

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

<b>Applicant:</b>	CEB ( <i>Represented by Ms Zara Burgess of Burgess Criminal Lawyers</i> )
<b>Respondent:</b>	Commissioner of Police ( <i>represented by Mr Clinton Arnold of the State Solicitor's Office</i> )
<b>Commission:</b>	Dr Kim Hames (Presiding Member)
<b>Matter:</b>	Application seeking review of Barring Notice issued pursuant to Section 115AD of the <i>Liquor Control Act 1988</i> dated 10 June 2022
<b>Date of lodgement of Application:</b>	22 July 2022
<b>Date of Hearing:</b>	Determined on the Papers
<b>Date of Determination:</b>	30 August 2022
<b>Determination:</b>	The Barring Notice is varied to expire on 30 August 2022.

**Authorities referred to in Determination:**

- *Liquor Control Act 1988* (WA) Sections 115AA(2), 115 AD(7), 115AD(7)(a) and (7)(b).
- *That's Entertainment (WA) Pty Ltd v Commissioner of Police* [(2013) WASC 75]

## BACKGROUND

1. On 10 June 2022, the Applicant was posted a notice under section 115AA of the *Liquor Control Act 1988* (WA) (Act) (Barring Notice). The Barring Notice prohibits the Applicant from entering specified classes of licensed premises in Western Australia for a period expiring on 15 November 2022 (i.e., the Barring Notice applied for approximately five months from the date of issue).
2. By application dated 22 July 2022, the Applicant applied to the Liquor Commission (the Commission) for a review of the Barring Notice under section 115AD of the Act (the Application).
3. The Applicant has elected for the Application to be determined on the papers.

### *The incident giving rise to the Barring Notice*

4. The incident occurred on 15 May 2022 outside the [REDACTED].
5. At about 3:20am that morning, police officers were dealing with an initially unrelated incident whereby police officers arrested two allegedly violent offenders (Preceding Incident).
6. When the Preceding Incident had been resolved, an arrested person (the Arrested Person) was placed sitting on the sidewalk with his hands handcuffed behind him surrounded by uniformed police officers.
7. The Applicant then leaves the [REDACTED] and walks onto [REDACTED] going around the Preceding Incident.
8. It is alleged by police that [REDACTED] “pushed past [REDACTED] and stood in the middle of the Incident”.
9. The police officer asked the Applicant to move away several times. When the Applicant did not move, the police officer attempted to usher him away from the scene. The Applicant did not comply and was arrested for obstructing a public officer.
10. The Applicant was then asked several times to provide his personal details but refused. The Applicant was arrested for this refusal. The totality of this conduct comprises the Relevant Incident.
11. Both the Preceding Incident and the Relevant Incident was captured on CCTV footage capturing the front of [REDACTED] (CCTV Footage). There is no audio recorded in the CCTV Footage. The timestamp in the top-right corner of the CCTV Footage commences at 15 May 2022, 03:03:43. That footage relevantly shows:
  - (a) 3:11:07: Police officers arrive at [REDACTED] and speak to persons outside the venue;
  - (b) 03:15:25: Persons involved in the Preceding Incident approach the police officers and begin speaking with them;
  - (c) 03:16:20: The conversation escalates into a violent physical confrontation with the persons involved in the Preceding Incident ultimately being restrained;

- (d) 03:20:10: The Applicant leaves [REDACTED] and walks past the scene;
  - (e) 03:20:21: The Applicant walks out of the CCTV Footage frame;
  - (f) 03:20:24: The Applicant is redirected back into the CCTV Footage frame by a police officer and is ushered away and continues animated discussions with the police officer;
  - (g) 03:21:03: The police officer gestures away from the scene but the Applicant does not leave;
  - (h) 03:21:26: The police officer begins moving the Applicant away from the scene, but the Applicant resists;
  - (i) 03:21:32: Other police officers intervene as the Applicant is moved up against the nearby wall;
  - (j) 03:21:43: The Applicant is taken to the ground where he is eventually handcuffed;
  - (k) 03:22:51: The Applicant is lifted to his feet by two police officers and walked back to the wall where he engages in an extended conversation with the police officers; and
  - (l) 03:32:10: The Applicant is walked away from the wall out of frame of the CCTV Footage.
12. The Relevant Incident was also captured on the arresting police officer's (Recording Officer) body-worn camera (BWC Footage). The BWC Footage runs for 15 minutes and 37 seconds. Although there is a timestamp in the top-right corner of the BWC Footage, that time is not correct. Accordingly, references made to specific points of the BWC Footage are references to the point in the recording (i.e., between 00:00 and 15:37), not to the incorrect timestamp.
13. There is audio in the BWC Footage which clearly records the conversation between the Recording Officer and the Applicant. However, the first 30 seconds of the BWC Footage are silent. This is because the Recording Officer actually commenced recording at 00:30 and, as is standard for the technology, the body worn camera back-captured the preceding 30 seconds of video, but not audio.
14. The BWC Footage does not capture the beginning of the Applicant's interaction with the Recording Officer (some of which is visible on the CCTV Footage).

