

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr Scott Andrew Beeson
(self-represented)

Respondent: Commissioner of Police
(Represented by Mr John Carroll of State Solicitor's Office)

Commission: Dr Eric Isaachsen (Presiding Member)
Ms Pamela Hass (Member)
Ms Emma Power (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of a decision by the delegate of the Director of Liquor Licensing to make a prohibition order.

Date of Lodgement of Application: 10 September 2018

Date of Determination: (on papers) 21 November 2018

Determination: The prohibition order shall remain in force and shall be varied to have effect for the period commencing 18 August 2018 ending on 13 February 2020.

Authorities referred to in the determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Batty v Commissioner of Police* (LC 33/2011)
- *McKinnon v Secretary, Department of Treasury* [2009] FCAF 142
- *Re Minister for Resources; ex parte Cazaly Iron Pty Ltd* [2007] WASCA 175.
- *Commissioner of Police v Bradley Hayes Dorrington* (LC16/2010)
- *Van Styn v Commissioner of Police* (LC19/2011)

Background

- 1 This is an application to review a Prohibition Order made by the Director of Liquor Licensing (“the Director”) pursuant to section 152E(2) of the *Liquor Control Act 1988* (“the Act”) on 13 August 2018 against Scott Andrew Beeson (“the Prohibition Order”).
- 2 The Prohibition Order prohibits the Applicant from entering any licensed premises within Western Australia, except those licensed under a liquor store licence, however described, issued under section 47 of the Act for a period of two years from the date of the Prohibition Order, provided that the Applicant can attend any licensed premises for bona fide work purposes, however, he is not permitted to consume liquor while attending licensed premises for bona fide work purposes.
- 3 The incident that gave rise to the Prohibition Order occurred on 3 February 2017 in the carpark of the Brook Bar and Bistro, Ellenbrook (“the Incident”). The Incident involved several parties and the Applicant’s actions resulted in serious injuries to one of the victims.
- 4 As a result of the Incident, the Applicant was charged with, and pleaded guilty to, Assault Occasioning Bodily Harm. On 20 April 2017, he received a term of imprisonment suspended for 12 months.
- 5 On 8 September 2017, the Commissioner of Police made application for a prohibition order against the Applicant to prevent the Applicant from entering any licensed premises for a period of two years.
- 6 On 31 January 2018 the Director wrote to the Applicant advising that a prohibition order had been sought by the Commissioner.
- 7 Following various submissions by the Applicant and the Commissioner of Police, the Prohibition Order was granted on the 13 August 2018 in the terms set out in paragraph 2 above.

Statutory Framework

- 8 Section 152E(2)(b) of the Act provides that the Director may make a prohibition order that prohibits the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises.
- 9 Section 152E(3) of the Act provides that the Director may make a Prohibition Order only if satisfied that it is in the public interest to do so and after:
 - a. having given the relevant person reasonable opportunity to make submissions or to be heard in relation to the application; and
 - b. having regard to:
 - i. any information or document provided by the Commissioner of Police in or with the application; and
 - ii. any information or document provided by the relevant person under paragraph (a).

- 10 The Applicant made an application for review of the grant of the Prohibition Order by the Director pursuant to section 25 of the Act.
- 11 The Commission is not required to find error on the part of the Director, but rather undertakes a full review and makes a determination on the basis of the same materials as before the Director when the decision was made (*Hancock v Executive Director of Public Health [2008] WASC 224*).
- 12 On a review pursuant to section 25 of the Act, the Commission may:
 - a. affirm, vary or quash the decision subject to the review; and
 - b. make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and
 - c. give directions –
 - i. as to any question of law, reviewed; or
 - ii. to the Director, to which effect shall be given; and
 - d. make any incidental or ancillary order.
- 13 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).
- 14 In light of the primary and secondary objects of the Act, the effect of any prohibition order 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 [*Van Styn v Commissioner of Police (LC19/2011)*].

