



Government of **Western Australia**
Small Business Development Corporation

Small Business
Development
Corporation



Our Ref: D13/672

Executive Officer
Liquor Act Review Committee
PO Box 6119
EAST PERTH WA 6892

Dear Executive Officer

REVIEW OF THE LIQUOR CONTROL ACT 1988

The Small Business Development Corporation ('SBDC') welcomes the opportunity to provide feedback from a small business perspective on the review of the *Liquor Control Act 1988* ('the Act').

The SBDC is an independent statutory authority of the Government of Western Australia established to facilitate the development and growth of small businesses in this State. One of the agency's key strategic goals is to identify and advocate for the removal or reduction of red tape impacting on the State's business community.

Reducing red tape for small businesses

Small businesses make up a significant proportion of the State's liquor industry. According to the latest Australian Bureau of Statistics ('ABS') data, as at June 2011 86% of liquor retailers, 79% of clubs and 59% of pubs, taverns and bars were classified as small businesses¹. In addition, the vast majority of businesses involved in other industries that rely on the sale and supply of alcohol, including those in hospitality and tourism, are also small businesses. As such, any moves to reduce the impact of government regulations and the cumulative burden of compliance would be greatly welcomed by the sector.

In 2009, the SBDC was heavily involved in the State Government's Red Tape Reduction Group ('RTRG'), which was established to investigate and make recommendations to reduce the regulatory burden on the Western Australian community. The RTRG investigation, based on a comprehensive program of consultations with small business operators throughout the State, highlighted the

¹ ABS publication 8165.0 *Counts of Australian Businesses, including Entries and Exits, June 2007 to June 2011*, Data Cube 'Businesses by Industry Class by Main State by Employment Size Ranges', released 24 April 2012.

need for governments at all levels to, wherever possible, reduce the regulatory burden on businesses in a wide range of areas, including liquor licensing.

The SBDC notes that Chapter 6 of the RTRG report, which was publicly released in February 2010, identified a range of liquor licensing reforms that had the potential to save businesses up to \$8 million in costs each year². As argued by the RTRG, a reduction in red tape in the liquor industry would likely encourage new small businesses to enter the market, resulting in enhanced competition and more choice and diversity for the public³.

The RTRG report provides a good analysis of the complexities associated with the regulatory framework for liquor control in Western Australia and, in the SBDC's opinion, the recommended reforms set out a clear blueprint to reduce the compliance burden on the liquor industry. In particular, the RTRG noted that⁴:

Liquor licensing was one of the most commonly raised issues during the consultation process (raised on 46 occasions) with most of the submissions related to:

- the overly prescriptive nature of the regulation;
- a general lack of clarity and guidance; and
- duplication in the requirements of agencies.

Complexity of the application process

It is commonly accepted that the requirements and processes associated with obtaining a liquor licence and running a licensed establishment in Western Australia are complex, onerous and time consuming. Complaints amongst small businesses typically include the length of time taken to process licence applications and the lack of assistance offered by the Department of Racing, Gaming and Liquor ('DRGL').

Recently, the SBDC was contacted by a small business owner having difficulty with the liquor licence application process. In addition to finding the process to be overly complicated, the client claimed that DRGL staff were not particularly helpful with her application and were in fact quite uncooperative.

The complexity of navigating through the application process, together with the general risk-aversion and lack of client-focus by DRGL staff, generates confusion and uncertainty amongst small businesses and leads to additional costs and compliance burdens. The SBDC is aware that for even the most straightforward licence application, small businesses are employing the services of lawyers or industry consultants to assist them in completing the requisite paperwork.

In the SBDC's opinion, the overly legalistic and costly process is likely to dissuade many potential applicants from applying for a liquor licence. The length of time it takes for licence applications to be processed also puts many entrepreneurs off, and often makes the original business case to establish a new venture unviable

² Department of Treasury, 2009 *Reducing the Burden – Report of the Red Tape Reduction Group*, available from: www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf?n=1005.

³ Ibid, pg.61.

⁴ Ibid, pg.64.

(particularly where the applicant has already entered into a commercial tenancy agreement, has invested in fittings and equipment and/or has other capital holding costs).

The SBDC also has concerns regarding the additional burden imposed on liquor licence applicants due to the requirement that all applications for the grant or removal of liquor licences must be submitted with a Public Interest Assessment ('PIA'). However, there are no comprehensive guidelines or templates that exist to assist applicants in preparing the PIA and as the RTRG report identifies, "Although the DRGL emphasise that a consultant is not required, a significant number of applicants hire a lawyer or industry consultant, as they are unable to prepare the document themselves"⁵. And the use of such external assistance does not come cheap: as noted by the Australian Hotels Association in their submission to the RTRG, "The estimated costs associated for these assessments can be anything from \$10,000-\$50,000 on licence applications"⁶.

The lack of guidance and assistance in the preparation and substantiation of applications detrimentally impacts on small businesses. This is significant given that public interest provisions cover a broad range of issues specific to each licence or permit application. Moreover, the public interest requirement associated with small businesses such as nightclubs, liquor stores, and hotels is generally more complex. These types of applications require supporting information covering a much wider and more detailed scope of public interest issues.

