

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

Applicant: MAM
(represented by Ms Rosie-Lee Cowden of Tudori Hager Grubb Lawyers)

Respondent: Commissioner of Police
(represented by Mr Toby Bishop of the State Solicitor's Office)

Commission: Alya Barnes (Presiding Member)

Matter: Application seeking review of Barring Notice issued pursuant to Section 115AD of the *Liquor Control Act 1988* dated 23 June 2022

Date of lodgement of Application: 23 June 2022

Date of Hearing: Determined on the Papers

Date of Determination: 16 August 2022

Determination:

The decision of the Delegate of the Commissioner of Police to issue a Barring Notice to MAM is varied with immediate effect as follows:

1. The Applicant is barred from the licensed premises known as Crown Perth (Casino Liquor licence number 6210027144) until 27 March 2023.
2. As to all other licensed premises in Western Australia of the particular specified class or classes set out below, the Applicant is barred from those premises until 24 September 2022:

- a) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restricted licences);
- b) All small bar licences issued under section 41A;
- c) All nightclub licences issued under section 42;
- d) All liquor store licences issued under section 47;
- e) All club licences issued under section 48;
- f) All restaurant licences issued under section 50;
- g) All producer's licences issued under section 55;
- h) All wholesaler's licences issued under section 58;
- i) All occasional licences issued under section 59; and
- j) All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations* 1989.

Authorities referred to in Determination:

- *Liquor Control Act 1988* (WA) Sections 5, 115AA(2), 115 AB, 115AD (3), 115 AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC19/2011)
- *Commissioner for Equal Opportunity v ADI Limited* [2007] WASCA 261 [44]-[46]
- *AC v Commissioner of Police* (LC01/2018)

Introduction

- 1 On 24 May 2022, following the Incident described in paragraph 5 below, MAM (the **Applicant**) was served with a Barring Notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (WA) (**the Act**) prohibiting him from entering all licensed premises in Western Australia from the date of service of the notice until 27 March 2023 (the **Barring Notice**).
- 2 On 23 June 2022, the Applicant applied to the Liquor Commission (**Commission**) for a review of the Barring Notice under section 115AD of the Act (the **Application**) to:
 - a) quash the Barring Notice on the basis it is not warranted as a protective mechanism for the public and should not be imposed as a punitive measure; or
 - b) narrow its scope to restrict the Applicant from entering the Crown Perth, Burswood only, and attached to his application certain submissions and three character references [REDACTED].
- 3 The Applicant has elected for the Application to be determined on the papers.
- 4 The Commission has been presented with the following evidence in support of the Barring Notice:
 - a) Copy of the Barring Notice dated 16 May 2022;
 - b) Statement of Material Facts;
 - c) Incident Brief Report [REDACTED];
 - d) Detected Incidents [REDACTED];
 - e) Statement of [REDACTED] dated 27 March 2022;
 - f) Photographs of [REDACTED]
 - g) Body worn camera screenshots of the Applicant;
 - h) Copy of Disclosable Court Outcomes – Criminal and Traffic for the Applicant;
 - i) Police photograph of the Applicant; and
 - j) Video file titled “[REDACTED]”,together, the **Material Evidence**.

The Incident

- 5 The facts of this matter, that are not in dispute, are as follows:
 - a) On Sunday 27 March 2022 at approximately 6:56 pm the Applicant attended Crown Perth, Burswood (the **casino**).
 - b) The Applicant was deemed too intoxicated by security officer, [REDACTED] and refused entry.
 - c) The Applicant refused to leave and there was an argument between the Applicant and [REDACTED] at the entry into the casino.
 - d) The Applicant struck [REDACTED] in the left temple with his fist.

