

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 6 – PLANNING AND  
ENVIRONMENT**

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

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney on Friday 14 September 2018**

**The Committee met at 12:00 pm**

**PRESENT**

The Hon. Shayne Mallard (Acting Chair)

The Hon. John Graham  
The Hon. Taylor Martin



**The ACTING CHAIR:** Welcome to the tenth hearing of the Portfolio Committee No. 6 – Planning and Environment inquiry into the Music and Arts Economy in New South Wales. The inquiry is examining policies to support music, arts and culture and is considering whether local councils are setting realistic noise abatement and environmental impact targets in their consideration of development applications from cafes, restaurants and live music venues. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay my respects to the elders past and present of the Eora nation and extend that respect to other Aboriginal people who may be present today.

Today we will hear from the Live Music Office, local councils, the Media, Entertainment and Arts Alliance, New South Wales government agencies, and the Sydney Opera House. Before we commence, I will make some brief comments about the procedures for today's hearing. The hearing is open to the public and is being broadcast via the Parliament's website. A transcript of the hearing will be placed on the Committee's website when it becomes available.

In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing, so I urge witnesses to be careful about any comments they make to the media or others after they complete their evidence because such comments would not be protected by parliamentary privilege if a person decided to take action for defamation. Guidelines for the broadcast of the proceedings are available from the secretariat. There may be some questions that a witness can answer only if they have more time or certain documents to hand. In these circumstances, witnesses are advised that they can take the question on notice and provide an answer within 14 days. I ask everyone to turn their mobile phones off or to silent for the duration of the hearing.

**JOHN WARDLE**, Director, Live Music Office, on former oath

**The ACTING CHAIR:** Mr Wardle, welcome to today's hearing. Would you like to make an opening statement?

**Mr WARDLE:** The Live Music Office thanks the Committee and parliamentary staff for the extraordinary amount of work that is being undertaken through this inquiry. The Committee is doing an industrial amount of work for our industry that will have wide-ranging and very positive impacts for us not only in New South Wales but also in forming national discussions and beyond. I will provide an update on a couple of things that have been in train since we last presented to the Committee. The Live and Local Strategic Initiative that was funded through Create NSW and our office has provided funding for events in 18 council areas across Western Sydney and regional New South Wales and was completed as at June 30. We are thrilled with how well the project has gone.

I have provided a two-page brief to the Committee detailing some of the outcomes. A total of 66 individual events have been presented through the program involving 1,359 musicians, 583 acts, and 852 performers. Create NSW priority areas were represented in every program with 236 cultural and linguistically diverse artists, 46 Aboriginal and Torres Strait Islander artists, 12 people with disabilities, and 450 youth artists. The program included artists aged from nine years to 71 years. We talk about all-ages events and these were definitely all-ages events. Total audience attendance is estimated at more than 53,000 across the 18 local government areas at 262 venues. The list provided includes 35 different types of businesses that put on live music from cafes to public domains, pubs, clothing shops, galleries, lawnmower and garden businesses, hairdressers, and bakeries. It has been such an exciting program.

In addition to those events, there has been wide-ranging policy and strategy engagement happening in the participating councils. We are seeing them engaging in this inquiry. For example, the evidence from Tweed Shire Council was really thorough and demonstrated the contribution of the project. There is participation in consultation and the development of the Create NSW Contemporary Music Strategy. We are also seeing connecting roles within councils, supported discussions on the night-time economy, and dialogue and consideration development. We have even seen photos, images and optics from the project being used by the Department of Planning and Environment in some forthcoming planning guides. It has been extraordinary.

Create NSW also presented Make Music Day in partnership with the Australian Music Association. Make Music Day is a free celebration of music-making around the world held on 1 June. It started in France in 1982 and is now held on the same day around the world in 750 cities and 120 countries. Our office put on a gig and I performed, which I am sure was very special for everyone. The Sydney Symphony Orchestra participated with a simulcast webcast of Verdi's *Requiem*, Waverley Council put on events at Bondi Pavilion and there were events at Liverpool. The Sydney Mandolin Orchestra also performed in Mosman. It is a really exciting initiative.

I see this as connecting with people who do not have access to the usual entry points for music participation. It also highlighted the challenges that the New South Wales Local Government Act presents for people putting on events. Activities that generally require council approval include events on community land, playing a musical instrument, singing for fee or reward, delivering a public address, or directing or procuring a theatrical, musical or other entertainment for the public. We have bandstands in parks all around New South Wales but people cannot play music in them unless there is an approval. People can play sport, but we cannot do it.

**The ACTING CHAIR:** That is a development application [DA] approval?

**Mr WARDLE:** No, it would not be a DA; it is just that there would need an approval under section 68. That is why many councils have busking policies—they need to negotiate the Local Government Act section 68 Part D "Community Land". There has been activity from the agencies with our industry, which we are pleased to see. Create NSW has been on the road in Western Sydney, Byron Bay and Orange, having music workshop events. There has been a number in Sydney—two in the city and one in Western Sydney. Create NSW has established the Contemporary Music Strategy advisory group, which has had its first meeting and has another one next week. It has put a musician survey out that is engaging directly with artists across New South Wales to collect information about their working conditions, their experiences and their perspectives.

We are really encouraged to see direct engagement by Create NSW with working musicians through that process. It is still open and it will close on Sunday 30 September. The Department of Planning and Environment has been engaging with us through the development of the night-time economy DA guide, which is great to see because, as the inquiry's evidence is showing, the development application process is a challenge, particularly for

small-to-medium independent operators. Liquor & Gaming NSW had its regulation round table on 22 August, which was important, and having the music industry included in that was great. It is good to see that the agencies are engaging directly with our industry.

**The ACTING CHAIR:** Thank you for coming back today. I note that there are some apologies from some of the Committee members this afternoon. They are keenly interested in what is going on and will be back involved. I start off by saying thank you for your submission. It was very thorough and comprehensive and a great guide for us in what we are doing. In your submission you said the main issue was the regulatory environment. Will you expand on the regulatory environment problems and what changes you would recommend?

**Mr WARDLE:** Yes. In the submission I have identified three main areas: the overlap and duplication in the liquor licensing and the planning approvals process; the complexity of the noise and sound issue and how we deal with land use conflict; and land use planning issues around designating and setting the ground rules, which is fundamental to both of those. I will start with the issue of duplication and the difficulties that people experience in not only establishing an entertainment venue or a hospitality industry premises but also in varying trading conditions. I have heard town planning professionals say that there is no need for the liquor licensing process when there is a development approval process. They need a DA first, although it is often unclear to applicants as to the planning approval pathway, the development consent and the liquor licence. They need a DA and a building approval and then, subsequent to that, have to go to Liquor & Gaming or local government and look for a liquor licence. It is that duplication that causes incredible cost and delays in process for businesses. It would be a common-sense solution to—

**The ACTING CHAIR:** On that point, when they apply for their liquor licence, the council has already put consent conditions and managing issues around noise impacts and crowd control and whatever else. Then there is another lot of conditions put in by the liquor authorities, and sometimes they ramp it up even higher. Are you suggesting that the council would be the liquor licencing approval authority?

**Mr WARDLE:** I think we need to remove the duplication in the process. There would certainly be a role for probity checks around character. But we do a single process for gaming machines in many ways. Section 209 (1) of the Gaming Machines Act states:

An environmental planning instrument (whether made before or after the commencement of this section) under the Environmental Planning and Assessment Act 1979 cannot prohibit or require development consent for, or otherwise regulate or restrict, the installation, keeping or operation of approved gaming machines in hotels or on the premises of clubs or any other premises.

Councils have no jurisdiction over the installation or use of gaming machines. It may not be directly applicable, but what we can see is a single agency that has jurisdiction over the approval of a land use. Is a liquor licence and a gaming machine licence comparable? It is an interesting situation. We can do it. Committee members should look to the experience of businesses. Last time I spoke I spoke to a couple of case studies. First, I spoke about Butchers Brew, which is a small bar on Marrickville Road that was going through the process. That was in March and the bar is still not open—they are still going between the planning approval and the liquor licensing and back and forth. Another example back then was Lazy Bones Lounge, which has experienced issues around the interpretation of whether it is a restaurant for its primary purpose test. When looking to a modification of a liquor licence under section 96, it is again a duplicate process where they need to notify police and Liquor & Gaming—

**The ACTING CHAIR:** I will hand over to Mr Graham, but we did note evidence from many venues that said they were not going to amend their applications because it opens up a whole can of worms.

**Mr WARDLE:** Yes, it does.

**The Hon. JOHN GRAHAM:** Thank you for your submission. The fact that it points towards many of the answers is one of the reasons we were keen to have you back a second time. Without speaking on behalf of the Committee, I think we are persuaded that there is a problem and are now looking for what the answers are and what recommendations we could put forward that actually cut through some of the problems that clearly exist in venues across New South Wales. You have got 24 recommendations in your submission that really go to the heart of some good examples around the country of things we can do to cut through the issues. I just wanted to skip through them quickly—I am conscious that we have little time to talk about some of those answers—and get you to give us a bit more detail. The first of those is a strategic plan for music in New South Wales. I think that goes without saying. Every other State on the mainland has one; we do not. We need a plan. You have talked about the red tape reduction. It has been revealed over the course of the inquiry that up to seven agencies deal with noise. How important is that, in your mind, to tackling these issues, to really simplify that noise excess?

**Mr WARDLE:** Like the duplication in the liquor and planning process it is absolutely fundamental. Again it comes down to land use. If you look at the agencies that have jurisdiction over the amenity process—whether it is Roads and Maritime Services—it is about land use. Whether it is—

**The Hon. JOHN GRAHAM:** When we are looking at recommendations, that really sits right up at the top of that?

**Mr WARDLE:** Yes, it does, absolutely.

**The Hon. JOHN GRAHAM:** I take your point about red tape reduction. In particular you have a point about exempt and complying development for low-impact entertainment. I think this really goes to the heart of the hundreds of venues that are prohibited from playing music and having live entertainment. You will not have seen these figures yet. We will talk about them later in the inquiry today, but we are aware now that there are hundreds more venues than we have been told previously that are subject to these restrictions. You have talked about South Australia in your submission, which just cut through these sorts of restrictions. You have talked about South Australia in your submission, which just cut through these sorts of restrictions. Just tell us about that example as a way to cut through these restrictions on people—basically a ban on musicians working, is how I have come to think of it. Tell us about South Australia.

**Mr WARDLE:** The issues identified through the 90-day change process in South Australia are uncannily similar to the issues that are appearing through this inquiry. Under the liquor legislation in South Australia liquor-licensed premises needed an entertainment consent and approval to have entertainment, and that was under section 105 of the Act. There were some extraordinary conditions that were happening and it was a significant barrier. In 2012 the liquor framework introduced a small venue's liquor licence, and this is interesting because it recognised venue hybridity, which has reference here to our on-premises licences so that you could be a restaurant and a bar. That liquor licence was exempt from section 105 of the Act. So if you went for one of those licences you were exempt from entertainment consents under section 105. The legislation came through in 2012.

In 2015, with Music SA, we did the Adelaide Live Music Census of all the venues in Adelaide and only one of those small venues had entertainment. We went back and looked at it and said, "Hang on. Why is this?" Those conditions that had been applied under the liquor Act were being applied under the development consent. So we were then able to make the case, through the 90-day change process, led by Premier and Cabinet. Cane Goldsworthy played a serious role in the negotiation of exempt development and that principle stands. If it is not—

**The Hon. JOHN GRAHAM:** Did that cut through those entertainment restrictions?

**Mr WARDLE:** Yes, it did.

**The Hon. JOHN GRAHAM:** So detailed, sometimes ridiculous, but effectively in South Australia you were able to say, "We will put those aside. These are not matters to be regulated."

**Mr WARDLE:** For the liquor Act process, most definitely. It is a two-stage process. The consent was removed for up until late trading and then it was realised that there was no need to maintain the consent. It is retained for adult entertainment and some other functions, but for most entertainment it has gone.

**The ACTING CHAIR:** The 90-day change process must have resulted in a suite of legislative amendments and reforms to be able to remove those conditions that were retrospectively embedded in DA consents and so forth?

**Mr WARDLE:** That is right. The 90-day change process happened after the momentum was already happening for the removal of entertainment conditions, and on 1 May 2016 a State variation to the national construction code of small arts venue was also introduced. The music industry was working closely with government, with the agencies, with the capital city council, with the police—everyone was collaborative—and AHA. There was a recognition that a couple of steps had been made, but the coordination of the agencies needed to happen. Just further to the DA conditions, from that as the exempt development came in there was a commitment from the City of Adelaide that existing conditions on DAs would be removed, I understand, without cost. Application would be made for existing conditions inconsistent with the exempt development conditions and would be removed on application.

**The ACTING CHAIR:** Thank you for that.

**The Hon. JOHN GRAHAM:** Given the time, I might just skip through some of these other recommendations, and I am particularly interested in how significant you see them designating responsibility for

the night economy by having a night mayor or a night-time economy commissioner. It seems straightforward, but where does it sit in your priority list?

**Mr WARDLE:** It sits highly, but it would also sit within government. We have some pretty fine advocates around, but ultimately somebody who can coordinate the agencies.

**The Hon. JOHN GRAHAM:** Creating a music development office—one of the things we have taken evidence on is the fact that there is in Create or in government there are not really those music-specific skills. We have some very good agency people, some people working very hard in Create often with a film background, but not that specialist music knowledge. Do you have a view on that gap?

**Mr WARDLE:** I look to the evidence from Millie Millgate, the Executive Producer from Sounds Australia, who speaks to that issue. I have a good working knowledge of the Music Development Office in South Australia and it has proven to be a highly effective agency that has contributed greatly to the recent development of the South Australian music industry, having now three staff although there have been some recent changes broadly within the State—I am not sure of the current status—but having industry and innovation, and also having public servants from State development and from the arts agency.

**The Hon. JOHN GRAHAM:** I might just quickly ask about a couple of others. You talk about establishing a community benefit fund to provide financial support to the sector. It is modelled on South Australia, supported in principle by the AHA. Will you give us a quick bit of background on this?

**Mr WARDLE:** In South Australia it has, within the Gaming Machines Act, a Community Benefit Fund. From that \$850,000 a year goes directly to developing the music industry in South Australia. What that effectively does is it quarantines funding for the music industry away from the contours that we see within decision-making around arts funding. It is quarantined away from that and it is allocated directly.

**The Hon. JOHN GRAHAM:** Lastly, I might just ask you about the role your office has played and funding for your office. You have worked across the country, you have assembled these recommendations and views that are very useful for us, and the feedback has been very strong from some of the music sector people with whom you have worked in your office about the assistance you have given them cutting through this jungle of regulation. Where is your funding up to federally, if we thought the work you were doing is valuable and it might be one option for the Committee to recommend a view about the ongoing role of your office. Where is that up to?

**Mr WARDLE:** The Live Music Office is currently in receipt of no funding federally. My role is funded solely through APRA AMCOS. And my position has changed.

**The Hon. JOHN GRAHAM:** When did that become the case?

**Mr WARDLE:** That became the case really at the start of 2018 but that structure is now in abeyance as APRA AMCOS do a review.

**The Hon. JOHN GRAHAM:** I might put some questions on notice to you on that subject.

**The ACTING CHAIR:** One of your recommendations has come up a few times in evidence and is regarding the attitude of the police in the process of liquor licence applications and indeed enforcement of liquor licence conditions. Your recommendation No. 21 is for independent analysis of submissions for licensing applications. We heard evidence from some venues that they had a great relationship with the police and local licensing police but then the neighbouring area had a bad one and there are different approaches to it. Generally speaking, we have heard evidence that police generally do not support applications for new venues just on principle. We heard that yesterday in Tamworth and we have also heard about it in the city. What is your view about the policing side of it?

**Mr WARDLE:** That is often my experience from speaking with venues. Businesses will often negotiate conditions just to get their doors open. When they are looking at varying their conditions they may not want to transfer from a restaurant to a bar or an entertainment on premises licence because it would then open their trading conditions up to consultation with the community and with police. I am interested in the responses. Is it a statistical response or is it a case-by-case consideration of the actual operation of the business and what it provides to the community? There is an opportunity here to look to the public interest test within the Liquor Act as well.

We see tensions around restaurants and primary purpose tests, but you look to the planning guidance and the planning guidance will say that venues can have entertainment as part of their main business without the need for a separate approval. Why is a restaurant with entertainment—when the planning says that, why is that venue morphing? We need more hybridity in how we are viewing these. I think the police need some more latitude there

because if they feel obliged under primary purpose tests to make a ruling around how they view the operation of a restaurant then we need to change the legislation. Are police responses to licensing and venue applications and variations really taking into consideration the business or are they just a statistical response that says, "Here's an opportunity to make a submission to wind trading back to midnight"?

**The ACTING CHAIR:** That is a very good question and one that we might put to the Government later today. Thank you very much for coming along today.

**Mr WARDLE:** I would just like to make one point. I did not recognise my colleague Lucy Joseph, who was the program manager for the Live and Local program. I think when we look at those results that have been delivered a large part of that is due to her application and diligence.

**The ACTING CHAIR:** We will convey our appreciation of the work she has done and that you have done as well. Thank you for coming in today. You may have taken some questions on notice. We will give you 14 days to respond to those and our lovely people here will help you do that.

