

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

Applicant: AS
*(represented by Mr Jarrod Ryan and Mr Patrick Fry of
Ryan & Co. Solicitors)*

Respondent: Commissioner of Police
*(Represented by Mr Zachary Clifford of the State
Solicitor's Office)*

Commission: Pamela Hass (Presiding Member)

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

Date of Hearing: 1 March 2022

Date of Determination: 29 March 2022

Determination: The term of the barring notice is varied pursuant to section
115AD(7) of the Act to expire on 30 April 2022

Authorities considered in the determination:

- *SVS v Commissioner of Police* (LC19/2011).

BACKGROUND

1. On 31 July 2021 an Incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Premises”) involving the Applicant.
2. As a result of such Incident(s) the Commissioner of Police (“the Respondent”) issued a Barring Notice (“the Barring Notice”) dated 18 October 2021, pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting the Applicant from entering specified licensed premises of the following cases in Western Australia for a period of approximately 9 months, expiring 31 July 2022:
 - a) All hotel licences issued under section 41;
 - b) All small bar licences issued under section 41A;
 - c) All nightclub licences issued under section 42;
 - d) Casino licence under section 44;
 - e) All liquor store licences issued under section 47;
 - f) All club licences issued under section 48;
 - g) All restaurant licences issued under section 50;
 - h) All producer’s licences issued under section 55;
 - i) All wholesaler’s licences issued under section 58;
 - j) All occasional licences issued under section 59; and
 - k) All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
3. The Barring Notice was served on the Applicant on 26 October 2021.
4. On 5 November 2021, the Applicant lodged an Application for Review of the Barring Notice under section 115AD of the Act. The Applicant has elected to have the review determined by hearing.
5. The Incident(s) giving rise to the Barring Notice is referred to in the following documents:
 - a) The Application for Review dated 5 November 2021 and attached letter from Ryan & Durey dated 5 November 2021 (“the Application”).
 - b) The evidential material relied on by the Commissioner of Police:
 - i. W.A. Police Detected Incidents Report;
 - ii. Statement of Senior Constable Douglas James Hibben dated 7 October 2021;
 - iii. Statement of Senior Constable James Allen dated 7 October 2021;
 - iv. Venue Incidents Report by Managers/Licensee;
 - v. Photographs of Applicant and Others;

- vi. Disclosable Court Outcomes for the Applicant – Criminal and Traffic; and
- vii. Footage of CCTV taken from inside and outside the Premises.
- c) The Respondent's Primary Submissions dated 28 January 2022.
- d) The Respondent's Responsive Submissions dated 18 February 2022.

THE INCIDENT

6. The circumstances of the Incident are summarised below:

- a) The Applicant [REDACTED] was at the Premises on the night of 31 July 2021. He was at the Premises in a social capacity playing pool with his son and others. The evidence states [REDACTED].
- b) The Police Detected Incidents Report states that Police as part of a welfare check attended the Premises at approximately 10:30pm after 2 female patrons became heavily intoxicated. They "saw a brawl including a number of people with security trying to separate the involved persons". It further states that Police removed 2 persons LS and MS who were moved outside, details taken and moved on with one (LS) apparently following St John Ambulance (SJA) to hospital.

The Detected Incidents Report further states that Police spoke to the Applicant who told Police he and a family member were assaulted. The owner then showed Police CCTV footage.

- c) The Police statements refer to attendance at [REDACTED] responding to an Incident report which indicated that "people were drugged and passing out" at approximately 10:30pm. St John Ambulance (SJA) were in attendance and treating 2 females who were apparently heavily intoxicated. Police observed inside the hotel a group of people fighting. Security was trying to escort 3 men out of the bar area, one of whom was very aggressive. Handcuffs were applied and he was escorted out along with another male. They alleged that the Applicant had accused them/him of drugging people.
- d) Both the Detected Incidents Report and the 2 Police statements refer to Police later viewing CCTV footage with the Applicant.
- e) Police viewed the CCTV footage and interpreted from it the following:
 - i. There is a fight near the pool table and a man in a white shirt (LS) is lying on the floor on his back in the midst of a group apparently fighting. The Applicant approaches the victim's head. He is shoeless and stomps on the victim's head with his right foot.
 - ii. Further in the CCTV recording the Applicant and LS are on their feet tussling. The Applicant picks up a pool ball in his right hand and swings his right hand towards LS head and throws the pool ball at the head of LS.
 - iii. Later in the CCTV recording the Applicant picks up a pool cue and appears to arm himself with it.

