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LIQUOR LICENSING RED TAPE ON AUSTRALIAN BUSINESSES

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Executive summary

- Hospitality and related industries suffer from red tape in many areas, including inflexible workplace relations laws, restrictive food handling and labelling regulations, and liquor licensing.
- This paper enquires into the state-based liquor licensing regulation through a survey of several Australian jurisdictions before providing reform recommendations.
- Restrictions on the sale of liquor across most jurisdictions are characterised by several different types of licenses referring to different business activities, as well as complex tiered fee structures ranging into the tens of thousands of dollars.
- Several recommendations are made to cut red tape on the sale of alcohol:
 - i. Streamline and simplify the number of liquor license types (e.g. on premises, off premises, special event) for different business activities to the minimum viable level.
 - ii. Flatten, lower and index both application and renewal fees to ameliorate business uncertainty.
 - iii. Shift liquor licensing resources away from restrictions on potential licensees prior to trade, towards greater enforcement of breaches once they have been committed.
- Reducing liquor licensing red tape must be coupled with a broader agenda to cut red tape across the Australian economy.

1. Introduction

Workplace relations, taxation and the regulation of alcohol are only some of the costly and complex burdens facing Australian hospitality and related industries. This paper is an enquiry into one subset of these burdens, liquor licensing, which impacts businesses from supermarkets to small bars. Liquor licensing refers to state-based regulatory restrictions on the sale of alcohol on premises (e.g. bars), off-premises (e.g. bottle shops) as well as special events (e.g. music festivals).¹ For business, these restrictions are considered to be one of their most over-regulated activities.¹

The aim of this report is not to mount arguments over the ultimate rationale or justification of regulations on the sale of alcohol, but to examine how the structure and scope of regulations can be reformed to minimise economic distortions and cost.² The core of our research is a survey and analysis of Australian liquor licensing regulations, and the direct and indirect costs they impose on business. The main finding is a time consuming compliance process before trading can commence including complex tiered application and annual fees, reaching into the tens of thousands of dollars.

Unfortunately, red tape on the sale of alcohol is only one facet of a broader red tape problem stemming from all levels of government, and permeating all Australian industries. Institute of Public Affairs research has calculated that red tape costs us at least \$176 billion per year in foregone economic output.³ There are now well over 100,000 pages of Commonwealth legislation and nearly 500 federal regulatory bodies, stakeholders and advisory groups involved in regulatory design and enforcement.⁴

We proceed as follows. Section 2 surveys the state of liquor licensing across major Australian jurisdictions. Section 3 outlines some attempts to cut red tape and recommends for reform. Section 4 concludes.

1 Australian Chamber of Commerce and Industry “National Red Tape Survey.” (2015) https://www.acci.asn.au/sites/default/files/uploaded-content/field_f_content_file/acci-2015-national-red-tape-survey_final.pdf

2 Or, put another way, we seek to focus on the red tape within liquor licensing, while maintaining the same overarching framework and objectives.

3 Novak, Mikayla “The \$176 billion tax on our prosperity.” Institute of Public Affairs, Melbourne (2016) <http://www.ipa.org.au/portal/uploads/The-176-Billion-Tax-On-Our-Prosperity.pdf>

4 Novak, Mikayla “The red tape state.” Institute of Public Affairs, Melbourne (2016) <http://www.ipa.org.au/portal/uploads/160526-MN-FinalReport.pdf>

2. Liquor licensing regulation in Australia

The regulation of liquor in Australia harks back as early as the 19th century. The administration of liquor licensing varies in scope across each state-based jurisdiction, and includes inputs from local government. Those variations include the scope and calculation of licence fees, the number of licences, the trading hours conditional on each licence, and the relevant tests to receive a licence. In this way, liquor licensing regulation faces a form of competitive laboratory federalism, which is conducive to cross-jurisdictional comparison and analysis.⁵ This analysis is a precursor to providing recommendations for reform.

