

Submission
No 26

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

Organisation: Local Government NSW

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Draft submission to the Parliamentary Inquiry into Music Festival Regulations

Inquiry by the Legislative Council Regulation Committee into Liquor
Amendment (Music Festivals) Regulation 2019 and Gaming and Liquor
Administration Amendment (Music Festivals) Regulation 2019

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State. LGNSW thanks the Committee for the opportunity to respond to the Terms of Reference for the Inquiry into music festival regulations. This submission is in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded.

Purpose

The viability of music venues in Sydney has been the subject of considerable debate following the NSW Government's *Liquor Amendment Act 2014* (lockout laws). Most recently, the debate has been reignited with the introduction in early 2019 of strict regulations on music festivals across NSW.

The Regulation Committee has been asked to inquire into the impact and implementation of the:

- (a) Liquor Amendment (Music Festivals) Regulation 2019, and
- (b) Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019.

This inquiry provides a welcome opportunity to evaluate the Government's approach to regulating music festivals and to offer suggestions to maintain the viability of music festivals in NSW.

Summary of this submission

This summary makes 12 recommendations on behalf of local government for the sensible regulation and support of music festivals. In terms of the impact and implementation of music festival regulation, it is crucial that the NSW Government works with local government as a partner and consults with LGNSW and the wider local government sector in advance of making any policy decisions that impact on councils in their role as event organisers, regulators and facilitators.

LGNSW would also welcome the inquiry considering the impact and implementation of music festival regulation in the context of broader regulatory and policy settings which impact on music and events in NSW. The broader focus and recommendations of this submission are made in this context, with the aim of encouraging a vibrant and sustainable music festival sector that is effectively and sensibly regulated.

Background to this submission

Scope

This submission has been informed through consultation with councils as described below and will refer to music festivals broadly, as well as the festivals subject to the new regulations. When the regulations that are the subject of this inquiry were first announced, it was initially intended by the NSW Government that the new requirements would apply to all music festivals in NSW¹. On 23 February 2019, in response to significant confusion and stakeholder criticism,

¹ ABC, 'High risk' music festivals will face new laws from Friday, but the industry is still 'bewildered', 27 February 2019, available at: www.abc.net.au/news/2019-02-27/high-risk-festivals-in-nsw-face-new-laws-from-friday/10832736

the NSW Government limited the scope of the reforms, stating that no festival, other than the 14 specified 'higher risk' festivals, would be affected by the new licensing scheme. This submission will not comment on deaths at music festivals as there is a Coronial Inquiry into Music Festival Deaths that is taking place concurrently to this inquiry.

Recent developments and consultation of councils

This submission follows on from LGNSW's February 2018 submission to the Parliamentary Inquiry on the Music and Arts Economy in New South Wales and reinforces some of the same proposals.

On 18 September 2018 the Premier, the Hon Gladys Berejiklian MP announced an expert panel to provide advice on how to keep people safe at music festivals. The announcement followed a music festival on 15 September 2018 where two people died after attending, and others were treated for suspected drug-related injuries.

In October 2018 LGNSW was invited to provide evidence to the Premier's expert panel but, with only three business days' notice, this left limited time to consult with our members. The opportunity to provide evidence was inadequate - it was limited to five minutes and only verbal evidence was accepted.

On 24 October 2018 the expert panel released its report without waiting for the recommendations of the Parliamentary Inquiry on the Music and Arts Economy in NSW. The Parliamentary Inquiry's recommendation report was not released until 15 November 2018. LGNSW is disappointed that in an effort to react to an event at a particular music festival, the consultation process was rushed and the Premier's expert panel did not take into account the Parliamentary Inquiry which was happening simultaneously. The Inquiry received 437 submissions and had eleven public hearings but this large amount of evidence was likely not considered by the Premier's expert panel.

Recommendation 1: That the NSW Government progresses the recommendations from the Parliamentary Inquiry into the Music and Arts Economy in NSW and considers the recommendations from this Parliamentary Inquiry into Music Festival Regulations before making any further decisions that may impact negatively on music performance in NSW.

