

THE LICENSING ACT, 1908.

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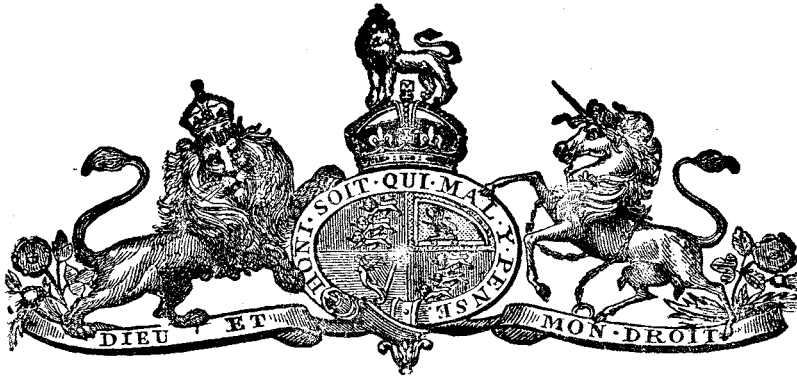
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T A S M A N I A.



1908.

ANNO OCTAVO

EDWARDI VII. REGIS,

No. 39.

AN ACT to amend the Law relating to ^{A.D.} 1908.
Licences for the Sale of Liquor, and for
other purposes. [14 December, 1908.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

PART I.

PRELIMINARY.

1—(1.) This Act may be cited for all purposes as “The Licensing Act, 1908,” and shall be deemed to be incorporated with and be construed as one with “The Licensing Act, 1902,” hereinafter called the Principal Act.

Short title and construction.
2 Ed. VII. No. 32.

(2.) This Act and the Principal Act may be cited together as the Licensing Acts.

2 This Act is divided into parts, as follows :—

Division of Act,

Part I.—Preliminary. (Sections 1 to 5.)

Part II.—Amendments to Principal Act. (Sections 6 to 15.)

Part III.—Occasional Licences. (Sections 16 to 20.)

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Part V.—Local Option. (Sections 39 to 53.)

Part VI.—Miscellaneous. (Sections 54 to 68.)

Repeal.

3 The enactments of the Principal Act mentioned in the schedule to this Act are to the extent there indicated repealed, subject to the provisions hereinafter contained, as from the commencement of this Act.

Interpretation.

4 In the construction and for the purposes of the Licensing Acts—

“Lodger.”

I. The word “lodger,” wherever occurring—

(a) Shall mean a person *bonâ fide* lodging in the licensed premises;

(b) Shall include a weekly boarder, that is to say— a person who habitually, from day to day, takes his meals in the licensed premises, and who pays for the same by the week :

“Traveller.”

II. The word “traveller,” wherever occurring, shall mean and be deemed to have reference only to a *bonâ fide* traveller. Provided that a person shall not be deemed to be a *bonâ fide* traveller—

(a) Unless the place where he lodged during the preceding night is at least Four miles distant from the licensed premises where he demands to be or is supplied with liquor or refreshment, and he shall have travelled at least Four miles on the day of such demand or supply, such distance to be calculated by the shortest practicable route along or over any public highway or thoroughfare, or by or across any arm of the sea, inlet, river, or creek between the place of lodging and such licensed premises; nor

(b) If the place where he usually sleeps is distant less than Four miles from such licensed premises, such distance to be calculated as aforesaid.

Cf. 54 Vict. No. 1111, s. 135 (Vict.).

62 Vict. No. 18, s. 64 (N.S.W.).

49 Vict. No. 18, s. 76 (Q.).

Interpretation.

“Clerk of the licensing bench.”
Cf. 2 Ed. VII.
No. 32, s. 3 (Tas.).

5 In this Act, unless the context requires another meaning —

“Clerk of the licensing bench” means the person officiating as police clerk or clerk of petty sessions at the police court or place of holding petty sessions held at or nearest to the usual meeting place of the licensing bench; and such person shall be and perform the duties of clerk to the said licensing bench :

“Licensed premises.”

“Licensed premises” means premises in respect of which an hotel or public-house licence is for the time being in force :

“Licensee.”

“Licensee” means a person holding an hotel or public-house licence granted under the Principal Act :

“This part.”

“This part” means “this part of this Act.”

*Licensing.***PART II.**

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AMENDMENTS TO PRINCIPAL ACT.

- 6** Subsection (3.) of Section Fifteen of the Principal Act is hereby amended—
- Amendment of
Section 15 of
Principal Act.
- i. By inserting in line 2, after the word "himself," these words in brackets, namely, "[except in case of sickness]:"
 - ii. By inserting at the end of the subsection these words, namely, "Provided that a member whose seat becomes vacant by reason only of his absenting himself from Two consecutive meetings shall nevertheless be eligible for re-election."
- 7** These words, namely, "But a packet licence shall not authorise the sale of liquor on the occasion of any excursion or trip of not more than Five hours' duration on *Sunday* on board of any such vessel thereby licensed," are hereby inserted at the end of Subsection (2.) of Section Twenty-five of the Principal Act.
- Amendment of
Section 25 of
Principal Act.
- 8** Subsection (4.) of Section Seventy-four of the Principal Act is hereby amended, as follows:—
- Amendment of
Section 74 of
Principal Act.
- i. By expunging the word "Five" in the Fifth line, and substituting therefor the word "Eight:"
 - ii. By expunging the word "One" in the Eighth line, and substituting the word "Two."
- 9** These words, namely, "A copy of the prohibition shall be served by the police on every licensee whose licensed premises are within the licensing district in which the prohibition is granted," are hereby inserted at the end of Subsection (1.) of Section One hundred and seven of the Principal Act.
- Amendment of
Section 107 of
Principal Act.
- 10** Section One hundred and ten of the Principal Act is hereby amended by inserting in line Eight, after the word "liquor," the following words —"or if he shall be found in a condition of intoxication or under the influence of liquor."
- Amendment of
Section 110 of
Principal Act.
- 11** Section One hundred and nineteen of the Principal Act is hereby amended—
- Amendment of
Section 119 of
Principal Act.
- i. As to paragraph (a) by repealing the word "Sixteen," and substituting therefor the word "Eighteen:"
 - ii. As to paragraph (h) by repealing the words "his servants to be drunk," and substituting therefor the word "drunkenness."
- 12** Section One hundred and twenty-three of the Principal Act is hereby amended by striking out the words "a like offence," and substituting therefor the words "any offence against that section (whether such convictions shall be in respect of the same or different kinds of offences)."
- Amendment of
Section 123 of
Principal Act.

