

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

**Applicant:** BR

**Respondent:** Commissioner of Police  
*(Represented by Ms Aleksandra Miller 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:** On papers

**Date of Determination:** 24 December 2021

**Determination:** The Barring Notice to the Applicant is varied pursuant to  
section 115AD(7) of the *Liquor Control Act 1988* to permit  
the applicant to enter sporting clubs (i.e., football) with  
licences issued under section 48 of the Act.

The remainder of the barring notice remains in full force.

**Authorities considered in the determination:**

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

## **BACKGROUND**

1. On 28 May 2021 an Incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Premises”), involving the Applicant.
2. As a result of such Incident the Applicant was charged with disorderly behaviour in public, contrary to section 74A(2)(a) of the *Criminal Code* and Obstructing Police Officer, contrary to section 172(2) of the *Criminal Code*. These charges did not result in convictions.
3. As a result of such Incident(s) the Commissioner of Police (“the Respondent”) issued a Barring Notice (“the Barring Notice”) dated 4 August 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 classes in Western Australia for a period of approximately 9 months, expiring 28 May 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 licenses 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 served on the Applicant on 8 August 2021.
5. On 9 August 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 on the papers.
6. The Incident(s) giving rise to the Barring Notice is referred to in the following documents:
  - a) The Application for Review dated 9 August 2021 (“The Application”).
  - b) The evidential material relied on by the Respondent Commissioner:
    - i. Brief Jacket (Brief No. [REDACTED]);
    - ii. Statement of Material Facts;
    - iii. W.A. Police Detected Incidents Report;
    - iv. Venue Incident Report by Managers/Licensee;

- v. Photographs of the Applicant;
  - vi. Disclosable Court Outcomes for the Applicant – Criminal and Traffic;
  - vii. Footage of CCTV take from inside the Premises; and
  - viii. Body Camera Footage (Video).
- c) Application for Review lodged by Applicant dated 9 August 2021 with grounds for the Application.
  - d) The Respondent's Outline of Submissions dated 17 September 2021.

## **THE INCIDENT**

7. The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
- a) At about 11pm on Friday 28 May 2021 the Applicant was at the Premises.
  - b) An Altercation had arisen inside the Hotel involving a group of patrons including the Applicant, who were Intoxicated.
  - c) The Statement of Material Facts states that the Applicant grabbed a male person pushing him towards a wall, hitting a table and knocking items to the floor. He was restrained by a male patron before pushing another male patron to the shoulder, causing them to step backwards. The manager of the licensed premises intervened and instructed the Applicant to walk away, which he did.
  - d) Police attended the Hotel. A fight broke out among a large group of patrons outside the hotel on the footpath. The Applicant and [REDACTED] were involved.
  - e) The Incidents were captured on CCTV taken from outside the Hotel and on body cameras worn by attending police. This shows:
    - i. On the footpath outside the Hotel, two women begin fighting, which becomes a scuffle between three or four women.
    - ii. The Applicant and [REDACTED] (the other man) can be seen observing the fight between the women and trying to break up the fight. [REDACTED] then becomes involved in the fight with the women and other men.
    - iii. For some time the Applicant can be seen merely observing the fighting between [REDACTED] and others.
    - iv. However, the Applicant decides to become physically involved. He can be seen throwing a punch at one of the men who were fighting with [REDACTED]. This appears to be unprovoked. He then continues to wrestle the man on the ground, punching him once again in the head.
    - v. Two other men who were not involved in the initial fight then began pushing [REDACTED]. The Applicant then throws a punch at one of those men, connecting near the back of his head. This precipitates a further scuffle between the four men.

- vi. As the Incidents progress, the Applicant can be seen attempting to block a police officer's path and is pushed away by officers as a result.
- vii. [REDACTED] and the Applicant are later moved on, but a police officer can once again be seen re-engaging with them.
- viii. The Applicant and [REDACTED] remain in the vicinity interacting with police officers for the next 15 minutes or so until [REDACTED] is eventually arrested.
- ix. During this time, the Applicant and [REDACTED] refuse to leave despite directions from police officers. The Applicant repeatedly says to officers "How about you back off?" argumentatively, in response to being told to "back off". He angrily says to officers "Would you like it if I talked to you like that" and "Fucken you back off", refusing to move on.
- x. Eventually, [REDACTED] is arrested due to his abusive and disorderly behaviour. After [REDACTED] arrest, the Applicant continues to argue with officers about moving away.

