

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant:



Respondent:

Commissioner of Police
(represented by the State Solicitor's Office)

Commission:

Dr K Hames (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:**

19 May 2021

Date of Determination:

10 August 2021

Determination:

The Application for review is dismissed.

Authorities considered in the determination:

- *Liquor Control Act 1988* (WA) Sections 115AA(2), 115AB, 115AD(3), 115AD(7)(1), 115AD(7)(a) and (7)(b)
- *The Criminal Code Act Compilation Act 1913* (WA) Sections 7(c), 444
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 19 October 2010, 7925

Review of Barring Notice

- 1 On 24 March 2021 in the vicinity of licensed premises, namely [REDACTED] (“the Premises”), it is alleged that [REDACTED] engaged in disorderly conduct and acted in contravention of a written law, namely criminal damage contrary to section 444 of the Criminal Code (“the Incident”).

- 2 As a result of such Incident, the Commissioner of Police served a Barring Notice on [REDACTED] (“the 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 for a period of approximately 9 months expiring on [REDACTED]:
 - 2.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 2.2. All small bar licences issued under section 41A;
 - 2.3. All nightclub licences issued under section 42;
 - 2.4. Casino licence issued under section 44;
 - 2.5. All liquor store licences issued under section 47;
 - 2.6. All club licences issued under section 48;
 - 2.7. All restaurant licences issued under section 50;
 - 2.8. All producer’s licences issued under section 55;
 - 2.9. All wholesaler’s licences issued under section 58;
 - 2.10. All occasional licences issued under section 59; and
 - 2.11. All special facility licences issued under section 46 and regulation 9A of the Liquor Control Regulations 1989.

- 3 The following allegations regarding the Incident were considered by the Police:
 - 3.1. During the evening of 24 March 2021, the applicant was in the company of three other men at the [REDACTED] (“the Premises”). The applicant is a [REDACTED] [REDACTED] and the other three men all have links to that organisation.

- 3.2. As part of this group, at approximately 9:00 PM, the applicant was involved in an incident on the street outside of the Premises that resulted in damage to a motor vehicle.
 - 3.3. Specifically, the incident involved the applicant and his associates leaving the Premises and chasing after a group of men on the street outside.
 - 3.4. The applicant and another member of his group then scratched the paintwork of a Toyota HiLux parked on the street close by to the Premises and slashed the left rear tyre of that vehicle.
 - 3.5. The applicant and his associates then left the area and Police attended.
 - 3.6. The owner of the HiLux was not prepared to provide a statement or pursue the matter.
- 4 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 4.1. 115AD Application for review of Barring Notice dated 19 May 2021.
 - 4.2. The evidential material relied upon by the Commissioner of Police being:
 - 4.2.1. a Police Detected Incidents Report;
 - 4.2.2. a venue incident report completed by Windsor Hotel staff;
 - 4.2.3. a witness statement of [REDACTED] attached to the [REDACTED] and annexed photographs;
 - 4.2.4. CCTV footage from inside the Premises;
 - 4.2.5. CCTV footage of [REDACTED] near the Premises; and
 - 4.2.6. the Criminal and Traffic History of the applicant.
 - 4.2.7. CCTV from the [REDACTED] x 2
 - 4.2.8. Venue Incident Report ("VIR");
 - 4.2.9. IMS Report;
 - 4.2.10. Witness Statements;
 - 4.2.11. Photographs;
 - 4.2.12. Criminal History; and

4.2.13. Identification Confirmed: ID Statement from [REDACTED],

4.3. The Commissioner of Police's Primary Outline of Submissions dated 5 July 2021.

5 Subsequently, Mr Ted Dobson, Counsel to the applicant, served submissions on behalf of Mr Filipovich to the Liquor Commission ("the Commission") seeking a review and calling for the Barring Notice to be quashed.

Applicant's Submissions

6 On 27 May 2021, the applicant appealed to the Commission for a review of the Barring Notice.

7 The applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.

8 Primary Submissions of the applicant were lodged 2 July 2021.

9 Responsive Submissions of the applicant were lodged 14 July 2021.

10 The submissions of the applicant are summarised as follows:

10.1. the evidence relied upon to by the respondent to identify the applicant as the person in the CCTV footage is unreliable and should not be accepted.

10.2. there is insufficient material to establish that the applicant behaved in a disorderly manner or contravened a written law. Those issues are addressed in the respondent's submissions filed on 5 July 2021. The issue of contravening a written law is further elaborated below in response to the applicant's contentions.

10.3. there is no evidence of that the group of men, including the person identified as the applicant, were served liquor inside the [REDACTED].

10.4. no evidence has been provided by the respondent that positively establishes the [REDACTED] was a licensed premises under the Act.

