Music industry position paper - The case for regulatory reform

July 2012

1. Overview

Melbourne is nationally and internationally recognised as one of the world's best music cities and has a diverse and vibrant live music culture. The industry comprises around 550 live music venues in Melbourne and 1,000 venues statewide[1], far more than any other city or State in Australia. Collectively, these venues constitute a cultural infrastructure that supports the live music industry. Victoria's live music industry is also economically significant, contributing approximately a billion dollars[1] to the State's economy and employing over 30,000 full time employees[1].

However, Victoria's music and cultural sector has been burdened by a regulatory system that does not appropriately recognise its cultural standing and value to the community, as well as the State economy. The live music industry is threatened by a multitude of issues relating to liquor licensing, planning, environment protection and other areas of the regulatory framework such as the building code.

Issues related to liquor licensing and the forced closure of The Tote came to the fore in February 2010 with the Save Live Australian Music (SLAM) rally. The Live Music Accord 2010 was agreed between representatives of the live music industry and the State Government on the eve of the SLAM rally, and is testament to the positive change that can be achieved through a collaborative approach. Music Victoria, representing the collective interests of the live music community, acknowledges that the Coalition Government has honoured the Live Music Accord as well as its election commitment to "reform liquor licensing laws and policies to ensure the continuing viability of the State's live music industry"[2] which included the provision of start up funding for Music Victoria.

1 The economic, social and cultural contribution of venue-based live music in Victoria, Deloitte Access Economics, 20 June 2011; Size and scope of the live entertainment industry, Ernst and Young for Live Performance Australia, May 2010; Popular music funding – It's time, Conference paper at Policy notes: Popular music, industry and the state, Dobe Newton, June 2012.

2 Victorian Liberal Nationals Coalition Plan for Liquor Licensing, page 15, 2010.

The Premier's Live Music Industry Roundtable presents a valuable opportunity to build on the momentum achieved through SLAM and the Live Music Accord to address a range of issues facing the industry, not just liquor licensing. Music Victoria calls on the State Government to extend its election commitment to other areas of the regulatory framework, and honour in full all of the commitments made in the Live Music Accord, to ensure live music remains an important part of the social and cultural fabric of Victoria.

One particularly pressing issue relates to amenity and forms the focus of this position paper. At the heart of the problem lies the competing interests of residents and venue owners/operators. Residents expect a reasonable level of amenity protection from noise and venue owners/operators expect to host profitable cultural events. Both interests are reasonable and legitimate, however, the current regulatory framework disproportionately favours residents and needs reform.

The regulatory regime needs to better recognise the current environment in which it operates, and respond to changes in urban consolidation that have occurred in recent decades. Most importantly, reform is needed to provide greater protection to cultural clusters by recognising different amenity expectations in areas with a vibrant night time economy.

It is recommended that the Roundtable agree to the following key reforms:

– give the agent of change principle legislative weight by elevating the status of the current Live Music Practice Guide to subordinate legislation under the *Planning and Environment Act 1987*;
– reform the outdated and inappropriate noise standards and measurements prescribed by the State Environment Protection Policy N-2 (Control of Noise from Public Premises) (SEPP N-2), including incorporating the agent of change principle; and
– reform other areas of the regulatory framework, such as liquor licensing and the building code, as appropriate.

The debate is often framed by commentators in a 'win-lose' context with venues, musicians and their audience being pitted against residents. In contrast, this paper contends that the proposed law reform package will result in a 'win-win' outcome. The community will benefit from the protection of its culture and cultural infrastructure and improved residential amenity in cultural clusters. Developers will benefit from being able to operate in an improved planning and design environment where greater regulatory clarity results in better product.

2. Background

2.1. Live Music Taskforce 2003

In 2003, the Labour Government established a Live Music Taskforce to examine the relationship between live music venues and residential amenity. The Taskforce process culminated in the *Live Music Taskforce Report and Recommendations*,

which made 13 recommendations. The Report acknowledged the conflict between residential and entertainment land uses, and observed:

> *It appears likely that noise issues emerging from greater diversities of land use and entertainment are likely to continue in the future…They could intensify if not well managed*[3].

The lasting contribution of the Taskforce process was that it provided a clear articulation of the issues facing the music industry and provided direction towards resolution. Ultimately, however, the Report fell short in the scope and implementation of its recommendations. The Taskforce did not outline a comprehensive approach to resolve the conflict within the broad regulatory framework. Its recommendations for regulatory reform were limited largely to town planning, without corresponding reform in environment protection, liquor licensing, and the nuisance provisions of the health legislation.

2.2. Live Music Accord 2010

The Live Music Accord 2010 was agreed between representatives of the live music industry and the State Government. The Accord formally recognised that "the automatic coupling of live music and 'high risk' security conditions is not appropriate" and made a number of commitments to amend the liquor licence conditions for live music venues. The Accord also recognised that "contemporary music plays as a cultural, social and economic driver" and committed to "revisit the issues considered by the Live Music Taskforce initiated in 2003".

