

# **ISSUES PAPER**

## *Live Music Industry in New South Wales*

### **1. INTRODUCTION**

### **2. CONSULTATION PROCESS**

- 2.1 21 October 2003 – *Vanishing Acts* Forum**
- 2.2 24 September 2004 – Live Music Industry Forum**
- 2.3 10 October 2004 – Live Music Agency Forum**
- 2.4 19 October 2004 – Local Government and Shires Association**
- 2.5 Written submissions**

### **3. ISSUES RAISED BY THE MUSIC AND HOSPITALITY INDUSTRIES**

- 3.1 Live Music Venues, provision and licensing of premises and places of public entertainment**
- 3.2 Planning and Noise Regulations**
- 3.3 Support for live music venues and performances**
- 3.4 Education and Information**

### **4. AREAS PROPOSED FOR THE CONSIDERATION OF GOVERNMENT**

- 4.1 Live Music Venues, provision and licensing of premises and places of public entertainment**
- 4.2 Planning and Noise Regulations**
- 4.3 Possible Support options for live music venues and performances**
- 4.4 Education and Information**

### **5. CONCLUSION**

## 1. INTRODUCTION

This Issues Paper was prepared for the purpose of identifying issues that impact on the provision of live music work opportunities, particularly in the State's clubs, hotels and restaurants. The paper was developed through consultation with the live music industry, operators of venues and relevant Government agencies. It will provide the basis of advice to Government on options to improve the live music industry in NSW.

The project emerged from the report *Vanishing Acts: An Inquiry into the state of live popular music in NSW*, by Associate Professor Bruce Johnson and Dr Shane Homan, and released by Government in May 2003. The report was jointly funded by the Ministry for the Arts and the Australia Council.

The Ministry for the Arts initially commenced the project with responsibility recently being passed to Strategic Projects Division, Premier's Department.

A Live Music Forum was convened by the Ministry for the Arts in October 2003 and attended by representatives of the music and hospitality industries, the Local Government and Shires Associations, and Government agencies. The forum discussed the recommendations of the *Vanishing Acts* report and the Ministry for the Arts subsequently produced a document identifying priorities for action which received broad support across the live music industry.

In September 2004 Premier's Department consulted further with the music and hospitality industries to ensure that all the issues raised by industry had been identified. Further meetings were also held in October 2004 with a wider representation of Government agencies and separately with the Local Government and Shires Associations. Written submissions were also received during this time.

Four key areas have been identified as impacting on the operation of live music venues:

- **Live Music Venues** – licensing of premises and places of public entertainment (clubs, hotels, restaurants etc);
- **Planning and Noise Regulations;**
- **Possible support for live music venues and performances;** and
- **Education and Information** – venue managers, patrons, musicians and residents.

This paper will explore the issues raised by industry, provide an overview of the areas identified and outline issues for consideration by Government. Subsequently, options will be considered for legislative, regulatory and administrative changes for the licensing and operation of live music venues throughout the State.

## **2. CONSULTATION PROCESS**

### **2.1 21 October 2003 – *Vanishing Acts* Forum**

The Ministry for the Arts held a Live Music Forum to discuss the recommendations of the *Vanishing Acts* report that included representatives from the live music industry; hospitality industry; the Local Government and Shires Associations; and Government agencies.

**Australian Hotels Association** – Greg McFarland  
**Australia Council** – Peta Williams  
**Contemporary Music Roundtable Working Party, Australia Council** – Adam Simpson  
**Department of Gaming and Racing** – Dominic Herschel and Lisa Kerr  
**Department of Infrastructure, Planning and Natural Resources** – Petula Samios  
**Local Government and Shires Association** – Janet Frost  
**Music Council of Australia** – Lindy Morrison  
**Music Managers Forum** – Selena Quintrell  
**MusicNSW** – Stephen Gray and Millie Millgate  
**Musicians Union** – Richard Ruhle and Sandi Chick  
**Ministry for the Arts** – Susan Donnelly, Kerri Cavanagh, Victoria Owens and Christine Sammers  
**Ministry for the Arts, Music Committee Member** – Peter Winkler  
**Performing Artist** – Tim Freedman  
**Premier’s Department** – Lynette Thorestensen  
**Premier’s Office** – Brett Johnson  
**Trading Post Agency** – Owen Orford  
***Vanishing Acts*, Co-author**, Associate Professor (now Professor) Bruce Johnson, University of New South Wales  
***Vanishing Acts*, Co-author**, Dr Shane Homan, University of Newcastle

