

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

Applicant: CD

Respondent: Commissioner of Police
(*represented by Ms Ellen Tapsell of the State Solicitor's Office*)

Commission: Sandra 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: 28 October 2021

Date of Determination: 6 January 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*.

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)*

Background

- 1 This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (WA) ("Act") made by [REDACTED] ("Applicant").
- 2 On 8 August 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that [REDACTED] was disorderly and remained in the vicinity of licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice on 30 September 2021 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - 3.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 3.2. All small bar licences issued under section 41A;
 - 3.3. All nightclub licences issued under section 42;
 - 3.4. Casino licence issued under section 44;
 - 3.5. All liquor store licences issued under section 47;
 - 3.6. All club licences issued under section 48;
 - 3.7. All restaurant licences issued under section 50;
 - 3.8. All producer's licences issued under section 55;
 - 3.9. All wholesaler's licences issued under section 58;
 - 3.10. All occasional licences issued under section 59; and
 - 3.11. All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 4 The Barring Notice was served on the Applicant on 12 October 2021 and is for a period of approximately 10 months expiring on 8 August 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in Detected Incidents Report incident no. [REDACTED]:
 - 5.1. Police on night-safe uniformed foot patrol duties were sighted and waved down by crowd controllers at the entry to the Premises.
 - 5.2. Two patrons, who had been removed from the Premises due to being intoxicated, had been physically aggressive to security in an attempt to re-enter the Premises.

- 5.3. During this event, the Applicant struck a female bar staff member ("Victim") to the face.
- 5.4. Both the Applicant and another patron were issued with a Move on Order.
- 5.5. Further enquiries on 12 August 2021 included police reviewing CCTV footage which the police allege is clear and establishes the offences.
- 5.6. Inquiries with the Victim identified that she does not wish to continue with an assault complaint.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
 - 6.1. Section 115AD Application for review of Barring Notice dated 28 October 2021.
 - 6.2. The evidential material relied upon by the Commissioner of Police being:
 - 6.2.1. Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.2. Western Australia Police Criminal Code Infringement Notice [REDACTED], dated 12 August 2021;
 - 6.2.3. Western Australia Police Liquor Infringement Notice [REDACTED] dated 12 August 2021;
 - 6.2.4. Copy of Criminal Investigation Act 2006 Move on Order [REDACTED], dated 8 August 2021;
 - 6.2.5. Western Australia Police Move on Notice Details Report [REDACTED], dated 8 August 2021;
 - 6.2.6. photographs of the injuries of the Victim;
 - 6.2.7. CCTV video filmed in the vicinity of the Premises ("CCTV Footage");
 - 6.2.8. eight still images of the CCTV Footage; and
 - 6.2.9. the Criminal and Traffic History of the Applicant.
 - 6.3. The Respondent's Primary Outline of Submissions dated 26 November 2021.

Applicant's Submissions

- 7 On 28 October 2021, 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 28 October 2021.

