

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: CBG
(Represented by Mr Brendon Slattery of Mackenzie & Mackenzie Barristers & Solicitors)

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

Commission: Ms Pamela Hass (Presiding Member)

Matter: Application seeking review of Barring Notice issued pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of lodgement of Application: 5 July 2022

Date of Hearing: 24 October 2022

Date of Determination: 15 November 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 referred to in Determination:

- *SVS v Commissioner of Police* (LC 19/2011)
- *KRB v Commissioner of Police* (LC33/ 2011)
- *BEL v Commissioner of Police* (LC 37/2018)
- *That's Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75; 228 A Crim R 201

BACKGROUND

1. On 30 April 2022, an Incident (“the Incident”) occurred at licensed premises, namely the [REDACTED] (“the Premises”), involving the Applicant.
2. As a result of such Incident, the Applicant was charged with unlawful wounding contrary to section 301(1) of the *Criminal Code*. At the date of this Liquor Commission hearing this charge had not been dealt with by the courts.
3. As a result of such Incident(s) the Commissioner of Police (“the Respondent”) has issued a Barring Notice (“the Barring Notice”) dated 1 June 2022, pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”), prohibiting the Applicant from entering specified licensed premises of the following classes in Western Australia for a period of approximately 10 months, expiring 30 April 2023:
 - a) All hotel licences issued under section 41;
 - b) All small bar licences issued under section 41A;
 - c) All nightclub licences issued under section 42;
 - d) Casino licence issued under section 44;
 - e) All liquor store licences issued under section 47;
 - f) All club licences issued under section 47;
 - g) All restaurant licences issued under section 50;
 - h) All producer’s licences issued under section 55;
 - i) All wholesaler’s licences issued under section 58;
 - j) All occasional licences issued under section 59; and
 - k) 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 14 June 2022.
5. On 5 July 2022, the Applicant lodged an Application for Review of the Barring Notice under section 115AD of the Act. The Applicant has elected to have the review determined by hearing.
6. The Incident(s) giving rise to the Barring Notice is referred to in the following documents:
 - a) The Application for review dated 5 July 2022 (“the Application”).
 - b) The evidential material relied on by the Respondent:
 - i. Brief Jacket [REDACTED];
 - ii. Statement of Material Facts;

- iii. W.A Police Detected Incidents Report;
 - iv. Statement of [REDACTED];
 - v. Statement of [REDACTED];
 - vi. Photographs of the Victim;
 - vii. Photographs of the Applicant from CCTV stills;
 - viii. Disclosable Court Outcomes for the Applicant – Criminal and Traffic; and
 - ix. Footage of CCTV camera.
- c) Application for Review lodged by the Applicant dated 5 July 2022 with grounds for the Application and the Applicant's submissions filed 19 September 2022; affidavit of [REDACTED]; letter of offer of employment from [REDACTED]; and confirmation of resignation letter [REDACTED].

THE INCIDENT

7. The circumstances of the Incident are summarised in the Statement of Material Facts as follows:
- a) At about 9:00pm on Saturday 30 April 2022 the Applicant was at the Premises.
 - b) Also present at the Premises was [REDACTED] (the Victim) who was with a group of friends celebrating a [REDACTED].
 - c) An altercation (verbal) broke out among a group of people at the Premises.
 - d) The Victim approached that group to attempt to diffuse the situation.
 - e) The Applicant approached the Victim and a heated verbal exchange occurred.
 - f) During this interaction, the Applicant had been holding a glass. The Applicant threw the glass at the victim. The glass made contact with the Victim's left eyebrow and shattered on impact.
 - g) The glass caused a 3-4 cm laceration.
 - h) The Victim attended [REDACTED] where she received seven stitches and later returned to the hospital where she was advised she had a fractured eye socket. The Victim has also noticed an impact on her left peripheral vision since the Incident.

