

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

**Applicant:**

[REDACTED]

**Respondent:**

Commissioner of Police  
(represented by [REDACTED] of the State Solicitor's  
Office)

**Commission:**

Ms S 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:**

27 May 2022

**Date of Determination:**

14 July 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* ending on 25 November  
2022

**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)

## Review of Barring Notice

1. This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (**the Act**) made by [REDACTED] (**the Applicant**).
2. On 25 April 2022 at and in the vicinity of licensed premises, [REDACTED] (**the Premises**), it is alleged that the Applicant committed the offence of [REDACTED] (**the Incident**).
3. As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice (**Barring Notice**) on 3 May 2022 under section 115AA(2) of the of the Act, prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
  - (1) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
  - (2) All small bar licences issued under section 41A;
  - (3) All nightclub licences issued under section 42;
  - (4) Casino licence issued under section 44;
  - (5) All liquor store licences issued under section 47;
  - (6) All club licences issued under section 48;
  - (7) All restaurant licences issued under section 50;
  - (8) All producer's licences issued under section 55;
  - (9) All wholesaler's licences issued under section 58;
  - (10) All occasional licences issued under section 59; and
  - (11) All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice is for a period of approximately 7 months expiring on 25 November 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]:
  - (1) The Applicant and [REDACTED] (**the Victim**) have previously had arguments and disagreements.
  - (2) The Applicant was at the Premises at 7:00pm on 25 April 2022.
  - (3) The Applicant was seated at another table outside the Premises [REDACTED] and the Victim was at another table nearby.

- (4) The Applicant moved across to the Victim's table and they were talking. The Victim agreed with something the Applicant said.
  - (5) The Applicant moved towards the Victim and pushed her [REDACTED], causing the Victim to fall backwards off the bench chair on to a concrete floor. The Victim landed predominantly on her hip and her head made contact with something behind her, causing bruising to both areas.
  - (6) Threats were also made by the Applicant towards a witness in relation to [REDACTED].
  - (7) The Incident was captured on CCTV.
  - (8) The Applicant was spoken to by police at the Premises and appeared heavily intoxicated, however made full admissions [REDACTED].
  - (9) The Applicant was arrested on 26 April 2022 and participated in an electronic record of interview, making full admissions [REDACTED].
  - (10) The Applicant was summonsed with [REDACTED] preferred.
  - (11) The explanation given by the Applicant to police was that "the Victim made a comment [REDACTED] I [REDACTED] got angry and went over and pushed her".
6. The Incident giving rise to the Barring Notice is referred to in the following documents:
- (1) Section 115AD Application for review of Barring Notice dated 27 May 2022.
  - (2) The evidential material relied upon by the Commissioner of Police being:
    - (a) Statement of Material Facts [REDACTED];
    - (b) Police Detected Incidents Report [REDACTED]
    - (c) Incident Brief Report, Incident [REDACTED];
    - (d) Statement of Victim dated 26 April 2022;
    - (e) Four still photographs of the injuries of the Victim;
    - (f) Statement [REDACTED] dated 26 April 2022;
    - (g) CCTV video filmed in the vicinity of the Premises (**CCTV Footage**);
    - (h) Two still images of the CCTV Footage;
    - (i) Body camera video taken by police during and following the Incident (**Body Cam Footage**);
    - (j) One still image of the Applicant from the Body Cam Footage;

- (k) the Disclosable Court Outcomes – Criminal and Traffic history of the Applicant **(Disclosable Court Outcomes)**.
- (l) The Respondent's Primary Outline of Submissions dated 22 June 2022.

**Submissions of the applicant**

- 7. On 27 May 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. Primary Submissions of the Applicant are contained within the application made by the Applicant on 27 May 2022.
- 10. The submissions of the Applicant are summarised as follows:
  - (1) The Applicant feels that the Barring Notice has been issued as a punishment [REDACTED]
  - (2) Since March 2021, the Applicant has not frequented the Premises and recently returned following an invitation to do so by friends of the Applicant. The Applicant has only frequented the Premises three times in 2022.
  - (3) The Applicant was contacted by three regulars of the Premises [REDACTED]
  - (4) There was no responsible service of alcohol being adhered to on the date of the Incident, as the Applicant was served [REDACTED] over the afternoon, from 3:00pm onwards with only two [people] drinking these.
  - (5) Once the police were called, the licensee raced over to table and took back the jug [REDACTED] that was just bought approximately 5 minutes beforehand. The Applicant further submits that the [licensee] did not want to seem to be serving an obviously intoxicated person when the police arrived.
  - (6) The Applicant also alleges that there was an incident where the licensee pushed [REDACTED] that [the Applicant] was with, to get the jug from the middle of the table before the police arrived [and the licensee] was highly agitated and worried. However, [REDACTED] felt it best not to place [REDACTED] charge on the licensee as he was just trying to protect himself and his business, which she understood, so did not proceed. [REDACTED]
  - (7) The Applicant submits that the licensee did not consider:
    - (a) the Applicant's character and reputation;
    - (b) any reasons surrounding the incident;

