

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr T R

Respondent: Commissioner of Police
(represented by Ms Jessica Berry of State Solicitor's Office)

Commission: Mr Paul Heaney (Presiding Member)

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

Date of Hearing: 05 September 2016

Date of Determination: 05 September 2016

Reasons of Determination: 07 September 2016

Determination: The application is dismissed.

- 1 On 27 May 2016 an incident involving the applicant, Mr T R occurred at the [REDACTED] Bowling Club in [REDACTED].
- 2 As a result of this incident the applicant was charged with assaulting Mr K M (“the victim”).
- 3 Subsequently in respect of this same incident a barring notice of 4 months duration was issued and served upon the applicant. This barring notice was issued pursuant to section 115AA of the *Liquor Control Act 1988* (“the Act”).
- 4 The barring notice was served upon the applicant on 11 July 2016 prohibiting him from entering any licensed premises in Western Australia for a period of 4 months.
- 5 On 8 August 2016, the applicant applied to the Liquor Commission (“the Commission”) for a review of the barring notice pursuant to section 115AD of the Act.
- 6 Section 115AA(2) provides as follows:

“The Commissioner of Police may give a notice to a person prohibiting the person from entering a specified licensed premises , or a specified class of licensed premises if the Commissioner believes on reasonable grounds that the person has on licensed premises:

a) Been violent or disorderly; or

...

- 7 It is clear from the wording of the provision that a single incident is sufficient to give rise to a barring notice.
- 8 At paragraph 12 of *SVS v Commissioner of Police LC 19/2011*, the members of the Commission stated:

“the provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing an individual for their actions. During the parliamentary debate on the amendments to section 115AA, the Minister for Racing and Gaming stated that ... “the whole idea of this legislation is to protect the general public, the licensee ... and also the person”

- 9 Section 5 of the Act is headed “Objects of the Act” and at subsection 1 it states:

The primary objects of the Act are:

...

b) to minimise harm or ill health caused to people, or any group of people, due to the use of liquor and

...

At subsection (2), the Act states:

In carrying out the functions under this Act, the licensing authority shall have regard to the ... following secondary objects:

...

b) to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor;

...

10 In light of the primary and secondary objects of the Act referred to above, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, it is not to be seen as a punishment imposed upon the recipient but is to be seen as a mechanism to support the primary and secondary objects of the Act.

11 This review is conducted pursuant to section 115AD of the Act. Section 115AD provides at subsection 6 as follows:

6) When conducting a review of the decision, the Commission may have regard to –

a) the material that was before the Commissioner of Police when making the decision; and

b) any information or document provided by the applicant

and at subsection 7 as follows:

7) on a review under this section the Commission may affirm, vary or quash the decision subject to this review

12 The incident giving rise to the barring notice is referred to in the following documents:

- 1) Statement of KRM ("Mr M") - the complainant
- 2) Statement of V B T L ("Mrs L") – the bar manager
- 3) Letter dated 20 August 2016 of E H ("Mr H") – a witness
- 4) Character reference of C L – Secretary of the Bowling Club
- 5) Character reference of M B – President of the Bowling Club
- 6) Incident Report of the Police
- 7) The applicant's grounds for review

13 There is no need for me to reiterate the contents of each of the above mentioned statements. Both Mr M and Mrs L gave clear evidence of the applicant acting in an aggressive manner towards Mr M and then striking him to the chest and then head butting Mr M with sufficient force to almost dislodge him from his bar stool. Mr M was 79 years of age at the time of the incident. Mr H referred to an argument between the

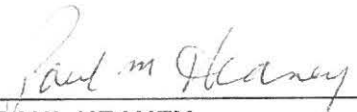
applicant and Mr M but the only physical contact was "█ grabbed █ by the collar of his shirt and got close face to face with him".

14 The two character references from C L the secretary of the Bowls Club and M B the President of the Bowls Club did not witness the incident. Both spoke highly of the applicant and confirmed that the accounts of his behaviour on 27 May 2016 were "out of character".

15 In his lengthy statement headed "Grounds for Application for Review" the applicant made the following observations:

- He was embarrassed by his behaviour of 27 May 2016.
- It was out of character and inappropriate in the setting of the █ Bowling Club.
- Mr M had a long term grievance with the applicant relating to decisions of the committee.
- On the 27 May 2016, the applicant had consumed 6-8 full strength middies and **was** affected by alcohol.
- There was a confrontation between the two men in the toilet.
- After a short delay the confrontation recommenced in the bar area.
- At paragraph 7 the applicant said 'I lost my composure, took hold of his collar, pulled his face towards mine and said words along the line of "mind your own business".
- He did not head butt Mr M.
- Since the incident he has:
 - a) apologise to his fellow members;
 - b) accepted a 4 week ban from the Club;
 - c) resigned from all positions within the Club.
- The barring notice is not necessary for the protection of the public.
- At paragraph 13 he listed matters personal to himself, such as his age; 50 years, a married man with 2 children aged 22 and 17, no criminal record, a member of the bowling club for 25 years, owner and manager of a company employing 38 employees.
- At paragraphs 14 and 15 he states that all his activities related to the Bowling Club are closed to him by virtue of the barring notice.
- The barring notice has had a punitive effect on him that outweighs the gravity of his behaviour on 27 May 2016.

- 16 Having reviewed all of the evidence, I am satisfied on reasonable grounds that the applicant's behaviour justifies the issue of the barring notice, on the grounds that on the 27 May 2016 he acted in a violent or disorderly manner (section 115AA(2)(a)).
- 17 The barring notice is not just about the applicant. It is about the [REDACTED] Bowling Club. The [REDACTED] Bowling Club does not want a reputation that it tolerates alcohol fuelled violence. It is about all Bowling Clubs and any other type of licensed club. It needs to be understood and expected by all people who frequent licensed clubs and premises that they are in a safe environment and can expect that they will not become victims of alcohol fuelled violence or have to witness alcohol fuelled violence or disorderly behaviour.
- 18 In *GML v Commissioner of Police* (LC 58/2011), the Commission observed that "the barring notice is not only about protecting the public but also protecting the applicant." The barring notice imposed upon the applicant is not a punishment imposed upon him but an opportunity for him to introspect and adopt strategies to manage his behaviour particularly engaging in the future in alcohol fuelled violence.
- 19 The provisions of section 115AA (subsection (5)) provide for a maximum duration of 12 months for barring notices. Such a period would be expected for cases involving serious behaviour as a consequence of which members of the public may be at risk. In my view, under the circumstances of this case before me involving the applicant, a barring notice of 4 months duration is entirely appropriate.
- 20 The application for review is therefore dismissed and the barring notice is affirmed.



PAUL HEANEY
PRESIDING MEMBER