

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: RH
(represented by Mr Danaraj Krishnan of Dana K Legal Barristers and Solicitors)

Respondent: Commissioner of Police
(represented by Mr Ethan Heywood of the State Solicitor's Office)

Commission: Ms Sandra Di Bartolomeo (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: 4 April 2022

Date of Hearing: Determined on the Papers

Date of Determination: 27 June 2022

Determination: The barring notice is varied in accordance with section 115AD(7) of the *Liquor Control Act 1988*.

Authorities considered in the determination:

- *Liquor Control Act 1988* (WA) Sections 5, 115AA(2), 115AB, 115AD(3), 115AD(7), 115AD(7)(a) and (7)(b)
- *SVS v Commissioner of Police* (LC 19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ZUW v Commissioner of Police* (LC 12/2021)

Background

- 1 This is an application for the review of a Barring Notice pursuant to section 115AD(3) of the *Liquor Control Act 1988* (WA) ("Act") made by [REDACTED] ("Applicant").
- 2 On 31 October 2021 at and in the vicinity of licensed premises, namely the [REDACTED] ("Premises"), it is alleged that the Applicant committed the offences of endanger life, health and safety, assault occasioning bodily harm and disorderly behaviour ("Incident").
- 3 As a result of the Incident, a delegate officer for the Commissioner of Police issued a Barring Notice dated 9 March 2022 ("Barring Notice") under section 115AA(2) of the of the *Liquor Control Act 1988* ("Act") prohibiting the Applicant from entering licensed premises within Western Australia of the following licence classes:
 - a) All hotel licences issued under section 41 (includes hotel, hotel restricted, tavern and tavern restrict licences);
 - 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 Regulations 1989*.
- 4 The Barring Notice is for a period of approximately 7 months expiring on 31 October 2022.

Incident

- 5 The following allegations regarding the Incident were considered by the Respondent, as set out in the Statement of Material Facts, Brief no. [REDACTED]
 - a) On Sunday 31 October 2021, at about 5.30pm, the Applicant attended the Premises and met his son and a group of his friends celebrating his son's girlfriend's birthday at the Premises.
 - b) At about 8.20 pm an altercation occurred involving the Applicant's son and security staff from the Premises adjacent to the bar where the Applicant was sitting. Once alerted to

the altercation the Applicant became involved. The altercation grew rapidly into a melee.

- c) The Applicant and [other patrons] (yet to be identified three or four) attacked [REDACTED] ("Victim 1") and other Door Staff and Security members. As a result of the attack, Victim 1 fell to the ground. Victim 1 raised his arms to cover his head and was kicked to the forearm. Victim 1 heard a crack emanating from his arm which was later found to be broken. It is unknown which of the [patrons] inflicted the injuries on Victim 1.
- d) The Applicant was involved in a large fight with security and other patrons of the Premises. The fight spilled out towards the exits of the Premises to the public footpath area and was observed by a large amount of the public who were present at the time. Members of the public had to move out of the area to avoid being caught up in the fight.
- e) All Door Staff and Security received injuries consistent with lacerations, bruising, concussion and soreness. Two of the victims received hospitalised medical care and treatment for the injuries inflicted.
- f) CCTV footage shows the Applicant and other patrons (yet to be identified) actively involved in the Incident.
- g) The melee moved from one side of the Premises to the other and out to the south exit. The Applicant left the melee as it moved parallel to the south facing side of the bar and re-joined it at the south exit.
- h) The Applicant moved up from behind [REDACTED] ("Victim 2") and used his right arm to punch Victim 2 to the side of the head. The Applicant used his left arm to strike Victim 2 to the left side of his face and dropped his arm down to take hold of Victim 2 around the neck.
- i) The Applicant continued to punch Victim 2 up to eight times with his right arm while still using his left arm to choke Victim 2.
- j) Victim 2 turned and faced the Applicant who continued with left and right punches to Victim 2's face and head. The Applicant moved into Victim 2 who lent into the Applicant who used his body weight to push Victim 2 who slipped on the wet floor.
- k) As a result Victim 2 struck the wall with enough force to cause a large hole. The Applicant lent over Victim 2 and took hold of Victim 2 with his left arm around his throat. Both men were now on the floor. Several security and staff members intervened and separated Victim 2 and the Applicant.
- l) Police attended the Premises and placed the Applicant in hand cuffs before removing him from the Premises. The Applicant was calm and compliant in police custody and was subsequently released pending further enquiries.
- m) On Friday 3 December 2021 the Applicant was spoken to by police and arrested. He was conveyed to the Police Station where he participated in a recorded interview, and provided an explanation that "I saw my son involved so I went over to help" and "Security were fighting my son so I went to protect him". The Applicant was charged

with endanger life, health or safety of a person, disorderly behaviour in a public place and assault occasioning bodily harm.

