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Submission:

Re Question 1: Positive Steps

1. Equal funding for Australian content relative to European content. Currently the music of deceased Europeans receives roughly 100 times the funding of that of living Australians. No more cultural cringe paid for with Australian tax dollars !
2. Tax incentives for venues presenting original Australian content.
3. Reduce regulation to encourage more small & medium size venues. These are the places where innovation happens.
4. Cultural precincts ala Fortitude Valley in Brisbane. Based on population, if Brisbane can successfully support one cultural precinct, Sydney deserves four.
5. More Festivals presenting local content.
6. All-age concert series.
7. Regular documentation of our best & brightest. (Recordings & video).
8. More grant application rounds per year & a far simpler application process.
9. Music made a compulsory part of the school curriculum.
10. Free high school instrumental instruction like the successful program in place in Queensland.
11. Local support acts to all international acts.
12. Local content minimums for TV, radio & all publicly funded events. This is NOT protectionism. Protectionism is favourable treatment for local products that can also be made overseas. Local culture is a commodity that can not be outsourced. We simply can not hire foreigners to create Australian culture for us. It is OUR responsibility.
13. More respect for the track record of applicants.
14. More diversity on the board of the Australia Council. Last year the Music Board had not one jazz musician & far too many classical musicians & academics.
15. One per cent of gambling revenue used to fund community music projects that perform Australian content. South Australia has a Community Development Fund that commits \$500,000 per year to such projects.

Question 2: Priorities

1. Restore Sydney to its rightful place as cultural capital of Australia !
2. Equal funding for Australian work relative to European work.
3. More small & medium size low impact venues.
4. Make the music profession viable again, especially in Sydney.
5. Focus on innovation, not recreation.
6. Money for humans, not buildings.

Question 3: Other Issues

1. National award appearances fees for musicians playing on TV.
2. No more kick backs to venues when musicians are playing for the door.
3. Unused spaces leased to artists at low cost like the Renew Newcastle project.

Attachment:

1. Journal article "Regulation Without Representation" published in July 2008 edition of Perfect Beat, a peer-reviewed journal. Author: Dave Panichi I would like to have this article tabled in federal parliament if possible please.

## **REGULATION WITHOUT REPRESENTATION:**

### **NSW LIVE MUSIC POLICY 1992-2008**

DAVE PANICHI

#### **ABSTRACT**

By the turn of the century the Sydney live music sector was in its most serious decline in the postwar period. Whilst social, leisure and technological changes contributed to a move away from live music, anti-competitive liquor licensing and flawed local government entertainment regulations were major factors in the loss of live music opportunities in NSW throughout the period. This article examines the connections between the NSW live music scene and its legislative frameworks, and reviews the process by which members of the music community successfully lobbied for some of the most radical changes in the history of entertainment legislation in NSW.

#### **INTRODUCTION**

*Cultural planning ... is about providing opportunities and removing obstacles to people's cultural expression.'*

*Section 68 of the NSW Local Government Act 1993, which relates to a place of public entertainment authority (POPE) is deeply flawed and inconsistent. The authority is difficult and expensive to obtain and really only applies to musical instruments. Televisions and pub tab are not classed in the definitions as entertainment. Therefore, they have no requirement. Poker machines have a "special exemption"*

*Confronted with a loss of performance opportunities for local musicians, it is argued that traditional cultural policy mechanisms and platforms used for cultural nationalist outcomes are no longer relevant. Rather, policy intervention must engage with administrative obstacles to live creativity, specifically the series of local regulations that have diminished the viability of live venues.*

Once the unquestioned live music capital of Australia, the Sydney live music sector has been in a state of serious decline for the past two decades. Melbourne, a city with a million fewer people now has the largest amount of live musical activity in the nation by a wide margin. This article investigates the impact of live music regulation on competition and work opportunities for the music industry in NSW between 1992 and 2007, and the process by which the problems raised by this regulation were explored and in large measure redressed. Key facts to emerge are that NSW was the most regulated state for live music with the most restrictive and anti-competitive policy in the nation. This paper will argue that the NSW live music sector was effectively structured to fail by restrictive policies that denied musicians the chance to compete with gambling and broadcast sport on an equal basis. And fail it did. Its stipulations had a devastating impact on the live music industry. Sydney in particular, has only a fraction of the live music activity it once enjoyed.

