

To: Independent Planning Commission
From: [REDACTED]
Date: 10 December 2018 and 3 January 2019
RE: North Byron Parklands SSD 8169 and MOD3 of the Concept Plan
Attached Document: *Keeping People Safe at Music Festivals* (October 2018)

This is the presentation I gave orally at the Public Meeting, with some elaborations in italics. Additional comments are at the end.

I live in North Ocean Shores, quite near to the site. My comments today are based on my careful reading of the independent reviews commissioned by the Department, the Department's Assessment Report, and the recommended conditions of consent. I also served as a Community Representative on the Regulatory Working Group for two years.

1. The current approval says that any approvals after the trial are supposed to take past performance into account. I learned earlier this year from the Department's head of compliance that a total of 11 breaches of the Parklands consent conditions have been recorded so far. However:

- In March 2014, the first Performance Report included an extensive list of verifiable breaches submitted by a member of the Regulatory Working Group. The list begins on page 517. The Department apparently didn't attempt to verify those breaches. *(They are not listed among the 11 acknowledged breaches.)*
- In March 2016, representatives from two community associations, accompanied by the EDO, met with the Department in Sydney and handed them the latest list of breaches, with 15 areas of concern and multiple items in each category. The Department apparently didn't attempt to verify those, either. *(They are not listed among the 11 acknowledged breaches.)*
- In July of this year, I informed the Department of a breach having to do with how the community was notified of the Splendour event. I asked for a reply but did not get one. I assume that has also been ignored. *(It is not listed among the 11 acknowledged breaches, and the same issue occurred with the Falls 2018 notification.)*
- To date, a coalition of community associations and individuals have noted over 100 verifiable breaches of the consent conditions, 10 times what the Department's compliance office acknowledges. *(The Department has expressed no interest in receiving information about these breaches.)*

I thought consent conditions were supposed to matter and that informing the Department of verifiable non-compliances would also matter. Apparently that has not been the case.

If any further approvals are given, what's needed is diligent independent monitoring of compliance that is fully responsive to local information about non-compliance. The Department's recommendation to have Parklands continue to handle its own compliance monitoring is not acceptable.

2. In 2012, the Planning Assessment Commission ruled that Byron Council would be in charge of granting any further approvals for festivals after the trial period, and we shire residents

expected local control of the development would be restored. This whole process undermines that intention of restoring local control, and I strongly object to that. (*See the 2012 PAC's Final Determination Report for the reasoning on this point.*)

3. The use of a Regulatory Working Group to oversee operations is certainly a good idea if further approvals are given, but the RWG needs to play a truly independent advisory role. That means the chair should be answerable to the Department, not to Parklands. I didn't see that when I was on the RWG. I saw group that was controlled by Parklands, with that control fully supported by the Department.

4. Parklands says the festivals cause no ecological impacts or only temporary impacts, but experienced ecologists have found serious flaws in their ecological monitoring and have noted that conclusions cannot rightly be drawn on the basis of available data. You can understand the arguments if you have been trained in measurement and statistics, and I have had that training. The Planning Department has ignored these criticisms and has accepted Parklands' assurances that there are no ecological impacts. That's not good enough when the site is bisected by a significant Wildlife Corridor and is immediately adjacent to a significant Nature Reserve. A thorough, independent review of the ecological monitoring to date is needed, including a thorough review of the critiques of the monitoring so as to inform future actions. Annual independent audits of the ecological monitoring and management are also needed. (*Attention should be paid equally to the area within the Parklands boundaries and the Nature Reserve, Wildlife Corridor, and SEPP Wetlands adjoining the property.*)

5. The Department's recommended conditions of consent seem to have been done in haste. For example, a Key Performance Indicator for noise is far too vague and subjective. Some conditions recommended by the Rural Fire Service are not included, and some conditions recommended by the independent reviewer of the wastewater plan are also not included. The omissions are puzzling. Furthermore, no Key Performance Indicators relating to ecological impacts are included although that has been an ongoing issue at RWG meetings and within OEH. Finally, many of the conditions require reporting but omit Byron Council and Tweed Council as recipients of the reports. The intent seems to be purposely keeping the Councils out of the way as was done during the trial period. That needs to change. And it's also not good enough to give permanent approval and agree that all the details can be worked out later (*which is what the Department's Assessment Report is recommending.*)

6. The Department is recommending permanent approval for any and all events that the current or future property owners may want to hold, without knowing for sure what those events might be. Any breaches of the consent conditions will presumably be handled with penalties after the fact but will not affect the permanent approval. That means penalties, if they are even levied, will simply become a cost of doing business.

The licencing used by the government-owned venues in Sydney would be a better model to follow, with each event having to apply for a licence to operate—a licence that may or may not be renewed. In this case, because some of the owners of Parklands also operate the festivals, as principals in a separate company, Parklands couldn't be allowed that authority because they would be issuing licences to themselves. A government authority, preferably local

Council, should be in charge of the licencing and on setting the conditions that must be met to obtain a licence.

7. Not long ago, Premier Berijikian expressed outrage about drug-related incidents and deaths at the Defqon festival in Penrith and suggested it should be banned altogether. That festival drew 30,000 people; 70 people were charged with drug offenses; two people died. In comparison, this year's Splendour drew 35,000 attendees, and 115 people were charged with a total of 148 drug offenses. Two people have died at Parklands festivals so far: Falls 2013 and Falls 2014.

The premier again expressed grave concern about the drug-related death and critical illnesses, along with drug charges, at the Olympic Park festival for 18,000 on Saturday (8 Dec).

Drugs are an integral part of music festivals. As we have seen at Parklands, the number of charges is directly related to how many people the police are able to check. Locals who have attended the festivals know that a great number of people are not checked on entry, especially if they arrive late in the day.

