

Submission
No 39

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

Organisation: Dont Kill Live Music

Date Received: 5 July 2019

DON'T KILL LIVE MUSIC

THE REGULATIONS ARE LIKELY TO INCREASE DRUG HARMS

DISALLOW THE LAWS NOW TO SAVE LIVES

"Don't Kill Live Music" ("DKLM") submission to the NSW Legislative Council inquiry into the impact and implementation of the [Liquor Amendment \(Music Festivals\) Regulation 2019](#) and the [Gaming and Liquor Administration Amendment \(Music Festivals\) Regulation 2019](#).¹

INTRODUCTION

On 30 May 2019 a NSW Legislative Council inquiry was formed to look into and report on the impact and implementation of the [Liquor Amendment \(Music Festivals\) Regulation 2019](#) and the [Gaming and Liquor Administration Amendment \(Music Festivals\) Regulation 2019](#) (*"the Music Festival Laws, or Music Festivals Regulations"*)(*"the Music Festivals Inquiry"*). This submission highlights several areas of deep community concern regarding this rushed legislative process that did not conform the ordinary law making processes of NSW Government Departments.

The DKLM campaign was started by a group of concerned persons for the purpose of protecting live music culture in NSW in response to the manner in which the Music Festival Regulations were not being consulted upon, and were misguided in attempting to deal with *alleged* drug induced deaths. This inquiry has largely been formed due to the enormous public outrage that has been caused by two pieces of subordinate legislation. The "Don't Kill Live Music" protest assembly of 20,000 people, and online petition of 134,000 signatures. A DKLM conforming to parliamentary standing orders has gathered in excess of 10,000 signatures. This petition will be delivered to the NSW Government at a later date, pending the outcome of this inquiry.

The purposes of the DKLM campaign has been to ensure any laws passed regarding music festivals in NSW:

- Protect human life and health
- Improve safety of events we love in NSW
- Maintain our irreplaceable music culture, and music scenes
- Maintain livelihoods created by music jobs, and other jobs supporting the music industry

¹ This submission has been written by several people expressing their opinion on matters of broad public interest

- Prevent NSW from falling into future national and international disrepute as a result of poor public management
- Arrest the trend in policy making that has existed since the O'Farrell government whereby policy makers have shown comprehensive deficiency to leader policy innovation conduct meaningful reforms to minimise the social harms caused by drugs

The title of submission this is deliberately dramatic, because the Music Festival Law will affect the trajectory of consumption of drugs and alcohol use in licenced premises, and what policy measures are put in place to support people who are faced with choices where they may not fully comprehend the consequences on their own actions. The majority of attendees of music festivals are not drug dealers. It is also common sense that the attendees of music festivals do not wish to die or get injured, but that the deaths that caused this public policy issue to arise were accidental deaths.

OUR RECOMENDATION

To improve drug and alcohol safety at music festivals DKLM, recommends:

- Disallowance of the Music Festival Laws.
- Reform of the Drug Misuse and Trafficking Act 1985.²

The process of investigating whether the statutory rules complied with or did not comply with requirements of the NSW Guide to Better Regulation, Subordinate Legislation Act 1987, IPART Licencing Framework, and whether perverse incentives have been created by the regulatory framework that may increase the risk of drug use and death is likely to require considerable resourcing. A better spend of scarce public resources would be to disallow the current rules and assess the root cause of what is driving drug user behaviour, and how may it practically be addressed. This is likely to be a complicated process and is best undertaken in coordinated rounds of consultation through governance panel the represents government, industry, academic, and community stakeholders.

ECONOMIC MODELLING TO BE FORWARDED TO MUSIC FESTIVALS INQUIRY

Authors and persons consulted in the making of this submission have formally qualifications in music festival operations management, addiction medicine, emergency response, social policy research, law, economics, regulatory policy design, and government program evaluation. Several authors of this report wish to remain anonymous, as they enjoy living quite private lives; so names are not provided here, although some of the authors may wish to come forward and be identified at some point.

One person who has contributed to the writing of this report is undertaking economic modelling. This modelling while not 100% ready for submission by the deadline of 5 July indicates that the Music Festival Regulations will substantially increase the economic incentives for young people to take drugs that are not alcohol, and are sold on black-markets by drug dealers predominantly outside of music festivals. The author of this model considers it would be irresponsible to submit incomplete economic modelling to a government inquiry, that could lead to sub-optimal policy states occurring as a result of this modelling.

This modelling has been undertaken to examine the real policy problem at hand. This policy question has not yet been appropriately defined or probed by the NSW Government, centres upon the question "Why do young persons persist in using ecstasy at music festivals, and what practical measures can be taken to assist people to make better choices to abstain, reduce, or respond to ecstasy use in certain situations?"

DKLM asks for permission to send this representative to present the complete model at the inquiry in on 13 August 2019. DKLM will forward this modelling to the inquiry at the earliest possible convenience.

² Economic modelling mentioned below will support this recommendation.

MUSIC FESTIVAL LAWS DO NOT ACHIEVE NET BENEFITS

The Music Festival Laws achieve none of these objectives, but do:

-
- Force businesses and jobs outside of NSW
- Will destroy culture in NSW

In making the Music Festival Laws, the NSW Government has likely failed to:

- Comply with the process and administrative requirements of the Subordinate Legislation Act 1989 (NSW) ("*Subordinate Legislation Act*")
- Other normal policy processes and standards of best practice procedures of the NSW Government such as the "*NSW Government Guide to Better Regulation*", and the "*Better Regulation Principles*". This may indicate partisanship within the public service or incompetent public management, and deserves investigation to assess why norms and standards have been either ignored or not applied happened; it is not possible to assess what has occurred without an order for the production of papers, and access to the internal documentation of decision making with the relevant departments. Access to this information has not been provided to one of the authors of this report, despite the authors commencing engagement with government departments on 28 January 2019 – including a formal Government Information (Public Access) Act 2009 (*GIPA Act*) application which has still not been responded to
- Liquor & Gaming NSW have confirmed to one of the authors of this report that no single document contains information that can demonstrate compliance with schedule 1 of the Subordinate Legislation Act. This causes the author to suspect that no centralised or integrated process of any kind has been used to assess the costs and benefits of the Music Festival Laws. This is unacceptable, and it does not comply with statutory requirements for the making of subordinate legislation; this should be investigated further.
- Increase the risk of harm and death to children and young from illicit drug consumption by increasing alcohol prices at events, and therefore increasing economic incentives for illicit drug consumption through price and substitution effects
- Are anti-competitive and interfere in the operation of markets without justification
- Consider how user pays police presence affects festivals was not considered in the context of how these costs affect incentives for drug and alcohol use through intoxicant market distortions introduced by this cost
- Considered how behavioural modification of drug and alcohol users may occur for high visibility licencing and policing strategies, or other requirements from the licencing framework, and this may cause licensed areas to become less safe
- Consider whether police presence actually "adds value" by creating additional safety benefits
- Consider how NSW Police measure their contribution improvement in safety created by police services; it appears that at present police do not measure the production "public order" as per the mission and functions of the Police Act, or any other safety metrics, but merely report the number of arrests and court attendance notices issued. From media reports it can be ascertained that at most festivals only a handful of actual drug dealers are caught. The questions should have been asked: What level of policing is optimal; what level of policing causes more harm than good; what police strategies achieve the mission of NSW Police, are best at reducing harms, and are likely to result in lower risk of death
- Best practices in public governance and incident investigation have been ignored in the creating of the Premier's Report September 2018, and this report led to the creation of the statutory rules; therefore the project to inform the regulatory proposal was compromised from the very start of the project commencing. In fact, the recommendations of the "expert report" were handed down before the completion of the ongoing coronial inquiry has handed down its findings. The Department of Premier and Cabinet has
- That significant economic harm will be caused by the statutory rules without demonstrable net benefits to NSW.

