

# The rationalisation of the regulation of live music in NSW



## History and Current Initiatives

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### 1 VANISHING ACTS REPORT

13 May, 2003, Addresses long-held industry concerns of the future viability of live music environments in NSW

<http://www.arts.nsw.gov.au/WhatsNew/vanishingacts.htm>

### 2 ISSUES PAPER, LIVE MUSIC -NSW PREMIERS DEPT., FEB 2005

24 Feb 2005, Issues for the consideration of Government and recommendations for reform across Licensing, Local Government and Education

[Read the Issues Paper](#)

### 3 NSW LIQUOR ACT, 2005

2003-6. Required by the NCP finding that Liquor Licensing in NSW was anti-competitive, as well as the Alcohol Summit harm minimisation recommendations.

[http://www.dgr.nsw.gov.au/legislation\\_amended\\_liq\\_rewrite.asp](http://www.dgr.nsw.gov.au/legislation_amended_liq_rewrite.asp)

### 4 TRANSFER LOCAL GOVT. ACT POPE TO EP & A ACT

The Transfer of the Place of Public Entertainment Authority (POPE) from LG Act 1993 to the EP & A act 1979. Creation of SEPP with exemptions for Acoustic Music.

[Transfer of functions](#)

### 5. Late Night Develop- ment Control Plan,

Live Music and Entertainment Precincts in Sydney Council  
[City of Sydney late night DCP](#)

Over the last few years extensive work has been done to research, and have addressed what are seen as the strategic areas for reform for a Live Music environment in NSW- to help create the structural foundations for a vibrant and sustainable Live Music Cultural Industry.

The 2 main areas I see as being of critical importance in the current Parliamentary session are:

1. *A more inclusive and diverse Liquor Licensing regime in NSW for live music venues, and protection for all licensed music venues from an unfair noise complaints process.*
2. *A POPE entertainment assessment in local council that treats musical instruments with the same level of compliance as large screen sport, amplified background music, and poker machines.*

To help bring these issues from the margins to the mainstream, we have also done some occasional media:

[Anything but an excess of venues](#)

[SMH, May 25, 2005](#)

[The trouble with Sydney. AGE, December 16, 2005](#)

[Licence to thrill. SMH April 21, 2006](#)

and an online petition:

<http://www.petitionspot.com/petitions/livemusic>, that has had some real influence in the State Government, as well as bringing the issues to peoples attention.

*The comments make for interesting reading.*

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Mysteriously, some questions from crossbenchers were also asked of the Premier and Ministers in the last Parliament **1. 2. 3. 4. 5.**

### NSW Liquor Act targets

- ♦ Live Music Venue Liquor Licence *for niche venues, and smaller live music rooms that are not Pubs or Clubs, where you can have a drink without a meal - in a restaurant say - as long as a Musician is working.*
- ♦ Existing Rights: *To give licensees and Musicians certainty in the face of changing zoning and increased urban density in traditional live Music areas*
- ♦ A new Restaurant Licence, *for Multiculturalism, classical repertoire, families, and diversity for live Music*
- ♦ *Recognition of the responsibility of the Office of Liquor, gaming, and Racing to Live Music and the developing popular culture of NSW in the objects of the Liquor Act*
- ♦ *An acknowledgment by the Minister of these issues included in the second reading speech in the Parliamentary tabling of the Legislation*
- ♦ Participation in the ongoing writing of the regulations.

### Place of Public Entertainment (POPE) rationalisation targets:

- ♦ *A tiered assesment for entertainment compliance that is more flexible than the current one size fits all regulation*
- ♦ *A fairer assessment process with technology neutral assessment criteria, that treats music equally with broadcast sport and gambling*
- ♦ *a focus on "Numbers and Noise" as the assessment criteria, rather than out of date definitions.*
- ♦ *SEPP standardised regulation across NSW*
- ♦ *Cultural Planning policy to include cultural industries in mixed zoning*

## Environmental Planning and Assessment Amendment Bill 2006

Passed in the last week of Parliament in November 2006, in the words of Planning Minister Sartor in the [second reading speech on the Bill](#), this is “**Long overdue, and extremely good news for the live music industry**”

*But not only for live music*, this is also the regulation for:

- Theatre and Cinema
- Circuses and temporary structures
- Country Shows / Community Fairs
- Churches, Surf clubs and public halls
- Agricultural exhibitions
- Outdoor music festivals
- Business promotional events

In short, this legislation will regulate the venues that host the Ideas and participation of the residents of this state for the generation to come, and as such is of the highest cultural importance to the people of NSW.