Parklands festivals will inevitably lead to more drug-related illnesses and deaths. To think otherwise is naïve. And the more people allowed on site, the more difficult it will be to control the illegal substances. Police and medical personnel will continue to be pushed to the limit. More tragedies are to be expected, despite the promoters assurances to the contrary. And we who live in the area will continue to face more drugs in the area as a direct result of the festivals.

I call your attention to the expert panel recently convened by the state government to study this. Their report calls for the use of a specific music-festival licence that would govern such events. Everything in that report indicates that giving permanent approval for music festivals at Parklands would be quite unwise. For details, see *Keeping People Safe at Music Festivals*, October 2018. (The report is attached here.)

I have other points for you to consider that I don't have time to cover here. I will send these comments and those additional points in writing.

END OF ORAL PRESENTATION

Additional comments:

8. Representatives of the indigenous community raised concerns at the Public Meeting, about being left out of the consultation. I went back through the cultural heritage documents that Parklands has presented in the past along with the one submitted with this current proposal, and I can see that the claims are justified. The right people have not been consulted; their voices have not been heard. This is a major injustice that needs to be rectified.

9. I have concerns about the Department's Assessment Report with regard to noise impacts, based on the history of noise limits at Parklands. Briefly:

- a. In 2012, the PAC imposed background+ limits on the noise because of the extremely quiet ambient noise in the area. Parklands had trouble staying within the limits and said they were unreasonable, claiming that festival-goers expect loud music.

- b. RWG recommendations called more than once for lowering the noise limits, but the Department rejected those recommendations in favour of the developers. (At one point, the Department claimed that because these recommendations did not come from the RWG as a whole, they could be safely ignored. That resulted in a change in the Terms of Reference for the group, whereby it was agreed that a recommendation from one or more RWG members did not require consensus from the other members to be valid and worthy of the Department's attention.
- c. The developers applied for MOD3, which proposed increasing the allowable limits. They claimed this would improve the situation by providing certainty for residents.
- d. MOD3, approved by the PAC in 2016, increased the noise limits at the closest sensitive receivers by 10-20 decibels, depending on time of day. The increase made it easier for Parklands to stay within the allowable limits, but festival noise continued to disturb residents in the area.
- e. The developers prided themselves on establishing limits on bass noise with MOD3, saying none had been established before. This is not strictly true because the original consent conditions included Parklands' Statements of Commitments, one of which promised to "*Control the bass frequencies by control of the dB(C)max levels*". The measurement unit dB(C)_{max} is actually stricter than the approved MOD3 dB(lin)L_{eq} because the "eq" unit of measurement is a kind of average of noise over time, whereas "max" is just that: the maximum allowed. So the original statement of commitment was more strict than the modification.
- f. The current Department recommendation uses the MOD3 limits, thereby favouring the festival-goers' expectations of loud music over residents' expectations of peace and quiet. That is an unreasonable recommendation, especially since the state has imposed this development on the area and has refused to allow our local council to set the noise limits or even monitor the noise.

Note: In February 2018, a Department executive noted to me and others in conversation in Ocean Shores that Parklands' noise consultants had measured ambient noise levels near the site and found them to be 30dB(A). He shook his head in disbelief and said, "That's as quiet as a library!" I responded, "True. Much of the surrounding area IS as quiet as a library, especially at night, which is why the noise from the festivals is so disturbing to so many of us." He did not respond but implied by his demeanour that we were being unreasonable in expecting to maintain such a level of quiet.

The same Parklands-paid noise consultants pointed out that the noise limits ought to be 35dB L_{Aeq} according to the NSW Industrial Noise Policy. That INP is the required guideline for this development, according to the SEARS. (See Appendix L of the EIS, Section 2.2, especially 2.2.1.3 on page 20.) Parklands has claimed that the INP is not relevant even though the SEARS require its use, and the Department clearly agrees with Parklands. The discrepancy is perplexing. One would think that the Department would support its Secretary's own requirements.

The main point about noise is that regardless of what the nominal limits are, *if people are disturbed, the noise is too loud.*

I and others are disturbed repeatedly by festival noise, but calling in complaints has made little difference. We are told we are the only ones to have complained or that the noise is within

the limits or that they will have to send someone out to verify. We have simply given up complaining, not because we're happy about the noise but because complaining simply doesn't do any good.

The ordinarily very quiet location of North Byron Parklands is not suitable for large outdoor music festivals with multiple sources of heavily amplified music and the ongoing drone of generators. If any further approval for festivals is given, the scale of the events and the noise limits should be reduced, not only to protect residents but also to protect the wildlife that inhabit the Wildlife Corridor, the Nature Reserve, and the SEPP wetlands.

10. The festivals that have been held at the site during the trial are known for their encouragement to attendees to "express themselves" in the clothes and ornaments they wear. Plastic glitter has become the norm, which is extremely concerning. The substance is not biodegradable and because it is such a popular decorative item, sizeable amounts of glitter end up flaking off and being ground into the soil and washed away into the drains. Glitter is a recognised negative impact on the environment and should not be allowed on a site so close to a major Wildlife Corridor, Nature Reserve, and SEPP Wetlands. For more information, please see the following information, which provides more details about the negative ecological impacts of this substance:

- <https://www.lipstiq.com/2017/149041/glitter-awesome-killing-environment>
- <http://greenanswers.com/question/how-does-glitter-harm-environment/>
- <https://www.allure.com/story/glitter-makeup-environmental-effects>

11. The Department's Assessment Report says that this proposal is for the same number of days that has already been approved and thus there's no increase of activity on the site. That's simply not true, as this comparison shows:

Current approval (daily attendance):	What is proposed (daily attendance):
> 10 event days for Large events (35,000) Medium events (25,000) Small events (15,000) > No event to exceed 4 days in duration > 10 non-music community events (1,500)	> 18 event days for big events: 5 event days for Splendour (50,000) 5 event days for Falls (35,000) 3 event days (25,000) 5 event days (5,000) > 2 community event days (1,500) but not specified as "non-music" > Significant increases in festival parking and camping
	Year-round conference centre for 180 + parking Year-round accommodations for 120 + parking Year-round public bar + parking

Note: During the trial, one large 3-day event and one medium 3-day event have been held annually. The plans now are to increase the attendance and extend the duration of both events (if they actually continue to be operated on the site) and add many more intrusive events during the year. This is clearly increased activity on the site, and as an affected resident, I strongly object to it.

