

The role of the community in liquor licensing decision making



Murdoch Law School Research Day, 8 November 2010

Greg Swensen
www.planitaerth.com

Liquor Control Act 2008: May 2007 Reforms

“The reforms focus on providing more choice for consumers, but not necessarily more licensed venues; promoting greater levels of innovation within the liquor and hospitality industries; providing opportunity to the small business sector; assisting the tourism sector cater for thousands of visitors to Western Australia; focussing on and promoting harm minimisation principles; and creating a safer liquor environment.”

Department of Racing Gaming & Liquor. Background to liquor reform

Liquor & Gaming Legislation Amendment Bill 2006

“For too long the interests of consumers have taken a back seat to vested industry interests. ... The government is determined to promote innovation and diversity in the way liquor services are provided to consumers and provide more opportunities for small businesses.

If anyone believes that Western Australia is Dullsville, these reforms will end that perception. They will add vibrancy to our entertainment, hospitality, and tourism sectors and bring social life in Western Australia into the twenty-first century. The reforms aim to strike a balance in determining what is in the best interests of the community in the delivery of services, harm minimisation and policing, while promoting a more competitive, responsible and dynamic liquor environment.”

Hon. Mark McGowan (Minister for Racing & Gaming) **Second reading speech, 20 September 2006, Liquor & Gaming Legislation Amendment Bill 2006.** Hansard, 6341

Liquor & Gaming Legislation Amendment Bill 2006

The public interest test

“Under this test, all applicants will be required to demonstrate that the application is in the public interest, and the licensing authority will be required to consider the application on the basis of its social, community, economic and health implications and/or benefits.”

Explanatory memorandum, Liquor and Gaming Legislation Amendment Bill 2006

Liquor Control 1988

38. Licensing authority to be satisfied certain applications are in the public interest

(4) Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include -

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
- (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
- (d) any other prescribed matter.

Dullsville

IT'S lunchtime at Black Tom's Oyster Bar, the up-market cafe that has become the meeting point of choice for Perth mining executives. Outside, Audis and BMWs face off for rare car spaces along the tree-lined streets of West Perth. Inside, men in Zegna suits and women in Fendi sunglasses down Coffin Bay oysters and Patagonian toothfish with a glass (or two) of Leeuwin Estate riesling.

Although it's a Monday, Black Tom's is bustling. The air is thick with the sounds of deals being dreamed up and thrashed out, of busy people making money.

At one table sits Malcolm Day, the man who founded and floated online pornographic retailer Adultshop.com. At another, discreetly near the back, sits deposed Evans and Tate chairman Franklin Tate. It seems that even when you have lost control of your company and it is being sold off piece by piece, life, and lunch, goes on.

...

Perth's problem is now how to find a happy medium between its 1980s Wild West status and the Dullsville tag it earned in the late 1990s.

WA rocks: making room for the boom, **The Age**, 27 May 2006

Dullsville 'Don't lock me out'

NO ENTRY
by Government Order

Don't lock me out

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Don't lock me out of:

- My favourite bar or pub
- My favourite club
- My local bottle shop
- My favourite restaurant

Take Action in 2 Ways!

Join us on

Register your protest

Do you want to be locked out of your favorite venue?
Do you want more restricted hours in WA?
Do you want to see WA's live music industry threatened?
Do you want more Nanny State laws in WA?

WHAT'S HAPPENING?

Without public consultation the Western Australian Parliament is currently considering new laws that could further control where and how you enjoy your social life. By Christmas, the Western Australian Government could have the power to forcibly lock anyone out of and to stop entry to their favourite bar, pub, club, bottleshop or restaurant at any time, day or night, anywhere in Western Australia.

- Voice your opinion and don't let Government turn us into even more of a nanny state by taking away more of your rights.
- These laws could damage Western Australia's tourism and hospitality businesses and thousands of jobs.

www.ahawa.asn.au/campaign/dontlockmeout/overview.phtml

Dullsville: Too much public interest

New Perth bars fail the public interest test

Daile Pepper

October 20, 2010 - 8:54AM

Comments 7



More obstacles have been put in the way of Perth's small bars. Photo: Erin Jonasson

Entrepreneurs who want to open bars in Perth are having their liquor licence applications knocked back because they were unable to prove the bar would be in the public interest.

The regulations stipulate that would-be licencees must prove their business is in the public's interest or else they will be refused a liquor licence, and so far 22 applications have been turned down since September 2008.