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Amendment of
Section 124 of
Principal Act.

13 Section One hundred and twenty-four of the Principal Act is hereby amended, as follows:—

The following paragraph is hereby substituted for paragraph ii., namely:—

“ii. Refusing admittance at any time, by day or night, to the Commissioner of Police, or to any member of the police force who—

(a) Is not below the rank of sergeant; or

(b) Has been authorised either generally or specially by a justice, or the Commissioner or a superintendent of police, to enforce the provisions of the Licensing Acts;

or delaying any such admittance to any such person as aforesaid for such a time as that it may be reasonably inferred that wilful delay was intended.”

Using false signs
or labels.
Cf. c. 9 of 1907,
s. 127, Province
of Alberta,
Canada.

14—(1.) No licensee shall use, or permit to be used, any sign or label upon any bottle, cask, or other vessel in which liquor is kept for sale upon the licensed premises, which does not correctly and truly state the nature of the contents of such bottle, cask, or other vessel, or which is in any manner calculated to mislead a customer or guest as to the nature, description, or quality of such contents.

Penalties.

(2.) Any person violating any of the foregoing provisions of this section shall be liable, upon summary conviction for a First offence, to a penalty of not less than Two Pounds and not more than Ten Pounds, and, upon summary conviction for a Second offence, to a penalty of not less than Five Pounds nor more than Twenty Pounds; and it shall also be lawful for the convicting magistrate or justices, in the case of any conviction for a Second or subsequent offence, either to suspend such person's licence for a certain time to be specified, or to declare such licence to be absolutely forfeited, in which event the operation of such licence shall be temporarily suspended, or such licence shall become and be absolutely void, as the case may be.

(3.) Any—

Taking samples
to see that law is
observed.

I. Inspector: or

II. Person appointed by the Commissioner of Police for that purpose—

may at any time, upon paying or tendering payment therefor, take from the liquors kept by any licensee upon the licensed premises sufficient thereof for the purpose of analysis, to ascertain whether or not any of the provisions of this section have been violated; and any person appointed by the Commissioner of Police shall, if required, before taking such liquor, produce the authority under which he acts in writing, signed or purporting to be signed by the Commissioner of Police.

Re-enactment of
part of Section
126 of Principal
Act.

15 If any person, not being a passenger being actually conveyed in any vessel in respect of which a packet licence has been issued, shall purchase liquor on board such vessel, he shall, on conviction, forfeit a penalty not exceeding Five Pounds.

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PART III.

A.D. 1908.

OCCASIONAL LICENCES.

16 In this part "public event" means—

- i. Any races, regatta, fair, agricultural show or sale in connection therewith, cricket or football match :
- ii. Any other public sports, games, or amusements proclaimed by the Governor to be public events for the purposes of this part :
- iii. Any public sale by auction of livestock not held in connection with an agricultural show, provided the sale is held more than half a mile away by the nearest practicable route from the nearest licensed premises.

Interpretation.
"Public event."**17**—(1.) An occasional licence may be granted—

i. By—

- (a) A police magistrate ; or
- (b) Any Two or more justices in petty sessions assembled :

Occasional
licences.
By whom to be
granted, and to
whom.

ii. At the police court or place of holding petty sessions situate nearest to the locality where the public event or public events referred to in the application are proposed to be held :

iii. To the holder of an hotel or public-house licence, and to no other person, and shall not continue in force after his licence under the Principal Act has ceased to be in force :

iv. Upon application therefor being made as prescribed :

v. Upon payment of the prescribed fee.

Upon application
and payment of
fees.

(2.) The police magistrate or justices granting an occasional licence may impose such restrictions and conditions as he or they may think fit.

Restrictions and
conditions may be
imposed.

(3.) Every application for an occasional licence for the same public event or public events, as the case may be, shall be made to the same police magistrate or justices unless the Attorney-General of the State otherwise directs, or regulations otherwise prescribe.

18—(1.) An occasional licence in the prescribed form may, upon payment to the clerk of petty sessions, of the sum of—

i. Five Shillings for each day covered by the licence, be granted in respect of a public event stated in the licence to take place at a specified locality, during One specified day or extending over any specific period not exceeding Seven days : or

ii. Five Pounds, be granted in respect of all the public events of the nature indicated in the licence (being of the same kind and controlled by the same managing authority) which may take place from time to time at a specified locality during any period, not less than Three months and not exceeding Twelve months, to be specified in the licence.

Occasional
licence grantable
for public event
extending over
and not exceeding
Seven days, or
public events
occurring from
time to time
during and not
exceeding Twelve
months.

(2.) The said fees shall be paid into the Treasury, and form part of the Consolidated Revenue.

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Effect of
occasional licence.

19—(1.) An occasional licence shall authorise the grantee thereof to sell and dispose of liquor under his hotel or public-house licence, and according to the tenor of the occasional licence, for the convenience of the public in attendance, and on the occasion of and at and during the public event or public events indicated in the licence and for the period specified therein.

