

Regulation Committee

**Liquor Amendment (Music  
Festivals) Regulation 2019  
and Gaming and Liquor  
Administration Amendment  
(Music Festivals) Regulation  
2019**

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## Terms of reference

1. That the Regulation Committee inquire into and report on the impact and implementation of the:
  - (a) Liquor Amendment (Music Festivals) Regulation 2019, and
  - (b) Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.
  
2. That the committee report by 29 August 2019.

The terms of reference were referred to the committee by the Legislative Council 30 May 2019.<sup>1</sup>

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<sup>1</sup> The original reporting date was 6 August 2019 (Minutes, Legislative Council, 30 May 2019, p 154). The reporting date was later extended to 29 August 2019 (Minutes, Legislative Council, 19 June 2019, p 232).

## Committee details

### Committee members

<b>The Hon Mick Veitch MLC</b>	Australian Labor Party	<i>Chair</i>
<b>The Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
<b>The Hon Catherine Cusack MLC</b>	Liberal Party	
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Ms Cate Faehrmann MLC*</b>	The Greens	
<b>The Hon Scott Farlow MLC</b>	Liberal Party	
<b>The Hon Ben Franklin MLC</b>	The Nationals	
<b>The Hon John Graham MLC</b>	Australian Labor Party	
<b>The Hon Matthew Mason-Cox MLC</b>	Liberal Party	

\* Ms Cate Faehrmann MLC substituted for Ms Abigail Boyd MLC from 12 June 2019 for the duration of the inquiry.

\* Hon John Graham MLC is a participating member of the committee from 11 June 2019 for the duration of the inquiry.

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## Chair's foreword

The regulations, that are the subject of this inquiry, were introduced following the tragic deaths of six young adults in association with music festivals. On behalf of the committee, I express my deepest and heartfelt condolences to the family and friends who have lost a loved one.

The committee was tasked to review the impact and implementation of the Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019. This was following a notice of motion in the Legislative Council by the Hon John Graham MLC to disallow the regulations.

The regulations establish a licensing scheme for 'high risk' music festivals in New South Wales. Those within the music festival industry have been concerned with the regulations from the beginning. The key issue that arose during the inquiry was a lack of consultation with industry during the development of the regulations and the rushed approach taken by the government for implementation. It is concerning that inadequate consultation has again been a primary issue for stakeholders. This was also raised as an issue during the inquiries conducted by this committee in the last Parliament.

In this regard, the committee has recommended that a regulatory roundtable be established for music festivals comprising of key government agencies and industry stakeholders. This roundtable has been proposed by industry and supported by the NSW Government. It is essential that the NSW Government act on this recommendation immediately, given the impending music festival season.

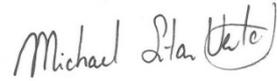
The committee heard from inquiry participants that the way in which the regulations have been implemented has caused much uncertainty across the industry, with many still confused as to which festivals are captured by the new licensing scheme, how they are being assessed and the financial implications to event organisers. As the committee heard, the uncertain atmosphere is causing festival operators to question whether New South Wales is a viable state to hold their events. We believe that the regulatory roundtable is a positive first step in resolving the uncertainty across the industry and addressing the issues presented in this report. It will ensure much greater involvement by the industry in charting a constructive way forward.

Another important recommendation made by the committee, is that the NSW Government take the findings and recommendations of the NSW Coroner's report into deaths at music festivals to the regulatory roundtable for discussion prior to the NSW Government responding to the Coroner. It is vital that this occurs to ensure that the Coroner's recommendations are implemented collaboratively, with government and industry input with the aim to achieve a successful outcome and ultimately make music festivals safer.

In terms of drug and alcohol harm at music festivals, we note that this is a complex issue that is much broader than this inquiry. We anticipate that the Coroner will address these issues in detail. However, we do commend the work of NSW Health in developing the *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*. The success of this document, we believe, has been due to the ongoing genuine consultation with industry stakeholders and provides a contrast to the lack of consultation industry participants highlighted during the development of the music festival regulations.

The committee received strong industry support for the disallowance of the regulations both in written submissions and at the public hearing. Given this and the issues that have been presented to the committee during this inquiry, the committee has recommended that the regulations be disallowed. This is now a matter for the House to decide.

I commend the report to the House.

A handwritten signature in cursive script that reads "Michael Veitch". The signature is written in black ink and is positioned below the text "I commend the report to the House."

The Hon Mick Veitch MLC  
**Committee Chair**

## Findings and recommendations

- Finding 1** **25**  
 That the consultation process for the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 undertaken by the NSW Government was inadequate.
- Finding 2** **46**  
 That the implementation of the music festival licensing scheme under the Liquor Amendment (Music Festivals) Regulation 2019 has caused uncertainty in the music festival industry and in the broader music festival economy of New South Wales.
- Finding 3** **47**  
 That there has been significant and unsustainable cost increases for the music festival industry as a result of the changed regulatory environment, particularly high user pays policing charges.
- Finding 4** **55**  
 That the development and continual improvement of the NSW Health *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction* is a positive step in addressing drug and alcohol related issues at music festivals.
- Recommendation 1** **25**  
 That the NSW Government immediately establish a regulatory roundtable for music festivals, with the participants to include:
- Liquor & Gaming NSW, NSW Health, NSW Police Force and other relevant government agencies;
  - industry representatives, such as the Live Music Office, the Australian Festivals Association, APRA AMOC, MusicNSW and Live Performance Australia;
  - Local Government NSW; and
  - health related/harm minimisation groups, such as Harm Reduction Australia, NSW Users and Aids Association, and the Foundation for Alcohol Research & Education.
- Recommendation 2** **47**  
 That the regulatory roundtable, to be established by the NSW Government as set out in Recommendation 1, include discussions on the issues raised by stakeholders during this inquiry, including but not limited to:
- user pays services;
  - definition of a music festival and concert;
  - criteria used to determine what festivals require a music festival licence;
  - council adoption of the NSW Health's *Guidelines for Music Festival Organisers: Music Festival Harm Reduction*
  - centralised policing for major events; and
  - harm reduction training.

**Recommendation 3**

47

That, if the current licensing scheme remains in place, Liquor & Gaming NSW actively communicate to relevant stakeholders the full criteria a music festival must meet if it is to be referred to the Independent Liquor & Gaming Authority for a music festival licence determination, as per the Liquor Amendment (Music Festivals) Regulation 2019 and the NSW Government *Music festival licence guidelines*.

**Recommendation 4**

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That the NSW Government take the findings and recommendations of the NSW Coroner's report into deaths at music festivals to the regulatory roundtable for discussion, prior to the NSW Government responding to the Coroner.

**Recommendation 5**

59

That, based on broad industry support, the Legislative Council disallow the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.

**Recommendation 6**

59

That the NSW Government put in place immediate measures to assist industry in the upcoming music festival season, including establishing the regulatory roundtable as set out in Recommendation 1.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 30 May 2019.

The committee received 52 submissions and 2 supplementary submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



# Chapter 1 Music festival licensing regulations

This chapter provides an overview and background of the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019. It discusses the purpose of the regulations and how they have been applied in practice. It also considers the social and economic benefits of music festivals and outlines the related inquiries and inquests occurring concurrently in New South Wales.

## Background to the regulations

- 1.1 The regulations were borne out of recommendations from an expert panel convened following a number of deaths associated with music festivals, as set out in detail below.
- 1.2 On 15 September 2018, two young adults, a 23-year-old man and a 21-year-old woman, died after collapsing at the Defqon.1 music festival in Penrith, Sydney. This was following four earlier deaths of young adults in association with music festivals in the last five years, including one death associated with Defqon.1 in 2013 and another in 2015, one death associated with Harbourlife music festival in 2014 and one death associated with Stereosonic music festival in 2015.<sup>2</sup>
- 1.3 Following the most recent deaths, the NSW Police Force established Strike Force Highworth to investigate the deaths.<sup>3</sup>
- 1.4 A coronial inquest was also established to look in to all six deaths associated with music festivals (discussed further below).
- 1.5 On 18 September 2018, the Premier, the Hon Gladys Berejiklian MP, established an expert panel to provide advice on safety at music festivals, in particular:
  - whether new offences or increased penalties are required to stop drug dealers endangering lives
  - how music festival promoters and operators can improve safety at their festivals
  - whether improved drug education is required to address the increase in illegal drug use in the community.<sup>4</sup>
- 1.6 The expert panel comprised of the NSW Police Commissioner, Mr Mick Fuller APM, NSW Chief Medical Officer, Dr Kerry Chant and Chair of the Independent Liquor & Gaming Authority, Mr Philip Crawford.<sup>5</sup> The expert panel consulted with a number of key stakeholders during the review, including music industry representatives, local government

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<sup>2</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), pp 3 and 4.

<sup>3</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 3.

<sup>4</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 1; Media release, Hon Gladys Berejiklian MP, Premier of New South Wales, 'Ensuring safety at music festivals', 18 September 2018.

<sup>5</sup> Submission 44, NSW Government, p 7.

and drug and alcohol experts, and also engaged with young people through the NSW Youth Advisory Council.<sup>6</sup>

**1.7** The expert panel handed down its report entitled *Keeping People Safe at Music Festivals* on 24 October 2018 and made the following seven recommendations to the NSW Government:

- develop a consistent approach to the regulation of music festivals, which could be through the introduction of a new category of liquor licence specific to music festivals
- require organisers to develop and adhere to a Safety Management Plan for their event, supported by a two-tiered system of risk, with variable regulatory conditions
- consider establishing an interagency committee to assess and manage an event organisers approach to event risk
- strengthen drug and alcohol harm reduction programs for music festival attendees
- develop best practice guidelines for event organisers on harm reduction approaches and messages;
- trial the use of Criminal Infringement Notices (on-the-spot fines) instead of Court Attendance Notices for drug possession offences at or in the vicinity of music festivals
- investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result.<sup>7</sup>

**1.8** The expert panel noted that should the government accept its recommendations further analysis and consultation is required on some of the issues, as well as liaising with a range of agencies and stakeholders on the implementation of the recommendations.<sup>8</sup>

**1.9** The NSW Government accepted in principle the recommendations made in the report.<sup>9</sup>

**1.10** On 13 November 2018, the NSW Government introduced the *Community Protection Legislation Amendment Bill 2018*<sup>10</sup> to implement the expert panel's recommendations, and this was passed by Parliament on 21 November 2018. The Bill, among other things, amended the *Liquor Act 2007* to create two new regulation making powers that allow for:

- licence types to be created by regulation
- the regulation to prescribe that a particular type of licence is not to be granted if the Independent Liquor & Gaming Authority is of the opinion that the sale or supply of liquor under the licence would more appropriately be provided under another type of licence.<sup>11</sup>

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<sup>6</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), pp 1, 3 and 14.

<sup>7</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 2.

<sup>8</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 2.

<sup>9</sup> Submission 44, NSW Government, p 7.

<sup>10</sup> Parliament of New South Wales, <<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3603>>.

<sup>11</sup> Submission 44, NSW Government, p 8.

- 1.11** The Department of Premier and Cabinet also convened an inter-departmental working group comprising of Liquor & Gaming NSW, NSW Health, NSW Police Force and the Office of Local Government, to progress the NSW Government's response to the *Keeping People Safe at Music Festivals* report.<sup>12</sup>
- 1.12** On 28 February 2019, in response to the *Keeping People Safe at Music Festivals* report, two new regulations relating to music festival licensing came into effect: the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.
- 1.13** On 7 May 2019, the Hon John Graham MLC gave notice to the Legislative Council that under section 41 of the *Interpretation Act 1987*, this House disallows the Liquor Amendment (Music Festivals) Regulation 2019, and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019, which were published on the NSW Legislation website on 28 February 2019.<sup>13</sup>
- 1.14** Following this, on 30 May 2019, the House agreed to the motion put forward by the Hon John Graham that the Regulation Committee inquire into and report on the impact and implementation of the regulations.<sup>14</sup> The regulations remain on the notice paper until the committee reports, at which time the original disallowance motion will be put before the House for consideration.

## Purpose of the regulations

- 1.15** The Liquor Amendment (Music Festivals) Regulation 2019 amends the Liquor Regulation 2018 made under the *Liquor Act 2007*. The object of the regulation, as set out in the explanatory note, is to:
- ... provide for a new type of liquor licence for music festivals and provide for the Independent Liquor and Gaming Authority to direct particular applicants to apply for a music festival licence. A music festival licence will authorise the licensee to sell or supply liquor on licensed premises, subject to conditions. The Regulation will provide also for the training requirements of licensees, managers, approved agents and supervisors for licensed premises under a music festival licence.<sup>15</sup>
- 1.16** The NSW Government advised that the purpose of the regulations are to 'give targeted support to higher risk music festivals to run safer events, without impacting lower risk festivals'. It advised that the regulations refine 'existing processes to ensure operators of higher risk festivals put in place appropriate plans to deal with the specific risks of their event'.<sup>16</sup>
- 1.17** The regulation defines a music festival as 'an event, other than a concert'<sup>17</sup>, that:

<sup>12</sup> Submission 44, NSW Government, p 8.

<sup>13</sup> *Notice Paper*, NSW Legislative Council, 8 May 2019, pp 25-26.

<sup>14</sup> *Hansard*, NSW Legislative Council, 30 May 2019, pp 37-38 (John Graham).

<sup>15</sup> Liquor Amendment (Music Festivals) Regulation 2019, Explanatory Notes, p 1.

<sup>16</sup> Submission 44, NSW Government, p 9.

<sup>17</sup> A concert is defined in the regulation as 'a music-focused event that uses a single stage, is proposed to be held over a period of less than 5 hours and has not more than 2 headlining performers and

- (a) is music-focused or dance-focused, and
- (b) has performances by a series of persons or groups that are engaged to play or perform to live or pre-recorded music, or to provide another form of musical or live entertainment, and
- (c) is held within a defined area, and
- (d) is attended by 2,000 or more people, and
- (e) is a ticketed event.<sup>18</sup>

**1.18** The regulation stipulates that the Independent Liquor & Gaming Authority will consider whether an application for the sale and supply of liquor is required under a music festival licence based on:

- (a) any advice from the Health Secretary or the Commissioner of Police that the health risks of the music festival would be more appropriately addressed by a music festival licence than another type of licence, and
- (b) whether a death has occurred in the State on a previous occasion at the music festival or in connection with the music festival in the last three years, and
- (c) any submission to the Authority that may have been made by a licensee or an applicant for a licence as to the reasons the licensee or applicant should sell or supply liquor under a licence that is not a music festival licence.<sup>19</sup>

**1.19** As set out in the regulation, an application for a music festival licence must be made 90 days prior to the first day of the festival and should include:

- a pre-arranged agreement with the owner of the premises to hold a music festival on such premises
- information about the individual who is nominated as the licensee's agent to sell or supply liquor under the licence
- a safety management plan and safety management plan checklist
- payment of the application fee as specified.<sup>20</sup>

**1.20** The Independent Gaming & Liquor Authority will assess an application for a music festival licence in accordance with the assessment criteria as specified in the regulation, including that the Authority may consider advice from the Commissioner of Police, Fire and Rescue NSW, the NSW Rural Fire Service, the Health Secretary and the council of the local government area where the music festival will be held. The Authority may only grant a music festival licence if it is satisfied 'that the risks associated with the music festival and the premises that are the subject of the application are suitably addressed by the application, the safety management plan, and any other information provided by the applicant'.<sup>21</sup>

**1.21** Stipulated in the regulation are the conditions of a music festival licence, including:

- conditions relating to the sale or supply of liquor, including the types of drinks that can and cannot be sold and the sale of food alongside the sale of alcohol

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not more than 4 performers in total, including supporting performers'. Liquor Amendment (Music Festivals) Regulation 2019, p 4.

<sup>18</sup> Liquor Amendment (Music Festivals) Regulation 2019, p 5.

<sup>19</sup> Liquor Amendment (Music Festivals) Regulation 2019, p 4.

<sup>20</sup> Liquor Amendment (Music Festivals) Regulation 2019, pp 5-6.

<sup>21</sup> Liquor Amendment (Music Festivals) Regulation 2019, pp 7-8.

- compliance with the approved safety management plan when conducting the event
- requirements for water being available at the music festival at all times free of charge
- a music festival licensee or manager being present at the music festival at all times
- a music festival licensee complying with directions by police officers in regards to access to the premises
- the music festival licensee providing briefings, if requested, for a person engaged by the licensee to provide health services at the event
- that an incident register be kept recording details of the incidents as listed in the regulation.<sup>22</sup>

**1.22** The regulation also includes a number of other provisions relating to exemptions, transitional provisions and other administrative requirements.

**1.23** The Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 made under the *Gaming and Liquor Administration Act 2007* is a consequence of the amendments made by the Liquor Amendment (Music Festivals) Regulation 2019. The regulation provides 'that particular decisions of the Independent Liquor & Gaming Authority in relation to music festival licences under gaming and liquor legislation are not subject to review under the *Gaming and Liquor Administration Regulation 2016* by the Civil and Administrative Tribunal of New South Wales'.<sup>23</sup>

## Regulations in practice

**1.24** The regulations came into effect on 28 February 2019 and are administered by Liquor & Gaming NSW, as the regulator for liquor, gaming, wagering, casino and registered clubs sectors in New South Wales.<sup>24</sup>

**1.25** The Independent Liquor & Gaming Authority also administers the regulations under the Liquor Act and is the independent statutory decision-maker responsible for determining which music festivals are required to apply for a music festival licence.<sup>25</sup>

**1.26** In practice, event organisers will only need to apply for a music festival licence if they are running a music festival, as defined in the regulation, and if the Independent Liquor & Gaming Authority directs an organiser to apply for a music festival licence.<sup>26</sup>

<sup>22</sup> Liquor Amendment (Music Festivals) Regulation 2019, pp 10-12.

<sup>23</sup> Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019, Explanatory Notes, p 1.

<sup>24</sup> NSW Government, Liquor & Gaming NSW, *Our role*, <<https://www.liquorandgaming.nsw.gov.au/about-us/our-role>>.

<sup>25</sup> Evidence, Mr Philip Crawford, Chair, Independent Liquor & Gaming Authority, 13 August 2019, uncorrected transcript, p 43.

<sup>26</sup> NSW Government, *Music festival licence guidelines*, p 1.

### Process for determining if a music festival licence is required

- 1.27** NSW Health and the NSW Police Force will provide advice to the Independent Liquor & Gaming Authority as to whether or not a music festival would most appropriately be licensed under a music festival licence. In determining this, NSW Health and the NSW Police Force will consider the following risk factors:
- if the festival has had one or more drug related serious illness<sup>27</sup> or drug related death that has occurred at, or in connection with, the music festival in the previous three years
  - if the festival has experienced a significant year on year increase in the number of drug related medical presentations and/or admissions to hospital over the last two years of operation
  - whether the proposed Safety Management Plan (as discussed below) will be able to sufficiently address the risks associated with running a higher risk event
  - if the festival is new and the organisers have a lack of experience running a higher risk event.<sup>28</sup>
- 1.28** NSW Health and the NSW Police Force may also take into account the following general indicative risk factors of a higher risk event when determining the licensing arrangements:
- predominant target demographic of people aged 18-29 years
  - projected attendance of 8,000 patrons or more
  - music type being predominantly high energy and/or electronic dance music
  - the event is held over a long period, such as eight hours or more, and/or extends past midnight
  - anticipated weather conditions, such as high temperatures, particularly if the event is held outdoors.<sup>29</sup>
- 1.29** On receiving the advice from NSW Health and the NSW Police Force, the Independent Liquor & Gaming Authority will provide the organisers with a copy of the advice, who are then provided at least 21 days to respond via a written submission or by appearing in person to provide an oral submission.<sup>30</sup>
- 1.30** Following its determination, the Independent Liquor & Gaming Authority will notify the organisers if they are required to apply for a music festival licence to hold their event.<sup>31</sup> The Authority will not make a determination until the organisers of the music festival have had the opportunity to provide their submission.<sup>32</sup>

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<sup>27</sup> A serious drug related illness is classified as an illness resulting in admission to an intensive care unit. NSW Government, *Music festival licence guidelines*, p 2.

<sup>28</sup> NSW Government, *Music festival licence guidelines*, p 2.

<sup>29</sup> NSW Government, *Music festival licence guidelines*, p 2.

<sup>30</sup> NSW Government, *Music festival licence guidelines*, p 2.

<sup>31</sup> NSW Government, *Music festival licence – Festivals required to apply for music festival licence*, p 2.

<sup>32</sup> NSW Government, *Music festival licence guidelines*, p 2.

- 1.31** If it is determined that the event does not need to operate under a music festival licence then it can operate under an existing licence<sup>33</sup> or apply for a Limited Licence – Special Event.<sup>34</sup> The Limited Licence – Special Event is for temporary and infrequent events that have a direct and significant social or economic benefit to the community at a regional, state, or national level, and allows for the sell or supply of alcohol as long as it is not the sole reason for holding the event.<sup>35</sup>

### **Applying for a music festival licence**

- 1.32** In applying for a music festival licence, event organisers will need to provide a Safety Management Plan, the development consent or landholder approval, a public liability certificate, a detailed site plan, a proposed list of scheduled artists and payment for the application. If applicable, the organiser may need to provide approval from an existing licence owner for a temporary suspension of their licence to allow for the music festival licence to operate and also contact details for the proposed approved agent.<sup>36</sup> The approved agent may be appointed by the music festival licensee to act as the licensee's agent to sell or supply liquor under the licence and this individual must be approved by the Independent Liquor & Gaming Authority.<sup>37</sup>

### ***Safety Management Plan***

- 1.33** The Safety Management Plan should detail the mitigation strategies that the event organiser proposes to put in place to manage risks associated with the music festival. These will include suitable onsite medical services, harm reduction services and messaging, adequate provision of shade, provision of free chilled drinking water inside and outside of bar areas, and appropriate levels of security.<sup>38</sup>
- 1.34** In developing the Safety Management Plan, event organisers are encouraged to consult with NSW Health, NSW Police Force, Local Health Districts and NSW Ambulance. These stakeholders will assist in the proposed mitigation strategies to ensure the safety and security of the event, as well as medical services expectations and harm reduction strategies, as stipulated in the NSW Health's *Guidelines for Music Festival Organisers: Music Festival Harm Reduction*<sup>39</sup>. During this consultation the NSW Police Force may request the organiser to enter into an agreement for user pays police (discussed further in chapter 2).<sup>40</sup>

<sup>33</sup> There are a range of liquor licences that may be required based on the business type and activities offered at a venue, including on-premises licence, special event, trade fair or single or multiple functions licence, and pop-up bar and events licence. NSW Government, Liquor & Gaming NSW, *What licence type do I need?*, <<https://www.liquorandgaming.nsw.gov.au/operating-a-business/liquor-licences/liquor-licence-types/what-licence-type-do-i-need>>.

<sup>34</sup> NSW Government, *Music festival licence guidelines*, p 1.

<sup>35</sup> NSW Government, Liquor & Gaming NSW, *Limited licence – special event*, <<https://www.liquorandgaming.nsw.gov.au/operating-a-business/liquor-licences/liquor-licence-types/limited-licence-special-event>>.

<sup>36</sup> NSW Government, *Music festival licence guidelines*, p 3.

<sup>37</sup> Liquor Amendment (Music Festivals) Regulation 2019, p 8.

<sup>38</sup> NSW Government, *Music festival licence guidelines*, p 3.

<sup>39</sup> The Guidelines describe harm reduction strategies and risk management approaches, with checklists and instructions to support implementation. The Guidelines are also used by NSW

- 1.35** The Safety Management Plan, and corresponding application documents, are submitted to Liquor & Gaming NSW who facilitates the review of the application with the inter-agency assessment committee. The committee is comprised of Liquor & Gaming NSW, NSW Health and the NSW Police Force, who will make an assessment on whether the Safety Management Plan appropriately deals with the risks associated with the event and provide expert advice and support to run safer events.<sup>41</sup> During this review, the event organiser will have the opportunity to respond to any comments from the agencies and provide alternative solutions to issues that have been identified.<sup>42</sup>
- 1.36** The application and Safety Management Plan, including any comments made by the agencies, is provided to the Independent Liquor & Gaming Authority to make a determination as to whether a music festival licence will be granted.<sup>43</sup> It will consider all documentation and grant a licence only if it is satisfied that the risks associated with the music festival and the premises are suitably addressed.<sup>44</sup> The Independent Liquor & Gaming Authority may request additional information prior to granting a licence or refuse an application. The Independent Liquor & Gaming Authority will aim to issue a licence no less than seven days from an event start date.<sup>45</sup>
- 1.37** The music festival licensing process is detailed in a flow chart in appendix 3.

### **Number of music festival licences**

- 1.38** Since the commencement of the regulations, NSW Health and the NSW Police Force have provided advice on 14 music festivals that were referred to the Independent Liquor & Gaming Authority for consideration. Of the 14 music festivals, 11 were required to apply for a music festival licence, two could be managed under an existing licence, and as at 25 June 2019 one music festival is yet to have its licensing position determined.<sup>46</sup>
- 1.39** In its submission, the NSW Government advised that 'of the over 80 music festivals that operate in New South Wales every year, only 11 have been required to apply for a music festival licence under the new scheme'. It went on to explain why these 11 music festivals were required to apply for this type of licence:

These events operate in a higher risk environment due to the nature of their business model – running larger music festivals targeted at a younger demographic which include a focus on electronic dance music. This operating environment increases the

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Health to assess Safety Management Plans. NSW Government, *Guidelines for Music Festival Event Organisers: Festival Harm Reduction* (February 2019), p 1.

<sup>40</sup> NSW Government, *Music festival licence guidelines*, p 3.

<sup>41</sup> NSW Government, Department of Industry, Liquor & Gaming, *Music festival licence application*, pp i and 4.

<sup>42</sup> Submission 44, NSW Government, p 9.

<sup>43</sup> NSW Government, *Music festival licence guidelines*, p 4.

<sup>44</sup> Submission 44, NSW Government, p 9.

<sup>45</sup> NSW Government, *Music festival licence guidelines*, p 4.