A NOTE ON HOW THE NSW CORONIAL INQUEST INFLUENCES THE MUSIC FESTIVAL REGULATIONS INQUIRY

There is at the time of writing this submission an ongoing coronial inquiry into the suspected drug induced deaths at music festivals being presided over by Deputy State coroner Harriet Grahame. This step is welcomed by DKLM, and DKLM would like to express gratitude and support to all who are cooperating with this inquiry process, the public servants who are conducting this process, and the NSW Coroners.

While the coronial inquiry is beneficial, many experts have described the NSW Coronial system as “anachronistic”, and as lagging behind developments in other jurisdiction. The skills of the people who work at the NSW coroner’s court are very useful in making specific findings of fact, in relation to specific deaths and the circumstances around those deaths. However, the development of policy requires the consideration, analysis, and interpretation of all available data by modern statistical methodologies in order to fine tune policy. Former Deputy Coroner Hugh Dillon "The foundations of the current structure of the coronial system were laid down in 1901. In that year, steam engines – operating at 8 per cent efficiency – were high tech," he said. "Although some of the work of coroners relates to unsolved homicides and suspicious deaths, recent thinking about coroners emphasises their roles in enhancing public health and safety."³

To enforce this role, a broad range of independent resources must be deployed, such as modern methods of statistical analysis. The coroners findings while excellent in terms of recommending changes to address the specific findings of fact around the deaths the coroner is investigating are not a substitute for comprehensive drug policy and music festivals policy reform if required. There are many suitable drug and alcohol-modeling experts in Australia (e.g. UNSW NDARC, DPMP). Such expertise should be integrated into the knowledge produced by this coronial inquest.

THE LAWS DO NOT ADDRESS ECONOMIC DRIVERS OF MARKET FAILURE

All licenced premises are associated with certain externalities, or transboundary problems of production or consumption. Drug use outside before entry into a licenced areas is common at pubs, clubs, and music events. This is in fact an example of each individual drug user externalizing the costs of their consumptive choices onto society and the licensees of such places. This causes significant economic damage to music festivals as it requires that music festivals expend considerable resources to take into account the reasonable, and likely, possibility that drug use will occur at a the licence premises. Festivals operators and private security operators are not police, and do not have the same statutory powers to search and/or arrest, and are unable to reasonably exclude every person from the festival area that is in possession of illicit substances.

It is a fact that NSW Police cannot even achieve the exclusion of drug affected persons from music festivals, events, licenced, or other public spaces. The exclusion of person from licenced venues who are under the influence of illicit substances is impossible.

The rate of detection and issuing of a court attendance notice by NSW Police at music festivals has been calculated by this authors to be around 6 per 1000 attendees; or less than 1% detection rate.⁴ This is an incredibly low detection rate and does not act as an effective specific or general deterrent in law enforcement. The addition of further user pays police, and the subsequent charging of user pays costs to festivals is likely to induce behavioural change in drug users when it is known what policing strategy is likely to be employed at an event. In survey research performed by NDARC prior knowledge that a “high visibility” policing strategy will be used has been shown that it would lead to attendees perceiving a higher risk of being detected; which using common sense would modulate drug use behaviour, and also potential

³ Michaela Whitbourn, 'Anachronistic': experts call for a shake-up of the NSW Coroners Court March 16, 2019, Sydney Morning Herald.

⁴ Unpublished primary research of the authors, based upon publicly available data from approximately 20 music festivals.

pre-loading of alcohol.

Currently, illicit substance users face the possibility of sanctions that include a criminal record; this sanction, on a common sense basis, causes drug users to consume drugs outside of the licenced area. A criminal record is a serious matter for all persons, as criminal records constrain the opportunities in life a person can access; the most common of these being employment opportunities, international travel restrictions, and access to licences by way of failing “fit and proper person” tests.

As people wish to avoid the possibility of a criminal record, they logically might take drugs outside of the licenced area. Illicit substances can be consumed prior to entry in areas with no police presence and then entry affected by the ticket holder prior to the illicit substance having physiological effects. It is common sense that increasing policing numbers at events would therefore lead to increased drug taking outside of licenced areas prior to entry; this is a potentially higher risk activity as persons engaging in this activity may decide to increase the mass of the dose consumed in order to prolong the effects of the drug. Ecstasy has a biological half-life of approximately 6 hours – that is to say that the concentration of the drug in the body 6 hours after entering the blood is on average approximately half of the initial concentration. Generally speaking, music festivals run of between 5 and 11 hours. A user might therefore, in response to a high visibility policing strategy, logically decide that they will ingest a greater amount of the drug in order to maintain the effects of the drug for longer. This is a higher risk behaviour and more likely to lead to instances of overdose occurring within the festival area as a direct result of a high visibility policing strategy. It is abundantly clear to the reasonable person that “getting tough on drugs” will not result in people not being under the influence of illicit substances at music festivals.

Another externality of drug consumption imposed upon festival operators is that black market consumption of illicit intoxicants displaces the consumption of the regulated and lawful intoxicant alcohol, thereby decreasing gross revenue from associated sales. To counter this substitution, events must therefore increase prices of alcohol to increase net profit per unit of alcohol sold, which in turn causes further incentives for users to substitute towards further consumption of illicit substances. Compounding this economic substitution effects further is the rapid growth that has occurred in the cost of user pays policing costs that have been levied on festival operators by NSW Police. Several festival operators have expressed to the authors of this report that these increases have been in the range of a 100-400% increase in user pays policing cost across the 2017/18 period.⁵ These user pays costs must be passed onto the consumer otherwise a festival business is not profitable and becomes insolvent. User pays costs are generally determined by the NSW Police LACs in which the festival is held. Festival operators often only know the magnitude of this cost several weeks before an event. At this point ticket prices have been set, tickets advertised, and tickets sold. The second revenue stream of most music festivals comes from alcohol sales, and the price of this can be changed up until the time an event commences. To increase net profit from alcohol sales to pay for this user pays policing expense, any first year university textbook on microeconomic theory would reveal that an event will need to either increase the quantity of alcohol sold at an event (holding price constant), or increase the price of alcohol sold (holding quantity constant); *ceteris paribus*. This is the application of basic partial equilibrium analysis, which is an analytical tool that has been used by economists since the late 1800s.

It is an astonishing oversight that the “Expert panel”⁶ has not considered that the Music Festival Laws and user pays costs likely act as an microeconomic driver to increases drug consumption indirectly by increasing production costs to the firm, costs passed on to consumers of alcohol, and therefore increase substitution towards relatively cheaper illicit alternatives by patrons. This speaks to a potential lack of economic expertise in the agencies involved, or that process of making the Music Festival Laws was extremely rushed.