(2.) An occasional licence shall not authorise or entitle the grantee thereof to exercise the privileges thereof—

- i. Before the hour of Nine in the morning, or after the hour of Seven in the evening :
- ii. On any land, building, or premises either wholly or partly controlled, occupied, or owned by any corporation or municipal council without the express permission in writing of the corporation or council, to be given under the hand of the mayor, warden, or clerk.

Provision for
postponement.

20 If for any reason the public event for which an occasional licence under paragraph i. of Subsection (1.) of Section Eighteen of this Act may have been granted is not held on the day or days for which the licence has been granted, but the holding thereof has been postponed to some future day or days within Twenty-eight days of the date of the said licence, then in such case a police magistrate or any Two or more justices may, by indorsement on the licence in the form prescribed, renew such licence without payment of any fee for the day or days to which such public event has been so postponed ; but such renewal must not be for any number of days exceeding those for which the licence was originally granted.

PART IV.**DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.***Supplying of Liquor.*Unlawful supply
by persons other
than licensee.
6 Ed. VII. No.
2068, s. 73 (Vic.).

21 Where on any licensed premises any person other than the licensee supplies liquor to any person in contravention of any of the provisions of the Licensing Acts, he shall be liable to a penalty not exceeding Ten Pounds, irrespectively of any liability that may attach to the licensee in respect of the same offence.

Aiding drunkards
to get liquor.
See 2 Ed. VII.
cap. 28, s. 7.
Vic., s. 74.

22 Any person who, being on any licensed premises—

- i. Procures or attempts to procure any liquor for any drunken person : or
 - ii. Aids or abets any drunken person in obtaining or consuming any liquor—
- shall on conviction be liable to a penalty not exceeding Five Pounds.

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23—(1.) Every person, not being a traveller, lodger, servant, or inmate, who purchases or obtains liquor, or is found drinking liquor, on any licensed premises at any time when such premises should not be open for the sale of liquor to the public, shall for every such offence be liable to a penalty not exceeding Five Pounds.

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Person found drinking liquor on premises during prohibited time.

See N.S.W., No. 40 of 1905, s. 17 (1).

Vic., s. 76.

Persons on premises during prohibited time. See N.S.W., No. 40 of 1905, s. 17.

(2.) Every person found on any licensed premises at any time when the licensed premises should not be open for the sale of liquor to the public, shall, unless he satisfies the presiding magistrate or justices that he was at the time when he was so found a traveller, lodger, servant, or inmate, be liable to a penalty not exceeding Five Pounds

(3.) Every person found in any yard, stable, outhouse, shed, or any other place whatsoever of, belonging, or in any way appertaining to any licensed premises at any time when the licensed premises should not be open for the sale of liquor to the public, shall, unless he satisfies the presiding magistrate or justices

i. That he was at the time when he was so found a traveller, or a lodger, servant, or inmate of the licensed premises : or

ii. That he had not been in the licensed premises during prohibited hours, and that he was in the place where he was found, not for the purpose of entering the licensed premises during prohibited hours, but for some definite, reasonable, and proper purpose, which he shall prove to the presiding magistrate or justices, and the sufficiency and reasonableness whereof the presiding magistrate or justices shall decide—

be liable to a penalty not exceeding Five Pounds.

24—(1.) In any proceedings against a licensee for an offence against any of the provisions of Sections One hundred and nineteen and One hundred and twenty of the Principal Act, if such licensee (hereinafter referred to as the defendant) fails to prove that the person to whom the liquor was sold or supplied (hereinafter referred to as the purchaser) was a traveller, but the court hearing the case is satisfied that the defendant believed that the purchaser was a traveller, the presiding magistrate or justices shall dismiss the case as against the defendant.

As to travellers. N.S.W., No. 18 of 1898, s. 64. Vic., s. 78.

(2.) In any such proceedings the presence on any licensed premises of Two or more persons other than travellers, lodgers, servants, or inmates shall be *prima facie* evidence of a sale of liquor having taken place.

(3.) In such proceedings if the presiding magistrate or justices think that the purchaser falsely represented himself to be a traveller, such magistrate or justices shall direct proceedings under this Act to be instituted against such purchaser.

25 If on *Sunday*, or within the hours during which the sale of liquor to the public is prohibited, any liquor—

Police may seize liquor drawn for sale or being carried away

i. Is drawn for sale on any licensed premises to persons other than travellers, lodgers, or inmates of the licensed house :

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during Sunday or
prohibited hours.
Vic., s. 80.

Penalty for
carrying liquor
from licensed
premises on
Sunday or during
prohibited hours.

No child under
Sixteen years to
be convicted if
ordered to convey
liquor.
Vic., s. 81.

Evasion of
exemption in
favour of
travellers.
N.S.W., No. 18
of 1898, s. 65.
Vic., s. 82.

Evasion of law as
to sale, &c., of
liquor on premises.
See N.S.W., No.
18 of 1898, s. 66.
Vic., s. 83.

Proof in
prosecutions.
N.S.W., No. 40
of 1905, ss. 16,
18. Vic., s. 84.
Testimonial for
applicants.
N.Z., 1904, No.
42, s. 32.
Vic., s. 68.

ii. Having been procured from, is being carried away from any licensed premises—
any member of the police force may seize and take, or cause to be seized or taken, away any such liquor, together with the vessel or utensil containing the same.

26—(1.) If any person (not being a lodger for his own consumption) carries away liquor in any vessel from any licensed premises on *Sunday*, or within the hours during which the sale or disposal of liquor to the public is prohibited, he shall be liable on conviction to a penalty not exceeding Forty Shillings.

(2.) No child under the age of Sixteen years shall be convicted of an offence against this section if it is proved to the satisfaction of the court that such child was ordered or requested by some other person to obtain or convey liquor as aforesaid.

27—(1.) No licensee shall be compelled to supply liquor to any person representing himself to be a traveller and requiring to be supplied with liquor at any time during which the sale or disposal of liquor to the public is prohibited; but if such licensee elects to supply liquor, then the person requiring the same shall on demand by such licensee give his true name and address and place of lodging during the preceding night.

