

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: MAK
(represented by Mr Anthony Eryes of Holborn Lenhoff Massey)

Respondent: Commissioner of Police
(represented by Ms Rebecca Davey of State Solicitor's Office)

Commission: Ms Emma Power (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: 20 December 2018

Date of Hearing: 26 March 2019

Date of Determination: 26 March 2019

Date of Reasons of Determination: 15 April 2019

Determination:

1. The application seeking review of the barring notice issued by the Commissioner of Police on 2 November 2018 is varied to permit Mr M A K to attend sporting events and areas licenced pursuant to the *Liquor Control Act 1988* located at:
 - a. Subiaco Football Club;
 - b. Associates Rugby Union Club at Swanbourne; and
 - c. HBF Park for Perth Glory Soccer matches.
2. Mr M A K is precluded from consuming alcohol at all venues as outlined in Order No 1.
3. The remainder of the barring notice remains in full force.

Authorities referred to in Determination:

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

Review of Barring Notice

- 1 On the night of 15 June 2018, an incident involving a physical altercation between the Applicant and another individual occurred at the licensed premises being the Club Bayview (**“the Incident”**).
- 2 During the Incident, the Applicant threw a punch at another party.
- 3 As a result of the Incident, the Applicant was charged with assault occasioning bodily harm pursuant to section 317(1) of the *Criminal Code (WA)*. The Applicant has pled guilty to such charge and received a fine and a spent conviction order.
- 4 As a further result of the Incident, the Commissioner of Police (**“the Respondent”**) issued a barring notice under section 115AA(2) of the of the *Liquor Control Act 1988* (**“the Act”**) prohibiting the Applicant from entering licensed premises in Western Australia of the following licence classes:
 - a. all hotel licences, however referred to, issued under section 41;
 - b. all small bar licences issues under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. Casino licence issued under section 44;
 - e. all club licences issued under section 50
 - f. all restaurant licences issued under section 59;
 - g. all occasional licences issued under section 59; and
 - h. all special facility licences issued under section 46 and regulation 9A of the Liquor Control Regulations.
- 5 The barring notice was dated 2 November 2018 and served on the Applicant on 20 November 2018 to expire on 1 May 2019, being for a total period of 6 months.
- 6 On 20 December 2018, the Applicant appealed to the Liquor Commission (**“the Commission”**) for a review of the barring notice.
- 7 A hearing was held on 26 March 2019 in respect to the application (**“the Hearing”**) and the determination handed down verbally. These are the written reasons for such determination.
- 8 It is noted that at the date of the Hearing there was only a further 36 days of the duration of the barring order remaining until its expiry on 1 May 2019.
- 9 The relevant information regarding the Incident giving rise to the barring notice is referred to in the following documents:
 - a. The Applicant’s application for review dated 20 December 2018 and annexed Grounds for Review of Barring Notice filed by Holborn Lenhoff Maasey on behalf of the Applicant dated 19 December 2019;
 - b. The police evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 2 November 2018;
 - ii. statement of Material Facts Brief Number 1863192-1;

- iii. Incident Report 150618 0920 8807 complied 2 November 2018;
 - iv. statement of James Mark Taylor;
 - v. Photographs of injury to victim;
 - vi. statement of Harry Oscar Burrell;
 - vii. statement of Tobias Hay Hector;
 - viii. licenced premises incident report completed by approved manager;
 - ix. CCTV Footage;
 - x. CCTV Footage stills; and
 - xi. Facebook extract used to confirm identity of Applicant.
- c. the Commissioner of Police's ("**the Respondent**") outline of submissions dated 12 March 2019; and
 - d. Further Submissions on behalf of the Applicant dated 12 March 2019.

Submissions by the Applicant

- 10 The Applicant's legal representation made submissions requesting the Commission vary the barring notice to either:
 - a. reduce the period of the barring notice; and/or
 - b. permit him to enter licenced premises located at:
 - i. Subiaco Football Club;
 - ii. Associates Rugby Union Club at Swanbourne;
 - iii. HBF Park for the purpose of attending Perth Glory Soccer matches; and
 - iv. venues with restaurant licences issued under section 59 of the Act.
- 11 The Applicant's legal representation also made the following written submissions in the initial Grounds and subsequent submissions:
 - a. the Applicant is 19 and has no criminal record;
 - b. the Applicant is hard working. He has commenced a commerce degree at university and has worked within his family's business;
 - c. the Applicant is an active rugby player at the Associates rugby club;
 - d. as evidenced by the 10 personal reference supplied, the Applicant:
 - i. is well thought of by his peers and adults who know him;
 - ii. is generous with his time and in assisting others;
 - iii. has a responsible attitude towards alcohol;
 - iv. has no history of aggressive or violent behaviour, even while drinking alcohol;

