



Exemptions to the freeze on new late night liquor licences in inner city Melbourne: early impact and experience in the four affected municipalities

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Summary

In 2008 the Victorian Government introduced a new policy that no new liquor licence applications for licensees seeking to trade past 1am would be issued in the four inner city municipalities of Melbourne, Port Phillip, Stonnington and Yarra. The 'freeze' applied to all licence categories except clubs, restaurants and cafés. In July 2015, the government introduced exemptions to the freeze. New 'late night' licences could be issued providing several criteria were met – including that applicants have 'council (municipality) support'.

MAIN FINDINGS

- Nine months following the introduction of exemptions, there has been barely any increase in applications for late night permanent licences but an increase in late night temporary licence applications. There has been one new late night licence granted and four applications made, one of which was rejected. The exact numbers of late night temporary licences granted and applied for is unknown, although the bulk of granted applications were for a one-off 24 hour event.
- There is no evidence of displacement of late night licensing to neighbouring municipalities since the freeze was introduced. There is very little growth in late night licences in non-freeze affected municipalities over the five years from 2012-2016.
- The State Government has produced no guidelines associated with the new step of 'council support', meaning it is hard to know what is intended with this aspect of the exemption policy.
- The requirement of 'council support' for new late night licences has significantly changed the role and power of local government in liquor licensing decisions. This has posed a challenge to local governments that has been met with widely divergent approaches.
- Differences in implementation of the guidelines emerged as a significant theme. We found that the four local governments vary widely in the ways in which they understand and approach the provision of 'council support' for post-1am applications. One saw the requirement as an opportunity to assess and veto applications based on local policy priorities, while another re-labelled 'support' to a position of 'no initial concern'.
- There has been some dispute about what is meant by the exemption criteria terms 'significant' and 'major' as they relate to temporary licence applications. There are no government guidelines on the meaning of these terms.

Introduction

In 2008 the Victorian Government introduced a freeze on the granting of new liquor licence applications for licensees wanting to trade past 1am in the local government areas (LGAs) of Melbourne, Stonnington, Yarra and Port Phillip – major entertainment districts in the inner part of the Melbourne metropolitan area. These licence applications could be for new premises or for changes of licence conditions at existing premises. In addition to Victoria, freezes (or moratoriums) on new liquor licences for late night trading were also introduced in selected inner city areas in New South Wales (NSW) in 2009, and in all of Queensland in 2009.

In general, such freezes have been pursued to ‘contain growth in extended trading licences so that long-term strategies to improve the safety and amenity¹ of the designated precincts could take effect’ (Manton, Room, & Livingston, 2014:128). For example in Victoria, the freeze was introduced to ‘provide the government with an opportunity to ensure that adequate mechanisms are in place to minimise the social harm from alcohol’ (Ministerial Taskforce on Alcohol and Public Safety, 2008:35). Other policies were also introduced around the same time, including a trial 2am lockout² for a three month period across the four LGAs, and risk-based licensing³.

The Victorian freeze applied to most licence types as well as bring-your-own alcohol (BYO) permits. It did not apply to restaurants and cafés, or community club licences. Introduced initially as a 12 month measure (Ministerial Taskforce on Alcohol and Public Safety, 2008:35), the freeze was extended in 2009 for a further two years, in 2011 for a further 18 months, and in 2013 for a further two years, although extensions of trading hours would be granted under exceptional circumstances.

In July 2015, a new policy concerning applications for liquor licences to trade after 1am in the four LGAs was released. The freeze was extended until the end of June 2019, but with some significant exemptions detailed in written guidelines on the implementation of the policy (Minister for Consumer Affairs Gaming and Liquor Regulation, 2015).

To be exempt from the freeze under the guidelines, venues in these four inner Melbourne LGAs must demonstrate support for the application by the LGA’s elected council, need to have in place a Venue Management Plan, and must demonstrate that the economic and social benefits of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and community amenity. The maximum patron capacity for an exempted premise must not exceed 200 (Minister for Consumer Affairs Gaming and Liquor Regulation, 2015). Exemptions only apply to accommodation hotels, live music venues, and bars where food is always available. The guidelines also provide for exemptions from the freeze for temporary liquor licences in the four inner Melbourne LGAs for a significant cultural festival, a major tourist event, New Year’s Eve, a major live music event, or a major charity event, provided the licensee has the support of the relevant council and they have a Venue Management Plan, and will comply with any food service conditions on the licence until alcohol service ceases.

1 “Amenity” is used as a general term in Australian urban planning to refer to the peace and good order of public space, with threats to amenity including such factors as noise, especially late at night, rubbish and public intoxication and altercations.

