

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Commissioner of Police
(represented by Mr Daniel Harrop of State Solicitor's Office)

Respondent: Mr Salar Abed Hussein

Commission: Mr Seamus Rafferty (Chairperson)
Ms Pamela Hass (Member)
Ms Emma Power (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of a decision by the delegate of the Director of Liquor Licensing in declining to make a prohibition order pursuant to section 152A of the Act.

Date of Hearing: 20 March 2018

Date of Determination: 20 March 2018

Reasons for Determination: 6 September 2018

Determination: The application is dismissed and the decision of the delegate of the Director of Liquor Licensing is affirmed.

Authorities referred to in the determination:

- *Woolworths Limited v Director of Liquor Licensing* 2013 WASC 227

Background

- 1 The Commissioner of Police in this matter makes an application pursuant to section 25 of the *Liquor Control Act 1988* ("the Act"), for a review of the decision of the Delegate of the Director of Liquor Licensing in declining to make a prohibition order pursuant to section 152A of the Act against the respondent in this matter, Mr Salar Abed Hussein.
- 2 The primary basis upon which the application is made relates to an incident that occurred at the Queens Hotel in Highgate on 15 July 2016. The Commission has been helpfully provided with the CCTV footage of that particular incident.
- 3 What can be seen on that footage, at about 5.20 pm on the afternoon of 15 July 2016 is that Mr Hamid Reza lilami entered a door of the licensed premises, which appears to be from the outside of the venue, into the bar area. It then appears that he was approached by the respondent, Mr Salar Abed Hussein.
- 4 The two men then came together at an area, what I'll refer to as the corner of the bar. Mr lilami grabbed hold of Mr Hussein and within a very short period of time of grabbing hold of him, threw four punches, each of which appears to connect to Mr Hussein's head and upper body region. The incident moves along the bar and it can be seen that Mr Hussein grabs hold of an item that he strikes Mr lilami over the head with a number of times.
- 5 For the purposes of this application, the Commission is satisfied that it was a glass. A number of people then became involved, separating the two men. At the relevant time, Mr lilami was a crowd controller at the venue and it appears that Mr Hussein was a person who was at the venue.
- 6 The Commissioner of Police provided the Commission with a copy of the statement of Mr Hamid Reza lilami dated 20 July 2016, which is five days after the incident. Relevantly, at paragraphs 22, 23 and 24, Mr lilami says the following things:

'At this time Salar walked straight across to me and without saying a word, he grabbed hold of the front of my shirt with one hand. I then grabbed hold of his shirt with one of my hands. We then started punching each other in the face. I can't recall who threw the first punch, but I felt threatened and feared for my safety at the moment Salar approached me.'

- 7 At paragraph 25, he stated:

'We must have threw [sic] three to four punches at one another and Salar picked up a glass from the top of the bar. He then raised his right arm and smashed the glass across the top of my head.'

- 8 Clearly, the CCTV footage does not bear out what Mr lilami said in his statement five days later and the Commission makes the factual finding that Mr lilami was trying to minimise his own conduct during the course of that incident. Clearly, he was not grabbed first by Mr Hussein. It was Mr lilami who grabbed hold of Mr Hussein first. It is also clear from the footage that he was the person who threw the first punch and he threw approximately four punches before Mr Hussein did anything.

- 9 The punches that Mr lilami threw were to the head and upper body of Mr Hussein and it is clear that each of those connected. As the two men moved along the bar during the confrontation, it is clear that Mr Hussein picked up a glass and that he struck Mr lilami to the head a number of times with that particular glass.
- 10 Relevantly, for the purposes of this application, Mr Hussein pleaded guilty to a charge of assault occasioning bodily harm in the Perth Magistrates Court on 3 February 2017 before his Honour Mr De Vries. During the course of that hearing, the charge of unlawful wounding, contrary to section 301 of the Criminal Code, was amended to a charge of assault occasioning bodily harm, contrary to section 317(1) of the Criminal Code.
- 11 At the commencement of that hearing, Mr Hussein pleaded guilty to the amended charge. Nothing about what led up to the incident, which is referred to in the paragraphs preceding paragraph 22 in Mr lilami's statement, was referred to by the prosecution in that hearing and it was accepted by the Magistrate for the purposes of sentencing that he was acting in self-defence and, relevantly, at page 6 of the transcript, Mr De Vries stated:

'Normally when one is convicted of assault occasioning bodily harm, which involves use of glass as a weapon, one can expect either a term of imprisonment or a very, very hefty fine. I pause there to note that that's consistent with a number of Court of Appeal authorities, the names of which are unimportant for the purposes of this exercise.'

- 12 His Honour then went on to state:

'I have listened carefully to the prosecutor. I have listened very carefully to Mr Noble and I accept, on this occasion, you did act in self-defence, but that your force was excessive. And in light of that, in my view, a term of imprisonment is not warranted.'


- 13 That factual finding is significant for the purposes of this application as to whether it is in the public interest to make a prohibition order that is sought by the applicant pursuant to section 152B of the Act.
- 14 Because of the credibility issues that arise at paragraphs 22 to 25 of his statement and in the absence of Mr lilami giving evidence at the hearing of the application, the Commission is not in a position to either accept or not accept those matters which are not shown in the CCTV footage and which relate to the events prior to 15 July 2016.
- 15 Under section 152E(3) of the Act:

'The director may make a prohibition order only if satisfied that it is in the public interest to do so, after: (a) having given the relevant person reasonable opportunity to make submissions or to be heard in relation to the application.'

- 16 Having been satisfied that service was affected on the respondent and, him having not attended the hearing of this application, the Commission has taken into account the submissions that were made by Mr Jeremy Noble on his behalf at first instance and the hearing proceeded in his absence.

Determination

- 17 Having taken into account all relevant matters, having taken into account the public interest test that was referred to by his Honour Buss JA as he then was in the decision of *Woolworths Ltd v Director of Liquor Licensing* (2013) WASCA 227 and in applying that test, the Commission is not satisfied that it would be in the public interest to make a prohibition order in the circumstances.
- 18 The basis upon which we have reached that conclusion is that there was a context to the behaviour of the respondent, albeit at no stage do we minimise his conduct. It was appalling conduct in all the circumstances, but it was responsive to the initial assault that he subjected to.
- 19 In all of the circumstances, it would be inappropriate to make a prohibition order against Mr Hussein in the context where he was not the aggressor. He is a person of otherwise prior good character, there being no criminal record against him and there being nothing upon which this which this Commission could be satisfied that he is likely to commit any further violent behaviour in licensed premises.
- 20 Pursuant to section 25(4)(a) of the Act, the Commission affirms the decision of the Delegate at first instance and the application for review is dismissed.



SEAMUS RAFFERTY
CHAIRPERSON