## **BARRING NOTICES**

15. Section 115AA of the Act provides that the Respondent may give to a person a notice in an approved form prohibiting entry to specified licensed premises, or a specified class of licensed premises, for a period not exceeding 12 months.
16. The Respondent may exercise its discretion to issue a barring notice under section 115AA of the Act if the Respondent believes on reasonable grounds that the person has, on licensed premises or in the vicinity of licensed premises, been violent or disorderly, engaged in indecent behaviour or contravened a provision of a written law.
17. A single incident can be sufficient to establish the belief based on reasonable grounds required by section 115AA(2) of the Act.

18. A Barring Notice has effect from the date it is given until the earliest of:
- (a) the date specified in the notice;
  - (b) the date of service of a revocation notice by the Respondent; or
  - (c) the date of service of a decision by the Commission to quash the barring notice pursuant to section 115AD of the Act.
19. The Respondent may delegate his functions under section 115AA of the Act, in writing, to a member of the WA Police Force of or above the rank of Inspector.

#### **REVIEW UNDER SECTION 115AD OF THE ACT**

20. If a person is dissatisfied with a decision of the Respondent to issue a barring notice for a period exceeding one month, that person may apply to the Commission for a review of the decision.
21. An application for review must be made within one month after an applicant is served with the notice or such longer period as the Commission allows. In this case, the Application was made within one month of the Applicant being served with the Barring Notice.
22. On review pursuant to section 115AD, the Commission may affirm, vary or quash the decision of the Respondent to issue the barring notice. A barring notice remains in force during the review process.

#### *Procedure on review*

23. Section 16 of the Act outlines the procedure of the Commission in any proceedings under the Act, including an application for review under section 115AD.
24. The Commission may make its determination on the balance of probabilities.
25. The Commission, in exercising its power under the Act, is:
- (a) 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;
  - (b) to act according to equity, good conscience and the substantial merits of the case without regard to technicality as is practicable; and
  - (c) to act speedily and with as little formality and technicality as is practicable.

#### *Materials before the Commission*

26. When conducting a review, the Commission may have regard to the material that was before the Respondent when making the decision to issue a barring notice and any information or document provided by the Applicant.
27. The Applicant has filed an application form dated 22 July 2022.

28. The Respondent has filed and served the following material relied upon by the Respondent to make the decision to issue the Barring Notice:
- (a) a document entitled "Evidence presented before the Commissioner's delegate" dated 10 June 2022;
  - (b) The CCTV Footage; and
  - (c) The BWC Footage.
29. The Applicant has also filed and served:
- (a) The CCTV Footage (Annexure A);
  - (b) Character reference from [REDACTED] (Annexure B);
  - (c) Character reference from [REDACTED] (Annexure C);
  - (d) Character reference from [REDACTED] (Annexure D); and
  - (e) Character reference from [REDACTED] (Annexure E).

## **APPLICANT'S SUBMISSIONS**

### *The Incident*

30. The circumstances of the incident, as alleged by Police, are summarised in the Statement of Material Facts. If there is additional evidence that Police rely upon, it has not been disclosed to the Applicant as at the date of filing these submissions.
31. On 10 June 2022, the Applicant's defence counsel received a copy of the CCTV footage recorded on 15 May 2022 outside [REDACTED].
32. In that footage, it is clear that the Applicant can be seen leaving the club at 3:20:10, and walking on to [REDACTED].
33. The next time the Applicant is visible in the CCTV footage is at approximately 3:20:43, following which he can be seen being pushed by a Police Officer, with the Applicant being in a defensive position and walking backwards.
34. By 3:21:47, the Applicant is surrounded by four additional Police Officers, thrown to the ground and restrained in what can be described as an excessive response.
35. The Applicant provided his details to Police immediately following his arrest, at the incident location. In the 15 minutes of footage disclosed by Police on 8 August 2022, it is apparent that the Applicant provided his name and address to Police who still decided to charge him notwithstanding he had complied with Police requests.

