

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr A C

Respondent: Commissioner of Police
(represented by Mr Sam Pack 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: 17 November 2017

Date of Determination: 10 January 2018

Determination: Pursuant to section 115AD (7) of the Act the barring notice to the applicant is varied by:

- a. deleting from the specified classes of licensed premises "All restaurant licenses issues under section 50" and "All club licences issues under section 48"; and
- b. inserting in the specified classes of licensed premises "All club licences issues under section 48, with the exception of the [REDACTED] [REDACTED]."

Authorities referred to in Determination:

- *Van Styn v Commissioner of Police* (LC19/2011)

Review of Barring Notice

- 1 On 30th April 2017, an incident occurred at licensed premises namely [REDACTED], [REDACTED] (“the Incident”) involving the applicant aged 48 and his [REDACTED] [REDACTED] (“the victim”).
- 2 As a result of such Incident:
 - a. the applicant was issued with a restraining order for a period of 72 hours;
 - b. several firearms belonging to the applicant were seized by the police;
 - c. the applicant was charged with assault occasioning bodily harm pursuant to section 317(1) of the *Criminal Code (WA)*. The matter has yet to be determined by the court.
- 3 As a further result of such incident, the Commissioner of Police (“the Police”) 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 nightclub licences issued under section 42;
 - c. Casino licence issued under section 44;
 - d. all club licences issued under section 50
 - e. all restaurant licences issued under section 59;
 - f. all occasional licences issued under section 59; and
 - g. all special facility licences issued under section 46 and regulation 9A of the Liquor Control Regulations.
- 4 The barring notice was served on the applicant on 17 October 2017 to expire on 16 April 2018, being for a total period of 6 months.
- 5 On 17th November 2017, the applicant appealed to the Liquor Commission (“the Commission”) for a review of the barring notice by way of a hearing pursuant to section 115AD of the Act. A hearing was listed for the 18th January 2018.
- 6 Since the application was made the applicant and the respondent have notified the Commission that they have conferred and agreed that the application may be resolved by issuing the following consent orders:

“ The barring notice issued by the Commissioner of Police on 17th October 2017 be varied by:

- a. *deleting from the specified classes of licensed premises “All restaurant licenses issues under section 50” and “All club licences issues under section 48”; and*
- b. *inserting in the specified classes of licensed premises “All club licences issues under section 48, with the exception of the [REDACTED] [REDACTED].”*

(“the Consent Orders”).

- 7 The applicant has further requested that this matter now be determined on the papers pursuant to section 115AD of the Act.
- 8 The Incident giving rise to the barring notice is referred to in the following documents:
- a. The applicant's application for review dated 17 November 2017 attaching:
 - i. character reference given by [REDACTED];
 - ii. character reference given by [REDACTED];
 - iii. character reference given by [REDACTED];
 - iv. character reference given by [REDACTED];
 - v. character reference given by [REDACTED]; and
 - vi. character reference given by [REDACTED].
 - b. The applicant's Witness Statement lodged on 30 November 2017
 - c. The police evidence presented before the Commissioner of Police's Delegate including:
 - i. barring notice dated 17th October 2017;
 - ii. statement of Material Facts;
 - iii. Incident Report - Brief No:1725683-1;
 - iv. statement of [REDACTED];
 - v. statement of [REDACTED];
 - vi. incident report completed by approved manager [REDACTED];
 - vii. copy restraining order No: 219443;
 - viii. property seizure report; and
 - ix. CCTV Footage.

Submissions by the applicant

- 9 The applicant has made submissions requesting the Commission to quash or vary the barring notice on the grounds:
- a. that the barring notice is excessive and punitive in nature due to:
 - i. the length of the term of the notice; and
 - ii. the specified classes of licensed premises to which the Notice applies; and
 - b. Alternatively, the delay between the incident and the subsequent issuing of the barring notice to the applicant is such that it does not achieve the objects of the Act, and should therefore be quashed.

Submissions on behalf of the Commissioner of Police

- 10 The Police have provided no submissions.

Statutory Framework

- 11 The Commissioner of Police has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
 - a. been violent or disorderly; or
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 12 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the police force or above the rank of Inspector pursuant to section 115AB of the Act.
- 13 Section 115AD(3) 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.
- 14 Section 115AD of the Act provides at subsection (6) 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 document provided by the applicant.
- 15 Subsection 115AD (7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 16 The Act also in section 16 prescribes that the Commission:
 - a. may make its determinations on the balance of probabilities [sub section(1)]; and
 - 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)];”
- 17 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).
- 18 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.
- 19 Section 5 of the Act set out the objects of the Act. In subsection (1)(b) one of the primary objects of the Act are to minimise harm or ill health caused to people, or any group of people, due to the use of liquor. Subsection (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.

- 20 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 the recipient but is to be seen as a protective mechanism (*Van Styn v Commissioner of Police* (LC19/2011)).

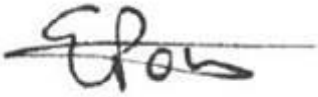
Determination

- 21 The review application must be decided on the appropriateness of issuing the barring notice and its punitive effect. To do so the Commission must 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 and whether the length and terms of the barring notice are sufficient to uphold the objects of the Act.
- 22 On the materials supplied, the Commission is satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act and there were reasonable grounds to conclude that the applicant had, on licensed premises, engaged in violent or disorderly behaviour and/or contravened a provision of a written law.
- 23 The delay of some 6 months between the Incident and the issuing of the barring order is not ideal and it would be preferable to issue such notices more promptly. However, the Act does not specify any timeframe for service.
- 24 The various character references provided by the applicant indicant that he is a respected member of the community and that the Incident was out of character.
- 25 However, it is clear from the evidence provided that the applicant and the victim, his brother, have a difficult relationship and the Incident, although provoked to some degree, was violent and serious in nature.
- 26 In addition, due to the farming community in which the applicant resides he is highly likely to come into contact with the victim again at the local hotel bar.
- 27 In the circumstances, a barring notice for a period of 6 months appears justified in order to:
- a. assure the members of the public who frequent licensed clubs and premises that they are in safe environments and can expect that they will not become victims of, or have to witness, violence or antisocial and disorderly behaviour; and
 - b. allow the applicant the opportunity for introspection regarding his behaviour on licensed premises and his interaction with alcohol.
- 28 Despite this, it appears from the character references provided, the applicant is dedicated to various local clubs and the local community and that:
- a. the members of the public attending local clubs or attending licensed restaurants in the area do not need to be protected from the applicant;

- b. to ban the applicant from participating in such local clubs and activities and prevent him from attending licensed restaurants would be punitive in nature.

29 As such:

- a. the Consent Orders are approved; and
- b. the barring notice to the applicant stands and is varied pursuant to section 115AD(7) in accordance with the Consent Orders.



EMMA POWER
PRESIDING MEMBER