

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: AGE

Respondent: Commissioner of Police
(represented by Mr Nikolas Barron of State Solicitor's Office)

Commission: Mr Eddie Watling (Presiding Member)

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

Date of Hearing: 1 December 2014

Date of Determination: 2 December 2014

Determination: The term of the barring notice dated 1 October 2014 is varied to terminate at the date of this determination.

Background:

- 1 On 13 October 2014, a barring notice was served under section 115AA of the *Liquor Control Act 1988* (“the Act”), prohibiting the applicant from entering any licensed premises in Western Australia, except those premises licensed under a liquor store licence, for a period of three months.
- 2 The barring notice was issued as a result of an incident at the Claremont Hotel (“the premises”) on 14 September 2014, which was observed by two plain clothes police officers from the WA Police Liquor Enforcement Unit (“LEU”) and a security officer of the premises.
- 3 It is alleged that the applicant *“lifted up a bar stool which was at the table and threw it across the floor”*. This incident took place at the first floor area of the premises.
- 4 In the police evidence statement filed by a LEU officer on 26 September 2014, it is stated that a security officer employed at the premises, and at the time in conversation with the LEU officers, after witnessing the incident, immediately asked the applicant to leave the premises. The applicant left the venue with no further issues.
- 5 An incident report was prepared by the venue security officer on the day of the incident.
- 6 On 29 October 2014, the applicant lodged an application for review of the barring notice with the Liquor Commission “the Commission” pursuant to section 115AD of the Act, citing the following grounds:
 - a. *“Whilst I admit my actions were reckless (kicked a chair) I believe the penalty is quite severe under the circumstances.”*
 - b. *“After the incident I was asked to leave. There was no abuse, no altercation. I walked out of the venue without restraint. Again, I feel if my actions were extremely serious then the police would have been called or at least my details would have been taken down. No police were called and no one took down my details.”*
 - c. *“I do not have a prior record and this is the first time I have ever received a barring notice. I would certainly appreciate a review and would love the opportunity to discuss this further with the Commission.”*
- 7 A hearing of the Commission was held on 1 December 2014.

Preliminary Matters

- 8 The applicant confirmed that he was aware that he was entitled to legal representation, however, chose to be self-represented.

- 9 It was confirmed that neither party had been able to secure CCTV footage of the incident.

Submissions on behalf of the applicant

- 10 The allegation that the applicant “threw” a stool across the floor was disputed and it was submitted that after ordering three drinks and then walking towards a couple of friends carrying the drinks in hand, he simply kicked a stool away out of his path.
- 11 It was submitted that whilst this action is deeply regretted, in no way was he being disruptive, destructive or acting in an intoxicated way.
- 12 Whilst admitting that the action was silly, he did not in any way act intoxicated and abided by the security officer’s instructions to leave the premises. He did so without any argument or issue.
- 13 It was submitted that receiving the barring notice some two weeks later came as a surprise as no one took personal details at the time of the incident, no police were called and no physical or verbal altercation of any kind took place with the security personnel.
- 14 It was submitted that this was a particularly harsh penalty, especially for someone with no prior record and more weight should have been given to the fact that he left the premises voluntarily and without issue when requested by security personnel.
- 15 It was submitted that, under the circumstances, the barring notice should be quashed, or failing that, varied to enable attendance at licensed restaurants to accommodate upcoming family social commitments.

Submissions on behalf of the Commissioner of Police

- 16 It was submitted that the LEU officer’s evidence statement and the security officer’s incident report place the applicant at the premises at the time of the incident and that all evidence indicates that he behaved in a disorderly manner by throwing a bar stool, resulting in his eviction. The incident report clarifies that the bar stool was metal and that it was thrown across the room.
- 17 Taken together, the evidence before the Commission establishes that the applicant was behaving violently or in a disorderly manner and therefore there are reasonable grounds for imposing a barring notice.
- 18 It was submitted that the incident was aggravated by the following circumstances:

- a) the conduct giving rise to the barring notice was the very type of conduct which the amendments to the Act were designed to overcome; that being engaged in acts of violence or disorderly conduct whilst on licensed premises;
- b) the applicant was in company with a number of other persons at the time he decided to throw the bar stool; and
- c) the evidence shows no provocation or justifiable motive for the applicant to have thrown the bar stool.

