

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

Applicant: Mr J T H

Respondent: Commissioner of Police
(*represented by Ms Kirsten Chivers of State Solicitor's Office*)

Commission: Ms Wendy Hughes (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: 17 July 2019

Date of Determination: 6 September 2019

Determination:

1. The barring notice issued by the Commissioner of Police on 16 July 2019 is varied to permit Mr J T H to attend licensed premises holding a restaurant licence issued under section 50.
2. Mr J T H is precluded from consuming alcohol at all venues as permitted in order 1.
3. The remainder of the barring notice is to remain.

Authorities referred to in Determination:

Hancock v Executive Director of Public Health [2008] WASCA 224

SVS v Commissioner of Police (LC 19/2011)

Introduction

1. On 25 June 2019, the Applicant, [REDACTED] was at the Star and Garter Hotel in Kalgoorlie. Whilst at the hotel [REDACTED] was involved in a physical fight with a male patron and had to be restrained and physically removed from the premises by staff. Whilst being removed the applicant grabbed a female staff member around her neck and pushed her backwards. After being removed from the hotel [REDACTED] attempted to re enter the hotel [REDACTED] conduct was subject to a separate criminal proceedings.
2. As a result of the incident the Commissioner of Police served a barring notice on [REDACTED] on 16 July 2019 prohibiting him from entering 11 classes of licensed premises in Western Australia for a period of 6 months, expiring on 9 January 2020.
3. [REDACTED] seeks a review of the barring notice by the Commission.
4. Pursuant to the *Liquor Control Act 1988* ("the Act") the Commission is to undertake a full review of the materials that were before the Director at first instance and make its own determination¹. The Commission may quash, vary or affirm the decision of the Police in issuing the barring notice².
5. The issues to be determined by the Commission are as follows:
 - (i) Are there reasonable grounds to issue the barring notice?
 - (ii) If so satisfied, should the Commission exercise its discretion to quash, vary or affirm the barring notice?

The incident giving rise to the barring notice

6. In support of the barring notice Police rely on the incident that occurred on 25 June 2019 at the Star and Garter Hotel in Kalgoorlie.
7. When conducting a review the Commission may have regard to the material that was before the Police when making the decision to issue a barring notice and any information or documentation provided by the applicant³.
8. The following material has been provided to the Commission:
 - (i) Statement of material facts;
 - (ii) Brief Jacket (Brief No. 1930811-1);

¹ *Hancock v Executive Director of Public Health* [2008] WASCA 224 [53]-[54]

² Section 115AD(6) of the Act

³ Section 115AD(6) of the Act

- (iii) Incident report of Tracey Davey dated 25 June 2019;
- (iv) Western Australia Police Incident Report (LWP19062500475200);
- (v) Move on Notice Details (MO451121);
- (vi) Stills from CCTV footage showing the incident;
- (vii) CCTV footage;
- (viii) Photograph of the applicant taken on 13 April 2015;
- (ix) Disclosable Court Outcomes- Criminal and Traffic of the Applicant dated 9 July 2019 (MDL 6254202).

Are there reasonable grounds to issue the barring notice?

9. Pursuant to section 115AA(2) of the Act, a barring notice may be issued if the Commissioner of Police

“believes on reasonable grounds that the person has, on licenced premises or in the vicinity of licenced premises been violent or disorderly, engaged in indecent behaviour or contravened a provision of written law”.

10. A single incident can be sufficient to establish a belief based on reasonable grounds, section 115AA(2) of the Act.

11. It is submitted by the Police there are reasonable grounds to believe [REDACTED] has been violent or disorderly or contravened a provision of any written law whilst on a licensed premise arising out of the incident on 25 June 2019 at the Hotel.

12. Having viewed the CCTV footage, I am satisfied to the required standard there are reasonable grounds to believe [REDACTED] has been violent and disorderly in a licenced premises. The CCTV footage shows [REDACTED] inside the Hotel:

- (i) throwing something behind the bar;
- (ii) punching a male patron to the face with his right fist before pushing the male into other patrons;
- (iii) grabbing a female staff member by the neck; and
- (iv) being restrained by staff whilst being escorted from the hotel.

