

Lockout laws review

Submissions by Music Australia

Prepared by ClarkeKann and Music Australia



ClarkeKann
LAWYERS

Music Australia makes this submission to the Senate Inquiry into Alcohol Fuelled Violence, and The Callinan Review of NSW Liquor Reforms

Introduction

Music Australia is a 50-member not for profit national peak music organisation for Australia and the only body in the country devoted to music in its entirety. As a national umbrella body we work with the professional industry to deliver information and resources, advocacy campaigns, and sector engagement. Our members include key national music industry organisations, artform specialists, and expert Industry Advisory Groups. We are active in music education and run Australia's largest school music program. *Music: Count Us In* reaches over 2,000 schools and 500,000 students across Australia, and provides professional development to 3,500 teachers.

The lockout laws do not achieve their desired purpose

The purpose of the lockout laws is to reduce alcohol fuelled violence. However, it is questionable whether these laws will achieve this aim. While health advocates have pointed to reductions in violent street behaviour in the affected zones, there are significant questions regarding causation, and multiple adverse impacts.

The laws are simultaneously over inclusive and under inclusive. Laws are over inclusive in that they adversely affect many lawful and non-violent activities, including without limitation, entering a licensed venue after the designated lock out time for the sole purpose of experiencing live music. The laws are under inclusive in that they do not address multiple issues of alcohol fuelled and non-alcohol fuelled violence.

Laws are over inclusive

These laws have multiple adverse impacts. For Music Australia these include the negative economic, cultural and social impacts on the live music scene, night time economies, and development of global cities. These include adverse impacts on:

- Individual musicians, production staff and support personnel
- Venue owners, operators, staff and suppliers
- Stakeholders in night time economies
- New areas with underdeveloped infrastructure where music may migrate
- City, State and National tourism generally
- Broader society through reduced social and cultural amenity within previously vibrant City centres.

Laws are under inclusive

These laws address one aspect of alcohol fuelled violence but do not address:

- Violence between patrons within venues, who arrived prior to the lock out
- Violence on streets in close proximity to licensed venues between locked out patrons
- Excessive consumption of alcohol by patrons prior to going out
- Excessive early evening consumption of alcohol by patrons, motivated by the lock out deadline
- The impact of moving problem behaviour elsewhere
- The systemic social and cultural causes of excessive alcohol consumption and violence generally.

Unintended consequences must be mitigated

Music Australia does not condone anti-social, violent behaviour or excessive alcohol consumption. We acknowledge these major issues need to be addressed systemically, and at the root cause as broad cultural and societal issues. We also acknowledge strong public and political views and expectations for action.

We submit that the significant unintended consequences of these laws must be proactively addressed. If not, the economic, cultural and reputational impacts on the music industry and cities concerned will be profound.

There is a clear relationship between the introduction of the lockout laws and a drop in patronage and revenue for local businesses, detailed below. This has led to the closure of various venues and this trend will continue.

The violence being committed is clearly of high importance. However we submit that remedial action should not be at the expense of or failure of music businesses. We also advocate that the live music industry is not a contributor to this type of behaviour, and is an unintentional victim of the effects of the lockout laws.

We advocate that mitigating measures and a campaign to restore public confidence involving the music industry be implemented expeditiously.

Adverse impacts of the lock out laws on music

Music Australia submits that lockout laws have significant impacts on the music industry, on night time economies, and potentially on city branding and tourism.

Music Industry Impacts

Decrease in local business patronage and revenue: Since the introduction of lockout laws in Sydney's CBD, there has been a significant drop in patronage at nightclubs and other live music venues; less people are going to see live music. Figures released by industry body APRA AMCOS in February 2016 indicate a 40 per cent drop in live music revenue in the Sydney CBD lockout zone since the laws were introduced in 2014. The data also shows a 19 per cent decrease in attendances at night clubs and dance venues in the affected zone.¹

Impacts of music moving elsewhere: As venues struggle to maintain patronage and viability in affected areas and artists struggle to find gigs, patrons and artists may migrate to venues not subjected to lock out laws, with resulting pressure on transport and infrastructure. Without adequate planning and facilities, this may cause local land use conflicts including with residents. There is anecdotal evidence this is happening in Sydney, with reports of increased night-time activity in Newtown, which is outside the lockout area zone.²

Music Industry viability: Live music plays a vital role in developing artists' careers, and as a pathway to success. Live music venues are where artists hone their craft, build a fan-base and earn the majority of their income. A Victorian study found 70 percent of musicians identified live performance as their primary income source.³

Night Time economy Impacts

Decrease in critical mass: entertainment precincts operate effectively when a range of leisure activities and experiences are on offer. In music this includes a mix of small, medium and large venues, and varied types of music.

