

# TASMANIA.

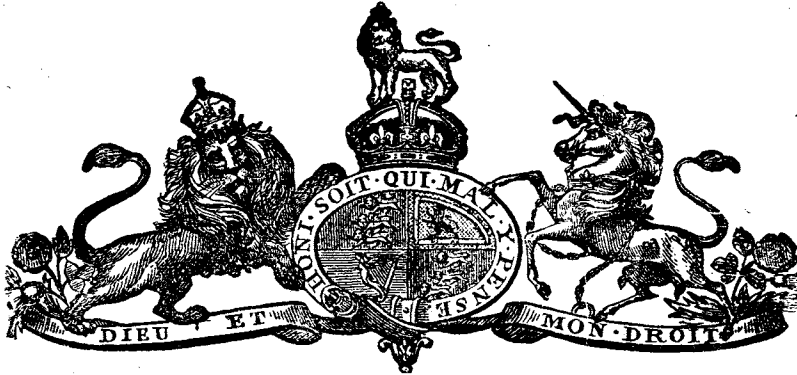
## THE LICENSING ACT, 1919

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T A S M A N I A.



1919.

ANNO DECIMO

GEORGII V. REGIS.

No. 12.



AN ACT to further amend "The Licensing Act, 1902," and certain Acts amending the same, and for other purposes.

A.D.  
**1919.**

[13 November, 1919.]

**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:—

**1.**—(1) This Act may be cited as "The Licensing Amendment Act, 1919," and shall be construed as one with "The Licensing Act, 1902" (hereinafter referred to as "the Principal Act"), and every amendment thereof.

Short title and citation.  
Incorporation with 2 Edw. VII. No. 32.

(2) The Principal Act, with its amendments (including this Act), may be cited as "The Licensing Acts, 1902-1919."

**2** Except as herein otherwise provided, this Act shall come into operation and take effect on a day to be appointed by proclamation.

Commencement.

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—  
Amendment of  
Section 3 of  
Principal Act.

**3** Section Three of the Principal Act is hereby amended by inserting after the definition of "Owner" the following definition:—

" 'Part' means Part of this Act."

Amendment of  
Section 25 of  
Principal Act.

**4** Section Twenty-five of the Principal Act is hereby amended—

i. By inserting after Subsection (1) thereof the following new subsection:—

" (1A) Every hotel or public-house licence issued by the Treasurer in respect of the year One thousand nine hundred and twenty or part thereof, or in respect of any subsequent year or part thereof, shall authorise the licensee to sell liquor—

i. In any house mentioned in the licence, in any quantity: and

ii. In any bonding warehouse, in any quantity of not less than Two gallons of any kind of liquor delivered at any one time.

" The expression 'house' in this section shall not include any—

(a) Yard, garden, or land: or

(b) Building not under the same roof with or connected by a covered passage-way with the main building—

Future licences.

whatsoever belonging or in any manner appertaining to the main building or occupied therewith, unless the licensing court shall otherwise order, in which case any inclusions so ordered shall be deemed to be part of the house licensed.

" Wherever in this Act or any amendment thereof an hotel or public-house is referred to (whatever may be the words used in such reference, whether 'house,' 'premises,' or otherwise), the reference shall be deemed to be made only to the house, inclusive of whatever the court has ordered shall be deemed part thereof":

ii. By omitting Subsection (1) thereof as from the Thirty-first day of December, One thousand nine hundred and nineteen.

Repeal and  
re-enactment of  
para. I. of Section  
29 of Principal  
Act.  
Sanitary condi-  
tions of Act.

**5** Section Twenty-nine of the Principal Act is hereby amended by omitting paragraph i. thereof, and substituting therefor the following:—

" i. Unless there are attached to such house, or the premises appertaining thereto or occupied therewith, sanitary accommodation in accordance in all respects with any requirements of or made under any Act for the time being in force relating to public health, or any by-laws or regulations thereunder."

