

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

Applicant: KS
(represented by Ms Tabitha Raphael of Andrews Legal)

Respondent: Commissioner of Police
(represented by Ms Catherine Wallace of the State Solicitor's Office)

Commission: Sandra 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: 28 January 2022

Date of Hearing: On Papers

Date of Determination: 26 April 2022

Determination: The barring notice is varied in accordance with section 115AD(7) of the *Liquor Control Act 1988* to permit the Applicant to enter licensed premises:

- a) when such attendance is required in relation to the Applicant's employment; and
- b) provided that the Applicant is precluded from purchasing or consuming alcohol whilst attending such licensed premises.

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)

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) ("Act") made by [REDACTED] ("Applicant").
- 2 On 26 September 2021 at and in the vicinity of licensed premises, namely the [REDACTED] ("Premises"), it is alleged that the Applicant contravened a provision of written law on licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice dated 30 November 2021 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - 3.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 3.2. All small bar licences issued under section 41A;
 - 3.3. All nightclub licences issued under section 42;
 - 3.4. Casino licence issued under section 44;
 - 3.5. All liquor store licences issued under section 47;
 - 3.6. All club licences issued under section 48;
 - 3.7. All restaurant licences issued under section 50;
 - 3.8. All producer's licences issued under section 55;
 - 3.9. All wholesaler's licences issued under section 58;
 - 3.10. All occasional licences issued under section 59; and
 - 3.11. 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 30 December 2021 and is for a period of approximately 9 months expiring on 26 September 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in Detected Incidents Report incident no. [REDACTED]:
 - 5.1. On Sunday 26 September 2021, at about 4.00pm, [REDACTED] ("Victim") was at the [Premises] with some friends.
 - 5.2. The Victim and his friends were sat outside in a booth. An unknown male walked past and stared at the group, and a short while later, the Applicant walked past and stared at the group.

- 5.3. About 45 minutes later, the Victim went to the bathroom. As the Victim was using the bathroom, the Applicant entered the bathroom and hit the Victim to the back of the head with a glass, causing laceration injuries.
 - 5.4. The Applicant and another patron ("Patron") then began punching and kicking the Victim. The Victim was bent over in pain and was protecting his face.
 - 5.5. The Victim pushed the Applicant off and both the Applicant and the Patron rushed out of the bathroom. The Victim recognised the Applicant, but was unsure who the Patron was.
 - 5.6. The Victim attended the doctor on Monday 27 September 2021 and then attended the police station to provide a report.
 - 5.7. On 21 October 2021, the Applicant was arrested and conveyed to the police station where he participated in an audio-visual record of interview. The Applicant made admissions in relation to the offence and was released pending further inquiries.
 - 5.8. On 18 November 2021, the Applicant was again arrested and taken to the police station and declined to participate in an audio-visual record of interview.
 - 5.9. The Applicant was bailed on the charges of endanger life, health or safety of a person and fighting in public causing fear.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 6.1. the Barring Notice.
 - 6.2. the evidential material relied upon by the Commissioner of Police being:
 - 6.2.1. Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.2. Statement of Material Facts brief no. [REDACTED];
 - 6.2.3. Statement of Material Facts brief no [REDACTED];
 - 6.2.4. Running Sheet, Incident Report [REDACTED];
 - 6.2.5. Statement of the Victim dated 27 September 2021;
 - 6.2.6. Addendum Statement of the Victim dated 27 October 2021;
 - 6.2.7. Consultation notes for the Victim recorded by [REDACTED] on 27 September 2021 in relation to a visit by the Victim on 27 September 2021 ("Doctor's Notes");
 - 6.2.8. four photographs of the Victim's injuries;
 - 6.2.9. Statement made by manager/employee of the Premises, [REDACTED] in relation to the video filmed in the Premises on the date of the Incident ("CCTV Footage");
 - 6.2.10. the CCTV Footage;

6.2.11. nine still images of the CCTV Footage; and

6.2.12. the Criminal and Traffic History of the Applicant.