Submissions on behalf of the Applicant

- 15 The representative for the Applicant made various and substantial submissions in respect to the proposed prohibition order, summarised as follows:
 - a. the Commissioner of Police took five months from the date the Applicant was charged to apply for a prohibition order and the Licensing Authority took a further four months to advise the Applicant of such application;
 - b. the Applicant did not oppose the making of a prohibition order but submitted the prohibition order should:
 - i. not apply to all licensed premises and that venues subject to the following classes of licences should be exempted:
 - Special Facility Licences;
 - Restaurant Licences; and
 - Liquor Store Licences;

- ii. permit entry in to any licensed premises for bona fide work purposes; and
 - iii. only be imposed for a period of 12 months.
- c. the Applicant is a FIFO worker in remote regions and this will require entry into licensed works canteens and wet mess areas where all personnel on site must eat their meals. Precluding the Applicant from entry would prevent him from being able to work;
 - d. the Applicant has never before come to the attention of the Licensing Authority and there is no evidence that would ground a finding he is prone to violence while attending licensed premises;
 - e. there is no evidence that the Applicant was intoxicated at the time of the Incident or consumes liquor in an irresponsible manner;
 - f. the Applicant resorted to violence off licensed premises when his friend was antagonised and assaulted and he was threatened with bodily harm;
 - g. the Incident was not “unprovoked” as one of the victims had shown violent actions prior to being removed from the relevant licensed premises;
 - h. the Applicant should be permitted to attend “low risk” licensed venues such as:
 - i. taverns or hotels for training seminars or meetings for work purposes. There is no basis for a finding that the need of the public to be protected outweighs the Applicant’s interest in satisfying his work requirements;
 - ii. licensed restaurants:
 - so that the Applicant can enjoy a meal with his wife, children and extended family and friends. To prevent this would be punitive not protective of the public as the public is comprised of fellow diners and wait staff who do not require protection from the Applicant;
 - as there is no difference in permitting the Applicant to attend licensed restaurants and allowing purchase of packaged liquor to take to an unlicensed restaurant;
 - iii. liquor stores as this is only for a brief commercial transaction; and
 - iv. special facilities licensed venues as this would include wet mess and canteens, theatres and cinemas, sports arenas and food halls;
 - i. a period of 24 months would be unduly harsh as this would, in effect, mean a prohibition order lasting for three years after the Incident and sentencing relating to the Incident;
 - j. the Applicant voluntarily turned himself into police the day following the Incident and pled guilty at the first opportunity;
 - k. the Applicant is aware of the consequences and seriousness of his actions;

- l. matters of provocation and self-defence can be validly raised to give context of a situation while not being raised in defence;
- m. although the Applicant pleaded guilty to the relevant offence, however, this does not equate to him pleading guilty to the assertions in the supporting statements nor prevent the Applicant from making further submissions;
- n. the characterisation of the Commissioner of Police of the Incident being a “sustained and cowardly assault” is mere opinion and has no basis in evidence;
- o. the Commissioner of Police has provided no evidence of the public interest in the Applicant being prohibited from entering on restaurant or special facilities licences;
- p. the Commissioner of Police’s submissions fail to meet the onus of proof;
- q. a period of one year from the date of any order is an appropriate period of time for any prohibition order as over a year has elapsed since the Incident;
- r. the Applicant has consumed liquor and attended, socialised and eaten at licensed premises without incident since the Incident occurred;
- s. if there was a pressing need to protect the public the Commissioner of Police would not have allowed such a delay in making the application for a prohibition order;
- t. the condition that the Applicant not be able to consume liquor when attending licensed venues for work purposes is not appropriate as:
 - i. due to the remote nature of the Applicant’s work, this would essentially prohibit the Applicant from consuming any liquor for weeks at a time;
 - ii. no risk to the public exists at the Applicant’s work site;
 - iii. this would render the prohibition order punitive not protective; and
 - iv. the Commissioner of Police has not provided evidence that imposing the “no liquor consumption” condition is in the public interest;
- u. venues with a special facilities licence should be exempt as:
 - i. canteens and wet messes are required to be attended as part of the Applicant’s employment;
 - ii. the Applicant would be prevented from attending venues such as Optus Stadium, the State Theatre, Adventure World and Rottnest Ferry and areas of the airport which is not appropriate or in the public interest as provision of liquor is ancillary to broader services;
 - iii. it is not within the intended scope of a prohibition order to prevent the Applicant from attending these types of venues for extended periods of time;
 - iv. the onus is on the Commissioner of Police to provide evidence that attending these types of venues is not in the public interest;

- v. the risk that the Commissioner of Police is referring to appears to be prefaced on the basis that the “risk” is not concerned with the consumption of liquor itself and just necessarily be concerned with the environment where liquor is being consumed. As such, the operation, environment and nature and classes of venues must be considered;
- vi. the Commissioner of Police has failed to address the inherent differences in the classes of venues;
- vii. the Incident was one instance at a late night high risk venue with a group of friends and the Applicant resorted to violence and aggression when acting in defence of a friend who was being attacked by another male who was similarly intoxicated. As such, this risk cannot be applied to the Applicant’s attendance at every venue;
- viii. as the Commissioner of Police has conceded liquor store be exempt, the Commissioner clearly considers there to be no risk with the Applicant consuming liquor when in the privacy of his own home or in an unlicensed restaurant.