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**6** Section Thirty-two of the Principal Act is hereby amended by omitting the word "suitableness," occurring in the Thirteenth line, and substituting therefor the words "sanitary condition and suitableness generally in other respects."

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Amendment of Section 32 of Principal Act.

**7** Section Thirty-four of the Principal Act is hereby omitted, and the following substituted therefor:—

Repeal and re-enactment of Section 34.

"**34** No application for a certificate (other than a provisional certificate) for any of the said licences shall be received or entertained at any licensing court (other than an annual licensing court) in any case in which a similar application by the same person has been rejected at the immediately preceding annual licensing court, or any court subsequent to such annual licensing court."

Certain rejected applications not to be entertained at subsequent licensing courts (not being annual courts).

**8** Section Thirty-six of the Principal Act is hereby amended by omitting therefrom Subsection (1) thereof, and substituting therefor the following Subsections (1) and (1A):—

Amendment of Section 36 (as re-enacted by No. 25 of 1917, s 39).

"**36**—(1) Every person who desires to obtain a certificate for—

Mode of applying for licences.

- I. Any of the said licences: or
- II. A transfer of any of the said licences: or
- III. Permission to continue to sell liquor under any of the said licences—

shall—

- (a) Deliver to the clerk of the court a notice of application, in writing, signed by the applicant, in such One of the forms in Schedule (2) as is applicable, or in a form to the like effect, together with Two copies thereof. In the case of an application to an annual licensing court, this notice must be lodged at least Fourteen days before such court is holden;
- (b) In the case of an application for a certificate for a licence for a house which has not been licensed in respect of the then current year, immediately affix a similar notice on the outer door or front of the principal entrance door of the premises for which such certificate is applied for, there to be kept until the day upon which the licensing court sits: Provided that notwithstanding that such notice is not so kept affixed, if the court shall be satisfied that the applicant has used all reasonable care to keep it so affixed, and that it is not due to any default on his part that it has not been so kept affixed, the court shall be at liberty to deem the requirements of this subsection in this respect complied with.

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“(1A) On the delivery to the clerk of any such notice of application (other than a notice of application to an annual licensing court), the clerk shall forthwith notify the same to the chairman, and the chairman shall appoint a time and place for hearing the application, not being less than One month, nor more than Three months from the receipt of such notification, and shall inform the clerk thereof, and the clerk shall give at least Fourteen days’ notice to the applicant of the time and place so appointed: Provided that where any notice of application for a certificate mentioned in Subsection (1) is lodged within Three months before the annual licensing court, it shall be heard and dealt with by such court only.”

Further amend-  
ment of Section  
36.

**9** Section Thirty-six of the Principal Act is hereby further amended by omitting from Subsection (2) thereof the words “he applies for the certificate” occurring at the end thereof, and substituting therefor the words “the sitting of the court.”

Repeal of Section  
37 and insertion  
of new section.  
Ascertainment of  
description of  
licensed premises.

**10** Section Thirty-seven of the Principal Act is hereby omitted, and the following section is inserted as Section Thirty-seven:—

“**37**—(1) Every applicant for a certificate for an hotel or public-house licence, or for the approval of the removal of any such licence to another house, shall, at least Three days before the sitting of the Court, deposit with the clerk, to be retained by him and filed in his office, complete and accurate plans—

I. Showing—

- (a) The boundaries of the premises in respect of which the applicant applies for a licence;
- (b) The situation of all buildings within such boundaries; and

II. Showing—

- (c) The boundaries of any land, and the situation of any buildings held or occupied in connection with the house, and proposed by the applicant to be excluded from the premises to be licensed;
- (d) The nature of such buildings;
- (e) The means of access to such land or buildings: and

III. Showing such further particulars as the court may require or as may be prescribed.

“Provided that the Court may, upon such terms as it thinks fit, grant to the applicant any further time it thinks necessary for the deposit of such plans, and may adjourn the hearing of the application.

“(2) After the description of the premises to be licensed shall have been settled by the licensing court, it shall be entered upon the certificate (if granted) and the licence to be issued, and in such description reference shall be made to the plan of the premises so deposited as aforesaid.