The West Australian, 20 October 2010

**Goodbye Dullsville:
The end is nigh**

Goodbyedullsville.com

What you need, when you need it



Manifesto Club



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Campaign Against the Booze Bans



Mayor of London Boris Johnson has claimed the banning of alcohol on the London Tube as one of the great successes of his first 100 days in office. But it isn't just Boris - and it isn't just London. There has been a creeping introduction of alcohol bans in public spaces all around the UK - and throughout many other countries, from town centres in the Czech Republic, to beaches in New Zealand, Australia and the USA.

We believe public space should be exactly that - a place where we can come together as a public - to argue and campaign, to pursue our common goals, to chat with friends and socialise. It is a space in which we, the public, should set the rules.

Response to 'Rebalancing the Licensing Act'

The government's proposed reforms to the Licensing Act represent a worrying increase in Licensing Authorities' powers to regulate and shut down licensed premises. Far from 'empowering communities' - as claimed - these proposed changes would increase the power of local councils and the police, who will be removed from necessary checks and balances.

The Manifesto Club's response to the consultation illustrates the problems with these proposals, for civic life and civil liberties.

- [Read our full response here.](#)



28 %: HOW CONSTANT AGE CHECKS ARE INFANTILISING ADULTS

With the coalition government planning tougher penalties for under-age serving, our new report finds that 'Think 25' policies are already penalising thousands of innocent adults.

28 %: How Constant Age Checks Are Infantilising Adults, by Dolan Cummings, finds that adults in their late 20s and 30s are being hassled by constant ID checks - and that the new rules will make this problem worse. The report is based on our survey of people's ID check experiences, and argues for the abolition of 'Think 25' policies and other over-cautious age-check rules.

[Download the full report.](#)

www.manifestoclub.com/

Liquor licensing: Views from battlefield

“A review of the results attained at the Local Option poll held in April 1921, shows that its operation was illogical and ineffective. Districts which are obviously over-licensed carried ‘Continuance’, whilst some districts with the smallest ratio of public houses to the population voted ‘Reduction’.”

Royal Commission on Licensing, 1922, 8.

“It was said that women must be protected from ‘the curse of the drink’, that they should be prevented from obtaining drink surreptitiously in wine shops and gallon license stores.”

Committee of Inquiry to Licensing Act, 1969, 10.

“The legacies of this period are still with us. Antiquated and unnecessary restrictions will need to be removed. Provisions which do not serve the public interest but which now only cause irritation and frustration should disappear.”

Committee of Inquiry to Licensing Act, 1969, 11.

Era Concerned With Regulation & Control

Legislation	Operative dates	Comment
Aborigines Act 1905	Apr 1906 - Jun 1964	Replaced by Native Welfare Act 1963
Lunacy Act 1903	Jan 1904 - Dec 1912	Replaced by Inebriates Act 1912
Health Act 1911	Feb 1911	Remains in force (amended)
Inebriates Act 1912	Dec 1912 - Jun 1966	Replaced by Convicted Inebriates Rehabilitation Act 1963
Redistribution of Seats Act 1911	Sep 1911 - Mar 1948	Replaced by Electoral Districts Act 1947
Convicted Inebriates Rehabilitation Act 1963	Dec 1963 - Nov 1989	Repealed in 1989
Opium Smoking Prohibition Act 1913	Dec 1913 - Mar 1930	Replaced by Police Offences (Drugs) Act 1929

Era of Reform: Liquor Licensing

Legislation	Operative dates	Comment
Licensing Bill 1905	Introduced Aug 1905	Lapsed Aug 1905
Licensing Bill 1909	Introduced Sep 1909	Lapsed Oct 1909
Licensing Act 1911	Commenced Feb 1911	Repealed Wines, Beer & Spirit Sale Act 1880
State Hotels Bill 1912	Introduced Sep 1912	Lapsed Sep 1912
Local Option Bill 1913	Introduced Nov 1913	Lapsed Dec 1913
Illicit Sale of Liquor Act 1913	Dec 1913 - Jul 1970	Replaced by Liquor Act 1970
Sale of Liquor & Tobacco Act 1916	Mar 1917 - Oct 1964	Replaced by Sale of Tobacco Act 1964