**(The witness withdrew)**

**(Luncheon adjournment)**



**BEAU REID**, Project Officer, Economic Development, City of Parramatta, sworn and examined

**JEFFREY STEIN**, Service Manager, City Events and Festivals, City of Parramatta, affirmed and examined

**KIERSTEN FISHBURN**, Chief Executive Officer, Liverpool City Council, affirmed and examined

**JENI POLLARD**, Place Manager, Penrith City Council, affirmed and examined

**REBEKAH ELLIOTT**, City Engagement Officer, Penrith City Council, affirmed and examined

**The ACTING CHAIR:** Good afternoon, everybody. Welcome to the tenth hearing of Portfolio Committee No. 6 inquiry into the music and arts economy in New South Wales. This afternoon we will be hearing from Penrith City Council, Liverpool City Council and Parramatta City Council. For the record, I will note that I was a City of Sydney councillor for 12 years and served with Ms Fishburn at the City of Sydney and then I was employed by Liverpool City Council for two years as an employee alongside Ms Fishburn. It is not a conflict but a confluence, in fact.

**Ms POLLARD:** It is local government.

**The ACTING CHAIR:** Would any or each of your organisations like to make a brief opening statement?

**Ms POLLARD:** I will. Thank you very much for the opportunity to appear in front of the inquiry this afternoon. Myself and Rebekah come from the Place area within council. We both have been involved in the development of the night-time economy strategy for Penrith, which we are tabling today. Copies have been provided to the secretariat. Penrith is a growing city. Like our heavyweights beside us, we are a regional city and we enjoy that position in outer Western Sydney. Our growth is quite substantial. We are looking at 10 per cent population growth between census periods, but, importantly, in respect of this inquiry our most significant population growth is in the 24-year-olds to 25-year-olds and working people in our city. We are really keen to go forward and look at the growth of the arts and music economy, particularly for those people as a target audience. We have some key recommendations about coming together through a roundtable. That is recommendation one in our submission. People in the City of Penrith are facilitators, artists, producers and participants in the arts and we are here representing their views on these matters.

**The ACTING CHAIR:** Anyone else?

**Ms FISHBURN:** I will say a few brief words. I advise the Committee that I tendered copies of a Deloitte report into arts and economy in Western Sydney. I am sitting here as the chief executive officer of Liverpool City Council but I came to local government through the arts and cultural area, including as the director of Casula Powerhouse Arts Centre. I have an unusual insight as a general manager [GM] in that I have seen both sides. I have seen the value of the arts and the difficulty of keeping it on the balance books as a GM. It has been an interesting challenge for me to reconcile.

You are probably aware that Liverpool is becoming Sydney's third central business district [CBD]. We are the home of the new Western Sydney airport and with that has come a new range of development and interest in us. In fact, as a recently as last week we rezoned our CBD to allow for mixed use, commercial and residential to create an 18-hour economy, which will be focused around leisure and retail offering, including cultural and innovation activities. The cultural economy is growing significantly in the Liverpool area and we expect as the airport comes on line in 2026 that the demand for cultural product in our community will significantly increase further.

**Mr REID:** Thank you for inviting the City of Parramatta to provide evidence to the inquiry. My name is Beau Reid and I am the economic development officer with the primary responsibility for planning, policy, regulation and program strategy relating to the development of our city's night-time economy. I am currently undertaking the development of our first night-time economy strategy for the City of Parramatta, which is due to be considered by council later this year. I am accompanied today by Mr Jeff Stein, who is the service manager of city events and festivals. He leads the delivery of our annual program of major and significant events.

The City of Parramatta is committed to becoming a thriving global city and cementing its place as the central river city, one that champions music, arts culture and a fantastic night life as key pillars to our vibrant and diverse community and to a stronger economy. Our city, in particular our CBD, is undergoing a massive amount of development and change now and in the future. Significant capital investment by local and State Government

to transformative infrastructure such as the Parramatta Light Rail, Sydney Metro West and a new Western Sydney stadium underpin this transformation and will position our city as a destination of choice.

We are excited for Parramatta to continue this growth as an arts and music centre with the State Government's commitment to a new museum of applied arts and sciences and a redeveloped riverside theatre, which is already a nationally significant theatre and a strong advocate for the arts in Western Sydney. These will forge a centre point for a thriving cultural central river city that fosters creativity, discovery and a performance opportunity. To this end, we have tabled our night-time economy discussion paper and our cultural plan, which was highly commended at the 2018 Local Government New South Wales awards.

We are already a city with so much to offer. We have developed strong partnerships with the Live Music Office. We work strongly with Create NSW to deliver key programs and events. We provide local business support through significant investment in mentoring, workshops, Australasian Performing Right Association [APRA] licences and programming acts in venues in Parramatta. We actively broker and create opportunities to collect local artists to showcase at large events such as the Invictus Games, Tropfest, TEDx, Parramatta Lanes, Sydney Festival, and Australia Day Parramatta. We are also a city that works directly with artists, contributing to the growth and sustainability of artists' careers as well as our community's participation in the arts. Parramatta Artists Studios is a reputable arts organisation run by council which provides vital studio spaces to artists from across different art forms and career stages, ensuring artists are made in the centre of our city. Artists based at Parramatta Artists Studios are industry-recognised and award-winning.

We aim to aspire to continue this momentum, leverage on significant cultural investment and position ourselves as the arts and cultural capital of Western Sydney. But doing this is not without challenges. Our community has told us they want to see more arts opportunities and live music in Parramatta, particularly, and more support for local artists, musicians and businesses to broker opportunities. They are conscious of the pressures of change and they want us to be proactive as a city in transition. They also want us to respond to traditional entertainment noise.

As we grow, the importance of the central river city in meeting the cultural infrastructure requirements of a burgeoning greater Sydney at large cannot be understated. The city advocates for planning of regulatory reform, as we detailed in our submission, to support greater flexibility for councils and operators to provide arts and cultural opportunities, for businesses to diversify their offerings, and for our nightlife to thrive. The City of Parramatta is pleased to be in attendance. We welcome the opportunity to answer any questions you may have.

**The ACTING CHAIR:** Thank you for attending today and for the documents you tabled, which we will use. The three councils commissioned the Deloitte's report, for which I congratulate you. That report is a 2015 report?

**Ms FISHBURN:** That is correct.

**The ACTING CHAIR:** You have tabled that. Do you want to just touch on the findings of that report and how it should inform our way forward in terms of Western Sydney and around the arts investment in Western Sydney?

**Ms FISHBURN:** The intention of the report was to look at the creative economy and arts funding, so the recommendations in it predominantly focus around that. I will focus on three particular areas. The first is the discrepancy between cultural funding that goes to the west in relation to population. This report is 2015, so the figures may be a little bit different but they are pretty close. In terms of the population, 1 per cent of Commonwealth funding in arts and cultural activity goes towards Western Sydney while Western Sydney has 10 per cent of the population. In New South Wales, 5.5 per cent of the 2014-15 cultural arts funding went towards Western Sydney while they have 30 per cent of New South Wales' population. The discrepancy is blatantly apparent there in terms of the funding dollar.

The second issue that the report looked at was essentially the value for money for investing in the arts in Western Sydney. I am sure you will be aware already that the majority, in fact the grand majority, of arts funding in the west comes through local government and is sourced out on local government with some top-up funding through Arts NSW and the Australia Council. On a dollar-for-dollar basis per visitation the Western Sydney arts venues were significantly better value for money than were the State-funded venues in the east. Possibly this is because you learn how to sweat a dime and local government does not quite have the same resourcing, but it did speak towards the return on investment [ROI] that you get from investing in the arts in Western Sydney.

The third matter that I think is particularly pertinent to this is the double or sometimes triple cost of accessing the arts that people living in the west experience. If you are a taxpayer, obviously you are supporting

the State-based institutions and the Commonwealth institutions through a variety of tax mechanisms. To get to those, you need to travel and we all understand the difficulties of travelling in the west: It is why we are supporting such great transport initiatives. There is a cost to that travel. If you then have a cultural institution in your own council area, you as a ratepayer are supporting that by paying twice to get access to cultural product. Then if you are accessing cultural product—and we are often told in the west that it is fine to borrow things from the Art Gallery NSW and people do not have to come, and you can borrow from the Australian Museum—there is a borrowing fee to access those goods as well. For example, if you walk into the Casula Powerhouse Arts Centre and you are seeing product from the Australian Museum, you have essentially paid to see that three times over if you are a resident of Western Sydney.

The final matter is less touched on in the 2015 reports because it does look at the creative economy, but it is worth mentioning—and I am sure my colleagues will talk about it as well—and that is the lack of space to create cultural product in Western Sydney. That speaks to both the lack of State-based institutions—noting the Powerhouse's potential move. However, that will be the only State-based institution. Everything else is dependent on local government. I am happy to talk later, if the Committee wishes, about the risks I see in basing your entire arts economy in the local government area in terms of Western Sydney. I am talking about spaces to create, to exhibit and to perform that significantly are lacking in the west. While that is not the key focus of Deloitte's report, it does pick up on it and it does speak to the broader need to ensure equal or relative arts funding.

**The ACTING CHAIR:** Would other councils like to make a contribution about the Deloitte's report and how that has perhaps fed into your recommendations to the Committee today and the documents you have tabled?

**Ms POLLARD:** Certainly, what Ms Fishburn has just spoken to concurs with our submission. The inequity is very apparent to us in terms of funding for Western Sydney.

**The ACTING CHAIR:** The report went into the multiplier effect of investment, particularly around the Powerhouse relocation.

**Ms FISHBURN:** That is right. That is correct. Looking at the fact that a dollar invested into Western Sydney arts has benefit back into the broader economy as well. We have certainly seen that. When cultural product is available in the west, you do get people coming from outside the area to access it. They do spend in place—all of the things that you see in the east and the city are equally as applicable in the west in terms of cultural access.

**The ACTING CHAIR:** I do not wish to be controversial, but it is the first document that actually recommended the relocation of the Powerhouse Museum to Western Sydney, which of course is another inquiry's controversial work going on. But this Committee can put on its arts hat and say that, in my view anyway, a very important investment for Western Sydney. I invite my colleagues to jump in if they want to ask questions. I am sorry to focus on Liverpool; I do not mean to do that. You made a recommendation around an arts school.

**Ms FISHBURN:** Yes.

**The ACTING CHAIR:** I think that is an interesting innovation for Western Sydney. Do you want to talk about that?

**Ms FISHBURN:** Absolutely. As I am sure you are aware, there has been a significant boom in tertiary education in the west recently, particularly with the University of Western Sydney opening a significant number of campuses, the University of Wollongong opening a campus in Liverpool, and the University of Newcastle campus soon to come. However, while they focus—and it is fantastic to see this—on science, technology, engineering and mathematics [STEM], there is very little capacity to access arts education outside of a broader arts degree for Western Sydney and Parramatta. Certainly the practical studio-based or performance-based arts no longer exist in the west; yet we are seeing many students travelling to the former College of Fine Arts [COFA], which is now UNSW Art & Design, the National Institute of Dramatic Arts [NIDA], and the Sydney College of the Arts from the western suburbs. They are very eager and desperate to access that type of arts education.

There is also something special about Western Sydney—its diversity and multiculturalism—that I think would lend itself to a really strong and interesting creative arts school and a creative arts educational presence. We would be very interested in one of the universities establishing a creative arts school in one of the three largest cities, potentially or, alternatively, relocating one of the current arts schools. I am not going to be too controversial here, but you have already relocated the Powerhouse. We are looking at an offshoot there so that that access to education is available in place. Students who may feel intimidated by the art schools in the west will feel more encouraged about exploring a creative arts career.

**The ACTING CHAIR:** I think we have done enough relocating and building a light rail to last us a little while, but it is a very good suggestion. I might go to some specifics. The Penrith submission states in the recommendations:

- c) Ensure policy is enforced in a way that does not disadvantage the people that live in the places nor those who benefit from the fact that the venue, activity or event is there. These communities are important to keep in mind when developing hubs of night-time economy.

I guess that refers to moving into the live music area. That is that the nub of one of the problems we have—land use conflict. I am open to all witnesses present to answer this question. What are your suggestions around managing that conflict between entertainment venues—whether that is live music or otherwise; it can be a theatre—and the residents. Actually you refer to residences as a land use around that.

**Ms POLLARD:** I will speak first in my colleagues may wish to add something as well. Penrith is emerging in terms of the numbers of residential dwellings coming into the city centre at the moment. From our perspective it is really about ensuring that those residents are clear that those conflicts may be coming forward and that they are advised early in the processes about restrictions on live venues but also the fact that there will be live venues. People coming in know that up front.

**The ACTING CHAIR:** These are people coming to new developments, or are they just moving into the area and into old housing stock?

**Ms POLLARD:** Yes. Our residential growth in our city centre has been slow to date, but it is coming forward fast and heavy at the moment. We do not want people coming in and thinking that those sorts of venues are not going to impact on them. Also, food venues have noise associated with them as well.

**Mr REID:** It is a similar story for City of Parramatta, particularly our central business district [CBD], which is going to double its population in the next five years. It is progressively becoming more of a living city that is moving away from just having a commercial call with development on the periphery. As part of the night-time economy strategy—and I think it is mentioned in the discussion paper as well—we will be pursuing what I would dub the Wollongong model, which is to adopt a clause inside the 149 certificate to be able to directly tell residents who are moving into particularly the CBD but also other entertainment precincts, like it is already happening for Sydney Olympic Park area, to let them know, "You need to expect a reasonable amount of entertainment noise in conjunction with events, live music venues, theatres, things like that."

**The ACTING CHAIR:** Just for the record, the 149 certificate what is that?

**Mr REID:** It is attached to your property title and it gives you specifications as to planning instruments and how they apply to your particular parcel of land.

**Ms POLLARD:** The section 149 certificate is actually not called that anymore. I was desperately trying to remember what it was called.

**Mr REID:** Yes.

**Ms POLLARD:** I was saying vague things about planning.

**Mr REID:** That is right. It is called something else in the Environmental Planning and Assessment Act.

**The ACTING CHAIR:** Excellent evidence, all under oath too.

**The Hon. JOHN GRAHAM:** First, thank you for your submissions. They are tremendously helpful to tackle one of the problems with this discussion, which is that it is often seen as a discussion about the centre of Sydney. In your submissions you really strike that out altogether and ask for greater consultation with your local areas, which I am sure the Committee will support in its report. You talk about the Night Time Economies Councils' Committee, which, I think, picks up Liverpool and Parramatta, but not Penrith at this stage. Are you intending to—

**Ms POLLARD:** Yes.

**Mr REID:** Please come.

**The Hon. JOHN GRAHAM:** That is one of the key forums where this discussion actually has been happening in practice. But greater consultation from State Government with that body would be one powerful way to drive this agenda. I think there is agreement on that, from what I can see. I did want to ask for some quick views on noise. The Committee, in evidence, has revealed there are seven agencies, counting local councils as one of those seven, that are regulating noise. That is clearly very confusing for venues; it is probably not good for

citizens either. There are some recommendations about simplifying noise complaints. Do you have any quick views on that issue? How important is it? Do you have any views about how to simplify it?

**Ms FISHBURN:** Speaking from Liverpool's perspective, our night-time economy is very nascent at the moment, so noise complaints are actually not the issue. What is the issue is venues that wish to get into the game, the complexity of them understanding what they have to do around noise management and acoustic treatment. We are at the other end of the scale to what you might be seeing in the CBD, but what is stifling us being able to get that happening and generated is the complexity of the planning framework and the legislative framework around noise. In a sense, you actually have the opportunity to take a Penrith or a Liverpool and use that as a test case to trial how you can make this more simple and see if that actually stimulates that night-time economy in a way that is less disruptive to members of the community.

**Mr STEIN:** I think business viability is crucial and the things that impede small venues, be that for live music or the arts, the things that will impede them in terms of their business model is all the regulation—and when I say that, the confusion and the red tape, if you like, around noise—and navigating that, particularly for small business. We do try to facilitate that through councils and help them navigate that. But the other thing is, of course, alcohol and the difficulty because that is part of the business model, particularly for live music, to help small business, in particular, navigate what is at times overly cumbersome and overly burdensome in terms of business viability. Any streamlining, any way that that would help business, because council can do—

**The Hon. JOHN GRAHAM:** I might come to exactly that issue now, because recommendation 8 in the Parramatta submission talks about exactly that, an integrated application process for liquor licensing and development applications. I presume that overlap—we have had evidence from venues that the overlap is a real source of frustration and confusion, but are you telling us today that it is similarly a source of confusion and frustration for councils and for communities?

**Mr STEIN:** I will say that we work, firstly, in a really productive and positive way, particularly with local police and have a great relationship with them. So I would have to say that first. But we are council, so it is slightly different in the relationship that we might have as being more authoritative or having more resources to navigate, whereas small business might not have that. While we try to facilitate that relationship and that navigation, and we at all times have a constructive conversation, the place of which they are looking at that is quite prohibitive, in that police do what police do—they look at the worst-case scenario; they do not look at all the different lenses that one might look at in terms of—of course, safety is very important and we do not deny that for a second, but there are other factors there. There are business factors, there are social factors and there are cultural matters that need to be looked at and perhaps police are not the final say in this. They have an important say in this and a crucial say in this, but not a kind of more nuanced, more balanced approach to that.

