

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

Applicant: MJI

Respondent: Commissioner of Police
(*represented by Ms Emily Negus of State Solicitor's Office*)

Commission: Ms Wendy Hughes (Presiding Member)

Matter: Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*

Date of Hearing: On papers

Date of Determination: 16 January 2020

Determination: The Commission affirms the barring notice served on the Applicant [REDACTED] on 27 August 2019 which is due to expire on 4 April 2020.

Authorities referred to in determination:

- Hancock v Executive Director of Public Health [2008] WASC 224
- SVS v Commissioner of Police (LC 19/2011)

Background

1. At 10:20 pm on Friday 17 May 2019, the Police were called to the [REDACTED] in [REDACTED]. When Police arrived, there was a group of approximately 20 to 30 people at the entrance/carpark area of the tavern. Some of the people were fighting. More Police were called to the tavern and Police were giving people move on notices. At approximately 11:20 pm Police were trying to give the applicant, [REDACTED] a move on notice. [REDACTED] swore at Police and was acting in an aggressive manner towards Police. Police tried to arrest [REDACTED] but he resisted arrest. [REDACTED] become involved in a fight with Police. There was also a crowd of people around the incident at the time trying to pull [REDACTED] away from Police. [REDACTED] spat at a Constable [REDACTED], with the spit landing on Constable [REDACTED] cheeks and neck.
2. As a result of the incident, the Commissioner of Police served a barring notice on [REDACTED] on 27 August 2019 prohibiting him from entering 11 classes of licensed premises in Western Australia, expiring on 4 April 2020.
3. [REDACTED] seeks a review of the barring notice by the Commission.
4. Pursuant to the *Liquor Control Act 1988* ("the Act") the Commission is to undertake a full review of the materials that were before the Director at first instance and make its own determination¹. The Commission may quash, vary or affirm the decision of the Police in issuing the barring notice².
5. The issues to be determined by the Commission are as follows:
 - (i) Are there reasonable grounds to issue the barring notice?
 - (ii) If so satisfied, should the Commission exercise its discretion to quash, vary or affirm the barring notice?

The incident giving rise to the barring notice

6. In support of the barring notice Police rely on the incident that occurred on 17 May 2019 outside the [REDACTED].
7. When conducting a review, the Commission may have regard to the material that was before the Police when making the decision to issue a barring notice and any information or documentation provided by the applicant³.

¹ *Hancock v Executive Director of Public Health* [2008] WASCA 224 [53]-[54]

² Section 115AD(6) of the Act

³ Section 115AD(6) of the Act

8. The following material was before the Respondent's delegate:
- (i) Statement of material facts;
 - (ii) Brief Jacket (Brief No. [REDACTED]);
 - (iii) Incident report from the [REDACTED], undated;
 - (iv) Incident register, [REDACTED];
 - (v) Incident Brief Report, incident number [REDACTED];
 - (vi) Western Australia Police Incident Report [REDACTED];
 - (vii) CCTV footage;
 - (viii) Statement of Police Constable [REDACTED], dated 2 July 2019;
 - (ix) Statement of Police Constable [REDACTED], dated 28 May 2019;
 - (x) Statement of Senior Constable [REDACTED], dated 2 July 2019;
 - (xi) Notes in Police Officer [REDACTED] Police notebook;
 - (xii) Stills from the CCTV footage; and
 - (xiii) Criminal history for [REDACTED] (no criminal history).
9. Further, [REDACTED] has filed in support of his application written submissions dated 23 September 2019, a signed statement dated 26 September 2019 and a character reference by [REDACTED] dated 20 September 2019.
10. The Respondent has filed written submissions dated 25 October 2019.
11. I have had regard to all of the above material.

Are there reasonable grounds to issue the barring notice?

12. Pursuant to section 115AA(2) of the Act, a barring notice may be issued if the Commissioner of Police:
- “believes on reasonable grounds that the person has, on licenced premises or in the vicinity of licenced premises been violent or disorderly, engaged in indecent behaviour or contravened a provision of written law.”*
13. A single incident can be sufficient to establish a belief based on reasonable grounds (section 115AA(2) of the Act).
14. It is submitted by the Police there are reasonable grounds to believe [REDACTED] has been violent or disorderly or contravened a provision of any written law whilst in the vicinity of a licensed premise, arising out of the incident on 17 May 2019 at the tavern.

