

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

**Applicant:** LO

**Respondent:** Commissioner of Police  
*(represented by Mr Chen Da Tan 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 October 2021

**Date of Determination:** 6 January 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*.

**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* ("Act") made by [REDACTED] ("Applicant").
- 2 On 8 August 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that [REDACTED] was disorderly and remained in the vicinity of licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice on 30 September 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 12 October 2021 and is for a period of approximately 10 months expiring on 8 August 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. Police on night-safe uniformed foot patrol duties were sighted and waved down by crowd controllers at the entry to the Premises.
  - 5.2. Two patrons, who had been removed from the Premises due to being intoxicated, had been physically aggressive to security in an attempt to re-enter the Premises.

- 5.3. During this event, one of the patrons [REDACTED], a friend of the Applicant, struck a female bar staff member ("Victim") to the face.
  - 5.4. Both the Applicant and [REDACTED] were issued with a Move on Order.
  - 5.5. Further enquiries on 12 August 2021 included police reviewing CCTV footage which the police allege is clear and establishes the offences.
  - 5.6. Inquiries with the Victim identified that she does not wish to continue with an assault complaint.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 6.1. Section 115AD Application for review of Barring Notice dated 28 October 2021.
  - 6.2. The evidential material relied upon by the Commissioner of Police being:
    - 6.2.1. Police Detected Incidents Report incident no. [REDACTED] ("Detected Incidents Report");
    - 6.2.2. Western Australia Police Criminal Code Infringement Notice [REDACTED], dated 12 August 2021;
    - 6.2.3. Western Australia Police Liquor Infringement Notice [REDACTED] dated 12 August 2021;
    - 6.2.4. Copy of Criminal Investigation Act 2006 Move on Order [REDACTED], dated 8 August 2021;
    - 6.2.5. Western Australia Police Move on Notice Details Report [REDACTED], dated 8 August 2021;
    - 6.2.6. photographs of the injuries of the Victim;
    - 6.2.7. CCTV video filmed in the vicinity of the Premises ("CCTV Footage");
    - 6.2.8. seven still images of the CCTV Footage;
    - 6.2.9. one photograph of the Applicant; and
    - 6.2.10. the Criminal and Traffic History of the Applicant.
  - 6.3. The Respondent's Primary Outline of Submissions dated 26 November 2021.

### **Applicant's Submissions**

- 7 On 28 October 2021, 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 28 October 2021.
- 10 The Applicant also submitted a response to the Respondent's Primary Submissions on 8 December 2021.
- 11 The submissions of the Applicant are summarised as follows:
  - 11.1. The Applicant's friend, [REDACTED], was forcefully grabbed by a security guard at the Premises and was thrown to the ground in a violent and aggressive manner.
  - 11.2. The Applicant was greatly disturbed and fearful of the abuse that was inflicted on her friend.
  - 11.3. In her Secondary Submissions, the Applicant states that she accompanied [REDACTED] out of the venue due to concern [of] her welfare as she was again thrown to the ground with excessive force outside of the Premises.
  - 11.4. The security manager accepted liability for the original incident and apologised for the actions of the security guard.
  - 11.5. The Applicant and her friend contacted and waited for the police to arrive in relation to the physical assault inflicted upon [REDACTED].
  - 11.6. [REDACTED] engaged in an altercation with the bar manager.
  - 11.7. In her Secondary Submissions, the Applicant:
    - 11.7.1. states that she attempted to prevent anything further from happening by placing herself in between the security guard and [REDACTED], and comforting [REDACTED];
    - 11.7.2. admits that she was trying to re-enter the Premises, and acknowledges that [pub security used] appropriate force to prevent her from re-entering the [Premises];
    - 11.7.3. states that while she was inside the Premises the same security guard grabbed her and forcibly removed her without any wrongdoing on her behalf;
    - 11.7.4. states that she was trying to take a photo of the security guard who had used excessive force on her and [REDACTED], and that is the reason she did not want to leave;
    - 11.7.5. acknowledges that her behaviour was unacceptable, that it was out of character, that she was in a heightened state and that she was acting this way in retaliation to how [the security guard] had used excessive force;
    - 11.7.6. states that she was placed in a headlock by security for a period of over 30 seconds and was struggling to breathe, which is the reason for her "struggling to get him to release";