- (c) the Applicant was being provoked by [REDACTED] all afternoon and evening;
  - (d) snide comments and laughter about [REDACTED];
  - (e) the seriousness of any violent or aggressive behaviour displayed by the Applicant;
  - (f) any effect(s) the drinking of alcohol may have had on the Applicant;
  - (g) that there was no effect on the Applicant's behaviour with any other patrons, regulars and staff;
- (2) The Applicant believes there were [no] sound grounds for issuing the Barring Notice to all venues in WA.
  - (3) The Applicant submits that [the Barring Notice] is not supposed to impose a penalty, but is a mechanism to protect the general public, a licensee or indeed, the subject of the barring notice from his or her own actions.
  - (4) The Applicant feels [that the Barring Notice] has been placed on her as a punishment. She states that the Incident should have never happened and she should have just left [the Premises] [REDACTED].
  - (5) The Applicant pleaded guilty to the offence immediately to both the police when [they] arrived and at court. She complied with the police and gave her statement [and] there was no aggression.
  - (6) The Applicant states that she immediately left the Premises, and was actually planning to leave before the Incident. However, the [Victim] was very rude [REDACTED] and Applicant [REDACTED] pushed her.
  - (7) The Applicant feels remorseful for this action and on reflection, says that she should have [REDACTED] walked away.
  - (8) When the Applicant attended court she received [REDACTED] on [the] date of sentencing which the Applicant submits reflects that the court believes [the Applicant is] unlikely to commit that sort of offence again and [the applicant] had good character before committing this offence.
  - (9) The Applicant is requesting that [the] barring notice decision on the barring notice be reviewed and submits that she will no longer frequent the Premises in the future, for as long as the licensee is the licensee [of the Premises].

#### **Submissions on behalf of the respondent**

- 11. The Respondent provided Primary Outline of Submissions dated 22 June 2022.
- 12. The Respondent's submissions are summarised as follows:
  - (1) **Reasonable grounds to believe the Applicant has been violent or disorderly, engaged in indecent behaviour or contravened a provision of any written law**

- (a) 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, on or in the vicinity of licensed premises:
- i. been violent or disorderly;
  - ii. contravened a provision of any written law, mainly the Criminal Code.
- (b) The Respondent refers to the materials which demonstrate that:
- i. on the evening of 25 April 2022, the Applicant was present at the Premises;
  - ii. the Applicant was drinking alcohol [REDACTED];
  - iii. the Victim was at the Premises with two friends, [REDACTED];
  - iv. the Applicant walked over to the Victim and spoke with the Victim and [her friend] [REDACTED];
  - v. the Applicant forced the Victim backwards off her chair in response to something the Victim said;
  - vi. the Victim landed on her hip and hit her head on something behind her, causing bruising;
  - vii. the Applicant was separated from the Victim and [the Victim's friend];
  - viii. the Applicant made threats towards [the Victim's friend], [REDACTED]; and [REDACTED];
  - ix. police officers attended and spoke with the Applicant, who admitted to pushing the Victim off her chair and continued to make threats towards either the Victim or [the Victim's friend] (it is not clear which person the threat is directed at) in the presence of the police officers;

(2) The Respondent submits that, accordingly, the evidence before the Commission provides reasonable grounds for the belief that the Applicant has, on a licensed premises, engaged in violent or disorderly behaviour by pushing/pulling another patron off her chair, causing bruising. The Applicant contravened a provision of a written law, relevantly, the Criminal Code, pleaded guilty and was sentenced for a charge of assault causing bodily harm.

(3) **Nature and circumstances of the incident giving rise to the Barring Notice**

- (a) The Respondent submits that, during the altercation with the Victim at the Premises, the Applicant who was heavily intoxicated, approached the Victim and [the Victim's friend]. Whilst speaking to the Victim and [the Victim's friend], the Applicant [REDACTED] "pushed her", causing the Victim to fall [REDACTED] off her chair.