

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

Applicant: JVC

Respondent: Commissioner of Police
(*represented by Mr Zachary Clifford of the State Solicitor's Office*)

Commission: Sandra Di Bartolomeo (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: 20 December 2021

Date of Determination: 15 February 2022

Determination: The Application for review is dismissed and the barring notice is affirmed in accordance with section 115AD(7) of the *Liquor Control Act 1988*.

Authorities considered in the determination:

- *Liquor Control Act 1988* (WA) Sections 5, 115AA(2), 115AB, 115AD(3), 115AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC33/2011)
- *ZUW v Commissioner of Police* (LC12/2021)
- *DJB v Commissioner of Police* (LC05/2017)

Background

- 1 This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (WA) ("Act") made by JVC ("Applicant").
- 2 On 13 November 2021 at and in the vicinity of licensed premises, namely [REDACTED] ("Premises"), it is alleged that the Applicant was disorderly on licensed premises ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice on 30 November 2021 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - 3.1. All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 3.2. All small bar licences issued under section 41A;
 - 3.3. All nightclub licences issued under section 42;
 - 3.4. Casino licence issued under section 44;
 - 3.5. All liquor store licences issued under section 47;
 - 3.6. All club licences issued under section 48;
 - 3.7. All restaurant licences issued under section 50;
 - 3.8. All producer's licences issued under section 55;
 - 3.9. All wholesaler's licences issued under section 58;
 - 3.10. All occasional licences issued under section 59; and
 - 3.11. All special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 4 The Barring Notice was served on the Applicant on 3 December 2021 and is for a period of approximately 12 months expiring on 13 November 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in the Detected Incidents Report incident no. [REDACTED]:
 - 5.1. At about 21.30 hours at the [Premises], [REDACTED] ("Victim") ordered a drink at the bar. The Victim spoke to an unknown female in the company of the Applicant. The Applicant and the Victim spoke for a while before the Applicant punched the Victim to the face knocking him to the ground.
 - 5.2. While the Victim was struggling to get up off the ground, another patron ("Patron") entered from the side and punched the Victim to the ribs multiple times.

- 5.3. Police arrived shortly after and witnessed the Patron leaving the Premises in a highly agitated state screaming obscenities towards the Victim who remained near the bar.
 - 5.4. The Patron was asked by police what had occurred and the Patron walked off down [the street] while police went inside to ascertain the welfare of the Victim.
 - 5.5. On 23 November 2021, police spoke to the Applicant over the telephone regarding the Incident and advised him that he would be receiving a Criminal Code infringement notice for disorderly conduct on licensed premises.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
- 6.1. Section 115AD Application for review of Barring Notice dated 20 December 2021.
 - 6.2. The evidential material relied upon by the Commissioner of Police being:
 - 6.2.1. Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.2. Running Sheet, Police Detected Incidents Report incident no. [REDACTED];
 - 6.2.3. Western Australia Police Criminal Code Infringement Notice [REDACTED], dated 22 November 2021;
 - 6.2.4. Incident Report completed by the manager, [REDACTED];
 - 6.2.5. CCTV video filmed in the Premises ("CCTV Footage");
 - 6.2.6. four still images of the CCTV Footage; and
 - 6.2.7. the Criminal and Traffic History of the Applicant.
 - 6.3. The Respondent's Outline of Submissions dated 11 January 2022.

Applicant's Submissions

- 7 On 20 December 2021, the Applicant applied to the Liquor Commission for a review of the Barring Notice.
- 8 The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9 Submissions of the Applicant are contained within the application made by the Applicant on 20 December 2021.
- 10 The submissions of the Applicant are summarised as follows:
 - 10.1. On 13 November 2021, the Applicant entered the Premises with his partner and partner's friends and they walked to the bar and stood next to the Victim who was saying explicit things to the Applicant's fiancé.
 - 10.2. The Applicant asked the Victim to leave his partner alone, and the Victim proceeded to "say abusive things to [the Applicant] and threatened to bash '[his] head in'."

