

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: DM
(represented by Mr Beau Hanbury)

Respondent: Commissioner of Police
(represented by Mr Nikolas Barron of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application for review of a barring notice issued pursuant to section 115AD of the *Liquor Control Act 1988*

Date of Hearing: 19 February 2015

Date of Determination: 9 March 2015

Determination The application is refused.

Authorities referred to in determination:

- *Batty v Commissioner of Police (LC33/2011)*
- *Van Styn v Commissioner of Police (LC19/2011)*

Background

- 1 In the early hours of 22 November 2014 an incident occurred at the “Air Nightclub” in Northbridge which the Police statement of material facts indicates involved a group of males including DM (“the applicant”), becoming involved in a fight with security personnel.
- 2 The incident resulted in injuries to the security officers one of whom required hospital treatment.
- 3 The applicant was subsequently served with a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) barring him from all licensed premises for a period of 12 months.
- 4 On 9 January 2015 the applicant lodged an application for review of the barring notice pursuant to section 115AD of the Act with the Liquor Commission (“the Commission”) and a hearing of the matter was convened on 19 February 2015.

Submission on behalf of the applicant

- 5 The applicant submitted that whilst he admits he threw punches, it was in the process of going to the aid of someone else and he was subject to attack himself.
- 6 The applicant further admits the group behaved badly but not specifically him.
- 7 It was submitted that the applicant’s actions were understandable but not justifiable.
- 8 Any inference the applicant was a member of, or associated with, OMCG’s is irrelevant.
- 9 The CCTV footage shows the applicant was towards the end of the incident more of a peacemaker than an instigator.
- 10 There are no independent witness statements and the Commission had to rely upon the Police statement of material facts and incident report which are effectively hearsay and CCTV footage which was not absolutely conclusive as it did not cover the entire sequence of events.
- 11 It was unlikely that the applicant would offend again and whilst not disputing the barring notice per se, he submitted that 12 months (the maximum term permitted) was excessive.
- 12 The applicant also submitted that he should be allowed to enter premises licensed as a restaurant where the likelihood of any incident occurring is remote.

Submissions on behalf of the Commissioner of Police

- 13 Counsel for the Commissioner of Police (“the Police”) made comprehensive written submissions on the applicable law and I do not consider it necessary or helpful to repeat them, however I will refer to them as necessary during the course of the determination below.
- 14 The applicant (among others) was refused entry as the venue was in lockout phase and entered the premises unlawfully.
- 15 The applicant pushed past a security officer who attempted to stop him.
- 16 By his own admission the applicant was involved in, and threw punches during, the subsequent brawl that erupted in the premises.
- 17 The security staff were heavily outnumbered and two security officers were hurt (one requiring hospital treatment).
- 18 The applicant having become disengaged chose to become reengaged in the fracas.
- 19 The CCTV footage does not support the contention that he was a reluctant intervener but supported the view he was a willing participant in the violent brawl that developed.
- 20 There is no evidence to suggest that the applicant would not behave in a similar manner in the future. By his own admission the applicant acted on instinct and there is no evidence to suggest his judgement was impaired.
- 21 The applicant’s behaviour was precisely of the kind that the legislation regarding barring notices was designed to address.

Determination

- 22 Two of the primary objects of the Act at section 5(1) are to minimise harm or ill health caused to people or any group of people due to the use of liquor and to regulate the sale, supply and consumption of it.
- 23 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.*)
- 24 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.
- 25 The applicant admits he was refused entry to the premises and subsequently entered the premises notwithstanding he had been refused entry.

- 26 He further admits he threw punches and was generally involved in the violence that followed.
- 27 Whilst there were breaks in the CCTV coverage of the incidents and there are no witness statements, the Police incident report and statement of material facts are largely undisputed and describe a violent altercation between security staff and a group of men of which the applicant was one. The CCTV footage does give significant support to the description of what occurred contained in the statement of material facts.
- 28 I do not accept that there is any probative evidence to support the contention that the applicant was a peacemaker. He was a willing participant in a group of males who forced their way into licensed premises and became involved in a particularly violent incident on the premises.
- 29 The applicant submitted that the length of notice was unnecessary as he would not reoffend. I am unconvinced that given similar circumstances, this was, in fact, possible and indeed quite likely.
- 30 I accept that in issuing a barring notice there is an element of punishment or penalty in denying the barred person the normal enjoyment of social intercourse at licensed premises but the ultimate purpose of issuing a barring notice is the protection of the public, see *Van Styn v Commissioner of Police (LC19/2011)* and *Batty v Commissioner of Police (LC33/2011)*.
- 31 Based on the information before me, I have determined to refuse the application. In deciding against making any reduction in the term of the barring notice or modifying it in any way I took into account the circumstances leading to the issue of the barring notice particularly the level of violence, the injuries inflicted and the fact that the applicant forced his way past security staff at the entrance to the premises.
- 32 The period of the barring notice may give the applicant time to reflect upon his actions and assist him in being able to exert greater control over impulsive reactions in circumstances such as those of this matter.



MR JIM FREEMANTLE
CHAIRPERSON