(2.) If any person so requiring to be supplied with liquor does not, on such demand, give his true name and address and place of lodging during the preceding night, or gives a false or fictitious name or address and place of lodging during the preceding night, such person shall be liable to a penalty not exceeding Five Pounds

28 In any proceedings against a licensee for any sale or supply of liquor, or the drinking or consumption of liquor, on his premises, at any time during which the sale or disposal of liquor to the public is prohibited, it shall be no defence to prove that such licensee himself took or carried, or employed or suffered any other person to take or carry, such liquor out of or from such premises for the purpose of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever in the occupation of such holder, or in any public place or public thoroughfare; but in all such cases such liquor shall be deemed to have been drunk or consumed by the purchasers thereof on the licensed premises of such licensee, and with his privity and consent.

29 In any prosecution for an offence against any of the provisions of the Licensing Acts any liquid shall be deemed to be liquor unless the contrary be proved.

30 Every new applicant for an hotel or public-house licence, or for a transfer thereof to himself, shall, with his application, deliver to the clerk of the licensing bench a testimonial as to his character

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and suitability for the particular premises applied for. It shall be the duty of the inspector—

- I. To make a searching investigation as to such applicant's character and suitability, and as to the genuineness and value of such testimonial : and
- II. To report in writing fully thereon to the bench.

The bench, in dealing with every such application, shall take into consideration such testimonial and report.



31—(1.) If any person, not being a member of the licensee's family, under the age of Eighteen years is for any purpose in the bar of any licensed premises, the licensee of such premises shall forthwith, without the use of unnecessary force, remove or cause to be removed such person from the bar.

Person under Eighteen not allowed in bar.
See N.S.W., 1905, No. 40, s. 10.

(2.) Any licensee who fails to comply with the provisions of this section shall on conviction be liable to a penalty not exceeding Two Pounds.

32 Any person who sends a person under the age of Sixteen years to licensed premises for the purpose of obtaining any liquor shall be liable to a penalty not exceeding Two Pounds.

Sending persons under age of Sixteen for liquor.
See N.S.W., 1905, No. 40, s. 10.

33 If any licensee allows any female under the age of Twenty-one years, other than his wife, daughter, or sister, to sell, supply, or serve liquor in any bar on his licensed premises, he shall on conviction be liable for every such offence to a penalty not exceeding Five Pounds. This section does not apply to any person employed as a barmaid on the First day of *September*, One thousand nine hundred and eight.

No female under age (except wife, &c.) to serve in bar unless already employed on September 1, 1908.
See *Ib.*, s. 13.

34—(1.) No person shall—

- i. Supply or offer to supply, by sale, gift, or in any other way, either directly or indirectly, or deliver to any half-caste : or
- ii. Solicit or receive from any half-caste any order for the supply or delivery of—

Prohibition against supply of liquor to half-castes.

any liquor ; and any person in any way offending against the provisions of this subsection shall, upon conviction in a summary way before a justice, forfeit and pay for every such offence a penalty of not less than Ten Pounds nor more than Fifty Pounds : Provided that it shall not be an offence under this subsection for any person, for any urgent cause or necessity (the burden of proof whereof shall rest upon him), to administer liquor to a half-caste for purely medical purposes.

In any proceedings against any person for an offence against any of the provisions of this subsection, if the justice hearing the case is satisfied that the defendant was not aware that the person in reference to whom the proceedings were taken was a half-caste, and could not reasonably be expected to know from his appearance that such person was a half-caste, the justice shall dismiss the case as against the defendant.

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Liquor in
possession of
half-castes.

(2.) It shall not be lawful for any half-caste to have in his possession any liquor.

If this subsection is contravened, the liquor may be seized and removed by any member of the police force, and any justice may, in a summary way, direct that it be forfeited, and that it be disposed of according to the discretion of the justice.

(3.) In this section "half-caste" means a resident of the reserve of Six thousand acres at *Cape Barren Island*, set apart by the *Tasmanian* Government for half-castes and their descendants.

*Powers of Police.*Powers of police
with respect to
persons on
licensed premises
at prohibited
times.N.S.W., No. 40
of 1905, s. 19.
N.Z., No. 42 of
1904, s. 42.
Vic., s. 91.

35—(1.) Any member of the police force who—

i. Is not below the rank of sergeant: or

ii. Has been authorised either generally or specially by a justice or the Commissioner of Police or a superintendent of police to enforce the provisions of the Licensing Acts—

may demand from any person found on any licensed premises, at any time within the hours during which the sale of liquor to the public is prohibited, the name and address of such person, and if he has reasonable ground to suppose that the name or address so given is false, may require such person to produce evidence of the correctness of the name or address given by such person.

(2.) If any such person, on demand being made as aforesaid, refuses to give such name or address, such member of the police force may without any warrant apprehend such person forthwith, and shall bring him before some justices as soon as practicable to be dealt with according to law.

(3.) Every such person who, on demand being made as aforesaid—

i. Refuses or neglects to give his name or address: or

ii. Fails without reasonable cause to produce any such evidence as aforesaid: or

iii. Gives a false name or address: or

iv. Produces false evidence with respect to such name or address—

shall be liable for every such offence to a penalty not exceeding Two Pounds.

(4.) Every licensee upon whose licensed premises any person is so found shall, unless he proves to the satisfaction of the presiding magistrate or justices that such person was lawfully on such premises, be liable to a penalty not exceeding Five Pounds.

Entrance by day
or night may be
demanded by
police officers in
certain cases.
Vic., s. 93.