2 A “lockout” means that those already in a drinking place can stay there if they choose until closing time, but that new customers cannot be admitted after the lockout time. Lockouts are believed by Australian police to be an effective means of reducing late night problems from on premise consumption, although there is little evidence one way or another to back up the belief.

3 With risk-based licensing, licence fees are based on factors believed to affect the cost of regulating and policing the establishment. These usually include a higher fee where an establishment has a permit to stay open beyond the regular closing hour.

The freeze on late night licences may be seen as a small step by governments caught between two opposing trends in Australian public life. On the one hand, there has been a great increase in the availability of alcohol, in terms of numbers of places of sale, and of opening hours, in recent decades (Roche & Steenson, 2014). This reflected both a long trend of reaction in Australia against the earlier temperance era – an era which had seen in Victoria a substantial restriction in the number of venues selling alcohol and a stringent restriction of opening hours (“6 o’clock closing”), and the application more recently of neoliberal free market and deregulation principles to alcohol sales (Room, 2010). On the other hand, as alcohol consumption and problems rose from the 1960s on, there has been a belated turn in public opinion in the past decade toward favouring more restrictive policies (Callinan, Room, & Livingston, 2014). In recent years in Australia, the main conflict zone for these two conflicting policy tendencies has been around late night sales of alcohol, mostly focused on pubs and clubs for on premise drinking.

A recent systematic review found seven studies published since 2005 addressing the impact of restricting trading hours (Livingston, Wilkinson, & Room, in press). The majority of these examine policy changes in Australia, reflecting that regulating late night trading hours has been a not uncommon response to concern over late night public violence.

The most comprehensive evidence in Australia comes from restrictions introduced in different parts of NSW. In 2008 a range of restrictions were introduced on pubs trading in the CBD of Newcastle. This included 3:30pm closing (initially 3am), with a 1:30am lockout (initially 1am), restriction on the sale of shots⁴ after 10pm, and the introduction of dedicated ‘responsible service officers’ to maintain decorum within venues. In a carefully designed study, Kypri et al. (2011) used the neighbouring area of Hamilton as a control to assess the impact of the Newcastle restrictions. Importantly, Hamilton implemented the same restrictions as Newcastle with the exception of the lockout and trading hours changes, meaning any effects could be reasonably attributed to these particular interventions. The study found a 37 per cent reduction in assaults in Newcastle between 10pm and 6am. In a later follow-up, Kypri et al. (2014) showed that these reductions had been sustained over the five years following the intervention. The authors also presented that the majority of this reduction came after 3am with little impact evident between 1am and 3am, suggesting that the trading hour restrictions, and not the lockout, was the key policy.

A similar set of interventions was subsequently implemented in the Sydney CBD and Kings Cross areas in February 2014 (although there was no set closing time, alcohol could not be sold after 3am). Menéndez, Weatherburn, Kypri, and Fitzgerald (2015) examined the impact of these restrictions on assaults, with appropriate controls and tests for whether harms were simply displaced from the restricted areas to other parts of Sydney. They found strikingly similar results to the Newcastle evaluation; assaults reduced between 26 per cent and 32 per cent. There was little evidence of displacement to other areas (Donnelly, Weatherburn, Routledge, Ramsey, & Mahoney, 2016). Thus, the trading hours literature provides broadly consistent evidence that reducing the permissible trading hours of late night venues is an effective way to reduce alcohol-related harm, particularly violence.

⁴ These were described at the time as including “straight nips of tequila, vodka and other spirits”, and also “‘bomb’ beverages, where shots of high-alcohol spirits are dropped into a glass of beer or Red Bull”. <http://www.dailytelegraph.com.au/lifestyle/shots-of-alcohol-banned/story-e6frf00i-1111113510642>

However, no evidence has been found that specifically addresses the impact on alcohol-related harm of either imposing or lifting a moratorium on late night trading. While Menéndez, Tusell, and Weatherburn (2015) examined the effect on assault rates of a package of reforms in NSW over the period 2008 to 2013, which included the 2009 freeze on new 24 hour liquor licence trading permits, the finding of a drop in overall assault rates by 30 to 40 per cent is not able to be attributed to any of the policy changes in particular. In Queensland, the complete lifting in September 2014 of a moratorium on late night trading applications which had been in place since September 2009 resulted in 107 applications being made for late trading beyond 12am in the first six months. Of these, 40 applications were approved and 67 were still awaiting a decision as of 28 February 2015 (Foundation for Alcohol Research & Education, 2015). The authors of this report argued that, while it was too early to determine the long-term impact that lifting the moratorium would have on alcohol-related assaults, such an increase in the availability of alcohol in the period between midnight and 3am would lead to an increase the risk of assaults, based on the existing literature about the effects of increases in late night trading. Although NSW has also had a freeze in place since 2009, the only area (the southern CBD) where the freeze was allowed to expire was in December 2012 for 12 months to enable the trial of a new Environment and Venue Assessment Tool to assess liquor licensing applications (NSW Government Office of Liquor Gaming and Racing, 2014). Thus, there is no comparable Australian data about impacts of the lifting of a moratorium on licence numbers.