<sup>46</sup> Submission 44, NSW Government, p 10.

risk that prohibited substances will be present and will cause a significant, adverse effect, including a drug overdose resulting in hospitalisation or death.<sup>47</sup>

- 1.40** Later at the hearing, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, confirmed that 12 out of over 80 festivals held in New South Wales have been directed to apply for a music festival licence, commenting on the reasons why and the next steps for those 12 festivals:

This was only after clear evidence was provided of the elevated health risks associated with their event. These included deaths occurring and admissions to intensive care units. These music festivals are now required to put in place appropriate measures to respond to the health risks associated with their event. This includes the right mix of medical personnel, adequate water and shade, harm reduction services and proper evacuation procedures, including dedicated ambulance entry and exit points. We do not consider this to be an onerous requirement and it should be where most of these operators were seeking to operate already.<sup>48</sup>

- 1.41** Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, also clarified that at the time of the hearing all 12 of the music festivals directed to obtain a licence had not yet taken place.<sup>49</sup>

## Social and economic benefits of music festivals

- 1.42** Many inquiry participants highlighted the social and economic benefits of music festivals including to the New South Wales economy, through jobs, tourism and support for artists, and socio-cultural benefits, such as supporting the social and cultural vibrancy of cities and towns and the music community more broadly.

- 1.43** The NSW Government indicated that more than 80 music festivals are held in New South Wales each year, drawing in hundreds of thousands of patrons from around the state, interstate and internationally. The submission stated:

Music festivals make a significant economic contribution to the NSW economy as a whole, as well as some regional areas. The University of Tasmania estimated that the live music sector contributed \$15.7 billion of value to the Australian community in 2014 and supported 65,000 jobs. NSW was found to be the largest contributor at \$3.6 billion and 23,207 jobs providing commercial, individual and civic benefits in the process.<sup>50</sup>

<sup>47</sup> Submission 44, NSW Government, p 10.

<sup>48</sup> Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 13 August 2019, uncorrected transcript, p 44.

<sup>49</sup> Evidence, Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 13 August 2019, uncorrected transcript, p 55.

<sup>50</sup> Submission 44, NSW Government, pp 3-4.

- 1.44** Live Performance Australia commented that 'Music festivals are a cornerstone of NSW's cultural vibrancy, with almost 400,000 people attending a contemporary music festival in NSW in 2017.'<sup>51</sup> It stated that music festivals contribute significantly to local economies:

Festivals are held in metropolitan, regional and rural locations. Some of the better-known events include Byron Bay Bluesfest, Splendour in the Grass (North Byron Parklands), Groovin the Moo (Maitland) and Falls Festival (Byron Bay). Events such as Bluesfest have a global reputation. Music festivals are a significant economic contributor to local economies, particularly in regional and rural areas. They were the third largest contributor to ticket sales revenue (\$55 million) in NSW in 2017 after contemporary music concerts and musical theatre.<sup>52</sup>

- 1.45** The Inner West Council views festivals as critical to the local music sector ecology:

The state's festivals, whether in the local government area or not, are a key platform for musicians, technicians and performers as they offer important employment and audience development opportunities, bringing large new audiences to their products. This often involves those musicians evolving from emerging to those of national and international significance. Festivals also fuel a culture of participation in live music and collective enjoyment of culture. Without a thriving Festivals sector, the live music sector as a whole suffers, as does the local economy and the Inner West's cultural vibrancy.<sup>53</sup>

- 1.46** MusicNSW outlined both the social and economic benefits of music festivals:

Music festivals employ thousands of people, support small businesses and cultural tourism, and provide inclusive spaces for many different communities to come together for a positive experience. They are vital not just to the NSW economy, but also to the social and cultural vibrancy of our cities and towns. They are also incredibly important to artists and the music community, as tastemakers, as employers, as venues for networking and business deals.<sup>54</sup>

- 1.47** On a similar note, Local Government NSW described how 'Councils across NSW support music events and see festivals as positive initiatives for the visitor economy and for the cultural diversity of local government areas. Councils also view music festivals as contributing to young people's involvement in society and generators of employment'.<sup>55</sup>

- 1.48** Individual submission authors also highlighted the personal enjoyment and benefits they get from attending musical festivals.<sup>56</sup>

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<sup>51</sup> Submission 30, Live Performance Australia, p 2.

<sup>52</sup> Submission 30, Live Performance Australia, p 2.

<sup>53</sup> Submission 15, Inner West Council, p 1.

<sup>54</sup> Submission 45, MusicNSW p 1.

<sup>55</sup> Submission 26, Local Government NSW, p 6.

<sup>56</sup> See for example: Sub 48 Mr Lachlan McLean p 1; Sub 42 Jessica Harris p 1; Sub 41 Mr Jahra Mortimer p 1; Sub 38 Holly Doust-Robinson p 1; Sub 35 Ms Nicole Hetherington p 1.

## Related inquiries and inquests

- 1.49** This inquiry is taking place in the context of a number of other New South Wales parliamentary inquiries and a coronial inquest into recent deaths at music festivals.
- 1.50** The coronial inquest was established to look in to all six deaths associated with music festivals in the last five years and is before Deputy State Coroner, Her Honour Harriet Grahame. Court hearings were held from Monday 8 July to Friday 19 July 2019<sup>57</sup> and further hearings are scheduled for September 2019, with the last hearing date scheduled on 20 September 2019. In correspondence to the committee the NSW State Coroner, Her Honour Teresa O'Sullivan, advised that 'no date has yet been set for delivering findings in this matter, the court is working towards delivering findings on or before 25 October 2019'.<sup>58</sup>
- 1.51** Occurring concurrently to this inquiry, is a Joint Select Committee inquiry on Sydney's Night Time Economy. The inquiry was established on 29 May 2019 and the committee is due to report by 30 September 2019. The committee will consider the Sydney's night time economy, including any measures required to:
- maintain and enhance community safety
  - maintain and enhance individual and community health outcomes
  - ensure existing regulatory arrangements in relation to individuals, businesses and other stakeholders, including Sydney's lockout laws, remain appropriately balanced
  - enhance Sydney's night time economy.<sup>59</sup>
- 1.52** As at 16 August 2019, the Joint Select Committee has received 790 submissions and held three public hearings.<sup>60</sup> The committee will likely report by the end of 2019.
- 1.53** In 2018, an inquiry conducted by the then Portfolio Committee No. 6 – Planning and Environment into the music and the arts economy in New South Wales considered the:
- progress and implementation of the government's response to the New South Wales Night-Time Economy Roundtable Action Plan
  - policies that could support a diverse and vibrant music and arts culture, including the establishment and sustainability of permanent and temporary venue spaces
  - policy and legislation in other jurisdictions, and options for New South Wales including red tape reduction and funding options.<sup>61</sup>

<sup>57</sup> Coroners Court, *Upcoming inquests*, <[http://www.coroners.justice.nsw.gov.au/Pages/upcoming\\_inquests.aspx](http://www.coroners.justice.nsw.gov.au/Pages/upcoming_inquests.aspx)>.

<sup>58</sup> Correspondence from Her Honour Teresa O'Sullivan, NSW State Coroner, to Chair, 5 August 2019.

<sup>59</sup> NSW Parliament, *Joint Select Committee on Sydney's Night Time Economy*, <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=260>>.

<sup>60</sup> NSW Parliament, *Joint Select Committee on Sydney's Night Time Economy*, <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=260>>.

<sup>61</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), p vii.

- 1.54** Although the regulations that are the subject of this inquiry was not a major focus of the Portfolio Committee No. 6 inquiry, the committee did explore the challenges associated with hosting festivals, including the regulations involved in organising such an event,<sup>62</sup> as well as concerns in relation to liquor licensing for venues that host music and other cultural activities.<sup>63</sup>
- 1.55** In its report, tabled on 15 November 2018, the committee recognised the importance of festivals to the music and arts ecosystem, including the social and economic benefits festivals can offer to local communities. It also noted that live performance provides a critical revenue stream to musicians and allows them to hone their performance and develop an audience.<sup>64</sup>
- 1.56** During the inquiry the committee heard of the challenges experienced by festival operators and the regulatory burden of delivering events in New South Wales. It noted the financial risks of organising festivals, such as securing artists and investing in sites prior to events, and also the difficulties in finding appropriate festival sites in the Sydney area. The committee made a recommendation in this regard for the government to investigate a possible permanent festival site in Inner Sydney.<sup>65</sup>
- 1.57** In terms of licensing, the committee focused on licensing arrangements for smaller and more permanent venues that host music and other cultural activities. However, the committee's comments in relation to these licensing arrangements are relevant to this inquiry, including that:
- the barriers to a healthy live performance industry need to be removed, and that matters such as genre, number of persons on stage, direction of sound, and venue decorations, should not be regulated
  - it is important to carefully regulate noise, the service of alcohol and operating hours in venues and that regulating entertainment conditions as a proxy for these issues is not defensible
  - security requirements should be evidence-based rather than rely on a simple formula or a rule of thumb
  - the complexity and duplication of the liquor licensing and development consent processes are hampering the live music industry in New South Wales
  - there is a need for a sensible licensing and compliance regime that ensures that hosting live music and other cultural activities is as simple as possible.<sup>66</sup>

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<sup>62</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), Chapter 9, pp 157-174.

<sup>63</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), Chapter 7, pp 125-144.

<sup>64</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), pp 40 and 173.

<sup>65</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), pp 173-174.

<sup>66</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), pp 132-133 and 138.

- 1.58** The committee made a number of recommendations in its report, but those particularly relevant to this inquiry include that:
- Create NSW establish and convene a Live Music Roundtable in New South Wales, based on the Victorian model, that includes key government agencies and music industry stakeholders
  - NSW Government contract the Live Music Office to provide advice on the range of regulatory issues identified in the committee's report, in order to assist with their rapid resolution
  - NSW Government review and amend liquor legislation to remove outdated conditions for liquor licences and development applications that place unnecessary restrictions on certain entertainment live music venues, such as prohibiting music genres or specific musical instruments
  - NSW Government ensure that security requirements for licensed venues be evidence-based
  - Liquor & Gaming NSW allow an individual licensing condition to be reviewed in isolation of other licensing conditions
  - as a matter of priority, NSW Government remove the duplication of regulatory and compliance responsibilities from multiple government agencies and local government
  - Liquor & Gaming and the NSW Department of Planning and Environment collaborate with the music industry to develop an 'Easy to Do Culture' initiative, similar to the 'Easy to Do Business' initiative, pursued by Service NSW
  - NSW Government introduce live music venue liquor licences.<sup>67</sup>
- 1.59** The committee received the NSW Government's response to its report on 7 January 2019, where the government advised that 'it is working to streamline planning, building, noise and liquor licensing approval processes, and is reviewing the associated regulatory requirements to make it easier for businesses to host arts and cultural activities'.<sup>68</sup>

## Conclusion

- 1.60** The NSW Government introduced regulations to licence music festivals with the purpose of providing targeted support for higher risk music festivals to run safer events. Having been in place since February this year, the regulations have caused concern for certain stakeholders. These concerns will be discussed in the next chapter.

<sup>67</sup> Portfolio Committee No. 6 – Planning and Environment, New South Wales Legislative Council, *The music and arts economy in New South Wales* (2018), pp xiii-xviii.

<sup>68</sup> Correspondence from the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, Minister for Resources, Energy and Utilities and the Arts, to the Clerk of the Parliaments, providing government response to the inquiry into the music and arts economy in New South Wales, 7 January 2019.



## Chapter 2 Key issues

The impact and the implementation of the music festival licensing regulations have raised a number of key issues and concerns for stakeholders, including the consultation process for the development of the regulations, identification of 'high risk' festivals that require a music festival licence, definitions and criteria used in the regulations, the financial impact of the regulations and the incorporation of harm reduction measures. These are addressed in this chapter.

### Consultation and implementation of the regulations

**2.1** Many stakeholders reported inadequate consultation with industry on the new regulations and a rushed implementation. This section details what consultation took place as part of the expert panel, the panel convened by the Premier to provide advice on safety at music festivals which recommended a licensing scheme for music festivals, and the consultation specifically relating to the development and implementation of the regulations, as well as the concerns from stakeholders.

#### Consultation with stakeholders

**2.2** In formulating its report on *Keeping People Safe at Music Festivals*, the expert panel met with a number of stakeholders on 3 October 2018, such as MusicNSW, Harm Reduction Australia, City of Sydney and Local Government NSW, as well as a number of medical professionals and the NSW Youth Advisory Council through the Advocate for Children and Young People. The expert panel was also advised of issues raised in community correspondence to the Premier and through written submissions.<sup>69</sup>

**2.3** The NSW Government advised that following its decision to introduce a new music festival licence it commenced consultation with industry stakeholders by holding several forums between 28 November 2018 and 6 February 2019.<sup>70</sup>

**2.4** Resulting from feedback received at these stakeholder forums, the NSW Government made the following changes to the proposed regulations to address stakeholder concerns:

- removing a risk assessment matrix from the draft *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*
- removing all lower risk music festivals from the new music festival licensing scheme
- only requiring music festivals assessed by the NSW Government to be higher risk to apply for a music festival licence if directed to do so by the Independent Liquor & Gaming Authority
- giving applicants the opportunity to make submissions before they are required to apply for a music festival licence
- reducing liquor sales restrictions

<sup>69</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 14.

<sup>70</sup> Submission 44, NSW Government, pp 8-9.

- calculating attendees on a daily basis rather than across the course of the event and only counting ticketed attendees
- removing licensing fees for all music festivals applying for a Limited Licence – Special Events liquor licence that are not required to apply for a music festival licence.<sup>71</sup>

**2.5** At the hearing, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, further advised that 'in developing the music festival licence, the Government consulted with industry over a number of months, including holding two stakeholder forums, engaging directly with individual festival operators and providing draft copies of the regulation to peak bodies'. Ms Webb went on to explain the urgency of the regulations and the reasons why it was a quick process:

While we do not shy away from the fact that we moved quickly to finalise the new licence, the preference for consultation to occur—and which happened—to enable everyone to be happy with the final product, we were also faced with a realistic prospect of festivals continuing to operate without appropriate safety management plans in place, putting festival goers at risk of serious injury or death. We consider the right balance has been struck and that the regulation is consistent with the Government's ongoing support of a vibrant music festival industry. I think it is important to understand what the actual burden of these regulations has been rather than focusing only on the expedited implementation timeline.<sup>72</sup>

**2.6** Ms Natasha Mann, Executive Director, Liquor Gaming and Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, provided further comment in this regard, acknowledging that the consultation process did not follow the usual timeframes, however a quick response was needed given the severity of the issues:

I suppose the point I would like to make is that the consultation was definitely less than ideal, but I guess there are a couple of things for the Committee that I would like to put on the record: We were in the middle of a music festival season where there were three deaths, the expert panel released its report, there were three more deaths and there was a lot of pressure everywhere to try and get something in place so that no more young lives were lost. I think that, in the process, the consultation absolutely was not optimal and not the way that I would normally like to conduct consultation.<sup>73</sup>

**2.7** When questioned as to whether a more extensive consultation process in this case would have produced a different outcome, Ms Mann advised that she believed the outcome was the right outcome, stating that 'there is probably some tweaking we could do in consultation with the industry, but I believe the outcome is the right one'.<sup>74</sup>

**2.8** In response to the committee seeking more detailed information on the consultation process, Liquor & Gaming NSW advised the following:

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<sup>71</sup> Submission 44, NSW Government, pp 8-9.

<sup>72</sup> Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 13 August 2019, uncorrected transcript, p 44.

<sup>73</sup> Evidence, Ms Natasha Mann, Executive Director, Liquor Gaming and Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 13 August 2019, uncorrected transcript, p 58.

<sup>74</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 64.

The following were consulted on the proposed regulatory approach: industry peak bodies (Australian Festivals Association, Live Music Office, Music NSW, Live Performance Australia), individual festival operators, individual live performance operators, venues, local government representatives (including the City of Sydney and Local Government NSW), and individual industry support businesses (including risk-management and medical service providers).

The consultation was conducted through face-to-face meetings with industry peak bodies and individual operators, stakeholder forums and telephone conversations.

On 28 November 2018, Liquor & Gaming NSW, NSW Health and NSW Police held a three hour stakeholder forum with industry representatives to present on the findings of the Expert Panel and the proposed new music festival licence. This forum was attended by around 30 people, including those who attended by video conference.

Between the 28 November 2018 and 6 February 2019 stakeholder forums, the Government engaged with industry on the development of the proposed Regulations, including through five face to face meetings with industry representatives.

On 6 February 2019, the Government held a second three hour stakeholder forum with industry representatives to present on changes to the proposed approach to the regulation of music festivals following the first stakeholder forum and to receive feedback and comments on the changes. This consultation informed the drafting of the Regulation. Over 100 representatives attended in person or by accessing the live stream.

On 8 February 2019, Liquor & Gaming NSW met with the Australian Festivals Association to discuss the proposed approach with licensing fees.

On 14 February 2019, Liquor & Gaming NSW and NSW Health met with the Australian Festivals Association to discuss the regulatory approach, including changes to the NSW Health guidelines following the stakeholder forum, changes to harm reduction support, how compliance history would be applied under the new scheme, liquor service conditions, and the Association's engagement with the festivals industry and comments provided to them on the regulatory approach.

On 19 February 2019, Liquor & Gaming NSW met with the Australian Festivals Association its legal advisers. During this three hour meeting, the Association was provided an opportunity to review the changes that had been made to the regulatory approach following previous consultation, including reviewing the draft Regulations. Liquor & Gaming NSW staff answered questions about the effect of the Regulation, and made changes to the drafting of provisions as part of this consultation.

On 20 February 2019, a meeting between Liquor & Gaming NSW and the Australian Festivals Association to discuss the draft Regulations was cancelled at the request of the Association.

On 20 February 2019, a meeting between Liquor & Gaming NSW and Music NSW to discuss the draft Regulations was cancelled at the request of Music NSW as a separate meeting on this issue was scheduled.

On 20 February 2019, the Australian Festivals Association, Live Music Office, Music NSW, Live Performance Australia met with representatives from the Premier's Office, the Minister for Racing's Office, the Minister for Health's Office, the Minister for Police's Office and representatives from the Department of Premier and Cabinet, NSW Health, NSW Police and Liquor & Gaming NSW to discuss the draft Regulations.<sup>75</sup>

### Stakeholder concerns

- 2.9** Industry stakeholders told the committee that both the consultation during the expert panel's report and prior to the introduction of the regulations was inadequate.
- 2.10** Local Government NSW advised that it was invited to provide evidence to the expert panel, however was only given three business days' notice and was limited to five minutes with only verbal evidence accepted, stating that 'this left limited time to consult with our members. The opportunity to provide evidence was inadequate'.<sup>76</sup>
- 2.11** Cr Jessica Scully, City of Sydney told the committee that when the expert panel convened the stakeholder meeting 'there was no regulation at that point, no detailed regulation or regulation to speak to' and that the meeting was 'more generally a conversation and each stakeholder was given five minutes to present to the panel on the terms of reference. That excluded any discussion of harm minimisation'.<sup>77</sup>
- 2.12** Don't Kill Live Music expressed concern that the expert panel handed down its report 'on the extremely complicated topic of "making music festivals safer"' only 33 days after the Premier's announcement on 16 September 2018, commenting that the report 'was likely rushed in order to fit within the political window prior to the NSW election'. Don't Kill Live Music also commented that the expert panel 'did not contain any specific expertise in drug and alcohol addiction or treatment' or 'one person with skills and experience in the operations management of a music festival environment'.<sup>78</sup>
- 2.13** Music Australia commented that it was 'uncertain' as to what experience the members of the expert panel had in relation to 'international best practice music festival management' and it did not believe that people with significant music festival experience were included in the stakeholder consultation process. Music Australia added that to really understand the impact the expert panel should have consulted with people in that sector to achieve a balanced outcome:

A panel which has the power to increase the regulatory burden on an industry sector should include the voices of people with experience in that sector to understand the impact of proposed interventions. This is the only way to achieve a balanced outcome, and it was not a process followed in this instance...<sup>79</sup>

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<sup>75</sup> Answers to questions on notice, Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 20 August 2019, pp 1-2.

<sup>76</sup> Submission 26, Local Government NSW, p 4.

<sup>77</sup> Evidence, Cr Jessica Scully, City of Sydney, 13 August 2019, uncorrected transcript, p 7.

<sup>78</sup> Submission 39, Don't Kill Live Music, pp 9-11.

<sup>79</sup> Submission 14, Music Australia, p 2.

**2.14** MusicNSW had a similar view noting that 'no festival representatives were included on the expert panel looking at music festival safety', and highlighted that this was also the case during the development of the regulations:

The Festival Regulations introduced this year were the result of knee-jerk decision-making, rushed and half-hearted consultation and political expediency. Despite repeated requests for inclusion and genuine consultation, much of the festival and broader music industry were not consulted in the development of these regulations.<sup>80</sup>

**2.15** In terms of the consultation process during the development of the regulations, inquiry participants made the following comments:

- 'Consultation with industry regarding the new regime commenced just three months before coming into effect. The final version of the Music Festival Regulation was available with just five days' notice before implementation ... the execution did not consider the business implications of the music festival industry'.<sup>81</sup>
- 'Industry were inadequately consulted during this process ... Changes to industry were rushed, with little regard to the industry business model'.<sup>82</sup>
- 'I don't believe the government has consulted properly with appropriate bodies to make these legislative decisions and more consultation and consideration needs to be made'.<sup>83</sup>
- 'The government's rushed approach to these regulations did not allow for proper industry consultation, which in turn caused considerable confusion and apprehension across the industry'.<sup>84</sup>
- 'Our industry was given very little time to prepare for the new licensing, which came together very quickly and without consultation on the detail'.<sup>85</sup>
- 'Sweeping, swift changes to liquor regulation without community and industry consultation and without adequate evidence base have had damaging impacts on Sydney's music industry and reputation'.<sup>86</sup>
- 'Although well-meaning, this legislation has been hastily constructed in a reactive manner in response to the tragic loss of five lives to drug use but without understanding how festivals are constructed'.<sup>87</sup>

<sup>80</sup> Submission 45, MusicNSW, p 1.

<sup>81</sup> Submission 28, Australian Festivals Association, p 4.

<sup>82</sup> See for example: Submission 18, Big Pineapple Music Festival, p 1; Submission 20, Select Music Agency Pty Ltd, p 1; Submission 25, Name suppressed, p 1; Submission 8, Mothership Events, p 1; Submission 32, The Hills Are Alive Group, p 1; Submission 33, Unified Music Group, p 1; Submission 34, Red Hill Entertainment, p 1; Submission 23, Chugg Entertainment Pty Ltd, p 1.

<sup>83</sup> Submission 38, Holly Doust-Robinson, p 1.

<sup>84</sup> Submission 30, Live Performance Australia, p1.

<sup>85</sup> Submission 51, Club Music Advisory Group, p 1.

<sup>86</sup> Submission 9, City of Sydney, p 2.

<sup>87</sup> Evidence, Ms Jessica Ducrou, Co-Chief Executive Officer, Secret Sounds, 13 August 2019, uncorrected transcript, pp 21-22.

- 2.16** Those stakeholders who were consulted noted that the process was insufficient. For example, the Live Music Office advised that, although they were included in communications regarding the regulations and also met with government in February 2019, they felt that they 'were not provided with the opportunity to make a constructive contribution to the shaping of the regulations before their deployment as caretaker conventions commenced' prior to the state election.<sup>88</sup>
- 2.17** Local Government NSW said that it was not informed of the information sessions run by Liquor & Gaming NSW for music festival organisers, and once notified by a member council contacted Liquor & Gaming NSW and was subsequently invited, however noted that this left little time to seek the views of its members.<sup>89</sup> At the hearing, Cr Linda Scott, President, Local Government NSW, commented that these sessions were never 'intended as a forum for genuine consultation; it was an information session'.<sup>90</sup>
- 2.18** Cr Scully informed the committee that the City of Sydney was the only local government in New South Wales invited to one of the two meetings that were held with the sector, stating that this was 'grossly inadequate'. Cr Scully added that although they had a voice at the table 'sadly we were the only ones and we were quite constrained', indicating that the 'list of topics that were able to be discussed were very limited' and the discussion was 'not representative of the different conditions that councils have to deal with in supporting different festivals'.<sup>91</sup>
- 2.19** Ms Julia Robinson, General Manager, Australian Festivals Association, told the committee that they were not given the opportunity to provide feedback on the changes to the Liquor Act that occurred in November and were only provided with the full version of the regulations in their final state just five days before implementation. Further, Ms Robinson stated that the notification of the final version was sent around at midnight on the Friday before a long weekend, and was disheartened if this was the usual process that government undertakes.<sup>92</sup>
- 2.20** Ms Evelyn Richardson, Chief Executive, Live Performance Australia, expressed the view that there was no proper consultation process, advising that they had tried very hard to engage with government early in the piece. Ms Richardson explained that they met with government three days before the regulations were implemented and 'it was made very clear that this process was going ahead and that we should continue to try and engage with government but there would not be an opportunity to sit down and go through a rigorous consultation process'. Ms Richardson made the following comments in relation to utilising the expertise across the industry to work together to achieve a shared outcome:

At the end of the day what we have been saying all along is we want to work with government. We all share the same objectives in terms of safe environments, but we

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<sup>88</sup> Submission 46, Live Music Office, p 1.

<sup>89</sup> Submission 26, Local Government NSW, p 4.

<sup>90</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 13 August 2019, uncorrected transcript, p 6.

<sup>91</sup> Evidence, Cr Scully, 13 August 2019, uncorrected transcript, p 6.

