

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicants:** Mr LWU and Mr TCP
(represented by Mr Richard Hickson, Aboriginal Legal Service of Western Australia)
- Respondent:** Commissioner of Police
(represented by Ms Jane Godfrey of State Solicitor's Office)
- Commission:** Mr Eddie Watling (Deputy Chairperson)
- Matter:** Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.
- Date of Determination:** 21 June 2016
(on papers)
- Determination:** The barring notice to both applicants is varied pursuant to section 115AD(7) of the Act to permit entry to the Gnowangerup Football Club and the Gnowangerup Golf Club.

Background

- 1 Around 11:20 pm on the evening of Friday 26 February 2016, Mr AWU and Mr TCP (“the applicants”) were involved in an incident at the Gnowangerup Hotel, Gnowangerup. A number of friends and family members of one of the applicants were also involved in the incident.
- 2 The circumstances of the incident are set out in the statement of material facts of First Class Constable Evans and the incident report prepared by the Police Liquor Enforcement Unit.
- 3 On 4 April 2016 the applicants were each served with a barring notice pursuant to section 115A(2) of the *Liquor Control Act 1988* (“the Act”) barring them from entering specified licensed premises within Western Australia, for a period of 7 months. The specified licensed premises being:
 - a) all hotel licences, however referred to, issued under section 41 of the Act;
 - b) all nightclub licences issued under section 42 of the Act;
 - c) Casino licence issued under section 44 of the Act;
 - d) all special facility licences issued under section 46 of the Act and regulation 9A of the *Liquor Control Regulations 1989*;
 - e) all club licences issued under section 48 of the Act;
 - f) all restaurant licences issued under section 50 of the Act; and
 - g) all occasional licences issued under section 59 of the Act.
- 4 The applicants were subsequently charged with assault occasioning bodily harm contrary to section 317(1) of the *Criminal Code (WA)* with a bail undertaking set in the Katanning Magistrates Court on 5 April 2016.
- 5 On 28 April 2016 the applicants’ representative, the Aboriginal Legal Service of Western Australia (ALSWA), lodged with the Liquor Commission (“the Commission”), an application for a review of the barring notice pursuant to section 115AD of the Act.
- 6 On 10 May, 2016 the ALSWA confirmed that the matter be determined on papers and that the review applications be determined simultaneously pursuant to Rule 8 of the Liquor Commission Rules 2007.

Submissions on behalf of the applicants

- 7 The applications for review are based on the following grounds:
- a) banning is so broad it is both excessive and repressive;
 - b) banning far exceeds the bail conditions imposed by local police and the local magistrate;
 - c) banning interferes with the applicants ability to play football;
 - d) applicants have not been convicted of any alcohol related offence;
 - e) applicants have no previous record of violence.
- 8 The following documents were submitted in support of the application:
- a) statement of material facts;
 - b) criminal history of the applicants;
 - c) bail undertaking set in the Katanning Magistrates Court.
- 9 The applicants have pleaded not guilty to the criminal charges and disclosure is due to be served on the office of ALSWA by 7 July 2016 when a trial allocation date will be set. In the electronic video record of interview conducted by the police, Mr LWU exercised his right to silence and did not admit to committing any offence and Mr TCP vehemently denied the committing of the offence. Both applicants maintain the position that they did not commit the offence or the acts alleged.
- 10 Bail was set by the Gnowangerup police after charges were laid requiring the applicants to not enter licensed premises in the Shire of Gnowangerup and not consume alcohol. The bail was varied on 5 April 2016 in the Katanning Magistrates Court to allow the applicants to enter the Gnowangerup Football Club, but still not consume alcohol.
- 11 It was submitted that Mr LWU is 28 years of age, resides in the small wheat belt town of Gnowangerup where he is in a relationship and since 2009, employed full time at the Shire of Gnowangerup. He is the owner of a house in Gnowangerup, subject to a mortgage, and has no record of physical violence or committing offences in licensed premises. He is a member of the Gnowangerup Australian Rules Football Team.
- 12 Mr TCP is 22 years of age, resides in Gnowangerup where he is in a relationship and since 2010 employed full time with the Shire of Gnowangerup. He is the owner of a house in Gnowangerup, subject to a mortgage, and has

no record of physical violence or committing offences in licensed premises. He is a member of the Gnowangerup Australian Rules Football Team.

