

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

Applicant: Mr T K D

Respondent: Commissioner of Police
(*represented by Mr Tom Ledger of State Solicitor's Office*)

Commission: Ms Kirsty Stynes (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: 18 July 2019

Date of Determination: 2 September 2019

Determination: The barring notice is varied pursuant to section 115AD(7) of the Act to terminate on the date of this determination.

Authorities referred to in determination:

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

Background

- 1 This is an application for the review of a barring notice pursuant to section 115AD(2) of the *Liquor Control Act 1988* (WA) ("the Act") made by [REDACTED] ("the Applicant").
- 2 The history of this matter is as follows:
 - a. On 18 May 2019, there was an incident at the [REDACTED] involving the Applicant;
 - b. As a result of the Applicant's participation in the incident the Applicant was issued with a Criminal Code Infringement Notice for disorderly behaviour and received a fine in the amount of \$500.00;
 - c. On 18 June 2019 Inspector [REDACTED] on behalf of the Commissioner of Police issued a barring notice pursuant to section 115AA(2) of the Act ("Barring Notice");
 - d. On 20 June 2019 the Applicant was served with the Barring Notice;
 - e. On 18 July 2019 the Applicant applied to the Liquor Commission of Western Australia for a review of the Barring Notice pursuant to section 115AD(3) of the Act; and
 - f. The Applicant has paid the Infringement Notice.
- 3 The terms of the Barring Notice prevent the Applicant from entering the following licensed premises:
 - a. all hotel licences, however referred to, issued under section 41;
 - b. all small bar licences issued under section 41A;
 - c. all nightclub licences issued under section 42;
 - d. casino licence issued under section 44;
 - e. all liquor store licences issued under section 47;
 - f. all club licences issued under section 48;
 - g. all restaurant licences issued under section 50;
 - h. all producer's licences issued under section 55;
 - i. all wholesaler's licences issued under section 58;
 - j. all occasional licences issued under section 59; and
 - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulation 1989*.
- 4 The Barring Notice expires on 18 October 2019.
- 5 The Commission has determined that the matter can be dealt with on the papers.
- 6 The Commission has been provided with the following material to determine the application:
 - a. Barring Notice dated 18 June 2019;

- b. Service endorsement dated 20 June 2019;
- c. Criminal Code Infringement Notice dated 20 May 2019;
- d. Police Move on Notice;
- e. Incident File Full Report;
- f. Incident Report Western Australia Police;
- g. Police Notes of [REDACTED];
- h. Statements from the following:
 - [REDACTED] ("BP") dated 18 May 2019;
 - [REDACTED] ("AWB") dated 1 June 2019 ([REDACTED] Security Officer);
 - [REDACTED] ("DPG") dated 1 June 2019 ([REDACTED] Senior Security Officer);
 - [REDACTED] ("WLT") dated 23 May 2019 (Higher Duties Security Officer);
 - [REDACTED] ("PTG") dated 23 May 2019 ([REDACTED] Security Officer);
 - [REDACTED] ("PSL") dated 1 June 2019 ([REDACTED] Security Officer);
 - [REDACTED] ("HLH") dated 23 May 2019 ([REDACTED] Security Officer Supervisor);
 - [REDACTED] ("LD") dated 23 May 2019 (employed by [REDACTED] in the Surveillance Department);
- i. CCTV footage and still photographs of CCTV footage;
- j. The Applicant's Criminal History;
- k. Application for review dated 18 July 2019;
- l. Applicant grounds for review with attachments dated 18 July 2019;
- m. Respondent's Outline of Submissions dated 1 August 2019;
- n. Email of the Applicant dated 19 August 2019 to the Commission requesting an extension of time to file responsive submissions;
- o. Email of the Respondent dated 19 August 2019 consenting to the extension of time;
- p. Email of the Applicant dated 21 August 2019 including responsive submissions.