Although the liberalization of gaming legislation was often seen as the cause of this failure, the proliferation of poker machines at the expense of live music was simply the symptom of a more deeply entrenched malaise. The pivotal factor was legislation known as POPE, relating to 'Places of Public Entertainment'. It imposed such complex conditions on the presentation of live performance that, as far as music is concerned, the acronym might well have stood for 'Prevention of Public Entertainment'. In May 2008 the POPE legislation was abolished. This paper traces the lengthy process by which this was achieved, and seeks to identify general and particular factors in this successful

campaign on behalf of live music. It will bring together some of the relevant documents and private papers into the public domain for the first time.

## **NSW ENTERTAINMENT LEGISLATION**

The legislation governing live music performance in NSW at the end of the twentieth century was the *NSW Liquor Act, 1982*, the *Environmental Planning and Assessment Act* of 1979, the *Local Government Act* of 1993 and the *Protection of the Environment Operations Act 1997*. The principal point of difference between live music regulation in NSW and in other Australian states is the Place of Public Entertainment authority (POPE). The POPE is Section 68 of the *Local Government Act*, which has been in force since 1993. It regulates conditions on entertainment venues in NSW. All live performance in NSW, including the singing of hymns in church, required a POPE authority. No consideration was given to the size or volume of the ensemble, nor was any consideration given to the cultural importance of the venue, or their track record in managing amenity impacts or dealing responsibly with Council. These bureaucratic impediments were by no means the only problems afflicting live music, but were at the crest of a slowly gathering swell that included the advent of random breath testing, liability insurance and workers' compensation issues and changing leisure and music technologies and associated modes of audience attentiveness as well as increasing competing entertainment options, both exemplified in the rise of DJs and rave parties, as well as domestic facilities like DVD/video, and 'home entertainment' suites. Although all of these contributed to the live music decline, they were not unique to New South Wales. POPE was.

In order to comply with the POPE authority process, two development applications had to be submitted under two different acts, one under the *Environmental Planning and Assessment Act 1979* and the other under the *Local Government Act 1993*. In theory, the development applications were required by law to be processed within forty days. In practice, the state average is fifty-nine days, and in Leichhardt Council the average is one hundred and nine days and Strathfield Council has an average of one hundred and twenty days for unopposed development applications (Creagh, 2007). These averages are continually being pushed back because of increasing backlog. In general, for inner city councils, the time frame tends to run four to five months for unopposed development applications and up to eighteen months for applications opposed by residents. Obviously, the legal costs of a development application encountering opposition will increase substantially. The Clubs NSW submission to the Premier's department of 2004 had this to say on the issue of cost:

- *The most outstanding issue for clubs as an impediment to the hosting of live music was the cost involved. Of all the information provided by clubs, this was by far the largest barrier to the hosting of live music...The compliance requirements to allow the hosting of live music were considered a significant impediment. Clubs found that compliance requirements, beyond those required of a POPE licence were considerable and posed a barrier to live music entertainment... A common response from clubs not providing live music was that the financial returns from live music were insufficient to offset the costs of undertaking the necessary works in order to comply with LGA requirements.*
- Clubs NSW, 2004:1-2
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- The costs associated with obtaining permission to perform in NSW involved compliance far in excess of that required by any other state.

In 2007, under the Liquor licensing regulations in NSW, the cost of a liquor license for a

pub in NSW was \$2,000. For a restaurant Dine or Drink authority (where 30% of patrons may drink without a meal) the cost was \$10,500 for a restaurant holding fewer than 100 patrons, and \$15,000 for more. For a nightclub in the Sydney central business district, Kings Cross and Oxford Street it was \$60,000. Elsewhere in metropolitan Sydney, Newcastle and Wollongong it was \$40,000. Everywhere else in the state, it was \$10,000. All of these categories of liquor license in Victoria cost a mere \$567.50. According to the Green party website, the third biggest source of political donations in the state was the Australian Hotels Association. Apart from the rates for liquor licenses, the POPE authority may entail further expenses given that they can require extensive structural alterations to the building, including fire hoses and sprinklers, one hour fire separation to the rest of the building, outward opening doors, disabled access and toilets. The many regulatory inconsistencies of the building codes were a further obstacle. The requirement that egress from places of entertainment be measured in terms of aggregate door width, and not the number of doors, effectively discriminated against older venues with narrow doors. Renovation expenses in turn entail legal and architects' advisory costs.

