

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr D J B

Respondent: Commissioner of Police
(represented by Ms Jane Langworthy 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 lodgement of Application: 16 December 2016

Date of Determination: 28 February 2017
(on papers)

Determination: The application for review is dismissed.

Authorities referred to in this determination:

- *Shane Van Styn v Commissioner of Police* (LC 19/2011)
- *George Mark Lewer v Commissioner of Police* (LC 58/2011)

1 On 23 October 2016, at licensed premises namely “ [REDACTED] ” on South Terrace, Fremantle (“the premises”) an incident occurred involving D J B (“the applicant”).

2 As a result of this incident the applicant was charged with unlawfully wounding [REDACTED] aged 31 years.

3 Subsequently in respect of this same incident a barring notice was served on the applicant on the 10 November 2016 to expire on 9 November 2017. The barring notice was issued pursuant to section 115AA of the *Liquor Control Act 1988* (“the Act”)

4 Section 115AA(2) provides as follows:

“The Commissioner of Police may give notice to a person prohibiting the person from entering 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*
- b) n/a*
- c) n/a*

5 It is clear from the wording of the provision that a single incident is sufficient to give rise to a barring notice.

6 At paragraph 12 of *Shane Van Styn 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, which is pretty important, and also the person.”

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

The primary objects of the Act are:

...

- a) to regulate the sale, supply and consumption of liquor; and*
- b) to minimise harm or ill health caused to people, or any group of people, due to the use of liquor; and*
- c) n/a*

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:

a) *n/a*

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

8 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 it is to be seen as a mechanism to support the primary and secondary objects of the Act.

9 On 16 December 2016, the applicant applied to the Liquor Commission (“the Commission”) for a review of the barring notice pursuant to section 115AD of the Act.

10 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*

11 Section 16 of the Act at subsection 1 provides as follows:

1) *In any proceedings under this Act the licensing authority however constituted-*

a) *shall act without undue formality;*

b) *may-*

i) *n/a*

ii) *make its determinations on the balance of probabilities*

and at subsection 7:

“the Evidence Act 1906 does not apply to proceedings of the licensing authority however constituted, and the licensing authority:

a) *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”*

- 12 The primary question to be determined on review is whether there are reasonable grounds for believing that the barred person has been, in this case, violent or disorderly.
- 13 The incident giving rise to the barring notice is referred to in the following documents and CCTV footage:
- a) WA Police Service Statement of Material Facts;
 - b) Incident Report;
 - c) Running Sheet;
 - d) Incident Report – [REDACTED];
 - e) Incident Register – Nightlife Security Services WA;
 - f) statement of victim [REDACTED];
 - g) statement of witness [REDACTED];
 - h) photographs;
 - i) CCTV;
 - j) letter dated 16 December 2016 from Geoghegan Myers Legal;
 - k) unsigned, 3rd person account of incident and [REDACTED] current circumstances presumably based on instructions given by [REDACTED] to his solicitors;
 - l) character reference from [REDACTED];
 - m) character reference by [REDACTED];
 - n) character reference by [REDACTED];
 - o) respondent’s outline of submissions; and
 - p) respondent’s outline of responsive submissions.
- 14 The respondent’s outline of submissions is a lengthy document of 95 paragraphs covering a broad range of matters relevant to the proceedings.
- 15 Paragraphs 94 and 95 of the submissions appear under the heading of “Conclusion”. They state that there is sufficient material before the Commission to establish that there

are reasonable grounds for believing that the applicant [REDACTED] contravened a provision of a written law by unlawfully wounding the victim on licensed premises or alternatively behaved in a violent or disorderly manner on licensed premises. It is also submitted that under the circumstances the gravity of the incident warrants there can be no justification for the quashing or variation of the terms of the barring notice.

16 I agree with those submissions.

17 The statement of the victim [REDACTED] is that:

- a) she is aged 31 years;
- b) unemployed mother of 2 children;
- c) on Saturday 22 October 2016 herself and friends dined out in Fremantle;
- d) at 1:00am (approximately) on 23 October 2016 they attended [REDACTED];
- e) On going to their table they passed a male and female who appeared to be arguing;
- f) [REDACTED] and her friends sat at a table directly behind the arguing couple approximately ½ a meter away;
- g) some of the wine being consumed by the arguing couple was spilt towards [REDACTED];
- h) she turned and asked that the wine not be thrown around;
- i) the male said something but she does not recall what was said;
- j) the argument continues until the female left, leaving the male alone;
- k) the male appeared upset and turned his attention to the victim's table;
- l) the victim turned to face him. He was standing and she felt something being thrown at her face. She was shocked and upset and stood up and placed her hands on her face as the wine was burning her eyes;
- m) she felt a bang on her left hand and face, she did not know what had happened but realised blood was flowing from her hand;
- n) she then went to the bathroom and waited for the police and ambulance to arrive and take her to hospital;
- o) [REDACTED] did not know [REDACTED] but given the statement received from his solicitor there is no doubt that [REDACTED] was the man involved.

