

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

Applicant: Mr BFP

Respondent: Commissioner of Police
(represented by Ms Belinda Loftus of State Solicitor's Office)

Commission: Ms Pamela Hass (Presiding Member)

Matter: Application for review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*

Date of lodgement of Application: 21 February 2018

Date of Determination: 30 April 2018

Determination: The application for review is dismissed

Authorities referred to in determination:

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

Review of Barring Notice

- 1 On 21 October 2017, an incident (“the incident”) occurred inside licensed premises namely the [REDACTED] (“the premises”) involving the applicant.
- 2 During the incident, the applicant discharged a fire extinguisher in the upstairs area of the premises.
- 3 As a result of such incident, the applicant was found guilty of one count of unlawful damage pursuant to section 445 of the *Criminal Code (WA)*, was fined \$500 and granted a spent conviction.
- 4 As a further result of such incident, on 8 January 2018 the Commissioner of Police (“the Police”) issued a barring notice under section 115AA(2) 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 Regulation 1989.
- 5 The barring notice was served on the applicant on 23 January 2018 to expire on 7 June 2018, being for a total period of approximately 4.5 months.
- 6 On 21 February 2018, the applicant appealed to the Liquor Commission (“the Commission”) for a review of the barring notice.
- 7 The applicant has elected to have the review 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 21 February 2018;
 - b. the Police evidence presented before the Commissioner of Police Delegate including:
 - i. barring notice dated 8 January 2018;
 - ii. statement of Material Facts for brief no. [REDACTED];
 - iii. Court Appearances Register;
 - iv. diagram of the premises licensed area;
 - v. photographs of the applicant and the premises;
 - vi. CCTV footage of the incident;
 - vii. Police Incident Report 21 October 2017; and
 - viii. Incident Report by manager of the premises [REDACTED].

- c. the Commissioner of Police's outline of submissions dated 22 March 2018; and
 - d. the applicant's Outline of Submissions prepared by McKenzie & McKenzie of 15 March 2018.
- 9 The applicant has made submissions requesting the Commission to vary the barring notice on the grounds that:
- a. the applicant was originally charged with offences of Criminal Damage under section 444(1)(B) of the Criminal Code and Trespass under section 70A(2);
 - b. he was not convicted of these offences but was only convicted of unlawful damage under section 445;
 - c. the applicant was fined \$500 and granted a spent conviction;
 - d. the applicant acknowledged the behaviour and offered to pay reparation for the cost of refilling the extinguisher;
 - e. the applicant is otherwise of good character and employed and character references were supplied; and
 - f. the applicant was prevented from attending any licenced premises from 21 October to 14 November 2017 prior to service of the barring notice. The bail condition was amended on 14 November 2017 to provide that he not attend the [REDACTED].

Submissions on behalf of the Commissioner of Police

- 10 The materials upon which the decision of the Police to issue the barring notice are based are noted in point 8(b) above.
- 11 The Police submit that:
- a. the applicant does not dispute the facts of the incident;
 - b. the applicant's explanation was that he had been drinking all day;
 - c. the incident occurred on licensed premises as shown by the floor plan of the [REDACTED];
 - d. there is sufficient evidence to establish, on reasonable grounds, that the applicant has, while on licensed premises, engaged in disorderly behaviour and has contravened a written law; and
 - e. 4.5 month barring notice is proper.
- 12 Counsel for the Police also made written submissions addressing the applicable law, which are not necessary to repeat here, however are referred to as necessary during the course of the determination below.

Statutory Framework

- 13 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.
- 14 The Commissioner may delegate the power conferred by section 115AA of the Act to any member of the police force above the rank of Inspector pursuant to section 115AB of the Act.
- 15 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.
- 16 Section 115AD of the Act 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.
- 17 Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 18 The Act also in section 16 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)).
- 19 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).
- 20 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.
- 21 Section 5 of the Act sets out the objects of the Act. In subsection (1)(b) one of the primary objects of the Act is 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.
- 22 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

- 23 On the material provided, I am satisfied there was a reasonable basis for the delegate of the Commissioner of Police to believe that the applicant had been disorderly and contravened a provision of a written law.
- 24 The applicant does not dispute that the incident occurred. The applicant's submissions do not appear to dispute that the barring notice was able to be issued under the Act but rather infer that the bail conditions in any event prevented the applicant from attending for a period licensed premises in general and the premises from 21 October to 14 November 2017.
- 25 Therefore, the primary question to be determined is whether 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 character references, 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. It 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.
- 27 The fact that the incident occurred in an area of the licensed premises not frequent by the public is not relevant. He still engaged in the type of behaviour that is expressly contemplated as being unacceptable by the Act.
- 28 Further, the applicant's comments regarding his having been drinking all day are not compelling.
- 29 In addition, the applicant's explanation does not indicate that the applicant is aware of the possible impact on other persons attending the premises. The relevant actions were aggressive and illegal and appear to have been largely unprovoked. The actions also exposed the public to fire risk because they reduced access to fire extinguishers.
- 30 In the circumstances a barring notice for a period of 4.5 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 be exposed to disorderly behaviour;
 - b. allow the applicant the opportunity for introspection regarding his interaction with alcohol; and
 - c. allow the applicant to further consider his behaviour and actions prior to engaging in disorderly conduct on licensed premises in the future.
- 31 The application for review is therefore dismissed and the barring notice is affirmed.



PAMELA HASS
PRESIDING MEMBER