- *In two examples provided by clubs, the process of applying and getting a POPE licence took 14 months, with the engineers fee alone being \$22,000, whilst another club updated its fire services to get a POPE licence but could not afford the extra \$150,000 required for the smoke system in their auditorium. Clubs NSW, 2004:1*
- Live-music activist John Wardle estimated that “Compliance with the special NSW building code could cost more than \$100,000” (Bartlett, 2006).
- In addition to costs, a further problem was the complexity of the application process.
  - *Brothers Matt and Dan Rule have owned the Annandale Hotel for the past six years. Matt says they have provided live music throughout that time, but the POPE process is “still a mystery to me”. Development applications through Leichhardt Council are “without doubt the biggest hurdle you face in running a small business in this municipality” Bartlett, 2006.*

- The Clubs NSW *Submission to the Premier's Department* recorded these concerns:
  - *By far the biggest issue raised by clubs in relation to Place of Public Entertainment (POPE) licences was the process of applying for them through Local Councils and the cost of applying. This also included the compliance requirements which are placed upon clubs by the Local Government Authority (LGA) relating to fire and a number of other areas.*
  - *Compliance issues were closely followed by dealing with the LGA to gain a POPE licence or to renew a POPE licence as the next main difficulty. This included such things as the application being too long, the renewal process being a 'hassle' each year, the time it takes to prepare the application and finding someone who can assist with the application preparation as LGA requirements/guidelines are not easily accessible.* Clubs NSW, 2004:1.

These comments detail an additional problem. Accurate information on POPE compliance requirements was not easily available. Without a precise directive from the Department of Planning in the form of a practice note describing a clear protocol, approvals were decided in an arbitrary and subjective manner. As a function of the local government act regulation, and the lack of a clear direction for approvals, there was no standard state-wide set of compliance requirements until the *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007* was gazetted.

To exacerbate the difficulties presented by costs and complexity associated with a POPE application, there were anomalies regarding the status of live music and uncertainty regarding the outcome of an application. *Live Music in South Australia*, a report prepared by the Live Music Working Group for the Minister for Transport and Urban Planning in 2001, commented on the importance of clarity and certainty:

*Licensed entertainment venues providing live music, in order to fulfill their critical role, must be able to operate in a legal environment that offers clarity and certainty, and should not be subjected to capricious, vexatious or unjustified interference in carrying out their lawful activities of providing live music.*  
Live Music Working Group, 2001:3.

This underscores one of the biggest shortcomings of NSW live music policy, the fact that despite a level of cost and complexity far in excess of other states, policy assured no certainty of outcome for applicants. Related to this is the fact that NSW did not recognize the live music industry in the liquor act, making it difficult, if not impossible, to protect the interests of musicians and venue operators. By way of contrast, the South Australian *Liquor Licensing Act of 1997* includes this sentence in the objects of the act:

*(1)The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—*

*(b) to further the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls.*

The recent Western Australian *Liquor and Gaming Legislation Amendment Bill 2006* went even further, including among the objects of the *Western Australian Liquor Licensing Act 1988*, “to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State”.

For applicants seeking a liquor licence for a live music venue, as well as for licensees dealing with noise complaints, this is a significant detail, as is the acknowledgement of the “public benefit” of live performance spaces addressed in the writing of the regulations. As Warren Cross noted in 1993, in NSW,

*The Liquor Administration Board does not have as part of its rule book, the employment or cultural value of the entertainment the venue provides. If a resident alleges that he or she has been disturbed by a venue, they are believed, and the venue is guilty until proven innocent.*

*Faced with the loss of their Liquor Licence, a hotel will abandon live music in the*

*face of such complaints.*  
Cross, 1993:np.

Because there is no reference to music in the objects of the *NSW Liquor Act 1982*, the right of a venue to continue music presentation is vulnerable to any complaint about live music. A complaint under section 104 (Quiet and good order of neighbourhood) of the *Liquor Act 1982* or section 17AA of the *Registered Clubs Act 1976* invites complainants to specify either the manner in which the business of the above licensed premises/registered club is conducted, the behaviour of persons after they have left the above licensed premises/registered club, or a combination of both as the reason for their complaint. Licensees responding to complaints are required to appear at a hearing at either the Liquor Administration Board in Sydney or one of the 68 Licensing Court Registries (Court Houses) in New South Wales with legal representation. There is no acknowledgement of the cultural, social, and economic value of live music in the considerations or determination guidelines.

