

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

Applicant: Ms K M R

Respondent: Commissioner of Police
(represented by Mr Daniel M Harrop 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: 18 July 2017

Date of Determination: 25 August 2017

Determination: The barring notice to the applicant is varied pursuant to section 115AD(7) of the Act to a period ending on the date of this decision being, 25th August 2017.

Authorities referred to in Determination:

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

Review of Barring Notice

- 1 On 28 January 2017, an incident occurred at licensed premises namely [REDACTED] in Northbridge (“the Incident”) involving the applicant and [REDACTED] (“the complainant”). The parties were previously known to each other and had a long-standing disagreement regarding a mutual boyfriend.
- 2 As a result of such Incident, the complainant made a formal police report the following day and subsequently (on the 12 February 2017) a restraining order was taken out by the complainant against the applicant. However, following an investigation as to the alleged assault, no charges were laid against the applicant under the *Criminal Code (WA)*.
- 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 20 June 2017 to expire on 19 October 2017, being for a total period of approximately 4 months.
- 5 On 18 July 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 lodged 18th July 2017;
 - b. The evidence presented before the Commissioner of Police’s Delegate including:
 - i. barring notice dated 20th June 2017;
 - ii. incident report number 300117 0915 16263;
 - iii. photographs of the complainant’s bruised eye area;
 - iv. statement of [REDACTED];
 - v. statement of [REDACTED];
 - vi. screenshots of various mobile telephone texts and messenger messages; and
 - vii. violence restraining order 2017 00374; and
 - c. The Commissioner of Police’s outline of submissions (as respondent) dated 15th August 2017.

Submissions by the applicant

- 8 In the application for review lodged on 18th July 2017, the applicant has requested the Commission to review the barring notice on the grounds that:
- a. she did not instigate the Incident;
 - b. that the complainant was verbally and physically aggressive;
 - c. any action taken by the applicant was in self defence; and
 - d. no charges were laid due to the Incident.
- 9 The applicant has not made any further submissions nor provided any additional evidence to support the grounds for review provided in her original application.

Submissions on behalf of the Commissioner of Police

- 10 The Police submit that:
- a. there is evidence to establish that the applicant has, on licensed premises, engaged in violent behaviour;
 - b. that the applicant acted violently when unprovoked on a licensed premises;
 - c. there is a risk of the applicant again behaving in a similar manner as is evidenced by the restraining order;
 - d. the barring notice should not be quashed or varied in order to give effect to the object and purposes of the Act;
 - e. the 4 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 and provide protection to the members of the public;
 - f. If a variation of the barring notice is warranted, then any variation be restricted to removal of the following types of premises from the operation of the barring notice:
 - i. premises licenced under a restaurant licence, other than a restaurant which forms a part of hotel premises or a restaurant with an extended trading Permit; and/or
 - ii. sporting clubs.
- 11 Counsel for the Commissioner of Police has also made comprehensive written submissions on the applicable law which are unnecessary to repeat here, however, I will refer to them as necessary in the determination below.

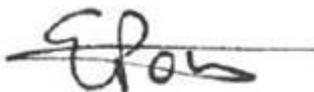
Statutory Framework

- 12 The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises been violent or disorderly.
- 13 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.
- 14 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.
- 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 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).
- 19 Section 5 of the Act sets 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.

Determination

- 20 The questions to be determined on review are whether:
 - a. there are reasonable grounds for believing that the applicant has been violent or disorderly on licenced premises; and
 - b. the period and terms of the barring notice reflect the object and purposes of the Act and are not punitive in nature.
- 21 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.

- 22 On the evidence provided it is clear that the circumstances which gave rise to the Incident were due to the history between the applicant and the complainant and that such animosity had been ongoing for some time. The exact verbal and physical actions of the applicant and the complainant during the Incident, and the manner in which the complainant received the eye injury from the applicant, are less clear on the evidence supplied. It is further noted that a restraining order against the applicant remains in place but that no formal charges of assault were eventually laid against the applicant.
- 23 Barring notices are intended as a protective mechanism for the public (*Van Styn v Commissioner of Police* (LC19/2011)) to assure members of the public that licenced premises are environments where they can remain safe from violent or antisocial behaviour. The protection of the licensee and applicant must also be considered.
- 24 The Police do not provide any clarification regarding their submission for the variation of the barring notice being changed to exclude:
- a. premises licenced under a restaurant licence, other than a restaurant which forms a part of hotel premises or a restaurant with an extended trading Permit; and/or
 - b. sporting clubs,
- and it is unclear how these particular limitations would provide any furtherance of the objects of the Act, or limit any punitive effect of the barring notice on the applicant.
- 25 In the circumstances, it appears that the applicant has a low risk of reoffending and a barring notice for the period of time that has already passed (just over 2 months) appears appropriate in order to:
- a. minimise the likelihood of harm to the public;
 - b. allow the applicant the opportunity for introspection regarding her behaviour on licensed premises and her interaction with alcohol.
- 26 The barring notice to the applicant stands and is varied pursuant to section 115AD(7) of the Act to a period ending on the date of this decision.



EMMA POWER
PRESIDING MEMBER