

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

Applicant: Mr A J B

Respondent: Commissioner of Police
(*represented by Daniel Harrop of State Solicitor's Office*)

Commission: Mr Paul Heaney (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: 26 October 2016

Date of Determination: 19 December 2016
(on papers)

Determination: The application for review is dismissed.

Authority referred to in this determination:

- *Shane Van Styn v Commissioner of Police* LC 19/2011
- *George Mark Lewer v Commissioner of Police* (LC 58/2011)

1 On 18 August 2016 an incident involving the applicant, A J B occurred at the [REDACTED].

2 Subsequently in respect of this incident a barring notice of 6 months duration was issued and served upon the applicant. This barring notice was issued pursuant to section 115AA of the *Liquor Control Act 1988* ("the Act").

3 Section 115AA(2) provides as follows:

"The Commissioner of Police may give a notice to a person prohibiting the person from entering a specified licensed premises, or a specified class of licensed premises if the Commissioner believes on reasonable grounds that the person has on licensed premises:

a) been violent or disorderly; or

...

4 It is clear from the wording of the provision that a single incident is sufficient to give rise to a barring notice.

5 At paragraph 12 of *S V S v Commissioner of Police* LC 19/2011, the members of the Commission stated:

"the provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing an individual for their actions. During the parliamentary debate on the amendments to section 115AA, the Minister for Racing and Gaming stated that ... "the whole idea of this legislation is to protect the general public, the licensee ... and also the person"

6 Section 5 of the Act is headed "Objects of the Act" and at subsection 1 it states:

The primary objects of the Act are:

...

b) to minimise harm or ill health caused to people, or any group of people, due to the use of liquor and

...

At subsection (2), the Act states:

In carrying out the functions under this Act, the licensing authority shall have regard to the ... following secondary objects:

...

b) to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor;

...

- 7 In light of the primary and secondary objects of the Act referred to above, 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 mechanism to support the primary and secondary objects of the Act.
- 8 On 26 October 2014, the applicant appealed to the Liquor Commission (“the Commission”) for a review of the barring notice issued by the Commissioner of Police pursuant to section 115AD of the Act.
- 9 This review is conducted pursuant to section 115AD of the Act. Section 115AD provides at subsection 6 as follows:

6) When conducting a review of the decision, the Commission may have regard to –

a) the material that was before the Commissioner of Police when making the decision; and

b) any information or document provided by the applicant

and at subsection 7 as follows:

7) On a review under this section the Commission may affirm, vary or quash the decision subject to this review

- 10 The incident giving rise to the barring notice is referred to in the following documents:

- 1) The applicant’s grounds for review
- 2) The Commissioner of Police (the respondent) outline of submissions
- 3) The Police Incident Report dated 19 August 2016
- 4) The Police Running Sheet
- 5) The [REDACTED] Incident Report dated 18 August 2016
- 6) Statement of the victim of the assault [REDACTED] dated 19 August 2016
- 7) CCTV footage obtained from [REDACTED]
- 8) File Notice in relation to the CCTV footage
- 9) Reference of [REDACTED]
- 10) Reference of [REDACTED]

- 11 APPLICANT’S GROUND OF REVIEW:

The appellant’s grounds for review are stated on the application for review itself.

[REDACTED] states as follows:

"I [REDACTED] believe that this ban imposed on me is too harsh as I have no record of violent behaviour prior to the altercation on the 18th August 2016 with the Police or any licensed venues.

I was acting in self defence as I feared for my safety as the other man involved in the incident is known for violence and being a public manace (sic), at the [REDACTED] [REDACTED] (sic) and also with Police.

The Police have not charge (sic) me and it was a one off occurrence(sic) and please lift this ban as I am not a trouble maker and this also really hinders me to be involved in family activities.

