

In the matter of the Liquor Licensing Act 1990
(as amended to 2005).

And in the matter of an application by
Paul Geoffrey Vincent
for a special licence to permit the sale
of liquor for off premises consumption,
subject to conditions from premises known as
Corporate Express Australia at 120 Campbell St,
Hobart.

Decision: **Corporate Express Australia 2005**

Heard before the **Licensing Board** at Hobart on 24th June 2005
Date of decision: 6th July 2005.

The Applicant appeared and gave evidence.

Special licence

11. A special licence authorizes the sale of liquor –

(a) between times; and

(b) on premises; and

(c) subject to compliance with any condition –

specified in the licence.

The principal guidance as to the Board's duty in considering applications is set out in s24A:

Requirements for licence

24A. (1) In considering an application for a licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community.

(2) In considering an application for an off-licence, the Board must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on-licence for a restaurant, the Board must be satisfied that the premises are, or are intended to be, used as a restaurant.

THE STRUCTURE OF THE ACT:

The Act prohibits sale of liquor without a licence or permit. Licences come in five categories: a general, an on, an off, and a club licence, with a special licence. The first 4 types of licence have conditions express in the Act. The fifth may have conditions imposed by the Commissioner. The Commissioner grants a licence on direction from the Board, and if the Board considers a special licence should be granted on any particular application, the Board will specify the licence conditions which are to be imposed on the grant of the licence. The conditions are structured to protect the integrity of the licence and the concept that the decision should be one which is in the best interests of the community. That is, the licence and conditions together make up the combination of the item which is considered under s24A.

The special licence category enables the Board to grant a licence which would not fit within the other categories of licence, but which is nevertheless in the best interests of the community for the licence to be granted.

The application is akin to an off licence: one to enable sale of liquor for consumption off the premises. However, as the Applicant seeks to have more stringent conditions imposed, the application has been framed as a Special Licence application. The concept is of selling liquor for off premises consumption from an existing logistics business, where the purchasers will be other businesses. In this regard, this licence application is more one of a wholesale licence than strictly retail. Although the purchasers will not be other licence holders, they will all be in business, and further detail of the type of customer and application of liquor purchased is set out below.

The last written decision of the Board regarding a wholesale licence application is *M Kent for Woolworths, July 1995*.

EVIDENCE

The Applicant applies on behalf of his employer, a significant public company, asserted to be Australia's leading contract supplier of office products and services to large corporations and government. The entity employs over 2,000 people in 49 locations with annual turnover of \$800M.

The entity provides in seven core areas: office products (general stationery), canteen supplies and janitorial supplies, IT products, business furniture, forms management and distribution, promotional marketing, and (in NSW, Victoria and ACT at present) liquor, under a trading name "Corporate Cellars".

The Applicant seeks conditions on the licence to the effect that:

- No personal shopping for liquor at the licensed premises, that is, no display area nor delivery to customers at the licensed premises;
- Liquor to be supplied only to customers of Corporate Express Australia in regard to other services provided by that entity;
- All liquor must be delivered to the purchaser at the purchaser's place of business. No sales to residential customers or delivery to residences;
- All orders to be taken by telephone, mail, fax, or internet or other electronic communication;

- The licensee must have in place system controls for verifying that the person placing the order is over 18 years of age, and must only deliver into the personal control of a person verified as over the age of 18 years of age;
- Liquor may be delivered on Monday to Saturday between the hours of 8am and 6pm.

In regard to the conditions suggested, the nature of the application as akin to a wholesale licence is reinforced, and protections are added to ensure the prospect of abuse of liquor and harm associated with misuse of liquor is not exacerbated. The proposed sale of liquor is more likely to add simply another provider of a service already in place where businesses acquire liquor for in house purposes and entertainment.

The Applicant gave evidence that existing national customers of Corporate Express who do get liquor from other State divisions will form the initial core of intended customers, then existing customers of the Tasmanian division (other than national customers)

The Applicant asserted that there are no other locally licensed operators who operate in a manner similar to that proposed, that is, principally serving the commercial office segment of the business community. The Applicant perceives an unsatisfied need for such a service, with efficiencies in distribution and service arising.

REPRESENTATIONS

The Australian Hotels Association (Tasmanian Branch) lodged a letter of representation and was represented by Ms Marina Polita, Counsel, at the hearing. In the written submission some reservations were expressed, but at the hearing, after consideration of the nature of the intended licence and the conditions requested by the Applicant, the AHA withdrew objection. Their concern was that the application mimics an off-licence, that the off-licence category of licence was appropriate not the special licence category, and as the off-licence category requires that the sale of liquor not form part of any other business (s24A) then the licence system would be subverted by employing the special licence category to avoid that restriction.

The Board seems to have aligned its view with the amended view of the AHA in that the concerns expressed seem to be adequately covered by the suggested restrictive conditions, and that the licence should be seen more as a wholesale or business to business licence, rather than as a retail or sale to end customers/retail consumers licence.

DECISION

The one concern we had was that expressed in the Licensing Inspector's report. Mr Anderson notes that the Applicant will have no control over the consumption of liquor once delivered.

In this regard, the licence would be like an off-licence or a wholesale licence. Liquor product is delivered into the hands of a sober adult, and after that, the control on consumption is entirely within that person's control – not the original vendor.

As the intended licence is more likely to add an additional provider to an already established market, and as there is not apparent any significant issues regarding abuse of liquor, or increased harm in association with consumption of liquor in such circumstances, the Board is content that the granting of the application would be a decision in the best interests of the community.

Liquor acquired via the licence would go into business houses, and be provided either as gifts to customers, or at corporate board or in-house social functions. The businesses would have significant incentive to only provide liquor in safe circumstances: for productivity and civil liability reasons, amongst others.

It may be that some responsible service of alcohol posters and signage could be provided to the Applicant, and as a condition of the licence, that the Applicant be required to make that available to any regular customer with a requirement (imposed by way of condition on the licence) that in the contract between seller and buyer, the regular customer be required to display the posters and signage where liquor is served.

We will hear the Applicant further on the feasibility of this proposal, before finally settling the terms of conditions for the licence.

Subject to that, we direct the Commissioner to issue a special licence on the terms above mentioned including the condition regarding display of responsible service of alcohol posters and signage. So that this condition can reflect changing perceptions of appropriate signage, it will be to the effect that the Applicant must ensure that any regular purchaser of liquor must, as part of the contract with the Applicant, agree to display such responsible service of alcohol signage as is directed from time to time by the Commissioner.

PA Kimber, Chairman.

L Finney, Member.

K Sarten, Member