

**Submission
No 232**

**INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN
NEW SOUTH WALES**

Organisation: Australian Hotels Association

Date received: 28 February 2018

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The Hon. Paul Green MLC
Chairperson
Legislative Council – Portfolio Committee No.6
NSW Parliament
SYDNEY NSW 2000

Dear Chairperson,

RE: INQUIRY INTO THE MUSIC AND ARTS ECONOMY

In September 2017, the Legislative Council Portfolio Committee No.6 was referred for inquiry and report on the music and arts economy in NSW. The Australian Hotels Association (AHA) NSW is pleased to make a brief contribution to this inquiry.

Introduction

The AHA NSW represents over 2100 licensed premises across NSW, from small family-run hotels in regional NSW to large, premium accommodation hotels operated by international consortiums in the Central Business District of Sydney.

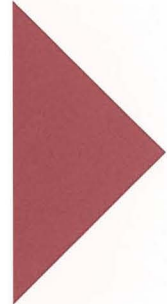
Over the years, music, whether it be it a live band, solo artist, acoustic performances, amplified background music or a Disc Jockey mixing for a dance floor have been the life blood of many of our venues and it is fair to say that music is as important to the hotel industry as the hotel industry is to music.

It is estimated that hotels across NSW support more than 75,000 live music performances every year – and that doesn't factor in the more dubious category of the many karaoke singers that aren't paid for their performances.

Hotels have been the nurseries of some of Australia's most famous, and iconic bands including Midnight Oil, Cold Chisel, Screaming Jets, Silverchair, Skyhooks, Australian Crawl, The Angels and even The Whitlams....

To this day, we continue to support music in hotels. In 2017, AHA NSW in conjunction with APRA/AMCOS and Live Music NSW sponsored an innovative competition seeking to find the best pub band in NSW – “Rockin the Pubs”. The competition saw over 300 entries with the winner – all-girl band Rackett – receiving support and guidance and a full pub performance tour. The competition will be held again in 2018.

In terms of other live performance types, hotels are equally invested. Comedians, politics in the pub, and even the ubiquitous “puppetry of the penis” all appear in hotels entertaining patrons, be it afternoon or late into the 24 hour economy.



However, live music is suffering for a range of reasons and there needs to be some strategies implemented to address the causes of the downturn.

One of the simple facts hurting music performances is that if hotels and other music venues aren't protected from complaints being made regarding reasonable noise during standard operating hours, venues will continue to close or look to other entertainment types.

Whilst AHA NSW acknowledges that while venues have a level of responsibility in relation to the amenity of the area surrounding music venues, the reality is that they generate noise, both those caused by the music from the venue itself as well as a level of noise caused by people travelling to or from the venue.

Currently, the Liquor Act 2007 provides that in determining a noise/disturbance complaint that the order of occupancy is considered. However, wherever a disturbance complaint is made the fallback position for the regulator is to call for acoustic testing to be conducted. This comes at a cost. Further, there needs to be an acknowledgement that during standard trading hours a reasonable level of noise is to be expected.


Agent of Change Concept and Entertainment Precincts

One of the ways of improving opportunities for music in venues and reducing red tape is to ensure that planning controls acknowledge the benefits of live music and permit reasonable levels of performances during reasonable hours in existing venues without the need for development consent.

However, to properly invest in our music culture, we need to go further. Sydney, and other parts of NSW including the Newcastle CBD is expanding – both outwards and upwards. There has to be a blend that allows for this expansion, but also allows for entertainment including music in these expansion zones as well as in established suburbs.

There is a need for Governments to ensure that entertainment is catered for as this expansion occurs. Two processes are discussed in this context – an agent of change mindset, where new developments have to comply with set noise attenuation standards rather than the venues being retro fitted, and dedicated entertainment precinct declaration – where areas are defined as entertainment precincts comprising safety, security, amenity as well as access, egress and infrastructure to support social activities such as food, entertainment, responsible alcohol consumption and music.

The agent of change concept has been used in areas such as Victoria, via the Planning Scheme Amendment VC120. This concept sees new developments around existing or planned entertainment venues required to have noise controls, as opposed to the venues being solely responsible for preventing noise through substantial sound attenuation.



Rather than a platform of one concept or the other, AHA NSW advocates a blended policy, comprising designated entertainment precincts where liquor licence, noise, safety and amenity are a focus complimented by agent of change laws that ensure new developments are built to dampen the infiltration of sound into newly constructed dwellings.

Other issues:

Whilst the *Liquor Act 2007* contains provision for “first occupancy” between venues and residents being considered in any disturbance complaint, it is a regular process in any complaint for the regulator to immediately call for acoustic testing of the venue – an expensive process. This mindset should be by exception rather than the rule, and should this not be changed, perhaps further consideration could be given to funding being provided, or dollar matched where acoustic testing is provided, as seen in South Australia.

AHA NSW advocates that further clarification and direction be sought in relation to the duplication in regulatory processes around noise and disturbance complaints.

Currently, Liquor and Gaming NSW have portfolio responsibility for noise and/or disturbance pertaining to licensed venues and impose noise controls and restrictions on those venues. However, Local Government also regularly impose noise controls on venues via their Development Consents.

Further, as NSW Police Force have responsibilities under the Protection of the Environment Operations Act, they regularly attend music venues during operating hours to direct reduction in noise, make application for noise conditions on liquor licence applications or through initiating noise and disturbance complaints.


Complainants have been known to “regulator shop” in relation to noise – moving from regulator to regulator until they secure action against a venue. Music is often the victim in these types of issues, with the venue operator forced to cease music performances in order to appease the complainant.

Gaming machines and live music

When discussing hotels and live music, there are some who lament that the advent of electronic gaming machines into clubs and hotels is responsible for a downturn in the number of live music performances across NSW. For a number of venues, revenue from EGMs act to subsidise live music performances that otherwise would not be financially viable. In fact, it has been identified that the admission of electronic gaming machines into NSW in 1956 led to an influx of aspiring music performers in this State.

“pop-up” opportunities:

AHA NSW maintains some concerns regarding the use of “pop-up” venue spaces for music and the arts. Throughout NSW, small business operators have invested in their businesses, owning or leasing premises. In some circumstances these operators see



pop-up or temporary operations commence, without the costs associated with property ownership/leasing. Should these types of approvals be granted, existing premises with ongoing overheads may find it more difficult to compete.

By utilising funding to support regional music festivals using existing infrastructure such as currently being conducted by Live Music NSW, grouped performance venues in suburban and regional areas are able to support performances and provide commercial and tourism benefits for their areas.

Recommendations;

- Further consideration of a “Pub-grants” style program for live music – as provided in South Australia, where Government’s provide funding for music performances.
- Removal of additional development consent requirements for hotels providing reasonable live music performances during standard trading hours
- Further clarification of a single regulator for music venues in respect of noise/disturbance
- Develop a policy using a blend of dedicated entertainment precincts in built up/CBD areas and “agent of change” planning laws for suburban, long-standing establishments

Should you require further information or wish to discuss any of the issues raised in the attached submission, do not hesitate in contacting AHA NSW Director of Liquor and Policing [\[redacted\]](#) on email [\[redacted\]](#) or telephone [\[redacted\]](#)

Yours faithfully,

JOHN WHELAN
Chief Executive Officer