Police's Submissions

11 The Commissioner of Police provided Primary Outline of Submissions dated 5 July 2021.

12 The Commissioner of Police also provided Responsive Submissions dated 13 July 2021.

13 The Police's submissions are summarised as follows:

- 13.1. The applicant can be identified from the CCTV footage inside the [REDACTED]. The applicant has been identified by [REDACTED] of the [REDACTED] [REDACTED] in CCTV footage obtained from behind the bar inside the [REDACTED] (bar footage) which provides a clear and unobstructed view of the face of the man identified as the applicant.
- 13.2. [REDACTED] states that he recognises the applicant having dealt with him in the past. And he is sufficiently familiar with the applicant to reliably identify the applicant from the Bar Footage.
- 13.3. The Police believe that the man shown in the bar footage (being established as being the applicant) is the same as man in the footage from [REDACTED] in the vicinity of the [REDACTED] (street footage), due to the following:
- 13.3.1. the applicant, as he appears in the bar footage, has similar, if not identical general features (build, approximate height, and hairstyle) as one of the men in the street footage.
- 13.3.2. A comparison of the bar footage and the street footage shows a man visible on the street footage who is wearing the same clothing that the applicant can be seen wearing in the bar footage (being a black T-shirt with 'RAW' in a large white writing across the front, a small bag worn strapped over the right shoulder, and shorts with a distinctive stylised Adidas logo on the right trouser leg)
- 13.3.3. the man seen on the street footage is in the company of the same three men with whom the applicant was with at the bar, as shown on the bar footage.
- 13.4. Accordingly, given:
- 13.4.1. the similar clothing of the men in the bar footage and the street footage;
- 13.4.2. the close proximity in time of the similarly clothed men in each the bar footage and the street footage; and
- 13.4.3. the location of the street footage being of an area adjacent to the Windsor Hotel bar seen in the bar footage,
- there is no doubt that the man in the street footage is the applicant.

- 13.5. A review of the street footage shows that the applicant caused damage to the left side paintwork of the Toyota HiLux vehicle ("the HiLux") parked on [REDACTED] Street on the evening of 24 March 2021.
- 13.6. The applicant's entire arm and hand are visible in the footage. A small implement is clearly visible in his hand and in contact with the left side panels of the HiLux. The applicant can be seen to drag the implement along these panels, under the HiLux logo on the left front door and over the left front wheel arch.
- 13.7. At 21:12:02, one of the applicant's companions wearing a white shirt can be seen making a similar but shorter scratch on the HiLux's paintwork.
- 13.8. The scratched paintwork shown in the photograph shows two very obvious scratches on the HiLux's left front door that are entirely consistent with the acts visible on the street footage. No other similar scratches are visible in the photograph.
- 13.9. The only reasonable inference that can be drawn is that the applicant and [REDACTED] caused those scratches.
- 13.10. These acts were deliberate and constitute criminal damage contrary to section 444 of the Criminal Code. Accordingly, there are reasonable grounds for believing that the applicant, in the vicinity of licensed premises, contravened a provision of the written law.
- 13.11. The street footage shows that the applicant either damaged the left rear tyre of the HiLux or otherwise attempted to do so. In any event, the applicant contravened a provision of the written law.
- 13.12. The respondent does not dispute the applicant's submission that the rear left tyre of the HiLux is not visible in the street footage. However, the location of the tyre just outside field of view of the street footage can be reliably extrapolated based on the significant portions of the vehicle that are visible.
- 13.13. At 21:13:23, the applicant approaches the HiLux, also with something in his right hand. At 21:13:29 he bends forward and makes two quick stabbing gestures towards the rear left tyre before turning and leaving the scene by walking down the nearby alley.
- 13.14. The deflated condition of the rear left tyre of the HiLux is clearly visible in the photograph provided.

- 13.15. Given the extent of damage to the tyre and consequent deflation, it is implausible to suggest that the HiLux's tyre was in such a condition when the vehicle arrived at the location.
- 13.16. The applicant can then be seen on the street footage approaching the HiLux within 10 seconds of its arrival. Accordingly, there is no prospect that the damage occurred prior to the applicant and his companions directing their attention to the vehicle.
- 13.17. Further, the street footage does not give any indication that any other persons approached this area of the vehicle. Given the necessary location of the rear left tyre just outside of the frame, any person adjacent to that tyre would almost certainly be visible in the street footage.
- 13.18. Police attended the scene under priority conditions, making it very unlikely that the damage to the tyre occurred after the end of the available footage.
- 13.19. Both the applicant and his companion can be seen separately on the street footage appearing to stab at the left rear tyre with something in their hands. It is clear that the applicant and [REDACTED] are attempting to damage the HiLux's left rear tyre. The only reasonable inference is that damage, resulting in the deflation of the tyre, was caused by either or both of those persons.
- 13.20. The applicant therefore contravened a written law by damaging or attempting to damage the tyre and/or being a party to that offence by aiding [REDACTED] in the commission of the offence pursuant to section 7(c) of the Criminal Code through his presence in support and active participation in the incident.
- 13.21. Accordingly, there are reasonable grounds to believe that the applicant contravened a written law in relation to the damage to the HiLux's tyre.
- 13.22. The respondent does not dispute the applicant's submission that the applicant and his companions did not repeatedly try to gain entry to the Windsor Hotel nor engage in offensive behaviour after being asked to leave. However, noting that it is not clear that the group was actually asked to leave, these facts are again not relevant to the decision made under s 115AA of the Act.