Keeping People Safe at Music Festivals

**EXPERT
PANEL
REPORT**



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COVER LETTER

Dear Premier

On Saturday 15 September 2018, two young people lost their lives at a music festival and many others suffered drug-related harms. Following these tragic events, you asked us to advise the NSW Government:

- whether new offences or increased penalties are required to stop drug dealers endangering lives
- how music festival promoters and operators can improve safety at their festivals
- whether improved drug education is required to address the increase in illegal drug use in our community.

Thank you for referring these important issues to us. Music festivals contribute to local economies and are highly valued by many in the community. Throughout the year, NSW hosts music festivals that vary in size, location and audience. The Panel has focused on large-scale music festivals attended by people aged 18 to 29 because of the drug-related harms that have been linked to these festivals. The focus is on these festivals continuing and being safer.

In approaching these issues, we were guided by the following principles:

- Attending music festivals should be a safe and positive experience for young people.
- Event organisers are responsible for providing a safe environment for festival attendees.
- There is no one-size-fits-all approach – solutions must reflect festivals' different risk profiles.

The Panel recommends a balanced package that maximises prevention while addressing the serious criminality of illicit drug supply. The Panel recommends the Government consider measures including:

- a new 'music festival' licence with Safety Management Plans tailored to the festival's risk
- development of a guide for health services and harm reduction services at music festivals
- improved drug and alcohol harm reduction programs and messages for festival attendees
- on-the-spot fines for possession of prohibited drugs
- a new offence for drug supply for financial or material gain causing death.

We extend our sincere thanks to those we consulted and those who wrote to the Premier on these issues. In developing this report we were conscious of ensuring young people had a voice, and we are particularly grateful to the NSW Youth Advisory Council for its input. The Panel acknowledges that numerous stakeholders raised the issue of 'pill testing', which is outside the terms of reference. In tasking the Panel, the Premier made clear that the NSW Government has no tolerance for illegal drugs and pill testing is not within the terms of reference. The Panel recognises that drug policy is an evolving space, and that policy makers may have regard to any new evidence as it arises.

Always present in our thoughts are the young lives that have been lost, and the impact on their loved ones, families and communities. We are confident that recommendations in this report will help to improve the safety of people who attend music festivals across NSW.

- Mick Fuller APM, Commissioner - NSW Police Force
- Dr Kerry Chant, Chief Health Officer - NSW Ministry of Health
- Mr Philip Crawford, Chair - Independent Liquor and Gaming Authority

Three handwritten signatures in blue ink are displayed horizontally. The first signature is a stylized 'M' with a small 'AM' to its right. The second signature is 'K Chant'. The third signature is a cursive 'P Crawford'.

1. EXECUTIVE SUMMARY

The Expert Panel makes seven recommendations for the NSW Government to consider. Given the short timeframe in which this report was prepared, more analysis and consultation on some issues is needed if the Government accepts the recommendations. This is particularly the case for the recommendations in *Part 6 – New opportunities to strengthen offences and penalties*, given the legal complexities.

In proposing a new offence for drug supply causing death, the Panel highlights its strong view that the intent is to target drug supply for profit, rather than the ‘young friends’ scenario.

The Panel wants to reserve the harshest penalties for drug dealers, rather than drug supply between friends. If the Government accepts this recommendation, the Panel wants to ensure this intent is met.

The Panel also has regard to the current regulatory arrangements that seek to ensure safety at music festivals, but notes they are ad hoc and inconsistent. Research and consultation undertaken during the development of this report also demonstrates the varying risk profiles of music festivals across the state. The Panel believes that in the spirit of ensuring a streamlined regulatory approach, a tiered system of regulation should be introduced.

Regulatory

Recommendation 1: Develop a consistent approach to the regulation of music festivals. This could be through the introduction of a new category of liquor licence specific to music festivals.

Recommendation 2: Require organisers to develop and adhere to a Safety Management Plan for their event, supported by a two-tiered system of risk, with variable regulatory conditions.

Recommendation 3: Consider establishing an interagency committee to assess and manage an event organiser’s approach to event risk.

Harm reduction programs and messaging

Recommendation 4: Strengthen drug and alcohol harm reduction programs for music festival attendees.

Recommendation 5: Develop best practice guidelines for event organisers on harm reduction approaches and messages.

Offences

Recommendation 6: Trial the use of Criminal Infringement Notices (on-the-spot fines) instead of Court Attendance Notices for drug possession offences at or in the vicinity of music festivals.

Recommendation 7: Investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result.

The Panel acknowledges that the NSW Government will need time to consider, respond to, and potentially implement these recommendations. There are also a range of agencies and other stakeholders that will be key partners during the implementation of any of the recommendations. The Panel would be pleased to reconvene twelve months after implementation to review progress.

Given this summer will be a peak period for music festivals, the Panel recommends that event organisers and government agencies continue to work together as productively as they have with the Panel. Ongoing collaboration will support voluntary changes in the short-term to provide immediate benefits.