*Over the last 10 years we have seen a dramatic decline in the number of venues available due to a significant number of venues having been closed due to amendments to licensing laws allowing residents to restrict the operation of venues which have live music.*

*The case of Lismore's Metropole Hotel proves that the persistent complaints of one person can cause serious restriction to a licensed entertainment venue.*

Apart from having to address complaints which may be merely vexatious, renewals may be arbitrarily refused. In one celebrated case, the Town Hall hotel in Newtown had their POPE renewal denied despite an absence of immediate neighbours, as it was flanked by

Newtown station on one side and a supermarket on the other. Nonetheless, POPE renewal was deemed not to be in the public interest. Presumably in the previous month it must then have been determined in the public interest, even though there had been no material or structural change to the premises, and there had been no complaints.

In summary, then, in relation to cost, complexity, uncertainty of outcome and returns, a venue operator had to be deeply committed to the presentation of live music in order to negotiate the bureaucratic obstacle course that was the POPE authority process.

## **LIVE MUSIC IN DECLINE**

Through the 1990s the array of disincentives to the presentation of live music was reaching critical mass. In 1993 an early alarm was sounded in what has so far become a fifteen year campaign to reverse the decline in live music. In the paper tabled by music business lawyer Warren Cross on liquor licensing at the Entertainment Industry Employment Summit on the 15 May of that year, he argued that the liquor laws suppressed live music venues:

*NSW is fast becoming a cultural backwater and losing significant tourist dollars because of the lack of quality live music venues. Although this issue has arts consideration, it is primarily an employment issue. The NSW licensing laws currently suppress the live music industry and in doing so, create significant unemployment amongst the NSW music industry.*

Cross, 1993:np.

Over 1997-8 Eric Myers, the NSW and National Jazz Co-ordinator, was receiving increasingly frequent reports from jazz musicians of diminishing gig opportunities. The

pattern was confirmed when he canvassed the community more systematically. He and the Jazz Co-ordination Association President, Bruce Johnson, then compiled a survey which went out to the membership of the NSW Musicians' Union in 1998. The key finding of this survey was that 67% of respondents had experienced a decline in performance opportunities and income over the previous twelve month period. Among the respondents, a higher percentage who were full-time professional musicians noted that their income had been adversely affected than those whose main income source was other than musical performance (Johnson, 2001:7).

This preliminary evidence suggested a need for more comprehensive research. On 7 May 1998, as he was assembling data, Johnson wrote to then premier Bob Carr to express his concern regarding declining work opportunities apparently caused by the introduction of poker machines into hotels. He declared:

*This is a matter of urgency. I felt that, even before our research is concluded and we have hard evidence to quantify the decline, a letter such as this should be on your desk. The current crisis probably represents the biggest threat to local live music in the postwar period. The steep decline in performance opportunities is of both quantitative and qualitative significance. It is affecting the livelihoods of a sector that formerly provided employment for around the same number of musicians as the classical music sector, and for around 2.4 times the audiences.*

Johnson said that while he was speaking only of jazz, it appeared that other forms of music such as rock and blues were also under threat. These musical forms also have substantial audiences. In his reply of 16 June 1998, Premier Carr stated that:

*Whilst there may be anecdotal evidence that the introduction of poker machines into hotels has affected sections of the music industry, it would be premature to presume that this is the primary cause without first assessing other factors.*

In a second letter to Premier Carr on 23 October 1998 Johnson wrote:

*Research to date suggests that the rate of contraction of work opportunities is*

*greater than feared at the outset, aggravated by what appear to be changes in the administration of live entertainment licenses... while I don't wish to undermine the credibility of this informal report by virtue of incomplete data, I have some concern that if we wait for a fully documented diagnosis with the resources currently available, the patient will be dead or beyond saving.*

## **LOBBYING, RESEARCH, REPORTS**

It is instructive as a model for taking political agency by or on behalf of a particular music community, to review the progress from that time to the culmination of a successful lobbying campaign by 'relay'. It was a campaign in which individual energies were decisive. Johnson and Myers requested a meeting with representatives of the NSW state government, also suggesting that it be attended by Mathew Elliott of Music NSW, with his broader constituency. This meeting, on 5 February 1999, was attended by members of the Premier's Department, John Dermody and Alexander Weilsmann, and David Charles, CEO of the Australian Hotels Association and his colleague Peter Ladler. The dynamic of the meeting was interesting to say the least, a story in itself, but the AHA representatives were persuaded to express, for publication, concern at the decline in live music and to offer assistance and support for continuing research into the problem (Johnson, 1999:8). This assistance proved invaluable, consisting of access and mail-out facilities to AHA membership. To his pleased surprise, at the end of the meeting Johnson was informally invited to apply for government funding for further research. He then recruited Shane Homan as co-investigator, having just acted as examiner for the latter's doctoral thesis, which would later be published as *The Mayor's a Square: live music and law and order in Sydney* (Homan, 2003). Both were academics as well as musicians. The research was co-funded by the NSW Ministry for the Arts and the Australia Council, and

the funds were largely used to employ the highly experienced Jon Atkins as research assistant.

