

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: [REDACTED]
(represented by Mr Phillip Lafferty of Armeli and Maloney Lawyers)

Respondent: Commissioner of Police
(represented by Mr Toby Bishop of State Solicitor's Office)

Commission: Ms Pamela Hass (Presiding Member)

Matter: Application seeking review of a barring notice pursuant to s.115AD of the *Liquor Control Act 1988*

Date of Lodgement of Application: 14 August 2020

Date of Determination: 7 December 2020

Decision: The Barring Notice is varied pursuant to s115AD(7) of the Act to permit the Applicant to enter licensed areas located at [REDACTED] [REDACTED] on the condition that the Applicant is precluded from consuming alcohol at that venue. Whilst it is assumed and there is no evidence before me that this venue has a licence under s.46, the variation does not extend to any other premises.

In all other respects the barring notice dated 17 July 2020 remains in place ending on 14 April 2021.

Note: The Commission Presiding Member Ms Hass declared at commencement of hearing that she is a member of [REDACTED] at which the Applicant work as a [REDACTED]. She declared she does not know the Applicant or recognise him. She asked the parties to consider and note this and if either party objected to her presiding, she would recuse herself. The parties counsel indicated they had no objection to the Presiding Member continuing.

Authorities referred to in Determination

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *AQ v Commissioner of Police* (LC 46/2011)
- *MP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

Background

1. This is an Application for Review of a Barring Notice pursuant to s.115AD(2) of the *Liquor Control Act 1988* (the Act) made by the Applicant [REDACTED].
2. On 3 January and 4 January 2020, incidents occurred in and in the vicinity of licensed premises namely the [REDACTED] [the Incidents] involving the Applicant.
3. As a result the Applicant was charged with three offences:
 - (a) remain in the vicinity of licensed premises (s.115(6)(b)(ii) of the Act);
 - (b) re-entered licensed premises within 24 hours (s.115(7) of the Act); and
 - (c) remained in the vicinity of licensed premises (s.115(6)(b)(ii) of the Act).
4. The Applicant has pleaded not guilty to the charges and the matter is listed for trial on 23 August-24 August 2021.
5. As a result of the Incidents, the Commissioner of Police (the Police), issued a Barring Notice under s.115AA(2) of the Act on 17 July 2020 prohibiting the Applicant from entering licensed premises in Western Australia in the following classes:
 - (a) all hotel licences, however referred to, issued under section 41;
 - (b) all small bar licences issued under section 41A;
 - (c) all nightclub licences issued under section 42;
 - (d) casino licence issued under section 44;
 - (e) all club licences issued under section 50;
 - (f) all restaurant licences issued under section 59;
 - (g) all producers licences issued under section 55
 - (h) all wholesalers licences issued under section 58;
 - (i) all occasional licences issued under section 59; and
 - (j) all special facility licences issued under section 46 of and regulation 9A of the *Liquor Control Regulations 1989*.
6. The Applicant applied to the Liquor Commission on 14 August 2020 for a review of the Barring Notice. The Barring Notice expires on 14 April 2021.
7. The Application was heard on 25 November 2020 with the decision reserved.
8. The Incidents giving cause to the Barring Notice are referred to in the following material provided to the Commission.
 - (a) Barring Notice dated 17 July 2020;
 - (b) Statement of Material Facts No. 1980380-1;
 - (c) Move on Notice Details No. 468983;
 - (d) Incident Brief Report;
 - (e) Incident report prepared by Manager/Licensee;

- (f) Statement of [REDACTED] dated 19 May 2020;
- (g) Statement of [REDACTED] dated 16 June 2020;
- (h) Statement of Sen. Constable John Hannah dated 16 June 2020;
- (i) Statement of Sen. Constable Leah Gardner dated 6 June 2020;
- (j) Typed commentary on CCTV footage;
- (k) Bundle of coloured photographs;
- (l) USB device of footage of [REDACTED];
- (m) Applicant Statement dated 24 August 2020;
- (n) Statement of [REDACTED] dated 10 November 2020;
- (o) The Applicants Application for Review dated 14 August 2020;
- (p) The Applicants Submission in Support dated 11 November 2020;
- (q) The Respondents Submission dated 11 November 2020 and the Respondents List of Authorities dated 11 November 2020;
- (r) The Respondents Outline of Submissions in Reply dated 18 November 2020; and
- (s) Court Outcomes Document WA Police.

