

STANDING COMMITTEE ON PLANNING, PUBLIC
WORKS AND TERRITORY AND MUNICIPAL SERVICES

Inquiry into Live Community Events

INTERIM REPORT - DECEMBER 2009

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Resolution of Appointment

On 9 December 2008, the ACT Legislative Assembly agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

- (e) a Standing Committee on Planning, Public Works and Territory and Municipal Services to examine matters related to planning, land management, proposed capital works projects in the public sector, including works undertaken by territory owned corporations, municipal transport services, heritage and sport and recreation.

The Assembly agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.¹

Terms of Reference

On 25 February 2009 the Assembly referred the issue of supporting live music and events in our community to the Standing Committee on Planning, Public Works and Territory and Municipal Services for inquiry and report by the first sitting day in October 2009. The inquiry will consider, but not be limited to:

- (a) a review of order of occupancy legislation;
- (b) options to encourage or require large commercial developments in group or town centres to provide community bollards for the promotion of events via bill posters; and
- (c) an examination of how building codes for residential and business development in commercial zones could be amended to ensure sound insulation and physical security are appropriate to co-location with live cultural events.²

¹Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

²Legislative Assembly for the ACT, *Minutes of Proceedings No. 9*, 25 February 2009, pp105-7.

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RECOMMENDATIONS

RECOMMENDATION 1

3.23 The Committee recommends that the description of ACT land areas in Schedule 2 (table 2.1) of the *Environment Protection Regulation 2005* specify which Territory Plan zones fall under a particular noise zone, where applicable.

RECOMMENDATION 2

3.37 The Committee recommends that the ACT Government review the noise standards in the *Environment Protection Regulation 2005* to provide more flexibility for small and medium venues to run live events. The review should consider:

- Distinguishing between outdoor and indoor entertainment;
- Allowing a higher noise standard on Friday and Saturday nights in Zone B, at least until midnight; and
- Allowing higher noise standard for New Year's Eve until 1.00am on 1 January.

RECOMMENDATION 3

4.16 The Committee recommends that the *Liquor Act 1975* enable the Commissioner to consider Order of Occupancy principles when investigating complaints in relation to a licensee.

RECOMMENDATION 4

4.17 The Committee recommends that the ACT Government investigates the best ways to ensure that people moving into residential areas where live entertainment is provided are made aware of Order of Occupancy principles.

RECOMMENDATION 5

5.30 The Committee recommends that the ACT Planning and Land Authority include the concept of Reverse Sensitivity as an overarching Objective in the relevant Development Codes and Precinct Codes of the Territory Plan.

RECOMMENDATION 6

6.18 The Committee recommends that private businesses and commercial developments be encouraged to provide bill posting facilities.

RECOMMENDATION 7

7.14 The Committee recommends that the ACT Government review the regulations that impact on live community events and ensure that the regulatory requirements for venues reflect the different types of music and entertainment that may be provided.

RECOMMENDATION 8

7.22 The Committee recommends that the ACT Government consider improved sound attenuation measures for existing community facilities.

RECOMMENDATION 9

7.23 The Committee recommends that the interdepartmental committee (IDC) further investigate the availability of community venues for live events in the ACT and consider how the ACT Government can better support this need.

1 INTRODUCTION AND CONDUCT OF INQUIRY

- 1.1 On 25 February 2009 the Assembly referred the issue of supporting live music and events in our community to the Standing Committee on Planning, Public Works and Territory and Municipal Services for inquiry and report.³
- 1.2 An invitation for public submissions was advertised by the Committee in The Canberra Times on Saturday 14 March 2009 and in The Chronicle on Tuesday 17 March 2009. The Inquiry was re-advertised in The Canberra Times on 5 August 2009. The Committee also invited stakeholders to provide a written submission to the inquiry by 21 August 2009. Late submissions were accepted up to 30 October 2009. The Committee received seven submissions, listed at Appendix A.
- 1.3 On 13 October 2009 the Assembly resolved to extend the inquiry reporting date until the ‘last sitting day in December 2009’.⁴
- 1.4 The Committee held two public hearings on 27 October 2009 and 6 November 2009 and heard from representatives of the Australasian Performing Right Association Limited (APRA), the Canberra Blues Society (CBS), the George Harcourt Inn, Into Tomorrow Pty Ltd, Indymfest and Planning Institute of Australia ACT Division.
- 1.5 On 6 November 2009 officers from the ACT Planning and Land Authority also provided the Committee with a public briefing on relevant provisions of the Building Code of Australia and planning issues related to the inquiry.

Scope of This Report

- 1.6 This report primarily focuses on the issues identified in the Terms of Reference.

³ Legislative Assembly for the ACT, *Minutes of Proceedings No. 9*, 25 February 2009, pp105-7.

⁴ Legislative Assembly for the ACT, *Minutes of Proceedings No. 36*, 13 October 2009, p395.

- 1.7 Part 2 provides some background to the issues of live events and relevant studies as well as the current level of ACT Government support.
- 1.8 Part 3 outlines the current ACT regulatory framework for noise standards, land zoning and some relevant aspects of liquor licensing.
- 1.9 Part 4 considers Order of Occupancy provisions in other Australian jurisdictions.
- 1.10 Part 5 outlines some of the considerations in the Territory Plan Development Codes and Precinct Codes relating to noise attenuation, security and safety. It also provides a discussion on the role of leases in the ACT, the concept of 'reverse sensitivity' in planning and considerations of amenity in commercial centres.
- 1.11 Part 6 considers event promotion and the role of commercial developments in providing bill posting facilities.

Other Issues and Regulatory Approaches

- 1.12 During the course of the inquiry a number of additional issues and regulatory approaches were raised by witnesses and in submissions.
- 1.13 The Committee notes that the inclusion of Order of Occupancy considerations in liquor licensing complaint processes is a back-end approach to supporting live events as it is only implemented as noise or disturbance complaints arise.
- 1.14 The Committee acknowledges that there are also a number of other regulatory approaches to supporting live entertainment that need to be explored such as:
 - Amenity or public interest considerations when granting liquor licences;
 - Noise limits and noise zones; and
 - Entertainment precincts.
- 1.15 Additionally, issues such as security requirements, public liability insurance costs, access and streamlining license and grant application processes have a bearing on live events.
- 1.16 The Committee has reviewed Queensland's Fortitude Valley Harmony Plan

in relation to entertainment precincts but has not explored the above issues in detail in this report. Part 7, therefore, includes a brief discussion of other considerations such as entertainment precincts, venue availability and the viability of venues providing live entertainment.

Best Practice Guide

- 1.17 The Cultural Ministers Council (CMC) is a Council of Australian Governments (COAG) ministerial council, providing a forum for cooperation and coordination between the Commonwealth, State, Territory and New Zealand Governments on matters relating to the development of the arts and culture.⁵
- 1.18 The Committee was advised that the CMC Working Group on Contemporary Music Development is currently developing a 'Best practice guide for the development of a legislative and regulatory environment supporting live music and entertainment'.⁶
- 1.19 In its Communiqué of 9 October 2009, the CMC approved the content of the best practice guide looking at 'issues to do with live performance which are affected by regulation'. The guide will highlight 'best practice principles which could be considered by jurisdictions in their own regulatory environments'.⁷
- 1.20 The Committee wrote to the Chief Minister on 23 September 2009 to request that a copy of the best practice guide be made available to the Committee when it is released. The guide was not available at the time of finalising this report.
- 1.21 The Committee would like to consider the Best Practice Guide before assessing the most appropriate combination of regulatory mechanisms to support live events in the ACT and before comparing and analysing the approaches of other States and Territories. The Committee, therefore,

⁵ COAG, *Commonwealth-State Ministerial Councils Compendium*, April 2009.

<http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf> at 5 November 2009.

⁶ Submission 6.

⁷ Cultural Ministers Council (CMC), *Communiqué*, Friday 9 October 2009.

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considers that this inquiry should be ongoing and that this is an interim report.

2 BACKGROUND

Live Music and Events

Importance of Live Events

- 2.1 The Committee recognises that live music and events are an inherent part of Australian society and culture. Live events are also important for the development of local performers, providing opportunities to perform in front of a variety of audiences and to develop their performance skills. According to a CMC Statistics Working Group paper based on ABS data, around 230 800 people participated as live music performers in 2004 in Australia.⁸
- 2.2 Live events can create ‘a real sense of community by bringing together people with similar interests and providing an outlet for the creative talent of musicians.’⁹
- 2.3 The Committee was advised that:
- In the ACT, APRA on our database has 48 venues licensed—that means an APRA licence in place—for live music. Our estimation is that those 48 businesses spend about \$2 million a year on live music. So that is money going directly to artists.¹⁰
- ...the average spend on live music in the ACT by, for instance, restaurants and cafes is about \$28,000 a year... With respect to the other two figures I have, the spend on live music in hotels, bars and nightclubs as a group is about \$40,000 a year.¹¹
- 2.4 The wider economic value of live events has not been measured, although APRA is currently trying to initiate this type of research.

⁸ Cultural Ministers Council Statistics Working Group, *Music in Australia: a Statistical Overview*, February 2007, p7.

⁹ Submission 1.

¹⁰ *Transcript of Evidence*, 27 October 2009, p4.

¹¹ *Transcript of Evidence*, 27 October 2009, p8.

Relevant Studies

Live Music (R)evolution strategy

- 2.5 The Committee was advised that APRA launched the Live Music (R)evolution strategy in April 2008 in order to 'provide venues with ongoing information about the current barriers to live music, the opportunities for presenting live music and the resources and assistance available'.¹²
- 2.6 The Live Music (R)evolution website provides information on relevant state legislation and the strategy aims to 'develop and implement strategies to support the growth and viability of venues that host live music'.¹³

Live Music Survey

- 2.7 In March 2008 the Music Council of Australia (MCA) and APRA also conducted a 'Live Music' survey of the hospitality industry as part of their Live Music (R)evolution campaign.¹⁴ The survey found that:
- Simpler planning and licensing regulations and more guidance on how to put on live music would make it make it easier for venues to host more live music in Australia.
- 2.8 The survey received 69 responses from hotels, clubs and restaurants, 70 per cent of which present live music at some point through the year.
- Venues that didn't host live music (29% of respondents) said that the key obstacles were overhead costs, government regulations, noise regulations and concerns about security. They also cited difficulties with sourcing artists and promoting gigs and were concerned about generating support from patrons and about ensuring a decent return on investment.
- 2.9 The results support the next stage of the Live Music (R)evolution campaign proposed by the Music Council of Australia and APRA, including:

¹² Submission 2, p2.

¹³ Live Music (R)evolution, *About*, <http://www.livemusicrevolution.com.au/?page_id=158> at 24 August 2009.

¹⁴ Music Council of Australia & APRA | AMCOS, *Live Music: hospitality + music = a good mix*, 'Live Music Survey results', <<http://www.livemusicrevolution.com.au/wp-content/uploads/2008/08/national-survey-summary1.pdf>>

- A Live Music 2010 Summit to keep the music and hospitality industries talking about concrete strategies to bring live music back into venues
- Developing a user manual on government regulations that apply to live music venues; and
- A detailed ‘how-to’ guide/resource to support venues that wish to host live music.

ACT Government Support and Action

2.10 The Committee was advised that the ACT Government supports live events and music in the ACT through the ACT Arts Fund, the ACT Festivals Fund, Health Promotions Sponsorships and Youth Interact Grants. The Government submission outlined how it ‘supports venues used for live music events’¹⁵, and has established programs of free live performances such as Groovin’ in Garema and the ‘round town’ events, as well as hiring performers for community celebrations including New Years Eve events and Party in the Park.¹⁶

Inter-Departmental Committee

- 2.11 The Committee also notes that a new interdepartmental committee (IDC) has been established by the ACT Government to consider the following:
- the barriers which exist to the production of live music in the ACT in particular in relation to legislation and regulation;
 - to examine ways in which the barriers to the production of live music in the ACT could be reduced; and
 - to develop a cabinet submission which addresses these issues.
- 2.12 The IDC, which includes senior representatives from each agency with an interest in some aspect of live music in the ACT, is chaired by David Whitney, Director of artsACT in the Chief Minister’s Department and will meet quarterly for 18 months. The IDC committee met for the first time on

¹⁵ Submission 6.

¹⁶ Submission 6.

18 August 2009. The Committee notes that the IDC may consider similar issues to this inquiry.

- 2.13 The Committee also notes that the ACT Department of the Environment, Climate Change, Energy and Water has launched a new website www.noise.act.gov.au to provide information on noise requirements in the ACT. The site appears to be aimed at residential noise concerns rather than noise from commercial or community venues.

3 CURRENT ACT REGULATORY FRAMEWORK

- 3.1 A number of legislative and regulatory mechanisms shape live entertainment in the ACT. The majority of entertainment venues are licensed venues so are subject to the *Liquor Licensing Act 1975* which regulates liquor licensing, setting out compliance requirements and disciplinary procedures which have a bearing on the use of licensed premises as live entertainment venues.
- 3.2 Environmental noise in the ACT, such as live concert noise is regulated by the *Environment Protection Act 1997*, which is administered by the ACT Environment Protection Authority (EPA).
- 3.3 Additionally, the *Planning and Development Act 2007* and the Territory Plan made under that Act are relevant to understanding noise restrictions and development zoning in the ACT. These are administered by the ACT Planning and Land Authority (ACTPLA).