2.1. Australian Capital Territory

Liquor licensing in the Australian Capital Territory (ACT) is administered by Access Canberra through the Liquor Advisory Board, with the administrative power under the *Liquor Act 2010*.⁶ Recent amendments have expanded the function and membership of the Liquor Advisory Board, and increased the powers of the Commissioner for Fair Trading for intervention. In the ACT there are five main types of liquor licenses, as well as three sub-classes, covering the range of possible venues and alcohol transactions.⁷ In conjunction with an application, the licensee is required to complete a Risk Assessment Management Plan (RAMP), which aims to provide details of how the business intends to sell liquor on their premises. Compounding this is the compulsory displaying of a sign at the premises and a proposal notice on the ACT website to enable a 30 day public consultation period, after which the Commissioner has up to 90 days to make a decision on the proposal.⁸

Businesses in the ACT face some of the most burdensome fees and charges on the sale of liquor. Application fees alone range from \$2,262 for a 'club licence' up to \$3,399 for a 'special licence'.⁹ The real burden on business, however, comes from the additional annual renewal fees, which vary according to patron capacity and trading times.¹⁰ For instance, renewing a licence for a nightclub with total occupancy over 350 people that is open until 5am costs an additional \$28,328 per year.¹¹ Business owners have unsurprisingly expressed concern over the indirect impacts of rising fees on employment levels.¹²

5 Productivity Commission "Relative Costs of Doing Business in Australia" Productivity Commission Research Report (2014):167 <http://www.pc.gov.au/inquiries/completed/retail-trade/report/retail-trade.pdf>

6 This was amended via the *Liquor Amendment Bill 2015*.

7 The five types of licenses are 'General license', 'On License', 'Club License', 'Off License', 'Special License'. See ACT Government Access Canberra "Liquor Licenses and Permits: What Are the Different Types of Licenses?" Accessed 16 January 2017. https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1654#ltabs-5

8 ACT Government Access Canberra "Liquor licensing and permits: How do I apply for a liquor licence" Accessed 17 January 2017 https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1654#ltabs-5

9 ACT Government Access Canberra "Liquor Licenses and Permits: Forms and Fees" Accessed 16 January 2017. https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1654#ltabs-7

10 *Liquor Act 2010*, s227 <http://www.legislation.act.gov.au/di/2016-97/current/pdf/2016-97.pdf>

11 Liquor (Fees) Determination 2016, Liquor Act 2010, s 227. <http://www.legislation.act.gov.au/di/2016-97/current/pdf/2016-97.pdf>

12 Burgess, Katie "Canberra bottle shop owners say 25 per cent taxation hike could force them to shed staff" Sydney Morning Herald, 4 August 2016 <http://www.smh.com.au/act-news/canberra-bottle-shop-owners-say-25-per-cent-taxation-hike-could-force-them-to-shed-staff-20160802-gqiz70.html?deviceType=text>

The central ongoing issue with liquor licensing in the ACT is not only the level, but also the increase in fees. In 2010 all bottle store annual fees were set at \$3,055. At present, those fees are based on the dollar value of liquor bought by the store and range from \$4,200 to \$29,600.¹³ Recent ACT liquor reforms roused debate on excessive fee hikes.¹⁴ Most hard hit are nightclubs and pubs, with recently proposed fees for venues open until 5am at \$163,000 a year for their licence, which is a near six-fold increase from the current level.¹⁵ Under the existing fees nightlife vibrancy has already diminished. Since 2010, there has been a 59 per cent fall in the number of nightclubs in Canberra (from 17 to 7).¹⁶ Even before the changes, the fees in Canberra were approximately 20 times those across the border in New South Wales.¹⁷

2.2. New South Wales

In New South Wales the sale, production, and distribution of liquor comes under the *Liquor Act 2007* and is administered by the Office of Liquor, Gaming and Racing.¹⁸ There are seven different liquor licence types, as well as three sub-classes.¹⁹ The annual cost of these licences range between \$102 and \$2,040, with various trading hours loadings applying if extended opening hours are required, which can add up to an additional \$5,000.²⁰ Of the seven licences, six are required to complete a Community Impact Statement (CIS) 30 days before lodging a licence application.²¹ The CIS must take into account harmful affects the licence may have on the local neighbourhood, and gauge community support for the proposal.

The substantive liquor licensing issue in NSW comes from delays. According to the Office of Liquor, Gaming and Racing, time delays for a small bar licence application can span up to 4.5 months.²² This includes an initial 30 day period for allowance of public comment followed by a determination period within four months by the Independent Liquor and Gaming Authority (ILGA). Efforts to ameliorate some of the cost issues have further exacerbated the delays. To obtain a 'small bar licence' in 2011 cost approximately \$500, took up to 80 days for approval, and allowed up to 120 patrons. Changes to the rules mean that, in 2016, a small bar licence will be cheaper, at \$350, but will take an extra 40 days and allow only 60 patrons.²³

13 Lawson, Kirsten "Bottle stores hit out at 25 per cent increase in licence fee as a blatant cash grab by ACT government." *Canberra Times*, 14 June 2016 <http://www.canberratimes.com.au/act-news/bottle-stores-hit-out-at-25-per-cent-increase-in-licence-fee-as-a-blatant-cash-grab-by-act-government-20160614-gpihvg.html>.