6 The Incident giving rise to the Barring Notice is referred to in the following documents:

- a) the Barring Notice;
- b) the evidential material relied upon by the Commissioner of Police being:
 - i. Police Detected Incidents Report incident no. [REDACTED]
 - ii. Statement of Material Facts Brief no. [REDACTED]
 - iii. Incident Report completed by the Premises staff;
 - iv. Statement of Victim 1 dated 21 November 2021;
 - v. Two photographs of Victim 1's injuries;
 - vi. Statement of Victim 2 dated 5 November 2021;
 - vii. Two photographs of Victim 2's injuries;
 - viii. Statement of [REDACTED] ("Victim 3"), security officer at the Premises dated 14 November 2021;
 - ix. Three photographs of Victim 3's injuries;
 - x. Statement of [REDACTED], crowd controller at the Premises dated 12 November 2021;
 - xi. Statement of [REDACTED] beverage manager at the Premises dated 1 November 2021;
 - xii. Four separate videos filmed in the Premises on the date of the Incident ("CCTV Footage");
 - xiii. Eight still images of the CCTV Footage;
 - xiv. Two separate body camera videos taken by police during and following the Incident ("Body Cam Footage");
 - xv. Four still images of the Body Cam Footage;
 - xvi. Photograph of the Applicant taken by police on his arrest on 3 December 2021; and
 - xvii. the Criminal and Traffic History of the Applicant;
- c) The Respondent's Outline of Submissions dated 20 April 2022; and
- d) The Respondent's Outline of Responsive Submissions dated 31 April 2022.

Applicant's Submissions

- 7 On 4 April 2022, the Applicant applied to the Liquor Commission for a review of the Barring Notice.
- 8 The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 9 Submissions of the Applicant are contained within the Application, the Applicant's Submissions dated 26 May 2022 and emails dated 8 June 2022 from the Applicant's solicitor to the Commission.
- 10 The submissions of the Applicant are summarised as follows:
 - a) The Applicant is charged with disorderly behaviour in public, endanger life, health or safety of a person, and assault occasioning bodily harm.
 - b) Pleas of not guilty have been entered by the Applicant in relation to all charges against him.
 - c) The Applicant was not an instigator or directly involved in the initial dispute between security and his son.
 - d) The CCTV Footage clearly indicates that the Applicant was initially a bystander observing the altercation between the [Premises] security and a patron. As the Applicant observes the confrontation, he realises that it was actually his son that was being assaulted by venue security as they were escorting him out of the venue.
 - e) Further, it can be seen that the Applicant's son is compliant and walking towards the south entrance when a security personnel pushes him for no apparent reason. It is at this stage that the Applicant's son turns around and security proceed to assault him.
 - f) In particular, the Applicant notices that the security personnel which is believed to be Victim 2, has the Applicant's son in a head lock whilst other security appear to be assaulting the Applicant's son whilst in a headlock secured by Victim 2.
 - g) It is only at this stage that the Applicant proceeds to grab Victim 2 so that he would let go of the Applicant's son. Despite the Applicant's hold of Victim 2, Victim 2 can be seen to continue the assault against the Applicant's son despite the intervention of the Applicant.
 - h) The remainder of the Applicant's involvement is consistent with his efforts to defend his son.
 - i) The Applicant's matter will progress to trial, and he will rely on "Self Defence" pursuant to section 248 of the *Criminal Code Act Compilation Act 1913 (WA)* (the "Criminal Code") on the basis that the Applicant believed that his act against Victim 2 was necessary to defend his son. Given the obvious altercation between the Applicant's son, Victim 2 and other security personnel, the Applicant had reasonable grounds to that belief.

