

Submission
No 24

**INQUIRY INTO LIQUOR AMENDMENT (MUSIC
FESTIVALS) REGULATION 2019 AND GAMING AND
LIQUOR ADMINISTRATION AMENDMENT (MUSIC
FESTIVALS) REGULATION 2019**

Organisation: NUAA
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Regulation Committee
Legislative Council
Parliament House
6 Macquarie Street
Sydney, NSW 2000

Submission to the Regulation Committee Inquiry into the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.

The NSW Users and Aids Association (NUAA) would like to thank the NSW Regulation Committee for the opportunity to make a submission to the Inquiry into the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.

NUAA represents people who use drugs in NSW and provides advice across a range of policy areas including harm reduction service delivery (peer education, needle and syringe programs, naloxone, safer using) and AOD and BBV treatment. NUAA is a peer-based harm reduction organisation, as people with lived experience of drug use and diverse personal journeys, we neither condone nor condemn drug use but seek to keep our community as safe as possible through provision of harm reduction services, education and advocacy for more rational policy approaches.

Our key festival-based peer education and harm reduction program, DanceWize NSW, commenced 2017, based on the highly successful Harm Reduction Victoria model established in the late 1990s. In the 2018-2019 financial year, DanceWize NSW attended 22 regulated and 4 unregulated events, provided brief education interventions to 10,000 people and care interventions to over 1,000 people. Over 150 highly skilled and trained volunteers are engaged in the program. These volunteers, along with staff and infrastructure funded by the NSW Health, make this program possible.

The following submission is not only based on the 30-year history of NUAA as a harm reduction organisation but also draws upon the deep skill base, experience and expertise of the DanceWize NSW team.



General Comments

NUAA appreciates that the Regulation Committee encourages ‘all interested individuals, groups and organisations to take part in the inquiry’, specifically the voices of ‘any stakeholders affected by the regulations’.¹ Of the many stakeholders with an interest in this inquiry, people who attend festivals and their families and friends are the ones with the most at stake. NUAA resolutely believes that peer support is the best way to ensure the safety of the communities that attend festivals.² This philosophy exists across many programs and services in NSW from the bushfire brigades to surf lifesaving clubs, and the festival community is no different. The DanceWize NSW team, driven largely by volunteers, is a labour of love – love of community. If we are genuine about preventing harm we must festival goers, and enable them to support and care for each other.

Music festivals are a vital contributor to the economic and cultural vibrancy of NSW, especially in regional and rural areas. They provide the opportunity for councils, businesses and non-profit groups to promote tourism and stimulate regional development.³ Our state is the largest music festival market in Australia, with the contemporary music and festival sector generating over \$325m in revenue for the NSW economy each year.⁴ However, the government’s recent measures to improve festival safety – in light of the needless and heartbreaking deaths of five young people this festival season – 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.

Evidence demonstrates that to be effective, harm reduction measures, including within music festivals, need to be established in collaboration with the affected community and stakeholders.⁵ The proposed changes to the *Liquor Act 2007* provides the ILGA with complete oversight of music festivals without allowing for ongoing oversight and collaboration with stakeholders. The proposed *Liquor Amendment (Music Festivals) Regulation 2019* lacks

¹ Regulation Committee, ‘Inquiry into Music Festival Licencing Regulations’ (Media Release, 7 June 2019).

² Hardon et al, ‘Harm Reduction from Below’ (2016) 24(3) *Contemporary Drug Problems*; Tim Rhodes and Dagmar Hedrich, ‘Harm Reduction: evidence, Impacts and Challenges’ (Monograph 10, European Monitoring Centre for Drugs and Drug Addiction, 2010) 349.

³ Ed Montano, ‘Stereosonic and Australian Commercial EDM Festival Culture’ in Graham John (ed), *Weekend Societies: Electronic Dance Music Festivals and Event-Cultures* (Bloomsbury Publishing, 2017), 46, 52.

⁴ MusicNSW, ‘Musicnsw, AFA & more Industry Bodies call on NSW Government to halt Festival Licence Changes’ (Media Release, 20 February 2019) < <http://www.musicnsw.com/2019/02/musicnsw-afa-more-industry-bodies-call-on-nsw-government-to-halt-festival-licence-changes/>>.

