

GOVERNMENTAL AS ANYTHING: Live Music and Law and Order in Melbourne

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I INTRODUCTION

Popular music has not historically enjoyed a celebrated place at the policy table of Australian governments. The few strands of popular music policy within Australian arts and cultural infrastructure that have existed have focused on recorded production (small levels of funding assistance for less mainstream recordings) and the protection of those recordings in the local market (radio quotas); or the promotion of Australian recordings overseas (export schemes). Local, live performance circuits, ranging from the large annual festivals and stadium tours to city and suburban bars and clubs, were not considered part of the policy mix for several reasons of history and discourses. Firstly, live, local music performance was not included in the 'excellence' criteria determined by successive federal and state governments that funded 'high art' musics (opera, classical music, music theatre), where, as Tim Rowse has put it, "funding and a reputation for excellence define[d] each other" (1985: 34). Secondly, governments in turn believed that such an overtly commercial sector of the music industry should exist without assistance, a claim periodically made by the music industry itself, which in the main has detested government interference or subsidy. Thirdly, audience attendance at live performance events has always been strong. And finally, the live music venue has been consistently proclaimed as a successful incubator of jazz, pop, blues and rock acts destined for global success. The Australian pub rock experience in particular has distinguished local product in a global market; the renowned ferocity of bands and 'punters' has provided a distinctive regional characteristic to a local industry built upon imported cultural forms.

Of course, where live music has most often appeared is not in the usual debates about selecting the appropriate cultural forms for subsidy, quotas or funding, but in providing sometimes spectacular moral panics that provoke renewed debate about youth behaviour, the scope of night-time economies and the true place of local performance. Examples can be found in all decades and across all genres. Johnny O'Keefe banned in town halls in the 1950s; rockers and surfies clashes in the 1960s; The Go-Betweens told by sturdy male publicans that what they were playing wasn't music, and that a female drummer was unacceptable in the 1970s; the Star Hotel riot in Newcastle in 1979; or re-regulation of nightclubs in the wake of the death of Anna Wood from ecstasy consumption in Sydney in the mid-1990s. This provides an historic and amusing paradox: the explicit and implicit assertion of popular music as 'worthless' disguised the immense amount of effort in policing and regulation. In a broader sense, we could also consider the amazingly long tenure of six o'clock closing in many states, designed to deliver sober heads of the household but in reality produced the mythic effects of the 'six o'clock swill'.

The gradual inclusion of popular music at the policy table began in the 1980s, and Marcus Breen has documented the shift to rock and pop policies in his *Rock Dogs* (1999) book. How and why the Hawke and Keating governments came to support popular culture is a whole other paper, as is the story about how state and local governments began supporting local music in similar ways. I'll return to the flows of regulation, but first let's consider the contemporary ways in which live music is understood in industrial, community and cultural contexts.

II LIVE MUSIC

The Australian music industry was conservatively estimated by the Music Council of Australia to contribute \$6.8 billion to the economy in 2007 (Hoegh-Guldberg 2007). A recent Australia Council arts participation survey found that 'nearly two in three (62 per cent) Australians participated in music in the past year with over half attending live events (57 per cent) and 15 per cent creatively participating'; and over one third (41 per cent) attended a performance in the mainstream categories of pop, rock, country etc at least once in the year (Australia Council 2010, pp. 24-25).

Live performance remains a key source of income for performers, and the least mediated, 'immediate' connection between musician and fan. Live music is at the centre of many tourism campaigns, encompassing festivals, venues, busking, and both original and cover/tribute performers. In the *Vanishing Acts* report I co-authored with Bruce Johnson in 2003 for the Australia Council and NSW Ministry of Arts, we listed the key reasons why live music remains important:

- Ongoing connections with audiences and peers
- Live performance as a marketing tool
- Primary means of income
- Skills development
- Precursor to export

The recording industry confronts various threats to its revenue and copyright structures, with internet 'radio' and digital file sharing predominant among technological shifts away from traditional sales mechanisms. Live music has re-emerged as a crucial revenue source. Consider Madonna's 2008 deal with touring company Live Nation for allegedly \$US120m, ending her association with Warner Music. The contract 'encompasses all of Madonna's future music and music-related businesses, including the exploitation of the Madonna brand, new studio albums, touring, merchandising, fan club/web site, DVDs, music-related television and film projects and associated sponsorship agreements' (Waddell 2007). This new '360 degree' business model represents a shift to other revenue streams by bundling the different production and consumption sectors in the one company: a performance touring company.