8. The evidential material is largely consistent with the above summary.

#### **SUBMISSION BY THE APPLICANT**

9. The Applicant lists his grounds for Application as follows:

- a) *Obstruction charge was dropped;*
- b) *Disorderly Behaviour resulted in large fine with no convictions;*
- c) *I believe my group were the victims of the Incident and I was standing up for my group;*
- d) *I work FIFO and very rarely go to pubs or clubs and when I do, I don't go looking for trouble;*
- e) *This was a one off Incident that will not happen again;*
- f) *My son has football presentations coming up which I will not be able to attend;*
- g) *I work away and only get to spend half the year with my family, when I am home we like to go to restaurants, football clubs etc.*

#### **SUBMISSIONS BY THE RESPONDENT**

- 10. The Respondent submits that the primary question to be determined on review is whether there are reasonable grounds for believing that the banned person has been violent or disorderly, or contravened a provision of a written law, on or in the vicinity of a licensed premises.
- 11. In the present circumstances on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant has:
  - a) engaged in both violent and disorderly conduct on and in the vicinity of licensed premises; and

- b) contravened a provision of written law, being:
    - i. section 74A(2)(a) of the *Criminal Code* (disorderly behaviour in a public place);
    - ii. section 172(2) of the *Criminal Code* (obstructing public officers); and/or
    - iii. section 313 of the *Criminal Code* (common assault).
12. The Respondent refers to the statement of Material Facts, the CCTV and Body Camera Footage, which demonstrate the following:
- a) the Applicant engaged in violent behaviour, namely:
    - i. while inside the Hotel, the Applicant approaches a man and pushes him to the upper chest area across the room and towards a wall;
    - ii. while outside the Hotel the Applicant punches a man in the face with significant force, causing the man to fall to the ground;
    - iii. the Applicant holds onto the man as he is on the ground, and punches him once again to the head and;
    - iv. the Applicant punches a different man later on, the punch being aimed towards the back of the man's head.
  - b) in relation to disorderly conduct, the Applicant can be seen on the CCTV and body worn camera footage to engage in the following conduct:
    - i. the Applicant blocks a police officer's path;
    - ii. the Applicant is argumentative in his interactions with police officers, including raising his voice, talking back to officers repeatedly saying "why don't you back off", arguing with officers about leaving the area, and pointing his finger at officers;
    - iii. the Applicant uses foul language towards police; and
    - iv. even after [REDACTED] has been arrested, the Applicant continues to refuse to comply with directions from officers to move on.
13. The Respondent also asserts that the materials demonstrate the following:
- a) the Applicant behaved in an argumentative manner towards police officers, used foul language towards police officers, and engaged in violent behaviour, thereby contravening section 74A(2)(a) of the *Criminal Code* (disorderly behaviour in a public place);
  - b) the Applicant attempted to block a police officer's attempts to move past him, thereby contravening section 172(2) of the *Criminal Code* (obstructing public officers); and
  - c) the Applicant threw punches at other members of the public and did so in circumstances where he was not defending himself or another person, thereby contravening section 313 of the *Criminal Code* (common assault).

### **Exercise of Discretion**

14. Once satisfied that there are reasonable grounds for the Respondent to form a belief underlying the imposition of the Barring Notice, the Commission must consider whether or not to exercise its discretion to quash, vary or affirm the Barring Notice.
15. This involves considering the nature of the Incident, the risk of repeat behaviour and the need to protect the public, the licensee and the Applicant.

### **Nature of circumstances of the Incident**

16. The circumstances of the Incidents show that when the Applicant decided to become violently involved in the altercations outside of the Hotel, the level of violence was significant:
  - a) the Applicant can be seen on the CCTV footage to line the man up for his punch, steadying him with his right hand, and then punching him in the face with his left hand with significant force, causing the man to fall to the ground;
  - b) the Applicant can then be seen to hold onto the man as he is on the ground, and punch him once again to the head; and
  - c) when the Applicant punches a different man later on, the punch is aimed towards the back of the man's head, and the man's attention is on [REDACTED] rather than the Applicant.
17. Further in the submission of the Respondent, the men who the Applicant punched were not engaging in any violent or threatening conduct towards the Applicant.
18. In relation to blocking the path of a police officer, this conduct is also significant. The CCTV footage shows that the officer attempts to approach [REDACTED] (who at this stage is re-engaging with persons from the group with whom he had been fighting) and the Applicant holds the officer back by placing his hand on the officer's chest. The officer pushes the Applicant back in order to remove him from his path and then approaches [REDACTED].
19. The Incident continues for approximately 30 minutes, and the Applicant does not comply with police officer's directions to move away from the area over a relatively extended period of time.
20. The Applicant's conduct throughout the Incident displays a willingness to disobey lawful directions, to be argumentative with officers, and to use foul language. Licensees are prohibited by law from allowing drunk, violent, quarrelsome, disorderly persons remaining on a licensed premises. Licensees, and members of the public attending licensed premises, should be protected from the Applicant who fits within all of those categories.
21. Further, the Applicant intentionally involved himself in the physical altercations. His actions were more than spontaneous or in response to his friend being assaulted. In this Incident, while the Applicant initially attempted to break up a fight between others, and only observe the fight, he then decided to become physically involved, punching two men. He also attempted to block a police officer's path who was trying to respond to the Incident. The Applicant should be protected from himself and his inability to control his actions on or in the vicinity of licensed premises.

