

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: GC

Intervener: Commissioner of Police
(represented by Mr Toby Bishop of the State Solicitor's Office)

Commission: Mr Nicholas van Hattem (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: 17 January 2022

Date of Hearing: Determined on the Papers

Date of Determination: 13 May 2022

Determination: The Barring Notice to the Applicant is varied pursuant to section 115AD(7) of the *Liquor Control Act 1988* to include an exemption provision.

Authorities referred to in the determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)
- *CIC Insurance Ltd v Bankstown Football Club Ltd* [1997] HCA 2; (1997) 187 CLR
- *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611
- *That's Entertainment (WA) Pty Ltd v Commissioner of Police* (2013) WASC 75
- *Commissioner for Equal Opportunity v ADI Limited* [2007] WASCA 261
- *Paula Susan Chappell as Executor of the Estate of Robert Hastings Hitchcock v Goldspan Investments Pty Ltd* [2021] WASCA 205
- *DJB v Commissioner of Police* (LC05/2017)
- *SVS v Commissioner of Police* (LC19/2011)
- *AC v Commissioner of Police* (LC01/2018)

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) (“**the Act**”) made by [REDACTED] (“**the Applicant**”).
- 2 On 8 October 2021 an incident (“**the Incident**”) occurred at and in the vicinity of a licensed premises, namely [REDACTED] (“**the Premises**”), involving the Applicant.
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police (“**the Respondent**”) issued a Barring Notice dated 13 December 2021 (“**the Barring Notice**”) pursuant to section 115AA(2) of the Act, prohibiting the Applicant from entering premises within Western Australia of the following licence classes for a period expiring 8 October 2022:
 - a. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern, and tavern restricted 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 served on the Applicant on or about 4 January 2022 and is for a period of approximately nine months, expiring on 8 October 2022.
- 5 The Applicant lodged an Application for Review of the Barring Notice, dated 17 January 2022, under section 115AD of the Act (“**the Application**”).
- 6 The Applicant has elected to have the review determined on the papers.

Overview of parties' positions

- 7 [REDACTED] The Applicant seeks that the Barring Notice be reviewed on the basis that it is excessively punitive and negatively impacts his family, notably his two children. [REDACTED]
[REDACTED]
[REDACTED]
- 8 The Applicant states that as a result of the Incident he was charged for two counts of assault occasioning bodily harm under section 317(1) of the *Criminal Code*. The Applicant admitted guilt at the first opportunity. The Applicant has experienced further distress from the Barring Notice as it restricts him from attending his children's sporting activities, take them to restaurants for their birthdays, or take them on holiday.

- 9 The Respondent submits that the Barring Notice should be affirmed. The Respondent submits that the Applicant's conduct was aggressive, unprovoked and disproportionate to the situation, and caused significant harm to the two victims. The Respondent submits that the Applicant poses a risk of behaving in a similar manner in the future and as such the Barring Notice should remain in effect.
- 10 The Respondents submits that matters personal to the Applicant are of little significance to the discretion of the Commission in affirming the Barring Notice. The Respondent accepts that the Applicant is experiencing a difficult period due to his personal circumstances, however the health and grief issues the Applicant refers to as matters that affected him at the time of the assault are matters likely to increase the risk of similar future behaviour rather than reduce it.

Incident

- 11 The Incident took place in the evening of 8 October 2021 at the Premises. The Incident involved the Applicant and two separate victims during the same sequence of events. The Incident is captured on CCTV footage from [REDACTED] and described in the Statement of Material Facts and witness statements as follows:
- a. at approximately 10.40pm on Friday 8 October 2021 the Applicant was at the Premises with a group of males;
 - b. the first victim and his wife ("the witness") were playing pool;
 - c. the Applicant was standing in the pool table area of the Premises at a table across from the first victim who was standing at the end of the pool table;
 - d. the witness was attempting to take a pool shot;
 - e. the Applicant was standing close behind the witness and was dancing and sticking out his buttocks which prevented the witness from taking her shot;
 - f. the witness looked back at the Applicant and he stopped;
 - g. the witness bent over again to take the pool shot, the Applicant looked over his shoulder at the witness and stuck out his buttocks to cause the witness to hit the Applicant with the pool cue, which affected the shot she was attempting to take;
 - h. the first victim was standing at the end of the pool table and said words to the effect of 'don't do that';
 - i. the Applicant walked over to the first victim where they had a short conversation;
 - j. the Applicant headbutted and punched the first victim in the head, causing the first victim to fall to the floor;
 - k. the second victim observed the Applicant headbutt and punch the first victim;
 - l. the second victim approached the Applicant and intervened by pushing the Applicant back and away from the first victim with his hands;
 - m. as the second victim was pushing the Applicant back, the Applicant punched the second victim in the face three times in short succession.

- 12 The first victim suffered a cut across the bridge of his nose, a blood nose that was bleeding the next morning, and bruising around the nose, cheek, and lip area of his face. The Respondent submits that it appears the first victim may have suffered a concussion due to his loss of memory between the time he was headbutted to the time he got back to his feet.
- 13 The second victim suffered a blood nose and a concussion. The second victim took one week off work in accordance with medical advice because of the injuries.
- 14 Following the Incident, the Applicant was arrested and charged with two counts of assault occasioning bodily harm under section 317(1) of the *Criminal Code* and subsequently bailed with a condition not to attend licenced premises. He entered a plea of guilty to the two charges.

Statutory Framework

The power to issue a barring notice

- 15 The Commissioner of Police has the power to ban 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. contravened a provision of any written law;
 - b. been violent or disorderly; or
 - c. engaged in indecent behaviour.
- 16 The Commissioner may delegate the power conferred by section 115AA of the Act to a delegate, pursuant to section 115AB of the Act.
- 17 A single incident is sufficient to give rise to a barring notice. There is no necessity for the person to whom the barring notice is issued to have engaged in a series of similar conduct or have engaged in habitual behaviour of the type specified: *DJB v Commissioner of Police* (LC05/2017), [5].
- 18 Section 115AA(2) does not specify or require that the person to whom a barring notice may be issued must have been charged or convicted of an offence.

Applications for review

- 19 If a person is dissatisfied with the decision of the Commissioner of Police to give a barring notice for a period exceeding one month, the person may apply to the Commission for a review of the decision pursuant to section 115AD.
- 20 On review, the Commission may affirm, vary, or quash the decision of the Commissioner of Police to issue the barring notice: section 115AD(7).
- 21 In conducting the review, 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: section 115AD(6).