### **2.2 24 September 2004 – Live Music Industry Forum**

Premier’s Department convened a Live Music Industry Forum to ensure that Government had covered all the issues raised earlier by the music and hospitality industries and to seek input into options for the consideration of Government. The following attended the meeting:

**Australian Hotels Association** – Charles Shields, John Keating and Scott Leach  
**Australian Music Radio Air Play** – Paul Mason  
**ClubsNSW** – David Costello and Nerida Child Dimasi  
**Ministry for the Arts** – Victoria Owens  
**Music Council of Australia** – Lindy Morrison  
**Music Managers Forum** – Selena Quintrell  
**MusicNSW** – Stephen Gray

**MusicNSW and Band Manager** – Millie Millgate

**Musicians Union** – Richard Ruhle

## **2.2 Cont'd – 24 September 2004 – Live Music Industry Forum**

**Premier's Department** – Peter Loxton, John Scott and Christine Pedder

**Restaurant & Catering NSW** – Robert Goldman

**Sydney Conservatorium of Music** – Craig Scott

**Sydney Conservatorium of Music Access Centre** – John Wardle

***Vanishing Acts*, Co-author**, Professor Bruce Johnson – University of NSW

**Venue Manager** – Mark Lambert (formerly Newtown RSL and The Globe, Sydney)

## **2.3 10 October 2004 – Live Music Agency Forum**

The Premier's Department convened a Live Music Agency Forum that included all relevant Government agencies to consider the issues raised by industry and to provide and initial response to issues raised by the music industry.

**Department of Education** – Julie Montague

**Department of Environment and Conservation (EPA)** – Geoff Mellor and Gordon Downey

**Department of Gaming and Racing** – Dominic Herschel

**Department of Infrastructure, Planning and Natural Resources** – Petula Samios

**Department of Local Government** – Karyn Apperley

**Ministry for the Arts** – Victoria Owens

**NSW Police** – Inspector John Green and Sergeant Nick Pitchuev

**NSW Treasury** – Geoff Lyons

**Office of Information, Communications and Technology** – Paul McCarthy

**Office of Fair Trading** – Andrew Gavrielatos

**Premier's Department** - Peter Loxton, John Scott and Christine Pedder

**Premier's Office** – Brett Johnson

**TAFE NSW** – James Black

**The Cabinet Office** – Marie Swain

## **2.4 19 October 2004 – Local Government and Shires Association**

Premier's Department convened a meeting with representatives of the Local Government and Shires Associations to ensure that local government was appropriately informed and involved in the process of the development of this Issues Paper.

## **2.5 Written Submissions**

Written submissions were received from various sources and included in the consultation process.

### **3. ISSUES RAISED BY THE MUSIC AND HOSPITALITY INDUSTRIES**

The issues raised by industry in relation to reducing impediments for live music work opportunities fall into four broad categories as outlined in the introduction.

#### **3.1 Live music venues, provision and licensing of premises and places of public entertainment**

- Processing of hotel and gaming licences and approvals for a Place of Public Entertainment authority (POPE) is complex. These processes need to be streamlined and simplified by removing inconsistencies between councils and by constraining councils' ability to impose conditions that are onerous or include extraneous matter.
- Current legislation (s.68 *Gaming Machines Act 2001*) requires hotels to have a dedicated room for poker machines in excess of 10 – which may take entertainment space away from live music.
- The process for the extension of licences and authorities involves onerous paper work.
- The annual renewal of POPEs creates an increased administrative burden on the hospitality industry during the busiest time of the year at the Christmas/New Year festive season.
- A POPE authority is required for all live music venues.
- Applications for special event licences are arduous and can be refused arbitrarily.
- Information regarding applying for POPEs can be difficult to access from local councils and is generally not available on council websites.
- Appropriate insurance needs to be held by venue operators and musicians. For example, workers' compensation and public liability insurance.