AIMS

One of the incentives for undertaking the current study in Victoria was to determine what the experience had been on the number of applications for new liquor licences trading past 1am, based on the introduction of the exemptions to the freeze on 1 July 2015.

A second incentive for undertaking this study was to examine how the stated requirement in the Government guidelines that ‘the venues in these four municipalities need council support’ has been implemented in practice. LGA councils have existing powers under the *Liquor Control Reform Act 1998* to object to the granting, variation or the relocation of an existing licence to their municipal district on the grounds of amenity. In the case of packaged liquor licence applications, council can also object on the grounds the licence would encourage misuse or abuse of alcohol. Councils have 30 days from the time the licence application is first advertised to make a written objection to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) (the state liquor licensing approval body). The VCGLR will then decide on the licence taking into account any objections received, which besides the local council may also come from the police or community members. If the VCGLR grants the application, the council/objector can make an application for an internal review. If at this internal review the original decision is upheld, an objector can then appeal to the Supreme Court.

Councils also have a role in licensing by way of their role in assessing planning permit applications, which are a pre-requisite for applications for permanent liquor licences. Under the new guidelines, applicants are required to seek the prior support of the relevant local council before lodging their application with the VCGLR. This is a new and different step from the existing requirement to issue a planning permit. The VCGLR webpage advises, “Each local council has developed its own process or policy on how decisions will be made on these applications” (Victorian Commission for Gambling and Liquor Regulation, 2015). The greater involvement of local government in the regulation of late night licensed premises through their existing role in land use decision-making was identified as one of the original justifications for the introduction of the freeze:

[The freeze] will also provide the inner city councils with an opportunity to review relevant local planning scheme policies to address emerging late night economies within the context of

impending amendments to planning legislation (Ministerial Taskforce on Alcohol and Public Safety, 2008:35).

APPROACH

It is the involvement of local government in the licensing process that is the focus of this paper, rather than any attempt to measure changing levels of harm.

Thus the research questions were:

1. In the nine months since the introduction of the changed freeze conditions in mid-2015, how many liquor licence applications for trading past 1am have been granted, rejected, or are in process in the four affected municipalities?
2. How do these data compare with new liquor licence approvals for trading past 1am in nearby non-freeze affected municipalities?
3. What has been the experience of the four affected municipalities in handling the requirement that applications require council support before being forwarded to the Victorian Commission for Gambling and Liquor Regulation (the liquor licensing approval body)?

Method

This study uses a mixed method approach referred to by Fetters et al. (2013) as a ‘convergent design’. In this approach quantitative and qualitative data are collected and analysed during a similar timeframe, and in our project initial quantitative findings influenced the qualitative data collected (Fetters, Curry, & Creswell, 2013:2137). That is, in order to answer the first research question, limitations on the availability of quantitative data on how many liquor licence applications that met the freeze exemption criteria are under consideration at the local government level, meant that quantitative data collection was supplemented through the interview process.

QUANTITATIVE MATERIAL

Liquor licences

Data on active late night general and on premise liquor licences were collated from the Victorian Commission of Gaming and Liquor Regulation for June in the four years preceding the recent changes to freeze conditions (2012-2015) and for the most recent data available (March 2016, nine months following the changes). Late night licences enable licensees to trade past 1am, and are therefore the category of licence affected by the freeze. We focus on ‘general’ and ‘on premise’ licence types as they represent the late trading non-restaurant venues that were the main target of the freeze policy. Data on temporary liquor licences for specific events were not readily accessible – given the previous evidence of spikes in alcohol-related harm associated with major holidays and events (Lloyd, Matthews, Livingston, Jayasekara, & Smith, 2013), future research should explore the prevalence of these temporary late night liquor licences. General and on premise liquor licences were collated for the four freeze LGAs, along with four comparison LGAs, to assess the broader trends in late night licencing. Three metropolitan and one regional area were selected as comparison sites. The metropolitan areas (Moreland, Darebin and Boroondara) were selected as they represented the most likely areas for displacement of late night licensing (all being relatively central and with existing entertainment precincts), while the regional area (Geelong, a deindustrialising port city 72 km from Melbourne) was selected due to its significant level of existing late night trading. Data for the non-freeze areas were not available for 2015.