Economic importance is, of course, underlined by cultural factors. The suburban or inner city rock pub, jazz restaurant or dance nightclub has always played an important role not just in the lives and careers of individual musicians, but in the life of cities. The famous jazz clubs of New York or the 'swinging' London nightclubs of the 1960s remain vivid examples of how music venues can come to represent distinct regional experiences, as signifiers of a wider cultural milieu. In the particularly Australian context that I will discuss here, live rock, blues and jazz venues have similarly assumed local and national importance as sites where communities are formed, performance skills tested, and reputations earned. In a nation that did not possess sophisticated recording studio facilities until the 1980s, the live moment – and the favoured live venue – has meant more to musicians and audiences than in other places. As Midnight Oil's Peter Garrett stated in 1987, 'Every Australian band comes from a different pub, and it's there they define what they are about. Every band remembers that pub, and it's more than sentimental value; it's something much stronger' (cited in Fiske, Hodge and Turner, 1987). This sentiment holds, as the recent Save Live Australian Music march confirmed.

III THE MELBOURNE 'PROBLEM'

Victoria is rightly proud of the series of licensing reforms undertaken in the 1980s that diversified the state's eating and drinking culture. The 1986 Nieuwenhuysen review of the 1968 *Liquor Control Act*, with many of the recommendations incorporated into the 1988 *Liquor Control Act*, derived from two important foundations: that increasing the times and number of drinking sites did not automatically mean an overall increase in consumption; and that diversification of drinking contexts was needed for the state to extend beyond its pub culture.

However, the liberalisation undertaken in the 1980s has been seriously questioned in the last few years, particularly increases in the number of late trading venues. The key statistic that triggered concerted media campaigns was that assaults in the CBD in 2006-2007 had increased by 17.5%; and that there had been a 24% increase in assaults since 2000 (Rood, 2007). Subsequent editorials, columnists and front page and television reports emphasised that the city's drinking culture was out of control, accompanied by CBD violence and particular binge drinking problems with youth. Some of the headlines betray the consistent narrative: 'The battle of the bottle'; 'Bingeing-we're a sick nation living high on the grog'; 'Hitting the drink'; 'In defence of wowsersism'. The views of both tabloid and other media is summarised in a 2008 article in *The Age*:

Far riskier now is to venture in the early hours along Melbourne's once straitlaced and pin-striped Queen Street, where, according to police, 'alcohol-fuelled anarchy' reigns. A binge drinking culture, coupled with an apparent over-concentration of venues in a couple of city blocks, has led to a rise in assaults, sexual attacks, robberies and homicides in the CBD's entertainment zone (Tippett, 2008).

The state government adopted a strategy familiar to many other Australian councils (such as Newcastle): the lockout, in addition to suspension of licences trading beyond 1 a.m. A trial 2 a.m. lockout for 487 venues began on 3 June 2008, with threats of fines if ignored. Upon appeal from venue owners, the Victorian Civil and Administrative Tribunal granted the right for venues to seek exemptions on the basis of inadequate consultation. Over 120 venues won exemptions, with others threatening a collective restraint of trade action (Houston 2008). While members of its alcohol taskforce complained that other regulatory measures and recommendations were ignored, the government was left with a partial lockout. A further attempt to grant the Director of Liquor Licensing automatic powers to impose 2 a.m. lockout on specific venues was unsuccessful in the Legislative Council. A 'Safe Streets' police taskforce was introduced in July 2008; and 'time out' CBD zones provided for revellers in November 2008. The Melbourne City Council also convened a City Safety Summit in October 2008. In December, a taskforce was engaged in undercover surveillance of clubs and bars.

The range of responses was, not surprisingly, overwhelmed by debate about the lockout. The chief criticism derived from the perceived need to regulate all venues without performing due diligence on the precise sources of drinking-related violence: "A law like this smacks of keeping the whole class in detention because a few kids act up" (Dubecki, 2008).

The chief opposing views were succinctly aired in *The Age*:

The council and the government have been unthinkingly repeating the mantra that Melbourne is a vibrant, 24/7 city. Do they know what they mean? We know that businesses and city workers are as concerned as residents. They also suffer from the broken windows, smashed glass, fear of violence, vomit, excrement and urine - even in the nice part of Collins Street ... let us ensure that November's council elections bring some meaningful 'vibrancy' at the town hall (Peter Mathews, President of Residents 3000, 2008).

The rise of nightclubs on such a scale and in such close proximity and concentration is the antithesis of my Review of the 1968 Liquor Control Act, which was used by the Cain government as the basis for its reforming 1988 legislation. A central plank of that review was the need to move away from the restricted box-like licence structure of the day and to create a flexibility

that would allow the growth of smaller, European-style establishments. This included an explicit condemnation of the beer barns ... Despite the sixfold multiplication of licences over the past twenty years, per capita alcohol consumption has remained stable. The problems ... [are] heavily associated with the large nightclubs in the city (Nieuwenhuysen, 2008).

