

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

**Applicant:** GC

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

**Commission:** Alya Barnes (Presiding Member)

**Matter:** Application seeking review of Barring Notice issued pursuant to Section 115AD of the *Liquor Control Act 1988* ("the Act") dated 16 January 2022

**Date of lodgement of Application:** 16 January 2022

**Date of Hearing:** On Papers

**Date of Determination:** 5 April 2022

**Determination:** The term of the barring notice is varied pursuant to section 115AD(7) of the Act to expire on 3 June 2022

**Authorities referred to in Determination:**

- Liquor Control Act 1988 (WA) Sections 5, 115AA(2), 115 AB, 115AD (3), 115 AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC19/2011)
- *DJB v Commissioner of Police* (LC05/2017)
- *Commissioner for Equal Opportunity v ADI Limited* [2007] WASCA 261 [44]-[46]
- *AC v Commissioner of Police* (LC01/2018)

## Background

1. On Saturday 20 November 2021 an incident involving the Applicant occurred at the licensed premises, [REDACTED] (the **Premises**) whereby the Applicant punched a man (the **Incident**).
2. On 24 November 2021, because of the Incident, the Applicant was served with a Criminal Code Infringement Notice for behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place (section 74A(2)(a)).
3. On 3 January 2022, following the Incident, the Applicant was served with a Barring Notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (WA) (the **Act**) prohibiting him from entering any licensed premises in Western Australia for a period of 12 months expiring 20 November 2022 (the **Barring Notice**).
4. On 16 January 2022, the Applicant applied to the Liquor Commission (**Commission**) for a review of the Barring Notice under section 115AD of the Act (the **Application**).
5. The Applicant has elected for the Application to be determined on the papers.
6. The Commission has been presented with the following evidence in support of the Barring Notice:
  - a. Copy of the Barring Notice stamped 29 December 2021;
  - b. Criminal Code Infringement Notice [REDACTED] issued 24 November 2021;
  - c. Detected Incidents Report [REDACTED];
  - d. Redacted CAD Report [REDACTED];
  - e. Stills from CCTV Footage of Premises, 20 November 2021, Internal Camera and Internal Camera 2;
  - f. Stills from Body Worn Camera Footage, 20 November 2021;
  - g. Police photograph of Applicant;
  - h. Copy of Disclosable Court Outcomes – Criminal and Traffic for the Applicant;
  - i. CCTV Footage of Premises, 20 November 2021, Internal Camera and Internal Camera 2; and
  - j. Body Worn Camera Footage (both suspects ID and Account at Scene and Both Suspects accounts at scene),

together the **Material Evidence**.

### **Applicant's Statement of Fact dated 20 November 2021**

7. The Applicant attached to his 16 January 2022 Application a Statement of Facts in which he asked for the Decision to be quashed on the basis he was the victim and not the perpetrator and stated further:
  - a. he was verbally abused by a man (**Mr S**) in the toilet at the Premises and then, Mr S physically assaulted him by kneeling him in the stomach as he left the bathroom;
  - b. later that evening, Mr S approached the Applicant's table and verbally abused him again. When the Applicant stood up to tell him to leave him alone, Mr S headbutted his face which assault precipitated several people, including the Applicant, restraining Mr S from further attacking the Applicant;
  - c. the Applicant feared for his safety and that of the [REDACTED] in his group;
  - d. Mr S was escorted out of the Premises and the doors locked for patron safety;
  - e. Mr S, after the doors were locked, ran at the door to break it by headbutting and kicking it;
  - f. the Applicant was fully cooperative with the police;
  - g. the Applicant could, if asked, produce character references from all his local licensed premises;
  - h. the Applicant's business and additional role as [REDACTED] requires that he attend the local tavern; and
  - i. the Applicant perceives himself as the victim of the incident, not the perpetrator, and seeks to have the ban removed.

### **Applicant's Further Submissions dated 10 February 2022**

8. In the Applicant's further submissions dated 10 February 2022, he says:
  - a. that Mr S attacked him;
  - b. that Mr S was both drug and alcohol affected and was ultimately locked out of the hotel for the patron's safety;
  - c. several other patrons tried to stop Mr S from attacking him; and
  - d. he himself was not asked to leave the Premises.

### **Applicant's Further Submissions dated 14 February 2022**

9. In the Applicant's further submissions by email dated 14 February 2022, the Applicant:
  - a. reiterates he was not the aggressor, but the one attacked;
  - b. claims the barring order has already affected his everyday life and he fears for his mental health;

- c. says his only form of exercise and stress relief has been playing golf as he can no longer (physically) play other sports and, due to the scope of the barring order, he is prevented from playing golf because the licence includes the course;
- d. says he can no longer preside at meetings or fund-raising events due to the barring order and this is in turn, affecting his mental health;
- e. says Mr S, his aggressor, was simply sent home by the police whereas he is restricted for a period of 12 months from attending licensed premises; and
- f. concludes the witness statements of [REDACTED] support his version of the facts and claim to be of good character.