Trends in the number of active late night licences were examined for each of these eight areas to assess whether changes to the freeze exemption conditions had led to an expansion of late night trading. Data were limited to permanent licences, so licensees applying for one-off event-based exemptions (for example for White Night⁵ or New Year's Eve) were not captured in the quantitative data.

QUALITATIVE MATERIAL

Initial findings from the quantitative data collection phase suggest little impact of the changes to the freeze exemption conditions in terms of permanent licences. This influenced the decision to undertake qualitative research with representatives of the four affected municipalities – Melbourne, Port Phillip, Yarra and Stonnington – to determine the level of applications to council for a letter of support. Furthermore, there was no quantitative data available on temporary liquor licence applications under the freeze exemption, and it was planned to try to gather this information through qualitative interviews.

Participants were initially recruited from the first author's contacts from a larger study of local government's role in alcohol policy in Victoria. From these initial contacts, participants were asked if there was any other person who should be interviewed, given our research interest, a form of purposive sampling. Each participant was sent a Plain Language Statement and a Consent Form approved as an amendment to the first author's original project ethics approval at The University of Melbourne, approval number HREC Number: 1238127.3. As a result of this process four people were interviewed who mainly had a statutory planning function.

Information gathered from interviews was supplemented by a telephone conversation and email exchanges. The information from the telephone conversation was captured in a fieldnote immediately after the conversation. Furthermore, the minutes of the Future Melbourne Committee (FMC), a special committee of the City of Melbourne Council that oversees implementation of, amongst other things, planning activities for the City, provided an accurate record of the status of the level of council support recommended for several permanent liquor licence applications under the freeze exemption. This provided valuable supplementary information to that gathered by interview.

The interviews were semi-structured and interview themes covered: liquor licence application numbers, types and outcomes; managing and responding to requests for 'council support'; and understandings of, and reactions to, the impact of the policy change on licence applications. Interviews were conducted by phone by the first two authors, digitally recorded after consent was given, and professionally transcribed. Interviews lasted up to 45 minutes. The interview questions were refined in later interviews as a result of preliminary analysis of the initial interviews. Transcribed interviews were stored and analysed by the first two authors using NVivo11, a qualitative software package that enables thematic analysis of large amounts of text (Braun & Clarke, 2006). Interviewees were informed that they would not be named in any publications. However, they were also informed that due to the small sample of participants and their familiarity with each other it was possible that someone would still be able to identify them.

As a result of participants informing us about the application process we requested each municipality provide us with internal policy documents that informed both their own practice and provided guidance to potential liquor licence applicants. These policy documents were compared and

⁵ White Night Melbourne is an all-night, free annual cultural event that offers a mix of free and ticketed entertainment including visual art, spectacular illuminations, music, theatre, special dining experiences, film, design and performances. <http://www.visitmelbourne.com/regions/Melbourne/Events/Art-and-exhibitions/White-Night-Melbourne.aspx>

contrasted to identify differences and similarities between approaches adopted by the four municipalities in fulfilling their function to show council support (or not).

Findings

QUANTITATIVE

The data on late night general licences (pubs able to sell off premise as well as on premise alcohol) for the eight areas are presented in Table 1. In each of the freeze areas the number of late night general licences declined between 2012 and 2015. The only increase in late night general licences in the nine months following the changes to the freeze exemption conditions occurred in the City of Melbourne, with the granting of a late night licence to the Duke of Wellington Hotel on Flinders Street (see the qualitative results for more details of this decision). It is worth noting that even in the four LGAs not covered by the freeze conditions, there was very little growth in late night licences. Between 2011 and 2016 the number of late night general licences increased by two in Darebin, and by one in Boroondara, but declined in Geelong and was unchanged in Moreland.

Table 1 – Active late night general licences by LGA, 2012-2016 (freeze exemptions introduced after 2015 data)

LGA	2012	2013	2014	2015	2016
Melbourne	103	103	102	100	101
Port Phillip	33	32	32	32	32
Stonnington	22	22	21	21	20
Yarra	37	37	36	35	35
Boroondara	7	7	7	na	8
Darebin	11	11	11	na	13
Geelong	19	19	18	na	18
Moreland	17	17	17	na	17

na – Data for the non-freeze areas were not available for 2015.

Trends in the number of late night on premise licences (bars) are presented in Table 2. Again, all four freeze areas saw declines in the numbers of late night on premise licences across the study period. The only increase observed was between 2014 and 2015 in the City of Melbourne, which was the result of the granting of two late night licences. As for general licences, the non-freeze areas did not experience growth in late night on premise licences over the period.