36 The Commissioner of Police, and any member of the police force who is not below the rank of sergeant, or who has been authorised either generally or specially by a justice or the Commissioner of Police or a superintendent of police to enforce the provisions of the Licensing Acts, may demand entrance into any licensed premises or any yard, stable, outhouse, shed, or any other place whatsoever of, belonging, or in any way appurtenant to such premises, at any time by

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day or night, and if admittance is refused or admittance is delayed for such time as that it may be reasonably inferred that wilful delay was intended, the offender— A.D. 1908.

- I. If he is the licensee, shall be dealt with under Section One hundred and twenty-four of the Principal Act :
- II. If he is any other person, shall forfeit and pay any sum not less than Two Pounds nor more than Ten Pounds.

Sanitary Provisions.

37—(1.) Every licensee shall—

- I. Cause his licensed premises to be furnished with proper sanitary appliances, including closets and urinals, in accordance in all respects with any by-laws from time to time in force under Section Twenty-nine, Subsection I., of the Principal Act, and shall during the hours when the sale of liquor to the public is permitted on such licensed premises, keep at least One closet and urinal open and available for the general public :
- II. Maintain such appliances and any room or place in which they are in a good sanitary condition :
- III. Keep his licensed premises free from offensive or unwholesome matters, and in a clean and wholesome condition generally.

Duties of licensee
as to sanitary
matters.
N.S.W., 1905,
No. 40, s. 15.
Vic., s. 95.

(2.) Any licensee who fails to carry out the provisions of this section, and any person who—

- I. Defaces, by writing or drawing anything obscene : or
- II. Pollutes—

any such room or place, shall be liable to a penalty not exceeding Ten Pounds.

Prevention of Betting and Gaming in Licensed Premises.

38—(1.) Every licensee who either himself, or by means of any agent, clerk, or servant, bets on his licensed premises with any other person, or permits, or is privy to, or connives at betting on his licensed premises, shall be guilty of an offence, and shall on conviction be liable to a penalty not exceeding Fifty Pounds, and for a Second or subsequent offence to a penalty of not less than Ten Pounds nor more than One hundred Pounds, and the owner, after a First conviction, may on such conviction have power to evict such licensee.

Betting in licensed
premises an
offence.
N.Z., No. 42 of
1904, s. 44.
Vic., s. 97.

(2) If within Three years after a conviction under this section a licensee is again convicted under this section he shall *ipso facto* by such conviction forfeit his licence, and be disqualified for a term of Three years from holding any licence.

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PART V.

LOCAL OPTION.

Commencement. **39** This part shall come into operation on the First day of 1st January, 1917. *January*, One thousand nine hundred and seventeen.

Preliminary.

Definitions.

"Annual election."

"District."

"Elector."

"Licence."

"Licensee."

"Licensed."

Constitution of licensing benches.
Cf. *N.S.W.*, s. 117.

40 In this part—

"Annual election" means the annual election of aldermen or councillors, as the case may be, prescribed by law :

"District" means a city or municipality :

"Elector" means every person being a natural-born or naturalised subject of His Majesty, and whether male or female, of the age of Twenty-one years, whose name as the owner or occupier of any property of any value whatever within the district appears on the assessment roll in force for the time being under "The Assessment Act, 1900," in the district :

"Licence," "licences," means hotel licence or public-house licence :

"Licensee" means holder of an hotel or public-house licence :

"Licensed" as applied to premises means premises in respect of which an hotel or public-house licence is for the time being in force.

From and after the First day of *January*, One thousand nine hundred and seventeen, for every district as defined by this section there shall be constituted a bench, to be called the licensing bench, for the purpose of giving effect to the provisions of this part, and the several provisions of the Principal Act and its amendments relating to licensing benches shall, subject to this Act, refer to every such licensing bench.

Maximum Number of Licences.

Number of licences not to exceed present number.

Cf. *N.S.W.*, s. 64.
Vic., s. 118.

41 The number of hotel and public-house licences in a district shall not, except in pursuance of special authority granted as hereinafter in this Act provided, at any time exceed the number of licences in the district at the commencement of this part, including therein conditional licences and applications pending for licences of premises in respect of which hotel or public-house licences were held within Four months before such commencement.

Increase in number of licences on ground of increase of population.
Cf. *N.S.W.*, s. 65.

42 Where a petition is presented to the Governor asking that an hotel or public-house licence may be granted for certain specified premises, and such petition is signed by a majority in number of the electors living in an area within a radius of One mile from the said premises, and it is shown by such petition that—

I. There has been a large increase of population in the said area since the number of licences in the district was fixed by or under this part, and that such increase of population is likely to be permanent :

Licensing.

ii. There are insufficient licensed premises to meet public requirements within such area : —

iii. No transfer of an existing licence to the premises specified in the petition has been applied for—

the Governor shall refer such petition for enquiry in open court by a licensing bench.

If, on such inquiry and after hearing evidence and any objection to the petition, the said bench is of opinion that the petition should be granted, it shall make a recommendation to that effect to the Governor.

On the receipt of such recommendation, the Governor may grant the petition, and shall so declare in the *Gazette*; and thereupon a licence or a transfer of a licence may be granted for the said premises, notwithstanding that by such grant the number of licences in the district will exceed the number therein as specified in the last preceding section or at the time of the taking of a vote under this part, or the number fixed in pursuance of a vote for the reduction of the number of licences in the district.

The Local Option Vote.

43—(1.) A vote of electors under this part, that is to say, a local option vote, shall be taken in every district in which more than One licensed house is situate.

(2.) In every case where a city is a district under this part, the First local option vote under this part shall be taken on the Second *Friday* in *December* in the year One thousand nine hundred and seventeen; and thereafter a local option vote shall be taken in every such district on the Second *Friday* in the month of *December* in every Third year, commencing with the Second *Friday* in the month of *December* in the year One thousand nine hundred and twenty.

