

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr P M J

Respondent: Commissioner of Police
(represented by Mr Gregory Stockton 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: 15 November 2016

Date of Determination: 18 January 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 1 October 2016 at licensed premises namely the [REDACTED], [REDACTED] an incident occurred involving P M J (“the applicant”) aged 68 years.

2 As a result of this incident the applicant was charged with aggravated assault occasioning bodily harm to [REDACTED] aged 61 years. The applicant pleaded guilty to the charge and was fined \$200 and ordered to pay \$1500 restitution to the victim [REDACTED].

3 Subsequently in respect of this same incident a barring notice was served on the applicant on 2 November 2016 to expire on 28 April 2017 a period of approximately 6 months. This 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 15 November 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:

- 1) P M J application received 15 November 2016
- 2) Barring Notice dated 2 November 2016
- 3) Statement of Material Facts
- 4) Relevant Incident Report
- 5) Victim's statement
- 6) Statement of [REDACTED] (Club Manager) dated 2 October 2016
- 7) Letter of Club President [REDACTED]
- 8) Respondent's Outline of Submissions
- 9) CCTV of the incident

14 A letter attached to the application, which is P M J's only statement received by the Commission states:

- a) that he acknowledges that he has made a big mistake;
- b) that he has been dealt with for this incident in account by way of a fine of \$200 and \$1500 restitution;
- c) he is 68 years old and has been a member of the club for 30 years;
- d) in 2016 he was diagnosed with cancer requiring two operations;
- e) the state wide ban imposed upon him has shocked him and his family.

In this, his only statement, he provides no explanation or defence for the assault on the victim.

15 The barring notice defines the specified class or classes of licensed premises applicable to the notice and is in effect until 28 April 2017.

16 The victim [REDACTED] in his statement dated 2 October 2016 said:

- a) he arrived at the club at approximately 6pm;
- b) on attempting to leave at approximately 7:50pm he was assaulted by 2 individuals;
- c) he was confronted by these 2 individuals blocking the door to his exit;

- d) he was threatened by the senior of the 2 individuals and then punched by the individual causing a severe nose bleed, a split lip and damage to his front teeth;
 - e) he was followed outside to the car park by the two individuals;
 - f) the younger of the two kicked [REDACTED] several times as he walked to his car;
 - g) on leaving the car park the younger person was taking photographs and threatening further action;
 - h) he had no interaction with either of these 2 individuals prior to the assaults;
 - i) [REDACTED] gave no explanation as to why he was assaulted.
- 17 In his letter dated 2 October 2016, the Club Manager [REDACTED] advised [REDACTED] that he was acting on the report of the assault on [REDACTED] and that the club had suspended the two individuals involved.
- 18 In his letter dated 3 October 2016, the Club President [REDACTED] advised both [REDACTED] and his son that pending police investigations into the incident they were not eligible to access the club.
- 19 The CCTV captured the incident on tape and the incident as revealed on the tape was consistent with the account given by [REDACTED].
- 20 The respondent's outline of submissions was wide ranging and thorough dealing with the background to this incident; the incident itself; barring notices; the process of reviewing barring notices and the role of the Commission on the review of barring notices; the statutory objects and purpose of barring notices and the relevant considerations when determining the review of a barring notice.
- 21 At paragraph 31 of the submissions it is stated that:
- “the primary question to be determined on review is whether there are reasonable grounds for believing that the barred person has been violent or disorderly ...”*
- Clearly in this case the applicant [REDACTED] has been violent, and with no explanation as to why.
- 22 The behaviour as demonstrated by P M J on 1 October 2016 at the [REDACTED] [REDACTED] is the very behaviour that barring notices are directed at. It is noted earlier, that one incident is sufficient to invoke the provisions of section 115AA(2).
- 23 Having reviewed all the evidence I am satisfied on reasonable grounds that P M J's behaviour justifies the issue of the barring notice on the grounds that on 1 October 2016 he acted in a violent manner (section 115AA(2)(a)).

- 24 The barring notice is not just about P M J. The [REDACTED] does not want a reputation that it tolerates violence. In his letter dated 3 October 2016 the Club President [REDACTED] states “we are very disappointed that this incident could have repercussions for the club”.
- 25 Barring notices relate to all clubs or licensed premises. It needs to be understood and expected by all people who frequent licensed clubs and 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.
- 26 In *George Mark Lewer v Commissioner of Police* (LC 58/2011) the Commission observed that “the barring notice is not only about protecting the public but also protecting the applicant”. The barring notice imposed upon P M J is not a punishment imposed upon him but an opportunity for him to introspect and adopt strategies to manage his behaviour particularly on licensed premises.
- 27 All users of licensed premises also 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.
- 28 The provisions of section 115AA (5) provide for 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 my view under the circumstances of this case before me involving P M J, a barring notice of 6 months duration is entirely appropriate.
- 29 The application for review is therefore dismissed and the barring notice is affirmed.



PAUL HEANEY
PRESIDING MEMBER