2. BACKGROUND

2.1 What happened at Defqon.1

On 15 September 2018, a 23-year-old man and a 21-year-old woman died after collapsing at the Defqon.1 music festival in Penrith, Sydney. Around 30,000 people attended the festival, which was held at the Sydney International Regatta Centre. In addition to the deaths, seven people were admitted to hospital for drug-related illness. Three of the seven people were admitted to intensive care units.

The NSW Police Force (NSWPF) conducted a number of drug searches. A range of illicit drugs were seized, including MDMA/ecstasy (3,4-methylenedioxymethamphetamine), cocaine and GHB (gamma hydroxybutyrate). 70 people were charged with drug-related offences, including:

- a female born 1998 charged with supply of a prohibited drug – found in possession of 114 MDMA capsules inside a condom in her underwear.
- a female born 1997 charged with supply of a prohibited drug – found in possession of 100 capsules of MDMA in her vagina.
- a male born 1984 charged with supply of a prohibited drug – found in possession of 243 grams of MDMA in his underwear.

The temperature at Penrith on 15 September 2018 reached 33 degrees Celsius – 10 degrees higher than the September average. This contributed to some of the presentations to on-site medical services.¹

Defqon.1 operated under the Regatta Bar and Kitchen licence, which was granted in 2008. There was no requirement for the event organiser to engage with the Independent Liquor and Gaming Authority or Liquor and Gaming NSW.

2.2 NSW Government response

On 18 September 2018, the Premier established a Panel to advise:

- whether new offences or increased penalties are required to stop drug dealers endangering lives
- how music festival promoters and operators can improve safety at their festivals
- whether improved drug education is required to address the increase in illegal drug use in our community.

The Panel was asked to consider input from the community and key stakeholders, including music industry representatives and local government.

The NSWPF formed Strike Force Highworth to investigate the deaths. There will also be a coronial inquest into the deaths.

¹ Australian Government, Bureau of Meteorology, 2018 retrieved at http://www.bom.gov.au/jsp/ncc/cdio/weatherData/av?p_nccObsCode=122&p_display_type=dailyDataFile&p_startYear=&p_c=&p_stn_num=067113.

2.3 Drug use by young people

Since 2010, drug use has remained stable in people aged 20-29 years in NSW.² However, studies at music festivals across Australia reflect a considerably higher rate of illicit drug use than in same-age groups in the general population.³ Most of the 1,808 drug-induced deaths in Australia in 2016 were not related to music festivals.⁴ A study at a music festival in Australia in 2011 found 52 per cent of attendees had used illicit drugs at least once.⁵ The most recent household survey of drug use showed 43 per cent of Australians aged 14 years and older had used illicit drugs at least once in their life.⁶

Recent studies of 'party drug' use (drugs routinely used at nightclubs or dance parties) show that ecstasy and cannabis were the drugs of choice.⁷ Use of ecstasy pills has declined and use of capsules and crystal increased – partially explained by the perceived purity of ecstasy capsules and crystal.⁸

Table 1 provides information on medical incidents at music festivals on land managed primarily by the Office of Environment and Heritage between July 2017 and September 2018.

Presentations to on-site medical services vary in severity and the majority of presentations are minor, including headaches and requests for sunscreen and Band-Aids. However, where serious drug-related illness occurs, patients require urgent medical treatment in hospital. Ambulance transfer of these patients to an appropriate treatment setting should not be considered an adverse performance outcome. Rather, early identification and rapid transfer of these patients should be encouraged.

The data below does not reflect deaths during music festivals. There have been four deaths in association with Defqon.1 in Australia – one in 2013, one in 2015, and two deaths in 2018. Over the past five years, there has been one death in association with a music festival on Botanic Gardens and Centennial Parklands Trust land – at Harbourlife in 2014. In 2015, there was a death in association with the Stereosonic music festival at Sydney Olympic Park.

Table 1. Medical incidents at music festivals and concerts on land managed by Botanic Gardens and Centennial Parklands Trust, Western Sydney Parklands Trust, Parramatta Parklands Trust, Sydney Olympic Park Authority, July 2017 – September 2018⁹

Event name and location	Date	Capacity	Total presentations to on-site medical	Drug and alcohol related presentations to on-site medical services	Total ambulance transfers	Drug-related ambulance transfers
Listen Out	30-Sep-17	30,000	198	12 drug	6	1
Centennial Park, Brazilian Fields						
Midnight Oil x 2	11 & 17-Nov-17	48,000	134	0	5	0
The Domain, Phillip Precinct						

2 Australian Institute of Health and Welfare 2017. National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics series no. 31. Cat. no. PHE 214. Canberra: AIHW.

3 Niamh Day et al, 'Music festival attendees' illicit drug use, knowledge and practices regarding drug content and purity: a cross-sectional survey', (2018), 15(1) Harm Reduction Journal.

4 Australia Bureau of Statistics – 3303 Causes of Death, Australia 2016. <http://www.abs.gov.au/>

5 Ibid.

6 Australian Institute of Health and Welfare, National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics series no. 31. Cat. no. PHE 214. Canberra: AIHW (2017), p. 53.

7 Peacock, A., et al, Australian Drug Trends 2018. Key findings from the National Ecstasy and Related Drugs Reporting System (EDRS) Interviews. Sydney, National Drug and Alcohol Research Centre, UNSW Australia, (2018).

