

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

**Applicant:** BDT

**Respondent:** Commissioner of Police  
*(represented by Ms Stephanie Smith 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:** 19 March 2018

**Date of Determination:** 30 April 2018

**Determination:** The barring notice to the applicant is varied pursuant to section 115AD(7) of the Act to permit the applicant to enter licensed areas located within:

- a [REDACTED] Oval; and
- b [REDACTED] Oval.

**Authorities referred to in Determination:**

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

## Review of Barring Notice

- 1 On 27 January 2018 (12.00am), an incident involving a verbal and physical altercation occurred at the licensed premises being the [REDACTED] (“the incident”) involving the applicant.
- 2 During such incident, the applicant exchanged some punches with another party and was knocked unconscious. Immediately following the incident there were various other parties involved in further physical altercations, including the applicant’s wife and friends, but which did not further involve the applicant.
- 3 As a result of such incident, the applicant was charged with disorderly behaviour in a public place pursuant to section 74A(2)(a) of the *Criminal Code (WA)*. The applicant has pled guilty to such charge.
- 4 As a further result of the 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.
- 5 The barring notice was served on the applicant on 16 March 2018 to expire on 13 June 2018, being for a total period of approximately three months.
- 6 On 19 March 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 relevant information regarding the incident giving rise to the barring notice is referred to in the following documents:
  - a. the applicant’s application for review dated 19 March 2018 and annexed email;
  - b. the police evidence presented before the Commissioner of Police’s Delegate including:
    - i. barring notice dated 16th March 2018;
    - ii. statement of Material Facts Brief Number [REDACTED];
    - iii. Incident Report [REDACTED] complied [REDACTED];

- iv. Running Sheet – for Incident Report [REDACTED];
  - v. statement of barmaid [REDACTED];
  - vi. statement of approved manager [REDACTED];
  - vii. statement of security controller [REDACTED];
  - viii. statement of bar staff attendant [REDACTED];
  - ix. statement of [REDACTED];
  - x. statement of [REDACTED];
  - xi. Three (3) Licensed Premises incident reports relating to the incident and later occurring altercations;
- c. the Commissioner of Police (“the respondent”) outline of submissions dated 13 April 2018;
  - d. an email from the applicant to the Liquor Commission dated 13 April 2018; and
  - e. the Commissioner of Police’s responsive submissions dated 20 April 2018.

### **Submissions by the applicant**

- 9 The applicant has made submissions requesting the Commission vary the barring notice to permit him to enter licence premises located at football clubs as he is the current president of the [REDACTED] (“the Football Club”).
- 10 The applicant further maintains:
  - a. he and his wife were the victims of verbal abuse which lead to the incident;
  - b. he accepts responsibility for his actions regarding the incident and acknowledges he should have handled things differently;
  - c. the behaviour was out of character and will not be repeated;
  - d. he is embarrassed and ashamed of his actions; and
  - e. he is only appealing the barring notice so he can continue to perform the duties required due to his position of president of the local Football Club.

### **Submissions on behalf of the Commissioner of Police**

- 11 The circumstances upon which the decision of the Police to issue the barring notice is based are contained within the documents referred to in paragraph 8(b) above.
- 12 The Police submit that:
  - a. there is evidence to establish that on the balance of probabilities, the applicant has, on licensed premises, engaged in violent or disruptive behaviour and has contravened a written law;
  - b. the conduct comprising the incident is what the provisions in the Act in are designed to overcome;
  - c. even if the risk of the applicant behaving in the same manner is low, this can be further minimised by the terms of the barring notice;

- d. there is no evidence before the Commission that mitigates the applicant's conduct or that demonstrates that the applicant would be unlikely to engage in such conduct again in the future;
  - e. the applicant has not:
    - i. specified the detriment that may be suffered by him due to the imposition of the barring notice on him;
    - ii. articulated why his position as president of the Football Club requires him to enter the licensed areas of football clubs; or
    - iii. specified either the precise times and dates which he will be required to enter licensed premises or the particular premises;
  - f. the barring notice is for a relatively short period so any detriment suffered by the applicant is unlikely to be unreasonable or significant;
  - g. the applicant has misconceived the purpose of a barring notice in contending he was a "victim" in the incident;
  - h. if the Commission is minded to vary the barring notice any variation should be limited to:
    - i. the particular dates times and venue the applicant is required to attend to his duties as president of the Football Club; and
    - ii. the applicant should not be permitted to consume alcohol whilst on the premises.
- 13 Counsel for the Commissioner of Police also made comprehensive written submissions both in the respondent's outline of submissions and outline of responsive submissions addressing the applicable law, which are not repeated here, but are referred to as necessary during the course of the determination below.

### **Statutory Framework**

- 14 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.
- 15 A single incident is sufficient to give rise to a barring notice.
- 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 of the Act provides 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.
- 19 Subsection 115AD (7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 20 The Act also in section 16 prescribes that the Commission:
- a. may make its determinations on the balance of probabilities [sub section (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 It appears that on the basis of the materials provided, as well as the applicant’s guilty plea to the charge of disorderly behaviour in a public place pursuant to section 74A(2)(a) of the *Criminal Code (WA)*, that:
- a. there are reasonable grounds for believing that the applicant has been violent or disorderly and/or contravened a provision of a written law; and
  - b. there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act.

- 26 Therefore, the review application must therefore be decided on whether the period and terms of the barring notice:
- a. reflect the objects and purpose of the Act; and
  - b. are not punitive in nature.
- 27 The exact verbal and physical actions of the applicant during the incident are not clear on the evidence supplied. The party that knocked the applicant unconscious appears to have also gone on to physically and verbally assault other parties at the venue.
- 28 The applicant accepts his behaviour as regrettable and serious and does not seek that the barring notice be quashed but requests a variation of the barring order to permit access only to football clubs licenced areas in order for him to undertake his obligations as president of the Football Club.
- 29 Despite the lack of specific information provided regarding the detriment that may be caused to the applicant by the barring notice, it is apparent that the same would negatively impact the applicant's role as president of the Football Club. Clearly any person holding the position of president of a sporting club is heavily involved in the both the operation of, as well as the social and community aspects of, that sporting club. Therefore, on the balance of probabilities, it appears highly likely the barring notice would have a detrimental and punitive effect of not permitting the applicant to undertake his usual community and social activities related to the Football Club.
- 30 A barring notice is not in any manner intended to be a judgment as to the applicant's actions in the context of the charges brought under the *Criminal Code (WA)*. Nor is its purpose to be punitive in nature but to protect the public.
- 31 There is no compelling evidence supplied which would indicate that the applicant is likely to engage in the same behaviour in the future, especially in the context where he would be representing the Football Club and undertaking duties as president.
- 32 In the circumstances, a barring notice expiring the 13 June 2018 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 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.
- 33 Despite this (and the relative short length of the barring notice) to ban the applicant from attending licensed areas within the football clubs in which he will be required to undertake his role as president of the Football Club does not appear to be necessary to protect the general public. Further, the same would likely have an unnecessary punitive effect on the applicant. This does not reflect the purposes and scope of the Act.

34 The barring notice to the applicant stands and is varied pursuant to section 115AD(7) of the Act to permit the applicant to enter the licensed areas located at:

- a. [REDACTED] Oval; and
- b. [REDACTED] Oval.



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**EMMA POWER**  
**PRESIDING MEMBER**