

Supporting Australia's Live Music Industry:

Suggested principles for best practice

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Introduction

Live concerts and performances have a very special role in Australia's cultural and creative life and are pivotal in helping Australian performers showcase their talents, hone their skills and earn an income. Live performance offers artists instant audience feedback and provides a mechanism to promote their music, their image and their brand. It is also a critical stepping stone to breaking through to an international market. It is therefore crucially important to nurture and develop live concerts and performances across the nation.

Regulations controlling the hosting and performance of live music are often determined at a state, territory and local government level and are impacted by a number of different issues. Regulatory frameworks are in place to ensure the safety and amenity of the community, which includes the general public, patrons, performers and venue operators. Whilst these are legitimate objectives, live entertainment regulations should be developed in a considered manner so as not to overly or unfairly disadvantage or present barriers or impediments to growing and supporting a live entertainment industry in Australia.

It is critical that there is a legitimate and transparent process that allows for the protection of local amenity and seeks to promote appropriate types and forms of a live entertainment industry. This is best achieved by applying the following key principles:

The need for regulatory action should be established;

The objective of regulatory action should be clear;

The impact of regulatory action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;

Regulatory action should be effective and proportional;

Consultation with business and the community should inform regulatory development;

The simplification, repeal, reform or consolidation of existing regulation should be considered;

Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

This document has been developed to support consideration of a range of issues that may be addressed by applying best practice regulatory principles to assist government agencies and stakeholders across a range of portfolios to achieve their sectoral aims whilst understanding the needs of live music and entertainment industries in their jurisdictions. The document comprises:

Section 1: Planning and Local Government Processes

Section 2: Liquor licensing

Section 3: Industrial Relations and Workplace Health and Safety

Section 4: Employment of children in the entertainment industry, and

Section 5: Funding models.

Appendix 1 provides a concise checklist of potential actions that could be considered in order to appropriately address live music performance. Appendix 2 provides a list of appropriate state and territory government contacts.

State, territory and local governments should also refer to the document entitled Council of Australian Governments (COAG) Best Practice Regulation: A guide for Ministerial Councils and National Standard setting bodies together with relevant State and Territory regulatory practice guides when considering new, or reviewing existing regulatory arrangements that may have implications for live music performance.

This document was prepared by the Cultural Ministers Council Contemporary Music Development Working Group with advice from Cultural Planning Consultant Mr John Wardle.

For more information about the Cultural Ministers Council visit www.cmc.gov.au

Section One: Planning and Local Government processes

While planning processes and building compliance assessments for live music and entertainment venues vary from state to state, there are some basic approaches that can be considered to foster a thriving local live music industry. In particular, regulations must be equitable across a range of entertainment activities, should be based on clear justification and avoid unnecessary costs for small scale venue operators.

Ensuring the live music industry has ready access to clear information about current relevant planning and local government regulations is also a vital step in ensuring regulations support rather than discourage local live music industries.

The need for a proportionate response

A challenge for regulators and consent authorities is to differentiate between intensive dedicated entertainment spaces, such as cinemas, that require specific building requirements, and low impact spaces such as hotels or restaurants where the provision of entertainment is one of a range of activities that may occur as part of the venue's normal operations. It is particularly important to ensure that standards of compliance are proportionate to the relevant impacts and risks associated with an activity and do not unnecessarily render grass roots and less commercial activity unviable.

- Regulations should differentiate between high and low impact uses and activities and their associated levels of risk to ensure that restrictions and compliance requirements are proportionate to each category.

Planning and local government processes

- When designing good practice planning and approvals processes, regulations should be kept simple and easy to follow, and include a tiered or flexible response to assess performance requirements for different types of venues depending on the size and intent.

Classification of venues under building legislation

- Information on building legislation should provide the hospitality industry with clear directions on how their venues will be assessed in regards to the relationship between various types of consent and building compliance.

Discretion for partial compliance

Compliance with current regulations for specific venues and alterations to those venues can be technically difficult to achieve and therefore consideration of partial compliance is important.

- Policies developed within building legislation frameworks should be flexible in how they assess existing buildings when alterations are made or a change of use is initiated.

Investigating measures to support live music and entertainment in town planning

Places are needed in any city, suburb or town where night economies can thrive and where live music and entertainment can host late night activities with certainty. Various capital cities have

introduced measures designed to manage issues related to entertainment venues and late night trading of licensed premises in the form of precincts and zoning under liquor and local government legislation and development control plans.

- Identify naturally occurring or pre-existing night economies or areas where there are live music and entertainment hubs, and investigate what may be appropriate to encourage performance opportunities.

Planning and local government information resources

- Adequate information on current relevant planning and local government processes and regulations should be made available in a range of formats to applicants due to the complexities of planning application processes and the need for certainty to facilitate sustainability.

Environmental protection information resources

The provision of adequate and accessible information regarding environmental protection is important to ensure that live music industry businesses are able to operate whilst reducing the effects of noise.

- Clear information resources on environmental protection should be readily available to the live music industry.

Section Two: Liquor licensing

Live music objectives in liquor licensing legislation

Many live music and entertainment venues in Australia have a liquor licence. A great deal of live music is provided in Australia as part of the normal operations of licensed venues such as hotels, clubs and restaurants.