Table 2 – Active late night on premise licences by LGA, 2012-2016

LGA	2012	2013	2014	2015	2016
Melbourne	144	142	141	143	143
Port Phillip	30	29	28	27	27
Stonnington	44	43	41	41	41
Yarra	30	29	29	29	29
Boroondara	7	7	7	na	6
Darebin	9	9	9	na	9
Geelong	6	6	6	na	6
Moreland	6	5	5	na	6

na – Data for the non-freeze areas were not available for 2015.

The quantitative data presented here suggest little impact of the changes to the freeze exemption conditions in terms of permanent licences, with only one new late night licence granted in the freeze areas after the conditions were altered. Interestingly, the results also suggest that there has been a lack of demand for late night licences outside of the freeze areas. This suggests that the freeze policy itself has not led to a displacement of new late-trading venues to unaffected LGAs.

QUALITATIVE

Permanent and temporary liquor licence applications

According to our council planning informants, there have been no applications for permanent liquor licence extensions post 1am in the City of Port Phillip or the City of Stonnington since July 2015. There has been one application for a permanent liquor licence extension to 3am for an existing bar in the City of Yarra, but the Statutory Planning office of the LGA and its Council are currently waiting for further information from the applicant. For the City of Melbourne, examination of the Future Melbourne Committee minutes over the nine month period from July 2015 to March 2016 revealed that four applications for permanent licences to trade beyond 1am had been brought to the Committee by planners, with one being supported with conditions, two being supported, and one being rejected (based on the grounds of amenity and reluctance to set a precedent in the locality).

One of these applications (the one which was supported with conditions) has subsequently been approved and refers to the successful application for the City of Melbourne mentioned in the quantitative section above. This approved application for the Duke of Wellington Hotel provides an interesting opportunity to compare the 'before and after' effects of the freeze exemption. Initially assessed before the freeze exemption, it was rejected by the VCGLR because it did not, as required at the time, demonstrate 'exceptional circumstances' to the satisfaction of the Commission. This decision was subsequently appealed. While the July 2015 freeze exemption guidelines no longer had this 'exceptional circumstance' test, a rejected application would not normally be reviewed under new guidelines. However, the circumstances in which there was a VCGLR internal review of the application in August 2015, after gazetting of the new guidelines in July 2015, meant the VCGLR review panel re-

assessed the application under the new guidelines and approved the application, subject to the original Council conditions being met (Victorian Commission for Gambling and Liquor Regulation, 2015a).

The situation for temporary liquor licences is somewhat different. Firm data for temporary licence applications are not available without substantial work from the relevant planners, and we accepted 'guesstimates'. There was no information available for the City of Stonnington, and there had been one application in the City of Port Phillip which had been withdrawn because the Council's internal policy of how to handle applications under the freeze exemption had not yet been approved, but also because the event in question was postponed. In the City of Yarra there had been about 'half a dozen' applications for New Year's Eve, for the Rugby World Cup and the Soccer World Cup, all for existing businesses. In the City of Melbourne there were two broad categories. Those venues applying for an exemption to trade later than 1am during the White Night cultural event are handled under a blanket approval so long as they met the guidelines, had received a letter of support from the White Night organisation, and met special City of Melbourne conditions. Other than this event, there may be anything up to around 50 other temporary licence events, but really all that can be said is that, in qualitative terms, it is 'a lot'.

The qualitative data suggest that very few permanent liquor licence applications to trade past 1am have been approved, although more than the one suggested by the quantitative data. That is, there may be up to three more permanent licence extensions, plus one that has been rejected. The situation with regard to temporary liquor licences is quite different, particularly in the City of Melbourne and especially with regard to White Night. Thus it would appear that the conditions of the freeze exemption for temporary licences has resulted in a significant number of new licences being granted. However, this does not mean that the process of applying the new guidelines has not been without its challenges for the relevant planners and municipalities.

Process for provision of council support to liquor licence applicants

The experience of the four affected municipalities in handling the requirement that applications need to secure council support before being forward to VCGLR was varied. We outline here the process for each of the four local councils.

City of Melbourne

The City of Melbourne refers new applications for permanent licences to the Future Melbourne Committee (FMC), using a report template covering purpose and background, key issues, and recommendations for providing the required letter of support or not. Temporary liquor licence applications are discussed internally by planners, minuted, and the minutes submitted to the FMC, after which the decisions can be issued. With respect to White Night, the Council supports any venue that is within the White Night precinct and has received a letter of support from the White Night organisation, subject to certain special conditions.

City of Port Phillip

Councillors of the City of Port Phillip approved a position on how the municipality would respond to requests for letters of support for late night liquor licence applications at a meeting on 12 April 2016, nine months after the government guidelines were introduced. The listed conditions included that the venue would not operate beyond 3am. Interestingly, council planners proposed a local policy of not supporting any new permanent liquor licences post 1am, such as ignoring the freeze exemption in their LGA, but this was not adopted by Council.