- e. the effects of the barring order will prevent the Applicant from attending:
 - i. the Associates rugby club;
 - ii. various sporting facilities which have liquor licences attached to them;
 - iii. various music concerts located at licensed premises for which the Applicant has already purchased tickets (copies supplied);
 and this will have a significant social and financial effect on the Applicant;
- f. it is in the community's interest for the Applicant to attend sporting clubs in order to play rugby;
- g. the CCTV footage of the Incident shows that only one punch was thrown;
- h. the Applicant was not the instigator of the argument;
- i. from the Applicant's point of view the Incident occurred in the following circumstances:
 - i. he was speaking to another club patron when he heard a comment that indicated his friend was being threatened and his instinctive reaction was to be concerned for his friend;
 - ii. when he moved over to the parties he lashed out, but was not aiming for any particular body part, however, he accepts he hit the victim's face and caused the injuries alleged;
 - iii. his motivation was to protect his friend from a perceived threat, however, accepts his actions were misguided; and
 - iv. he disputes that his actions had anything to do with the alcohol consumed;
- j. there is no evidence that the Incident occurred due to the excessive consumption of alcohol. The CCTV footage shows only 1 drink being consumed by the Applicant at the relevant venue and it is maintained that he only drank one other alcoholic drink prior to attending the venue;
- k. there is no evidence that the Applicant was intoxicated and there is no link between consumption of alcohol by the Applicant and the Incident;
- l. when the circumstances of the Incident and the Applicant's personal circumstances are considered, there is no purpose or utility in the barring notice;
- m. alternatively, the barring notice is too wide in scope and should be limited to preventing attending at nightclubs;
- n. the barring order should be for a much more limited timeframe bearing in mind what is said by the Applicant's father about the Applicant's social network, the relatively limited nature of the offending, the lack of evidence that excessive consumption of alcohol was responsible for the Incident and the Applicant's prior good history;

12 At the Hearing it was also submitted that:

- a. due to various delays, the term of the barring order had almost expired;
- b. the victim was known to the Applicant through school, the parties have since spoken, the Applicant has apologised and there is no lasting animosity between the parties;

- c. the Incident was due to an unfortunate rush of blood to the head, not the result of excessive consumption of alcohol;
- d. the necessity for a barring order of such wide scope to protect the public is questioned in the circumstances;
- e. the bail conditions imposed on the Applicant did not preclude access to licensed premises;
- f. the barring order had served its purpose at the date of the Hearing and should now be ended;
- g. conversely, the barring order should be varied to permit access to:
 - i. Subiaco Football Club;
 - ii. Associates Rugby Union Club at Swanbourne;
 - iii. HBF Park for Perth Glory Soccer matches; and
 - iv. venues with restaurant licences issued under section 59 of the Act; and
- h. the Applicant is not a threat to the public so it can be considered the nature of the barring order is in the character of a punishment.

Submissions on behalf of the Commissioner of Police

- 13 The circumstances upon which the decision of the Respondent to issue the barring notice is based, are contained within the documents referred to in paragraph 8(b) above.
- 14 The representative for the Respondent submits in her written submissions that:
 - a. evidence submitted clearly establishes on the balance of probabilities that the Applicant was engaged in violent or disorderly behaviour or contravened a written law on licenced premises;
 - b. the contentions by the Applicant that the Incident *“does not appear to have occurred as a result of excessive alcohol consumption”* and that there is *“no utility or purpose in the barring notice”* and that there is no *“link”* between excessive consumption of alcohol and the Incident is misguided;
 - c. the object of the Act and purpose of a barring order are clear and, although the level of intoxication of a person may be a factor to be taken into consideration, it is not the sole consideration. This is of little relevance and should be given little weight;
 - d. the conduct comprising the Incident is what the provisions in the Act are designed to overcome;
 - e. the violent behaviour was in a high risk, crowded venue and unprovoked;
 - f. the fact that the Applicant was not the instigator and only struck the victim once is of little relevance;
 - g. there is no evidence of the Applicant’s motivation or that the Applicant was remorseful, and this shows a lack of insight as to the impacts of his behaviour;