13. [REDACTED] himself does not dispute that he was violent or disorderly in the licenced premises. [REDACTED] submitted in an email dated 22 July 2019 that he “can offer no explanation for my behaviour on the night of the 25 June 2019 at the Star and Garter Hotel Kalgoorlie” except that he “can say with certainty that this behaviour is not normal”.

14. It follows I find there are reasonable grounds to believe [REDACTED] has been violent and disorderly in a licensed premise so there is a proper basis for issuing the barring notice.

Should the Commission exercise its discretion and issue a barring notice?

15. Having found there were reasonable grounds for the issuing of the notice, it follows should the Commission exercise its discretion to quash, vary or affirm the barring notice⁴?

16. When considering whether to exercise my discretion I have had regard to the primary and secondary objects of the Act. In particular, section 5(1)(b) of the Act, “to minimise harm or ill health caused to people, or any group of people, due to the use of liquor” and 5(2)(d) of the Act “to provide adequate controls over, and over the person directly or indirectly involved in, the sale, disposal and consumption of liquor”. I have also had regard to Parliament’s intention when introducing the legislation allowing for the issuing of barring notices.

17. Further, I accept the purpose of barring notices is different to the purposes of criminal proceedings and that a “barring notice is not a penalty but a mechanism to protect the general public, a licensee or indeed, the perpetrator from his own actions”⁵.

18. It is submitted by the Police the incident giving rise to the barring notice was violent and persistent [REDACTED] was violent towards a member of the general public and a staff member of the hotel. [REDACTED] had to be physically removed from the hotel. It was also submitted there is no evidence from [REDACTED] as to the risk of him acting in a violent manner again, other than his assertions that the behaviour was “not normal” for him. Therefore, the Police submit the barring notice should not be varied in this case.

19. [REDACTED] submits the incident was out of character for him and seeks to vary the barring notice so that:

- (i) it operates for 3 months only; and
- (ii) the prohibition on Mr Hill entering premises holding a restaurant licence granted under section 50 is removed.

[REDACTED] clarified he does not seek to vary the barring notice to allow him to “go out drinking and carrying on”.

⁴ Section 115AD(3) of the Act

⁵ *SVS v Commissioner of Police* (LC 19/2011) [9]

20. [REDACTED] seeks the variation of the barring notice to allow him to conduct business meetings for his small print business and to attend meetings for community groups he is involved in. In support of reducing the length of the barring notice to 3 months [REDACTED] submits he is due to get his driver's licence back which will require him to maintain a blood alcohol reading of zero at all times which will have the motivating effect of him to not consume alcohol.

21. I find the following:

- (i) The incident on 25 June 2019 at the hotel was a serious incident which involved actual violence being perpetrated against a member of the public and a staff member of the hotel by [REDACTED]. It took considerable effort by staff and members of the public to remove [REDACTED] from the hotel.
- (ii) This is the first time [REDACTED] has been involved in an incident of this kind.
- (iii) There remains a low to moderate risk that [REDACTED] may continue to act in a violent manner on licenced premises, having regard to his inability to offer an explanation for why he was violent on the night. Of particular concern is the risk to staff of licensed premises. In assessing [REDACTED] risk I have also had regard to his criminal history which suggests problematic alcohol consumption in the past with two drink driving convictions in 2012.
- (iv) [REDACTED] owns a small print and promotional merchandise company and a proportion of his business is with licensed venues. [REDACTED] job requires him to regularly meet with clients at different licensed venues in Kalgoorlie.
- (v) Currently [REDACTED] is unable to attend community meetings which are held at licensed venues in Kalgoorlie.

22. I therefore determine the following:

- 1. The barring notice issued by the Commissioner of Police on 16 July 2019 is varied to permit [REDACTED] to attend licensed premises holding a restaurant licence issued under section 50.
- 2. [REDACTED] is precluded from consuming alcohol at all venues as permitted in order 1.
- 3. The remainder of the barring notice is to remain, including the length.

Wendy Hughes

Wendy Hughes
Presiding Member