- 10.3. As the Victim was sizeably larger than him and in his personal space, the Applicant felt extremely threatened for not only himself but also for his future baby and fiancé.
- 10.4. The Victim continued with threatening words and invading the Applicant's space with the clear intention in engaging in a physical altercation.
- 10.5. The Applicant felt his life was in danger, and hit the Victim in what he states was self-defence. There was a third person involved in the altercation, whom the Applicant had only met that night and whom he did not ask nor expect to pursue the fight.
- 10.6. The Applicant received a disorderly infringement notice from the police.
- 10.7. The Victim did not pursue the matter any further after the Incident, which the Applicant feels is because the Victim knew he was in the wrong.
- 10.8. On 3 December 2021, the Applicant was issued with the Barring Notice.
- 10.9. The Applicant requests that the Barring Notice be dismissed or the length lessened on the following grounds:
 - 10.9.1. the Applicant lives in a remote, small community of 800 people and believes the Barring Notice to be an extreme outcome;
 - 10.9.2. the Applicant feels he is being pushed out of town, and it is very isolating not being able to even attend the local restaurant for a meal; and
 - 10.9.3. the Applicant is an active member of the community; he volunteers his time for various organisations throughout the year. He is no threat to anyone in the community, has never been in trouble with the police before, nor has he ever been in a physical altercation in his life.

Respondent's Submissions

- 11 The Respondent provided Primary Outline of Submissions dated 11 January 2022.
- 12 The Respondent's submissions are summarised as follows:

Reasonable grounds for believing the Applicant has been violent or disorderly or contravened a provision of any written law on licensed premises

- 12.1. The Respondent submits that the facts establish that the Applicant engaged in disorderly behaviour and that the Applicant was violent.
- 12.2. There is clear evidence that the Applicant punched the Victim to the head in two separate attacks, as captured on the CCTV Footage.
- 12.3. The Applicant asserts that the Victim was threatening and abusive. The Respondent states that there is no independent evidence as to what the Victim said to the Applicant. However, before the Victim was struck he (the Victim) turned away from the Applicant and put his hands on the bar. This is inconsistent with the assertion that the Victim was behaving in a threatening manner. In any event, the Applicant's actions were unreasonable and disproportionate to any abuse that may have occurred.

- [REDACTED]
- 12.12. In summary, the Commission cannot be satisfied that the Applicant will not behave in a similar way in the future. The Barring Notice will allow the Applicant time to consider the appropriateness of his actions and to learn from the incident. In addition, the Barring Notice will assist in protecting the public from violence in licensed premises.

Statutory Framework

- 13 The Commissioner of Police has the power to ban people from licensed premises, or a specified class of licensed premises, for a period not exceeding 12 months, pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises or in the vicinity of licensed premises:
- 13.1. been violent or disorderly; or
 - 13.2. engaged in indecent behaviour; or
 - 13.3. contravened a provision of any written law.
- 14 The Commissioner of Police may delegate the power conferred by section 115AA of the Act on any member of the police force of 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 the notice, the person may apply to the Commission for a review of the decision.
- 16 Section 115AD(6) of the Act 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 Subsection 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:
- 18.1. may make its determinations on the balance of probabilities;¹ and
 - 18.2. 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;² and
 - 18.3. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.”³
- 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,

¹ *Liquor Control Act 1988* (WA), s 16 (1)

² *Ibid*, subsection (7)(a).

³ *Ibid*, subsection (7)(b).

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.

- 20 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.⁴

Principles

- 21 The Commission, in considering an application under section 115AD, must review the decision and determine whether to affirm, vary or quash the decision.
- 22 The matters to be determined on a review are whether:
- 22.1. there are reasonable grounds for believing the barred person has, on licensed premises or in the vicinity of the same, engaged in indecent behaviour, been violent or disorderly or contravened a provision of a written law; and
- 22.2. the length and terms of the barring notice are sufficient to uphold the objects of the Act and are not punitive in nature.
- 23 It is for the Commission to determine whether, on the balance of probabilities, the barring notice is warranted.

