



Music NSW Response to *The Liquor Bill 2005* (NSW)

## **A. BACKGROUND**

MusicNSW is the service organisation for the NSW music industry. We are a non-profit association set up to represent, promote and develop the contemporary music industry in New South Wales.

### **Our objectives are to:**

- Provide advice and resources and have information available for the industry.
- Increase industry professionalism and skills through education and training.
- Develop regional, national and international recording and performance opportunities for NSW artists.
- Provide coordination between grass roots organisations, industry sectors and government bodies.
- Ensure that the interests of NSW contemporary music artists are adequately addressed by the media, government and cultural bodies.
- Empower communities around NSW to retain their musical identity and foster audiences for local material.

The closely aligned nature of the supply of liquor and the existence of live music venues, would indicate that MusicNSW, responsible for representing and ensuring that the interests of the music industry is adequately addressed, is a significant stakeholder in the development of the proposed bill.

A number of issues raised by *The Liquor Bill 2005* (NSW) (the **Bill**) have been identified by Music NSW, under the following categories.

1. **Application Processes**
2. **Applications for Extensions**
3. **Special Event Licences**
4. **Disturbance Complaints**
5. **Acknowledgement of the public cultural and social benefit of live music**
6. **Drink or Dine Regulations**
7. **Greater Provision Of All Ages Entertainment**
8. **Form, Content and Scope of Social Impact Statements for Live Music Venues**

## **B. COMMENTS AND PROPOSALS OF MUSIC NSW**

### **1. The Application Process**

- 1.1 In general, Music NSW supports the proposed administrative structure under the Bill. Music NSW believes it will streamline and simplify the application process.



**Music NSW proposes that** the process include an appeal option, should an application be declined on initial consideration by The Director.

1.2 Part 3 Liquor Licences  
Division 1 – Types Of Licences

- (a) The primary purpose of a nightclub is entertainment, not the supply of Liquor. Consequently the social impact of a nightclub with specific reference to harm minimisation in the supply of liquor is significantly different to that of hotels.

**Music NSW opposes** the amalgamation of Nightclub Licences with Hotel Licences.

- (b) Further, the Nightclub Licence was derived from the Restaurant Licence. Such venues are represented by the restaurant associations and not the AHA. Therefore even on an industry level it appears inappropriate, due to current industry structures, to combine Nightclubs into the Hotel Licence.
- (c) Further, MusicNSW is concerned that should Nightclub Licences be left in the Hotel Licences category, there may be a shift in operations, resulting in nightclubs focussing more on the supply of liquor rather than the entertainment. Such a change in operations will derogate from the entertainment function of nightclubs – specifically live entertainment, and thus will adversely affect the entertainment sector in NSW as a whole.
- (d) Accordingly **Music NSW proposes that** the Nightclub Licence should be categorised with the On Premises Licence, which more closely reflects both the purpose of business and the potential social impact.

1.3 Proposed Appeal Processes

**Music NSW proposes that** there should be an appeal process if the application is not approved at the first stage. Such an appeal process would enable consideration of mitigating factors for relatively minor non-compliance and would encourage licensees to resolve non-compliance issues without having to incur the considerable cost of a new application.

2. Applications for Extensions

2.1 Part 4, Division 2: Social Impact Assessment Process for Licence and Other Relevant Applications

- (a) Clause 43(c) (*Applications for Extended Trading Authority*) is likely to affect the NSW music industry in a number of ways. However the extent of that impact, adverse or otherwise, will depend largely upon the eventual framing of the definitions relevant to this Clause and the regulations that are made under it.



- (b) **Music NSW proposes that** the assessment processes required of the Live Music Venues should be proportionate and appropriate to the perceived risk of adverse social impact, that granting the Extended Trading Authority may potentially create.
- (c) Consequently **Music NSW requests that** the Department consults with Music NSW upon the drafting of the relevant definitions and regulations.
- (d) In addition **Music NSW proposes that** the Social Impact Statement should consider, and give weight to the cultural and social value of live music.