14 *ibid*. Lawson (2016).

15 *ibid*. Lawson (2016).

16 Rees, Gwyn "Don't destroy Canberra's nightlife" *The Age*, 16 June 2016 <http://www.theage.com.au/comment/dont-destroy-canberras-nightlife-20160616-gpk946?deviceType=text>

17 *ibid*. Burgess (2016).

18 Since amended via *Liquor Amendment Act 2014* No 3.

19 The licenses are: 'club license', 'hotel license', 'limited license', 'on-premises license', 'packaged liquor license', 'producer/wholesaler license', and the 'small bar license'. Note there are three subcategories for hotel licenses. See NSW Government "Which licence do I need?" Accessed 17 January 2017 <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/liquor-licences/which-licence-do-i-need.aspx>

20 NSW Government "Liquor licence annual fee 2016: factsheet" Accessed 17 January 2017 <https://www.liquorandgaming.justice.nsw.gov.au/Documents/liquor/liquor-licences/Annual-Liquor-Licence-Factsheet.pdf>

21 NSW Government "Apply for a licence" Accessed 17 January 2017 <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/liquor-licences/apply-for-a-licence.aspx>

22 NSW Government "Liquor Licence FAQ's: How long does it take to get a liquor licence?" Accessed 17 January 2017 <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/liquor-licences/liquor-licence-faqs.aspx>

23 White, Louis "Small bars continue to grow as drinking landscape recovers from lockouts" *Sydney Morning Herald*, 1 August 2016 <http://www.smh.com.au/small-business/growing/small-bars-continue-to-grow-as-drinking-landscape-recovers-from-lockouts-20160728-qgfox2.html#comments>

2.3. Queensland

In Queensland, the Office of Liquor and Gaming Regulation (OLGR) administers the sale of liquor under the Liquor Act 1992. In Queensland there are seven types of licences, including a commercial hotel licence, as well as a range of 'other' licences, some of which have several sub-classes.²⁴ According to the regulator, approval time for liquor licences can take 4-6 months. Application fees vary according to licence type, patron capacity, and trading hours, from \$327.10 to \$12,990.²⁵ For new applications and/or request of additional trading, licensees must produce a Risk-Assessed Management Plan (RAMP).²⁶ A Community Impact Statement (CIS) may also be required, which is designed to verify that the licensed premises will 'minimise its impact' on the community.²⁷

Strict liquor regulation in Queensland has stymied some social activities. For instance, the Australian pastime of a B&S ball has declined in regularity.²⁸ Similar attacks on 'Australian culture' include the shutting down of a local Queensland beer economy facebook page which held 3,400 members. In a move labelled 'un-Australian', the Liquor Act 1992 deems the barter or exchange of liquor products as illegal.²⁹ The money raised for local community causes and social upside for rural citizens will diminish if the status quo of red tape remains. Other controversial issues include the 'revenue grabbing' of 174 licensees who missed the deadline of their licence renewal by only days.³⁰ The case here shows the lack of communication effort made by the OLGR to licensees in order to penalise businesses where possible.

At first glance, recent legislative changes appeared to relieve regulatory burden on liquor licensees. Indeed, across the Gold Coast and Brisbane licence fees for nightclubs fell by \$976,000.³¹ On closer inspection, however, these reductions in fees are effectively compensation for additional red tape in the form of restricted trading hours. The new regulations stipulate the creation of a 'nightclub licence', where previously they fell under the same category as restaurants and cafes. As a result, base nightclub licence fees have skyrocketed almost 5.5 times (to \$3,507 per year) which does not include additional loadings.³² Such regulation puts local jobs at risk, and increases the already heavy administrative burden on business.