City of Stonnington

The City of Stonnington adopted a Liquor Licence Freeze Exemption Policy in August 2015 whereby applications for permanent licences would only be considered if located in specific sites. Processes for assessing permanent and temporary liquor licence applications are clearly flowcharted.

City of Yarra

The City of Yarra approved a Liquor Licence Freeze Exemption Practice Note in November 2015 that outlines the circumstances in which a letter of 'no initial concern' would be provided. It was noted in this Practice Note that the letter advising that Council has no initial concern as per the gazetted guidelines (for permanent or temporary licences), did not guarantee that Council would not object to the licence application when it was referred back to Council from the VCGLR (at the licence assessment stage).

Change in process and the importance of wording

One of our informants noted that the new requirement for council support represented a significant change in the licensing process that moved the responsibility to local government:

Because every application needs council support before application is made to VCGLR, the big shift for local governments is that that point of decision making has been moved from VCGLR to local government. That's why council has to very carefully consider how they decide whether to offer a letter of support or not, because essentially they have veto now.

However this approach was not uniformly adopted and several informants recognised the importance of the choice of wording in their council policy guidelines. Contrary to the approach identified above of having the power of veto, one informant noted that their council backed away from providing unequivocal support:

We were very, very careful of the wording [in our policy]. [...] We were happy to say we don't have an initial concern but we weren't willing to use the word 'support' because later the application is still referred from the VCGLR to council. And for all we know the application could have changed significantly. They might have put in all these different things that we haven't initially considered. [...] So we could say at the beginning in principle, it sounds like this would be a reasonable application but we still reserve the right to object at a later time.

The word 'support' was noted by another informant as having perhaps unintended meaning, partly because there was no guidance provided about what was intended:

All the guidelines say is that for the thing to be accepted it needs to have got council's support. It doesn't give any criteria for what that is based around; why does the council support something and why doesn't it? Councils wouldn't usually use words like 'support' when that's fraught with issues, with members of the public taking issue with – oh, you supported this. And if you think about the wording and the word 'support' as opposed to 'no objection' you can probably guess that words are important. And councils by their very nature are reasonably conservative, especially anything that's controversial. So to make a council hang their hat on the word 'support' as opposed to saying 'no objection', that's a massive difference, whether [the authors of the government guidelines] intended that or not.

Moreover the new process was not welcomed by licensees as it represented extra work and did not always improve the previous process, especially for temporary licences:

[The guidelines represent] an extra step in an already fairly bureaucratic process that businesses have to overcome and also that councils have to work. It's more work for us that's been created as a result of this. So I can definitely see the merits on permanent licences because it's definitely something that you need to get right. But in the cases of temporary licences we have a mechanism and it's the objection or not objection process, so why not just leave that as it is, I think would be the logical thing to do.

While one of the positives from introducing the new guidelines was the “recognition that local government understands planning at that local level, and they understand the impact of alcohol at the local level”, one of the negatives was a lack of an appeal process if the council did not provide a letter of support. This informant could foresee an unsuccessful applicant bringing their grievance to a council meeting, representing a change of process for handling objections:

It moves that point of conflict from VCGLR to local government. So the only process would be, if local government didn't give you a letter of support, [...] that you would go to a council meeting.

One of the difficulties in applying the new guidelines for the granting of temporary liquor licence extensions has been in the interpretation of the wording of what constitutes a ‘significant cultural festival’, which is one of the circumstances under which exemptions to the freeze pertained. Planners have had to refer back to VCGLR for advice, and over time as decisions are made it is becoming clearer what circumstances are regarded by VCGLR staff as qualifying.

There was also evidence of a new tension between agencies in the implementation of the new guidelines:

But VCGLR have accepted applications that do not have [council] support and sent them to us. We've queried this with a few of them and said aren't you not even meant to have lodged these applications and sent the referral to us until we've done the first step, which is this new step of getting a support letter? And in some of those cases they have then stopped it and we'll get them to apply for the support. They apply for the support to us. We give them the letter of support and then that sort of process can start again. And in other cases we've been told why don't you do it two for one? If you're not objecting, you can sort of say, letter of support, we support it. And in other cases I think we've just stayed silent on the whole thing and said we're looking at it, we don't object. They should know their own processes and they should have got them to get a letter of support but we shouldn't have to tell them every time this doesn't happen. We don't object so we'll just say we don't object. So it's not an ideal situation.