### *Grounds for Application*

36. The Applicant relies on the following in support of his Application:
- (a) He has no prior criminal history nor history of antisocial or violent behaviour;
  - (b) He is a person of good standing in the community, as evidenced by the three character references annexed to these submissions (Annexures B-D);

- (c) He [REDACTED]. The barring notice significantly impacts his business, as it:
- i. prevents him from taking his team or clients to lunches or drinks, as many venues (including cafes and restaurants) are licensed;
  - ii. restricts him from meetings and professional events (such as conferences) at licensed venues, where business is often done;
  - iii. damages the reputation of his business, as he has to disclose why he cannot attend venues in relation to meetings and events; and
  - iv. negatively impacts his ability to maintain his business, due to the overall effect of the above;
- (d) The case against him is weak, particularly given the fact that the CCTV from [REDACTED] depicts the Police Officer as the aggressor;
- (e) The licensed premises that the incident occurred in the vicinity of [REDACTED] has confirmed that the Applicant has never, formally or informally, received a ban or bar for antisocial behaviour, misconduct or otherwise, including on the date in question ([REDACTED] Annexure E);
- (f) There is no evidence that the Applicant was intoxicated, nor that liquor consumption played any role in the incident; and
- (g) The criminal matter will not be determined until after the barring notice period lapses; even if a finding of guilt was to be made, the behaviour alleged is not objectively serious and is unlikely to be repeated again.

*Materials provided by the Commissioner of Police*

37. The body worn camera footage of the arresting officer has been reviewed by the Applicant with the following observations (times are approximate):
- (a) 0:05 – confirms the Applicant in a defensive position as the arresting officer pushes him backwards;
  - (b) 0:45 – Applicant is restrained by multiple officers including one applying pressure to his neck. The Applicant can be heard to plead with officers ‘*can you stop it please, I never touched anybody, I tried to walk through*’;
  - (c) 2:10 – Applicant requests that Police show their camera footage of the alleged offence of obstruction;
  - (d) 7:21 – Applicant can be heard to apologise to the arresting officer and attempt to query the basis for the arrest in a polite manner (contrary to the Respondent’s submissions that the Applicant was antagonistic – when he arguably had a right to question the integrity of the Police response in the circumstances);
  - (e) 8:45 – Applicant states to the arresting officer ‘*I never touched you*’ to which the officer confirms ‘*not physically*’, and further goes on to say ‘*I don’t think you realised*’;
  - (f) 9:40 – Applicant states he can provide his details but continues to query what the allegation is based on;

- (g) 12:20 – arresting officer confirms in conversation with other officers present that the Applicant *'barged past him'* (there is no mention of a push or any deliberate physical action on the part of the Applicant);
- (h) 13:50 – another officer confirms the Applicant has provided his details (which are then confirmed to be correct), a mere 5 minutes after being asked to provide them; and
- (i) 14:52 – the arresting officer can be heard to say that despite the Applicant's cooperation it is *'too late for him'*.

*Whether the Applicant contravened a written law*

- 38. The body worn camera footage does not show the alleged obstruction incident itself, and despite there being at least 10 other officers in the vicinity (all of whom were equipped with body worn cameras) Police have failed to provide any other body worn camera footage that might corroborate their version of events.
- 39. In relation to the Respondent's submissions at paragraph 46, the Applicant is only seen to re-enter the field of view of the CCTV camera because the arresting officer is pushing him back towards Connections, when it is clear from the movements of other people in the area (who were moving in the same direction as the Applicant) that it would have been equally convenient for the officer to simply have allowed the Applicant to continue on his way out of the area.
- 40. The Applicant maintains there is insufficient evidence to make out the obstruction offence.
- 41. The Respondent has failed to address how the arresting officer reasonably suspected that the Applicant had committed the offence of obstructing a public officer, in all the circumstances; nor is it clear that the Applicant did not comply with the request in a reasonable time frame (given the passage of a mere 5 minutes between the request and the provision of the details, combined with the arresting officer's obviously obstinate approach to this cooperation by stating it was 'too late').