- 18 The witness statement of her friend [REDACTED] is that:
- a) she is also 31 years of age and a qualified child care worker;
 - b) she has known the victim since they were 17 years old;
 - c) she confirms that on the night in question they dined out in Fremantle and found themselves at [REDACTED] restaurant;
 - d) she heard a male and a female arguing at the table next to theirs;
 - e) the male was acting aggressively to the female;
 - f) [REDACTED] spoke to them and asked them to “chill out”;
 - g) She then felt something wet hit her on the shoulder and neck;
 - h) a short time later she saw red wine land on Ms Busby’s face;
 - i) approximately 20 seconds later she saw a wine glass hit [REDACTED] hand which was up in front of her face;
 - j) they both then went into the bathroom with [REDACTED] bleeding “badly” from her hand;
 - k) [REDACTED] stayed with [REDACTED] until the ambulance arrived and then accompanied her in the ambulance to RPH emergency department.
- 19 The unsigned statement attached to the solicitor’s letter in respect of [REDACTED] provides as follows:
- a) earlier on the day in question [REDACTED] and his friends began drinking to celebrate the departure of a friend;
 - b) the celebration moved around in Fremantle until he went to [REDACTED] with his girlfriend;
 - c) a bottle of wine was purchased and shared between the two of them. Discussion about their relationship evolved into an argument;
 - d) during the course of this argument [REDACTED] threw some wine at his girlfriend and put the glass down forcefully, causing it to smash;
 - e) the victim and her friends were sitting at the table next to [REDACTED];
 - f) [REDACTED] believes that the smashing of the glass on the table was how the victim [REDACTED] was injured. He denies throwing the glass at her;

- g) he said that his drunken behaviour this particular evening was not typical and that he drank a far greater amount of alcohol than normal;
- h) [REDACTED] currently works as a fly in fly out worker with [REDACTED]. He has been F.I.F.O for approximately 5 years and never drinks on site;
- i) since the incident he has reduced his alcohol consumption to a minimal amount as he is shocked with his behaviour on the night of the incident;
- j) he is a generally a peaceful person and has never behaved like this before. He has no history of fighting.

20 [REDACTED] seeks a variation of the barring order to delete:

- a) all restaurant licences issued under section 50 of the Act; and
- b) all occasional licences issued under section 59 of the Act.

The statement indicates that:

“[REDACTED] feels remorseful about his behaviour. It was out of character for him and has made him reconsider his alcohol consumption. He understands the purpose and reasoning behind the notice and does not want the notice removed entirely. However he would like the opportunity to attend restaurants and some live music venues.”

Given the changes he has made to his alcohol consumption and his recognition of the seriousness of his offending it is submitted that he is unlikely to repeat this kind of offence.

21 Three referees have given favourable references on his behalf:

1) [REDACTED] states that:

- a) the charges are out of character for [REDACTED];
- b) the incident has been a wake-up call for [REDACTED] who has stopped drinking and will attend counselling for his behaviour.

2) [REDACTED] states that:

- a) he has never seen [REDACTED] behave anti-socially or aggressively;
- b) he has shown great remorse; and
- c) he has always been decent, hardworking, friendly and trustworthy.

3) [REDACTED], who has known [REDACTED] for 22 years states that:

“In the past 22 years of our friendship I have never seen him act aggressively. David is usually a calm and collected person and is rarely confrontational. The incident David was involved in was out of character.”

22 In determining whether to quash or vary a barring notice a consideration is the possibility or likelihood of an applicant behaving in a similar manner if faced with similar circumstances. There is no reason to believe that given similar circumstances, including the consumption of alcohol that ██████ would not act in a violent or disorderly manner.

23 Section 115AA(2) provides that:

“the Commissioner of Police may give a notice to a person prohibiting the person from entering 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 ...

Therefore the primary question to be determined on review is whether there are reasonable grounds for believing that Mr Byrne has been “violent or disorderly”.

24 I am satisfied that in this case ██████ has been violent and disorderly. I accept the evidence given by the victim and the witness ██████ and reject the evidence given by ██████ as to how ██████ sustained her injuries.

25 The behaviour as demonstrated by ██████ on the 23 October 2016 at the ██████ Fremantle is the very behaviour that barring notices are directed at. It has been noted earlier that one incident is sufficient to invoke the provisions of section 115AA(2).

26 The barring notice is not just about ██████. ██████ does not want a reputation that it tolerates violence.

27 Barring notices, as does this one, relate to all clubs, bars or licensed premises. It needs to be understood and expected by all people who frequent licensed premises that they are in safe environments and can expect that they will not become victims of violence or have to witness violence or disorderly behaviour.

28 In *George Mark Lewer v Commissioner of Police (LC 58/2011)* the Commission observed that “the barring notice is not about protecting the public but also protecting the applicant. The barring notice is not a punishment imposed on the applicant but an opportunity to introspect and adopt strategies to manage his behaviour on licensed premises.”

29 All users of licensed premises need to be aware of the existence and scope of barring orders so that they can also introspect and adopt strategies to manage their behaviour on licensed premises and be aware of the dramatic consequences of failing to do so.

30 The provisions of section 115AA(5) provide 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 put at risk. In this case the applicant threw a glass into the face of the victim, causing the glass to break.

Fortunately for both [REDACTED] and the victim her hand was up to her face and her hand was cut and not her face.

- 31 In my view the circumstances of this case are serious enough for the maximum period of 12 months to be applied.
- 32 Also in my view the circumstances of this case are serious enough to justify the application of the provisions relation to section 50 and section 59 of the Act.
- 33 Accordingly the application for review and variation is dismissed and the barring notice is affirmed as it is.



PAUL HEANEY
PRESIDING MEMBER