- e) After striking [REDACTED], the Applicant ran past security officers and into the casino.
- f) Another security guard, [REDACTED] apprehended the Applicant and a struggle ensued.
- g) During the struggle between the Applicant and [REDACTED], the Applicant got on top of [REDACTED] and struck him whilst holding, in the same hand, his mobile phone, causing a large haematoma to the right side of [REDACTED] head behind his ear.
- h) Upon getting to his feet, [REDACTED] felt soreness to his head, and noticed his vision and concentration to be blurry.
- i) The Applicant struggled with security officers as they were attempting to remove him from the casino,

being the “**Incident**”.

- 6 As a result of the Incident, the Applicant, having pleaded guilty, was convicted of failure to leave a licensed premises (section 115(4B) *Liquor Control Act 1988*); common assault (section 313(1)(b) of the *Criminal Code*); and assault occasioning bodily harm (section 317(1) of the *Criminal Code*) and was fined \$3,500.

Applicant’s Submissions in Support of Application for Review dated 23 June 2022

- 7 In support of the Application, the Applicant:

- a) Says that [REDACTED] made a derogatory and provocative comment regarding his wife along the lines of “you can go in sexy, but you can’t”.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- e) The Barring Notice in its current form will stop the Applicant from attending any of the abovementioned places and events and, since his attendance is a work requirement, there is a high likelihood his employment will be terminated [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

- f) As evidenced by the three character references, the Applicant submits further that:
 - i. his involvement in the Incident was out of character;
 - ii. he is hard working, honest and dedicated to his work; and
 - iii. he is responsible.

- g) In relation to public interest considerations, the Applicant submits:
- i. the Incident is a blemish on his otherwise clean criminal record [REDACTED] and that, given the risk to his employment and ability to provide for his family, he is unlikely to offend in a similar way;
 - ii. the Barring Notice, in its reach (any licensed premises within Western Australia), is extreme and unreasonable;
 - iii. it significantly curtails his normal rights to enter any licensed premises;
 - iv. if his employment is consequently terminated, he and his family will experience severe suffering; and
 - v. regard must be given to the character references that he submits show he is responsible, dedicated, and honest.
- h) The Applicant submits the Barring Notice is punitive in that it is too broad in its scope and, to enable the Applicant to continue to work, should be restricted to either:
- i. just the Perth Crown Casino; or
 - ii. every licensed premises except a licensed restaurant (section 50 of the Act); a club [REDACTED] (section 48 of the Act); or the special facility licensed premises (a) reception or function centre (Crown Ballrooms); and (b) sports arena (Optus Stadium).

Respondent's Primary Submissions dated 18 July 2022

- 8 The Respondent submits that, in accordance with section 115AA(2)(a) of the *Liquor Control Act 1988*, there are reasonable grounds for the barring notice because the Applicant contravened a provision of a written law on or in the vicinity of licensed premises being the charges of breach of section 115(4B) of the *Liquor Control Act 1988*, section 313 (1)(b) of the *Criminal Code* and section 317(1) of the *Criminal Code* whilst at the Crown Casino, a licensed premises and furthermore, the acts of striking [REDACTED] comprise acts of violence that satisfy the requirement of section 115AA(2)(a) of the Act - another reasonable ground for issuing the Barring Notice.
- 9 The Respondent submits the Commission should exercise its discretion to affirm the Barring Notice to protect the public from antisocial behaviour in and around licensed premises because of the following matters that indicate there is a risk the Applicant will re-offend:
- a) The violent nature of the Applicant's actions that demonstrate a clear need for the Barring notice to protect the public.
 - b) Provocation, if it occurred, is irrelevant in the circumstances the security officers were required by law to refuse the Applicant entry as he was intoxicated.
 - c) Unlike the Applicant's intoxicated friend who left the Casino when asked, the Applicant refused to do so and therefore acted unreasonably.
 - d) Provocation cannot justify or explain the Applicant's conduct given that after striking [REDACTED] who purportedly called his wife "sexy", he then ran into the casino, struggled with and struck [REDACTED] and other officers whilst being escorted out of the building.