The research began with a survey form circulated to 3,854 hotels and clubs. These were followed up by personal interviews with a sample of respondents. The response rate was a statistically significant 12%, with a breakdown of 174 hotels and 270 clubs statewide, totalling 444 venues. The outcome was the report *Vanishing Acts: an inquiry into the state of live music opportunities in NSW*, completed in 2002 and published in 2003 (Johnson and Homan, 2003). Issues covered included the decline in work opportunities for live musicians in pubs and clubs, attitudes of venue operators towards presenting live music, the effect of poker machines on live music presentation, the effect of regulation and amenity impacts such as noise complaints, and attitudes regarding cost and complexity. The *Vanishing Acts* report is the seminal research document in the literature on NSW live music regulation. It was the most comprehensive study to date of live music opportunities in NSW. Its aims were to stimulate critical and scholarly debate, to investigate industry concerns, and to propose changes designed to increase live music opportunities. It was the first report to provide detailed documentation and discussion of the inadequacies of existing policy and to direct the attention of those responsible for policy structure to these problems. It also increased public awareness of music industry concerns regarding a harsh regulatory environment and the subsequent dire effect on work opportunities. By leading to the formation of the *Vanishing Acts* Forum and its publication of the *Issues Paper*, further discussion on this topic was stimulated, leading ultimately to policy changes from late 2006.

Key findings of this report were that there had been a significant reduction in live music over the previous decade, and that there was a significant measure of truth in the belief that the liberalisation of gambling had been a substantive factor in this decline. The Survey Findings section reported that in 11% of metropolitan hotels, 12% of non-metropolitan hotels, 23% of metropolitan clubs and 13% of non-metropolitan clubs live entertainment areas had been displaced by gaming areas. There was however, a range of other causes, including changes in leisure options, changes in urban environments due to gentrification and changes in the regulatory environment. One of the main reasons that gambling became a popular alternative was its status as an activity exempt from the same regulation as live music (see below).

*Vanishing Acts* stimulated public, media and political interest and provided the issues platform for a succession of papers, forums and committees. The State Government's immediate response was the establishment of a task force within the NSW Premier's Department, which conducted extensive consultation over a two year period, with input from representatives of the music and hospitality industries, members of the police force and local and state government. The outcomes were collated in an Issues Paper, *Live Music Industry in NSW*, published in January 2005. It identified four areas of concern:

- 1) Live Music Venues, Licensing and the POPE process.
- 2) Planning and Noise Regulation.
- 3) Possible Support for Venues and Performances.
- 4) Education and Information.

- It was the first two of these that were most widely ventilated in subsequent lobbying and debate, because they were so clearly linked with each other.
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- Gaming machines were clearly complicit in the problems facing live music, although the matter was not straightforward or unambiguous. One of the points made in the *Vanishing Acts* report was that poker machines were found in some cases to have subsidised live music in approximately 50% of clubs and just under 40% of hotels statewide. It also recognized that the arrival of poker machines was not so much the root cause of the decline in the presentation of live music, as an alternative solution for licensees to a pre-existing suite of problems. Chief among these were the impediments presented by POPE application and compliance. It was reported that 38% of hotels and 32% of clubs statewide expressed a concern regarding “too much red tape” as the most unsatisfactory aspect of obtaining an entertainment license. Pokies presented a relatively unregulated alternative that was increasingly favoured over live music as an optional extra service in licensed premises. These machines were granted “special exemption” status under the *Local Government Act 1993* (see further Homan 2002). This exemption allowed the same room to host gambling and broadcast sport with far greater numbers of patrons, without having to meet the same standards of fire and building code compliance required to present live music. Clearly, any publican with an aversion to paperwork would find this an enticing option. A publican with late trading hours and a room full of poker machines would be reluctant to expose his extended trading hours and gambling profits to the risk of losing late trading under the penalty clauses accompanying live entertainment. The

exemptions functioned as a rather primitive form of social engineering. They served to facilitate record participation rates in the exempted activities by awarding them a competitive advantage over live music. New South Wales has more poker machines than the other states and territory combined. At one point it had 10% of the world's poker machines, a staggering statistic given the state's tiny population in global terms (Johnson, 2001:9).