6.3. The Respondent's Outline of Submissions dated 4 March 2022.

Applicant's Submissions

- 7 On 28 January 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 Submissions of the Applicant are contained within the Applicant's Outline of Submissions dated 2 March 2022.
- 10 The submissions of the Applicant are summarised as follows:
 - 10.1. The Applicant is charged with fighting in public causing fear and endanger life, health or safety of a person. Pleas of not guilty have been entered with the Court.
 - 10.2. The Applicant's position is that the [Barring Notice] should be quashed or alternatively varied to allow the Applicant [the] ability to attend the licensed restaurant on the relevant mine sites and licensed airports in relation to his work commitments.
 - 10.3. The Applicant is currently working for a mining and construction company as a field service technician, working 5 days on and 2 days off.
 - 10.4. As part of his employment, the Applicant flies into airports, most if not all of which serve alcohol in the boarding lounge. Due to the Barring Notice, the Applicant would be barred from sitting in the boarding lounge awaiting his flight.
 - 10.5. As part of his employment, the Applicant resides at mine sites which impose restrictions on traveling to town and lack of in-room facilities available to prepare meals, and which have a restaurant/cafeteria on site to provide employees with meals. In addition to meals, these facilities on various mine sites also offer alcohol and have liquor licences. The Barring Notice would mean that the Applicant would be barred from having a meal in the mine site facilities.
 - 10.6. Additionally, there are instances where the Applicant is flown up to the rural area [of the mine site] at late hours of the night, and he is permitted to stay at a hotel or motel before going to the mine sites the next day as part of his employment. Due to the Barring Notice, the Applicant is unable to stay in licensed hotels or be able to have a meal at the restaurants of the hotel, which means he is unable to engage in these types of late fly out jobs for his employer. This may result in the Applicant potentially losing his position.
 - 10.7. The Applicant is further concerned that if he is expected to quarantine at a hotel on the direction of his employer due to COVID-19 pandemic, he will be unable to do so due to the Barring Notice.

- 10.8. The Applicant also outlines a number of scenarios where he would be unable to undertake various family outings and hobbies due to the Barring Notice, including attending the race track with his children, staying in hotels when visiting relatives and various sporting activities.
- 10.9. The Applicant submits that he is substantially affected by the Barring Notice [in relation to] his work, participation in activities focused on bettering his mental health and participating in events with his children.
- 10.10. The Applicant concludes that the [Commission should] either:
 - i. quash the Barring Notice;
 - ii. vary the Barring Notice to allow the Applicant to attend any licensed premises before 9pm each day, excluding bars (that are not at airports) and nightclubs, and to stay at licensed accommodation at all times; or
 - iii. vary the Barring Notice to allow the Applicant to travel to any airport, stay in licensed accommodation and attend restaurants.

Respondent's Submissions

- 11 The Respondent provided an Outline of Submissions dated 4 March 2022.
- 12 The Respondent's submissions are summarised as follows:

There are reasonable grounds to believe the Applicant has been violent or contravened a provision of any written law

- 12.1. The Respondent submits that there is sufficient evidence to believe that the Applicant has engaged in violent conduct and/or contravened a provision of a written law, being section 304(1)(b) of the Criminal Code.
- 12.2. The materials provided to the Commission, along with the CCTV Footage, is sufficient to provide reasonable grounds for believing the Applicant has engaged in violent conduct and contravened a provision of written law.
- 12.3. In particular:
 - i. the Victim's statement identifies the Applicant as one of his assailants;
 - ii. the CCTV stills show the Applicant was at the Premises with the Patron at the time the Victim was assaulted, including showing the Applicant and the Patron (with a glass in his hand) entering the restroom area shortly after the Victim, and departing the Premises straight after exiting the restroom area;
 - iii. the CCTV timestamps indicate that the Applicant and the Patron followed the Victim into the restroom area at or around the time of the assault;
 - iv. the Victim's Statement and Addendum Statement indicate the Victim was struck to the back of the head by a glass, and then repeatedly punched and kicked by two assailants; and