<sup>92</sup> Evidence, Ms Julia Robinson, General Manager, Australian Festivals Association, 13 August 2019, uncorrected transcript, pp 24-25.

have not really been given an opportunity. When you look at the expertise across the country and within New South Wales, we really need to harness that.<sup>93</sup>

### Call for industry consultation

- 2.21** A number of stakeholders informed the committee of attempts that were made to consult further with government prior to the commencement of the regulations.
- 2.22** The Live Music Office explained that 'ensuring consultation comprising state, local government and the music and festivals industry has been a primary request throughout the turbulent deployment of the Music Festivals Regulations this year', and noted the attempts made by the Wollongong Lord Mayor and key industry stakeholders in February 2019 and the City of Sydney Lord Mayor in March 2019.<sup>94</sup>
- 2.23** Cr Clover Moore, Lord Mayor of the City of Sydney, explained that its motion in March 'supported calls for the music festival regulations to be repealed' and called for 'genuine and comprehensive consultation with the live music and festival sector' to take place. Cr Moore confirmed that all councilors supported this motion that was moved.<sup>95</sup>
- 2.24** APRA AMCOS, the Australian Festivals Association, Live Performance Australia, MusicNSW and the Live Music Office issued the following joint statement on 20 February 2019 calling for better stakeholder consultation on the regulations:
- We urge the Government to come to the table with a commitment to genuine and extensive consultation that includes a commitment to defer the 1 March start date for the new licensing requirements so we can understand the economic, cultural and operational impacts of the new regulations.<sup>96</sup>
- 2.25** The City of Sydney advised that on 21 February 2019, 'thousands gathered in Hyde Park to protest the introduction of these liquor regulation amendments', following which industry stakeholders continued to call for the government to 'defer implementation of the new regulation to allow for genuine and extensive consultation with the sector'. The City of Sydney commented that 'the call was ignored and the regulations were introduced'.<sup>97</sup>
- 2.26** ARIA also advised that it had 'called on the NSW Government to commit to consultation with the music festival sector prior to and following the enactment of the regulations' and acknowledged 'that this inquiry is an important first step in this requested consultative process'.<sup>98</sup>

<sup>93</sup> Evidence, Ms Evelyn Richardson, Chief Executive, Live Performance Australia, 13 August 2019, uncorrected transcript, p 25.

<sup>94</sup> Submission 46, Live Music Office, p 7.

<sup>95</sup> Evidence, Cr Clover Moore, Lord Mayor, City of Sydney, 13 August 2019, uncorrected transcript, p 2.

<sup>96</sup> Submission 47, APRA AMCOS, p 2.

<sup>97</sup> Submission 9, City of Sydney, p 3.

<sup>98</sup> Submission 29, ARIA, p 2.

- 2.27** Similarly, Live Performance Australia said that it had 'made numerous attempts on behalf of our members to engage with the government on the development of these regulations prior to their introduction', and expressed the view that by working collaboratively with industry stakeholders 'government could have achieved industry support for better safety that was practical, deliverable and did not undermine the financial or operational viability of festivals'.<sup>99</sup>
- 2.28** Many inquiry participants called on the government to undertake consultation with music festival organisers, industry stakeholders, local government and health experts, as well as people who attend music festivals.<sup>100</sup>

### **Establishment of a regulatory roundtable**

- 2.29** The committee received evidence from inquiry participants recommending the establishment of a roundtable to facilitate ongoing consultation between government and industry. Specifically, industry stakeholders called for the:
- establishment of a regulatory roundtable for festivals in New South Wales to address regulatory changes in a measured and consultative approach<sup>101</sup>
  - establishment of a Live Music Roundtable in New South Wales, based on the Victorian model, that includes key government agencies and music industry stakeholders.<sup>102</sup>
- 2.30** The Australian Festivals Association explained that a regulatory roundtable will ensure critical concerns from industry regarding the current regulations can be addressed in a consultative approach, 'where the balance of expert advice from market-leaders is heard alongside regulatory consideration from relevant agencies'. It indicated that there are a number of issues that require immediate discussion, including user pays services, council adoption of Health Guidelines, centralised policing for major events and harm reduction training, that would be best discussed in a roundtable forum.<sup>103</sup>

<sup>99</sup> Submission 30, Live Performance Australia, p 1.

<sup>100</sup> Submission 1, Harm Reduction, p 2; Submission 8, Mothership Events, p 1; Submission 9, City of Sydney, p 6; Submission 12, The Phonographic Performance Company of Australia Ltd, p 1; Submission 17, FBi Radio, p 2; Submission 24, NSW Users and Aids Association, p 2; Submission 25, Name suppressed, p 1; Submission 26, Local Government NSW, p 3; Submission 28, Australian Festivals Association, p 11; Submission 29, ARIA, p 4; Submission 30, Live Performance Australia, p 4; Submission 46, Live Music Office, pp 7-8; Submission 51, Club Music Advisory Group, p 1.

<sup>101</sup> Submission 8, Mothership Events, p 1; Submission 11, Name suppressed, p 1; Submission 15, Inner West Council, p 3; Submission 18, Big Pineapple Music Festival, p 1; Submission 19, Secret Sounds Group, p 1; Submission 20, Select Music Agency Pty Ltd, p 1; Submission 23, Chugg Entertainment Pty Ltd, p 1; Submission 24, NSW Users and Aids Association, p 4; Submission 25, Name suppressed, p 1; Submission 28, Australian Festivals Association, p 9; Submission 30, Live Performance Australia, p 4; Submission 32, The Hills Are Alive Group, p 1; Submission 33, Unified Music Group, p 1; Submission 34, Red Hill Entertainment, p 1; Submission 46, Live Music Office, p 22; Submission 45, MusicNSW, p 2.

<sup>102</sup> Submission 28, Australian Festivals Association, p 10; Submission 29, ARIA, p 4; Submission 30, Live Performance Australia, p 4; Submission 45, MusicNSW, p 2; Submission 46, Live Music Office, p 22; Submission 51, Club Music Advisory Group, p 2.

<sup>103</sup> Submission 28, Australian Festivals Association, pp 9 and 16 (Appendix D).

- 2.31** Further, the Australian Festivals Association outlined that 'the success of this roundtable relies on the inclusion of peak industry bodies and key representatives'.<sup>104</sup> The Association provided a list of suggested key industry stakeholders and government agencies to be involved in the regulatory roundtable in its answers to questions on notice.<sup>105</sup>
- 2.32** In relation to the establishment of a Live Music Roundtable, the Australian Festivals Association advised that it 'sees this recommendation as a long-term solution to strategically address the live music ecosystem, and its important place in NSW's economy and socio-cultural environment'. It went on to say that establishing this roundtable would be 'a positive step towards repairing the reputation the state has gained around live music' and noted the success Victoria has had since the establishment of its own roundtable in 2017.<sup>106</sup>
- 2.33** During the hearing stakeholders emphasised the need for a roundtable to ensure ongoing engagement between government agencies and the sector. For example, Ms Julia Robinson emphasised the Australian Festivals Association's call for a regulatory roundtable 'so that appropriate agencies can consult with key industry contacts to deliver better regulations that strike the right balance between safety, community, culture and economic concerns'.<sup>107</sup>
- 2.34** Along similar lines, Ms Jessica Ducrou, Co-Chief Executive Officer, Secret Sounds, stated that she wants 'to see an ongoing industry-inclusive roundtable process that includes all stakeholders, where we can discuss the various challenges, implement the appropriate strategies in order to present safe, well-organised festivals'.<sup>108</sup>
- 2.35** Cr Scott welcomed the proposal of a roundtable as a framework to consult with councils and the wider local government sector to seek input and feedback for proposals for festivals.<sup>109</sup> Cr Scott commented that councils welcome the opportunity to work closely with government to establish a better system:
- We would welcome a conversation with the Government about how to do this better. We have no problem with working very closely with the Government to try to co-design a better system. It simply is that this response did not come after consultation with local governments. It did come in the current form as a shock. We have no argument with the need for a response. The current response that has been done without consultation with councils has not been welcomed.<sup>110</sup>
- 2.36** Also in support of the roundtable was Dr Mary Harrod, Chief Executive Officer, NSW Users and Aids Association, and Ms Trish Hepworth, Director of Policy and Research, Foundation of Alcohol Research & Education.<sup>111</sup> Dr Harrod encouraged 'any ongoing festival regulation

<sup>104</sup> Submission 28, Australian Festivals Association, pp 9 and 16 (Appendix D).

<sup>105</sup> Answers to questions on notice, Ms Julia Robinson, General Manager, Australian Festivals Association, 20 August 2019, p 6.

<sup>106</sup> Submission 28, Australian Festivals Association, p 10.

<sup>107</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 21.

<sup>108</sup> Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, pp 21-22.

<sup>109</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 7.

<sup>110</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 9.

<sup>111</sup> Evidence, Dr Mary Harrod, Chief Executive Officer, NSW Users and Aids Association and Ms Trish Hepworth, Director of Policy and Research, Foundation of Alcohol Research & Education, 13 August 2019, uncorrected transcript, p 42.

to have a consultative approach with the affected community, which is festival-goers but also the multiple stakeholders who are involved in this important part of the economy'.<sup>112</sup> Ms Hepworth added that any ongoing consultation process 'needs to have strong representation from the health sector including public health and alcohol'.<sup>113</sup>

**2.37** When asked about the suggestion of a regulatory roundtable at the hearing, Ms Mann from Liquor & Gaming NSW 'wholeheartedly' supported the recommendation.<sup>114</sup> Likewise, Dr Michelle Cretikos, Director, Clinical Safety and Quality, Centre for Population Health, NSW Ministry of Health, said that they are already in intensive consultation, however 'would be very happy to have a formal process interagency to consult'.<sup>115</sup>

**2.38** Further, Liquor & Gaming NSW proposed the following representatives for a regulatory roundtable for music festivals:

Proposed government representatives could include the Department of Premier and Cabinet, NSW Health, NSW Ambulance, NSW Police Force, Liquor & Gaming NSW, the Department of Planning, Industry and Environment, Destination NSW and Create NSW.

The Government would support a broad representation on any regulatory roundtable, including representation from industry peak bodies such as the Australian Festivals Association, individual operators, community run events, local councils and supporting industry support businesses, including medical service providers, liquor and hospitality services and venues.

The Roundtable could be used to bring together experts on music festivals (and live entertainment more broadly) to discuss emerging opportunities and risks in the sector, and identify ways to improve the music festival regulatory framework to ensure that it continues to allow operators to run safe and enjoyable events. This could include informing future reviews of the licensing scheme.<sup>116</sup>

**2.39** Liquor & Gaming NSW indicated that it supports the roundtable to meet before the next music festival season begins:

Liquor & Gaming NSW would support meeting before the Spring/Summer music festival season begins (September) and post this season (post-March) to discuss lessons learned and to ensure that industry and Government are working together to tackle issues in the industry. A rotating chair between industry and Government could also be considered.<sup>117</sup>

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<sup>112</sup> Evidence, Dr Harrod, 13 August 2019, uncorrected transcript, p 35.

<sup>113</sup> Evidence, Ms Hepworth, 13 August 2019, uncorrected transcript, p 42.

<sup>114</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 59.

<sup>115</sup> Evidence, Dr Michelle Cretikos, Director, Clinical Safety and Quality, Centre for Population Health, NSW Ministry of Health, 13 August 2019, uncorrected transcript, p 59.

<sup>116</sup> Answers to questions on notice, Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 20 August 2019, pp 2-3.

<sup>117</sup> Answers to questions on notice, Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 20 August 2019, pp 2-3.

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**Committee comment**

- 2.40** The committee acknowledges industry stakeholder concerns of the inadequate consultation process involved in developing and implementing the regulations. We note this was a general theme in this committee's inquiries of the last Parliament. Whilst we note that the NSW Government felt pressure for fast action to respond to calls to make music festivals safer for young people, developing and implementing a brand new licensing scheme in the space of four months is not best practice. Therefore, the committee finds that the consultation process for these regulations was inadequate.

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**Finding 1**

That the consultation process for the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 undertaken by the NSW Government was inadequate.

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- 2.41** The committee notes that the NSW Government has also acknowledged that the consultation process was less than ideal and is encouraged that it will support a regulatory roundtable as recommended by many inquiry participants. The committee sees merit in the establishment of a regulatory roundtable as a way forward to address a number of concerns and issues raised by industry stakeholders and other inquiry participants.
- 2.42** The committee therefore recommends that, given the upcoming festival season later this year, the NSW Government immediately commence steps to establish a regulatory roundtable for music festivals, with the participants to include, Liquor & Gaming NSW, NSW Health, NSW Police Force, industry representatives, such as the Live Music Office and the Australian Festivals Association, Local Government NSW, and health related/harm minimisation groups, such as Harm Reduction Australia, NSW Users and Aids Association, and the Foundation for Alcohol Research & Education. (awaiting on AQON to confirm participants). We are of the view that the regulatory roundtable needs to be established immediately regardless of whether the regulations are disallowed or not.

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**Recommendation 1**

That the NSW Government immediately establish a regulatory roundtable for music festivals, with the participants to include:

- Liquor & Gaming NSW, NSW Health, NSW Police Force and other relevant government agencies;
  - industry representatives, such as the Live Music Office, the Australian Festivals Association, APRA AMOC, MusicNSW and Live Performance Australia;
  - Local Government NSW; and
  - health related/harm minimisation groups, such as Harm Reduction Australia, NSW Users and Aids Association, and the Foundation for Alcohol Research & Education.
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## Uncertainty in the music festival industry

- 2.43** Although not all festivals will need to apply for a music festival licence under the new regulations, the committee heard that the scheme has created uncertainty across the industry. The uncertainty stems from a number of issues raised by inquiry participants including, confusion around definitions and criteria contained in the regulations, being identified as a 'high risk' festival, financial implications associated with the regulations and the impact of oversight by and discretionary power of the Independent Liquor & Gaming Authority.
- 2.44** Industry stakeholders made the following comments sharing their concerns regarding the uncertain atmosphere the regulations have generated:
- Ms Ducrou told the committee that 'in broader terms, right now, and operating under the proposed legislation, the festival industry is confused'.<sup>118</sup>
  - The Illawarra Folk Club said that 'overall the events of the last year and the current regulations as written have left the Illawarra Folk Club Inc feeling very uncertain about our future ability to provide Folk Festivals to the Illawarra community'.<sup>119</sup>
  - FBi Radio stated that 'musicians and performers, production crews and festival staff face employment and income uncertainty as a result of unbalanced policy'.<sup>120</sup>
- 2.45** The Australian Festivals Association provided the below case study to the committee demonstrating how the introduction of the new regulations has caused uncertainty amongst all music festival operators, not just those that have been directed to apply for a music festival licence.

### Case study: Fairgrounds Festival

Fairgrounds Festival, situated in the idyllic town of Berry, harks back to festivals of the 70s with gourmet eats, artisan markets, intimate artist experiences, Little Fairgrounds, and craft workshops. Now in its fourth year, Fairgrounds has established itself as an intimate festival experience, hosting a carefully curated line-up of international and local artists across the twin-stage site.

The festival contributes around \$3 million each year to the small town that had been mostly closed off to tourist traffic due to highway bypasses. The impact of the festival is also felt in the neighbouring towns of Kangaroo Valley, Gerringong, Geroa and Nowra with festival attendees seeking accommodation during the three-day event.

As the festival is held in December, planning had been well underway for the 2019 event by the time the regulations changes were announced. Managing Director of Fairgrounds, Mark Dodds, noted that due to the uncertainty in the industry, he was hesitant to book artists in case the changes would blow the festival budget out. Usually, artists would have been locked in well before 12 months out from the festival allowing ticketing budgets to be finalised.

Even though the regulations currently do not apply to Fairgrounds, the impact of the changes meant that Mark was unable to move quickly enough to lock in artists, resulting in the loss of leads. As a

<sup>118</sup> Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, p 21.

<sup>119</sup> Submission 10, Illawarra Folk Club Inc, p 3.

<sup>120</sup> Submission 17, FBi Radio, pp 1-2.

result, the line-up composition is different from the usual split of international and local artists; it is unknown what toll this may take on ticket sales.<sup>121</sup>

- 2.46** The committee also heard from councils on the uncertainty they experienced during the process. Cr Scott explained to the committee that although presently the regulations apply to only the 14 nominated 'high risk' festivals, they were initially intended to apply to all music festivals in New South Wales. Cr Scott commented that there is 'concern amongst councils that they could be extended to other festivals in the future. In short, no council in New South Wales has supported these new festival regulations and we would support them being repealed'.<sup>122</sup>
- 2.47** Likewise, the Inner West Council said that 'the release of the definitive list did not ameliorate concerns that legislation and regulations could be introduced suddenly, thus impacting confidence that the financial risk of running a festival was worth taking'.<sup>123</sup>
- 2.48** Cr Scully indicated that the regulations raised a lot of issues for the City of Sydney and those festivals that the council supports in the inner city, commenting that it generated regulatory uncertainty, a higher risk profile for these kinds of events and created extra attention and policing focus on community-focused events as well.<sup>124</sup>
- 2.49** In relation to the impact on smaller community based festivals, Local Government NSW indicated that following the introduction of the regulations 'some low risk festivals have found that the safety requirements of NSW Police Local Area Commands, Local Health Districts and NSW Ambulance have increased substantially, placing pressure on community festivals'. It provided the example of the Northern Beaches Music Festival which was almost cancelled in 2019 'due to stringent new requirements by the police for extra security'.<sup>125</sup>
- 2.50** Regional Arts NSW expressed the view that 'the beat up in the press and the knee jerk reaction from the NSW Government around these regulations is causing considerable stress and confusion for smaller festivals', outside the intended purpose of the regulations.<sup>126</sup>
- 2.51** The Live Music Office also commented on the response by rural and regional event organisers who were uncertain as to how the new regulations would impact regional events:

Recognising the fragility of the festival model, the impact on the festivals community this year has been significant, with many of these events in rural and regional NSW shocked by the unfolding process, as regulations were hurriedly prepared for an imminent caretaker deadline. The logistics involved in delivering these events are major undertakings, Event timelines are planned long in advance, and with tickets sold, performers, contractors and suppliers engaged, festival organisers across greater NSW were then left in limbo and facing an uncertain future.<sup>127</sup>

<sup>121</sup> Submission 28, Australian Festivals Association, p 14.

<sup>122</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 5.

<sup>123</sup> Submission 15, Inner West Council, pp 1-2.

<sup>124</sup> Evidence, Cr Scully, 13 August 2019, uncorrected transcript, p 9.

<sup>125</sup> Submission 26, Local Government NSW, p 10.

<sup>126</sup> Submission 7, Regional Arts NSW, p 1.

<sup>127</sup> Submission 46, Live Music Office, p 4.

- 2.52** Other stakeholders had concerns that the new regulations were causing the closure of music festivals or forcing music festivals to move interstate and that this was having an impact on the social and economic benefits of music festivals in New South Wales.
- 2.53** Live Performance Australia argued that the 'over-regulation of music festivals could force the closure or relocation of long-established, well managed and safe events that contribute tens of millions of dollars to the NSW economy, including regional areas, in addition to job losses in those businesses and communities that support festival activity both directly and indirectly'.<sup>128</sup>
- 2.54** The Club Advisory Group commented on the serious impact the regulations have had on the electronic music scene in New South Wales already, reporting that a series of major events in the industry are being discontinued.<sup>129</sup> Music Australia had a similar view indicating that the regulations have had a 'negative subsequent impact on entertainment, arts and culture, tourism the economy, and employment' and highlighted that 'there have been many examples of festivals closing as a result of the laws'.<sup>130</sup>
- 2.55** The NSW Users and Aids Association provided a number of examples of music festivals closing down or moving interstate due to 'increased police charges and increased regulation':
- Bohemian Beatbreaks cancelled in 2018 because of excessive, last minute user-pays police charges. Rabbits Eats Lettuce, a well-established festival by the same promoters, moved to Queensland. Dragon Dreaming has recently announced it is not proceeding because of difficulty complying with guidelines in a relatively short time-frame. Other festivals that have closed include Mountain Sounds, Psyfari, and Northern Beaches Music.<sup>131</sup>
- 2.56** Further, the NSW Users and Aids Association said that 'as event after event shuts down NSW is rapidly losing a vibrant part of its culture', suggesting that 'we need to provide festival operators with greater certainty in user pays police charges and health and medical costs along with longer timelines to implement changes, particularly in regional settings'. It also raised concerns that the 'closure of regulated festivals may lead to an increase in unregulated festivals with no oversight and potentially greater risks'.<sup>132</sup>
- 2.57** In terms of music festivals moving interstate due to the regulations, Lord Mayor of Sydney, Cr Moore, indicated that they are very concerned that 'lots of people are leaving Sydney and going to other places because of the lack of opportunity', arguing that 'we know that the regulation can have a serious impact on opportunities for people in the music industry'.<sup>133</sup>
- 2.58** The Australian Festivals Association noted that traditionally New South Wales 'has led Live Performance revenue and attendance when compared with the rest of the country', however, advised that for the first time since 2010 the live performance revenue share for New South Wales has decreased from 37.1 per cent to 32.7 per cent, allowing Victoria to take the lead

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<sup>128</sup> Submission 30, Live Performance Australia, p 2.

<sup>129</sup> Submission 51, Club Music Advisory Group, p 1.

<sup>130</sup> Submission 14, Music Australia, p 2.

<sup>131</sup> Submission 24, NSW Users and Aids Association, pp 8-9.

<sup>132</sup> Submission 24, NSW Users and Aids Association, p 9.

<sup>133</sup> Evidence, Cr Moore, 13 August 2019, uncorrected transcript, p 10.

share. The Australian Festivals Association highlighted the concern amongst their members about the future of festivals in New South Wales.<sup>134</sup>

- 2.59** Several industry stakeholders that made submissions to the committee also noted their concerns that the 'recent changes to festival regulation may see New South Wales slip further behind the other Australian States and Territories', and that the 'regulatory burden of operating festivals may drive some organisers across state lines'.<sup>135</sup>
- 2.60** Ms Richardson noted that 'other States and Territories are watching closely what is happening in New South Wales and based on the feedback that we have received to date, they are keen to avoid replicating such negative impacts in their own jurisdictions'.<sup>136</sup>
- 2.61** At the hearing, Ms Webb from Liquor & Gaming NSW indicated that they 'have heard of some festivals that may not go ahead', however was of the view that 'there are quite a number of factors that influence whether a festival goes ahead, to do with economics of the festival, other operational requirements', and that 'it is difficult for us to say there is a single source of decision-making on that'. Ms Webb further advised that it is not the intention of the regulations to cause the closure of music festivals and that government want to work with industry to ensure music festivals can operate safely:

The regulations do not shut music festivals down, and nor has any festival had its licence refused since the expert panel handed down its report. Liquor & Gaming NSW is committed to working constructively with those who have been directed by the Independent Liquor & Gaming Authority to apply for a music festival licence. If a festival has been directed to apply for a licence it does not mean that the organisers have not been trying to do the right thing. It does mean that agencies want to work with those organisers to support them to run safer events.<sup>137</sup>

### Identification of 'high risk' festivals

- 2.62** As discussed in chapter 1, since the establishment of the new regulations 14 music festivals have been referred to the Independent Liquor & Gaming Authority for determination if a music festival licence is required. Concerns were raised regarding the way in which these festival operators were notified of the referral and the reputational impact on businesses.
- 2.63** Local Government NSW advised that when the regulations were first announced the initial intent was that they would apply to all music festivals in New South Wales. It explained that following 'significant confusion and stakeholder criticism' the NSW Government then limited the scope of the regulations to only the 14 specified 'high risk' festivals.<sup>138</sup>

<sup>134</sup> Submission 28, Australian festivals Association, pp 1 and 4.

<sup>135</sup> Submission 18, Big Pineapple Music Festival, p 1; Submission 20, Select music Agency Pty Ltd, p 1; Submission 23, Chugg Entertainment Pty Ltd, p 1; Submission 25, Name suppressed, p 1; Submission 8, Mothership Events, p 1; Submission 32, The Hills Are Alive Group, p 1; Submission 33, Unified Music Group, p 1; Submission 34, Red Hill Entertainment, p 1

<sup>136</sup> Evidence, Ms Richardson, 13 August 2019, uncorrected transcript, p 22.

<sup>137</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 47.

<sup>138</sup> Submission 26, Local Government NSW, pp 3-4.

- 2.64** In terms of being notified to apply for a music festival licence, Ms Julia Robinson reported that some of their members were notified by email, however one person was notified by a text message and one 'did not receive the notification in the way that they potentially should have and they found out by a media report'.<sup>139</sup>
- 2.65** In response to questions about whether festivals were notified by text message, or not notified at all ahead of the release of the list of high risk festivals, Liquor & Gaming NSW supplied the following information:
- One festival operator was unable to be contacted by phone before the Minister's media release was provided to media outlets. This festival operator was contacted by email and text message asking them to contact Liquor & Gaming NSW to discuss their festival whenever was convenient for them. The festival operator responded by email on 25 February indicating that they wanted to be contacted later that evening. This contact occurred. This festival operator has had ongoing engagement with Liquor & Gaming NSW and NSW Health since that time.
- ...
- Every effort was made to give impacted festival organisers prior notice, but given the sensitive nature and urgency of the announcement, we were unable to notify all of them in time.<sup>140</sup>
- 2.66** The case study below describes the experience of one music festival operator who was not one of 14 'high risk' festivals but has now been directed to apply for a music festival licence.

### Case study: Listen Out

Ms Adelle Robinson, Director of Fuzzy Operations, is the event organiser for the music festival Listen Out. She told the committee that her event was not originally on the 14 'high risk' list but has since been notified by the Independent Liquor & Gaming Authority that the sale of liquor would more appropriately be provided under a music festival licence.

She advised that she had not even announced this year's event or lodged an application for a liquor licence when she received the letter from the Authority saying that the event was being considered for a music festival licence and that she needed to make a submission to present her case.

Ms Robinson commented that 'despite demonstrating that I was already going above and beyond the requirements for the music festival licence, I was told that my event fit with the definition of a music festival under the regulations and therefore had deemed that a better licence for my event. Under this case study the assumption has to be that at any time the Authority can determine that any event that falls under the definition in the regulations could be better placed under a music festival licence'.

She advised that she was still not exactly sure why her event had been flagged and it was not made clear to her why the Authority had requested letters from NSW Health and the NSW Police Force about the event. She noted that although she was expecting to be on the 'high risk' list originally due to the particularities of her event, 'there was no transparency around why I was not on it to begin with and

<sup>139</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 24.

<sup>140</sup> Answers to questions on notice, Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW, 20 August 2019, p 6.

why I am now'.