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Poker machines solved many problems for a number of stakeholders. Shane Homan discusses the convergence of desired outcomes for licensees, Local Governments, and law enforcement, in limiting late trading for hotels to 24 hour poker machine rooms, (and rejecting late opening live music consents), where the local amenity is barely affected by the discrete traffic of late night gambler – as opposed to a musical performance, where groups of people assemble to share a cultural experience, all arriving and leaving in large and festive groups (Homan, 2003:131-2, 162-3). Once the alternative of gaming machines was embarked upon, it also made it more difficult to revert to live music. John Wardle later expanded on the topic in a briefing he prepared for an address at the APRA licensing conference in Lorne, Victoria in February 2007:

*Poker machines, introduced to NSW in 1996 have caused havoc for performers, with over 60% of musicians surveyed in the vanishing acts report acknowledging they had lost their jobs at the time, and a large number of NSW pubs dumping live music almost overnight. Anecdotal evidence of this transformation indicates that whilst rural and regional gigs were not as badly affected, that metropolitan gigs were devastated, causing a major reduction in live music in Sydney in particular.*

*Poker machines continue to remove performance spaces in hotels in NSW, as the revenue they generate is used regularly to modernise the traditional pub, with any building work voiding existing entertainment consent, and requiring extensive compliance and process under state and local government regulations for its*

*return, which may not be seen as fashionable by the trendy licensee at the time.*  
Wardle, 2007:np.

The 2005 Issues Paper recommended that the POPE process be simplified and rationalised. Concerns were raised regarding the requirement for a dedicated space to house more than ten poker machines, and the excessive amount of paperwork required to satisfy POPE renewals. It was suggested that longer terms of five years or longer be considered for a POPE authority (at that time they were renewed annually as a “temporary approval”). The timing of renewals, (over the holiday season) was raised, as well as the arbitrary nature of refusals and the difficulty of locating information regarding requirements for granting of a POPE authority.

One set of problems arising from POPE, however, also concerned issues of local social amenities and noise regulations, since under the terms of POPE, the complaint process was loaded so heavily against the venue. It was of only limited use to ease the process of application, if a successful outcome was still vulnerable to amenity and noise regulations. This takes us to the second of the two areas of concern identified by the Issues Paper, and which were the subject of extended discussion. Planning and noise regulation problems raised a range of community issues. These included the need for an appreciation by both private and commercial interests of the importance of local live music venues. This was becoming increasingly so as both those interest groups were changing with growing gentrification of inner-city zones, introducing new expectations and services. If a local community was unappreciative of the pre-existing cultural profile of an area under such

development, and if local business services were unwilling to co-ordinate their activities with that profile, these were potential obstacles to the success of a music venue.

The Issues Paper canvassed various ways of addressing these tensions, including buyer-beware legislation in live music areas, with responsibility for noise issues to be shared between venues and residents, as for example by requiring new buildings close to venues to install adequate sound insulation. In 1993 Warren Cross had proposed that

*Local Governments should adopt in their planning, entertainment precincts where normal parking requirements are dispensed with, and where the red tape in setting up a music venue is minimized. It seems ironic that the NSW Government has created precincts for prostitution, yet cannot seem to do the same thing for contemporary music.*

Cross, 1993:np

The live music precinct would later be implemented in the Brisbane inner city suburb of Fortitude Valley. A defined area is designated a “special entertainment precinct”. Within this area venues are protected and can trade freely within the parameters of existing regulation. There is buyer beware legislation to inform prospective property purchasers of the character of the neighbourhood and that a silent environment is not a reasonable expectation. This initiative has been a huge success for musicians and patrons alike. As Homan later also pointed out, this is an area where NSW compares unfavourably with Queensland in terms of live music infrastructure (Homan 2002). On the basis of population ratios, if Brisbane can support one special entertainment precinct, Sydney could support four. By 2007 NSW still had no live music precincts.

The absence of any such infrastructural or legislative machinery was the reflection of a

deeper problem, of which POPE itself was the most spectacular manifestation. That is, the absence of any co-ordinated 'vision' within which live music might be enabled to flourish in a positive relationship with the local community. From a live music perspective, a comparison with night trading strategies in Brisbane, London and the Melbourne city of Stonnington is disconcerting. London in particular has articulated a positive vision for its late night culture. Sydney has yet to articulate a vision for either live music or night trading. Despite the politicians' wish to characterize Sydney as a cosmopolitan, international city, the reality is that in terms of live music and associated night trading amenities, Sydney is a provincial, rather than global city. The point was explored by Homan, who discussed the need to situate live music within the image of creative national identity, noting the lack of recognition of live music venues as cultural institutions and musicians as cultural workers (see further Homan 2002).