In February 2019, after being notified by a member council of an information session run by Liquor & Gaming NSW for music festival organisers, LGNSW contacted Liquor & Gaming NSW and was subsequently invited to attend the information session. Again, there was limited time to seek the views of LGNSW members or collate any questions from councils prior to the session. Prior to, and after, the session LGNSW stressed to Liquor & Gaming NSW that councils are festival organisers as well as regulators and supporters of community events.

Recommendation 2: That the NSW Government consults with LGNSW and the wider local government sector to seek input and feedback on proposals for music festivals which might affect councils in their role as event organisers, regulators and supporters of community events.

On 1 March 2019, a main aspect of the new music festival regulations came into effect, which is the ability for the Independent Liquor & Gaming Authority to require certain high risk festivals to apply for a Music Festival Licence.

The new music festival licence is available for an event, other than a concert, that:

- a) is music-focused or dance-focused

- 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
- c) is held within a defined area
- d) is attended by 2,000 or more people (on any day)
- e) is a ticketed event.

LGNSW's further feedback in response to the impact and implementation of the music festival regulations follows.

Response to the terms of reference

In this section LGNSW addresses the terms of reference by first discussing the role of councils in music performance. Then this submission addresses the implementation and impact of the music festival regulations for (1) councils as a regulatory authority and for (2) councils as an event organiser and support of events.

(a) the role of councils in music performance and the perspective of councils

The perspective of councils

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.

The role of councils as organisers and supports of music festivals

Councils are the main organisers or key sponsor of music festivals in many local government areas.

Examples include:

- *Tamworth Country Music Festival supported by Tamworth Regional Council* – this is Australia's largest music festival and considered one of the top ten music festivals in the world.
- *Feel the Beat Music Festival run by Campbelltown City Council* – a new music event for young people with a disability will be held in August 2019.
- *Mullum Music Festival supported by Byron Shire Council* – a festival in Mullumbimby where many school halls, community spaces and street corners are turned into music venues. For the 2018 festival, Byron Shire Council Chambers was even transformed into a comedy venue for the duration of the festival.
- *Shoreshocked Festival run by Mosman, North Sydney, Lane Cove, Ryde, Willoughby, Kuringai and Northern Beaches Councils* – this is an all-ages drug and alcohol-free event held in NSW Youth Week each year.

Numerous councils in NSW have also produced events under two significant government grant programs:

1. Live and Local Initiative. The Western Sydney and Regional NSW Live and Local Strategic Initiative provided ten councils in Western Sydney and eight councils in regional NSW the opportunity to develop bespoke local music events over the course of 2017/2018. The Live and Local Strategic Initiative was funded by Create NSW on behalf of the NSW State Government, in partnership with the federally established Live Music Office.
2. Indent Youth Music Event Development Grants program. More than half of the 11 recipients were councils in the 2018 round. These councils worked with local young people to stage all ages live music events.

In cases where councils are not the main organiser of a music festival, they are often still the primary point of contact for community event organisers. Councils support festivals through grants, reduced fees and charges and in-kind professional advice and services. Councils need to consider which events require a fee or charge to cover costs but overwhelmingly councils try to keep these to a minimum. Any fees and charges required by councils are set annually in a fees and charges schedule published on each council website. Furthermore, councils often have individual arrangements with community event organisers, so in many cases the schedule of fees and charges are heavily subsidised or covered by council.

Recommendation 3: That councils are supported to continue to run music festivals through ongoing State Government funding for the Live and Local Initiative and the Indent Youth Music Event Development Grants program.

The role of councils as regulators of music festivals

Councils are the owners and operators of sites on which many music festivals are held, and also the development consent authority for large festivals held on private land.

Councils may grant approval through varying forms – some events require a development assessment (DA), other events on council-owned land may require a permit or a plan of management which acts in place of the DA.

During the council approval process, the event organiser will be expected to have consulted with the relevant government agencies and received their approval. Councils often act as point of contact between event organisers and other agencies to assist however the onus is on the event organiser to consult with and receive approval from these regulatory agencies.

Councils rely on the advice of these expert agencies (NSW Police, emergency services, Liquor & Gaming NSW) when approving the event. Councils will assess planning issues such as noise, zoning, use of site etc.