15. Having considered the statements from the Police officers, I am satisfied to the required standard there are reasonable grounds to believe [REDACTED] has been violent and disorderly in the vicinity of a licenced premises, namely the carpark area of the tavern.
16. Constable [REDACTED] in his statement describes [REDACTED] behaving in the following manner:
- (i) Shouting and swearing abuse, possibly “fuck you cunts, let’s go and make this a party”;
 - (ii) Acting very aggressively after Police tried to move him on;
 - (iii) Pushing Police away;
 - (iv) Thrashing around and physically resisting arrest;
 - (v) (Constable [REDACTED]) being trapped between a brick wall and [REDACTED];
 - (vi) (Constable [REDACTED]) falling to the ground and being trapped underneath [REDACTED]; and
 - (vii) Spitting with the spit landing on his (Constable [REDACTED]) cheeks and neck.
17. Constable [REDACTED] in his statement describes [REDACTED] behaving in the following manner:
- (i) Shouting;
 - (ii) Pulling his arms back as if he was getting ready to throw a punch at Senior Constable [REDACTED];
 - (iii) After Constable [REDACTED] approached him and took hold of his left arm, he started thrashing around, swearing and resisting;
 - (iv) Said “Let’s make it a party”;
 - (v) Struggled violently;
 - (vi) Fell to the ground with Constable [REDACTED]; and
 - (vii) Shouting and swearing and trying to drop his weight and kicking out with his legs when he was being taken to the Police car.
18. Constable [REDACTED] in his statement described [REDACTED] behaving in the following manner:
- (i) Refusing to budge;
 - (ii) Yelling back at the police officers and his associates came behind him and pushed back against the officers;
 - (iii) Getting in the face of Senior Constable [REDACTED]; and
 - (iv) Yelling “fuck you cunts” and “Fuck you I am not under arrest”.

19. As is his right, ██████ has not gone into detail about the incident and as far as the Commission is aware there are criminal charges pending. ██████ indicates in his statement that there may be negotiations with the prosecution about the charges.
20. However, ██████ does say in support of his application that he does not offer a defence to the charges and that he is remorseful for some of his behaviour. He also expresses regret for his behaviour on the night.
21. Having regard to the statements of Constable ██████, Constable ██████ and Constable ██████ I find there are reasonable grounds to believe ██████ was acting in a violent and disorderly manner in the vicinity of a licenced premises, the carpark area, and there is a proper basis for issuing the barring notice.

Should the Commission exercise its discretion and issue a barring notice?

22. Having found there were reasonable grounds for the issuing of the notice, it follows should the Commission exercise its discretion to quash, vary or affirm the barring notice⁴?
23. When considering whether to exercise my discretion I have had regard to the primary and secondary objects of the Act. In particular, section 5(1)(b) of the Act, *“to minimise harm or ill health caused to people, or any group of people, due to the use of liquor”* and 5(2)(d) of the Act *“to provide adequate controls over, and over the person directly or indirectly involved in, the sale, disposal and consumption of liquor”*. I have also had regard to Parliament’s intention when introducing the legislation allowing for the issuing of barring notices.
24. Further, I accept the purpose of barring notices is different to the purposes of criminal proceedings and that a *“barring notice is not a penalty but a mechanism to protect the general public, a licensee or indeed, the perpetrator from his own actions”*⁵.
25. The Respondent submits the nature of the incident demonstrates aggressive and violent behaviour on the part of ██████ and in particular a willingness to respond aggressively and violently to persons in authority. It is further submitted notwithstanding ██████ previous good character, history of employment and expressions of remorse, a risk remains to the general public. Therefore, the Respondent submits the barring notice should not be quashed or varied.
26. ██████ submits the he is of previous good character, is remorseful for his actions and does not have a problematic relationship with alcohol. He further submits the barring notice is unduly onerous on him as it prevents him from attending ██████ ██████ either as a ██████. In support of ██████ application is the letter of support from ██████ dated 20 September 2019 which states

⁴ Section 115AD(3) of the Act

⁵ *SVS v Commissioner of Police* (LC 19/2011) [9]

██████████ has known ██████████ for approximately 8 years and believes the incident on 17 May 2019 to be out of character for ██████████ who is ordinarily, in his opinion, a disciplined, level headed and respectful person.

27. ██████████ seeks for the barring notice to be quashed or in the first alternative varied to only apply to the ██████████ or in the second alternative varied to allow ██████████ to attend licensed premises for the purposes of ██████████.

28. I find the following:

- (i) The incident on 17 May 2019 at the tavern was a serious incident in the context of the Police having the very difficult task of dispersing a large crowd that had the potential to escalate. ██████████ conduct towards the Police was violent and aggressive and made their task on the evening particularly onerous. ██████████ behaviour was prolonged in nature and at no stage during his arrest did ██████████ comply with the Police requests for him to co-operate. Spitting at a person always has the potential for harm, as does violently resisting arrest in the manner in which ██████████ did on the night.
- (ii) This is the first time ██████████ has been involved in an incident of this kind and he is remorseful for his actions.
- (iii) There remains a low to moderate risk that ██████████ may continue to act in a violent manner on licensed premises, having regard to his inability to offer an explanation for why he was violent on the night.

29. I therefore determine the following:

- (i) Having regard to the risk to the general public, the Commission declines to exercise its discretion to quash or vary the barring notice and the barring notice is to remain until it expires on 4 April 2020.

Wendy Hughes

WENDY HUGHES
PRESIDING MEMBER