In every case where a municipality is a district under this part, the First local option vote under this part shall be taken on the Fourth *Thursday* in the month of *April* in the year One thousand nine hundred and eighteen; and thereafter a local option vote shall be taken in every such district on the Fourth *Thursday* in the month of *April* in every Third year, commencing with the Fourth *Thursday* in the month of *April* in the year One thousand nine hundred and twenty-one.

(3.) The vote taken in any district shall be given effect to within that district, and—

- i. In every case where the city or municipality constituting the district is a licensing district, shall be given effect to by the licensing bench of the licensing district :
- ii. In every other case, shall be given effect to by such one of the licensing benches for any licensing district within or partly within the city or municipality as the Governor shall appoint for the purpose.

Place and date of voting.
Cf. N.S.W., s. 66.
Vic., s. 119.
55 Vict. No. 11, s. 21 (Hobart), p. 3307, Vol. V. (Stops).
58 Vict. No. 30, s. 21 (Launceston), p. 3585, Vol. V. (Stops).
6 Ed. VII. No. 31.

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Form of resolutions.

Cf. N.S.W., s. 67.

Vic., s. 120.

*Resolutions to be Submitted.***44** The following resolutions shall be submitted to the vote of electors :—

i. That the number of licences existing in the district continue (Resolution A) :

ii. That the number of licences existing in the district be reduced (Resolution B) :

and the voting-paper shall be in the form or to the effect of the schedule to this section.

SCHEDULE.

"THE LICENSING ACT, 1908."

LOCAL OPTION VOTE.

	I vote that the number of licences existing in this district continue.
	I vote that the number of licences existing in this district be reduced.

Indicate your vote by making a cross in the square opposite the resolution for which you vote.

When Resolutions Carried.

What majority is required for carrying resolutions.
Cf. N.S.W., s. 68.
Vic., s. 121.

45 Resolution A or B of the last preceding section is carried if a majority in number of the votes given is in favour of any such resolution : Provided that Resolution A or B shall not be carried unless Twenty-five per centum or more of the number of the electors on the roll for the district vote upon such resolution.

Effect of Carrying Resolutions.

Effect of carrying resolutions.
Cf. N.S.W., s. 69.
Vic., s. 122.

46 If any resolution is carried it shall be notified in the *Gazette*, and shall, subject to the provisions of this Act or the Principal Act and its amendments, be given effect to within the district as follows, until altered by a subsequent vote :—

- i. If Resolution A is carried, the number of licences of the respective descriptions shall not exceed the number at the time of the taking of the vote :
- ii. If Resolution B is carried, the number of licences of the respective descriptions at the time of the taking of the vote shall be reduced, and in each case may be reduced to Three-fourths of such number, where such number is not less than Four ; and where such number is less than Four, by not more than One.

*Licensing.**The Enforcing of Resolution B.*

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47 For the purposes of this part any member of a licensing bench, or any person authorised by it in writing, may enter any licensed premises at any time by day or night.

If admittance to such premises be refused or unreasonably delayed, after demand made by such member or person as aforesaid, the licensee of such premises, and every person who wilfully refuses or delays such admittance, shall be liable to a penalty not exceeding Fifty Pounds.

Admittance to
licensed premises
by bench or
authorised person.
Cf. N.S.W., s.
71, ss. (4).
Vic., s. 123.

48 The determination of the licensing bench shall be final and conclusive, except as to any question of law as to which an appeal may lie to the Supreme Court in the manner provided by Section Eighty-five of the Principal Act.

Determination of
bench final.
Cf. N.S.W., s.
71, ss. (5).
Vic., s. 123, ss.
(3).

49—(1.) Where Resolution B is carried, the licensing bench having jurisdiction within the district shall—

Resolution B, how
given effect to.
Cf. N.S.W., s.
72.
Vic., s. 124.

- i. Determine the reduction to be made in the number of the existing licences of the respective descriptions, exclusive of those which under a previous vote will cease to be in force at the expiration of the prescribed period: Provided that—

(a) Where such number exceeds Twelve, and is less than Twenty-four, such number shall be reduced by at least Two ;

(b) Where such number is Twenty-four or more, but is less than Thirty-six, such number shall be reduced by at least Three ;

(c) Where such number is Thirty-six or more, such number shall be reduced by at least Four :

- ii. For the purpose of the said reduction, cause a classification of the licensed premises to be made as hereinafter provided :
- iii. Make the reduction by declaring that certain specified licences of each description shall cease to be in force :
- iv. Notify in the *Gazette* its determination, and give notice to the licensees affected thereby.

(2.) The classification shall include licensed premises as to which the following conditions or any of them apply :—

Classification of
premises.

- i. There have within the Three years next preceding the taking of the vote been either Two convictions for One of the following offences, or One conviction for Two of such offences, made against the same or different licensees of the same premises, that is to say—

(a) Selling or supplying, or allowing to be sold or supplied, any liquor to persons under the age prescribed by law or to prohibited persons ;

Principal Act,
s. 119 (a).

(b) Supplying any intoxicated person with liquor ;

Ibid., s. 119 (d).

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Ibid., s. 120

(f, g).

Ibid., s. 119 (h).*Ibid.*, s. 119 (h).*Ibid.*, s. 120 (h).*Ibid.*, s. 125.*Ibid.**Ibid.*

(c) Failing to prevent any gambling or the exercise of any game of chance in parts of premises where prohibited ;

(d) Failing to prevent prostitutes or persons of known bad character remaining in the licensed house or on the premises ;

(e) Being drunk or permitting drunkenness in the licensed house or on the premises ;

(f) Selling or supplying liquor in prohibited hours or at prohibited times ;

(g) Selling or having in his possession or on his premises other than good and wholesome liquor ;

(h) Selling or having in his possession or on his premises liquor adulterated or mixed with any deleterious ingredient ;

(i) Having any deleterious ingredient in his possession or on his premises for the purpose of adulterating liquor :

ii. There has within the said Three years been a conviction of any licensee of the premises for any one of the said offences :

iii. It is proved that the business in the premises is so badly conducted as to be a serious inconvenience to persons requiring accommodation, or a nuisance to neighbours, or that the premises are insufficiently provided with proper sanitary conveniences.