24 QLD Government "Types of Liquor and Wine Licenses" Business and Industry Portal. Accessed 16 January 2017 <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/liquor-wine-licensing/licence-permit-applications/types>

25 QLD Government "Liquor and Wine License and Permit Applications" Business and Industry Portal. Accessed 24 January 2017 <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/liquor-wine-licensing/licence-permit-applications>
QLD Government "Fees and charges: Queensland liquor licensing" Accessed 17 January 2017 <https://publications.qld.gov.au/dataset/bcf03d20-ff59-4678-bdc7-2adfc2ee520/resource/a622ec53-72e8-4812-a7b7-f159899df608/download/tyolgr-1437838-v2c-liquorlicensingfeesandcharges.pdf>

26 QLD Government "Guideline 42: risk-assessed management plan" Business and Industry Portal. Accessed 16 January 2017 <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/guidelines-listing/risk-assessed-management-plan>

27 QLD Government "Community impact statement" Business and Industry Portal. Accessed 16 January 2017 <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/liquor-wine-licensing/community-impact-statement>

28 Halpin, Thea "Will liquor licensing laws spell the end of B&S balls?" *ABC News*, 28 November 2016 <http://www.abc.net.au/news/2016-11-28/life-and-death-of-the-country-b&s/7988424>

29 James, Ethan "Qld beer economy shutdown 'un-Australian'." *News.com.au*, 21 January 2016 <http://www.news.com.au/national/breaking-news/qld-beer-economy-shutdown-unaustralian/news-story/fcf17deb5fef640e876812908250da81>

30 Bavas, Josh "Fines of more than \$400k in unpaid liquor licence renewals in Queensland a 'revenue grab'" *ABC News*, 10 March 2016 <http://www.abc.net.au/news/2016-03-10/almost-410k-in-fines-for-unpaid-liquor-licence-renewals-in-qld/7236472>

31 Keen, Ryan "Liquor licence fees soar: Nightclubs served double whammy with lockout laws." *Gold Coast Bulletin*, 5 March 2016 <http://www.goldcoastbulletin.com.au/business/liquor-licence-fees-soar-nightclubs-served-double-whammy-with-lockout-laws/news-story/4a56349418db3dfc3c6158a3f4f9702b>

32 QLD Government "Fees and charges: Queensland liquor licensing." Accessed 17 January 2017 <https://publications.qld.gov.au/dataset/bcf03d20-ff59-4678-bdc7-2adfc2ee520/resource/a622ec53-72e8-4812-a7b7-f159899df608/download/tyolgr-1437838-v2c-liquorlicensingfeesandcharges.pdf>

2.4. South Australia

In South Australia the Attorney-General's Department, Consumer and Business Services, upholds the Liquor Licensing Act 1997 which regulates the sale, production, and distribution of liquor in the state. There are 13 different types of licences.³³ Annual licence fees range from \$111 to \$771, with further costs imposed on new applicants and extended trading hours.³⁴

In addition to applying for a hotel or retail merchant licence, prior to 2016 the applicant was required to perform a 'needs test'. South Australia was the only state to have a needs test, which had the sole aim of providing reasoning as to why the licence is necessary.³⁵ However, in late 2016 the needs test was abolished, and a 'community impact and public interest test' for high risk venues was introduced.³⁶

One of the main issues in South Australia are approval time delays, which result from objections on the grounds of anti-competitive behaviour. After a two year battle with Woolworths and the Australian Hotels Association³⁷, Costco lost its bid to obtain a retail liquor merchant's licence.³⁸ This case found '... Costco's model for liquor retailing was not compatible with South Australian requirements and granting the big-box retailer a licence would risk setting an undesirable precedent.'³⁹ The ruling imposed on Costco is not an anomaly, similar outcomes have occurred for Aldi in Western Australia.⁴⁰

33 The 13 licenses are: 'club', 'direct sales', 'entertainment venue', 'hotel', 'limited club', 'limited license', 'producers', 'restaurant', 'retail liquor merchant', 'residential', 'small venue', 'special circumstances' and 'wholesale liquor merchant'. See: South Australian Government "Liquor Licensing: New Applicants." Accessed 16 January 2017. <https://www.cbs.sa.gov.au/licensing-and-registration/licor/new-applicants/>

34 South Australian Government "Annual Liquor Fees" Accessed 17 January 2017 <https://www.cbs.sa.gov.au/assets/files/Annual%20Liquor%20fees.pdf>

35 Attorney-General's Department Consumer and Business Services "Liquor licensing discussion paper" (2015) <http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Liquor%20licensing%20discussion.pdf>

36 Anderson, Tim "Review of the South Australia Liquor Licensing Act 1997." (2016) http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Anderson%20Report%20Review%20of%20Liquor%20Licensing%20Act%201997_June%202016.pdf

37 Heffernan, Madeleine "Liquor leaves bitter taste for Costco, ALDI." *Sydney Morning Herald*, 27 June 2016 <http://www.smh.com.au/business/retail/liquor-leaves-bitter-taste-for-costco-aldi-20160626-gps4zn.html>

38 Griffiths, Luke "Supreme Court dismisses Costco's application to sell alcohol at its Kilburn warehouse." *The Advertiser*, 21 July 2016 <http://www.adelaidenow.com.au/business/supreme-court-dismisses-costcos-application-to-sell-alcohol-at-its-kilburn-warehouse/news-story/53b1260d7640488f859843d4d5601148>

39 *ibid*. Heffernan (2016).

