

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

Applicant: BEL

Respondent: Commissioner of Police
(represented by Ms Kate Dromey of 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: 19 October 2018

Date of Determination: 10 December 2018

Determination: The terms of the barring notice dated 17 September 2018 is varied as follows:

1) In the fourth paragraph of the barring notice, after the words:

“All restaurant licenses issued under section 50”

add the words:

“operating with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act.

2) The barring notice shall otherwise remain in its current terms.

Authorities referred to in determination:

- *Van Styn v Commissioner of Police* (LC19/2011)
- *Batty v Commissioner of Police* (LC 33/2011)
- *Quartermaine v Commissioner of Police* (LC 46/2011)
- *Piscopo v Commissioner of Police* (LC 55/2011)
- *Lewer v Commissioner of Police* (LC 58/2011)
- *SVS v Commissioner of Police* (LC19/2011)
- *KRB v Commissioner of Police* (LC22/2011)

Background

- 1 On 31 August 2018, an incident (“the Incident”) occurred at licensed premises namely [REDACTED] (“the Venue”) involving the Applicant (aged 30) and [REDACTED] (“the Complainant”).
- 2 As a result of such Incident, the Applicant was charged with one offence of assault occasioning bodily harm contrary to section 317(1) of the *Criminal Code*. The Applicant is yet to enter a plea to the charge.
- 3 As a further result of such Incident, a Delegate of the Commissioner of Police (“the Respondent”) issued a barring notice (“Barring Notice”) pursuant to section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) on 17 September 2018 to prohibit the Applicant from entering specified licensed premises in Western Australia for a period of six months, namely:
 - a. all hotel licences issued under section 41;
 - b. all nightclub licences issued under section 42;
 - c. casino licences issued under section 44;
 - d. all club licences issued under section 48;
 - e. all restaurant licences issued under section 50;
 - f. all occasional licenses issued under section 59; and
 - g. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
- 4 The Barring Notice was served on the Applicant on 4 October 2018 and will expire on 17 March 2019.
- 5 On 19 October 2018, the Applicant lodged an Application for Review in respect of the Barring Notice pursuant to section 115AD(3) of the Act. The Applicant has elected to have the review determined on the papers pursuant to section 115AD of the Act.
- 6 The Incident giving rise to the Barring Notice is referred to in the following documents:
 - a. The Application for Review which included the following documents:
 - i. Statement of the Applicant dated 18 October 2018;
 - ii. Copy of the Barring Notice;
 - iii. Statement of Material Facts dated 8 September 2018 (“Statement of Material Facts”);
 - iv. Interim Family Violence Restraining Order dated 19 July 2018;
 - v. Notice of Determination of Interim Order dated 10 August 2018;
 - vi. Letter from [REDACTED] (undated); and
 - vii. Character reference and statement from [REDACTED] (undated).

- b. The material relied upon by the Respondent's Delegate when issuing the Barring Notice:
 - i. Copy of the Barring Notice;
 - ii. Statement of Material Facts;
 - iii. Witness Statement of the Complainant dated 31 August 2018;
 - iv. Photograph of the Complainant;
 - v. Venue Incident Report;
 - vi. Incident Report and Running Sheet;
 - vii. Letter from the WA Police Force Liquor Enforcement Unit to the Venue requiring the provision of CCTV footage, Venue Incident Reports and scan data;
 - viii. CCTV time line of evidence;
 - ix. Criminal and Traffic History of the Applicant dated 13 September 2018; and
 - x. CCTV footage of the Incident.
- c. The Respondent's outline of submissions dated 12 November 2018.

The Incident

- 7 Both the Applicant and the Respondent have provided the Commission with a copy of the Statement of Material Facts relating to the Incident, which states the following:

"The victim and accused in this matter were previously unknown to each other.

At about 10:30pm on Friday 31 August 2018 the accused was at [REDACTED],

The victim was sitting with friends at a bar table and the accused has approached her, telling her to cheer up.

The victim and accused have had a short conversation with the accused telling the victim that she should not be sad and needed to be happy. The victim has told the accused to leave her alone.

The accused stepped back from the table and gave the victim the finger and yelled at her. The victim has raised her glass to drink and the accused has stepped forward, hitting the glass upward.

The glass has hit the victim on the bridge of the nose creating a cut next to her eyebrow and giving her a blooded nose.

The victim has stood up and yelled at the accused causing security to grab her and take her outside.