Noise zones and Noise standards

- 3.4 Noise zones and noise standards for the ACT are set out in Schedule Two of the *Environmental Protection Regulation 2005* (the Regulation) at **Appendix B**. The noise standards ‘vary according to the land use zone in which the activity is located’ and the ‘limits must not be exceeded at the boundary of the land from which the noise is originating’.¹⁷
- 3.5 The following table summarises the permissible noise limits in the ACT.

¹⁷ DECCEW, *Live Music and Entertainment Noise*, Business and Industry Information Sheet, 2009.

Location	7am–10pm (8am–10pm Sunday & Public Holidays)	10pm–7am (10pm–8am Sunday & Public Holidays)
Civic centre and other major town centres (Belconnen, Gungahlin, Woden and Tuggeranong)	60 dB(A)	50dB(A)
Group centres such as Dickson and Kingston	55 dB(A)	45dB(A)
Smaller local centres such as Griffith and Lyneham	50dB(A)	35dB(A)
Residential Areas	45dB(A)	35dB(A)

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- 3.6 The ACT noise standards acknowledge the different levels of ambient noise in different parts of the Territory, for example, Civic centre and other town centres have a higher noise limit than residential areas. The limits are also measured at the boundary of the land from which the noise is originating, rather than at a residence. Higher limits also apply between 7am and 10pm (8am – 10pm on Sunday’s and public holidays) compared to the night time noise limits.
- 3.7 The *Noise Environment Protection Policy 1998* (Noise EPP)¹⁹ and the *Outdoor Concert Noise Environment Protection Policy 2001* (Outdoor Concert Noise EPP) help to explain and apply the *Environment Protection Act 1997* and the Regulation.
- 3.8 There are also some provisions in the Regulation to deal with issues around the co-location of diverse land uses including special zoning and zone boundary requirements.

Special Zoning

- 3.9 With regard to the co-location of residential developments and live music and entertainment venues, the Noise EPP outlines the requirements for

¹⁸ DECCEW, *Live Music and Entertainment Noise*, Business and Industry Information Sheet, 2009.

¹⁹ Environment ACT, *Noise Environment Protection Policy*, 1998,

<http://www.environment.act.gov.au/_data/assets/pdf_file/0015/146211/noiseepp.pdf>

‘Special Zoning’ where different noise standards apply to land zoned in the Territory Plan as “Community Facilities,” “Services” or “Leisure and Accommodation”. In these cases the standard is taken to be the same as the highest standard of any adjoining noise zone:

...nightclubs may be found in an “Entertainment, Accommodation and Leisure” [now referred to as Leisure and Accommodation] area adjoining a Town Centre while motels might be located in an “Entertainment, Accommodation and Leisure” area surrounded by residential areas. To cater for the differences found within these land use areas, the zone standard is the same as that of the adjoining zone with the highest standard. Thus, for a nightclub in an “Entertainment, Accommodation and Leisure” area adjoining a Town Centre, the Town Centre standard would apply, enabling the nightclub to compete on equal terms, as far as noise requirements are concerned, with nightclubs in the Town Centre. In the case of the motel surrounded by residential areas, the residential zone noise standard would apply.²⁰

Zone Boundary

- 3.10 Similarly, allowances are made for land which is at the boundary between two or more different noise zones. Noise standards at the boundary are an average of the noise standards for the noise zones rounded up to the nearest dB(A)²¹, for example:

... a shop located on a block of land bordering a residential area is expected to take more precautions than it otherwise would in order to reduce the noise reaching the residential area. Equally, a person living adjacent to a shop expects to be exposed to some increase in noise levels above the zone noise standard which applies in a purely residential area.²²

Location of Community and Recreation Facilities

- 3.11 The Territory Plan also has a *Community and Recreation Facilities Location Guidelines General Code* to assist in making decisions about where to locate a

²⁰ Environment ACT, *Noise Environment Protection Policy*, 1998, p8.

²¹ *Environmental Protection Regulation 2005*, s24 (2)(c).

²² Environment ACT, *Noise Environment Protection Policy*, 1998, p10.

broad range of community and recreational facilities. It takes into account the need for adequate noise separation when considering relationships to other land uses and specifies in most cases the need for a buffer from residential areas if it is likely to be a noisy facility:

Facilities likely to generate noise (such as clubs and outdoor recreation facilities) should be located so that they do not reduce residential amenity, nor constrain or preclude later residential development in surrounding areas.²³

- 3.12 This would be of relevance to community spaces, such as scout and community halls, used for live events.

Territory Plan Zones and Noise Zones

- 3.13 The Territory plan sets out applicable land use zones in the ACT which determine what kind of development is allowed on a particular block. The Territory Plan Zones fall into categories including Residential, Commercial and Community Facility.

Permitted Development

- 3.14 Under the Territory Plan, commercial CZ1 [Core], CZ2 [Business] (with some specific exemptions), CZ3 [Services], CZ4 [Local Centre] and CZ5 [Mixed Use] zones all allow for residential use. In CZ6 zones [Leisure and Accommodation] residential development is not generally allowed but it is allowed on some specific blocks and sections.
- 3.15 In terms of potential entertainment venues, CZ1, CZ2 and CZ3 zones permit development of clubs, drink establishments, indoor entertainment facilities, places of assembly and restaurants.
- 3.16 CZ4 zones allow for indoor entertainment facilities and restaurants (although in Bruce Local Centre drink establishments are also permitted).
- 3.17 CZ5 zones allow for indoor entertainment facilities, places of assembly and restaurants. Hotels and motels are also permitted. A number of specific areas

²³ *Territory Plan*, 'Community and Recreation Facilities Location Guidelines General Code', 2008, s3.5.

have additional development that may be approved subject to assessment which, in some cases, include clubs and drink establishments. In terms of residential development, CZ5 zones specifically allow multi-unit housing, and serviced apartments in addition to general residential use.

- 3.18 CZ6 zones allow for drink establishments, indoor entertainment facilities, places of assembly and restaurants.
- 3.19 The Committee notes that the variety of permitted uses in each zone increases the likelihood that conflicting uses will be developed in close proximity to each other.
- 3.20 The ACTPLA Development Codes and design considerations with regard to these zones are discussed in more detail at Part 5 of this report.

Noise and Planning Zone Cross-Referencing

- 3.21 The Committee notes that the descriptions of ACT land in column 3, Schedule 2 (table 2.1) of the *Environment Protection Regulation 2005* (Appendix B) are somewhat ambiguous as they do not correspond directly to Territory Plan zones. Some Territory Plan zones are currently listed in the table, for example ‘land in a commercial CZ4 zone’ clearly falls into Noise Zone D, however, a large number of Territory Plan zones are not cross-referenced at all. The Committee is concerned that this may create some confusion about which noise restrictions apply to which Territory Plan zone.
- 3.22 Cross referencing the Territory Plan zones in Schedule 2 (table 2.1) of the *Environment Protection Regulation 2005* would assist developers, residents, venue owners and operators and live music or event performers to understand the noise restrictions in any particular Territory Plan zone.

RECOMMENDATION 1

- 3.23 **The Committee recommends that the description of ACT land areas in Schedule 2 (table 2.1) of the *Environment Protection Regulation 2005* specify which Territory Plan zones fall under a particular noise zone, where applicable.**

Noise Offences

- 3.24 The *Environment Protection Regulation 2005* also outlines noise offences in the ACT. It is an offence if a person makes noise in the ACT louder than the noise standard and the noise causes environmental harm in an 'affected place' (a place where a person is affected by the noise)²⁴, such as playing a musical instrument or using portable loud speakers.
- 3.25 Under the regulation, a person is only considered to be affected by noise if the noise exceeds the standard for the affected place and if the person complains about the noise to an 'authorised officer' (an Environment Protection Officer).
- 3.26 The EPA can issue infringement notices with on the spot fines under the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* as well as issuing Environment Protection Orders, however:
- The EPA anticipates using environment protection orders as a second or third resort - if approaches based on cooperation, education, and in appropriate cases, formal warning, have failed.²⁵
- 3.27 The Committee notes that there were 158 noise complaints relating to amplified music noise in the 2007-08 financial year. Nine infringement notices were issued relating to excessive noise and two Environment Protection Orders were issued for breaches of the noise zone standard. The majority of noise complaints originated in the Belconnen, Canberra Central, Gungahlin and Tuggeranong districts.²⁶

Outdoor Concerts

- 3.28 Submissions to the Committee and witnesses raised concerns about the ability for venues to provide live entertainment outdoors under current the

²⁴ *Environmental Protection Regulation 2005*, s22.

²⁵ Environment Protection Authority, *General Environment Protection Policy*, 2007.

²⁶ Standing Committee on Climate Change, Environment and Water, *Inquiry into the 2007-08 Annual Report, Question Taken on Notice, 'Environment Protection Enforcement'*, report 1, Seventh Assembly, March 2009.

current regulations.²⁷

- 3.29 Under the *Outdoor Concert Noise Environment Protection Policy* the Environmental Protection Authority can grant environmental authorisations for outdoor concert venues. Authorisations can be granted to Bruce Stadium and Exhibition Park in Canberra for unlimited periods. The policy also outlines the requirements for authorisations for other venues:

Applications for authorisations to conduct single outdoor concert events will be considered for other public venues capable of holding more than 2,000 persons. These environmental authorisations, which will permit single outdoor concert events will contain conditions consistent with this Policy.

Outdoor concert venues capable of holding fewer than 2,000 people do not require an environmental authorisation but must comply with zone noise standards under the Environment Protection Act 1997.²⁸

- 3.30 The EPA still limits the noise produced by those venues with authorisations and will not authorise an event that is likely to produce noise which exceeds 65 dB(A) at the compliance location for 15 minutes or longer.
- 3.31 Where noise is permitted to exceed the zone noise standards, authorised outdoor concerts are required to finish by 11 pm except on New Year's Eve which must finish by 12.30am on 1 January. Venues that conduct multiple large events may also hold only a limited number of events per year, spread throughout the year, and only with substantial prior notice to affected residents (at least 8 weeks notice for residents near large outdoor concert venues). For smaller events or other venues 'where there are only a relatively small number of affected occupiers' [e.g. nearby residents], the authorisation can allow the venue to provide direct notice to those likely to be affected.²⁹
- 3.32 The Committee heard that the noise limits, particularly for small venues wanting to host outdoor live events, are prohibitive as there is no option for an exemption or event authorisation. As noted above, outdoor venues that hold fewer than 2,000 people can not get an exemption from the noise

²⁷ Submission 7; Submission 5; *Transcript of Evidence*, 27 October 2009, p33.

²⁸ Environment ACT, *Outdoor Concert Noise Environment Protection Policy*, 2001, Part 2.

²⁹ Environment ACT, *Outdoor Concert Noise Environment Protection Policy*, 2001, Part 4.5.

standards.

- 3.33 Mr Gil Miller of the George Harcourt Inn highlighted to the Committee the difficulty in containing outdoor music noise because it is going to carry to nearby residences.³⁰ Venues that would like to offer live entertainment to their patrons in summer are limited by the noise standards. Those same venues are unlikely to offer outdoor live music inside because the patrons are outside in summer and inside can be cramped and too warm.³¹
- 3.34 APRA also highlighted to the Committee that venues were often 'prepared to offer up their outdoor spaces to young artists or amateur artists to perform' as a development opportunity but face the risk of being confronted with a noise complaint which may put a stop to the live music or impose other limitations on the licensee.³² The risk is therefore unlikely to be one that licensees take on, and in turn limits the availability of performance venues.
- 3.35 The Committee was advised that some exceptions in the noise standards which permit a higher noise standard on Friday and Saturday nights, potentially extended until 11pm would provide venues with more flexibility when offering live entertainment, particularly outdoors.³³
- 3.36 The Committee believes that the ACT Government should revise the noise standards in the *Environment Protection Regulation 2005* to provide more flexibility for small and medium venues to run live events. Noise standards should distinguish between outdoor and indoor entertainment. The Committee believes that it is also reasonable to allow a higher noise standard on Friday and Saturday nights in Zone B [(land in the city centre and town centres; land in the Central National Area (City)], at least until midnight to encourage more live events.

³⁰ *Transcript of Evidence*, 27 October 2009, pp13 & 33.

³¹ Submission 7.

³² *Transcript of Evidence*, 27 October 2009, p13.

³³ Submission 7; *Transcript of Evidence*, 27 October 2009, pp13 & 31.

RECOMMENDATION 2

3.37 **The Committee recommends that the ACT Government review the noise standards in the *Environment Protection Regulation 2005* to provide more flexibility for small and medium venues to run live events. The review should consider:**

- Distinguishing between outdoor and indoor entertainment;
- Allowing a higher noise standard on Friday and Saturday nights in Zone B, at least until midnight; and
- Allowing higher noise standard for New Year’s Eve until 1.00am on 1 January.

Liquor Licensing

3.38 Some provisions of liquor licensing legislation in the ACT have a bearing on the operation of licensed venues that may host live events and music.