40 Kelly, Joel "Liquor licensing board rejected Aldi's plans to sell cheap alcohol." *Perthnow*, 15 June 2016 <http://www.perthnow.com.au/news/western-australia/licor-licensing-board-rejected-aldis-plans-to-sell-cheap-alcohol/news-story/579126d156f31decc8625478757150b>

2.5. Victoria

Liquor laws in Victoria come under the *Liquor Control Reform Act 1988*, which is administered by the Victorian Commission for Gambling and Liquor Regulation. A total of ten different liquor licences come under the Act.⁴¹ For new applicants, a fee of \$452.20 applies on top of the base licence fees, which range from \$233.40 for a wine and beer producers BYO permit, to up to \$1896 for late night packaged liquor.⁴² Furthermore, there are additional fees for 'risky' operating hours, which range to \$7,584.10 if authorised to trade past 3am. Moreover, if the patron capacity of the venue is over 200 people, a 'venue capacity multiplier' applies for some late night venues, which can range up to a multiple of 4 times the fee.

Licensees have become frustrated with the discretionary power of regulators to apply restrictive red tape. In mid-2016, a Richmond pub's application for an extension of trading hours to air a Socceroos match was rejected by the Victorian Commission for Gambling and Liquor Regulation. The application was vetoed even though it had been approved by the Yarra Council, with the commission ruling that it was not a 'significant cultural festival'.⁴³ On many previous occasions the pub had been granted the same request, but red tape uncertainty may reduce further applications in the future.

In 2015, a local kombucha tea producer was banned from selling its product, costing \$1,000 a day in lost earnings.⁴⁴ This was a result of the drink having an alcohol volume of 1 per cent, which is under the national limit of 1.15 per cent, but over Victoria's 0.5 per cent maximum. The owner said:

It's unfortunate that bureaucratic hurdles are stopping this industry from thriving and stopping us from being able to provide a genuinely healthy alternative to synthetic drinks.⁴⁵

⁴¹ Victorian State Government Victorian Commission for Gambling and Liquor Regulation "Select the right liquor license" Accessed 16 January 2017 <http://www.vcglr.vic.gov.au/home/licor/new+applicants/select+the+right+liquor+licence/>

⁴² Victorian Commission for Gaming and Liquor Regulation "Liquor License Fees From 1 July 2016" Accessed 16 January 2017 <http://assets.justice.vic.gov.au/vcglr/resources/cde47780-84fd-4620-952b-e520d1e4f9c3/licor+licence+fees+july+2016.pdf>

⁴³ Rolfe, Peter "Victorian liquor regulator bans Sporting Globe opening for Socceroos v England match." *Herald Sun*, 18 May 2016 http://www.heraldsun.com.au/news/victoria/victorian-liquor-regulator-bans-sporting-globe-opening-for-socceroos-v-england-match/_news-story/839cc2c62709c44c08696dbc69178cba

⁴⁴ Hatch, Patrick "Kombucha tea crackdown for alcohol content prompts call for licence change." *Sydney Morning Herald*, 8 September 2015 <http://www.smh.com.au/business/retail/kombucha-tea-crackdown-for-alcohol-content-prompts-call-for-licence-change-20150907-gjguqu.html>

⁴⁵ *ibid*. Hatch (2015).

2.6. Western Australia

In Western Australia the *Liquor Control Act 1988* governs the sale, production, and distribution of liquor, and the controlling authority is the Department of Racing, Gaming and Liquor.⁴⁶ There are ten types of licences, and six sub-categories.⁴⁷ Annual licence fees range from \$288 to \$584, and does not include additional costs for new applicants and other extensions.⁴⁸ In Western Australia, cutting red tape on liquor licensing is estimated to provide some of the highest cost savings, of around \$7.7 million.⁴⁹

Other indirect costs, such as licence approval timeframes, have also become a deterrent for businesses. Delays have occurred over periods as long as two years in a case as recent as 2014.⁵⁰ Exacerbating this process is police intervention, as every application lodged with the department requires the police to be notified.⁵¹

All licences must satisfy a public interest test which takes into account a range of considerations, including the harm of people due to liquor use, the location impacts of the amenity, social externalities (i.e. disturbance), and any other matter stipulated in the *Liquor Control Regulations 1988*. For new licences, the removal of existing licences, and permit applications all applicants must complete a Public Interest Assessment (PIA).⁵² A PIA is to be completed by the applicant outlining how the proposal will impact the community and their plans to manage such impact. However, the level of information provided in a PIA is at the applicant's own discretion.