- j) The Applicant is currently working [REDACTED], which is a role which involves the Applicant to travel to regional branches situated [REDACTED]. The Applicant's role is to visit various mine sites and agricultural farms as a representative of his employer.
- k) These locations are situated in small towns, where the Applicant is required to reside in various hotel accommodation which venues fall within the barred venues as per the Barring Notice.
- l) The Applicant is seeking a review of the Barring Notice purely due to work related reasons. If the Applicant continues to be barred from entering licensed premises, he will not be able to fulfill his work obligations.
- m) The Applicant requests that the Commission vary the Barring Notice so that the Applicant can attend hotels and licensed restaurants so that he can fulfil his work obligations.

Respondent's Submissions

- 11 The Respondent provided an Outline of Submissions dated 20 April 2022 and Outline of Responsive Submissions dated 31 April 2022.
- 12 The Respondent's submissions are summarised as follows:

There are reasonable grounds to believe the Applicant has been violent or has contravened a provision of written law on or in the vicinity of licensed premises

- a) The Respondent submits that there is clear and unequivocal evidence that the Applicant has engaged in violent conduct on licensed premises.
- b) The [CCTV] Footage clearly depicts the Applicant grasping a Staff member with one arm around his neck from behind, before repeatedly punching him.
- c) In his statement, the Staff member who suffered a concussion recounts being unable to breathe while being choked from behind during the altercation in the entrance to the [Premises]. He recounts that this was done by a person matching the description of the Applicant. As does another member of Staff. The [CCTV] Footage suggests that it is, at least, arguable that this person referred to by Staff was the Applicant.
- d) The Respondent submits that the above evidence clearly and unequivocally leads to the conclusion that the Applicant was violent at the [Premises], a licensed premises, on 31 October 2021, and that a reasonable person would be inclined to assent to, and not reject, the proposition that the Applicant has been violent on or in the vicinity of licensed premises.
- e) The Respondent further, and in the alternative, submits that there are reasonable grounds to believe that the Applicant contravened a provision of a written law on or in the vicinity of licensed premises.
- f) Section 313 of the Criminal Code makes it an offence to unlawfully assault another person. Assault is defined in section 222 of the Criminal Code to include striking a

person without their consent. An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

- g) The [CCTV] Footage clearly and unequivocally shows the Applicant holding a security officer by the neck from behind and repeatedly striking him. Staff at the [Premises] were attempting to evict patrons who were themselves being violent and disorderly. The Applicant involved himself in the altercation and assaulted the security staff. The Respondent submits that there was no justification for him doing so.
- h) The Applicant claims that he was assisting his son, who was involved in the physical altercation with [Premises] staff. Self-defence or the defence of another is a defence to a charge of common assault under the Criminal Code.
- i) The Applicant admitted to WA Police that he did not know how the altercation began. The Respondent submits that, while the Applicant does exhibit concern for the wellbeing of his son in the [Body Cam Footage], at no point did he indicate that he became involved to protect or come to the defence of his son because his son was being attacked. The Applicant only indicated that all he could see was his son getting involved in a melee.
- j) The Respondent submits that the Applicant involved himself in a violent physical altercation where he attempted and appears to have succeeded in inflicting substantial injuries on a Staff member. He did so of his own volition and without any authorisation, justification, or excuse for doing so. He was not acting in self-defence or in defence of another. He joined in the physical altercation in a general sense and not with any desire to diffuse it or remove his son from harm's way.
- k) In addition, it is submitted by the Respondent that the [CCTV] Footage and [Body Cam Footage] capture that the Applicant actively sought to inflict harm on the Staff without the aim of defending his son.
- l) The Respondent submits that, even if the Applicant joined the melee to defend his son, he did so in circumstances that were unreasonable and did so when the act of the Staff requiring his son to leave the [Premises]. The Respondent acknowledges that the response of some of the Staff are arguably also violent, however, the CCTV Footage shows that the Staff responded to a physical altercation in an effort to remove the patrons from the [Premises] and does not justify the actions of the Applicant.
- m) On the basis of the above, the Respondent submits that a reasonable person would be inclined to assent to, and not reject, the proposition that there are reasonable grounds to believe that the Applicant has contravened a provision of a written law on or in the vicinity of licensed premises.