She indicated that as an event organiser who was not on the list but is now on the list 'there is a definite reputational damage'. She advised that she highlighted this in her submission to the Authority who 'said that being under the music festival licence should be worn as a badge of honour, and it is like the health tick of approval from their perspective'. Ms Robinson argued that this shows a 'real disconnect between what is being played out in the media and what is happening on a government level'.

She went on to explain that 'from a police perspective, from a venue perspective, from a bank perspective, merchant facility perspective, being under the music festival licence is very, very much a negative'. She highlighted that the media storm surrounding these regulations has amplified every dealing they have had to have with their stakeholders, commenting that 'everyone has been operating in an atmosphere of fear'.<sup>141</sup>

**2.67** Other inquiry participants also reported on the reputational damage of music festival operators due to the way the regulations have been rolled out and the notification of the 'high risk' events.

**2.68** For example, Mothership Events told the committee that 'many "good operators" were tarred with a "dodgy operators" brush' and experienced 'public shaming and media listing without our prior knowledge or consultation', stating that this 'has had effect on our business and event reputations with long reaching negative impacts to consumer confidence in our festival brands and company'.<sup>142</sup>

**2.69** Live Performance Australia highlighted a number of concerns regarding the ramifications of the new regulations, including that the industry has experienced reputational harm 'based on poorly informed commentary and negative media coverage of festivals, both locally and internationally'.<sup>143</sup>

**2.70** When questioned on the reputational damage of operators flowing on from the music festival licensing system, Ms Webb indicated that it 'might be one perception that some people have', however expressed the view that as these music festivals have gone through this additional licensing process 'they potentially have less risk involved in them and certainly safety management plans that might attract people to attend them'.<sup>144</sup> Ms Webb further emphasised the advantage of having a music festival licence:

We would say that there is an advantage to these festivals that they have got to through this process; to have a safety plan in place that has been carefully scrutinised and I think they could make something of the fact that they in fact are probably now operating at a higher standard because of the process they went through.<sup>145</sup>

**2.71** In addition, Mr Philip Crawford, Chair, Independent Liquor & Gaming Authority explained that they 'spent quite a bit of time talking to each of the promoters when we met with them about the fact that there was, as far as we were concerned, absolutely no express or implied

<sup>141</sup> Evidence, Ms Adelle Robinson, Director, Fuzzy Operations, 13 August 2019, uncorrected transcript, pp 23, 26, 32 and 34.

<sup>142</sup> Submission 8b, Mothership Events, p 1.

<sup>143</sup> Submission 30, Live Performance Australia, p 2.

<sup>144</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 47.

<sup>145</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 47.

criticism of them as operators'. Mr Crawford noted that the reason these particular events have been directed to apply for a music festival licence is that they are big events with risk factors and required more time and assistance to maximise their harm minimisation platform.<sup>146</sup>

**2.72** In terms of the list of 'high risk' events, Mr Crawford stated that 'we do not keep a list and we did not approach it that way', explaining that 'we went to some length to point out in our first meetings with them that the regulation does not have any reference to high risk itself'.<sup>147</sup>

**2.73** When determining what events were initially directed to apply for a music festival licence, Dr Cretikos outlined that 'it is the same process as we are using now, where we examined the profile of the event, what we knew about the event in terms of the size, the target demographic, the genre of music, the period, the weather conditions and any history that we had about the event to determine whether it was of greater risk of drug-related harms'.<sup>148</sup>

**2.74** Regarding the advice sent to event operators, Mr Crawford told the committee that at a meeting the board members had 'very interactive discussions about the sorts of issues we were looking at' with the event operators, however advised that the letters subsequently sent do not go into detail explaining the rationale for the decision:

We do not write the long decision like we do in some of the matters we deal with, which often have various rights of appeal to the Supreme Court or NSW Civil and Administrative Tribunal [NCAT]. There is a letter informing them of the decision but it does not go into chapter and verse on reasons.<sup>149</sup>

**2.75** Mr Crawford later clarified that the Independent Liquor & Gaming Authority's statutory responsibilities under the regulation did not commence until after the Minister announced the 14 'high risk' music festivals.<sup>150</sup> Mr Crawford advised that the Authority had no involvement in the development of the list and that this was based on advice from NSW Health and the NSW Police Force. Mr Crawford explained that on 15 March 2019 the Authority 'wrote to 14 music festival operators indicating that it intended to consider whether their music festival would be more appropriately licensed under a music festival licence than another type of licence'. Music festival operators were then given 21 days to make a written submission. Mr Crawford added that on 10 April 2019 the Authority held a meeting with the nominated festival operators to make oral submissions.<sup>151</sup>

<sup>146</sup> Evidence, Mr Philip Crawford, Chair, Independent Liquor & Gaming Authority, 13 August 2019, uncorrected transcript, p 60.

<sup>147</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 47.

<sup>148</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 48.

<sup>149</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 54.

<sup>150</sup> On 23 February 2019 the Hon Paul Toole MP, Minister for Racing, issued a press release announcing that the new licensing scheme for music festivals will only apply to 14 specified higher risk festivals. The Independent Liquor & Gaming Authority commenced its responsibilities under the regulations on 28 February 2019. *Liquor & Gaming NSW*, 'Ministerial media release: NSW Government releases list of higher risk music festivals', 23 February 2019; Answers to supplementary questions, Mr Philip Crawford, Chair, Independent Liquor & Gaming Authority, 20 August 2019, p 1.

<sup>151</sup> Answers to supplementary questions, Mr Crawford, 20 August 2019, p 1.

## Definitions and criteria

- 2.76** The regulations provide definitions of what constitutes a music festival and a concert, as noted in chapter 1. However, industry stakeholders highlighted that these do not match industry definitions, do not allow flexibility in its application and have ultimately led to a level of uncertainty in the industry.
- 2.77** The Live Music Office commented that 'these definitions and the process as to how these quite precise specifications were determined for such a diverse area of art-form practice and event delivery continue to be a matter for deliberation across the music industry'.<sup>152</sup>
- 2.78** Ms Naomi Bower, Cultural Planning and Policy Leader, Inner West Council, highlighted that the definitions of the regulations are quite broad and could capture any number of different events:
- ... whilst a definition of music festivals was provided in the Liquor Amendment (Music Festivals) Regulation 2019, in practice there is a spectrum of festivals offering music and celebration, from small community operators to major national festivals, all of which are important in the creative echo system. The new regulations both directly and indirectly affected operators from across this spectrum, and likewise a challenging regulatory environment that impacts not only large operators but also smaller community-based festivals.<sup>153</sup>
- 2.79** Don't Kill Live Music argued that 'the definition of "Music Festival" by size, as a risk category, is not justified by any data', adding that the terms 'Music Festivals', 'Events' and 'Concerts' are 'all different names for variations on the same thing; being a gathering of humans that are attending a location where there is music being played by performers'.<sup>154</sup>
- 2.80** A number of other industry stakeholders stated that the definitions of a music festival and concert under the new regulations 'do not fit with current industry understanding'.<sup>155</sup> The Australian Festivals Association emphasised this point and provided the below industry definition of a music festival, as defined by APRA AMCOS:

- A. Occurs on at least one full day (being no less than 8 hours in advertised duration)
- B. Is at an outdoor place requiring a stage to be erected, or a specific performance area to be created, specifically for the festivals
- C. Is advertised as a Festival, in which the staging of the event and all associated advertising is not dependent on any one or two headline acts
- D. Includes at least six acts.<sup>156</sup>

<sup>152</sup> Submission 46, Live Music Office, p 9.

<sup>153</sup> Evidence, Ms Naomi Bower, Cultural Planning and Policy Leader, Inner West Council, 13 August 2019, uncorrected transcript, p 2.

<sup>154</sup> Submission 39, Don't Kill Live Music, p 11.

<sup>155</sup> Submission 11, Name suppressed, p 1; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1, Submission 28, Australian Festivals Association, p 1; Submission 30, Live Performance Australia, p 2.

<sup>156</sup> Submission 28, Australian Festivals Association, p 6.

- 2.81** Mr John Wardle, Consultant to the Live Music Office, reported that industry were not consulted about the definition within the regulation, and many industry stakeholders questioned how these definitions would work in practice.<sup>157</sup> Mr Wardle highlighted that it is a clear risk that the definitions 'could capture any number of events'.<sup>158</sup>
- 2.82** Ms Ducrou had a similar view providing the example of a concert in the Domain in Sydney, that could be a headline concert that might run for a longer period of time, that would essentially fit that criteria as well.<sup>159</sup>
- 2.83** During the hearing, Ms Mann from Liquor & Gaming NSW, acknowledged that the definitions used in the regulations are 'much broader than the intention of what should be caught by a music festival licence', explaining that the 'intention is to go for the ones that fall within that category of risk. And so when you read the rest of the regulation in its entirety then that becomes clear'.<sup>160</sup> Ms Mann further clarified that just because an event falls under the definition does not mean they are instantly referred to the Independent Liquor & Gaming Authority for determination, they would also need to have at least one other indicative factor outlined in the criteria set out in the NSW Government *Music festival licence guidelines*.<sup>161</sup>
- 2.84** In terms of consultation on the definitions, Ms Webb confirmed that there was consultation with industry and that the definitions also 'followed advice from the expert panel and drafting advice from the parliamentary counsel'. Ms Webb indicated that 'part of the issue was making sure that we did catch events that were under eight hours. Some of the other industry-based definitions did not incorporate those festivals, but we were concerned to catch those'.<sup>162</sup>
- 2.85** There was also much confusion amongst inquiry participants regarding the criteria for determining whether or not a festival would be referred to the Independent Liquor & Gaming Authority.
- 2.86** Live Performance Australia noted uncertainty amongst event organisers, not only regarding the definition of a music festival, but also what music festivals would consequently be determined as 'high risk' by the Independent Liquor & Gaming Authority.<sup>163</sup> Likewise, the City of Sydney indicated that there is 'considerable confusion and lack of clarity and transparency about the requirements to obtain a music festivals licence'.<sup>164</sup>
- 2.87** The Australian Festivals Association commented that 'the criteria are subjective' and that 'there are festivals that would meet this criteria that are not currently being required to apply for the licence, while some have been required'. The Association added that 'it remains unclear

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<sup>157</sup> Evidence, Mr John Wardle, Consultant, Live Music Office, 13 August 2019, uncorrected transcript, p 26.

<sup>158</sup> Evidence, Mr Wardle, 13 August 2019, uncorrected transcript, p 27.

<sup>159</sup> Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, p 27.

<sup>160</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 51.

<sup>161</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, pp 51-52.

<sup>162</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 50.

<sup>163</sup> Submission 30, Live Performance Australia, p 3.

<sup>164</sup> Submission 9, City of Sydney, p 3.

as to the process used to identify the 14 festivals initially required to apply, compared to what is being used on an ongoing basis'.<sup>165</sup>

**2.88** The NSW Users and Aids Association also reported a lack of transparency about how the assessment criteria in the regulations are applied to applications, stating that 'it is not clear how these criteria will be assessed, what discretionary powers will be applied and what risk assessment frameworks will be used'.<sup>166</sup>

**2.89** Likewise, Cr Scully told the committee that the criteria for assessing applications is not clear and that this is generating uncertainty across the festival industry:

If I could answer, no, there is no clear criteria. That is something that has been conveyed to us by our panel as well. It is hard to even discern a unifying link amongst those 14 festivals that were eventually narrowed down to be the target festivals. That sort of uncertainty undermines the whole sector, whether it is the commercial sector or the not-for-profit sector or community sector because any entity could find itself in the targets. There is no way that people have criteria that they can respond to and argue back or make their own case, and it also extends that regulatory uncertainty to the broader festival sector.<sup>167</sup>

**2.90** The Inner West Council received feedback from the music sector following the implementation of the regulations that there was 'confusion about the regulations', particularly who they apply to and the timelines for their enforcement, that was 'throwing festival planning into uncertainty'.<sup>168</sup>

**2.91** The Illawarra Folk Club indicated that although it has not been referred to the Independent Liquor & Gaming Authority for review under a music festival licence it was not clear as to how that decision was made and this lack of clarity was having an impact on the planning of the event:

Our organisation has been told (verbal and email) that we are low risk but the regulations do not show how that status was arrived at. We are at the mercy of various departments operating to unspecified criteria. The lack of regulatory clarity currently in force makes commercial decision making almost impossible in a process where lead act musicians are contracted over a year before a planned event.<sup>169</sup>

**2.92** In response to these concerns, Mr Crawford from the Independent Liquor & Gaming Authority stated that 'clear guidance is contained in the music festival licence guidelines, which are hosted on the Liquor & Gaming NSW website, which spell out the factors agencies will need to take into account before making their submission to the Authority'. Mr Crawford explained that 'the Authority has been clear in its engagement with operators' in considering applications and emphasised that 'going through the licensing process is not an assessment on

<sup>165</sup> Answers to questions on notice, Ms Julia Robinson, General Manager, Australian Festivals Association, 20 August 2019, p 3.

<sup>166</sup> Submission 24, NSW Users and Aids Association, p 7.

<sup>167</sup> Evidence, Cr Scully, 13 August 2019, uncorrected transcript, p 6.

<sup>168</sup> Submission 15, Inner West Council, pp 1-2.

<sup>169</sup> Submission 10, Illawarra Folk Club Inc, p 2.

our part of whether the operator was a good operator or not; rather, it is about fulfilling our obligations under the Liquor Act'.<sup>170</sup>

**2.93** Ms Mann made it clear to the committee that the *Music festival licence guidelines* contain a comprehensive list of criteria that is used to assess an event and this has been published on the Liquor & Gaming NSW website, as well as on NSW Health's website. Ms Mann spelled out the four points under the criteria and then listed the indicative risk factors, explaining that 'these are factors that, no matter how you control your festival, the inherent nature of your festival puts you in this indicative higher risk category'.<sup>171</sup>

**2.94** Ms Mann acknowledged that this perhaps 'is not widely known or understood', however the parameters for referral to the Independent Liquor & Gaming Authority are very clear.<sup>172</sup> When questioned as to whether consultation with industry would have mitigated some of these concerns, Ms Mann agreed that a better communication process would have made some of these details clearer to stakeholders and suggested that they learn from the initial music festivals currently going through the process:

Yes, I do think so, and I think a better communication process so that there was clear awareness of what I have read out, you know, that these are the factors, this is what is going to be the burden and impost on you, it is not as great—people have not actually completed this process yet, so I think it would be good to speak to the 12 that are going through it at the end and just see where that lands before we make any hasty moves.<sup>173</sup>

### **Financial costs to festival operators**

**2.95** Some stakeholders were of the view that adhering to the new regulations would add additional financial burden to event organisers, contributing to a level of uncertainty for the music festival economy in New South Wales.

**2.96** Live Performance Australia outlined that the music festival business model is 'typically project-based and reliant on ample lead-time to set ticket prices and pay deposits for artists and production services' and that 'uncertainty about discretionary costs that may be imposed at the last minute, such as policing or security fees, can make a festival financially unviable'. It went on to say that the new regulations may increase the cost to music festivals and disadvantage New South Wales comparable to other states:

Ultimately, the new regulations may increase the relative cost of music festivals in NSW for both event organisers and event patrons, and place NSW at a significant competitive disadvantage in fostering live music and cultural innovation compared to other destinations in Australia and overseas.<sup>174</sup>

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<sup>170</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, pp 43-44.

<sup>171</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 49.

<sup>172</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 49.

<sup>173</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, pp 58-59.

<sup>174</sup> Submission 30, Live Performance Australia, pp 2-3; See also Submission 49, Live Nation Australasia, p 2.

- 2.97** Live Performance Australia further highlighted its 'serious concerns about the transparency of the administrative, financial and regulatory burden of the new regulations', suggesting that 'regulations need to be fit-for-purpose, and also provide adequate clarity and certainty to music festival event organisers about resourcing requirements and associated budgetary implications'.<sup>175</sup>
- 2.98** The Australian Festivals Association outlined the business model in planning for a music festival and the impact last minute budgetary constraints can have on the event:
- Our members report that for-profit, ticketed festivals generally operate on a project-based business model. Typically festival budgets, including ticket prices, are built 12-18 months out from an event meaning changes within this period may have serious implications for the business ... Usually, a green-space festival of fewer than 5,000 patrons might operate at a loss. Not-for-profit festivals operate on shoestring budgets with any cost increases threatening the continuation of the event.<sup>176</sup>
- 2.99** At the hearing, Ms Julia Robinson confirmed that the issues around costs 'were largely because of the fast implementation of these regulations' that put pressure on events that had started planning 12 to 18 months beforehand, that already had artists booked and ticket prices set, and were then given just five days' notice of the introduction of the new regulations.<sup>177</sup>
- 2.100** Cr Scully also noted the timeframes for submitting an application in line with the commercial reality of running an event, commenting that 'the idea that you would put your application in 90 days before an event with no requisite obligation on the Government's part to give people some certainty as to when they would receive that licence really undermines the commercial viability of the sector, which invests millions of dollars across New South Wales in delivering these complex and well-managed events'.<sup>178</sup>
- 2.101** Other stakeholders commented that the regulatory system should not place unreasonable financial burden on event organisers. For example, the City of Sydney said 'that action must be taken to reduce festival overdoses and the damaging impacts of drug related harm. However, the approach must be clear and consistent and should not place unreasonable financial and operational burdens on festival operators'.<sup>179</sup>
- 2.102** The Inner West Council reported that 'prohibitively high costs in order to meet required regulations' are a barrier to a thriving music festival sector and that the new regulations 'are perceived as another obstacle to mounting festivals in a burdensome regulatory environment'.<sup>180</sup> Further, Ms Bower told the committee that 'it has been very concerning to witness so many festival operators struggling or ceasing operations over the last five years due to increasing regulatory burdens and costs'.<sup>181</sup>

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<sup>175</sup> Submission 30, Live Performance Australia, p 3.

<sup>176</sup> Submission 28, Australian Festivals Association, p 4.

<sup>177</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 21.

<sup>178</sup> Evidence, Cr Scully, 13 August 2019, uncorrected transcript, p 4.

<sup>179</sup> Submission 9, City of Sydney, p 3.

<sup>180</sup> Submission 15, Inner West Council, p 2.

<sup>181</sup> Evidence, Ms Bower, 13 August 2019, uncorrected transcript, p 2.

- 2.103** Ms Adelle Robinson pointed out that it will be the smaller events that will suffer, explaining that as a large operation she has the resources to meet the music festival licence requirements but not all event companies have these resources. Ms Robinson went on to say as a new operator she would not risk starting up in New South Wales:

Under the current legislation, it will only be the large and profitable events that are able to thrive. In the current climate, I would not take the risk I did 19 years ago and put on my first music festival in New South Wales. I want a festival economy that allows new players to come into the market, that allows avant-garde events to thrive and that fosters diversity and creativity. I am here for the smaller events because that is where I started. I am asking the committee to disallow the regulations. It is possible to have safe, well-run events of all shapes and sizes. Let us work together to make events safe and thriving in New South Wales.<sup>182</sup>

- 2.104** Taking a different view, the Foundation for Alcohol Research & Education explained that the 'fees to hold a music festival should reflect the risks they pose to both attendees and to taxpayers'. It explained that the current licensing scheme for music festivals is not 'fit for purpose' and 'unfairly penalises smaller festivals and is likely not high enough to cover the costs associated with larger festivals'. It went on to propose an additional fee table specifically for music festival licenses, similar to the Western Australia model, where the fee system is risk-based and the fees increase in line with the size and length of the festival.<sup>183</sup>

- 2.105** When asked about the financial impact to event operators under the new regulations, Ms Webb confirmed that 'the new music festival licence fee is \$650, the same amount that festivals operating on a stand-alone liquor licence were previously subject to'.<sup>184</sup> Further, Ms Webb commented that although at times event organisers felt that the new regulations required extra work to what was previously in place, the government are actively working with industry to ensure commercial viability of their businesses under this process:

I think we have certainly had some good discussions with the festivals as part of the pre-licensing and the licensing process. Probably it is fair to say that there are views sometimes that what we are asking or the police or the Ministry of Health is asking is beyond what they may feel they would have done if not subject to this regime. But I think in general we are finding it a very fruitful process of working through how they can meet the objectives of the regulation while maintaining their commercial viability. That has definitely been something the team is working closely with them on.<sup>185</sup>

### *User charges services*

- 2.106** An issue outside of the regulations but raised by a number of industry stakeholders is the related issue of the cost of user charges services and its impact on the planning stages of a music festival.
- 2.107** As part of the application for a music festival licence, event organisers are encouraged to engage with the NSW Police Force, NSW Health and the NSW Ambulance before finalising their Safety Management Plan to determine what medical and policing services are required

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<sup>182</sup> Evidence, Ms Adelle Robinson, 13 August 2019, uncorrected transcript, p 24.

<sup>183</sup> Submission 31, Foundation for Alcohol Research & Education, pp 2-3.

<sup>184</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 44.

<sup>185</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 62.

for the event. At this stage agencies will advise event organisers if an agreement needs to be entered into for user charges services.<sup>186</sup>

- 2.108** The NSW Department of Premier & Cabinet defines a user charge as a 'payment to an agency for a particular good or service that benefits the payee directly'. In its policy for applying user charges for major and special events<sup>187</sup> it also notes that when a major or special event requires 'significant government resources, over and above what would normally be allocated by an agency as a public service', then that agency can be charged a fee for that service. For major or special events these services are usually provided by the NSW Police Force and/or NSW Ambulance, as well as Roads and Maritime Services, should the event impact on road users.<sup>188</sup>
- 2.109** In terms of ambulance services at major events, if pre-deployment of resources is requested then these resources are charged on a user pays basis.<sup>189</sup> NSW Ambulance will recommend the level of resourcing for an event and calculate the fees based on the fee structure included in its *Special and sporting events user charges factsheet*.<sup>190</sup> The pre-event deployment charges do not include the cost of treating or transporting a patient, as these are charged separately to the patient.<sup>191</sup>
- 2.110** If NSW Ambulance responds to a situation at a music festival and these resources were not pre-deployed then the cost of this is borne by the NSW Government and the patient, as per the usual ambulance call out fee. Although these resources are rostered on duty and therefore do not incur additional costs to the government, it can impact on the NSW Ambulance's ability to respond to other requests for assistance from the community and may result in delayed response times for other emergencies.<sup>192</sup>
- 2.111** For policing services, the NSW Police Force will recover costs under user charges if the services 'go beyond the agency's general responsibility to the community to promote public safety and protect community interests'.<sup>193</sup> The NSW Police Force's *Cost recovery and user charges policy* details the types of services provided under cost recovery arrangements, the process for requesting user charges services and invoicing and payment requirements, and the policing levels and conditions of police deployment for special events.<sup>194</sup> The policy provides the following statement in terms of cost recovery for special events:

<sup>186</sup> NSW Government, *Music festival licence guidelines*, p 3.

<sup>187</sup> The whole-of-government policy for applying user charges for major and special events provides a flexible strategic framework to assist both the event industry and government to determine the impact and application of user charges for major and special events. It ensures the adoption of a consistent user charges policy by agencies providing event services, including appropriate support for smaller events conducted by charitable and incorporated non-profit community organisations. NSW Department of Premier & Cabinet, *User charges policy* (2019), <https://www.dpc.nsw.gov.au/programs-and-services/events/user-charges-policy/>.

<sup>188</sup> NSW Department of Premier & Cabinet, *User charges policy* (2019), <https://www.dpc.nsw.gov.au/programs-and-services/events/user-charges-policy/>.

<sup>189</sup> Submission 44, NSW Government, p 5.

<sup>190</sup> NSW Ambulance, *Special and sporting events user charges* (February 2016), pp 1-2.

<sup>191</sup> Submission 44, NSW Government, p 5.

<sup>192</sup> Submission 44, NSW Government, pp 5-6.

<sup>193</sup> NSW Police Force, *Cost recovery and user charges policy* (February 2019), p 5.

<sup>194</sup> NSW Police Force, *Cost recovery and user charges policy* (February 2019).

Charges for special events are set to recover only avoidable cost in accordance with the New South Wales *Whole of Government Policy for the Application of User Charges for Major and Special Events*. Avoidable costs are those costs that would be avoided by the NSW Police Force if the good or service were not provided. The event organiser is not being charged for overhead costs that would have been incurred in running the non-commercial activities of the NSW Police Force.<sup>195</sup>

- 2.112** The NSW Government also highlighted that the NSW Police Force 'does not make a surplus for user pays activities' and fees are 'generally set to recover full cost'. It also advised that 'the level of user pays police resources is determined in consultation with the event organiser, on a risk-assessed basis', and is signed off at a senior level within the NSW Police Force.<sup>196</sup>
- 2.113** Stakeholders raised concerns regarding the inconsistencies and lack of clarity on the application of user charges, particularly for policing services, and the impact this has financially on the planning stages of an event.
- 2.114** Live Performance Australia acknowledged 'the importance of adequate medical and policing resources for music festivals', however, commented that 'the provisions of these resources differs between regions in New South Wales, creating inconsistency in approach'. It also highlighted concerns with the application in rural areas, suggesting that a risk assessment be conducted to 'ensure rural areas are not negatively impacted and local medical and policing resources are adequate to respond to any emergency during a peak time'.<sup>197</sup>
- 2.115** The Live Music Office indicated that 'there is not always a clear understanding from a music industry perspective as to how user paid policing for events operates in practice' and that the current system to determine the level of user charges for policing at major events 'lacks clarity and consistency, does not accurately reflect the level of risk posed by many events, and does not account for the experience or compliance history of the event producer'.<sup>198</sup>
- 2.116** The Australian Festivals Association also commented on the lack of consistency in relation to the application of user charges across different locations and the high cost of user charges in New South Wales:

Members have reported varying levels of user charges requirements across the state. In addition, members have identified user charges costs in NSW can be 3 times that of other states for an event of the same size/demographic. Issues like a lack of transparency, inconsistencies and increased costs become a significant barrier to new entrants in this industry.<sup>199</sup>

- 2.117** Don't Kill Live Music said that there has been 'rapid growth' in the cost of user pays policing costs with several festival operators informing them 'that these increases have been in the range of a 100-400 per cent increase' during the 2017-2018 period. Don't Kill Live Music explained that 'user pays police costs are not generally decided upon prior to ticket prices

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<sup>195</sup> NSW Police Force, *Cost recovery and user charges policy* (February 2019), p 7.

