

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr AMK

Respondent: Commissioner of Police
(represented by Mr Sam Pack of State Solicitor's Office)

Commission: Mr Seamus Rafferty (Chairperson)

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

Date of Hearing: 14 August 2017

Date of Determination: 14 August 2017

Determination:

1. On 10 May 2017, AMK ("the applicant") was issued with a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act"). Pursuant to section 115AA(2) of the Act, A/Superintendent Long, on behalf of the Commissioner of Police, believed on reasonable grounds that the applicant had acted in a disorderly manner on licensed premises.
2. The Commissioner of Police gave notice that Mr AMK was barred from entering specified licensed premises within Western Australia for a period up until, and including, 8 November 2017. For the purpose of the notice, the specified class or classes of licensed premises from which Mr AMK was barred were all hotel licences, however referred to, issued under section 41 of the Act, all nightclub licences issued under section 42 of the Act, casino licence issued under section 44 of the Act, all club licences

issued under section 48 of the Act, all restaurant licences issued under section 50 of the Act, all occasional licences issued under section 59 of the Act and all specific special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.

3. Effectively, the applicant was barred from almost all, if not all, licensed premises within Western Australia. In making a decision to issue a barring notice, regard was had to nine separate incidents that were alleged to have occurred at the [REDACTED] Hotel between 11 January 2015 and 25 April 2017.
4. Those incidents specifically were an incident on 11 January 2015 in which Mr AMK by his own admission was involved in a physical altercation, albeit he says for a noble purpose, but I make a finding on the balance of probabilities that it was a physical altercation nonetheless and of itself would constitute behaving in a disorderly manner. Notwithstanding the fact that the applicant believed there was a noble purpose, it is for others who are involved in the running of the premises to deal with those matters and not for a person who is either playing music or a person who is a patron of the premises to become involved.
5. There is an allegation that on 14 January 2015, there had been an argument over the barring of the applicant from the licensed premises for one month. The applicant stated that he simply requested information as to why he had been barred from the premises. The conversation went for 10 seconds and he denied that he used any form of inappropriate language towards the staff member. The incident report for 14 January 2015 filled out by Lisa Olsen states that, 'I advised Aiden that he had a month owing for his unacceptable behaviour on 11 January 2015, grabbing another patron by the throat and slamming him on the table, which he admitted to. He told me I was a piece of shit and management were cunts and we will pay for this.'

6. On behalf of the Commissioner of Police, Mr Pack submits that I can be satisfied on the balance of probabilities that abusive language was used by the applicant. The incident report was filled out contemporaneously. It is clear from that document that there is a general attitude of hostility between the applicant and the owners and staff of the licensed premises and the applicant was slow to leave the premises. I am satisfied on balance that the applicant made comments as alleged and that these comments would constitute disorderly behaviour on that particular day.
7. There was an allegation of an incident on 3 October 2015. That relates to the argument over the applicant's dog being present on the premises. The applicant admits that he swore at the crowd controller, but I do also find that there really was no reason for the crowd controller to follow him that far out of the licensed premises and it does seem to be unclear as to where that particular incident took place, whether it was within the licensed premises or outside the licensed premises. I'm not satisfied that this alleged incident constitutes behaving in a disorderly manner.
8. There is an allegation of an incident in the bottle shop on 22 October 2015. Based on the totality of the evidence I am satisfied that Mr AMK was argumentative during this incident but not necessarily hostile. I find that such argumentative conduct amounts to disorderly behaviour.
9. There was an allegation of an incident on 9 December 2015 in which Mr AMK was told to leave. There's nothing about the evidence relied upon on which I can find that the applicant's behaviour was disorderly.
10. There is an allegation of an incident on 17 April 2017, in which there is a suggestion about the throwing of a lemon on the floor of the bar. This incident just goes to show that the applicant and those who work in the bar would be better separated. However, I cannot make a finding that the behaviour of the applicant was disorderly on this occasion.

11. There is an allegation of an incident on 21 January 2017. Based on the totality of the evidence, I cannot find that the alleged behaviour of the applicant was disorderly.
12. There is an allegation of an altercation on 23 April 2017. This involves repeated returning to the licensed premises despite having been told to leave. The incident report is contemporaneous and refers to the applicant's conduct on this occasion. It would be an offence for the person to include in that particular incident report information which was not true and I am satisfied there were a couple of returns to the bottle shop that would constitute disorderly behaviour.
13. There is an allegation of an altercation on 25 April 2017. I can make no positive finding in respect to this alleged incident and accordingly make a finding that I cannot be satisfied in any manner as to what occurred.
14. I am satisfied that there have been occasions in late 2015 and 2017 where the applicant's conduct could be construed on the balance of probabilities as being disorderly. The question then becomes what is the appropriate remedy in the context of the findings that I have made. Should the barring notice issued by the Commissioner of Police remain in force or should it be modified in some way? Matters bearing upon this issue include that the applicant has a criminal history, albeit a relatively minor one and he is now 55 years old.
15. There is no evidence before me upon which I could reach a conclusion that those who work and operate other licensed premises need to be protected from the applicant's ongoing conduct. I do believe that his conduct is solely directed towards the [REDACTED] Hotel based on his subjective belief, that he has been wronged by those who run the hotel and as a result of that, that seems to motivate his behaviour.
16. Having reached that particular conclusion and by applying the principles outlined in section 115AB of the *Liquor Control Act*, I may only have regard

to the material that was before the Commissioner of Police when making a decision and any other information as provided by the applicant and I have had regard to all of that information.

17. In the circumstances, I am prepared to vary the barring notice that was issued by the Commissioner of Police, quite properly, on 10 May 2017. There did need to be some intervention that stopped this ongoing conduct between the applicant and those who operate and work at the licensed premises. I am prepared to impose a specific condition barring Mr AMK from attendance at the [REDACTED] Hotel until 8 November 2017.

18. The remaining conditions imposed are varied by deleting the condition that he is not to attend all hotel licences, however referred to, issued under section 41, all nightclub licences issued under section 42. I'm not sure that Mr AMK is all that concerned about that particular condition, the casino licence issued under section 44, all club licences issued under section 48, all restaurant licences issued under section 50, all occasional licences issued under section 59 and all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.



SEAMUS RAFFERTY
CHAIRPERSON