- e) The facts in paragraph (d) above and the Applicant's [REDACTED] [REDACTED] show the Applicant is unable to make good decisions whilst intoxicated.
 - f) The Applicant's criminal records shows an emerging pattern of violent behaviour and disregard for authority.
 - g) The [REDACTED] between the Applicant's last conviction should be given little weight in assessing the Applicant's level of ongoing risk in the circumstances [REDACTED]
[REDACTED]
[REDACTED].
 - h) The Applicant's record, viewed holistically, shows periodic but ongoing offending involving violence, intoxication and a disregard for authority, but not always together.
 - i) The Applicant's habitual and repetitious behaviour of violence, intoxication and disregard for authority poses an ongoing risk to the community if he is permitted to attend licensed premises and particularly if he is intoxicated.
 - j) The 3 character references are not from witnesses to the Applicant's longitudinal pattern of behaviour and therefore do not rebut the ongoing risk the Applicant poses to the community and the need for a Barring Notice.
- 10 Despite the above, the Respondent agrees the Barring Notice could be punitive if the Applicant consequently lost his employment and there is reason, given that possibility, to warrant a variation to the Baring Notice as follows:
- a) the Applicant can only attend a licensed premises exempted from the Barring Notices for the purposes of carrying out a function or duty in his role [REDACTED]
[REDACTED]
 - b) when attending any licensed premise exempted from the Barring Notice, the Applicant must be able to produce a written record evidencing a direction from his employer directing him to attend that licensed premises for work purposes;
 - c) the Applicant is prohibited from consuming alcohol on any licensed premises; and
 - d) the Applicant is only permitted to attend licensed premises in accordance with the above conditions that are of a class of restaurant licence, club licence or special facility licence.

Applicant's Responsive Submissions in Support of Application for Review dated 25 July 2022

- 11 By way of Responsive Submissions, the Applicant seeks that any variation also include a reduction in the applicable period of time to end 24 November 2022 since its application of 10 months is excessive given 12 months is the maximum. This reduced period will be sufficient to assure 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 allow the Applicant time for introspection regarding his behaviour.

Statutory Framework

- 12 Section 115AA of the Act empowers the Police to give a notice to a person prohibiting that person (for a maximum period of 12 months) from entering specified licensed premises if the Police believe, on reasonable grounds, that the person has on licensed premises, been violent or disorderly, engaged in indecent behaviour, or contravened a provision of any written law (section 115AA(2)(a)-(c) of the Act inclusive).
- 13 Section 115AD(7) of the Act provides that on a review, the Commission may affirm, vary or quash the decision the subject of the review.
- 14 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; the need to protect the general public, the licensee and the Applicant; and whether the length and terms of the barring notice are sufficient to uphold the objects of the Act and are not punitive in nature.
- 15 When conducting a review pursuant to a section 115AD(3) application, regard may be given to the material that was before the Police and any information provided by the Applicant (section 115AD(6) of the Act) effectively by way of a rehearing, and, in doing so, is to have regard to the objects and purpose of the Act (*Commissioner for Equal Opportunity v ADI Limited* [2007] WASCA 261 [44]-[46] (Martin CJ, Wheeler and Pullin JJA agreeing).
- 16 Two of the primary objects of the Act in section 5(1) are to regulate the sale, supply and consumption of liquor (section 5(1)(a)) and to minimise harm and ill-health caused to people, or any group of people, due to the use of liquor (section 5(1)(b)).
- 17 A secondary object of the Act required to be considered (section 5(2)), is the requirement to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor (section 5(1)(d)) with priority to be given to the primary objects over the secondary objects in the case of inconsistency (section 5(3)).
- 18 Conducive to 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 with respect to the general public.¹
- 19 Accordingly, when determining a review application, as well as considering the appropriateness of issuing a barring notice, the Commission should consider its punitive effect, and whether the length and terms of the barring notice uphold the objects of the Act (which are not to punish individuals for their behaviour): *AC v Commissioner of Police* (LC01/2018).
- 20 By virtue of section 16(1)(b)(ii) of the Act, the Commission may make its determination on the balance of probabilities and is to “act without undue formality” (section 16(1)(a)).