Councils support evidence-based initiatives to improve safety at music festivals, but there is little guidance or scope for the regulation of illicit drugs.

Recommendation 4: That the NSW Government recognises that councils rely on the advice of emergency services and other government agencies when approving music festivals and that the NSW Government ensures that any new process for assessing music festivals does not place additional responsibility onto councils.

(b) implementation of the new regulations – council as a regulatory authority

LGNSW recognises that the new music festival regulations, which came into effect on 1 March 2019, were intended to improve community safety. LGNSW also recognises that the new regulations are primarily aimed at festivals with a high risk of hospital admissions and fatalities for festival goers. So far, the NSW Government has deemed 14 festivals in NSW to come under this high risk category.

Therefore, while the regulations do not immediately impact council run festivals, councils are still required to implement the changes as a planning authority. Councils are seeking clarity on their role in assessing festivals under the new regulations and sample templates for the approval processes. These matters are discussed in detail below.

Seeking clarity on the role of councils in assessing festivals under the new regulation

In cases where a Music Festivals Licence is required by the Independent Liquor & Gaming Authority, it is important for clear consideration to be given to how councils will be involved during the licence application process.

At a presentation to the LGNSW Events Network in May 2019, Liquor & Gaming NSW explained that there will be ongoing engagement with councils while the Safety Management Plan² is being developed by the applicant and there will be an opportunity for councils to suggest changes to be made to the Plan before a licence is issued.

The timing of these processes (e.g. seeking development consent, applying for a Music Festival Licence and preparing a Safety Management Plan) and how they fit into the overall approval process needs to be clearer for both the applicant and the regulators, including councils.

On the one hand, Liquor & Gaming NSW has stated that they will not review the licence applications until the council has given development consent yet, on the other hand, we have heard from councils that they are reluctant to give development consent until the Independent Liquor & Gaming Authority has conducted its assessment. Further, Liquor & Gaming NSW anticipates the decisions to grant development consent take into account the health risks of the festival. This may be possible for well-resourced councils but, as stated earlier in this submission, most councils rely on advice from emergency services to assess risk. Councils are also unsure how the approval process interacts with local planning panels.

Recommendation 5: That the NSW Government improves consultation and communication with councils about their role in assessing festivals under the new regulation. That the NSW Government provides clarity around timing and expectations on regulatory authorities to assess the Safety Management Plans to ensure a coordinated approach.

² Applying for a Music Festival Licence requires the development of a Safety Management Plan in line with new [NSW Health Guidelines](https://www.health.nsw.gov.au/aod/Pages/music-festival-guidelines.aspx), available at: <https://www.health.nsw.gov.au/aod/Pages/music-festival-guidelines.aspx>

Seeking sample templates

Applicants and regulatory authorities would benefit from the use of template applications or guides to allow a more consistent approach across festivals. Whilst the development assessment process is different for each council, having a sample of a music festival specific DA template would be helpful, as would having a completed sample for event organisers. Templates could be modified and added to on the basis of size, scale and risk categorisation. LGNSW would be happy to work the NSW Government to facilitate council input into the development of such a template.

Recommendation 6: That Liquor & Gaming NSW (or another agency if regulatory responsibility for music festivals changes) coordinates the production of templates to guide applicants and regulatory authorities during the assessment and approval process of music festivals.

(c) implementation of the new regulations – councils as an event organiser and supporter

The primary impact on councils of the new regulations is in the role as event organisers and supporters of community events.

Resolving inconsistencies in how the regulations are being applied

LGNSW urges the NSW Government to review how the Music Festival regulations are being interpreted and applied by authorities. Although the Music Festival Licence only affects the 14 high risk festivals, the NSW Health *Guidelines for Music Festival Event Organisers: Music Festival Harm Reduction* have been written as a guide for all music festival organisers.

There is anecdotal evidence that when event organisers, including councils, are consulting with NSW Police Local Area Commands, Local Health Districts and NSW Ambulance in planning for an event, the guidelines are being applied very differently in neighbouring areas. Following the introduction of the Music Festival Licence, 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. For example, it was reported earlier this year that Northern Beaches Music Festival which receives financial support from Northern Beaches Council was almost cancelled in 2019³ due to stringent new requirements by the police for extra security.