2.3. Premier's Live Music Industry Roundtable

The conflict between land use and entertainment, or residents and live music venues, has not been adequately addressed. The problems identified by the Taskforce remain unresolved and, arguably, have intensified since 2003 due to increasing residential development and a growing night time economy. Given the deficiency of the regulatory system to appropriately resolve this conflict in the last 10 years, the time has arrived for a more direct approach.

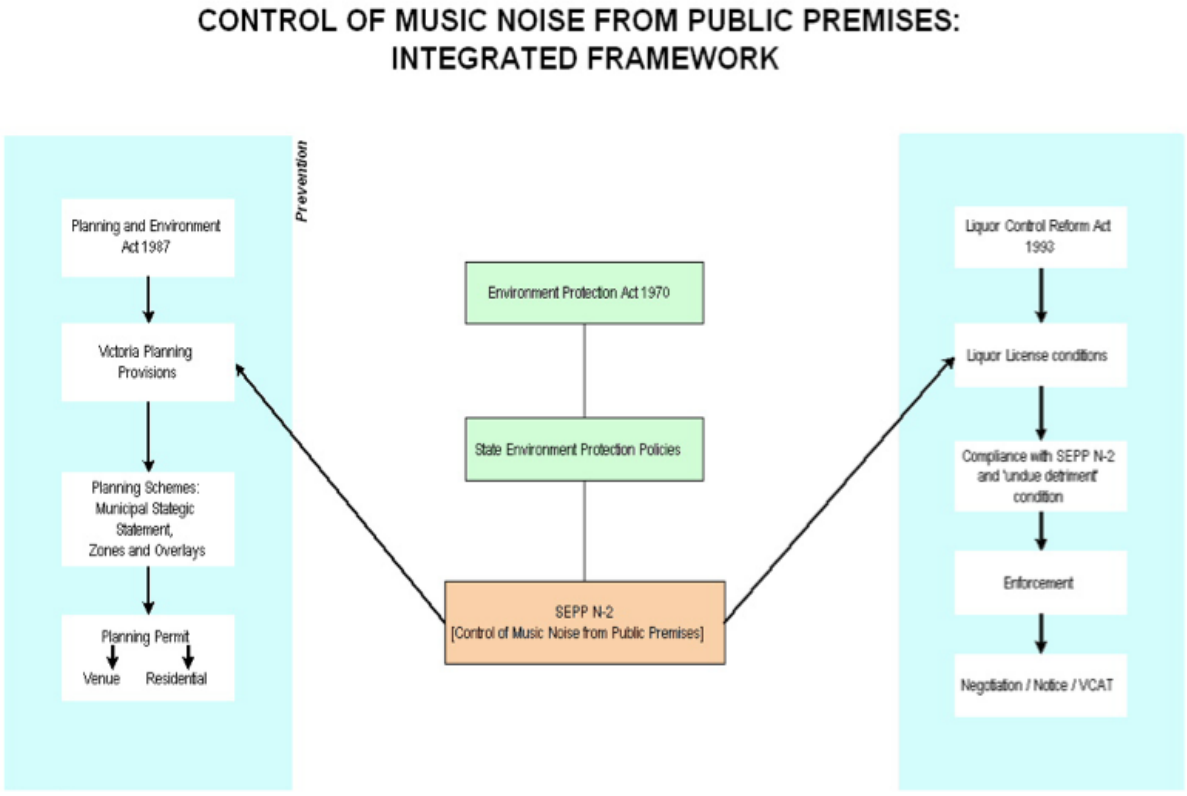
Resolution of the issues facing the live music industry requires the coordinated efforts of State agencies, local government, representative groups, as well as venue owners and operators. Leadership is required, particularly at the State Government level to ensure a whole of government and inclusive approach. This paper aims to provide a basis for better managing the issue of live music noise, as well as other related reforms. It focuses in particular on the planning, environment protection and liquor licensing legislation and offers a suite of related initiatives which if collectively applied, will contribute to enhancing Victoria's culture and community and support the creative economy.

3. Regulatory framework

Music noise is regulated by three main regulatory regimes - planning, environment protection and liquor licensing – and the relationship between them is illustrated

3 Live Music Taskforce, Report and Recommendations, 5 December 2003, page 26.

below. These three regimes act as a trinity, comprising an overlapping and interdependent system of controls, thus, reform in one requires complementary reform in the others.



4. Agent of change principle

Reform is required to better apply the agent of change principle. The principle states that the onus of responsibility for the cost of management of music noise should fall upon the agent of change. For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue. For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation (sound proofing) standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs for the venue.