8 Ibid.

9 Data compiled by Office of Environment and Heritage, the Office of Sport and NSW Ministry of Health.

Harbourlife	18-Nov-17	5,500	29	2 drug	0	0
The Domain, Fleet Steps						
Alison Wonderland	9-Dec-17	5,000	124	2	1	0
Lizard Log, Western Sydney Parklands						
Field Day	1-Jan-18	26,618	189	9 drug	6	4
The Domain, Phillip Precinct						
FOMO	13-Jan-18	18,000	491	9	0	0
The Crescent, Parramatta Park						
The XX Concert	20-Jan-18	12,500	30	0	0	0
The Domain, Fleet Steps						
Electric Gardens	27-Jan-18	11,200	49	4 alcohol and/or unconfirmed drug	2	0
Centennial Park, Brazilian Fields						
Sydney City Limits	24-Feb-18	14,170	80	2 unconfirmed drug/ alcohol	1	0
Centennial Park, Brazilian Fields						
Jumanji	10-Mar-18	8,000	99	1	2	0
The Crescent, Parramatta Park						
Defqon.1 Festival Australia	15-Sep-18	29,989	696	30 (25 drug-related)	6	3
Sydney International Regatta Centre, Penrith						
TOTAL		208,977	2,119	≈ 71	29	8

3. WHAT THE NSW GOVERNMENT DOES NOW

3.1 Regulation of music festivals

The Panel recognises that there are already ad hoc measures in place that seek to support safety at music festivals. There are a variety of responsible authorities that play a part in approving different aspects of a music festival's operation. This is due to the various locations that music festivals are held, and the different types of events that are held.

There is no common mechanism to facilitate consideration and planning around drug risk management. Operational arrangements to mitigate drug risk are often addressed within other event plans, such as medical and security plans.

Development application

The local landowner, often the local council, is responsible for approving an event through a development application. This generally requires event organisers to submit various management plans. Development applications for music festivals can only be approved when a liquor licence has been granted.

Engagement with NSW Health

Currently, there is no regulatory requirement for event organisers to work with NSW Health. However, NSW Health has directly approached organisers planning to hold events on land managed by the Office of Environment and Heritage. NSW Health encourages these event-organisers to deliver harm reduction messages to attendees.

Some local health districts (LHDs) also actively participate in local council meetings on pre-event planning and risk management, but this is not consistent or done on a regular basis. LHDs provide advice on health messaging, event amenities, and first aid or other health services. The Ambulance Service of NSW also engages directly with some event organisers.

Liquor licences

Music festivals are regulated under the Liquor Act 2007 (NSW) and the Liquor Regulation 2018 (NSW) by:

- the Independent Liquor and Gaming Authority (the Authority), which is a statutory body that is independent of government; and
- Liquor and Gaming NSW (L&GNSW), which is an agency in the Department of Industry.

L&GNSW provides administrative and processing functions to support the Authority, and makes some licensing decisions under delegation from the Authority. L&GNSW also has a compliance and enforcement function, and works closely with NSWPF. L&GNSW refers enforcement regarding drug-related activity to NSWPF.

As of October 2018, music festivals are licensed to sell liquor in several ways, including through existing on-premises licences, as was the case for Defqon.1. Other common licensing options for music festivals include:

On-premises licence with a sale on other premises authorisation

- This allows the licensee to sell alcohol at an otherwise unlicensed site, as long as it is not the business's primary purpose. This means a caterer can sell alcohol off-site with food.
- For events for more than 2,000 people, the applicant must notify L&GNSW, NSWPF and the local council 28 days before the event.

Limited licence for a special event

- Selling alcohol must not be the special event's primary purpose.
- The applicant must notify NSWPF, the local council, and L&GNSW.
- NSWPF generally liaises with the applicant regarding conditions on the licence.
- For events for more than 2,000 people, the decision maker can refuse to grant the licence if the application is made later than 28 days before the event. The applicant is also required to have an extra tier of Responsible Service of Alcohol qualification.

3.2 Harm reduction programs and messaging

NSW Health funds two Non-Government Organisations to deliver harm reduction programs at music festivals, including:

- Australian Red Cross (ARC) – \$149,516 in 2018-19 to deliver the save-a-mate program, which provides peer education and a staffed chill out space; and
- the NSW Users and AIDS Association (NUAA) – \$500,000 in 2017-18 and 2018-19 to develop and deliver DanceWize NSW, which also provides peer education and chill out spaces.

In 2018-19, save-a-mate and DanceWize NSW will support 26 events.

NSW Health also produces content for Your Room, a joint website by NSW Health and St Vincent's Alcohol and Drug Information Service, to encourage young people to reduce their risk, for example *'Top tips to stay safe at music festivals'*. Your Room receives roughly 7,000 visits per month.

Drug education forms a part of the NSW Department of Education's mandatory curriculum and the focus is on the drugs that young people are most likely to be exposed to. Schools are also required to implement a Drugs in Schools Policy. This policy sets out requirements for schools to implement responses to drug-related incidents. The emphasis is on prevention through drug education and safe and supportive school environments.

3.3 Offences and penalties for supplying drugs

NSWPF is responsible for policing music festivals in NSW, and works closely with event organisers and other agencies, including NSW Health and L&GNSW, to protect festival attendees.

NSWPF regularly provides extensive policing resources to compliment user pay and event management operations to increase safety at these events. NSWPF use diverse strategies to ensure safety, including: high visibility, covert, drug detection dogs, crowd control, hostile vehicle mitigation, and traffic management. While drug detection and prevention are a key focus, NSWPF also deals with other crimes, including assault, sexual assault and theft.

NSWPF and event organisers provide media statements before festivals, notifying people of the likely use of drug detection dogs. NSWPF, on the authority of the licensee, can deny someone entry if a drug detection dog makes a positive indication.