3.39 In applying for a liquor license under the *Liquor Licensing Act 1975*, applicants are required to comply with standards relating to premises in order to be granted a licence, including:

- (b) whether the premises in relation to which the licence is sought are fit and proper premises for the purpose of the licence;
- (c) whether the conditions of the Crown lease over the premises are appropriate conditions for the purpose of the licence applied for.³⁴

3.40 The *Liquor Act 1975* also includes provisions for occupational discipline where certain conditions are not met by a licensee. Three grounds for occupational discipline in relation to a licensee may be relevant to the co-location of entertainment venues and residential developments where:

- ...(c) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people occupying premises in the neighbourhood;
- (d) the licensed premises do not comply with the licensing standards manual;

³⁴ *Liquor Act 1975*, s52.

...(g) a loss of amenity has arisen in the vicinity of the licensed premises that is attributable to the premises and about which there has been a complaint.³⁵

3.41 Where a person believes there are reasonable grounds for occupational discipline, such as loss of amenity, they may complain in writing to the Commissioner for Fair Trading³⁶ as the Commissioner has responsibility for the day-to-day administration of licensing and enforcement provisions of the *Liquor Act 1975*.³⁷

3.42 The Commissioner will investigate complaints and, if satisfied that reasonable grounds for occupational discipline exist, such as a breach of the Act, the Commissioner may apply to the ACT Civil and Administrative Tribunal for an occupational discipline order in relation to the licensee.³⁸

Young performers

3.43 The Committee was advised that licensed venues also had the potential to provide opportunities for development of young performers and emerging talent, and that NSW had recently changed its legislation to allow minors to perform in venues if accompanied by an adult.³⁹

3.44 The Committee notes that section 156 of the ACT *Liquor Act 1975* allows persons under 18 years old to enter or remain in a bar-room on licensed premises in the care of a responsible adult. In practice, this would allow for live performers under the age of 18 to perform in licensed venues in the ACT if they are accompanied by an adult, such as a parent or guardian.

³⁵ *Liquor Act 1975*, s84.

³⁶ *Liquor Act 1975*, s77-78.

³⁷ *Liquor Licensing Practice Manual*, 2009, Part 1.2.

³⁸ *Liquor Act 1975*, s84.

³⁹ *Transcript of Evidence*, 27 October 2009, pp10-11.

4 ORDER OF OCCUPANCY

- 4.1 Order of occupancy is the concept of taking prior occupancy between licensed premises and a complainant, either residential or commercial, into account when dealing with complaints about disturbance, such as noise complaints.
- 4.2 Order of occupancy legislation sets the ground rules for both residential and entertainment developments. It accounts for ‘who was there first’ and aims to prevent long-standing live entertainment venues being forced to cease live events because of noise complaints from new residential developments.

These provisions are designed to give protection to established venues from unreasonable expectations of potential new residents as to the type of amenity that can be expected in the neighbourhood.⁴⁰

Similarly, it aims to protect established residential areas from potential noise impacts from new entertainment venues.

- 4.3 In general, order of occupancy considerations put the onus ‘on the party who has made the recent move, either by introducing music, or moving in next door’.⁴¹ It may also consider prior use principles:
- where the activity is indexed to the use of a premises such as a hotel for example, which whilst it may not host live entertainment all the time, has been a fixture in the local area, and there is a reasonable expectation that live entertainment is an activity you would normally associate with a consent for this type of land use.⁴²
- 4.4 The consideration is designed to give context to complaints and to establish if the complaint is fair, the type of complaint and number of complaints that may be reasonable to stop activity such as live events. It also takes the bias

⁴⁰ Live Music (R)evolution, *Order of Occupancy Considerations*, <http://www.livemusicrevolution.com.au/?page_id=249>

⁴¹ Music Council of Australia, *A comparison of state and territory legislation and regulations pertaining to the presentation of live entertainment in liquor-licensed venues in Australia*, 2008, p8.

⁴² Music Council of Australia, *A comparison of state and territory legislation and regulations pertaining to the presentation of live entertainment in liquor-licensed venues in Australia*, 2008, pp7-8.

- 4.5 There is currently no Order of Occupancy consideration in ACT legislation.

Interstate Approaches

- 4.6 New South Wales and Queensland include order of occupancy considerations into their Liquor Acts for dealing with disturbance complaints and nuisance activity. Under these acts, the relevant authority is to take into account order of occupancy between the licensed premises and the complainant before making a decision. Changes to the licensed premises and the premises occupied by the complainant, including structural changes to the premises, and any changes in the activities conducted on the licensed premises over a period of time must also be taken into account by the relevant authority.
- 4.7 The South Australia and Western Australia Liquor Acts do not explicitly include order of occupancy considerations, however they do include provisions for dealing with disturbance complaints that include consideration of a venue's usage history and structural changes.
- 4.8 Under the Western Australian *Liquor Act 1988*, when considering a complaint about noise or behaviour related to licensed premises, the director may have regard to alterations and structural changes that may have been made to the licensed premises or the premises where the complainant resides, works, worships, attends or is a patient.⁴⁴ They may also consider 'changes that have taken place over time to the activities that take place on the licensed premises; and the kind of business conducted under the licence and how that business is managed'.⁴⁵
- 4.9 Similarly, section 106 (6) of the South Australian *Liquor Licensing Act 1997* provides for considerations that are essentially about order of occupancy. In

⁴³ *Transcript of Evidence*, 27 October 2009, p11.

⁴⁴ *Liquor Act 1988*(WA), s4(b)

⁴⁵ *Liquor Act 1988*(WA), s4(b)

hearing and determining a disturbance or noise complaint in relation to a licensed venue the Commissioner or the Court (the body may vary depending on the nature of the complaint) must take into account:

- (i) the relevant history of the licensed premises in relation to other premises in the vicinity and, in particular, the period of time over which the activity, noise or behaviour complained about has been occurring and any significant change at any relevant time in the level or frequency at which it has occurred.⁴⁶

4.10 In New South Wales, Western Australia and South Australia order of occupancy considerations are also supported by a reference in the object of their Liquor Acts:

The objects of the Liquor Act must be considered in deciding any matter before the licensing authority. It is important that the Act includes an object that recognises the value and importance of live music. Then, the Interests of music become a relevant consideration in licensing matters such as applications, amenity or complaints processes, variations on trading hours and conditions or transfer of licenses.⁴⁷

Application to the ACT

4.11 The majority of witnesses and submissions to this inquiry support the concept of order of occupancy in some form but many emphasised the need for any order of occupancy requirement to be accompanied by adequate rules around building sound attenuation.⁴⁸

4.12 The Canberra Blues Society (CBS) highlighted a number of local cases where new residential developments in proximity to venues had resulted in noise complaints. Some venues were now self-regulating, limiting their entertainment to a few nights a week and finishing early in order to avoid complaints.⁴⁹ The CBS advised the Committee that they self-regulate their

⁴⁶ *Liquor Licensing Act 1997 (SA)*, s106(6)

⁴⁷ Music Council of Australia, *A comparison of state and territory legislation and regulations pertaining to the presentation of live entertainment in liquor-licensed venues in Australia*, 2008, p7.

⁴⁸ Submission 1; Submission 2; Submission 3; Submission 7; *Transcript of Evidence*, 27 October 2009, pp17-19, 27, 37; *Transcript of Evidence*, 6 November 2009, pp59-60.

⁴⁹ *Transcript of Evidence*, 27 October 2009, pp18-19.

sound level to some degree by setting up monitoring equipment a few meters away from the bands and keeping their noise to a set level.⁵⁰

- 4.13 Mr Peter Bayliss, Managing Director of Into Tomorrow Pty Ltd and Mr Bruce Ryan of Indyfest, provided the committee with examples of business-to-business order of occupancy disputes where a licensee or owner in close proximity has changed a venue's activities and complained about existing business noise, forcing the existing business to pay for noise attenuation measures.⁵¹
- 4.14 The Committee believes that including Order of Occupancy principles in the ACT's liquor licensing complaints review mechanism is a fair and suitable way to consider disputes between live event venues and local residents. The Commissioner for Fair Trading (the relevant authority) in the ACT should be able to consider order of occupancy principles when investigating complaints against licensed premises.
- 4.15 The Committee believes that the Government should investigate the best way to ensure that people moving into neighbourhoods where live entertainment is provided are aware of order of occupancy principles. This may include measures such as declarations in property documentation along the lines required for easements.

RECOMMENDATION 3

- 4.16 **The Committee recommends that the *Liquor Act 1975* enable the Commissioner to consider Order of Occupancy principles when investigating complaints in relation to a licensee.**

RECOMMENDATION 4

- 4.17 **The Committee recommends that the ACT Government investigates the best ways to ensure that people moving into residential areas where live entertainment is provided are made aware of Order of Occupancy principles.**

⁵⁰ *Transcript of Evidence*, 27 October 2009, p19.

⁵¹ *Transcript of Evidence*, 27 October 2009, pp36-7.

5 BUILDING CODES

5.1 Whilst Order of Occupancy considerations provide a mechanism for complaints against licensed venues which can take into account change in use as well as structural changes to the premises of both parties, it is also possible to establish other mechanisms that address amenity issues at the time a new development is being planned. The performance requirements of new developments in mixed use areas should be adequate to reduce the likelihood of complaints in the first place.

5.2 The Music Council of Australia comments in its report on state and territory legislation and regulations pertaining to the presentation of live entertainment in liquor-licensed venues in Australia, that:

Whilst a neighbour can complain that entertainment from a local entertainment venue may be audible, what processes are there in place to ensure that residents are equally compliant with the construction performance requirements appropriate for the location?⁵²

5.3 Similar concerns were raised in submissions, suggesting that building codes relating to the co-location of residential and business developments need to be reviewed, particularly the need for suitable sound attenuation, and for new developments to take responsibility for the attenuation measures.⁵³

5.4 The Committee notes inner city residential developments need appropriate noise attenuation:

...the consideration should not be to the detriment of investment opportunities such as residential developments, but be in a reasonable and equitable manner to maintain opportunities and a vibrant society'.⁵⁴

⁵² Music Council of Australia, *A comparison of state and territory legislation and regulations pertaining to the presentation of live entertainment in liquor-licensed venues in Australia*, 2008, p8.

⁵³ Submission 1; Submission 2, p4; Submission 3, pp3 & 11-12; Submission 4; *Transcript of Evidence*, 27 October 2009, pp18-19.

⁵⁴ Submission 3, p3.

The Building Code of Australia

- 5.5 The Committee was advised by the Chief Planning Executive, Mr Neil Savery, that in the context of this inquiry, the Building Code of Australia (BCA) has no relevance as it deals with internal noise attenuation between tenancies within a building rather than external sound attenuation.⁵⁵ The BCA 'has no jurisdiction or authority in relation to land use planning and zones and therefore the relationship of activities to one another'.⁵⁶ The Committee was also advised that the Building Codes Board made a decision in 2008 that external noise attenuation in regard to the proximity of different land uses was not a role for the BCA. If they wished, each jurisdiction would be able to set their own policies on the issue through their respective planning processes.⁵⁷

Territory Plan - Development Codes and Precinct Codes

- 5.6 In the ACT, there are currently some requirements for developers to take responsibility for sound attenuation at the development application stage.
- 5.7 The Committee was advised that ACTPLA considers the proximity of adjacent land uses and associated issues such as noise, traffic, privacy when assessing development applications:

When you go through the territory plan and look at all the provisions that are trying to establish what issues we should be looking at in assessing a development application in terms of the impacts of a new development on an existing development, you are putting into effect that issue of order of occupancy.⁵⁸

- 5.8 The Territory Plan includes Development Codes and Precinct Codes that are

⁵⁵ *Transcript of Evidence*, 6 November 2009, pp44-5.

⁵⁶ *Transcript of Evidence*, 6 November 2009, p44.

⁵⁷ *Transcript of Evidence*, 6 November 2009, p44.

⁵⁸ *Transcript of Evidence*, 6 November 2009, p45.

intended to provide additional planning, design and environmental controls to support the Territory Plan zone and precinct objectives and the assessable uses in development tables. ACTPLA uses the codes to assess development applications. The controls in each code are expressed as either rules, which are generally definitive and quantitative, or as qualitative criteria.⁵⁹

- 5.9 The Chief Planning Executive highlighted to the Committee that in some cases new commercial developments also have conditions attached to the development approval requiring them to include noise attenuation, to ensure that existing uses in close proximity are not adversely affected by a new occupant.⁶⁰ The conditions are designed so that the business can operate effectively within the noise limits set by the EPA.
- 5.10 Some of the relevant Territory Plan code requirements are discussed in detail below.

Noise – code requirements for noise attenuation

Commercial

- 5.11 All commercial Development Codes and Precinct Codes under the Territory Plan require that:

A Noise Management Plan, prepared by an accredited acoustic specialist who is a member of the Australian Acoustical Society, endorsed by Environment Protection is provided for the following uses:

- club
- drink establishment
- hotel
- industry (except light industry)
- indoor entertainment facility
- restaurant

The Noise Management Plan details the design, siting and construction methods, which will be used to minimise the impact of noise on neighbours.

⁵⁹, *Territory Plan*, 'Residential Zones – Multi-Unit Housing Development Code', 2008, Part 3.3, p1.

