

In the matter of the Liquor and Accommodation Act 1990

In the matter of an application by
the **Commissioner for Licensing** for suspension or cancellation of a General Licence.

In the matter of premises **Westbury Hotel**, Westbury

Decision of the Licensing Board of Tasmania.

This application was heard by the Board in Launceston on the 14th January 2003.

The transfer of liquor licence was approved to Mr Donellan on an undertaking to the Commissioner as part of his requirements under S 22 to assess whether the applicant is a fit and proper person to hold a liquor licence and as part of his requirements to assess the applicants capacity to control the service and sale of all liquor.

The making of the applicant's statement appears to the Board to have been made somewhere on the spectrum between negligently to false and misleading. Candidly, we think it probably was not false and misleading, but in determining whether the statement was just negligent or false and misleading we have to look at all of the circumstances that have followed. Mr Donellan received three invitations to attend the Responsible Service of Alcohol program (and gave an undertaking to attend) and did not attend.

It is 3 months since Mr Donellan's undertaking and the Commissioner applied to the Board under s42 for the cancellation or suspension of the licence.

The Board gets one of these types of applications every 2 months and that means that there is a degree of non-conformity amongst transferees.

The Commissioner's office has been put to some degree of attention in having to keep closer tabs on transferees to ascertain who do not undertake the Responsible Service of Alcohol course, in order to make sure that they do. There appears to be a small number of people who will not do it unless forced through this process.

In the past where adequate excuse has been given the Board has tended to suspend the licence but suspend the suspension provided the transferee goes to the next RSA course. Because of the recurrent nature in these things and the degree of lack of conformity, the Board has decided to change that policy. That would not be fair to Mr Donellan because he has not been advised (nor the public generally advised) of the new policy. The Board is going to use this application to put out the warning.

In the future it is the Board's intention to suspend licences from the time of hearing until the applicant transferee has attended the course. In this instance the licensee would have been suspended to 11 February (assuming he did the course on that date), under the new policy. But the Board will not do that. We will (in accordance with the old policy) suspend the licence until the applicant does the course, but if the licensee manages to complete a course adequately between now and the 19 February then that suspension is not to operate. So it is imperative (for him) that Mr Donellan takes one

of these four opportunities to go and do a course between now and then. He says that he will have no difficulty in so doing.

The Board asks the Commissioner, in organising these applications, to make the new policy known to the extent that he can, perhaps at RSA courses and through the RSA newsletter that is sent out from time to time, and to schedule these hearings in such a manner as to give a fair opportunity to respondents to go to the courses before the hearings.

P Kimber, Presiding Member

B Morris, Member

L Finney, Member

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