Number of licensed premises by Magisterial District, 1901

Magisterial District	Licensed houses	Magisterial District	Licensed houses
Phillips River	2	Murchison - East (Lawlers)	20
Williams	2	Yalgoo	22
Kimberley - Goldfields	3	Dundas (Norseman)	23
Ashburton (Onslow)	4	Plantagenet (Albany)	24
Kimberley - East	4	Roebourne	25
Kimberley - West (Derby)	5	Wellington (Bunbury)	38
Toodyay (Newcastle)	5	Broad Arrow	39
Broome	6	Swan	39
Sussex (Vasse)	6	Victoria (Geraldton)	42
Gascoyne - Carnarvon	7	Mount Margaret (Malcolm)	44
Esperance	8	Coolgardie	59
Murray (Pinjarra)	8	Coolgardie - North East (Kanowna)	66
Northam	10	Coolgardie - North (Menzies)	68
Peak Hill	10	Fremantle	87
York	11	Murchison (Cue)	124
Collie	12	Perth	154
Blackwood (Bridgetown)	13	Coolgardie - East (Kalgoorlie)	155
Katanning	14	State	1,190
Pilbara (Marble Bar)	15		
Yilgarn (Southern Cross)	16		

High frequencies of hotels & other licensed houses existed in WA, particularly in towns located in Goldfields & the North West mining regions.

In 1901 the State had a population of 182,220 and there was a total of 1,190 licensed hotels & other licensed houses.

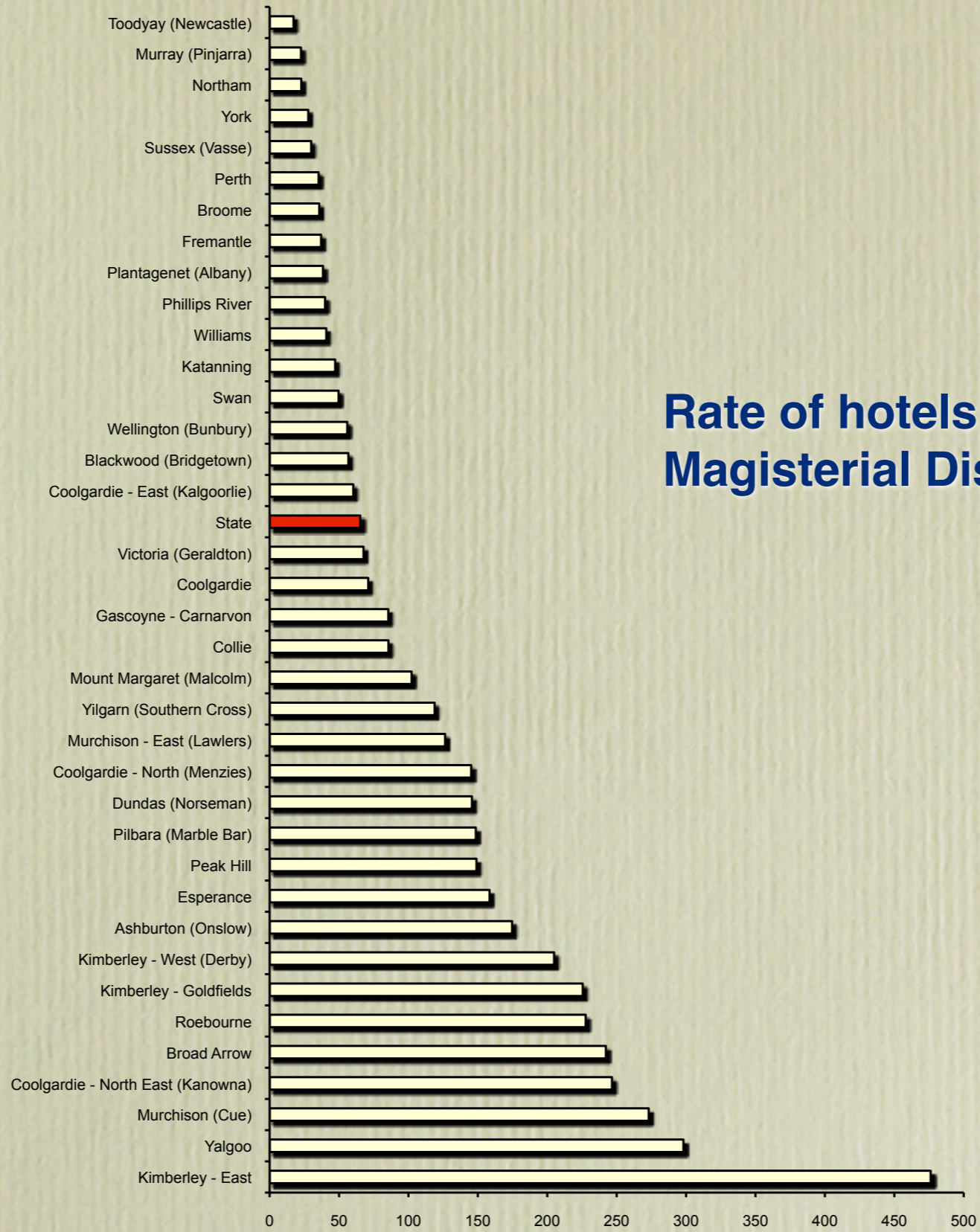
On a per capita basis, the number of licensed premises ranged from a rate of 17.2 per 10,000 in Toodyay to 476 per 10,000 in the East Kimberley.