SUBMISSIONS BY THE APPLICANT

8. The Applicant initially listed her Grounds for Application on 5 July 2022 as follows:
 1. *"[The] Applicant objects to Barring Notice dated on 1 June 2022, posted on 2 June 2022 and received on 14 June 2022 as the Applicant intends to plead not guilty to the alleged offence.*
 2. *The Applicant is not in receipt of full disclosure by prosecution in relation to the alleged offence and is at the present time unable to provide full and comprehensive submissions as to the grounds of objection.*
 3. *In the alternative the Barring Notice is too onerous on the Applicant. The Applicant lives and works [REDACTED] region and is limited to only a few social activates where alcohol is not served reducing her quality of life and enjoyment.*
 4. *The Applicant seeks leave to provide comprehensive grounds in due course upon full disclosure of the offence."*
9. The Applicant is represented by Mr Brendon Slattery of McKenzie & McKenzie Barristers & Solicitors.
10. Further grounds are set out in submissions from Mr Slattery filed on 19 September 2022 dated 17 May 2019.
11. These grounds state that the Applicant has pleaded not guilty to the charge and if acquitted she would have been unjustly subject to the Barring Notice.
12. The Barring Notice is too wide and given the place of residence it severely restricts her ability to attend restaurants and eateries for family gatherings as most are licensed.
13. There is no suggestion that the Applicant was intoxicated at the time and no evidence that she will behave in a similar manner as alleged in other licensed premises.
14. The Applicant is of prior good character. Reference is made to her previous [REDACTED] in her affidavit.
15. The Barring Notice has affected her income. The Applicant indicates that she had to resign from employment which required her attendance at licensed premises to undertake a course. This resulted in a significant diminution of earnings.
16. The Applicant has provided affidavit evidence sworn in September 2022 denying that she knows [REDACTED] who allegedly witnessed the interaction with the Victim, who had signed a statement that she was able to identify the Applicant [REDACTED].
17. The Applicant has further provided a list of licensed premises, a letter from [REDACTED], and a contract of employment and letter of offer [REDACTED].

SUBMISSIONS BY THE RESPONDENT

18. The Respondent is represented by the State Solicitor's Office.
19. The Respondent states that there is sufficient material before the Commission to establish that there are reasonable grounds that the Applicant has, on licensed premises, engaged in violent or disorderly behaviour, or contravened a written law, and that the Commission's discretion should not be exercised to quash or vary the Barring Notice.
20. The Respondent asserts that the materials before it when making the decision the subject of the Application (referred to at paragraph 6) demonstrate that:
 - a) the Applicant can be identified as the aggressor in the altercation with the Victim at the Premises;
 - b) the Applicant threw a glass at the Victim's face;
 - c) the glass broke on impact; and
 - d) the Victim suffered a 3-4cm laceration to the left eyebrow, a fractured eye socket and loss of vision.
21. From this material the Respondent concludes that there is support for the belief that the Applicant has unlawfully wounded the Victim and thereby contravened a written law, i.e., section 301(1) of the *Criminal Code*.

22. Further, the Respondent says that:

"There is also evidence that the Applicant was violent and disorderly at the Premises. The act which forms the basis of the unlawful wounding charge was clearly violent. Further, the Applicant's behaviour before and after the unlawful wounding can reasonably be described as disorderly. The Incident Report records that the Applicant, in company with at least two males, made multiple attempts to join [REDACTED] [REDACTED]... The Incident Report also records that another person reported to the police that she had been punched in the face by the Applicant at the Premises on 30 April 2022, after the altercation with the Victim.

It is understood that, to date the Applicant has been charged with but not convicted of an offence contrary to s 301(1) of the Code. However, a conviction is not a pre-requisite for the Commissioner to consider a person's conduct for the purposes of a barring notice.

Collectively, the above evidence establishes reasonable grounds for the belief the Applicant has, on a licensed premises, been violent or disorderly and/or contravened a provision of a written law."

23. The Respondent then asserts that the next question for the Commission is whether to quash, vary or affirm the Barring Notice. The purpose of the Barring Notice is to protect the general public, the licensee and the Applicant herself. The nature of the Incident indicates that the Barring Notice is warranted to ensure those purposes are achieved.

24. The Respondent further submits that there is a risk of the Applicant behaving in a similar manner. This is shown by:
- a) the verbal and physical aggression;
 - b) the indication from witness statements that the violence was unprovoked and that the Victim was not known to the Applicant;
 - c) that the Applicant has demonstrated disregard for the wellbeing of patrons of the venue; and
 - d) that the Applicant has not provided any evidence that she has accepted responsibility or is remorseful.
25. The Respondent concludes not only that the Barring Notice should not be quashed but also that the Commissioner's decision should not be varied.
26. The Respondent replies to the Applicants grounds for objection to the Barring Notice as follows:

“(a) Applicant objects to barring notice [...] as the applicant intends to plead not guilty to the alleged offence.