The penalty for possession of prohibited drugs is \$2,200 (20 penalty units), imprisonment for two years, or both. The penalty for supply of prohibited drugs (depending on the amount of prohibited drug) if dealt with summarily ranges from \$5,500 to \$11,000 (50 to 100 penalty units), imprisonment for two years, or both. For supply offences dealt with on indictment, a fine of up to \$220,000 (2,000 penalty units), imprisonment for 10 years, or both applies.

4. NEW OPPORTUNITIES TO STRENGTHEN REGULATORY ARRANGEMENTS FOR MUSIC FESTIVALS

The Panel notes that the existing regulation applied to music festivals in NSW is largely ad hoc, with different approaches taken depending on where the festival is held. The Panel has regard to the current arrangements, noting the proposals below are designed to strengthen the regulatory system, and provide a more consistent experience for event organisers.

Above all, the Panel recognises that there is a community expectation that when large events occur, patrons can be assured of their safety. Generally, the best method available to governments to achieve this is through a licencing system. The Panel's proposed approach recognises that some events are riskier and require closer scrutiny.

4.1 A new licensing system for music festivals

In NSW, music festival regulation is inconsistent due to several factors, including highly variable event types, locations and responsible authorities. Event approval generally rests with the landowner (in many cases, the local council). Therefore, there are varying approval processes and requirements.

Recommendation 1: Develop a consistent approach to the regulation of music festivals. This could be through the introduction of a new category of liquor licence specific to music festivals.

This would ensure all music festivals are subject to a consistent and rigorous regulatory regime. This approach would also take advantage of existing legislation and assessment processes.

Recommendation 2: Require organisers to develop and adhere to a Safety Management Plan for their event, supported by a two-tiered system of risk, with variable regulatory conditions.

A Safety Management Plan would consolidate various planning and risk assessment requirements (many of which already occur). The plan should include liquor, health and policing measures. The plan would need to be assessed by the relevant authorities.

A two-tiered system of risk, with variable regulatory requirements, recognises that some events are higher risk than others. It also demonstrates a streamlined and adaptable regulatory approach.

The proposed system is based on enforcement of a Safety Management Plan as part of a liquor licence. Drug and other risks (e.g. crowd control) are still present even where alcohol is not provided. Encouraging 'BYO' increases risks in relation to alcohol consumption. The Panel recommends that all music festivals be required to obtain a liquor licence (specific to a music festival) in order to prevent such events from being operated as 'BYO' and thereby avoiding regulatory scrutiny.

Recommendation 3: Consider establishing an interagency committee to assess and manage an event organiser's approach to event risk.

An interagency committee would help address the current ad hoc approach to regulation, and would also streamline stakeholder consultation. The committee could be used to consider an event's risk profile, and the adequacy of measures put in place by event organisers. However, the Panel does not prescribe requirements for this committee, but notes that it should focus on an event's specific needs.

The Panel considers it desirable that such committee(s) would have different membership according to the event's location (i.e. local council).

The use of an interagency committee to determine a festival's risk profile could ensure an ongoing ability to share outcomes and knowledge as this system develops.

4.2 A risk-based approach

A key aspect of the Panel's proposed approach is the categorisation of specific events into one of two risk tiers. To determine risk, a proposed event should be assessed against a set of risk factors.

Definition of music festival: A music festival is a music-focused event, often involving performances by multiple music artists and held at an entertainment venue (indoor or outdoor) where 2,000 or more attendees enjoy a range of music for anywhere between several hours and several days.

The Panel notes the challenge in arriving at a comprehensive and appropriate definition. Events should be assessed as to their risk, rather than whether they meet the specific definition. In assessing the risk of a music festival, an interagency committee will need to have regard to the location. A 2,000 person event in metropolitan Sydney may not constitute as high a risk as one held in regional NSW, where access to emergency services may be limited.

The term ‘dance parties’ is often used to describe similar events, and may present similar risks to events considered ‘music festivals’, depending on the scale of the dance party.

In assessing the risk tier of music festivals, the Panel recommends considering the following indicative risk factors (**Table 2**). One factor alone may constitute a ‘higher risk’ determination for a festival. However, this list is not exhaustive and other factors may be considered to identify a festival’s risk profile.

Table 2: Indicative guide to assess the risk of a specific music festival

Indicative risk factor
The event targets people aged 18-29 years.
Attendee numbers are high relative to available services at the location.
The event is held over a long time (e.g. six hours or more), and/or extends past midnight.
Anticipated weather conditions, in particular heat.
The event has limited access to acute hospital services.
The event operator/organiser is inexperienced.
Events by this organiser or landholder in the previous three years have seen:
a death or serious medical presentation as a result of alcohol or other drug-use, crowd behaviour or improper safety management
a high rate of drug or alcohol-related medical presentations*
a high rate or probability of illicit drug supply or use.

* Note that early identification and rapid transfer to hospital of patients with drug-related illness should be encouraged. Requests for ambulance transfer should not be considered an adverse performance outcome.

4.3 Safety Management Plan: A tiered system of conditions

The Panel recommends a two-tiered regulatory system, with music festivals (and similar events, such as dance parties) automatically considered ‘base tier’. This recognises the inherent risk associated with music festivals.

The Panel acknowledges the wide range of conditions that currently apply to event organisers. These requirements, at a minimum, should remain if an event is assessed as ‘base tier’. However, current conditions are inconsistent and do not always reflect best practice. Accordingly, current and other base requirements should be codified into a Safety Management Plan, enforced by way of a new liquor licence, with which event organisers must comply.

The Panel recommends strengthening current conditions by including additional safety management requirements in the Safety Management Plans for ‘higher risk’ festivals.

The Panel notes that landowners/local councils have their own approaches to event approval, and that there are varying degrees of rigour around event assessments. The Panel’s proposed system ensures a consistent and rigorous regulatory approach regardless of the landowner’s approach.