46 Department of Racing, Gaming and Liquor “Liquor Legislation Amendment Act 2015” (2016) <http://www.rgl.wa.gov.au/liquor/liquor-legislation-amendment-act>

47 Government of Western Australia, Department of Racing, Gaming and Liquor. “License Types” Accessed 16 January 2017 <http://www.rgl.wa.gov.au/liquor/liquor-applications/licence>
For an overview of license types see: Department of Racing, Gaming and Liquor “Overview of all license categories.” Accessed 16 January 2017 http://www.rgl.wa.gov.au/docs/default-source/rgl/overview_all_licence_types.pdf?sfvrsn=2

48 Government of Western Australia, Department of Racing, Gaming and Liquor “Fees and Charges.” Accessed 16 January 2017 <http://www.rgl.wa.gov.au/liquor/liquor-applications/fees-and-charges>

49 Synergies Economic Consulting “Cost of Red Tape in Australia.” A Report for the Economic Regulation Authority (2014):16 <https://www.erawa.com.au/croot/12218/2/Synergies%20Economic%20Consulting%20Report%20-%20Red%20Tape.pdf>

50 Crispin, Shanna “Anger mounts against liquor license delays.” *Business News WA*, 15 December 2014 <https://www.businessnews.com.au/article/Anger-mounts-against-liquor-licence-delays>

51 *ibid*. Crispin (2014).

52 Government of Western Australia “Public Interest Assessment.” Accessed 25 January 2017 <http://www.rgl.wa.gov.au/liquor/liquor-applications/licensing-process-information/public-interest-assessment>

3. Paths to reform of liquor licensing

Section 3.1 outlines several examples of attempts to cut liquor licensing red tape across various jurisdictions in Australia. Section 3.2 makes recommendations of potential reform paths including reducing the number of licences, flattening fee structures, and shifting resources away from licensing towards enforcement of breaches in regulation.

3.1. Previous efforts to cut liquor licensing red tape

Given widespread business concern over the impact of liquor licensing red tape, several Australian jurisdictions have made efforts to pursue reform. This section highlights some cases of red tape reduction that have positively impacted Australian businesses and, indirectly, their customers and communities.

One of the most active reforming states in recent years is Western Australia. In an effort to modernise liquor laws the state government has made the sale of locally produced products easier, streamlined application processes and extended trading hours.⁵³ The value to local producers in these respects is accessibility to the wider market via the ability to sell their product at off-site outlets.⁵⁴ A second wave of reforms in 2016 reduced restrictions on tourism businesses and lengthened the Extended Trading Permit (ETP) duration for low risk venues from five to ten years.⁵⁵ Under the new rules, tourists can consume alcohol from their tourism operator. The ETP extension also reflects significant cost savings to licensees. According to the state government, a direct saving of \$120,000 a year covering 620 permits will be achieved as a result of the red tape reduction.⁵⁶

While recent pledges by the Labor government in the ACT included incentivising small venues (i.e. 80 patrons or less) through reducing their licence fees, this came with higher fees for larger retailers.⁵⁷ This demonstrates the progressive notion of redistribution affecting liquor licensing regulation, as opposed to attempting to meet policy objectives with minimal legislation.

53 Government of Western Australia "Liquor reforms will cut industry red tape." Media Statements, 17 November 2015 <https://www.mediamessages.wa.gov.au/Pages/Barnett/2015/11/Liquor-reforms-will-cut-industry-red-tape.aspx>

54 De Poloni, Gian "Liquor law reform to open door for collaborations between producers." *ABC News*, 18 November 2015 <http://www.abc.net.au/news/2015-11-18/cellar-door-reform-on-way-wa/6952054>

55 Government of Western Australia "Cheers to cutting hospitality sector red tape." Media Statements, 17 October 2016 <https://www.mediamessages.wa.gov.au/Pages/Barnett/2016/10/Cheers-to-cutting-hospitality-sector-red-tape.aspx>

56 *ibid*. Government of Western Australia (2016).

