

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

- Applicant:** Jayden Liam DAVIS  
(represented by Mr Steven Shadgett, Lawyer)
- Intervener:** Commissioner of Police  
(represented by Mr Toby Bishop, State Solicitor's Office)
- Commission:** Ms Sarah Oliver (Presiding Member)  
Mr Paul Shanahan (Member)  
Mr Nicholas Van Hattem (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* (WA) for review of the decision of the delegate of the Director of Liquor Licensing to issue a prohibition notice, under section 152E of the *Liquor Control Act 1988* (WA), prohibiting the Applicant from entering any licensed premises, except the Burracoppin Football Club, until 12 October 2022.
- Date of Hearing:** Determined on the Papers
- Date of Determination:** 10 August 2021
- Determination:** The application is allowed and the decision of the delegate of the Director of Liquor Licensing is varied

**Authorities considered in the determination**

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Commissioner of Police v Bloo Moons Pty Ltd* (LC 05/2010)
- *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227

## Background

- 1 This is an application brought under section 25 of the *Liquor Control Act 1988* (WA) (“**the Act**”) for review of a decision of a delegate of the Director of Liquor Licensing (“**Director**”).
- 2 The Commissioner of Police (“**the Commissioner**”) applied to the Director for an order, pursuant to section 152E of the Act, prohibiting Jayden Liam DAVIS (“**the Applicant**”) from entering all licenced premises for a period of three years commencing on 13 October 2019. The application followed an incident at the Commercial Hotel in Merredin on 13 October 2019.
- 3 In the early hours of 13 October 2019, the Applicant was at the Commercial Hotel at Merredin in company with a friend. The friend was looking for his ex-girlfriend and, after a dispute or misunderstanding between the friend and the victim, the friend began assaulting the victim in the outdoor area of the hotel. The friend called the Applicant over, who then joined in the assault of the victim. The Applicant struck and kicked the victim several times to his stomach and back. The Applicant only stopped his assault of the victim once his friend walked back into the hotel (“**the incident**”). The Applicant then left the hotel and did not have any further dealings with the victim. Whilst the victim was known to the Applicant at that time, they were not well known to each other.
- 4 During the assault, the victim sustained a minor laceration to the front side of his forehead, bruising and minor swelling to the left side of his face near his eye and cheek area, minor bruising to his throat and jaw line, minor abrasions to his lower back, minor bruising to his back, shoulder and left arm, and tenderness around both sides of his ribs.
- 5 Following the incident, the Applicant was arrested and charged with assault occasioning bodily harm. He entered a plea of guilty to that charge and was sentenced to seven months imprisonment, conditionally suspended for 12 months.
- 6 On 5 March 2021, a delegate of the Director (“**the Director**”) considered the Commissioner’s application and decided to issue an order prohibiting the Applicant from entering any licensed premises until 12 October 2022 (“**the prohibition order**”). An exception to the prohibition order allowed the Applicant to attend the Burracoppin Football Club (“**the Club**”) so as to attend organised club events and player award presentations during the football season, subject to the condition that he does not purchase or consume any liquor while on the premises (“**the exception**”).
- 7 The Director provided written reasons for that decision on 18 March 2021.
- 8 On 16 April 2021, the Applicant applied to the Liquor Commission of Western Australia (“**the Commission**”) for a review of the Director’s decision. The Applicant seeks an expansion or clarification of the exception to the prohibition order to allow him to attend other licensed premises in connection with player presentations and awards associated with the Club.
- 9 The Applicant requested that the application for review be determined on the papers. Both the Applicant and the Commissioner have provided written submissions to the Commission.

### **Submissions on behalf of the applicant**

- 10 The Applicant submits that, at the time of the Director's decision, the season's fixtures for the Eastern Districts Football League had not been released. The fixture having now been released provides for 14 home and away rounds, with home games in rounds 2, 3, 5, 7, 11 and 13.
- 11 Except for round 13 (which will be played at the Club's oval in Burracoppin), the home games are to be played at the Merredin Recreation and Leisure Centre. After home games, the player presentations and awards will be held in the Grandstand Bar and Restaurant in the Merredin Recreation and Leisure Centre. After the presentations and awards, post-game functions will continue at the Northside Tavern in Merredin.
- 12 After the away games, the Club player presentations and awards, and player functions, are to be held at the Commercial Hotel in Merredin. The Commercial Hotel is the venue at which the incident occurred.
- 13 The Applicant further advises that:
  - (a) the semi-finals are to be played on 14-15 August 2021, at a location to be determined upon the completion of the regular season;
  - (b) the preliminary final is to be played on 21 August 2021, at a location to be determined upon the completion of the semi-finals;
  - (c) the grand final is to be played on 28 August 2021 at the Southern Cross Football Club;
  - (d) the Eastern Districts Football League presents the Miller Medal to the fairest and best player during the regular season; and
  - (e) the Miller Medal presentation is to be held on 18 August 2021 at the Club.
- 14 The Applicant submits that it was the Director's intention to allow the Applicant to attend **all** Club player presentations and awards, and that the exception should be interpreted broadly (or varied) to allow the Applicant to attend any and all player awards and presentations, and also to attend training, games and Club functions at:
  - (a) the Club;
  - (b) the Grandstand Bar and Restaurant at the Merredin Recreation and Leisure Centre;
  - (c) the Northside Tavern;
  - (d) the Commercial Hotel;
  - (e) the venue of the semi-finals and the preliminary final; and
  - (f) the Southern Cross Football Club for the grand final.