Whilst this bill has some additional and currently higher profile aspects to it, the important part for us is *The Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* which continues the process of transferring building-related functions from the *Local Government Act 1993 (LG Act)* to the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

### Current approval requirements to obtain Entertainment approval in NSW:

- A development consent to use the premise as a PoPE must be obtained from council.
- An application to obtain entertainment approval under Section 68 of the Local Government Act 1993 must be lodged with council.
- If the proposal involves alterations or construction work, an application for Construction Certificate under the Environmental Planning and Assessment Act 1979 must be submitted to the Certifying Authority.

This transfer means it will no longer be necessary to obtain both development consent under the EP&A Act and an approval under the LG Act to obtain entertainment consent in NSW, as they will be **controlled solely as development under the EP&A Act**.

There are additional and very exciting outcomes enabled by this transfer

- The creation of a State Environmental Planning Policy (SEPP). Recognised as a regulation of State significance, (*Policy proposed by the Minister and approved by the Governor. They address matters of state significance*) the new regulations are standardised across NSW
- Reduced fees, complexity, and duplication in process
- The creation of a tiered assessment process, rather than the previous draconian 9bBCA dual development application process for the lowest of impact activities. The drafting of the new regulations has a low impact / low hazard focus, with:
  1. Exempt activities
  2. Complying development activities (a simple checklist/ inspection, with a 7 day turnaround)
  3. Single D.A application under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.
- The writing of new practice notes on the new regulations. For distribution to local councils, venues, private certifiers, compliance officers, etc... these spell out the intent and how to properly administrate these new procedures. With so much confusion, and complexity in the previous regime, **actually having the regulations clearly defined and accessible** will go a long way to giving certainty to licencees, compliance officers and certifiers, applicants, and ultimately Musicians and Audiences.
- Equal assessment for live performance with broadcast sport in NSW.

Currently still being drafted by the Planning Reform Unit in the Planning Department, the new regulations will be gazetted and in force across NSW in the not too distant future, when an education campaign will be required. *Incidentally, the passage of the bill through the upper house was quite interesting, with the Greens and the Democrats making [extensive comments on the regulation of live music in NSW in the Hansard](#).*

## Rewrite of the NSW liquor laws

In November 2005, the NSW Government released a draft Liquor Bill 2005 and Liquor and Gaming Court Bill 2005, which represent a complete rewrite of the liquor licensing laws.

The Bills include comprehensive changes to the liquor regulatory framework aimed at reducing complexity and cost. They also simplify and modernise the law to aid understanding and enforcement.

The new Liquor act was informed by the findings of these two studies:

- [2003 NSW Summit on Alcohol Abuse](#).
- [2003 National Competition Policy review of the liquor and club management laws](#)

There are significant implications for the regulation of Live Music in NSW in the new Bill, with some strategic areas for attention, and a commitment from the state government that these be included in the new Legislation.

- Amendments to the [Section 104](#) noise complaints processes that are currently unfair and heavily weighted in favour of the complainant. The new regulations are a commonsense amendment, informed by precedents in South Australia, and [Fortitude Valley](#). The devil will be in the detail, and close attention will have to be paid subsequent to the passing of the Bill to the weighting placed on the processes, as well as in the ongoing life of the Act. I would like to see it referred to as existing rights considerations, which more accurately reflects the process and the fact that there needs to be an awareness from each party of the others situation.
- A new Live Music Venue Liquor Licence. For niche bars and diversity, this licence is inspired by the [W.A. cabaret licence](#), the [QLD on-premises cabaret licence](#), and the [VIC on-premises licence](#), the concerns raised by the fact that every nightclub in NSW is to become a Hotel Licence in the previous draft bill, as well as the requirement for a more flexible licence to cater for multi cultural and world music, classical repertoire and orchestral instruments, small jazz bars, and hole in the wall acoustic venues. Designed to augment the current pub and club options, to cater for the types of music that require a different space, and give additional work and performance opportunities for Musicians and audiences in NSW.

