



AUSTRALIAN FESTIVAL ASSOCIATION SUBMISSION TO THE REVIEW OF THE MUSIC FESTIVALS ACT 2019 (NSW)

1. Introduction

Australian Festival Association Ltd (AFA) welcomes the opportunity to make a submission to the Review of the NSW *Music Festivals Act 2019* (the **Act**). The **Act** has been a source of considerable discontent and unease in the music festival industry since its introduction over four years ago.

The **Act** introduced a classification system for festivals, with the NSW Independent Liquor & Gaming Authority (**ILGA**) given authority to form the opinion that a festival is a **subject festival**. Festivals designated as a **subject festival** have subsequently experienced a much more punitive approach from the regulators and enforcement agencies responsible for music festivals: **ILGA**, Liquor and Gaming NSW, the NSW Ministry of Health and the NSW Police.

This approach has resulted in significantly increased costs for **subject festival** organisers and a considerably less pleasant experience for patrons at music festivals in New South Wales, when compared with the experience of festival organisers and patrons in other state and territory jurisdictions across the country.¹ The reputational impact on an organiser whose festival is designated as a **subject festival** is enormous.

The designation of a music festival as a **subject festival** in NSW inflicts significantly higher costs on festival organisers for private medical providers and user pays ambulance, given these are requirements set in the **Safety Management Plan** under the **Act**.

In addition, a **subject festival** designation is also used as a justification for much higher user pays police costs as well as more punitive liquor licence conditions. The punitive liquor licence conditions have impacted commercial sponsorship relationships and revenues for some AFA members.

Here are some examples of the discrepancies in costs faced by festival organisers in NSW compared with other states, which was included in our recent submission to the NSW Arts, Cultural and Creative Industries policy:

	QLD	VIC	NSW (Subject)
Show Capacity	14,000	14,000	16,000
Medical	\$9,374.20	\$18,463.07	\$44,117.02
User Pays Police	\$35,933.63	\$17,913.40	\$45,236.80
User Pays Ambulance	\$0.00	\$9,152.00	\$18,498.35
	\$45,307.83	\$45,528.47	\$107,852.17

	QLD	VIC	NSW (Subject)
Show Capacity	10,000	15,000	11,000
Medical	\$3,872.98	\$17,486.69	\$37,252.44
User Pays Police	\$8,920.23	\$0.00	\$33,855.80
User Pays Ambulance	\$2,241.08	\$5,219.50	\$8,854.27
	\$15,034.29	\$22,706.19	\$79,962.51

¹ Special Commission of Inquiry into the drug "Ice". Volume 3. Page 826. <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Special-inquiry-ice-report-volume-3.pdf>



The cost discrepancies outlined above have a huge impact on the commercial viability of music festivals in NSW. These government-imposed costs, which are then compounded with the 30-40% increases in costs on every line item in festival budgets since the pandemic, is making it near impossible to produce an economically viable music festival in NSW. The industry is also faced with changes in patron ticket purchasing behaviour, which has not yet stabilised, and this adds to the considerable uncertainty in the market and could lead to the cancellation of festivals across NSW or the movement of those festivals into other states or territories.

Music festival organisers and the AFA are seeking a partner in government to help get through this challenging period. However, in New South Wales we consistently see government put in place greater barriers, with increases in costs and a combative relationship between music festival organisers and government agencies.

The AFA advocated for this Review of the **Act** to be commenced earlier than required under the **Act** because the requirements placed on the majority of festival organisers are the biggest contributor to these increased costs. **Subject festivals** in NSW face far greater costs as compared to the same or similar events produced across state borders, which has the potential to have a long term impact on the cultural and creative industries in NSW.

Music festivals cancelling due to higher costs means:

- fewer jobs for small businesses and suppliers across the state.
- fewer opportunities for NSW artists to develop new audiences, given festivals are one of the main forms of discoverability of new music for people.
- less tourism in NSW, given the significant financial contribution to regional tourism, at a time when the NSW Government is trying to support the creative industries, artists and focus on experience-based tourism.

The AFA is calling on the NSW Government to work with us to deliver not only safe and viable events, but a thriving, growing festival scene in NSW. This can only be achieved by changing the **Act** and reducing the costs attributable to a **subject festival** designation to a more reasonable level. Levelling the playing field by having all music festivals under the same regulatory regime will go a long way to helping ease the cost pressures on festival organisers.

Before this Review was committed to, the AFA worked with Liquor & Gaming NSW to address the concerns of **subject festival** organisers around transparency and proper process of requirements under the **Act**.