Police have been driving past at this point and seen security with the accused. Police have stopped and spoken with the victim and security, then viewed CCTV to determine

what has happened, which confirmed the accused hitting the glass into the face of the victim.

The accused was then arrested and conveyed to Mandurah Police Station to be interviewed.

During the interview the accused has admitted all aspects apart from the assault. She has stated that she could not recall the incident or how the victim came to be injured.

EXPLANATION: Stated the victim had said or done something to her, which she cannot recall and she has reacted in a defence mode”.

- 8 The evidential material (including the incident reports and the CCTV material) is consistent with the Statement of Material Facts.

Submissions by the Applicant

- 9 The Applicant has made submissions requesting the Commission vary or quash the Barring Notice on the following grounds:

- a. She is a single mother of three young children aged 6, 5 and 2. She recently came out of an abusive relationship that ended in July 2018 which involved domestic violence. At the time of separation from her ex-husband, the Applicant applied for and was granted a Family Violence Restraining Order (“FVRO”) against him. On the day the FVRO was served on the Applicant’s ex-husband, he breached the FVRO and was charged.
- b. The first time the Applicant went out without her children after the FVRO was granted was the night of the Incident. It was her first time at that particular venue.
- c. Earlier in the day (the same day of the Incident), the Applicant had attended her first Joint Mediation session that did not go well. She also had issues with two cars in her possession. The Applicant was invited to go out by her friend so that she could take a break.
- d. The Applicant consumed a few alcoholic beverages at the Venue. She then noticed the Complainant sitting by herself looking upset. The Applicant approached the Complainant. There was a verbal altercation between the two and the Applicant responded by raising her middle finger to the Complainant.
- e. The Applicant states:

“I take full responsibility in my actions following the surprised response that night. I don’t remember what happened after that and later was told by my psychologist that it was my defence mechanisms from my PTSD as I couldn’t understand what happened as I was just trying to be nice.”

- f. The Applicant states that prior to the Incident she has never been convicted of a criminal offence.

- g. The Applicant has been receiving mental health treatment and seeing a counsellor and a psychologist since the FVRO was granted and was at the very early stages of treatment when the Incident occurred. Her children are still on the waiting list to see a counsellor.
- h. The day after her second child was born, six years ago, her brother was murdered. Her family subsequently fell apart and she and her children were left isolated.
- i. After she separated from her ex-husband, she started to take her three young children out for a monthly treat at what became their favourite venues which include the Old Coast Brewery, Peel Ale House, Lake Clifton Tavern and the Bouvard Tavern. These are family friendly venues.
- j. Now that the Applicant has been served with the Barring Notice, she finds it extremely restrictive. The Christmas holidays are approaching and she respectfully requests that the Barring Notice be varied or cancelled so she can again attend her children's favourite venues and thus will not continue to live in isolation.

Submissions on behalf of the Respondent

10 The Respondent submits:

- a. The facts of the incident are largely undisputed.
- b. There are reasonable grounds for a belief that the Applicant engaged in violent or disorderly conduct.
- c. The conduct relied on by the Respondent in issuing the Barring Notice was the Applicant's hitting of the glass into the Complainant's face, causing a laceration next to the Complainant's eyebrow and for the Complainant's nose to bleed.
- d. The Applicant has put forward no evidence disputing the Complainant's injuries. While the Applicant has stated that she does not remember what happened after she raised her middle finger at the Complainant, she also stated that she takes "full responsibility" for her actions in relation to the incident. Further, the CCTV footage clearly shows the Applicant hitting the glass into the Complainant's face.
- e. The Applicant's admitted conduct in hitting a glass into the Complainant's face was violent or disorderly conduct, regardless of the surrounding circumstances and regardless of whether she is criminally responsible for the Complainant's injuries. The Applicant's claims regarding her motive for approaching the Complainant do not change this fact.
- f. In addition, although it is not strictly necessary to decide the point, there are also reasonable grounds, on the available evidence, to believe that the Applicant contravened a provision of written law, being section 317(1) of the *Criminal Code* by assaulting the Complainant and thereby causing her bodily harm. Although the Applicant has not (on the material before the Commission) been convicted of the offence against section 317(1) the Commission is entitled to draw its own conclusions on the balance of probabilities, irrespective of the outcome of any criminal proceedings and furthermore:

