

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: K A R
(represented by Mr Robert Eagle of Eagle and Partners Solicitors)

Respondent: Commissioner of Police
(represented by Ms Rosie Phillips of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application for review of barring notice pursuant to section 115AD of the *Liquor Control Act 1988* dated 9 March 2012.

Date of Determination: 29 May 2012
(Determined on papers)

Determination: The terms of the barring notice dated 9 March 2012 are varied as follows:

K A R is prohibited from entering any licensed premises in Western Australia except those premises licensed hereunder:-

- i) a liquor store licence;
- ii) 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 *Liquor Control Act 1988*; and
- iii) sporting clubs accommodating sports in which the applicant is actively engaged.

Authorities referred to in the Determination:

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

Background

- 1 On 26 February 2012 an incident occurred at licensed premises (Roebuck Bay Hotel, Broome) when according to the statement of material facts, the applicant abused and then struck a licensed crowd controller causing the crowd controller to sustain injuries to his face.
- 2 The applicant was arrested and charged with assault causing actual bodily harm.
- 3 On 9 March 2012 a barring notice was served on the applicant pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") prohibiting her from entering any licensed premises in Western Australia for a period of 9 months other than premises licensed under a liquor store licence.
- 4 The matter was determined on the papers submitted without a hearing at the request of the applicant.

Submissions on behalf of the applicant

- 5 On 16 March 2012 the applicant received a spent conviction order at the Broome Magistrates Court in relation to the incident.
- 6 A number of character references were submitted.
- 7 The applicant simply seeks to be able to continue to play netball and thus seeks admission to sporting clubs accommodating this and to be able to attend licensed restaurants as the availability of unlicensed eating establishments is extremely limited in Exmouth (her home town).

Submissions on behalf of the Commissioner of Police

- 8 The Commissioner of Police ("the Police") made a detailed submission concerning the interpretation and purpose of section 115 of the Act and summarised the relevant case law. I will deal with this insofar as it is necessary in my determination (below).
- 9 The Police also submitted a body of evidence concerning the incident out of which this barring notice arose including material identifying the circumstances of the offence, statement of material facts, statement of the victim of the attack and the incident report by the security company, covering the premises.
- 10 The conduct of the applicant was of precisely the type that section 115 was designed to address.
- 11 The behaviour and demeanour of the applicant prior to the actual assault was aggressive, threatening and unco-operative.
- 12 Essentially the question at issue is the likelihood and possibility of the applicant behaving in a similar manner in similar circumstances thus jeopardising public safety.
- 13 There is sufficient material before the Liquor Commission to indicate that there are reasonable grounds to believe the applicant was violent and she has demonstrated a lack of concern for the safety of others.

Determination

14 The applicant does not contest the barring notice but seeks a variation in its terms to permit her to play netball and to be permitted entry to licensed restaurants.

15 Section 115A(2) of the Act is not intended to act as a punishment but is designed to protect the public as per *S V S v Commissioner of Police LC19/2011* at paragraph 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”.

16 I therefore only have to consider whether varying the barring notice as sought by the applicant, as section 115AD empowers me to do, will result in the likelihood of the public being endangered.

17 I am concerned that in her application the applicant offered nothing by way of mitigation or explanation and expressed no remorse. She offered nothing to suggest that she would not react in the same way in similar circumstances. I can only conclude that she does not see her behaviour as anything to be much concerned about.

18 I have taken into account the positive character references supplied and given them some weight, however on balance, I remain concerned that even if the applicant is normally of good character and the incident leading to the barring notice out of character according to her referees, there is a probability of a similar reaction in similar circumstances.

19 Thus to fulfil the requirements of section 115 and to discharge my responsibilities under it, I am prepared to vary the barring notice as sought as to the licensed premises to which she seeks admission. I see little likelihood of circumstances arising where she is likely to be put in a position where she will behave in such a way as to create a danger to other people from which they need to be protected.

20 The barring notice against the applicant is varied to permit her access to premises licensed under:-

a) restaurant licences, other than a restaurant with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act; and

b) sport clubs accommodating sport in which the applicant is actively engaged,

in addition to premises licensed under a liquor store licence to which she is already entitled entry under the current barring notice imposed on 9 March 2012.



MR JIM FREEMANTLE
CHAIRPERSON