*In addition, the Applicants lawyers handed up copies of Authorities LC 16/2019; LC 25/2019 and LC 11/2020.

Statutory Framework

9. The Commissioner of Police has the power to ban people from licensed premises pursuant to s.115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises or in the vicinity of licensed premises:
 - (a) been violent or disorderly;
 - (b) engaged in indecent behaviour; or
 - (c) contravened a provision of any written law.
10. The Commissioner may delegate the power conferred by s.115AA of the Act on any member of the police force of or above the rank of Inspector pursuant to s.115AB of the Act.
11. 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.
12. Subsection 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.
13. Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
14. 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 the 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)];”
15. 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).
16. 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.
17. Section 5 of the Act sets out the objects of the Act. Subsection 5(1)(b) of the primary objects of the Act is to minimise harm or ill health caused to people, or any group of people, due to the use of liquor. Subsection 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.
18. 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 (*SVS v Commissioner of Police* (LC19/2011)).

Submissions by the Applicant

19. The Applicant seeks a variation to the barring notice to allow him to attend restaurants and licensed venues.
- (a) The Applicant denies the criminal charges and has pleaded not guilty to them. The hearing is listed for 23-24 August 2021.
 - (b) The Applicant submits that there are inconsistencies in the evidence of witnesses [REDACTED] and [REDACTED].
 - (c) The Applicant asserts that the CCTV footage is not clear and does not support a finding that the Applicant was intoxicated on the premises and instead supports a finding that the Applicant was unlawfully requested to leave the premises and was unlawfully removed.
 - (d) The Applicant says that around 11.25pm he was served with his friend [REDACTED], two beers and several shots of Café Patron at the [REDACTED].
 - (e) He says this is inconsistent with him appearing to be intoxicated as the bar staff would have had a duty not to serve him.
 - (f) He submits that it is not open to the Commission to find that the Applicant acted violently or disorderly or engaged in indecent behaviour.

- (g) The Applicant concedes that he should not have lost his temper but attributes this to being asked to pay for drinks he did not consume after being asked to leave and became angry.
- (h) He acknowledges his bad behaviour that saw him returning to the premises after some 30 minutes in an angry state and further engaging with security. This resulted in him finding himself restrained by security and being placed under arrest by the police. In short, he admits he ought not to have returned.
 - i. He submits that he has “learnt his lesson” but his behaviour whilst bad for a man of ■ years was at the low end of the scale in that no member of the public was harmed or injured and that the behaviour was between him and the crowd controllers or security.

Submissions on behalf of the Respondent, the Commissioner of Police

20. The Respondent submits that the circumstances of the case warrant the exercise of the Respondent’s discretion to issue a Barring Notice. The decision of the Respondent to issue the barring notice should not be quashed or varied but affirmed.

(a) Reasonable Grounds for the Decision

The Respondent submits that the evidence i.e. the CCTV footage, the statements of ■■■■■■■■■■ and ■■■■■ and the Police who attended, establishes that a reasonable person would be inclined to the view that the Applicant had been disorderly and violent and in the vicinity of a licensed premises.

(b) The Nature of the Incidents

The Respondent refers to the following:

- The Applicant used insulting, threatening and offensive language when he threatened security officers that he was going to “fucking smash” them, when he called a security officer a “black cunt” and when he further threatened to “smash” and “kill” ■■■■■.
- The Applicant threatened security officers, pushed them and pointed his finger in the face of one in an aggressive and abusive manner.
- The Applicant refused to leave ■■■■■■■■■■ when directed by security officers.
- After being evicted from ■■■■■■■■■■, he forced open the doors and re-entered the venue. Security officers physically removed him and a scuffle occurred in ■■■■■ in the vicinity of ■■■■■.
- The Respondent notes the contravention of laws in these incidents.
- He left the area returning at 12.45am to the front entrance when he threatened ■■■■■ and charged at him. He was restrained and police attended. SC Hannah states that the Applicant was heavily intoxicated and that he saw him fall over.

- The Respondent refers to footage on body video cameras on Police which shows that the Applicant refused to listen to Police or his friend and made various unusual demands. A move on order is made.

21. **The Risk of the Applicant behaving in a similar manner**

The Respondent submits that the Applicant may behave in the same/similar manner in future and refers to his previous albeit limited history of alcohol related offences on 7 August 2005 of Driving under the Influence (x2) and 11 November 2005 being convicted of dangerous driving causing death.