**The ACTING CHAIR:** I wanted to touch on the Western Sydney City Deal in the Liverpool submission, but you are all signatories—

**Ms FISHBURN:** No, Parramatta is not.

**The ACTING CHAIR:** Parramatta is not?

**Mr REID:** Not us.

**Ms FISHBURN:** No.

**The ACTING CHAIR:** Then you are not going to get the benefit from the airport. The Western Sydney Airport will change the night-time economies probably in a decade's time or so for Liverpool, Penrith and Parramatta. How does the Western Sydney City Deal help the night-time economies and how are you preparing for that?

**Ms FISHBURN:** I will probably speak to that because I am probably more familiar with the content of it than anyone else. The city deal, for the benefit of those who are not familiar with it, is essentially a tripartite agreement between Federal, State and eight local councils that are represented by the western city as defined by the Greater Sydney Commission to work collaboratively on unlocking the potential in Western Sydney. It essentially focuses around the catalysts that the airport brings and the deficit—that is, the jobs deficit—at the moment. It is a shortage of about 200,000 jobs. There are 38 actions in the Western Sydney City Deal currently, none of which directly relates to culture. However, the city deal is a 20-year project and we have certainly had some conversations with the city deal councils about one of the next iterations of the city deal, looking at the cultural aspect and the tourism aspect because the two are going to be somewhat interlinked when the airport arrives.

I see the city deal as an opportunity to look at tripartite thinking around what type of cultural product, support and infrastructure might be needed, and to use that as a mechanism to get the feds to get a bit of skin in the game as well in Western Sydney, which is important for us all to see. I think the fact that the reason for the city deal coming into existence—one of the two reasons—is that the 200,000 jobs deficit provides an opportunity as well to think more strategically about the creative economy, and creative and cultural jobs in the west as well. That may well be, again, a chapter of work that the city deal councils need to do. It would be foolish not to bring Parramatta and Blacktown into that conversation as well because there is a significant interconnectivity between cultural product that there might not be in other industries. At present, to answer your question, fairly silent on the city deal, but the governance of the city deal provides a mechanism to have that conversation.

**The Hon. JOHN GRAHAM:** I have one separate question, and this is one we are pursuing elsewhere. I want to ask about the conditions that apply to either liquor licences or to development applications that impact on venues providing entertainment. It is clear that across both those sources of regulation, often in overlapping ways, there are a lot of conditions for venues saying, "No live music. No entertainment". I think it is important to say upfront that it is very important to regulate noise. It is very important to regulate how alcohol is served. This is a third matter, though, about whether or not entertainment is able to be provided, which seems less sensible on the face of it. It really looks like a ban on musicians being able to work. I just wondered if there was a view from any of the councils about the state of those entertainment conditions. Are they really required, I guess?

**Mr STEIN:** The short answer is no. But I guess it is about having a more nuanced approach to understanding what that means. Again, if you asked the police, they would take the worst-case scenario and would imagine a nightclub dance party full of teenagers. It could also be an acoustic jazz player; it could be myriad things. Of course, they do not have the skill set to look at it in a nuanced way; they will immediately look at the worst-case scenario. A more nuanced approach is crucial. They should have an understanding of what it means and its impact. Its impact can vary greatly and, for the most part, it does not have the negative effect that is immediately assumed through the police lens.

**Mr REID:** The other issue is that development applications and liquor licences are essentially two separate processes. A development application can contain things that go to the liquor licence in a way, but they do not actually talk to one another. A development consent can say one thing and the liquor licence can say another thing and they can be in complete conflict with each other. They may put too much onus on a venue holder to put on live music or to mitigate noise. Because those two systems are not talking to one another in a constructive way, you can end up having a development application and six months later getting a liquor licence consent that does not talk to the development application. What do you do?

**The ACTING CHAIR:** That is the evidence we have heard. I think the representative from the City of Parramatta referred to the agent of change principle and the Victorian legislation. Can you comment on that principle?

**Mr REID:** The City of Parramatta is considering it as part of its night-time economy strategy. We note there are difficulties with the application of agent of change principle, particularly in the City of Sydney, and the onus it puts on a business, especially small operators, pop-ups or whatever, to be able to mitigate noise and other things. We have not looked at it in much detail. I will take the question in notice because I have the review on my desk.

**The ACTING CHAIR:** It works both ways.

**Mr REID:** Correct.

**The ACTING CHAIR:** It does relate to new small bars, but it also relates to the apartment gentrification that Liverpool will now have in the CBD after the zoning change. If you build an apartment block next to a pub, you are responsible for mitigating the noise.

**Mr REID:** Correct, so we need to consider how we are going to go forward with that, whether it is through agent of change principles or an overhaul of our local environmental plan and development control plans for particular precincts and having a nuanced approach knowing that no two parts of our local government area are the same. Our CBD is so different from the rest of the area and that will have an effect on how we apply the principle. We are going through that process now.

**The ACTING CHAIR:** I think that the Penrith and Liverpool councils will be looking at that because they are both going through that change.

**Ms FISHBURN:** We have certainly looked at that and we are thinking about existing use trumping whatever comes next and the responsibility being with the newcomer to manage the existing use. That is the

planning principle everywhere else. If you want to build a residential development next to a poultry farm, it has the existing use and you cannot build residential next to it. It just has not been applied in as sophisticated a fashion through the planning regime in terms of cultural and entertainment precincts. However, it is not something that falls outside the scope of planning thinking or general principles.

**Ms POLLARD:** I agree with that. Like Liverpool, we are emerging. This inquiry provides information on how we can develop going forward. It is a great learning experience being here for this process.

**The ACTING CHAIR:** Thank you for taking the time to appear before the Committee and for making submissions and providing documents. I think you can look forward to some support for Western Sydney from the Committee. Of course, I am speaking on my own behalf in that regard. That all goes towards the greater good outcome that you achieve in your local communities.

**(The witnesses withdrew)**

**PAUL DAVIES**, Director, Media, Entertainment and Arts Alliance, affirmed and examined

**ADRIAN KEATING**, Violinist, affirmed and examined

**The ACTING CHAIR:** Would you like to make an opening statement?

**Mr DAVIES:** We thank the Committee for conducting this inquiry. We have made a submission, but we welcome the opportunity to work with the Committee and other decision-makers on any solutions. Of course, we will welcome the findings and recommendations the Committee reaches. I seek leave to lodge a supplementary submission and recommendations. I am new to the role and I have been doing some work to reposition our organisation and some of that involves extensive industry research, which I trust will be instructive and helpful to the Committee.

I have read some of the submissions and I am aware of the general issue around constraints on the night-time economy. We have made submissions and provided evidence about that and I am happy to talk about it. However, I wish to focus on the consequences of these issues for musicians. In essence, problems with performance opportunities are exacerbating an already critically dysfunctional sector. It is a sector where there is chronic under-employment and a great deal of expertise. Musicians are experts and the people we have surveyed who identify as full-time musicians have provided very detailed and important information that is evidence of the problem. Can I table something?

**The ACTING CHAIR:** Of course.

**Document tabled.**

**Mr DAVIES:** The document details the results of our recent survey, which was conducted by a market research expert. It is national research, but it is skewed towards population centres and therefore is highly relevant to New South Wales. I will not go into every part of this, but I will bring your attention to the key findings. More than 35 per cent of the respondents to this survey reported that their fees for performance are not paid at least 10 per cent of the time—at least 10 per cent. They earn well under the average wage—bearing in mind the secondary and even tertiary jobs they need to do to make ends meet—at around \$55,000 or less each year.

At least 37 per cent of musicians earn less than \$30,000 a year. Respondents to our survey receive an average of 50 per cent of their total income from music. If we include their preparation time and all the other incidental work that needs to be done—which is in fact an investment that they often have to pay for—they make an hourly rate of well less than the minimum wage. This is an indicative measure—I know it is not scientific, but we needed to make a case about what the costs and returns are that musicians face from doing their work.

Two thirds of their working weeks are spent on rehearsal, management and marketing. They receive only 12 per cent of their income from broadcasting, streaming, publishing and sales. I note recent reports about the apparent resurgence of the recorded music industry, but that is highly skewed towards a few major players. There are scant returns—if I can put it that way—for the majority of musicians from streaming. As I am sure the Committee is aware, that segment of the recording industry is incredibly difficult to regulate. As an organisation representing musicians, we are looking towards concentration of the live music sector in order to bring about some stability in that labour market and to avoid the waste and exploitation that is going on at the moment. That is why the subject matter of this inquiry is incredibly important to us. Lost opportunity just compounds an already dysfunctional sector. I know this is quite a long opening statement—

**The ACTING CHAIR:** No, it is very helpful.

**Mr DAVIES:** They are the main facts of our survey. I have two supplementary recommendations that go to the point I have been making, which I would like to table as well. The submission we put to you in March recommended and expressed support for, among other things, regulatory changes around development, which would be in line with agent of change principles. We do not come here as experts in planning and that sort of thing but we understand the concepts. It is a sensible concept. I understand the complexities in it and I understand that there are alternatives that go to precinct planning. As a matter of first principles, we support the efforts that government at all levels can take to improve live music opportunities through implementing planning regulatory changes.

The two recommendation I have put up to you just now go to the issue I was talking about a moment ago—the need to establish a floor for music performance. We are proposing an industry code of conduct, which would initially be binding upon musicians themselves as a way of professionalising or articulating the professional standards that they hold themselves to. It would then develop as a means for regulating a base under which venues



and the industry could rebuild confidence in the sector—that is, the confidence of musicians who would see that there was a reason to continue with their profession and that they were not going to be exploited and undercut by other musicians or paid under an acceptable market rate, for instance. I certainly accept the implicit or actual ambition in such a project, but we have no other reason for being here so that is what we are going to be doing. We look to Government to support such a process. We think it is a sensible way of bringing stability to the sector. We look forward to hearing your views on that.

The second recommendation goes to building audience and the rather lamentable situation whereby 63 per cent of schools in this country do not have school-based music education. Unfortunately—and I apologise—I am not familiar with the exact figure for New South Wales, but we have an aim to promote school-based music education with State governments and the Federal Government. I have suggested that the Council of Australian Governments develop a music education plan for schools that would double the participation of students. Finally, can I say that one of the major constituents of our association and union is symphony orchestra musicians. I note an absence or omission in the submissions and information available to you about the significant impact that orchestras make to the night-time economy. I note in particular the challenges facing the Sydney Symphony Orchestra in the next couple of years with recollection from the concert hall at the Opera House. We would submit that the Government should come to the party to assist with that relocation and the effects it would have.

**The Hon. SHAYNE MALLARD:** Thank you for that. We have the Opera House in this afternoon so we can have a discussion on that. Mr Keating, did you want to add to the submission?

**Mr KEATING:** I thank the Committee for allowing me to give evidence today. My training was at the Conservatorium of Music, where I attended both the high school and the tertiary systems. I have been a violinist with Opera Australia since 1987 and was principal violinist there for over 25 years and occasionally guest concertmaster. I am here in my own capacity as a working musician, and am not representing Opera Australia. Additionally, I organise and lead the Sydney Lyric Orchestra for producers requiring an orchestra. To give you some context, an example of this would be Tina Arena live at the Opera House or providing an orchestra for the visiting Paris Opera Ballet, presented by Leo Schofield.

I am also contacted to provide musicians and perform recordings for many high-profile commercial releases of the day, including Dave Faulkner's Hoodoo Gurus—which was co-incidentally my first professional session for a major label—Savage Garden, You Am I and so on. In April 2017, I started a part-time music venue above a restaurant in Crows Nest named Music @ StreetMarket, which was enabled by the legislation championed by John Wardle. I am also the chair of the Association of Australian Musicians Committee. I want to take us back in time a bit and add a little more about my part in contemporary music and my relevance to this field.

From 1982, I came to know performers in bands working the pub and club scene. My love for the immediacy, dexterity, music-making, knowledge-base and camaraderie musicians displayed to me inspired me to become part of this culture. I was 21 and essentially had never heard a band play live before, as it was not on my radar as a student studying classical music. At this time, musically, I was probably leading the Sydney Youth Orchestra, conducted by Richard Gill, and was part of the Australian Youth Orchestra. During the late 1980s I would finish work at the opera and go out again to perform with bands, probably three times a week on average—and, yes, I did wear earplugs. I am here today because everything possible must be done to protect the resource of our future audience. I am fully aware this Committee knows of the differing laws and legislations across three disciplines of structure—gaming and licencing, police and council—and the prevailing attitudes that developed that are completely out of step to enabling the most basic elements of a live music industry to survive. A good audience is good for business, at all levels.

In relation to the demise of the Kings Cross precinct, I am personally aware that council actively set up road blocks on Cowper Wharf Road near Garden Island preventing access to the precinct, unless, as happened in my case, I was allowed to proceed so I could drop a colleague home. I am still stunned that such an effort was made to proactively reduce business, and prevent people from doing business in the precinct. I know the road block was council because I asked, and they had lanyards and so forth. It is my opinion that all areas of professional music suffer if the so-called grassroots live music culture of our society stagnates.

The arts are an interactive profession, in that the success of all the parts are intricately tied together, the final result being public interaction—the audience—and the attitudes to the profession. A key symptom of a stagnant music industry would be the wages and fees that hirers believe they can charge freelance musicians, given the devaluing of music as a profession and/or the perceived competition to drive wages down. A producer once confronted me with a statement, "Well, if we need to find musicians who will work for less, I'm afraid we may have to go down this road" and "Musicians will work for whatever they are offered", or words to that effect.

Clearly this is challenging at best, and an example of how the profession has been devalued. The insinuation directly was that I would charge less because I should, and that musicians should accept what they are given.

I would like to quote from this statistic from the Australian Bureau of Statistics 2009-2010 that essentially states that twice the number of people went to live cultural events as opposed to patronising live sporting events. I do have the details of where that link comes from. I presume, eight years later, this statistical proportion would still be evident. I would ask that these proportions hang in the space of all discussions related to these hearings, because numbers talk. If the majority of people seek cultural events to experience then it must follow that it is good for business to engage a potential audience with every scheme possible to do so.

I would now like to talk about what I call cultural awareness and educating our audience. I would like to demonstrate how cultural awareness has affected the music industry. I wanted to share with you my opinion of two events that led to a major employment shift in the arts and music that started in the late 1980s. These events made enormous changes to the live band music culture in Australia, eventually impacting the entire music industry and its periphery industries. Both of these changes played a part in devaluing the profession. The first event were legislations that allowed a change in parity of Australian airplay on mainstream radio of the day, which, as this hearing knows, went from a percentage of one hour, to a percentage in a 24-hour period. We all know from the evidence submitted to this hearing that this pushed the percentage of new Australian music out of mainstream working hours.

In my opinion this legislation single-handedly, over time, removed venues and bands from real-time awareness, because bands and the venues they were performing in used to be announced together after a song was played. The recording industry was also decimated, specifically by another broad legislation designed to remove protectionist policies such that recordings of advertising, for example, actors that would have otherwise revoiced ads that had American accents and so on, those jobs simply evaporated.

**The ACTING CHAIR:** We are running out of time. I wonder if you could draw to a conclusion so that we could ask you some questions? I do not mean to be rude, but time is limited. You can certainly table that document. It is very helpful, what you have been saying. Maybe summarise it?

**Mr KEATING:** The next section I talk about is the poker machine, the advent of poker machines and how this has affected us.

**The ACTING CHAIR:** We understand that. Please table that document and we will incorporate it. We will have it as a tendered document, so that it will be on the record.

**Mr KEATING:** Okay.

**Document tendered.**

**The ACTING CHAIR:** You will probably be able to touch on some things in the questions.

**Mr KEATING:** I do have a final statement that I want to make.

**The ACTING CHAIR:** Do that.

**Mr KEATING:** I wanted to re-stress that to create awareness of the arts, and education of the population in a broad sense the full circle of audience participation, awareness and education, which is good for business. education, even masquerading as awareness, is a means to access our future audience; our future audience that will attend community functions, appreciate the arts as a profession, understand the concept of being a professional musician, and not music as something you do in between other jobs. As a career violinist with one of the world's premier opera companies, our success in the industry will rely on the awareness of our potential future audience. Everything must be done to protect this resource.

**The ACTING CHAIR:** Thank you. It is of great benefit to us to have someone of your professional background and experience giving evidence today. So thank you for coming in.

**The Hon. JOHN GRAHAM:** Thank you for your evidence today and also for your submission, which, I have to say, I found as one of the very helpful submissions for the overview it really provided of the set of issues here. I wanted to come to one set of specific issues just to get a view about this, and that is the conditions that apply to venues that place restrictions on entertainment or live music in many places. It has been revealed there are hundreds of venues where this is the case. I want to be on the record saying that I support regulating noise. I think it is really important to regulate the sale of alcohol. A restriction on live music, a restriction on entertainment to me sounds like a ban on work for musicians, for your members in venues. I am really interested in what position you want to put to us today on that issue.

**Mr DAVIES:** One report, which you are probably aware of, says that up to 50 per cent of gigs—if you like, performance opportunities—have been reduced in the past few years, say 10 years.