As noted above, a conviction is not a pre-re requisite for the Commissioner to consider a person's conduct for the purposes of a barring notice. The Commission is entitled to draw its own conclusions on the balance of probabilities, irrespective of the outcome of any criminal proceedings.

(b) The Applicant is not in receipt of full disclosure by prosecution in relation to the alleged offence and is at present time unable to provide full and comprehensive submissions as to the grounds of objection.

On 25 August 2022, the Respondent provided copies of the materials which informed its decision to issue the Barring Notice to the Commission and the Applicant. These materials included: the Statement of Material Facts, the Incident Report, witness statements and photographs of the Victim's injuries, inter alia. The Respondent submits that these materials ought to be sufficient to inform the Applicant's submissions in relation to its Application.

(c) In the alternative the Barring Notice is too onerous on the Applicant. The Applicant lives and works [REDACTED] region and is limited to only a few social activities where alcohol is not served reducing her quality of life and enjoyment.

Given the object of a barring notice is protective, the Commission should pay minimal, if any, heed to matters personal to the Applicant such as the impact that the Barring Notice may have on the Applicant's social life. Nothing in the Act suggests the Commission is required to balance the Applicant's personal interests with the purposes of the Act. Rather, the purposes of the Act are paramount.

Nevertheless, the Respondent submits that the personal impact raised by the Applicant in her Application does not lead to the conclusion that an order applicable to all licensed premises is not justified.

The Barring Notice is due to expire on 30 April 2023. Any effect on the Applicant's personal circumstances will be confined to that date. Precluding the Applicant from entering licensed premises until 30 April 2023 provides her with an opportunity to reflect and to improve her self-regulation during this time.

While the Respondent accepts that the Barring Notice will necessarily limit the type and perhaps quantum of social gatherings the Applicant can attend, it does not prohibit the Applicant from socialising outside licensed premises. The Respondent submits that the Barring Notice is a proportionate measure to achieve its protective aims."

STATUTORY FRAMEWORK

27. The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds the person has, on licensed premises:
 - a) been violent or disorderly;
 - b) engaged in indecent behaviour; or
 - c) contravened a provision of any written law.
28. The Commissioner may delegate the power conferred by section 115AA of the Act to any member of the Police Force of or above the rank of Inspector pursuant section 115AB of the Act.
29. Section 115AD(3) of the Act provides that when a person is dissatisfied with the decision of the Commissioner of Police, the person may apply to the Liquor Commission for a review of the decision.
30. 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 documents provided by the Applicant.
31. Section of 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
32. Section 16 of the Act prescribes that the Commission:
 - a) may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
 - 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)].

33. 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, and Legislative Assembly 19 October 2010, 7925).
34. 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.
35. Section 5 of the Act sets out the objects of the Act. In subsection 5(1)(b) one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any groups of people, due to the use of liquor. Section 5(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.
36. In light of the primary and secondary objects of the Act, the effect of a Barring Notice on a recipient, whilst possibly detrimental, is not meant to be seen as a punishment imposed on them but is to be seen as a protective mechanism [*SVS v Commissioner of Police* (LC19/2011)].
37. Whilst an Applicant may be charged and/or convicted of a criminal offence, a conviction is not a pre-requisite for the Commission to consider a person’s conduct for the purposes of quashing, varying or confirming a Barring Notice (*That’s Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75; 228 A Crim R 201).
38. The Commission, in determining whether to quash or vary a Barring Notice, must draw its own conclusions on the balance of probabilities regardless of the outcome of criminal proceedings.
39. It is relevant to take into account the nature and circumstances of the incident giving rise to the Barring Notice, the risk of the Applicant behaving in a similar manner and the need to protect the general public, the licensee and the Applicant (*KRB v Commissioner of Police* (LC33/ 2011) at [34]).

DETERMINATION

40. The Commission, in considering an application under section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
41. Therefore, the questions are whether:
 - a) there are reasonable grounds for believing that the barred person has, on or in the vicinity of a licensed premises, been violent or disorderly; engaged in indecent behaviour or contravened a provision of written law; and
 - b) the period and terms of the Barring Notice reflect the objects and purposes of the Act and are not punitive in nature.
42. It is for the Commission to 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.