The Respondent submits the influence of alcohol consumption on the Applicant's behaviour creates a risk to the public.

22. **Determination**

The Commission, in considering an application under s.115AD is to review the decision and determine whether to affirm, vary or quash a decision.

The questions to be determined on a review are whether:

- (a) There are reasonable grounds for believing that the barred person has, on licensed premises or in the vicinity of the same, engaged in indecent behaviour, been violent or disorderly or contravened a provision of a written law; and
- (b) The period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.

It is for the Commission to determine whether, on the balance of probabilities the barring notice is warranted.

I have considered all the evidence before me including:

- Statements of security officers and Police
- Statements of the Applicant and his friend [REDACTED]
- The CCTV footage

I have also had careful regard to the submissions of both parties and thank counsel for their comprehensive submissions.

- (c) On considering the materials supplied, I am satisfied that there were reasonable grounds to conclude that the Applicant was disorderly or violent on licensed premises or contravened a provision of a written law and that there was a proper and clear basis for the delegate of the Commission to exercise the power conferred by S115AA of the Act.

In determining whether to quash or vary the Barring Notice, it is relevant 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 again; and the need to protect the general public, the licensee and the Applicant himself: *KRB v Commissioner of Police* (LC 33/2011); *AQ v Commissioner of Police* (LC

46/2011); *MP v Commissioner of Police* (LC 55/2011); and *GML v Commissioner of Police* (LC 58/2011).

- (d) When considering this matter, I have also had regard to the primary and secondary objects of the Act. In particular, s.5(1)(b) of the Act, “to minimise harm or ill health caused to people, or any group of people, due to the use of liquor”. I have also had regard to Parliament’s intention when introducing the legislation allowing for the issuing of barring notices.
- (e) Further, I accept the purpose of barring notices is different to the purposes of criminal proceedings and that a “barring notice is not a penalty but a mechanism to protect the general public, a licensee or indeed, the perpetrator from his own actions”.
- (f) I find that the incidents of 3 January 2020 and into the early morning of 4 January 2020 were serious in nature and showed a propensity in the Applicant over a period of time to engage in anti-social behaviour towards security guards and Police. I accept that the Applicant was intoxicated at the time. The circumstances of the incidents taken as a whole as well as the fact that the Applicant was issued with a Move on Notice, indicate that there is potentially a risk to the public in relation to possible future anti-social behaviour by the Applicant in the context of consumption of alcohol.
- (g) I find that, whilst as Counsel for the Applicant describes them – Incidents 1 and 2 i.e. Incident 1 when he was asked to leave initially and Incident 2, when matters escalated and the Applicant gets angry and is removed, may have ended the matter. There follows Incident 3 where the Applicant returns after some 30 minutes in an angry and agitated state. As the Applicant admits, this is not good behaviour for a man of [REDACTED] and it is then that the matters deteriorate, police are called, and he is arrested.
- (h) It seems to me that these circumstances considered as a whole indicate there is some risk that the Applicant may behave in a similar manner in the future and that risk is minimised by the terms of the barring notice. This is particularly so when the Applicant has consumed liquor.
- (i) I accept that the Incidents’ impact were confined to security officers and Police, but the potential for a member of the public to have been adversely affected was high. This fortunately did not occur.
- (j) The Applicant submits that the Barring Notice impacts on his ability to engage fully in his work as a [REDACTED] and limits his ability to attend licensed [REDACTED] and venues to entertain customers, friends and family.
- (k) With regard to the Applicant’s ability to socialise with friends and family, I do not find this agreement compelling as there are other ways he can socialise with friends and family.
- (l) However, I consider that to ban the Applicant from attending licensed areas within the [REDACTED] at which he [REDACTED] does not appear necessary to protect the general public. Further, the same would likely have an unnecessary punitive effect on the Applicant.

Therefore, the Barring Notice is varied pursuant to s115AD(7) of the Act to permit the Applicant to enter licensed areas located at [REDACTED] on the condition that the Applicant is precluded from consuming alcohol at that venue. Whilst it is assumed and there is no evidence before me that this venue has a licence under s.46, the variation does not extend to any other premises.

In all other respects the barring notice dated 17 July 2020 remains in place ending on 14 April 2021. This should allow the Applicant the opportunity to assess his behaviour in the context of his interaction with alcohol.

A handwritten signature in black ink, appearing to read 'Pamela Hass', written in a cursive style.

Ms Pamela Hass
Presiding Member