

Questions on Notice – Liquor & Gaming NSW

1. Please detail the consultation undertaken by the NSW Government specifically on the Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 (not on the Community Protection Legislation Amendment Bill 2018) including:

- a. Who was consulted?

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).

- b. In what format was that consultation?, and

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

- c. When did the consultation take place?

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.

2. Prior to implementation of this regulation on the 1st of March, did any Minister in the NSW government meet with the industry in relation to this matter?

L&GNSW refers the Committee to the [Ministers' Diary Disclosures](#) hosted on the Department of Premier & Cabinet website.

3. Noting the agency evidence in support of a regulatory roundtable, who would you recommend is on such a regulatory Roundtable? What other aspects of its design would you recommend?

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.

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.

4. Given that one of the four criteria for events that have to apply for the music festival licence is for 'new' festivals, has any assessment been done of the impact this may have on new festivals commencing in NSW?

The indicative and general risk factors that NSW Health and NSW Police consider before providing advice to the Independent Liquor & Gaming Authority are intended to identify the categories of risk that may make a music festival licence the more appropriate liquor licence than another type of licence for a music festival.

One of those factors is where festival is new and the festival promoters have a lack of experience running a higher risk event (as characterised by the general indicative risk factors outlined on page 2 of the [Music festival licence guidelines](#)).

In circumstances where an operator is new to the industry, or to running this type of event, the music festival licensing scheme ensures that this operator is able to access the best available advice and support to run an enjoyable and safer event. This includes access to experts in clinical advice, public safety and harm reduction. No other Australian jurisdiction offers music festivals this level of comprehensive support.

For a new operator having access to this advice through one process will ensure that they are able to put in place good plans early, enabling them to plan for their costs and approach to running a festival well in advance of the start date.

The Government considers that the new licensing processes enhances the support new operators receive and is likely to have a positive impact on new festivals commencing in NSW.

Liquor & Gaming NSW has been working with operators from 5 festivals that have not operated in NSW before but are planned for the next 12 months. This will increase the number of festivals that the Government identified in its submission as being run in NSW every year.

5. In relation to the information supplied by NSW Health and possibly NSW Police to the Government ahead of the Minister's press release on the 23rd of February setting out the fourteen festivals:

- a. Who requested this information?

The then Offices of the Premier, Minister for Racing, Minister for Police and Minister for Health.

- b. To whom was it supplied?

The then Offices of the Premier, Minister for Racing, Minister for Police and Minister for Health.

- c. When was it requested?

18 February 2019

- d. When was it supplied?

A set of festivals was provided to the relevant Ministers' offices on 22 February 2019.

- e. Where any criteria specified in that request, or in parallel to that request, about the criteria for festivals on that list?

The request asked NSW Health and NSW Police to identify those festivals likely to have elevated health related risks that would be better managed with comprehensive support from NSW Government agencies. This included where a drug-related death or serious medical illness had occurred previously at that event.

- f. Fourteen events were recommended. Was this list amended at any point?

Yes. As the list was developed on the advice of NSW Health and NSW Police different festivals were identified as falling within the criteria identified in Answer 5(e).

- g. Given the Minister's press release names fourteen festivals, in contravention of the process which is proposed to apply, was this press release reviewed by any agency prior to it being issued? If so, by which agency?

Yes. Liquor & Gaming NSW was provided copies of the draft release.

6. Given the evidence that a RIS was not conducted because debate had already occurred in Parliament at the time of the passing of the Bill the previous year, how could the agencies be aware of the impact of this regulation given it was months away from development at that point?

The Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 introduce a music festival licence for music festivals operating in a higher risk environment. The new licence fee is \$650 (which is the same as the existing Limited Licence – Special

Events), and provides operators access to clinical, public health, public safety and harm reduction experts to help plan and support their event.

The requirement to undertake a Regulatory Impact Statement under the *Subordinate Legislation Act 1989* is required for a principal statutory rule. The Liquor Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 are amending Regulations and are not considered a 'principal statutory rule' under the Act.

The amendments to the *Liquor Act 2007* to allow the making of a Regulation to introduce a new licence type contemplated the introduction of a new licence type for music festivals as part of the implementation of the recommendations of the Expert Panel report *Keeping People Safe at Music Festivals*.

As part of the parliamentary debate on this amendment, the Government committed to undertaking consultation with industry before any new licence types were introduced.

During consultation with industry the regulatory burden associated with the changes were considered before the Regulation was introduced, consistent with the *NSW Guide to Better Regulation* and Schedule 1 of the *Subordinate Legislation Act 1989*.

This included balancing the licensing cost of a music festival licence (commensurate with other liquor licence types that would apply to music festival operators) against the cost of doing nothing, which could result in festival operators not having access to the advice and support they need to get their patrons home safely.

A number of refinements to the scheme were made following the passage of the amending legislation in the Parliament which demonstrate a desire to balance the costs of the licensing scheme for festival organisers against the benefits to the safety of attendees, the wellbeing of their families and avoidable costs for the public health system. These include:

- setting the music festival licence fee at \$650 – the same price as a limited licence – special event
- exempting all music festivals that have not been directed to apply for a music festival licence from the \$650 fee for a limited licence – special event
- targeting the scheme at only those music festivals that have been directed by the Independent Liquor & Gaming Authority to apply for a music festival licence (currently only 12 out of around 92 music festivals held annually across NSW),
- continued funding by NSW Health of peer based harm reduction services such as DanceWize and Australian Red Cross Save A Mate (2018/19 music festival season cost was \$885,929),
- provision of free harm reduction messaging by NSW Health in the form of videos and graphics for use by festival organisers (2018/19 costs \$627,244)

- continuing to provide ambulance services above and beyond pre-agreed user pays ambulance services on an as-needed basis for future events (NSW Ambulance resources deployed in response to demand not accounted for by festival operators at 28 selected music festivals for the period 15 September to 31 May 2019 included: 111 ambulance crews; 5 forward commanders; 3 helicopter retrieval teams; and 9 road retrieval teams having to be diverted from other tasks without prior notice), and
- leaving open the option of NSW Health deploying specialist medical and retrieval teams to a music festival to supplement private medical services.