There is a profound disjunction between these problems and the local government cultural policy pieties. It is salutary to be reminded of the following declaration from the document *Cultural Planning Guidelines for Local Government*: "Cultural planning.... is about providing opportunities and removing obstacles to people's cultural expression, creativity and sense of place". Given the cost and complexity of pre-2007 regulation, it is difficult to see how those policies and in particular the POPE authority process meet these objectives. Indeed it is difficult to see NSW live music regulation as doing anything other than providing significant barriers, both financial and bureaucratic, to performance opportunities and cultural expression. This document also lists the objectives of cultural planning as,

*To promote the cultural well being of the area,  
To emphasize community engagement and creative expression of values and aspirations  
To improve links with other spheres of government in order to increase opportunities for partnership and funding.*

This paper also states that the “principal instrument in cultural planning is the development of a local cultural framework”. However I have been unable to find any local council in NSW that has a cultural framework for live music. Similarly in relation to another aim articulated in the paper:

*It is essential that a cultural planning framework and plan aims for the following features:  
Points to ways of removing barriers and enhancing opportunities for shared cultural expression and participation.  
...  
A cultural plan = a cultural framework + an action plan + a budget.*

By 2007, neither an action plan nor a budget for live music had been found anywhere in the state.

The *Cultural Planning Guidelines* also make a critical distinction between two types of policy approach - strategic and operational. Operational policy is reactive, concerned with the short term and often crisis-driven. Strategic policy is proactive, mapped out over the medium and long term, and characterized by reflection. Operational policy aims for small-scale change and the management of day to day operations, the "how to do this?" approach. Strategic policy aims for fundamental, significant change and doing what is important over the long term, the "why are we doing this?" - or even more importantly, "what are the consequences of this choice?" Using this standard, it is difficult to see NSW policy as anything other than purely operational policy.

In one way or another, the problems these advert to all flow from that oppressive legislation unique to New South Wales, the POPE process.

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## **EPILOGUE**

The momentum for live music advocacy increased in the wake of the various reports summarized above, and particularly through the work of Richard Ruhle, drummer and office bearer of the NSW Musicians' Union, and John Wardle, guitarist and tutor at the Sydney Conservatorium of Music. Apart from the most energetic lobbying and the drafting and advising on numerous discussion papers, Wardle and Ruhle showed an extraordinary talent and determination in gaining personal access to the centres of legislative and policy influence, both at an official and a social level. In the course of their lobbying, they also gained a detailed command of the labyrinthine paths through legislative process. It is doubtful if any other arts sector in Australia has produced more able political advocates. Very largely as a direct outcome of their persistent and well-informed lobbying, in early December 2007, reforms to the Entertainment Venue Liquor Licence were passed in the NSW parliament. Hansard recorded the following appreciation:

*In 1998 the Musicians Union of New South Wales surveyed its members on why work was disappearing. The driving force behind this survey, Professor Bruce Johnson, then teamed up with Dr Shane Homan. In the 2003 they received funding from the Australia Council and the New South Wales Ministry for the Arts to prepare the "Vanishing Acts Report". The findings in that paper then informed the drafting of an issues paper for government by the Premier's Department in early 2005. Special mention must be made of the contributions of Victoria Owens, Program Manager, Music, from Arts New South Wales, who has played a major part in the implementation of these reforms, Shane McMahon from Arts New South Wales, Richard Ruhle from the Musicians Union and the Media,*

*Entertainment and Arts Alliance, and, of course, John Wardle. John is in the Chamber with supporters tonight. I am inspired by the enormous amount of work he has done on this issue over 3½ years. I have heard that he is a talented musician. He knows many people in the industry and I trust and have faith in his briefings. I commend him for his energy, drive and intelligence.*

On 3 April 2008, a draft of new planning laws was released for public comment. They included new POPE entertainment law amendments intended to give complete exemption to small scale venues from any POPE approval provided certain conditions are met. It is a tribute to those involved at that stage of the lobby process that they were able to ensure sustained attention to these matters at a time of serious ructions within the NSW Labor Party membership over the move to privatize the state's electricity grid. In my foregoing account of the POPE process I have wavered between present and past tense. This is because of the serendipitous timing of events in relation to the preparation of this paper. On 15 May 2008, the day the first draft of the paper was completed, the NSW Planning Minister Frank Sartor tabled the *Environmental Planning and Assessment Amendment Bill 2008*, which would in effect abolish the POPE legislation. In the jubilant words of John Wardle in a celebratory email, 15 May 2008, "This will mean that the POPE as we knew it for NSW will now be stone dead. Finished for good! No reference – no POPE. The end".

