

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

**Applicant:**

[REDACTED]

**Respondent:**

Commissioner of Police  
(represented by [REDACTED] of the State Solicitor's  
Office)

**Commission:**

Ms S Di Bartolomeo  
(Presiding Member)

**Matter:**

Application seeking review of a barring notice pursuant  
to section 115AD of the *Liquor Control Act 1988*.

**Date of lodgement  
of Application:**

27 May 2022

**Date of Determination:**

14 July 2022

**Determination:**

The Application for review is dismissed and the barring  
notice is affirmed in accordance with section 115AD(7)  
of the *Liquor Control Act 1988* ending on 25 November  
2022

**Authorities considered in the determination:**

- *Liquor Control Act 1988* (WA) Sections 5, 115AA(2), 115AB, 115AD(3), 115AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC33/2011)
- *ZUW v Commissioner of Police* (LC12/2021)
- *DJB v Commissioner of Police* (LC05/2017)

## Review of Barring Notice

1. This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988 (the Act)* made by [REDACTED] (**the Applicant**).
2. On 25 April 2022 at and in the vicinity of licensed premises, [REDACTED] (**the Premises**), it is alleged that the Applicant committed the offence of [REDACTED] (**the Incident**).
3. As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice (**Barring Notice**) on 3 May 2022 under section 115AA(2) of the of the Act, prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
  - (1) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
  - (2) All small bar licences issued under section 41A;
  - (3) All nightclub licences issued under section 42;
  - (4) Casino licence issued under section 44;
  - (5) All liquor store licences issued under section 47;
  - (6) All club licences issued under section 48;
  - (7) All restaurant licences issued under section 50;
  - (8) All producer's licences issued under section 55;
  - (9) All wholesaler's licences issued under section 58;
  - (10) All occasional licences issued under section 59; and
  - (11) All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice is for a period of approximately 7 months expiring on 25 November 2022.

### Incident

5. The following allegations regarding the Incident were considered by the Respondent, as set out in the Statement of Material Facts – Brief no. [REDACTED]:
  - (1) The Applicant and [REDACTED] (**the Victim**) have previously had arguments and disagreements.
  - (2) The Applicant was at the Premises at 7:00pm on 25 April 2022.
  - (3) The Applicant was seated at another table outside the Premises [REDACTED] and the Victim was at another table nearby.

- (4) The Applicant moved across to the Victim's table and they were talking. The Victim agreed with something the Applicant said.
  - (5) The Applicant moved towards the Victim and pushed her [REDACTED], causing the Victim to fall backwards off the bench chair on to a concrete floor. The Victim landed predominantly on her hip and her head made contact with something behind her, causing bruising to both areas.
  - (6) Threats were also made by the Applicant towards a witness in relation to [REDACTED].
  - (7) The Incident was captured on CCTV.
  - (8) The Applicant was spoken to by police at the Premises and appeared heavily intoxicated, however made full admissions [REDACTED].
  - (9) The Applicant was arrested on 26 April 2022 and participated in an electronic record of interview, making full admissions [REDACTED].
  - (10) The Applicant was summonsed with [REDACTED] preferred.
  - (11) The explanation given by the Applicant to police was that "the Victim made a comment [REDACTED] I [REDACTED] got angry and went over and pushed her".
6. The Incident giving rise to the Barring Notice is referred to in the following documents:
- (1) Section 115AD Application for review of Barring Notice dated 27 May 2022.
  - (2) The evidential material relied upon by the Commissioner of Police being:
    - (a) Statement of Material Facts [REDACTED];
    - (b) Police Detected Incidents Report [REDACTED];
    - (c) Incident Brief Report, Incident [REDACTED];
    - (d) Statement of Victim dated 26 April 2022;
    - (e) Four still photographs of the injuries of the Victim;
    - (f) Statement [REDACTED] dated 26 April 2022;
    - (g) CCTV video filmed in the vicinity of the Premises (**CCTV Footage**);
    - (h) Two still images of the CCTV Footage;
    - (i) Body camera video taken by police during and following the Incident (**Body Cam Footage**);
    - (j) One still image of the Applicant from the Body Cam Footage;

- (k) the Disclosable Court Outcomes – Criminal and Traffic history of the Applicant **(Disclosable Court Outcomes)**.
- (l) The Respondent's Primary Outline of Submissions dated 22 June 2022.