Nature and circumstances of the incident giving rise to the Barring Notice

- n) The Respondent submits that the aggressive and violent nature of the Applicant's actions demonstrate a clear need for the Barring Notice in order for the public to be protected.
- o) The Applicant involved himself in a dangerous and violent altercation. There was no justifiable reason for the Applicant to involve himself in the altercation. The weight of

the evidence suggests strongly that there was a substantial risk of harm to all of those involved. The Applicant contributed to that risk, particularly with reference to the Staff member he grasped around the neck and punched.

- p) The Respondent submits that the evidence before the Commission shows the extent of the injuries suffered by the Staff as a result of the physical altercation generally. While it is not clear precisely who caused each of those injuries individually, it is evident from the [CCTV] Footage that the Applicant's actions had the potential to cause significant harm to the victim of the attack.
- q) The Respondent also states that the Applicant is not, by the imposition of the Barring Notice, being punished for any injuries suffered by the Staff. The relevant consideration is that the Applicant's actions had the potential to cause serious harm to the Staff or a member of the Staff, thereby demonstrating a need for the public to be protected from violence perpetrated by the Applicant.

The risk of the Applicant behaving in a similar manner

- r) The Respondent submits that in this case, there is a risk of the Applicant behaving in a similar manner in the future for three reasons.
- s) First, the Applicant attacked the Staff member when there was no reason for him to become involved in the altercation. It is evident from the [CCTV] Footage and [Body Cam Footage] (considered together) that the Applicant had no idea what the altercation was about or what precipitated it, and simply took advantage of the opportunity to become involved.
- t) Second, the [CCTV] Footage and [Body Cam Footage] (considered together) show that the Applicant repeatedly violently punched a member of the Staff at the [Premises] despite the presence of WA Police and being repeatedly told to stop and calm down.
- u) Third, 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 unacceptable by societal standards.
- v) The Respondent submits that the Commission cannot be satisfied that the Applicant will not behave in a similar way in the future. The Barring Notice will allow the Applicant time to consider the appropriateness of his actions and to learn from the incident. The Barring Notice will also serve to protect the public from violence in licensed premises.

Statutory Framework

- 13 The Commissioner of Police has the power to ban people from licensed premises, or a specified class of licensed premises, for a period not exceeding 12 months, pursuant to section 115AA of the Act if he believes on reasonable grounds that the person has, on licensed premises or in the vicinity of licensed premises:
 - a) been violent or disorderly; or
 - b) engaged in indecent behaviour; or
 - c) contravened a provision of any written law.

- 14 The Commissioner of Police 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.
- 15 Section 115AD(3) provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.
- 16 Section 115AD(6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the applicant.
- 17 Subsection 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 18 The Act also in section 16 prescribes that the Commission:
 - a) may make its determinations on the balance of probabilities;¹ and
 - b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply;² and
 - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms."³
- 19 Section 5 of the Act set out the objects of the Act. In subsection (1)(b), one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. Subsection (2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor.
- 20 In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon the recipient but is to be seen as a protective mechanism.⁴

Principles

- 21 The Commission, in considering an application under section 115AD, must review the decision and determine whether to affirm, vary or quash the decision.
- 22 The matters to be determined on a review are whether:
 - a) there are reasonable grounds for believing the barred person has, on licensed premises or in the vicinity of the same, engaged in indecent behaviour, been violent or disorderly or contravened a provision of a written law; and

¹ *Liquor Control Act 1988* (WA), section 16(1)

² *Ibid*, subsection (7)(a).

³ *Ibid*, subsection (7)(b).

⁴ *SVS v Commissioner of Police* (LC 19/2011)

- b) the length and terms of the barring notice are sufficient to uphold the objects of the Act and are not punitive in nature.
- 23 It is for the Commission to determine whether, on the balance of probabilities, the barring notice is warranted.