## **ISSUES RAISED BY THE MUSIC AND HOSPITALITY INDUSTRIES**

### **3. 2 Planning and noise regulations**

- Local councils are not generally informed of the desirability of zoning live music precincts eg; Newtown, Surry Hills, Bondi, Balmain, Kings Cross, Darlinghurst and Glebe areas.
- Current 'business' zoning does not cover the special needs of operating live music venues.
- Local Council policy and planning should acknowledge live music venues in their areas.
- High density residential development in proximity to venues exacerbates noise and parking problems for venues. Patrons leaving club premises often generate complaints from surrounding neighbours.
- Gentrification of local areas is often at the expense of pre-existing local culture. New residential developments should not impact on existing live music venues. 'First property rights' should be recognised for venues whose businesses are encroached or otherwise affected by neighbourhood gentrification and/or denser residential development.
- There is no requirement to inform intending purchasers that the property they are seeking is in proximity to an existing live music venue.
- 'Buyer Beware' legislation should be introduced for residents in proximity to live music venues.
- Noise regulations can differ across local councils and the standardisation of noise requirements would assist in reducing conflict between developers, venues and councils.
- Responsibility for dealing with noise issues should be shared between venues and residents rather than seen as the venue's responsibility.
- Developers should be given the responsibility for soundproofing new residential developments in proximity to live music venues.
- When local residents lodge a section 104 complaint (Disturbance complaint under the Liquor Act) the complainant should be required to lodge a holding deposit as a way of minimising vexatious complaints and offsetting the cost to government and the venue in responding to the complaint. Complaints should factor in the interests of the live music industry.

## **ISSUES RAISED BY THE MUSIC AND HOSPITALITY INDUSTRIES**

### **3.3 Support for live music venues and performances**

- No grant program currently exists in NSW specifically for the operation and promotion of live music venues.
- There is a need to create a funding program that supports live music venues.
- The industry practice that gives all the bargaining power, and none of the commercial risk, to live music performers and the performers' promoters needs to be overhauled.

**Note: The Musician's Union opposes this issue (further comments are recorded at 4.3 Overview)**

- Categories of grant assistance to include – education package; soundproofing costs; noise management; purchase of public address systems; fit-out costs related to compliance with fire safety requirements under the Building Code of Australia (eg. Exit signs, smoke alarms, extinguishers, fire retardant – carpets and seats); additional security to staff all-age events; promotion costs for venues to present original Australian music; one-off funding for special events; pilot projects to present local bands at their local pubs; outer Sydney live music venue development in currently 'unserved' areas eg. Campbelltown in Sydney's south-west.

## **ISSUES RAISED BY THE MUSIC AND HOSPITALITY INDUSTRIES**

### **3.4 Education and information**

- There is a lack of understanding in parts of the leisure industry on the community benefits of establishing live music venues.
- There is a lack of awareness in the community of patron behaviour and responsibilities in and around live music venues.
- Access to information on live music opportunities needs to be available for venue managers.
- Noise regulations need to be available for venues, patrons, musicians and residents.
- Musicians and agents need to be educated that the music style and volume must be geared to suit the venue.
- Live music should be promoted as a cultural right of the community.
- A website needs to be established outlining patron behaviour responsibilities.
- A comprehensive information booklet on noise regulations as they relate to venues, patrons, musicians and residents needs to be produced.
- Information on obtaining a POPE authority needs to be available through the appropriate Government website.