⁶⁰ *Transcript of Evidence*, 6 November 2009, p45.

5.12 CZ5 zones in the Gungahlin District have additional noise attenuation criteria requiring that 'noise-generating uses are located to minimise impacts on residential or commercial accommodation development.'

5.13 Kingston Group Centre also has additional noise attenuation requirements:

For Kingston Section 22 Blocks 21, 25-33:

Where additional Restaurant, Hotel or Motel uses are applied for, a noise management plan is prepared by an accredited acoustic specialist and endorsed by the relevant authority. The noise management plan details the design, siting and construction methods, which will be used to minimise the impact of noise on neighbours in accordance with the noise standards prescribed in the relevant environmental legislation and the hours of operation relevant to the appropriate noise standards.⁶¹

Residential

5.14 The *Residential Zones Multi Unit Housing Development Code* also includes a number of requirements relating to amenity for multi unit housing, including noise and acoustic privacy.

5.15 Multi unit residential developments in RZ4 and RZ5 zones (as they apply in Belconnen, Bruce, Hawker, Narrabundah, Woden District and Tuggeranong District) and in all commercial zones must be designed and constructed to comply with Australian Standards *AS/NZS 3671 Acoustics – Road traffic noise intrusion, building siting and construction* and *AS/NZS 2107 Acoustics – Recommended design sound levels and reverberation terms for building interiors*. They must also comply with the ACT Environment Protection Regulations and *ACT Draft Noise Management Guideline 1996*.⁶²

5.16 The siting and design of apartment buildings also needs to provide acoustic privacy and protect the privacy of neighbours.⁶³

5.17 The code provides rules and criteria for mixed use developments, such as

⁶¹ *Territory Plan*, 'Group Centres Precinct Code', 2008, Part 4.4, R14, p20.

⁶² *Territory Plan*, 'Residential Zones – Multi-Unit Housing Development Code', 2008, Part C(5), Rule R228, p85.

⁶³ *Territory Plan*, 'Residential Zones – Multi-Unit Housing Development Code', 2008, Criteria C229, p83.

where residential apartments are built on top of commercial space. Criteria C230, for example, requires that:

Apartments near other uses are designed with regard to the potential noise from those activities by locating noise-sensitive sleeping and living areas and private open spaces away from the noise source and by incorporating appropriate noise reduction measures in the construction of the buildings.

- 5.18 The code also allows for other sound attenuation, such as the use of courtyard walls and fences forward of the building line ‘where they provide an acoustic barrier to traffic noise whilst maintaining opportunities for casual surveillance of public places.’⁶⁴

Inner North and Gungahlin

- 5.19 The *Residential Zones Multi Unit Housing Development Code* also contains specific provisions for acoustic privacy for multi unit housing in the RZ3 – Urban and RZ4 – Medium Density Zones in Inner North Canberra and the Gungahlin District. Buildings must be constructed in accordance with *Australian Standard 3671: Acoustics – Road Traffic Noise Intrusion, Building Siting and Construction*. If that standard cannot be met, the criterion requires that:

the design and siting of buildings minimises noise penetration into dwellings exposed to offsite noise. Separation distances or acoustic barriers are provided to achieve acoustic privacy between dwellings.

- 5.20 Development applications for multi unit housing are assessed against these code requirements.

Consultation with Environment Protection Authority

- 5.21 The *Planning and Development Act 2007* also requires that development applications in the Impact Track be referred to the EPA for consultation. In light of feedback from the EPA, ACTPLA may place additional conditions on a developer to include improved noise attenuation. For example, in a

⁶⁴ *Territory Plan, ‘Residential Zones – Multi-Unit Housing Development Code’, 2008, Criteria C123, p56.*

residential building proposed for a commercial setting ACTPLA may require additional noise attenuation 'to lessen the likelihood of future residents complaining'.⁶⁵ Similarly, if a commercial building beside an existing residential development wanted to change their business use under their lease, such as from a shop to a drink establishment, ACTPLA approval is required and the onus would be on the drink establishment to put the necessary noise attenuation in their facility to safeguard the residents from likely additional noise.⁶⁶

- 5.22 The Committee would like the Territory Plan Development Code and Precinct Code provisions to require more assessment of the balance between residential amenity and the provision of live entertainment and other activities within neighbourhoods.

Reverse Sensitivity

- 5.23 The Committee heard that the concept of 'first occupant rights' in New Zealand is called reverse sensitivity, and relates to the effect of new developments on existing activities. It recognises that the existing activities set the ambient environment, be it noise, smell, traffic and that new developments must 'bear the cost of ensuring the existing environment is unaffected by your development'⁶⁷ and protect existing users from complaints by new developments. The CBS particularly supported the need for incoming developments to take the onus for implementing adequate sound attenuation measures.⁶⁸
- 5.24 Reverse sensitivity is considered at the development application stage for new developments.
- 5.25 The Committee acknowledges that the Territory Plan Development Codes and Precinct Codes do, to some extent, embrace the concept of reverse sensitivity where the onus is on the incoming developer to take

⁶⁵ *Transcript of Evidence*, 6 November 2009, p47.

⁶⁶ *Transcript of Evidence*, 6 November 2009, p47.

⁶⁷ *Transcript of Evidence*, 6 November 2009, p60.

⁶⁸ *Transcript of Evidence*, 27 October 2009, pp18-19.

responsibility for attenuating noise. The requirements that are in place ‘seek to minimise the potential for residents to want to advocate or lobby for those things to be changed’.⁶⁹ However, APRA stressed to the Committee that principles such as reverse sensitivity and order of occupancy must be clearly written into planning regulations rather than implied or they ‘...may as well not exist’.⁷⁰

- 5.26 The Committee believes that the concept of reverse sensitivity could be strengthened in the ACT by including the concept as an overarching Objective in the relevant development codes, such as the *City Centre Precinct Code*, including related rules and criteria for specific commercial zones.

Role of Leases

- 5.27 The Committee was advised by the Chief Planning Executive that the ACT is also in a unique position because leases in ACT commercial centres typically have multiple uses. A ‘person who has purchased the lease believes they have an entitlement to exercise all of those uses, one or two of those uses, and they can change them through the life of their lease.’⁷¹
- 5.28 The Committee heard that the multipurpose or ‘broadband’ leases do not provide an automatic entitlement for a lessee to use all of those permitted uses. They still require a Development Application to examine the potential implications of any changes to the approved use if a lessee wants to access those other allowable uses in the lease.⁷²
- 5.29 The concept of reverse sensitivity supports this requirement, as the onus would be on new developments to manage the effect of the ambient environment within their development, including noise levels.

RECOMMENDATION 5

- 5.30 **The Committee recommends that the ACT Planning and Land Authority include the concept of Reverse Sensitivity as an**

⁶⁹ *Transcript of Evidence*, 6 November 2009, p49.

⁷⁰ *Transcript of Evidence*, 6 November 2009, p67.

⁷¹ *Transcript of Evidence*, 6 November 2009, p46.

⁷² *Transcript of Evidence*, 6 November 2009, p53.

**overarching Objective in the relevant Development Codes and
Precinct Codes of the Territory Plan.**

Amenity in Commercial Centres

- 5.31 A number of witnesses emphasised to the Committee that, people residing or working in commercial centres must accept that they cannot expect the same level of amenity as property in residential zones, particularly as residential and higher-density development increases in commercial centres.⁷³
- 5.32 The Committee heard that owners and tenants need to be made aware that they cannot expect the same level of amenity as solely residential areas. Ambient noise in commercial centres goes beyond entertainment facilities and includes traffic, the noise of patrons arriving or leaving venues, delivery trucks, garbage trucks, etc.⁷⁴
- 5.33 The Committee notes, however, that in the ACT, even if residents are aware of what other legitimate activities or businesses are taking place in close proximity before buying or leasing, the commercial leases usage may change.⁷⁵
- 5.34 Additionally, both the Chief Planning Executive and representatives from the Planning Institute of Australia (ACT) highlighted that, even when residents are aware of the ambient noise levels and all possible uses of neighbouring commercial leases and even in cases where residents signed an acknowledgement (no-complaint covenant) when purchasing or leasing, no level of awareness could stop residents' right to lobby for change.⁷⁶
- 5.35 The Committee notes that because of the right to lobby for change, it is necessary to include Order of Occupancy considerations in complaints assessments and to strengthen the concept of reverse sensitivity.

⁷³ *Transcript of Evidence*, 6 November 2009, p46; *Transcript of Evidence*, 27 October 2009, p26.

⁷⁴ *Transcript of Evidence*, 6 November 2009, pp49 & 66; *Transcript of Evidence*, 27 October 2009, p26.

⁷⁵ *Transcript of Evidence*, 6 November 2009, p47.

⁷⁶ *Transcript of Evidence*, 6 November 2009, pp54, 56, 59 & 61.

Ensuring Appropriate Physical Security and Safety

5.36 Physical Security and Safety issues are also included in the Territory Plan Development Codes and Precinct Codes to some degree within landscaping and lighting requirements. There are no specific requirements in relation to Physical Security and Safety and the co-location of residential areas with live music and entertainment venues.

5.37 All commercial Development Codes and Precinct Codes include a criteria for landscaping:

A documented landscape design concept shows how landscape associated with the development addresses all of the following:

j) does not obscure or obstruct building entries, paths and driveways to reduce the actual or perceived personal safety and security.

5.38 Similarly, all Commercial Development Codes and Precinct Codes include lighting rule that:

External lighting is provided to building frontages, to all pathways, roads, laneways and car-parking areas in accordance with *Australian Standard AS1158.1.3 Pedestrian Lighting*.

The associated criterion requires that ‘External lighting is provided in accordance with the *Crime Prevention Through Environmental Design General Code*.’

5.39 Local centres, CZ2 Office Areas and CZ6 Precinct and Development Codes state that ‘all outdoor lighting, including security and car park lighting, is designed and sited to minimise light spill.’

5.40 City, Town and Group Centres as well as the CZ5 Precinct Code, include a rule that ‘all external lighting provided is in accordance with AS 4282 Control of the Obtrusive Effects of Outdoor Lighting.’

Crime Prevention Through Environmental Design General Code

5.41 Additionally, the *Crime Prevention Through Environmental Design General Code* is a part of the Territory Plan and sets out specific requirements for crime

prevention through environmental design (CPTED) 'to ensure that issues of community safety are adequately addressed in decision making for land use and development activities in the ACT.'⁷⁷ The code applies to all zones in the ACT except single dwellings and development in rural and broadacre zones.

- 5.42 The Code deals with environmental design issues such as natural surveillance, natural access, landscaping lighting, signage and building interfaces.
- 5.43 Developments that are relevant to this inquiry and which are required to meet the code include:
- Residential care accommodation
 - Community activity Centre
 - Community theatre
 - Club
 - Drink establishment
 - Restaurant
 - Indoor entertainment Facility
 - Guest house
 - Boarding house
 - Place of assembly⁷⁸
- 5.44 The Committee notes that this Code, in conjunction with the other provisions of the Territory Plan, seem to provide reasonable guidance on physical security and safety in relation to all development types. The Code does not provide guidance specifically on issues related to co-location of residential developments and live entertainment venues.

⁷⁷ ACT Government, *Crime Prevention Through Environmental Design General Code*, Part A (1) Neighbourhood Design, p1.

⁷⁸ ACT Government, *Crime Prevention Through Environmental Design General Code*, Part A (1) Neighbourhood Design, p4.

6 EVENT PROMOTION

- 6.1 Both distribution and marketing are important to the live music industry to attract audiences and establish some recognition. The Committee notes that many bands, music groups and performers have limited funds with which to promote their events.
- 6.2 The Committee heard that many live performers undertake their own advertising, like the CBS who use as much free advertising as possible. Venues do not generally do a lot of promotion for themselves or their performers⁷⁹ and Memorandums of Understanding are often established between venues and entertainers, requiring the entertainers to promote their event and the venues.⁸⁰

Bill Posting

- 6.3 Advertising using posters remains one of the most common forms of promotion for live music and events. Many submissions to the Committee reinforced the benefits of enabling legal bill posting as a low-cost way for live performers to promote their acts as well as assisting a performer to establish a ‘brand’ and a following.⁸¹
- 6.4 The Canberra Blues society supported the need for community display space, such as bill posting silos and community noticeboards, in order to ‘increase the opportunities for community-based non-profit groups...to reach out to and engage with the broader community’.⁸² The Committee also heard that having a defined postering space, in collaboration with some art work such as a mural, may be an effective means of providing legal bill posting facilities.

⁷⁹ *Transcript of Evidence*, 27 October 2009, p23.

⁸⁰ Submission 1.

⁸¹ Submission 3, p9; Submission 1; Submission 4; Submission 7; *Transcript of Evidence*, 27 October 2009, p40.

⁸² Submission 1.

