

Submission
No 383

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

Name: Mr Daniel Robertson

Date received: 11 April 2018

Partially
Confidential

To Whom it may concern,

Without prejudice.

I'd like to write a late submission for Sydney's night time economy. I appreciate my submission is past the due date, however, I thought it could be of benefit to submit our story.

My name is Daniel Robertson, I'm 38 years old and was the co-owner of a small live music venue in Sydney with my partner Sarah Vuong. We both resigned from our full time jobs, sold our apartment and invested our life savings to pursue our life goal of opening a venue to provide a unique space for local artists and performers to come and share ideas, music & culture and also contribute to Sydney's night-time economy. We believe these kind of spaces are crucial to the development of any city and are valued extremely high by the community. We developed an original concept and built the business from the ground up. PLAY BAR opened in 2013 in the creative hub of Surry Hills.

The abolishment of the POPE licence provided an opportunity for artists and musicians to play music in public spaces. The availability of new liquor licences, such as the General Hotel Licence - Small Bar and other similar licences, Sarah & I saw an opportunity to create our niche.

During our time at Play Bar, we were host to 750+ live music gigs (mix of local and international), some acoustic based, some funk, soul, samba, some DJ oriented, some reggae & more. We held gallery exhibitions for many local visual artists. We ran hip-hop nights, open mic nights, electronic producer evenings, nights focussing on the females in our industry, corporate talks, design workshops, street dance events, product launches, international artist conversations, dance workshops and DMC finals.

Operating the business was an incredibly rewarding experience. We grew a great deal as individuals and we learnt a significant amount about business and how this city operates (infront & behind the scenes). We truly value all the newly formed friendships, relationships & connections, as a result of bringing so many incredible people together.

I personally programmed, booked and organised every artist, created brands & artwork + promoted our events and designed all marketing collateral for both print and digital platforms and social media. The work-load was immense with my average working week consisting of approx. 90 hours, with some weeks up to 110 hours. The job satisfaction was very high, and we had a compelling will to keep doing what we were doing, in-order-to contribute our part to Sydney's night time economy.

There were, however, quite a few hurdles we had to overcome in our 5 years.

Within our first week of opening, we were subject to sound complaints. The first of these occurring at 9pm on a Friday evening, (our up-stairs neighbour). The office had already embarked on a campaign to have our business closed. This included a range of attacks on our business; from

having our private building certifier investigated (which stalled our opening time by a few weeks), numerous sound complaints (which were never found to be in breach), an article written in the AFR (that in-turn back-fired), their front office lady stealing our event artwork, to rostering extra staff on to work late nights in office till 10-11pm, to having the City of Sydney's Late Night Compliance Team on speed dial, ready to make a complaint.

We had an 'Offensive Noise Abatement' imposed on us, an archaic piece of legislation, which has no definite boundaries that a business can possibly adhere to, and super-seeds all other sound laws & regulation. We had followed, adhered and complied with all our sound requirements conditions set-out within our DA & POM, however this law is able to over-ride all these conditions. This law enforcement can be handed down by one compliance officer determined by ear alone. The Abatement was later reversed.

We felt completely vulnerable, we were threatened with possible closure, and had no idea where to turn for assistance.

It was pure chance that one of our performing Jazz artists, Mr. Darren Heinrich, was able to point us towards seeking advice from the newly formed live music task force, headed by John Wardle. From there we met a few other amazing individuals within the City of Sydney, councillors Linda Scott and Edward Mandla, also John Graham Labor MP, Peter Garrett Labor MP, Chris Abood, Hugh Nicols, Ianto Ware to mention but a few, who all pretty much, through their counsel & mentorship, saved our business.

Due to the status & nature of who the complainant was, the issue elevated quite rapidly in many public forums. We would have much preferred to become known for our brand, product & music offering rather than this direction.

Sarah & I were invited into City of Sydney council building for a meeting with the Council CEO, in order to discuss how we are planning to resolve the issue. However, upon entering the meeting, there was no CEO. We were met with the Head of Health, Head of Compliance and a few of the council's solicitors. It felt like an ambush. Sarah & I and we were queried and questioned, in a very hard-line approach, about our business practice, the result of which we were seen to be co-operating and wanting a solution, more than anyone, as it was our new business. It was explained and understood what the issue was and we worked co-operatively with the council, together, towards a solution. We had to give weekly reports to the head of compliance on the status of the issue and its resolution. A mediation was offered by the council to both parties, to which we accepted and the Greens office declined. Overall, the whole ordeal was a very daunting experience.