The AFA welcomed the introduction of an annual review of **subject festival** designations as outlined in the [Subject Festival guidance](#), and the clarity provided on the review processes available to festival organisers under the current regime as outlined in the Subject Festival guidance and [Music Festival Flowchart](#), both of which were published in February 2023.

The AFA formally expresses appreciation for the engagement of Liquor & Gaming NSW, and in particular the Hospitality Concierge, as the AFA worked through the issues raised and the first annual review of **subject festival** designations conducted in July 2023, along with ILGA, and the Office of the ILGA. The AFA would also reiterate its appreciation to Liquor & Gaming NSW staff for their work coordinating the Music Festival Roundtable as Secretariat and to the CEO and Acting CEO's we have worked with as co-Chair of the Roundtable.



2. Policy Objectives

The AFA notes that the policy objectives of the **Act**, as outlined in the Minister's second reading speech and explanatory notes attached to the Bill in 2019, are not expressly stated in the Act. The AFA believes the festival industry, government and the community would all benefit from having these policy objectives expressly stated in the **Act**, to provide clarity and certainty of the intention of the NSW Parliament with this law that governs the regulation of music festivals.

The AFA calls for the **Act** to be amended to include an updated form of policy objectives.

The current policy objectives do not adequately acknowledge the economic contribution of music festivals to the NSW economy and community. The AFA believes this is the result of a rushed process by the previous NSW Government in introducing the **Act** with little consultation or engagement with music festival organisers on the legislation. The current policy objectives in the **Act** appear reflective of that approach.

The current policy objectives of the **Act** are as follows:

- (a) to provide that the Independent Liquor and Gaming Authority (ILGA) may direct music festival organisers for high-risk festivals to prepare a safety management plan for the proposed festivals for approval by ILGA,
- (b) to make it an offence for music festival organisers for high-risk festivals to hold the festival unless there is an approved safety management plan for the festival,
- (c) to impose other obligations on music festival organisers for high-risk festivals, including to provide briefings for health service providers, to keep records relating to incidents that occur at festivals or in their vicinity and to make the approved safety management plan available to police officers and other persons if requested to do so,
- (d) to provide for the enforcement of the proposed Act,
- (e) to provide for other related matters.

The AFA believes the **Act** should reflect the intention of the current NSW Government. The Hon. John Graham MLC, Minister for Music and the Night Time Economy stated at a recent budget estimates:

"....I want to make clear is that one thing we won't be doing is launching a war on music. That is where this started—a direct war on the festival sector in New South Wales, and we nearly lost some of the best operators in the State..... So that's one thing we won't be doing. The way I am indicating to the Committee that I am approaching that is to look at costs overall. We should be taking a holistic view about those costs and getting them down to a level where the other States are at, but doing it with safety in mind and doing it with festival viability in mind. We want a culture in New South Wales which welcomes these festivals and the community that they bring."²

The policy objectives of the Act should reflect this position of the NSW Government.

² Minister for Music and the Night Time Economy. NSW Budget Estimates 2023. 9 November 2023. Page 9-10:
[https://www.parliament.nsw.gov.au/lcdocs/transcripts/3176/Transcript%20-%20PC6%20-%20Budget%20Estimates%20\(Graham\)%20-%209%20November%202023%20-%20UNCORRECTED.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/3176/Transcript%20-%20PC6%20-%20Budget%20Estimates%20(Graham)%20-%209%20November%202023%20-%20UNCORRECTED.pdf)



The policy objectives currently fail to do so. The AFA submits that the policy objectives should be updated along the lines of the following:

- (a) to acknowledge the contribution of music festivals to the NSW economy, creating jobs, providing a platform for artists to play to fans and discover new audiences; and for the cultural benefit,
- (b) to support the music festival industry to produce events that showcase both the creative talent and natural environment,
- (c) to require a harm reduction approach to alcohol and other drug use at music festivals,
- (d) to ensure the Ministry of Health supports music festival organisers to deliver safe events, by providing access to world's best practice advice from clinical and public health experts,
- (e) to require collaboration between government agencies and music festival organisers to deliver safe music festivals,
- (f) to outline the structure and responsibilities of the NSW Music Festival Roundtable, a forum for collaboration between industry and government to deliver safe, vibrant and successful music festivals,
- (g) to ensure government agencies are authorised to facilitate and support music festivals.

3. Subject Festival Framework

The current **subject festival** framework is not the most effective framework for ensuring high risk festivals are run safely as it does not appear to be implemented as intended.