- 6.5 Submissions to the Committee and witnesses were particularly concerned about the current limited number of legal bill posting facilities in Canberra, particularly poster silos or bollards, and many called for increased bill posting facilities in smaller shopping/town centres.⁸³
- 6.6 Report number three of the Standing Committee on Planning, Public Works and Territory and Municipal Services on the Inquiry into the *Crimes (Bill Posting) Amendment Bill 2008* discussed a number of issues around bill posting and community notice facilities.
- 6.7 The Committee's recommendations in that report focused on the need for increased bill posting facilities as well as the need for information on legal bill posting locations and on the application of the legislation to be made easily accessible. The report also recommended that the ACT Government undertake a comprehensive public awareness campaign on legislation affecting bill posting.⁸⁴
- 6.8 In its response to the above report, the ACT Government re-affirmed its commitment 'to significantly increasing the number of bill-posting silos across Canberra' and outlined the level of appropriation received this calendar year for this to proceed. By the end of February 2010, the Government anticipates that 22 new bill posting silos will be installed around Canberra.⁸⁵
- 6.9 One submission to the Committee called for more stringent bill posting etiquette and a designated cleaning day for Government-provided bill posting facilities.⁸⁶ The Committee notes that the Territory and Municipal Services website advises that 'poster pillars operate on a first come, first served basis, with posters removed monthly within the first five days of a new month'⁸⁷ and the Committee believes this is adequate notice to assist

⁸³ Submission 3, p9; Submission 1; *Transcript of Evidence*, 27 October 2009, p40.

⁸⁴ Standing Committee on Planning, Public Works and Territory and Municipal Services, *Inquiry into the Crime (Bill Posting) Amendment Bill 2008*, Report 3, Seventh Assembly, 2009.

⁸⁵ ACT Government, *Response to Report 3 of the Standing Committee on Planning, Public Works and Territory and Municipal Services, Inquiry into the Crime (Bill Posting) Amendment Bill 2008*, 2009.

⁸⁶ Submission 3, pp9-10.

⁸⁷ *Ibid.*

posterers to plan their poster activities.

- 6.10 The Committee also notes that poster etiquette guidelines will be reinforced in any bill posting awareness campaign undertaken by the ACT Government in relation to new bill posting facilities. However, as noted by the ACT Government in its response to report three on the Inquiry into the *Crime (Bill Posting) Amendment Bill 2008*, poster etiquette guidelines are also not legally enforceable and offers only general guidance.

Commercial Developments

- 6.11 Submissions to the Committee and witnesses did not address options to encourage or require large commercial developments in group or town centres to provide community bollards for the promotion of events via bill posters, other than a general consensus that more bill posting facilities are required in Canberra.
- 6.12 The Government response to the Inquiry into the *Crime (Bill Posting) Amendment Bill 2008* noted a number of factors that should be considered when selecting locations for bill posting silos, with priority given to Town Centres and Group Centres, followed by local shopping centres selected based on bill posting ‘hotspot’ data and areas of genuine demand.⁸⁸ The Government response also noted the need for planning approval for silo installation, selection of ‘locations that are safe...and do not impede pedestrian movement’ and possible heritage sensitivities.⁸⁹ The Government response also noted that entertainment venues come and go so the need and demand for bill posting facilities is correspondingly variable.
- 6.13 The above factors must also be taken into account by commercial developments if they choose to, or are required to, provide community bollards for bill posting.
- 6.14 The majority of the Committee does not believe it is appropriate to force

⁸⁸ ACT Government, *Response to Report 3 of the Standing Committee on Planning, Public Works and Territory and Municipal Services, Inquiry into the Crime (Bill Posting) Amendment Bill 2008*, 2009, p1-2.

⁸⁹ ACT Government, *Response to Report 3 of the Standing Committee on Planning, Public Works and Territory and Municipal Services, Inquiry into the Crime (Bill Posting) Amendment Bill 2008*, 2009, p1.

commercial developments to provide and maintain community poster bollards because of the costs involved particularly for poster removal and cleaning.

- 6.15 If commercial developments choose to provide such facilities, the responsibility for the maintenance, repair, cleaning and removal of inappropriate material from bollards would most likely fall to the building owner or lessee. Lease conditions usually include a requirement for tenants to, keep the premises clean and tidy and free from rubbish and other unsightly matter which the Committee considers would most likely capture any bill posting facilities. Despite this, there remains a risk that the poster facility will not be maintained and cleared regularly, adding to the visual pollution of commercial centres.
- 6.16 The Committee acknowledges that, if large commercial developments were to provide community poster bollards, maintenance and cleaning responsibility could be negotiated between the commercial development and the Department of Territory and Municipal Services. However, the burden of maintaining many additional bill posting sites may also be excessive to add to the existing TAMS poster clearing work.
- 6.17 The Committee support action to encourage more commercial developments and private businesses to provide bill posting and community noticeboard facilities if they feel it is appropriate and manageable for their business.

RECOMMENDATION 6

- 6.18 **The Committee recommends that private businesses and commercial developments be encouraged to provide bill posting facilities.**

7 OTHER CONSIDERATIONS

Other regulatory approaches

Queensland - Brisbane Fortitude Valley Precinct

- 7.1 In Brisbane, the issues of co-location of residential developments and live event venues has been addressed by establishing entertainment precincts such as in Fortitude Valley, which are subject to special regulatory requirements.
- 7.2 Fortitude Valley has been established as an entertainment precinct (see Appendix C) to ‘provide for and encourage a variety of live music, nightclub and other music venues into the Valley’.⁹⁰ The ambient noise levels are accepted as being relatively higher than other areas of Brisbane and new residential and entertainment developments in the Core Area must be designed with appropriate noise attenuation measures.
- 7.3 To support the zoned entertainment precincts, the Queensland *Liquor Act 1992* includes provisions for a higher level of noise to be emitted from licensed premises in the precincts.⁹¹ If a special entertainment precinct is established under the *Local Government Act 1993*, amplified music played at a licensed premises in that precinct is exempt from the ‘abatement of nuisance or dangerous activity’ provisions of the *Liquor Act 1992*.
- 7.4 The Valley Music Harmony plan was created in 2002 by the Brisbane City Council ‘to address the concerns and conflict created by the convergence of mixed land uses in the Valley’⁹². It was developed in consultation with key stakeholders, including residents, community representatives, business

⁹⁰ *Valley Music Harmony Plan amendments to Brisbane City Plan 2000, ‘Amendments to Fortitude Valley Local Plan, Newstead Teneriffe Waterfront Local Plan and Bowen Hills Local Plan’, <http://www.valleyentertainmentprecinct.com/docs/Legislation/Valley%20Music%20Harmony%20Plan2000_kit.pdf>*

⁹¹ Live Music (R)evolution, *Liquor*.

⁹² Brisbane City Council, *Valley Music Harmony Plan*, 2004, p6.

owners, venue owners and operators, the development industry and relevant government agencies and involved them from the beginning to help scope the issues and undertake problem-solving.⁹³ The Committee heard that the issues were debated in a cordial fashion.⁹⁴

7.5 Importantly, the plan acknowledges that ‘residents and businesses in and around the Valley special entertainment area will experience a higher ambient noise environment than expected in suburban residential or semi-rural living’.⁹⁵ The ambient noise environment, including ‘noise levels and noise frequency spectrum of different types of music and noise insulation performance of venues and apartments’ was established through research undertaken by Brisbane City Council.⁹⁶

7.6 The five key features of the Valley Music Harmony Plan are to:

- Designate a special entertainment area within the Valley and a buffer area.

The enhancement and expansion of the music-based entertainment industry will be encouraged within the special entertainment area and not within the special entertainment area buffer or the remainder of the Valley.⁹⁷

- Require new development to attenuate noise.

Higher noise limits are permitted in the core of the precinct and developments in both the core and buffer areas will need to have adequate noise attenuation.⁹⁸ The onus is on the ‘agent of change’ to adequately insulate their development from noise:

Music from entertainment venues (particularly nightclubs) contains a lot of propulsive low frequency (bass) noise ... Therefore new residential buildings in the Valley will require higher construction standards to cater for impulsive low frequency noise. Venues will also have tighter restrictions for low frequency noise late at night...

...The “Fortitude Valley Local Plan” will be amended to require new residential

⁹³ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p2.

⁹⁴ *Transcript of Evidence*, 27 October 2009, p2.

⁹⁵ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p2.

⁹⁶ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p6.

⁹⁷ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p8.

⁹⁸ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p8.

apartments and accommodation to be designed and constructed to achieve a minimum noise reduction of 25 decibels in the 63 hertz frequency band, within the Valley special entertainment area and buffer.

...This noise insulation requirement for new residential type buildings may not provide silence, and is a minimum standard only.⁹⁹

It should also be noted that the standard is based on windows of a residential building being closed because of the accepted higher level of ambient noise in the precinct.

- Adopt new uniform noise emission levels for music venues in the Valley special entertainment area.

The proposed music noise emission levels will allow a reasonable increase in the internal noise level of music venues before midnight/1am to ensure live music can function, but will not increase current lawful levels for music venues after midnight/1am. The proposed emission levels are close to the noise levels currently emitted by venues in most instances.¹⁰⁰

The new noise emission levels are measured at the venue, meaning the permissible level of music noise from a venue will not depend on how close a venue is to residences. Maximum noise levels inside venues will still vary based on the level of noise insulation:

The internal levels will be based on achieving the proposed music noise emission levels of Table 1 at the boundary of the licensed area of the venue.

⁹⁹ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p9.

¹⁰⁰ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p13.

TABLE 1: PROPOSED MUSIC NOISE EMISSION LEVELS FOR MUSIC VENUES SITUATED IN THE VALLEY SPECIAL ENTERTAINMENT AREA

Average Music Noise Emission Level	Music Noise Emission Level Time Limit	Venue Location
80 dB (C) Leq	10am – 1am Thurs, Fri & Sat 10am – midnight Other days	Valley Special Entertainment Area A (see appendix 1)
70 dB (C) Leq	At all other times	Valley Special Entertainment Area A (see appendix 1)
80 dB (C) Leq	10am – midnight Fri & Sat 10am – 11pm Sun to Thurs	Valley Special Entertainment Area B (see appendix 1)
55 dB (C) Leq	At all other times	Valley Special Entertainment Area B (see appendix 1)

101

- Provide noise management assistance and advice (and info) to music venues, businesses and residents; and
- Implement a communication strategy to improve communication between government, industry and the community and to make potential residents aware of the Valley’s entertainment values before they move to the Valley.

102

Entertainment Precincts

7.7 The Committee heard that the Planning Institute of Australia (ACT) supported the concept of entertainment precinct identification, such as in the Fortitude Valley case, but only on a broad scale that identifies the city or commercial centre as a whole.¹⁰³ In the ACT this would mean defining a precinct as all commercial zones, or the city centre as a whole, not just the CZ5 or CZ3 zones or a few streets within the city centre. Entertainment precincts that are too narrowly defined risk creating a segregation of uses, where the entertainment ‘block’ may become the only lively part of the city

¹⁰¹ Brisbane City Council, *Valley Music Harmony Plan*, 2004, p13.

¹⁰² Brisbane City Council, *Valley Music Harmony Plan*, 2004, p3.

¹⁰³ *Transcript of Evidence*, 6 November 2009, pp60-61.

centre whilst other areas become dead spots.¹⁰⁴

- 7.8 As noted above, the Committee would like to consider this approach in comparison to other regulatory approaches to supporting live events and will await the CMC Best Practice Guide before commenting on the Fortitude Valley example.

Venue Availability

- 7.9 The Committee notes that live music is ‘reliant on the availability of suitable community or commercial venues’.¹⁰⁵ The Committee heard, for example, that the last ten years has seen a decline in live music in licensed venues, brought about through a variety of reasons but particularly attributed to the difficult regulatory environments that exist in many States and Territories for venues to present live music.¹⁰⁶
- 7.10 There appears to be a shortage of small to medium sized venues in the ACT. The CBS highlighted that finding appropriate facilities is becoming increasingly difficult with ‘many restrictions being imposed on the management of those facilities’, particularly limits to noisy activities and night time events. The viability of commercial venues is particularly affected where they are located near residential areas because of the pressure to limit their music activities to meet strict noise guidelines.¹⁰⁷
- 7.11 The Committee was advised that educating venue owners and operators about the wide variety of live music that could be presented at their venue was another important factor to encourage more venues to offer live entertainment. APRA emphasised that ‘live music does not necessarily mean a five-piece rock band’¹⁰⁸ so will not result in a noise issue in many cases.
- 7.12 It is interesting to note that live music events were also not the main cause for complaint in the Fortitude Valley region before the Valley Music

¹⁰⁴ *Transcript of Evidence*, 6 November 2009, pp53, 61 & 63.

¹⁰⁵ Submission 1.

¹⁰⁶ *Transcript of Evidence*, 27 October 2009, p2.

¹⁰⁷ Submission 1.

¹⁰⁸ *Transcript of Evidence*, 27 October 2009, p3.