The agent of change principle determines responsibility for music noise management. Where changed conditions are introduced into the built environment, the existing standards for residents and music venues should be maintained. The agent of change is responsible for attenuation works to maintain those standards.

One valuable contribution of the 2003 Taskforce was the adoption of the agent of change principle in the form of a Live Music Practice Guide. However, because the Guide has no statutory weight and relies on voluntary compliance, it has failed to provide adequate protection to existing venues from residential encroachment.

This failure will become all too stark as more venues such as The Corner Hotel, Palace Theatre and events such as Cherry Rock come under threat from residential development. The number of residents in inner Melbourne, in which the city's cultural clusters are located, has rapidly increased. Since 1996, the City of Melbourne alone has increased its population from approximately 40,000[4] to 99,000[5] residents and hosted development of some 33,000[45] dwellings.

However, the concern is not for residential encroachment as such, but that new development should be properly attenuated to protect the amenity of residents within. This means the planning system needs to impose conditions that exceed the standards set by the Building Code of Australia. Of course, higher standards of attenuation will have wider amenity benefits for residents, especially for those located in and around areas of the night time economy.

The regulatory framework must recognise that the legitimate rights of individuals to enjoy amenity protection or to enjoy musical entertainment come with corresponding duties and responsibilities. The way forward in regulatory reform requires a realignment of respective rights and responsibilities.

Buildings which are developed proximate to cultural clusters should be attenuated to protect residential amenity. It is a very simple concept which the planning system at present is failing to adequately manage. The agent of change principle needs to have the standing of subordinate legislation under the *Planning and Environment Act 1987* to be appropriately applied, and should also be adopted or directly referenced in some form in the Victoria Planning Provisions.

4.1 The existing regulatory framework cannot provide a robust legal solution

The legal system recognises the agent of change principle and the Victorian Civil and Administrative Tribunal (VCAT) has applied the principle in its decisions. However, the application of the agent of change principle under existing legislative conditions by councils, VCAT or by negotiated outcomes between venue and developer, falls short of a robust legal solution for a number of reasons, as outlined below.

– No amount of attenuation placed on a new residential development prevents the venue from falling out of compliance with SEPP N-2. This is because the external sound measurement point moves to the newly constructed nearest residence from the previous nearest residence.

– Planning permits relate only to one property and cannot be used to order attenuation works on the sound emitter i.e. the venue. There is no legal mechanism available to mandate a solution that prevents the venue from falling out of compliance with SEPP N-2.

– Even where negotiated outcomes between a developer and venue are reached in the form of a contract, the land can be sold later, invalidating the contract. There is no legal mechanism that binds the solution to the land owner.

4 The City of Melbourne – A snapshot (http://www.futuremelbourne.com.au/info/facts/cityofmelbourne).

5 City of Melbourne – Melbourne in numbers (http://www.melbourne.vic.gov.au/AboutMelbourne/Statistics/Pages/MelbourneSnapshot.aspx).

– The existing planning processes result in an unavoidable adversarial process between the venue and developer or venue and resident, where the stakes are set so high that the very economic survival of the participants is threatened by the process itself.

– Local councils are limited in their application of the agent of change principle if they choose to apply it. This is partially due to cultural uses (Section 2 or 3 status) having different status in zoning provisions to residential use which enjoy Section 1 status (permit not required). Such practical limitations are expressed by Mr Craig Kenny, Director, Community Programs, City of Yarra:

> *While Council attempts to enforce the "agent of change" principle, there are practical impediments to this. First and foremost, State and Local Policies strongly encourage residential uses in commercial areas, leading to a situation where such conflicts are becoming more common. Council has attempted to address this through the development of policy (Clause 22.05 Interface Uses Policy) which requires new development to protect themselves. This has enabled some scope to require changes to developments, such as the intelligent placement of sensitive rooms in new development, and the use of higher quality materials which restrict noise transmission. In instances where an obvious noise source exists, Council will require a report from a qualified acoustic engineer to provide recommendations on how a new development can protect itself from the resultant impacts.*
>
> *However ultimately, SEPP N-2 has the final say in terms of what level of noise is reasonable, and it places the emphasis for limiting noise impacts on the noise creator, and does not differentiate between an existing use and a new development. Until this changes, the primary emphasis will always be on live music venues to control their noise emissions within SEPPN-2 limits.*

5. State Environment Protection Policy N-2

The regulatory framework depicted above in section 3 shows how the State Environment Protection Policy N-2 (Control of Noise from Public Premises) (SEPP N-2) lies at the centre of the problem. SEPP N-2 has the status of subordinate legislation under the *Environment Protection Act 1970* (the Environment Act) and establishes the objective standard for sound levels or the baseline for music noise regulation. Compliance with SEPP N-2 is a standard condition under liquor licences and it is referenced under the Victorian Planning Provisions (clause 13.04-1) to ensure that "community amenity is not reduced by noise emissions".