*Response to other submissions*

- 42. In relation to the Respondent's submission (at paragraph 69) that the Applicant demonstrated a persistent refusal to follow lawful directions, there is no evidence that he 'intruded' upon an arrest scene – and he in fact provided his details to Police once a different officer became involved and the arresting officer was no longer escalating the situation.
- 43. In relation to the Respondent's implicit submission that the Applicant was intoxicated (at paragraph. 74), there has been no evidence provided by the Respondent as to the Applicant's blood alcohol content or otherwise any evidence that he was intoxicated. Indeed, the Applicant is coherent at all times in the footage provided.
- 44. In relation to the Respondent's submission that there is no evidence before the Commission that the Applicant has any insight into the fact his behaviour was not acceptable (at paragraph 75), it ought be noted that the Applicant's position remains that the arresting officer acted in a manner that was unreasonable and without lawful justification.



45. That submission lacks merit in a case such as this where there is no objective proof of the alleged offence and where the basis of the officer's conduct is in question – particularly in circumstances where the officer may have had his judgment skewed by the dynamic situation of the 'preceding incident' and overreacted to the Applicant simply moving through a public area (which was not cordoned off or declared a protected forensic area, and was on a busy [REDACTED] street).
46. There is nothing in the Respondent's submissions that draws any direct correlation between the objectives of the Act and the Applicant's alleged behaviour. On the contrary, the submissions appear to be centred on an inappropriately punitive approach that focuses on the Applicant needing to 'learn' from his alleged behaviour as opposed to safe-guarding the very people and places the Act seeks to protect.
47. If the primary consideration of the Commission in affirming a Barring Notice is the objects and purposes of the Act (and to reflect community expectations), then this is not a case in which those considerations are met.
48. There is no basis to uphold the Barring Notice and accordingly it should be quashed.

#### **RESPONDENT'S SUBMISSIONS**

49. In support of the Application, the Applicant points to a lack of criminal history and prior good character, several character references and asserts that the Applicant's behaviour is 'unlikely to be repeated again.'
50. The Respondent accepts that the Applicant has no previous criminal history and that the character references provided speak positively of the Applicant's character.
51. However, the submission that the Applicant is unlikely to repeat his behaviour must be seen in a context in which the Applicant has never indicated any acknowledgement, regret or insight in respect of his behaviour. The fact that, even now, the Applicant insists he has done nothing wrong indicates that the Applicant has not learned anything from the Relevant Incident.
52. An illustrative example of this attitude can be seen at paragraph 13 of the Applicant's Submissions where the Applicant states he provided his details to Police immediately following his arrest, at the incident location. In the 15 minutes of footage disclosed by Police on 8 August 2022, it is apparent that the Applicant provided his name and address to Police who still decided to charge him notwithstanding he had complied with Police requests.
53. The Applicant submits that the Barring Notice restricts his ability to attend professional events at licensed venues. However, the Respondent notes that while section 115AA(7A) of the Act expressly provides a mechanism by which a person subject to a barring may attend a licensed premises solely for the purposes of performing work duties, subsection (7B) expressly does not allow attendance at 'a function associated with the person's work' at a licensed premises. Accordingly, it is apparent that Parliament considered this matter and did not, as a general rule, intend that persons subject to a barring notice should be allowed to attend work-related functions. That persons, such as the Applicant, might be barred from attending functions related to their work was clearly contemplated by Parliament and is consistent with the intended operation of the Act.

54. The Applicant submits that the reputation of his business is damaged as he has to disclose the reason why he cannot attend licensed venues for meetings and events. However, it should be noted that there is no obligation for the Applicant to disclose why he is not attending licensed venues. Further, and more importantly, if the disclosure of the Barring Notice affects the Applicant's professional reputation, then it only does so because it indicates that the Applicant's own behaviour merited the issue of a barring notice. If the Commission is otherwise satisfied that the materials before the Respondent gives rise to reasonable grounds to believe the Applicant contravened a provision of a written law in the vicinity of a licensed venue, then the Applicant's submission that the Commission should nonetheless shield the Applicant from the reputational consequences of his own behaviour should be rejected. Further, the submission indicates that the Applicant even now does not accept responsibility for the Relevant Incident.
55. Taken in their entirety, the Applicant's submissions overstate the impact that the Barring Notice will have on the running of the Applicant's health consulting firm. The Respondent accepts that the Barring Notice may have an impact on the Applicant's ability to engage in a particular subset of professional events held at licensed venues. Despite that, given the object of a barring notice is protective, the Commission should give minimal, if any, weight to this impact.