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“ Subject to the provisions of Subsection (3) of this section, after plans have been so deposited, and the said description has been so settled and entered, no plans need be again deposited in respect of the said premises unless the court shall otherwise order. A.D. 1919

“ (3) No enlargement of or diminution in any premises licensed under this Act, and no structural alteration in such premises, shall be made, except with the permission, in writing, of the licensing court.

“ The licensee shall make application in writing to the licensing court for such permission in the mode prescribed in the case of an application for a certificate for an hotel licence, and shall, before the court gives its decision, deposit with the clerk, to be retained by him and filed in his office, complete and accurate plans showing such enlargement, diminution, or alteration, as the case may be.”

**11** After Section Forty of the Principal Act the following new section is inserted :— Insertion of new Section 40a.

“ **40a** In any case where an objection is made to an application for a certificate or a provisional certificate, and in any other case if the court so requires, the applicant shall support his application by evidence on oath, and shall himself be a compellable witness, and the provisions of Sections Eighty-seven and Eighty-nine of “ The Evidence Act, 1910,” shall, *mutatis mutandis*, apply. Evidence.

“ The evidence in support of the application shall (unless the court otherwise orders) be heard prior to the evidence (if any) of the objectors, and the applicant shall be entitled to call evidence in reply to any evidence called by the objectors.”

**12** Section Forty-seven of the Principal Act is hereby omitted, and the following sections substituted therefor :— Repeal and re-enactment of Section 47, and insertion of new Sections 47a and 47b.

“ **47** In case of the decease or bankruptcy of the holder of any of the said licences before the expiration of his licence, his executors or administrators or trustees, or their agent, if specially authorised in writing by any member of the licensing court, may carry on the business of such holder until the expiration or forfeiture of such licence, and the widow of such holder, or, if he has not left a widow, any member of his family of the age of Twenty-one years, or any person on behalf of such family, may, with the consent in writing of a member of the licensing court, carry on the business for a period not exceeding Six months from his death, if probate of his will or administration of his estate is not sooner granted and his licence is not forfeited or does not sooner expire. Business may be carried on by executor, &c., in certain cases.

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“ Provided that such executors, administrators, trustees, agent, widow, or person shall be subject and liable to the same duties, liabilities, obligations, disqualifications, and penalties as if they, he, or she were the licensee under such licence.

“ The provisions of this section which apply in case of the bankruptcy of the holder of any of the said licences shall extend and apply where the holder of any of the said licences—

(a) Files a petition under ‘ The Bankruptcy Act, 1870,’ for the liquidation of his affairs by arrangement or composition with his creditors, and subsequently a resolution is passed for the liquidation of his affairs by arrangement; or

(b) Assigns his estate for the benefit of his creditors, whereby his estate becomes assets for their benefit.

Public Trustee may by authorised agent carry on deceased licensee’s business.

“ **47a** If the estate of any deceased holder of any of the said licences is being administered by the Public Trustee, he may, by an agent, specially authorised in writing in that behalf by a member of the licensing court, carry on the business of such deceased holder until the end of the year for which such licence was granted, unless it is previously transferred to a purchaser or forfeited. Such agent shall be subject and liable to the same duties, liabilities, obligations, disqualifications, and penalties as if he were the licensee under such licence.

Provision in case of person becoming of unsound mind.

“ **47b** If any holder of any of the said licences, owing to disorder of the mind or mental infirmity, becomes—in the opinion of the licensing court—incapable of managing himself or his affairs, the licensing court may, upon the application of the wife or any member of the family of the age of Twenty-one years of such holder, or any person on behalf of such family, or, where such holder has no wife or family, upon the application of the Public Trustee, authorise an agent to carry on the business of such holder until the end of the year for which his licence was granted, unless he is sooner discharged or the licence is forfeited, and such agent shall be subject and liable to the same duties, obligations, disqualifications, and penalties as if he were the licensee under such licence.”