It is especially encouraging to have the personal support of Premier Morris Iemma on this exciting development, as noted in recent media:

[Music key to rural future, says Iemma](#)  
[Rhythm and booze: we'll drink to that](#)

- The objects of the Act amended to include references to the entertainment and live music industry, and acknowledge the responsibility of the regulations and to support the developing popular culture of NSW. Refer to the objects of the [South Australian](#) and [Western Australian](#) Liquor Acts
- A commitment from the OLG Minister to refer to the concerns and requirements of the Musicians in NSW in the second reading speech when the Bill is tabled before the Parliament. The second reading speech is a plain english discussion of the intent of the legislation, and is legally referable to throughout the life of the regulations.
- Ongoing participation of live music representatives in the writing of the regulations and the [Social Impact Assessments](#). It is at this time when the second reading speech, and objects of the act will become important, to acknowledge in the legislation the public benefit in holding a liquor licence and assist in the application process where the employment of musicians and the hosting of cultural performance activities is an integral part of the business plan of the venue in question.

Many hundreds of submissions have been received in the consultation process on this Draft Bill, and there are additional pressures involved coming up to the state election. The Bill is expected to be tabled in the Budget sessions, post the 2007 state election. Note a [response from the Minister](#) on the representation of the Musicians in the political process,

[View the draft Liquor Bill 2005](#)

For enquiries about the draft bill and regulations, contact Peter Cox on telephone (02) 9995 0657, fax (02) 9995 0699, email [peter.cox@olgr.nsw.gov.au](mailto:peter.cox@olgr.nsw.gov.au).

## Funding for cultural industries

Subsequent to the findings of the Vanishing Acts report, we have asked for long term sustainable funding from certain areas, understanding that in South Australia, [Queensland](#), [Western Australia](#) (\$10.2 Million in 2005/6 to the Arts ), as well as in the [United Kingdom](#) (£1.1 billion Between 2006 and 2008), there are precedents that work very well for cultural industries.

We have requested that the [Responsible Gambling Fund](#) (previously the community benefit fund) have its charter amended through the Premiers Dept. Issues Paper process, however, this was refused - additionally, there has also been recent investigation into amending the charter of the [Clubs NSW CDSE fund](#) - which has also met its own difficulties.. we press on.

For example, In South Australia, Gambling revenue is distributed like this:

<http://www.parliament.sa.gov.au/Catalog/legislation/Acts/g/1992>

72A—Gaming tax

(4) The revenue received under this section by the Treasurer in respect of each financial year is to be paid—

(c) as to \$20 million—into the Community Development Fund established under this Part;

<http://www.parliament.sa.gov.au/Catalog/legislation/Acts/g/1992.49>.

\$500,000 from the Community Development fund goes straight to Live Music:

73C—Community Development Fund

- (1) The Community Development Fund is established.
- (2) The Fund will be kept at Treasury.
- (3) The money paid into the Fund under this Part will from time to time be applied by the Treasurer, in accordance with the directions of the Governor, towards—
  - (a) financial assistance for community development; and
  - (b) the provision of government health, welfare or education services.

(4) Despite subsection (3), at least \$500 000 must be applied from the Fund in each financial year towards programs that will be of benefit to the live music industry.

The funds are distributed as such,  
(with the direction currently under review)

[http://www.arts.sa.gov.au/site/page.cfm?nav\\_id=860](http://www.arts.sa.gov.au/site/page.cfm?nav_id=860)

- \$150,000 to grant programs
- \$100,000 to musicians in schools
- \$50,000 to website music.sa.com.au
- \$150,000 goes to the fuse on stage initiative
- \$50,000 to miscellaneous projects

A gesture like this, in addition to existing Arts funding from the NSW Government, would be greatly supported by a sizable footprint of the population of NSW,  
(as noted in some of the comments on my [online petition](#))

This money could be used to finance foundation and education support schemes to maximise the potential that the combined revised Liquor and EP & A acts quite clearly has for the future of live music in NSW.

And how about the [W.A Sound Attenuation and Support Program \(SASP\)](#), that matches a venue dollar for dollar up to \$50,000.00 on soundproofing, P.A's, advice, and support?

