

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

Applicant: Miss H E W

Respondent: Commissioner of Police
(*represented by Mr A L Mason 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: 1 July 2017

Date of Determination: 22 August 2017

Determination: The barring notice to the applicant is varied pursuant to section 115AD(7) of the Act to a period ending the 8th November 2017.

Authorities referred to in Determination:

- *Van Styn v Commissioner of Police* (LC19/2011)
- *Hot Holdings Pty Ltd v Creasy* [2002] HCA 51

Review of Barring Notice

- 1 On 18 March 2017, an incident occurred at licensed premises namely Embargo Bar, Elizabeth Quay (“the Incident”) involving the applicant aged 27.
- 2 As a result of such Incident, the applicant was charged with two counts of assaulting a public officer pursuant to section 318 of the *Criminal Code (WA)*. The matter has yet to be determined by the court.
- 3 As a further result of such 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.
- 4 The barring notice was served on the applicant on 15 May 2017 to expire on 8 January 2018, being for a total period of approximately 8 months.
- 5 On 1st June 2017, the applicant appealed to the Liquor Commission (“the Commission”) for a review of the barring notice.
- 6 The applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 7 The Incident giving rise to the barring notice is referred to in the following documents:
 - a. The applicant’s application for review dated 1st June 2017;
 - b. The police evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 8th May 2017;
 - ii. statement of Material Facts dated 19 March 2017;
 - iii. History for Court – Criminal and Traffic;
 - iv. Incident Report dated 19 March 2017;
 - v. statement of First Class Constable Salinas Gonzalez;
 - vi. statement of First Class Constable David Eagers;
 - vii. statement of First Class Constable Sherrit;
 - viii. statement of crowd controller Bryan Christopher Castagnette; and
 - ix. statement of crowd controller Peter Hua.

- c. The Commissioner of Police (“the respondent”) outline of submissions dated 6th July 2017;
- d. The applicant’s outline of submissions dated 12 July 2017 including:
 - i. unsigned email statement by Sam Hamilton dated 4 April 2017;
 - ii. emergency department diagnosis dated 19 March 2017;
 - iii. clinical treatment notes dated 20 March 2017 - 21 March 2017;
 - iv. MH Dental Services treatment plan dated 20 March 2017;
 - v. medical certificate dated 20th March 2016;
 - vi. signed statement by Kyle Holdsworth dated 5 April 2017;
 - vii. signed statement by Brianna Johns dated 18 March 2017;
 - viii. unsigned undated statement by Adam Parker;
 - ix. unsigned undated statement by Jessica Farlie;
 - x. various photographs of bruises, abrasions and injured mouth area;
 - xi. photograph of broken silver bracelet;
 - xii. copy of x-ray of teeth; and
 - xiii. CD containing mobile telephone footage; and
- e. The Commissioner of Police’s responsive submissions dated 19th July 2017.

Submissions by the applicant

- 8 The applicant has made submissions requesting the Commission to quash or vary the barring notice on the grounds of:
 - a. the barring notice is an abuse of process;
 - b. the fact that the two counts of assaulting a public officer pursuant to section 318 of the Criminal Code (WA) has not been determined by the court and that she is currently presumed innocent of charges;
 - c. she has no criminal history or other history of antisocial behaviour to justify the barring notice;
 - d. she is not a “party girl” and rarely frequents licensed premises and does not regularly consume alcohol;
 - e. that the barring notice imposes unnecessary and unfair restrictions on her freedom of movement; and
 - f. that the incident was isolated and that she will not act in an anti-social manner again.
- 9 The applicant further does not admit or agree with various submissions make by the respondent and in particular:
 - a. denies pushing or kicking or being violent towards any police officer;
 - b. makes allegations that the respondent is biased;

- c. makes allegations that the Police have issued the barring notice in order to “cover up” an assault on the applicant.
- 10 The applicant does not contest that, prior to the attendance of the police officers, she was “yelling and swearing” at persons, nor that she was then being evicted from the premises by the crowd controllers employed at the premises.
- 11 The applicant maintains that she had been drinking but was not intoxicated.
- 12 The applicant requests that the barring notice be quashed, or in the alternative, varied to exclude licensed restaurants and/or expire 15 days earlier on 24th December 2017.