Additional Questions from hearing

1. Consultation

- a. Were the draft Regulations first shared with industry on Friday 21 February in the evening (after 11pm)?

No. A copy of the draft Regulations was shared with industry before this time.

- b. Was a copy of the draft Regulations shared at this time? By whom?

Liquor & Gaming NSW understands that a copy of a further draft of the Regulations may have been provided by the Premier's or a Minister's Office on the evening of 21 February.

Liquor & Gaming NSW was not provided a copy of this email so cannot confirm the time it was sent. As noted above, this was not the first time that a copy of the draft Regulations was provided to industry.

2. Information to 14 festival operators

- a. Was at least one of the 14 festival operators the subject of media reports notified by text message?

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.

- b. Were any not notified before the media was informed?

Please note response to the above question. 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.

3. Definition of music festival

- a. Based on the definition of music festival under the Regulations, are more than 80 events captured by this definition?

As of 20 August 2019, Liquor & Gaming NSW has identified around 92 events that could be captured under the definition of “music festival” under the Liquor Regulation 2018 (this includes seven events that will be held for the first time in 2019).

The definition of “music festival” under the Liquor Regulation 2018 has been drafted to ensure that the kinds of events that would benefit from additional support from Government to run a safer event are eligible to apply for a music festival licence.

The definition deliberately prevents certain kinds of events that may otherwise have been captured from falling within the definition, including by introducing size and ticketing requirements to stop smaller events, and community and council run events from coming under the definition under the Regulation.

In addition, the requirement to be a “music” or “dance” focused event further refines the kinds of events that would fall under the definition. Liquor & Gaming NSW considers that this element of the definition would require music or dance to be the primary or predominant element of the event.

The definition under the Regulation differs from the definition proposed in some submissions to the Committee. The Government determined that the definition proposed by industry was not sufficient as it would inadvertently capture community run events, and would not capture music festivals held indoors.

Further, the definition of “music festival” must be read in the context of the Regulation, including a requirement that an event is not required to apply for a music festival licence until it is directed to do so by the Independent Liquor & Gaming Authority.

In considering whether to direct an event that falls within the definition to apply for a music festival licence the Authority may have regard to:

- 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
- 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
- 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.

NSW Health and NSW Police will consider the following general indicative risk factors of higher risk events before providing advice to the Authority:

- predominant target demographic of people aged between 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 (i.e. eight hours or more), and/or extends past midnight, and
- anticipated weather conditions, such as high temperature, particularly if the event is to be held outdoors, and

the following event-specific risk factors:

- the festival has had one or more drug related serious illness (an illness resulting in admission to an intensive care unit) or drug related death that has occurred at, or in connection with, the music festival in the previous three years.
- 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 (if already received) will be able to sufficiently address the risks associated with running a higher risk event, including:
 - o sufficient number of appropriately qualified doctors
 - o correct mix of health service professionals
 - o sufficient number of ambulances and/or appointment of Ambulance Forward Commander
 - o broader compliance with the NSW Health *Guidelines for Music Festival Organisers: Music Festival Harm Reduction*.
- the festival is new and the festival promoters have a lack of experience running a higher risk event (as characterised by the general indicative risk factors outlined above).

Liquor & Gaming NSW notes that only a limited number of events would meet this threshold, regardless of whether they fall within the definition of a “music festival” under the Regulation.

b. Does the music festival capture concerts?

Following consultation with industry, some operators raised concerns that the proposed licensing scheme would apply to both music festivals and concerts.

To address these concerns, the Government committed to exempting concerts from the new licensing scheme as it was considered that the risks associated with these kinds of events were different from the kinds of music festivals that will apply for a music festival licence (noting that the majority of music festivals run every year in NSW are not required to apply for a music festival licence).

The definition of “concert” was settled following advice from Parliamentary Counsel’s Office that the term needed to be defined under the Regulation to give effect to the proposed exemption.

Where an event does not fall within the definition of “concert” it must still have the risk factors identified above before NSW Health or NSW Police will provide advice to the Independent Liquor & Gaming Authority that the event should be more appropriately dealt with under a music festival licence than another type of licence.

4. Drug-related illness under the [Music festival licence guidelines](#)
 - a. Does this capture alcohol-related illnesses as well as other drug-related illnesses?

Yes. Where alcohol results in a person being admitted to an intensive care unit or death alcohol-related illnesses may be captured in this indicative risk factor.

5. Bluesfest
 - a. Could you please explain specifically why the Bluesfest is not caught under these regulations?

Neither NSW Health nor NSW Police have provided advice to the Independent Liquor & Gaming Authority that Bluesfest should be required to apply for a music festival licence.

Bluesfest has a broader patron demographic (i.e. a significant number of patrons older than 18-29 years) and significantly different musical genre (contemporary blues and roots) profile compared to the indicative risk factors of a higher risk event.