- iv. The interpretation of the CCTV footage of the Incident by the lawyers for the Applicant is set out at item 4.2 of the submissions dated 4 February 2022 as follows:

a) The Applicant was at the premises in a social capacity on the night of the Incident. Although the Applicant works at the premises, on the night of the Incident he was not on duty and was at the premises playing pool with his son and friends.

b) The Applicant submits that an earlier Incident on the night is what may have triggered the Aggressor's behaviour. The earlier Incident involved two females at the premises who were acting odd and may have been under the influence drugs. One female passed out and when security went to her aid and said that they would call an ambulance, the Aggressor and his friends started to get agitated and persuade the security that one had already been called.

c) Despite this, the security guard called the ambulance and shortly after it arrived, the second female also passed out. Security said that they would not only call an ambulance but the police as well. This appeared to stir up the Aggressor and his friends even more and said that they would take the female outside. Security proceeded to call emergency services for assistance.

d) The Applicant and his friends could see what was happening and it was at this time that the Applicant spoke to a tall male with dreadlocks (Male A) and discussed that he did not like seeing girls passed out like that and she must get medical attention and departed company on agreeable terms and shook hands as seen on CCTV Camera 23 at 22:25. (Annexure A is the full extract of the CCTV footage from the Incident).

e) Immediately after, the Applicant returned to play pool and was talking with his friend, Aaron.

f) Male A then spoke with the Aggressor as can be seen on CCTV camera 19 at 22:27.

g) The Aggressor then walks straight towards the Applicant and tries to put him in a headlock and starts throwing punches at the Applicant's friend [REDACTED], which is where the CCTV footage lodged by the Commissioner of Police commences.

h) The Applicant believes that Male A and the Aggressor were trying to create a diversion from the issues associated with the females who had passed out.

i) As can be seen in the CCTV footage, the Aggressor throws the first punch and continues to throw punches whilst the Applicant and his friends try to stop him. When the Aggressor is on the ground, the Aggressor had hold of the Applicant's son. It is at this time when the Applicant, while only wearing socks, tries to stop the Aggressor attacking his son by pinning his arm down with the Applicant's foot. The Applicant was not trying to stomp on his head.

j) The Applicant did not throw a punch during the entire Incident. Whilst the Applicant did throw a pool ball and hold pool cue, this was as protection for his

personal safety as he was being attacked. The Applicant never used the pool cue as a weapon.

k) Following the Incident, the Aggressor and Male A left the premises and the Police intervened outside of the premises. The Applicant understands that neither the Aggressor nor Male A sustained any injuries.

l) The Applicant had never seen the Aggressor before the night of the Incident, nor had ever spoken to the Aggressor on the night or since.

SUBMISSION BY THE APPLICANT

7. The Applicant is represented by Ryan & Durey Solicitors (later referred to in papers as Ryan & Co. Solicitors). Their submissions on behalf of the Applicant dated 4 February 2022 set out the grounds for application:

- a) It is noted that no criminal charges were laid against the Applicant and no evidence was provided that any other persons involved in the Incident have been charged.
- b) The Applicant submits that the statement of the 2 Police Officers who attended on that evening rely on their interpretation of CCTV footage.
- c) The Officers did not witness the Incident.
- d) The Applicant attended the review hearing on 1 March and gave evidence under oath and was cross-examined by the solicitor for the Respondent. He also provided a Statutory Declaration dated 4 February 2022.
- e) The Applicant denies he was intoxicated and says he was drinking a glass of white wine and soda while playing pool with his son and a friend.
- f) He states he has worked in [REDACTED]. He was an approved manager. He was not working on the night of the Incident.
- g) The Police "Disposable Court Outcomes" shows no criminal and traffic data to report.
- h) The Applicant's lawyers submit that he acknowledges the Incident could have been handled better.
- i) He asks the Commission to view the whole matter in context. He asserts that the person described as the Aggressor in his lawyer's submission (to be referred to for the purpose of this matter as "Male B") initiated the confrontation and the Applicant was attempting to defuse the situation and have Male B and Male A leave, had formed the view that they had given something (perhaps drugs) to the 2 females who collapsed quite suddenly.
- j) In evidence the Applicant says that around 10:24pm he spoke to Male A who approached him. He says Male A was highly animated but had not drunk alcohol at the venue. He says he told Male A not to "do that here" as he has formed the view that Male A was doing drugs and that the 2 girls had "taken something" but has no evidence of

this. Male A then left and the Male B approached the Applicant and punched his son in the head. He says he was hit by that male and felt he was going to be killed.