On 16 May, a media release from Parramatta City Council announced:

***LORD MAYOR INVITES MUSICIANS TO PARRAMATTA***

*The Lord Mayor of Parramatta, Cr Paul Barber has invited musicians and entertainers across Sydney to come to city of Parramatta after the proposed abolition of the PoPE (place of public entertainment) process in forthcoming*

*planning reform.*

*“The overhaul of the laws is a big win for the people of Parramatta. What this bill means is that pubs, restaurants and cafes will no longer have to jump bureaucratic hurdles if they want a bit of live entertainment in their establishments,” the Lord Mayor said.*

*“It was just absurd that you could put a huge plasma screen in a pub with barely any limitation but to have a jazz band, it would suddenly cost you \$100,000 in red tape and approvals. This is more about cultural reform than anything else and Parramatta City Council welcomes these new laws.” the Lord Mayor said.*

*Parramatta City Council has made it a priority to create an urban environment that has a night life scene that is cultivated, enjoyable and safe. From Church Street to the riverside, Parramatta now plays host to hundreds of restaurants, bars and cafés.*

*“This new legislation will do more for the employment of musicians and artists than any grant. It will also do much to reverse the negative effect that poker machines and loud TV screens have had on our people and our city,” the Lord Mayor said.*

*“From pianists, to singers, to jazz bands to comedians, we welcome you to come to Parramatta and create a buzz for the people who already enjoy one of the best night spots in Sydney,” the Lord Mayor said.*

*“Residents can be reassured that proprietors still have to be aware that normal noise controls still apply and venues that host live activities will need to be good neighbours,” the Lord Mayor said.*

## **CONCLUSIONS**

The *Vanishing Acts* report documented what had previously been unsubstantiated gossip: that is, the major erosion of live music venues and therefore of work opportunities in NSW for musicians since 1993. It further established that liberalisation of gambling had played a significant role in this decline. Further research and discussion papers in its wake articulated in greater detail the complicity of other factors. The costs, complexities and uncertainties of license application and POPE compliance, the noise complaint process, the arbitrary application and enforcement of legislation, all conspired to radically

diminish a major culture industry.

There are more general lessons to be learned from the foregoing narrative, however. One is to do with political engagement by both musicians and music scholars. For the former it is an unhappy fact that the most common form of political intervention is post-gig 'one for the road' bar-room complaint, a mutual nurturing of grievances based on ill-informed anecdote. Invited to engage actively in the politics that shape their careers, the answer is all too often a demotic version of the Romantic artist detached from everything except his creative mission. The common assertion "I'm not interested in that bullshit" is in fact a voluntary relinquishing of agency. The changes in the legislative framework of live music described above indicate what can be done by musicians themselves, if, in the words of one of those involved, "they get up off their arses". At the same time, the foregoing narrative discloses the importance of individual energies in political interventions. Reference is often made to lobbying by a 'community' or 'interest-group'. Yet such groups are infinitely heterogeneous. In part this paper seeks to understand how and why a political campaign worked. To talk of a 'music lobby-group' is to invoke an uninformative abstraction. Who are they? What did 'lobbying' involve? Established policy and its administrative machinery are, virtually by definition, instruments for imposing inertia for the advantage of entrenched interest groups. The achievement of reform will benefit groups disadvantaged by policy, but is always dependent on the energy of particular individuals. None of those named in this article was absolutely required by whatever office he might have held, to give active priority to the issues discussed. Policy implementation and reform depend on individual actions reaching critical mass.

There is a similar lesson for popular music scholars. The literature of popular music studies is disproportionately sparse in matters of policy and legislation, and especially in areas that might be thought of as removed from music itself. In the present case, an understanding of liquor licensing provisions, for example, is one of the main keys to understanding a major node in the history of popular music in Australia's most populous state. Pub licensees don't just say yes or no to a bandleader seeking to start a residency, and it would help both musicians and music scholars to understand this. The study of the staggeringly complex and often irrational processes by which live music is installed in a venue is as important as the music itself in any attempt to assess a live music scene. And that in turn takes research to an array of other legislative issues including gaming, urban development, liability insurance and building regulation. Entering these areas not only enlarged the understanding of a historical trajectory in local music history, it fostered a political dimension to academic popular music studies which has largely atrophied.