### **Respondent's primary submissions dated 22 February 2022**

10. The Respondent, in its primary submissions dated 22 February 2022, first describes the incident (drawing on certain elements of the Material Evidence); then sets out the legal parameters of Barring Notices including review of barring notices and procedure on review; the role of the Commission on Review and submits that:
  - a. there are reasonable grounds for believing that the barred person has been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law on licensed because:
    - i. the Applicant was involved in a physical altercation with Mr S at the Premises; and
    - ii. the Applicant engaged in violent conduct by punching Mr S during the physical altercation which conduct was unlawful and contravened section 313 of the *Criminal Code*;
  - b. Mr S was not the sole aggressor;
  - c. the Applicant required several patrons to restrain him who were then forcefully pushed away which, when coupled with the Applicant's punch to Mr S on the ground, contradicts the Applicant's evidence he was not "aggressive in any way, except to protect [his] [REDACTED] and [him]self";
  - d. punching Mr S was not an act of self-defence, it was an act of aggressive retaliation;
  - e. the Applicant's antisocial behaviour is the type of behaviour which a barring notice is intended to address;
  - f. the Applicant's action had the potential to cause serious harm to Mr S thereby demonstrating a need for the public to be protected from violence perpetrated by the Applicant;
  - g. one punch is sufficient for the purpose of section 115AA(2);
  - h. the Applicant has failed to take any responsibility for his actions and has not shown any insight into the fact his behaviour was not acceptable as evidenced by blaming Mr S: "I

was not the aggressor, I was one being attacked" (sic), and "I was the victim, not the perpetrator of this incident";

- i. it is not unlikely that the Applicant will encounter similar circumstances in the future and will engage in violent behaviour as he has not shown remorse for his actions;
- j. the Applicant's convictions in relation to alcohol misuse are relevant in the assessment of risk;
- k. the primary consideration for the Commission are the objects and purposes of the Act, and in particular, the need to minimise instances of antisocial behaviour in licensed premises and protect the general public from harm;
- l. a 12 month ban is appropriate in all of the circumstances;
- m. the Applicant could hold his [REDACTED] meetings at alternative unlicensed premises or the Applicant could attend remotely thus his social life is not unduly inconvenienced and there is no evidence to support an assertion otherwise; and
- n. there are other courses for the Applicant to play golf at and other recreational activities to do thus the 12 month barring notice is, in the circumstances, warranted.

#### **Applicant in response to the Respondent's Submissions dated 25 February 2022**

11. The Applicant responded to the Respondent's submissions on 25 February 2022 essentially to elaborate further on the circumstances before and after the incident to the effect:
  - a. he was first kned in the ribs by Mr S yet did not retaliate;
  - b. Mr S forcefully re-entered the premises, trying to attack him again;
  - c. he acknowledges hitting Mr S whilst he was on the ground explaining he did so to protect [REDACTED] who had been knocked down by Mr S and was [REDACTED];
  - d. he did not leave the Premises nor was he asked to;
  - e. he was not violent or aggressive, he was only trying to protect [REDACTED] and himself;
  - f. he has paid the fines and incurred the suspensions with respect to the traffic offences;
  - g. he did not know he could ask for the Barring Notice to be varied as to term but now that he does, seeks a shorter period;
  - h. all the golf courses in his area are licensed [REDACTED] with the nearest unlicensed course being [REDACTED]; and
  - i. the bar manager did not have a problem with him.

## **The Respondent's Responsive Submissions dated 1 March 2022**

12. The Respondent on 1 March 2022, responded to the Applicant's submissions 25 February 2022 to say:
  - a. by punching Mr S on the ground, the Applicant was not intercepting any immediate threat against [REDACTED], but rather to engage in an act of aggressive retaliation;
  - b. rather than showing insight into his conduct, the Applicant denies being violent and disorderly and as such there is a greater risk of the Applicant behaving in a similar manner;
  - c. the Applicant misconceives the purpose of the barring notice is to punish by focussing on the punitive impact on the Applicant's life when the purpose is to protect the public; and
  - d. for the above reasons, the Respondent submits that the Commission should not exercise its discretion to quash the notice or vary it to reduce the term.

## **LEGAL AND STATUTORY FRAMEWORK**

13. Section 115AA of the Act empowers the Commissioner of Police to give a Barring Notice to any person barring that person from entering all or specified classes of licensed premises if, on reasonable grounds, the person behaved in a violent and disorderly manner.
14. The Commissioner of Police may delegate the power conferred by section 115AA of the Act on any member of the police force of 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. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
18. Section 16 of the Act prescribes that the Commission:
  - a. may make its determination on the balance of probabilities;
  - 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;
  - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
  - d. is to act speedily and with as little formality and technicality as is practicable.