#### *The criminal proceedings*

56. The Applicant's submission at [14(g)] seems to imply that the criminal proceedings have some bearing on the resolution of the Application.
57. However, a barring notice serves a different purpose to criminal charges. In *That's Entertainment (WA) Pty Ltd v Commissioner of Police* [(2013) WASC 75], the appellant submitted that conduct which constitutes an offence (in that case under section 115(1)(a) of the Act) must be proved to the criminal standard before such conduct may be relied upon for the purposes of disciplinary proceedings (in that case under section 95 of the Act). In that case, the appellant had been acquitted of the criminal offence. Justice Pritchard held that there was no reason why the same conduct could not be relied upon for the two sets of proceedings, irrespective of whether there had been a conviction or an acquittal, noting the different standards of proof in the two types of proceedings.
58. In particular, her Honour held that the appellant also submitted that section 95(4)(e)(i) should not be used to "outflank" section 95(4)(f)(i) when a licensee has been acquitted of an offence in respect of conduct which is then relied upon as the basis for disciplinary action. That submission ignores the fact that disciplinary proceedings have an entirely different purpose as compared with criminal proceedings. The purpose of the disciplinary action contemplated in section 95 of the Act is to protect the public by maintaining the standards of behaviour for licensees which are set out in, and contemplated by, the Act. The object of those proceedings is not to punish licensees.
59. Like disciplinary action under section 95 of the Act, barring notices have entirely different purposes to criminal proceedings. The Barring Notice was issued to protect the public and the Applicant himself. Accordingly, the fact that the criminal proceedings will not be resolved until after the Barring Notice expires has no bearing on the resolution of the Application.

### *Evidence of Intoxication*

60. The Applicant has submitted that *'[t]here is no evidence that the Applicant was intoxicated on the night of the incident'*. Nothing in the Act requires the Commission to form a view that the Applicant was 'intoxicated' although intoxication may be relevant in the assessment of the particular risks being addressed by the Barring Notice. Regardless, the material before the Commission strongly supports an inference that the Applicant was intoxicated.
61. There is no suggestion in the material filed by the Applicant or in the Applicant's Submissions that the Applicant was a non-drinker. Indeed, several of the character references provided comment on their experiences with the Applicant on occasions that he has consumed alcohol.
62. The material before the Commission also supports an inference that the Applicant had been drinking in the hours leading up to the Relevant Incident. The character reference of [REDACTED] states that he had been with the Applicant *'on the evening he was charged.'* In fact, the Relevant Incident occurred the following morning at approximately 3:20am. The inference arising from the evidence is that the Applicant had been at [REDACTED] for several hours.
63. It should also be inferred that this meant the Applicant had been drinking at least some alcohol during that time.
64. The Applicant's own behaviour, seen in the BWC Footage, supports an inference that the Applicant had become intoxicated. Throughout the BWC Footage the Applicant's speech is slurred; the Applicant misspeaks (e.g. *"No, I don't want my ID"* instead of *"No I don't want to provide my ID"*); and the Applicant keeps asking for the Recording Officer to explain the reason for his arrest (notwithstanding that the Recording Officer has explained the matter multiple times). Each of these matters support an inference that the Applicant was intoxicated.
65. Finally, it should be noted that despite asserting that there is no evidence that the Applicant was intoxicated at the time of the Relevant Incident, the Applicant has not actually provided any statements or submissions asserting that he was not.
66. In the circumstances, the Commission should draw the inference that the Applicant had been drinking prior to the Relevant Incident and was intoxicated when it occurred.
67. In the alternative, if the Applicant is prone to refusing to follow lawful direction even when sober, it is likely that his attitude would only be amplified by the further consumption of alcohol.

### *'Punitive' effect of Barring Notice*

68. At [19(b)] of the Applicant's Submissions, the Applicant asserts that the Barring Notice is 'solely punitive in nature' and similarly claims again at [20] that the Barring Notice 'can only be said to be punitive'.
69. Although it may be the case that the Barring Notice has a detrimental effect on the Applicant personally, the Barring Notice was not issued as a punishment for his behaviour. Rather, the Barring Notice is a mechanism to protect the community from the risks enlivened by the Applicant's behaviour. The Barring Notice also reinforces community expectations that contravention of a written law on or in the vicinity of a licensed premises is not acceptable.