5.1 Polluter pays principle

Under SEPP N-2, music sound from public premises is treated as 'pollution' and subject to the polluter pays principle. This same principle applies to all emissions under the Environment Act such as industrial emissions to the air and water and hospital grade bio-waste. This places the onus of responsibility for compliance with SEPP N-2 entirely upon the venue operator as the 'emitter' of pollution.

The concept of music as noise is entirely subjective, unlike all other forms of emissions that are managed under the Environment Act. On the one hand, it is recognised that music is noise for the unintended receptor and its origin or form is irrelevant. However, music is also the art of organised sound and has wider social and cultural value. In this respect, it differs from all other forms of emissions controlled under the Environment Act and accordingly, should be treated differently.

SEPP N-2 already recognises this subjectivity by offering exemption from its provisions where music noise is emitted as a result of recognised religious observance, and this exemption should be extended to music noise in all cultural forms. SEPP N-2 does not provide proper recognition to the subjective nature of music and its equally legitimate and intrinsic cultural value.

5.2 Definition of music noise

The measurement methodology outlined in SEPP N-2 focuses on what is physically measurable, with no regard to what is neurologically perceived by the receptor as a nuisance likely to cause sleep disruption or a serious degradation of residential amenity.

Furthermore, SEPP N-2 has not kept pace with technological change. It does not cover sound emissions used for cultural purposes that are produced by computer software or dedicated electronics, and that are not a result of playing a musical instrument. This is the case in most contemporary electronic music (such as drum'n'bass and dubstep) and sound art.

As such, as it is not possible to establish how much measured music noise is covered under the definition of music in SEPP N-2, and how much falls outside of the definition. There is no way of distinguishing between the two, thus, SEPP N-2 risks becoming increasingly irrelevant in practice unless it is revised.

5.3 Policy imbalance

SEPP N-2 was introduced in 1989 prior to the wave of inner urban consolidation and the standards by which music noise is assessed has not kept pace with changing community standards. While the policy framework has broadly served the community well, it has also inflicted harm on the vitality of some of Victoria's cultural assets.

The music noise standards in SEPP N-2 should be better aligned with its policy goal, which states:

> *The goal of this policy is to protect residents from levels of music noise that may affect the beneficial uses made of noise sensitive areas while recognising the community demand for a wide range of musical entertainment.*

The stated policy goal recognises two competing interests; the need to protect residents and the community demand for musical entertainment. The two parts of the policy goal are appropriate and should be supported. However, the policy gives a disproportionate primacy of protection for the individual resident over the interests of the community and its enjoyment of cultural entertainment. The treatment of music

as noise or as cultural artefact should form the starting point for establishing the context and basis for effective, practical and successful regulation.
There are numerous examples of enforcement action against venue operators based on the anomalous complaint of one individual. It is appreciated that remedies should be available even if there is only one or a few adversely affected individuals, particularly in acute circumstances. Nevertheless, it is the consensus of the community, not individuals, which should set the standards by which music noise is controlled.

Many residents enjoy the ambiance and activities of the night time economy and move to these areas precisely for this reason. Hyper-sensitive residents who choose to move into areas of the night time economy simply cannot demand the same noise amenity standards that apply in more sedate residential areas.

Accordingly, the regulatory framework should recognise that amenity expectations in cultural clusters should differ from standards in other areas. The right to amenity protection should be burdened by corresponding responsibilities to protect the very cultural vitality that make cultural clusters so attractive to residential living in the first place.

5.4 Review of music noise standards

The State Environment Protection Policy for regulating music noise is outdated. The standards and provisions within the Policy need to be completely reviewed and revised in line with current expectations and best practice. A review of the Policy should consider the following issues, among others (see Appendix 1 for more detail).

– The agent of change principle should be implemented in SEPP N-2 so that the music noise emitter does not fall out of compliance when new residential developments are built. This effectively means that once a venue has achieved compliance it stays in compliance. The responsibility for protecting residential amenity of any future residential developments from music noise would then fall on any future developer, unless the venue varied its operation.
– All music sound level measurements should be conducted in habitable rooms with the windows closed at the point of exposure. This would ensure that attenuation measures on the residence and venue are taken into account in the entire sound transmission path.
– Acceptable sound emission levels, frequency of events and times of events need to be higher in and around cultural clusters than in purely residential zones.
– The definition of music noise needs to be broadened to encompass all sound used for cultural purposes. The revised definition should also distinguish between sound that has a neurological basis for being a nuisance from sound that the recipient has a cultural objective to.

5.5 Tiered approach

The regulatory system needs to provide the opportunity for local variations to noise levels. The blanket approach that applies the same noise levels across Victoria is no longer appropriate. In much the same way the blanket approach applied to liquor

licensing legislation was inappropriate for live music, so it is for planning and environment protection legislation.