## **4.0 AREAS PROPOSED FOR THE CONSIDERATION OF GOVERNMENT**

### **4.1 – Live music venues, provision and licensing of premises and places of public entertainment**

#### **Overview**

The licensing of premises and the POPE approval process are obvious areas of concern for industry. The main focus relates to streamlining and simplifying the POPE authority process by removing inconsistencies between councils.

Premises are licensed under the *Liquor Act 1982* and clubs in NSW are licensed under the *Registered Clubs Act 1976*, within the administration of the Department of Gaming and Racing (DGR). Local council approval for POPEs is required under s.68 of the *Local Government Act 1993* (LG Act).

In July 1999 Government powers related to POPEs were transferred from the Department of Local Government to the Department of Infrastructure, Planning and Natural Resources (DIPNR) (formerly the Department of Urban Affairs and Planning). DIPNR is therefore responsible for legislative and policy advice regarding POPEs.

The *Local Government (Approvals) Regulation 1999* includes standards required in gaining the approval of the council for events. There are also other approvals required under s.68 that may relate to the staging of events on community land. Councils have the power to set standards and policies and use these to issue conditions with any approval. They are also required under s.89 of the LG Act to consider certain matters prior to issuing an approval.

#### **Issues for consideration:**

- Examine legislative and regulatory requirements for a POPE approval, to include consideration of other issues associated with POPEs and live music venues, and their relationship to liquor licensing.
- Examine exceptions for a POPE approval for acoustic or ambient live music in licensed premises, including restaurants and hotels, on the basis that the music is ancillary to another activity such as the service of food or alcohol.
- Examine administrative aspects of issuing a POPE approval either as a standing approval or for a longer term eg five years.
- A review of the application process and criteria for function licences and allowing live music to be performed at functions after 12.00am on a limited basis
- Examine risk assessment by use of a suitable standard eg AS/NZS 4360:1999 for special events. The aim would be to call up a suitable standard in a

regulation to make it mandatory.

- Examine possible cost concessions on Drink-or-Dine authorities indexed to the level of live music presentation.

**Note: This issue is not supported by the AHA and will need to be examined in accordance with the views of all stakeholders and any future Government initiatives in this area.**

## AREAS PROPOSED FOR THE CONSIDERATION OF GOVERNMENT

### 4.2 Planning and noise regulations

#### Overview

The main focus of concern with industry is the non-standardisation of planning and noise regulations across local government and conflicts arising between existing live music venues and the impact of urban redevelopment and changing demographics.

Local Councils would generally be the appropriate regulatory authority (ARA) for the purposes of the Protection of the Environment Operations Act (POEO). The Department of Environment and Conservation does not have a statutory ability to regulate how councils execute their ARA functions but has recently issued a *Noise Guide for Local Government* to assist councils undertake their regulatory functions under the POEO Act.

The Liquor Administration Board (LAB) is responsible for noise management of licensed premises and is the lead agency for dealing with complaints about noise (including music) from licensed venues and applies licence conditions in this regard. LAB conditions are performance based and set noise limits that the licensee must achieve. It is the licensee's responsibility to decide the most appropriate way to achieve the limits.

The DGR is currently considering proposals following the National Competition Policy (NCP) review of the liquor laws, which provides an opportunity for the future operation of the noise and disturbance complaint provisions in the liquor laws to be examined.

The Ministry for the Arts and the Department of Local Government recently released *Cultural Planning Guidelines for Local Government*, which provides a useful framework for the inclusion of live music opportunities within cultural development strategies. Local government responsibilities in regard to social and community planning, as outlined in the *Social and Community Planning and Reporting Guidelines*, is another way in which councils can address local community needs with live music opportunities.

It should be noted that whilst Government agencies provide local councils with information to assist and guide them in their areas of responsibility, adherence to this advice is purely voluntary by councils.

#### Issues for consideration:

- The tension between current live music venues and residents in new developments with changing residential accommodation and urban density is recognised. This is also perceived to be a problem for development of new venues. It is proposed to examine the requirements for development approvals where existing or potential live music venues (particularly licensed premises

and community halls) may have a noise impact, with regard to design feature to ameliorate the impact of noise on residential use.