43. 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 documents provided by the Applicant.
44. The Commission has also taken account of the submissions the Applicant and the Respondent made before the Commission and thanks the parties counsel for their assistance.
45. As the Presiding Member of the Commission, I have considered all of the evidence before me, and I am satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act as there were reasonable grounds to believe that the Applicant was disorderly and/or violent on or in the vicinity of licensed premises.
46. Whilst I am informed by counsel that the Applicant has been charged but not at the time of this hearing been convicted of an offence under the *Criminal Code*, I emphasise that a conviction is not a prerequisite for the consideration of a person's conduct for the purposes of a Barring Notice. The Commission draws its own conclusions on the balance of probabilities regardless of the outcome of criminal proceedings (*That's Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75; 228 A Crim R 201; and *BEL v Commissioner of Police* (LC 37/2018) at [15]).
47. I am satisfied that the Applicant has been identified as being involved in the Incident which led to the injuries to the Victim. I am particularly persuaded by the evidence of [REDACTED] as well as the Victim herself.
48. I am satisfied on the evidence that there are reasonable grounds for believing that the Applicant threw a glass at the Victim. The Victim's injuries are significant i.e., a 3-4 cm laceration, fractured eye socket and vision impairment. Those injuries appear to be consistent with the glass having been thrown with sufficient force to cause it to break on impact with the Victim's face.
49. There is also evidence that prior to the Incident, the Applicant intentionally involved herself with others in attempting to join a [REDACTED] which was attended by the Victim, and that there may have also been a level of disorderly behaviour by the Applicant towards other members of the public attending the venue on that occasion.
50. Having found that there is a clear and proper basis for the Respondent's delegate to exercise the power conferred by section 115A of the Act and impose a Barring Notice, it is now for the Commission to determine in the relevant circumstances whether the length and conditions of the Barring Notice are sufficient to uphold the objects of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.
51. In determining whether to quash or vary the Baring Notice, it is relevant to take into account the nature and circumstances of the Incident giving rise to the Barring Notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant.
52. The nature of the Incident as outlined above was serious.

53. Given the evidence outlined above, it is inescapable that there may be a real risk that in being faced with a similar situation or environment in the future that the Applicant could behave in a disorderly manner on licensed premises.
54. It further appears to the Commission that this risk may to some degree be minimised by the imposition of the Barring Notice.
55. It is however noted that barring notices are not intended as punishment. Instead, they serve as a measure to protect the public from antisocial behaviour in and around licensed premises. Barring notices are also a mechanism to protect the licensee and in some cases the applicant from his/her own actions.
56. In balancing the above, I note that members of the public must be able, when they frequent licensed premises, to be assured that they are in safe environments and not become victims of, or witness, violent antisocial behaviour or disorderly conduct. On the evening in question, that could not be said in the case.
57. From considering all the materials, it can only be concluded that the public interest in attending a safe environment was severely compromised by a situation in which the Applicant played a significant role. This was a situation, it is emphasised, which culminated in a member of the public attending licensed premises being injured and attending hospital for treatment for what appear to be serious injuries.
58. The Applicant has made submissions on the impact of the Barring Notice on her work and her social and family life. It is accepted that a barring notice limits the Applicant's ability to socialise with family and friends [REDACTED] where many establishments are licensed and fall within the categories of the premises listed in the Barring Notice.
59. There is, however, always the opportunity to socialise with family and friends in private residences or venues which are not licensed.
60. Evidence has also been presented as to a loss of income experienced by the Applicant [REDACTED].
61. Whilst the Commission accepts that this has presented difficulty for the Applicant, she is to be given credit for obtaining alternative gainful employment.
62. The Commission in this context notes section 115AA(7A) of the Act which states that a person the subject of a Barring Notice does not commit an offence if the person enters a licensed premises solely for the purpose of performing duties relating to the person's work.
63. The Applicant's affidavit of 16 September 2022 is also before the Commission. The matters relating to the stress, loss of income and impact on her social life are noted.
64. Whilst I do not find her argument in this respect wholly convincing, I accept she has experienced a level of difficulty stemming from the terms of the Notice. I note however, that she appears to take no responsibility for her contribution to the events of that evening or express any remorse or concern for the Victim.

65. In conclusion, I consider that the punitive effect of the Barring Notice is relatively low when balanced with the protection of the public from alcohol-related harm on licensed premises, whether as a victim of such harm or as a witness. In the circumstances the Barring Notice appears justified and appropriate in order to:
- a) assure the members of the public who frequent licensed 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 time to reflect and hopefully move forward in a positive way, which the evidence indicates she is more than capable of doing.
66. The Application for review is dismissed.



PAMELA HASS
PRESIDING MEMBER