It is recommended that SEPP N-2 adopt a tiered approach to music noise standards. If a tiered approach is adopted in SEPP N-2, then the local planning scheme provides the appropriate forum for nomination of local and site specific variations. There are a number of opportunities in the regulatory framework to apply tiered music noise standards including:

– in the Victoria Planning Provisions
  : recognise cultural clusters in the State Planning Policy Framework;
  : develop an appropriate link to SEPP N-2 providing for local variations to noise controls; and
  : recognise cultural activities as a Section 1 (permit not required) use under respective zoning provisions and policy advice on the types of cultural activities that are subject to Section 2 or 3 status.
– in local planning schemes
  : recognise specific cultural clusters in the Municipal Strategic Statement;
  : adopt local policies that recognise differing standards of residential amenity; and
  : apply existing instruments, such as the Design and Development Overlay or Incorporated Document, to nominate local variations to noise limits and to better apply the agent of change principle.

5.6 Public health and wellbeing

There is a need to apply a consistent standard for the management of public amenity across the various regulatory regimes, including the *Public Health and Wellbeing Act 2008* (Health Act). In particular, the nuisance provisions within the Health Act are administered by local councils. This means that the objective standards, as applied under a revised SEPP N-2, should form the same standards under the Health Act.

6. Liquor licensing

The provisions of the liquor control system can, and do, have a material impact on cultural activities. It is important to recognise the positive steps that have been taken to progress music culture under the liquor licensing system, most notably the recent reform introduced through the Live Music Accord process. A key outcome of that process was amendment to the *Liquor Control Reform Act 1998* (Liquor Act) at Section 4(1)(c) to add ‘live music’ so that it is an objective of the Liquor Act “to contribute to the responsible development of the liquor, licensed hospitality and live music industries”.

The positive recognition of the ‘live music industry’ under the Liquor Act should assist to re-align ongoing discussions and reform of liquor licence controls. The liquor licensing system can assist to progress reform in the following areas.

– Ensure that the agent of change principle is implemented in the complaints provisions of the Liquor Act so that sufficient weight is given to the order of occupancy, and to the balance between the communities access and participation in its culture (in particular live music) and residential amenity (see Appendix 2 for more detail on liquor legislation in other States).

– Take positive steps to allow musicians and artists under the age of 18 to perform in licensed venues without the current restrictive requirements for temporary licences in under 18's events (see separate paper produced by Music Victoria for more detail).

– Add clarity in Section 120(2)(c) of the Liquor Act by allowing supervised contractors, as well as employees who are under the age of 18, to work on licensed premises. This would allow musicians under the age 18 to work in licensed premises when not directly employed by the hotel.

– Reform the on-premises restaurant provisions to allow entertainment to continue until trading finishes. Amenity protection is well covered by existing planning and SEPP N-2 provisions, which prevent a restaurant or café with small scale entertainment being turned into a high impact nightclub. The proposed reform is that the restrictions in Section 9(3)(ii) on live entertainment in on-premises licences (with restaurant conditions) after 11pm would no longer be required. This is the case in New South Wales (NSW) and other States.

The music and cultural industries recognise the difficulties faced by enforcement officers in the liquor licensing system. Often these officers are the point of ‘first contact’ in disputes. It is also recognised that live music venue publicans have particular responsibilities on behalf of the music and cultural sectors to work within the liquor licensing regime to uphold community standards.

There are also reforms that affect all licensees and threaten the viability of venues. As musicians and audiences are significant stakeholders in maintaining cultural infrastructure, the following reforms are proposed.

– Ensure 3AA does not apply retrospectively.

– Repeal or amend the 3AA evidence provisions to mandate an experiential test so breaches of amenity cannot be mandated by the Liquor Act in an urban vacuum. The provisions under Section 3AA(h) "causing nuisance" and Section 3AA(h)(i) "noise disturbance to occupiers of other premises" could force a review of a venue’s liquor licence. In addition, a review could be enforced by local government as a nuisance under current Health Act provisions. This section of the Health Act should mandate the use of SEPP N-1 and SEPP N-2 when applicable.

– Review the following sections of 3AA:

  (d) using profane, indecent or obscene language;

  (e) using threatening, abusive or insulting language;

  (f) behaving in a riotous, indecent, offensive or insulting manner; and

  (g) disorderly behaviour.

The above provisions of 3AA are all value judgments that may have a place in a kindergarten but should not be offences inside venues that are used by adults for cultural and recreational purposes. Such intervention by the State is completely unacceptable and a threat to robust performance culture. As a general principle, the police should place more emphasis on pursuing perpetrators of bad behaviour and acts of violence, than on pursuing licensees, unless there is a proven causal link.

As such, sections 3AA (c) vandalism; (d) using profane, indecent or obscene language; (e) using threatening, abusive or insulting language; (f) behaving in a riotous, indecent, offensive or insulting manner; (g) disorderly behaviour; (h) causing nuisance; and (i) noise disturbance to occupiers of other premises should not apply internally to a venue and the Liquor Act should be amended accordingly.