- i. While the Applicant has suggested that her conduct was an unwilling act, nothing in the CCTV footage suggests the Applicant was not acting deliberately and of her own volition. To the contrary, the Applicant's body language before and after she hit the glass indicates she was consciously interacting with and responding to the Complainant.
 - ii. While there is some material that suggests the Applicant may have been provoked by the Complainant's response to the Applicant, there is no evidence before the Commission that the Complainant's response to the Applicant was unlawful.
- 11 In relation to the principal considerations in the exercise of the discretion to issue a Barring Notice, of whether a barring notice is likely to achieve the legislative aims of minimising antisocial behaviour in and around licensed premises and minimising harm or ill-health caused by the use of alcohol, it is relevant to consider:
 - a. the nature and circumstances of the incident;
 - b. the likelihood of the Applicant behaving in a similar manner in the future; and
 - c. the need to protect the general public, staff of licensed premises and the Applicant herself from future instances of alcohol-related harm.

Nature and circumstances of the incident

- 12 The circumstances of the incident are essentially undisputed and are, in any event, clearly depicted in the CCTV footage that critically demonstrates:
 - a. the Applicant initiated both verbal and physical contact with the Complainant;
 - b. the Applicant was the aggressor in the situation, in that she returned to confront the Complainant after the Complainant imitated the Applicant; and
 - c. the Applicant was the only perpetrator of physical violence in the altercation.
- 13 The hitting of the glass into the Complainant's face is an antisocial and dangerous act, as is evidenced by the injuries occasioned to the Complainant.
- 14 The primary point of difference between the Applicant and the Complainant's accounts is the nature of the initial interaction between the women which is largely irrelevant. Further, the Commission should have regard to the (undisputed) facts that the two women were previously unknown to one another and that the Applicant was the initiator of contact with the Complainant, which included touching her head/face areas.

Likelihood of repetition and need to protect public

- 15 Although the Applicant does not appear to have any prior convictions, and there is no evidence of prior alcohol-related violence, nothing in the Act requires a decision-maker to be satisfied of repeated conduct before issuing a barring notice.
- 16 The Respondent does not dispute the Applicant's account of her personal circumstances or that she is receiving ongoing treatment for her mental health and that this is a step towards addressing the underlying causes of the Applicant's violent behaviour. However, the Applicant had, on her own account, been receiving such treatment for at least a month prior to the

incident on 31 August 2018. Notwithstanding the treatment, the Applicant engaged in violent and disorderly conduct towards a woman previously unknown to her. The Applicant has provided no evidence that she is at a stage under treatment such that she is no longer prone to respond violently to “triggers” such as the Complainant’s reaction to her, which at its highest was a “mean and rude” response to unwanted contact from the Applicant.

- 17 In those circumstances there is a need for a Barring Notice in order to protect members of the public from a risk of future antisocial conduct on or around licensed premises.

Response to Applicant’s grounds of review

- 18 Apart from the Applicant’s statement dated 18 October 2018, the only other apparent basis on which the Applicant seeks review of the order is that it is extremely restricting. In particular, the Applicant refers to being unable to take her children to a number of licensed venues during the Christmas period.
- 19 The Barring Notice serves a legitimate purpose having regard to the objects of the Act; and the Applicant is a person from whom the community requires protection in the context of alcohol consumption on licensed premises. The terms and duration of the Barring Notice do not go further than is necessary to achieve that protective purpose.
- 20 Counsel for the Respondent makes further comprehensive written submissions regarding the applicable law, which are referred to as necessary during the course of the determination below.

Statutory Framework

- 21 The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months 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;
 - b. engaged in indecent behaviour; or
 - c. contravened a provision of any written law.
- 22 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 section 115AB of the Act.
- 23 Section 115AD(3) of the Act 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.
- 24 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.

- 25 Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
- 26 Section 16 of the Act prescribes that the Commission:
- a. may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
 - 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 [subsection 7(a)]; and
 - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms [subsection (7)(b)].
- 27 In 2010, the Act was amended “*to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations*” (Minister’s statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925).
- 28 The Minister further stated that the legislation gave the Police the power to issue Barring Notices to persons engaging in antisocial behaviour at licensed premises.
- 29 Section 5 of the Act sets out the objects of the Act. In subsection 5(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. Section 5(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.
- 30 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 them but is to be seen as a protective mechanism (*Van Styn v Commissioner of Police* (LC19/2011)).