- k) In the evidence and under cross-examination, the Applicant states he does not believe during the melee when Male B was on the ground and the Applicant was shoeless that he stomped on the head.
- l) He admits during the evidence he reached over the pool table and grabbed a pool ball and whilst he threw the ball he denies that it hit the head of Male B.
- m) Further he says that when the fight moved closer to the bar area, he grabbed a pool cue and whilst the CCTV footage shows him thrusting it at the Male B he denies it made contact with the person's head.
- n) Overall the Applicant denies that he was acting violently, but was rather attempting to defuse a situation and says that there was no injury to anyone.
- o) The Applicant says that the Incident had a significant effect on him and the family and they have [REDACTED]
- p) He states that he was the only person adversely affected by the Incident and that the Barring Notice should be quashed or if not varied as the period of 9 months is excessive.

SUBMISSIONS BY THE RESPONDENT

- 8. The Respondent is represented by Mr Zacchary Clifford of the State Solicitor's Office. The submissions dated 28 January 2022 and 18 February 2022 set out the grounds.
- 9. The Respondent asserts that there is sufficient material before the Commission to establish that there are reasonable grounds for believing that the Applicant has engaged in violent behaviour in a licensed premises.
- 10. The Respondent refers to CCTV footage and witness statements by the Police Constables which demonstrate that the Applicant engaged in violent behaviour, namely:
 - a) The Applicant stomped or attempted to stomp on the victim's head (Identified as Male B) while he was down and lying on his back and was being restrained, and asserts the victim's head jolts towards the floor which in the Respondent's view indicated that the stomp connected.
 - b) The Applicant further picked up a pool ball and smashed or attempted to smash it into the Victim's head using the ball as a weapon. The Respondent asserts that there is sufficient evidence that the ball made contact with the head.
 - c) Later in the Incident the Applicant armed himself with a pool cue. The Respondent says it made contact with the head of the man. In cross-examination of the Applicant by the solicitor for the Respondent, the Applicant asserts it did not make contact and that he was attempting to defuse the situation.
 - d) The Responsive Submissions by the Respondent on 18 February 2022 refer to the Applicant's assertion of antagonistic and inappropriate behaviour on the part of Male A and the victim Male B prior to the Incident. The Respondent says this does not detract

from the fact that the Applicant engaged in violent behaviour and the public needs to be protected given the risk that he may do so again.

- e) The Respondent says that there are 3 components of the Incident:
 - i. The Applicant threw a punch while holding a pool ball;
 - ii. The Applicant attempted to strike the victim with a pool cue; and
 - iii. The Applicant stomped or attempted to stomp on the victim's head and has failed to accept responsibility for his actions.

In conclusion the Respondent says the Barring Notice should be affirmed.

STATUTORY FRAMEWORK

- 11. The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises:
 - a) Contravened a provision of any written law;
 - b) been violent or disorderly; or
 - c) engaged in indecent behaviour.
- 12. The Commissioner may delegate the power conferred by section 115AA of the Act to any member of the police force of or above the rank of Inspector pursuant section 115AB of the Act.
- 13. Section 115AD(3) of the Act 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.
- 14. 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 documents provided by the Applicant.
- 15. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 16. Section 16 of the Act prescribes that the Commission:
 - a) may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
 - b) 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 [subsection 7(a)]; and
 - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms [subsection (7)(b)].

17. In 2010, the Act was amended *“to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations”* (Minister’s statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925).
18. The Minister further stated that the legislation gave the Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
19. Section 5 of the Act sets out the objects of the Act. In subsection 5(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. Section 5(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, 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 them but is to be seen as a protective mechanism (SVS v Commissioner of Police (LC19/2011)).

DETERMINATION

21. The Commission, in considering an application under section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
22. Therefore, the questions are whether:
 - a) There are reasonable grounds for believing that the barred person has, on or in the vicinity of a licensed premises, been violent or disorderly; engaged in indecent behaviour or contravened a provision of written law; and
 - b) The period and terms of the Barring Notice reflect the objects and purposes of the Act and are not punitive in nature.
23. It is for the Commission to determine whether, on the balance of probabilities, the Applicant was involved in the Incident to the degree that warrants the issue of a Barring Notice.
24. I have considered all the evidence before me and I am satisfied that there were reasonable grounds to conclude that the Applicant was disorderly and violent on or in the vicinity of licensed premises.
25. It is undisputed that he was involved in an Incident(s) at the [REDACTED] on 31 July 2021. He was playing pool in a social capacity on this night. [REDACTED] licensed premises and he was the Manager.
26. The Applicant became involved in 3 situations shown in the CCTV footage from the scene:
 - a) Stomping while shoeless on, or attempting to stomp on, a man involved in a melee and on the ground;
 - b) Throwing or attempting to throw or hit the same man with a pool ball while involved in an altercation with that man; and
 - c) Swinging and hitting or almost hitting the same man with a pool cue.