57 Fettes, James "ACT Government white paper proposes 500pc increase on 5:00am liquor licences." *ABC News*, 6 April 2016 <http://www.abc.net.au/news/2016-04-06/act-government-white-paper-proposes-increase-on-liquor-licence/7302004>

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New South Wales has made some small, but welcome, steps towards reducing red tape. Unlike Victoria, where bottle shops can trade at all hours of the day, NSW restricts such operation to 10pm. New reforms have extended closure times to 11pm, with Sunday being an exception.⁵⁸ Although the reforms were not meant to be in force until February 2017, they were fast tracked before the Christmas holiday period in December 2016. Complementing this was the expansion of the patron limit for small bars from 60 to 100.⁵⁹ After significant public opposition to the more onerous aspects of NSW's alcohol restrictions, this proposal was widely accepted.⁶⁰

In 2016 the NSW government and the city of Parramatta ran a digital pilot that dramatically cut red tape for cafés, restaurants and small bars. The initiative reduces the start-up time for new enterprises to just 3 months – a decrease of 83 per cent.⁶¹ Since implementation, 35 new enterprises have been generated, contributing to employment and night-life vibrancy in the area.⁶²

South Australia has progressed reforms to increase consumer freedom and streamline the application process. Previously, a condition of pub and club licensees required patrons to be seated whilst drinking in outside areas. In mid-2015 the state government relaxed this provision, allowing any venue it effected to apply for it to be removed.⁶³ Furthermore, the application fee to do so has been reduced from \$518 to \$111.⁶⁴ Several other efforts to reduce red tape in the liquor industry have also been made. These include a simplified application process for stallholders at festivals, and removing the consent requirement for entertainment between 11am and midnight.⁶⁵

58 Brook, Benedict "NSW Government to allow bottle shops to open until 11pm." *News.com.au*, 14 December 2016 <http://www.news.com.au/lifestyle/food/drink/nsw-government-to-allow-bottle-shops-to-open-until-11pm/news-story/c78050447f232eaab13095ec414a0473>

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59 *ibid*. Brook (2016).

60 Dumas, Daisy "Lockout law protest movement gathers steam." *Sydney Morning Herald*, 9 February 2016 <http://www.smh.com.au/nsw/lockout-law-protest-movement-gathers-steam-20160209-gmp6ss.html>

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62 Colman, Elizabeth "Parramatta night-life booms as digital pilot cuts red tape for start ups." *Daily Telegraph*, 29 September 2016 <http://www.dailyleague.com.au/newslocal/parramatta/parramatta-nightlife-booms-as-digital-pilot-cuts-red-tape-for-start-ups/news-story/c04f8c99e70e16474a2b2e6c4c32bf05>

63 Sutton, Malcolm "Adelaide bars given a standing chance as conditions forcing drinkers to sit down outside are lifted." *ABC News*, 12 May 2015 <http://www.abc.net.au/news/2015-05-12/conditions-forcing-drinkers-to-sit-down-outside-pubs-lifted/6464228>

64 *ibid*. Sutton (2015).

65 Restaurant and Catering Australia "Liquor licensing discussion paper: Attorney-General's Department." (2016) http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Submissions-%20Feb2016/70_Restaurant%20%26%20Catering%20Australia.pdf

3.2. Recommendations for liquor licensing reform

Recommendation 1: Reduce the number of types of licences.

In the previous section we revealed the extensive variation in the number of types of licences across different jurisdictions. These are summarised in the following table.

| Jurisdiction | Licences (and sub-classes) | Names of Licences |
|------------------------------------|----------------------------|--|
| Australian Capital Territory (ACT) | 5 total (3 sub-classes) | General On licence - Nightclub - Bar - Restaurant and cafe Club Off licence Special |
| New South Wales (NSW) | 7 total (3 sub-classes) | Club Hotel - General bar Limited - Single or multiple functions - Special event or trade fair On-premises Packaged liquor Producer/wholesaler Small bar |
| Queensland (QLD) | 7 total (7 sub-classes) | Commercial hotel Commercial other - Subsidiary on-premises - Subsidiary off-premises - Bar - Industrial canteen - Producer/wholesaler Commercial special facility Community club Community other Nightclub Wine - Wine producer - Wine merchant |
| South Australia (SA) | 13 total | Club Direct sales Entertainment venue Hotel Limited club Limited licence Producers Restaurant Retail liquor merchant Residential Small venue Special circumstances Wholesale liquor merchant |

| | | |
|------------------------|--------------------------|---|
| Victoria (VIC) | 10 total | Temporary licences Limited scale and scope On-premises and take away Club On-premises consumption Packaged liquor Bring your own Wholesale supply Winery or brewery Internet or mail order |
| Western Australia (WA) | 10 total (6 sub-classes) | Casino liquor Club - Club restricted Hotel, tavern and small bar - Hotel - Hotel restricted - Tavern - Tavern restricted - Small bar Liquor store Nightclub Restaurant Occasional Producer Wholesaler Special facility |

Having a wide range of licences places additional uncertainty, and therefore compliance costs, on business. The cost comes through business uncertainty of fees and obligations regarding what licences they require even prior to trading, as well as when businesses undergo structural changes, and thereby move between categories.