Amendment of Section 57 of Principal Act.

**13** Section Fifty-seven of the Principal Act is hereby amended by omitting Subsection (3) thereof, and substituting the following therefor :—

“ (3) The applicant shall deposit with the notice of such application complete and accurate plans showing the details and particulars required by Section Thirty-seven to be fur-



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nished in the case of the applications therein referred to; such plans as aforesaid shall be retained by the clerk and filed in his office, and shall be open to inspection at that office at all reasonable times by any person without fee."

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**14** Section Seventy of the Principal Act is hereby amended by omitting Subsection (1) thereof, and substituting therefor the following:—

Amendment of Section 70 of Principal Act.

"**70**—(1) If the holder of a wholesale or importer's licence—

Wholesale, &amp;c., licences, the holders whereof have died, &amp;c., may be continued.

I. Dies : or

II. Is adjudicated bankrupt : or

III. Files a petition under 'The Bankruptcy Act, 1870,' for the liquidation of his affairs by arrangement or composition with his creditors, and subsequently a resolution is passed for the liquidation of his affairs by arrangement : or

IV. Assigns his estate in trust for the benefit of his creditors, whereby his estate becomes assets for their benefit : or

v. Owing to disorder of the mind or mental infirmity becomes, in the opinion of the Treasurer, incapable of managing himself or his affairs :  
or

VI. Departs from Tasmania with the intention of permanently residing out of Tasmania—

the Treasurer may, on application made to him in that behalf, grant permission, in writing, to some adult member of the family of such holder, or to the executor, or administrator, or the trustee or receiver for the time being of his estate, or to some person appointed in that behalf by such adult member, executor, administrator, trustee, or receiver, as the case may be, to continue to sell liquor under such licence until the expiration thereof by effluxion of time.

"Every such permission shall be granted without payment of any fee, and may be in the form in Schedule (11) or to the like effect."

**15** Part Six of the Principal Act is hereby amended—

Amendment of Part VI. of Principal Act. Repeal of Sections 73 and 80 to 83 inclusive.

I. By omitting the heading "Local Option," and substituting therefor the heading "Petitions and Objections":

II. By omitting therefrom Section Seventy-three and Sections Eighty to Eighty-three inclusive:

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III. By inserting immediately after Section Eighty-four the following heading and section :—

*“Objections that may be Taken.*

Objections to  
licences, &c.  
2 Ed. VII. No  
32, s. 73.

“**84a** The objections that may be taken to the granting to any person of a certificate for an hotel or public-house licence, or a provisional certificate for an hotel licence, or the transfer or continuance of any such licence, may be one or more of the following :—

- I. That the applicant for such certificate is of bad fame and character, or of drunken habits :
- II. That the applicant has within the previous year been deprived of an hotel or public-house licence by the licensing court :
- III. That the applicant has been convicted of selling liquor without a licence within a period of Three years :
- IV. That the house in respect of which the application is made does not afford the accommodation or comply with the requirements prescribed by this Act.
- V. That the house in respect of which the application is made is not required in the neighbourhood :
- VI. That in the case of a house for which a provisional certificate for an hotel licence is applied for, the quiet of the place in which such house is situate or proposed to be erected will be disturbed if an hotel is opened there.”

Repeal and  
re-enactment of  
Section 97 of  
Principal Act.  
Fees payable in  
respect of licences  
granted.

**16** Section Ninety-seven of the Principal Act is hereby omitted, and the following substituted therefor :—

“**97** The fee payable to the Treasurer for any licence issued pursuant to a certificate granted by any licensing court at a sitting held after the Thirty-first day of March in any year, in respect of that year, shall be—

- I. Three-fourths of the fee payable for the whole year for such licence, if it is issued during the quarter ending the 30th day of June :
- II. One-half of such fee, if the licence is issued during the quarter ending the Thirtieth day of September :
- III. One-fourth of such fee, if the licence is issued during the last quarter of such year.”