Determination

The Applicant engaged in violent or disorderly conduct

- 24 In the Applicant's submission, it is stated that the Applicant has entered a plea of not guilty in relation to the charges of disorderly behaviour in public, endanger life, health or safety or a person and assault occasioning bodily harm.
- 25 In addition, the Applicant submits that he will rely on "Self Defence" pursuant to section 248 of the Criminal Code in relation to those charges and that he has very good prospects of an acquittal.
- 26 The charges laid against the Applicant are consistent with a finding of disorderly and violent behaviour in the context of the Act, noting that there does not need to be a criminal conviction for the purposes of the Act.
- 27 Barring notices issued under section 115AA(2) do not specify or require the charging of or conviction of an offence. Even if conduct does not constitute an offence, it may nevertheless constitute violence, which can be a sufficient basis for a barring notice.⁵
- 28 These factors, together with the CCTV Footage which clearly shows the Applicant was involved in disorderly and violent behaviour at the Premises, provides sufficient material before the Commission to establish that there are reasonable grounds for believing that the Applicant engaged in violent or disorderly behaviour and/or contravened a written law.

Whether the Applicant was on or in the vicinity of licensed premises

- 29 Pursuant to section 115AA(2), the relevant conduct must occur on licensed premises or in the vicinity of licensed premises.
- 30 It is not disputed by the Applicant that the Incident occurred on licensed premises or in the vicinity of licensed premises.
- 31 The Commission finds that the evidence has established that the Incident took place on licensed premises or in the vicinity of licensed premises.

Exercise of discretion

- 32 On review of a Barring Notice under section 115AD of the Act, the Commission may exercise its discretion to quash, vary or affirm the Barring Notice. In doing so, the Commission must consider the objects and purpose of the Act.
- 33 Section 5 of the Act sets out the objects of the Act with a primary object being to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor (ss(1)(b)

⁵ ZUW v Commissioner of Police (LC 12/2021)

of the Act) and the secondary objects including the need to provide adequate controls over, and over the persons directly or indirectly involved in the sale, disposal and consumption of liquor (ss(2)).

- 34 The review application must also be decided on whether the period and terms of the Barring Notice reflect the objects and purpose of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.

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

- 35 From the materials provided to the Commission, and in particular the CCTV Footage which captures the Applicant violently and repeatedly punching Victim 2, and the serious consequences of the Applicant's actions demonstrated by the nature of the injuries inflicted on Victim 2, the Commission is of the view that Incident was extremely serious in nature.

The risk of the Applicant behaving in a similar manner

- 36 The Applicant does not address his behaviour at all in his application, other than to raise the premise of self-defence. He does not express remorse, but rather, focuses on the impact the Barring Notice will have on his employment.
- 37 In particular, the Applicant does not acknowledge that his behaviour was inappropriate and antisocial, nor does he express any remorse for that behaviour.
- 38 Therefore, the Commission believes that there is the possibility, if not the probability, that the Applicant will behave in a similar manner in the future, and that risk can be minimised by the terms of the Barring Notice.⁶
- 39 The purpose of barring notices differs to that of criminal proceedings, and they are not intended as a punishment. Rather, barring notices serve as a measure to protect the public from antisocial behaviour, such as the Applicant's, in and around licensed premises.⁷
- 40 In the circumstances, the Barring Notice is justified to:
- a) serve to assure members of the public who frequent licensed premises that they are in safe environments and can expect that they will not become victims of, or have to witness, violence, or antisocial or disorderly behaviour; and
 - b) allow the applicant the opportunity for introspection regarding his behaviour and the serious consequences of his actions in relation to the victims (in particular, Victim 2).
- 41 Noting that the purpose of the Act is to minimise the likelihood of harm on both the public and the Applicant, a Barring Notice should be directed at harm minimisation, not punishment. Whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon the recipient but is to be seen as a protective mechanism.
- 42 On the balance of probabilities, it appears likely that the Barring Notice would have a punitive effect of limiting the Applicant's ability to undertake his employment.

⁶ KRB v Commissioner of Police (LC 33/2011)

⁷ SVS v Commissioner of Police (LC 19/2011)

43 On that basis, the Barring Notice is affirmed but is varied pursuant to section 115AD(7) of the Act to permit the Applicant to enter licensed premises which comprise short term regional hotel accommodation:

- a) when such attendance is required in relation to the Applicant's employment, for genuine work purposes only; and
- b) provided that the Applicant is precluded from purchasing or consuming alcohol whilst attending such licensed premises.



SANDRA DI BARTOLOMEO
PRESIDING MEMBER