Table 3 is an indicative outline of the Panel’s proposed system of assessing risk, and what is thereby required of event organisers. It demonstrates that more stringent assessments would apply if an event is determined to be ‘higher risk’. The approach outlined is not exhaustive. The Panel notes further work on designing this system is required.

Table 3: Indicative tiered system of conditions

Interagency Committee Consists of relevant authorities (e.g. NSW Police Force, NSW Health, L&GNSW, Local Council)	
Safety Management Plan	
Base Tier Characteristics	Higher Risk Tier Characteristics over and above base tier
Risk assessments, plans of management, and other assessments are required. These requirements should be, at a minimum, what is required currently. Further work is required to formalise and describe what is required of event organisers.	Risk assessments, plans of management, and other assessments are required. The requirements will become more stringent and closely scrutinised if an event is in the ‘higher risk’ tier. The requirements are over and above the ‘base tier’, recognising an event’s higher risk. (For example, more stringent on-site medical service provider requirements)

5. NEW OPPORTUNITIES TO IMPROVE HARM REDUCTION PROGRAMS AND MESSAGING

Recommendation 4: Strengthen drug and alcohol harm reduction programs for music festival attendees.

There is a need to strengthen drug and alcohol harm reduction programs to prevent deaths and drug-related harms at music festivals in NSW.

The Government could, for instance:

- **increase coverage** of evidence-based harm reduction programs before, during, and after, music festivals in NSW
- **provide additional support for health professionals:** Support primary care providers in providing drug and alcohol and harm reduction information and messages to young people and their families. This would include additional training, education, and resources for general practice
- **enhance use of social media and other platforms** for delivery of harm reduction messages and programs, which are co-designed with young people and targeted at particular groups.

Recommendation 5: Develop best practice guidelines for event organisers on harm reduction approaches and messages.

Current harm reduction approaches and messages delivered at music festivals are inconsistent. Best practice guidelines could increase consistency and maximise effectiveness. Event organisers should be responsible for funding harm reduction programs at their events.

The guidelines could include advice, for instance, on:

Harm reduction approaches

- **Peer education:** Peer educators who provide drug and alcohol health promotion messages and assist people in getting to medical tents.
- **Chill out spaces:** Offering a safe, supervised space where people can come if they are feeling unwell (including after taking drugs). This space allows them to rest and be monitored, or taken to a medical tent if required.
- **Training for non-health professionals:** Such as event, security and bar staff – on how to identify ‘at risk’ attendees and provide support and referral to health services.
- **On-site medical services:** Services need to be highly visible to patrons. Police should not routinely be in the vicinity of the medical services and chill out areas, but may attend as requested to support staff. This will help achieve a balance between the need for a policing presence at music festivals, while ensuring those needing assistance are not discouraged from seeking help.
- **Secure medical waste bins:** There should be secure medical waste bins in medical tents to enable people to safely throw out unwanted drugs or drugs they may have inadvertently found, rather than consume them or have them be found by other festival attendees. The bins should be in a discreet, secure area.
- **Intoxicated festival attendees:** Organisers should ensure that due diligence is used when ejecting an intoxicated individual from a festival. It may be more appropriate for the individual to be transferred to the medical tent or chill out space rather than ejected from the festival.
- **Provision of alcohol and drug treatment advice and referral options at music festivals:** Festival attendees may be motivated to seek help to change their behaviour while in these settings.

*Harm reduction and health promotion messages***• Messages content:**

- Messages should encourage people to seek help early if they experience adverse effects after substance use.
- General messages could include, for instance:
 - pace yourself
 - take your time to chill
 - stay hydrated: free water is available from all bars and water refill outlets
 - don’t let this festival be your last
 - look after your friend
 - if you see someone looking unwell, get help.
- Messages should be co-designed with young people and tailored to the target audience.
- Over time, messages and delivery should be tailored to events, event characteristics and demographics.

- **Channels and locations to issue these messages:**

- For example, event website; social media; email; push messages; on patron wristbands and tickets; signage at toilets, queuing points and in transport hubs.
- The Government could also make public transport settings, such as key train platforms and bus stops, available for drug and alcohol harm reduction messaging before and after major music festivals.

- **Timing for issuing messages:** For instance, before, at and after the event.

- **How to maximise uptake and impact:** For example, online training as a condition of ticket purchase; engaging a headline music performer to reinforce a key message; or linking training to pre-sale or VIP ticketing opportunities.

6. NEW OPPORTUNITIES TO STRENGTHEN OFFENCES AND PENALTIES

In considering new opportunities to strengthen existing offences and penalties the Panel wanted to ensure that the focus was on drug suppliers rather than users. It is apparent that suppliers target music festivals for financial or material gain. For those who target festival attendees, the law needs to be tough.

6.1 A proposal to issue on-the-spot fines for drug possession

Recommendation 6: Trial the use of Criminal Infringement Notices (on-the-spot fines) instead of Court Attendance Notices for drug possession offences at or in the vicinity of music festivals.

Strengthened penalties (**Recommendation 7**) need to target drug suppliers. Advice was received from stakeholders about festival attendees' behaviour in relation to police enforcement methods, including anecdotes of people hurriedly consuming drugs to avoid detection. Provision of on-the-spot fines for possession of prohibited drugs at music festivals provides for a harm reduction approach. This could be strengthened by exploring the feasibility of Police offering referral to individuals issued with on the spot fines to suitable NSW Health services. This would help young people who use substances to access treatment and harm reduction programs.

Under the Criminal Procedure Act, Police can already issue on-the-spot fines for selected offences, including: offensive language; offensive conduct; and continuation of intoxicated and disorderly behaviour following a move-on direction. The NSW Government also recently announced it would extend on-the-spot fines to low range drink driving first offences.

