

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

Applicant: Mr L M C

Respondent: Commissioner of Police

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application for review of barring notice pursuant to section 115 AD of the *Liquor Control Act 1988* ("the Act") dated 11 October 2011

Date of Determination: 17 February 2012
(Determined on papers)

Determination:

The terms of the barring notice dated 11 October 2011 issued to Mr L M C be varied as follows:

Mr L M C is prohibited from entering any licensed premises in Western Australia except those premises licensed hereunder:

- a) a liquor store licence;
- b) a restaurant licence other than a restaurant with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act;
- c) the premises accommodating the North Fremantle Amateur Football Club and Mosman Park Amateur Football Club

Authorities referred to in Determination:

- *S V S v Commissioner of Police (LC 19/2011)*

Background

- 1 An incident involving a group of people of which the applicant was one occurred at licensed premises (Metropolis Night Club) in Fremantle on 17 September 2011("the incident").
- 2 A blow was struck which resulted in the victim of the blow suffering a broken jaw.
- 3 The applicant was charged by Police as a result of the incident.
- 4 On 1 November 2011, the applicant was served with a barring notice dated 11 October 2011 pursuant to section 115 AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting him from entering any licensed premises in Western Australia for a period of 12 months other than premises operating under a liquor store licence.
- 5 The matter was determined on the papers submitted without a hearing at the applicant's request.

Applicant's submissions

- 6 The applicant submitted a statement of events and described his employment, family situation and involvement in sporting activities.
- 7 He advised that he intended to defend the charges against him arising from the incident over which he was issued a barring notice.
- 8 The applicant enclosed a number of character references.

Respondent's submissions

- 9 The respondent outlined its interpretation of the applicable law particularly the operation and purpose of section 115 of the Act and I will deal with this insofar as it is necessary in my determination (below).
- 10 The applicant has been charged with grievous bodily harm as a result of the incident. at the Metropolis Night Club on 17 September 2011.
- 11 The respondent tendered the material on which the delegate of the Commissioner of Police had relied including a witness statement, CCTV footage and the Police Incident Report.
- 12 On the balance of probabilities the respondent believes that there is a risk of the applicant reoffending if confronted with similar circumstances.

Determination

- 13 The applicant does not contest the barring notice. He requests that it be varied to the extent that he can play football and join his family for meals at restaurants.
- 14 As the respondent points out in his submission, section 115 AA(2) of the Act is not intended to act as a punishment but is there to protect the public, and quotes *S V S v Commissioner of Police (LC19/2011)* at para 9.... "*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”.

It therefore remains for me to simply consider whether varying the barring notice as sought by the applicant, as I am empowered to do by section 115AD, results in the likelihood of there being any danger to the public within the context of the provision of section 115 of the Act.

- 15 In assessing this I gave considerable weight to the character references provided. Whilst I acknowledge that the applicant is unlikely to seek references from parties other than those that would be supportive of him, the spread of referees, the positions they hold in terms of being able to assess the character of the applicant, do suffice to convince me that varying the barring notice as I have done will not endanger the public.
- 16 I also took into account the reference provided by the applicant's parents. Whilst there may be an understandable bias in such referees, their letter persuaded me to believe that the applicant enjoys a strong level of family support.
- 17 I concluded that there was little likelihood of the applicant representing a danger to the public by being permitted to enter the additional classes of licensed premises and I vary the barring notice as follows:

Mr L M C is prohibited from entering any licensed premises in Western Australia except-

- a) a liquor store licence;
- b) a restaurant licence other than a restaurant with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act;
- c) the premises accommodating the North Fremantle Amateur Football Club and Mosman Park Amateur Football Club .



MR JIM FREEMANTLE
CHAIRPERSON