

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

Applicant: LO

Respondent: Commissioner of Police
(*represented by Mr Chen Da Tan 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* ("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, one of the patrons [REDACTED], a friend of the Applicant, struck a female bar staff member ("Victim") to the face.
- 5.4. Both the Applicant and [REDACTED] 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] (Detected Incidents Report");
 - 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. seven still images of the CCTV Footage;
 - 6.2.9. one photograph of the Applicant; and
 - 6.2.10. 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's friend, [REDACTED], was forcefully grabbed by a security guard at the Premises and was thrown to the ground in a violent and aggressive manner.
 - 11.2. The Applicant was greatly disturbed and fearful of the abuse that was inflicted on her friend.
 - 11.3. In her Secondary Submissions, the Applicant states that she accompanied [REDACTED] out of the venue due to concern [of] her welfare as she was again thrown to the ground with excessive force outside of the Premises.
 - 11.4. The security manager accepted liability for the original incident and apologised for the actions of the security guard.
 - 11.5. The Applicant and her friend contacted and waited for the police to arrive in relation to the physical assault inflicted upon [REDACTED].
 - 11.6. [REDACTED] engaged in an altercation with the bar manager.
 - 11.7. In her Secondary Submissions, the Applicant:
 - 11.7.1. states that she attempted to prevent anything further from happening by placing herself in between the security guard and [REDACTED], and comforting [REDACTED];
 - 11.7.2. 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];
 - 11.7.3. states that while she was inside the Premises the same security guard grabbed her and forcibly removed her without any wrongdoing on her behalf;
 - 11.7.4. states that she was trying to take a photo of the security guard who had used excessive force on her and [REDACTED], and that is the reason she did not want to leave;
 - 11.7.5. acknowledges that her behaviour was unacceptable, that it was out of character, that she was in a heightened state and that she was acting this way in retaliation to how [the security guard] had used excessive force;
 - 11.7.6. states that she was placed in a headlock by security for a period of over 30 seconds and was struggling to breathe, which is the reason for her "struggling to get him to release";

- 11.7.7. states that shortly after she was released, a patron ran out from the Premises and struck ██████ in the face. The Applicant retaliated by running over to him and shoving him. The Applicant states that she is ashamed of this and it was an unacceptable retaliation made without thinking; and
- 11.7.8. 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.
- 11.8. The Applicant assumed that the police were there to assist her and ██████ in relation to the physical assault inflicted upon ██████, however the Applicant and ██████ were issued with a move on notice.
- 11.9. The Applicant and ██████ did not leave the immediate vicinity as requested, as they were hopeful that the incident would be classified as an assault on ██████.
- 11.10. 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.
- 11.11. On 12 October 2021, the Applicant was issued with the Barring Notice.
- 11.12. The Applicant requests that the Barring Notice be reviewed on the basis of three grounds:
- 11.12.1. in the context of the evidence presented, the Barring Notice is manifestly excessive and disproportionate to the offence;
- 11.12.2. the evidence presented is in disputable context, the Applicant's friend could be seen to be acting in self-defence and there is, and would have been at the time, sufficient evidence to suggest that the Applicant was not a risk to which the public needed general protection; and
- 11.12.3. 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 was simply acting in the interests of a friend who was in her view, 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, a reasonable person would be inclined to assent to, and not to reject, that there are reasonable grounds for believing that the Applicant has behaved in a violent or disorderly manner on licensed premises, and contravened several written laws.

13.2. In particular:

13.2.1. the Detected Incidents Report describes how the evidence shows that the Applicant and [REDACTED] were "removed due to being intoxicated", and "had been physically aggressive to security in an attempt to re-enter";

13.2.2. the CCTV Footage shows:

- (a) the Applicant repeatedly try to forcibly re-enter the premises, after being removed from the Premises for the first time, thereby contravening section 115(7) of the Liquor Control Act (re-entering a licensed premises within 24 hours of being required to leave)
- (b) the Applicant having to repeatedly be physically restrained by pub security, for trying to physically force her way back into Premises;
- (c) the Applicant was uncooperative while restrained, and continued to struggle, while attempting to kick pub staff and security;
- (d) that even after being released by pub security, the Applicant does not leave the Premises, but instead returns to film and argue with pub security, thereby contravening section 115(4B) of the Liquor Control Act (refusal to leave a licensed premises);
- (e) the Applicant charged at a patron, and shoved him to the floor, while the patron's back was turned, thereby committing the offence of common assault under section 313 of the *Criminal Code Act Compilation Act 1913* (WA) (Criminal Code).