### **Submissions of the applicant**

- 7. On 27 May 2022, the Applicant applied to the Liquor Commission for a review of the Barring Notice.
- 8. The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9. Primary Submissions of the Applicant are contained within the application made by the Applicant on 27 May 2022.
- 10. The submissions of the Applicant are summarised as follows:
  - (1) The Applicant feels that the Barring Notice has been issued as a punishment [REDACTED]
  - (2) Since March 2021, the Applicant has not frequented the Premises and recently returned following an invitation to do so by friends of the Applicant. The Applicant has only frequented the Premises three times in 2022.
  - (3) The Applicant was contacted by three regulars of the Premises [REDACTED]
  - (4) There was no responsible service of alcohol being adhered to on the date of the Incident, as the Applicant was served [REDACTED] over the afternoon, from 3:00pm onwards with only two [people] drinking these.
  - (5) Once the police were called, the licensee raced over to table and took back the jug [REDACTED] that was just bought approximately 5 minutes beforehand. The Applicant further submits that the [licensee] did not want to seem to be serving an obviously intoxicated person when the police arrived.
  - (6) The Applicant also alleges that there was an incident where the licensee pushed [REDACTED] that [the Applicant] was with, to get the jug from the middle of the table before the police arrived [and the licensee] was highly agitated and worried. However, [REDACTED] felt it best not to place [REDACTED] charge on the licensee as he was just trying to protect himself and his business, which she understood, so did not proceed. [REDACTED]
  - (7) The Applicant submits that the licensee did not consider:
    - (a) the Applicant's character and reputation;
    - (b) any reasons surrounding the incident;

- (c) the Applicant was being provoked by [REDACTED] all afternoon and evening;
  - (d) snide comments and laughter about [REDACTED];
  - (e) the seriousness of any violent or aggressive behaviour displayed by the Applicant;
  - (f) any effect(s) the drinking of alcohol may have had on the Applicant;
  - (g) that there was no effect on the Applicant's behaviour with any other patrons, regulars and staff;
- (2) The Applicant believes there were [no] sound grounds for issuing the Barring Notice to all venues in WA.
  - (3) The Applicant submits that [the Barring Notice] is not supposed to impose a penalty, but is a mechanism to protect the general public, a licensee or indeed, the subject of the barring notice from his or her own actions.
  - (4) The Applicant feels [that the Barring Notice] has been placed on her as a punishment. She states that the Incident should have never happened and she should have just left [the Premises] [REDACTED].
  - (5) The Applicant pleaded guilty to the offence immediately to both the police when [they] arrived and at court. She complied with the police and gave her statement [and] there was no aggression.
  - (6) The Applicant states that she immediately left the Premises, and was actually planning to leave before the Incident. However, the [Victim] was very rude [REDACTED] and Applicant [REDACTED] pushed her.
  - (7) The Applicant feels remorseful for this action and on reflection, says that she should have [REDACTED] walked away.
  - (8) When the Applicant attended court she received [REDACTED] on [the] date of sentencing which the Applicant submits reflects that the court believes [the Applicant is] unlikely to commit that sort of offence again and [the applicant] had good character before committing this offence.
  - (9) The Applicant is requesting that [the] barring notice decision on the barring notice be reviewed and submits that she will no longer frequent the Premises in the future, for as long as the licensee is the licensee [of the Premises].

### **Submissions on behalf of the respondent**

- 11. The Respondent provided Primary Outline of Submissions dated 22 June 2022.
- 12. The Respondent's submissions are summarised as follows:
  - (1) **Reasonable grounds to believe the Applicant has been violent or disorderly, engaged in indecent behaviour or contravened a provision of any written law**

- (a) On the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant has, on or in the vicinity of licensed premises:
- i. been violent or disorderly;
  - ii. contravened a provision of any written law, mainly the Criminal Code.
- (b) The Respondent refers to the materials which demonstrate that:
- i. on the evening of 25 April 2022, the Applicant was present at the Premises;
  - ii. the Applicant was drinking alcohol [REDACTED];
  - iii. the Victim was at the Premises with two friends, [REDACTED];
  - iv. the Applicant walked over to the Victim and spoke with the Victim and [her friend] [REDACTED];
  - v. the Applicant forced the Victim backwards off her chair in response to something the Victim said;
  - vi. the Victim landed on her hip and hit her head on something behind her, causing bruising;
  - vii. the Applicant was separated from the Victim and [the Victim's friend];
  - viii. the Applicant made threats towards [the Victim's friend], [REDACTED]; and [REDACTED];
  - ix. police officers attended and spoke with the Applicant, who admitted to pushing the Victim off her chair and continued to make threats towards either the Victim or [the Victim's friend] (it is not clear which person the threat is directed at) in the presence of the police officers;

(2) The Respondent submits that, accordingly, the evidence before the Commission provides reasonable grounds for the belief that the Applicant has, on a licensed premises, engaged in violent or disorderly behaviour by pushing/pulling another patron off her chair, causing bruising. The Applicant contravened a provision of a written law, relevantly, the Criminal Code, pleaded guilty and was sentenced for a charge of assault causing bodily harm.