Determination

- 31 The questions to be determined on this review are whether:
- a. there are reasonable grounds for believing that the barred person has, on licensed premises, been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law; and
 - b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
- 32 From the wording of section 115AA of the Act it is clear that a single incident is sufficient to give rise to a barring notice and does not require that the person to whom the barring notice is issued must have engaged in habitual or repetitious behaviour of the type specified in the section.

- 33 The Applicant does not dispute the Incident occurred as set out in the Statement of Material Facts. The Applicant's conduct in hitting a glass into the Complainant's face was violent and disorderly, regardless of the surrounding circumstances and regardless of whether she is criminally responsible for the Complainant's injuries.
- 34 Given the above, the Commission is satisfied that there was a proper basis for the delegate of the Commissioner to exercise the power conferred by section 115AA of the Act and that there were reasonable grounds to conclude that the Applicant had, on licensed premises, been violent or disorderly.
- 35 Therefore, it is for the Commission to determine, in the relevant circumstances, whether the length and terms of the Barring Notice are sufficient to uphold the objects 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.
- 36 In determining whether to quash or vary the barring notice it is relevant to take into account the nature and circumstances of the incident giving rise to the barring notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant herself: *Batty v Commissioner of Police* (LC 33/2011); *Quartermaine v Commissioner of Police* (LC 46/2011); *Piscopo v Commissioner of Police* (LC 55/2011); and *Lewer v Commissioner of Police* (LC 58/2011).
- 37 The actions of the Applicant were very serious in nature and injurious to the Complainant and could have had devastating ramifications for the Complainant. The Applicant was aggressive and violent, and her conduct was worthy of the Barring Notice prohibiting the Applicant entering licensed premises generally.
- 38 The Applicant and the Complainant were unknown to each other before the Incident occurred and the Applicant acknowledges the role that alcohol played in the Incident.
- 39 I note the difficult personal circumstances of the Applicant in the lead up to and on the day of the Incident and that the Applicant has sought professional help in relation to the issues she is experiencing.
- 40 I also accept that the Applicant does not have a history of violent or disorderly conduct having regard to a copy of the Applicant's criminal history. The Applicant attaches a single character reference that indicates that such behaviour is not usual for the Applicant.
- 41 On the evidence provided I find it is unlikely that the Applicant would offend again. However, it appears to me that there is some risk the Applicant might behave in the same or similar manner in the future if faced with similar circumstances, especially in certain licensed premises. This risk can be minimised by the terms of the barring notice [*Batty v Commissioner of Police* (LC 33/2011)].
- 42 The Applicant has not advised how she intends to plead with regard to the criminal charges laid against her and while she provides some explanation for what happened and states she accepts full responsibility for her actions, she does not apologise for her behaviour or show particular remorse.

- 43 The Applicant states that the Barring Notice is restrictive and that she wishes to attend her children's favourite venues, all of which are licensed, during the upcoming Christmas period.
- 44 I do not find this submission or the reasoning behind it compelling. I am not convinced that the Barring Notice will necessarily significantly impact the Applicant and her three young children's ability to go on family outings or socialise during the Christmas period, and the punitive effect of the Barring Notice is relatively low when balanced with the protection of the public, and the Applicant herself (*SVS v Commissioner of Police* (LC19/2011); and *KRB v Commissioner of Police* (LC22/2011)).
- 45 In balancing the above considerations, it appears to me that the duration of the Barring Notice is appropriate to allow the Applicant the opportunity for introspection regarding her behaviour and to continue to seek help. However, I find it unlikely that the Applicant will, while present at a restaurant that is only authorised to sell liquor for consumption on the premises and ancillary to a meal, engage in the kind of conduct listed at section 115AA(2).
- 46 I have concluded that:
- a. it is appropriate to vary the barring notice to allow the Applicant to enter all restaurant licences except those restaurants with an extended trading permit (liquor without a meal), enabling the Applicant to socialise with her family and friends during the Christmas period in a restaurant setting, whilst satisfying the objects of the Act to protect the public and the Applicant herself from her own actions; and
 - b. it is not appropriate to otherwise vary the Barring Notice.
- 47 Accordingly, the terms of the Barring Notice dated 17 September 2018 are varied as follows:
- In the fourth paragraph, after the words:
- "All restaurant licences issued under section 50"*
- add the words:
- "operating with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act"*.
- 48 The Barring Notice shall otherwise remain in its current terms.



ELANOR ROWE
PRESIDING MEMBER