Outcomes of introduction of the freeze exemption

One of the outcomes of the new government guidelines identified by informants has been what has been referred to as ‘1am is the new norm’:

I just think that the actual freeze itself probably influenced people thinking about 1am as the norm. I don't know that for sure but the majority of places in our entertainment precincts are now applying for 1am. They just wouldn't apply for 11 [pm] any more really.

With all the freeze talk and anything after 1am has to meet these different requirement or you're not allowed to go past 1am. People start thinking about 1am as being the high risk, anything post that being the high risk.

State Government ‘cumulative impact guidelines’ released in 2009 recommend that local government planners give greater scrutiny to applications for licences seeking to trade after 11pm. On the other hand, licences for trading after 1am became a new licence category in their own right in 2011 (and

were used in Victoria's risk-based licensing system), rather than trading hours being a characteristic of any existing licences. Thus, there are messages of greater risks for harms from licences trading after both 11pm and 1am. Victoria is unique in this respect, with most other Australian jurisdictions having a single definition of extended trading hours (Manton et al., 2014).

However, even as it was suggested that 1am is the new norm, the possibility that low risk extends beyond 1am for certain venues was also flagged:

We've always had the view that lower risk venues would be fine to potentially operate past 1am, obviously with the approvals that they need to get. We've always had a view that smaller premises with live music in particular [...] that there should be opportunities and that it's pretty unfair for venues that are already able to go past 1am to limit opportunities for other smaller, low risk venues to be able to do the same if they want to.

Explanations for low level of applications

We asked our informants why they thought the level of applications for liquor licences to trade past 1am had been so low, other than for temporary licences in the City of Melbourne, and to a much lesser extent in the City of Yarra. Our informants did express surprise about the low level. As explained earlier, one council did not have their internal process for decision-making in place during the nine-month period of interest, but this would only seem to have impacted on one application.

The most common explanation was that it was probably not economically viable for venues to trade past 1am, especially outside the City of Melbourne. It was suggested that not all licensees authorised to trade past 1am on existing licences in these non-Melbourne areas were in fact trading as late as their licence permitted. Various barriers to making an application to council were also cited, including the number of different institutions that applicants had to deal with (particularly for applicants for temporary licences who do not have to apply for a planning permit from local government and for whom this step represented a major change), the cost of preparing an application, and just the sheer 'hassle', leading one respondent to express a desire for a streamlined process particularly for temporary licences. One thought that there was a 'wait and see' approach, with venues waiting to see if other neighbouring businesses were applying and what the outcome was. Another thought that the 24 hour public transport trial on Friday and Saturday nights might make a difference if it became permanent after it has been evaluated in June 2016 and if levels of patronage increase. With respect to temporary liquor licences it was commented that these were easier to apply for, but that some applicants were knocked back early on as they didn't meet the government or council guidelines.

Conclusion

From a public health perspective the partial lifting of the freeze in Melbourne in July 2015 was met with some initial concern as it would lead to an increase in alcohol availability, in terms of increased hours of late night trading (Foundation for Alcohol Research and Education, 2015). In contrast to the Queensland experience, this study has shown that in the nine months following the partial lifting of the freeze there has been little growth in late night trading (permanent licences). The results also suggest that there has been a lack of demand for late night licences outside of the freeze areas over the five year study period. This may reflect more stringent approval processes in these areas even without the formal freeze policy applying, or it may reflect a limited market for late-trading venues outside the key inner city entertainment precincts. Further information on approval processes in non-freeze affected LGAs would help us understand if late night trading applications are assessed differently from applications for standard trading hours.

Research on night time economies of key Australian LGAs suggest spending on alcohol has dropped in the City of Melbourne between 2009 and 2013 (Bevan, 2015: 41), supporting our finding of stable trends in late night licensing. On the other hand, our study has found a steady demand for temporary liquor licences to trade after 1am for one-off events, in at least in two municipalities. This finding is consistent with a submission to a Working Group of the State Government Liquor Control Advisory Council that had been set up to consider the extension of the freeze post 2015. They expressed disappointment that licensees within the freeze zone were not entitled to the automatic extension of trading hours on New Year's Eve afforded to the rest of Victoria, suggesting an unmet demand (City of Yarra, 2014).

It is significant that licence applications have been rejected in some municipalities, as Victorian local governments have had very little power within the licensing system up until this point. It has been noted that the objection powers under the *Liquor Control Reform Act 1998* may not be powerful enough, or the guidance for their consideration under the Act may not be directed enough towards prevention of the negative social impacts of alcohol use (Willingham, 2016). While there have been a series of recent changes to the role of Victorian local governments in assessing planning permit applications for licensed premises – in 2008, local governments were required to issue planning permits for package liquor licences (previously exempt) and to integrate a 'cumulative impact' assessment as part of their assessment of planning permits for a liquor licence – there is no suggestion that these changes have allowed local government to influence the availability of alcohol in their local areas (Howard, Gordon, & Jones, 2014). This fits with a characterisation of challenges faced by local governments in controlling alcohol that they often have 'responsibility without power' (Martineau, Graff, Mitchell, & Lock, 2014). In contrast, the guidelines introduced in July 2015 concerning exceptions to the freeze can be seen as a shift towards greater local alcohol control in the sense that the policy puts the inner city local governments firmly in the licensing system and as the first agency to get support from before approaching the state licensing agency.