Nature of the Incident

- 7 The circumstances of the Incident can be characterised as follows:
- a. On 18 May 2019, the Applicant, the Applicant's son [REDACTED] ("TD") and another adult male ("AAM") were outside the [REDACTED] waiting for a taxi;
 - b. AAM and an unknown male ("Big Male") walked away from the taxi queue and engaged in a physical altercation which resulted in both men being on the ground;
 - c. TD and the Applicant started to approach AAM and the Big Male;

- d. BP, an unknown male to either party, approached and stood between TD, the Applicant and AAM and the Big Male;
- e. BP faced TD and put his hands up towards his face in what could be described as a fighting stance and moved his head forward towards TD;
- f. TD put both his hands up with his palms towards BP;
- g. The Applicant stood between BP and TD and I accept was attempting to diffuse the situation;
- h. TD then moved around the two males on the ground;
- i. BP then used his left fist to punch TD in the jaw;
- j. The Applicant can be seen pulling on the left side jacket of BP and subsequently grabbing him around his upper torso with his right arm;
- k. The Applicant then held BP around the throat area and pulled him backwards towards the ground, laying on top of him;
- l. TD and another male engaged in a further altercation;
- m. BP and the Applicant got up off the ground and chased after them;
- n. The Applicant can be seen falling face first along the ground before reaching TD;
- o. Security officers have intervened; and
- p. The Applicant was subsequently detained by Police and issued with a Move on Notice.

Statutory Framework

- 8 The Commissioner of Police (“the Commissioner”) has the power to ban persons from licensed premises pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises:
 - a. been violent or disorderly; or
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 9 The Commissioner 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.
- 10 The underlying purpose of a barring notice is not to penalise an individual but to act as a protective mechanism.¹
- 11 A single incident is sufficient to give rise to a barring notice.²

¹ *SVS v Commissioner of Police* (LC19/2011).

² *Supra*.

Applicant's submissions

- 12 In the Applicant's written submissions received on 18 July 2019 and responsive submissions received on 21 August 2019, the Applicant argues that the Barring Notice should not have been issued on the basis that:
- a. There is no evidence the disorderly behaviour was because of any consumption of alcohol as there is no evidence the Applicant was intoxicated;
 - b. There is no evidence the Applicant was the instigator and he dealt with BP by way of self-defence of another;
 - c. After the defence of TD he was pushed around by a stranger who he did not realise was a Police Officer;
 - d. He provided the Police Officer with some on the job training and advice about his behaviour being improper, inflammatory and "one size fits all policing"; and
 - e. When the circumstances of the offence are considered in conjunction with the Applicant's personal circumstances and the references in support of his responsible behaviour around alcohol there is no purpose or utility in the barring notice.
- 13 The Applicant asserts in the alternative:
- a. the Barring Notice is too wide and should be limited to the [REDACTED]; or
 - b. the Barring Notice should not include the following licences:
 - i. all hotel licences, however referred to, issued under section 41;
 - ii. all small bar licences issued under section 41A;
 - iii. all liquor store licences issued under section 47;
 - iv. all club licences issued under section 48;
 - v. all restaurant licences issued under section 50;
 - vi. all occasional licences issued under section 59; and
 - vii. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulation 1989*; or
 - c. The Barring Notice should be for a shorter timeframe.

Submissions on behalf of the Commissioner of Police

- 14 The Respondent submits the following:
- a. there is sufficient evidence to establish that the Applicant engaged in violent or disorderly behaviour by:
 - i. pulling BP to the ground, holding him around the throat and laying on top of him; and

- ii. subsequently becoming threatening and abusive towards security and Police officers’.
- b. The Applicants behaviour in “strangling” BP was a disproportionate response in the circumstances and had the effect of escalating tensions between the two groups and causing further altercation;
- c. The Applicant appears to accept that the behaviour was “disorderly” as he stated “[t]here is no evidence that the disorderly behaviour was because of any consumption of alcohol”³;
- d. The Applicant was observed to be visibly intoxicated and to make a series of threats and provocative comments towards security officers; and
- e. The Barring Notice should not be varied in this case, as the terms and length are appropriate to ensure the safety of the public and will provide the Applicant with an opportunity to reassess his actions.

