

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

Applicant: AJC

Respondent: Commissioner of Police
(represented by Ms Emily O’Keeffe of State Solicitor’s Office)

Commission: Dr Eric Isaachsen (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: 13 October 2017

Date of Determination: 23 November 2017

Determination: The term of the barring notice is varied from six months to four months

Authorities referred to in determination:

- *Van Styn v Commissioner of Police* (LC19/2011)

Review of Barring Notice

- 1 On 18 May 2017, an incident (“the incident”) occurred inside licensed premises namely the [REDACTED] (“the premises”) involving the applicant.
- 2 During the incident, the applicant punched the victim twice using her left hand, the second of which contacted the victim above her right eyebrow causing a skin laceration. The applicant left the premises immediately and presented to the Bunbury Police station later that night.
- 3 As a result of this incident, the applicant was charged with unlawful wounding.
- 4 As a further result of such incident, on 1 August 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.
- 5 On 25 September 2017, the applicant was served with the barring notice prohibiting entry from specified premises, as listed at paragraph 4 above, for a period expiring on 1 February 2018.
- 6 On 13 October 2017, 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 13 October 2017;
 - b. The police evidence presented before the Commissioner of Police’s Delegate including:
 - i. Statement of Material Facts - [REDACTED];
 - ii. Police Incident Report [REDACTED];
 - iii. Notes of interview taken at audiovisual record of interview;
 - iv. CCTV Footage of the incident from 1 Camera (disc);
 - v. Photographs of the victim, [REDACTED] (hard copy, disc);
 - vi. Medical record for the victim, dated 19 May 2017; and
 - vii. One witness statement.
 - c. The Commissioner of Police’s outline of submissions dated 3 November 2017.

Submissions by the applicant

- 9 The applicant has made submissions requesting the Commission to vary the barring notice on the grounds that:
- a. she was charged with assault occasioning bodily harm, downgraded from unlawful wounding as mentioned immediately after the incident, and she pleaded guilty;
 - b. she considered the incident occurred as an act of self-defence as outlined in her instructions to her solicitor.

Submissions on behalf of the Commissioner of Police

- 10 The materials upon which the decision of the Police to issue the barring notice are based are noted in point 8(b) above.
- 11 The Police submit that:
- a. the applicant signed the Statement of Material Facts in relation to the incident and therefore admitted her guilt in relation to a criminal offence;
 - b. 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
 - c. a 6 month barring notice is proper and to vary the barring notice would undermine its protective and deterrent effects.
- 12 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

- 13 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.
- 14 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.
- 15 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.

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

- 23 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.
- 24 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 duration of the barring notice ought to be reduced due to the circumstances set out in her application.

- 25 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.
- 26 No submissions were made by the applicant with regard to the terms of the barring notice and the terms remain in place.
- 27 The period of the notice is central to the applicant's comments that a claim of self-defence ought to be a mitigating factor. It appears that consideration was given to this proposition in the amendment of the original charge from unlawful wounding to assault occasioning bodily harm, to which the applicant pleaded guilty. The claim would also be consistent with the facts as provided by all parties and I find it to be a sustainable argument.
- 28 In all the circumstances of this case, I consider that there is a justifiable basis upon which to reduce the term of the barring notice to four (4) months, whilst maintaining the intent of a barring notice 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 her interaction with alcohol; and
 - c. allow the applicant to further consider her behaviour and actions prior to engaging in violent or disorderly conduct on licensed premises in the future.
- 29 Accordingly, the term of the barring notice issued on 1 August 2017 shall now expire on 30 November 2017.



ERIC ISAACHSEN
PRESIDING MEMBER