(3) **Nature and circumstances of the incident giving rise to the Barring Notice**

- (a) The Respondent submits that, during the altercation with the Victim at the Premises, the Applicant who was heavily intoxicated, approached the Victim and [the Victim's friend]. Whilst speaking to the Victim and [the Victim's friend], the Applicant [REDACTED] [REDACTED] pushed her", causing the Victim to fall [REDACTED] off her chair.

- (b) Considering all of these circumstances, the incident demonstrates aggressive and violent behaviour on the part of the Applicant whilst intoxicated.
- (c) Accordingly, there is a role for the Barring Notice to play in terms of a protective purpose.

(4) **The risk of the Applicant behaving in a similar manner**

- (a) The Respondent submits that the Applicant [REDACTED] acted impulsively by pushing the Victim off her seat. [REDACTED]
- (b) The Applicant appeared heavily intoxicated whilst speaking with police officers following the incident. The presence of police officers did not deter the Applicant from continuing to make threats to assault the Victim or [the Victim's friend] the next day.
- (c) The Applicant has expressed remorse and has since reflected [REDACTED]. She also notes that she co-operated with police [REDACTED] because the Court was satisfied that she was unlikely to commit this sort of offence again.
- (d) The Respondent's view is that there remains a risk the Applicant could behave in a similar manner again. Given the conduct and the subject of this matter in which the Applicant was influenced by alcohol, the Respondent submits that the Commission can have a real concern that the Applicant's alcohol consumption has a negative influence on her behaviour, which increases the risk she poses to the public when present on or in the vicinity of licensed premises.
- (e) The Respondent further submits that the circumstances of the incident may be replicated in the future. [REDACTED] the Applicant may find it difficult to contain her emotions and respond in an appropriate manner.
- (f) The Applicant's Disclosable Court Outcomes reveal that the Applicant has a number of previous offences [REDACTED]. These [REDACTED] offences and the incident the subject of the Barring Notice, create a strong inference that alcohol consumption adversely affects the Applicant's ability to make good decisions.
- (g) Even if there is a low risk that the Applicant could behave in a similar manner again, it is submitted by the Respondent that the terms of the Barring Notice protect the public in general by minimising the risk of such violence occurring.
- (h) For the reasons above, the Respondent submits that the Commission should not exercise its discretion to quash the notice.



## Statutory Framework

13. The Commissioner of Police has the power to ban people from licensed premises, or a specified class of licensed premises, for a period not exceeding 12 months, pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises or in the vicinity of licensed premises:
  - (1) been violent or disorderly; or
  - (2) engaged in indecent behaviour; or
  - (3) contravened a provision of any written law
14. The Commissioner of Police may delegate the power conferred by section 115AA of the Act on any member of the police force or above the rank of Inspector pursuant to section 115AB of the Act.
15. Section 115AD(3) provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.
16. Section 115AD(6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the applicant.
17. Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
18. The Act also in section 16 prescribes that the Commission:
  - (1) may make its determinations on the balance of probabilities;<sup>1</sup> and
  - (2) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply;<sup>2</sup> and
  - (3) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;<sup>3</sup>
19. Section 5 of the Act set out the objects of the Act. In subsection (1)(b), one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. Subsection (2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor.
20. In light of the primary and secondary objects of the Act, whilst the effect of a barring notice may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon the recipient, but is to be seen as a protective mechanism.<sup>4</sup>

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<sup>1</sup> *Liquor Control Act 1988 (WA)*, s 16 (1)

<sup>2</sup> *Ibid*, subsection (7)(a).

<sup>3</sup> *Ibid*, subsection (7)(b).

<sup>4</sup> *SVS v Commissioner of Police* (LC19/2011)

## Principles

21. The Commission, in considering an application under section 115AD, must review the decision and determine whether to affirm, vary or quash the decision.
22. The matters to be determined on a review are whether:
  - (1) there are reasonable grounds for believing the barred person has engaged in indecent behaviour, been violent or disorderly or contravened a provision of a written law on the licensed premises or in the vicinity of the same; and
  - (2) the length and terms of the barring notice are sufficient to uphold the objects of the Act and are not punitive in nature.
23. It is for the Commission to determine whether, on the balance of probabilities, the barring notice is warranted.