- 10 The Applicant also submitted a response to the Respondent's Primary Submissions on 8 December 2021.
- 11 The submissions of the Applicant are summarised as follows:
- 11.1. The Applicant was assaulted by a security guard at the Premises and was removed from the Premises by use of excessive force by pub security.
 - 11.2. In her Secondary Submissions, the Applicant states that she was once again thrown to the ground with excessive force by the same security guard outside of the Premises.
 - 11.3. The security manager accepted liability for the original incident and apologised for the actions of the security guard.
 - 11.4. The Applicant contacted and waited for the police to arrive in relation to the physical assault inflicted on the Applicant.
 - 11.5. The Applicant engaged in an altercation with the bar manager for which she is extremely remorseful and which is highly out of character. The Applicant does not deny that this occurred and is extremely apologetic.
 - 11.6. In her Secondary Submissions, the Applicant:
 - 11.6.1. admits that she was trying to re-enter the Premises, and acknowledges that [pub security used] appropriate force to prevent her from re-entering the [Premises];
 - 11.6.2. acknowledges that her behaviour is unacceptable, states that she was in a heightened and dazed state, and states that she was acting this way in retaliation to being attacked "by unknown men by all different angles";
 - 11.6.3. admits that she accidentally made contact with the Victim's face;
 - 11.6.4. states that the incident has been portrayed by the Respondents in a context other than that which occurred, and they have not acknowledged anyone's disorderly actions towards the Applicant; and
 - 11.6.5. acknowledges that her behaviour was inappropriate and completely out of character, states that she is remorseful and recognises the seriousness of her behaviour and the impact it may have had on others involved in the incident, particularly the [Victim] which the Applicant is very remorseful for.
 - 11.7. The Applicant assumed that the police were there to assist her in relation to the physical assault inflicted upon her, however the Applicant and her friend were issued with a move on notice.
 - 11.8. The Applicant did not leave the immediate vicinity as requested, as she was hopeful that the incident would be classified as an assault on her.
 - 11.9. Following the Incident, the Applicant was issued with two infringement notices in relation to behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place and a person who under section 115, has been refused

entry to, or has been required to leave and has left, or been removed from, licensed premises; and remains on any footpath that is adjacent to the licensed premises.

11.10. On 12 October 2021, the Applicant was issued with the Barring Notice.

11.11. The Applicant requests that the Barring Notice be reviewed on the basis of three grounds:

- 11.11.1. in the context of the evidence presented, the Barring Notice is manifestly excessive and disproportionate to the offence;
- 11.11.2. the evidence presented is in disputable context, the Applicant could be seen to be acting in self-defence and there would have been sufficient evidence to suggest that the Applicant was not a risk to which the public needed general protection; and
- 11.11.3. the object of the Act is for protection rather than to be punitive and there is no justifiable reason why the Applicant should [have been issued] with a [12] month barring notice as punishment for simply not moving on. The Applicant states that she was not disorderly in the context and genuinely believes she was a victim of a physical assault.

Respondent's Submissions

12 The Respondent provided Primary Outline of Submissions dated 26 November 2021.

13 The Respondent's submissions are summarised as follows:

Reasonable grounds for believing the Applicant has been violent or disorderly or contravened a provision of any written law on licensed premises

13.1. On the evidence before the Respondent, especially Detected Incidents Report and the CCTV Footage, a reasonable person would have been inclined to assent to, and not to reject, the proposition that the Applicant engaged in violent or disorderly conduct on or in the vicinity of the Premises, or contravened a provision of any written law, being the offences of common assault under section 313 of the *Criminal Code* (Criminal Code), refusing to leave a Premises when directed under section 115(4B) of the *Liquor Control Act 1988* (Liquor Control Act); and attempting to re-enter a venue under section 115(7) of the Liquor Control Act.

13.2. The Applicant's conduct constitutes:

- 13.2.1. Engaging in violent conduct on licensed premises and/or in the vicinity of a licensed premises, namely;
 - (a) Swinging her elbow backwards in the direction of the head of a security guard;
 - (b) Striking a security officer at head height with her fist while moving quickly towards the Premises entry;