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**17**—(1) Sections One hundred and nineteen and One hundred and twenty of the Principal Act are hereby amended by omitting therefrom respectively the words “or on the premises” and the words “or on any part of the premises” wherever occurring throughout the said sections, and substituting for the words so omitted the words “or in any yard, stable, outhouse, shed, or any other place whatsoever of belonging or in any way appertaining to the licensed premises.”

Amendment of Sections 119 and 120 of Principal Act.

(2) Section One hundred and twenty of the Principal Act is hereby further amended by omitting paragraph (d) from Subsection (2) thereof.

**18** Section One hundred and fifty-four of the Principal Act is hereby amended—

Amendment of Section 154 of Principal Act.

I. As to Subsection (1), by omitting therefrom the words “issued under the provisions of any Act hereby repealed”:

II. As to Subsection (2), by omitting therefrom the words “until the expiration or sooner determination of the licence for such house.”

**19** Section Twenty-three of “The Licensing Act, 1908,” is hereby amended—

Amendment of Section 23 of No. 39, 1908 (8 Edw. VII. No. 39).  
7 Geo. V. No. 19.

I. As to Subsection (1) thereof (as re-enacted by Section Ten of “The Licensing Act (No. 2), 1916”), by omitting therefrom the words “not exceeding Five Pounds,” and substituting therefor the words “of not less than One Pound nor more than Ten Pounds”:

II. As to Subsection (1A) thereof (as inserted by Section Ten of “The Licensing Act (No. 2), 1916”), by omitting therefrom the words “for a First offence to a penalty of not less than Five Pounds nor more than Ten Pounds, and for every subsequent offence to a penalty of not less than Ten Pounds nor more than Twenty Pounds,” and substituting therefor the words “to a penalty of not less than One Pound nor more than Ten Pounds.”

**20** Section Thirty-seven of “The Licensing Act, 1908,” is hereby amended by omitting from paragraph I. of Subsection (1) the words “by-laws from time to time in force under Section Twenty-nine, Subsection I., of the Principal Act,” and substituting therefor the words “requirements of or made under any Act for the time being in force relating to public health, or any by-laws or regulations thereunder.”

Amendment of Section 37 of No. 39, 1908.  
Sanitary provisions.

*Licensing.*

A.D. 1919.

Repeal and re-enactment of Section 11 of No. 25, 1917.  
 Tenure of office.  
*Ibid.*, s. 9 (W.A.).  
 Cf. *ibid.*, s. 15 (Tas.).  
 1917 Act, s. 11

**21** Section Eleven of "The Licensing Act, 1917," is hereby omitted, and the following substituted therefor:—

"**11** Every member of the licensing court being a police magistrate shall hold office at the Governor's pleasure, and every other member of such court shall hold office for a period of Three years from the date of his appointment, unless he—

- I. Dies: or
- II. Resigns: or
- III. Becomes disqualified under the next succeeding section: or
- IV. Ceases to be a justice or is removed from office: or
- V. Being a member nominated by a municipal council ceases to be a member of such council—

in any of which events a successor shall be appointed in the manner his predecessor was appointed, and such successor shall hold office for the unexpired period of his predecessor's term of office."

Repeal and re-enactment of Section 14 of No. 25, 1917.  
 Vacancy in office through absence of member.

**22** Section Fourteen of "The Licensing Act, 1917," is hereby omitted, and the following substituted therefor:—

"**14** Any member of a licensing court, other than a police magistrate, who (except in case of sickness, or for other reasonable cause allowed by the Minister) absents himself from any Two consecutive sittings of the court shall, if the court within One month of the date of the second of such sittings so orders, vacate his office, and such vacancy shall, as soon as conveniently practicable, be again filled.

"Nothing in this section contained shall affect the power of the Governor to remove any member from office."

Repeal and re-enactment of Section 15 of No. 25, 1917.  
 Vacancy not to prevent quorum acting.