**The ACTING CHAIR:** That would not surprise me.

**Mr DAVIES:** That is unsustainable. That is why we have the situation I was trying to articulate with the opening statement and the document I handed up. One-quarter of the gigs played by our members are unpaid because there is such a scramble of people to get any gigs at all. The employment within the sector is tenuous—can I put it that way? It is hard to get statistics. One of the reasons why we conducted this survey was so that we could get a handle on it. I think there is a statistic that says there are 6,000 full-time musicians in the country. Who knows how many; what that really means?

**The Hon. JOHN GRAHAM:** I think the survey information you presented is tremendously helpful and colours in one part of this story that we really did not have. I accept the position you are putting about the impact of streaming. I think we have had that put to us as one of the real positives here, that there is an economic model for growth for the industry for the first time. I accept your point that it is very concentrated—it is going to few musicians—but the other evidence we have received is the grassroots music industry, which is really in crisis is the view you put. I struggle to think of another industry that would have a ban on work in this way; a ban on entertainment, a ban on live music in this way.

**Mr DAVIES:** Indeed. We are trying to articulate the situation that musicians are dealing with at the moment and it is critical. The work is drying up. I understand that even though, from a report this morning in fact, there are indications that the night-time economy is recovering in some of our cities, live music venues are still decreasing in number, even as an aggregate number. I can only affirm the view you are putting, which is it is a strain on employment. It is hard to understand how musicians would continue to invest their time and effort when jobs just do not exist.

**The Hon. JOHN GRAHAM:** We have taken evidence from the festival sector about some of the regulations in place for them. One example, festivals operated on private land are allowed to operate for 20 of 365 days a year. There is a balance to be struck between the community and operators using these festival grounds, but again I struggle to think of another industry which is regulated in a way to say that it cannot operate 345 days a year. Imagine if we said that to farmers or to the mining sector. But these festival operators on private property are being told it is 20 days a year and that is it. Are you concerned about the impact on work? That is a direct attack on work for your members, is it not?

**Mr DAVIES:** Absolutely. We support any measure that will improve the opportunities for our member musicians to have work. When we say "work", primarily they are working as contractors so they are small business operators. We would support any opportunity, whether it is regulation or the relaxing of regulations around the way festivals operate or property owners can use their land, or whether it is through laws which are more nuanced in the way noise complaints are managed, or property development laws.

**The Hon. JOHN GRAHAM:** I am conscious of the time. I might follow up with some questions on notice particularly about what you would like to see in the code that you are proposing, which I think would be of real interest. Mr Keating, I might ask on notice for some further information about the importance of orchestral music and the opera sector and for some specific information on the SSO relocation.

**Mr KEATING:** May I add an idea to this? In my running of the venue that I am doing and all these venues that are shutting down and so forth, naturally it is only about the audience. Once you have untrained your audience that is the only driver. Notwithstanding the difficulties, venues would survive if there was an audience that would patronise the venues. This is a key element.

**The ACTING CHAIR:** The music education recommendation goes part way to that. Thank you for those supplementary recommendations.

**Mr DAVIES:** It is an ambitious goal, I know, but we hope you can get behind it.

**The ACTING CHAIR:** Mr Davies, we like your ambition. I do like the idea of an industry code of conduct. We have taken evidence about the issues your survey has highlighted of underpayment, non-payment and exploitation of musicians. I think my colleague Mr Graham is onto the point about the prohibition on live entertainment being a prohibition on employment for your sector. If we can address that issue by economic knock-on effect we can probably better address the employment opportunities for the sector.

**Mr DAVIES:** We appreciate your attention to the issue.

**The ACTING CHAIR:** Thank you. Mr Keating, thank you for coming in and giving your perspective as well. You took some questions on notice and Mr Graham will perhaps submit some others. You will have 14 days to respond to those because we will be doing our report quite soon. The secretariat will assist you with that.

**(The witnesses withdrew)**

**PAUL NEWSON**, Deputy Secretary, Liquor and Gaming NSW and Office of Racing, on former affirmation

**The ACTING CHAIR:** Would you like to make an opening statement before we ask you some questions? The Government has made a submission No. 385a, which we have.

**Mr NEWSON:** I would appreciate the opportunity to make a statement. Thank you for the invitation to appear again before the Committee. I would like to attempt to counter what we find at Liquor and Gaming NSW to be a sometimes specious and corrosive narrative around the Sydney night-life. I would also like to urge caution around what I feel is an artificial pairing, an artificial dependence, that is applied between alcohol and a vibrant night-time economy. I think if we cling to this, I think if we reduce our discussion around a vibrant night-time economy to this pairing with alcohol, I think it far too narrowly focuses the discussion and we do not get the benefit of a much richer and a much wider discussion and all of the diverse activities that that contemplates.

I submit Sydney is open. I submit that Sydney is thriving. I would like to point to a few matters to underpin that. Reasonably recently—certainly in the last month or so—the Economist's Global Liveability Index was released and it ranked Sydney at number five globally for livability. Of the five metrics that they have regard to culture and entertainment is one of them and it is weighted at 25 per cent. I turn to Destination NSW. Its latest figures indicate that New South Wales is ranked as the number one State for visitor nights and expenditure. Their figures also show that Sydney is number one in Australia for visitors, for nights, and for expenditure. Their figures also show that regional New South Wales leads regional Australia.

Just last night I believe, or certainly this week, a report was released by the Council of Capital City Lord Mayors. I have not had the opportunity to immerse in that report but I skimmed it briefly. That report measuring the Australian night-time economy in 2016-17 makes some fairly compelling statements around the Sydney night-time economy. If I can quote, it says that Sydney has the strongest and most concentrated night-time economy in Australia. In 2016-17 it saw establishments increase by 1.8 per cent. It saw employment increase by 6.2 per cent and turnover increase by 6.3 per cent. It also said that this is driven by strong performance in creative and performing arts.

On 2 September there was what was dubbed the King Street Crawl. This was an activity that involved in the vicinity of 150 diverse acts, live music and the like. It was a collection of 20 or more different venues across King Street, Enmore and Erskineville roads. I think that is a strong demonstration that there is a confident industry. I also would like to briefly point to an ABC article that caught my attention. The title is "Sydney's small bar scene shakes off lockout law limbo, as Harbour City looks to revitalise nightlife". It is quoting one individual experience, just one experience, but it was something that caught my attention. The quote is from Mr O'Neill:

"Everyone kept talking about it," said the Irishman, who arrived in Sydney for a holiday last year.

"They were all saying the lockout laws were killing the city. But I didn't understand. I was an outsider coming in, and I thought it was alive—I loved it."

It then goes on to say that he has had a very positive experience professionally in starting up his small bar. At the last hearing on 26 March, it was put to me that the entity behind the Sydney Fringe Festival, allegations or claims had been made—representations had been made in evidence to this Committee that controls or conditions had been put on that event that they were not allowed to have dancing, they were not allowed to have DJs. In this environment, that gets traction and sometimes it will be picked up by the media, but, as we found, there was no substance to those claims. When we investigated it, the four conditions that were applied to the relevant licence were: no sale of alcohol between 4.00 a.m. and 10.00 a.m., no shooters, shots or slammers or otherwise drinks that are designed to be consumed rapidly, a senior manager needs to be on site while liquor is served, and the event needs to be conducted in accordance with its plan of management. These are very ordinary conditions and nothing that causes me concern. They were proposed by New South Wales police and they were consented to by the event. If I could leave my remarks there and thank you for the opportunity for making an opening statement.

**The ACTING CHAIR:** Thank you for that contribution, Mr Newson. Obviously the inquiry's remit is broader than lockouts as well as those issues you have raised. We will come to a point of discussing issues around regulatory control and the conflicts we have come across in our inquiry.

**The Hon. JOHN GRAHAM:** First, I acknowledge that Liquor and Gaming has provided some significant evidence to the Committee over time, which has been quite helpful in sorting through this and it has also provided information in detail, which certainly has been of assistance. I want to turn to the answer you gave to the Committee on notice in May, talking about the number of licences across New South Wales that prohibit or restrict forms of entertainment conducted on the premises. That first answer indicated entertainment was prohibited in 74 venues and restricted in 215. The Committee was provided with information just yesterday—

I am not sure when you provided it—that says that was wrong and, in fact, the number is much higher. Can you tell us what that new information is?

**Mr NEWSON:** I am certainly aware that there were two matters in the information that we provided either on notice or supplementary questions that had some level of error in them. One was a modest error when talking about has Liquor and Gaming NSW imposed any restrictions or controls on genres of music? We said in our questions on notice that, no, we had not. A further look into that demonstrated that there had been a venue. It was one Avoca-based venue. When I looked into the details of that venue, it is not alarming and not extraordinary that the nature of those conditions would be on that venue. It is a wholesaler producer licence and it is allowed to have live entertainment, but it is not allowed to have rock bands or the like, so it is a fairly nuanced condition that is on it. That was an error that we made. I understand we either have or are writing to the Committee to correct that.

The second error, I understand, is around the number of venues that have some measure of control on them. I can refer to my notes. I am not sure that I have that precise detail with me as to what the correct figure is, but what I would like to speak to briefly is the error arose because the conditions that apply to the some 17,000 liquor licences in New South Wales, many of them are historic and many of them have been applied through different mechanisms over time. What it requires is a very heavy manual intervention into these licences. Essentially, staff are reading some 12,000, 13,000, 14,000 licences and attempting to pull out what are the sometimes handwritten, sometimes quite confusing—depending how far back they go, because the IT system never contemplated that sort of query. It is not ideal. There were two errors. One was modest. We did not think there had been a condition imposed. I understand there has been one. The other thing was, I think we have misstated the number of venues that have a control on them. I can refer to my notes.

**The Hon. JOHN GRAHAM:** I might help you there. I want to thank you for providing the information, because it is tremendously helpful. I acknowledge the work that goes into it, but the figure that you have now provided is dramatically higher. Previously, 74 were prohibited, 215 were restricted. Now it is 94 venues are prohibited and 575 venues have entertainment restrictions on them. We are now talking about hundreds of venues across New South Wales, most of which are told "no entertainment, no live music". I support strong regulation of noise. I support strong regulation around the sale of liquor, but I cannot understand why these venues are being told "no live music". Can you enlighten us, what is the problem here?

**Mr NEWSON:** I can certainly try to. The first remark I would make is that it is disappointing. It is disappointing, it is cumbersome and as manual effort is required to go through those licences in a manual intensive way, it is disappointing that we were not able to provide that information at first instance to the Committee, so I apologise for that. The numbers as you have advised me—I think I heard 94 and 575—the first comment I would make is there are now some 7,600 licences in New South Wales. In context, it is a reasonably small percentage of those licences. If I dived into those figures, I think we would find—and I say this cautiously because I do not want to misstate or misrepresent something—that the majority of those conditions are applied to on-site licences, restaurant licences. Those ones, without being trite, are the most accessible, have the biggest churn and, generally, if they are just an on-premises licence restaurant by themselves, they have the lowest risk footprint. It is only when they have other features that their risk profile increases.

I guess what I am suggesting is that, as a percentage, in context, it is a small percentage of the licensed population in New South Wales. I would suggest, but I would like to take on notice and make sure this is accurate, that the vast majority of those licences would be on premises and I think I would accept that there probably would be some form of historical controls or conditions on them, but I think the vast majority would be on premises and that their conditions would be appropriate.

**The Hon. JOHN GRAHAM:** Some information on notice would be helpful. I do not accept the premise that these are just on-premises licences. They are not, in the information you have supplied, and they also apply to some big venues, including hotels, clubs—a series of licensed conditions. My question is: What is the principle here? What is the rationale? If this is not about noise or alcohol, why ban musicians turning up to work in these venues?

**Mr NEWSON:** What I would first like to say is that I understand your comment about the premise, but my comment was not that they are all on premises, they are substantially—

**The Hon. JOHN GRAHAM:** If you could come back on notice, that would be helpful.

**Mr NEWSON:** Absolutely. I would certainly not want to leave the Committee with an impression that there are not other venues with controls on them. There absolutely are.

**The Hon. JOHN GRAHAM:** Let us get to the bottom of that. What is the principle? Why ban musicians turning up to work?

**Mr NEWSON:** I do not think that is necessarily a helpful construction. We are not in the business of, if I can use your words, "banning musicians". We have no role in regulating musicians as such. We have a role—

**The Hon. JOHN GRAHAM:** There are hundreds of venues that are told "no live music" in their liquor licence, which you are regulating, you are supplying to this Committee. Why is that condition on the licence? What purpose does it serve? On the face of it, I cannot understand why—

**Mr NEWSON:** Nor should you be able to, because you cannot take an aggregate number of 500—these conditions are imposed under the statute, so a statutory threshold test needs to be satisfied—and say, "Why are they imposed?" You cannot do that. You need to segment it. You need to look at each file. You need to understand what were the risks attending to that matter, who was the decision-maker, what was the complaint and what reasoning underpinned their decision-making. You need to do that one by one. In essence, at the highest level—although I do not think it takes this where the Committee wants it as in exploring each one of those 500—certainly from a noise disturbance point of view, the legislation very clearly requires there to be a level of respectful observance for the quiet amenity of neighbourhoods.

**The Hon. JOHN GRAHAM:** Yes. That is understood. The noise is heavily regulated. There are seven agencies dealing with noise. I accept that. If this is about the noise, I am with you. Put that aside because it is the subject of heavy regulation. Why is music prohibited in those venues? What is the public good, what is the regulatory reason, and what is the rationale?

**Mr NEWSON:** Again, I would steer this away from that. I do not agree with that construction. I do not think that takes us to the nub of this issue. We are not a music regulator. We are regulating because—

**The Hon. JOHN GRAHAM:** You are a music regulator in 600 venues across the State. That is the information you have provided.

**Mr NEWSON:** I am sorry: I do not accept that construction.

**The Hon. JOHN GRAHAM:** The licence conditions ban music—ban live music, ban entertainment—in many of these venues.

**Mr NEWSON:** I do not have the 500 licence conditions in front of me, but I would suggest to the Committee that in order to get a meaningful response—in order to meaningfully understand—

**The ACTING CHAIR:** We will give you a copy of your later submission, since you have not brought it with you, with a list of the conditions with the prohibitions on live entertainment.

**Mr NEWSON:** Thank you.

**The ACTING CHAIR:** I am surprised that they did not give that to you.

**The Hon. JOHN GRAHAM:** Let me go to the detail of some of those conditions just to help you. You have stated that in one instance those conditions go to the sort of music that is played, and that is in Avoca. But I also want to turn to, for example, the restriction on the South Dubbo Tavern, which says this in part: "Entertainment is to be confined to solos, duos, small cover bands, and country and western music. No large rock bands." What is the rationale for that sort of condition?

**Mr NEWSON:** If I can first answer that comment around I did not bring this with me, I certainly did not contemplate stepping through a level of detail around each venue. I would say that because it does not assist us much further. We have very limited detail here. We have a high-level aggregate statement that says "no live entertainment is permitted on the premises", and there are scores and scores of these. You cannot meaningfully understand this data until you look at that file, you look at the circumstances of that venue, you look at, if it is relevant to a neighbourhood complaint, what was the level of disturbance that that neighbourhood was experiencing, what was the police submission, what was the commissioner's concern around that venue.

**The Hon. JOHN GRAHAM:** I accept that, but there is a range of others that are very similar. I could pick out a range of other examples, but that regulation is restricting the number of people on stage. It is restricting the music to a particular genre of music. Forget Avoca: We are in Dubbo here. It is an additional one on top of what you have talked about. They are allowed to have both sorts of music, country and western, but nothing else. Not only that, there is a restriction saying "small cover bands", so presumably they are banned from playing original music. If a singer-songwriter wants to turn up at the pub, under the liquor licence, they cannot write their

own song and turn up. We are restricting this to cover bands. What is the rationale for a licence condition like this?

**Mr NEWSON:** If I can take you back to my opening remarks where I said in regard to the Sydney Fringe Festival, representations were made and certain conditions were imposed on that licence. Once due diligence was done on that, that was not substantiated.

**The Hon. JOHN GRAHAM:** To that point, the Sydney Fringe Festival did not turn up to this Committee saying that those conditions were imposed. They said they were proposed. The Sydney Fringe Festival has provided the original recommendation from the police that indicated a licence condition was proposed, indicating no DJs and no dancing. That would have prohibited ballet being programmed. After discussion and the heavy resistance of the City of Sydney council, on their evidence, that condition was not imposed. You are correct in saying that. It was proposed, not imposed. Why was this ever propose?

**Mr NEWSON:** That is a matter for the New South Wales Police Commissioner.

**The Hon. JOHN GRAHAM:** Thank you for that evidence. Returning to cover bands and country and western music, is there any rationale for these conditions? On the face of it, they look laughable.

**Mr NEWSON:** I do not know whether I am allowed to ask if we can go back to that question that I took on notice because how it was constructed to me does not quite fit with how it is being presented here.