<sup>196</sup> Submission 44, NSW Government, p 6.

<sup>197</sup> Submission 30 Live Performance Australia, p 3.

<sup>198</sup> Submission 46, Live Music Office, p 19.

<sup>199</sup> Submission 28, Australia Festivals Association, pp 9-10.

being determined, and in many cases have been increased only weeks out from music festivals'.<sup>200</sup>

**2.118** Ms Adelle Robinson highlighted that given the user pay police bill in New South Wales is consistently two to three times higher per capita than events in Queensland and Victoria, this makes the New South Wales shows less profitable. Ms Robinson commented that 'I can honestly say that if I was given the opportunity to start a new event in any city in Australia in the current climate, I would chose Melbourne or Brisbane over Sydney'.<sup>201</sup>

**2.119** Further, Ms Adelle Robinson provided to the committee a comparative price for user pays police across different states in Australia from her 2018 Listen Out music festival, stating that:

- Sydney with a capacity of 35,000 patrons cost a total of \$171,927.46 + GST
- Melbourne with a capacity of 18,000 patrons cost a total of \$33,243.45 + GST
- Brisbane with a capacity of 18,000 patrons cost a total of \$42,217.50 + GST
- Perth with a capacity of 26,000 patrons cost a total of \$54,610.91 + GST.<sup>202</sup>

**2.120** Ms Ducrou provided an example, explaining that her Splendour in the Grass event held in New South Wales has a user charges paid bill in excess of \$200,000, in comparison to a similar event in Victoria, Falls Festival, where 'there is no user paid bill at all. In fact, I think the police that are provided are complementary'.<sup>203</sup>

**2.121** Cr Scott commented that the significant cost of policing services across New South Wales is impacting on the financial viability of music festivals, and is not only affecting event organisers but also councils who support those events financially:

It is also the case that particularly for music festivals, the increasing cost of user-pays policing has had an impact on their financial viability. The New South Wales police received more than \$20 million per year over the past two years for this service. As a result, we have seen music festivals facing dramatic increases year on year. Overall, this is a significant cost-shift to local government on behalf of the New South Wales Government.<sup>204</sup>

**2.122** Inner West Council highlighted that the 'lack of clarity and cost of user paid police' is a barrier to a thriving festivals sector, in particular the uncertainty around the application of the user charges with Local Area Command approaching this service differently area to area. However, Inner West Council noted that there is a fear that standardising the cost for user charges 'will only make the cost burden worse'.<sup>205</sup>

**2.123** The Australian Festivals Association indicated that policing issues are a 'high priority' for the industry and 'one that has been adding considerable pressure to businesses'. It suggested that

<sup>200</sup> Submission 39, Don't Kill Live Music, pp 4 and 16.

<sup>201</sup> Evidence, Ms Adelle Robinson, 13 August 2019, uncorrected transcript, p 23.

<sup>202</sup> Answers to questions on notice, Ms Adelle Robinson, Director, Fuzzy Operations, 20 August 2019, p 1.

<sup>203</sup> Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, p 29.

<sup>204</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 5.

<sup>205</sup> Submission 15, Inner West Council, p 2.

this be an item for discussion at the regulation roundtable, as recommended to be established by the Association.<sup>206</sup>

- 2.124** Likewise, the Live Music Office noted support for 'a financially sustainable industry standard for user-pays policing and medical services at events' developed in consultation with industry, as well as recognition on how user charges are applied within the planning time frames of an event and the financial impacts:

There must be a recognition in the operation of these processes that planning and budgeting for live music events and festivals requires a great deal of preparation, and with timelines that can have a lead in of 18 months to two years or longer. Ensuring that compliance history, clarity and consistency are primary considerations when assessing applications and not have further compliance measures applied imminently before the day arrives are crucial to a sustainable live music and performance events industry.<sup>207</sup>

- 2.125** Assistant Commissioner Michael Willing APM, Commander Central Metropolitan Region, NSW Police Force, told that committee that 'police user charges services are negotiated between police area commanders and operators at the request of festival operators who request user-charges police'.<sup>208</sup>

### **Oversight and discretionary power**

- 2.126** Stakeholders raised concerns with the committee in relation to the oversight and discretionary power of the Independent Liquor & Gaming Authority in determining applications for a music festival licence and questioned whether the intent of the regulations to reduce drug-related harm at festivals should be governed under the Liquor Act.
- 2.127** Several inquiry participants argued that discretionary power allows for subjective decisions to be made by the Independent Liquor & Gaming Authority.<sup>209</sup> The Australian Festivals Association commented that this has left the industry 'vulnerable and uncertain' and explained that 'without a clear framework for this process and full transparency, discretionary powers may result in unfair determinations'.<sup>210</sup>
- 2.128** The NSW Users and Aids Association highlighted its concerns that the regulations 'substantially increases the scope of unsuitable regulatory authorities' discretionary oversight' and provides the Independent Liquor & Gaming Authority with 'complete oversight of music festivals without allowing for ongoing oversight and collaboration with stakeholders'. It noted that the powers granted to the Authority and the NSW Police Force are 'broadly discretionary' and give these agencies, who are outside of the local areas, the power to make decisions

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<sup>206</sup> Submission 28, Australian Festivals Association, pp 9-10.

<sup>207</sup> Submission 46, Live Music Office, p 19.

<sup>208</sup> Evidence, Assistant Commissioner Michael Willing APM, Commander Central Metropolitan Region, NSW Police Force, 13 August 2019, uncorrected transcript, p 52.

<sup>209</sup> Submission 25, Name suppressed, p 1; Submission 28, Australian Festivals Association, p 1; Submission 30, Live Performance Australia, p 2; Submission 11, Name suppressed, p 1; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; Submission 24, NSW Users and Aids Association, pp 2-3.

<sup>210</sup> Submission 28, Australian Festivals Association, p 7.

without a full comprehension of 'local conditions and whether a decision to approve an application or Safety Management Plan is appropriate to local conditions'.<sup>211</sup>

- 2.129** Similarly, Mothership Events commented on the 'legislative shifts in governance that has shifted away powers from the immediate operational stakeholder agencies to regional agency representatives who are not aware of the 'boots on ground' knowledge of these events'.<sup>212</sup>
- 2.130** Cr Scott explained that prior to the introduction of the regulations councils were already regulating festivals and 'that councils need to continue to be able to best regulate festivals in their area', commenting that 'a one-size-fits-all approach' across the whole of New South Wales is not a great approach.<sup>213</sup>
- 2.131** In terms of the provision under the regulations whereby decisions of the Independent Liquor & Gaming Authority are not subject to review, the Foundation for Alcohol Research & Education told the committee that as a matter of principal it did not support this change. It argued that 'administrative decisions made by ILGA, in relation to music festival licences should be subject to review in the same way that other decisions made by ILGA are', and recommended the removal of the amendments made under the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.<sup>214</sup>
- 2.132** Stakeholders also argued that the Independent Liquor & Gaming Authority and Liquor & Gaming NSW are not the most appropriate authorities to be managing music festival licensing.
- 2.133** Local Government NSW noted that these authorities 'have a clear focus on functions related to liquor and gaming' and may not be 'the most suitable authorities to oversee music festivals in the context of addressing illicit drug-related harms'. It also highlighted that there may be festivals that do not sell alcohol at their events and so would not be covered under the new music festival licensing scheme that could still have a risk of drug-related harm. In this regard, Local Government NSW recommended that the NSW Government 'consider whether another agency, such as the Department of Planning, Industry and Environment, may provide more suitable oversight and coordination of music festival regulation'.<sup>215</sup>
- 2.134** The Australian Festivals Association also noted that the regulations fail to 'capture events that are not licensed to sell or supply alcohol, including BYO and alcohol-free events'.<sup>216</sup>
- 2.135** Cr Scott further emphasised this point providing an example of festivals targeted at younger people that do not involve alcohol:

A number of the festivals that councils run do not have any involvement with alcohol. We run a number of festivals—for example, in Youth Week—that are all targeted at people under 18 and they explicitly do not have an alcohol component. The numerous festivals that councils organise, regulate and sponsor across the State are largely not, in

<sup>211</sup> Submission 24, NSW Users and Aids Association, pp 2-3 and 7.

<sup>212</sup> Submission 8b, Mothership Events, p 1.

<sup>213</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, pp 7-8.

<sup>214</sup> Submission 31, Foundation for Alcohol Research & Education, p 4.

<sup>215</sup> Submission 26, Local Government NSW, pp 10-11.

<sup>216</sup> Submission 28, Australian Festivals Association, p 6.

any way, focused on the delivery of alcohol but rather on entertainment, culture, community engagement and economic activity for a main street or a small town. Therefore, they should be regulated in a way that understands the need to balance safety with economic development, cultural activity and fun. The delivery of alcohol is a minor component in a small number of festivals and should not be the driving regulatory approach.<sup>217</sup>

- 2.136** Regional Arts NSW strongly recommended 'a complete overhaul of all regulations pertaining to all festivals' and 'that a separate body be set within Create NSW to ensure that this vital sector for artists and audiences continues to thrive and grow in NSW'. It suggested that 'if an event is planning to sell liquor, it should simply apply for a liquor licence at a level that is determined according to the size of the planned event'.<sup>218</sup>
- 2.137** Other inquiry participants expressed the view that in general the regulation of music festivals should not fall under the Liquor Act, with several industry stakeholders highlighting the inappropriate use of the Liquor Act to address a 'complex health and safety issue'.<sup>219</sup>
- 2.138** The Australian Festivals Association commented that the intent of the new regulations, to address drug-related harm at music festivals, does not fit within the scope of the Liquor Act to 'regulate and control the sale, supply, and consumption of liquor'.<sup>220</sup> Ms Julia Robinson told the committee that 'it is a classic case of a square peg in a round hole' with the Liquor Act 'written to regulate the sale and supply of alcohol, not to address the harm caused by illicit drug use'.<sup>221</sup>
- 2.139** Ms Adelle Robinson, Director, Fuzzy Operations, commented that it is a real issue that the Liquor Act is attaching itself to the health guidelines.<sup>222</sup> Cr Scully had a similar view stating that it 'is a misaligned approach in that liquor licensing is being used to deal with a health and harm minimisation issue'.<sup>223</sup> Likewise, Ms Ducrou explained that alcohol is just one part of the operations of a festival and by linking festivals to a liquor licence has created confusion amongst the industry:

It would appear disingenuous to link festival licence to a liquor licence. It could be interpreted as a crude tool to control the festival's future but in reality it has created confusion and disharmony in our industry. As you can appreciate, the service of alcohol is just one part of many considerations when planning and presenting an event.<sup>224</sup>

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<sup>217</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 5.

<sup>218</sup> Submission 7, Regional Arts NSW, p 3.

<sup>219</sup> Submission 11, Name suppressed, p 1; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; Submission 28, Australian Festivals Association, p 1; Submission 30, Live Performance Australia, p 2.

<sup>220</sup> Submission 28, Australian Festivals Association, p 6.

<sup>221</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 21.

<sup>222</sup> Evidence, Ms Adelle Robinson, 13 August 2019, uncorrected transcript, p 30.

<sup>223</sup> Evidence, Cr Scully, 13 August 2019, uncorrected transcript, p 4.

<sup>224</sup> Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, p 21.

**2.140** A number of submission authors also highlighted that a liquor licence does not address the initial drug-related health concerns that were the reasoning behind the regulations.<sup>225</sup> Secret Sounds Group and Mothership Events both called for the management of sale and supply of liquor through existing suitable licence arrangements and the management of health-related risks at music festivals through NSW Health.<sup>226</sup>

**2.141** When questioned as to whether it is appropriate that the issue of looking at illicit substances should fall under a liquor licence, Mr Crawford explained that the reasons why it was placed under Liquor & Gaming NSW to manage was that they have similar issues with alcohol and already had a working structure:

The first thing I would say is that it emerged from work done late last year that some regulatory regime was required if there was to be regulation imposed on this industry and there was a certain obviousness about the fact that liquor and gaming have similar problems with alcohol in terms of licensing premises and outdoor events... Ultimately, there was already a structure down there and very highly competent people who had been there for a long time—who understand industry and both sides of the argument; how to work with people. That is why it ultimately merged with liquor and gaming.<sup>227</sup>

**2.142** In terms of the decision making process of the Independent Liquor & Gaming Authority, Mr Crawford advised that 'the Authority makes its decisions objectively and with regard only to relevant factors'.<sup>228</sup> Mr Crawford went on to outline that in making its decision, 'the Authority will consider what additional requirements an applicant would have to satisfy, compared with a different type of licence', and that 'this assessment invariably comes down to the mandatory requirements around having a safety management plan in place to deal with the risks associated with an event'.<sup>229</sup>

**2.143** Further, Mr Crawford noted the importance of the applicant having the opportunity to respond to the advice from NSW Health and the NSW Police Force, ensuring procedural fairness in the process:

Before the authority makes any of its decisions it has given each applicant the opportunity to consider the advice of New South Wales police and NSW Health, and to prepare their own written submissions, responding to that advice and then to make oral submissions before our board. To this end, the authority has ensured that every applicant has had the benefit of procedural fairness and that no decisions have been made before the process is complete. In fact, it has ensured that some festivals have not been required to apply for a music festival licence, notwithstanding initial advice to the contrary provided by Health and police.<sup>230</sup>

<sup>225</sup> Submission 18, Big Pineapple Music Festival, p 1; Submission 20, Select music Agency Pty Ltd, p 1; Submission 8, Mothership Events, p 1; Submission 32, The Hills Are Alive Group p 1; Submission 33, Unified Music Group, p 1; Submission 34, Red Hill Entertainment, p 1; Submission 25, name suppressed, p 1; Submission 32, Chugg Entertainment Pty Ltd, p 1; Submission 24, NSW Users and Aids Association, p 3.

<sup>226</sup> Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; see also submission 11, Name suppressed, p 1.

<sup>227</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 55.

<sup>228</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 43.

<sup>229</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 44.

<sup>230</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 44.

- 2.144** Regarding the issue that decisions by the Independent Liquor & Gaming Authority are not subject to review, Mr Crawford stated that 'it is a fairly thorough process and we are governed by administrative laws so there is procedural fairness at every level', commenting that through this process engagement with the applicant occurs at a very early stage and the Authority works with everyone to make sure everyone knows exactly what they require. Mr Crawford added that the Authority simply decides if an event needs a music festival licence and if so the event organiser is provided with a high level of assistance to go through that process:

What we do is to simply determine if they are suitable for a music festival licence. If not, they go back to a generic liquor licence. And weighing that up is a serious undertaking because of the hidden inherent risks involved. The music festival licence gives them Rolls Royce treatment through the department in terms of assistance, through medical, we take advice from health and from police—we take advice from them, they do not tell us what to do—and then we bundle all that up with the application and send it to the applicant and ask them to provide their own submissions.<sup>231</sup>

### **Committee comment**

- 2.145** The committee acknowledges stakeholder concerns regarding the uncertain atmosphere the regulations have generated. We note that there are a number of factors that have contributed to this level of uncertainty. The prime factor has been the inadequate consultation with industry in the development of the regulations, as discussed in the previous section. This has created a void of information for the festival industry, supporting industries and festival goers.
- 2.146** We note other factors contributing to the uncertainty has been a lack of clarity around the application of the definitions and criteria in the regulation, leaving festival organisers unclear as to whether their festival will be required to apply for a music festival licence or not. Similarly, we note that being identified as a 'high risk' festival and therefore requiring a music festival licence has caused reputational issues and may potentially impact negatively on ticket sales and hence future uncertainty for those festivals. Further, we note there is some level of uncertainty caused by the discretionary power of the Independent Liquor & Gaming Authority to determine music festival licence applications.
- 2.147** In addition, the committee recognises that there is an increase in the financial burden on music festival organisers as they are required to increase resources to meet the requirements of a licence. This, as pointed out by industry stakeholders, in turn may lead to organisers moving festivals to other states contributing to a level of uncertainty for the future of the music festival economy in New South Wales. We also note that within the state stakeholders have raised concerns with the inconsistent application of user pays charges.

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### **Finding 2**

That the implementation of the music festival licensing scheme under the Liquor Amendment (Music Festivals) Regulation 2019 has caused uncertainty in the music festival industry and in the broader music festival economy of New South Wales.

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<sup>231</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 53.

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**Finding 3**

That there has been significant and unsustainable cost increases for the music festival industry as a result of the changed regulatory environment, particularly high user pays policing charges.

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- 2.148** The committee believes that the uncertainty in the industry can be lessened through the regulatory roundtable recommended earlier in this chapter. The roundtable also provides a suitable forum for discussions on specific issues raised by industry stakeholders, such as user pays services, the definition of a music festival and concert, criteria used to determine what festivals require a music festival licence, council adoption of Health Guidelines, centralised policing for major events and harm reduction training.
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**Recommendation 2**

That the regulatory roundtable, to be established by the NSW Government as set out in Recommendation 1, include discussions on the issues raised by stakeholders during this inquiry, including but not limited to:

- user pays services;
  - definition of a music festival and concert;
  - criteria used to determine what festivals require a music festival licence;
  - council adoption of the NSW Health's *Guidelines for Music Festival Organisers: Music Festival Harm Reduction*
  - centralised policing for major events; and
  - harm reduction training.
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- 2.149** Specifically, with regard to the definitions and criteria used by Liquor & Gaming NSW and the Independent Liquor & Gaming Authority to establish if a music festival requires a licence under the regulation, the committee recommends that, if the current licensing scheme remains in place, that Liquor & Gaming NSW actively communicate the full criteria to relevant stakeholders, as per the regulation and the NSW Government *Music festival licence guidelines*. This may go some way in clarifying the applicability of the licence scheme.
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**Recommendation 3**

That, if the current licensing scheme remains in place, Liquor & Gaming NSW actively communicate to relevant stakeholders the full criteria a music festival must meet if it is to be referred to the Independent Liquor & Gaming Authority for a music festival licence determination, as per the Liquor Amendment (Music Festivals) Regulation 2019 and the NSW Government *Music festival licence guidelines*.

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## Drug and alcohol harm at music festivals

- 2.150** A key issue for inquiry participants was the need for harm minimisation as it relates to drug and alcohol use at music festivals.
- 2.151** The expert panel's report provided a number of statistics regarding the use of drugs by young people, including that:
- 43 per cent of Australians aged 14 years and older had used illicit drugs at least once in their life
  - since 2010, drug use has remained stable in people aged 20 to 29 years old in New South Wales, however studies at music festivals across Australia reflect a considerably higher rate of illicit drug use than in same-age groups in the general population
  - a study at a music festival in Australia in 2011 found 52 per cent of attendees had used illicit drugs at least once
  - most of the 1,808 drug-induced deaths in Australia in 2016 were not related to music festivals
  - a 2018 study of 'party drug' use showed that ecstasy and cannabis were the drugs of choice, with a decline seen in the use of ecstasy pills and an increase in the use of capsules and crystal instead.<sup>232</sup>
- 2.152** The NSW Government's submission detailed the drug related harm at 28 music festivals between 15 September 2018 and 31 May 2019, stating that there were 5 deaths, 29 pre-hospital intubations and 5 hospital intubations, 26 intensive care admissions and 23 additional hospital admissions.<sup>233</sup> It also advised that 212 festival patrons were transported from these 28 music festivals by NSW Ambulance to hospital, and of these 130 transports (61.3 per cent) were suspected to be drug or alcohol related.<sup>234</sup>
- 2.153** Further, the NSW Government advised that of the 11 music festivals held between 2015 and 2016 on land managed by the then Office of Environment and Heritage, 10.4 per cent of the 770 medical presentations were due to illicit drug use and 44 per cent of the 16 ambulance transfers were drug related.<sup>235</sup>
- 2.154** The NSW Government advised the committee that, following the deaths at music festivals, NSW Health invested significant resources to help keep people safe at music festivals, including:
- creating a team of five people to support the music festival response

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<sup>232</sup> NSW Government, *Keeping People Safe at Music Festivals* (2018), p 4.

<sup>233</sup> The NSW Government advised that the information in relation to hospital admissions relates largely to patients who were transported to hospital directly from the event by ambulance, and is therefore likely to be an underestimate of music festival-related hospital admissions. Music festival patrons may have presented to hospital without requiring ambulance transport, or been transported to hospital by ambulance sometime after they had left the event. Submission 44, NSW Government, p 7.

<sup>234</sup> Submission 44, NSW Government, p 7.

<sup>235</sup> Submission 44, NSW Government, p 7.

- providing expert clinical and toxicology advice, logistics support, and emergency management response support and resources
- during the peak festival season holding daily meetings within the NSW Ministry of Health to review issues identified at events and plan for upcoming events
- holding risk assessment, pre-brief and debrief meetings for events considered to have a substantial risk of drug related harms
- investing \$1.7 million to implement measures to reduce drug related harm, including enhancing social marketing and harm reduction messaging targeted to music festival patrons, strengthening peer support and education services, developing harm reduction guidelines for event organisers, developing and implementing strategies to make the music festival environment safer and developing clinical guidance and enhancing the onsite response to serious medical illness at events.<sup>236</sup>

**2.155** One of these initiatives has been the development of the *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*. The interim guidelines were published in December 2018, with an update published in February 2019 following consultation. At the time of the hearing, further updates to the guidelines were the subject of consultation with an anticipated publication of September 2019. Dr Cretikos informed the committee that the guidelines 'have been developed to support event organisers to deliver safer music festivals'.<sup>237</sup>

**2.156** Inquiry participants acknowledged the great work undertaken to the revised *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*. For example, Ms Adelle Robinson, Fuzzy Operations, indicated that the guidelines 'have evolved significantly since their first iteration' and commended the approach of NSW Health who 'have welcomed feedback and taken on board this feedback from the industry and also the medical provider sector'.<sup>238</sup>

**2.157** Ms Julia Robinson from the Australian Festivals Association commented that the guidelines 'are in a really great position to provide safety to our patrons at music festivals in their current capacity'.<sup>239</sup> Ms Robinson provided further comments on the standard of the guidelines in addressing harm reduction at music festivals:

The good news is that there has already been positive steps taken by NSW Health in the area of harm reduction and medical oversight at festivals. The latest consultation version of the guidelines for music festival harm reduction that has been submitted to the AFA is shaping up to be the most contemporary and comprehensive health-focused guidelines for music festival operators in Australia. It is likely that these guidelines will be widely used in other States as best practice, putting New South Wales back on the map.<sup>240</sup>

**2.158** The committee heard from three organisations during the inquiry within the drug and alcohol space; Harm Reduction Australia, the NSW Users and Aids Association and the Foundation

<sup>236</sup> Submission 44, NSW Government, p 4.

<sup>237</sup> Evidence, Dr Cretikos, 13 August 2019, uncorrected transcript, p 45.

<sup>238</sup> Evidence, Ms Adelle Robinson, 13 August 2019, uncorrected transcript, p 23.

<sup>239</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 27.

<sup>240</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 21.

for Alcohol Research & Education. They provided their views on the extent of drug and alcohol use at music festivals and provided suggestions on harm reduction at these events.

**2.159** Harm Reduction Australia, a volunteer organisation focused on advocating and delivering harm reduction policies, highlighted the reality that no matter what preventative measures are in place people will still use drugs:

Nonetheless, it is important to establish at the start that no matter how strong our desire for people not to use drugs or our efforts at education and prevention, people will use drugs. This is not to undervalue drug education and prevention programs but rather to be realistic about their impact and the evidence of their effectiveness, particularly in the long-term. We know from numerous surveys that a large proportion of people in Australia use drugs at some time in their lives. The majority enjoy the experience and encounter little, if any adverse effects. However, for too many people the illegality of the drugs will significantly raise the potential for many unnecessary harms.<sup>241</sup>

**2.160** Harm Reduction Australia further emphasised that saving lives should be 'paramount', noting that 'policies and practices to reduce harm, treat drug use and support people and families in our communities are meaningless when the person has died as a result of policies that increase harm'.<sup>242</sup>

**2.161** Harm Reduction Australia made the following recommendations in its submission to minimise the harm of drugs at music festivals:

- engage and consult with people who attend festivals, people who use drugs, festival organisers and festival health experts in considering the proposed amendments of the regulations
- pill testing services be permitted at music festivals at the discretion of festival organisers as part of their health and safety management plans
- the immediate cessation of the use of sniffer dogs at music festivals
- implement an integrated alert system for patrons with real time data on pill testing services, paramedics and other health and medical services in music festivals.<sup>243</sup>

**2.162** The NSW Users and Aids Association is a peer-based harm reduction organisation that represents people who use drugs in New South Wales and provides advice across a range of policy areas, including harm reduction service delivery. The Association also runs the festival-based peer education and harm reduction program DanceWize NSW,<sup>244</sup> which involves volunteers and experienced coordinators at festivals managing care space's, referring people to medical services and walking through the crowd looking for people who may be in trouble.<sup>245</sup>

**2.163** During the hearing, Dr Harrod from the NSW Users and Aids Association provided her opinion on the issue of illicit drug taking:

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<sup>241</sup> Submission 1, Harm Reduction Australia, p 1.

<sup>242</sup> Submission 1, Harm Reduction Australia, p 8.

<sup>243</sup> Submission 1, Harm Reduction Australia, pp 2 and 8.

<sup>244</sup> Submission 24, NSW Users and Aids Association, p 1.

<sup>245</sup> Evidence, Dr Harrod, 13 August 2019, uncorrected transcript, p 40.