Decrease in associated businesses: Research has shown that for every dollar Australians spend on live music, three dollars circulate back into the economy⁴. While data is not yet available it is self-evident the evening economies and employment associated with live music would have experienced a *corresponding* drop in revenues as live music venues have faced.

Lack of procedural fairness: In NSW there was no public consultation or adequate notice of the lock-out laws given to business owners. The State Government unilaterally made a decision on what it believed constitutes a valid form of entertainment and business. It is probable that if these issues arose in the day time economy they would receive different treatment from policy makers. It would be almost unthinkable for a similar imposition on trading hours on day time businesses to manage social behavioural issues.

City Branding and Tourism Impacts

Loss of advantage: Sydney is already experiencing reduced inner city live music revenues and attendance, and fewer evening entertainment options, particularly for young people. Brisbane may follow suit. This can reduce the comparative attractiveness of these cities with others such as Melbourne. The southern capital prides itself on its live music offering. It has at least 460 live music venues. The 2012 Melbourne Music Census noted that each every Friday and Saturday night 38,805 people attend popular music live performances in Melbourne CBD venues.⁵

Loss of Opportunity: An effective global music city can contribute powerfully to the domestic economy and to music tourism. Globally the 'music city' represents those cities which have exploited unique identities through music. Toronto, Nashville, London, Austin and Berlin have all successfully placed popular music as central to cultural and economic policy. In Austin Texas, the music industry generates \$1.6 billion a year, and A 2013 Austin White Paper identified live music as a key city attractor.⁶ Sydney, and potentially other cities could miss the opportunity offered by music cities.

Loss of Positioning: Cities impacted by such legislation risk loss of national and international market positioning established over time. Brisbane for example, has a long contemporary music tradition dating back to the seventies. Its Fortitude Valley entertainment precinct is regarded as one of Australia's best live music centres, and has nurtured groups including The Saints, The Go Betweens, and Powderfinger; through to The Veronicas, Sheppard, and current ARIA chart toppers Violent Soho. Brisbane also hosts *Big Sound*, the region's largest and most respected music industry market and conference.

Music is not the problem

Recent studies have indicated that there is no empirical evidence that identifies live music as a cause of anti-social behaviour (see Giesbrecht, Bosma, Juras, & Quadri, 2014; Green & Plant, 2007; cited in Carter & Muller 2015). In fact, "*bands, even loud ones, do not cause aggression and violence....Quality bands that entertain an audience generate a positive social atmosphere, that has been observed to counteract other negative variables*" (see Tomsen, Homel & Thommeny, 2006).

Music as a Positive Contributor to a Solution

We submit that music is not a contributor to the problem, and can be part of the solution to address anti-social, violent behaviour and excessive alcohol consumption.

Addressing anti-social behaviour

Music and the arts, with appropriate investment and frameworks, can contribute by:

- Staging more alcohol free and all ages concerts for young people, and running youth music programs
- Promotion of positive messages through events harnessing the power of music to deliver the themes of non-violence, responsible alcohol consumption, and general social cohesion; and
- Providing increased options for music entertainment and patron choices for recreational engagement and enjoyment
- Utilising music as a powerful communication medium to affect social and behavioural change
- Utilising music's capacity to have a civilising impact on people's behaviour
- Providing alternatives where excess alcohol consumption and violent behaviour result from there being "nothing better to do".

Through these and other measures music can help address this issue.

Promoting Positive Behaviour

A number of studies have noted that live music can play a positive role in patron behaviour:

- A 2011 Deloitte study for Arts Victoria found that "92% of patrons surveyed believe that live music in venues improves quality of life, and 84% believe it provides a welcoming and safe environment... participants noted that live music often draws the focus of the crowd away from alcohol consumption and towards the music performance – the specific reason for attendance at the venue for 63% of patrons."⁷
- Roy Morgan Research has found that attendees at a rock or pop concert are "almost 20% more likely than those at a jazz, blues or classical concert to think obedience and respect for authority are the most important values children should learn".⁸
- Live Music attendance has been identified by patrons and venues as contributing to improved health and wellbeing.⁹

Size of Live Music Industry

More Australians attend live music than sport;¹⁰ over 40 million people attend contemporary music performances annually.¹¹ Music Australia has estimated the broader music sector contributes \$4 to \$6 billion to the Australian economy,¹² and Australia's live contemporary music industry generates revenues of \$1.5 - \$2 billion annually.¹³ Australian music and performing arts businesses comprise almost one per cent of all Australian small businesses¹⁴, and expenditure associated with live music in Australia is estimated to generate some 64,747 jobs, 37,652 of which are full-time.¹⁵