The **Act** requires organisers of music festivals that have had a death or ICU admission occur at their event, or as a result of attending their event, should be required to submit a **Safety Management Plan**. This is to ensure organisers have access to the expert advice and the oversight of the NSW Ministry of Health, via the **Safety Management Plan**, in the three years after such an event.

This is set out in Part 2, Division 1, Section 5 of the Music Festivals Act 2019:

5. Requirement for subject festival to prepare safety management plan

- 1) If, in ILGA's opinion, a music festival is a subject festival, ILGA may direct the music festival organiser to prepare a safety management plan for the festival.
- 2) Without limiting the matters ILGA may consider in forming an opinion that a music festival is a subject festival, ILGA may have regard to the following matters—
 - a) any advice from the Health Secretary or the Commissioner of Police,
 - b) any advice from the music festival roundtable,
 - c) whether a death has occurred in the State on a previous occasion at the music festival or in connection with the music festival in the last 3 years,
 - d) whether a prescribed event occurred at a music festival, or an event related to a music festival, for which the music festival organiser was the organiser, in the 3 years immediately preceding the date on which the proposed music festival is to start,
 - e) any submission made to ILGA by the music festival organiser about the reasons the proposed music festival is not a subject festival.
- 3) The direction under subsection (1) must be—
 - a) given in writing, and
 - b) accompanied by a copy of the NSW Health music festival guidelines.



4) In this section—

prescribed event means the death of a person, or admission to an intensive care unit, that is reasonably suspected to be—

- a) because of alcohol or drug use, or
- b) caused by crowd behaviour or improper safety management.

The experience of AFA members is that the majority of festivals are being deemed a **subject festival** by ILGA, whether or not those festivals have had a **prescribed event** occur at their festival. It is also their experience that if ILGA receives advice from NSW Police that a festival being considered should be designated a **subject festival**, then ILGA was unlikely to decide otherwise, which ILGA confirmed in recent budget estimates hearings.³ This appears to be corroborated by more and more festivals each year being designated as a **subject festival**.

The AFA is aware of festivals that had never occurred in NSW before, being produced by operators with no history of a **prescribed event** also being designated a **subject festival**. The AFA is also aware of events that have been operating for decades that were not designated a **subject festival** since the introduction of the **Act**, subsequently designated as a **subject festival** by ILGA in 2023, despite there being no change in the capacity, size or location of the festival. Those with a **subject festival** designation also find it extremely difficult to have the designation removed.

During the recent review of **subject festivals** by ILGA, of the 40 subject music festivals in New South Wales, 16 applied to have their have subject status reviewed. [The Report on the activities of the Music Festival Roundtable for the financial year ending 30 June 2023](#) states that:

“Of the sixteen (16) applications, two (2) festivals had their subject status removed and were confirmed ‘not subject’ and it was determined that nine (9) would remain ‘subject’ festivals.

Five (5) festivals advised that their festival would not be held again in NSW and ILGA therefore determined they were no longer considered subject. ILGA noted this decision was contingent on the events no longer occurring in NSW and, should they occur in future, their subject status may be reassessed.”

Feedback received from AFA members was that a number of other festival organisers felt discouraged from submitting an application for review based on their experience of the process with Liquor & Gaming NSW and ILGA since the introduction of the **Act**. There was a considered view that in any case it would be very unlikely their event would no longer be designated a **subject festival**.

The increase in costs associated with music festivals that have been designated as a **subject festival** is not reflective of the risk or level of safety of those festivals. The AFA refers to a number of music festivals of a similar size and nature produced in other states without the same level of cost imposed by government, and no evidence of greater alcohol or illicit drug use in NSW.⁴ There has also been no evidence-based justification that these increased costs are increasing safety, and NSW is not experiencing any difference in outcomes when it comes to alcohol and other drug related harms, which was an original objective of the **Act**. NSW is not an inherently unsafe place when it comes to the harms from alcohol and other drugs experienced compared to other jurisdictions, so there is

³ NSW Budget Estimates Hearings, ILGA, 9 November 2023. Page 75.

[https://www.parliament.nsw.gov.au/lcdocs/transcripts/3176/Transcript%20-%20PC6%20-%20Budget%20Estimates%20\(Graham\)%20-%209%20November%202023%20-%20UNCORRECTED.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/3176/Transcript%20-%20PC6%20-%20Budget%20Estimates%20(Graham)%20-%209%20November%202023%20-%20UNCORRECTED.pdf)

⁴ Australian Institute of Health and Welfare (2023) *Alcohol, tobacco & other drugs in Australia*, AIHW, Australian Government.



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little, if any, justification that the regulatory regime should be so much more punitive and cost prohibitive for music festival organisers in NSW.