In my mind, illicit drugs, like it or not, the reality of the society we live in is this is a way a lot of people enjoy themselves and connect with each other. The problem for me is yes, there are problems in the way people take illicit drugs—I would not deny that—and there are problems in the way we try to control drug use. The observation of our organisation and my observation is the more we try to crack down on things, the more people go sideways with them and the behaviour becomes more covert ... I do not expect us all to accept that drug use is part of life and it is a reality, but that is the position I am coming from and that is my experience.<sup>246</sup>

- 2.164** Dr Harrod further emphasised that the approach towards illicit drug use by 'saying we are going to crack down and crack down and say no is not working, and it is increasing harm', stating that it needs 'an evidence-based health-based approach'.<sup>247</sup>
- 2.165** The NSW Users and Aids Association submission also highlighted that 'to improve music festival safety, the government needs to take a considered approach that addresses the specific harms within festival environments' and this would include strengthening and increasing harm reduction policies and practices.<sup>248</sup>
- 2.166** It went on to express the view that the regulations 'have the potential to damage the vibrant NSW festival culture and do not go far enough in ensuring that vital harm reduction measures will be appropriately implemented'.<sup>249</sup> It made the following suggestions in terms of harm reduction at music festivals:
- ensure the definition of harm reduction services specify they be evidence based and include identified peers
  - require the provision of additional harm reduction strategies at festivals such as the inclusion of roving services (as detailed in the Music Festival Guidelines) and allow for the establishment of trial of drug checking/pill testing in these settings
  - include peak drug user organisations and harm reduction services to the list of agencies that the Authority may have regard to seek advice from in s61L(1)(a) [of the Liquor Amendment (Music Festivals) Regulation 2019] and ensure that harm reduction services are included in planning and event coordination
  - ensure that on the ground staff at festivals, including licensing compliance officers and police have sufficient training in the principles and practices of harm reduction to allow for effective implementation of these strategies.<sup>250</sup>
- 2.167** In terms of the consumption of alcohol at music festivals, the Foundation for Alcohol Research & Education, an independent, not-for-profit organisation working to reduce the significant harm caused by alcohol, emphasised that although the regulations are much more focused on illicit drug use, 'alcohol remains the most widely used and most harmful drug in Australia'.<sup>251</sup>

<sup>246</sup> Evidence, Dr Harrod, 13 August 2019, uncorrected transcript, p 37.

<sup>247</sup> Evidence, Dr Harrod, 13 August 2019, uncorrected transcript, p 37.

<sup>248</sup> Submission 24, NSW Users and Aids Association, p 5.

<sup>249</sup> Submission 24, NSW Users and Aids Association, p 2.

<sup>250</sup> Submission 24, NSW Users and Aids Association, p 6.

<sup>251</sup> Submission 31, Foundation for Alcohol Research & Education, p 1.

**2.168** Ms Hepworth from the Foundation stated that 'there are high rates of alcohol harm at music festivals' and that recent studies found that 'alcohol was the most common drug leading to emergency medical treatment among people who identify as festival-goers and additionally that many people are intoxicated before they consume illicit drugs'.<sup>252</sup> Ms Hepworth further explained that there is a culture of drinking alcohol at festivals that is encouraged by festival promoters:

Festivals often play on a certain culture that encourages out-of-body or intoxicating experiences and a lot of that is to sustain the alcohol sales which underpin that business model of festivals. So festivals absolutely have this interest in ensuring that people continue to purchase alcohol, which is one of the reasons they are such a high-risk vector for alcohol harms.<sup>253</sup>

**2.169** In its submission, the Foundation for Alcohol Research & Education made a number of recommendations particularly around the consumption and harm of alcohol at music festivals, including:

- that additional research be commissioned to gain a better understanding of the range and magnitude of alcohol (and drug) harm at NSW music festivals
- that harm minimisation be included as an object in the Liquor Act 2007
- that amendments be made to the Liquor Regulation 2018 to include a definition of harm relating to the sale, supply and consumption of alcohol
- to introduce special licence conditions for the music festival licence, including prohibiting the sale of high alcohol content beverages and shots and a per-person sale limit of no more than four alcoholic drinks at one time<sup>254</sup>
- integrating some form of the violent venue system that already exists in New South Wales to incentivise festivals to provide best harm reduction services for festival-goers
- breaking the insidious link between alcohol promotion and festival sponsorship.<sup>255</sup>

**2.170** Other inquiry participants provided their views on minimising the harm of alcohol and drugs at music festivals.

**2.171** The Australia Festivals Association recommended a significant increase in investment for peer-based harm reduction services at music festivals,<sup>256</sup> noting that the Association's members 'have already pioneered these strategies to bolster the onsite activities and we invite the committee to consult with market-leaders in this space to understand these initiatives'.<sup>257</sup> It

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<sup>252</sup> Evidence, Ms Hepworth, 13 August 2019, uncorrected transcript, p 35.

<sup>253</sup> Evidence, Ms Hepworth, 13 August 2019, uncorrected transcript, p 39.

<sup>254</sup> Submission 31, Foundation for Alcohol Research & Education, p 4.

<sup>255</sup> Evidence, Ms Hepworth, 13 August 2019, uncorrected transcript, p 35.

<sup>256</sup> This was also supported by submission 18, Big Pineapple Music Festivals, p 1; Submission 20, Select Music Agency Pty Ltd, p 1; Submission 23, Chugg Entertainment Pty Ltd, p 1; Submission 25, Name suppressed, p 1; Submission 8, Mothership Events, p 1; Submission 32, The Hills Are Alive Group, p 1; Submission 33, Unified Music group, p 1; Submission 34, Red Hill Entertainment, p 1; Submission 19, Secret Sounds Group, p 1; Submission 30, Live Performance Australia, p 4; Submission 454, MusicNSW, p 2.

<sup>257</sup> Submission 28, Australian Festivals Association, p 9.

also recommended further research be undertaken in this space to understand the drug related issues at music festivals, but also amongst the wider community:

Commission regular research into recreational drug use to adopt an evidence-based, health-focused approach to drug regulation. The recent drug-related issues are a reflection of a broader societal health issue that deserves greater understanding to ensure the appropriate responses are being implemented. We need to understand drug use behavior better, identify significant intervention points, better coordinate between regulators, health, police, businesses and broader communities, and make sure that the health and safety of Australians is the ultimate priority.<sup>258</sup>

- 2.172** Live Performance Australia had a similar view, acknowledging 'the importance of harm minimisation related to drug and alcohol use', and recommending that these issues be 'considered in the context of broader community health and safety initiatives and not just characterised as a problem that occurs at music festivals'.<sup>259</sup>
- 2.173** Regional Arts NSW commented that 'no festival organiser ever wishes a death to occur during their event' and that 'all work extremely hard to provide a safe and enjoyable environment for their audiences'. It contended that prohibiting drugs does not work and that 'this whole issue should be restated as a health issue and the government should support pill testing'.<sup>260</sup>
- 2.174** In terms of pill testing, several inquiry participants called for pill testing services to be made available at music festivals.<sup>261</sup>
- 2.175** A strong advocate in this space was the City of Sydney. In its submission the council provided details of a demonstration it held at Sydney Town Hall on 11 June 2019, where a consortium of harm reduction advocacy groups conducted pill testing. The aim of the demonstration was to assist the current public education campaign to promote harm reduction initiatives at festivals and to advocate to the state government about the role of pill testing in harm minimisation.<sup>262</sup>
- 2.176** At the hearing, Cr Moore emphasised her concerns that the 'New South Wales law will not currently permit pill testing and counselling as a harm reduction measure', indicating that 'simply relying upon the "just say no" message does not work for a lot of people and can have the opposite effect when delivered by middle-aged people in suits and uniforms'.<sup>263</sup>

<sup>258</sup> Submission 28, Australian Festivals Association, p 10.

<sup>259</sup> Submission 30, Live Performance Australia, pp 3-4.

<sup>260</sup> Submission 7, Regional Arts NSW, pp 2-3.

<sup>261</sup> Submission 1, Harm Reduction Australia, pp 2-8; Submission 15, Inner West Council, p 1; Submission 24, NSW Users and Aids Association, p 6; Submission 7, Regional Arts NSW, p 3; Submission 9, City of Sydney, pp 4-5; Submission 27, Reason Australia, p 1; Submission 28, Australian Festivals Association, pp 10-11; Submission 30, Live Performance Australia, p 4; Submission 32, The Hills Are Alive Group, p 1; Submission 11, Name suppressed, p 1; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; Submission 45, MusicNSW, p 2.

<sup>262</sup> Submission 9, City of Sydney, pp 4-5.

<sup>263</sup> Evidence, Cr Moore, 13 August 2019, uncorrected transcript, p 2.

- 2.177** The Australian Festivals Association acknowledged that pill-testing is not the only answer, 'but it is a crucial part of a broader harm reduction strategy that prioritises people's health and safety, over criminality or laws'.<sup>264</sup>
- 2.178** Another recommendation called for by inquiry participants was the establishment of a Drug Summit.<sup>265</sup>
- 2.179** The City of Sydney explained that a Drug Summit would bring together 'Members of Parliament, experts in the medical and social aspects of drug use, community representatives, families, and people with experience of drug use and its effects'. It went on to suggest that the Drug Summit should:
- i. examine and make recommendations on actions which could contribute to reducing and ending the harm from illicit drug use; and
  - ii. specifically consider illicit drug testing, including hearing evidence on the nature and effectiveness of illicit drug testing and making recommendations on the value of providing for illicit drug testing and how an effective drug testing trial may be conducted in NSW.<sup>266</sup>
- 2.180** Further, Cr Moore told the committee that 'times have changed and drugs have changed and there are new issues that need to be addressed', arguing that this would be best done by holding a drug summit:
- Another drug summit could examine all the possible ideas that could contribute to minimising the harm from illicit drug use. It could consider whether existing approaches are working effectively or whether they are perversely increasing the risk of harm. This includes measures to ensure safety and reduce harm, not just at music festivals but more broadly. I urge the Committee to make recommendations in support of a new drug summit until testing demonstration to ensure that policy relating to music festivals and drug use is evidence-based, practical and effective.<sup>267</sup>
- 2.181** Inner West Council advised that it had already been advocating for a drug summit, writing to the Prime Minister and Federal Leader of the Opposition, the Premier and NSW Leader of the Opposition, to support 'an honest ongoing drug education campaign', highlighting that 'progressive drug reform is interlinked with providing a safe festivals sector'.<sup>268</sup>

### Committee comment

- 2.182** The committee, like inquiry participants, commends the work of NSW Health in developing the *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*, and we acknowledge and support the ongoing consultation NSW Health is undertaking to continually

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<sup>264</sup> Submission 28, Australian Festivals Association, pp 11.

<sup>265</sup> Submission 9, City of Sydney, p 6; Submission 15, Inner West Council, pp 1 and 3; Submission 51, Club Music Advisory Group, p 2; Submission 46, Live Music Office, p 22.

<sup>266</sup> Submission 9, City of Sydney, p 6.

<sup>267</sup> Evidence, Cr Moore, 13 August 2019, uncorrected transcript, p 2.

<sup>268</sup> Submission 15, Inner West Council, p 1.

improve these guidelines with the prime aim of addressing drug and alcohol related issues and making music festivals safer.

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#### **Finding 4**

That the development and continual improvement of the NSW Health *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction* is a positive step in addressing drug and alcohol related issues at music festivals.

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- 2.183** We note that some inquiry participants have raised the issue of pill testing and calls for a drug summit. These issues are outside the terms of reference for this inquiry and are more appropriately considered in the domain of the NSW Coroner as part of the inquest into the recent deaths at music festivals. The committee notes that the NSW Coroner is yet to hand down the findings and recommendations for this inquest. When this does occur we urge the NSW Government to take the findings and recommendations to the regulatory roundtable for discussion prior to the NSW Government responding to the Coroner.
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#### **Recommendation 4**

That the NSW Government take the findings and recommendations of the NSW Coroner's report into deaths at music festivals to the regulatory roundtable for discussion, prior to the NSW Government responding to the Coroner.

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### **Calls for disallowance**

- 2.184** The majority of inquiry participants who provided submissions or appeared before the committee called for the disallowance of the regulations,<sup>269</sup> with many arguing that the sale and supply of liquor should be managed through existing suitable licensing arrangements, such as the Limited Licence – Special Event,<sup>270</sup> and that the health and safety related issues be

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<sup>269</sup> Submission 51, Club Music Advisory Group, p 1; Submission 9, City of Sydney, p 2; Submission 11, Name suppressed, p 1; Submission 18, Big Pineapple Music Festival, p 1; Submission 20, Select Music Agency Pty Ltd, p 1; Submission 23, Chugg Entertainment Pty Ltd, p 1; Submission 25, Name suppressed, p 1; Submission 8, Mothership Events, p 1; Submission 32, The Hills Are Alive Group, p 1; Submission 33, Unified Music Group, p 1; Submission 34, Red Hill Entertainment, p 1; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; Submission 28, Australian Festivals Association, p 2; Submission 30, Live Performance Australia, p 2; Submission 35, Ms Nicole Hetherington, p 1; Submission 39, Don't Kill Live Music, p 1; Submission 40, Name suppressed, p1; Submission 41, Mr Jahra Mortimer, p 1; Submission 42, Jessica Harris, p 1; Submission 45, MusicNSW, p 2; Submission 49, Live Nation Australasia, p 2.

<sup>270</sup> Submission 45, MusicNSW, p 2; Submission 30, Live Performance Australia, p 4; Submission 28, Australian Festivals Association, p 2; Submission 19, Secret Sounds Group, p 1; Submission 8a, Mothership Events, p 1; Submission 11, Name suppressed, p 1;

managed under NSW Health's *Guidelines for Music Festival Organisers: Music Festival Harm Reduction*.<sup>271</sup>

**2.185** A key voice calling for the disallowance of the regulations was the Australian Festivals Association who explained why the new music festival licensing regulations are not the answer:

The Music Festival Regulations are not the solution. Festivals are complex. They cross multiple regulatory jurisdictions and impact various operational agencies. To add to the complexity, festivals comprise patron groups with changing trends and nuances that require organisers to be agile and flexible in managing large crowds of these patrons. A regulatory solution can only be derived from meaningful consultation with all aspects of this industry. We want [to] see music festivals continue to attract fans to metropolitan and regional communities, while ensuring patron safety remains the top priority. Impacts on the economy, tourism, labour and sociocultural areas need to be considered as part of any regulatory approach that aims to address patron safety or the operation of festivals.<sup>272</sup>

**2.186** At the hearing, Ms Julia Robinson, General Manager of the Association, continued to advocate for the disallowance of the regulations and the establishment of a regulatory roundtable. Ms Julia Robinson acknowledged that there is no doubt concerns 'about the pending summer festival season and having in place the necessary controls to address safety concerns', however, expressed the view that these recommendations would ensure the 'appropriate agencies can consult with key industry contacts to deliver better regulations that strike the right balance between safety, community, culture and economic concerns'.<sup>273</sup> Ms Robinson added that 'from a timeline perspective ahead of the summer season, what we would not want to see is another band aid or quick-fix sort of response to what are complex issues'.<sup>274</sup>

**2.187** Other stakeholders who appeared before the committee emphasised their support for the disallowance of the regulations:

- Ms Richardson from Live Performance Australia contended their 'serious concerns about the new regulation' and strongly supported its disallowance.<sup>275</sup>
- Ms Adelle Robinson also asked the committee to disallow the regulations and instead 'work together to make events safe and thriving in New South Wales'.<sup>276</sup>
- Representing local government, Cr Scott emphasised to the committee that councils have not welcomed the new regulations and would support their repeal.<sup>277</sup>

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<sup>271</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 27; Evidence, Ms Adelle Robinson, 13 August 2019, uncorrected transcript, p 35; Evidence, Ms Ducrou, 13 August 2019, uncorrected transcript, p 35; Submission 28, Australian Festivals Association, p 2; Submission 30, Live Performance Australia, p 4; Submission 45, MusicNSW, p 2.

<sup>272</sup> Submission 28, Australian Festivals Association, p 11.

<sup>273</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 21.

<sup>274</sup> Evidence, Ms Julia Robinson, 13 August 2019, uncorrected transcript, p 27.

<sup>275</sup> Evidence, Ms Richardson, 13 August 2019, uncorrected transcript, p 22.

<sup>276</sup> Evidence, Ms Adelle Robinson, uncorrected transcript, p 24.

<sup>277</sup> Evidence, Cr Scott, 13 August 2019, uncorrected transcript, p 8.

**2.188** However, Ms Hepworth from the Foundation for Alcohol Research & Education had a different view, commenting that the regulations are an improvement to what was there before to ensure safety at music festivals and may only need some further refining:

I definitely think that the regulation as it stands is an improvement in what we have had before. In particular, the key thing that we appreciate about the regulation is that ability for festivals to be compelled to ensure that there is a safety management plan in place and that safety management plan must be in consultation with groups such as NSW Health. Having said that, we would obviously recommend that there is scope for this licence to be refined and certainly acknowledge that there have been hiccups in its implementation. But we would not advocate scrapping it, especially not with something else in place that would ensure that those harm reduction measures were in place.<sup>278</sup>

**2.189** At the hearing, the NSW Government representatives reflected on the implications if the new regulations were disallowed.

**2.190** Mr Crawford from the Independent Liquor & Gaming Authority NSW stated that 'the Authority believes that the licensing scheme that has been implemented strikes a balance and gives operators the support they need to run safe and enjoyable events'.<sup>279</sup> Mr Crawford added that if the regulations were disallowed there would be no framework for the agencies to work under which has been much more of an improvement than what was in place before:

The real benefit from our perspective is that this regulation is a framework for three government agencies to work together to get the best possible outcome. Take that away and there is no framework. There was no framework before this was put up, so it is a quite valuable tool for us all getting together and everyone knowing the ground rules. I think it has been quite amazing and hopefully we will get some good outcomes over the summer. It is the framework, and if you take that away I do not know where we go.<sup>280</sup>

**2.191** Ms Webb from Liquor & Gaming NSW advised that without the regulations it could lead to taking 'a very risk-averse approach to the licensing decisions and, because we cannot have this dialogue with health and police and looking at the safety management plans, it may be that liquor and gaming decides to be very risk averse and not grant licences'.<sup>281</sup> In addition, Ms Webb noted that the new 'licensing process is intended to encourage best practice' and once music festival operators have gone through the process and understand what is required of them 'then it hopefully will just become the way they do business and each time should be easier for them to obtain the licence'.<sup>282</sup>

**2.192** Further to this, Ms Mann argued that having a music festival licence 'is not a huge impost' and festival operators as part of this process 'are being required to do things which are very reasonable and they are probably doing already', with dedicated resources and support from the government agencies. Ms Mann acknowledged that improvements could be made in

<sup>278</sup> Evidence, Ms Hepworth, 13 August 2019, uncorrected transcript, p 36.

<sup>279</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, pp 43-44.

<sup>280</sup> Evidence, Mr Crawford, 13 August 2019, uncorrected transcript, p 63.

<sup>281</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, pp 62-63.

<sup>282</sup> Evidence, Ms Webb, 13 August 2019, uncorrected transcript, p 58.

consultation with industry stakeholders, but emphasised that disallowing the regulations is not the best option:

Yes, there are probably improvements that could be made, but to remove it, to disallow it now takes us back to the position that we were in before, which is really not ideal. I think we are very committed to working with the industry. We understand that they would like to see improvements and changes and we absolutely want to do that, but to remove this and have effectively what we had before I just think is a bad outcome.<sup>283</sup>

**2.193** In terms of what the new regulations have meant for NSW Health and the work they do in supporting safer music festivals, Dr Cretikos advised that the regulatory framework offers 'the mechanism to obtain information in relation to the consistency with which the guidelines are being considered in relation to the safety management plans'. Dr Cretikos clarified that the guidelines are simply guidelines, whereas the regulations provide the basis for NSW Health to be able to assess the safety management plans in line with the risk of the event.<sup>284</sup> Dr Cretikos further reflected on the benefits of the new regulations and what had been occurring previously:

We found the regulatory framework to be a helpful approach in that it ensures that Health is engaged early, particularly for the festivals that are of concern to us. Before this framework there was no mechanism for Health to be engaged systematically as part of the planning process. In many cases, Ambulance would have been engaged, particularly around the deployment of ambulances to events, but in many events local health districts may not have been engaged or may have only been engaged at a very late stage. So we do welcome the opportunity to engage from both an ambulance perspective and from a local health district perspective to ensure that we can provide the support and advice that is required, and so without that regulatory framework the guidelines can provide more consistent guidance and an approach to planning, but that does not ensure the engagement with Health that we would really like to see.<sup>285</sup>

**2.194** Assistant Commissioner Willing supported the regulations and what they encompass and was committed to working with industry to continue to improve the safety at music festivals:

In relation to the matters before the Committee we recognise and support the benefits of the regulations under consideration, including the requirement for operators to provide comprehensive plans, especially in relation to health risks, the involvement of NSW Health to act as an oversight in relation to those plans and the requirement to lodge an application 90 days prior to the event in a process that allows for the opportunity to draw on expert advice on how to improve the operator's medical, drug and alcohol management plans for their event. The NSW Police Force is keen to continue to work with industry and recognises that there is a committed focus by industry on the development of informed and unified strategies in response to event liquor licensing, harm minimisation practices, even medical guidelines and awareness of public safety issues.<sup>286</sup>

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<sup>283</sup> Evidence, Ms Mann, 13 August 2019, uncorrected transcript, p 58.

<sup>284</sup> Evidence, Dr Cretikos, 13 August 2019, uncorrected transcript, p 63.

<sup>285</sup> Evidence, Dr Cretikos, 13 August 2019, uncorrected transcript, p 58.

<sup>286</sup> Evidence, Assistant Commissioner Willing, 13 August 2019, uncorrected transcript, p 45.

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**Committee comment**

- 2.195** The committee recognises the concerns that have been raised by stakeholders throughout this inquiry and acknowledges the call for the disallowance of the regulations.
- 2.196** The committee notes that the regulations have not been implemented smoothly, and as mentioned earlier, with very little engagement with the industry. This has caused a great deal of uncertainty across the sector. However, given the severity of the situation, in which five people tragically lost their lives, we note that the NSW Government needed to act fast to put measures in place to keep people safe at music festivals.
- 2.197** We also note that although the regulations have provided a framework for collaboration between the relevant government agencies, they are not supported by the industry. The committee therefore recommends that the Legislative Council disallow the regulations.

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**Recommendation 5**

That, based on broad industry support, the Legislative Council disallow the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.

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- 2.198** Should the regulations be disallowed, the committee urges the NSW Government to put in place immediate measures to assist industry in the upcoming music festival season. We believe that the regulatory roundtable, as set out in Recommendation 1, will assist with this process.
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**Recommendation 6**

That the NSW Government put in place immediate measures to assist industry in the upcoming music festival season, including establishing the regulatory roundtable as set out in Recommendation 1.

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# Appendix 1 Liquor Amendment (Music Festivals) Regulation 2019



## Liquor Amendment (Music Festivals) Regulation 2019

under the  
Liquor Act 2007

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Liquor Act 2007*.

PAUL TOOLE, MP  
Minister for Racing

### Explanatory note

The object of this Regulation is to amend the *Liquor Regulation 2018* to provide for a new type of liquor licence for music festivals and provide for the Independent Liquor and Gaming Authority to direct particular applicants to apply for a music festival licence. A music festival licence will authorise the licensee to sell or supply liquor on licensed premises, subject to conditions. The Regulation will provide also for the training requirements of licensees, managers, approved agents and supervisors for licensed premises under a music festival licence.

This Regulation is made under the *Liquor Act 2007*, including sections 10 (1) (g), 11 (1) (b), 40 (4) (b) and (d), 41 (3), 45 (4), 55 (5), 60A (3) (b) and 159 (the general regulation-making power).

Liquor Amendment (Music Festivals) Regulation 2019 [NSW]

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## **Liquor Amendment (Music Festivals) Regulation 2019**

under the

Liquor Act 2007

### **1 Name of Regulation**

This Regulation is the *Liquor Amendment (Music Festivals) Regulation 2019*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

**Schedule 1 Amendment of Liquor Regulation 2018****[1] Clause 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*approved agent* means an agent approved in accordance with Subdivision 1 of Division 5 of Part 4A.

*Health Secretary* means the Secretary of the Ministry of Health.

*music festival*—see clause 61B.

*music festival licence* means a music festival licence granted under Part 4A.

*replacement supervisor* means a person nominated in accordance with clause 61Q.

**[2] Clause 6 Licence transfer endorsement fees**

Omit clause 6 (c). Insert instead:

- (c) 2.7 fee units for a music festival licence,
- (d) 2.16 fee units for any other type of licence.

**[3] Clause 21 Occupiers of neighbouring premises to be notified of application**

Insert at the end of clause 21 (5) (b):

- , or
- (c) a music festival licence.

**[4] Clause 23 Notice relating to application to be fixed to premises**

Insert “or a music festival licence” after “limited licence” in clause 23 (6).

**[5] Clause 30 Submissions in relation to applications**

Insert after clause 30 (4) (d):

- (e) a music festival licence.

**[6] Clause 35**

Omit the clause. Insert instead:

**35 Information relating to persons interested in licensee’s business**

Section 41 of the Act does not apply in relation to an application for:

- (a) a limited licence, or
- (b) a music festival licence.

**[7] Clause 35A**

Insert before clause 36:

**35A Authority may require music festival licence**

- (1) For the purposes of section 159 (2A) of the Act, if the Authority is of the opinion that the sale or supply of liquor for an event that is a music festival would more appropriately be provided under a music festival licence, the following licences must not be granted:

- (a) a hotel licence,
- (b) a club licence,
- (c) a small bar licence,

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Schedule 1 Amendment of Liquor Regulation 2018

- (d) an on-premises licence,
  - (e) a packaged liquor licence,
  - (f) a producer/wholesaler licence,
  - (g) a limited licence,
  - (h) a type of licence prescribed under section 10 (1) (g) of the Act that is not a music festival licence.
- (2) Without limiting the matters the Authority may consider in forming an opinion that the sale or supply of liquor would more appropriately be provided under a music festival licence, the Authority may have regard to matters including:
- (a) any advice from the Health Secretary or the Commissioner of Police that the health risks of the music festival would be more appropriately addressed by a music festival licence than another type of licence, and
  - (b) whether a death has occurred in the State on a previous occasion at the music festival or in connection with the music festival in the last 3 years, and
  - (c) any submission to the Authority that may have been made by a licensee or an applicant for a licence as to the reasons the licensee or applicant should sell or supply liquor under a licence that is not a music festival licence.

**[8] Clause 44A**

Insert after clause 44:

**44A Prohibition on sales during music festivals**

- (1) It is a condition of a licence that a licensee must not sell or supply liquor at a music festival if the Authority has decided under clause 35A that the music festival requires a music festival licence.
- (2) This clause does not apply to a music festival licence.