We had signed a lease that included an approved DA. This DA had a list of acoustic requirements that we had to complete to make the venue sound compliant. We strictly followed these requirements. In our eyes we had done everything legally to be compliant.

The end result, two parties were ultimately responsible for our noise issue. The person who lodged the DA stating there was a concrete slab between tenancies,

which there wasn't (the building owners planner) and the planner from council, who didn't inspect the premise, and approved the DA.

There was strong cases to take action against the City of Sydney and the building owner, but at the cost of the very real risk of loosing our business in the interim.

We were stuck with music venue that wasn't allowed to play any loud music and needed further sound attenuation because the lodged and approved DA was incorrect. We felt the system had let us down.

Sarah & I invested the majority of our capitol into the build, so weren't in a position financially to take the matter to court. With the building owner denying any responsibility, we had to engage solicitors to resolve who's responsibility it was to install any further sound attenuation. This lasted the best part of 12 months.

We pushed on, working in constant fear of if-and-when the next complaint may occur, resulting in further council visits with potential fines & threats of closure. Solicitor fees drained every cent of revenue and it was near impossible to book future music related events on the chance we would make too much noise and be closed. Our days were completely consumed with drafting & reading legal letters, arguments, emails and reports to council. Then our nights we attempted to remain positive, serve customers and run the business.

After almost a year there was a resolve, and nearly \$100k of legal bills. The building owner was found to have lodged a false DA, hence our lease contract was null & void. We were entitled to walk away. But this meant walking away from everything we had put into our business. We loved the space, it was our baby, and in order to keep it, we had to compromise on our position.

Acoustic engineer, _____, was assigned the project of assembling a solution by the building owner and approved by the City of Sydney. Steven designed a detailed sound attenuation solution for the venue, to which we had to quote and project manage. The cost of works summed to approx. \$100K (covered by the building owner with a 10% contribution from us). These works were to take approx. 5 weeks to complete, meaning we had to close and bare the cost of closure for that period in terms of loss-of-trade. A 1 month rent free period was granted by the landlord for the works.

At a rough estimate the total cost for both parties (landlord & ourselves) including legals, loss of trade, loss of rent would come close to \$350k... All for an office that itself is based off a DA from 1989. The DA of that time didn't state standard operating hours, meaning technically it can operate 24-hours a day. Despite the fact the office did a \$300k refit and didn't lodge a DA for it, which I can only speculate would have provoked council to administer some sort of normal trading hour requirements in their revised DA, should it ever had been lodged.

After the works were completed and final acoustic reports done and sound systems set, we had learnt a great deal about sound compliance and how such a grey area it

can be, with many acoustic engineers sharing different views and opinions on what is compliant and what isn't.

We were finally able to get on with our business. The works resolved the sound issues, but there was always that fear in the back of our minds that we would be getting another council visit.

Whilst we appreciate the role and work the police do in our community, we ourselves and staff were subject to Police intimidation, bullying and harassment. We had over 230 visits from police in our first 3 years, this seems somewhat over the top for a venue of 120pax capacity and which has never has any issues. We witnessed first hand dishonest police conduct, police quoting incorrect legislation resulting in a breach imposed on our venue. We witnessed on CCTV police high five-ing each other after incorrectly breaching our venue. This incident occurred 3 years into our business and Sarah & I were on our first weekend away ever from the venue. We had just arrived overseas and flew back to Sydney the next day because we were concerned of losing our business. The breach was reversed and no further action was taken as it became apparent that there were irregularities with the information provided from the officer. There was no accountability from the Police and no action against the officer who made an error. After this situation was resolved, the following week we had another 5 police officers inspect our venue in the middle of service, taking us out of the business for approx. 45min-1hr every time, when we queried the Sergeant about some irregularities about the information provided by his officers, they were left unanswered.