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

- 15 The Commissioner submits that there is no ambiguity in the wording of the exception, and no need to interpret it as having any other meaning than that which is plainly stated.
- 16 The Commissioner submits that there was no misapprehension by the Director of the nature of the condition the Applicant applied to have imposed, in that the Applicant had sought an exception to the prohibition order that would permit him to attend licences premises/areas within the Merredin area for organised social events, the Club for organised club events and player award presentations, and sporting clubs associated with the Eastern Districts

Football League. The decision to limit the exception to the Club reflects a determination by the Director to exclude all other venues, other than the Club, from the prohibition order.

- 17 The Commissioner submits that the Applicant has not discharged his onus of satisfying the Commission that the prohibition order should be varied. It is further submitted that to grant the variation sought by the Applicant would give little operational effect to the prohibition order, and is not in the public interest.

### **Responsive submissions**

- 18 In his reply submissions, the Applicant appears to be seeking a lifting of the entire prohibition order and if that is not granted, then the variation to the exception as outline above. The Applicant submits that the prohibition order is an excessive punitive response to the incident and is essentially disconnecting the Applicant from all social activities within the small community in which he lives and works.
- 19 The Applicant provided seven character references and a copy of the 2021 fixture, but does not otherwise respond to the Commissioner's submissions.
- 20 In the Commissioner's reply submissions, the Commissioner points out that the Applicant provided submissions to the Director which sought an exception to the prohibition order that allowed him to attend the licensed premises/areas, including: "*at the ...Club for organised club events*" and "*at the ...Club for organised club events and player award presentations during the football season*". It is submitted that it is reasonable to assume that the Applicant's submissions to the Director formed the basis for the Director to decide that the Applicant could attend the licensed premises of the Club. It is submitted that it is inextricable that the Applicant sought the exception, received the exception, and now submits that the exception is of no effect and seeks a further variation to the exception.
- 21 The Commissioner submits that, if the Commission is minded to allow a variation of the prohibition order to allow the Applicant to attend any licensed premises for the purposes of attending Club post-match awards and presentations, any variation should be specifically limited to that purpose and be confined to the dates specified in the season fixture.

### **Determination**

- 22 On a review under section 25 of the Act, the Commission may:
- (a) affirm, vary or quash the decision subject to the review; and
  - (b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and
  - (c) give directions:
    - as to any question of law, reviewed; or
    - to the Director, to which effect shall be given; and
  - (d) make any incidental or ancillary order.

- 23 In conducting a review under section 25, the Commission is not constrained by a finding of error on the part of the Director, but is to undertake a full review of the material before the Director and make its own decision on the basis of those materials.<sup>1</sup>
- 24 The Commission is not bound by the rules of evidence or any practices or procedures applicable to courts of record and is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.<sup>2</sup>
- 25 In conducting a review, section 25(2c) of the Act provides that the Commission may have regard only to the material that was before the Director when making the decision. In this regard, the Commission notes that the Applicant has provided to the Commission seven character references and the 2021 fixture for the Eastern Districts Football League. The character reference from Mr Baltovich dated 25 March 2021 and the 2021 fixture were not before the Director, so the Commission cannot have regard to that material in reviewing this decision. The Commission has had regard to the other six character references which were before the Director, including the reference from Mr Balovich dated 7 December 2020, as well as the other materials before the Director.
- 26 The decision under review in the present case is a decision by the Director to make the prohibition order pursuant to section 152E(2)(b). Section 152E(2)(b) of the Act provides that “*the Director may make a prohibition order that ... prohibits a person from entering specified licensed premises, licensed premises of a specific class or any licensed premises*”. Section 152E is indicative of Parliament’s intention to promote “*lower risk drinking environments*” and address “*alcohol-related anti-social behaviour*”.<sup>3</sup>
- 27 Section 152E(3) provides that the Director may make such an order only if satisfied that it is in the public interest to do so after having given the person an opportunity to make submissions and to be heard in relation to the application, and after having had regard to any information or document provided by the Commissioner of Police or provided by the relevant person.
- 28 The term “*public interest*” is not defined in the Act. Nor does the Act expressly state the nature of the factors to be considered by the Commission in determining whether it is satisfied that it is in the public interest for a prohibition order to be made.
- 29 The term “*public interest*” is defined in the Macquarie Dictionary as “*the benefit or advantage to a whole community, as opposed to the individual*” the removal of the words “for organised club events” in the *public interest*” directs attention to that conclusion or determination which best serves the advancement of the interests or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.<sup>4</sup>
- 30 In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 at [48]-[49], Buss JA (as his Honour then was) observed that where a statute provides no positive indication of

