

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

Applicant: Mr RNW

Respondent: Commissioner of Police
(represented by Mr Andrew Mason of State Solicitor's Office)

Commission: Ms Emma Power (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: 15 September 2017

Date of Determination: 24 October 2017

Determination: The application for review is dismissed.

Authorities referred to in Determination:

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

Review of Barring Notice

- 1 On 29 July 2017 an incident occurred at licensed premises namely the [REDACTED] [REDACTED] ("the incident") involving Mr RNW ("the applicant").
- 2 During the incident, the applicant and another man ("the victim"), who were previously known to each other, were engaged in a heated argument. As a result, the applicant pushed and then struck the victim with a closed fist.
- 3 Following the incident, the victim attended the Fremantle Police station to report the same.
- 4 As a result of the incident, the Commissioner of Police ("the Police") issued a barring notice under section 115AA(2) of the of the *Liquor Control Act 1988* ("the Act") prohibiting the applicant from entering all licensed premises in Western Australia with the exception of premises with a liquor store licence.
- 5 The barring notice was served on the applicant on 10 September 2017 to expire on 27 December 2017.
- 6 On 15 September 2017, the applicant appealed 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 15 September 2017;
 - b. The police evidence presented before the Commissioner of Police's Delegate including:
 - i. Barring Notice dated 28 August 2017;
 - ii. Incident Report dated 29 July 2017 ("Police Incident Report");
 - iii. Incident Report statement by [REDACTED] approved manager dated 30 July 2017 ("SK Incident Report");
 - iv. Withdrawal of Complaint by the victim dated 5 August 2017;
 - v. Closed Circuit Television Footage of Incident dated 29 July 2017 ("the CCTV Footage"); and
 - c. The Commissioner of Police's outline of submissions (as respondent) dated 2 October 2017.

Submissions by the applicant

- 9 The applicant has made submissions requesting the Commission to reconsider the barring notice on the following grounds:
 - a. the victim had been drinking and was harassing the applicant;

- b. the victim has a violent history known to the applicant;
- c. the applicant has been the victim of a prior assault which informed his reaction;
- d. the applicant was acting to protect himself;
- e. the applicant has attempted to mitigate the damage caused by his behaviour by apologising to the duty manager of the relevant premises and speaking to the victim to discuss the incident;
- f. the incident was out of character and, in particular, the applicant is not a violent man, usually acts to help others and poses no risk to the innocent public; and
- g. the barring notice is too harsh as the applicant's "best mate" is having a wedding in October which he would not be able to attend.

Submissions on behalf of the Commissioner of Police

- 10 The circumstances upon which the decision of the Police to issue the barring notice is based are contained within the Police Incident Report, the SK Incident Report and the relevant CCTV Footage.
- 11 The Police submit that:
- a. there is evidence to establish that the applicant has, on licensed premises, engaged in violent or disorderly behaviour;
 - b. that the applicant was the aggressor in the incident and the applicant's explanation of his behaviour and the Incident should be rejected;
 - c. that the submissions made by the applicant that he would not again behave in a similar manner are unsupported and should be given little weight;
 - d. the barring notice reinforces community expectations that such behaviour is not acceptable and will reduce the likelihood of harm to the general public;
 - e. the period of the barring notice will provide the applicant with an opportunity to reassess his actions and the nature of his interactions with alcohol; and
 - f. if the Commission is minded to vary the barring notice, this should only be permitted in order to allow the applicant to attend the wedding of his "best mate".
- 12 Counsel for the Commissioner of Police has also made comprehensive written submissions in the respondent's outline of submissions addressing the applicable law which are not necessary to repeat here, however I will refer to them as during the course of the determination below as required.

Statutory Framework

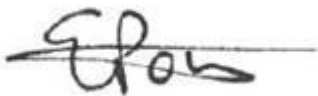
- 13 The Commissioner of Police has the power to ban people from licensed premises pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises been violent or disorderly.

- 14 The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the police force or 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 a barring notice, the person may apply to the Commission for a review of the decision.
- 16 Section 115AD of the Act provides:
 - a. at subsection (6), 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; and
 - b. at subsection (7), that on a review the Commission may affirm, vary or quash the relevant decision.
- 17 Section 16(1) of the Act also prescribes that the Commission may make its determinations on the balance of probabilities.
- 18 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).
- 19 Section 5 of the Act set 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.
- 20 The effect of a barring notice is not intended to be a punishment imposed upon the recipient but is to be seen as a protective mechanism (*Van Styn v Commissioner of Police* (LC19/2011)).

Determination

- 21 It appears clear from the evidence provided (in particular the CCTV footage) that the applicant has pushed and struck the victim while on licenced premises. This is not disputed by the applicant.
- 22 In the circumstances, I am satisfied that there were reasonable grounds for the delegate of the Police Commissioner to:
 - a. conclude that the applicant had, on licensed premises, engaged in violent or disorderly behaviour; and
 - b. exercise the power conferred by section 115AA.
- 23 The wording of section 115AA of the Act indicates that a single incident is sufficient to give rise to a barring notice and does not require that the person to whom the barring notice is issued must have engaged in habitual or repetitious violent behaviour.

- 24 Despite the applicant's explanation of his behaviour and his assurances that the behaviour was out of character, it is difficult to accept these statements without additional evidence. Further, the CCTV Footage does not support the applicant's assertions that the victim was the sole aggressor.
- 25 The actions of the applicant had the potential to cause significant harm and, in the circumstances, a barring notice for the period given appears justified in order to:
- a. assure the 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 witness, violence or antisocial and disorderly behaviour; and
 - b. allow the applicant the opportunity for introspection regarding his behaviour on licensed premises and his interaction with alcohol.
- 26 Despite this, it is acknowledged that the applicant admits his behaviour was unacceptable and, further, that the victim withdrew his complaint on the 5 August 2017.
- 27 Given this, and the fact that barring notices are not intended to be punitive, I would be prepared to consider varying the barring notice to allow the applicant to attend the wedding of his "best mate". However, the applicant has now confirmed that he does not intend to attend such wedding. As such, the variation is not required.
- 28 The application for review is therefore dismissed and the barring notice is affirmed as it is.



EMMA POWER
PRESIDING MEMBER