## Conclusion

70. There remains sufficient material before the Commission to establish reasonable grounds for believing that the Applicant has contravened the provision of a written law in the vicinity of a licensed premises.
71. Further, the Barring Notice was issued for a period of less than five months and should not be varied in length downwards further. If the Commission were otherwise of the view that the scope of the Barring Notice was too broad, the Commission could address that issue by removing the restrictions on attendance at venues with liquor store and restaurant licences while otherwise affirming the Barring Notice.

## DETERMINATION

72. As seen on the CCTV Footage, the Preceding Incident commences at approximately 03.16 on 15 May 2022.
73. By the time [REDACTED] leaves the [REDACTED] at 03.20, the Preceding Incident has concluded with an arrested handcuffed person (the Arrested Person) sitting on the sidewalk surrounded by Police Officers.
74. Numerous pedestrians are seen walking in close proximity on all sides of the Police and the Arrested Person.
75. The WA Police Statement of Material Facts (document 3B) states; *"the Accused pushed past [REDACTED] and stood in the middle of the incident"* (meaning the Preceding Incident).
76. CCTV and body camera footage is not available to confirm the first component of this statement. The second component, that [REDACTED] *"stood in the middle of the incident"* is not confirmed on CCTV footage.
77. It can be seen that at the instance of the Applicant's exit from the [REDACTED], three Police Officers and two Security Guards are standing across the footpath, providing a difficulty for pedestrians walking in that direction. The Applicant is clearly seen trying to walk around the Preceding Incident on to [REDACTED].
78. [REDACTED] walks well clear of the Arrested Person on the pavement who is surrounded by at least three Police Officers.
79. After the Applicant walks past the Preceding Incident, he is no longer visible on the CCTV footage.
80. When next visible at 03.20.43 the Applicant is seen walking backwards as directed by a Police Officer at least two metres away from the Arrested Person.
81. A pedestrian is observed walking from the left of screen and moving between the Applicant and the Police Officers around the Arrest Person.
82. None of the three Officers make any attempt to prevent the pedestrian from walking in that space. This would strongly suggest that there is no clearly marked area around the Arrested Person through which pedestrians should not walk.

83. No Police evidence has been provided as to why the Applicant was not permitted to continue to walk past the Previous Incident as he clearly intended.
84. Despite the above, it is clear that the Police Officer was directing the Applicant to go in a different direction. The Applicant was not compliant with this lawful direction and continued to converse with the Officer. The Officer then pushes the arm of the Applicant to move him in the direction indicated. The Applicant pushes back on the arms of the Officer and is subsequently forcibly restrained by four Police Officers, laid face down on the pavement and handcuffed.
85. The Applicant has provided four character references, all from persons of high community standing, stating that this is not the normal behaviour of the Applicant. Only one of those submissions was from a person who was with him on the night, but it is clear that the person was not with him at the time of the Relevant Incident.
86. While there is no evidence provided as to why the Applicant was redirected by the Police Officer to walk past the Arrested Person in an alternative direction, clearly this was the case.
87. It can be assumed that if the Applicant had complied with this lawful direction that no further action would have ensued. It appears that the Applicant has offended in not immediately following this directive, and in not immediately providing his name and address as requested.
88. It is also accepted that the Applicant was attempting to walk past the Preceding Incident at what would appear to be a reasonable distance, and there is no demarcation of the area around the Arrested Person. This view is reinforced by the fact that another pedestrian, walking closer to the Police and the Arrested Person, was not prevented from doing so by the three other Police Officers.
89. While it is not clear that the action of the Applicant was affected by the consumption of alcohol, it would appear that his refusal to comply with a Police directive does not match his usual behaviour, even after consumption of alcohol, as indicated by his referees.
90. It is also clear that the behaviour of the Applicant was not aggressive and he had no intent on interfering with Police actions in managing the Preceding Incident. Indeed, if he had been permitted to continue to walk past, at a distance further than other subsequent pedestrians, he would not have returned to feature in the Relevant Incident.
91. It is therefore decided to vary the barring notice so that the period of barring concludes on the date of this decision, namely 30 August 2022.



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**DR KIM HAMES**  
**PRESIDING MEMBER**