Liquor licensing compliance is covered by a number of enforcement agencies and other bodies. The compliance cost to government has risen from $5 million in 2009 to approximately $35 million. These costs are passed on to licensees in the form of increased licence fees. Many of the compliance functions are duplicated over the various agencies and their various departments, therefore, there is an clear opportunity for Government to rationalise these areas and pass the savings on to business in the form of reduced licence fees.

This proposed reform would be consistent with the Baillieu Government's election commitment to reduce red tape and business costs by 25 per cent, whilst also improving liquor licensing compliance consistency and delivery. Such reforms would substantially reduce costs to both the industry and Government.

7. The Building Code

In a number of cases, anomalous provisions in the Building Code of Australia (BCA) have placed an unduly onerous burden on venue owners and operators. The provisions define a venue as either a Class 6 or Class 9b building, with Class 9b requiring higher building standards. The issue of concern is the appropriate trigger for requiring the Class 9b standard to apply to an existing Class 6 building, and whether there is any evidence to link the presence of entertainment to the need to apply the BCA change of use in venues.

These BCA provisions act as a de facto Place of Public Entertainment (POPE) Licence, which is precisely the reason for the abolition of these provisions in NSW. It is also the reason behind the recent small gig exception amendments to the United Kingdom's *Licensing Act 2003* (see Appendix 3 for more detail).

The BCA (Section A, General provisions, Part A3 Classification of buildings and structures) dictates that if more than 10 per cent of a story of a venue is used for entertainment, the class of the building changes because of its use. Therefore, the minor use becomes the major use. This changes the venue from being a Class 6 building (retail, bar, hotel, restaurant) to a Class 9b building (place of assembly such as night club, sports stadium, airport). See Appendix 4 for more detail.

The problem is that venues, particularly small venues, are faced with major compliance costs if they provide entertainment because the building changes from

Class 6 to Class 9B compliance. It is purely the act of the provision of entertainment that changes the building class to 9B and places a small venue in the same category as a sports stadium, airport, hospital or university.

The difference in compliance between Class 6 and Class 9B includes the installation of: fire hydrants; sprinkler systems; smoke detector systems with 24 hour monitoring and direct connection to the fire brigade; mechanical smoke extraction systems; increased fire rating and isolation of walls and doors; disabled facilities and access; and increased structural requirements for floors.

The significant financial investment required to upgrade venue facilities to comply with Class 9B is well beyond the budget of almost all venues. The situation is complicated further because most venues in the inner city are located in old stock buildings, which increases compliance issues from a technical and heritage view point and forces the venue to undertake major building renovations.

A licensed premise that provides entertainment is assessed by Responsible Alcohol Victoria for its patron number capacity in the same manner whether it provides entertainment or not. This is at the rate of 0.75 patrons per square meter.

The act of providing entertainment, particularly in the form of a live band, does not change the risk of fire or any other risk factor in any way. This provision of the building code is not backed up by any empirical data or case studies and does not apply in NSW. The act of playing music can not be argued to be more combustible in Victoria than it is in NSW.

Clearly, when a venue finds its self in a situation where it receives a building notice from a municipal building inspector, their only real option to comply with the notice is to cease entertainment. The solution is to strike out this section of the building code by adopting the NSW provisions, or at least make venues under 750 square meters of area per story exempt from these excessive provisions.

8. Other regulatory issues

8.1 Enforcement

The enforcement of the SEPP N-2 standards is widely perceived to have resulted in an erosion of Victoria's cultural standing. It is worth noting that the process for enforcement is for the most part undertaken in a respectful manner by regulators. Except in acute circumstances, the staged process for resolving noise issues places formal enforcement action as an action of last resort. However, once formal enforcement commences, the regulators must enforce the regulations, namely SEPP N-2. Accordingly, our concern is to be directed at the provisions of the regulations.

The trigger for complaint should include a 'reasonableness' test. Some degree of responsibility should be placed to demonstrate impact; simply being able to hear noise is not sufficient. Preparation of an impact statement for example could act as a condition precedent for the instigation of formal enforcement action.

Also, enforcement action against a venue that has achieved compliance to SEPP N-2 should not be actionable under the Liquor Act or Health Act (for that component of amenity related to music noise). A revised SEPP N-2 establishes an objective standard which should be consistent across the entire regulatory system.

8.2 Environmental management systems

Responsible venue operators have continually stressed the importance of responsible venue management practices. To support reform, venues and other performance arts organisations would benefit from an off-the-shelf environmental management plan. Application of a simple check-list may reduce the number of incidents, and assist in management and first contact enforcement processes. Such an environment management plan should be applicable to both licensed and other performing arts venues. This recognises that the greatest opportunity for the management of noise issues lies in addressing the problem at its source.