⁵ More than 9 festival operators have discussed this at length with the submission authors in private conversation; all have stated that they wish to remain anonymous for fear of further increases in user pays costs in retaliatory regulatory action by NSW Police.

⁶ Especially considering that there are persons with experience in insolvency law and business serving upon the ILGA board.

EXAMINATION OF COMPLIANCE WITH SCHEDULE 1 OF THE SUBORDINATE LEGISLATION ACT 1987 WHEN STATUTORY RULES WERE MADE REQUIRED

The approach of deploying an expert panel in an attempt to solve a social problem that has existed for centuries within the extremely constrained political window of the NSW election was a reckless political decision. Drug and alcohol policy interventions affect a panoply of regulated and unregulated markets, influenced by multiple parameters. Unintended consequences through cascading price changes in these markets cannot be discounted without thorough research. It appears research to investigate these effects was not performed by Liquor and Gaming NSW, or any other government department, prior to the statutory rules commencing. The authors of this submission bases this assumption on the fact that quantification or any numbers defining costs or benefits resulting from reduced social costs associated with reduction in harm are conspicuously absent from the NSW Government Document "*Liquor Amendment (Music Festivals) Regulation 2019 – Statement of Compliance with Schedule 1 of the Subordinate Legislation Act 1989*" ("*the Schedule 1 SOC*"). The Schedule 1 SOC was provided to the authors as part of a proactive release of information requested by the authors of NSW Liquor & Gaming, and provided by the Liquor & Gaming NSW Director of Licencing at approximately 11:16PM on 14 March 2019.

DKLM recommends that:

- the inquiry should obtain a copy of the SOC, and the emails from staff in the agency writing this SOC and the Schedule 1 analysis in order to compare this SOC with the standard of other SOCs made by Liquor & Gaming NSW;
- the inquiry compares the quality of the work performed, and whether the SOC is supported by evidence of actual compliance with schedule 1 of the Subordinate Legislation Act;
- the inquiry order the production of documents from Liquor and Gaming NSW for the time period between when the Premier ordered the production of the expert report in early September 2019, and the time in which the Schedule 1 SOC was prepared by an unknown liquor and gaming officer on 24 February 2019. This is advisable so that that the inquiry members may substantiate whether Liquor & Gaming NSW actually complied with schedule 1 of the Subordinate Legislation Act 1987, and whether any accidental or deliberate non-compliance occurred, in the making of the Music Festival Regulations as subordinate legislation.

POTENTIAL NON-COMPLIANCE BY NSW GOVERNMENT DEPARTMENTS WITH NSW BETTER REGULATION REQUIREMENTS IN MAKING OF THE REGULATIONS

The Better Regulation Requirements (BRRs) have been in place since 1 June 2008. Each Better Regulation Requirement (BRR) is a set that acts as an administrative check and balance upon the making of new statutory rules, so that capricious, dysfunctional and costly new laws are not frivolously made by NSW Government Departments. NSW Treasury reaffirmed the BRRs are official treasury policy requirements in January 2019 with the document "*TPP19-01 Policy and Guidelines Paper, NSW Government to Better Regulation*".

NSW Premier Gladys Berejiklian was NSW Treasurer from 1 April 2015 until becoming Premier on 23 January 2017, a period of almost two-years. When Premier Berejiklian was Treasurer, the same requirements to comply with BRRs applied. This author is of the opinion that the Premier, the Department of Premier and Cabinet (DPC), and NSW Cabinet know about these requirements as the leadership of the NSW Government; they would frequently with NSW Treasury, and new regulatory proposals from NSW Government agencies.

DKLM is of the opinion that the following BRRs may not have been adequately addressed, and that inquiry should investigate, whether the following BRRs were adhered to:

BRR 1 - new and amending regulatory proposals must demonstrate compliance with the Better Regulation principles

Principle 1: The need for government action should be established, government action should only occur where it is in the public interest, that is, where the benefits

outweigh the costs.

Principle 2: The objective of government action should be clear.

Principle 3: The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

Principle 4: government action should be effective and proportional.

BRR 3 - the impacts of the proposal must be identified and justified through quantitative and qualitative analysis of all available data. The level of analysis should be proportionate to the significance of the proposal

BRR 4 - opportunities to simplify, repeal, reform or consolidate existing regulation should be considered

BRR 7 - effective consultation with stakeholders is required to inform the development of regulatory proposals, and to assist the government in thoroughly understanding the impacts

BRR 8 - regular review (using all available data) is required so regulation remains relevant, continues to meet its policy objectives, and does not impose unnecessary regulatory burdens as circumstances change

POLICY PROBLEM WAS NOT CORRECTLY IDENTIFIED IN THE PREMIERS REPORT: WE ARE NOT PAST “BRR: 1, PRINCIPLE 1”

According to the Australian Government Australian Institute of Health and Welfare Australia's Health in Brief \$3.1 million Australians have used an illicit drug in the past 12 months; that is approximately 12.5% of the Australian population used an illicit drug in 2018.⁷ This figure includes all illicit drugs.

The Music Festival Regulations arose were created in response to the recommendations of an “expert report” ordered by Premier Gladys Berejiklian after the deaths of two people at a music event in Sydney on 15 September 2018. The Premier ordered the production of a report called “*NSW Government Expert Panel Report: Keeping People Safe at Music Festivals 2018*” (“*the Premier's Report*”) after two people had allegedly attempted to take the party drug known as MDMA or ecstasy at this event.

The Premier's language stating that the government intended to do everything to shut down the event before looking at a policy problem objectively indicates the event may have been used in a strategic manner as a catalyst for a pre-determined outcome.

Immediately the Premier stated about the two deaths “we will do everything we can to shut this down”.⁸ It is in the opinion of the authors that this declaration to “shut this down” was not responsible crisis, accident or emergency management by the government. The appropriate steps to take after an accident or in an emergency are to investigate what occurred before taking any further actions to rectify the problem, so that steps are not taken that may exacerbate the problem. The Premier failed to do this, and has therefore failed to responsibly govern NSW, and has put the lives of children and young adults at risk by not undertaking the normal policy development processes. This is not good government.

The need to include the word “expert” and “safe” in the report title indicates that careful strategic framing has been employed by the NSW Government in writing the Premier's Report in an attempt to legitimize the report, and also “frame” the subject matter of the report to be about being “safety” rather than drug policy as an attempt to influence public opinion of the public policy issue at hand; this is a common political practice in order to influence public discourses (Chong and Druckman, 2007).

⁷ Australian Government, Australian Government Australian Institute of Health and Welfare, Australia's Health in Brief, <https://www.aihw.gov.au/reports/australias-health/australias-health-2018-in-brief/data> accessed 2 July 2019.

⁸ Bellinda Kontominas, <https://www.abc.net.au/news/2018-09-16/defqon-two-dead-after-music-festival-overdoses/10252848>, Updated 17 Sep 2018, 5:58am

It is the opinion of the authors that the social mischief that must be addressed, and should have been investigated by the Premier's Report is "why has NSW failed to achieve comprehensive drug policy reforms to address drug risks before people died last summer?"

DKLM suggests to the NSW Legislative Council that comprehensive drug law reforms are required; this is a long-term process, but it needs to occur to prevent further deaths.

