

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

Applicant: LPK

Respondent: Commissioner of Police
(represented by Mr Sam Pack 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: 16 October 2017

Date of Determination: 14 November 2017

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 16 August 2017, an incident (“the incident”) occurred outside and inside licensed premises namely the [REDACTED] (“the premises”) involving the applicant.
- 2 During the incident, the applicant kicked the door of the premises with such force that it came off its hinges and the upper glass panel was broken. The applicant and his friend also yelled and made aggressive gestures at the premises’ staff before leaving.
- 3 As a result of such incident, the applicant was charged with one count of criminal damage or destruction of property pursuant to section 444(1)(b) of the *Criminal Code WA* and disorderly behaviour in a public place pursuant to *Criminal Code* section 74A(2)(a).
- 4 The applicant pled guilty to both charges and does not deny that the incident took place.
- 5 As a further result of such incident, on 18 September 2017 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.
- 6 The barring notice was served on the applicant on 21 September 2017 to expire on 17 December 2017, being for a total period of approximately 3 months.
- 7 On 16 October 2017, the applicant appealed to the Liquor Commission (“the Commission”) for a review of the barring notice.
- 8 The applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9 The incident giving rise to the barring notice is referred to in the following documents:
 - a. The applicant’s application for review dated 16 October 2017;
 - b. The police evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 18 September 2017;
 - ii. statement of Material Facts [REDACTED];
 - iii. Court Appearances Register [REDACTED]
 - iv. Redline Diagram of the premises licensed area;

- v. Photographs of the applicant and the premises;
 - vi. CCTV Footage of the incident from 3 Cameras;
 - vii. Police Incident Report [REDACTED]; and
 - viii. Incident report by manager of the premises dated 16 August 2017.
- c. The Commissioner of Police's outline of submissions dated 31 October 2017;

Submissions by the applicant

- 10 The applicant has made submissions requesting the Commission to vary the barring notice on the grounds that:
- a. the applicant was not involved in the initial dispute that led to the incident and should not have been locked out of the premises;
 - b. the applicant's sister was still inside the venue, the premises staff would not let her leave and he was worried about her;
 - c. the applicant has never been in trouble before with the police or in relation to any licensed premises;
 - d. the applicant is extremely sorry and states that the behaviour was out of character for him;
 - e. the applicant's actions were extremely "silly" but did not cause harm to any person; and
 - f. the time already passed under the barring notice is sufficient to deter the applicant from similar behaviour in the future.

Submissions on behalf of the Commissioner of Police

- 11 The materials upon which the decision of the Police to issue the barring notice are based are noted in point 9(b) above.
- 12 The Police submit that:
- a. the applicant does not dispute the facts of the incident;
 - b. the applicant has not demonstrated a real insight into the seriousness and effects of his actions and downplays the significance of his actions;
 - c. the incident occurred within the "red line" area of the premises and therefore was on licensed premises;
 - d. there is sufficient evidence (including CCTV Footage) 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. a 3 month barring notice is proper and to vary the barring notice would undermine its protective and deterrent effects.
- 13 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

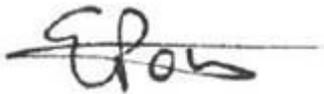
- 14 The Commissioner of Police has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
- a. been violent or disorderly; or
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 15 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the police force 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 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.
- 18 Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 19 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));”
- 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 (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.
- 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 On the materials provided, I am satisfied there was a reasonable basis for the delegate of the Commissioner of Police to believe that the applicant had been violent or disorderly and contravened a provision of a written law.
- 25 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 timeframe of the barring notice already served is sufficient due to the circumstances set out in his application.
- 26 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.
- 27 Despite the applicant's statement that he has never been in trouble on licensed premises or with the police before, 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.
- 28 The fact that the applicant was not involved in the initial dispute involving his friend prior to the incident and no person was hurt are largely irrelevant. He still engaged in the type of behaviour that is expressly contemplated as being unacceptable by the Act.
- 29 Further, the applicant's comments regarding his concern for his sister acting as a trigger for his actions are not compelling.
- 30 In addition, the applicant's comments in his application and the language used, such as "silly" and "speaking incorrectly", does not indicate that the applicant is fully aware of the seriousness of his actions or the possible impact on other persons attending the premises. The relevant actions were violent, aggressive and illegal and appear to have been largely unprovoked.

- 31 The applicant's assertion that his behaviour won't happen again has been taken into account. However, this is not particularly convincing as, in spite of the personal consequences arising from this incident, the applicant has continued to downplay the seriousness of his behaviour.
- 32 In the circumstances a barring notice for a period of 3 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 become victims of, or have to witness, violence or antisocial and 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 violent or disorderly conduct on licensed premises in the future.
- 33 The application for review is therefore dismissed and the barring notice is affirmed.



EMMA POWER
PRESIDING MEMBER