⁵ Mark Lyne & Adrew Galloway, ‘Strategies for Managing Alcohol at Large Events in New Zealand’ (2011) 18(6) *Drugs: Education, Prevention & Policy* 468.



transparency, substantially increases the scope of unsuitable regulatory authorities' discretionary oversight and raise considerable barriers for festival organisers.

We seem to currently be in an environment where many stakeholders – promoters, clinical services, police and bureaucrats agree on an evidence-based, rational approach to harm reduction, but ongoing scrutiny results in reactive and rushed decisions. On the ground translation of regulation is at times not well coordinated and local authorities are vested with the power to make decisions that contravene best practice in preventing harm. NUAA's DanceWize NSW program has encountered excessive operational interference from on-site authorities on several occasions. Examples include licensing authorities instructing our team to operate our care space in a manner that contravened the Health Festival Safety Guidelines and our evidence-based, Health-approved resource being banned from distribution by the Royal Agricultural Society, a venue operator with no experience in health education or harm reduction. Ad hoc decisions such as these are increasing, not reducing, the risk to festival patrons.

One key problem is that we have no overarching, state-wide strategy for addressing alcohol and other drug issues, but that is beyond the scope of this submission. Specific points relevant to the proposed amendment are included below.

1. Liquor licensing laws will not adequately address drug related harms at music festivals

The proposed *Liquor Amendment (Music Festivals) Regulation 2019*, which establishes the Independent Liquor and Gaming Authority (ILGA), as the agency responsible for oversight of music festivals, may not achieve the intended outcome of improving safety at music festivals. Liquor licencing laws regulate the consumption of alcohol and are not intended to manage events or address drug related harms which result from a complex set of social and environmental causes.

The political environment under which these proposed amendments have arisen is similar to the Liquor Amendment Act 2014 No 3 (NSW), Lockout Laws Act when an understandable anxiety about community safety resulted in the rapid implementation of a solution that did not



include broader stakeholder engagement.⁶ While there has been a marked reduction in assaults in Kings Cross since the implementation of the lockout laws, assaults have risen in other popular night life areas such as Pyrmont, Bondi and Newtown.⁷ The success of these laws is dubious. There is little evidence to suggest that the reduction in assaults in areas subject to the lockout laws was due to the amendments made to the *Liquor Act 2007*⁸. A clear negative of this legislation was the closure of a number of venues in Kings Cross and the CBD when they became commercially unviable. Policy levers and regulatory options that are implemented without broad consultation increase the potential for unintended consequences and increased interdiction frequently results in unintended harms.⁹

Music festivals are complex environments involving multiple regulatory bodies and stakeholders. Successful, collaborative examples of nightlife and entertainment regulation exist overseas – most notably Amsterdam - where regulatory changes to the night time economy are done in consultation with stakeholders. The result has been a vibrant night time economy with substantially reduced alcohol and other drug related harms.¹⁰ NUAA supports the Australian Festival Association’s proposed Regulatory Roundtable with the further suggestion of the inclusion of NUAA as a peak body representing the DanceWize NSW and festival communities.

Recommendation 1: Ensure ongoing consultation and effective policy implementation by establishing a Regulatory Roundtable with broad representation of stakeholders.

⁶ Julia Quitler, ‘Sydney’s Lockout Laws: Cutting Crime or Civil Liberties?’ (2016) 28(1) *Current Issue in Criminal Justice* 94.

⁷ Neil Donnelly et al ‘The effect of lockout and last drinks laws on non-domestic assaults in Sydney: An update to September 2016’ *Crime and Justice Bulletin*(February 2017) <<https://www.abc.net.au/news/2017-03-06/assaults-rise-in-areas-outside-sydneys-lockout-zones/8327032>>

⁸ Don Weatherburn, ‘What Does Research Tell Us about the Impact of Recent Liquor Licence Restrictions on Violence in New South Wales?’ (2016) 28(1) *Current Issues in Criminal Justice* 101.

⁹ Murray Lee, ‘Sydney’s Lockout Laws: For and Against’ (2016) 28(1) *Current Issues in Criminal Justice* 120.

¹⁰ Jon Henley ‘The Stuff of Night Mayors: Amsterdam Pioneers new way to run Cities After Dark’, *The Guardian* (online), 19 may 2019 <<https://www.theguardian.com/cities/2016/mar/21/night-mayor-amsterdam-holland-mirik-milan-night-time-commission>>



2. Strengthen harm reduction services and ensure that they are able to operate effectively

To improve music festival safety, the government needs to take a considered approach that addresses the specific harms within festival environments – in this case that involves looking to strengthen and increase harm reduction policies and practices.