**23** Section Fifteen of "The Licensing Act, 1917," is hereby omitted, and the following substituted therefor:—

"**15** Notwithstanding any vacancy whatsoever in the number of members of a licensing court, the jurisdiction conferred by this Act upon such court may be lawfully exercised by a quorum of the court."

Amendment of Section 19 of No. 25, 1917.

**24** Section Nineteen of "The Licensing Act, 1917," is hereby amended by omitting therefrom the proviso thereto.

Repeal and re-enactment of Section 20 of No. 25, 1917.  
 Majority to decide.

**25** Section Twenty of "The Licensing Act, 1917," is hereby omitted, and the following substituted therefor:—

"**20** Every application made to a licensing court shall be decided by a majority of the members: Provided that where only Two members are present, and they disagree, the chairman or deputy-chairman alone (whether he is or is not one of those members) shall decide the matter. If neither the chairman nor deputy-chairman is one of the members so disagreeing, then, in order to enable him to hear and determine the matter, it shall stand adjourned to a time and place to be fixed by him, and he may, if necessary, further adjourn the hearing from time to time."

Provision in case of disagreement.

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A.D. 1919.

**26** Subsection (1) of Section Twenty-five of "The Licensing Act, 1917," is hereby amended by omitting the words "in the month of December in every year," and substituting therefor the words "on such date in the month of November or December in every year as the chairman shall appoint."

Amendment of  
Section 25 of  
No. 25, 1917.  
Annual Licensing  
Courts.

**27** Section Twenty-six of "The Licensing Act, 1917," is hereby omitted, and the following substituted therefor:—

Repeal and  
re-enactment of  
Section 26 of  
No. 25, 1917.  
Other  
Licensing Courts.

"**26**—(1) In addition to the annual licensing courts, licensing courts for each licensing district shall be held from time to time, at such time and place (whether within or without the licensing district) as the chairman shall appoint, for the consideration of—

- I. Applications for certificates for any of the said licences :
- II. Applications for certificates for the transfer of any of the said licences :
- III. Applications for certificates of permission to continue to sell liquor under any of the said licences.

"(2) Every reference in the Principal Act, and every amendment thereof, to a quarterly licensing meeting shall be read as a reference to a sitting of a licensing court appointed under this section.

"(3) Any person applying for and obtaining permission to sell liquor under any provisions of the Principal Act pending the consideration by the licensing court of an application by him for a certificate, shall, within Fourteen days after obtaining the said permission, apply for the certificate in the manner prescribed by the Principal Act, otherwise the said permission shall, notwithstanding anything to the contrary contained in the Principal Act, lapse, and become null and void.

"(4) Special sittings of any licensing court may from time to time, whenever occasion requires, be held at any time or place appointed by the chairman of the court for the purposes of Part V. of "The Licensing Act, 1908," or for any other purpose contemplated by the Principal Act, or any amendment thereof (including this Act).

"(5) "The clerk shall give at least Seven days' notice of the time and place of holding a sitting of the licensing court by advertisement in some newspaper circulating in the district in the case of a—

- I. Sitting of a court (not being an annual licensing court) to be held under Subsection (1) of this section :
- II. Special sitting to be held for the purposes of Part V. of 'The Licensing Act, 1908.'

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*Licensing.*

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A.D. 1919

Amendment of  
Section 27 of  
No. 25, 1917.

**28** Section Twenty-seven of "The Licensing Act, 1917," is hereby amended—

- I. By omitting Subsection (1) thereof:
- II. By omitting the figure "(2)," occurring at the commencement of the Fourth line.

Amendment of  
Section 29 of  
No. 25, 1917.

**29** Subsection (1) of Section Twenty-nine of "The Licensing Act, 1917," is hereby amended by omitting therefrom the word "Attorney-General," and substituting therefor the word "chairman."

Amendment of  
Section 30 of  
No. 25, 1917.

**31** Section Thirty of "The Licensing Act, 1917," is hereby amended—

- I. By inserting at the end of Subsection (1) the words "and upon such terms as to costs or otherwise as it thinks fit."
- II. By omitting Subsection (3) thereof.