- (c) Punching [the Victim] to the face with her fist causing bruising; and
 - (d) Being repeatedly "physically aggressive to security in an attempt to re-enter" the Premises, repeatedly physically struggling with staff members or passers-by, and repeatedly needing to be physically restrained.
- 13.2.2. Engaging in disorderly conduct on licensed premises and/or in the vicinity of a licensed premises, namely:
 - (a) Being repeatedly uncooperative with staff members or passers-by;
 - (b) Being in or in the vicinity of the Premises between approximately midnight and 1:00AM on 8 August 2021, having been "removed due to being intoxicated"; and
 - (c) Having been removed from the Premises, attempting to regain entry to the Premises some 14 times, including attempts to forcibly regain entry.
- 13.3. It is consistent with the above conduct that the Western Australia Police issued the Applicant with a Move on Order, which stated that the Applicant was either intending, had just committed, or was committing an offence. The Move on Order describes the relevant offence in question to be "disorderly behaviour in public" and "assault".
- 13.4. Further, it is consistent with the above conduct that the Western Australia Police issued the Applicant with a Criminal Infringement Notice, which stated that the Applicant was "[b]ehaving in a disorderly manner in a public place or in sight or hearing of any person in a public place"; and further a Liquor Infringement Notice, which stated that the Applicant was "[a] person who, under section 115, has been refused entry to, or has been required to leave and has left, or been removed from, licensed premises; and remained on any footpath that is adjacent to the licensed premises."
- 13.5. Accordingly, the evidence before the Commission provides reasonable grounds for the belief that the Applicant has, on or in the vicinity of licensed premises, engaged in violent or disorderly behaviour.
- 13.6. Further, the evidence before the Commission provides reasonable grounds for the belief that the Applicant contravened a written law, being the Criminal Code and the Liquor Control Act.

Nature and circumstances of the incident giving rise to the Barring Notice

- 13.7. The Respondent submits that the actions of the Applicant over the course of the incident on 8 August 2021 constituted a serious example of violent and disorderly behaviour occurring in the vicinity of the licensed premises.
- 13.8. The Applicant demonstrated aggressive and violent behaviour to a number of people who had minimal involvement in the incident and who had not provoked the

Applicant. The Applicant's violent response was disproportionate to any perceived or alleged provocation (noting that the Respondent disputes that anybody provoked the Applicant at all). In particular, the Applicant's conduct towards [the Victim] was entirely disproportionate to any perceived or alleged provocation, because her stated reason for punching [the Victim] to the face was that she had been pushed to the ground by another security officer.

- 13.9. Accordingly, the terms of the Barring Notice achieves its protective purpose, by protecting the general public from the actions of the Applicant on licensed premises.

The risk of the Applicant behaving in a similar manner

- 13.10. The evidence clearly establishes that the Applicant acted violently and disorderly in the vicinity of the licensed premises.
- 13.11. When considering the Applicant's personal circumstances, the risk of the Applicant behaving in the same or similar manner in the future is high.
- 13.12. The Applicant is not of prior good character. The Applicant has a previous conviction for alcohol related offending, namely "excess 0.08% alcohol per 100ml of blood" contrary to section 64(1) of the *Road Traffic Act 1974* (WA) on 18 July 2014. It is relevant to note that the Applicant does not acknowledge this conviction in her Initial Submissions. Rather, the Applicant inaccurately submits "I have no previous convictions".
- 13.13. Further, it is relevant that during the incident it is the Applicant who repeatedly re-engages in violent or disorderly conduct by attempting to re-enter the Premises or approaching members of staff.
- 13.14. Given the Applicant's prior offence and the conduct the subject of this matter in which the Applicant was influenced by alcohol, 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.
- 13.15. Rather than demonstrating insight into her conduct, the Applicant entirely denies being violent and disorderly in or in the vicinity of the Premises, and denies even knowing that she engaged in an altercation with [the Victim].
- 13.16. Given the Applicant appears to lack any real insight into how her actions were disorderly, violent, and contrary to written laws, the Respondent submits that the likelihood of the Applicant's behaviour in the same or a similar manner around licensed premises in the future if faced with similar circumstances is high.
- 13.17. Even if there is a low risk that the Applicant could behave in a similar manner, any such risk can be further minimised by the terms of the relevant notice.
- 13.18. For the above reasons, the Respondent submits that the Commission should not exercise its discretion to quash the notice.

Statutory Framework

- 14 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:
 - 14.1. been violent or disorderly; or
 - 14.2. engaged in indecent behaviour; or
 - 14.3. contravened a provision of any written law.
- 15 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.
- 16 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.
- 17 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.
- 18 Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 19 The Act also in section 16 prescribes that the Commission:
 - 19.1. may make its determinations on the balance of probabilities;¹ and
 - 19.2. 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;² and
 - 19.3. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;³
- 20 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.