NUAA recognises and welcomes the amendments specific reference to ‘harm reduction’. However, the limited definition provided in relation to ‘harm reduction areas’ is insufficient in regard to the issue of drug related deaths at festivals. To address this issue, harm reduction strategies beyond those given in s611(1)(a) need to be more broadly integrated into the amendments. This necessarily involves a collaborative, multi-layered approach of drug education, peer-to-peer support, drug-checking/pill-testing and health services.

An example of one such measure, would be requiring the provision of ‘supervised relaxation spaces’ to follow the Music Festival Guidelines recommendation that these services be provided by peer-based programs. Additionally, an evidenced-based harm reduction strategy addressed in neither the legislation, nor the Guidelines, is the inclusion of peer-staffed and led harm reduction roving services.¹¹ Roving services are built into the DanceWize NSW program, and out of the 22 festivals attended this year, rovers engaged with as many as 99,350 patrons. While the type of roving interaction varied considerably, a measure of the value of roving services is the number of patrons introduced to the care space via rovers. This year, a total of 169 of the 993 (17%) care episodes delivered were referred by rovers with one of those 169 people being referred to an ambulance and 40 referred on to medical services (24%). Of all the people in care referred to medical services (n=112) a total of 35% were brought into the care space by rovers, exceeding the numbers brought in by security (14%, n=16) and self-referrals (34%, n=38).

¹¹ Dilkes-Frayne, Ella, ‘Drugs at the Campsite: Socio-Spatial Relations and Drug Use at Music Festivals’ (2016) 33 *International Journal of Drug Policy*, 27



NUAA also supports the establishment of a pill testing trial with adequate expert evaluation. This intervention is highly acceptable to the community and young people and has operated effectively to reduce on-site drugs use in a number of settings.¹²¹³¹⁴

Recommendation 2: Ensure the definition of harm reduction services specify they be evidence based and include identified peers.

Recommendation 3: Require the provision of additional harm reduction strategies at festivals such 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.

Recommendation 4: 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) and ensure that harm reduction services are included in planning and event coordination.

Recommendation 5: 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.

3. Lack of Transparency in Decision Making Processes and Increased scope of discretionary powers

The new amendments are not within the intent of parliament when passing the original legislation, and scope of powers within the *Liquor Act 2007*. By making amendments to old legislation, the government has not carefully examined the proposed changes by way of a regulatory impact statement (RIS), which is required by the *Subordinate Legislation Act 1989* for all new significant laws which are not amendments. This is a key concern as increased legislative barriers have been demonstrated to promote the commercialisation of festivals at

¹² Alison Ritter, Six reasons Australia should pilot “pill testing” party drugs
<https://ndarc.med.unsw.edu.au/node/301000974>

¹³ STA-SAFE consortium, Report on the ACT GTM Pill Testing Pilot: a harm reduction service
(<https://www.harmreductionaustralia.org.au/wp-content/uploads/2018/06/Pill-Testing-Pilot-ACT-June-2018-Final-Report.pdf>)

¹⁴ Testing drugs at festivals is a “lifesaver” study finds (<https://www.theguardian.com/society/2018/dec/08/testing-drugs-festivals-lifesaver-study>)



the expense of the local community, key stakeholders and the industry as a whole as was seen with the policy responses following the death of Anna Wood in 1995.¹⁵

The proposed legislative amendments clearly define when an event is considered a 'music festival' but also allow broad discretionary powers to be exercised by ILGA 35A(2), as it allows the authority to require certain events to have music festival licenses – based on advice from Health or Police. While NUAA recognises that some festivals carry increased risk and will benefit from increased measures to prevent harm, this clause creates an atmosphere of uncertainty for promoters and does not provide a clear process or timelines for promoters to address concerns.

Additionally, although the amendments thoroughly detail what is required in a Safety Management Plan in section 61I(1), there is a lack of transparency about how the assessment criteria in 61K(1) are applied to applications. It is not clear how these criteria will be assessed, what discretionary powers will be applied and what risk assessment frameworks will be used. The lack of clarity around assessment criteria is all the more concerning given the breadth of discretion given to the ILGA in making decisions on granting licenses in 61M(1).