Recommendation 7: That the NSW Government ensures that the regulations and guidelines are being applied fairly and consistently across NSW in proportion to the risk of each festival. This can occur by educating authorities on how to interpret the changes and by providing a centralised authority for event organisers to seek a review of decisions made by local emergency and health authorities.

Evaluating the effectiveness of the new regulation in addressing drug-related harm

Councils support evidence-based initiatives to improve safety at music festivals. The impetus for the new regulations were two drug related deaths which occurred at a festival in Sydney.

Festivals which do not sell liquor will not be covered by the new Music Festival Licence, regardless of the degree of risk of drug-related harm. This is because the requirements for the Music Festival Licence are contained within the Liquor Regulation 2018, which only requires licences for events that seek to sell or supply liquor:

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,*
- (d) an on-premises licence,*
- (e) a packaged liquor licence,*
- (f) a producer/wholesaler licence,*
- (g) a limited licence,*

³ The Music Network, Northern Beaches Music Festival the latest victim of NSW Government licensing laws, 15 April 2019

(h) a type of licence prescribed under section 10(1)(g) of the Act that is not a music festival licence.

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.

Given that Liquor & Gaming NSW and the Independent Liquor & Gaming Authority have a clear focus on functions related to liquor and gaming, it may be that they are not the most suitable authorities to oversee music festivals in the context of addressing illicit drug-related harms. To ensure that safety at music festivals is considered in a broader planning context and regardless of whether liquor is or is not sold or supplied at a festival, it may be that another agency, such as the Department of Planning, Industry and Environment is better placed to oversee music festival regulation, in close consultation with all relevant stakeholders (which would also include Liquor & Gaming NSW for liquor licensing issues)

Recommendation 8: LGNSW encourages the NSW Government to consider whether another agency, such as the Department of Planning, Industry and Environment, may provide more suitable oversight and coordination of music festival regulation.

Providing resources for councils and community event organisers

Many organisers of community music events are volunteers, so navigating multiple tiers of growing government compliance can be time consuming, confusing and discouraging. Therefore, the resources and expertise required of the applicant must be proportional to the festival risk. An advisory service for community, artistic and volunteer groups and councils would be helpful. Councils are seeking a dedicated contact in the NSW Government, in Liquor & Gaming NSW (or another agency such as the Department of Planning, Industry and Environment if music festival regulation is administered by a different agency in the future).

Recommendation 9: The NSW Government should encourage the continuation of community music festivals by:

1. providing an advisory service for community groups, volunteer groups and councils, and
2. ensuring resources and expertise required of the applicant are proportional to the festival risk.

In 2018 the Municipal Association of Victoria released its Live Music Toolkit⁴. This practical resource was developed in response to feedback from councils, who found navigating the live music scene overwhelming. Councils had found that information on how to support the live music scene and the role of councils to do so was overwhelming to navigate. The toolkit provides strategies on how councils can support and strengthen the music scene and well as broader information on navigating local and state government policies that support investment in live music. This toolkit was developed in partnership with Creative Victoria and Music Victoria, with funding from the Government of Victoria.

Recommendation 10: The NSW Government considers funding LGNSW to create a live music toolkit for NSW councils, based on the successful toolkit developed in Victoria.

⁴ Municipal Association of Victoria, Live Music Toolkit, available at: <https://www.musicvictoria.com.au/music-toolkit-180822.html>

(d) other regulations and policies impacting on the sustainability of music festivals

Although the Terms of Reference for this inquiry relate to two specific pieces of regulation, there are several other regulatory and policy changes occurring in NSW which may impact on the viability of music festivals and the impact and implementation of music festival regulations that are the subject of this inquiry.

OneMusic

OneMusic Australia is a joint initiative between APRA AMCOS and PPCA, the two Australian music rights management organisations. OneMusic is a new system to give legal access to all music works, sound recordings and music videos. This system came into place at the start of July 2019.

The Australian Local Government Association on behalf of all state and territory local government associations has made a submission⁵ to the ACCC outlining concerns with the transition to the OneMusic scheme. Consequently, the ACCC has recommended a number of conditions to improve transparency of the new system. For example, they have suggested APRA publish details of operating costs, fee methodology and how it distributes payments to artists and collects rights revenue.

