

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

Applicant: JRL

Respondent: Commissioner of Police
(represented by Ms Rebecca Davey 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: 3 May 2018

Date of Determination: 11 June 2018

Determination: The application for review is dismissed.

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 28 January 2018, an incident occurred at licensed premises namely Optus Stadium (“the Incident”) involving the applicant aged [REDACTED].
- 2 As a result of such Incident, the applicant was charged with one count of assaulting a public officer pursuant to section 318(1)(d) of the *Criminal Code (WA)* and one count of obstructing a public officer pursuant to section 172(2) of the *Criminal Code (WA)*.
- 3 The applicant pleaded guilty to assaulting a public officer and the charge of obstructing a public officer was dismissed. The applicant was sentenced to a one year community based order.
- 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 1989*.
- 5 The barring notice was served on the applicant on 4 April 2018 to expire on 3 October 2018, being for a total period of approximately 6 months.
- 6 On 3 May 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 3 May 2018;
 - b. The Police evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 4 April 2018;
 - ii. statement of Material Facts No. [REDACTED];
 - iii. History for Court – Criminal and Traffic;
 - iv. statement of First Class Constable Nathan Gilmour;

- v. statement of Senior Constable Adam Robert Rigoir;
 - vi. Incident Report No. [REDACTED]; and
 - vii. photograph of the applicant dated 28 January 2018; and
- c. The Commissioner of Police's outline of submissions dated 30 May 2018.

Submissions by the applicant

- 9 The applicant has provided the following documentation to the Commission:
- a. psychologist report by [REDACTED], Clinical Psychologist and Psychotherapist dated 18 February 2018;
 - b. letter from the applicant to Senior Constable Rigoir date 26 February 2018;
 - c. business card from Department of Justice Adult Community Corrections Centre, East Cannington; and
 - d. various signed character references for the applicant from:
 - i. [REDACTED] dated 8 February 2018;
 - ii. [REDACTED] undated;
 - iii. [REDACTED] dated 20 February 2018;
 - iv. [REDACTED] dated 14 February 2018;
 - v. [REDACTED] 13 February 2018;
 - vi. [REDACTED] 19 February 2018; and
 - vii. [REDACTED] dated 14 February 2018.
- 10 The applicant has made submissions requesting the Commission to quash the barring notice on the following grounds:
- a. he was then suffering from considerable distress due to severe financial hardship;
 - b. the behaviour was out of character and a first time offence;
 - c. he has now sought professional help through a psychologist;
 - d. he has been compliant in all respects with the 12 month community based order;
 - e. he has sought substance abuse counselling;
 - f. a suggested treatment through counselling sessions is joining a variety of sporting, activity and social groups and the barring order may prevent such activities due to the venues for the same; and
 - g. the 12 month community based order acts to ensure public safety due to its supervision order component.

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 those items set out in paragraph 8(b) above.
- 12 The Police submit that:
 - a. the guilty plea of the applicant establish that the applicant has, on licensed premises, contravened a written law and the Commission for Police is therefore entitled to issue a barring notice;
 - b. the conduct giving rise to the Incident is the very type of conduct which the Act is intended to overcome;
 - c. the offence for which the applicant was charged is not trivial;
 - d. even if the risk that the applicant will behave in a similar manner in the future is low, that risk can be further minimised by the barring order;
 - e. the barring notice will:
 - i. allow the applicant to consider his actions prior to engaging in illegal and antisocial behaviour; and
 - ii. provide the applicant with the opportunity to implement any necessary strategies to limit his alcohol consumption while protecting the public.
 - f. the period of enforced absence from licensed premises will not impinge on the applicant's ability to engage in pro-social activities and may give the applicant more time to reflect on his actions and assist in his rehabilitative goals;
 - g. any detriment to the applicant in not attending activities on licensed premises does not outweigh the public interest;
 - h. the barring notice reinforces community expectations that such behaviour is not acceptable and will reduce the likelihood of harm to the general public; and
 - i. the barring order should be affirmed, however, in the event the Commission is minded to vary the barring order, the same should only be varied to exclude:
 - i. the particular dates, times and venues the applicant establishes he is required to attend as part of his rehabilitation; and
 - ii. the applicant should not be able to consume alcohol whilst on such premises.
- 13 Counsel for the Commissioner of Police also made comprehensive written submissions regarding the applicable law, which are referred to as necessary during the course of the determination below.

Statutory Framework

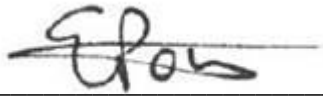
- 14 The Commissioner of Police has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
 - a. been violent or disorderly;
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 15 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.
- 16 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.
- 17 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 document provided by the applicant.
- 18 Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 19 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)];”
- 20 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).
- 21 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.
- 22 Section 5 of the Act set out the objects of the Act. In subsection 5(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. 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.

- 23 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

- 24 From the wording of section 115AA of the Act it is clear 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.
- 25 The applicant does not dispute the Incident occurred as set out in the statement of material facts and statements of the public officers referred to in paragraph 8(b) above.
- 26 Due to the applicant's plea of guilty to assaulting a public officer pursuant to section 318(1)(d) of the *Criminal Code (WA)* it is clear there is a proper basis for the delegate of the Commissioner of Police to exercise the power conferred by section 115AA of the Act.
- 27 The review application must therefore be decided on whether the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature. The public interest must be balanced against the impact on the barring notice on the applicant.
- 28 The actions of the applicant are serious in nature and resulted in a criminal conviction. Further, the applicant has acknowledged the role that alcohol played in the Incident and has voluntarily attended substance abuse counselling and agreed to reduce the amount of alcohol he consumes.
- 29 It is noted that the applicant shows significant remorse and the multiple character references provided would appear to indicate that such behaviour is not usual for the applicant.
- 30 However, I am not convinced that the barring order will necessarily significantly impact the applicant's ability to join or participate in appropriate clubs and social activities. In addition, the applicant has not specified exactly what social or club activities he intends to undertake.
- 31 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)].
- 32 The punitive effect of the barring order is relatively low when balanced with the protection of the public and the applicant himself. Although, as asserted by the applicant, the community based order does act to protect the community, it does not have the specific intended result of the barring order in respect to licensed premises.

- 33 In the circumstances, the barring notice for the period ending 3 October 2018 appears justified 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 the opportunity for introspection regarding his behaviour on licensed premises and his interactions with alcohol.
- 34 The application for review is dismissed.

A handwritten signature in black ink, appearing to read 'E Power', written over a horizontal line.

EMMA POWER
PRESIDING MEMBER