- 12 Also in his application, [REDACTED] indicated that he would prefer the Commission to consider this matter on papers.
- 13 On 31 October 2016, the parties were requested by letter to lodge and serve any information or document they wished to present to the Commission for consideration on the hearing of his review. The applicant provided no further information or document for consideration in addition to the documents lodged with the application. However submissions in support of the barring order were lodged on behalf of the respondent on 17 November 2016.
- 14 The victim of the applicant's attack was [REDACTED]. [REDACTED] states:
 - He is 50 years of age.
 - Employed as a labourer.
 - At about 4:45pm on Thursday, 18 August 2016 he was at [REDACTED].
 - He got up and went to the TAB and to get a drink.
 - As he walked back to the Tavern, he walked past a person he knew as [REDACTED].
 - He said "hello" to [REDACTED] who told him "don't talk to me".
 - He asked "why"?
 - [REDACTED] stood up and was standing right up and in his face.
 - [REDACTED] began shouting at him saying something about his girlfriend, one of the barmaids at the tavern.
 - [REDACTED] then proceeded to punch him several times to the face and head with both fists. He fell to the ground and covered up his face with his jacket. [REDACTED] continued to punch him on his face and head as he lay on the ground.

- He then saw [REDACTED] walking off.
 - He subsequently reported to St John of God Hospital in Midland.
 - X-rays and C.T scans revealed bruising and swelling around his right eye and a cut to his right ear, right eye lid and a possible fracture to his nose.
- 15 The CCTV reveals the extent of this brief but violent incident consistently with the statement of [REDACTED].
- 16 I also received and reviewed two references on behalf of [REDACTED], the owner and licensee of the [REDACTED]. [REDACTED] described [REDACTED] as a regular patron, a moderate drinker, hard working and devoted father, had a sunny disposition, was well liked and respected by staff and other patrons, fair minded and has never caused any disruption previously.
- 17 A reference was also received from [REDACTED] the Manager at the [REDACTED]. She also spoke highly of Mr [REDACTED] along the same lines as [REDACTED]. However she went on to describe the victim of the incident, [REDACTED] as being aggressive and quarrelsome to staff and other patrons, threatening, extremely vulgar, condescending and rude to patrons and bar staff on a regular basis.
- 18 She went on to say that [REDACTED] is not a threat to anyone's safety and has no underlying issues with drug or alcohol abuse.
- 19 The behaviour as demonstrated by [REDACTED] on the 18 August 2016 is the very behaviour that barring orders are directed at. As noted earlier, one incident is sufficient to invoke the provisions of section 115AD.
- 20 Having reviewed all of the evidence, I am satisfied on reasonable grounds that [REDACTED] behaviour justifies the issue of the barring notice, on the grounds that on the 18 August 2016 he acted in a violent or disorderly manner (section 115AA(2)(a)).
- 21 In the reviewing of the documents relating to the barring notice in relation to [REDACTED], the behaviour of [REDACTED] was also referred to. I am required to only look at the behaviour of [REDACTED] and his barring order in these proceedings.
- 22 The barring notice is not just about [REDACTED]. The [REDACTED] does not want a reputation that it tolerates violence. It is about all taverns and any other type of licensed premises. It needs to be understood and expected by all people who frequent licensed clubs and premises that they are in a safe environment and can expect that they will not become victims of violence or have to witness violence or disorderly behaviour.
- 23 In *G M L v Commissioner of Police* (LC 58/2011), the Commission observed that "*the barring notice is not only about protecting the public but also protecting the applicant.*" The barring notice imposed upon [REDACTED] is not a punishment imposed upon him but

an opportunity for him to introspect and adopt strategies to manage his behaviour particularly on licensed premises.

- 24 The provisions of section 115AA (subsection (5)) provide for a maximum duration of 12 months for barring notices. Such a period would be expected for cases involving serious behaviour as a consequence of which members of the public may be at risk. In my view, under the circumstances of this case before me involving [REDACTED], a barring notice of 6 months duration is entirely appropriate.
- 25 The application for review is therefore dismissed and the barring notice is affirmed.



PAUL HEANEY
PRESIDING MEMBER