PRODUCTION OF AN "EXPERT REPORT" IN 5 WEEKS: POLITICAL CONSIDERATIONS

The reason for this inquiry is to report upon the was established on 30 May 2019 to inquire into and report on the impact and implementation of the Liquor Amendment (Music Festivals) Regulation 2019 and the Gaming and Liquor Administration Amendment (Music Festivals) Regulation 2019 ("*the Music Festivals Regulations 2019*"). These regulations arose from the recommendations of the NSW Government "*Expert Panel Report Keeping People Safe at Music Festivals 2018*" ("the Premier's Expert Report"). This report was order by the NSW Premier Gladys Berejiklian in response to two alleged drug-induced deaths at a music festival on 15 September 2018. Therefore, the origin of the *regulatory proposal* that gave rise to the Music Festivals Regulations 2019 must therefore be traced back to the Premier's Expert Report.

DKLM notes that the liberal party lost the seat of Wagga-Wagga by a 30% swing against the liberal party, a seat that the party held for 60 years; this was reported on 18 September 2018.⁹ The Premier's government was not polling well at this point. It is conceivable that political advice arose from within the liberal party to manufacture a crisis (a well known tactic to improve the standing of a government in polling). DKLM does not suggest it has any information to suggest this did occurred or that a specific person would have made such a decision. However, it is not beyond the mind of a reasonable person that this could have happened. The fact that a "drug crisis" occurred required the ordering of a production of an "expert report", and an emergency response at this specific moment of political crisis for the Government is an interesting coincidence to note. If, hypothetically, this were a political strategy, certain opinions in the public would consider this to be a highly immoral political tactic. That is to say, some members of the public would consider it immoral to implement a program of reform without proper research or policy development, such as the Music Festival Laws, that increases the risk of death and injury to children and young persons as an unintended consequence of the reform for political gain.

At this time¹⁰ the circumstances of the deaths at DEFOQON1 were not confirmed as drug-induced deaths, but were only as drug deaths. Much media sensationalism centred on these deaths, and this sensationalism was likely to be fanned by the flames of press statements made by the Premier's department.

The Premier first spoke about the drug deaths on 16 September 2018, and the Premier's report was published in full on 24 October 2018.¹¹ This leaves only 33 days to write an expert report on the extremely complicated topic of 'making music festivals safer'. The fact is, at the time the report had been completed on October 24 2018 the causes of death for the two deceased had not yet been established; although it appears the Premier's "expert panel" implied that the deaths were drug-induced prior to there being comprehensive and definitive toxicological reports, and a completed coronial inquiry into the deaths. This would have been a somewhat defamatory assessment of the character of the deceased if it were to eventuate that illicit substances were not the cause of death for either of the deceased, as confirmed by

⁹ [Lauren Pezet, Jennine Khalik and Moyra Shields](https://www.abc.net.au/news/2018-09-08/liberals-lose-wagga-wagga-by-election/10217434)Wagga Wagga by-election: Liberals lose state seat held for more than 60 years, <https://www.abc.net.au/news/2018-09-08/liberals-lose-wagga-wagga-by-election/10217434> - ABC News, Updated 18 Sep 2018, 8:55am

¹⁰ Approximately between 15-20 September 2018

¹¹ Police & Justice, Improving Safety at Music Festivals, <https://www.nsw.gov.au/news-and-events/news/improving-safety-at-music-festivals/> 24 October 2018

the coroner. This has occurred with music festival deaths previously. For example, at a festival in Victoria in 2019, the tragic death of young man Callum Edwards was initially reported as having died of a drug overdose, when in fact he had likely died as a result of being bitten by a tiger snake.¹²

The importance of completing a full and thorough investigation to make findings of specific fact upon which to develop policy after the conclusion of formal investigate processes before convening an expert panel to assess the totality of all available evidence and data, which is also required to comply with BRR3.

It would be beneficial if the news media were not encouraged in this speculative sensationalism from this point onwards; it does not respect the persons who have died at festivals, and it does not contribute to the policy questions at hand. Page 2 of Australian Government Institute of Health and Welfare (“AIHW”) 2018 report Australia’s Health 2018 (Australia’s Health Care Series no. 16 AUS221, Canberra) states that drug-induced deaths are defined as those that can be directly attributable to drug use from toxicology and pathology reports. AIHW reports were used within the Premier’s report also, therefore it is known to be a trusted source of information to NSW Government decision makers.¹³

COMMENTS ON THE PREMIER’S SELECTION OF AN EXPERT PANEL: LACK OF INDEPENDENT DECISION MAKING

DKLM notes that the people on the expert panel are experts within certain fields, and are persons of good repute and excellent moral character. This section identifies that in the specific field of “music festival operational safety” and “drug use and addiction medicine” there were/are preferable experts within NSW that should have been consulted given the seriousness of this issue.

ILGA Representative: Mr Philip Crawford is a solicitor primarily with experience in banking: he has experience in litigation, banking and insolvency, dispute resolution and negotiation.¹⁴ There is no clear link between these areas of expertise and the ability to analyse the cause of alleged deaths, and make findings of fact upon the causes of death, and recommend policy solutions or changes in management that will keep patrons safer at events in the future. Mr Crawford is a person of good repute and considerable is experience and expertise as a solicitor. Mr Crawford may have been selected to be on the expert panel as there is not a single regulatory economist, health economist, or health professional on the ILGA board, this is concerning as the ILGA board makes many decisions about regulatory decisions that modulate the harms of drugs (licit and illicit) in NSW. The ILGA board is unbalanced in favour of law and accounting professionals. It would be prudent public management for the ILGA board to be renewed, with a more balanced set of skills represented.

NSW Police Representative, Mr Mick Fuller: Commissioner Fuller is an expert in policing, law enforcement and emergency management. Mr Fuller as Police Commissioner contributes highly relevant skills in Police Management, the organisation of large crowds, an enormous breadth of experience in numerous policing capacities, and is trained in Emergency Management Arrangements and Managing an Emergency Operation, and working in an Emergency Operations Centre. The authors agree that Commissioner Fuller is a leader in Australian Policing, and agrees that Commissioner Fuller is an expert that is relevant to the questions investigated by the expert report.

NSW Health - Dr Kerry Chant is NSW Chief Health Officer with the qualifications MBBS FAFPHM MHA MPH “leads the Population and Public Health Division which has accountabilities for a broad portfolio of issues, including tobacco control, reduction of risk drinking and obesity, the promotion of physical activity, end of life care and organ donation.

¹² Siobhan Kenna, Beyond The Valley Festival Death: Snake Venom Found In Reveller’s Blood <https://10daily.com.au/news/australia/a190109dif/beyond-the-valley-festival-death-snake-venom-found-in-revellers-blood-20190109>, 10 January 2019

¹³ Australian Institute of Health and Welfare 2017. National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics series no. 31. Cat. no. PHE 214. Canberra: AIHW.

Dr Chant has a particular interest in the response to HIV, hepatitis C and hepatitis B and Aboriginal Health".¹⁵ Dr Chant is extremely qualified in the particular fields of population health, medical care and health. It does not appear as though Dr Chant has published specific drug and alcohol addiction treatment research. There are many medical experts who are drug and alcohol treatment researchers and experts in NSW; it would have been wise of the Premier to choose one of those experts to inform policy development, as either a replacement or supplement to the considerable skills of Dr Chant.

