

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

**Applicant:** MAK  
(represented by Mr Anthony Eryes of Holborn Lenhoff Massey)

**Respondent:** Commissioner of Police  
(represented by Ms Rebecca Davey 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:** 20 December 2018

**Date of Hearing:** 26 March 2019

**Date of Determination:** 26 March 2019

**Date of Reasons of Determination:** 15 April 2019

**Determination:**

1. The application seeking review of the barring notice issued by the Commissioner of Police on 2 November 2018 is varied to permit Mr M A K to attend sporting events and areas licenced pursuant to the *Liquor Control Act 1988* located at:
  - a. Subiaco Football Club;
  - b. Associates Rugby Union Club at Swanbourne; and
  - c. HBF Park for Perth Glory Soccer matches.
2. Mr M A K is precluded from consuming alcohol at all venues as outlined in Order No 1.
3. The remainder of the barring notice remains in full force.

**Authorities referred to in Determination:**

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

## Review of Barring Notice

- 1 On the night of 15 June 2018, an incident involving a physical altercation between the Applicant and another individual occurred at the licensed premises being the Club Bayview (**“the Incident”**).
- 2 During the Incident, the Applicant threw a punch at another party.
- 3 As a result of the Incident, the Applicant was charged with assault occasioning bodily harm pursuant to section 317(1) of the *Criminal Code (WA)*. The Applicant has pled guilty to such charge and received a fine and a spent conviction order.
- 4 As a further result of the Incident, the Commissioner of Police (**“the Respondent”**) 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 small bar licences issues under section 41A;
  - c. all nightclub licences issued under section 42;
  - d. Casino licence issued under section 44;
  - e. all club licences issued under section 50
  - f. all restaurant licences issued under section 59;
  - g. all occasional licences issued under section 59; and
  - h. all special facility licences issued under section 46 and regulation 9A of the Liquor Control Regulations.
- 5 The barring notice was dated 2 November 2018 and served on the Applicant on 20 November 2018 to expire on 1 May 2019, being for a total period of 6 months.
- 6 On 20 December 2018, the Applicant appealed to the Liquor Commission (**“the Commission”**) for a review of the barring notice.
- 7 A hearing was held on 26 March 2019 in respect to the application (**“the Hearing”**) and the determination handed down verbally. These are the written reasons for such determination.
- 8 It is noted that at the date of the Hearing there was only a further 36 days of the duration of the barring order remaining until its expiry on 1 May 2019.
- 9 The relevant information regarding the Incident giving rise to the barring notice is referred to in the following documents:
  - a. The Applicant’s application for review dated 20 December 2018 and annexed Grounds for Review of Barring Notice filed by Holborn Lenhoff Maasey on behalf of the Applicant dated 19 December 2019;
  - b. The police evidence presented before the Commissioner of Police’s Delegate including:
    - i. barring notice dated 2 November 2018;
    - ii. statement of Material Facts Brief Number 1863192-1;

- iii. Incident Report 150618 0920 8807 complied 2 November 2018;
  - iv. statement of James Mark Taylor;
  - v. Photographs of injury to victim;
  - vi. statement of Harry Oscar Burrell;
  - vii. statement of Tobias Hay Hector;
  - viii. licenced premises incident report completed by approved manager;
  - ix. CCTV Footage;
  - x. CCTV Footage stills; and
  - xi. Facebook extract used to confirm identity of Applicant.
- c. the Commissioner of Police's ("**the Respondent**") outline of submissions dated 12 March 2019; and
  - d. Further Submissions on behalf of the Applicant dated 12 March 2019.

### **Submissions by the Applicant**

- 10 The Applicant's legal representation made submissions requesting the Commission vary the barring notice to either:
  - a. reduce the period of the barring notice; and/or
  - b. permit him to enter licenced premises located at:
    - i. Subiaco Football Club;
    - ii. Associates Rugby Union Club at Swanbourne;
    - iii. HBF Park for the purpose of attending Perth Glory Soccer matches; and
    - iv. venues with restaurant licences issued under section 59 of the Act.
- 11 The Applicant's legal representation also made the following written submissions in the initial Grounds and subsequent submissions:
  - a. the Applicant is 19 and has no criminal record;
  - b. the Applicant is hard working. He has commenced a commerce degree at university and has worked within his family's business;
  - c. the Applicant is an active rugby player at the Associates rugby club;
  - d. as evidenced by the 10 personal reference supplied, the Applicant:
    - i. is well thought of by his peers and adults who know him;
    - ii. is generous with his time and in assisting others;
    - iii. has a responsible attitude towards alcohol;
    - iv. has no history of aggressive or violent behaviour, even while drinking alcohol;