### **The risk of the Applicant behaving in a similar manner**

22. The Respondent states further that, in determining whether there is a risk that the Applicant might behave in the same or similar manner in the future, the Commission should have regard to the relevant personal characteristics of the Applicant.
23. The Respondent 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.
24. The Respondent notes that the Applicant has a prior record, having been convicted of assaulting a public officer and obstructing public officers in 2008. This, together with his conduct during the Incident, suggests that the Applicant has a propensity to disobey lawful authority and assault others.
25. Given the nature of the Applicant's conduct, and his prior convictions, the Respondent submits that there is a risk that the Applicant could behave in a similar manner once again if he is intoxicated and a disagreement occurs at a licensed premises involving him or one of his friends. The fact that the Applicant may have been responding to a perceived threat to his friend, [REDACTED], and that he perceived himself and his friend to be the victims, does not lessen this risk. The Applicant could find himself in a similar situation in the future.

### **Respondent Conclusion**

26. The Respondent concludes that there is sufficient material before the Commission to establish that there are reasonable grounds for believing that the Applicant has on or in the vicinity of licensed premises, engaged in disorderly conduct, violent behaviour or contravened a written law.
27. The Respondent submits that the Commission should affirm the Barring Notice.

### **STATUTORY FRAMEWORK**

28. 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) been violent or disorderly;
  - b) engaged in indecent behaviour; or
  - c) contravened a provision of any written law.
29. 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.
30. 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.



31. 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.
32. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
33. 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)].
34. 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).
35. 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.
36. 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.
37. 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**

38. The Commission, in considering an application under section 115AD is to review the decision and determine whether to affirm, vary or quash a decision.
39. 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.
40. 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.

41. 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.
42. It is undisputed (CCTV Footage) that the Applicant became involved in a violent altercation outside the Hotel, punching men and then blocking the path of a police officer and failing to obey lawful directions of a police officer.
43. The Applicant further intentionally involved himself in the physical altercations. While it is acknowledged that he is seen on CCTV footage to initially attempt to stop a fight between others and only observe, he then becomes actively involved.
44. He may have perceived himself and his friend [REDACTED] to be the victims and there to be a perceived threat to his friend. However, he had ample opportunity to walk away and later, despite police over a period of approximately 30 minutes encouraging them to leave, he does not do so.
45. Accordingly, I find there is a clear and proper basis for the Respondent's Delegate to exercise the power conferred by section 115A of the Act and impose a Barring Notice.
46. Therefore, it is for the Commission to determine in the relevant circumstances, whether the length and terms of the Barring Notice are sufficient to uphold the objects 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.
47. 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 general public, the licensee and the Applicant.
48. The nature of the Incident as outlined above was serious and the Applicant's conduct went beyond a spontaneous desire to assist a friend. It is noted that he initially attempted to break up a fight and only observe, but then he actively became involved by throwing punches. He tries to block a police officer's path and refuses to leave and given opportunity to do so. It is also clear from viewing the CCTV and body cam footage that the Incident had potential to escalate further and the Applicant failed to walk away.
49. Given his conduct there must, on the balance of probabilities, be a risk that he could behave in a similar manner again if he is intoxicated and provoked – even if he is or perceives himself or his friends to be the victim.
50. I note also in this context that the Applicant has a prior record of conviction in 2008 of assaulting a public officer and obstructing public officers.
51. Therefore, it appears to me that there is some risk that the Applicant will behave in a similar manner in the future and that risk can be minimised by the terms of the Barring Notice.
52. Further, it is noted that barring notices are not intended as punishment. Instead, they serve as a measure to protect the public from anti-social behaviour in and around licensed premises. Barring notices are also a mechanism to protect a licensee and in some cases the Applicant from his/her own actions.

53. In balancing the above, I note that members of the public must be able, when they frequent licensed premises, to be assured that they are in safe environments and not become victims of, or witness, violent anti-social behaviour or disorderly conduct. On the evening in question that could not be said to be the case. From a viewing of the CCTV footage and body cam it can only be concluded that the public interest in attending a safe environment was severely compromised by a situation to which the Applicant contributed significantly when he had adequate opportunity to walk away.
54. The Commission agrees with the decision of 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 and further that it is not appropriate to vary the length of the Barring Notice.
55. The Applicant has made submissions as to the impact of the scope of the Order on the Applicant's family and community engagement. While I do not find his arguments wholly convincing, I note the potential impact on his family of him being unable to attend any sporting club events and presentations relating to his son.
56. Therefore, I have determined to vary the Order so that the Applicant will be able to enter certain licensed premises, namely sporting clubs (i.e., football) under section 48 of the Act on the basis that such venues do not have the same innate similarities with the venue where the Incident occurred.
57. The Variation of the Order will allow the Applicant to continue to be a viable member of the community and support for his son's sporting club participation, while also providing a sufficient degree of protection to the community in that he will not, for the length of the Barring Notice, be able to attend all specified classes of venues listed in paragraph 3 with the exception of paragraph 3(f).



**Pamela Hass**  
**PRESIDING MEMBER**