It is important to note that none of the experts selected for the panel are truly capable of making independent policy recommendations of the government of the day; they are all heads of government departments that are influenced by the NSW Premier and Cabinet.

The Panel did not contain any specific expertise in drug and alcohol addiction or treatment.

The panel did not contain one person with skills and experience in the operations management of a music festival environment. Many experts of this kind do in fact exist in Australia. The inquiry is invited to contact DKLM for a comprehensive list of such experts, and the inquiry may wish to select such an expert to inform policy development in the future.

Therefore, each of the persons representing the NSW Government Agencies and the Premier had a vested interest in not examining the actions and or processes of their agencies internally, or providing any kind of performance appraisal or program evaluation in respect of their own agencies administrative, statutory, or enforcement responsibilities. There appears to have been little introspection, or review of the how the performance of the NSW agencies may have affected safety at any music festivals. Given that this was a highly politicized public issue, it would have been good governance practice by the Premier and NSW Cabinet to appoint an independent chair to oversee the expert panel; preferably from another Australian jurisdiction so that the independent chair of the panel would be isolated from the political and administrative consequences of any recommendations that poor practices, or other controversy, was found when examining the responses of NSW Government Agencies.

All properly trained police or accident investigators have been equipped with the basics of how to search for the truth in a set of circumstances by using a standard form of questions known as the "5W1H"¹⁶: who was involved; what happened; when did it happen; where did it happen; and **WHY** did it happen; how did it happen. Given that Mr Crawford and

Searching the words *who, what, when, where, how* all appear within the document multiple times as written by the "experts" that have authored the report.

The document does not contain the word "**WHY**" within the document. At no point has the following questions been asked: "Why did the persons die"; "Why did the persons allegedly take drugs"; "Why does drug use occur"; "Why does drug use persist despite the risks of drug use being well known to ordinary people in society".

Because the "Why" questions have not been asked at all, the Premier's report is deficient.

In this context, it is clear that the "expert panel" was not an independent expert panel, but was rather a panel of convenience that had been convened to serve political objectives of the government of the day, as a strategic use of public deliberation; this is a well known tactic of politicians and has been studied extensively in the policy literature (Hendriks, 2006). Further, this strategic use of deliberation, was not authentically aiming to address the underlying policy question of "why drugs are being taken at music festivals leading to injuries and deaths?" and "what can are the reasonably practicable policies, or interventions that can be carried out to directly affect or influence the persons choosing to take drugs at, or before entering, music festival licenses premises?"

The fact that a panel with limited independence was appointed to investigate the deaths of

¹⁶ See for example references to the Kipling Method on p 7 of AiPol, Australian Institute of Policing, Journal of the Australasian Institute of Policing Inc. Volume 7 Number 2 2015.p 7

the deceased is disrespectful to their memory. When a person dies, a public agency investigating their death must take this duty seriously, and owes it to the memory of the person who died to carry out a full and proper investigation of their death. The Premier's report was released prior to the many of the facts around their death had been established, in fact the NSW Coroner's Court has continued to investigate these deaths.

It is the authors's opinion that the Premier's Report did not pay adequate respect to the memory of those who died as it was likely rushed in order to fit within the political window prior to the NSW election, and so that the Music Regulations could be passed prior to the commencement of the caretaker period March 1 2019. The regulations were passed only just before the

While, this may seem like a small error to the layperson to trained investigator a glaringly obvious error if it was intended that a comprehensive investigation be attempted to establish *why* the deaths happened, and what can be done to stop or prevent future reoccurrence of future deaths.

RECOMMENDATIONS MADE BY MUSIC FESTIVALS PANEL WERE LIKELY DECIDED BEFORE MAKING FINDINGS OF SPECIFIC FACTS ABOUT THE DEATHS: PRE-DETERMINED POLICY OBJECTIVES

The recommendation that a specific liquor license should be created in response to alleged drug-induced deaths was in fact a pre-determined policy objective of NSW Liquor & Gaming as a stand alone political entity in it's own right. It is well known among policy scholars that public sector managers can often act "policy entrepreneurs" who have their own policy agenda outside of the scrutiny of public discourse and merely wait for the "political window" to align with their desired policy reform projects, within the political subsystems which are their public institutions and networks of stakeholders that they engage with (Mintrom and Norman, 2009, Sabatier, 2013).

This can be ascertained from a careful reading of the opening sentence of the report, which states in the cover letter "two young people lost their lives at a music festival *and* many others suffered drug-related harms." The very opening sentence of the report here appears to attempt to connect the deaths of two people at the festival with drugs, despite at the time this report being authored a conclusive cause of death had not yet been established by the NSW Coroner.

DEFINITION OF "MUSIC FESTIVAL" AND RISKS NOT JUSTIFIED BY ANY DATA ANALYSIS IN EXPERT REPORT

The Definition of "Music Festival" by size, as a risk category, is not justified by any data. "Music Festivals", "Events", "Concerts" are all different names for variations on the same thing; being a gathering of humans that are attending a location where there is music being played by performers.

Figure 1 below shows a linear regression model fitted to data from Table 1 in the Premier's Report¹⁷. There were no attempts to analyze the data in Table 1 of the Premier's "expert" report within the Premier's Report; that is to say the data is merely presented by no trends or relationships of statistical significance were analyzed by the expert panel. In fact the data presented in the Premier's report is misleading in a material respect. The data of relevance being presented in this submission is that there is no correlation *Ambulance Transfers Per Capita*.

¹⁷ Table 1. Medical incidents at music festivals and concerts on land managed by Botanic Gardens and Centennial Parklands Trust, Western Sydney Parklands Trust, Parramatta Parklands Trust, Sydney Olympic Park Authority, July 2017 – September 2018.

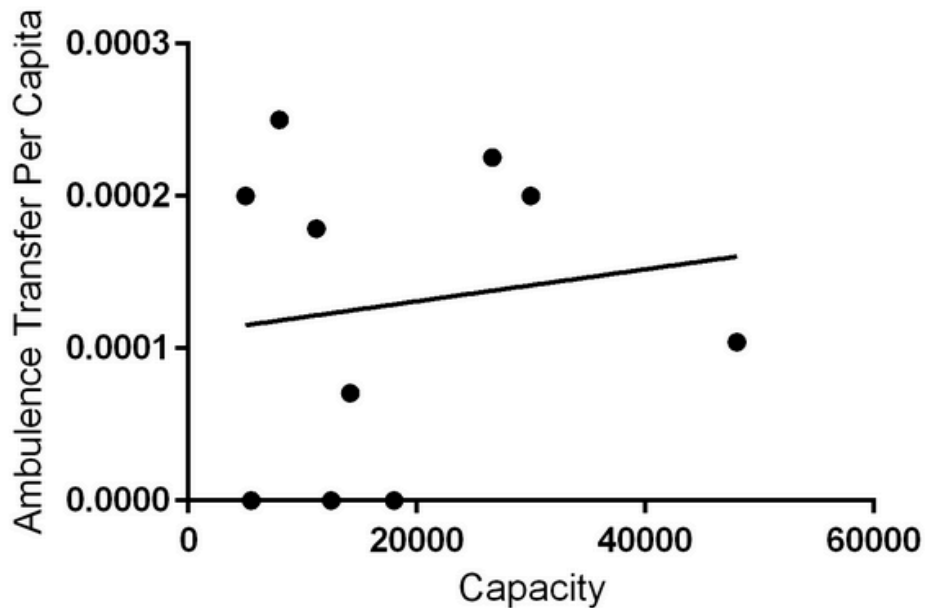


Figure 1: There is no significant statistical correlation between event capacity and the number of ambulance transfers per capita using the data contained within in the Premier’s Report (P-value = 0.68 R-squared value = 0.02041).¹⁸

It is also noteworthy that the may also be because the hastily prepared expert report did not consider a single festival that occurs outside of metropolitan Sydney. This means that laws which affect country people have been made that did not even consider the welfare of country people, or whether there was a difference in the risk profile of events in country towns. Given that the state is in drought and economic benefits of festivals accruing to these country towns, directly and indirectly, it is not good policy that the place of music festivals in the country has been ignored by the Premier’s report. NSW Government has a duty to make policies that consider the welfare of significant rural centers, and country areas. The Premier’s report fails to address this question with any data about rural or non-metropolitan events.