19 In determining whether to quash the notice, the issue in question is the likelihood or possibility of the applicant behaving in a similar manner, and public safety being jeopardised if the applicant is faced with similar circumstances. Given that the applicant appears to have acted spontaneously, there is no reason to think that the applicant may not do so again on future occasions when he enters licensed premises.

20 It was submitted that the evidence before the Commission demonstrates that the applicant acted in a disorderly manner without any clear provocation and that his age (33 years at the time of the incident) suggests that his actions are more likely the result of an established character or disposition than a one-off incident resulting from inexperience with alcohol.

21 Precluding the applicant from entering licensed premises for three months provides him with an opportunity to reassess his actions and the nature of his interactions with alcohol. It ensures that members of the public are afforded some protection while he is unable to enter licensed premises.

22 Given the aggravating factors identified, it was submitted that there are no grounds to justify the notice being either quashed or varied. However, if the Commission considers that variation is warranted, it was submitted that any variations should be restricted to:

- a) premises licensed under a restaurant licence, other than a restaurant which forms part of hotel premises or a restaurant with an Extended Trading Permit; and/or
- b) sporting clubs,

and the applicant should not be allowed to consume alcohol whilst on the premises.

Determination

23 Section 115AA(2) of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting that person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to

12 months if the Commissioner believes, on reasonable grounds, that the person has, on licensed premises:

- a) been violent or disorderly; or
- b) engaged in indecent behaviour; or
- c) contravened a provision of the written law.

- 24 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 the individual for their actions. As submitted by the respondent, it was stated by the Minister for Racing and Gaming during the parliamentary debate on the amendments to section 115AA of the Act, that *"the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person."*
- 25 The difficulty that exists in considering this application is in determining the circumstances of the incident itself. The respondent has issued a barring notice on the basis that the applicant threw a bar stool across the room of the premises, whilst the applicant states that he kicked a stool away from in front of him to make a pathway to a table.
- 26 The fact that no CCTV footage of the incident has been made available by either party means that the Commission can only reach a conclusion based on an evaluation on the submissions before it.
- 27 The respondent has submitted a statement of evidence by an officer of the LEU together with an incident report filed by a security officer of the premises, each being consistent in a description that the applicant threw a metal bar stool across the upstairs room of the premises.
- 28 The applicant's position of being reckless in kicking a chair out of his way has not been corroborated by evidence that might have been obtained from other witnesses to the incident, particular those friends with whom he was associating with at the premises at the time. The applicant did offer an explanation as to why witness statements were not obtained.
- 29 Under the circumstances, the Commission is not persuaded that there is cause to dispute the respondent's position and find that the reasonable grounds required by section 115AA(2) of the Act for the issuing of a barring notice have been established. The fact remains that an incident took place that was serious enough to result in the applicant being evicted from the premises and to be subject to a LEU report.
- 30 In considering whether there is a case to vary the barring notice, there is a need to exercise a judgement on whether, on the balance of probabilities, the applicant is likely to re-offend if confronted with similar circumstances on licensed premises.

- 31 As indicated in paragraph 24 above, a barring notice is designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focused on punishing the individual for their actions.
- 32 In this instance, the applicant has recognised that he behaved recklessly, responded responsibly to the request by the security officer to leave the premises, and has demonstrated remorse for his actions.
- 33 I am persuaded that the contrition demonstrated by the applicant, together with his high public profile and business involvement in the hospitality industry would, on the balance of probabilities, make it highly unlikely that he will re-offend.
- 34 On this basis, I am prepared to vary the barring notice to terminate on the date of this determination.



EDDIE WATLING
MEMBER