

# Empty spaces:

## Government regulation is killing Australian culture

Christopher Murn

**T**here is now an increasingly significant barrier to a vibrant Australian culture—nanny state regulations and bureaucratic red tape.

The most difficult time for any artist is at the beginning of their career. Artistic entrepreneurs don't hold the promise of windfall profits that their commercial brethren possess and this can discourage investors.

In Australia, taxpayer subsidies overwhelmingly favours established artists. Last year the Australia Council issued \$156 million in grants of which \$63 million went directly to orchestras alone—over 40 per cent of total funding. Amongst other reasons, arts funding often fails because it is impossible to distinguish who constitutes a good investment in the absence of a proven reputation. After all, no-one would appoint a candidate with an empty resume and no references as the CEO of their company.

But while acquiring necessary funding is (and will always be) a constant challenge for young artists, they are now facing perhaps a more challenging problem—high regulatory barriers which prevent artists from finding performance and exhibition space, hosting events, and obtaining necessary permits. And their lack of capital makes regulatory compliance costs even more crippling. New acts and events find it difficult and burdensome to obtain funding, which they must then spend on public liability insurance, lawyers, acoustic engineers, permits, licences and building inspectors to ensure they meet regulatory requirements.

The problem every artist faces is how to bring their talent to the public. This requires holding an exhibition or public event, obtaining a venue and promotion to ensure an audience.

Finding a place to perform isn't easy; in the case of musicians there has been a growing decrease in the demand for live acts by venue owners. The Australia Council's 2002 *Vanishing Acts* report showed that various forms of regulation contributed to this downward trend. Aspiring artists depend on the availability of venues, which in turn are heavily regulated.

Venue owners must comply with excessively onerous regulations. Firstly, a place of public entertainment permit (POPE) is needed from the local council before they even think of admitting the public to their residence. POPE costs vary from council to council but can be as high as \$2,050 (City of Melbourne). This particularly hurts smaller community and cultural institutions, creating a venue shortage for aspiring artists.

POPE permits require venue owners to obtain an occupancy permit. This involves hiring building inspectors to ensure the venue meets the building code and often additional fire safety upgrades are needed. In Sydney any stage constructed must be able to contain a fire for over an hour before it spreads; no easy feat and hardly worth the effort unless pyrotechnical displays are involved.

POPE regulations can also apply to temporary structures such as booths and marquees at outdoor events. Not surprisingly, more time and money is required for a temporary venue than establishing a permanent commercial venue. Outdoor festivals need to be planned months in advance to accommodate the long and intensive local council permit processes. Extensive community consultation is required with affected parties. Road closure approval, emergency plans, public liability insurance, occupational health and safety laws, traffic management plans, and notification of emergency services must all be addressed to obtain a permit.

Venue owners and event organisers rely heavily on food and beverage sales to supplement their income from cover charges and ticket sales. *Vanishing Acts* found that 81 per cent of hotels derived no direct income from live music, and a further 17 per cent derived less than 5 per cent of their income from live performances. Artists rely on food and alcohol sales to subsidise their performances and exhibitions. However, here too, increasingly stringent and onerous liquor licensing and food regulations are raising the cost of cultural production for artists and venue owners.

Liquor laws vary throughout Australia. In Melbourne liquor licences are around \$500 whereas in Sydney liquor

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licences can cost as much as \$60,000. However, this is set to change due to liquor licensing reforms in NSW, dramatically reducing fees. Nevertheless, as NSW liberalises its liquor laws, Victoria is tightening its regulatory control. In Melbourne, the state government has enacted a 12-month freeze on new liquor licences trading after 1am in the city and inner suburbs. Furthermore, existing venues will be subjected to the freeze if they attempt to alter any condition upon their liquor license. This effectively prohibits venue owners from upgrading their facilities—such as creating an outdoor space to accommodate smokers.

This freeze on late night licences will act as a significant barrier to competitive entry, restricting new venues while supporting existing venues by relieving them of potential competition. The only way a new entrant can sell alcohol beyond 1am is to purchase an existing venue without amending its liquor licences. And this has a knock on effect for Melbourne's cultural scene, further limiting the availability of cultural venues.

Existing liquor permits are saddled with many regulatory conditions, including compliance with EPA noise limits, which are monitored by local councils.

*Vanishing Acts* found that the greatest consideration making live music difficult was noise complaints. EPA regulations are extremely technical and complicated. For instance, in Victoria acceptable noise levels vary depending on:

- Whether it is a weekday or weekend.
- Whether the venue is indoor or outdoor.
- How often the venue is used.
- How high the level of background ambient noise is.
- Whether the venue emits constant or spasmodic noise pollution.

Just to complicate things further, the method of measurement varies between day and night. At night the ambient noise is only measured across particular frequencies making it a much stricter requirement. Not only do venue owners require a solicitor to understand the intricacies of the regulations but they also need an acoustic engineer to understand the measurement techniques required.

Cultural production is a largely voluntary—or semi-voluntary industry—where the struggle for funding means that artists and their support staff work without much compensation.

But while it is not hard to find actors or exhibition directors who will work for love or loose change, it is much harder to find regulatory lawyers and acoustic engineers who will do so. What funding is available to artists is being funnelled towards regulatory compliance rather than art.

Given this regulatory mishmash, it might be easier to perform on the streets—however buskers don't escape regulatory control.

Even if artists perform on the streets they can still be fined for busking without a permit, creating excessive noise and obstructing the footpath. In Melbourne fugitive buskers can be fined up to \$1500. Applicants must sit a Safety and Amenity Review and submit 100 points of identification before a permit can be granted. With six different types of permit, three permit zones and fluctuating time restrictions, busking is not as simple as finding a good corner to play on. In comparison, Sydney has only two types of permits and supplies public liability insurance with them.

Of course a venue will be useless without sufficient patrons to reimburse the compliance costs of event organisers and venue owners.

Obtaining this essential publicity is easier said than done. Traditionally promoters used fliers and posters to tout their events in the immediate vicinity of the venue. A permit is required from the local council to display any material in a public place, including handing out fliers. Even community noticeboards require council approval. In the City of Melbourne a permit to hand out fliers to pedestrians costs \$50 per day with an additional \$5 for each location used. Non-compliance attracts a \$500 fine. Whereas in Sydney a permit is not required so long as advertising is restricted to the promoters clothing and no third party advertising is present. However, the Sydney City Council reserves the right to charge a fee for occupation of a footpath when handing out fliers.

Buskers often promote their work by selling their art cheaply. This necessitates a roadside selling permit, adding a further dimension of regulation. Some councils expressly prohibit the sale of CD's in areas such as Sydney Harbour Foreshore. Buskers in Melbourne are permitted to sell CDs as long as a Melbourne City Council bureaucrat has listened to and approved of the content of the CD, adding a degree of censorship to the process.

In many circumstances the burden of publicity falls on the event organisers and venue operators. This occurs because a majority of their income is generated indirectly through food and drinks sales.

Clearly there is a need for regulatory reform, cultivating a vibrant and innovative culture brings vast social and economic rewards. The first step must be to clear up this tangle of red tape and minimise the unfettered discretion given to local councils under current regulations.

If governments are really serious about creating culturally rich communities, rather than focusing on the controversial issue of government arts subsidies, they must first remove the regulatory impediments that smother creativity and innovation. Innovative and new artists are being left to drown in a regulatory cocktail.

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