CHARACTERIZING THE MUSIC FESTIVAL DRUG USER: “EUPHORIC” EFFECTS OF MDMA AND ALCOHOL

DKLM includes this section to show some of the complexity of the information in relation to MDMA consumption; this section is not intended to condone the use of drugs in any way. The information here is by no means comprehensive, it just scratches the surface, The relevance to this inquiry into the Music Festival Laws, is to illustrate that the expert report and recommendations produced in a short period of time to support the making of the Music Festival Laws was barely a cursory examination of the issue of MDMA use. Here are some facts from peer reviewed scientific journals that demonstrate the complexity of this regulatory area:

- One comprehensive Australian study in the Emergency Medicine Journal of 1347 hospital presentations caused by “ectasy and related drugs” (“ERD”) found that only 21% of hospital presentations come from licensed venues(Horyniak et al., 2014); which includes *all* licensed venues (e.g. clubs, pubs, casinos). The same study found that the median length of stay for admission was 3 hours with 81% of patients discharged directly home by health care professionals (Horyniak et al., 2014). This is an important finding as it demonstrates that most medical presentations due to ERD drugs are short, and that medical professionals were confident enough to know that within 3 hours they had treated, and discharged their duty of care to the patient, and that the patients were in a safe enough medical state to return home.

¹⁸ As there is not a large enough data cloud of events,

- Peer review studies have shown that users rate the combined intoxication of MDMA and alcohol as being a longer lasting euphoric effect than just MDMA, or alcohol alone (Hernández-López et al., 2002). Further, the combined use of MDMA and alcohol causes dissociation between subjective and objective sedation which means that subjects may feel euphoric and less sedated and feel like they are better at doing things (dancing, driving, being sober) but actual performance ability continues to be impaired by the effect of alcohol, which can lead to underestimation of risk(Hernández-López et al., 2002).
- Several studies have used the same Addiction Research Center Inventory (ARCI) as a questionnaire to measure the subjective effects Of MDMA and alcohol when used individually, and when used together (Hernández-López et al., 2002). \
- Concomitant MDMA and alcohol use impairs cognitive function, and that they are frequently used by young people who are “polydrug” users, which means that the users will use MDMA, alcohol, cannabis, cocaine, ketamine or other party drugs simultaneously in a session. Although the simultaneous use of alcohol and ecstasy is generally well tolerated and increased subjective (Dumont et al., 2008), and increased subjective utility may be obtained from simultaneous use of both drugs simultaneously rather than separately(Hernández-López et al., 2002)
- Users of the drug ecstasy are normally not addicted to the drug¹⁹, but are “instrumental” users that use drugs to obtain benefits from altered states of the central nervous system (CNS), and other benefits derived from being in non-altered states after the drug experience has been completed (Goudie et al., 2011, Smirnov et al., 2013).
- People also voluntarily consume psychoactive drugs at dosages that are usually below the acute toxic range from the drugs at (Gable 2004; Hagen et al. 2009).

THE NSW MUSIC FESTIVAL REGULATIONS WILL INDIRECTLY INCREASE THE COST OF ALCOHOL COST PER UNIT AT EVENTS – A PARTIAL EQUILIBRIUM ANALYSIS

Partial Equilibrium Analysis, and has been used by economists worldwide to analyze the effects of changes in market prices, quantities and regulatory interventions – and has been in used by economists from the late 1800s onward. It is used on the basis that macroeconomic effects have microeconomic fundamentals, and is used to analyze market trends in past data, and also predict how a market would behave to changes in market conditions in the future. For example, organizations such as the World Bank have used partial equilibrium analysis within the “*SMART Theoretical Framework*” of the *World Integrated Trade Solution* to analyze trade data to assess the impact of tariff changes on trade.²⁰ Partial Equilibrium Analysis is one of the most commonly used tools available to economists to assess the impact of market interventions, such as new regulations or changes in taxes that will impacts upon market prices, demand, supply, and quantities of goods or services supplied to markets.

ALCOHOL AND BLACK-MARKET PRICE EFFECTS CAUSED BY MUSIC FESTIVALS REGULATION HAVE NOT BEEN CONSIDERED

Surprisingly, it appears nobody in the NSW Government has attempted to model the incentives for drug and alcohol users, and how changes in price might affect their behavior in the incredibly specific licensed premises type of a “Music Festival” as defined by the NSW Government Music Festival regulations. These areas contain a regulated market for alcohol, and a myriad of black-market goods, which are illicit substances; see the list of chemicals that are cited at schedule 1 of the *Drug Misuse and Trafficking Act 1985* for a full list of the black-market substances that could be complementary, or substitute goods to alcohol.

Attendees of ticketed “*music or dance*” focused events (“Music Festivals”) are market

¹⁹ Addiction being defined in the medical sense of exhibiting tolerance AND withdrawal symptoms which lead to continued use of the drug.

²⁰Information on World bank use of partial equilibrium analysis in trade and tariff assessments can be found here: <https://wits.worldbank.org/wits/wits/witshelp/Welcome.htm>

participants in a spatially and temporally constrained market. “Punters” as they are referred to colloquially are not allowed to leave events once they enter through “*pass outs*” to enable exit and re-entry. As such the market conditions for the sale of alcohol within the premises is of a spatiotemporal monopoly. The festival owner sets the price of alcohol within the premises and no unauthorized vendors are allowed to sell alcohol within the event zone. An event holder may sometimes outsource sales of alcohol within such zones (e.g. beer and wine festivals), however the general case is that the event promoter of music festival is the sole seller of alcohol.

Therefore, net profit generated from alcohol sales is a substantial component of the financial model underpinning music festivals; that is to say that the majority of music festivals would not be profitable, and therefore would not exist without the revenue of alcohol sales.²¹ As such, increasing any of the fixed or variable costs of running a music festival will require more net profit from alcohol sales for the music festival to break even and keep operating.

Partial equilibrium analysis, increasing Police user pays costs decreases the amount of funds available to devote to critical care of persons at festivals, it also makes it more likely that a festival business will not survive as it reduces the profit margin by adding a fixed cost to event budgets after the point in which this can be factored into a ticket price. This means the festival business is at risk of being bankrupted by decisions made by NSW Police by the, which is also long after approval for an event has been given to proceed.