We witnessed police evaluating our security procedures, which is totally acceptable, however their method was questionable; by asking our security to remove a customer they deemed to be approaching intoxicated. When queried how did they determine this, the reply was replied to by visual only. We stated that we usually talk to our customers first and assess their state after that interaction. Upon approaching the particular customer we found her to be sober. The officer still insisted the patron be removed and was timing us on his watch, the customer confronted the Police officer as she was aware of what was occurring and our venue was blamed for 'making' the undercover officers. We witness police breath testing customers within a venue. The heavy police presence impacted the patronage as customers would feel uncomfortable and leave. We quickly found we were not alone and most other night time alcohol related business in the city were receiving the same treatment.

Living in the inner-city and walking directly through the centre of it to get to and from work most times, we saw first hand the total demise of the city's vibrancy, after the lock-out laws were introduced. I think people tried to adjust to the laws the first few months, but the end result was people stopped bothering all together and the city did become a total ghost town. I took many photos of my walks home through the city and the complete lack of people & activity which for me was heart-breaking. The long term effects of the lock-out laws are now evident as the night life of Sydney CBD does not go much past midnight and 9pm during weeknights.

The new laws have seriously affected so many businesses within the city, hence the masses of venue closures. We ran & operated a very well respected live music

space and adapted to the changes. Whilst the lock-outs didn't directly affect our trading hours, the second killer component of the lock-out laws, the liquor freeze, absolutely halted the growth and potential of our business.

We ran a completely compliant community oriented space, our business was severely punished by these laws, even though we had no contact or interaction with the parties involved in the incidents that led to the new laws being introduced. Due to the new laws we were not allowed to apply to extend our trading hours to 1am or 2am because of the liquor license freeze. Our original business plan was to trade for the 12 months trial period, gain a good compliance trading history and then apply for the extension of hours. This would have also shifted how we program our music and ran our business... in fact, had we known we would not be able to extend our trading hours, we would have never taken a venue in the CBD. Extended trading hours would have allowed a better flow of business in our local area, i.e. when people finish their meals at nearby restaurants at 11pm they would have been able to go to another place for music or drink before heading home, where what we experienced was they restaurant customers would just go home, because why bother going to try to get in somewhere for only 30mins.

When our lease was up for renewal, after 5 years, we thought long and hard about continuing. The lock-out laws, the ongoing scrutiny from the Police, council and regulation imposed on business' became the main focus of operating a business, the once vibrant Sydney depleted, it was apparent the city lacked support for business' and it's night time economy focussed on casinos and gaming. We lost complete confidence in our city and for this reason opted to move on from the business.

A few points we observed:

- Rent in Sydney for small business is exorbitant.
- Min wages are high for small business. Penalty rates made it not viable at all to open Public holidays or Sundays. Agree penalty rates are required but on more level ground
- Sydney Alcohol regulations are far to extensive, excessive.
- Further music grants to assist musicians and business put on musicians
- Have bar/restaurant cluster zones. For less traveled streets, allow to have the streets closed after peak times (7pm) and the business and pedestrians can utilise the whole street - A seen in Singapore.
- OLGR and the City of Sydney need to communicate better together ie - introduction of new 100pax small bar license, neither side knew what was required from the other department.
- Compliance fines for small business can be crippling - fines are same for small, medium, large business
- The Sydney lock-outs, treating grown adults like children is just beyond us
- Please remove or re-write the offensive noise law - give any boundary, give any decibel reading you have comply with. How is any business suppose to manage this?
- Remove the liquor freeze for any compliant arts or music related business so they have the ability to grow
- Stop basing societies rules on the lowest common denominator *wishful thinking*
- Stop treating business like intoxicated criminals - is a western Sydney car

dealership responsible for the death of a person involved in a car accident in the city CBD?

- Entertainment zones need to be created to protect music venues
- Independent body to investigate NSW licensing police procedures, fines, mistakes, point of contact for business
- Give some form of protection to business, ie a business council that sit in the city
- Owning a business without a loading zone vehicle made deliveries difficult, and there is a lack of city parking. Having to move car every hour and run a business some days is a bit crazy. Was also difficult for musicians to drop off/pick up sound gear.

I would like to see Sydney shine again and be a part of this movement, I would be more than happy to further discuss my experiences to help bring changes and make Sydney a global 24-hour city.

Thank you for your time in reading my submission.

Daniel Robertson
Play Bar Sydney