

The Licensing Board of Tasmania
In the Matter of an application for
A special licence (restaurant) together
With authority to sell liquor in single
Bottles or more for off premises
Consumption.

In the matter of an application by
In relation to premises at Main Road, Moonah.

Hong Kong Restaurant

The Applicant applied for a Special Licence (Restaurant) with the additional aspect sought being the authority to sell liquor in the form of single (or more) bottles of Tasmanian wines for consumption off the premises. The application was heard and decision given on the 22nd July

The premises is set out as a relatively large seating capacity restaurant; there is no special or unusual usage of the premises which would categorise it as providing unique hospitality and tourist services.

The relevant guideline states:

5 Special licences

Special licences are enabled by s 11 of the Act. They apply to premises that sell liquor but which do not fall within the framework of specific licence types. A special licence authorises the sale of liquor between times and on premises subject to compliance with any condition specified in the licence.

For convenience, the Board has grouped similar types of licensed or proposed licensed facilities under headings within the special licence category. The guideline for grant of a licence within each of these categories is shown separately. The Board retains the ability to consider any other application for the sale of liquor on premises or with conditions not specifically provided for below.

And

5.7 Tasmanian & Local Wines

As a general rule the Board will direct the grant of a Tasmanian & Local Wines Licence if it is satisfied that the liquor to be sold by the licensee will be:

5.7.1 *Tasmanian and Local Wine only,*

5.7.2 *(except for tastings) sold only for consumption off the premises, and*

5.7.3 *sold only as an adjunct to the primary purpose of the licensee to be carried on at the licensed premises which primary purpose relates to the provision of hospitality and tourist services or the sale of hospitality or tourist goods on the licensed premises.*

5.7.4 *subject to conditions to ensure that such provision will not detrimentally impact on the operation of the premises for their primary purpose.*

The intention of this guideline is that authority to sell Tasmanian wines in single bottle (or more) sales is to be an adjunct to some tourism or hospitality service. For example, the “Tasmania Shop” sells tourism goods of a special Tasmanian quality. To also offer Tasmanian wine in small lots is a suitable adjunct to that business; the sale of the other Tasmanian product in conjunction with Tasmanian wine is complementary.

A normal restaurant, although providing a service to tourists, is not a provider of hospitality and tourist services, or predominantly established for the sale of hospitality or tourist goods. It is established to sell prepared food to all comers for consumption on the premises, and as an adjunct to the sale of food, there is an obvious social and hospitality function in providing liquor.

The framework of the Liquor and Accommodation Act 1990 is to provide for particular licence categories: for example the on-licence, general licence, and off-licence categories.

The latter, off-licence, is covered by a particular requirement that no less than 9 litres be sold. Whilst this restriction has been criticised in the National press in recent times, it remains the law.

The guidelines should not be employed to subvert the overall intention of the Act. They should be interpreted in a manner to support the s216 criteria, and the licence structure.

The exception established by guideline 5.7, whereby off sales is authorised in single bottles sale, is not intended to be an indirect method of avoiding the restrictions imposed by s9 of the Act. It is a special licence category, designed to assist in the economic and social development of Tasmanian industry and provision of tourist services.

Should guideline 5.7 be used to enable a restaurant to sell single bottle sales of Tasmanian wine, the structure of the s9 limitation would be subverted, and the criteria in s216 of facilitating the orderly development of the hospitality industry would not thereby be pursued. Whilst a ‘floodgates’ argument is not attractive, the reality is that if the Hong Kong Restaurant were to be permitted to sell single bottles of wine for consumption off the premises, there would be no justification for refusing that authority to almost every restaurant. That would not be consistent with the apparent intent of the licence structure around s9 of the Act, nor (unless there was substantial additional evidence in support of the proposition) in accordance with the obligations of the Board stated in s216.

It may be that the proprietors of the Hong Kong Restaurant are asked from time to time, by tourists, for single (or more) bottles of Tasmanian wine, for off premises consumption. This does not thereby justify direction for a grant of such a licence authority.

The evidence was to the effect that local hotels do provide a wide range of Tasmanian wines (particularly the Valern Hotel), so there is no justification in going outside the existing guidelines, as an exception, to cater for an otherwise unsatisfied demand.

The Board is entitled to deviate from its own guidelines where it is in the public interest to do so. In this case it is not demonstrated that the public interest would be served by, in effect, creating a new special licence sub-category authorising restaurants to sell Tasmanian wine for consumption off the premises.

Perhaps that day will come, when (and if) the liquor sale industry is more deregulated than it is at present. The objects of the Act, the framework of s216, and the guidelines already set down however guide the Board.

In this instance the Board directs the grant of a Special Licence (Restaurant) but directs that the ancillary proposal of authority to sell Tasmanian wine for off premises consumption not be granted.

Phillip Kimber, Presiding Member Bill Morris, Member. Louise Finney, Member.
22nd July, 1999.