¹ *Liquor Control Act 1988* (WA), s 16 (1)

² *Ibid*, subsection (7)(a).

³ *Ibid*, subsection (7)(b).

- 21 In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it 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.⁴

Principles

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

Determination

The Applicant engaged in violent or disorderly conduct

- 25 The Applicant alleges that her behaviour was in retaliation of an earlier physical assault, and argues that her actions were in self-defence. There is no evidence before the Commission to support those findings. In any event, the Commission considers those allegations to have no relevance as to whether the Applicant behaved in a disorderly or violent manner.
- 26 In the CCTV Footage, the Applicant is seen to repeatedly re-engage in violent or disorderly conduct by attempting to re-enter the Premises or approaching members of staff on numerous occasions.
- 27 In her own submissions, the Applicant admits that that she repeatedly tried to re-enter the Premises, acknowledges that appropriate force was used to prevent her from re-entering the Premises and acknowledges that her behaviour was inappropriate and unacceptable.
- 28 In the CCTV Footage, the Applicant is seen to strike the Victim, and the Applicant does not dispute that this occurred in her submissions.
- 29 In addition, the Applicant was issued with a Move on Order and two Criminal Infringement Notices, all of which are consistent with a finding of disorderly and violent behaviour.
- 30 Together with the CCTV Footage, there is 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.

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

Whether the Applicant was on or in the vicinity of licensed premises

- 31 Pursuant to section 115AA(2), the relevant conduct must occur on licensed premises or in the vicinity of licensed premises.
- 32 It is not disputed by the Applicant that the Incident occurred on licensed premises or in the vicinity of licensed premises.
- 33 The Applicant acknowledges that she was trying to re-enter the Premises and the CCTV Footage clearly captures her doing so, together with her interactions immediately outside the Premises.
- 34 On the basis outlined above, the Commission finds that the evidence has established that the Incident took place on licensed premises or in the vicinity of licensed premises.

Exercise of discretion

- 35 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.
- 36 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).
- 37 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.

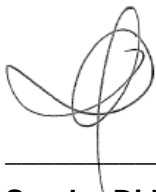
The nature and circumstances of the Incident giving rise to the Barring Notice

- 38 From the materials provided to the Commission, and in particular, the CCTV Footage, the Applicant appears intoxicated and aggressive. In her own submissions she describes herself as being in a "heightened and dazed state".
- 39 The Applicant appears quite insistent on gaining re-entry to the Premises, notwithstanding having been forcibly removed and being asked to move on.
- 40 In addition, the Applicant admits to striking the Victim in the face.
- 41 The evidence before the Commission clearly establishes that the Applicant behaved in a violent and disorderly manner.

The risk of the Applicant behaving in a similar manner

- 42 The Applicant submits that her behaviour was "completely out of character". However, the Respondent submits that the Applicant is not of prior good character, given that she has a previous conviction for an alcohol related offence.

- 43 As submitted by the Respondent, the Applicant's prior offence and her conduct during the Incident in which the Applicant was influenced by alcohol does cause the Commission some concern that the Applicant's alcohol consumption has a negative influence on her behaviour.
- 44 It therefore appears that there is some risk that the Applicant will behave in a similar manner in the future and that risk can be minimised by the terms of the Barring Notice.⁵
- 45 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.
- 46 In the circumstances, the Commission does not find it appropriate to vary the length of the Barring Notice, which seems justified to:
- 46.1. 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
 - 46.2. allow the applicant the opportunity for introspection regarding her behaviour on, and in the vicinity of, licensed premises.
- 47 The Barring Notice is affirmed and the application for review is dismissed.



Sandra Di Bartolomeo
PRESIDING MEMBER

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