- 13 It was conceded that the alleged offence occurred at the licensed premises, although in the outdoor beer garden area.
- 14 The only material before the Commission submitted by the applicant is a police report and the statement of material facts prepared for prosecution of the charge of assault occasioning bodily harm. The applicants have pleaded not guilty to the charge and maintain the position that they did not commit the offence or the acts alleged. The evidence supporting the charge is yet to be disclosed to the applicants.
- 15 The documents before the court have not been tested and no finding has been made in relation to the applicants on the night in question and in respect of their own character and personal circumstances.
- 16 The applicants have submitted their own criminal record with a character reference from the licensee of the premises and also from the Shire of Gnowangerup. Two additional character references were also submitted for Mr TCP.
- 17 Neither applicant has a record of violence to show that he has behaved in a disruptive, violent or illegal fashion in the past and therefore is unlikely to behave in a similar fashion in the future. There is no evidence, other than the incident report, to support the contention that either applicant poses a risk to the general public.
- 18 It was submitted that the barring notice has a punitive effect on the applicants as they are unable to enter the football club or golf club which are the venues of their two forms of exercise and leisure. They are also unable to attend restaurants and other licensed venues in Perth and other locations in WA which severely restricts their capacity to socialise and meet friends and family.
- 19 Therefore it is submitted that, on the basis of the material before the Commission that has been challenged by the applicants in their plea of not guilty to the criminal charges, there is insufficient reasoning to warrant the issuing of the barring notice and it should therefore be quashed.

Submissions on behalf of the Commissioner of Police

- 20 The following material was submitted by the Commissioner of Police ("the Police"):
 - a) statement of material Facts;
 - b) a printout from the Incident management System of the applicants personal details; and
 - c) incident report 260216 2323 9656.

- 21 The facts concerning the incident that gave rise to the barring notice were submitted as being:
- a) on Friday 26 February, 2016 at 11:20pm, the applicant TCP, was in the company of family and friends, including applicant LWU, at the Gnowangerup Hotel ("the hotel"). Both applicants had been consuming liquor throughout the evening;
 - b) the applicants, family members and friends became involved in a brawl with another group at the hotel;
 - c) the assault victim ("the complainant"), who was also consuming liquor at the hotel observed a female person repeatedly punching a second female person. At this time the main group of people who had been brawling had ceased fighting;
 - d) the complainant perceived that the second female person was not defending herself and had nowhere to go. The complainant also observed the applicants and other persons shouting and encouraging the female person to fight;
 - e) the complainant, who decided that he could not stand by and watch the second female person be assaulted, intervened and stood between the two female persons. The complainant held the first female person's wrists to prevent her from throwing punches and told her to stop what she was doing and leave;
 - f) the applicants (applicant TCP is the partner of the first female person) and another person struck the complainant several times to the face, causing the complainant to become dazed. The complainant fell to the ground and was repeatedly kicked by the applicants and the other person for a brief period;
 - g) the applicants, with family and friends, then recommenced fighting with the group they had been brawling with. The complainant walked out of the hotel and went home;
 - h) as a result of the assault:
 - i) the complainant suffered swelling to his nose and left eye socket;
 - ii) the complainant's teeth were sore and hurt when he ate food;
 - iii) the complainant's knees were grazed and left thumb was sore;
 - iv) the complainant's right hand little finger was swollen, blue and bent at a 45 degree angle;
 - v) the complainant required medical attention for his injuries and was referred to a plastic surgeon for corrective surgery to rectify the injury to his little figure.

- 22 The applicants were subsequently charged with assault occasioning bodily harm contrary to section 317(1) of the *Criminal Code* (WA).
- 23 It was submitted that section 115AA of the Act provides that the police may give to a person, a barring notice in an approved form prohibiting entry to specified licensed premises, or a specific class of licensed premises, for a period not exceeding twelve months.
- 24 It was submitted that the primary question to be determined on review is whether there are reasonable grounds for believing that the barred persons have been violent or disorderly; engaged in indecent behaviour, or contravened a provision of the written law as specified under section 115AA(2) of the Act.
- 25 The material before the police established that a reasonable person would have been inclined to assent to, and not reject, the proposition that the applicants have, on licensed premises, contravened a provision of the written law. In particular the police refer to:
- a) the Incident Report and Statement of Material Facts, which indicate that the applicants repeatedly struck the complainant and, more generally, were involved in a brawl on licensed premises; and
 - b) the Incident Report (page 6 for TCP and pages 1 and 6 for LWU) demonstrates that there were numerous witnesses to the incident and, in addition to the complainant, at least one of those witnesses is able to identify TCP and a number also identify LWU as being involved in the incident.
- 26 Therefore, the Police submit that there is sufficient evidence before the Commission to establish the necessary jurisdictional fact in section 115AA(2) of the Act for making a barring notice with respect to the applicants.
- 27 It was submitted that if the Commission decides to not quash the barring notice, a variation to permit the applicants to enter the Gnowangerup Football Club is considered appropriate.