The AFA recommends that this classification system of a **subject festival** be removed.

The AFA recommends that all music festivals operate under the one regime, including extending elements of the current **Act** that have had a positive impact across all music festivals, not just those designated a **subject festival**.

The AFA recommends the NSW Ministry of Health be involved in the planning of, and providing assistance to, all festival organisers, particularly with assessing the level of staffing and equipment that private medical providers are required to have on site at music festivals under the current **Safety Management Plans**.

However, the AFA recommends that the **Safety Management Plan** be renamed to a **Medical and Harm Reduction Plan**, to more accurately reflect the actual content of these Plans, and for music festival organisers to submit this **Medical and Harm Reduction Plan** to the NSW Ministry of Health for advice and approval. We will explain this arrangement in more detail in Section 5.

4. Process to inform government

Under the current regime a festival is required to advise Liquor & Gaming NSW of its intention to hold a music festival, through the [early notification form](#).

If the AFA's suggested approach is adopted, there may no longer need to be a requirement on festival organisers to advise Liquor & Gaming NSW of their intention to hold a music festival.

The AFA acknowledges the ongoing work and efforts of Liquor & Gaming NSW in maintaining a list of upcoming festivals for all government agencies, as well as their work supporting the NSW Music Festival Roundtable as secretariat. Maintaining the notification scheme housed in Liquor & Gaming NSW may be an appropriate clearing house for music festival organisers, but the AFA suggests the NSW Ministry of Health may be a more appropriate agency to inform government of their upcoming festival.

The AFA is open to advice from Liquor and Gaming NSW and the NSW Ministry of Health about the best process to inform government of an upcoming music festival.

5. Current regulatory arrangement with ILGA as decision maker for determining whether a festival is a subject festival

The AFA and its members agree that certain processes in the planning of events, that were introduced as a result of the introduction of the **Act** have had both a positive impact on safety outcomes and provided the assurance to festival organisers and government that music festivals are safer as a result of the **Act**.

The most positive and welcome development from the implementation of the **Act** has been the greater involvement of the NSW Ministry of Health. The Ministry's advice and assistance provided to organisers when contracting a private medical provider to use at a festival is very welcome, especially given NSW does not have a licensing regime for private medical providers, similar to that of the [First](#)



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[Aid Services licencing](#) regime in Victoria. Since October 2021 the Victorian Department of Health has been licensing private medical providers, under the *Non-Emergency Patient Transport and First Aid Services* (First Aid Services) Regulations 2021.

The Victorian Department of Health states in their [First Aid Service Provider FAQ](#):

“The aim of these changes is to provide minimum standards in the provision of first aid across public events. Public events can range from small-scale, short duration events to large single day events, large multiday live-in events, and events that travel across the state over several days.”

Music Festival organisers understandably hold neither the skills nor expertise to determine whether a private medical provider quoting for a job is actually able to provide adequate medical care to patrons in need at a festival. With the NSW Ministry of Health’s assessment of a **Safety Management Plan** under the **Act**, which the AFA recommends be renamed a **Medical and Harm Reduction Plan**, festival organisers are able to ensure that their chosen private medical provider will have the right equipment, and roster an adequate number and adequately trained staff that will be able to manage and respond to the expected level of demand by patrons of the medical tent at the festival.

The [NSW Health Guidelines for Music Festival Organisers](#) also assist music festival organisers on the level of private medical provider services required onsite at festivals, in lieu of a formalised licencing regime, as seen in Victoria. A licensing scheme would provide the preferred level of assurance for festival organisers that a private medical provider is able to deliver the service they say they can.

This direct involvement of the NSW Ministry of Health’s Alcohol and Other Drugs team has been transformative for those festival organisers who have been able to work with them. A number of AFA members that are either owned by multinational festival companies or work closely with international promoters have stated that their experience working with the NSW Ministry of Health is world’s best-practice. This is why the AFA would like to see the Ministry’s involvement extended to all music festivals.

In addition to the support provided by the NSW Ministry of Health when planning the level of support required from private medical providers, the introduction of mandatory requirements to engage a Peer-based Harm Reduction Service, such as Dancewize NSW, has been extremely well received by festival organisers, but more importantly, by patrons. The AFA recommends that a requirement to have a peer-based harm reduction service should be extended to all music festivals.

The [NSW Health Guidelines for Music Festival Organisers](#) state:

“Peer-based harm reduction programs can make an important contribution to keeping people safe at music festivals through the delivery of harm reduction strategies onsite. Services that deliver peer-based harm reduction programs are perceived as credible, friendly, and helpful by music festival patrons. This enables them to effectively engage with patrons, deliver information on harms and harm reduction related to alcohol and other drugs, identify patrons in need of assistance, and promote access to appropriate care and support. Peer-based services can also help to ensure that festival goers in need of medical care receive attention sooner.

