

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: KMW

Respondent: Commissioner of Police
(represented by Mr Stefan Tomasich of State Solicitor's Office)

Commission: Mr Eddie Watling (Deputy Chairperson)

Matter: Application seeking review of a barring notice issued pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of Lodgement Of Application: 19 September 2017

Date of Determination: 2 November 2017

Determination: The terms of the Barring Notice are varied as follows:

KMW of [REDACTED] is barred from entering licensed premises in accordance with the Barring Notice dated 1 September 2017 with the exception of licensed premises associated with her attendance at [REDACTED] games in which her sons are participating. No alcohol is to be consumed whilst on these premises.

Background

- 1 On 1 September 2017, a barring notice was served under section 115AA(2) of the *Liquor Control Act 1988* ("the Act"), prohibiting the applicant from entering specified licensed premises in Western Australia for a four month period until 30 December 2017.
- 2 The barring notice was issued as a result of an incident at the [REDACTED] ("the Hotel"), [REDACTED] where it is alleged that the applicant committed the offence of common assault.
- 3 It is alleged that on the afternoon of 12 August 2017, the applicant approached and abused [REDACTED] ("the complainant") and [REDACTED] at the Hotel and took the complainant's mobile phone. The applicant then proceeded to grab at, and pull, the complainant's hair.
- 4 The applicant then walked off with the complainant following her. There was then another altercation at the door of the Hotel. This second altercation was initiated by the complainant and reported in the WA Police Statement of Material Facts, as being an attempt to retrieve her mobile phone. At this point the Hotel security intervened and separated the two parties. The Hotel Incident Report is consistent with this order of events.
- 5 On Monday 28 August 2017, the applicant attended [REDACTED] Police Station and participated in an electronic record of interview, with the WA Police Statement of Material Facts recording that the applicant made a full admission to first assaulting the complainant.
- 6 It is apparent that this incident is associated with the breakdown of the applicant's marriage to [REDACTED] who was in the company of the complainant at the Hotel. The applicant has accused her husband of having an affair with the complainant.

Submissions by the applicant

- 7 The applicant has admitted to first assaulting the complainant, however, has asked that the barring notice be reviewed to enable her to enter licensed premises in order to be able to attend [REDACTED] matches played by her sons. Three of the applicant's sons play [REDACTED] and her [REDACTED] son represents the State and Australia in that sport.
- 8 Character references provided indicate that the applicant's activities for the [REDACTED] include being a supportive parent, manager and scorer with these roles often requiring her to be positioned in a licensed area.

- 9 The applicant has submitted that she has the primary parent role in relation to her sons' [REDACTED] activities and not having access to the licensed areas associated with every venue has meant that she has not been able to attend games.
- 10 The applicant has requested that the barring notice be reviewed to allow her to provide family support at [REDACTED] games in which she has a strong involvement.

Submissions on behalf of the Commissioner of Police

- 11 It was submitted by the Commissioner of Police ("the Police") that it is accepted that some variance of the barring notice is appropriate, although it is not accepted that the barring notice should be quashed outright.
- 12 The Police accept that the barring notice should be varied to allow the applicant to attend [REDACTED], but not at all grounds that her sons play [REDACTED] that have licensed areas. It is the Police's view that it is only [REDACTED] that would require those attending to watch the [REDACTED], to either enter or pass through the licensed premises. Furthermore, as the applicant has not provided any evidence as to why she would need to attend the licensed premises at other grounds, it is not justifiable to vary the barring notice with respect to those other grounds.

Determination

- 13 Section 115AA(2) of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting that person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months if the Commissioner believes, on reasonable grounds, that a person has on licensed premises:
 - a) been violent and disorderly; or
 - b) engaged in indecent behaviour; or
 - c) contravened a provision of the written law.
- 14 The provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing the individual for their actions. As submitted by the Police, it was stated by the Minister for Racing and Gaming during the parliamentary debate on the amendments to section 115AA of the Act that "The whole idea of this legislation is to protect the general public, the licensee, which is pretty important and also the person".

- 15 In examining the material before me in this application I am satisfied that the issuing of the barring notice is appropriate under the circumstances. It therefore remains for me to consider whether varying the terms as sought by the applicant, as section 115AD of the Act empowers me to do, will result in the likelihood of the public being endangered.
- 16 The Police have accepted that some variation of the barring notice is appropriate, however, supports a variance that only applies to allowing the applicant access to the licensed area of [REDACTED]. It was submitted that it is unnecessary to vary the barring notice with respect to other grounds that the applicant may attend for her sons' games as she has not provided any evidence as to why she would need to attend licensed premises at those grounds.
- 17 I accept the applicant's and Police submissions that there is a case for the barring notice to be varied and it is therefore a matter for me to determine the extent of that variance.
- 18 The Police position is clear in the view that only access to the licensed areas of [REDACTED] should be allowed, however, I have some concerns as to the practicality of that approach in achieving an outcome that does not prejudice the intention of the variance which is to allow the applicant to attend [REDACTED] games in support of her sons.
- 19 As the layout of the licensed areas of the [REDACTED] venues in question are not known to me and I am aware that the applicant has submitted "*at every venue my son plays at there is alcohol served and due the nature of my involvement, manager and/or scorer I am required to be with him and attend his games*", it would seem that a wider variance to the barring notice to that proposed by the Police is appropriate.
- 20 I have reviewed the reported circumstances of the incident, which the applicant has admitted instigating, and do not believe, on the balance of probabilities, that the applicant poses a future public threat. Rather, the incident was strongly based on emotions associated with what she considered was an interference in her marriage by the complainant. Therefore I do not consider the protection of the general public to be an overriding matter in considering a variation to this barring notice.
- 21 However, the incident that took place on licensed premises cannot be justified through the personal circumstances of the applicant and I am satisfied that the Police had reasonable grounds to issue the barring notice.

22 Therefore, the terms of the barring notice are varied as follows:

KMW of [REDACTED] is barred from entering licensed premises in accordance with the barring notice dated 1 September 2017 with the exception of licensed premises associated with her attendance at [REDACTED] games in which her sons are participating. No alcohol is to be consumed whilst on these premises.



EDDIE WATLING
DEPUTY CHAIRPERSON