- 11.7.7. states that shortly after she was released, a patron ran out from the Premises and struck ██████ in the face. The Applicant retaliated by running over to him and shoving him. The Applicant states that she is ashamed of this and it was an unacceptable retaliation made without thinking; and
- 11.7.8. states that she is remorseful and recognises the seriousness of her behaviour and the impact it may have had on others involved in the incident.
- 11.8. The Applicant assumed that the police were there to assist her and ██████ in relation to the physical assault inflicted upon ██████, however the Applicant and ██████ were issued with a move on notice.
- 11.9. The Applicant and ██████ did not leave the immediate vicinity as requested, as they were hopeful that the incident would be classified as an assault on ██████.
- 11.10. Following the Incident, the Applicant was issued with two infringement notices in relation to behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place and a person who under section 115, has been refused entry to, or has been required to leave and has left, or been removed from, licensed premises; and remains on any footpath that is adjacent to the licensed premises.
- 11.11. On 12 October 2021, the Applicant was issued with the Barring Notice.
- 11.12. The Applicant requests that the Barring Notice be reviewed on the basis of three grounds:
- 11.12.1. in the context of the evidence presented, the Barring Notice is manifestly excessive and disproportionate to the offence;
- 11.12.2. the evidence presented is in disputable context, the Applicant's friend could be seen to be acting in self-defence and there is, and would have been at the time, sufficient evidence to suggest that the Applicant was not a risk to which the public needed general protection; and
- 11.12.3. the object of the Act is for protection rather than to be punitive and there is no justifiable reason why the Applicant should [have been issued] with a [12] month barring notice as punishment for simply not moving on. The Applicant states that she was not disorderly in the context and was simply acting in the interests of a friend who was in her view, a victim of a physical assault.

## **Respondent's Submissions**

12 The Respondent provided Primary Outline of Submissions dated 26 November 2021.

13 The Respondent's submissions are summarised as follows:

Reasonable grounds for believing the Applicant has been violent or disorderly or contravened a provision of any written law on licensed premises

13.1. On the evidence before the Respondent, a reasonable person would be inclined to assent to, and not to reject, that there are reasonable grounds for believing that the Applicant has behaved in a violent or disorderly manner on licensed premises, and contravened several written laws.



13.2. In particular:

13.2.1. the Detected Incidents Report describes how the evidence shows that the Applicant and [REDACTED] were "removed due to being intoxicated", and "had been physically aggressive to security in an attempt to re-enter";

13.2.2. the CCTV Footage shows:

- (a) the Applicant repeatedly try to forcibly re-enter the premises, after being removed from the Premises for the first time, thereby contravening section 115(7) of the Liquor Control Act (re-entering a licensed premises within 24 hours of being required to leave)
- (b) the Applicant having to repeatedly be physically restrained by pub security, for trying to physically force her way back into Premises;
- (c) the Applicant was uncooperative while restrained, and continued to struggle, while attempting to kick pub staff and security;
- (d) that even after being released by pub security, the Applicant does not leave the Premises, but instead returns to film and argue with pub security, thereby contravening section 115(4B) of the Liquor Control Act (refusal to leave a licensed premises);
- (e) the Applicant charged at a patron, and shoved him to the floor, while the patron's back was turned, thereby committing the offence of common assault under section 313 of the *Criminal Code Act Compilation Act 1913* (WA) (Criminal Code).

13.3. The police issued the Applicant with a Move on Order, which states that the Applicant was either intending, had just committed, or was committing an offence. The Move on Order describes the offence in question to be "disorderly behaviour in public" and "assault".

13.4. Accordingly, there were reasonable grounds for the Respondent to form the requisite belief that the Applicant had engaged in violent and disorderly conduct and contravened several written laws.

Nature and circumstances of the incident giving rise to the Barring Notice

13.5. The Respondent submits that the actions of the Applicant in the incident on 8 August 2021 was a serious case of disorderly and violent behaviour occurring outside licensed premises.

13.6. The available evidence in the present case shows the Applicant behaving in a disorderly and violent manner in the vicinity of the Premises, including not leaving the Premises after being removed, trying to force her way back into the Premises and having to be restrained by pub security on multiple occasions, and being highly uncooperative while being restrained and removed from the Premises, and trying to kick pub security while being restrained.