Alcohol market price increases to recover costs of compliance with the Music Festivals Law may act as a driver of drug market demand for MDMA/Ecstasy through substitution effects! This has not been analyzed, or considered in the making of the laws.

POLICE DECISIONS TO INCREASE USER PAYS COSTS MAY UNINTENTIONALLY INCREASE DRUG RISKS AT FESTIVALS BY INCREASING ECONOMIC INCENTIVES TO CONSUME DRUGS

The current version of the ‘NSW Police Force: Cost Recovery and User Charges Policy February 2019’ states that:

“The number of police deployed to an event is the minimum number to maintain order as required by section 208 of the Police Act. The policing requirements will be assessed against risk factors associated with the event including, but not limited to:

- *The size and type of venue and event*
- *The type and age group of spectators*
- *Facilities available at the venue*
- *Availability of alcohol*
- *Experience at similar events*
- *Emergency management requirements*
- *Private security arrangements*
- *Other risks impacting on the event*
- *Time and place of the event (e.g. no single police units are available for some work after dark, some areas may require work in teams etc.”*

In making decisions under this policy, the person making an administrative decision under this policy must therefore construe the meaning of the words in this policy through the parliamentary intent of the Police Act 1990, where it states the mission and function of NSW Police at section 6 is to:

“[Work] with the community to reduce violence, crime and fear... to provide police

²¹ This information has been obtained from discussions with numerous NSW music festival owners, directors and operations managers.

services for New South Wales... [In] the protection of persons from injury or death, and property from damage, whether arising from criminal acts or in any other way”

The imposition of user pays policing levels and therefore the associated user pays invoice payable by an event to NSW Police is decided at the level of Local Area Command (“LAC”) Commander. LAC commander is a role or position, not a rank, within the NSW Police Force. On conducting desktop research for this submission, publicly available information about the role of LAC Commander was not found. A phone call was placed to the NSW Police assistance helpline and a NSW Local Area Command and the question was asked verbally about the difference between a Local Area Commander and NSW Police Ranks. It was ascertained in discussion with a NSW Police Duty Officer that the role position of LAC Commander is generally performed by a LAC Superintendent, however at minimum the role could be filled by a person in the role acting in this capacity while staff who are regularly the LAC Commander are on leave (e.g. recreational leave, sick leave, family leave). Therefore the minimum rank and role of a person making a decision about user pays policing services according to the UPP is likely to be a LAC Commander who is at minimum the rank of Inspector.

The minimum requirements to become a police officer in NSW are stated at *Annexure A* to this report. To become a police inspector the *Police Regulation 2015 (NSW)* states that “*in the case of a specialist position of the rank of inspector—a period of, or periods totalling, not less than 3 years at the rank of sergeant or a higher rank*”²² is required, and that they must be “*on the inspectors promotion list that is in force when the position is advertised.*”²³ If an officer has attained the rank of sergeant or higher, and they have performed well enough to be on the list of promotion, they may be promoted to inspector. As an inspector, they may have to perform the duties of a LAC Commander, or the LAC Superintendent may perform this. There is nothing in this career progression pathway that necessarily trains a person to adequately assess the formation and reaction of mass drug markets to policy invention; the career path is effectively basic training, and then incredible amounts of perseverance and experience. DKLM appreciates the skills of all members of NSW Police force, and especially appreciates that officers of commissioned ranks have committed tremendous amounts of service and sacrifice to society.

However, it is not obvious what makes a person with this combination of training and experience the appropriate person to determine the optimal quantity of user pays police presence at a music festival in order to reduce all harms at music festivals. In fact, these roles are perhaps not the appropriate people to assess safety at music festivals at all, as police officers are not drug and alcohol safety specialists, public health specialists, or drug emergency treatments specialists.

Police officers are drug law enforcement specialists, and are experts in detecting drugs, arresting offenders and collecting evidence of the commission of drug offences. Police are also experts in static crowd control, safe movement of people, dealing with violent individuals, and investigating reports of sexual crimes for example. These are all extremely important actions and functions of NSW Police in music festivals, sporting events and in other public situations. The presence of NSW Police as visible general deterrent to violent and anti-social behaviour is vital for the safety of many events. This fulfils the object of the NSW Police mission and function in ‘reducing violence’.

LAC Commanders are not likely to have the appropriate level of skill to make informed drug and alcohol policy decisions that affect mass-market formation and user behaviors. This is not to say that they do not a fantastic job. DKLM thanks the officers of the NSW Police for all of their service, in assisting operators plan, operate, and improve events over several decades of meaningful engagement with operators. However, DKLM suggests that decision about an optimal level of policing should be made by a specialist unit within the police force that contains skills in regulatory economics and the enforcement of law, drug and alcohol addiction and treatment knowledge, as well as the indispensable street level policing

²² NSW Police Regulation 2015 (NSW) section 5.

²³ NSW Police Regulation 2015 (NSW) division 4.

knowledge that is developed by officers as they progress through the police force.

However, the risk of drug detection for young drug users actually increases 'fear' and 'crime'. User pays police costs are not generally decided upon prior to ticket prices being determined, and in many cases have been increased only weeks out from music festivals: see for example 'Mountain Sounds Festival'²⁴, or two-weeks before the festival 'Rabbits Eat Lettuce'.²⁵ These massive increases in *fixed costs* immediately prior to an event mean that businesses cannot be passed on to patrons through ticket pricing components. At the stage the LAC sends the user pays invoice to the business ticket prices have been set, and tickets are on-sale or sold out, making cost recovery of this user pays charge not possible. Therefore, only the alteration of alcohol pricing in an attempt to increase the net profit from alcohol sales can occur to.

As police, officers attend music festivals on a user pays this cost must be passed on by the business to the patron from the revenue streams available to a business. As mentioned earlier, this is generally passed on to customers at events in the form of higher drink prices, or could lead to relaxation in RSA responsibilities for an unscrupulous operator.

DKLM would like to close this section by stating that Police Officers place themselves at considerable personal risk when dealing with intoxicated, and sometimes violent people, and that music lovers in NSW all appreciate their service in facilitating safe events.

DOES THE USER PAYS POLICE POLICY ENHANCE CO-PRODUCTION OF REGULATORY OUTCOMES AND CONTINUOUS SAFETY IMPROVEMENT?

DKLM asked some festival operators the question "What do you think about how the NSW Police User Pays Policy has been implemented since the September 2018". Two of their anonymous responses are reported in this section.

Below are written response of the festival operators, provided on the condition of anonymity for fear of retaliatory increases in user pays charges or further enforcement targeting by NSW Police. The fact that festival operators, whether a natural persons or company, feel they must speak on the basis of anonymity out of legitimate concern of being targeted by police and other regulators emphasizes the uneven, uncertain, and potentially unfair manner in which user pays police charges have been used by certain LACs.

Whether this is in response to LAC orders, or police directives from higher-ranking officers, it appears that trust has been broken between festival operators and regulators. This will almost certainly produce worse regulatory and safety outcomes, as instead of safety being a collaborative issue upon which operators and government agencies are working with a shared sense of purpose and objective of improvement, NSW Government policies have instead created an adversarial environment in which approvals, operational information, and other information that could improve safety will not openly be shared. This kind of working relationship between regulators and the regulated community is extremely unproductive and unlikely to afford regulators and festivals to adopt a model of *continuous improvement* in safety planning and improvement.