13.3. The police issued the Applicant with a Move on Order, which states that the Applicant was either intending, had just committed, or was committing an offence. The Move on Order describes the offence in question to be "disorderly behaviour in public" and "assault".

13.4. Accordingly, there were reasonable grounds for the Respondent to form the requisite belief that the Applicant had engaged in violent and disorderly conduct and contravened several written laws.

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

13.5. The Respondent submits that the actions of the Applicant in the incident on 8 August 2021 was a serious case of disorderly and violent behaviour occurring outside licensed premises.

13.6. The available evidence in the present case shows the Applicant behaving in a disorderly and violent manner in the vicinity of the Premises, including not leaving the Premises after being removed, trying to force her way back into the Premises and having to be restrained by pub security on multiple occasions, and being highly uncooperative while being restrained and removed from the Premises, and trying to kick pub security while being restrained.

- 13.7. The Applicant's actions of shoving a patron would have constituted the offence of common assault under section 313 the Criminal Code.
- 13.8. The Applicant's conduct throughout the incident displays a propensity to disobey lawful directions. Further, the Applicant has shown an inclination to involve herself in physical altercations. That inclination is more than spontaneous.
- 13.9. Accordingly, the Respondent submits that given the serious nature of the Applicant's disorderly and violent behaviour, the Barring Notice is necessary to protect the public, the licensee and the Applicant from her own actions.

The risk of the Applicant behaving in a similar manner

- 13.10. When considering the Applicant's personal circumstances, the risk of the Applicant behaving in the same or similar manner in the future is high.
- 13.11. The Applicant, in her Initial Submissions, has taken no responsibility for her disorderly and violent behaviour outside the premises.
- 13.12. The Applicant further denies being disorderly and violent outside the Premises, stating that she was "not violent", "not disorderly in the context", and that she was "standing up for her friend", or "simply acting in the interests of a friend". The Applicant's Initial Submissions denies any wrongdoing on her part.
- 13.13. The Applicant has further maintained that she does not believe herself a risk to the public. The Respondent thus submits that the Applicant has clearly displayed no remorse for her actions.
- 13.14. Given the Applicant has denied any wrongdoing on her part, and the Applicant appears to lack any insight into how her actions were disorderly, violent, and potentially contravened multiple written laws, the Respondent submits there are real concerns that the Applicant may behave in the same or a similar manner around licensed premises in the future, if faced with similar circumstances.
- 13.15. Even if the Commission considers that the risk of the Applicant behaving in a similar manner is low, that risk can be further minimised by the terms of the Barring 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.
- 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.

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

² *Ibid*, subsection (7)(a).

³ *Ibid*, subsection (7)(b).

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

- 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 and that she did not interact with any person who did not assault herself or [REDACTED] first. These allegations are not supported by the evidence before the Commission. In any event, the evidence clearly establishes that the Applicant behaved in a disorderly and 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 forcibly push a patron from behind, and the Applicant does not dispute that this occurred in her submissions, but rather, seeks to justify the behaviour.
- 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.

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 physically aggressive.
- 39 Notwithstanding having been forcibly removed and being asked to move on, the Applicant remains insistent on gaining re-entry to the Premises.
- 40 In addition, the CCTV Footage shows the Applicant forcibly pushing another patron from behind.
- 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".
- 43 While the Applicant states that she is remorseful and recognises the seriousness of her behaviour, she continues to describe that behaviour as being justified as a form of retaliation and a form of (self) defence.
- 44 In addition, in the CCTV Footage, the Applicant demonstrates an inclination to involve herself in physical altercations.
- 45 It therefore appears that there is some risk that the Applicant will behave in a similar manner in the future if presented with similar circumstances, and that risk can be minimised by the terms of the Barring Notice.⁵
- 46 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

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

notices are also a mechanism to protect a licensee or indeed, the perpetrator, from his/her own actions.

47 In the circumstances, the Commission does not find it appropriate to vary the length of the Barring Notice, which seems justified to:

47.1. 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

47.2. allow the applicant the opportunity for introspection regarding her behaviour on, and in the vicinity of, licensed premises.

48 The Barring Notice is affirmed and the application for review is dismissed.



Sandra Di Bartolomeo
PRESIDING MEMBER