All jurisdictions should substantially streamline and simplify the number of liquor licences. One simple delineation could be the wholesale sale of alcohol (e.g. bottleshops), the provision of alcohol on premises (e.g. bars and nightclubs), and special events (e.g. music festivals). This new delineation would enhance the transparency of obligations that potential applicants will face in obtaining a liquor licence.

While instituting such a change does not necessarily lead to a reduction in the indirect burden of licences more broadly – i.e. which comes from the restrictions themselves – it would go some way to reducing the direct compliance burden of understanding the regulation.

Recommendation 2:

Flatten, lower and index liquor licensing application and annual fees.

Licence fees widely vary, and are calculated using different methods across jurisdictions. Fees are also subject to changes and large jumps (or reductions). Fees can also cost as much as tens of thousands of dollars, which has led to accusations that the system is being exploited for revenue raising.

Tiered fee structures distort the market for alcohol provision and are not clearly justified on the basis of public health and safety, as is their stated intention. Businesses and individuals already pay taxes, contributing significantly to public revenue.

There is no clear link between increasing fees and improving public health, and therefore it cannot be argued that fees should be higher than the cost of their implementation. The burden should be placed on government when it wishes to levy fees higher than the cost it takes to administer the licences.

Unfortunately, the justification for licence fees seems to be increasingly justified on progressive redistribution. That is, larger venues pay more money while smaller venues pay less. And, as was outlined above, this sometimes occurs simultaneously. Regulators must reassess the rationale behind charging higher fees to businesses which undertake a higher rate of economic activity (i.e. engage in more voluntary trade with their customers).

Considering this, we further recommend that fees not only be lowered, but should also be flattened. This would reduce the impact of redistribution which incentivises businesses to remain smaller and undertake fewer mutually beneficial trades.

To be clear, there is an inherent trade-off here because flattening fee structures would have a small regressive effect (i.e. the licence cost would be a higher proportion of the income or turnover of the venue). The question of the flatness in the fee structure and whether that had a progressive or regressive burden is an empirical one. Undoubtedly, however, lowering the rates overall would decrease the red tape burden.

Fees should also be indexed to prevent discretionary increases for the purpose of revenue raising.

Recommendation 3:
Lighter touch licensing in favour of policing and punishment for offences.

The central driver of contemporary red tape issues is a broader problem of a culture of regulatory intervention. The core idea of providing licensing power to government over any particular business activity is driven by the incentive to restrict certain individuals or businesses from engaging in that activity. The need for restriction is regularly predicated on the idea of public safety.

The burden of proof to restrict autonomous individuals from trade is on the government. If it is determined there is a deviation (i.e. there is a 'market failure' supposedly identified) from some objective, then the question is still comparatively institutional: how should the objective be met? For liquor licensing, this could come in several potential ways. The general approach adopted across Australia, and that which is reviewed in this paper, is the 'licence first' approach, followed generally by penalties for defections on the existing regulations.

The alternative option, however, is to apply lighter touch regulation before the fact, and direct those resources towards detecting and enforcing defections from existing regulation. This approach would be a reduction in red tape for Australian businesses.

4. Concluding remarks

- Liquor licensing is a microcosm of the broader red tape problem facing Australian businesses. This stems from a culture which believes that state permission must be granted before engaging in voluntary exchange.
- In this report we surveyed and analysed liquor licensing restrictions across many Australian jurisdictions. This revealed an excessive number of licence types, as well as tiered and progressive fee structures.
- Drawing on this we made several recommendations:
 - i. Streamline and simplify the number of licence types across different jurisdictions, thereby reducing uncertainty for potential licensees.
 - ii. Lower, flatten and index application and annual fees for liquor licences in order to take away the progressive and discretionary nature of regulators to heap red tape onto business.
 - iii. Shift the culture and resources of regulation away from licensing in favour of enforcing defections after offenses have been committed.
- All reductions in liquor licensing red tape must also sit within a broader framework of red tape reduction within the Australian economy, at all levels of government.

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