Order of reduction of licences to which paragraphs i., ii., and iii. apply.

(3.) In carrying out the said reduction the licensing bench, in determining what licences shall cease to be in force, shall—

i. Consider the convenience of the public and the requirements of the several localities in the district, and shall have regard to the accommodation of the licensed premises :

ii. Subject to the above consideration, deal in the first place with the licences of premises to which paragraph i. of the last preceding subsection applies, and in the second and third places respectively with those to which paragraphs ii. and iii. of such subsection respectively apply.

(4.) If, after giving effect to the provisions of this section relating to premises to which paragraphs i., ii., and iii. aforesaid apply, the desired reduction of the number of licences has not been made, the licensing bench may apply the reduction to other premises.

When licence to cease.

(5.) When the licensing bench has determined that any licence shall cease, such licence shall at the expiration of the period for which the same was granted cease and become absolutely void, and shall not be renewed.

Right to appear before court.

(6.) In any such proceedings as aforesaid by a licensing bench—

i. Classifying licensed premises : or

ii. Declaring that licences shall cease to be in force—

any person who may be directly affected by the determination of the bench in such proceedings may appear before the bench, and shall be heard.

Licensing.

50—(1.) Where in pursuance of a vote under this part the licence of any premises ceases to be in force the following provisions shall apply:—

- I. If any of the conditions set out in paragraph 1 of Sub-section (2.) of the last preceding section apply to such premises, the lessor may, within Fourteen days after the licence ceases to be in force, give to the lessee written notice of the determination of the lease at the expiration of Fourteen days from such notice, and the same shall thereupon determine as by effluxion of time :
- II. In any other case, the lessee may, within Fourteen days after the licence ceases to be in force, give to the lessor written notice that he desires to have the rent of the premises fixed by arbitration.

On such notice being given, the said rent shall be fixed by Two arbitrators, appointed by the lessor and lessee respectively, who may appoint an umpire, and shall, from the date when the licence ceases to be in force, and during the currency of the lease, be the rent payable thereunder in respect of the premises.

(2) In this section—

“Lessee” includes an assignee of a lease and a sub-lessee:

“Lessor” includes the person for the time being entitled to the rent of the premises.

51 The local option vote shall be taken in every district in accordance with the following provisions, but the Governor may, whenever he deems it expedient or necessary so to do, by proclamation alter the said provisions (except provisions II., III., and V.), and may supplement the said provisions, and make such provisions by proclamation as he may consider desirable to give effect to and enable the local option vote to be carried out:—

- I. The vote shall in each district be taken at the polling-places appointed for elections of aldermen or councillors, as the case may be :
- II. Every elector—
 - (a) Is qualified to vote ;
 - (b) Shall have One vote only ;
 - (c) May vote for One resolution only :
- III. The manner of voting shall be similar to that followed in the election of aldermen or councillors, as the case may be, but the vote shall be recorded and the voting-paper shall be marked as follows:—

The voter shall place a cross, thus ×, within or substantially within the square opposite the resolution for which he votes :

- IV. The votes given shall be placed in a separate box, and shall be counted by the officer presiding at the booth in the presence of the poll clerks (if any), and such officer shall

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Provisions applicable as between lessor and lessee where licence ceases to be in force.
Cf. N.S.W., s. 74.
Vic., s. 126.

Provisions for voting.

Licensing.

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- communicate the result to the returning officer of the district wherein the booth is situate :
- v. A voting-paper is invalid if ---
- (a) The elector has voted for more than One resolution ;
 - or
 - (b) It does not bear the signature or initials of the returning officer or is not stamped with his signature stamp :
- vi. Subject to the other provisions of this section, the provisions of the Acts for the time being in force—
- (a) Regulating the conduct of or relating to elections of aldermen or councillors, as the case may be, in a district ; or
 - (b) Respecting returning officers and officials required for the purposes of any such elections—
- shall, with the necessary changes, and so far as they are applicable, extend and apply to the taking of a local option vote in the district, and for the purposes thereof, as if the taking of such vote were expressly authorised by the said Acts ; and all powers exerciseable by virtue of the said Acts in relation to the appointment of officers, or for any other purpose in connection with any such elections as aforesaid, may be fully exercised in like manner for the purposes of and in connection with the local option vote :
- vii. Wherever practicable the local option vote shall be taken in a district at the same time and places, and shall be conducted and given effect to by the same returning officer and officials, as in the case of the annual election for that district :
- viii. The result of the voting for a district shall be notified by the returning officer in the *Gazette*.

Provisions where
vote is void.
Cf. N.S.W., s.
76.
Vic., s. 129.

52 If in any district a vote of electors under this part is for any reason void the Governor may appoint a day and places for taking the vote in such district, and may appoint officers and make necessary arrangements for the purpose of such vote being taken.

Regulations.

Governor's
regulations.
Recovery of
penalties.
Cf. N.S.W., s.
78.
Vic., s. 130.

53 The Governor may make regulations for carrying out the provisions of this part, and may in such regulations impose any penalty not exceeding Twenty Pounds for the breach of the same.

Any such penalty may be recovered in a summary way before a police magistrate or any Two or more justices.

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PART VI.

A.D. 1908.

MISCELLANEOUS.

Evidence.

54 In any prosecution for an offence against or contravention of any of the provisions of the Licensing Acts relating to persons of a specified age, it shall be a sufficient defence if the accused proves that the person in reference to whom proceedings were taken was apparently above the age stated.

Proof as to age.
N.S.W., 1905,
No. 40.
Vic., s. 99.