---

<sup>1</sup> *Hancock v Executive Director of Public Health* [2008] WASC 224 at [54]; *Commissioner of Police v Bloo Moons Pty Ltd* (LC 05/2010) at [7].

<sup>2</sup> Act, sections 16(7)(a)-(b)

<sup>3</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 20 September 2006, 6341 (Mark McGowan, Minister for Racing and Gaming); Explanatory Memorandum, *Liquor and Gaming Legislation Amendment Bill 2006* (WA) 1

<sup>4</sup> *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70 per Tamberlin J at [9]

the considerations by reference to which a decision is to be made, a general reference to "*the public interest*" will ordinarily only be confined by the scope and purposes of the statute, and in the context of the Act, the decision maker will be bound to take into account factual matters relevant to the objects of the Act set out in section 5(2).

- 31 The primary objects of the Act include the minimisation of harm or ill-health caused to people, or any group of people, due to the use of liquor. The secondary objects of the Act include the provision of "*adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor*" (sections 5(1)(b) and 5(2)(d)). It is apparent from the subject matter and purposes of Part 5A (including as expressed in the extrinsic materials), and the objects of the Act generally, that matters relevant to the "*public interest*" when considering an application for a prohibition order include the protection of members of the public from alcohol-fuelled antisocial behaviour.
- 32 The public interest test, understood by reference to the scope, subject matter and express objects of the Act, directs attention to considerations of public safety in the context of alcohol consumption. It is not concerned with the punishment of the person subject to the order. In other words, the granting of a prohibition order is not an exercise in sentencing – the jurisdiction is protective rather than punitive.
- 33 In the present case:
- (a) The conduct engaged in by the Applicant during the incident is extremely serious. It involved the Applicant joining in on a violent assault upon the victim, in circumstances where the Applicant had no personal interest in the dispute between the victim and his friend, and the victim was already on the ground and was not retaliating. The objective seriousness of the offending is reflected by the fact that the Court imposed a term of imprisonment for the offending, albeit a suspended term.
  - (b) The nature and seriousness of that offending reflects particularly adversely on the character of the Applicant. That is particularly so in circumstances where the Applicant has a criminal record which records a number of anti-social offences committed between 2011 and 2014, including reckless driving, threats to injure, disorderly behaviour and stealing. It cannot be said that the Applicant's anti-social behaviour during the incident is isolated or out of character for him.
  - (c) The offending, whilst perhaps opportunistic, tends to suggest that the Applicant poses a risk of future violence or disorderly behaviour when drinking in a licensed premises, because it tends to display a propensity for the Applicant to make poor decisions whilst intoxicated, resulting in anti-social offending behaviour.
  - (d) The Commission acknowledges and has had regard to the references that were provided by the Applicant to the Director, as to his character. These indicate that he is a well-liked and respected member of his community.
  - (f) The Commission also acknowledges and has had regard to the fact that the Applicant has engaged in counselling sessions with Amity Health. The fact that he has engaged in these sessions reflects that he is taking steps to address the factors that may have led to or contributed to his offending behaviour.
- 34 Having considered all of the evidence and the submissions from the parties, the Commission is satisfied that the granting of the prohibition order is in the public interest. In reaching that finding, the Commission acknowledges that the Applicant appears remorseful

for his offending, and is taking steps to address his behaviour. However, having regard to all of the circumstances, and in particular to the serious nature of the offending by the Applicant, the Commission considers that the public interest lies in favour of the protection of members of the public attending licensed premises from violence. The interests of the community must outweigh the interests of the individual in this case.