Currently, 'possession of prohibited drug' (small quantity) is a summary (low level) offence under the *Drug Misuse and Trafficking Act* (DMTA). The penalty is \$2,200 (20 penalty units), imprisonment for two years, or both. However, according to BOCSAR, in 2017 there were 11,077 offences of possession of illicit drugs (principal offence). Of those, 6,005 (54%) were provided a fine; 2,539 were given a bond (without supervision); and 699 were given section 10s (no offence recorded).

The Panel is satisfied that the community would generally consider a trial for on-the-spot fines a reasonable sanction for illicit drug possession at music festivals. Police are similarly able to convey the seriousness of this offence. Examination of ticket prices for major music festivals shows that attendees are willing to pay, on average, over \$200 for an event. An on-the-spot fine together with high visibility policing at music festivals will continue to send a strong message to music festival attendees.

The Panel considers on-the-spot fines may be useful in other situations as well, but given its terms of reference focus it on music festivals it has not considered broader applications. A trial of this approach in the music festival context may provide a good proving ground for further application.

In developing the penalty amount the Government should have regard to existing Criminal Infringement Notice penalties.

6.2 A new offence of drug supply causing death

Recommendation 7: Investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result.

Key elements of the offence:

- Supply of a prohibited drug (other than a prohibited plant i.e. cannabis, specified in Schedule 1 of the DMTA).
- The person to whom the prohibited drug was supplied died and the death was caused, or substantially caused by, the prohibited drug.
- The supply was for the purpose of financial or material gain.

In considering this new offence the Panel recommends the Government should have regard to limiting the offence to those who supplied the drug for financial or material gain. In other words, the offence should be targeted towards drug dealers rather than the 'young friends' scenario (in this scenario, one friend is tasked with obtaining or sourcing drugs for a group of friends, and is then reimbursed, rather than seeking profit).

To ensure that any new offence of supplying a drug causing death is effective in practice, detailed consultation and careful drafting will be required to address the issues in relation to causation and intent. In this regard the Panel has not made a recommendation on the maximum penalty for this proposed new offence.

The Panel was concerned by anecdotes of the increased risk associated with drug taking at music festivals. For instance, anecdotes of users purchasing drugs from unknown drug dealers at music festivals, and subsequently having even less certainty about what they are purchasing. Other potential increased risk factors included users taking high drug dosages and taking multiple drugs in order to maintain the drug effects for the period of the festival. Added to this the potential for increased peer pressure and dealers specifically targeting music festivals for profit.

The Panel has stopped short of recommending consideration be given to creating an aggravated drug supply at music festivals offence. The proposed new regulatory scheme will provide for better data collection which could provide information as to the increased vulnerability of drug-users at music festivals and the aggravating nature of drug-dealing in these settings.

APPENDIX

A. Stakeholder consultation

The Panel was advised of issues raised in community correspondence to the Premier.

The Panel met with the following stakeholders on 3 October 2018. Some stakeholders also provided written submissions.

- Emily Collins (MusicNSW)
- Dr Caitlin Hughes (National Drug and Alcohol Research Centre)
- Matthew Lazarus-Hall (St Jerome's Laneway Festival)
- Dr Alex Wodak
- Mark Ferry (Ted Noffs Foundation)
- Shelley Smith (Ted Noffs Foundation)
- Gino Vumbaca (Harm Reduction Australia)
- Adelle Robinson (Fuzzy)
- Peter Rugg (City of Sydney)
- Damian Thomas (Local Government NSW)
- Elizabeth Robertson (Local Government NSW)
- Andrew Johnson (Advocate for Children and Young People)

Panel members and their agencies also consulted with additional stakeholders, including:

- Dr Mary Harrod (NSW Users and AIDS Association)
- Prof Alison Hutton (Australian College of Nursing)
- A/Prof Charlotte Hespe (Vice President of the Royal Australian College of General Practitioners (RACGP), Chair of RACGP NSW & ACT)
- Dr Kean-Seng Lim (Australian Medical Association NSW President)
- Through the Advocate for Children and Young People, the NSW Youth Advisory Council.

B. Premier's media release



Gladys Berejiklian
Premier of NSW

MEDIA RELEASE

Tuesday, 18 September 2018

ENSURING SAFETY AT MUSIC FESTIVALS

Premier Gladys Berejiklian today established a high level expert panel to provide advice on how to keep people safe at music festivals.

Ms Berejiklian's announcement comes after two people died on Saturday night and many others were treated for drug-related injuries at the Defqon. 1 music festival in Penrith.

Police Commissioner, Mick Fuller APM, NSW Chief Medical Officer Dr Kerry Chant and Chair of the Independent Liquor & Gaming Authority Philip Crawford will provide the NSW Government advice on:

- Whether new offences or increased penalties are required to stop drug dealers endangering lives;
- How music festival promoters and operators can improve safety at their festivals; and
- Whether improved drug education is required to address the increase in illegal drug use in our community.

"We need to do everything we can to protect the safety of concert goers and people attending music festivals," Ms Berejiklian said. "That is why I have tasked our health, law enforcement and regulatory experts to advise Government on what can be done immediately to improve safety at these events.

"I want people to be able to enjoy music festivals – they are an important part of NSW's entertainment scene. But unfortunately, the operators of this particular festival have had a poor safety record with four deaths in the last five years and many more being treated for drug-related injuries. This is simply not good enough.

"Festival goers have a right to enjoy these events without fear of harm. Parents and families expect us to do whatever we can to keep their children safe."

The Premier has requested that the Panel provide its advice within four weeks but of course the Government will consider any recommendations from the panel to take action before the conclusion of its review. The panel will conduct targeted stakeholder consultation, including with the music industry and local government.

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