

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

Applicant: Ms AEF
(represented by H Menaglio of Curt Hofmann and Co)

Respondent: Commissioner of Police
(represented by J M Vincent of State Solicitor's Office)

Commission: Ms Pamela Hass (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: 18 April 2018

Date of Determination: 9 July 2018

Determination: The application for review is dismissed.

Authorities referred to in determination:

- *Van Styn v Commissioner of Police (LC19/2011)*

Background

- 1 On 8 February 2018, an incident (“the incident”) occurred inside licensed premises namely the [REDACTED] (“the premises”) involving the applicant.
- 2 During the incident, the applicant hit [REDACTED] forehead with an empty champagne bottle.
- 3 As a result of such incident, the applicant was found guilty of one count of unlawful wounding pursuant to section 301 of the *Criminal Code* WA, was fined \$1500 plus court costs of \$100 and granted a spent conviction.
- 4 As a further result of such incident, on 7 March 2018 the Commissioner of Police (“the Police”) issued a barring notice under section 115AA(2) 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 nightclub licences issued under section 42;
 - c. Casino licence issued under section 44;
 - d. all club licences issued under section 50;
 - e. all restaurant licences issued under section 50;
 - f. all occasional licences issued under section 59; and
 - g. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 5 The barring notice was served on the applicant on 24 March 2018 to expire on 6 March 2019, being for a total period of 12 months.
- 6 On 18 April 2018, the applicant applied to the Liquor Commission (“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 The incident giving rise to the barring notice is referred to in the following documents:
 - a. The applicant’s application for review dated 18 April 2018;
 - b. The police evidence presented before the Commissioner of Police Delegate including:
 - i. barring notice dated 7 March 2018;
 - ii. statement of Material Facts for brief no. [REDACTED];
 - iii. Court Appearances Register;
 - iv. photographs of the applicant and the complainant;
 - v. Police Incident Report 9 February 2018;
 - vi. Statement by [REDACTED] dated 9 February 2018.

- vii. Statement by [REDACTED] dated 9 February 2018;
 - viii. Statement by [REDACTED] dated 9 February 2018; and
 - ix. Statement by [REDACTED].
- c. The Commissioner of Police's outline of submissions dated 11 May 2018 and responsive submissions of 18 May 2018; and
 - d. The applicant's outline of Submission prepared by Curt Hofmann of 11 May 2018.
- 9 The applicant has made submissions through her lawyer requesting the Commission to vary the notice on the grounds that:
- a. She acknowledges the incident occurred and is extremely remorseful and has provided an apology letter to the victim;
 - b. She is otherwise of good character, employed and good character references were supplied;
 - c. She is studying at university and achieving positive results;
 - d. She was under stress from an emotionally abusive relationship at the time of the incident;
 - e. The 12 month duration of the barring notice will have a negative effect on her ability to socialise with friends which is an important support system for an international student; and
 - f. Her employment is with a catering company and there is potential for the barring notice to affect her employment although it is conceded that she may enter licensed premises under section 115AA (7A) of the Act.

Submissions on behalf of the Commissioner of Police

- 10 The materials upon which the decision of the Police to issue the barring notice are based are noted in point 8(b) above.
- 11 The Police submit that:
- a. the applicant does not dispute the facts of the incident;
 - b. the applicant's explanation was that she does not recall the incident but is extremely remorseful;
 - c. the incident occurred on licensed premises;
 - d. there is sufficient evidence to establish, on reasonable grounds, that the applicant had, while on licensed premises, engaged in violent or disorderly behaviour and has contravened a written law; and
 - e. 12 month barring notice is proper.

- 12 Counsel for the Police also made written submissions addressing the applicable law, which are not necessary to repeat here; however, are referred to as necessary during the course of the determination below.

Statutory Framework

- 13 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.
- 14 The Commissioner may delegate the power conferred by section 115AA of the Act to any member of the police force above the rank of Inspector pursuant to section 115AB of the Act.
- 15 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.
- 16 Section 115AD of the Act at subsection (6) provides 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.
- 17 Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 18 The Act also in section 16 prescribes that the Commission:
- a. may make its determinations on the balance of probabilities (subsection (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)).
- 19 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).
- 20 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.

- 21 Section 5 of the Act sets out the objects of the Act. In subsection (1)(b) one of the primary objects of the Act is 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.
- 22 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 (*Van Styn v Commissioner of Police* (LC19/2011)).

Determination

- 23 On the material provided, I am satisfied there was a reasonable basis for the delegate of the Commissioner of Police to believe that the applicant had engaged in violent or disorderly behaviour and contravened a provision of a written law.
- 24 The applicant does not dispute that the incident occurred. The applicant's submissions do not appear to dispute that the barring notice was able to be issued under the Act but rather that the applicant is of otherwise good character and extremely remorseful and seeks a reduction in the term.
- 25 Therefore, the primary question to be determined is whether the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
- 26 Despite the applicant's character references it is clear from the wording of section 115AA of the Act that a single incident is sufficient to give rise to a barring notice. It does not require that the person to whom the barring notice is issued must have engaged in habitual or repetitious behaviour of the type specified in the section.
- 27 In addition, the applicant's explanation indicates that the applicant does not remember her behaviour. Her violent response, after having consumed a significant amount of alcohol appears to be disproportionate to any perceived or alleged provocation by the victim. The relevant actions were aggressive and illegal.
- 28 In the circumstances a barring notice for a period of 12 months appears justified in order to:
- a. assure the members of the public who frequent licensed premises that they are in safe environments and can expect that they will not be exposed to disorderly behaviour;
 - b. allow the applicant the opportunity for introspection regarding her interaction with alcohol, her behaviour after consuming alcohol; and
 - c. allow the applicant to further consider her behaviour and actions prior to entering licensed premises in the future.

29 The application for review is therefore dismissed and the barring notice is affirmed.

A handwritten signature in black ink, appearing to read "Pamela Hass", is positioned above a horizontal line.

PAMELA HASS
PRESIDING MEMBER