A ‘peer’ is someone who a patron perceives to be like-minded and similar to them. Market testing with young people in NSW has found that the desirable qualities of a peer include:

- having a non-judgmental, non-authoritarian approach;



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- being an age that is similar to, but ideally a few years older than the patron. The ideal peer is old enough to be experienced and feel credible, but young enough to still be seen as relatable;
- and being approachable, trustworthy, knowledgeable, and experienced.”

Having the Ministry of Health only involved and advising in the planning of **subject festivals** has meant that their expertise has not been able to be utilised or offered to other music festival organisers who, in the AFA’s view, would benefit from their involvement in planning the festival.

The AFA recommends the current regulatory arrangement be changed so that there are no longer two different festival classifications: those designated **subject festivals** and those not.

Rather, the AFA recommends all music festivals are required to submit to the NSW Ministry of Health a **Medical and Harm Reduction Plan** for approval.

The AFA recommends removing the **ILGA** as the approving authority for a **Medical and Harm Reduction Plan** as the NSW Ministry of Health is most qualified and appropriate to advise and approve plans involving the level of service provision by private medical providers and peer-based harm reduction services.

As a result of this change, **ILGA**, Liquor & Gaming NSW, and the NSW Police would still maintain their role as the approver and regulator of liquor licences for music festivals and the AFA is not suggesting that any changes to that regime would apply.

The AFA also would like to state its support and call for the NSW Government to implement the recommendations from both the NSW Deputy Coroner’s Inquest into six drug related deaths at music festivals and the Special Commission of Inquiry into the drug “Ice”. The AFA looks forward to participating in the NSW Drug Summit due to be held in 2024.

6. Administrative obligations

The AFA considers the current administrative obligations requiring briefings with health service providers and incident registers are appropriate and should remain.

7. Enforcement powers

It is the ability to designate a music festival as a **subject festival** which has the main impact on event costs for festival organisers. The AFA believes that by removing those designations, there would be a positive impact and cost reduction for festival organisers, as well as removal of this significant reputational burden.

The AFA would provide enthusiastic consultation on enforcement provisions to ensure festival organisers submit and adhere to their **Medical and Harm Reduction Plan**, as is the case currently for **Safety Management Plans**.

8. Current regulatory arrangement with Liquor & Gaming as lead agency

AFA recommends the NSW Ministry of Health as lead agency is the most appropriate arrangement for ensuring the objectives of the **Act** are met as a result of the AFA’s proposed changes to the **Act**.



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9. Current governance arrangements – the Music Festival Roundtable

The AFA believes the NSW Music Festival Roundtable is an appropriate governance arrangement to improve relations between government and industry, and has welcomed the improvement in the relationship between the AFA, its members, and the NSW Government since inception.

The AFA recommends the addition of an Emergency Services representative (FRNSW, SES and RFS), the 24 Hour Economy Commissioner, and a representative of Dancewise NSW be listed in the Act as members of the Music Festival Roundtable.

Emergency service agencies (mainly SES and RFS, but also FRNSW in some cases) are a key partner agency in the delivery of many music festivals particularly in regional NSW. With the increase in climate-change related impacts, like flooding and bushfires causing cancellations of some festivals, it is entirely appropriate for emergency services agencies to be represented on the Music Festival Roundtable.

Given the reforms to the Office of the 24-Hour Economy Commissioner and the role played by the Commissioner in being a coordination function, and bridge between industry and government, we see the Office's role as complementary to the work of the objectives of the NSW Music Festival Roundtable and both parties would significantly benefit from having the Commissioner on the Roundtable.

Dancewise NSW is the main organisation funded to deliver peer-based harm reduction services by the NSW Ministry of Health, and is the main supplier of peer-based services to AFA members. The AFA recommends it is appropriate for Dancewise NSW to also be represented on the Music Festival Roundtable.

The AFA recommends that the equal number of Government and Industry representatives be maintained.

10. Conclusion

The AFA greatly appreciates the opportunity to submit to this Review. The AFA looks forward to participating in any continuing consultation to finalise the Review.

The AFA remains committed to ensuring the success of the work of the NSW Music Festival Roundtable and the AFA's role as a constructive contributor to any forums that improve the relations between music festival organisers and government agencies responsible for the delivery of the much loved, cultural events that our members produce for the benefit of the community of NSW.

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