Harmony Plan was put in place. The majority of noise complaints before the Harmony Plan was in place related to DJ music.¹⁰⁹

- 7.13 The Committee heard that businesses could also use live music to distinguish themselves from similar businesses and do something that adds breadth to their business. It is therefore equally important that the regulations discern between different types of music and entertainment.¹¹⁰

RECOMMENDATION 7

- 7.14 **The Committee recommends that the ACT Government review the regulations that impact on live community events and ensure that the regulatory requirements for venues reflect the different types of music and entertainment that may be provided.**

Community Venues

- 7.15 As well as commercial venues such as licensed premises, the Committee was advised that sufficient community venues are needed for live music and events to ensure they remain ‘an integral part of our culture and continue to contribute to the maintenance of a vibrant, culturally diverse community’.¹¹¹
- 7.16 The CBS felt that community venues in the ACT were lacking and they generally had to look for commercial venues, who often do not want to work with a community organisation.¹¹²
- 7.17 APRA highlighted to the Committee that events held in community venues such as halls do not seem to attract the same level of complaints from event organisers about regulatory difficulties, potentially because they are more likely to be one-off events.¹¹³
- 7.18 The Committee notes that new community halls and similar facilities could be designed with the possibility in mind that they may be used as live event facilities. With adequate sound attenuation, they could be more versatile

¹⁰⁹ Submission 2, p4.

¹¹⁰ *Transcript of Evidence*, 27 October 2009, pp3 & 7.

¹¹¹ Submission 1.

¹¹² *Transcript of Evidence*, 27 October 2009, p16.

¹¹³ *Transcript of Evidence*, 27 October 2009, p9.

facilities.

- 7.19 The Committee notes that the opportunity for a ‘live music economy’ requires more spaces to be available, and suited, to live performances.
- 7.20 The Committee also heard that consideration needs to be give to youth centres and venues that are accessible to under 18’s to perform to friends and peers, when reviewing the current regulatory arrangements. The Committee was advised that it is often difficult to hold an under 18’s event at a licensed premises.¹¹⁴
- 7.21 In addition to new halls, older community facilities, such as Corroboree Park Community Hall and youth centres, could be upgraded to have more adequate sound attenuation.

RECOMMENDATION 8

- 7.22 **The Committee recommends that the ACT Government consider improved sound attenuation measures for existing community facilities.**

RECOMMENDATION 9

- 7.23 **The Committee recommends that the interdepartmental committee (IDC) further investigate the availability of community venues for live events in the ACT and consider how the ACT Government can better support this need.**

Viability of Venues

- 7.24 The Committee notes that live entertainment can contribute to the viability of venues such as restaurants, cafes, pubs, clubs and hotels.
- 7.25 APRA advised the committee that the driving factors for venues that do provide live music were not typically financial ones. An informal survey by APRA and comments to the Committee suggests that many venues choose to provide live music because it was important to their customers and

¹¹⁴ *Transcript of Evidence*, 27 October 2009, pp38-9.

community, or to invest in culture.¹¹⁵ Live music can also be a way to attract repeat clientele.

- 7.26 APRA also highlighted some case studies of businesses that have managed to provide regular live music and profit from it.¹¹⁶ Providing live entertainment can be a profitable relationship for a venue where, like the Canberra Blues Society, the entertainment fills 'a void' in the activities of their current home by conducting activities at a time the venue would otherwise be very quiet.¹¹⁷
- 7.27 However, the Committee also heard that for many venues, the choice to not provide live entertainment often comes down to profit margins and the risk of noise complaints and associated fines or operating limits being imposed by the EPA.¹¹⁸ Only those owners willing to take the risk and who are committed to live music maintain that entertainment.
- 7.28 Mr Gil Miller, publican of the George Harcourt Inn highlighted to the Committee that venues such as his may also choose not to present live music all the time because of the nature of the establishment where bands are background music.¹¹⁹ Nonetheless, Mr Miller indicated that he is committed to providing some live entertainment and advised the Committee that in addition to paid entertainment he provides live music for patrons by inviting performers to play to the outdoor crowds on a weekend as a promotional opportunity for the performer rather than for a charge.¹²⁰
- 7.29 Mr Bayliss and Mr Ryan advised the committee that smaller venues that were more likely to encourage start-up bands the opportunity to play in front of an audience and hone their talent, were also more likely to be affected by residential intensification and disturbance complaints.¹²¹

¹¹⁵ *Transcript of Evidence*, 27 October 2009, pp12 & 22.

¹¹⁶ *Transcript of Evidence*, 27 October 2009, p12.

¹¹⁷ *Transcript of Evidence*, 27 October 2009, p16.

¹¹⁸ *Transcript of Evidence*, 27 October 2009, pp22 & 27.

¹¹⁹ *Transcript of Evidence*, 27 October 2009, p31.

¹²⁰ *Transcript of Evidence*, 27 October 2009, pp30-1.

¹²¹ *Transcript of Evidence*, 27 October 2009, pp35-6.

- 7.30 The Committee notes that reducing the regulatory burden and securing the rights of venues to present live entertainment may make the presentation of live music a more viable and less risky venture.

8 CONCLUSIONS

- 8.1 The Committee acknowledges that the current ACT noise standards reflect the different level of amenity that can be expected in the city centre, town centres, group centres, local centres and residential areas. However, there is scope for additional flexibility to assist venues to provide live entertainment at times demanded by patrons.
- 8.2 The Committee notes that future residents moving into a commercial or mixed use area need to be made aware of the different amenity level that should be expected, but the Committee believes no-complain covenants are not the most effective way to do this. Including Order of Occupancy considerations into liquor licensing complaints mechanisms enables all parties to have a say in the case of a complaint and for the decision maker to take into account the ambient noise of the area and first occupancy 'rights'.
- 8.3 The Committee also notes that, to some degree, the current Territory Plan Development Codes and Precinct Codes require new developments to consider sound attenuation measures that may reduce the likelihood of complaints arising from owners and tenants of those premises against activity in close proximity. The Committee believes the current requirements could be strengthened by including reverse sensitivity considerations in the Zone or Precinct objectives of the Territory Plan. Appropriate rules and criteria should also be developed to reinforce the reverse sensitivity principle.
- 8.4 The Committee notes that whatever changes are made to support live entertainment, regulatory or otherwise, broad level consultation should take place. Problem solving and decision making processes should involve all stakeholders, from the hospitality and music industries, government, residency groups, the development industry, venue owners and the community.¹²²

¹²² *Transcript of Evidence*, 27 October 2009, p29.

- 8.5 The Committee notes that there appears to be a shortage of live event venues in the ACT and believes that the inter-departmental committee should investigate the issue further.
- 8.6 The Committee notes that there are many regulatory approaches to reducing barriers to live events in our community. As discussed at the beginning of this report, the Committee would like the opportunity to review the Cultural Ministers Council Working Group 'Best Practice Guide for the Development of a Legislative and Regulatory Environment Supporting Live Music and Entertainment'. The Committee believes this guide would be of great relevance to this inquiry and the Committee notes that the other regulatory approaches to live events in other Australian jurisdictions warrant further investigation and analysis against the Guide. The Guide was not available at the time the Committee wished to finalise this report. The Committee has therefore agreed that this inquiry should be ongoing, and that this report is an interim report only.
- 8.7 The Committee notes that there are other matters to explore, such as:
- Transport;
 - Access;
 - Public liability; and
 - Security.

Mary Porter AM MLA

Chair

3 December 2009

Appendix A Submissions Received by the Committee

No.	Author
1	Canberra Blues Society
2	APRA/AMCOS
3	Into Tomorrow and Liquid Enterprises
4	ACT Democrats
5	George Harcourt Inn
6	ACT Government
7	Cardboard Charlie

Appendix B Environment Protection Regulation 2005

Schedule 2 (Part 2.1 and 2.2)

Noise zones, noise standards and conditions

(see s 23, s 24 and s 29)

Note Noise emitted from land in the ACT may affect NSW land. Accordingly, this regulation prescribes the noise standard for certain NSW land.

Part 2.1 Noise zones

2.1 Definitions for pt 2.1

In this part:

broadacre zone means an area designated as a broadacre zone in the territory plan.

Central National Area (City) means the area designated as Central National Area (City) in the national capital plan.

Note See s 67 (Displacement of Legislation Act, s 47 (5) and (6)).

Central National Area (Fairbairn) means the area designated as Central National Area (Fairbairn) in the national capital plan.

Central National Area (The Parliamentary Zone; Barton; sections 39, 40 and 41 of Yarralumla; Acton; Anzac Parade and Constitution Avenue; Russell; Duntroon, ADFA and Campbell Park; Development Nodes and Clubs of Lake Burley Griffin and Foreshores) means the area of that name in the national capital plan.

city centre means the area identified as the city centre in the City Centre Precinct Code in the territory plan.

commercial CZ4 zone means an area designated as a commercial CZ4 (Local Centres Zone) zone in the territory plan.

commercial CZ5 zone means an area designated as a commercial CZ5 (Mixed Use Zone) zone in the territory plan.

community facility zone means an area designated as a community facility zone in the territory plan.

group centre means an area identified as a group centre in the Group Centres Precinct Code in the territory plan.

industrial zone means an area designated as an industrial zone in the territory plan.

leisure and accommodation zone means an area designated as a leisure and accommodation zone in the territory plan.

national capital plan means the national capital plan as in force from time to time.

Note ***National capital plan*** is defined in the Legislation Act, dict, pt 1.

office site means an area identified as an office site outside the city centre, group

centres and town centres in the territory plan.

Queanbeyan city business zone means a business zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

Note See s 67 (Displacement of Legislation Act, s 47 (5) and (6)).

Queanbeyan city industrial zone means an industrial zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

Queanbeyan city special uses zone means a special uses zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

restricted access recreation zone means an area designated as a restricted access recreation zone in the territory plan.

town centre means an area identified as a town centre in the Town Centres Precinct Code in the territory plan.

TSZ2 services zone means an area identified as a TSZ2 (Services Zone) zone in the territory plan.

Table 2.1

column 1 item	column 2 noise zone	column 3 ACT land	column 4 NSW land
1	zone A	land in an industrial zone	land in the Queanbeyan city industrial zone
2	zone B	land in the city centre and town centres land in the Central National Area (City)	land in the Queanbeyan city business zone
3	zone C	land in group centres and office sites land in the Central National Area (The Parliamentary Zone; Barton; sections 39, 40 and 41 of Yarralumla; Acton; Anzac Parade and Constitution Avenue; Russell; Duntroon, ADFA and Campbell Park; Development Nodes and Clubs of Lake Burley Griffin and Foreshores)	
4	zone D	land in a commercial CZ4 zone	
5	zone E	land in— <ul style="list-style-type: none"> a restricted access recreation zone a broadacre zone 	
6	zone F	land in— <ul style="list-style-type: none"> a commercial CZ5 zone a TSZ2 services zone a community facility zone a leisure and accommodation zone 	land in the Queanbeyan city special uses zone

column 1 item	column 2 noise zone	column 3 ACT land	column 4 NSW land
7	zone G	all areas other than Central National Area (Fairbairn)	other NSW land

Note The territory plan is available at www.actpla.act.gov.au.

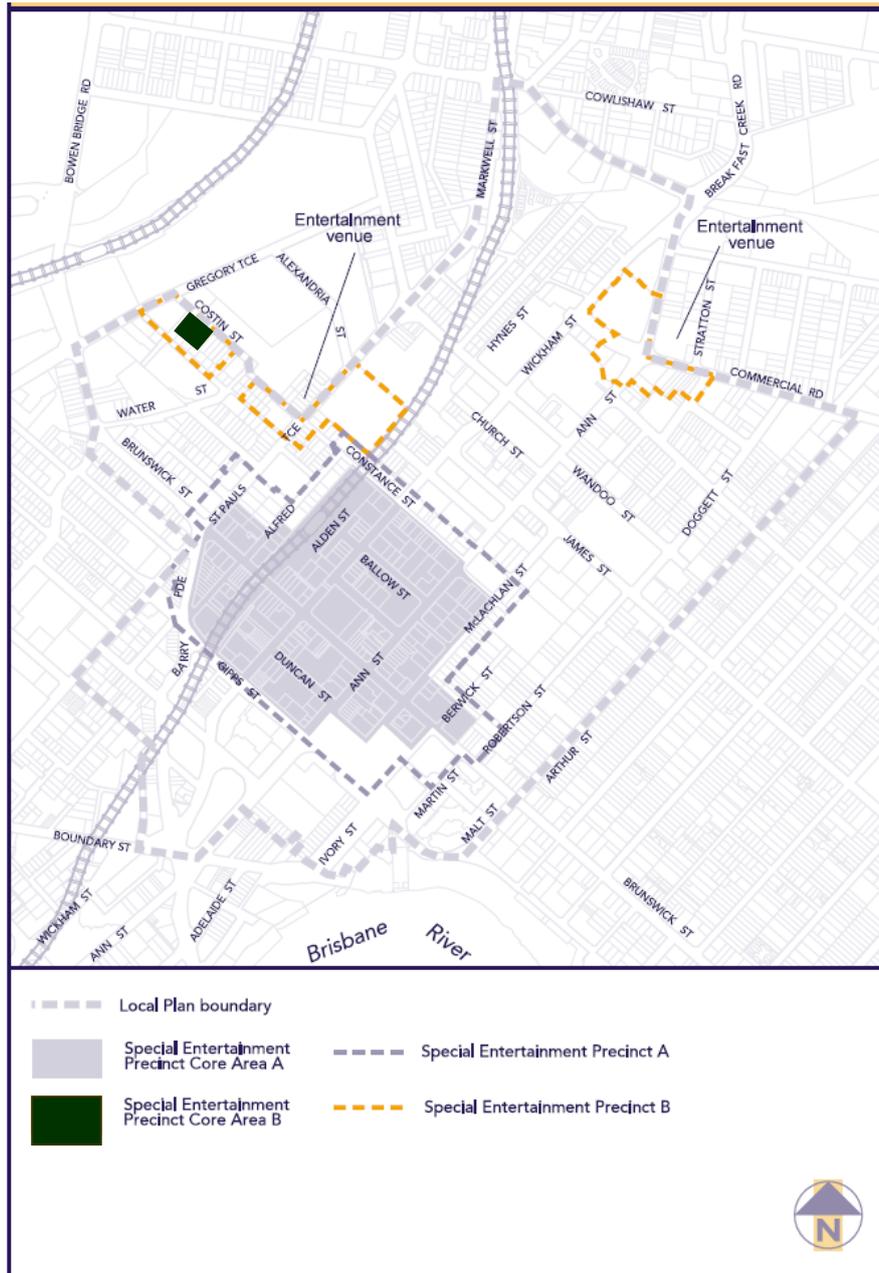
Part 2.2 Noise standards

Table 2.2

column 1 item	column 2	column 3 noise standard (dB(A)) Monday-Saturday 7am-10pm Sunday and public holiday 8am-10pm	column 4 noise standard (dB(A)) Monday-Saturday 10pm-7am Sunday and public holiday 10pm-8am
1	zone A	65	55
2	zone B	60	50
3	zone C	55	45
4	zone D	50	35
5	zone E	50	40
6	zone F	same as the noise standard for the adjoining noise zone with the loudest noise standard for the time period	
7	zone G	45	35

Appendix C Fortitude Valley Entertainment Precinct

Map of Precincts ¹²³



¹²³ Brisbane City Plan, *Fortitude Valley Local Plan*, Chapter 4, p62.