A reference to live music in the aims or objects of liquor legislation can provide recognition of the value of the live music industry, on the basis that the aims or objects must be considered in deciding any matter that goes before a licensing authority. It can also assist applicants who specify that they intend to host live music and entertainment in the premises when they apply for, or transfer licences or when they seek to vary trading hours.

- Liquor legislation should acknowledge that the live music sector may be associated with the provision of alcohol. It should also help to ensure that the live music and entertainment industry are considered in licensing matters.

Information resources on liquor licensing

An important aspect to assist in building a positive management framework for the live music industry is to ensure that there are adequate and useful information resources on licensing requirements for entertainment venues who wish to apply for or renew liquor licences.

- Adequate information resources should be made available on the licensing requirements for live entertainment venues applying for new licences and on the review and renewal of existing licence conditions.

Costs, fees and renewals in liquor licensing

The costs and fees associated with liquor licensing can prohibit the ability of venues to host live music, particularly in the case of small-scale premises. It is important to ensure that fees closely reflect the actual costs of licensing administration.

- Liquor licensing fees should be affordable to encourage the establishment of small-scale premises hosting live music.

Noise Complaints and Order of Occupancy Considerations

Order of occupancy principles allow regulators to consider the order of occupancy between a venue and a resident when any changes, such as structural alterations in either premises or the activities conducted in licensed premises, are being considered. These considerations provide scope in complaints arbitration processes to enable venues and residents to resolve noise complaints and amenity issues within a broader context.

- Order of occupancy principles should inform consideration of noise and amenity complaints and can be given added weight through a reference in the objects or aims of liquor licensing legislation.

Section Three: Industrial relations and workplace health and safety

Those in the live music industry have a general duty of care to ensure that risks arising from hazards encountered in the work undertaken are eliminated or controlled. Common hazards in the live music industry, which should be identified and controlled include: use of electrical equipment including instruments and lighting, falls from heights, manual handling, slips and trips, and noise.

Ensuring the health and safety of persons at work is a shared responsibility between production companies, event managers, the venue and their workers and contractors.

As musicians, entertainers, agents and managers can be very vulnerable to fluctuations in work opportunities, it is also important to ensure that positive and transparent work arrangements promote ethical and high quality dealings between all parties.

Workplace health and safety

- To promote the workplace health and safety of workers and others in the workplace, organisations involved in the live music industry should have well documented and easily accessible policies and procedures that aim to protect health and safety.
- Consultations and risk assessments should be undertaken to identify hazards in order to implement appropriate policies and control measures.

Regulation of agents and managers

- Regulation should ensure clear performance standards and mechanisms for effective enforcement. Consideration should be given to ensuring that relevant performance standards are developed in partnership with industry. Such measures could reduce the risks that agents and managers charge performers excessive fees, pay late or not at all, or otherwise act inappropriately.
- Where possible, work environments and negotiations need to be transparent to promote positive arrangements between artists and venues.

Section Four: Employment of children in the entertainment industry

Minors performing in licensed premises

The ability for minors to work alongside established professionals in licensed premises under appropriate conditions is consonant with Article 31 of the UN Convention on the Rights of the Child. The ability to perform, under appropriate conditions, can assist minors to simultaneously commence an apprenticeship, expand their profile and earn an income.

- Minors should have the ability to work alongside established professionals in licensed premises under appropriate working conditions, and in the company of a responsible adult.

Employment of children in the entertainment industry

The ability to perform live can provide career changing opportunities for young performers. The regulation of children working in the entertainment industry and the minimum age of employment varies according to each state and territory.

- Regulations should encourage the safe and responsible involvement of young musicians, and should aim to protect children working in the entertainment industry from exploitation or abuse, and prevent inappropriate and unreasonable demands being placed on them.

Section Five: Funding models

Funding through regulation

Various states and territories have legislation which includes provisions for specific funding mechanisms for live music.

- Jurisdictions could consider funding mechanisms, including through gambling revenue, to encourage support for the arts, including live music.

Checklist of potential actions

Consider the acknowledgment of live music within respective state and territory liquor legislation to provide recognition of the value of the live music and entertainment industry (Section 2).

Develop information resources which specifically make reference to entertainment venues and liquor licensing requirements (Section 2).

Investigate introducing contextual considerations in noise and amenity arbitration processes for licensed premises hosting live music and entertainment (Section 2).

Investigate the clarification of conditions for minors to work as performers in licensed premises (Section 4).

Ensure appropriate arrangements are in place to protect and safely encourage the employment of children in the entertainment industry (Section 4).

Consider regulatory measures that ensure a proportionate response to the relevant impacts and risks associated with activities and venues (Section 1).

Investigate and consider introducing measures to support live music and entertainment in town planning, such as through designated districts or other means (Section 1).

Consider introducing a dedicated information helpline to assist with compliance issues for entertainment venues (Section 1).

Consider publishing a dedicated live music and entertainment noise guide to encourage best practice in live music venues (Section 1).

Consider establishing a dedicated webpage resource for entertainment industry agents, managers, venues and performers (Section 3).

Consider arts representation on any working group that is established to look at reform of regulation and planning that may have an affect on the live music sector (Section 1).

Contacts:

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