55 The delivery of liquor to any person shall be *prima facie* evidence of sale thereof unless satisfactory proof to the contrary is adduced to the presiding magistrate or justices.

Delivery of
liquor.
See N.S.W., No.
18, 1898, s. 113.
Vic., s. 100.

56 In any proceedings under the Licensing Acts for any offence thereunder, the burden of proof that he is licensed shall lie on the defendant.

Burden of proof.
Vic., s. 101.

57 In proving the sale or consumption of liquor for the purpose of any proceeding relative to any offence under the Licensing Acts it shall not be necessary to show that any money actually passed, or that any liquor was actually consumed, if the presiding magistrate or justices hearing the case are satisfied that a transaction in the nature of a sale took place, or that any consumption of liquor was about to take place, and proof of consumption or intended consumption of liquor on any licensed premises, by some person other than the licensee or a servant in such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same by or on behalf of the licensee.

Evidence of sale.

58 Upon the trial of any person for the selling of liquor without a licence, if it shall be proved that bottles or decanters, or tumblers or glasses, or other vessels which are usually employed for holding and using liquor, were found in and upon the premises of the accused person, and had been recently used, or that persons were found drinking or drunk on the said premises, this shall be deemed sufficient *prima facie* evidence of violation of Section One hundred and eleven of the Principal Act, and to cause such accused person to account for the purposes for which such articles were on his premises, and to require him to establish his innocence by proof.

Prima facie case.

59 Any sale of liquor made on any licensed premises by the wife, child, or servant of the licensee shall be considered presumptively as the act of the licensee, and shall be punished in the same way as if sale had been made by the licensee in person.

Sale by wife or
servant.

60—(1.) A licensee of any licensed premises in which any sale, barter, or traffic of liquor, or any matter, act, or thing in contravention of any of the provisions of the Licensing Acts, has taken place shall be personally liable to the penalty and punishments prescribed in the

Licensee liable to
penalty without
proof of sale, &c.,
by his direction,

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Proof of sale, &c.,
by person in
licensee's employ,
&c.

Licensing Acts, notwithstanding such sale, barter, or traffic be made by some other person who cannot be proved to have so acted under or by the directions of such licensee; and proof of the fact of such sale, barter, or traffic, or other act, matter, or thing, by any person in the employ of such licensee, or who is suffered to be or remain in or upon the premises of such licensee, or to act in any way for such licensee, shall be *prima facie* evidence that such sale, barter, or traffic, or other act, matter, or thing took place with the authority and by the direction of such licensee.

Liability of
actual offender
as well as
licensee.

(2.) The person actually selling, or otherwise contravening any of the provisions of the Licensing Acts, as in this section mentioned, is for the purpose hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender, as well as the licensee, shall be personally liable to the penalties and punishments prescribed by the Licensing Acts, and at the prosecutor's option the actual offender may be prosecuted jointly with or separately from the licensee, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor.

Joint or separate
prosecution, but
only one to be
convicted.Shifting of onus
of proof as to
description of
liquor sold, fact of
sale, &c.

61 In any prosecution under the Licensing Acts for the sale or other disposal of liquor without a licence it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation, or to his own personal or certain knowledge, but the police magistrate or justices trying the case, as soon as it appears to him or them that the circumstances in evidence sufficiently establish the infraction of the law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence shall convict him accordingly.

Several offences
charged in one
information.

62 Several cases of contravention of this Act committed by the same person may be included in one and the same information or complaint, provided that such information or complaint and the summons issued thereon contain specifically the time and place of each contravention.

Contents of
information.

63 In describing the offences respecting the sale or other disposal of liquor, or the keeping or the consumption of liquor, in any information, summons, conviction, warrant, or proceeding under or for the purposes of the Licensing Acts it shall be sufficient to state the sale, disposal, keeping, or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or the name of any person to whom it was sold or disposed of or by whom it was consumed, and it shall not be necessary to state the quantity of liquor so sold, disposed of, kept or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity, as the case may require.

Licensing.

64 No conviction or order shall be vacated, quashed, or set aside for want of form, or be impeached or affected by reason of any defect, mistake, or omission therein, if the proceeding or matter, to which such form relates be sufficient in substance and effect. A.D. 1908.
Convictions, orders, &c. not to be impeached for informalities.

Regulations.

65 The Governor may make regulations for carrying out the provisions of this Act. Regulations.

Penalties.

66 Any licensee who contravenes, or permits or suffers on his licensed premises a contravention of, any of the provisions of the Licensing Acts for which no penalty is expressly enacted shall, on conviction in a summary way, be liable for a First offence to a penalty of not more than Five Pounds, and for a Second or subsequent offence of the same kind to a penalty of not less than Two Pounds nor more than Ten Pounds. Penalties.

67 All informations for offences against the provisions of the Licensing Acts or the regulations, and all penalties imposed by the Licensing Acts or the regulations, may be heard, determined, and recovered in a summary way by and before a police magistrate or any Two or more justices in the mode prescribed by "The Magistrates Summary Procedure Act." Procedure.
19 Vict. No. 8.

Parliamentary Refreshment-room.

68 Nothing in the Licensing Acts shall apply to any person selling or offering for sale liquor in any refreshment-room at the Houses of Parliament by the permission or under the control of the Houses of Parliament. Licensing Acts not to apply to Parliamentary refreshment-room.

SCHEDULE.

The definitions of "lodger" and "traveller" in Section Three.
The words "shall be resident in the district and" occurring in the last paragraph of Section Three. Sect. 3.
Subsection (2.) of Section Twenty-three.
Sections Sixty-one and Sixty-two and Schedule (7.).
The words "which are not situate in any town in such district" occurring in Subsection (1.) of Section Ninety-six.
Paragraph 11. of Section One hundred and twenty-four.
Section One hundred and twenty-six.
Section One hundred and forty-nine.