- e. the effects of the barring order will prevent the Applicant from attending:
  - i. the Associates rugby club;
  - ii. various sporting facilities which have liquor licences attached to them;
  - iii. various music concerts located at licensed premises for which the Applicant has already purchased tickets (copies supplied);
 and this will have a significant social and financial effect on the Applicant;
- f. it is in the community's interest for the Applicant to attend sporting clubs in order to play rugby;
- g. the CCTV footage of the Incident shows that only one punch was thrown;
- h. the Applicant was not the instigator of the argument;
- i. from the Applicant's point of view the Incident occurred in the following circumstances:
  - i. he was speaking to another club patron when he heard a comment that indicated his friend was being threatened and his instinctive reaction was to be concerned for his friend;
  - ii. when he moved over to the parties he lashed out, but was not aiming for any particular body part, however, he accepts he hit the victim's face and caused the injuries alleged;
  - iii. his motivation was to protect his friend from a perceived threat, however, accepts his actions were misguided; and
  - iv. he disputes that his actions had anything to do with the alcohol consumed;
- j. there is no evidence that the Incident occurred due to the excessive consumption of alcohol. The CCTV footage shows only 1 drink being consumed by the Applicant at the relevant venue and it is maintained that he only drank one other alcoholic drink prior to attending the venue;
- k. there is no evidence that the Applicant was intoxicated and there is no link between consumption of alcohol by the Applicant and the Incident;
- l. when the circumstances of the Incident and the Applicant's personal circumstances are considered, there is no purpose or utility in the barring notice;
- m. alternatively, the barring notice is too wide in scope and should be limited to preventing attending at nightclubs;
- n. the barring order should be for a much more limited timeframe bearing in mind what is said by the Applicant's father about the Applicant's social network, the relatively limited nature of the offending, the lack of evidence that excessive consumption of alcohol was responsible for the Incident and the Applicant's prior good history;

12 At the Hearing it was also submitted that:

- a. due to various delays, the term of the barring order had almost expired;
- b. the victim was known to the Applicant through school, the parties have since spoken, the Applicant has apologised and there is no lasting animosity between the parties;

- c. the Incident was due to an unfortunate rush of blood to the head, not the result of excessive consumption of alcohol;
- d. the necessity for a barring order of such wide scope to protect the public is questioned in the circumstances;
- e. the bail conditions imposed on the Applicant did not preclude access to licensed premises;
- f. the barring order had served its purpose at the date of the Hearing and should now be ended;
- g. conversely, the barring order should be varied to permit access to:
  - i. Subiaco Football Club;
  - ii. Associates Rugby Union Club at Swanbourne;
  - iii. HBF Park for Perth Glory Soccer matches; and
  - iv. venues with restaurant licences issued under section 59 of the Act; and
- h. the Applicant is not a threat to the public so it can be considered the nature of the barring order is in the character of a punishment.

#### **Submissions on behalf of the Commissioner of Police**

- 13 The circumstances upon which the decision of the Respondent to issue the barring notice is based, are contained within the documents referred to in paragraph 8(b) above.
- 14 The representative for the Respondent submits in her written submissions that:
  - a. evidence submitted clearly establishes on the balance of probabilities that the Applicant was engaged in violent or disorderly behaviour or contravened a written law on licenced premises;
  - b. the contentions by the Applicant that the Incident *“does not appear to have occurred as a result of excessive alcohol consumption”* and that there is *“no utility or purpose in the barring notice”* and that there is no *“link”* between excessive consumption of alcohol and the Incident is misguided;
  - c. the object of the Act and purpose of a barring order are clear and, although the level of intoxication of a person may be a factor to be taken into consideration, it is not the sole consideration. This is of little relevance and should be given little weight;
  - d. the conduct comprising the Incident is what the provisions in the Act are designed to overcome;
  - e. the violent behaviour was in a high risk, crowded venue and unprovoked;
  - f. the fact that the Applicant was not the instigator and only struck the victim once is of little relevance;
  - g. there is no evidence of the Applicant’s motivation or that the Applicant was remorseful, and this shows a lack of insight as to the impacts of his behaviour;

- h. it is concerning that the Applicant's behaviour did not occur when he was under the influence of alcohol;
  - i. even if the risk of the Applicant behaving in the same manner is low, this can be further minimised by the terms of the barring notice;
  - j. the access to licensed premises is a privilege not a right and being subject to a barring order will:
    - i. make the Applicant more likely to consider his future actions prior to engaging in anti-social violent behaviour; and
    - ii. provide the Applicant with the opportunity to implement any necessary strategies to address his aggressive tendencies while protecting the public at licensed venue during that period;
  - k. the barring order does not impede the Applicant's ability to play rugby and only the clubhouse portions of the playing fields are licensed;
  - l. most of the ticketed events referred to in the initial Grounds have passed and no further social or financial detriment will therefore occur;
  - m. there are many social activities that the Applicant can avail himself which are not conducted on licensed premises;
  - n. any detriment to be suffered by the Applicant is outweighed by the public interest in protecting the general public;
  - o. the Commission should not exercise its discretion to quash the barring notice;
  - p. there is no basis for varying the terms of the barring notice;
  - q. if the Commission is minded varying the barring notice, it should only provide the Applicant to attend the Associates Rugby Union Club clubhouse to permit the Applicant to participate in sporting activities and not to be able to consume alcohol.
- 15 Counsel for the Commissioner of Police also made comprehensive written submissions addressing the applicable law, which are not repeated here, but are referred to as necessary during the course of the determination below.
- 16 At the Hearing, Counsel for the Respondent reiterated the following submissions:
- a. the Respondent opposes the quashing or review of the barring order and relies on its written submissions in this regard;
  - b. it is concerning that the Applicant can lose control even when not affected by alcohol and this is exactly the type of behaviour the Act seeks to control; and
  - c. due to the delay in the service of the barring order the Applicant "gained" 20 days before the barring order come into effect.