Determination

- 15 I am satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act as there were reasonable grounds that the Applicant had, on licensed premises engaged in disorderly behaviour.
- 16 The Applicant’s behaviour on the night has been described as follows:
- a. He was “acting in an aggressive manor, shouting and attempting to push past security to get to Police”⁴;
 - b. The Applicant was “being abusive and making verbal threats towards Police”;⁵
 - c. After being handcuffed, he was not compliant with officer’s requests and would shout at the officers when they were trying to talk to him, and I heard him say words similar to “Take these cuffs off and let’s go” to the officers;⁶
 - d. Police were attempting to speak with the Applicant and “he was being abusive towards the Police Officer”;⁷
 - e. Police spoke with the Applicant for a short time during which he told them to “Fuck off”;⁸
 - f. The older male said, “Let me go through I am a fucking boxer and bloody good at it”, he was acting in an aggressive manner continuing to swear and yell abuse at the male waiting at the taxi rank;⁹ and

³ Applicant’s submissions dated 18 July 2019.

⁴ Statement of DPG at [20].

⁵ Statement of PTG at [47].

⁶ Statement of PSL at [17-19].

⁷ Statement of WLT at [16].

⁸ Statement of AWB at [22].

⁹ Statement of HLH at [22-26].

- g. Notes by Officer Chad Corley states that the Applicant said, "You cunts are fucking nothing, you say worse in your crib room".
- 17 The Applicant asserts that he was pushed around by a person in overalls and was not aware that he was a Police Officer. There is evidence before the Commission that even after the Applicant was informed the person was a Police Officer he acted in a disorderly manner by failing to comply with requests and shouted at the officer.¹⁰
- 18 One of the primary objectives of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor.¹¹
- 19 A barring notice is intended to act as a protective mechanism for the public and to assure members of the public that licenced premises are environments where they can remain safe from violent or antisocial behaviour.¹² The protection of the licensee and applicant must also be considered.¹³
- 20 I am satisfied the Applicant had been consuming alcohol on the night having regard to the statements of security officers who stated the Applicant had slurred speech, displayed erratic behaviour and one officer could smell alcohol on the Applicant's breath.
- 21 The basis upon which the Applicant contends the Barring Notice should be quashed is not compelling. The Applicant asserts that he was acting in defence of TD when he assaulted BP. I accept that the Applicant was acting out of concern and for the protection of TD, when he grabbed BP by the torso and put an arm across his throat taking him to the ground following a punch to TD's jaw.
- 22 It is unnecessary in the circumstances of this case to resolve whether the assault by the Applicant was lawful as I am satisfied in all the circumstances that the behaviour of the Applicant in dealing with security officers and the Police was disorderly. It was appropriate in the Commissioner's discretion to issue a barring notice. The Barring Notice was issued in accordance with a primary objective of the Act and was consistent with minimising incidents of antisocial behaviour at licenced premises.
- 23 In considering whether to vary the Barring Notice I have considered the nature and circumstances of the incident giving rise to the Baring Notice, the risk of the Applicant behaving in a similar manner and the need to protect the public.
- 24 I am persuaded given the references in support of the Applicant demonstrating remorse and attesting to his character and the impact of the Barring Notice, that on the balance of probabilities it is very unlikely that he will reoffend. The current length of the Barring Notice has an unnecessary and punitive effect on the Applicant. This does not reflect the purposes and scope of the Act. The period of two months' and thirteen days' that has passed is sufficient to achieve the purposes of the Act.

¹⁰ Statement of PSL at [17-19].

¹¹ *Liquor Control Act 1988* (WA), s 5(1)(b).

¹² LC19/2011.

¹³ *Supra*.

25 The Barring Notice is varied pursuant to section 115AD(7) of the Act to terminate on the date of this determination.

A handwritten signature in black ink, appearing to read 'K Stynes', with a long horizontal flourish extending to the right.

KIRSTY STYNES
PRESIDING MEMBER