However, this new power is not without its problems. In contrast to local governments' existing role in planning and licensing processes, the new step of providing 'council support' gives council a high degree of discretion to exercise, as there are no guidelines associated with the step, no specifications on what are eligible grounds for granting support or not, no process for applicants to appealing decisions, and no guidance on how this step relates to the existing mechanism for local government in liquor licensing (which is to make an objection or not).

One aim of this study was to examine the experience of the four affected municipalities in handling the requirement that applications require council support before being forwarded to the VCGLR. Differences in implementation of the guidelines emerged as a significant theme. We found that the four local governments vary widely in the ways in which they understand and approach the provision of 'council support' for post-1am applications. Some have approached their new responsibility to approve late trading venues as a means of refusing applications (i.e. exercising veto power), or approving applications subject to conditions. Others have downplayed their new responsibility to the degree that they are re-labelling the step (for example a letter of 'no initial concern'). We also found that there was some confusion over the interpretation of what constituted a 'significant cultural festival' for a temporary liquor licence. The finding of divergence and variance among local governments, when licensing is devolved, is consistent with experiences in the UK (Herring, Thom, Foster, Franey, & Salazar, 2008) and in New Zealand (Maclennan, Kypri, Room, & Langley, 2013).

The management of alcohol in night time entertainment precincts is an arena of vigorous policy debate in Australian jurisdictions. Subsequent to freezes, reduced trading hours policies were introduced in parts of NSW in February 2014 and across Queensland in July 2016. These are substantial policies compared to freezes, as they affect existing licences, not only applications for new licences. Against

these changes, the introduction of exemptions to the Freeze under the current guidelines have been seen as part of a ‘Melbourne approach’ to night time entertainment, along with introduction of 24 hour public transport on Friday and Saturday nights, currently undergoing a trial – an approach that will not involve lockouts (Li, 2016). However the way in which exemptions to the freeze have been introduced in Victoria has introduced an additional outcome, whether intended or not, of significantly changing the role and power of local government in liquor licensing decisions. This has posed a challenge to local governments that has been met with widely divergent approaches.

LIMITATIONS

There are a number of limitations to this study. Firstly, the number of interviews is small. While the qualitative sample included a representative from each freeze-affected municipality, in the largest municipality in particular (the City of Melbourne) it would have been useful to speak with more than one representative in order to have a more representative picture of the experience of each of the municipalities. Secondly, only local government staff were interviewed. It would be insightful to interview other policy stakeholders, particularly representatives of the licensing agency – the Victorian Commission for Gaming and Liquor Regulation – to get their perspectives of the policy. Finally, licence numbers were only available for permanent licence types. Information on temporary licence numbers came from interviewees and are therefore inexact. It would be useful for data to be routinely collected on exact numbers of temporary licence numbers.

IMPLICATIONS FOR ALCOHOL POLICY

The introduction of exemptions to the freeze on the granting of new liquor licence applications for licensees wanting to trade past 1am in the four inner city LGAs in Melbourne has resulted in barely any increase in applications for permanent licences, but an increase in temporary licence applications. The temporary licences are not perceived to be likely to result in increased harms, with many of them being associated with ‘White Night’, which is not an alcohol-focused event.

The main implication for alcohol policy relates to the requirement to demonstrate that the application be supported by the relevant council. The implications of this policy change are far-reaching, as demonstrated by the significantly different interpretations by the four local councils ranging from ‘veto’ to re-labelling ‘support’ to a position of ‘no initial concern’. In introducing this policy amendment, there was a failure to provide guidelines associated with the step, and a failure to outline an appropriate appeals process. It is not clear from the policy, as introduced in July 2015, if the addition of the words that “the application is supported by the council of the municipality in which the premises is, or will be, located,” were intended to significantly change the role and power of local government in liquor licensing decisions. What is clear, however, is that the choice of wording is critical, with ‘support’ having very strong meanings for the councils.

With respect to temporary licences, the main confusion over interpreting the policy relates to what constitutes a ‘significant cultural festival’. Guidance on what was intended here is required.

The policy gives a greater responsibility to local governments. This represents a step in the right direction, one that will be improved further if the issues identified above are addressed.

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