¹ See *SVS v Commissioner of Police* (LC19/2011), Commissioner J Freemantle quoting the Minister for Racing and Gaming in explaining the purpose of the relevant provisions of the Act “*the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person.*” (Western Australia, Parliamentary Debates, Legislative Assembly, 19 October 2010, 7925).

- 21 When considering an application for a review of a barring notice, the Commission is to conduct a review of the decision of the Police on its merits.

Determination

- 22 Having regard to the nature and circumstances of the Incident as particularised in paragraph 5, the Commission finds that there were reasonable grounds to issue the Barring Notice on the basis the Applicant contravened written law (section 115AA(c) of the Act) as evidenced by the three convictions against the Applicant arising out of the Incident and that the Incident, for the purposes of section 115AA(2) of the Act, occurred on or in the vicinity of licensed premises being Crown Perth. The Commission also finds that the Applicant was violent and disorderly for the purpose of section 115AA(2)(a) in that he assaulted two security officers whilst they carried out their duty to expel him from licensed premises. The question then turns to whether to exercise the discretion to affirm, vary or quash the barring notice taking into account the objects and purpose of the Act.
- 23 The Commission has reviewed the Material Evidence, the Submissions of both parties and the character references and, whilst cognizant of the undisputed facts of this matter set out in paragraph 5 above, consider the following additional matters relevant:
- a) [REDACTED] attests to the Applicant, his friend and wife all being intoxicated, *"the male was with another male and one female, all three were intoxicated"*. Despite this, the Applicant's wife, as may be inferred from the comment "you can come in sexy", was allowed entry, thus the Respondent's argument the security officer was obliged to refuse entry and therefore any provocation was irrelevant is not persuasive. Clearly some discretion was exercised on the part of the guard. Furthermore, the video evidence shows the Applicant pointing to three security guards stating that one is laughing at him. One of the two photos of [REDACTED] injuries show a small bump on the right-hand side of his head behind his ear, and he is smiling in both images. It is quite likely something occurred between the Applicant and the guards and whilst the truth will never be known, on the balance I find that it more likely than not that the Applicant was provoked with respect to the first assault whether by the "sexy" comment in reference to his wife, or the Applicant's perceived unfairness of the decision to allow only his wife into the casino given she too was intoxicated.
 - b) According to the Respondent, the Applicant who, after striking the security guard, ran into the casino and then hit another guard, is understood by this conduct to no longer be operating under the influence of the provocation and therefore a continuing risk to the public. The Applicant does not explain why he ran into the casino, and it would seem reasonable to surmise, given the Applicant's Disclosable Outcomes that evidence several drink driving offences, violent behaviour convictions and general disregard for the law, that his motivation was simply to get away from the guards so as not to get into further trouble. Accordingly, the Commission finds that at that point, the Applicant was no longer operating under the influence of provocation, and given his poor decision to get on top of the guard and hit his head whilst holding a mobile phone in his hand, rather than cooperate, and leave the premises without struggle, it is more likely than not that if further action and control is not taken, he will continue to pose a threat the public, the licensee and himself.

[REDACTED]

- d) The Applicant does not admit any wrongdoing either on camera or by way of his submissions, nor does he show any concern for the welfare of the guards he assaulted - this is a concern when one considers the likely risk of the Applicant re-offending.
- e) The character references do not acknowledge the Applicant's criminal record, only the barring notice which, according to his referees, was caused by events that were "out of character".
- f) The Applicant's criminal record for [REDACTED], being the same period he has been with his employer, has been clean.

[REDACTED]

[REDACTED]

[REDACTED]

27 Conversely, the Applicant is now, if he wasn't before, fully aware that his employer greatly relies upon him attending restaurants and functions at licensed premises and that he will lose his job if he cannot do that – this knowledge can be expected to have an ameliorating effect on the likelihood of re-offending in a similar way.