**The ACTING CHAIR:** Which question, sorry?

**Mr NEWSON:** Question 15: The Committee has received submissions from organisations like the Sydney Fringe Festival talking about the conditions imposed on its operations. In response to the festival's application to operate, it was told that there were to be no DJs and no dancing. The letter to the organiser states that the venue is not to be used for entertainment that includes DJs and dancing. This is the radical Sydney Arts Festival and it is not allowed to have dancing. Is that not a barrier?" I find that unhelpful because I do not have—and how could I possibly have—the forensic detail around all of these licence conditions in front of me. What I am saying to the Committee is that when we test that, and when we look to substantiate that, we often find out that those claims are very excited and not overly accurate. Whether the police commissioner has substantiation or has cause or is motivated, for whatever purpose police deal with, to propose something is a matter for the police commissioner.

**The Hon. JOHN GRAHAM:** We might put those documents to you on notice just to deal with that issue, and I would be interested in your view. What is the rationale, though, for these sorts of restrictions? It is not just South Dubbo or Avoca. The Valley Tavern—jazz, folk and popular music—are the only styles allowed or acceptable. Other sorts of music is banned. Disco music, however that is defined, is routinely banned. At the Wharf Road Restaurant and Bar they are allowed to play compact discs of a soft "rock'n'roll" nature. At the Stoned Crow, the type of music played on the premises is to be limited to these genres: jazz and rock'n'roll. What is the rationale for telling the citizens of New South Wales what sort of music they are allowed to listen to when they turn up to their local venue?

**Mr NEWSON:** If I can reiterate, we could, if we had the files for 575 of these venues, we could step through.

**The Hon. JOHN GRAHAM:** Well, you have it in front of you.

**Mr NEWSON:** I do not have it in front of me.

**The Hon. JOHN GRAHAM:** You have the conditions in front of you.

**Mr NEWSON:** I have a very high-level statement. The statute, the legislation, provides a framework as to where and how conditions can be imposed on a licence. This is the outcome. This is telling me that venue X has a condition. It does not give me any insights into what was the aggravation why that condition is there. Was it the neighbourhood? Was it New South Wales police? Was it by consent by the venue itself? What activated that? We do not know. We need to pull that curtain back.

**The ACTING CHAIR:** Taking a bigger picture look at this issue, the statute is directing you to consider the impact of live entertainment in venues. What Mr Graham is getting at is that if you are managing regulation—and it is heavily regulated and we have come by a lot of conflicts in this area too—of the sound emission issue—the council regulates it and so forth. It is very heavily regulated.

**Mr NEWSON:** Yes.



**The ACTING CHAIR:** You manage the sound impacts and you manage the impacts of alcohol consumption through trading hours and crowd capacity and so forth and security on the licence for liquor, the nature of the entertainment is not practical because, if the sound is contained and regulated and the alcohol issue is regulated, it does not matter what they are performing inside a venue or if they are dancing or there is a mirror ball. We have taken so much evidence about this conflict.

**Mr NEWSON:** There certainly has been an occupation around the mirror balls. I do not mean to be trifling about this.

**The ACTING CHAIR:** But what I am getting at is that if you have the sound under control and the liquor licence's alcohol capacity and security are under control, the character of the licensee is under control, then the type of entertainment surely is irrelevant.

**Mr NEWSON:** In response to that, if I could make a couple of remarks, the first one would be that this data, this 575, is taking an extract from 17 and a half thousand licences from time back to whenever.

**The Hon. JOHN GRAHAM:** Yes. We accept that.

**The ACTING CHAIR:** Yes. We will come to that in a minute, too.

**Mr NEWSON:** Over decades, these have been imposed.

**The ACTING CHAIR:** That is a problem.

**Mr NEWSON:** Last year there were seven noise complaints that I understand our office dealt with. Out of that, I understand two venues had conditions imposed. I do not want the Committee to get a distorted view here. There are 575 out of 17,600 out of a totality of a continuum of licences. It is not 500 that were imposed last year; that is how many in existence, full stop. What I would also like to say is I understand your point, but there are reasons as to why—and it could be New South Wales police or it could be us, and at budget estimates recently I made a reference around it—sometimes most venues do the right thing. Most venues are responsible. But there is a small number of venues that access an on-premises restaurant licence. They do that—I made my remarks at the start. They are the most accessible, the most churned—hundreds a year, very easy to obtain. They represent that it is going to be a genuine restaurant, but in reality we use the term it "morphs" into a nightclub. Then there is often, in these limited number of examples, the irresponsible service of alcohol which contributes to the impact that none of us want, the impact where you have St Vincent's having the emergency room impost that they have.

**The Hon. JOHN GRAHAM:** To that point, because I support you regulating the responsible service of alcohol—where you are doing that, you deserve the full support of the Parliament—I do not understand why we are regulating mirror balls or the sort of music rather than regulating the alcohol service. There are good venues turning up saying, "We are being told we cannot put up a mirror ball." This has been drawn to our attention.

**The ACTING CHAIR:** Or cannot dance.

**The Hon. JOHN GRAHAM:** Or, "We cannot have dancing." Why not regulate the thing that is the problem, rather than—

**The ACTING CHAIR:** Dancing.

**The Hon. JOHN GRAHAM:** —some other issue?

**Mr NEWSON:** Without being seen to impugn evidence that has been given at this hearing, I need to take with some caution claims that are being made here because I find it incredible that those claims would be substantiated. Any venue, any licensee, at any time can make application to have an amendment to their licence conditions—any venue at any time.

**The ACTING CHAIR:** I want to go to a point because you have rightly said that some of these are historical. In fact you told us some of the conditions are handwritten and you can see the conditions for the same prohibition are inconsistent. You can see there is a historical change about the context, like disco today or rock music tomorrow. There is a problem there too. We were at West Tamworth League Club yesterday, a key entertainment venue for the community of Tamworth. They had a condition imposed in 1991—this was not under oath; this was just when we did an inspection—in the 1990s, that has a monitor for sound, a microphone for sound above their stage and a green, amber and red light. When the amplification of performers gets too loud, it goes from green to amber. When it goes to red, it shuts the power off from the stage. They have looked at having that removed because it was imposed in the 1990s from one complaint from a now deceased neighbour across the road. They have looked at having that removed and I understand it is too difficult to remove.

One of the issues is that when you put in an application to amend historical and probably obsolete conditions—I will tell you why it is obsolete there on what they told us: Since then they have double-glazed, soundproofed the roof, put in an airlock and all these things that would mean that the sound would be very different outside, and there have been different developments around the building as well now—is that it opens up all of the other conditions on the premises. I know from my experience as a councillor for 12 years in the City of Sydney that venues are reluctant to open up and get a whole lot of new conditions that are unreasonable, in their view, imposed. I want to put to you a question: Is there a way that venues like that could sensibly have their conditions reviewed—you are saying some of these are historical and silly; we are not saying "silly" but in our view some of them are a little bit ludicrous and outdated—without having the whole Pandora's box of their venue reopened?

**Mr NEWSON:** Absolutely. I would suggest a few things. One, it would surprise me if a venue contacting us activated us to look exhaustively at their licence and want to put on draconian conditions. That would surprise me greatly. Our strategic approach, our priorities are published documents. They are well distributed in industry. Three weeks ago we had a regulatory round table with 120 or so senior members of industry from all stripes.

**The ACTING CHAIR:** We have heard that and we heard it went well.

**Mr NEWSON:** I have regular engagement with industry, as we do with other interest groups and other community representatives. I have never had that put to me, certainly in recent times, that there is any caution or concern around seeking a review of a licence condition. I have never had represented to me by the peak clubs body that there is a caution or concern around—if that is a member of ClubsNSW—the west leagues Tamworth club have trepidation about coming to the regulator. I would like to suggest that the Committee that it is available to that club now. On the facts as they are being presented to me, as they were presented to you, I do not see any difficulty. It is just basic on its face. It seems from the information provided that it is redundant, it is obsolete, and no regulator, let alone—

**The ACTING CHAIR:** Yes, indeed—and unique. I do not know of any other venue that has a cut-off of the power to the stage during a performance. It is quite bizarre, but it is a historical anomaly. That is what I am getting at. I wanted to touch on the issue of the duplication of the processes between your office and local government. Councils impose conditions of consent for a venue—and this goes back to you talking about restaurant morphing into a bar or a club, and that may well be a matter of economic survival. But the council is the regulator in terms of the approved usage of the property; you deal with the licence issue. But what happens is that the council puts in conditions. As I said, I have been a councillor for 12 years in the City of Sydney. They put in conditions about the double glazing, closing of windows at 9.00 p.m., they often put conditions about security and on capacity. But you also do that. You come back months later when they get the liquor licence and there will be other conditions on there, sometimes not talking to each other.

I have to say, I do not understand and from the evidence that we have received business operators do not understand why they get one set of conditions from council, who are very much on the ground, and another set with their licence that deals with similar issues—windows closing and double glazing or whatever. Why do you not leave it to the council and you can advise the council? You give the council advice about the physical conditions the venue around the venue, the capacity and all that—police can do that too—and just deal with the character of liquor licence applicant that is legitimate, the service of alcohol issues that my colleague Mr Graham has talked about, and maybe look at broader, cumulative impact of alcohol venues, because that is a legitimate concern and a bigger picture for the State, and let the council deal with those physical matters that can be amended more easily through the council process if things change later on.

**Mr NEWSON:** I do not think I am necessarily informed to speak in any intelligent way around New South Wales planning laws. I am probably not the proper person to do so but what I can do is recognise and acknowledge what you are saying: that there is unwanted duplication. I would probably say it even rises to a level of clumsiness between planning laws and liquor laws when it comes to the level of consultation required and often the friction between council development approval [DA] position and approvals and then the liquor regulator's position. It can push both ways. You will find in different councils—and you will probably be more aware than anyone here—that councils' sophistication is a bit of a continuum. City of Sydney is a very sophisticated entity and it has the capacity to engage in a meaningful way in the discussion around liquor. Other councils do not and do not want to.

**The ACTING CHAIR:** It is a fair observation.

**Mr NEWSON:** It cuts both ways. You will find that our strategic plan is published. It has been published since 2017. We are criticised from certain parts of our stakeholder continuum that we are too liberal to industry;

industry from time to time accuses us of being too draconian. So on one view that is probably not a bad position to be in: somewhere caught in the middle. But it can cut both ways. We can have a liberal view around a licence. Take the City of Sydney: You look at the planning position, you look at the DA and it will have a constrained view. It will not allow them to trade—say a small bar, it will not allow them to trade till five in the morning. Under the liquor laws, that bar could trade till five in the morning if it achieved the right permissions. Speaking theoretically, councils sometimes will have a more restrictive position and probably appropriate reasons for that. But I am acknowledging there is an unwanted duplication between planning generally and liquor laws. We are alive to it. We are in a dialogue.

I met with the New South Wales Commissioner for Productivity just last week and we had a conversation about this. How can we do some work to look into what this ought to look like? We have been looking at it and we have consulted widely on it. There are mixed views; some stakeholders are highly critical of it and others laud it. How do we rationalise the consultation process that happens between a development application approval and a liquor licence approval? Our view is that there is ample opportunity to go from a two-stage process to a one-stage process. I acknowledge the point. It is a live issue and we certainly want to achieve far better harmony between the two. What that looks like, I would not want to speculate at this stage.

**The Hon. JOHN GRAHAM:** I think those views are very welcome.

**The ACTING CHAIR:** I am glad you are alive to it.

**The Hon. TAYLOR MARTIN:** We touched on it earlier, but what avenue is available for venues to have restrictions placed on them reviewed? What would that process look like for a venue? Terrigal Hotel cannot have live/rock bands performing on the premises. That is my local pub. That seems bizarre.

**Mr NEWSON:** That is not far away from being my local pub.

**The Hon. JOHN GRAHAM:** Are you a rock fan?

**Mr NEWSON:** Not particularly.

**The ACTING CHAIR:** You are under oath.

**The Hon. JOHN GRAHAM:** No wonder it is your local.

**Mr NEWSON:** In all seriousness, any venue which has conditions imposed on its licence at any time and which is aggrieved by those conditions, or just wants to explore the situation because things might have moved on, can pursue that. It does not have to be as straightforward as the Acting Chair suggested around being redundant. On its face, we would want to deal with that expeditiously. It might just be a discussion about it being implemented one, two, three or five years ago and the NSW Police Force might have been the catalyst.

It might have been a neighbourhood complaint. When the noise rises to a level of undue disturbance and there is a neighbourhood complaint, they get to be very difficult and complex issues. There are some straightforward matters where if you have an order of occupancy and the venue has been there forever and someone moves in then, on balance, we must side with the venue and the newcomer who might be establishing apartments needs to have to greater regard to how they insulate them and how they provide satisfactory noise abatement. But that is rare. In most circumstances, there is a level of parity between occupancies. The venue was probably established at the same time as the houses and the venue's operations might be causing what is defined in the statute as "undue disturbance".

This is not arbitrary; this is not someone simply saying, "This is undue disturbance." It involves professional acoustic experts who attend the premises. They have specially calibrated equipment and they measure the noise, and they are prepared to give that evidence in the relevant courts. It is a difficult and complex space when we get to the noise issue. I would ask the Terrigal Hotel to contact Liquor and Gaming NSW generically through the helpdesk or any of our senior people. They can talk to us or send us something in writing—an email or a letter—asking for a meeting. They can tell us a story about their difficulty, how they want their venue to operate, and what are the views of other stakeholders. We need to listen to other people who will be impacted.

**The Hon. JOHN GRAHAM:** I have another example from Avoca of genre-based bands—no rock/live bands. This is the case that went to court and to appeal. A judge had to decide what is rock music and what is a band. These were the subjects of appeal in a New South Wales court. It seems ridiculous on the face of it.

**Mr NEWSON:** A court can put conditions on a New South Wales liquor licence.

**The Hon. JOHN GRAHAM:** But in this case the court had to interpret what is a band from the point of view of Liquor and Gaming NSW. Many of these conditions state that a band is not allowed to play. What is a band? Venues are confused about that.

**Mr NEWSON:** To be fair, it is the court's role to interpret that. If the statute is silent on it, it is the court's role to interpret it. If the Parliament has not adequately articulated its intention, it is the court's role to do so.

**The Hon. JOHN GRAHAM:** It is not only the court's role because Liquor and Gaming NSW is imposing these conditions on licences. The court said that generally a band would be four performers or more. It was silent on a trio; it did not make a judgment on that. It ruled out the fact that one or two performers on stage would be a band. That is the view of the court. However, Liquor and Gaming NSW has licence conditions such as a "live band is taken to mean a company of musicians constituted by more than two musicians at one venue"; "limited to solo or duo acts" in another venue; "no more than two entertainers provide entertainment at any one time"; and "limited to soloists, duos and small ensembles". Can you see the confusion this might be causing for venues?

**Mr NEWSON:** Absolutely. Again, to be fair and to ensure the Committee does not misunderstand this, these are historical conditions. My advice is that we dealt with seven noise-related matters last year and imposed conditions on two venues.

**The Hon. JOHN GRAHAM:** These are live conditions on venues at the moment in New South Wales. Three people cannot take the stage.

**Mr NEWSON:** I understand that. I made the point earlier in this discussion that many of the conditions on the 17,600 venues—you mentioned one from the 1990s—have been on licences for decades and may have been imposed by a court. We used to have to a dedicated liquor court in New South Wales and they were experts. I can only propose that they would have imposed them for precise reasons. I cannot say with this limited information what that reasoning was.

**The Hon. JOHN GRAHAM:** I think you made an important point previously, and I acknowledge that. These are the liquor licence conditions and you have provided the information about them, and the Committee is grateful for that. On top of that, there are conflicting additional conditions—they might be the development approval conditions. So, hundreds more venues are being affected by them, but because we have not been able to access that information the situation is probably far worse than the one you are describing. That is no fault of yours; you have been able to pull this information together. I acknowledge that point. What research does Liquor and Gaming NSW have to show that these conditions—no entertainment and no live music—are causing any violence or illegal or problematic sales of alcohol? Do you have any research showing a link?

**Mr NEWSON:** We would not ordinarily initiate research of that nature. Again and without wanting to frustrate the Committee, we would not look at this aggregate level; we would look at the facts put to us. As I said, we dealt with seven of these last year and imposed conditions on two. It is a pretty low volume.

**The ACTING CHAIR:** I am surprised it is so few—only seven.

**Mr NEWSON:** It is a pretty low volume. When it is noise-related matters—

**The ACTING CHAIR:** It would shock the authorities, I suppose.

**Mr NEWSON:** We do not look at this aggregate level; we do not want cookie-cutter, uniform laws—

**The Hon. JOHN GRAHAM:** I accept that, but are you aware of any research in government? Can you point the Committee towards any research that indicates any link between entertainment, live music and violence or problems with alcohol? Is there any research underpinning these conditions?

**Mr NEWSON:** I may have misunderstood the question. There is obviously a plethora of evidence about alcohol and its correlation with violence.

**The Hon. JOHN GRAHAM:** Correct. I am talking about music and violence. Is there any research?

**Mr NEWSON:** We would not ordinarily commission research at that level. That is not our decision-making space. We are looking an individual venue. We are taking the submissions that we receive from the venue, the police commissioner, the council—

**The Hon. JOHN GRAHAM:** I accept that, but you are in a key regulatory position. Are you aware of any such research dealing with those questions that exists elsewhere in government?

