

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: DGE
(represented by Mr Murray Tennent-Brown of Austral Legal)

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., cricket and 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 failure to leave a licensed premises when required under section 115 of the *Liquor Control Act 1988* (“the Act”); 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*. The offence of obstructing police officers was dropped and dismissed. On the other two offences he was fined and granted spent conviction orders.
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*, prohibiting the Applicant from entering specified licensed premises of the following cases 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 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 served on the Applicant on 8 August 2021.
5. On 12 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 12 August 2021 and attached letter from Austral Legal dated 11 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 Incidents Report by Managers/Licensee;
 - v. Photographs of 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) The Respondent's Outline of Submissions dated 17 September 2021.

THE INCIDENT

7. The circumstances of the Incident as 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 and the Applicant, who were intoxicated.
 - c) Police attended the Hotel. The applicant was observed standing in the doorway at the front entrance with an open pre-mix drink. He faced Police and said "It's too late now for you to do your fucking jobs". The Approved Manager and Police told the Applicant to go back inside the Hotel. He refused, argued and was ultimately forcibly removed and the door was locked.
 - d) He remained on the footpath and was involved in a physical altercation with other people.
 - e) Police tried to intervene and control the situation.
 - f) He repeatedly refused to comply with police directions to move on.
 - g) He then wrapped his left arm around the antenna on the bull bar of a parked police vehicle and had to be forcibly restrained and secured in the back of a police vehicle.
 - h) The Applicant was arrested and conveyed to hospital for treatment of minor injuries sustained in the altercations with patrons.
 - i) The incidents as summarised above were captured on CCTV taken from inside and outside the Hotel and on body cameras worn by Police.
 - j) The evidential material is also largely consistent with the above summary.
 - k) On 14 July 2021, the Applicant was convicted of disorderly conduct in public under section 74A(2)(a) of the *Criminal Code* and failing to leave a licensed premises when required to do so by an authorised person contrary to section 115(4B) of the Act and fined \$750 and \$400 respectively.

SUBMISSION BY THE APPLICANT

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

- a) The Applicant is represented by Mr Murray Tennant Brown of Austral legal.
- b) It is noted that the Applicant was charged with disorderly conduct and failing to leave licensed premises, was fined, and granted spent conviction orders. The charge of obstruction referred to in the Barring Notice was dropped by Police.
- c) The grounds for application are set out in a letter from Austral Legal dated 11 August 2021:
 - i. *On the evening in question, [REDACTED] by his own admission become intoxicated.*
 - ii. *The incident inside the [REDACTED] which gave rise to his conviction for failing to leave licensed premises stemmed from a member of his group assisting staff with removing another patron from the premises, which he became caught up in. At that stage, [REDACTED] did not believe he had done anything wrong and that he was simply trying to help out.*
 - iii. *In any event, it is common ground that he was then refused service and asked to leave. He felt aggrieved by this turn of events and became argumentative. He also recalls that he did tell staff he would leave when he had finished his drink. It was shortly after that the Police arrived and also asked him to leave the premises.*
 - iv. *[REDACTED] acknowledges that at that time he became belligerent, but was not aggressive.*
 - v. *However, shortly after he and his wife, along with their friend exited the premises, his wife and another female friend were assaulted by up to three women. That assault occurred in the presence of the attending police and included his wife being kicked in the face/head while lying on the ground. She subsequently required hospital treatment for her injuries, which included extensive bruising and swelling to her eyes and face.*
 - vi. *[REDACTED] in-turn went to his wife's aid and was then himself assaulted by other male persons who he believes were part of the same group as the females who had assaulted his wife.*
 - vii. *[REDACTED] perceived himself, his wife, and the other persons in his group to be the victims of those assaults.*
 - viii. *The police then deployed chemical agent to end the assaults and [REDACTED] was removed from the immediate area by police to wash the chemical agent from her face. Unfortunately, [REDACTED] was unaware of that at the time.*
 - ix. *[REDACTED] conduct thereafter which led to his conviction for disorderly conduct when considered in the context of the assaults against himself and his wife (Which I am instructed unfolded rapidly), his level of intoxication, and him not knowing where his wife had been taken to, while not excusing his behaviour, perhaps explain his state of mind and lack of clarity of thought at the time.*
 - x. *It was likely that [REDACTED] was in a heightened state and no doubt impacted by a surge in adrenalin at the time following the assault on him and his wife.*

- d) The Applicant's submission states that he acknowledges his behaviour stemmed from his intoxication and he is remorseful for his actions. He perceived himself and his group to be the victims of actions of others.
- e) He asserts he is not a problem drinker, nor regularly intoxicated and that it was a one-off incident and he has no prior convictions.
- f) It was submitted on his behalf that the scope of the Barring Notice is out of proportion as [REDACTED] is a small town and the effect of the ban is disproportionate as it prevents him from attending any local football and cricket clubs where his son plays as most are licensed premises.