9. Application to other venue types

While live music is acting as the focus of the issue and the catalyst for reform, the issues of noise management apply more widely. The regulatory regime should recognise the value of performance based activities generally, including all forms of performing arts. Support is also needed for activities such as rehearsal, recording, dance studios and artist studios more broadly. Initial consultation undertaken with venue owner/operators of such venues has indicated their support for the proposed reforms. All performance arts activities which are undertaken in whole or in large part in real time, deserve recognition and protection.

Note:
This document was prepared by a sub-committee of Music Victoria in conjunction with FairGoforLiveMusic, which includes several academics with expertise in planning and music policy, venue operators, musicians, lawyers and representatives from SLAM. This paper has been endorsed by the Board of Music Victoria.

APPENDIX 1

SEPP N-2 – SPECIFIC REFORMS REQUIRED

The State Environment Protection Policy (Control of Music Noise from Public Premises) N-2 (SEPP N-2), should be amened to provide the outcomes listed below.

a) Recognise the dual nature of music as both noise and cultural artefact, as part of the policy goal or some other preamble. This will remove the default treatment of music as a form of pollution (paragraph 4), thereby softening the 'polluter pays' principle.

b) Develop a tiered approach to measurement of noise levels, providing different but appropriate standards in and around cultural clusters (paragraph 14), including revision of operating periods for indoor venues (Schedule A) and measurement of background levels (Schedule B). This will provide for local variations to the blanket approach and can be nominated through a planning instrument in a local planning scheme. A link is necessary between this standard and the planning system. Alternatively, the SEPP N-2 itself could provide for local variations.

c) Apply the agent of change principle, including specific recognition of existing use rights for venues (as defined in SEPP N-2). This means that once a venue achieves compliance, it stays compliant, even when the surrounding built environment changes over time. This could include a requirement that places responsibility on both the venue occupier and receptor for 'steps to be taken' to limit the noise and impact (possibly in the general provisions under Part IV). In addition, the Policy should align with existing use rights under the Victoria Planning Provisions (at Clause 63).

d) Recognise increased residential attenuation requirements (in addition to planning provisions) in and around cultural clusters and nodes, and potentially in areas generally part of the night time economy (the Scheduled Area provisions at Schedule C provide a lead for this).

e) Increase the number of operations and levels prescribed (at paragraph 24).

f) Revise the standards applicable to outdoor venues.

g) Revise the Assessment Procedures (Schedule B) to ensure that the location of measurement points is taken at the point of exposure, not outdoors, but within habitable rooms and with the windows shut. Revisions are also needed on provisions relating to transmission paths. Such revisions should recognise that opening windows during testing renders building attenuation measures completely redundant and is not in keeping with the balance of rights and responsibilities of residents living in areas of the night time economy.

h) Develop a simpler and more cost effective testing regime that enables venue operators themselves to monitor noise emissions in the first instance (like for example a testing procedure akin to a personal alcohol breathalyser). Acousticians should only be required in the most chronic dispute situations and to set initial compliance status.

i) Broaden the definition of music noise to encompass all sound used for cultural purposes and to distinguish sound that has a neurological basis for being a nuisance from sound that the recipient has a cultural objection to.

APPENDIX 2

LIQUOR LEGISLATION – STATE COMPARISON OF NOISE COMPLAINTS FROM LICENSES PREMISES

State	**New South Wales**	**Queensland**	**South Australia**	**Western Australia**
Act	***Liquor Act 2007***	***Liquor Act 1992***	***Liquor Licensing Act 1997***	***Liquor Control Act 1988***
Section	81 Decision by director in relation to complaint	187 Abatement of nuisance or dangerous activity	106 Complaint about noise etc emanating from licensed premises	117 Noise or behaviour related to licenses premises, complaints about
Relevant sub-section/s	(3) The Director is to take the following matters into consideration before making a decision under subsection (2): (a) the order of occupancy between the licensed premises and the complainant, (b) any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises, (c) any changes in the activities conducted on the licensed premises over a period of time.	(2A) In deciding whether to give a written notice under subsection (2), the investigator must have regard to the following-- (a) the order of occupancy between the licensee or permittee and any complainant; (b) any changes in the licensed premises and the premises occupied by any complainant, including, for example, structural changes to the premises; (c) any changes in the activities conducted on the licensed premises over a period of time.	5(b)(i) the relevant history of the licensed premises in relation to other premises in the vicinity and, in particular, the period of time over which the activity, noise or behaviour complained about has been occurring and any significant change at any relevant time in the level or frequency at which it has occurred.	(4b) Without limiting the matters that the Director may have regard to when making a determination under subsection (4a), the Director may have regard to — (a) any alteration, including any structural change, made — (i) to the licensed premises; or (ii) if the complainant is a person referred to in subsection (2)(d) — to any relevant premises where the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) resides, works, worships, attends or is a patient; and (b) any changes that have taken place over time to the activities that take place on the licensed premises; and (c) the kind of business conducted under the licence and how that business is managed; and (d) if the complainant is a person referred to in subsection (2)(d) — whether the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) began to reside, work, worship, attend or be a patient at any relevant premises before or after the licensee began to conduct business at the licensed premises.