**Mr NEWSON:** It is probably a better matter for other agencies. As much as I do not think you are accepting my comment, we are not a music regulator. If a particular feature of a venue is—

**The Hon. JOHN GRAHAM:** I do not accept that.

**Mr NEWSON:** We had a case in Newcastle recently that we prosecuted because it was a restaurant licence and they were running the venue like a nightclub and the impost on the community was outrageous. The irresponsibility of the alcohol service was unacceptable. It was designed as a nightclub. It may well have been the correlation between the music, the impact and the irresponsible service of alcohol. We are looking at it on a single-venue basis. We were not doing broad or empirical research around music and its correlation with violence because we do not regulate music.

**The Hon. JOHN GRAHAM:** Why do we not do what South Australia did and get rid of these entertainment conditions that seem archaic and pretty silly on the face of it? Venues are hesitant to come forward in case it opens up their conditions more generally. We have had evidence from many venues in the work the Committee has done that they have that hesitancy. They do not want to put that view officially but they do have that hesitancy. What do we not do what South Australia did and simply take out these archaic, historical—your point—conditions that ban entertainment, tell citizens what music to listen to and tell venues how to decorate? Why do we not simply strike them out of the licences, as South Australia did, and deal with it?

**Mr NEWSON:** My initial remark to that would be: is it the liquor and gambling regulator's role to trawl through 17,500 licences and form a view on what we think? We are a risk-based regulator and we are applying our resources where we think the risk to the community is greatest. Do I divert my resources from that and trawl through—manually in many cases—17,500 licences and then form a view on what we think is an appropriate or inappropriate licence condition, because we could not do that on the face of the documents? We would then need to have some level of awareness of the venue and we would need to understand their level of satisfaction with the condition and how it is imposing on their business and the like.

Just on the face of it, I think that is a troubling proposition for a diversion of our resources. That means we would have less inspectors where the risks are high and where there is a real impact from alcohol-related violence. What I would rather suggest is to have a discussion around the extent that responsible venues—and my view is that the majority are responsible—are cautious around contacting Liquor & Gaming NSW to have a discussion around whether it is possible to remove or amend a condition, I would rather us focus on that. It certainly has not been presented to me by ClubsNSW, the Australian Hotels Association NSW, Liquor Stores Association NSW or Restaurant & Catering Industry Association—none of the peak bodies have made representations to me.

**The ACTING CHAIR:** This will be the last question, and then we will need to move on to the next witness.

**The Hon. JOHN GRAHAM:** You have got in front of you a list of some specific venues that have closed. In evidence to the Committee from artists, we have had artists turn up and talk to us about music venues—you are talking about the sub-set of licenced venues—which is a much smaller sub-set of the venues you are dealing with. They have turned up and said that venue after venue—and they have named them and you have a list of some of them in front of you—has closed. They have said that these are the venues that they played at; that they have now closed and have not been replaced. Many of these artists are now travelling the world—they are some of the best artists in the Australia music scene and are now able to make money around the world. They are coming to this Committee and saying, "Look, we could not have done that now these venues are gone." Do you accept that these music venues have closed? Stepping away from the aggregate figures you have talked about, do you have any light you would like to shed? You have said that Sydney is open, but do you accept that we have lost these music venues and they have not been replaced?

**Mr NEWSON:** I certainly represented to the Committee, based on third-party evidence and metrics, that there is a level of vibrancy and recognition internationally around Sydney. It is difficult for me. There is no doubt and no disputing that venues close, there is a venue churn and that a number of venues closed as a result of our intervention in Kings Cross and, more modestly, in the Sydney central business district [CBD] precinct. I certainly do not cavil with that. As to what the reasons were for those closures, it is all too easy to make an ambit claim that "venue X closed because of the lockout laws." Sometimes the hilarity extends to people claiming it was caused by the lockout laws even outside of the precinct.

**The Hon. JOHN GRAHAM:** I am not going to the reason. You said that Sydney is open; we have to make a judgement about the recommendations we make. We have had artist after artist say that these venues have closed—here is the list. Do you accept that we have lost many music venues in the city?

**Mr NEWSON:** I would qualify it and say that I can only accept on face value that they are venues. As to whether they are music venues and what the substance of their impact on the music scene is, I do not have any knowledge that I can assist the Committee with. What I would like to put on the record is that there is no longer a licence freeze in the Sydney CBD or in Kings Cross for live music venues. That is outstanding. 32 venues have taken up the extension to the last drinks and lockouts. That is pretty impressive in itself, together with the opening metrics. I can only take this on face value. There have been licences that have closed. When I look at the number of licences in New South Wales, there are now 98 small bars in New South Wales. When we look at on-premises, there are 8,559 on-premises—your restaurants and cafes—

**The ACTING CHAIR:** Mr Newson, we have to wrap up now. Could you supply to the Committee a break down of all the licences in New South Wales? You referred to quite a large figure in your evidence. Could you provide how many are for catering and so forth? It is not just restaurants and bars.

**Mr NEWSON:** Absolutely.

**The ACTING CHAIR:** Thank you for coming today. After 10 days of hearings and travelling around the State and to Victoria we have gathered a lot of information. You took some questions on notice—you have 14 days to reply to those because we are going into deliberative very soon to do our report. I thank you for coming in today.

**(The witness withdrew)**

**ALISON FRAME**, Deputy Secretary for Policy and Strategy, Department of Planning and Environment, sworn and examined

**ALISON BURTON**, Acting Executive Director, Planning Policy, Department of Planning and Environment, affirmed and examined

**The ACTING CHAIR:** I thank you for the government submission. Would either of you like to make an opening statement?

**Ms FRAME:** I would, if that is okay.

**The ACTING CHAIR:** Yes, of course.

**Ms FRAME:** It provides some context on the work that we are doing and might lead to more questions. The Department of Planning and Environment acknowledges the work of the Committee and the strong interest of the community in the music and arts economy in New South Wales. We recognise that the submissions and evidence given to this inquiry have identified a number of areas for examination that fall within the responsibility of the Department of Planning and Environment. I would like to assure the Committee that we are working closely with our colleagues at Create NSW and the Office of Liquor and Gaming to identify what we can do to support a vibrant music and arts culture in New South Wales.

As the Committee is aware from the submissions and evidence that you have received, it is a complex planning and regulatory environment, and we are developing considered policy responses to the issues raised. We are investigating how the Department of Planning and Environment can support and promote the night-time economy. Most importantly, the creation of a new strategic plan for local councils in reforms to the Environment Planning and Protection Act in December last year, provide a new context for councils to plan for night-time uses and communicate this clearly to their community, and any potential new residents and businesses.

More specifically, we are looking at the key issues of night-time economy entrepreneurs in establishing or expanding current businesses having regard to the current legislative and policy context. We will develop some guidance to assist them to navigate the planning system. We are also looking at future trends for night-time economy uses as well as reviewing best practice internationally, nationally and locally, and looking at initiatives with the intent of identifying what can be done by government to promote a vital night-time economy.

Accordingly, the department is looking far and wide at what is being done, including evaluating international best practice such as the introduction of a night mayor in London and New York in their respective remits, national best practice such as variations to construction standards for small arts venues in South Australia and Victoria, and the introduction of alternate noise-management strategies in Brisbane city, Sydney city and Wollongong city. We are looking at how to remove red tape and reduce complexity in the planning system and any other regulatory systems.

There could be opportunity for low-impact night-time economy uses through approval pathways which best match risk and oversight, and we are investigating the potential for introduction of strategies to better inform future residents of the need to balance the benefits of living in a cosmopolitan environment with potential noise impacts on their amenity. Given the complexity and the various stakeholder views, we will consult with stakeholders as this work progresses and work closely with our Create NSW colleagues.

I also acknowledge that noise has been raised in a number of the submissions that the Committee has received. There are various pieces of State legislation governing the planning and regulation of sound and vibration. The multiples pieces of legislation and enforcing bodies have been identified as a potential area for inconsistency and uncertainty in assessment and enforcement. We are currently undertaking a noise management study looking into opportunities to remove duplication of legislation and any uncertainty this may create.

We have also recently finalised changes to promote a stronger retail sector including enabling artists in food and drink premises such as craft breweries, distilleries and cheesemaking premises to be allowed in all zones where light industrial uses are permitted and providing councils the opportunity to permit these uses in additional zones. The music and arts are a key part of the night-time economy, which enriches our cities and regions and promotes character, culture and community. We are working with stakeholders to identify the barriers and challenges that might curtail a flourishing and vibrant night-time economy.

**The ACTING CHAIR:** Are you all right with that opening statement?

**Ms BURTON:** Yes.

**The Hon. JOHN GRAHAM:** I thank you for that opening statement. It is very encouraging to hear the progress that is being made since we first had Create present on behalf of the New South Wales Government at the start of this inquiry; to hear the set of issues that Planning is now looking at, which really go to the heart of some of the things that might fix these complex issues. I wanted to turn to a couple of those specific ones and get your view on this. The Committee will make recommendations. I think we are really interested in the view of Planning about the sort of recommendations we make and whether they do align with what you now think is possible. One of those issues is that overlap in regulatory functions between development applications and liquor licensing for venues. The suggestion has been made that some sort of one-stop shop, some sort of streamlining should be possible. What is your view at the moment about how possible it is to simplify that process?

**Ms FRAME:** Our view is that it certainly is possible to create some improvements in the way those systems work together. We are activity working with the Office of Liquor, Gaming and Racing [OLGR] on that. We have some precedent as well that we think gives us examples of how that can be achieved. With the education SEPP that the department prepared 18 months ago, I think, that we spent quite a lot of effort there working closely with education and the childcare sector to try to combine the regulatory requirements of the childcare centre approval, the licencing requirements there, with the planning consent conditions as well, and worked really actively to try to bring that together so that there was less of a separate process and the things could be considered in a consolidated way. With cafes and restaurants there has been some efforts also to bring those conditions together and bring those processes together, and we think with the e-planning portal closely working with OLGR and certainly there is potential to streamline the system.

**The Hon. JOHN GRAHAM:** I want to ask specifically about that restaurant issue because that is a lot of the issue here and it goes to the complexity of planning and licensing laws. Many of the venues that provide music are actually set up under that restaurant licence or are using the restaurant provisions—really setting themselves up as restaurants—because it is easier, but then provide music. Liquor and Gaming has just now put their concerns about these venues transforming into music venues, but they are doing it because it is the simplest way through the system. Have you got any views you would like to put on that particular question?

**Ms FRAME:** Certainly from a planning system perspective that is not a good scenario where the community are confronted with uses that are different to what was actively considered in the first instance with the planning approval being sought.

**The ACTING CHAIR:** It is clearly a council matter to resolve it. Once the action is outside the development consent the council should be the one moving in on the venue.

**Ms FRAME:** If the conditions of the consent are being breached.

**The ACTING CHAIR:** If a restaurant becomes a nightclub it is a council matter.

**Ms FRAME:** Yes, that would be true. But our desire in all the reforms we are looking at is to increase the level of knowledge and transparency that residents have. That is an example where things are morphing into something in addition.

**The Hon. JOHN GRAHAM:** Can I go to the question of entertainment conditions that we have just been through in detail with Liquor and Gaming, who to their credit have provided all of the entertainment conditions that are in place across venues in New South Wales. Hundreds of venues have been told in particular that they cannot have entertainment and they cannot have live music. They have provided that information but many of those conditions are also in council DAs with similar restrictions. These are the sorts of restrictions: no live music; particular sorts of music—rock'n'roll is in or not in, jazz is required or not required, disco music is regulated or not regulated; and the number of entertainers on stage is regulated in some of these conditions.

We have good oversight now of the liquor licence side of that but not of the DA side of it and, of course, those two things interact particularly badly. The way South Australia dealt with that issue was to simply say, "Look, if there are historic, archaic or on the face of it silly restrictions on entertainment we are just going to strike those out of the conditions of licences." Have you got a view about that South Australian solution to this problem and how it might apply in New South Wales?

**Ms BURTON:** I guess we are looking at all the different jurisdictions in Australia in terms of how they might work in New South Wales. The ways that we control conditions in New South Wales from a State perspective would be if we had standard complying development provisions which said that if you met certain criteria and met these conditions then the use could occur through a simpler pathway. But in terms of conditions imposed by council, we do not control what conditions go on.



**The Hon. JOHN GRAHAM:** There might be an exempt or complying development path here which just says that these are not matters that end up being regulated?

**Ms BURTON:** Correct. That is something we could consider if we were changing that.

**The Hon. JOHN GRAHAM:** You have talked about simplifying the seven agencies that currently regulate or enforce the noise restrictions that are in place. Do you want to give us any specific update on that issue? Is there an early view about how you might simplify something that on the face of it looks very confusing?

**Ms FRAME:** I do not think I can add much to that at the moment other than to say it is something that is being very actively discussed in that interagency task force with a view to ensuring that there is more efficient response mechanisms as well—that people are not calling police about something that council might be able to more efficiently and effectively resource or vice versa or just that there is clarity of who is enforcing so we can get the most efficient allocation of resources and that the community know who to go to in the first instance.

**The Hon. JOHN GRAHAM:** Thank you, that is helpful. Lastly on that entertainment condition issue, as we are thinking about recommendations is there any caution you want to put from the planning department if we take a view that says that it should not be a matter for regulation whether you listen to rock'n'roll or disco music? It is up to the citizen or the venue what sort of music they listen to, whether there is a mirror ball hanging up in the venue, whether there is dancing and how many people are in a band—whether it is one, two or three. In some cases the conditions go to five or seven people in the bands. Have you got any caution for us about saying that these are not matters that on the face of it should be regulated? Is there any rationale for any of these?

**Ms FRAME:** It is not appreciated and does not bode well for the planning system when it is the system that is considered to be imposing those kinds of requirements. It is not a standard condition or requirement to go to people's tastes in music if people would be attributing that to a planning system requirement. It is something that is normally beyond the scope of the planning system and its conditions.

**Ms BURTON:** I guess in a way they are being used as surrogates for controlling noise.

**The Hon. JOHN GRAHAM:** Exactly.

**Ms BURTON:** Something that the planning system should deal with is noise impacts.

**The Hon. JOHN GRAHAM:** But we would be better fixing the regulation of noise than applying these proxy regulatory tools.

**The ACTING CHAIR:** Some of them are quite historical, they are 20 or 30 years old. Noise abatement measures in the 1990s and 1980s were nowhere near as sophisticated as they are today. Perhaps the approach to managing noise back in those days was to say that you cannot have bands, but I put it to you that today it is an obsolete way of controlling noise. You deal with the physical environment and measure it outside and regulate that. It is heavily regulated and it is good to hear you are looking at it. If it is an issue of crowds and their behaviour when they are dispersing—our observation from site venue inspections over the last months has been that the nature of crowds has changed a lot in terms of alcohol consumption and behaviour—that is regulated by the capacity and security. The type of activity inside the venue is really quite irrelevant in terms of regulation. Would you not agree?

**Ms BURTON:** I would.

**Ms FRAME:** We would.

**The Hon. JOHN GRAHAM:** Similarly on that live music question, is there any rationale that you can see for that being a condition, acknowledging we should be regulating noise and we obviously should be regulating violence or alcohol? Is there any planning rationale that you are aware of for saying in hundreds of venues there can be no live music?

**Ms FRAME:** No, I do not think so. You gave examples of conditioning how many musicians could be in a band. Unless that was directly connected to some safety or capacity issue, then no.

**Ms BURTON:** Yes, I would agree with that.

**The ACTING CHAIR:** I wanted to touch on the overlay of conditions on the liquor licence by the council. It is good to hear you talk about streamlining and dealing with that. I put it to Liquor and Gaming in their evidence a minute ago that in my view it would be far better for them when issuing a licence to deal with the character of the licence applicant, the cumulative impact of alcohol in that component of the community, the responsible service of alcohol and the oversight of that type of licence. While taking advice perhaps from other

agencies including the police and Liquor and Gaming, councils should be dealing with the physical conditions on the site.

The first is whether or not council thinks it is an appropriate use for the site. That is a matter for the community to decide. Then council should deal with the capacity and security—though we have had evidence that security conditions are pretty onerous—and the hours of trading and the physical things like closing the windows at 9.00 p.m. and so forth. Would you support that approach? You may well be going down this path already to strip away those conditions in the liquor licence, just put them in the consent from the council and let the liquor licence just deal with the liquor issue.

**Ms BURTON:** It is definitely one part of the work that we are doing with Liquor and Gaming around what conditions would go through a planning approval and what conditions would be imposed through a liquor licence and where there is overlap or duplication that does not make sense can we remove that from the system. I am not familiar with all the liquor licence conditions so I probably could not say exactly whether there is conflict.

**Ms FRAME:** From a high level principal perspective, we happily attest that we do everything we can to reduce and eliminate duplication of conditions, and often it can eventuate in some contradictory conditions as well, so it is not a sensible regulatory approach to have that overlap and increase uncertainty and then create concern about which condition prevails. In our discussions with the Office of Liquor, Gaming and Racing, we would be looking at any conditions or examples where that was an issue with our principal view of looking to reduce and eliminate that.

**The ACTING CHAIR:** I am aware of police and council attending venues with their separate licence conditions. They might talk about capacity and behaviour in the venue and then the council has its own conditions and the proprietors are quite confused.