27. I have viewed the CCTV footage both prior to and during the hearing, the latter with the assistance of Counsel and the Applicant.
28. I have further read the Police Statements provided as documents 2D and 2E which substantively rely on an interpretation of CCTV footage as, while the officers attended the premises to do a welfare check, they did not directly witness the Incident.
29. I find that the CCTV footage is inconclusive of the facts that the “stomp” connected with the man’s head, that the pool cue which was swung by the Applicant hit the man’s head or that the pool ball which the Applicant grabbed and swung actually hit the man in question. The matter turns on the interpretation of the CCTV footage.
30. I accept that a situation had arisen at the premises where 2 young women had suddenly lost consciousness and that the Applicant had concerns about the activities of the men referred to as Male A and Male B in this context.
31. I accept that it appears both men approached the Applicant and his son at the pool table after the Incident with the 2 girls (noting that security had called SJA who were in attendance), in one case (Male A) a highly animated state and in relation to the second (Male B) a clearly aggressive manner.
32. Whilst it is an irrelevant consideration it is noted that Male B appeared able to walk out of the venue after the Incident and had no clear signs of injury.
33. However the fact remains the Applicant engaged in violent conduct with the potential to do harm including the risk that the Incident could have escalated to pose a risk to members of the public.
34. It is clear to me that initially the Applicant appears to be defending himself and his son from clearly aggressive behaviour and may well have been attempting to defuse the situation. He however went further and one questions that his responses were reasonable and commensurate responses to the inappropriate behaviour.
35. As an [REDACTED] he should be aware of the role of security who were indeed on the scene.
36. Accordingly, I find there is a clear and proper basis for the Respondent’s delegate to exercise the power conferred by section 115AA of the Act and impose a Barring Notice.
37. Therefore, it is for the Commission to determine in the circumstances whether the length and term of the Barring Notice is sufficient to uphold the objects of the Act and is not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.
38. In determining whether to quash or vary the Barring Notice, it is relevant to take into account the nature and circumstances of the Incident giving rise to the Barring Notice, the risk of the Applicant behaving in a similar manner again and the need to protect the public and the Applicant himself.
39. The nature of the Incident is serious regardless of what interpretation is adopted from the CCTV footage.

40. It is clear from viewing the CCTV footage that the Incident had the potential to escalate even further than it had already done. In this context I note the third situation involving the pool cue. The Applicant had picked up and armed himself with the pool cue and whether one accepts the Respondent's interpretation that the pool cue made contact with the male's head or that it was a wide swing and was an action designed to defuse, it could have resulted in serious injury. It is here that the Applicant could have desisted and left the matters to security who were clearly present and visible.
41. Given the conduct in this regard there may, on the balance of probabilities, be a risk that he could behave in a similar manner again if provoked.
42. I note and take into account his previously good record and [REDACTED]. I note also and accept his evidence that he is highly committed to an environment in the establishment owned by him free of illegal substances. I also accept that there is evidence that the genesis or pretext of the Incident was the sudden loss of consciousness of 2 female patrons and his concerns (well-founded or not) that the 2 males accompanying them may have given or supplied them with substances and that he did not want this in his establishment. I also accept his evidence of his comments to Male A at the pool table before the Incident.
43. However, he did not remain in control of his actions, which is not an unreasonable expectation of someone of his experience in the industry. I refer in this context to the apparent action of stomping or attempting to stomp on a male's head and later swinging a pool cue towards a male's head.
44. Further it is noted that Barring Notices are not intended as punishment. Instead they serve as a measure to protect the public from antisocial behaviour in and around licensed premises.
45. In balancing the above, members of the public must be able, when they frequent licensed premises, to be assured that they are in safe environments and not witness antisocial behaviour. On the evening in question that cannot be said to be the case. From viewing the CCTV footage it can only be concluded that the public interest in attending a safe environment was compromised by a situation to which the Applicant contributed.
46. The Commission agrees with the Delegate and has concluded that there was a clear and proper basis for the delegate to exercise the power conferred under section 115AA of the Act.
47. The Applicant has made submissions that the length of the Barring Notice in the circumstances was excessive and submits that it amounts to a penalty in that it is in place for 9 months. I accept that the Applicant did not instigate the Incident and was trying to defuse a situation and further to that no injury appears to have been sustained by anyone and no charges laid.
48. While I do not find all of his argument wholly convincing, I note the impact of the whole Incident on him and his family, including the decision prompted largely by welfare and safety concerns [REDACTED]
49. Therefore taking into account all the evidence I have determined to vary the order so that the term of the order is 6 months rather than 9 months and expires on 30 April 2022.



PAMELA HASS
PRESIDING MEMBER