Determination

The Applicant engaged in violent or disorderly conduct

- 24 The Applicant alleges that he felt that his life was in danger, that his actions were in self-defence, and that there was a clear intention to engage in a physical altercation by the Victim. There is no evidence before the Commission to support those findings.
- 25 The Applicant is seen to strike the Victim in the CCTV Footage on two separate occasions, and the Applicant acknowledges hitting the Victim in his submissions.
- 26 In the CCTV Footage, the Applicant and the Victim are seen to be conversing just prior to the Applicant punching the Victim in the head for the first time. The Victim's arms are by his side, and there is no indication that the Victim was seeking to engage in a physical confrontation.
- 27 After being hit, the Victim does not retaliate, and the Applicant needs to be forcibly dragged away from the Victim.
- 28 The Applicant then returns to the Victim a second time and, unprovoked, again strikes the Victim in the head and once again must be physically restrained.
- 29 The Applicant was issued with a Criminal Code infringement notice for disorderly conduct in a public place, which is consistent with a finding of disorderly and violent behaviour in the context of the Act.

⁴ *SVS v Commissioner of Police* (LC19/2011)

- 30 Together with the CCTV Footage, there is sufficient material before the Commission to establish that there are reasonable grounds for believing that the Applicant engaged in violent or disorderly behaviour and/or contravened a written law.

Whether the Applicant was on or in the vicinity of licensed premises

- 31 Pursuant to section 115AA(2), the relevant conduct must occur on licensed premises or in the vicinity of licensed premises.
- 32 It is not disputed by the Applicant that the Incident occurred on licensed premises or in the vicinity of licensed premises.
- 33 The Commission finds that the evidence has established that the Incident took place on licensed premises or in the vicinity of licensed premises.

Exercise of discretion

- 34 On review of a Barring Notice under section 115AD of the Act, the Commission may exercise its discretion to quash, vary or affirm the Barring Notice. In doing so, the Commission must consider the objects and purpose of the Act.
- 35 Section 5 of the Act sets out the objects of the Act with a primary object being to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor (ss(1)(b) of the Act) and the secondary objects including the need to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor (ss2).
- 36 The review application must also be decided on whether the period and terms of the Barring Notice reflect the objects and purpose of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.

The nature and circumstances of the Incident giving rise to the Barring Notice

- 37 From the materials provided to the Commission, and in particular, the CCTV Footage, the Applicant appears aggressive and violent.
- 38 In addition, the Applicant admits to striking the Victim at least on one occasion.
- 39 The evidence before the Commission clearly establishes that the Applicant behaved in a violent and disorderly manner.

The risk of the Applicant behaving in a similar manner

- 40 The Applicant submits that the Barring Notice is an extreme outcome, that he is not a threat to anyone, has never been in trouble with the police before, nor has he previously been in a physical altercation.
- 41 However, the Commission notes that the Applicant has a previous conviction for an alcohol related offence.

- 42 In addition, the Applicant in his submission blames the Victim for the Incident, and does not appear to acknowledge that his behaviour was inappropriate, nor does he express any remorse for that behaviour.
- 43 As submitted by the Respondent, it is not unlikely that the Applicant will encounter similar circumstances in the future, and the risk that the Applicant will engage in violent behaviour is particularly heightened in circumstances where the Applicant does not appear to have learnt from the incident and does not accept that his actions were unacceptable.
- 44 Therefore the Commission believes that there is the possibility, if not the probability, that the Applicant will behave in a similar manner in the future, and that risk can be minimised by the terms of the Barring Notice.⁵
- 45 The Applicant submits that the Criminal Code infringement notice "is where he thought [the matter] would end." The purpose of barring notices differs to that of criminal proceedings, and they are not intended as a punishment. Rather, barring notices serve as a measure to protect the public from anti-social behaviour, such as the Applicant's, in and around licensed premises.⁶
- 46 In the circumstances, the Commission does not find it appropriate to vary the length of the Barring Notice, which seems justified to:
- 46.1. serve to assure members of the public who frequent licensed premises that they are in safe environments and can expect that they will not become victims of, or have to witness, violence, or antisocial or disorderly behaviour; and
 - 46.2. allow the applicant the opportunity for introspection regarding his behaviour on, and in the vicinity of, licensed premises.
- 47 The Barring Notice is affirmed and the application for review is dismissed.



Sandra Di Bartolomeo
PRESIDING MEMBER

⁵ KRB v Commissioner of Police (LC 33/2011)

⁶ SVS v Commissioner of Police (LC19/2011)