28 As for character and whether the Applicant could, without further restriction, pose a threat to the general public, licensees and himself, the character references of [REDACTED]

can be interpreted to the effect, the [REDACTED]
the past and that this recent lapse in judgement certainly will not re-occur because, as stated above, he is on notice he will lose everything if he re-offends.

29 The Respondent submits that little weight should be given to the fact the Applicant has not offended in the past 4 years because, according to the Respondent, there is a pattern (6 years, 5 years and now 4 years) between the offences that includes violence, intoxication and disregard for authority but not always together and this pattern should be taken into account when considering the risk of re-offending and the need to protect the public from antisocial behaviour.

30 The Commission has taken the Applicant's history into account but notes also that the character references indicate the Applicant can control his behaviour whilst under the influence and this has been tested on a weekly basis over the last four years without event.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

31 Whilst the Applicant's Disclosable Court Outcomes show a history of alcohol related offences that pre-date his employment, and his employment references show he can carry out his work functions that involve alcohol without event, the fact remains that with regards to the Incident, he was intoxicated, and he was violent towards two people at the very least. Furthermore, his criminal history shows little regard for authority where for example, [REDACTED]
[REDACTED], thus it would be unsafe from a minimisation of public harm point of view, to immediately allow him access to licensed premises regardless of the conditions imposed (not to consume alcohol and for work only) because there is a real risk he will not, in any event, adhere to such rules that curtail his "normal rights"².

32 The Commission finds that the Applicant would benefit from time to self-reflect and imagine how his actions could have, and indeed may have, affected the physical, financial, and mental wellbeing of others. [REDACTED]

[REDACTED] The Applicant asks the Commission to consider the effects of a legally valid notice on his life without due regard for the impact of his actions on the lives of others. With further reflection it is hoped the Applicant will realise the need to control himself knowing that if he does not do so, it is entirely possible he will lose his job and everything that is dear to him – this is in his control and is his responsibility, not the Commission's.

33 As to the duration of the barring notice, the Applicant says 12 months is extreme and unreasonable because it will mean he will lose his job. This consequence, articulated in both parties' submissions, really pertains to circumstances other than the "nature and circumstances of the Incident". Given the Applicant refused to leave the premises, even though he was intoxicated, argued with staff, assaulted two people, and struggled against his eviction, it was entirely reasonable and appropriate then for the Police to impose the maximum period of restriction.

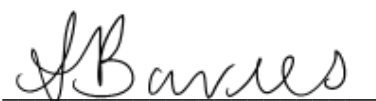
² Paragraph 29.2 of the Applicant's submissions in Support of Application for Review dated 23 June 2022.

34 However, the Commission does not consider a 12-month restriction with respect to all licensed premises is necessary in the circumstances set out below:

- a) The Applicant was provoked with respect to the first assault and what followed was a litany of poor decisions and behaviour which is now known to the Applicant to be unacceptable.
- b) The Applicant has been put on notice his employer does not tolerate such behaviour and he will likely lose his job if he re-offends.
- c) A short period of continuation will afford the Applicant time for introspection to consider the impact of his actions on others.
- d) The Applicant may still feel aggrieved by the Incident and hold a grudge against the casino staff such that they and the general public at the casino need the protection afforded by the notice until 27 March 2023.

35 Accordingly, the Commission determines the barring notice is to be varied with immediate effect as follows:

1. The Applicant is barred from the licensed premises known as Crown Perth (Casino Liquor licence number 6210027144) until 27 March 2023.
2. As to all other licensed premises in Western Australia of the particular specified class or classes set out below, the Applicant is barred from those premises until 24 September 2022:
 - a) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restricted licences);
 - b) All small bar licences issued under section 41A;
 - c) All nightclub licences issued under section 42;
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 - f) All restaurant licences issued under section 50;
 - g) All producer's licences issued under section 55;
 - h) All wholesaler's licences issued under section 58;
 - i) All occasional licences issued under section 59; and
 - j) All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations* 1989.



ALYA BARNES
PRESIDING MEMBER