While a sizeable industry, it is also not robust. Digitisation of music has hugely impacted global revenues, dropping from \$26b to \$15b in 15 years to 2014,¹⁶ profoundly changing how music is consumed. During this period Australian music lost global market share, dropping from 3rd to 6th largest world music market for revenues¹⁷, compounding Australia's position as a net cultural importer, with a smaller creative sector than global peers.¹⁸ These challenges have increased Australia's reliance on live music as the main source of artist income. While this is a vibrant sector, it too faces numerous regulatory, environmental and consumer trend pressures. A 2014 arts participation study showed a two percent drop in live music attendance over four years.¹⁹

Dynamics of licensed music venues

The nature of live music is that many performances start late, can continue until 2 or 3am, patrons move between venues, and some will see more than one act on one night. Typically venues will present 2 shows, the first from 8pm and the second from midnight. Multiple bands and DJs may appear. The double show format is an economic necessity, as typical revenues from food and beverage comprise over 80 per cent of total income, and ticket sales less than twenty per cent.²⁰

In many cases people will simply not attend if artists perform earlier. If fewer patrons attend, venues face lesser revenues but similar costs. The bands still have to be paid and the business operates at a loss. With reduced slots, it is emerging bands who are less likely to draw an audience, and can miss out. These bands will miss the valuable performance experience necessary for a successful career.

When patron movement is restricted by requiring people to remain in a certain venue after 1.30am, it is a disincentive to attend. Fewer performance slots are available, resulting in fewer artists presented through the course of a night. The reality is that fewer people will attend, evidenced by the above APRA data which indicates an alarming drop in revenues and attendances. Fewer bands will also perform, reducing employment in the industry. Live music is a tool often used by business to attract patrons, and lockout laws restricts a business's ability to attract their customer base.

Case for Night time economies

There is a strong economic argument for efficient utilisation of existing infrastructure in high density areas where day time and night time economies both flourish. For example, areas with an efficient flow of trade from lunch to dinner, to evening entertainment, put little or no additional strain on infrastructure and resources.²¹ Centrally located entertainment precincts provide affordable transport and efficient travel to, from, and between venues.

The night-time economy refers to the range of leisure activities and experiences associated with patterns of collective night-time socialising and entertainment, including drinking, eating and creative practice (Hannigan, 1998: 3). Broadly, the night-time economy is a manifestation of the dynamic relationship between the social, cultural and material economies of cities with an emphasis on leisure and lifestyle (Lovatt & O'Connor, 1995).

The night time economy recognises varied ways in which people live, work and enjoy life, and that not all operate to the same schedule. By ordering the closure of venues at a certain hour, the NSW Government has prescribed a certain lifestyle on its residents inconsistent with a modern 24 hour global city. The lock-out laws see a reduced ability to live and access the benefits of living in Sydney.

Recently, increased recognition has been given to night time economies, with new approaches to planning and regulatory regimes. In Europe 'Night Mayors now operate in places such as Amsterdam, Paris, Toulouse and Zurich;²² and are under consideration in other major cities including London.²³ The Night Mayor performs an ombudsman style role for a city's nightlife, suggesting improvements and schemes to strengthen a city's nightlife, managing associated risks, and incorporating a variety of stakeholder opinions.

This, and other positive strategies could assist Australian Governments effectively and safely utilise night time infrastructure.

Recommendations

Music Australia supports the work and recommendations of the National live Music Office, and make the following recommendations:

Nationally:

Beyond reactive problems

- We submit that the NSW experience demonstrates that reactive approaches, ie: unilateral lockout laws to address anti-social behaviours, are inappropriate, and that such measures are no longer suitable for any Australian jurisdiction.

Proactive Approaches

- Accordingly, proactive approaches are essential to address alcohol fuelled violence and other anti-social behaviour in entertainment precincts and to ensure these businesses are not adversely impacted
- These involve planned and integrated management and regulatory environments, to optimise balanced and healthy night time economies, and provide for public order and industry viability
- Best practice approaches to be used as in Victorian and South Australian jurisdictions. These can include making specific reference to music venues in planning policies, adopting the agent of change principle, red tape reduction, and integrated stakeholder planning.
- National definitions for Live Music Venues, Small Bars and other relevant activities to aid planning policy and regulations.