Statutory Framework

- 14 The Commissioner of Police has the power to ban people from licensed premises, or a specified class of licensed premises, for a period not exceeding 12 months, pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises:
- 14.1. been violent or disorderly; or
 - 14.2. engaged in indecent behaviour; or
 - 14.3. contravened a provision of any written law.
- 15 The Commissioner of Police 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.
- 16 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.
- 17 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.
- 18 Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 19 The Act also in section 16 prescribes that the Commission:
- 19.1. may make its determinations on the balance of probabilities;¹ and
 - 19.2. 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;² and

¹ *Liquor Control Act 1988* (WA), s 115AD (7)(1)

² *Ibid*, subsection (7)(a).

- 19.3. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;³
- 20 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”⁴.
- 21 The Minister further stated that the legislation gave the Police the power to issue barring notices to persons engaging in antisocial behaviour at licensed premises.
- 22 Section 5 of the Act set 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 over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor.
- 23 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.

Determination

- 24 In respect to the applicant’s argument in relation to the identification of the applicant the Commission notes the applicant:
- 24.1. is positively identified by a Police Officer who was on duty and performing his function as a Police Officer, and has had a previous dealing with the applicant, with [REDACTED] signing a witness statement confirming the identification of the applicant in the bar footage;
- 24.2. does not allege that he is unidentifiable in the bar footage because it is, for example, of insufficient quality or obscured. Rather, the bar footage clearly shows the face of the applicant (as identified by [REDACTED]); and
- 24.3. does not deny that it is him in the bar footage;

³ Ibid, subsection (7)(b).

⁴ Western Australia, *Parliamentary Debates*, Legislative Assembly 19 October 2010, 7925 (MLA Terry Waldron).

- 25 The Commission is permitted to make findings of fact on the balance of probabilities and the Commission therefore finds that:
- 25.1. the man shown and identified as the applicant in the bar footage is the applicant; and
 - 25.2. the man shown and identified as the Applicant in the street footage is the applicant;
 - 25.3. the man who undertook some of the damage to the HiLux vehicle was the applicant; and
 - 25.4. such conduct can be considered to be a reasonable basis for disorderly conduct and in contravention of a written law, being criminal damage contrary to section 444 of the Criminal Code.
- 26 In respect to the respondent being required to prove that the relevant Premises is licenced, this argument is somewhat disingenuous.
- 27 The Police at all times asserted in their submissions and the Barring Order that the Premises is licensed. It is a matter of fact and public record that a 'Liq-Tavern' licence number [REDACTED] is held by the licensee [REDACTED] in respect of the [REDACTED].
- 28 The applicant does not argue or lead any evidence that the factual assertion made by the Police that the Premises are licensed is untrue or incorrect.
- 29 Given the Commission's specialist knowledge in this jurisdiction, it is prepared to accept in the balance of probabilities that the Premises is the subject of a liquor licence.
- 30 In respect to the matter of the applicant being served liquor inside the Premises, service or consumption of alcohol is not a pre-condition to the exercise of power under section 115AA of the Act. In any event the CCTV footage clearly shows the applicant being served alcohol.
- 31 For the reasons outlined above, and in the respondent's submissions filed on 5 July 2021, there is sufficient material before the Commission to establish that there are reasonable grounds for believing that the applicant, on or in the vicinity of licensed premises, engaged in violent or disorderly behaviour and/or contravened a written law.
- 32 The review application must also be decided on whether the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature. The public interest must be balanced against the impact on the barring notice on the applicant.

33 The Commission considers that the punitive effect of the barring order is relatively low when balanced with the protection of the public who should not have to deal with antisocial destructive behaviours when attending licensed premises.

34 In the circumstances, the barring notice for the period ending 24 December 2021 appears justified in order to:

34.1. assure the members of the public who frequent licensed premises or areas in which licensed premises are present, 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

34.2. allow the applicant the opportunity for introspection regarding his behaviour on, and in the vicinity of, licensed premises.

35 The application for review is dismissed.



Dr K Hames
PRESIDING MEMBER