35 The prohibition order that has been imposed is in effect until 12 October 2022. The Commission has not been persuaded that there is any basis for a reduction in the term of the prohibition order in this case, and the duration is therefore affirmed.

36 Which leaves for consideration the terms of the exception that was granted by the Director to the prohibition order. The Director says, in his written reasons:

*“...However, I was of the view that it was appropriate for [the Applicant] to be able to attend his football club for organised club events and player award presentations during the football season, provided he does not consume alcohol whilst on those premises.”*

37 The terms of the exception to the prohibition order are:

*“Where it is necessary for [the Applicant] to attend Burracoppin Football Club for organised club events and player award presentations during the football season, subject to the condition that he does not purchase or consume any liquor while on those licenced premises.”*

38 In the Commission’s view, there is little ambiguity in the exception as imposed by the Director. It is clear the Director’s intention was that the exception only apply in relation to the Club and not to any licensed premises where any events associated with the Club may be being held during the football season. It is understandable why the Director would be prepared to make that limited exception, and not be prepared to extend the exception to all licensed premises. Extending the exception to all licensed premises would tend to undermine the purpose of the prohibition order. It might also tend to undermine the effectiveness of the deterrent effect of a prohibition order generally, particularly if others within a small community such as Merredin saw such broad exceptions being applied to the prohibition order in the Applicant’s case.

39 Having said that, however, the Commission is of the view that it is appropriate to vary the terms of the exception to allow the Applicant to attend player presentations and awards in relation to home and away games and the finals during the football season, but only such player presentations and awards as are held at the Club and the Merredin Recreation and Leisure Centre. In our view, it would undermine the effectiveness of the prohibition order, and it would not be in the public interest, to extend the exception to allow the Applicant to attend Club player presentations and awards held at the Commercial Hotel or the Northside Tavern.

40 In the course of reviewing this matter, the Commission considered whether there was ambiguity in relation to the phrase *“for organised club events”* as used in the current exception to the prohibition order. As this was not an issue raised by either party, the Commission invited both parties to make any further submissions they wished to make in relation to whether, if the application to vary the prohibition was granted, the words *“for*



*organised club events*” contained in the current exception should be removed. Both parties provided a response to this invitation on 9 August 2021. The Commissioner of Police supported the removal of those words, whereas the Applicant’s representative did not support the removal of the words. The Applicant submitted that the words “*for organised club events*” encompasses club functions and meetings that are additional to player award presentations. It is that potential breadth of the exception, and the ambiguity that arises from those words, that concerned the Commission.

- 41 Having considered the submissions of both parties, we consider the phrase “*for organised club events*” as used in the current exception to the prohibition order requires amendment. In the Commission’s view, it would undermine the effectiveness of the prohibition order if this term was taken as extending to *any* social event organised by the Club. Whilst there is a basis to exclude from the prohibition order the Applicant’s attendance at certain licensed premises for the purposes of attending player presentations post home and away games in which he is a participant, and for the purposes of attending end-of-season awards such as the best and fairest award, there is no basis to extend that exception such as to allow the Applicant to attend *any* social function organised by or associated with the Club at any licensed premises. It is not in the public interest to allow the Applicant to attend licensed premises with other players, where the other players will be consuming liquor and there is a risk of behaviours escalating into anti-social behaviours.

## Conclusion

- 42 The Commission therefore varies the prohibition order by deleting the current terms of the exception (condition 2) and replacing it with the following terms:

*“For the purposes of the Eastern Districts Football League’s football season in 2021 and 2022, the prohibition order does not apply in the following circumstances:*

- (a) where it is necessary for [the Applicant] to attend any of the following licensed premises for the purposes of attending to play in a football game as part of the football fixture, to attend training and/or to attend player award presentations:*
  - (i) the Burracoppin Football Club; and/or*
  - (ii) the Merredin Recreation and Leisure Centre (including the Grandstand Bar and Restaurant);*
- (b) where it is necessary for [the Applicant] to attend any of the following licensed premises for the purposes of attending to play in a football game as part of the football fixture and to attend player award presentations:*
  - (i) the venue of the semi-finals and the preliminary final as determined by the Eastern Districts Football League, provided [the Applicant] has been selected as a player in a team competing in those finals; and*
  - (ii) the Southern Cross Football Club for the grand final, provided [the Applicant] has been selected as a player in a team competing at that grand final;*

*provided that, [the Applicant] does not purchase or consume any liquor whilst on any*

*of those licensed premises.”*

A handwritten signature in black ink, appearing to read 'SO', with a small dot above the 'i'.

---

**SARAH OLIVER  
PRESIDING MEMBER**