Appendix D Additional Comments – Caroline Le Couteur MLA

My concern is in relation to the discussion about encouraging new commercial developments to provide bill posting facilities. Bill posting provides an important means of local communication about things that matter to members of the community. Live music can be part of that conversation and bill posting is particularly important for smaller and less professional events.

I have a much more positive view of the private provision of bill posting facilities than the rest of the committee. Many shopping centres (Garran, Lyneham and Red Hill to name a few) have them. They seem to be most successful where they are in an open, easily accessible location. As part of the normal maintenance, these shopping centres seem to be able to keep the bill posting areas reasonably tidy.

The Government could make it a requirement of leases for new commercial developments to provide and maintain noticeboards or other bill posting facilities. Given that government resources are already stretched, I believe it is reasonable for lessees who provide these facilities to maintain them. I expect that this can be done for minimal cost, as part of existing maintenance and cleaning regimes.

Recommendation

New local, group and town centres should be required to provide bill posting facilities as part of the development conditions. This should also be done for new development applications on sites in existing local, group or town centres, where appropriate



8 December 2009

STANDING COMMITTEE ON PLANNING, PUBLIC
WORKS AND TERRITORY AND MUNICIPAL SERVICES

Inquiry into Live Community Events

FINAL REPORT - AUGUST 2010

Report 7

Committee Membership

Ms Mary Porter AM MLA	Chair
Ms Caroline Le Couteur MLA	Deputy Chair
Mr Alistair Coe MLA	Member

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Resolution of Appointment

On 9 December 2008, the ACT Legislative Assembly agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

- (e) a Standing Committee on Planning, Public Works and Territory and Municipal Services to examine matters related to planning, land management, proposed capital works projects in the public sector, including works undertaken by territory owned corporations, municipal transport services, heritage and sport and recreation.

The Assembly agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.¹

Terms of Reference

On 25 February 2009 the Assembly referred the issue of supporting live music and events in our community to the Standing Committee on Planning, Public Works and Territory and Municipal Services for inquiry and report by the first sitting day in October 2009. The inquiry will consider, but not be limited to:

- (a) a review of order of occupancy legislation;
- (b) options to encourage or require large commercial developments in group or Town Centres to provide community bollards for the promotion of events via bill posters; and
- (c) an examination of how building codes for residential and business development in commercial zones could be amended to ensure sound insulation and physical security are appropriate to co-location with live cultural events.²

¹Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

²Legislative Assembly for the ACT, *Minutes of Proceedings No. 9*, 25 February 2009, pp105-7.

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RECOMMENDATIONS

These recommendations should be read in conjunction with those in the Committee's interim report.

RECOMMENDATION 1

1.8 The Committee recommends that the ACT Government should reflect on its commitment to live events in the objectives of the relevant legislation, including planning, licensing and noise regulations.

RECOMMENDATION 2

2.18 The Committee recommends that the Environmental Protection Authority, ACT Policing and the Office of Regulatory Services collect more consistent and further defined data-sets on noise complaints.

RECOMMENDATION 3

2.28 The Committee recommends that the ACT Government provide information to the entertainment industry on noise standards, measuring and compliance.

2.29 A public education campaign could also be implemented to advise the public on the appropriate authority to lodge noise complaints with, the preferred medium for lodging complaints, the actions available to each authority and any public feedback mechanisms.

RECOMMENDATION 4

2.34 The Committee recommends that all relevant authorities ensure that timely feedback is provided to all complainants regarding their complaint, including details of any actions that can or have been taken to address the complaint.

RECOMMENDATION 5

3.13 The Committee recommends that the ACT Government undertake comprehensive noise monitoring and analysis of both dB(A) and dB(C) over a suitable period of time to establish ambient noise levels in Canberra City and Town Centres.

RECOMMENDATION 6

3.14 The Committee recommends that the dB(A) noise standards be amended to more realistically reflect the ambient and background noise levels in the City and Town Centres as indicated by the monitoring process recommended above.

RECOMMENDATION 7

3.15 The ACT Government should consider implementing noise standards for the dB(C) range to manage peak and intermittent noise levels.

RECOMMENDATION 8

3.21 The Committee recommends that the ACT Government provide venue operators and owners with a site-specific internal noise standard to enable them to monitor and adjust their own sound levels.

RECOMMENDATION 9

3.49 The Committee recommends that ACT Government should consider implementing a public and industry awareness program to increase industry awareness on the risks of noise and noise-induced-hearing loss.

RECOMMENDATION 10

3.50 The Committee recommends that the ACT Government review the Environment Protection Laws regarding noise and Occupational Health and Safety legislation.

RECOMMENDATION 11

3.51 The Committee recommends that any changes to legislated ACT noise standards only be undertaken with serious consideration of Occupational Health and Safety requirements and the significant risks of Noise Induced Hearing Loss for workers, performers and patrons.

RECOMMENDATION 12

3.52 The Committee recommends that the ACT Government work with the live events industry on the best way to approach patron awareness of noise exposure risks.

3.53 Venues should also consider providing quiet space where patrons and staff can be safe from noise exposure and have breaks from noise.

RECOMMENDATION 13

4.23 The Committee recommends that the ACT Government should give consideration to an entertainment precinct through the eastern broadacre study.

RECOMMENDATION 14

4.24 The Committee recommends that the ACT Government investigate the possibility of establishing entertainment precincts that align with the Territory Plan zoning, taking into considerations the risks and limitations identified by the Committee.

RECOMMENDATION 15

4.32 The Committee recommends that the Territory Plan development codes require reasonable noise attenuation to be incorporated in all new residential developments in the City and Town Centres.

RECOMMENDATION 16

4.33 The Committee also recommends that the Territory Plan development codes for commercial businesses require reasonable noise attenuation to be incorporated in any new venue or for any new lease where the venue is intending to host live community events.

RECOMMENDATION 17

4.46 The Committee recommends that the ACT Government investigate the possibility of funding a grant or other incentive program to assist small and medium business owners of existing live entertainment venues to improve the noise attenuation measures on their premises.

RECOMMENDATION 18

4.51 The Committee recommends that the ACT Government examine the Association of Australian Acoustical Consultants' Acoustical Star Rating for Apartments and Townhouses and assess the potential for that rating system or a similar system to be implemented Territory-wide.

RECOMMENDATION 19

4.56 The Committee recommends that the ACT Government work with local peak building and design bodies to provide readily available information on acoustic design approaches and products.

RECOMMENDATION 20

5.22 The Committee recommends that the ACT Government review the proposed changes to the *Liquor Act 1975* against the “Cultural Ministers’ Council Best Practice Guide for Supporting Australia’s Live Music Industry” and ensure that the amended Act would not impose unreasonable barriers to the presentation of live community events.

RECOMMENDATION 21

6.11 The Committee recommends that order of occupancy principles be reflected in the objects or aims of the *Liquor Act 1975*.

RECOMMENDATION 22

6.15 The Committee recommends that the ACT Government should investigate how it can empower relevant authorities to facilitate mediation between venues and complainants.

RECOMMENDATION 23

7.3 The Committee recommends that the ACT Government consider implementing an authorisation system to enable venues (both indoor and outdoor) that hold less than 2000 people to be able to seek authorisation for one-off events that are likely to exceed the noise standards.

RECOMMENDATION 24

7.4 The Committee recommends that the ACT Government consider implementing an authorisation system to enable organisations to host one-off, or once-a-year outdoor events.

RECOMMENDATION 25

7.9 The Committee recommends that the ACT Government investigate the viability of extending the ACTION Nightrider service year-round on Friday and Saturday nights.

RECOMMENDATION 26

7.10 The Committee recommends that the ACT Government consider reinstating taxi-rank supervisors on Friday and Saturday nights at prime locations (including Canberra City, busy Town centres, Manuka and Kingston) to facilitate smooth exit of patrons from the City to other town centres and home.

RECOMMENDATION 27

7.18 The Committee recommends that the ACT Government look to provide reasonable-cost, appropriate, multi-purpose and accessible arts facilities.

RECOMMENDATION 28

7.20 The Committee recommends that the ACT Government investigate making existing facilities easier to access for live events.

RECOMMENDATION 29

7.21 The Committee recommends that the ACT Government explore whether the Government can incorporate public liability insurance into the cost of hiring Government-owned facilities and venues.

RECOMMENDATION 30

7.23 The Committee recommends that the ACT Government investigate whether a scheme such as that run by 'Renew Newcastle' would be appropriate for implementation in the ACT.

RECOMMENDATION 31

7.24 The Committee recommends that the application process should be as user friendly as possible.

RECOMMENDATION 32

7.29 The Committee recommends that the ACT Government undertake further assessment of security and policing arrangements necessary to support a night-economy.

STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND
TERRITORY AND MUNICIPAL SERVICES

1 INTRODUCTION AND CONDUCT OF INQUIRY

- 1.1 On 25 February 2009 the Assembly referred the issue of supporting live music and events in our community to the Standing Committee on Planning, Public Works and Territory and Municipal Services for inquiry and report.³
- 1.2 On 13 October 2009 the Assembly resolved to extend the inquiry reporting date until the 'last sitting day in December 2009'.⁴
- 1.3 The Committee tabled an Interim Report for this inquiry on 10 December 2009, focusing primarily on the specific issues identified in the Terms of Reference. The Committee acknowledged at that time, however, that many additional issues affect the live music and entertainment industry in the ACT, particularly in mixed use areas and that these warranted further consideration. The Committee was also awaiting the opportunity to consider the Cultural Ministers Council's (CMC) 'Best practice guide for the development of a legislative and regulatory environment supporting live music and entertainment' before assessing the most appropriate combination of regulatory mechanisms to support live events in the ACT. The Committee therefore considered that the inquiry should be ongoing. The Assembly resolved that the inquiry be extended to the last sitting day in August 2010.
- 1.4 On 18 March 2010, the Chief Minister wrote to the Committee responding to the Interim Report. That letter was tabled in the Assembly on 1 July 2010 as the Government Response. The Committee notes that the Government Response to the interim report did not address each recommendation individually. This report should therefore be read in conjunction with the Committee's interim report. The Committee expects

³ Legislative Assembly for the ACT, *Minutes of Proceedings No. 9*, 25 February 2009, pp105-7.

⁴ Legislative Assembly for the ACT, *Minutes of Proceedings No. 36*, 13 October 2009, p395.

that the Government will provide a more comprehensive response that will address both the interim and final recommendations.

1.5 Additional submissions were accepted up to 5 August 2010. The Committee received 73 additional submissions (see Appendix A.)

1.6 The Committee held an additional public hearing on 28 July 2010 and heard from the following witnesses:

- Mr Dr Anthony Hogan, ANU, Fellow, National Centre for Epidemiology and Population Health.
- Dr Warwick Williams, Senior Research Engineer, the National Acoustic Laboratory, Chatswood.
- Mr Mark Higgins, General Manager, The Waldorf Apartments Canberra.
- Mr Nigel McRae, Canberra Musicians Club.
- Mr Steven Fanner, General Manager, Australian Hotels Association (ACT Branch).