The State mean was 65 per 10,000.

Source: Return showing particulars re Magisterial Districts, 1901 (WA Parliament, Hansard, Minutes Votes & Proceedings 1901-02)

Rate per 10,000 population

Rate of hotels by Magisterial District, 1901



Licensing Act 1911

Legislation	Operative dates	Comment
Licensing Act 1911	Feb 1911 - Jul 1970	Part V established local option polls & Part VI provided power to establish State hotels
Local Option Vote Continuance Act 1914	Feb 1915 - Mar 1918	Replaced by Local Option Continuance Act 1918
Licensing Act Amendment Act 1914	Sep 1914 - Dec 1920	Power to restrict or prohibit sale of liquor & to fix opening hours by regulation (extended by amendment to 31 Dec 1920)
Sale of Liquor Regulation Act 1915	Jan 1916 - Dec 1920	Restricted closing time & optional poll in Goldfields (extended by amendments to 31 Dec 1920)
Amendment 1922	Dec 1922	New Part V to create Licenses Reduction Board & new Part VI to hold a State wide prohibition polls)

Note: The local option polls to be conducted every 3 years after the first poll in April 1911 were not held. The second local option poll was held in April 1921. The poll defined 'license' to exclude some classes of licenses (eg club)
Licensing Act 1911 replaced by Liquor Act 1970.

Local Option & Prohibition Polls

Local option polls (Feb 1911 original legislation)

Poll held in Licensing Districts & counted separately by district.

Only 2 polls held - 26 April 1911 & 30 April 1921.

Different set of questions for first & subsequent polls -

- 4 questions for 1911 poll
- 6 questions at 1921 poll

Two common questions at both polls related to State management

Prohibition polls (Dec 1922 amendment)

Polls held in Electoral Districts but counted for whole State.

Only 2 polls held - 4 April 1925 & 9 December 1950.

One question asked - **“Do you vote for prohibition?”**

A vote in favour of a proposal had to be required to be carried by at least 60% of votes throughout the State & that at least 30% of electors throughout the State had voted.

1911 Local Option Poll

26 April 1911 poll

Four questions:

That -

“... the number of licenses existing in the District be increased.”

“... the number of licenses existing in the District be not increased.”

“... all new publican’s general licenses in the District shall be held by the State?”

“Are you in favour of State management throughout the District?”

If question 3 passed then new publican general licenses could only be held by a State hotel, depending on whether the Minister decided to establish a State hotel.

Note: On 26 April 1911 a Commonwealth (national) referendum was held at the same time which involved two questions (trade & commerce & nationalisation of monopolies).

1911 Local Option Poll: Results

Results 1911 poll: Increase number of existing licenses

Yes	No	Total	% support
4,554	17,623	22,177	20.5%

Results 1911 poll: New publican licenses held by State

Yes	No	Total	% support
27,007	14,378	41,385	65.3%

Results 1911 poll: State management of hotels

Yes	No	Total	% support
26,631	14,944	41,575	64.1%

1921 Local Option Poll

30 April 1921 poll

Six questions:

That -

“... the number of licenses existing in the District continue.” (A)

“... the number of licenses existing in the District be increased.” (B)

“... the number of licenses in the District be reduced.” (C)

“... no licenses be granted or renewed in the District.” (D)

“... all new publican’s general licenses in the District shall be held by the State.”

“Are you in favour of State management throughout the District?”

Note: Resolution D (no licenses) required to be passed by 60% votes & that at least 30% of electors had voted, other resolutions passed by majority & not a minimum % of electors had voted
Elector to vote for only one of the resolutions A, B, C or D. This resulted in high level of informal votes being cast. The legislation provided for results on questions to be aggregated as ‘continuance’ (A & B) and ‘reduction’ (C & D).