Two other strategies are relevant here. A Licensing Compliance Directorate was established with a roving commission to enforce compliance of the Liquor Act across all licensed premises; and the introduction of the *Liquor Control Reform Amendment (Licensing) Bill 2009* recast licence fee structures based on risk. Fees were now calculated on (i) a base category fee; (ii) an additional risk fee derived from the premise's compliance history; and (iii) multiplied by venue capacity (Department of Justice 2010a; see online licence fee calculator). The new structure meant lower fees for restaurants; and higher fees for larger venues with late trading.

IV THE LIVE MUSIC VENUE

The state government response was predictable in the context of other state and local government legislation applied across Australia that began to roll back some of the late trading liberalisation of the 1990s. The Victorian landscape and soundscape for music venues has not been exempt from wider changes. The requirement of security personnel ('crowd controllers') had existed for a handful of music venues in 1999; in 2002, other venues found security conditions imposed in relation to late night trading, despite no history of infringements or amenity/violence problems. The number of venues affected increased throughout 2009 and 2010, with the security conditions invoked by the Director of Liquor Licensing for some troublesome venues in the late 1990s incrementally and (in some cases) retrospectively enforced as de facto precautionary measures that assume 'high risk' activity in the absence of infringements. This stipulated that crowd controllers (security guards) be hired at a ratio of two for the first 100 patrons; and one additional controller for every further 100 patrons, in addition to the installation of CCTV cameras. Licensees have been told by the Director of Liquor Licensing that:

... it is the Director's policy to endorse these conditions on a liquor licence where: live or recorded amplified music other than background music is provided; and trading hours endorsed on a licence extend beyond 1 a.m.

Security conditions were and are a normal condition of venue licences that trade beyond 1 am that places premises in the category of being a 'high risk' venue. At the same time, the mere presence of music had become the regulatory catalyst for categorising live performance venues as 'high risk'. Data is still inconclusive as to how many venues where this was pertinent; however, some cases are worth brief description. Small venues, such as the Oakleigh Bowling Club, the Lomond Hotel (Brunswick), the Emerald Hotel (South Melbourne) and the Railway Hotel (North Carlton) faced added security costs to provide blues, pop and other genres to often seated, older audiences. The Greek Deli and Taverna, (Chapel Street), providing rebetika music played by two men, also found themselves categorised as 'high risk' (Bruce-Rosser 2009). Similarly, the Arthouse, a North Melbourne hotel providing a range of 'indie' musics, faced the option of abandoning its post-1 a.m. licence, or retaining it with reduced capacity. According to *The Age*, a Nigel Kennedy performance at Abbotsford Convent was accompanied by two security guards (Williams 2010).

Fair Go 4 Live Music was reactivated from its 2002-2003 campaigns, with representatives from venues, musicians, promoters, radio stations and academics. SLAM (Save Live Australian Music) was also formed to represent similar constituencies. The centrepiece of frustration was the closure of The Tote Hotel (Collingwood) in January 2010. Licensee Bruce Milne cites crowd controller costs as a dominant factor, coupled with the Liquor Control Commission's refusal to grant trading beyond 1 a.m. The closure of a nationally respected venue of twenty-five years' standing was the event that unified the different sectors of the local industry, and confirmed that the 'high risk' category was continuing to claim venues.

On 11 February 2010, Fair Go 4 Live Music and SLAM submitted a letter to Premier Brumby and Attorney-General Hulls after separate meetings with the Director of Liquor Licensing, Sue McLellan, and Consumer

Affairs Minister Tony Robinson. The letter's key point was that the imposition of the 'high risk' category was implemented on less than substantial evidence that music was the problem. Indeed, the Department of Justice's *Liquor Control Reform Regulations: Regulatory Impact Statement* report of 2009 stated that insufficient data prevented any firm, evidence-based conclusions about live music as a risk factor. In one sense, the (lack of) process in the implementation of the 2 a.m. lockout was being repeated. Both shared key processual features: the lack of evidence-based research undertaken to establish amenity and risk problems; the lack of nuanced detail about the history, scope and forms of activity; and the imposition of a blanket approach that bludgeoned premises that were not the sources of the problem. It's also interesting that while the new licence fee structure emphasised risk according to different licence uses and activities, regulation did not follow suit, in failing to produce a graduated assessment of music venues.

By 22 February, a Live Music Accord had been signed by all parties (including the newly minted Music Victoria) (see Department of Justice 2010b). The key concessions stated that:

- The automatic coupling of live music and 'high risk' security conditions on liquor licenses is not appropriate [...]
- Where these conditions have been applied in the last 12 months as a result of the implementation of standard conditions across the State, the State Government will ask the DLL to reverse conditions relating to crowd controllers if: (a) The venue requests such a reversal; (b) The Victoria Police have no objection.