## Determination

### 24. The Applicant engaged in violent or disorderly conduct

- (1) The Applicant alleges that she was being provoked by [REDACTED] [REDACTED] Other than the Applicant's assertions, the Commission does not have any evidence before it to support this assertion.
- (2) In the Victim's statement, it is alleged that the Applicant [REDACTED] and that the Applicant approached the Victim and her friend. In this regard, the CCTV Footage does indicate that the Applicant approached the Victim and her friend, and pushed the Victim off her chair.
- (3) As submitted by the Respondent, it is difficult to discern exactly what was said between the Applicant and the Victim. In any event, the evidence clearly establishes that the Applicant behaved in a disorderly and violent manner.
- (4) The Applicant admits in her submissions that she pushed the Victim, admits the same in the Body Cam Footage and pleaded guilty to the offence [REDACTED].
- (5) There is therefore sufficient material before the Commission to establish that there are reasonable grounds for believing that the Applicant engaged in violent or disorderly behaviour and/or contravened a written law.

### 25. Whether the Applicant was on or in the vicinity of a licensed premises

- (1) Pursuant to section 115AA(2), the relevant conduct must occur on a licensed premises or in the vicinity of a licensed premises.
- (2) It is not disputed by the Applicant that the Incident occurred on a licensed premises or in the vicinity of a licensed premises.

- (3) On the basis outlined above, the Commission finds that the evidence has established that the Incident took place on a licensed premises or in the vicinity of a licensed premises.

**26. Exercise of discretion**

- (1) On review of a Barring Notice under section 115AD of the Act, the Commission may exercise its discretion to quash, vary or affirm the Barring Notice. In doing so, the Commission must consider the objects and purpose of the Act.
- (2) Section 5 of the Act sets out the objects of the Act with a primary object being to minimise harm or ill health caused to people, or any group of people, due to the use of liquor (ss(1)(b) of the Act) and the secondary objects including the need to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor (ss2).
- (3) The review application must also be decided on whether the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.

**27. The nature and circumstances of the Incident giving rise to the Barring Notice**

- (1) In her submissions, the Applicant refers to a previous dispute with the licensee of the Premises, and is of the view that the Barring Notice has been issued as a punishment  
[REDACTED]
- (2) As has been pointed out by the Respondent, the issuing of the Barring Notice was a decision made by the delegated officer for the Commissioner of Police, based on the evidence presented to the delegate outlined in the materials set out in [6] above.
- (3) From the materials provided to the Commission, and in particular, both the CCTV Footage and Body Cam Footage, the Applicant appears heavily intoxicated and demonstrates aggressive and violent behaviour whilst intoxicated.
- (4) In addition, the presence of police officers did not deter the Applicant [REDACTED]
- (5) The Applicant was charged [REDACTED]

**28. The risk of the Applicant behaving in a similar manner**

- (1) The Applicant submits that she is of good character, that she is unlikely to commit this sort of offence again, [REDACTED]
- (2) The Applicant has also expressed remorse in relation to the [REDACTED]
- (3) As submitted by the Respondent, the circumstances of the Incident may be "replicated in the future [REDACTED]

[REDACTED] The incident demonstrates that whilst intoxicated, the Applicant may find it difficult to contain her emotions and respond in an appropriate manner".

- (4) In addition, the Applicant's Disclosable Court Outcomes reveal that the Applicant has a number of previous offences [REDACTED]

[REDACTED] Together with the Incident the subject of the Barring Notice, the Commission agrees with the Respondent's submission that this creates a strong inference that alcohol consumption adversely affects the Applicant's ability to make good decisions.

- (5) It therefore appears that there is some risk that the Applicant will behave in a similar manner in the future if presented with similar circumstances, and that risk can be minimised by the terms of the Barring Notice.<sup>5</sup>

29. The purpose of barring notices differs to that of criminal proceedings, and they are not intended as a punishment. Rather, barring notices serve as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises. Barring notices are also a mechanism to protect a licensee or indeed, the perpetrator, from his/her own actions.

30. In the circumstances, the Commission does not find it appropriate to vary the length of the Barring Notice, which seems justified to:

- (1) serve to assure members of the public who frequent licensed premises that they are in safe environments and can expect that they will not become victims of, or have to witness, violence or antisocial or disorderly behaviour; and
- (2) allow the applicant the opportunity for introspection regarding her behaviour on, and in the vicinity of, licensed premises.

31. The Barring Notice is affirmed and the application for review is dismissed.



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**S Di Bartolomeo**  
**PRESIDING MEMBER**

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<sup>5</sup> KRB v Commissioner of Police (LC 33/2011)