**The Hon. JOHN GRAHAM:** On the point the Chair made earlier in the Liquor and Gaming session about venues being hesitant to strike out these conditions, the sensible answer when venues have talked about some of these mad conditions is to say, "You can have them. You can apply to amend your DA and your liquor licence", and you will no longer be restricted to playing both sorts of music, country and western. You can roam freely across the musical genres. You can apply to change your DA or your liquor licence. The venues say this: We are worried about going down that path because it opens up a discussion about all our conditions. Is that the sort of thing you are hearing from a planning point of view or through the system? Or do you have any reflections on that view?

**Ms BURTON:** Certainly the work we are looking at with Liquor and Gaming is about that duplication. I am not aware of specific examples of the issue of going back to amend a DA or a liquor licence. It is something we can consider.

**The Hon. JOHN GRAHAM:** The view that venues have put to us repeatedly is that it is a major barrier. They understand there is a path to fix this, and it is a path they are not prepared to go down because of what it might open up. That is why this is not happening. Even though everyone agrees some of these conditions are silly, they stay there because of that hesitancy.

**The ACTING CHAIR:** That is from the council and the liquor licence point of view. They are reluctant to go forward with an amendment because it opens up the issue again. I imagine the community consultation triggers are hit for both, so that brings in a whole lot of issues again.

**Ms BURTON:** There is a process available under the planning Act to amend a condition of consent, a modification to do that, but—

**The ACTING CHAIR:** We heard some evidence from Liquor and Gaming and also from the councils about the issue of councils having the skills capacity to do what I suggested before, which is for them to manage the bulk of the applications for licensed premises. Liquor and Gaming said that the City of Sydney's expertise in this area is good but other councils either do not have it, do not have the capacity for it or they do not want it. I see this as a role for the Department of Planning and Environment and planners in the field in providing tools and resources and maybe some training. Would you like to comment on the issue of the capacity of councils to pick up that extra responsibility?

**Ms FRAME:** I certainly agree that the City of Sydney is uniquely skilled and resourced in that area. It is a role for us in the department, in any planning issue, to build a council's capacity and ensure that councils have the resourcing and the department and skills and documents that they need to assist them. We have been developing a range of guides around different policy approaches which are an area of focus for the State Government. This is one we would be actively looking at what can we do, what information can we prepare, what

training sessions can we provide to assist councils. It enables councils then to opt in according to their level of interest, because there will be some councils that do not have any issues and do not want to get too involved, but other councils will and we can calibrate according to what councils are seeking from us and provide them with that support.

**The ACTING CHAIR:** That is good to hear.

**The Hon. JOHN GRAHAM:** I want to put one of these conditions on record. In the course of the previous session and this one there has been a lot of talk about what music you cannot play. To give you an idea of some of the sorts of conditions that apply, this entertainment condition is required at Rosedale Tavern: entertainment is to be provided consisting of two performances of not less than 45 minutes duration, one before and one after midnight; dance music is to be provided at other times. One, we are regulating the set times. Two, unlike all these other venues, we are insisting that this venue plays disco music when it is banned in hundreds of other venues. I wanted to put that example on record. I welcome any response on notice.

**Ms FRAME:** These conditions raise interesting enforcement issues about who is going to make the decision about what constitutes dance music.

**The ACTING CHAIR:** We have had that discussion about the prohibitions on dancing. When does dancing occur?

**Ms FRAME:** You need to get some Baptist to advise on that.

**The Hon. JOHN GRAHAM:** We will see Create NSW shortly. I am certain we will put this question to them, but you are integrally involved in putting together the strategic music plan or the plan for contemporary music across New South Wales. We do not have one. Every other mainland State has one. We are on the way to getting one. Can you give us any update where that is up to ahead of us asking Create NSW that question?

**Ms BURTON:** We would have to defer to Create NSW on that one.

**The Hon. JOHN GRAHAM:** Understood. Thank you.

**The ACTING CHAIR:** Do you represent the submission that we have received from the New South Wales Government?

**Ms FRAME:** We contributed to that submission.

**The ACTING CHAIR:** Can I ask you about the issue around the Office for Police or are you going to take that on notice?

**Ms FRAME:** I will take that on notice.

**The ACTING CHAIR:** We have received untested evidence that the police generally oppose new liquor licences applications to expand into venues. The question that was put to us is: is that a case-by-case assessment or is that a statistical response to the issue of alcohol in the community and their perception of violence and managing it. As you are representing this submission, can you get some information from the police about their approach to applications for liquor licences or changes to liquor licences and venues? I know they make submissions to councils and councils are very reluctant to not accept those submissions. Liquor and Gaming regularly commented that we should ask the Commissioner about conditions prohibiting dancing and live entertainment. I am wondering if it is appropriate for you to get more information for us.

**Ms FRAME:** Certainly we can consult with colleagues in the Government. It will be an answer that comes from the police, but we would be happy to facilitate that.

**The ACTING CHAIR:** How do they assess the applications across the State, not just in the city, for new licensed venues or amendments to licences? Is it case by case or is it a statistical assessment? Is it the case that their standard is to say no? I would like to know what expertise they have regarding that assessment. That might include training at Goulburn, if there is training involved. That would be helpful information for us. They are a key stakeholder in this discussion.

**Ms FRAME:** Yes, no problem.

**The ACTING CHAIR:** Thank you very much for coming in this afternoon. You will have 14 days to respond to questions on notice. The secretariat will assist you in getting those answers organised.

**(The witnesses withdrew)**

**BEN THOMAS MARSHALL**, Head—Contemporary Music, Sydney Opera House, affirmed and examined

**The ACTING CHAIR:** Good afternoon, Mr Marshall.

**Mr MARSHALL:** Good afternoon.

**The ACTING CHAIR:** Welcome to the inquiry into music and the arts economy.

**Mr MARSHALL:** Thank you very much for inviting me.

**The ACTING CHAIR:** Would you like to make an opening statement to the Committee?

**Mr MARSHALL:** I would, if that is all right.

**The ACTING CHAIR:** Yes.

**Mr MARSHALL:** I would like to begin by acknowledging the traditional custodians of the land on which we meet and pay my respects to elders, past and present. Thank you for inviting me to this inquiry and for holding it as it goes to the heart of some issues I feel strongly about in my position as Head of Contemporary Music at the Sydney Opera House. I would like to begin this exchange by talking a little bit about the Sydney Opera House and how our contemporary music program fits into things.

The Sydney Opera House is the symbol of modern Australia and embodies our cultural aspirations. Since its opening in 1973 it has held a unique place in Australian society as both a timeless World Heritage listed architectural icon that is brought to life daily by artists from home or abroad who bring the widest possible range of performances to Sydney's audiences. We play a critical role in Australia's music and arts ecosystem, supporting and nurturing local artists at key points in their career, promoting and presenting excellent local and international artists, and strengthening and inspiring the community through cultural participation.

The Sydney Opera House hosts more than eight million visitors a year including about one and a half million people who attend to more than 1,800 shows. The Opera House is home to seven flagship Australian performing arts companies, such as the Sydney Symphony Orchestra and Bangarra Dance Company. We founded Sydney Opera House Presents to be our own programming arm, which presents about 700 performances each year whose role is to complement, not replace, the work of the resident companies. Sydney Opera House Presents directly broadens the audience that the Opera House attracts through its programming areas of children, families, and creative learning, talks and ideas, contemporary performance, First Nations cultures and, the area I am responsible for, contemporary music. The idea is to widen the screen a little on what has traditionally been regarded as great art so that we reflect modern audiences and the vigour and excellence present in, for example, modern music—which is indisputably one of the major art forms of our time.

In 2016-17, more than 183,000 people attended contemporary music programming by the Opera House and third party promoters, with 51 per cent of these patrons attending an Opera House event for the first time. By focusing our attention on contemporary music, the audience grew over four years from 3,000 patrons to more than 100,000 annually, which is where we sit, on average, now per year. The key venues I program are the 2,200 capacity Concert Hall and, when the right arts presents itself, I program the 6,000 capacity Forecourt and the 600 capacity Studio. During Vivid LIVE, our annual music festival that is presented in conjunction with our partners, Destination NSW, we take over every room, every rehearsal space, and every facet of the Opera House for 10 days as well as lighting the Sydney Opera House sails. It is the only time of year that one art form takes over the entire building. Luckily for me, it is contemporary music.

Today we announced the incredible Australian talents of the John Butler Trio and Missy Higgins, who will be performing on the Forecourt in February. The Forecourt is perhaps the grandest stage in the city and has been used for concerts at least as far back as Thin Lizzy and Stevie Wright in the 1970s, as the architect Jørn Utzon originally envisaged the Forecourt would. One of the aspects of this inquiry I find most heartening is the view that it holds live music—live or performed contemporary music—to be treated as an art form, as a significant and legitimate cultural activity and not simply as a commercial exercise. Even people working in the area most often say they work in the music industry in a way that is not comparable to other art sectors like theatre, dance, opera or classical music.

The Opera House sees this inquiry as recognition that contemporary music has a legitimate and profound role to play in any city's cultural life, and any diminishing of that role ought to be seen through a cultural context, not only a commercial or a public health and safety one. I saw that Brandon Saul referenced in his evidence Brian Eno's keynote at the Opera House in 2009. I bought nine copies of the published version of that speech. He has

only let us print 400 copies of it. In it he talks about art being a place where people go to experience surrender in a world that much more often dignifies the control end of the axis. Creating the right conditions for art to thrive is also a careful balance of control and surrender and a mix of many factors: affordability of living, patrons with money supporting up and coming artists, unused spaces they can be organically adapted for artistic purposes, the density of physical interaction between artists and their audiences, the availability of part-time or casual work for artists to fund their creative activities until they become self-sufficient, media who want to engage with art, urban planning rules, public transport, among many other factors.

There are headwinds for attending music performances all over the Western world with London's Mayor's Office publishing figures saying that the number of nightclubs in London halved between 2011 and 2016 and the number of live venues dropped by 44 per cent over the same period. The United Kingdom [UK] is losing something like a thousand pubs a year. There is a view, I think, that because contemporary music performance can often carry itself commercially, it will always be okay in a way that people do not view more traditional art forms, and that music can maybe even survive a few adverse conditions that get thrown its way. However, with the changing behaviour of young people to connect more online and less in the real world, I do not think that assumption holds—or necessarily the distinction between traditional and non-traditional art forms, or high and low—and that music performance needs active support through the creation of conditions in which it can get back to thriving.

The Opera House has a role to lead in this area through its own directly presented contemporary music. As our submission makes clear, the Opera House is a part of the broader music ecosystem in Sydney, Australia and globally. Whatever runs through the artistic rivers of Sydney also runs through us. We rely on the ecosystem of small, mid-size and large venues, promoters, agents, labels, radio stations, and so forth, to create the conditions and develop the artists that then have a moment on the Opera House stage. We are pleased to be at the inquiry to assist in the maintenance, growth and health of this ecosystem.

**The ACTING CHAIR:** Thank you for that statement, which has been very helpful for us. You say look after the Concert Hall. What are the plans for the Concert Hall and the management of the Sydney Symphony Orchestra [SSO]?

**Mr MARSHALL:** I would have to refer to my director to deal with the exact arrangements with the SSO, but obviously it is public knowledge that the Government is giving the Opera House about \$220 million in order to refurbish the Concert Hall to bring it up to standard for accessibility issues and to improve the acoustics of the room. Arrangements are being made with the SSO, just as they were with Opera Australia in the recent refurbishment of the Joan Sutherland Theatre.

**The ACTING CHAIR:** For how long will the Concert Hall be offline?

**Mr MARSHALL:** For two years.<sup>1</sup>

**The ACTING CHAIR:** That issue has been raised with us during the inquiry, which is why I asked. You might like to take that on notice.

**Mr MARSHALL:** Yes, if I could.

**The ACTING CHAIR:** Get back to your director and advise us of the plans for the SSO.

**Mr MARSHALL:** Yes.

**The ACTING CHAIR:** The Forecourt has been quite controversial. It touches on the issues we are dealing with in this inquiry around the impacts of amenity on arts, culture and live music. Do you want to talk us through what has happened and how you have addressed the issues around the Forecourt?

**Mr MARSHALL:** Absolutely. The forecourt is probably as open and welcoming as it has ever been at this point. I think in about 2011 or 2012 our Access and Pedestrian Safety [VAPS] project was finished, which means that trucks no longer need to drive across the Opera House Forecourt to deliver key equipment and to set up shows. There is now an underground tunnel.<sup>2</sup> The risk of pedestrian accidents has diminished considerably. Since VAPS has finished, the Opera House Forecourt is obviously freer and open for concerts. Over the last four

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<sup>1</sup> See, [Correspondence from Mr Ben Marshall, Sydney Opera House to Chair](#), Mr Marshall advised that the concert hall will be offline for up to two years.

<sup>2</sup> See, [Correspondence from Mr Ben Marshall, Sydney Opera House to Chair](#), Mr Marshall advised that the VAPS commenced operations in 2015.

years I think a quarter of a million tickets have been sold to events such as comedy, contemporary performance, and children's activities on the Forecourt.

The area I look after has sold about 100,000 tickets to concerts on the Forecourt. It is an amazing space. It is a space with no pre-existing infrastructure so there are hurdles there of cost and expense to set up and stage a concert. Obviously we have to balance the competing interests of the audience expectations of volume level and concerns of neighbours. We want to be a good neighbour as well by finding the right point at which to balance all these things.

**The ACTING CHAIR:** We have evidence from major event organisers that there is a lack of large outdoor venues in Sydney—Centennial Park and the Domain right behind us. No-one mentioned the forecourt but clearly that is an offering. Do you have to program the music or can someone approach you to hire that space?

**Mr MARSHALL:** The space is open for public users. It is used for New Year's Day, it is used for Australia Day, it has community uses, it has hire uses and it has commercial uses.

**The ACTING CHAIR:** Who is your regulator of the noise? Are you unique?

**The Hon. JOHN GRAHAM:** Correct, yes.

**The ACTING CHAIR:** Are you a unique venue, or do you have the same regulators as the pub up the road?

**Mr MARSHALL:** I believe we have the same regulators. It is the Environment Protection Authority [EPA]. We have our own DA and there is a SEPP. In 2016 a new DA was signed for the Opera House to regulate noise on the forecourt and it is now a durational limit rather than an instantaneous limit.

**The Hon. JOHN GRAHAM:** I think it would be interesting to look at that on notice because that is not what the Committee has been told.

**Mr MARSHALL:** I could be wrong.

**The Hon. JOHN GRAHAM:** No worries, but I think it would be useful to tidy that up because it is one of the issues we have been looking at. Thank you for your submissions and for your evidence today. I want to acknowledge in particular the change you have talked about in the way the Opera House is programming. It is much more music focused, much more contemporary music focused than it had been and that has driven a change in the audiences using the Opera House. I very much agree with the point that you have made. One of the challenges that presents is the fact that as more of those acts have moved into the Opera House other venues are under pressure. Have you got any views about how you work best with some of those private venues? You have talked about some of the groups that you work with. Is there a way you work with them? Obviously you are conscious of the impact on the whole ecosystem—you have talked about that—but tell us your views on those issues.

**Mr MARSHALL:** The Opera House obviously occupies a unique place in the ecosystem. It is the stage many artists are looking to perform on and we can do things that nobody else can. We go out of our way to celebrate new artists who are doing interesting, different and original things. We pass backwards and forwards between many venues in the city. Once an artist performs on the Opera House stage they are not with us forever. They can start at the Metro, they graduate to the Opera House, they come back and perform at the Enmore, they then play at the Hordern and they move to the International Convention Centre. We are one of many venues they can choose to perform at. The Opera House is an expensive venue. Our costs of operation are much higher than a commercial entity. Many artists have to make a commercial decision: Do we want to perform at the Opera House with its high cost base, or do we want to go to the Enmore? Obviously the Opera House is hired by private operators as well who are making a commercial judgement between many venues in the city.

**The Hon. JOHN GRAHAM:** I want to ask specifically about Vivid. Obviously it has been very successful over time. Since that speech which you presented—and thanks for that—it has grown dramatically. In fact, on the view that has been put in the last couple of years it is almost at bursting point in the city resulting in those warning signs going up this year, which you would only see in Sydney, warning people about electronic flashing signs which I was a bit alarmed about. Vivid has grown, including the programming you are dealing with. Have you got a view about where it goes from here? What is the future of Vivid and particularly that contemporary music part of it?

**Mr MARSHALL:** I would have to defer to my colleagues at Destination NSW for the broader Vivid Sydney event. For the part that I am responsible for at Sydney Opera House—Vivid LIVE—it is at capacity. There are no new venues being constructed. We obviously do not stage events on the forecourt during Vivid with the

crowds out to look at the sails. I program into the Concert Hall every night of the week, into the Joan Sutherland Theatre, into the Studio, the Drama Theatre, the Playhouse, down to the 200 capacity Utzon Room. There will be no growth as far as contemporary music goes at the Opera House. Destination NSW has a Vivid music arm, of which Vivid LIVE is a part. I believe they have grand plans to expand and grow, as it has grown over recent years.

**The Hon. JOHN GRAHAM:** Is there a way we could drive some of that activity into the private music venues?

**Mr MARSHALL:** As I understand it, that is what is already happening.

**The Hon. JOHN GRAHAM:** Thank you.

**The ACTING CHAIR:** We appreciate you coming in and giving us a perspective from the Opera House. As it is a diverse inquiry with many and diverse stakeholders we appreciate your perspective on this inquiry and we appreciate your support for what we are doing to which you referred in your opening statement. It is very much appreciated. I think you took a couple of things on notice.