16 In the Application for Review of the Decision of the Director pursuant to section 25 of the Act, the Applicant has requested that the Prohibition Order be varied as:

- a. he feels that the Prohibition Order was made with the intention for punishment rather than to protect the public;
- b. the Director gave no valid reason why he should be banned from all licensed premises;
- c. the Director has not stated how he is a threat to the public in any way;
- d. the exemptions he sought to attend wet mess and canteens were not taken into consideration and this will impact his employment;
- e. he accepts that the Commission would want him restrained from going to pubs and nightclubs as they are high risk venues;
- f. he asserts that restaurants are not high- risk venues as the purpose is to have a casual meal with friends and family;
- g. he does not believe that he is any risk to the public as the Incident was a one-off misjudgement on his behalf and he has learned his lesson;
- h. he does not feel he should be banned from taking his family out to a Gold Class movie or dinner in his limited time off work;
- i. he would like to be allowed to socialise with his work colleagues after a 12-hour shift and not be an outcast as he is not permitted to enter a licensed venue; and
- j. it has been 19 months since the Incident and in that time he has entered licensed venues and shown no risk or danger to the public.

Submissions on behalf of the Commissioner of Police

- 17 The Commissioner of Police made the following submissions in relation to the grant of the Prohibition Order:
- a. the conduct by the Applicant is best described as a sustained and cowardly assault upon a young male who, at the end stages of the assault, was defenceless and possibly unconscious on the ground at the mercy of the Applicant and his accomplices;
 - b. on the night of the Incident the Applicant drank 8-9 pints of Carlton Dry beer (which is a full strength beer) and therefore he was likely negatively affected by alcohol;
 - c. the actions of the Applicant were violent and serious and he made no attempt to check on the victim's welfare or to seek medical assistance for him;
 - d. it is not open for the Director to accept evidence to the extent that it differs from the Statement of Material Facts (provided by the Commissioner of Police) as the Applicant pleaded guilty to those facts;
 - e. there are material conflicts between the Statement of Material Facts witness statements and other evidence and the Applicant's statements;
 - f. the Director should turn his mind to the inconsistencies between the Statement of Material Facts and the further evidence provided as this demonstrates:
 - i. a lack of insight into the seriousness of the Applicant's conduct;
 - ii. the willingness of the Applicant to say anything to support his case to resist the imposition of a prohibition order;
 - g. the issue of provocation is irrelevant, the Applicant only became involved when the victim was defenceless, and maybe unconscious, on the ground;
 - h. despite the Applicant's submission that he was not the aggressor, kicking and repeatedly punching a man who is defenceless would fall squarely within the category of acts of aggression;
 - i. such serious conduct would ordinarily warrant a ban of three years or more, but as a year has passed, an order for two years would be suitable;
 - j. the Commissioner of Police would accept that:
 - i. liquor stores not be included in any prohibition order; and
 - ii. the Applicant may attend licensed premises for bona fide work purposes;
 - k. in relation to the other requested exemptions:
 - i. there is no need for an exemption so the Applicant can attend cinemas;
 - ii. it is unclear what amusement centres the Applicant is referring to; and
 - iii. it is appropriate to extend the order to licensed restaurants to protect members of the public.

- 18 The Commissioner of Police did not make any further submissions in respect to the Application for a section 25 review of the Director's decision.