Furthermore, the new powers granted to ILGA and NSW Police are broadly discretionary, and effectively give NSW Police and ILGA plenary powers – decisions are being made at a state level and will be implemented locally. The decision-making power is vested in authorities who are located outside of local contexts, and who are unable to comprehend local conditions and whether a decision to approve an application or Safety Management Plan is appropriate to local conditions. NUAA has worked closely with the NSW Ministry of Health in creating safer festivals over the past two years and we acknowledge the excellent collaborative approach taken by all stakeholders but feel that legislation must be strengthened to ensure collaboration with local stakeholders.

The amendments under Clause 61W also give broad discretionary powers to local police with senior police able to refuse access to the festival. We must recognise that increased policing of festival attendees does not increase festival safety and that these powers have been frequently exercised in a heavy-handed manner and have directly resulted in the closure of festivals that have operated safely for a number of years. It has also resulted in an atmosphere

¹⁵ Ed Montano, 'Stereosonic and Australian Commercial EDM Festival Culture' in Graham John (ed), *Weekend Societies: Electronic Dance Music Festivals and Event-Cultures* (Bloomsbury Publishing, 2017), 46, 55.



at festivals where individual attendees are subject to extreme measures such as drug detection dogs and strip searches, measures that are unreliable and increase harm.¹⁶¹⁷

No regulatory mechanisms have been developed to provide transparency around these discretionary powers to ensure decisions are made fairly and consistently across the industry and are appropriate to local conditions. In addition, increased discretionary powers of the Police can decrease the efficiency of harm reduction measures. That is, discretionary powers can be used as a means to an end, rather than rules that are mechanistically applied in all situations.¹⁸ Therefore, to address issues of harm it is foundationally important that peak harm reduction bodies are equally involved in all aspects of the consultation process.

Recommendation 6: Develop evidence-based guidelines for policing at music festivals and ensure that promoters and fans have certainty in regard to their rights and obligations in interactions with police.

4. Increased Barriers for Festival Organisers

Live Performance Australia, the national peak body for the live performance industry, has suggested that the proposed legislative amendments have created 'confusion and uncertainty' for festival and community event organisers across the state.¹⁹ Similarly, the Australian Festival Association argues the amendments have 'contributed to an atmosphere of fear and uncertainty for many event organisers' and has been 'too rushed and without enough consultation or consideration given to the impacts on the industry as a whole'.

A number of festivals have now closed citing increased police charges and increased regulation. Additionally, festivals that are important to the community such as Defqon.1 have failed to find a venue. Bohemian Beatfreaks 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

¹⁶ <https://www.abc.net.au/news/2018-12-03/fact-check-are-drug-dogs-incorrect-75-pc-of-the-time/10568410>

¹⁷ <https://theconversation.com/its-time-to-change-our-drug-dog-policies-to-catch-dealers-not-low-level-users-at-public-events-111710>

¹⁸ Matthew Bacon, 'Maintaining order in the drug game: Applying harm reduction principles to drug detective work' (2016) 17(4) *Police Practice and Research* 307.

¹⁹ Live Performance Australia, 'NSW: Australia's New Festival-Free Zone' (Media Release, 21 February 2019) <<https://liveperformance.com.au/wp-content/uploads/2019/03/LPA-MR-NSW-Australias-New-Festival-Free-Zone-21Feb2019.pdf>>



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.

Bush festivals/doofs are a key cultural gathering space for young people and most doofs include space for cultural exchange, education and artistic expression. As event after event shuts down NSW is rapidly losing a vibrant part of its culture. Likewise, festivals like Defqon.1 are treasured by young people in NSW as opportunities for connection. NSW cannot afford to lose these events. 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. The closure of regulated festivals may lead to an increase in unregulated festivals with no oversight and potentially greater risks.

Creating certainty for the various stakeholders operating in the festival environment is an urgent priority. Larger one-day events that are considered high-risk such as Defqon.1 should be allowed to operate in the well-controlled environment of Sydney Olympic Park with good access to medical facilities and optimal operating conditions. Regional festivals and multi-day events must be allowed to transition to the new guidelines over a longer period of time with implementation considering the size and resources of promoters.

Recommendation 7: Provide mechanisms for regular review, in consultation with key industry stakeholders, of any legislative amendments made.

Recommendation 8: Ensure emergency service and police costs borne by events are negotiated well ahead of time and are consistent across the state and in line with practices in other jurisdictions.

This submission was prepared by Alice Ruby Pierce and Mary Ellen Harrod