APPENDIX 3

UNITED KINGDOM – SMALL GIG EXEMPTIONS

The United Kingdom's *Live Music Act 2012* amends the *Licensing Act 2003* ("the 2003 Act") by partially deregulating the performance of live music and removing regulation about the provision of entertainment facilities[6]. It:

– removes the licensing requirement for unamplified live music taking place between 8am and 11pm in all venues, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate relating to premises authorised to supply alcohol for consumption on the premises;

– removes the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons on premises authorised to supply alcohol for consumption on the premises, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate;

– removes the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment).

– removes the licensing requirement for the provision of entertainment facilities; and

– widens the licensing exemption for live music integral to a performance of morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of unamplified live music.

The following sections, among others, were added to the Act to give affect to the objectives outlined above[7]:

Live music in workplaces

12B The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act, provided that—

> (a) the place where the performance is provided is not licensed under this Act (or is so licensed only for the provision of late night refreshment) but is a workplace as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992,
>
> (b) the performance takes place in the presence of an audience of no more than 200 persons, and
>
> (c) the performance takes place between 8am and 11pm on the same day.

6 Live Music Act 2012, Explanatory Notes, United Kingdom, 8 March 2012. (http://www.legislation.gov.uk/ukpga/2012/2/notes/contents)

7 Live Music Act 2012, United Kingdom, 8 March 2012. (http://www.legislation.gov.uk/ukpga/2012/2/pdfs/ukpga_20120002_en.pdf).

Live unamplified music

12C The provision of entertainment consisting of a performance of live music is not (subject to section 177A(3) and (4)) to be regarded as the provision of regulated entertainment for the purposes of this Act provided that the music—

(a) is unamplified; and

(b) takes place between 8am and 11pm on the same day.

APPENDIX 4

BUILDING CODE OF AUSTRALIA 2012 – STATE COMPARISON OF RELEVANT PROVISIONS

Section A General Provisions – Part 3A Classification of buildings and structures

Provision	New South Wales	Victoria
A3.2 Class 6	Class 6: a shop or other building for the sale of goods by retail or the supply of services direct to the public, including— (a) an eating room, cafe, restaurant, milk or soft-drink bar; or (b) a dining room, bar, shop or kiosk part of a hotel or motel; or (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or (d) market or sale room, showroom, or service station.	Class 6: a shop or other building for the sale of goods by retail or the supply of services direct to the public, including— (a) an eating room, café, restaurant, milk or soft-drink bar; or (b) a dining room, <u>bar area that is not an assembly building</u>, shop or kiosk part of a hotel or motel; or (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or (d) market or sale room, showroom, or service station.
A3.2 Class 9B	Class 9b — an assembly building, including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class;	Class 9b — an assembly building, including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class;
A1.1 Assembly building	Assembly building means a building where people may assemble for— (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or (b) educational purposes in a school, early childhood centre, preschool, or the like; or (c) entertainment, recreational or sporting purposes including— (i) a cinema; or (ii) a sports stadium, sporting or other club; or (iii) transit purposes including a bus station, railway station, airport or ferry terminal.	Assembly building means a building where people may assemble for— (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or (b) educational purposes in a school, early childhood centre, preschool, or the like; or (c) entertainment, recreational or sporting purposes including— (i) <u>a discotheque, nightclub or a bar area of a hotel or motel providing live entertainment or containing a dance floor</u>; or (ii) a cinema; or (iii) a sports stadium, sporting or other club; or (d) transit purposes including a bus station, railway station, airport or ferry terminal.
A3.3 Multiple classification	N/A	Each part of a building must be classified separately, and— (a) (i) where parts have different purposes — if not more than 10% of the floor area of a storey, being the minor use, is used for a purpose which is a different classification, the classification applying to the major

		use may apply to the whole storey; and (ii) the provisions of (i) do not apply when the minor use is a laboratory or Class 2, 3 or 4 part; and (b) Classes 1a, 1b, 7a, 7b, 9a, 9b, 9c, 10a, 10b and 10c are separate classifications; and (c) a reference to— (i) Class 1 — is to Class 1a and 1b; and (ii) Class 7 — is to Class 7a and 7b; and (iii) Class 9 — is to Class 9a, 9b and 9c; and (iv) Class 10 — is to Class 10a, 10b and 10c; and (d) A plant room, machinery room, lift motor room, boiler room or the like must have the same classification as the part of the building in which it is situated.