Determination

- 28 It is a primary object of the Act to minimise harm or ill health caused to people, or any group of people, due to the use of liquor – section 5(1)(b) of the Act.
- 29 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 2019, 7925*).

- 30 The Minister further stated that the legislation gave police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
- 31 The Police Statement of Material Facts and Incident Report provide a summary of the offence which the applicants have conceded occurred in the outdoor beer garden area of licensed premises.
- 32 The Police Statement of Material Facts and Incident Report record, that on the night in question, two groups of people, comprising a total of between 15 and 20 persons, became involved in a brawl that attracted the complainant, who had also been drinking on the premises, to the area of conflict.
- 33 These facts are not disputed and it is now a matter to determine the subsequent involvement of the complainant and the applicants in an associated incident involving a fight between two female persons who the complainant endeavoured to separate.
- 34 The facts of this incident have been listed (refer paragraph 21 above) and paragraph 4 in the police submission filed 27 May, 2016. The applicants responsive submission lodged on 3 June, 2016 offered no response to paragraphs 1 to 14 of the Police submission therefore I accept the reported incident facts of the police submission.
- 35 I acknowledge that the grounds of the review application are not based on the applicants involvement in the incident, but on the appropriateness of the issuing of a barring notice under the circumstances, and the punitive effect on the applicants.
- 36 Whilst no written statements from the witnesses have been provided, I accept that the details provided in the Incident Report evidence the applicants involvement in the incident and the extent of the role that they played.
- 37 I also note that the applicants themselves have not submitted a statement providing any alternative view on the order of events that took place on the night in question, but rather state that the contents of Statement of Material Facts and the Incident Report are yet to be contested through the not guilty plea to the charges of assault occasioning bodily harm.
- 38 Be that as it may, administration of the *Liquor Control Act 1988* is a different jurisdiction to the administration of the *Criminal Code (WA)* and accordingly it is for the Commission to determine whether, on the balance of probabilities, the applicants were involved in the incident to the degree that warrants the issue of a barring notice.
- 39 To this end I am persuaded through the documented evidence provided and in the absence of a contradictory statement of facts, that each of the applicants offended to the level that warrants the issuing of a barring notice to each of them.

- 40 I am further of the view that the seven month term of that notice is appropriate under the circumstances.
- 41 I reach this determination on the basis of the lengths to which the applicants went in their assault, under circumstances where the complainant was not posing any threat to them, but was endeavouring to intervene in and break up a dispute between two females, where one of them appeared to be in a distressed state.
- 42 I accept that applicant TCP had an emotive involvement in the incident as his partner was one of the females involved and in fact was the person whose wrists were held by the complainant. However, had applicant TCP intervened in the altercation himself rather than reportedly encouraging the females to fight, then there is every possibility that the complainant would not have entered the argument. None-the-less, neither applicant can justify the extent to which the assault was carried out, particularly the kicking of the complainant whilst he was on the ground.
- 43 I now turn to the particular provisions of the barring notices and the specified licensed premises that the applicants are excluded from.
- 44 As stated earlier, the purposes to which barring notices issued under section 115AA of the Act, are very different to the purposes of criminal proceedings – the barring notice being a protective mechanism for the protection of the public.
- 45 Whilst the applicants have no previous record of violence or of committing offences in licensed premises, the manner in which they reacted under the circumstances of this incident raises concerns as to whether they might be likely to behave in a similar fashion should a similar situation arise. More so in a small rural community where the likelihood of an interface with members of the parties associated with the incident would be high.
- 46 However, I am prepared to vary the specified licensed premises of the barring notice only to the degree that allows the applicants entry to the Gnowangerup Football Club and the Gnowangerup Golf Club on the basis that they do not consume liquor on those premises.
- 47 The barring notice to both applicants stands and is accordingly varied as per paragraph 45 above, pursuant to section 115AD(7) of the Act.



EDDIE WATLING
DEPUTY CHAIRPERSON