Submissions on behalf of the Commissioner of Police

- 13 The circumstances upon which the decision of the Police to issue the barring notice is based are contained within a Police Statement of Material Facts, a Police Incident Report, and various statements by police officers and crown control employees of the relevant premises.
- 14 The Police submit that:
- a. there is evidence to establish that the applicant has, on licensed premises, engaged in violent or disruptive behaviour and has contravened a written law;
 - b. the applicant’s explanation or alternative version of events is not to be preferred;
 - c. there is nothing to mitigate the belief that the applicant would again behave in a similar manner in licenced premises;
 - d. the barring notice reinforces community expectations that such behaviour is not acceptable and will reduce the likelihood of harm to the general public; and
 - e. the 8 month period of the barring notice will provide the applicant with an opportunity to reassess her actions and the nature of her interactions with alcohol.
- 15 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 each of the applicant’s submissions and on the applicable law, and I do not consider it necessary to repeat them here, however I will refer to them as necessary during the course of the determination below.

Statutory Framework

- 16 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.
- 17 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.
- 18 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.
- 19 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.
- 20 Subsection 115AD (7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 21 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)];”
- 22 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).
- 23 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.
- 24 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.
- 25 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

- 26 The basis upon which the applicant contends that the barring notice should be quashed are not compelling. To the contrary, the only further materials upon which the Commission can consider her application are:
- a. a number of subjective assertions that are purely self-serving in nature and often contrary to other evidence; and
 - b. various witness accounts collected by the applicant which provide no additional credible evidence as to the applicant actions, but rather focus on the actions of the police officers involved in the Incident; and
 - c. various photos and medical records of the appellant's injuries which reflect the amount of force used against the appellant by the police officers, however, have no evidentiary relevance in relation to the review of the barring notice.
- 27 Further, there is nothing put before the Commission by the applicant that sufficiently corroborates her assertions that:
- a. the issuing of the barring notice is an abuse of process;
 - b. there is no basis of a reasonable belief she engaged in any of the violent or disorderly behaviours comprising the Incident or contravened a written law;
 - c. the respondent has acted in a biased manner and is incapable of acting as "a reasonable person"; or
 - d. the applicant is unduly or unfairly penalised by the barring notice.
- 28 The fact that the criminal proceedings against the applicant are ongoing:
- a. does not make the issuing of a barring notice an "abuse of process"; and
 - b. is not relevant to the issue of a barring notice.
- 29 Section 115AA(2) does not specify or require that the person to whom a barring notice may be issued must have been charged or convicted of an offence.
- 30 Further 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 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.

- 31 The review application must therefore be decided on the appropriateness of issuing the barring notice and its punitive effect and 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)*.
- 32 However, it is for the Commission to determine whether, on the balance of probabilities, the applicant was involved in the Incident to the degree that warrants the issue of a barring notice and whether the length and terms of the barring notice are sufficient to uphold the objects of the Act.
- 33 The allegation of bias by the applicant appears solely founded on the fact that the Commissioner of Police accepted the sworn statements of various police officers. Leaving aside the fact there were also the sworn statements of 2 crowd controllers employed at the premises, this is a serious allegation which is not supported by the materials provided. The fact that the Commissioner of Police's delegate and the officers that gave statements are all employed by the Western Australian Police is not enough to itself establish bias (*Hot Holdings Pty Ltd v Creasy* [2002] HCA 51).
- 34 Therefore, the primary question to be determined on review is whether there are reasonable grounds for believing that the barred person has been, in this case, either:
- a. violent or disorderly; or
 - b. contravened a provision of any written law.
- 35 The secondary question is whether the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
- 36 The purpose of the Act is to minimise the likelihood of harm on both the public and the applicant. Despite the seriousness of the alleged behaviours by the appellant, she gives assurances that she will not act in the same manner again. Given the far reaching consequences of the Incident for her, as well as her continued arguments of innocence, I believe this to be a genuine assertion.
- 37 On the materials supplied I am satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act and there were reasonable grounds to conclude that the applicant had, on licensed premises engaged in violent or disorderly behaviour and/or contravened a provision of a written law.
- 38 In the circumstances, a barring notice for a period of 6 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; and
 - b. allow the applicant the opportunity for introspection regarding her behaviour on licensed premises and her interaction with alcohol.

- 39 However, there is no compelling reason to vary the barring notice to exclude licenced restaurants as requested by the applicant.
- 40 The barring notice to the applicant stands and is varied pursuant to section 115AD(7) of the Act to a period ending the 8th November 2017.

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

EMMA POWER
PRESIDING MEMBER