### **Statutory Framework**

- 17 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.
- 18 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.
- 19 A single incident is sufficient to give rise to a barring notice and there is no necessity for the relevant party to have engaged in a series of similar conduct.
- 20 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.
- 21 Section 115AD of the Act provides, at subsection (6), 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.
- 22 Subsection 115AD (7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 23 The Act also in section 16 prescribes that the Commission:
- a. may make its determinations on the balance of probabilities [sub section (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)];”
- 24 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).
- 25 The Minister further stated that the legislation gave the Respondent the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
- 26 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. Subsection (2) provides for various secondary objects including to provide adequate controls regarding the sale, disposal and consumption of liquor and the persons directly or indirectly involved in the same.
- 27 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 (*SVS v Commissioner of Police* (LC19/2011)).

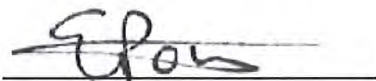


## Determination

- 28 At the Hearing it was conceded that the events referred to in the statement of material facts were accurate and that:
- a. there were reasonable grounds for believing that the Applicant had been violent or disorderly and/or contravened a provision of a written law; and
  - b. there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act.
- 29 Therefore, the review application is to be decided on whether the period and terms of the barring notice:
- a. reflect the objects and purpose of the Act; and
  - b. are not punitive in nature.
- 30 A barring notice is not intended to be a judgment as to the Applicant's actions in the context of the charges brought under the Criminal Code (WA). Nor is its purpose to be punitive in nature but to protect the public.
- 31 It is acknowledged that the period barring order has substantially passed and that, at the time of the Hearing, only a further 36 days remained.
- 32 In determining whether to quash or vary the barring notice it is relevant to take into account the nature and circumstances of the Incident giving rise to the barring notice, the risk of the Applicant behaving in a similar manner again and the need to protect the general public, the licensee and the Applicant himself. *KRB v Commissioner of Police (LC 33/2011)*; *ARQ v Commissioner of Police (LC 46/2011)*; *MRP v Commissioner of Police (LC 55/2011)*; and *GML v Commissioner of Police (LC 58/2011)*.
- 33 I note that applicant has no history of violent or aggressive behaviour and I also acknowledge the personal references supplied to support the character of the Applicant.
- 34 There is no compelling evidence supplied which would indicate that the Applicant is likely to engage in the same behaviour in the future. However, it remains of concern that the Incident was unprovoked and does not appear to be caused by the consumption of alcohol, but simply the Applicant lashing out due to a perceived threat to his friend.
- 35 The fact that excessive consumption of alcohol did not appear to be a contributing factor in the Incident does not prevent the imposition of a barring order. The barring order was justified in the circumstances. Although this is a factor which may be considered, it is of secondary importance to the objects of the Act.
- 36 The Incident was violent and of precisely the type the amendments to the Act in 2010 were introduced to counteract.
- 37 In the circumstances, a barring notice expiring 1 May 2019 appears justified in order 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; and
  - b. allow the Applicant the opportunity for introspection regarding his behaviour on licensed premises and his interactions with alcohol and others drinking alcohol.

- 38 Despite the above, I consider that to ban the Applicant from attending licensed areas within the sporting clubs at which he plays rugby does not appear to be necessary to protect the general public. Further, the same would likely have an unnecessarily punitive effect on the Applicant. This does not reflect the purposes and scope of the Act.
- 39 In addition, I will grant the Applicant's request to attend Perth Glory Games at HBF Park for the remaining period of the barring order.
- 40 It is noted that the Applicant has already purchased season tickets for the Perth Glory homes games and that there are only 3 games during the relevant period. Given the Applicant's lack of any prior record and the manner of venue it is considered that the Applicant attending such soccer games will be very low risk for the general public.
- 41 However, the argument that the Applicant should be permitted to attend premises the subject of restaurant licences is not compelling. The only purpose advanced for such attendance is to permit the Applicant to socialise with his friends.
- 42 Even if attendance at licensed restaurants can be considered low risk due to the Applicant's circumstances, such risk may be further minimised by the barring order remaining in effect. This is also unlikely to have an unreasonable or significantly detrimental effect on the Applicant nor prevent him for participating in other social activities.
- 43 The barring notice to the Applicant stands and is varied pursuant to section 115AD(7) of the Act to permit the Applicant to enter the licensed areas located at:
- a. Subiaco Football Club;
  - b. Associates Rugby Union Club at Swanbourne; and
  - c. HBF Park for Perth Glory Soccer matches,

on the condition that the Applicant is precluded from consuming alcohol at all of the above venues.



**EMMA POWER**  
**PRESIDING MEMBER**