**[9] Part 4A**

Insert after Part 4:

**Part 4A Music festival licences****Division 1 Interpretation****61A Definitions**

In this Part:

*concert* means a music-focused event that uses a single stage, is proposed to be held over a period of less than 5 hours and has not more than 2 headlining performers and not more than 4 performers in total, including supporting performers.*harm reduction area* means an area referred to in clause 61I (1) (a).*incident register* means an incident register maintained in accordance with clause 61Y.*Music Festival Licence Guidelines* means the *Music Festival Licence Guidelines* published by the Authority, as in force from time to time.*music festival licensee* means a person who holds a music festival licence.*performer* includes a group, band or act.

*safety management plan* means:

- (a) for the purposes of Divisions 3 and 4—the most recent safety management plan for the music festival licence supplied to the Authority, or
- (b) for the purposes of Divisions 6 and 8:
  - (i) if a change has been accepted in accordance with clause 61ZC—the safety management plan accepted by the Authority under that clause, or
  - (ii) otherwise—the safety management plan at the time the music festival licence is granted.

#### **61B Meaning of “music festival”**

A *music festival* means an event, other than a concert, that:

- (a) is music-focused or dance-focused, and
- (b) has performances by a series of persons or groups that are engaged to play or perform to live or pre-recorded music, or to provide another form of musical or live entertainment, and
- (c) is held within a defined area, and
- (d) is attended by 2,000 or more people, and
- (e) is a ticketed event.

### **Division 2 Requirement to hold music festival licence**

#### **61C Music festival licence**

For the purposes of section 10 (1) (g) of the Act, a music festival licence is prescribed.

#### **61D Grant of music festival licence and sale or supply of liquor**

- (1) The Authority may grant a music festival licence that authorises the licensee to sell or supply liquor on the premises specified in the licence only:
  - (a) for consumption on the premises, and
  - (b) on a day or days specified in the licence that are a day or days on which the music festival is held.
- (2) The following requirements are to be specified in the licence:
  - (a) the times when liquor may be sold or supplied under the licence,
  - (b) the parts of the premises where liquor must not be consumed,
  - (c) the parts of the premises where liquor is not to be sold or supplied.

### **Division 3 Application for music festival licence**

#### **61E Requirement for application**

For the purposes of section 40 (4) (d) of the Act, the applicant for a music festival licence must have entered into an agreement with the owner of the premises the subject of the application to hold a music festival on the premises.

#### **61F Information required for application**

For the purposes of section 40 (4) (b) of the Act, the following are prescribed for an application for a music festival licence:

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- (a) information about the nomination of an agent for the purposes of Subdivision 1 of Division 5,
- (b) a safety management plan checklist in the form approved by the Authority,
- (c) a safety management plan that includes the information specified in clause 61I.

**61G Time for application**

- (1) An application for a music festival licence must be made at least 90 days before the first day of the music festival.
- (2) However, if an application is made less than 90 days before the first day of the music festival, the application may be granted if the Authority is satisfied it has enough time to properly consider the application.

**61H Fees for application**

For the purposes of section 40 (4) (b) of the Act, the fee for an application for a music festival licence is the fee for a music festival licence in Part 1 of Schedule 1.

**61I Information to be included in safety management plan**

- (1) The safety management plan must specify the following:
  - (a) a site plan for the premises showing entry points, exit points, areas of the premises and the proposed uses of each area, including the areas for the festival that will be used for the following purposes (each a *harm reduction area*):
    - (i) an area for providing access to medical assistance and supplies,
    - (ii) an area for providing supervised relaxation spaces for patrons,
  - (b) information about the areas for the entry to and exit from the licensed premises for a police vehicle or an emergency vehicle,
  - (c) information about evacuation points for the licensed premises,
  - (d) information about the entry and exit points for patrons to access the licensed premises, including information about any fencing, structures or other boundaries that will define the area of the licensed premises to limit people from entering or exiting the premises,
  - (e) information about signage intended to indicate the location of health services and water stations on the licensed premises,
  - (f) information about proposed health services and harm reduction initiatives that will be provided by the applicant for the festival,
  - (g) information about whether the health services and harm reduction initiatives to be provided at the festival by the applicant are consistent with the *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction*, published by NSW Ministry of Health, as in force from time to time,
  - (h) information about persons providing health services at the festival and the qualifications and work experience of those persons,
  - (i) information about proposed strategies to deal with the preservation of a crime scene on the premises,
  - (j) information about a proposed replacement supervisor as referred to in clause 61Q or a proposed approved agent, if any,

- (k) any other information the Authority considers appropriate for the premises or the festival that is included in the checklist referred to in clause 61F (b) or the Music Festival Licence Guidelines.
- (2) In this clause:
  - emergency vehicle* has the same meaning as in the *Road Rules 2014*.
  - police vehicle* has the same meaning as in the *Road Rules 2014*.

#### **Division 4 Assessment of application for music festival licence**

##### **61J Assessment of application**

The Authority must complete an assessment of a music festival licence application in accordance with the assessment criteria specified in this Division.

##### **61K Assessment criteria**

- (1) The Authority may have regard to the following assessment criteria:
  - (a) the circumstances of any prescribed event that occurred at a music festival, or an event related to a music festival, for which the applicant was the licensee, manager or approved agent, in the 3 years immediately before the date on which the application for the music festival licence was made,
  - (b) the safety management plan for the music festival,
  - (c) the number of tickets to be made available for sale for the music festival,
  - (d) the targeted age demographic of the music festival,
  - (e) the anticipated weather conditions for the time the music festival is proposed to be held,
  - (f) the type of music featured at the music festival,
  - (g) the assessment criteria set out in the Music Festival Licence Guidelines.
- (2) In this clause:
  - intensive care unit* means a unit for the observation, care and treatment of patients with life threatening or potentially life threatening illnesses, injuries or complications, from which recovery is possible, that is specially staffed and equipped for that purpose.
  - prescribed event* means the death of a person, or admission to an intensive care unit, that is reasonably suspected to be because of alcohol or drug use, or caused by crowd behaviour or improper safety management.

##### **61L Consultation for assessment**

- (1) For the purpose of the assessment, the Authority may have regard to:
  - (a) advice from the following:
    - (i) the Commissioner of Police,
    - (ii) Fire and Rescue NSW,
    - (iii) NSW Rural Fire Service,
    - (iv) the Health Secretary,
    - (v) the council of the local government area in which the premises that are the subject of the application are situated, and
  - (b) a submission received by the Authority in relation to the application under clause 30 (4).

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- (2) If the Authority receives advice under subclause (1) (a) that the application or the safety management plan does not suitably address the risks associated with the music festival or premises, the advice must be provided to the applicant.

**61M Decision to grant licence**

- (1) The Authority may grant a music festival licence only if the Authority is satisfied from the assessment, and any resulting changes made to the safety management plan or application in response to comments by the Authority, that the risks associated with the music festival and the premises that are the subject of the application are suitably addressed by:
  - (a) the application, and
  - (b) the safety management plan, and
  - (c) any other information provided by the applicant.
- (2) In refusing to grant a music festival licence, the Authority may have regard to advice provided under clause 61L.

**Division 5 Supervision under music festival licence****Subdivision 1 Appointment of approved agent****61N Condition of approval of approved agent**

- (1) A music festival licensee may appoint an individual as the licensee's agent to sell or supply liquor under a music festival licence.
- (2) It is a condition of the licence that the agent be approved by the Authority under this Subdivision.

**61O Application to be approved agent**

- (1) An application for the Authority's approval of an individual to be an approved agent for the sale or supply of liquor under a music festival licence must be in the form and manner approved by the Authority.
- (2) The Authority may grant the application or refuse to grant the application.

**61P Person who may be appointed as approved agent**

- (1) The Authority must not approve an individual to be an approved agent unless the Authority is satisfied that the individual:
  - (a) is a fit and proper person to sell or supply liquor in accordance with the music festival licence, and
  - (b) understands the individual's responsibilities in relation to, and is capable of implementing, practices in place at the licensed premises for ensuring the responsible sale, supply and service of alcohol and the prevention of intoxication, and
  - (c) is currently a licensee or manager, and
  - (d) has not been the subject of proceedings under Part 9, 9A or 10 of the Act.
- (2) Without limiting subclause (1) (a), in determining whether a person is a fit and proper person to be an approved agent, the Authority is to consider whether the person:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to sell or supply liquor under the licence.

- (3) For the purposes of subclause (1) (a), a person is not a fit and proper person to be an approved agent if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
- (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of, a *declared organisation* within the meaning of the *Crimes (Criminal Organisations Control) Act 2012* or an organisation specified in clause 98 (2) (a), and
  - (b) that the nature and circumstances of the person's relationship with the organisation or the organisation's members are such that it could reasonably be inferred that improper conduct that would further criminal activities of the organisation is likely to occur if the person is granted an approval.
- (4) The Authority is not, under the Act, or any other Act or law, required to give any reasons for not granting an approval because of subclause (3) to the extent that the giving of those reasons would disclose any criminal intelligence.

## Subdivision 2 Nomination of replacement supervisor

### 61Q Replacement supervisor to be nominated by licensee

- (1) A requirement under this clause is a condition of the licence.
- (2) A music festival licensee may nominate a replacement supervisor for the licensee, manager or approved agent.
- (3) The replacement supervisor:
  - (a) must be an individual, and
  - (b) must be an employee or agent of the licensee, and
  - (c) must not be the approved agent, and
  - (d) must hold a recognised competency card with a current RSA endorsement.
- (4) A replacement supervisor for a licensee or manager must have experience as a manager or in respect of licensed premises or in a supervisory position at events that were either music festivals or large scale commercial events.
- (5) Subclause (4) does not apply if the replacement supervisor holds the recognised competency card and endorsement required under clause 67B.
- (6) A replacement supervisor for an approved agent must have experience as the holder of a managerial or supervisory position in respect of licensed premises (being a position with duties in relation to the service of liquor).
- (7) This clause does not affect the liability of a licensee for a contravention by the licensee of a provision of the Act or this Regulation.
- (8) In this clause, *large scale commercial event* means a function or event that is open to the public and that is to be attended by (or has a patron capacity of) 2,000 persons or more on any day.

Liquor Amendment (Music Festivals) Regulation 2019 [NSW]  
Schedule 1 Amendment of Liquor Regulation 2018**Division 6 Conditions for music festival licence****61R Application of Division**

A requirement under this Division is a condition of a music festival licence.

**61S Conditions for sale or supply of liquor**

- (1) Liquor may be sold or supplied only on the licensed premises to which a music festival licence relates by way of opened cans, opened bottles or other opened containers.
- (2) The following drinks must not be sold or supplied on the licensed premises during a music festival:
  - (a) a drink (commonly referred to as a “shot”, a “shooter” or a “bomb”) that is designed to be consumed rapidly,
  - (b) a drink containing more than 50% spirits or liqueur,
  - (c) a drink prepared on the premises that contains more than 30 millilitres of spirits or liqueur.
- (3) Liquor must not be sold or supplied in a harm reduction area.
- (4) Food of a nature and quantity consistent with the responsible sale, supply and service of alcohol must be made available whenever liquor is sold or supplied on the licensed premises.
- (5) A staff member must not consume alcohol during the music festival unless the staff member has finished work.

**Note.** Section 9 of the Act prohibits the sale or supply of liquor by an agent of a licensee in contravention of the conditions to which the licence is subject.

**61T Conditions in relation to a safety management plan**

- (1) The music festival licensee must comply with, and conduct the event in accordance with, the safety management plan.
- (2) A copy of the safety management plan must be kept on the licensed premises and made available on request to a police officer, inspector, health officer or emergency services officer.
- (3) In this clause:

*ambulance forward commander* means a member of staff of the Ambulance Service of NSW of or above the rank of ambulance forward commander.

*emergency services officer* means an officer of Fire and Rescue NSW or a member of a rural fire brigade.

*health officer* means a member of staff of the Ministry of Health, a member of staff of the NSW Health Service, an ambulance forward commander or a person engaged by the music festival licensee to provide health services at the music festival.

**61U Condition to make water available at festival**

Drinking water must, at all times during the music festival, be made available free of charge to patrons:

- (a) at or near the point of service at which, or by the same means of service by which, liquor is sold or supplied on the premises, and
- (b) in accordance with the safety management plan.

**61V Conditions of supervision of music festival**

- (1) A music festival licensee or manager must, at all times during the music festival, be present:
  - (a) on the licensed premises, or
  - (b) if a designated control area has been specified in an application or the safety management plan—in the designated control area, unless the licensee or manager has a reasonable excuse.
- (2) If the licensee or manager is not present on the licensed premises or in the designated control area, a replacement supervisor must be present on the licensed premises or in the designated control area.
- (3) If an approved agent is appointed, the approved agent must, at all times during the music festival, be present on the licensed premises unless a replacement supervisor is present on the premises and the approved agent has a reasonable excuse to leave the premises.
- (4) In this clause, *designated control area* means an area, that is not part of the licensed premises, used for the purpose of coordinating the operational logistics of the music festival.

**61W Condition to comply with directions by police officer about access to premises**

- (1) A music festival licensee must:
  - (a) refuse to give patrons access to the premises if directed to do so by a senior police officer, and
  - (b) ensure that an employee or agent complies with the police direction.
- (2) If a senior police officer gives a direction under this clause, the licensee must also comply with any other direction given by a police officer arising from risks associated with the refusal of access to the premises.
- (3) The senior police officer may give a direction under this clause if:
  - (a) the music festival is yet to commence, and
  - (b) the premises are not open for access to patrons, and
  - (c) the licensee is in breach of the music festival licence.
- (4) In this clause, *senior police officer* means a police officer of or above the rank of senior sergeant.

**61X Conditions about the briefings for health service providers**

- (1) A music festival licensee must hold a briefing with a person engaged by the licensee to provide health services at the music festival if representatives of a prescribed entity request the briefing.
- (2) The briefings may be held at the following intervals:
  - (a) at least 48 hours before the start of the music festival,
  - (b) on the licensed premises on the day the music festival is due to begin,
  - (c) within 21 days after the end of the music festival.
- (3) The music festival licensee must, at least 7 days before the briefing, notify each prescribed entity of the date, time and location of the briefing.
- (4) A representative of a prescribed entity may attend the briefing.

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Liquor Amendment (Music Festivals) Regulation 2019 [NSW]  
Schedule 1 Amendment of Liquor Regulation 2018

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- (5) In this clause, *prescribed entity* means the following:
- (a) the Authority,
  - (b) NSW Police Force,
  - (c) Fire and Rescue NSW,
  - (d) NSW Rural Fire Service,
  - (e) the Ministry of Health,
  - (f) the council of the local government area in which the licensed premises are situated.

**61Y Incident register to be kept**

- (1) The music festival licensee must maintain an incident register in the form approved by the Secretary under section 56 (1) of the Act.
- (2) The incident register must record details of the following incidents that occur during the period beginning when the festival starts operating until 1 hour after the festival stops operating:
  - (a) an incident that results in the death of a patron of the licensed premises,
  - (b) an incident that results in a patron of the licensed premises requiring medical assistance as a result of intoxication,
  - (c) an incident involving violence or anti-social behaviour occurring on the licensed premises,
  - (d) an incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the licensed premises and that involves a person who has recently left, or been refused admission to, the licensed premises,
  - (e) an incident, on the licensed premises, of which the licensee is aware, that involves the possession or use of any substance that the licensee reasonably suspects as being a prohibited plant or a prohibited drug, other than an incident that has been disclosed to a person engaged by the music festival licensee to provide health services at the music festival or to a health practitioner,
  - (f) an incident that results in a person being turned out of the licensed premises,
  - (g) if the licence prohibits minors on the licensed premises or part of the licensed premises—a minor being located on the licensed premises or the part of the licensed premises prohibited to minors.
- (3) The incident register must also record details of action taken in response to a recorded incident.
- (4) The licensee must:
  - (a) make the incident register available for inspection by a police officer, inspector or health officer if requested to do so, and
  - (b) allow a police officer, inspector or health officer to take copies of the incident register or to remove the incident register from the premises, and
  - (c) ensure that the information recorded in an incident register is retained for at least 3 years from the day the record was made.

## (5) In this clause:

*health officer* means a member of staff of the Ministry of Health, a member of staff of the NSW Health Service or a person engaged by the music festival licensee to provide health services at the music festival.

*health practitioner* has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.

**61Z No double jeopardy**

If an act or omission of a person is a breach of a condition against both clause 61T and any other condition under this Part, the person may only be punished for the breach of the condition under one provision.

**Division 7 Exemptions****61ZA Exemption for intoxicated conduct**

For the purposes of section 159 (4) of the Act, a music festival licensee is exempt from section 73 (1) (a) of the Act if an intoxicated person:

- (a) is on licensed premises and the licensee proves that the licensee, or the licensee's employees or agents, caused the intoxicated person to move to a harm reduction area, or
- (b) is in a harm reduction area.

**61ZB Other exemptions**

For the purposes of sections 55 (5) and 159 (4) of the Act:

- (a) a person mentioned in section 55 of the Act is excepted from section 55 of the Act in relation to a music festival licence, and
- (b) a music festival licensee is exempt from sections 93 (1), 95 and 136E (2) of the Act.

**Division 8 Other provisions for administration of music festival licence****61ZC Change to safety management plan**

- (1) A music festival licensee may notify the Authority, in writing, of a proposed change to the safety management plan.
- (2) The Authority must advise the licensee whether the Authority accepts or rejects the proposed change.

**Division 9 Transitional provisions consequent on commencement of Liquor Amendment (Music Festivals) Regulation 2019****61ZD Definition**

In this Division:

*amending Regulation* means the *Liquor Amendment (Music Festivals) Regulation 2019*.

Liquor Amendment (Music Festivals) Regulation 2019 [NSW]  
Schedule 1 Amendment of Liquor Regulation 2018**61ZE Limited licence (special events) granted for events deemed to be music festival licence**

- (1) This clause applies to a limited licence (special event):
  - (a) granted before the commencement of the amending Regulation, and
  - (b) in relation to a special event that is a music festival to be held on or after 28 February 2019, and
  - (c) for which the Authority is of the opinion the sale or supply of liquor would more appropriately be provided under a music festival licence.
- (2) The limited licence (special event) is taken to be a music festival licence.
- (3) The limited licence, taken to be a music festival licence, is subject to the conditions of a music festival licence under this Regulation and, to the extent of any inconsistency between the conditions of the licence and this Regulation, this Regulation prevails.
- (4) A safety management plan supplied to the Authority for the limited licence (special event) is taken to be a safety management plan for a music festival licence.

**61ZF Existing applications for limited licence for a special event that is for a music festival**

- (1) This clause applies to an application for a limited licence (special event):
  - (a) made, but not finally determined, before the commencement of the amending Regulation, and
  - (b) in relation to a special event that is a music festival to be held on or after 28 February 2019, and
  - (c) that the Authority has decided under clause 35A requires a music festival licence.
- (2) The application is taken to be an application for a music festival licence.

**61ZG Training requirements for music festival licence**

Clauses 61Q (5) and 67A–67C do not take effect until 1 April 2019.

**[10] Clauses 67A–67C**

Insert after clause 67:

**67A Requirements for grant of music festival licence**

- (1) The Authority must not grant a person a music festival licence unless:
  - (a) the applicant, or the proposed manager for the licence, holds a recognised competency card with a current licensee endorsement and current advanced licensee endorsement, or
  - (b) if a person is proposed to be the approved agent—the person holds a recognised competency card with a current licensee endorsement and current advanced licensee endorsement.
- (2) The Authority may exempt an applicant for a music festival licence, or the proposed manager for the licence, from a requirement to hold a recognised competency card with a current licensee endorsement or a current advanced licensee endorsement.
- (3) In deciding whether to exempt the applicant, the Authority must consider the following:

Liquor Amendment (Music Festivals) Regulation 2019 [NSW]  
 Schedule 1 Amendment of Liquor Regulation 2018

- (a) whether the training required to obtain the recognised competency card with a current licensee endorsement or a current advanced licensee endorsement will be effective in reducing the risk of alcohol-related violence or anti-social behaviour on or about the licensed premises,
  - (b) whether the safety management plan for the music festival includes sufficient harm reduction initiatives that aim to reduce the risk of alcohol-related violence or anti-social behaviour on or about the licensed premises,
  - (c) if a person is proposed to be the approved agent—whether the person proposed to be the approved agent for the music festival licence holds a recognised competency card with a current licensee endorsement and current advanced licensee endorsement.
- (4) In this clause, *safety management plan* means the most recent safety management plan for the music festival licence supplied to the Authority under Part 4A.

**67B Requirements for replacement supervisor of music festival licensee or manager**

- (1) This clause applies if:
  - (a) a replacement supervisor for a licensee or manager under a music festival licence has been appointed, and
  - (b) an approved agent or replacement supervisor for an approved agent has not been appointed, and
  - (c) the replacement supervisor for the licensee or manager does not have the experience referred to in clause 61Q (4).
- (2) It is a condition of a music festival licence that the replacement supervisor for the music festival licensee or manager must hold a recognised competency card with a current licensee endorsement and current advanced licensee endorsement.

**67C Requirements for replacement supervisor of approved agent for music festival licence**

- (1) This clause applies if a replacement supervisor for an approved agent under a music festival licence has been appointed.
- (2) It is a condition of a music festival licence that the replacement supervisor for the approved agent must hold a recognised competency card with a current licensee endorsement and current advanced licensee endorsement.

**[11] Schedule 1 Fees**

Insert at the end of Part 1:

Music festival licence	Nil	6.5	6.5
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## Appendix 2 Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019



### Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019

under the

Gaming and Liquor Administration Act 2007

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gaming and Liquor Administration Act 2007*.

PAUL TOOLE, MP  
Minister for Racing

#### **Explanatory note**

The object of this Regulation is (as a consequence of amendments to the *Liquor Regulation 2018* made by the *Liquor Amendment (Music Festivals) Regulation 2019*) to provide that particular decisions of the Independent Liquor and Gaming Authority in relation to music festival licences under gaming and liquor legislation are not subject to review under the *Gaming and Liquor Administration Regulation 2016* by the Civil and Administrative Tribunal of New South Wales.

This Regulation is made under the *Gaming and Liquor Administration Act 2007*, including sections 13A and 47 (the general regulation-making power).

Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 [NSW]

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## **Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019**

under the

Gaming and Liquor Administration Act 2007

### **1 Name of Regulation**

This Regulation is the *Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

### **3 Amendment of Gaming and Liquor Administration Regulation 2016**

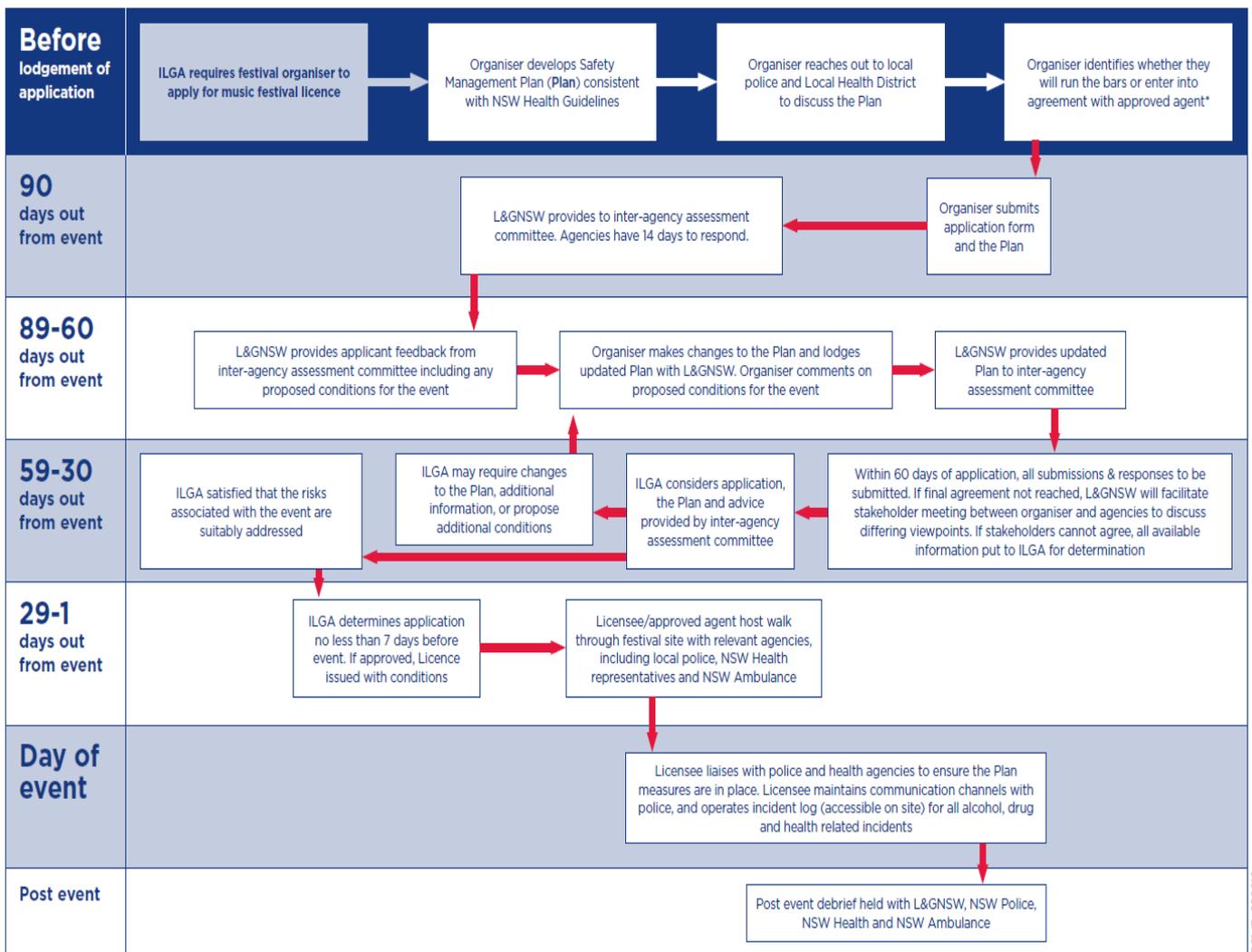
#### **Clause 7 Administratively reviewable decisions**

Insert at the end of the clause:

- (2) An application referred to in subclause (1) is not prescribed for the purpose of section 13A of the Act if the decision of the Authority to be reviewed is a decision that the sale or supply of liquor under the licence would more appropriately be provided under a music festival licence.
- (3) In this clause:  
*music festival licence* means a licence granted in accordance with Part 4A of the *Liquor Regulation 2018*.