## Entertainment Regulation: Melbourne compared to Sydney

In Wednesdays meeting at APRA, Agent Owen Orford raised the Sydney / Melbourne comparison as an example of far behind Sydney and NSW is lagging in relation to other parts of the country.

Firstly, there are genuine social and environmental differences that can be considered, with varying degrees of relevance:

- Sydney is an “Outdoor” city, Melbourne “indoor”
- Melbourne residents are comfortable with public transport, particularly trams, whereas Sydneysiders avoid it like the plague, and not helped by the fact that trains to places like Kings Cross stop running at midnight.
- Melbourne has “Pots”, Sydney has “Schooners”
- The obvious geographic concentration of live music “Hot Spots” in Melbourne, with no Sydney equivalents on the same scale.

What is very interesting, however, is to take a careful look at Liquor Licensing and Local Council entertainment consent processes.

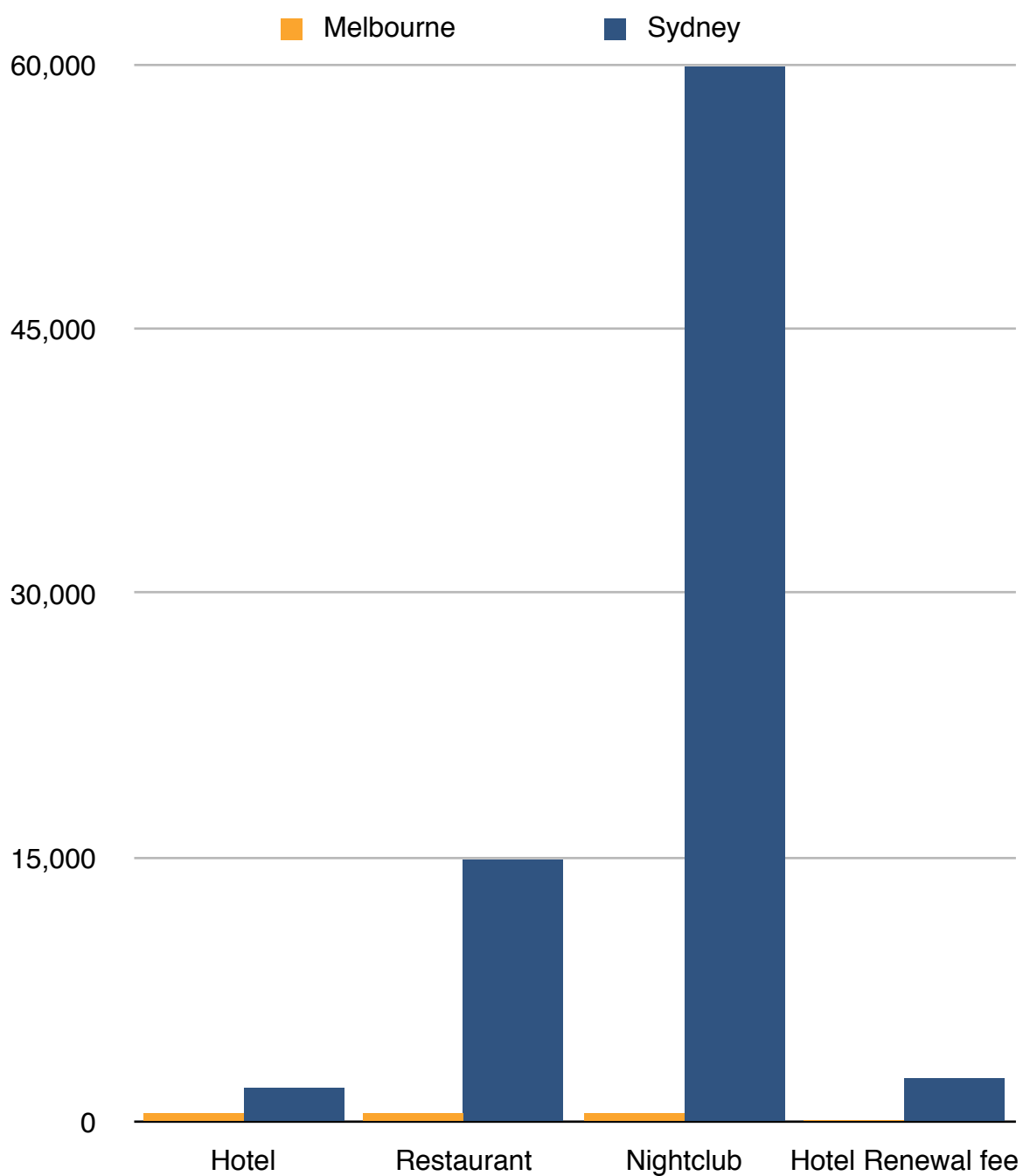
*It is also interesting to read of just how important the deregulation of the previously anti competitive liquor licensing regime has been in Victoria and how Melbourne recently celebrated the 20th anniversary of these changes.*