- Examination of administrative arrangements for complaints under s.104 or s.17AA complaint to try and achieve balance between live music and complainants.
- In the development of local council strategic plans consider providing councils with appropriate information on the issues and concerns of the music and hospitality industries. Particularly concerns with the lack of uniform noise conditions across local council areas and their impact on live music venues; and changes sought by industry such as the creation of live music precincts.
- Consider encouraging local area planning by councils to include the consideration of live music opportunities and the cultural and social benefit of live music within the community.
- Examination of appropriate noise attenuation requirements arising out of urban redevelopment in proximity to existing live music venues to assist local council approval processes.
- Examination of the provision of information to intending purchasers of residential property where the property is located in close proximity to an established live music venue.
- Subject to funding being available investigation is undertaken into current advances in technology in the areas of sound amplification systems and architectural acoustics that will assist live music venues contain noise within the premises.

## AREAS PROPOSED FOR THE CONSIDERATION OF GOVERNMENT

### 4.3 Possible support for live music venues and performances

#### Overview

It is recognised that there is limited Government funding available for the provision and operation of live music venues. Existing funds such as the Casino Community Benefit Fund is a hypothecated taxing scheme and must be allocated in accordance with the overarching framework that is primarily directed to alleviating gambling related problems.

The Community Development and Support Expenditure (CDSE) scheme for gaming machine taxes is also expended on local community projects in accordance with the CDSE guidelines approved by the Minister for Gaming and Racing under the *Gaming Machine Tax Act 2001*. The projects must meet strict criteria and are directed primarily towards community services.

In addition to the consultative process involved in the development of this paper, the hospitality industry (AHA, ClubsNSW and Restaurant & Catering NSW) met with the Minister for Gaming and Racing to assist further in the process of developing options for the Government's consideration. Subsequent advice indicated that the hospitality industry generally agreed the liquor laws were not there primarily to encourage live music opportunities – there were other avenues to do that. The commercial practices that currently exist between venue operators and the music industry were identified as a priority for examination.

Conversely, the Musicians' Union advised that it would strongly resist any attempts to reduce musicians' remuneration and conditions below that established by industrial legislation and awards.

Following the Industry Forum on 24 September 2004 ClubsNSW conducted a state-wide survey which provided valuable feedback from clubs throughout the State. Clubs identified the major impediment to hosting live music was the cost involved and that it is a risky business as there is no guaranteed return. Generally, clubs provide live entertainment as a service to members which is often subsidised by the club. However, with any increases in costs or a downturn in revenue, live music would be one of the first areas clubs would reduce.

Significantly, two clubs advised that to reduce the risk of hosting live music they now no longer pay artists a standard fee. In both instances, the clubs expect the bands to help promote their show and pay the artists through door deals or small guarantees.

The Musicians' Union has advised that agreements such as these may be in breach of the Industrial Relations Act 1996 (particularly section.128 Minimum Remuneration for Musicians and section.106 Unfair Contracts). Consequently, the Union suggests that the appropriate mechanisms to address the issues are currently available through either the Musicians' (Live Performance) (State) Consolidated Award – Clause 24

*Special Arrangements* or through the negotiation of specific enterprise bargaining agreements.

**Issues for consideration:**

- Examine options for the risk and benefits of live music – this would need to be conducted with the representatives of venues (such as clubs and hotels) and musicians.
- Greater dialogue be encouraged between the hospitality industry and musicians concerning the provision of live music. Success often depends on the correct promotion, timing and staging of musical performances and experienced musicians and venue operators need to work closely over this issue.

Discussions to include identifying any inhibitive factors that a particular style of music may have on the normal recreational enjoyment of the venue's regular patrons.

- Musicians are encouraged to adopt best practice when performing. Issues to be taken into consideration such as setting up on time; keeping breaks to a minimum; and the appropriateness of consuming alcohol whilst performing.
- Relevant Government agencies to consider promotional opportunities for live music events.