Determination

- 19 The primary purpose of a prohibition order is the protection of the public, not punishment of the individual, and any decision to impose a prohibition order must be made in the public interest.
- 20 The expression "public interest" does not have any fixed meaning and is of wide import (*McKinnon v Secretary, Department of Treasury [2009] FCAF 142* and *Re Minister for Resources; ex parte Cazaly Iron Pty Ltd [2007] WASCA 175*). Nevertheless, it is not a test of unfettered discretion and is confined by the scope of the legislation and the context of the relevant matter.
- 21 The objects of the Act clearly set out that the minimisation of harm is a primary objective of the legislation and protection of patrons in and around licensed premises is clearly a matter of public interest.
- 22 The Commission has carefully considered all the written submissions made by the Applicant and the Commissioner of Police.
- 23 Due to the amount of alcohol consumed by the Applicant (which is not disputed) the Commission finds on balance the Applicant's behaviour was affected by alcohol.
- 24 The essential facts relating to the Incident and the Applicant's role in the same are not in dispute. However, there is some differing opinion as to the Applicant's motivation for his behaviour and the extent to which such behaviour may have been provoked or in self-defence.
- 25 Further, the fact that a prohibition order should be granted is not in dispute, only the length and scope that should be applied.
- 26 People who attend licensed premises have a right to expect that those premises are safe and free from drunken, violent and anti-social behaviour [*Commissioner of Police v Bradley Hayes Dorrington (LC16/2010)*].
- 27 In this case the Commission must evaluate the risk of possible similar conduct occurring in the future and the interests of the public in preventing such conduct.
- 28 On the basis of the materials provided, the Commission views the Applicant as having involved himself in the Incident rather than being involuntarily drawn in. Further, the evidence supports the view that the Applicant physically assaulted an already grounded, defenceless victim.
- 29 The arguments that the Applicant was provoked or acted in self-defence are not compelling in this instance. Further, the assertion that the Applicant was merely defending a friend is not supported by the evidence provided.

- 30 The Commission notes the Applicant's assertion that the Incident was a one-off occurrence, however, section 152E of the Act does not require that the person to whom the prohibition order is issued must have engaged in habitual or repetitious violent or antisocial behaviour or, in fact, that such behaviour takes place on licensed premises.
- 31 The conduct by the Applicant is precisely the type of antisocial and violent behaviour that the changes to the Act in 2010 were intended to address.
- 32 Contrary to the Applicant's assertions in the section 25 Application for Review, the Prohibition Order does not ban the Applicant from attending licensed work canteens and wet messes. The Applicant may attend *any* licensed premises for bona fide work reasons. The Applicant is, however, banned from consuming alcohol while in any such licensed premises. As such, the Prohibition Order does not negatively impact on the Applicant's ability to earn an income.
- 33 The Applicant's arguments that the ban on consuming alcohol will:
- a. will not allow him to be social, bond with colleagues or relax; and
 - b. is unnecessary due to other policies and procedures operating in his work place,
- are not convincing.
- 34 The consumption of liquor cannot be considered by the Commission to be a vital element of maintaining the Applicant's wellbeing and the Commission has no control over management procedures and protocols at the Applicant's place of employment.
- 35 The Commission considers that the Applicant is not prevented from spending time with his family and friends by being unable to attend licensed venues and that the imposition of the Prohibition Order does not create an unduly punitive effect in this regard when balanced against the right of the public to expect that those premises are safe and free from drunken, violent and anti-social behaviour.
- 36 The Commission finds, on balance, that purchasing liquor at a liquor store would not hold a similar risk of such conduct occurring and, therefore, it is reasonable that premises licensed under a liquor store licence should be exempted from the Prohibition Order.
- 37 Given the above, the Commission does not consider that the possible punitive effect of the Prohibition Order on the Applicant outweighs the necessity to protect the public, and the Applicant himself, in accordance with the scope of the Act.
- 38 The Commission is satisfied on the balance of probabilities that:
- a. the grant of the Prohibition Order is in the public interest;
 - b. the Prohibition Order should stand in the terms already given; and
 - c. a period of two years is appropriate and justified given the seriousness of the Applicant's conduct.

39 Such Prohibition Order will:

- a. assure the members of the public who frequent licensed venues that they are in safe environments and can expect that they will not become victims of, or have to witness, violence or antisocial and disorderly behaviour; and
- b. allow the Applicant the opportunity for introspection regarding his behaviour on licensed premises and his interaction with alcohol.

40 Despite the above, there were a number of administrative delays in seeking and obtaining the Prohibition Order which were outside of the control of the Applicant and which the Applicant should not be penalised for.

41 The Commission finds that the period of the Prohibition Order should therefore be reduced by a period of six months to take into account such delays.

Final Determination

42 Pursuant to section 152F of the Act the prohibition order shall remain in force and shall be varied to have effect for a period commencing 18 August 2018 ending on 13 February 2020.



DR ERIC ISAACHSEN
PRESIDING MEMBER