This again is in contrast to the policies of how safety is improved in other NSW Government Departments, especially in the area of work health safety zero harm objectives. Improving safety at festival sites is no different in theory to improving safety on other business work sites upon which goods and services are sold and traded. As per NSW Safe Work processes for incidents and accidents there should be a *focus upon prevention, response when required, focus upon compliance, and use of evidence* to identify lessons learned from each event and

²⁴ Al Newstead, Mountain Sounds cancelled, blames NSW Government's "war on festivals"
<https://www.abc.net.au/triplej/news/musicnews/mountain-sounds-festival-2019-cancelled-nsw-govt-war-on-festival/10795174>

²⁵ Paul Gregoire "Challenging the NSW Police Shutdown: An Interview With Bohemian Beatfreaks' Erik Lamir-Pike"
" <https://www.sydneycriminallawyers.com.au/blog/challenging-the-nsw-police-shutdown-an-interview-with-bohemian-beatfreaks-erik-lamir-pike/>

how to improve safety next time.

Festival Operator 1

"We have a council, licensing police, regular police stakeholder meetings as part of the council development or event application, it's a necessary part of having a good working relationship with the authorities in your local area, and part of the event application requires feedback from NSW police as a council requirement, but also now NSW Health and paramedics. We've been doing this the whole time. But there has been an obvious change, the main difference we saw in the way the LAC has been carrying out orders in these meetings, especially as there is uncertainty around what council and the police's expectations of their regulatory responsibilities are, neither Authority has really known who has been responsible for what, but overall there has been uncertain around events and who has what responsibility to do what job. The local councils have been looking to NSW police LACs, the LACs have been providing inconsistent information, and the officer at the events have been acting in really unusual ways. We've seen police doing absolutely nothing at all and not engage with the public, or alternatively with seen officers being really aggressive in their enforcement strategies and physically intimidating, it appears there has been no clear directives from higher up in the force. As a result of the confusion in what the police are they're to achieve. We work with the LACs all the time, but they have been policing in line with what their superiors have told them, and the superiors don't have an understanding of the nuance of these events – there are no police that appear to be trained in specific elements of music festival safety. We've seen this in the interactions they have had with people that have turned uglier than they had to have been when Police have got physical when words would have made a situation better, and seen Police try and restrain people that more appropriately could have been talked to and taken to a medical tent. There needs to be a top down shift in what NSW Police directives are, and better training about how to deal with these kinds of situations. So we are left scratching our heads about what the role of police has been at these events, and what value proposition they pose in increasing festival safety when we see these kinds of responses."

The main between safety improvement and systems elsewhere and at music festivals is that it is impossible and unreasonable for, or to expect, festival operators to be able to keep drug-affected persons out of festival licensed areas. "Operator 2" below elicits to the inquiry that despite actions by NSW Police with full compliance and assistance by their operation they are finding patrons turning up to events intoxicated by alcohol and potentially other drugs.

Festival Operator 2

"It seems the response, especially in the last year has been to increase policing numbers on the ground to try and scare people out of using drugs, but what we are seeing anecdotally is that where this has happened the kids just turn up drunk or on drugs before the events because they know that the police are waiting at the gates to search them, so they consume their gear much earlier in the day to avoid from having to "run the gauntlet" at the entry. This is actually the complete opposite of what will make our events better businesses and more social places. Ideally we want everybody turning up stone cold sober, and if they chose to consume drinks or substances, we'd want them to do that inside of an area in which there are security guards, police, and medical staff to help them out if they get in to trouble. We have to deal with these people [police] on a day-to-day basis, and they also want to get along with us in the job we both have to do. They are told to implement laws and policy. If we are pushing back on what they have been told to implement as a their duty as officers, it's not good for the relationship between us and them and making a safe cooperative environment. The officers have said that they just do what they are told, the police officers on the ground at the events have said they think this situation is absolutely ridiculous as well, but they are just following chain of command, and they just hang around in groups of 5 or 6 and kick stones to pass the time because they've been told to be there, and they don't necessarily have anything to do for the majority of the time they are there"

FAILURE TO ASSESS EFFECTS OF POLICING STRATEGY ON SAFETY

The NSW Government has failed to consider this basic fact in the design of their policy, which is a heavy-handed top down approach – which treats all music lovers in the same manner as

drug-dealers by subjecting them to invasive searches upon entry to festivals. Research by the National Drug and Alcohol Research Centre UNSW shows that these searches are likely to decrease drug possession upon entry, but not whether a decision is made to consume drugs, and that it causes behavioural change so that persons would be more likely to purchase drugs of a person once inside a festival (NDARC).²⁶ Therefore, the use of such searches and policing tactics may ironically be creating ideal market conditions for drug dealers inside of festivals. The deployment of these invasive and coercive powers in policing also likely undermines the mission and function of NSW Police, as it generates distrust and dislike of members of the police force. This submission does not specifically address the detection dog program, however it should be noted by the inquiry that the Music Festival Laws did not address the effects of these policing strategies, and that is a failure also.

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²⁶ NDARC Drug Policy Modelling Program (DPMP), Can police deter drug use and supply at music festivals and licensed entertainment precincts? Caitlin Hughes, Vivienne Moxham-Hall, Alison Ritter, Rob MacCoun, Don Weatherburn, Applied Research in Crime and Justice Conference, Sydney, 16 February 2017

Annexure A: Minimum Requirements for admission to NSW Police Force

General Criteria	<ul style="list-style-type: none"> • Minimum 18 years 4 months of age • No driving offences for 12 months prior to submitting PSA - minimum, hold a current NSW Green Provisional licence • Australian citizen/permanent resident or a NZ citizen with Special Category Visa • No tattoos on face/neck/hands (i.e. nothing visible) – see Body Art policy
Academic Criteria	<ul style="list-style-type: none"> • The Charles Stuart University (Goulburn Campus - Police Academy) academic eligibility criteria (hyperlinked) for the course must be met by the student, usually a TAFE Certificate III or ATAR above 65 for acceptance into an associate Degree in Policing Practice. • Professional Suitability Application (PSA), which includes lodging JP-certified copies of Full Birth certificate, RMS Certified Driving Record & Australian citizenship (for applicants born overseas). • Literacy and Reasoning Test (i.e. supervised exam at either Broadway, Blacktown, Dubbo, Wagga Wagga, Coffs Harbour or Newcastle), handled for NSWPF by VETASSESS – they also sell a booklet for students who want to practice prior to the exam. Invitations to this stage are given to applicants by NSWPF (i.e. you don't book the exam without the invitation from NSWPF to do so). Offers appear to be based on the academic rankings provided to NSWPF by CSU (refer to Academic Eligibility Criteria above).
Mandatory Certificates	<ol style="list-style-type: none"> 1. Keyboarding Skills Certificate – at least 25 wpm with 98% accuracy 2. Apply First Aid + Pocket Mask Certificate – 2 day St. John's course; make sure you ask for the additional Pocket Mask item; do the refresher course if it becomes more than 12 months since you did it; must be current when you lodge PSA; 3. Aquatic Rescue Sequence Certificate (\$10) – wearing lightweight pants and t-shirt: tread water for 1min; 25m head-up freestyle swim; tread water for 1min; pick up 2kg weight & swim 25m – by an AustSwim instructor.