## AREAS PROPOSED FOR THE CONSIDERATION OF GOVERNMENT

### 4.4 Education and Information

#### Overview

There are a number of dimensions in the area of education which requires a multi-faceted approach. There is a need to assist venue managers and musicians on what is required in staging live music events as well as educating children and the community generally about the benefits of live music.

The *Vanishing Acts* report specifically targeted primary and secondary students being educated and gaining an awareness of their local music culture. It is recognised however, that the Department of Education and Training currently provides support for students attending outside music venues as well as introducing musicians into schools. TAFE also has a number of Units of competence in the management and operation of live music venues.

Recommendations and initiatives arising out of the Alcohol Summit also have an educative role in the development of responsible patron behaviour at live music venues.

The Office of Information and Communications Technology (OICT) is undertaking the Channel NSW Digital Television pilot project in the Sydney metropolitan region. The OICT is assessing DTV as a channel for the delivery of public and government information – an initiative that has not previously been explored by any Government in Australia.

Local Government also has a significant role in understanding their local music culture and the benefits it brings to their communities. The Department of Local Government is responsible for the legislative and policy framework for local government in NSW.

#### Issues for consideration:

- As part of Channel NSW DTV trial OICT to explore the possibility of live coverage of student performances in collaboration with the Department of Education and the Conservatorium of Music
- The Department of Education to consider opportunities within the curriculum for raising student awareness of their local music culture.
- The Department of Environment and Conservation (EPA) to promote its *Noise Guide for Local Government*, to assist councils undertake their regulatory functions under the POEO Act.

Note: The Guide has been distributed to all NSW Councils and to the training and development officer in all Police Local Area Commands. An extensive

seminar series has also been conducted and attended by over 370 council officers in 14 city and regional locations.

- Promotion of initiatives arising out of the Alcohol Summit through relevant Government websites to inform and involve communities in strategies such as the Liquor Accords. The strategy involves local stakeholders coming together to agree on a set of rules and standards to apply to the sale of alcohol and operation of licensed venues in an area.
- Also following the Alcohol Summit the Department of Local Government to review and update existing publications to assist councils, promoters and other industry personnel to effectively manage events. These include, the DLG Practice Note - *Major and Special Events Planning: A Guide to Promoters and Councils* and the *Guidelines for Dance Parties and Code of Practice*, to be completed by June 2005.
- Consideration be given to establishing a dedicated position (Information Officer) to provide advice to industry on what is required for a POPE approval and the numerous issues associated with presenting live music. Consideration also be given to the information content, funding options and appropriate host for the position.
- Relevant linkages are explored on Government websites to ensure that there is uniformity and consistency of information available to venue managers, musicians, patrons and residents. Consideration also to be given to websites being a vehicle for recording and sharing experiences from the live music industry.

## 5.0 CONCLUSION

The purpose of this paper is to identify where agreement and broad support can be reached in creating more live music opportunities throughout the State. It is not about creating a competitive edge between different music sectors. The issues are complex and diverse and require the co-operation of everyone.

It became evident, however, during the finalisation of the draft paper that certain issues identified in the consultation process were not supported by all stakeholders. It is the view of Premier's Department that these issues should remain in the paper to be discussed with the relevant parties during the next stage of the development of options for the consideration of Government.

In addition, some of the submissions received on the draft paper were not necessarily targeted at the issues identified in the paper but rather presented a broader vision and options for the future of the live music industry. Accordingly, these submissions will be of benefit during the next stage.

The *Vanishing Acts* report provided an impetus for action and the subsequent participation of the hospitality and music industries, the Local Government and Shires Associations and relevant Government agencies provided the information necessary for this paper.

The issues for consideration are proposed as a starting point for responding to the concerns of various stakeholders and as such the parties responsible for pursuing those issues have not generally been identified.

Strategic Projects Division  
Premier's Department  
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