Safety in Crowded Places

Events organisers incur costs to comply with *Australia's Strategy for Protecting Crowded Places from Terrorism* and LGNSW has been advocating to the State and Federal Government for a grant program to help councils meet the cost of implementing these requirements. Councils would also support the State Government subsidising the costs of the preparation of Traffic Management Plans for community events. A resolution from the 2017 LGNSW Annual Conference sought a commitment from the NSW Government on this issue.

Recommendation 11: That this Inquiry takes a holistic approach to addressing the sustainability of music festivals in NSW by considering other current regulatory and policy matters that impact on music in NSW.

Political representation

To achieve the measures outlined in this submission, the NSW Government would benefit from finalising the NSW Contemporary Music Strategy which was being developed by Create NSW in 2018 in consultation with stakeholders.

The Government should also consider appointing a Minister for the Night Time Economy and Music to drive this strategy. LGNSW notes that while Liquor & Gaming NSW currently has responsibility for licensing music festivals, this submission suggests that music festival regulation may be better placed within another agency such as the Department of Planning, Industry and Environment. A dedicated Minister could assist in coordinating changes across multiple government agencies.

Recommendation 12: That the NSW Government finalises the NSW Contemporary Music Strategy and appoint a Minister for the Night Time Economy and Music to drive the implementation of this strategy.

⁵ Australian Competition and Consumer Commission, ALGA submission to re-authorisation of Australasian Performing Right Association Limited, 20 May 2019, available at: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australasian-performing-right-association-limited-0>

Recommendations

This submission makes the following 12 recommendations:

Recommendation 1: That the NSW Government progresses the recommendations from the Parliamentary Inquiry into the Music and Arts Economy in NSW and considers the recommendations from this Parliamentary Inquiry into Music Festival Regulations before making any further decisions that may impact negatively on music performance in NSW.

Recommendation 2: That the NSW Government consults with LGNSW and the wider local government sector to seek input and feedback on proposals for music festivals which might affect councils in their role as event organisers, regulators and supporters of community events.

Recommendation 3: That councils are supported to continue to run music festivals through ongoing State Government funding for the Live and Local Initiative and the Indent Youth Music Event Development Grants program.

Recommendation 4: That the NSW Government recognises that councils rely on the advice of emergency services and other government agencies when approving music festivals and that the NSW Government ensures that any new process for assessing music festivals does not place additional responsibility onto councils.

Recommendation 5: That the NSW Government improves consultation and communication with councils about their role in assessing festivals under the new regulation. That the NSW Government provides clarity around timing and expectations on regulatory authorities to assess the Safety Management Plans to ensure a coordinated approach.

Recommendation 6: That Liquor & Gaming NSW (or another agency if regulatory responsibility for music festivals changes) coordinates the production of templates to guide applicants and regulatory authorities during the assessment and approval process of music festivals.

Recommendation 7: That the NSW Government ensures that the regulations and guidelines are being applied fairly and consistently across NSW in proportion to the risk of each festival. This can occur by educating authorities on how to interpret the changes and by providing a centralised authority for event organisers to seek a review of decisions made by local emergency and health authorities.

Recommendation 8: LGNSW encourages the NSW Government to consider whether another agency, such as the Department of Planning, Industry and Environment, may provide more suitable oversight and coordination of music festival regulation.

Recommendation 9: The NSW Government should encourage the continuation of community music festivals by:

1. providing an advisory service for community groups, volunteer groups and councils, and
2. ensuring resources and expertise required of the applicant are proportional to the festival risk.

Recommendation 10: The NSW Government considers funding LGNSW to create a live music toolkit for NSW councils, based on the successful toolkit developed in Victoria.

Recommendation 11: That this Inquiry take a holistic approach to addressing the sustainability of music festivals in NSW by considering other current regulatory and policy matters that impact on music in NSW.

Recommendation 12: That the NSW Government finalise the NSW Contemporary Music Strategy and appoint a Minister for the Night Time Economy and Music to drive the implementation of this strategy.

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For further information on this submission, please contact Elizabeth Robertson, Senior Policy Officer,