## 2.2 Part 4, Division 3: Additional Authorisations

- (a) Music NSW is apprehensive about the potential inconsistencies in the administration of this clause in its present form: Music NSW is aware of several occasions where extended authorisations for cultural events have been denied with scant recourse, but comparable extensions for sporting events have apparently been relatively easy to obtain.
- (b) Accordingly, to avoid such inconsistencies, **Music NSW proposes that** the definition of “*special occasion*” in Clause 47 (6) should include “*a unique or infrequent event of cultural, sporting, local, State or National significance...*”[emphasis added].
- (c) Again, **Music NSW requests that** the Department consults with Music NSW upon the drafting of the relevant definition.

## 3. Special Event Licences

- 3.1 The Bill proposes that all types of licence applications require a social impact assessment (an **SIA**). In our view, this requirement is not appropriate for applications for events such as one-off Festivals. The requirement will not simplify the process for such applications.
- 3.2 If this requirement is to remain, **Music NSW proposes that** the SIA requirements for one-off events take into account the size and duration of the event in assessing its social impact.
- 3.3 **Music NSW requests that** the Department consults with Music NSW upon the drafting of the relevant regulations.

## 4. Disturbance Complaints

### 4.1 Part 5, Division 1: Quiet and Good Order Of Neighbourhood

- (a) **Music NSW supports** the proposed Clause 73(12), particularly the compulsory consideration of “*order of occupancy*” in Clause 73(12)(a).



- (b) However, **Music NSW proposes** that the clause should go further and to articulate what a licensee's existing rights as a prior occupier are. In particular, Music NSW proposes that a licensee carrying on a musical activity will, in a decision making process, have his/her/its existing rights upheld.
- (b) Music NSW also **proposes that** the effect of the Clause could be enhanced by;
  - (i) the pursuit of directives to local councils by Department Of Gaming and Racing to create music precincts in their planning processes; and
  - (ii) The implementation with other statutory authorities such as the Department of Fair Trading of "buyer beware" legislation to ensure persons purchasing and leasing property within the relevant precincts or within hearing of a music venue (that has prior order of occupancy) have an onus to be aware of the live music venues, which onus should be a compulsory consideration of the Director in reviewing any complaint.
- (c) **Music NSW proposes that** the Clause include a compulsory consideration of the relevant venue's prior history, in particular, whether the venue has maintained a good track record with its local community (including both residents and clients of the venue).
- (d) **Music NSW requests that** the Department consults with Music NSW upon the drafting of the relevant regulations and provisions.

## **5. Acknowledgement of the public cultural and social benefit of live music**

### **5.1 Clause 3: Object of This Act:**

- (a) The stated object of the Bill is essentially liquor harm minimisation. But **in the view of Music NSW, the stated object should include** a further purpose of the Bill: to better regulate, administer and facilitate the access of communities to live music, entertainment and cultural events upon licensed premises in order to enhance and develop the cultural life of New South Wales.
- (b) To better ensure that the objects of the Bill acknowledge the cultural and social benefit of live music, **Music NSW requests that** the Department consults with Music NSW upon the drafting of the relevant provisions.

## **6. Drink or Dine Regulations**

- 6.1 In the event that the proposal contained in paragraph 1.2 (b) above is not accepted, **Music NSW proposes that** restrictions regarding the supply of liquor requiring the simultaneous supply of a meal be excluded where the licensee is supplying live entertainment, especially with reference to acoustic performances.



- 6.2 To better promote the development of culture in NSW, and to provide a frame of reference for the Director of Gaming and Racing in decision making, **Music NSW proposes that** a definition of entertainment be included in the Bill and should include “*dance, live theatrical performance, live music, exhibition or any event presented by actual persons in real time calculated to attract and entertain members of the public*”.

**7. Greater Provision Of All Ages Entertainment**

*Part 6 Division 3 Clause 109(4) - Functions for Minors in Hotels*

- (a) Music NSW believes a 20-unit penalty is severe and **proposes that** this penalty is reduced.

**8. Form, Content and Scope of Social Impact Statements for Live Music Venues**

The most onerous requirement for live music venues in obtaining a licence or an authorisation will be the SIA. As the service organization for the music industry in NSW, **Music NSW proposes that** it is given the opportunity to comment on content and format that document during the drafting.

MusicNSW appreciates the opportunity to respond to the Draft Bill and given our position as the state advocacy body for the Music Industry, believe we are a vital stakeholder in any further consultations concerning this Bill and the development of subsequent regulations.

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