A day after the accord had been signed, the local music industries proceeded with the Save Live Music rally organised by SLAM, with estimates of 20 000 participants and a range of celebrity speeches before Parliament House. While the Premier viewed the march as a 'celebration' of Victorian music, its organisers regarded it as part of an ongoing strategy, mindful that the Accord contains several components of government action and promises.

V THE MUSIC CITY

The 'high risk' saga is instructive for ongoing debates and practices in relation to the 'cultural' or 'creative' city. Australian cities and states have adopted different variations of the UK 'creative industries' concept as a means of connecting themes of individualism and enterprise with culture. This in turn has been coupled with urban policy, with new popular music policies aimed at urban and regional regeneration. The Queensland government's Fortitude Valley Music Harmony Plan is a practical means of reconciling residential concerns in an area renowned for its live venues. A 2001 South Australian report similarly urged the state government to view its local music scene as an important part of the state's economy, and financial incentives were subsequently introduced to support live music and training.

By late 2007, the NSW government had introduced key legislative changes designed to increase the provision of live music, including the streamlining of public entertainment licence processes; the creation of a special category of liquor licence for music and entertainment venues separate from hotel licences; the abolition of the POPE (Place of Public Entertainment) licence that imposed onerous structural conditions for music; and 'order of occupancy' guidelines for venue/resident noise disputes. The establishment of a public entertainment category of liquor licence was crucial, in allowing greater flexibility about the function of venues, rather than their form, and leading to more innovative combinations of dining, music and drinking sites. This was accompanied by a newly installed Premier Morris Iemma reminiscing in the tabloid media about his days as a pub rocker.

The changes in other states recognised the accumulative effects upon live music, including increased commercial and residential rents and the gentrification of CBDs; building code, noise level and venue trading hour issues; shifts to other forms of entertainment, primarily gambling; inconsistencies in local council regulation; and a lack of wider consideration about the place of live music within city-wide cultural planning. The property

boom, and subsequent changes to residential populations, has thus provoked a perverse program of social selection, where the more controlled urban environment sought by the new residents is distinctly at odds with its earlier vibrant, cosmopolitan reputation. The paradox of affluent residents seeking a bohemian culture, only to see it destroyed by their cultural tastes and influence, was not lost on media commentators, venue owners and musicians in other states.

VI CONCLUSION

The struggle for guitar bands and singer-songwriters to obtain decent incomes (or even part-time music careers) has not diminished. The 'natural' economic state – an oversupply of willing musicians and an undersupply of recording labels, live venues, radio stations and audiences – ensures that livelihoods from music activity remain difficult. In debates about night-time economies, at least two distinct narratives of leisure, deviance and social regulation can be discerned. The first sits within a discourse of celebration of the role of the new entertainment-leisure precincts of cities, reflecting not just the acceptance of popular culture as industries, but their importance in promoting a more complex blend of consumerism and city life. The second narrative in contrast details the deregulation of night-time activities, with state and local governments removing controls. The predominance of market forces within the leisure landscape is argued to be at the expense of social order. To this we can add a third narrative: concern with the increasing regulation and surveillance of the leisure consumer. With previously marginal commercial leisure activities now welcomed into the inner sanctum of local government planning, there is a need for new analytical frameworks of their intersection with law and politics.

Music has moved closer to the policy table, evident in arts and community strategies. However, the much harder work in liquor and planning is yet to be done, that ensures the rhetoric of the 'creative industries' translates into more creative spaces in the city. Street busking regulations, or the closing hours of live pubs, indicate the varying state attitudes to both commercial and non-commercial city music activity, and the extent to which the "polite consensus" (Blum 2001: 16) of urban life is allowed to be disturbed. In this sense, the danger of a cultivation of cultural diversity and a 'vibrant' nightlife lapsing into a middle class sameness remains real.

Governments can also too easily fall into simply observing one of the key Foucaultian tenets of governance: that a failure in regulation and policing inevitably leads to greater regulation and policing. This involves governance based simply upon a series of risk management strategies, predicated upon fearing the worst. Instead, regulation should in the first instance ensure that changes represent a collective encouragement for venue owners to not immediately rule out the provision of music as an option. Melbourne is rightly proud of its consistently high rankings in various 'liveability' league tables that pit cosmopolitan cities against each other. Young people in particular consider the forms and frequency of live music available in assessing 'liveability'. This requires both local and state governments to instead think more strategically about the city's role in the provision of music as both commodity and social convention; how live performance connects particular genres to particular spaces. Ongoing reform further afield (e.g. Britain's decision to remove licence approvals for venues with capacities under 100 people (DCMS 2009)) and closer to home (NSW) are being compared to the recent Melbourne debates in relation to industrial and 'liveability' league tables. This requires a radical shift in how state governments view music not as an endless 'problem', but as a valuable cultural resource of both economic and social value.

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