NSW:

Exemptions

- Exemptions be granted to sufficient live music venues, either from 1.30am lockout or 3.00am cessation of alcohol service, to restore a critical mass of small, medium and large venues
- Exemptions from the liquor freeze for venues presenting live entertainment, including theatres, galleries, and live music venues following the Melbourne precedent

Regulation

- Develop coordinated low risk regulations for live music and performance venues
- Establish a live music regulatory roundtable across government agencies & live music industry

Mitigation measures

- Recognise that exemptions alone are not sufficient to restore and maintain music industry viability, and provide a package of incentives including grants, management plans and full stakeholder cooperation
- Recognise the serious damage suffered by music businesses and night time economies, adopt best practice management and regulation to restore viability and provide sustainability

Invest in live music venues

- Recognise that market failure extends to live music venues as well as other arts and cultural facilities, and build provision into planning and development.
- Deliver proactive and integrated City and State Planning to ensure provision of live music venues in the built environment, potentially achieved through incentive partnerships with the private sector. The City Recital Centre in Angel Place is an example. Similar approaches can be applied to new developments to deliver a viable mix of fit for purpose live music venues in the inner city and other locations.

Queensland:

- Introduction of a reference in the legislation objectives to recognise the live music industry, as is in place in NSW, SA, WA and VIC
- Capacity in legislation for exemptions from the 1am lockout for live music venues
- Capacity in legislation for live music venues to trade up until 3am statewide
- Development of coordinated low risk regulations for live music and performance venues
- Development of low risk criteria for live music venues, as has been done in Victoria with the exemptions for 200 capacity live music venues from the 1am liquor freeze in Melbourne
- Establishing a live music regulation roundtable across government agencies and the live music sector
- A comprehensive live music regulation best practice and red tape reduction review

References

- ¹ APRA AMCOS, <http://apraamcos.com.au/news/2016/february/sydney-cbd-sees-drop-in-live-performance-revenue-since-introduction-of-lockout-laws/> accessed 22.3.2016
- ² <http://www.smh.com.au/nsw/newtown-gets-busy-as-kings-cross-empties-20150619-ghseco.html>
- ³ Creative Victoria - Music Distribution and Income: A Survey (2011).
- ⁴ The Economic and Cultural Value of Live Music in Australia, 2014, University of Tasmania.
- ⁵ Victorian Live Music Census: 2012
- ⁶ The State of the Austin Music Industry, Austin Music People (2013)
- ⁷ Deloitte for Arts Victoria (2011) The economic, social and cultural contribution of venue-based live music in Victoria
- ⁸ Roy Morgan Research (2014) [Rocking on or all jazzed up, more Aussies go to see live music than live sport](#)
- ⁹ University of Tasmania 2014: page 28-29
- ¹⁰ Roy Morgan Research (2014) [Rocking on or all jazzed up, more Aussies go to see live music than live sport](#)
- ¹¹ University of Tasmania (2014)
- ¹² Estimating the Value of the Music Sector (2005-2014)– [Music in Australia Knowledge Base](#)
- ¹³ E&Y for APRA Economic contribution of the venue-based live music industry in Australia (2011) & 2014 Ticket Attendance and Revenue Survey Live Performance Australia (2015)
- ¹⁴ Valuing Australia's Creative Industries Final Report (2013) Creative Industries Innovation Centre
- ¹⁵ The Economic and Cultural Value of Live Music in Australia, University of Tasmania (2014)
- ¹⁶ IFPI Recorded Industry in numbers (2014)
- ¹⁷ Australia Council for the Arts (2012) The Music Recording Sector in Australia: Strategic Initiatives, and IFPI (2015) Recording Industry in Numbers
- ¹⁸ Culture, Creativity, Cultural Economy: A Review (2014) Justin O'Connor and Mark Gibson
- ¹⁹ Australia Council (2024) [Australian Participation in the Arts](#)
- ²⁰ Ernst & Young for APRA AMCOS (2011): [Economic contribution of the venue-based live music industry in Australia](#)
- ²¹ The Government of South Australia has noted that it is one of its key aims to encourage citizens to 'linger longer' in the city, Adelaide After Dark: A Submission to the Citizen's Jury.
- ²² <http://www.citylab.com/cityfixer/2016/01/night-mayor-amsterdam-mirik-milan/433893/>;
<http://fortune.com/2015/11/23/london-night-mayor/>
- ²³ City of London: https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

Music Australia (Music Council of Australia Pty Ltd)
104 Erskineville Road Erskineville NSW 2043
T 02 9519 9778 | F 02 9519 9849 | E admin@musicaustralia.org.au
W www.musicaustralia.org.au | ABN 85 070 619 608