

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

**Applicant:** DY

**Respondent:** Commissioner of Police  
(represented by Ms Megan Barry 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:** 8 February 2022

**Date of Hearing:** On Papers

**Date of Determination:** 6 April 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)
- *ZUW v Commissioner of Police* (LC12/2021)
- *DJB v Commissioner of Police* (LC05/2017)
- *Barrington v Austin* [1939] SASR 130
- *Heanes v Herangi* [2007] WASC 175

## 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 21 November 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that the Applicant committed the offence of disorderly behaviour and that the Applicant contravened a provision of written law in the vicinity of licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police ("Delegate") issued a Barring Notice dated 20 December 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:
  - a. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
  - b. All small bar licences issued under section 41A;
  - c. All nightclub licences issued under section 42;
  - d. Casino licence issued 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*.
- 4 The Barring Notice was posted to the Applicant on 29 December 2021, which the Applicant states he received on 14 January 2022, and which is for a period of approximately 5 months expiring on 21 May 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]:
  - a. At about 1.50am on Sunday 21 November 2021, the Applicant was outside of [the Premises].
  - b. There were several members of the public on the footpath outside of [the Premises].

- c. The Applicant was refused entry into [the Premises] and became aggressive toward [the Premises] security. The Applicant swung at [the Premises] security in an attempt to punch him.
  - d. Police bike patrol were flagged down by [the Premises'] security staff.
  - e. The Applicant continued to shout and swear in the presence of Police and members of the public.
  - f. The Applicant was charged with the offence of disorderly behaviour in a public place, and issued with move on notice serial number [REDACTED] ("Move on Notice").
  - g. The Applicant was ordered to move beyond the area bounded by [REDACTED].
  - h. The order was explained to the Applicant and he was told to leave the area as per the [Move on Notice] immediately. The [Move on Notice] was due to expire at 11.00 pm on Sunday 21 November 2021.
  - i. At about 2:00 am on Sunday 21 November, the Applicant was still located outside [the Premises] after being asked to leave a number of times by Police and being told he will be arrested if he does not leave.
  - j. The Applicant was spoken to by Police and it was ascertained the Applicant was in the bounded area of the [Move on Notice] and provided no lawful excuse for being in breach of the order.
  - k. The Applicant was arrested and conveyed to Perth Police Station on the charge of 'Fail to Obey Order Given by an Officer'.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- a. Section 115AD Application for review of Barring Notice dated 8 February 2022.
  - b. The evidential material relied upon by the Commissioner of Police being:
    - i. Statement of Material Facts brief no. [REDACTED];
    - ii. Barring Notice Running Sheet a/c Op Manual;
    - iii. Move on Notice dated 21 November 2021;
    - iv. Disclosable Court Outcomes of the Applicant dated 14 December 2021;
    - v. template Barring Notice;
    - vi. image of [REDACTED];
    - vii. body worn camera ("BWC") footage of the incident; and
    - viii. BWC timeline including still frames extracted from the BWC footage.
  - c. The Respondent's Outline of Submissions dated 23 March 2022.

## **Applicant's Submissions**

- 7 On 8 February 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 Submissions of the Applicant are contained within the application made by the Applicant on 8 February 2022 and an email dated 23 February 2022 sent by the Applicant to the Liquor Commission.
- 10 The submissions of the Applicant are summarised as follows:
  - a. The Applicant requests that the Barring Notice be reviewed on the basis that it is an unjust and excessive measure for his situation.
  - b. The Applicant was seen to be behaving in a disorderly manner, which is a first time offence, and he does not believe that a 6 month ban is an appropriate outcome for the [Incident].
  - c. The Applicant suggests in his email that this is not regular behaviour for him and feels that the outcome does not apply or fit the Applicant's situation.
  - d. The Applicant states that there are worse situations that happen in Northbridge than [the Incident], that do not receive the same penalty of a Barring Notice.
  - e. In addition, the Applicant states that he believes the incident was [REDACTED].
  - f. The Applicant works full time and currently [REDACTED] and states that he is not a "thug" out to cause trouble when [he goes] out with [his] friends, and simply [goes] out to enjoy [himself] and be social with [his] friends/relatives.
  - g. The Applicant states that [the Incident] has made him hesitant about going anywhere in the future, but [the Applicant] would like to be able to have that choice if [he wished] to do so, without having a Barring Notice.

## **Respondent's Submissions**

- 11 The Respondent provided an Outline of Submissions dated 23 March 2022.
- 12 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

- a. The Respondent submits that the Applicant did in fact disturb the peace outside [the Premises] by using insulting, offensive and threatening language directed towards the police officers and others.

- b. The Respondent submits as evidence the BWC footage, described at paragraph 7 of the Respondent's submissions.
- c. In addition, the Respondent refers to various evidence from the BWC footage as described in paragraph 8 of the Respondent's submissions in respect of the Applicant's failure to obey an order given by an officer.
- d. The Respondent asserts that there is a compelling inference, and thus reasonable grounds to believe, that the Applicant has:
  - i. contravened the criminal prohibition on failing to obey an order given by an officer under the *Criminal Investigation Act 2006* (WA), without reasonable excuse, contrary to section 153(1) of that Act;
  - ii. contravened the criminal prohibition on disorderly behaviour in public contrary to section 74A(2)(a) of the *Criminal Code*; and
  - iii. in the vicinity of licensed premises, been disorderly, even if the more stringent definition of 'disorderly conduct' in the criminal context is applied.

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

- a. The Respondent submits that the Applicant was, in the vicinity of [the Premises]:
  - i. disorderly in his behaviour;
  - ii. verbally abusive, and threatening, to others;
  - iii. verbally abusive to, and argumentative with, police officers; and
  - iv. non-compliant in relation to orders given to him by police officers.

The risk of the Applicant behaving in a similar manner

- a. The Respondent accepts that the Applicant does not have an extensive criminal history. However, the Respondent submits that it is not required to demonstrate, nor is the Commission required to be satisfied, that there was multiple, serial, habitual or repetitious conduct in order to issue a barring notice.
- b. The Respondent notes that in the BWC footage of the incident, the Applicant states that he is "sober" and then that he is "tipsy". The Respondent submits that as the [Incident] occurred in the vicinity of a licensed premises, there is a risk that the Applicant might behave in the same or similar manner in the future, particularly in circumstances where the Applicant is further intoxicated than he was at the time of the incident.
- c. Further, the Respondent notes the poor choices of the Applicant during the [Incident]. The Applicant was first given an opportunity by police officers present at the incident to simply walk away, and second to comply with the Move on Notice. Despite support from friends and the significant time he was afforded to take one of those options, the Applicant chose to remain in the area which resulted in his arrest.