

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

Applicant: Mr RH

Respondent: Commissioner of Police
(represented by Mr Stefan Tomasich 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: 22 July 2018

Date of Determination: 6 September 2018

Determination: The term of the barring notice is varied pursuant to section 115AD(7) of the Act to a period ending 16 November 2018.

Authorities referred to in Determination:

- *Van Styn v Commissioner of Police* (LC19/2011)
- *Batty v Commissioner of Police* (LC 33/2011)

Review of Barring Notice

- 1 On 14 June 2018, an incident occurred at licensed premises namely [REDACTED] (“the Incident”) involving the applicant.
- 2 During the Incident an altercation with security staff occurred and the applicant struck a security guard. The applicant was then restrained and escorted to the premises’ holding room until the police arrived.
- 3 As a result of the Incident, the applicant was issued with an infringement notice for behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place pursuant to section 74A(2)(a) of the *Criminal Code (WA)*.
- 4 The applicant paid the infringement fine and, in addition, was banned from the [REDACTED].
- 5 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.
- 6 The barring notice was served on the applicant on 17 July 2018 to expire on 4 January 2019.
- 7 On 22 July 2018, the applicant appealed to the Liquor Commission (“the 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 The Incident giving rise to the barring notice is referred to in the following documents:
 - a. The applicant’s application for review dated 22 July 2018;
 - b. The police evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 10 July 2018;
 - ii. Criminal Code Infringement Notice dated 15 June 2018;
 - iii. WA Police Incident File Full Report - Incident File [REDACTED];
 - iv. WA Police Incident Report No. [REDACTED];
 - v. CCTV Footage from [REDACTED];

- vi. still pictures from the CCTV Footage; and
- c. The Police's outline of submissions dated 17 August 2018.

Submissions by the applicant

- 10 The applicant has made submissions requesting the Commission for leniency regarding the barring notice as he:
- a. was standing up for his friend;
 - b. unintentionally reacted and pushed the security guard's arm away;
 - c. immediately apologised to the Security Guard and was remorseful for his actions;
 - d. did not refuse to co-operate with ██████ Security;
 - e. was led to believe the matter was settled after he paid the fine for disorderly conduct and was banned from the ██████;
 - f. he works FIFO and enjoys attending licensed premises during his breaks once a month;
 - g. his actions on the night were out of character and he has no previous convictions.
- 11 The applicant does not specify whether the barring notice should be varied or quashed.

Submissions on behalf of the Commissioner of Police

- 12 The circumstances upon which the Police based its decision to issue the barring notice is based are contained in the documents and footage referred to in clause 7 above.
- 13 The Police submit that:
- a. there is sufficient evidence to establish that the applicant engaged in an act of violence on the licenced premises;
 - b. the conduct giving rise to the barring notice is the very type of behaviour the Act was designed to overcome;
 - c. the incident was unprovoked and against a security guard who was performing his duties;
 - d. the applicant intervened in a situation that did not involve him;
 - e. the applicant shows no insight into his offending and appears to blame the security staff for his actions;
 - f. the applicant claims he "unintentionally reacted" by pushing the security guard's arm away, however, the CCTV footage does not bear this out;
 - g. the CCTV footage shows the applicant did not push away the security guard's arm but that he slapped his face in a deliberate response to a situation which did not involve the applicant;

- h. the slap was a deliberate act by the applicant and the fact that he seeks to downplay his actions demonstrates he has no understanding or appreciation of his offending;
 - i. given the banality of the circumstances that led to the offending there is a risk that the applicant will behave in a similar manner again; and
 - j. precluding the applicant from entering licensed premises for six months provides him with an opportunity to reassess his actions and ensures members of the public are afforded some protection.
- 14 Counsel for the Commissioner of Police also made comprehensive written submissions addressing the applicable law which are referred to as necessary during the course of the determination below.

Statutory Framework

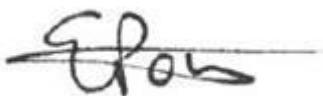
- 15 The Commissioner of Police has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
- a. been violent or disorderly; or
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 16 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.
- 17 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.
- 18 Section 115AD(6) of the Act 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 documentation provided by the applicant.
- 19 Subsection 115AD(7) of the Act provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 20 Section 16 of the Act also prescribes that the Commission:
- a. may make its determinations on the balance of probabilities [subsection (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)].”
- 21 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).
- 22 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.
- 23 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.
- 24 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

- 25 The questions to be determined on review are whether:
- a. there are reasonable grounds for believing that the barred person has been violent or disorderly on licensed premises; and
 - b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
- 26 Despite the applicant’s assertions, the CCTV footage clearly shows that the applicant slapped the security guard across the face. Further the applicant paid the relevant infringement notice and thereby accepted the relevant charge.
- 27 In addition, irrespective of the lack of any prior convictions of the applicant, it is clear from the wording of section 115AA of the Act that a single incident is sufficient to give rise to a barring notice and does not require that the person to whom the barring notice is issued must have engaged in habitual or repetitious behaviour of the type specified in the section.
- 28 Given the above, 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 that there were reasonable grounds to conclude that the applicant had, on licensed premises engaged in violent or disorderly behaviour.
- 29 Therefore, it is for the Commission to determine, in the relevant circumstances, whether the length and terms of the barring notice are sufficient to uphold the objects of the Act.

- 30 It is important to note that barring notices are not intended to be punitive in nature and that they are for protective purposes, both of the public and the individual.
- 31 The applicant asserts that he was acting to “stick up for his friend” and that his contact with the security guard was “involuntary”. However, the CCTV footage does not support this contention. The applicant did not appear to be provoked and his actions seem purposeful.
- 32 The fact that the applicant does not take full responsibility for his actions indicates that a period of barring is appropriate to allow the applicant to have some insight as to his actions and to minimise:
- a. the likelihood of any future similar occurrence; and
 - b. any likely harm to either the applicant or the public.
- 33 On the evidence provided it is unclear whether the applicant would be likely to offend again, however, even if the risk of the applicant reoffending is low, such risk may be further minimised by the terms of the barring notice [*Batty v Commissioner of Police* (LC 33/2011)].
- 34 Taking into account the nature of the Incident, the infringement issued by the Police and the fact that that the applicant apologised for the Incident at the time, a barring notice for a period in excess of 5 months appears excessive and punitive in nature.
- 35 However, a barring notice for a period of 4 months (from the service of the barring notice) does appear 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.
- 36 The barring notice to the applicant stands and is varied pursuant to section 115AD(7) of the Act to a period ending 16 November 2018.



EMMA POWER
PRESIDING MEMBER