# Appendix 3 NSW Government music festival licensing process flow chart

## Music Festival licensing process



L&GNSW - Liquor & Gaming NSW  
 ILGA - Independent Liquor & Gaming Authority

\*Approved agent: If a Festival organiser enters into agreement with liquor approved agent to run the bars, responsibility should be determined under the Safety Management Plan. Approved agents must have required RSA certification and be a licensee or manager of a current NSW Liquor Licence.

## Appendix 4 Submissions

No.	Author
1	Harm Reduction Australia
2	Ms Sally Westlake
3	Name suppressed
4	Mr Balunn Jones
5	Ms Meg Benson
6	Name suppressed
7	Regional Arts NSW
8	Mothership Events
8a	Mothership Events
8b	Mothership Events
9	City of Sydney
10	Illawarra Folk Club Inc
11	Name suppressed
12	The Phonographic Performance Company of Australia Ltd
13	Fuzzy Operations Pty Limited
14	Music Australia
15	Inner West Council
16	Ms Jane Burley
17	FBI Radio
18	Big Pineapple Music Festival
19	Secret Sounds Group
20	Select Music Agency Pty Ltd
21	Mr James O'Connor
22	Name suppressed
23	Chugg Entertainment Pty Ltd
24	NSW Users and Aids Association
25	Name suppressed
26	Local Government NSW
27	Reason Australia
28	Australian Festivals Association Inc.
29	ARIA

<b>No.</b>	<b>Author</b>
30	Live Performance Australia
31	Foundation for Alcohol Research & Education
32	The Hills Are Alive Group
33	Unified Music Group
34	Red Hill Entertainment
35	Ms Nicole Hetherington
36	Name suppressed
37	Name suppressed
38	Holly Doust-Robinson
39	Don't Kill Live Music
39a	Don't Kill Live Music
40	Name suppressed
41	Mr Jahra Mortimer
42	Jessica Harris
43	Confidential
44	NSW Government
45	MusicNSW
46	Live Music Office
47	APRA AMCOS
48	Mr Lachlan Mclean
49	Live Nation Australasia
50	Name suppressed
51	Club Music Advisory Group
52	Splendour in the Grass

## Appendix 5 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday 13 August 2019 Macquarie Room, Parliament House, Sydney	Cr Clover Moore	Lord Mayor, City of Sydney
	Cr Jessica Scully	Councillor, City of Sydney
	Ms Naomi Bower	Cultural Planning and Policy Leader, Inner West Council
	Cr Linda Scott	President, Local Government NSW
	Mr Benjamin Cox	Regulatory Policy Director, Don't Kill Live Music
	Mr Scott May	Director, Legal Services and General Counsel, Victorian Commission for Gambling and Liquor Regulation <i>via teleconference</i>
	Ms Julia Robinson	General Manager, Australian Festivals Association
	Ms Jessica Ducrou	Co-Chief Executive Officer, Secret Sounds
	Ms Adelle Robinson	Director, Fuzzy Operations
	Mr John Wardle	Consultant to the Live Music Office
	Ms Evelyn Richardson	Chief Executive, Live Performance Australia
	Dr Mary Harrod	Chief Executive Officer, NSW Users and Aids Association
	Ms Trish Hepworth	Director of Policy and Research, Foundation for Alcohol Research & Education
	Ms Maddie Day	Senior Policy Officer, Foundation for Alcohol Research & Education
	Mr Philip Crawford	Chair, Independent Liquor & Gaming Authority
	Ms Rose Webb	Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW
Ms Natasha Mann	Executive Director, Liquor Gaming and Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW	
Dr Michelle Cretikos	Director, Clinical Safety and Quality, Centre for Population Health, NSW Ministry of Health	

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Michael Willing AMP	Assistant Commissioner. Commander, Central Metropolitan Region, NSW Police Force

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## Appendix 6 Minutes

### Minutes no. 1

Thursday 6 June 2019

Regulation Committee

Members' Lounge, Parliament House, Sydney, 2.15pm

#### 1. Members present

Mr Veitch (*Chair*)

Ms Boyd (*Deputy Chair*)

Mr Borsak

Ms Cusack

Mr Donnelly

Mr Farlow

Mr Franklin

Mr Mason-Cox

#### 2. Tabling of resolution establishing the committee

The Committee Clerk tabled the resolution of the House establishing the committee, which reads as follows:

##### Appointment

1. A Regulation Committee be appointed.

##### Functions

2. The committee may inquire into and report on:
  - (a) any regulation, including the policy or substantive content of a regulation, and
  - (b) trends or issues that relate to regulations.

##### Referral of inquiries

3. The committee is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House.
4. Where a regulation referred to the committee is the subject of a notice of motion or order of the day for the disallowance of the regulation:
  - (a) the notice or order shall stand postponed until the tabling of the committee report,
  - (b) unless otherwise ordered, the committee must table its report within six weeks,
  - (c) on tabling of the committee report, the Clerk is to place the notice of motion or order of the day on the Notice Paper at the stage it had reached prior to the regulation being referred.

##### Membership

5. The committee is to consist of eight members comprising:
  - (a) four government members,

- (b) two opposition members, and
- (c) two crossbench members.

### **Chair and Deputy Chair**

6. (1) The committee is to elect the Chair and Deputy Chair in accordance with the standing orders.
- (2) The Chair of the committee is to be a non-government member.

### **Quorum**

7. The quorum of a committee is three members, of whom two must be government members and one a non-government member.

### **Sub-committees**

8. The committee has the power to appoint sub-committees.

### **Conduct of committee proceedings**

9. Unless the committee decides otherwise:
  - (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
  - (b) attachments to submissions are to remain confidential,
  - (c) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
  - (d) the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
  - (e) transcripts of evidence taken at public hearings are to be published,
  - (f) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
  - (g) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

### **3. Election of Chair**

The committee noted that the Chair of the committee must be a non-government member.

The Clerk called for nominations for the Chair.

Mr Donnelly moved: That Mr Veitch be elected Chair of the committee.

There being no further nominations, the Clerk declared Mr Veitch elected Chair.

#### 4. Election of Deputy Chair

Mr Veitch took the Chair.

The Chair called for nominations for the Deputy Chair.

Ms Cusack moved: That Mr Franklin be elected Deputy Chair of the committee.

Mr Borsak moved: That Ms Boyd be elected Deputy Chair of the committee.

The Chair informed the committee that, there being two nominations, a ballot would be held.

The Chair announced the result of the ballot as follows:

- Mr Franklin – 4 votes
- Ms Boyd – 4 votes.

There being an equality of votes, the Chair informed the committee that, in accordance with the practise of the House, a second ballot must be held.

The Chair announced the result of the ballot as follows:

- Mr Franklin – 4 votes
- Ms Boyd – 4 votes.

There again being an equality of votes, in accordance with the practice of the House, the Chair exercised their casting vote and declared Ms Boyd elected as Deputy Chair.

#### 5. Conduct of committee proceedings – Media

Resolved, on the motion of Mr Borsak: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- committee members use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses
- media statements on behalf of the committee be made only by the Chair.

#### 6. Correspondence

The committee noted the following items of correspondence.

##### *Received:*

- 11 January 2019 – Letter from the Hon. Anthony Roberts MP, Minister for Planning, Housing, Special Minister of State, to the Clerk of Parliaments, providing the government's response to the report into the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.
- 12 February 2019 – Letter from the Hon. Anthony Roberts MP, Minister for Planning, Housing, Special Minister of State, to the Clerk of Parliaments, providing further information relating to the government's response to the report into the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.

#### 7. Inquiry into the Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019

##### 7.1 Terms of reference

The committee noted the following terms of reference referred by the House on 30 May 2019:

1. That the Regulation Committee inquire into and report on the impact and implementation of the:

- (a) Liquor Amendment (Music Festivals) Regulation 2019, and
  - (b) Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.
2. That the committee report by 6 August 2019.

### 7.2 Proposed timeline

Resolved, on the motion of Mr Mason-Cox: That the committee adopt the following timeline for the administration of the inquiry:

- submissions close on Friday 5 July 2019
- one hearing to be held in the second week of August 2019, on a date to be canvassed with members by the secretariat.

Resolved, on the motion of Mr Donnelly: That the Chair move a motion in the House to seek an extension of the reporting date to 22 August 2019.

### 7.3 Stakeholder list

Resolved, on the motion of Mr Donnelly: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 7.4 Advertising

The committee noted that all inquiries are advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales.

## 8. Publication of minutes of the first meeting

Resolved, on the motion of Mr Franklin: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members for agreement.

## 9. Adjournment

The committee adjourned at 2.31 pm, *sine die*.

Rebecca Main  
Committee Clerk

## Minutes no. 2

Tuesday 13 August 2019

Regulation Committee

Members' Lounge, Parliament House, Sydney, 9.17 am

### 1. Members present

Mr Veitch, *Chair*

Ms Cusack (*from 9.31 am*)

Mr Donnelly (*until 10.10 am*)

Ms Faehrmann (*substituting for Ms Boyd for the duration of the inquiry into Music Festival Licensing Regulations*)

Mr Fang (*substituting for Mr Franklin*)

Mr Farlow

Mr Graham (*participating for the duration of the inquiry into Music Festival Licensing Regulations*)

### 2. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 1 be confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

**Received:**

- 11 June 2019 – Email from the Hon Shaoquett Moselmane MLC, Opposition Whip, to committee, advising that the Hon John Graham MLC will be participating for the duration of the inquiry into Music Festival Licensing Regulations
- 12 June 2019 – Email from Ms Abigail Boyd MLC, to committee, advising that Ms Cate Faehrmann will be substituting for the duration of the inquiry into Music Festival Licensing Regulations
- 13 June 2019 – Email from Mr Alex Baxter, Senior Policy Officer, Department of Premier and Cabinet, to secretariat, advising the departments intention to provide a consolidated submission to the inquiry and requesting the specific government departments the committee wish to hear from
- 24 June 2019 – Email from Mr Alex Baxter, Senior Policy Officer, Department of Premier and Cabinet, to secretariat, requesting an extension to provide the whole-of-government submission by 12 July 2019
- 28 June 2019 – Letter from Hon John Ajaka MLC, President and Chair, Procedure Committee, to Chair, advising of the committee's inquiry into the broadcast of proceedings resolution of continuing effect
- 2 July 2019 – Email from an industry stakeholder, to Chair, requesting an extension to provide a submission and to appear at the public hearing
- 5 July 2019 – Email from Ms Ann-Maree Bayley, Executive Assistant, Tamworth Regional Council, to Chair, advising that the Tamworth Regional Council will not be making a submission to the inquiry
- 16 July 2019 – Email from Mr Greg Marshall, General Manager, Association for Electronic Music (AFEM), to secretariat, advising that they will not be making a submission to the inquiry
- 23 July 2019 – Email from Mr Gino Vumbaca, President, Harm Reduction Australia, to secretariat, advising that he is unable to attend the hearing due to a prior commitment
- 5 August 2019 – Letter from Her Honour Magistrate Teresa O'Sullivan, NSW State Coroner, to the Chair, providing anticipated timeframes for the coronial inquest into deaths at music festivals
- 6 August 2019 – Email from Ms Donna Schriever, Senior Case Co-ordinator, NSW Coroner Court, to secretariat, confirming the State Coroner's letter to the committee can be made public.

**Sent:**

- 13 June 2019 – Email from secretariat to Mr Alex Baxter, Senior Policy Officer, Department of Premier and Cabinet, providing the list of government departments the committee wish to hear from
- 25 June 2019 – Email from secretariat to Mr Alex Baxter, Senior Policy Officer, Department of Premier and Cabinet, advising of the Chair's approval to the request for an extension to provide a submission
- 4 July 2019 – Email from secretariat to industry stakeholder advising that the committee will consider the request to appear at the hearing and seeking a submission as soon as possible
- 31 July 2019 – Letter from the Chair to Her Honour Magistrate Teresa O'Sullivan, NSW State Coroner, requesting timeframes for the coronial inquest into deaths at music festivals.

Resolved, on the motion of Ms Faehrmann: That the committee keep the following correspondence confidential, as per the request of the author:

- 2 July 2019 – Email from an industry stakeholder, to Chair, requesting an extension to provide a submission and to appear at the public hearing
- 4 July 2019 – Email from secretariat to industry stakeholder advising that the committee will consider the request to appear at the hearing and seeking a submission as soon as possible.

#### 4. Inquiry into Music Festival Licensing Regulations

##### 4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-2, 4-5, 7-10, 12-21, 23-24, 26-35, 38-39, 41-42, 44-49 and 51-52.

#### 4.2 Partially confidential submissions

The committee noted that the following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 3, 6, 11, 22, 25, 36, 37, 40 and 50.

Resolved, on the motion of Mr Farlow: That the committee keep the following information confidential, as per the request of the author: names and/or identifying information in submissions nos. 3, 6, 11, 22, 25, 36, 37, 40 and 50.

#### 4.3 Confidential submissions

Resolved, on the motion of Mr Fang: That the committee keep submission no. 43 confidential, as per the request of the author.

#### 4.4 Attachments to submissions

Resolved, on the motion of Mr Donnelly: That the committee publish the attachments to submission no 9.

#### 4.5 Proforma A

The committee noted the Chair's proposal to treat the 28 responses from individuals of the same content as Proforma A. This was published under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mr Farlow: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying information in Proforma A.

#### 4.6 Provision of documents to participating member

Resolved, on the motion of Mr Donnelly: That the Hon John Graham MLC, who has advised the committee that he intends to participate for the duration of the inquiry into Music Festival Licensing Regulations, be provided with copies of all inquiry related documents, including meeting papers and unpublished submissions.

#### 4.7 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Fang: That:

- any supplementary questions from members be provided to the secretariat 24 hours following receipt of the transcript
- any responses to questions taken on notice and/or supplementary questions for witnesses appearing at the 13 August hearing be due within 5 calendar days from the receipt of those questions.

#### 4.8 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Clover Moore, Lord Mayor, City of Sydney
- Ms Jessica Scully, Councillor, City of Sydney
- Ms Naomi Bower, Cultural Planning and Policy Leader, Inner West Council
- Ms Linda Scott, President, Local Government NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Benjamin Cox, Regulatory Policy Director, Don't Kill Live Music.

Mr Cox tabled the following documents:

- NSW Police Force, *Cost Recovery and User Charges Policy*, February 2019
- Harry R. Sumnall, Elizabeth Tyler, Graham F. Wagstaff, Jon C. Col, *A behavioural economic analysis of alcohol, amphetamine, cocaine and ecstasy purchases by polysubstance misusers*, April 2004
- Simon C. Moore, *Substitution and Complementarity in the Face of Alcohol-Specific Policy Interventions*, July 2010

- Peter G Miller and Nicholas Droste, *Alcohol Price Considerations on Alcohol and Illicit Drug Use in University Students*, 2013.

The evidence concluded and the witness withdrew.

The following witness appeared via teleconference and was sworn and examined:

- Mr Scott May, Director, Legal Services and General Counsel, Victorian Commission for Gambling and Liquor Regulation.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Julia Robinson, General Manager, Australian Festivals Association
- Ms Jessica Ducrou, Co-Chief Executive Officer, Secret Sounds
- Ms Adelle Robinson, Director, Fuzzy Operations
- Mr John Wardle, Live Music Office
- Ms Evelyn Richardson, Chief Executive, Live Performance Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Mary Harrod, Chief Executive Officer, NSW Users and Aids Association (NUAA)
- Ms Trish Hepworth, Director of Policy & Research, Foundation for Alcohol Research & Education (FARE)
- Ms Maddie Day, Senior Policy Officer, Foundation for Alcohol Research & Education (FARE).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Philip Crawford, Chair, Independent Liquor & Gaming Authority
- Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW
- Ms Natasha Mann, Executive Director, Liquor, Gaming & Racing, Better Regulation Division, Department of Customer Service, Liquor & Gaming NSW
- Dr Michelle Cretikos, Director, Clinical Safety and Quality, Centre for Population Health, NSW Ministry of Health
- Mr Michael Willing APM, Assistant Commissioner, Commander, Central Metropolitan Region, NSW Police Force.

Mr Willing left the hearing at 3.43 pm.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.13 pm.

#### **4.9 Tendered documents**

Resolved, on the motion of Ms Cusack: That the committee accept and publish the following documents tendered during the public hearing:

- NSW Police Force, *Cost Recovery and User Charges Policy*, February 2019
- Harry R. Sumnall, Elizabeth Tyler, Graham F. Wagstaff, Jon C. Col, *A behavioural economic analysis of alcohol, amphetamine, cocaine and ecstasy purchases by polysubstance misusers*, April 2004
- Simon C. Moore, *Substitution and Complementarity in the Face of Alcohol-Specific Policy Interventions*, July 2010
- Peter G Miller and Nicholas Droste, *Alcohol Price Considerations on Alcohol and Illicit Drug Use in University Students*, 2013.

## **5. Adjournment**

The committee adjourned at 4.14 pm, until 10.00 am Friday 23 August 2019, Room 1136 (report deliberative).

Sarah Dunn  
**Committee Clerk**

**Draft minutes no. 3**

Friday 23 August 2019

Regulation Committee

Room 1136, Parliament House, Sydney, 10.01 am

**1. Members present**

Mr Veitch, *Chair*

Mr Banasiak (*substituting for Mr Borsak*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mr Farlow

Mr Franklin (*from 10.04 am*)

Mr Graham (*participating*)

Mr Mason-Cox

**2. Draft minutes**

Resolved, on the motion of Ms Cusack: That draft minutes no. 2 be confirmed.

**3. Correspondence**

The committee noted the following item of correspondence:

***Received:***

- 18 August 2019 – Email from Mr Benjamin Cox, Regulatory Policy Director, Don't Kill Live Music, to secretariat, providing to the committee a bibliography of relevant literature in the field of drug and alcohol policy.

**4. Inquiry into the Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019 and Local Land Services Amendment (Allowable Activities) Regulation 2019**

**4.1 Terms of reference**

The committee noted the following terms of reference were referred by the House on 20 August 2019:

1. That the Regulation Committee inquire into and report on the impact and implementation of the:
  - (a) Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019, and
  - (b) Local Land Services Amendment (Allowable Activities) Regulation 2019.
2. That the committee report by 24 October 2019.

**4.2 Proposed timeline**

Resolved, on the motion of Mr Donnelly: That, the committee adopt the following timeline for the administration of the inquiry:

- Sunday 15 September 2019 – submission closing date
- Friday 27 September 2019 – hearing
- Friday 18 October 2019 – report deliberative
- Thursday 24 October 2019 – table report.

### 4.3 Stakeholder list

Resolved, on the motion of Ms Cusack: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 4.4 Advertising

The committee noted that all inquiries are advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales. It is no longer standard practice to advertise in the print media.

## 5. Inquiry into Music Festival Licensing Regulations

### 5.1 Supplementary submission

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of submission no. 39a.

### 5.2 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Farlow: That the following answers to questions on notice and supplementary questions be published:

- answers to supplementary questions from Ms Evelyn Richardson, Live Performance Australia, received 20 August 2019
- answers to questions on notice and supplementary questions from Ms Natasha Mann, Executive Director, Liquor & Gaming NSW, received 20 August 2019
- answers to supplementary questions from Mr Philip Crawford, Independent Liquor & Gaming Authority, received 20 August 2019
- answers to questions on notice and supplementary questions from Dr Michelle Cretikos, NSW Ministry of Health, received 20 August 2019
- answers to supplementary questions and additional information from Ms Julia Robinson, Australian Festivals Association, received 20 August 2019
- answers to questions on notice from Ms Adelle Robinson, Fuzzy Operations, received 20 August 2019
- answers to supplementary questions from Ms Naomi Bower, Inner West Council, received 20 August 2019
- answers to supplementary questions from Ms Linda Scott, President, Local Government NSW, received 21 August 2019
- answers to supplementary questions from Ms Trish Hepworth, Foundation for Alcohol Research and Education, received 21 August 2019
- additional information from Mr John Wardle, Live Music Office, received 21 August 2019
- answers to supplementary questions from Cr Jessica Scully, Councillor, City of Sydney, received 22 August 2019.

### 5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled '*Inquiry into Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019*', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Donnelly: That the list of findings and recommendations on pages viii-ix be amended by listing all findings before recommendations.

## Chapter 2

Resolved, on the motion of Ms Faehrmann: That paragraph 2.4 dot point 3 be amended by omitting 'only requiring higher risk music festivals' and inserting instead 'only requiring music festivals assessed by the NSW Government to be higher risk'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.65 be omitted: 'Liquor & Gaming NSW advised that 'Every effort was made to give impacted festival organisers prior notice, but given the sensitive nature and urgency of the announcement, we were unable to notify all of them in time', and insert instead:

'In response to questions about whether festivals were notified by text message, or not notified at all ahead of the release of the list of high risk festivals, Liquor and Gaming NSW supplied the following information:

“One festival operator was unable to be contacted by phone before the Minister's media release was provided to media outlets. This festival operator was contacted by email and text message asking them to contact Liquor & Gaming NSW to discuss their festival whenever was convenient for them. The festival operator responded by email on 25 February indicating that they wanted to be contacted later that evening. This contact occurred. This festival operator has had ongoing engagement with Liquor & Gaming NSW and NSW Health since that time.”

“Every effort was made to give impacted festival organisers prior notice, but given the sensitive nature and urgency of the announcement, we were unable to notify all of them in time.” [FOOTNOTE: Answers to questions on notice, Liquor & Gaming NSW, 20 August 2019, p 6.]

Ms Faehrmann moved: That paragraph 2.147 be amended by omitting 'We also note that within the state stakeholders have raised concerns with the inconsistent application of user pays charges' and inserting instead 'We also note stakeholders concerns with the inconsistent application of user pays charges across the state, as well as the much higher charges for policing the same festival in New South Wales compared to other states'.

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Banasiak, Ms Cusack, Mr Donnelly, Mr Farlow, Mr Franklin, Mr Mason-Cox, Mr Veitch.

Question resolved in the negative.

Ms Faehrmann moved: That the following new finding be inserted after Finding 2:

**'Finding X**

That there has been significant and unsustainable cost increases for the music festival industry as a result of the changed regulatory environment, particularly high user pays policing charges.'

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mr Veitch.

Noes: Ms Cusack, Mr Farlow, Mr Franklin, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Ms Cusack moved: That Recommendation 5 be omitted: 'That, based on broad industry support, the Legislative Council disallow the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Farlow, Mr Franklin, Mr Mason-Cox.

Noes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mr Veitch.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat by 5.00 pm Monday 26 August 2019;
- h) That the report be tabled on 28 August 2019; and
- i) That the Chair hold a press conference on 28 August 2019.

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mr Veitch.

Noes: Ms Cusack, Mr Farlow, Mr Franklin, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

## 6. Adjournment

The committee adjourned at 10.26 am, *sine die*.

Sarah Dunn  
Committee Clerk

## Appendix 7 Dissenting statement

### **The Hon Catherine Cusack MLC, Liberal Party**

Government Members dissent from the recommendation that Parliament disallow the regulations requiring a special license for high risk music festivals.

The Committee has found the recommendation is not generally supported by Industry.

Firstly, the special license for music festivals has been made to save lives at festivals including those where a death or deaths have already occurred, and additional measures are necessary to prevent future deaths. These include provision of free water, chill out spaces for patrons suffering the effects of drugs and a mandatory health protocol to ensure adequate emergency health services.

The importance of these specific measures was not disputed. All witnesses from Industry, community and government praised the health protocol.

Industry's complaints were focused on:

1. The lack of consultation and,
2. Misunderstandings regarding the number and location of festivals impacted by the regulations

In response to these objections by Industry, the Committee received evidence from Racing and Gaming and NSW Health witnesses that there was insufficient time to do a full Regulatory Impact Statement and the usual consultation. We were reminded that young people were dying and that the NSW Government had prioritised saving lives ahead of the usual consultation protocols.

Secondly, there were efforts in the short time available, to convene a round table of industry representatives. As much consultation as possible was undertaken in that short time period.

Thirdly, the music festival season operates approximately October-April. In making an early determination for a new license targeting high risk festivals, the NSW Government has given the 14 affected festivals sufficient time to understand and comply with additional safety requirements. We note that all of the nominated festivals have received additional Government assistance to obtain a new license, and these improvements will save lives.

If Parliament disallows the regulations, there will be no license, the health protocol which has received widespread praise and support will no longer be mandatory and the enormous work undertaken by the 14 festival businesses and Government agencies to protect festival patrons will be rendered irrelevant and unenforceable.

NSW Police, NSW Health and Racing and Gaming implored the Committee to retain the licensing regime for high risk festivals because repealing it would leave authorities with nothing that can be enforced.

The NSW Government has acknowledged and explained the short consultation timeframe. We agree there are improvements to be made to regulating Music Festivals and these proposals have been accepted and are being acted upon. However, to repeal the regulation targeting the 14 high risk music festivals is irresponsible and places lives at risk.

If Parliament, in effect repeals the new license and safety regimes that are being put in place for the most high risk festivals, it will almost certainly cost lives. There are no recommendations to modify the regulation. Full disallowance is recommended and a full consultation which cannot be undertaken in

time for the next festival season will be required. This means the NSW Government's mandated health protocol for the forthcoming Festival Season will be completely voided, leaving nothing to replace it.

Repealing the Music Festival regulations at this time is reckless and irresponsible and almost certain to cost more young people their lives. Anybody who acts on this recommendation, and votes to disallow the regulations bears a heavy burden of responsibility for potential incidents at the 14 most high risk music festivals to be held in the coming months. We strongly dissent from this recommendation.