SUBMISSIONS BY THE RESPONDENT

- 9. 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.
- 10. 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 provisions of written law, being:
 - i. section 74A(2)(a) of the *Criminal Code* (disorderly behaviour in a public place); and
 - ii. section 115(4)(b) of the *Liquor Control Act 1988*, failure to leave licensed premises when required to do so by an authorised person.
- 11. 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 outside the Hotel the Applicant throws punches at a man. The Applicant pushes a woman and 2 other men and engages in pushing and shoving with other men.
 - 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. *refuses to leave the Hotel when directed to do so by a police officer;*
 - ii. *he talks back to and argues with police officers when directed to leave the Hotel or the immediate vicinity of the Hotel;*
 - iii. *he uses foul language towards police officers;*
 - iv. *his manner towards police officers is argumentative and he points his finger in officers' faces;*

- v. *he stands in an aggressive stance when interacting with police officers, and repeatedly walks up very close to them;*
- vi. *he speaks in an aggressive manner to other men and points his finger at them;*
- vii. *he shouts "fuck you" at others, says he will "smash" someone, and uses other foul language (including racist language) as well as making an aggressive gesture;*
- viii. *he resists attempts by police officers to move him away, does not comply with their directions and speaks in an aggressive manner to police officers; and*
- ix. *he resists arrest.*

12. 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 over the course of some 30 minutes, thereby contravening section 74A(2)(a) of the *Criminal Code* (disorderly behaviour in a public place).
- b) the Applicant refused to leave the Hotel and later refused to leave the vicinity of the premises contrary to directions from police officers.
- c) the Applicant threw punches at other members of the public and shouted racist comments at members of the public of Aboriginal descent.

Exercise of Discretion

- 13. 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.
- 14. 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.

- 15. The circumstances of the Incidents show that when the Applicant decided to become violently involved in the altercations inside and outside of the Hotel, the level of violence was significant:
 - a) The entire incident continues for approximately 30 minutes, and the Applicant does not comply with police officer's directions to move away from the area and continues to behave in a disorderly manner over an extended period of time.
 - b) The Applicant's conduct throughout the incident displays a willingness to disobey lawful directions, as well as a willingness to engage in verbal abuse. Licensees are prohibited by law from allowing drunk, violent, quarrelsome, disorderly persons from 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.

- c) Further, the Applicant intentionally continued to involve himself in physical altercations and to engage in verbal abuse. His verbal abuse of police officers and members of the public was significant both in terms of quantity and the kind of language used.
 - d) His actions were more than spontaneous or in response to him or his wife being assaulted. He continued to re-engage in confrontations with others throughout the incident, shouting verbal abuse and approaching the persons with whom he had the physical altercation. During the incident, he threw punches in response to being pushed rather than moving away, and re-ignited a physical altercation. The Applicant should be protected from himself and his inability to control his actions on or in the vicinity of licensed premises.
16. 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.
17. 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.
18. 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.

The risk of the Applicant behaving in a similar manner

19. 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.
20. 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.
21. Given the nature of the Applicant's conduct over a period of time, 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 friends or family, and that he perceived himself and his friends and family to be the victims, does not lessen this risk. The Applicant could find himself in a similar situation in the future.

Respondent Conclusion

22. 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.
23. The Respondent submits that the Commission should affirm the Barring Notice.

STATUTORY FRAMEWORK

24. 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.
25. 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.
26. 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.
27. 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.
28. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
29. 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)].
30. 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).
31. 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.
32. 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.

33. 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

34. The Commission, in considering an application under section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
35. 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.
36. 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.
37. 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.
38. It is undisputed (CCTV Footage) that the Applicant became involved in an altercation inside the Hotel, was asked to leave, refused to do so, and remained in the doorway and then outside in the vicinity of the Hotel footpath.
39. The Applicant further intentionally involved himself in the physical altercations. He remained on the footpath and became involved in a physical altercation with people outside and was verbally abusive to police.
40. He attempted to incite further fights and refused to comply with Police orders to leave, he was finally arrested and after that he wrapped his arm around the antenna on the bull bar of the parked police car. Police had to forcibly restrain him by the arms and handcuff him.
41. 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.
42. 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.
43. 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.
44. The nature of the Incident as outlined above was serious and while it is acknowledged that he was concerned for his wife's wellbeing, he agrees he was intoxicated and should have stopped drinking earlier. However, it is also clear from viewing the CCTV and body cam

footage that the Incident had potential to escalate even further and the Applicant had the opportunity to walk away and failed to do so repeatedly.

45. 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 and family to be the victims.
46. I note and take into account his previously good record and his long-term residence in and apparent commitment to the community in [REDACTED].
47. It however 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 minimalised by the terms of the Barring Notice. He did not remain in control of his drinking and stop. Therefore, the risk remains that in similar circumstances he will behave in the same way again.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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., cricket and 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.
53. 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