Given the complexity and large up-front costs associated with completing the PIA requirements – with no guarantee of approval – the present system represents a significant barrier to entry, particularly for very small operators. This does little to promote innovation and diversity in the industry, thus limiting entrepreneurial opportunities and reducing consumer choice.

In this regard, the SBDC fully supports the RTRG's recommendations to reform PIA processes; namely, that comprehensive guidelines or templates be created to assist in the preparation of PIAs, a tiered system for PIA submission requirements depending on the level of risk be introduced, and the requirement for Extended Trading Permit ('ETP') applications to include PIA submissions be removed.

Extended Trading Permits

Small licensed businesses spend considerable time and effort in applying for ETPs, especially as they are subject to local government and WA Police support and approval. Applications for an ETP can only be made subsequent to a liquor licence being granted. In addition, ETPs need to be renewed on a regular basis and in some cases (e.g. an application for an ongoing ETP) include a PIA. These factors add up to a considerable administrative burden. Further to this, the SBDC notes that while the Act provides for an ETP to be granted for up to five years, these are rare.

⁵ Ibid, pg.67.

⁶ Ibid, pg.67.

The SBDC supports the streamlining of the ETP process. To this end, the SBDC endorses the RTRG recommendation⁷ to allow ETP applications to be accepted along with the initial liquor licence application. The requirement that ETP applications be accompanied by a PIA submission should also be removed as this is submitted with the original licence application.

Sunday trading on long weekends

Currently small licensed businesses such as taverns and small bars are permitted to trade from 10am to 10pm on Sundays under section 98 of the Act. An ETP is required to trade beyond this time on the Sundays of long weekends. Most tourists and regular bar goers would expect licensed premises to be open later on a Sunday long weekend. Extending the trading hours to enable licensed premises to trade to midnight on Sundays of long weekends represents a common sense approach to regulation and would substantially reduce the red tape burden associated with ETP applications.

As such, the SBDC recommends amending core hours of a hotel licence to enable hotels, taverns and small bars to trade until midnight on Sundays of long weekends.

Liquor Licensing Fees

The SBDC understands that liquor licensing fees increased in January 2013 without consultation with the industry. Further to this, the number of fees and charges associated with liquor licensing are also quite substantial. These include application fees, search and supply fees, and annual licence fees.

The list of fees covers multiple pages and these have increased significantly in recent years. For example, licences for hotels, taverns, small bars and nightclubs have increased from \$2,200 in 2009⁸ to \$3,186 in 2013⁹. This represents an increase of around 10% annually, which far exceeds the Consumer Price Index.

The SBDC supports a review of the processes and actions that have been used to calculate the administration costs of processing licence applications. These should be based on a cost recovery basis and indexed to the rate of inflation.

CONCLUDING STATEMENT

The SBDC believes that State Government agencies, especially those that administer complex regulations, should be mindful of the need to reduce onerous and/or unnecessary red tape on small businesses. As such, the SBDC would welcome the opportunity to work with the DRGL to create greater flexibility and choice for small businesses in the liquor, hospitality and tourism industries.

⁷ Ibid, Recommendation 6.7, pg.70.

⁸ DRGL, *Fees and Charges*, available from: www.rgl.wa.gov.au/ResourceFiles/Publications/RGLCDRom2009-10.pdf.

⁹ DRGL, *A guide to liquor licensing in Western Australia 2009/10*, available from: www.rgl.wa.gov.au/Default.aspx?NodId=88.

The SBDC appreciates the opportunity to provide a submission as part of the review of the Act. Should you wish to discuss this submission in more detail, please contact Ms Tania D'Agostino, Policy and Advocacy, on [redacted] or email [redacted]

Yours sincerely

[redacted signature]

Clause 3(1)

Clause 3(1)

Clause 3(1)

David Eaton
SMALL BUSINESS COMMISSONER

5 March 2013

SUMMARY OF THE SBDC SUBMISSION

- The SBDC supports measures to reduce the compliance burden on small businesses in Western Australia.
- The SBDC believes the recommendations of the Red Tape Reduction Group to reform liquor licensing provide a clear blueprint to reduce the compliance burden on small businesses – these have the potential to save affected businesses up to \$8 million in costs each year and encourage new market entrants.
- The confusion and uncertainty arising from the complex liquor licensing application process, together with the risk aversion and lack of customer focus of DRGL staff, leads to significant compliance costs for small businesses.
- The SBDC recommends reforms to the Public Interest Assessment and Extended Trading Permit processes to reduce the burden of compliance.
- The prescribed trading hours on the Sundays of long weekends should be extended until midnight for small licensed businesses (i.e. doing away with the need for ETPs to be applied for).
- A review of the way licensing fees are calculated should be undertaken to ensure hefty escalations don't occur from one year to the next.
- The SBDC is willing to assist the DRGL to identify and implement reforms to reduce the red tape burden on affected small businesses.