1921 Local Option Poll

Results 1921 poll: New publican licenses held by State

Yes	No	Total	% support
30,156	24,377	54,533	55.3%

Note: Total informal votes = 30,579, ie 35.9% of total of 85,112 votes cast

Results 1921 poll: State management

Yes	No	Total	% support
28,915	24,943	53,588	53.7%

Note: Total informal votes = 31,239, ie 36.7% of total of 85,097 votes cast

1921 Local Option Poll: Results

Results 1921 poll: Support continuance & reduction

Resolution	Result	% support
(A) Continue	37,711	48.1%
B (Increase)	2,165	2.8%
C (Reduced)	6,974	8.9%
D (No licenses)	31,268	39.9%
Continuance	40,080	52.1%
Reduction	38,242	48.8%
Total	78,322	

Note: Total informal votes = 7,421, ie 8.7% of total of 85,743 votes cast

1921 Local Option Poll

Results 1921 poll: Districts voted in favour of reduction

District	% support	District	% support
Albany	50.3%	Guildford	53.9
Beverley-Pingelly	55.6%	Leederville-Subiaco	60.4%
Canning	57.2%	Northam	60.2%
Claremont	58.1%	Swan	57.7%
Collie	56.2%	Wagin	50.9%

Note: A total of 42 Licensing Districts 10 of which voted in favour of reduction. There were a total of 912 licenses in the State.

1921 Local Option Poll

Results 1921 poll: Number of licenses in Districts that supported reduction

District	Licenses	District	Licenses
Albany	18	Guildford	21
Beverley-Pingelly	12	Leederville-Subiaco	23
Canning	22	Northam	17
Claremont	22	Swan	15
Collie	14	Wagin	6

Note: Reduction formula based on existing licenses in District:

more \geq 12 & 24: reduce by at least 2 licenses

24 & $<$ 36: reduce by at least 3 licenses

\geq 36 licenses: reduce by at least 4 licenses

Potentially reduction of 18 licenses (9 x 2) + 1 for Wagin = 19 if licensed premises had been convicted within 3

previous been convicted of at least 2 offences or badly conducted or nuisance or insufficient sanitary conveniences

Licenses Reduction Board

Licenses Reduction Board created by amendment in 1922.

To operate for 6 years, from 1 Jan 1923 - 31 Dec 1928

Board constituted 16 August 1923, had same membership as the 3 member Licensing Courts & operated throughout the State. Compensation fund through a levy of 2% of annual amount paid by all licensees for annual liquor purchases.

Total of 167 licenses decided or surrendered & total of £ 80,549 compensation paid.

Over period 16 August 1923 to 31 December 1927:

- Licenses at 16 August 1923 = 1,012
- New licenses issued = 93
- Licenses removed = 98
- Licenses surrendered = 68
- Licenses at 31 December 1927 = 938

Sources: Annual reports of Licenses Reduction Board

Licensing Act 1911: Opening Hours

Original legislation (Feb 1911)

97. (1) No licensee shall

- (a) have or keep his licensed premises open for the sale of liquor; or
- (b) sell any liquor or permit or suffer any liquor to be drunk or consumed in or upon his licensed premises at any time before six o'clock in the morning nor after eleven o'clock at night upon any day in the week, except under the authority of an occasional license.

Penalty: For a first offence. Fifty pounds; for any subsequent offence, One hundred pounds.

(2) But this section shall not prohibit the sale or consumption of liquor to or by any bona fide traveller, lodger, or inmate if the liquor is not drunk at the public bar of the licensed premises.

Amended by Sale of Liquor Regulation Act 1915 (commenced Jan 1916)

State divided into 4 districts:

- hours set from 9 am to 9 pm in the Metropolitan and Agricultural Districts
- hours remained from 6 am to 11 pm in the North West and Goldfields Districts
- in Goldfields District an optional poll could be held if requested by a minimum of 2,000 electors to vote on optional closing times between 6 pm & 11 pm

Note: Sale of Liquor Regulation Act 1915 extended by amendments & expired 31 December 1920

Licensing Act 1911: Opening Hours

Amended by Licensing Act Amendment Act 1922

Section 97 repealed & new section enacted that throughout all the State, except for the Goldfields District, licensed premises shall remain open from 9 am to 9 pm, except if licensee held an occasional license.

Goldfields opening hours from 9 am to 11 pm, except if licensee held an occasional license.

Note: Goldfields District redefined to include Kalgoorlie & much of the remainder of the North West.

Amended by Licensing Act Amendment Act 1959 (commenced Jan 1960)

Except for the Goldfields District, licensed premises shall remain open from 10 am to 10 pm, except if licensee held an occasional license.

In Goldfields opening hours from 9 am to 11 pm, except if licensee held an occasional license.

Continuation of previous prohibition for licensed premises to be closed on a Sunday, ANZAC day, Good Friday or Christmas day contained in original legislation.

Note: Section 91 renumbered s. 121 in 1923 reprint.