

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

**Applicant:** JME

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

**Commission:** Ms Elanor Rowe (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:** 25 December 2021

**Date of Hearing:** On papers

**Date of Determination:** 29 April 2022

**Determination:** The barring notice issued by the Commissioner of Police to JME on 30 November 2021 is affirmed.

**Authorities referred to in determination:**

- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

## Background

1. On 13 November 2021, an incident (**the Incident**) involving the Applicant (aged 29 at the time) occurred at licensed premises, namely the [REDACTED] (**the Venue**).
2. On 30 November 2021, as a result of the Incident, the Applicant was issued with a Criminal Code Infringement Notice pursuant to section 74A(2)(a) of the *Criminal Code Act Compilation Act 1913* (**Criminal Code**) for the sum of \$500.00.
3. As a further consequence of the Incident, the Commissioner of Police (**the Respondent**) issued a barring notice (**Barring Notice**) dated 30 November 2021 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (**the Act**) prohibiting the Applicant from entering the following specified licensed premises in Western Australia for a period of approximately eight and a half months:
  - a. all hotel licences issued under section 41;
  - b. all small bar licences issued under section 41A;
  - c. all nightclub licences issued under section 42;
  - d. casino licences 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 licenses issued under section 59; and
  - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice will expire on 13 August 2022.
5. By Application dated 25 December 2021 (**Application**), the Applicant applied for a review of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.
6. The Incident which gave rise to the Barring Notice is referred to in the following documents:
  - a. Copy of the Barring Notice;
  - b. The evidential material relied upon by the Respondent's delegate when the Barring Notice was issued:
    - i. Venue Incident Report, dated 13 November 2021;

- ii. Summary of Incident No. [REDACTED], dated 13 November 2021;
  - iii. Infringement Notice No. [REDACTED], dated 22 November 2021;
  - iv. Detected Incidents Report No. [REDACTED] (**Incident Report**), undated;
  - v. Running Sheet Incident Report No. [REDACTED], undated;
  - vi. CCTV footage;
  - vii. Photo images from the CCTV footage; and
  - viii. Disclosable Court outcomes for the Applicant – Criminal and Traffic;
- c. The Application for Review;
  - d. The Applicant's submissions dated 17 January 2022; and
  - e. The Respondent's Primary Submissions dated 11 February 2022.

### **The Incident**

7. The circumstances of the Incident at the Venue are summarised in the Incident Report as follows:
- a. The Applicant was at the Venue along with a friend (**Friend**) and two female companions;
  - b. At about 9.30pm, another patron (**Victim**), ordered a drink at the bar;
  - c. The Victim spoke to the Friend and one of the female companions for a while;
  - d. The Friend punched the Victim in the face, knocking him to the ground;
  - e. While the Victim struggled to get up off the ground, the Applicant approached from the side and punched the Victim multiple times in the ribs;
  - f. The Police arrived shortly afterwards and witnessed the Applicant leaving the Venue in a highly agitated state, screaming obscenities at the Victim who remained near the bar; and
  - g. The Police asked the Applicant what had occurred, and the Applicant in response screamed [REDACTED] and other profanities at the Victim.
8. The Applicant did not dispute any of the evidence relating to the circumstances of the Incident or put forward an alternative account of what had happened. The evidential material is consistent with the Incident Report.

## Submissions by the Applicant

9. The Applicant submits that the length of the Barring Notice should be varied and reduced in length.

### Personal circumstances of the Applicant and background

- a. The Incident was out of character for him, and he has an impeccable record of conduct. He is actively engaged with his local community through his ongoing [REDACTED] contributions.
- b. He has no prior criminal record and is of good character.
- c. He is deeply remorseful for behaving in a disorderly manner, particularly in a public place and in future he will choose to conduct himself in a far different manner.
- d. The Barring Notice had resulted in making him feel isolated from the small community where he lives [REDACTED]. It is a small remote town and the Barring Notice has had an impact on his mental health due to his inability to connect with the community, such as during town events and workplace functions as they are hosted on licensed premises. In [REDACTED], there are only two restaurants and one community sporting precinct, all of which are registered licensed premises. The Barring Notice prevents him from taking part in team sports.
- e. He has also been unable to attend at both restaurants for breakfast with his family, which has been a standing tradition with his young children since the family relocated to [REDACTED].
- f. The Applicant is an active rostered [REDACTED] and his roster consists of twelve-hour days on a 14:7 rotation: 7-day shifts, 7-night shifts and 7-days off. He only attends licensed premises once during each fourteen-day period when he is working. Over the duration of his seven-day non-working period, he would typically only enter licensed premises for family breakfast and a maximum of two social engagements.

### The Incident

- g. The Applicant had attempted to assist a friend in diffusing a physical altercation which was started by a third party. He was then required to defend himself against the Victim, who is well known to the Police.

## Submissions by the Respondent

10. The Respondent submits that the circumstances of the case warrant the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be varied, and the Barring Notice should be affirmed.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

11. In the circumstances presented and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had engaged in violent or disorderly conduct on or in the vicinity of licensed premises (the Venue) and/or contravened a provision of any written law, being the Criminal Code.
12. The Applicant attacked the Victim in the company of another man (his Friend), who had already delivered the first punches to the Victim. The Applicant then restrained the Victim by his head/neck to keep him from standing up. The Applicant then punched the Victim twice in the left side of his torso after his Friend had been removed by bystanders.
13. In his letter accompanying the Application, the Applicant attempted to minimise his role in the attack on the Victim. The Applicant described the altercation as having been "*started by a third party*" and attributed his assault on the Victim as self-defence. The Applicant stated that he was assisting a friend to diffuse a physical altercation.
14. However, the CCTV footage does not support the Applicant's submissions and there is no indication that the Victim was, at any time, behaving in a physically threatening manner or had intended to engage in any physical confrontation. There is also no evidence that the Victim attempted to retaliate or punch the Applicant. In any event, the Applicant's actions were unreasonable and disproportionate.

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

15. The violent nature of the Applicant's actions demonstrate a clear need for the Barring Notice in order for the public to be protected. The Applicant involved himself in the altercation before the Victim and the Friend were separated. There was no justifiable reason for the Applicant to involve himself in the altercation. His actions had the potential to cause serious harm to the Victim. The initial restraint was directed at the head and/or neck of the Victim. The punches appear to have been delivered to the rib area of the left side of the Victim's torso.
16. The evidence before the Commission does not show the extent of the injuries suffered by the Victim and the Victim was able to return to the bar after the Incident. However, that is not relevant. The relevant consideration is that the Applicant's actions had the potential to cause serious harm to the Victim.

The risk of the Applicant behaving in a similar manner

17. In this case, the fact that the Applicant attacked the Victim when there was no reason for him to become involved in the altercation supports the view that there is a risk of the Applicant behaving in a similar manner in the future. The Applicant was looking for a physical confrontation and took advantage of the opportunity to become involved in one.
18. The Applicant has failed to take any substantive responsibility for his actions and has not demonstrated any insight into the fact that his behaviour was antisocial and wrong by societal standards. The Applicant blames the Victim for the Incident. Antagonistic and inappropriate behaviour is not uncommon in society, particularly on licensed premises, and responding to it with violence is unacceptable.