**Mr MARSHALL:** Yes. Fourteen days.

**The ACTING CHAIR:** Yes, you are well versed. Thank you for coming in today.

**Mr MARSHALL:** It is a pleasure. Thanks for inviting me.

**(The witness withdrew)**

**DAVE RUBY HOWE**, Music Director, triple j Unearthed, triple j, affirmed and examined

**LACHLAN MACARA**, Content Manager, triple j Unearthed and Hack, triple j, affirmed and examined

**The ACTING CHAIR:** Welcome to the inquiry into the arts and music economy. This is our tenth day of hearings. We appreciate you coming in. Would either of you like to make an opening statement?

**Mr MACARA:** No, we are fine. Thank you.

**Mr RUBY HOWE:** Thank you.

**The Hon. JOHN GRAHAM:** Thanks for attending. We are glad you are here, given the role that triple j plays in the contemporary music scene in Australia. We are coming to the end of the hearings, but two things have become clear. There is massive potential for Australian artists now on the global stage in a way that was not there even five years ago. Once you take off it can be pretty exciting. Obviously you are a key part of that take-off group for artists. But alongside that potential there is a problem with the grassroots music scene in New South Wales and Sydney, in particular, an entertainment venue crisis for a complex set of reasons—the cost of running a venue, the regulations and the noise. A series of things are making it harder than it should be to run a venue. That is hurting the grassroots music industry. That is a quick sketch of where the Committee has got to. You are dealing with the music industry around the country. I am interested in your views about either of those sides of this issue—the potential or the grassroots problem.

**Mr MACARA:** Specifically in New South Wales?

**The Hon. JOHN GRAHAM:** Yes.

**Mr MACARA:** That is an important distinction because triple j is a national youth broadcaster. There might be points where we go into more detail than we need to, but we are happy doing that if people are not fully across triple j's role. As a national youth broadcaster, we are dealing with emerging artists all the time, particularly Australian artists. Triple j Unearthed is a program, a platform, a digital radio station, a whole community that is based on supporting emerging Australian artists. Dave Ruby Howe can speak a bit more to that. To the first point, there is obviously more potential now than ever for emerging artists. We have seen some examples even this year of artists managing a break through. Triple j has certainly been part of that process from a grassroots level, which is "unearthed" by name and nature. That is obviously a fantastic breeding ground in a way; it is a very supportive community that surrounds artists who are uploading to triple j Unearthed. We have more than 80,000 artists on Unearthed at the moment.

**Mr RUBY HOWE:** Yes, perhaps more. The influx of new music that has been provided to Unearthed by unsigned and independent musicians, which is what it is for—it is for artists who are not attached to a major label—is about 500-plus songs every week.

**Mr MACARA:** One of the reasons Unearthed has done so well is that there was not a lot around like it when it launched as an online digital space. *Triplejuneearthed.com* celebrated its tenth anniversary the year before last. In 2006, Myspace would have been around, SoundCloud was not—

**Mr RUBY HOWE:** It was pre-Facebook.

**Mr MACARA:** It was trailblazing in many ways. It has been fantastic to see that community build as far as them knowing there is a place they can upload their music. People at triple j who really care about music will listen to it. The opportunities for that music to reach more people through triple j, which is a national broadcaster on the FM band and online, will be even greater. With more online platforms becoming available and all sorts of services, that pathway has become even more fruitful. I think some Committee members have seen G Flip recently. Am I right in thinking that?

**The Hon. JOHN GRAHAM:** Yes.

**Mr MACARA:** That is another fantastic triple j Unearthed success story.

**Mr RUBY HOWE:** That story is a whole case study in a microcosm. She uploaded her song and in a matter of days it was played on triple j. The effect was global; she was on *pitchfork.com*, which is a huge and very influential music critiquing site. *The Project* also did a piece on her and she was playing at South by Southwest, which is a huge event in Austin, Texas, mere months after she emerged with a debut song. It can happen really quickly and not just at the local level. The pathways to the international level are there and present.



**Mr MACARA:** I was in London at the time. I spent about seven years at triple j before I went to work for BBC Radio One in London, which has a very similar mandate as a national youth broadcaster and public broadcaster. Even in London people were asking me who was G Flip. That was about two days after she uploaded. It is not possible to have that sort of impact without Unerthed.

**The Hon. JOHN GRAHAM:** One of the reasons it is powerful is that it is plugging directly into the streaming services. Spotify has given some important evidence about how it is working. It potentially creates a cycle where our artists are coming up and are profiled by triple j and getting a global platform very quickly.

**Mr MACARA:** That is right. An important fact may speak to your second point with regard to some issues that artists in New South Wales are facing in particular. Live music and playing gigs are so important nowadays. They always have been, but in the past few years especially they have come back with a vengeance as an important revenue stream as well as a chance to hone your chops and to fine tune your craft. It is fair to say that most States have a strong advantage over New South Wales artists in that regard. That is particularly true in Melbourne, where there are more opportunities to be heard at venues and as a result there is a more supportive community around those events. That is why I think conversations like this are really important.

**The Hon. JOHN GRAHAM:** That is what we are grappling with. Our part of that ecosystem is the grassroots. That is really what State Government and local government can most easily influence. We set the liquor licence conditions, the planning conditions and the noise regulations that make that work or not work. That is our focus. Any views you have about the state of that grassroots music scene would be particularly informative from your national point of view. Where are we up to?

**Mr MACARA:** Perhaps an interesting comparison would be around feature artists and general plays on triple j and digital radio. We are obviously getting a number of New South Wales acts through there.

**Mr RUBY HOWE:** I did a little number crunching. In terms of triple j Unerthed, it is all user-generated content. I encourage members who have not already done so to visit [triplejunearthed.com](http://triplejunearthed.com) to discover your new favourite artists and your next favourite band.

**Mr MACARA:** You will love it.

**Mr RUBY HOWE:** It is a platform for people who want to discover new music and people who love Australian music and who want to find something exciting that they have never heard. It is also for artists to share their music with that community, with triple j, because we are all definitely plugged into it and searching for the next Amy Shark or the next Flume. We are looking for the next artist who will break big and make our audience go crazy. Many in the music industry always want to know what is going to be big and what is next.

The number of artists in New South Wales uploading their music is still really good. Out of the 87,000 artists who have signed up to [triplejunearthed.com](http://triplejunearthed.com), 27,216 are from New South Wales. Of the 148,855 tracks they have uploaded over the past 10 years-plus—not accounting for tracks that have since been deleted because there is a three-track maximum on each artist's profile—nearly 46,000 come from New South Wales artists. It is still really healthy. I think there are many sides to the story about live music and the lockout restrictions. In terms of how triple j Unerthed plays into that, I am happy to be as transparent as possible.

**The Hon. JOHN GRAHAM:** Those figures are really useful because they tell us that there is plenty of young talent coming through and plenty of people writing and recording songs and uploading them. It probably narrows the problem to the point you made, which is about the opportunity to get out of the bedroom or the garage and into a venue and in front of an audience to hone your craft. Is it fair to say that that is where the squeeze is in New South Wales?

**Mr MACARA:** That is absolutely the battleground, but there are other contributing factors. We cannot deny the fact that in the past few years, certainly since Flume—who is probably one of Unerthed's fondest discoveries and success stories—many electronic artists were coming through who did not necessarily have that same desire or will to perform live. That is fair enough; you can go from your bedroom to the global stage in many ways. But eventually that is still important. I am sure that if there were a Flume in the room, live performances would still be important. That plays into the picture as well. I believe the Committee has heard from representatives from Future Classic, his label.

**The Hon. JOHN GRAHAM:** To your point, we have had Future Classic come in on behalf of Flume and Flight Facilities. Client Liaison turned up with a similar story—they are preaching the same message that they could not have done what they have done and got to where they got to with the current state of venues in New South Wales. That was one of the things that made a big impact on my view on these issues.

**Mr RUBY HOWE:** One thing that I will mention about the getting to live stage part of it is do with my experience communicating with artists as a representative of Uearthed. A lot of the artists do not have managers or labels, so it usually direct contact with an artist. It is super rewarding to speak to them and giving them the opportunity to speak to someone at triple j is really beneficial. One thing we do at triple j every year is run a campaign called Uearthed High, which is a national search for the best high school-aged musicians in the country. That has yielded some really fantastic results over the last couple of years. A couple of years ago there was a winner called Gretta Ray and she is currently touring Europe and doing fantastic stuff. One thing I hear feedback wise from artists who are in high school and making music is that they are not sure how to play and get out there. There are not a lot of opportunity for under-age gigs for some of these artists—

**The Hon. SHAYNE MALLARD:** Or, as Mr Macara said, to practice and hone their chops. What you have underlined to me is the importance of triple j in terms of the development of Australian music content and new artists. That is historical—it was Double J or something when I was very young. I want to get an appreciation of how across the New South Wales scene you are. Where is your head office? Where are you guys located?

**Mr MACARA:** In Ultimo.

**The Hon. SHAYNE MALLARD:** You are in the Ultimo complex?

**Mr MACARA:** Yes, but triple j is a national broadcaster and we have a big office in Melbourne, offices in Canberra and Brisbane and staff in Perth. We also have this fantastic community of super users through Uearthed who are volunteer "superfans" of Uearthed and emerging Australian music and they are all around the country.

**The Hon. SHAYNE MALLARD:** Is the triple j that I listen to driving up into the mountains the same as the triple j someone is listening to in Melbourne?

**Mr MACARA:** Correct.

**The Hon. SHAYNE MALLARD:** It is the same content?

**Mr MACARA:** That is right.

**The Hon. SHAYNE MALLARD:** How do you program New South Wales content into that national discussion—the profiling of New South Wales artists and interviewing emerging artists in Sydney? How do you do all of that?

**Mr MACARA:** We would probably flip it the other way round. We are making sure that triple j is always relevant to a 18-24 Australian no matter where they are in the country. There is no office for triple j in Darwin as it stands—we might get there one day; that would be fantastic—but we do not want it to be any less relevant to a young person in Darwin as it would be to someone in New South Wales, even though there is quite a big population base in New South Wales. That is a constant balance and we are really proud of the ground that we have made on diversity, particularly through triple j Uearthed. Diversity is a conversation around geography as much as it is around genre, gender, Indigenous artists that are uploading to Uearthed and that are getting played, as well as culturally and linguistically diverse artists. That is always part of that consideration, but there is certainly no shortage of Australian music and, as a result, music from New South Wales to play on triple j.

It is a shame to me, as Content Manager of triple j, that there is such a gulf between the amazing community that we have of young Australians who support and love Australian music—there is a five-city weekly reach of more than 1.8 million people and we can guarantee they all love Australian music—and what we are seeing with commercial radio and moves there to step away from an obligation to play Australian music. There is more that we can play at triple j. We have got a self-imposed quota of 40 per cent for triple j and we smash that.

**Mr RUBY HOWE:** Regularly, it is about 50 per cent to 60 per cent.

**The Hon. JOHN GRAHAM:** The commercial FM stations have given evidence through their industry association and one of the concerns they have raised is whether there is enough quality Australian music out there and whether it is recorded at a production level they can safely and happily play.

**Mr MACARA:** Tell them to come chat to us. We can point them in the right direction.

**The Hon. JOHN GRAHAM:** What you are saying to us is that we should be less concerned by that?

**Mr RUBY HOWE:** I would definitely be less concerned. I am the Music Director of triple j Uearthed so I program a digital radio station on the digital audio broadcasting [DAB] bandwidth that is 100 per cent Australian music—there is nobody from any other country that is played on the station that I program. That music

is all unsigned or independent and has been sourced from the triplejuneearthed.com website. When I came to triple j in 2011 I had that same concern and was not sure if we would be able to program 24 hours a day seven a week with really high quality music from triplejuneearthed.com that was going to interest and appeal to somebody who had never of a lot of the artists. But I have fallen in love with every single one. There is so much talent out there—it is really staggering. I am impressed every day by the creativity and musicianship of someone I have never heard of who has had an idea and has been able to record it. There are all sorts of variables in the quality that gets uploaded—some are not great and some are fantastic—but there is more than enough to fill the 24 hours of the day that we have.

**Mr MACARA:** There have been examples this year already of artists who have had commercial radio support. When I say "commercial radio support" I do not mean hiding the odd play in the middle of the night; I mean when people are listening during the day, please. Dean Lewis is someone who has had a number of plays on triple j and has also found more plays on commercial radio. He is selling out four or five shows at Metro Theatre, which is a 1,200-capacity venue in Sydney. Amy Shark is another good example. Eventually the commercial radio sector has got behind these artists. The proof is in the pudding. I do not subscribe to that opinion but if they want to chat about some Australian artists that they can play, the door is open and we are happy to share.

**Mr RUBY HOWE:** It would be a huge boon for any artist to feel like commercial radio is a pathway that they could pursue and that they could get played on these stations. It is not just music for triple j. If you are in the car you flip on triple j but if you do not like the song you flip it to something else. People do not have to be loyal to one single station in 2018.

**The Hon. PAUL GREEN:** I apologise for not being here earlier. We have taken a lot of evidence about how integral your station is and I thank you because a lot of people gave evidence about triple j—we just kept hearing it. What you are doing is fantastic—keep up the great work. Young artists and emerging artists have great hope in what you are doing. Thank you—I appreciate it.

**Mr MACARA:** Thank you. I think I speak on behalf of everyone at triple j when I say that we take that responsibility really seriously. We understand as the national youth broadcaster that we have to be looking and sounding like young people around the country. We are really proud of the work that we do but we are only as strong as the people who listen and get around Australian music as much as we do. After working at the BBC for a bit over a year and then coming back to triple j just a couple of weeks ago, I can honestly say there is nothing in the world like it. There is no better investment in Australian music than a happy and healthy triple j—I can guarantee that as well.

**The Hon. PAUL GREEN:** I have six kids aged from 16 to 22 and you are their station.

**Mr RUBY HOWE:** Right in the demographic.

**The Hon. PAUL GREEN:** Hopefully through the recommendations we can open the door to the commercial stations through you guys. That will be an excellent recommendation to come up with. We really appreciate it.

**Mr RUBY HOWE:** I do not know if we are wrapping up, but I would like to give another recommendation. I speak to so many artists who are balancing university, a part-time job and finding time and money for rehearsals and equipment. My heart does go out to them because it is a demanding pursuit to try to pursue music as a full-time career and try to get their musicianship out there and be an artist. So many of them will slog away and make some really good stuff but it just does not get the attention it deserves and because of contributing factors like money and the balance of life they are not able to pursue it any longer. If there were grants, soundproofing investments and rehearsal spaces that could be made available through the arts and councils, it would definitely encourage that.

**The Hon. PAUL GREEN:** Watch this space. I think you will see some recommendations in terms of that about the ability for up-and-coming, emerging artists and what I term "plug and play".

**Mr RUBY HOWE:** It is amazing.

**The Hon. PAUL GREEN:** We have seen that at the Bakehouse in Melbourne where they are able to come in and hire a room for \$20, which is quite affordable, and learn their art.

**Mr RUBY HOWE:** Yes, it make a huge difference.

**The Hon. PAUL GREEN:** I think you will see that reflected in the report.

**The Hon. JOHN GRAHAM:** To that point, it has not been the case that the Parliament has often talked to the music sector. This is really the first inquiry in that direction so we have taken quite a lot of evidence. We have been on tour, including in Tamworth yesterday.

**The ACTING CHAIR:** Tours.

**Mr MACARA:** Tours as well.

**The ACTING CHAIR:** Roadies.

**Mr MACARA:** What happens on tour stays on tour.

**The Hon. JOHN GRAHAM:** I think that has created a discussion with the Parliament about these issues, the sorts of things you are talking about. Obviously when we report, that discussion continues, so any work you can do on these issues as we are reporting is appreciated as well.

**Mr RUBY HOWE:** Sure. We are always happy to talk more. We have various relationships with other State bodies. We have had a fantastic relationship through Uearthed and Melbourne music State bodies in the last few years to put on events and gigs which have been a huge success. It would be great to be able to do that and link up between triple j Uearthed and MusicNSW or any other relevant State bodies in the future, absolutely.

**The ACTING CHAIR:** In wrapping up, thank you for coming in. I was very encouraged to hear the discussion around the role of digital broadcasting and the role of live venues because they are working together through you guys and your advocacy really well, and that is encouraging. There has been a lot of discussion about digital and streaming and trying to explore whether that is replacing the live venue space. You are clearly saying it is not; it has to be complementary. They have to hone their skills out there in front of audiences as well. That is also encouraging. Thanks for coming in today. We started early so we can finish early, so you can get back to your radio station.

**Mr RUBY HOWE:** Back to the office.

**Mr MACARA:** Yes. Thank you. Thanks for having us.

**The ACTING CHAIR:** We appreciate you coming in. I do not think there were any questions taken on notice. If there were, you have 14 days to respond to those for us as the Committee is going into writing the report very soon.

**Mr MACARA:** Best of luck.

**Mr RUBY HOWE:** Good luck with it. Thank you. We appreciate it.

**(The witnesses withdrew)**

**(The Committee adjourned at 16:32)**