

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Ms RJC
- Respondent:** Commissioner of Police
(represented by Ms Rachel Paljetak of State Solicitor's Office)
- Commission:** Ms Helen Cogan (Presiding Member)
- Matter:** Application seeking review of a barring notice issued pursuant to section 115AA(2) of the *Liquor Control Act 1988*
- Date of Determination:** 9 March 2016
(on papers)
- Reasons for Determination:** 16 March 2016
- Determination:** Pursuant to section 115AD(7) of the *Liquor Control Act 1988* the terms of the barring notice are varied as follows:
- Ms RJC is prohibited from entering any licensed premises in Western Australia except:
 - those licensed as a liquor store; and
 - the licensed area of the [REDACTED] [REDACTED] *provided* she does not consume any alcohol while on that licensed area.
 - The barring notice shall have effect until midnight on 7 May 2016.

Background

- 1 On 8 January 2016, the applicant was served with a notice (“the barring notice”) under section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting her from entering any licensed premises within Western Australia except those licensed under a liquor store licence for the period from 8 January 2016 until 7 May 2016.
- 2 On 31 December 2015, the applicant was present at the [REDACTED] Sports Club (“the premises”) when an incident occurred.
- 3 The circumstances of the incident giving rise to the barring notice are summarised in the Western Australian Police Service Statement of Material Facts and the relevant incident reports.
- 4 In summary the facts of the incident are as follows:
 - (1) on 31 December 2015, the applicant was present at the [REDACTED] Sports Club and was asked by the manager and the duty manager to leave the premises because she appeared to be intoxicated, disorientated and had difficulty standing.
 - (2) When asked to leave the premises the applicant shouted obscenities at the manager and the duty manager, an example of the language used being “fuck off, you cunt, bitch”.
 - (3) The applicant did leave the premises but subsequently returned and when the Police attended the premises she was asked again to leave and once again used obscene language in close proximity to other patrons in the premises and was verbally aggressive and threatening towards members of staff.
 - (4) The applicant was then escorted from the premises by the police and requested to calm down but continued to repeatedly shout and swear.
 - (5) The applicant was subsequently charged with one count of refusing to leave licensed premises when requested by an authorised person contrary to section 115(5)(c) of the Act and one count of disorderly behaviour in a public place contrary to section 74A(2)(a) of the *Criminal Code (WA)*.
 - (6) The applicant entered a plea of guilty to each charge.
- 5 On 8 February 2016, the applicant applied to the Liquor Commission (“the Commission”) for a review of the barring notice pursuant to section 115AD of the Act.

Applicant's submissions

6 The applicant has stated:

- (1) she takes full responsibility for her actions in the premises on the evening in question and that she pleaded guilty to the charges made against her at the first opportunity.
- (2) Her behaviour on the relevant night was out of character and unacceptable and that leading up to that night she had been informed of a serious injury to a very close friend and did not handle the news very well.
- (3) She is currently employed at the [REDACTED], [REDACTED] and is complying with the barring notice but finds it extremely difficult as she lives on site at the hotel and the whole downstairs area of the hotel is licensed so that when not working she is virtually confined to her own room so that she does not break the barring notice.
- (4) She is enrolled in a Pre-Sentence Opportunity Program (POP).

Submissions on behalf of the Commissioner of Police

7 The Commissioner of Police ("the Police") made a comprehensive summary of the relevant law concerning barring notices and I consider it is not necessary to repeat the summary - I will deal with any specific legal issues as they arise in the reasons for determination below.

8 The Police also submitted that:

- (1) The Commission ought 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 herself.
- (2) There is sufficient evidence before the Commission to establish the necessary jurisdictional fact in section 115AA(2) of the Act for the issue of a barring notice to the applicant.
- (3) For reasons given in comprehensive detail in the Police submissions the barring notice should not be quashed.
- (4) Whilst there may be a punitive element to a barring notice, the ultimate purpose of a barring notice is the protection of the public. The Police accept that in the circumstances, the barring notice has an excessive punitive effect on the applicant.

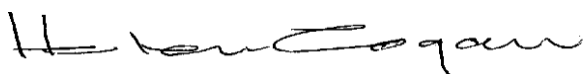
- (5) If the Commission is minded not to quash the barring notice the Police would agree to a variation of the barring notice to permit the applicant to enter the licensed area of the [REDACTED], [REDACTED] subject to the condition that the applicant is prohibited from consuming alcohol whilst in the licensed area of the [REDACTED], [REDACTED].

Determination

- 9 Two of the primary objects of the Act at section 5(1) are to minimise harm and ill-health caused to people or any group of people due to the use of liquor and to regulate the sale, consumption and supply of liquor.
- 10 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*)
- 11 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.
- 12 Section 115A(2) of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting that person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months if the Commissioner 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 the written law.
- 13 The provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and it’s not focused on punishing the individual for their actions. It was stated by the Minister for Racing and Gaming during the parliamentary debate on the amendments to section 115AA of the Act that “*the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person.*”
- 14 This is consistent with the public interest theme of the Act in the determination of licensing applications and consistent with the provisions of section 152E of the act in respect of prohibition orders where it provides that such an order may only be made if the licensing authority is satisfied that it is in the public interest to do so.
- 15 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence.

Tamberlin J in McKinnon v Secretary Department of Treasury [2005] FCAFC142 stated...“the expression in the public interest “directs attention to that conclusion and determination which best serves the interest or welfare of the public...and its content will depend on each particular set of circumstances”.

- 16 I am satisfied on the evidence before me that the applicant represents a minimal risk of reoffending and that as stated by the applicant and accepted by the Police the barring notice does has an excessive punitive effect on the applicant.
- 17 Accordingly, the barring notice will not be quashed but will be varied only so as to permit the applicant to enter the licensed area of the [REDACTED], [REDACTED] on the condition that she does not consume alcohol while in that licensed area.



HELEN COGAN
PRESIDING MEMBER