[\*\*Here's cheers after 20 years\*\*](#)

*“The liquor reforms had a challenging and ultimately positive impact on the pub/hotel industry” **Brian Kearney, Victorian CEO, Australian Hotels Association:***

The following comparisons of Liquor Licensing and Entertainment Assessment are eye opening.

## Liquor Licensing Fee Comparison: Melbourne compared to Sydney



Licence Issue Fee	Melbourne	Sydney
Hotel	\$553.60	\$2,000
Restaurant/ On-Premises	\$553.60	\$15,000
Nightclub	\$553.60	\$60,000
Hotel Renewal Annual fee	\$166.10	\$2,500

## Case Study. A comparison of Local Government Entertainment Assessment and Liquor Licenses in Melbourne and Sydney.

In Melbourne, entertainment, and noise are regulated through two instruments:

- ✓ When you undertake to operate a liquor licence, you acknowledge to comply with "Amenity" provisions under the Act [3A \(2\)c the Liquor Control Reform Act-1998 Act No.94/1998](#)
- ✓ - Additionally, noise is assessed under the [SEPP No 2N2 State Environment Protection Policy \(Control of Music Noise from Public Premises\)](#)

These regulations are enforced by council inspectors, who patrol their Local Government Area and are able to take readings

If it's too loud, you will get shut down - this approach can be seen as a re-active regulation

In Sydney, there has been a pro - active regulation, where compliance across a range of processes must be adhered to **prior** to the commencement of the Music.

The competition for the entertainment dollar, large screen broadcast sport is exempt from regulation by omission, and [poker machines have a "special" exemption](#). Amplified background music needs no special conditions, however, if a real person is producing the sound, then the highest fire compliance in the country, as well as permission from the local community is required - even if the music is a \$3.00 kazoo.

The [new SEPP will completely rewrite this process](#), resulting in a multi faceted approach.

Currently, the licensee must undergo these processes, *neither of which are required in Victoria*

- ✓ Development application processed through local government under the [Environmental Planning and Assessment Act, 1979](#)

This involves amongst other things:

- Compliance with 9b building code fire assessment under the BCA 96 standard
- Outward opening doors
- Disabled access and toilets
- 1 hour fire separation between other areas of the building
- Fire hoses and sprinklers
- Fees and process
- Acoustic reports
- etc etc etc

- ✓ Subsequent Development Application processed through Local Government under the [Local Government Act, 1993 Sec.68, Place of Public Entertainment Authority \(POPE\)](#)

This involves:

- Invitations to the local community to lodge negative impact statements
- Notices in the local paper
- Conditional on compliance with previous D.A. under the EP&A act 1979
- Fees and process

Licensees can be prosecuted for having a musical instrument played on their premises without permission under:

- [LIQUOR ACT 1982 - SECT 104](#) Quiet and good order of neighbourhood
- [NSW ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 125](#) For hosting live music without an approval under the Act
- [LIQUOR ACT 1982 - SECT 68](#)

### Grounds for complaint

**68 Grounds for complaint**(g1) that [entertainment](#) has been conducted on the [licensed premises](#) otherwise than in accordance with the [conditions](#) of an approval under Part 1 of Chapter 7 of the [Local Government Act 1993](#) or the provisions of any regulation made under that Act,

- [Protection of the Environment Operations Act 1997](#)

- Penalties can also be enforced by council, as well as the liquor administration board, who can fine as well as reduce the trading hours of the premises just for having someone playing a harmonica.