Key issues raised in Submissions

Key Issues	Details
Noise Levels	<ul style="list-style-type: none"> - Application of noise limits - One complaint should not cease entertainment activity - Noise pollution legislation stifles live events - Legislation favours tenants/homeowners - Music is too loud and too late - Don't relax noise restrictions - Hearing damage from noise should be considered - Legislation controlling noise need to be consistent and clear
Sound Attenuation of Residential Developments and/or Venues	<ul style="list-style-type: none"> - Existing venues should retrofit noise insulation - Government should support retrofitting of noise attenuation measures in existing residential developments and live event venues - New residential developments should include appropriate sound attenuation
Order of Occupancy	<ul style="list-style-type: none"> - Order of Occupancy should be considered in complaints and

Considerations	<p>development requirements</p> <ul style="list-style-type: none"> - Development conditions should require suitable noise attenuation to be provided by the incoming party (be it venue or residential)
Ambient Sound Levels in Cities	<ul style="list-style-type: none"> - City and Town centres are traditionally louder. Noise restrictions should reflect this
Homeowner/Tenant Rights	<ul style="list-style-type: none"> - Homeowners rights need to be protected - Everyone deserves a quiet night's sleep

- 1.7 The Committee believes that the ACT Government should ensure that live music is given consideration in relevant decisions by recognising the important contribution music venues, live performances and arts and cultural facilities make to Canberra's character, vitality, cultural life and activity centres.

RECOMMENDATION 1

- 1.8 **The Committee recommends that the ACT Government should reflect on its commitment to live events in the objectives of the relevant legislation, including planning, licensing and noise regulations.**

Site Visits

Brisbane

- 1.9 On Friday 19 March the Committee travelled to Brisbane and met with the following people regarding the development and implementation of the *Fortitude Valley Music Harmony Plan* and Valley Special Entertainment Precinct:
- Ms Carol Gordon, President, Valley Chamber of Commerce;
 - Mr Les Pullos, Director of the Pullos Group, owner Rics Café and past Chair Valley Liquor Accord;
 - Mr Frank Henry, Principal Policy Officer, Pollution Prevention (Environment policy), Brisbane City Council; and
 - Mr John Beirne, Program Officer, Alcohol Management Community Safety (safety/alcohol mgmt), Brisbane City Council.

1.10 The Committee was also provided with a late evening tour of several venues within the Fortitude Valley Entertainment Precinct to view and discuss examples of sound attenuation, barriers to live entertainment and the *Valley Music Harmony Plan*. The tour was hosted by Mr Danny Blair, General Manager, Katarzyna Group and Chair of the Valley Liquor Accord.

Canberra

1.11 The Committee also conducted a site visit of some local live music and night-time entertainment venues on the evening of Friday 28 May 2010, hosted by the Australian Hotels Association (ACT Branch) General Manager, Mr Steven Fanner and Membership Officer Mr Gwyn Rees. The Committee visited the following:

- Julie Stelzer of The George Harcourt Inn (Gold Creek);
- Patrick Collins of the Lighthouse Bar (Belconnen);
- Frank Condi of Suburban (Dickson); and
- Marc Grainger of the Transit Bar (Civic).

1.12 The Committee noted from its tour that venue owners and operators appear to be taking measures to try and reduce the impact of their operations on nearby residence, with two venues purposefully closing their outdoor seating areas hours earlier than their liquor licences require. Additionally most of the venues had modified their premises to reduce noise leakage, including use of double glazing and other noise insulation.

1.13 The Committee was also advised that a lot of the noise complaints made about the premises actually relate to the noise made by patrons sitting, talking or waiting outside the venues, other pedestrians passing by and traffic rather than music levels. Mr Grainger also highlighted to the Committee that the changes to smoking laws banning indoor smoking resulted in an increased the number of patrons mingling outside for longer periods of time and creating noise.

Noise Complaints Survey

- 1.14 As part of the inquiry, the Committee conducted a survey on how noise complaints are handled in the ACT, targeting those that may have lodged a noise complaint to a relevant ACT Government authority in relation to music or patrons from a live-events venue. An invitation to complete the survey was sent on 7 April 2010 to individuals and business that had made submissions to the inquiry indicating that they had experienced noise issues. The Committee also released a media alert on 9 April 2010 to increase likely publicity and placed the survey on the Inquiry webpage.
- 1.15 A total of 40 people completed the survey by 16 July 2010 and respondents consisted chiefly of city-based residential owners.
- 1.16 Results of the survey are discussed in more detail in Part 2 of this report.

6 STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND
TERRITORY AND MUNICIPAL SERVICES

2 NOISE - HOW BIG IS THE ISSUE?

- 2.1 One of the major themes that arose in submissions to the Committee was the effect of noise, from both music and people, on residential owners and tenants living in proximity to live event venues and other 'night economy' businesses. It is an issue that appears to be the most contentious between those living near live music venues and the owners and tenants of the businesses.

Noise Authorities

- 2.2 As the Committee noted in its interim report, noise complaints in the ACT are handled by a number of different authorities under different legislative and regulatory frameworks.
- 2.3 The Environment Protection Authority (EPA) handles complaints about environmental noise such as amplified music noise, building activity, use of power tools, garden maintenance (mowers, leaf blowers), garbage collection and air conditioning units under the *Environment Protection Act 1997*.
- 2.4 The Office of Regulatory Services (ORS) handles complaints about noise from licensed premises, as it administers the *Liquor Act 1975*.
- 2.5 The Australian Federal Police -ACT (ACT Policing) is responsible for the enforcement of Section 394 of the *Crimes Act 1900*, around offensive noise:

Offensive noise means noise that, because of its level or nature, or the time when it is made, or any other circumstances, is likely to be harmful or offensive to, or to interfere unreasonably with the comfort or repose of, persons who are—

- (a) if the noise is made in premises other than a public place— outside the premises; or
- (b) if the noise is made in premises that are a public place— within or

outside the premises.

Premises include any place, vehicle or vessel.⁵

- 2.6 Animal noise, such as barking dogs, is handled by ACT Domestic Animal Services.

Noise under the Environment Protection Act 1997

- 2.7 The Committee is aware that the EPA has produced a number of Information Sheets relating to noise management which outline the appropriate authority to contact for specific types of noise disturbances and the best method to lodge a noise complaint. These information sheets were updated in September 2009.

- 2.8 Information provided by the EPA includes the following:

Source of Noise	Authority	Contact Number
Environmental noise, including music noise. Outdoor concerts, or outdoor entertainment using amplified equipment	Initially, you should try to solve the problem by discussing it with whoever is causing the noise. Alternatively, you may wish to initiate mediation through the Conflict Resolution Service.	Conflict Resolution Service 6162 4050.
	Environment Protection Authority Where the noise problem cannot be resolved through the above mechanisms, you may lodge a complaint with the Environment Protection Authority (EPA).*	Via Canberra Connect on 13 22 81

**To register a complaint with the EPA, you must identify the source of the noise before phoning the EPA. The first stage in investigating the complaint is for the EPA to send out a letter advising the alleged noise producer of their responsibilities under the Act and invite them to discuss the matter. In most cases the matter can be resolved at this stage.*

Following this, if another noise complaint is received, the complaint needs to be validated by the EPA. This involves the EPA visiting the site and taking a valid noise measurement. If validated, a warning letter or on- the-spot fine may be issued, or, depending on the circumstances, an Environment Protection Order (EPO) may be issued. A breach of an EPO

⁵ Crimes Act 1900, 'noise abatement directions', S394(12).

is a serious offence. If the noise continues to be a problem, it could lead to prosecution in court.

Noise not covered by the EPA Act⁶

- 2.9 The EPA information sheets also identify the appropriate authority to contact regarding noise issues not covered by the *Environment Protection Act 1997*.

Source of Noise	Authority	Contact Number
People (e.g. rowdy behaviour)	Australian Federal Police (ACT)	(02) 6256 7777
Animal	Domestic Animal Services	Via Canberra Connect 13 22 81
Aircraft (including hot air balloons)	Air Services Australia	1 300 302 240
Cars (traffic)	Road User Services	Via Canberra Connect 13 22 81
Patron Noise from Licensed Venue	Office of Regulatory Services	Via Canberra Connect 13 22 81

- 2.10 The Committee notes that EPA information sheets fulfil, to a degree, one of the actions suggested by the Cultural Ministers Council Guide *Supporting Australia's Live Music industry: Suggested principles for Best practice* (CMC Best Practice Guide), that State and Local governments 'consider publishing a dedicated live music and entertainment noise guide to encourage best practice in live music venues'.⁷ The CMC Best Practice Guide notes that it is important to provide adequate and accessible information regarding environmental protection to ensure that live music industry businesses are able to operate whilst reducing the effects of noise.⁸

⁶ DECCEW, Environment Protection, *Residential Information Sheet 'noise in residential areas'*, 22 Sep 2009.

⁷ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p11.

⁸ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p6.

2.11 The Office of Regulatory Services (ORS) also provides an External Complaints Policy outlining how complaints directly relating to one of its areas of operational responsibility can be lodged and how these complaints are administered, including Liquor Licensing issues.⁹

Noise Complaint Data

2.12 Each of the authorities discussed above keep a range of data on the number and type of noise complaints received each year. The Committee wrote to the Attorney General, Minister for Police and Emergency Services and Minister for Environment, Climate Change and Water Mr Simon Corbell MLA seeking data on noise complaints received by those authorities to assess the size and nature of noise problems. That data is provided below.

EPA Noise Data

Table 2: Environmental Protection Agency noise data

Source	2006-2007	2007-2008	2008-2009	2009-2010* at 21/5/2010
Annual number of noise complaints¹⁰				
All	1057	1389	1494	-
Number of Noise Complaints about amplified music received by EPA				
Residential	339	459	512	425
Commercial	59	95	59	36
Outdoor Concert	8	21	13	47
Noise infringement notices issued for amplified music noise¹¹				

⁹ Office of Regulatory Services, *External Complaints Policy*, available at: http://www.ors.act.gov.au/ors/pdfs/Complaints_Policy_Ext.pdf

¹⁰ Department of Territory and Municipal Services and Department of the Environment, Climate Change, Energy and Water - *Annual and Financial Reports*.

¹¹ NOTE: A final notice is served where the first notice has not been paid within the prescribed timeframe or is being disputed. A final notice does not constitute a separate breach of the legislation.

Residential	7 (4 Final Notices)	4 (2 Final Notices)	7 (4 Final Notices)	4 (2 Final Notices)
Commercial	4 (1 Final Notice)	2	4 (2 Final Notices)	3 (2 Final Notices)
Outdoor Concert	0	0	1	2
EPO's issued for amplified music noise				
Residential	0	0	0	0
Commercial	0	1	0	0

2.13 The Committee notes that the EPA maintains data on noise complaints, and does identify complaints specifically from amplified music. The EPA database also includes fields for date of incident, location/address of incident and category (type of noise or pollution. However, the EPA does not distinguish between commercial or residential premises or type of music (live music events versus DJ/electronic music). EPA officers may also enter notes on the database detailing the nature of the noise, time of complaint and other relevant data.¹²

ACT Policing Noise Data

2.14 ACT Policing receives a variety of noise complaints but does not distinguish between different types and sources of noise complaints, such as people or car noise, music or maintenance activities. Noise complaints are recorded as ‘noise’ or ‘noise pollution’. The Committee was advised that during 2009, 2429 noise complaints were received (not specifically amplified music noise), however only 1000 of those incidents were confirmed.¹³

¹² Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010..

¹³ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

Office of Regulatory Services Noise Data

- 2.15 Licensees are required under the *Liquor Act 1975* to take steps 'to ensure that their premise has not been used in such a way as to cause undue disturbance to people occupying premises in the neighbourhood.' They must also ensure that 'a loss of amenity does not occur within the vicinity of the licensed premise'.¹⁴ The ORS considers undue or excessive noise to be an amenity concern.¹⁵
- 2.16 The ORS maintains an inspection database and a complaint file relating to each licensed premise but it does not distinguish between amplified noise complaints and other noise complaints. Since 1 January 2009 the ORS has received 45 noise complaints relating to licensed premises, some of which relate to the same premises on different occasions.¹⁶
- 2.17 As neither ACT Policing nor ORS maintain data specifically on amplified music noise complaints, it is particularly difficult to accurately gauge the number of noise complaints made in any one year. The Committee believes that a better picture of the nature and number of noise complaints would be possible if consistent data sets were collected by all relevant authorities. It may also highlight areas of the ACT where tensions between residential developments and commercial operations in the ACT, particularly live event venues, are prevalent.

RECOMMENDATION 2

- 2.18 **The Committee recommends that the Environmental Protection Authority, ACT Policing and the Office of Regulatory Services collect more consistent and further defined data-sets on noise complaints.**

¹⁴ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

¹⁵ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

¹⁶ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

- 2.19 Whilst the complaints data above does not suggest music noise in mixed use and commercial areas is a large issue, the empirical evidence arising from submissions to this Committee, witness evidence and comments in the general media suggest that the conflict between residential development and businesses, including licensed and entertainment venues, regarding noise standards is a substantial issue.

Noise Complaints Survey

- 2.20 The Committee's survey on noise complaints processes in the ACT attracted a number of responses from individuals who strongly support live music and who highlighted that they have not, and would not, make noise complaints against venues.¹⁷
- 2.21 Of the ten respondents that were concerned about noise and had lodged noise complaints, most were primarily concerned with noise from sources noise other than live music and licensed venues, such as traffic, people and dogs, chiefly between 10pm and midnight.¹⁸
- 2.22 The Committee notes that 5 respondents who had issues with noise leakage from venues had also approached the relevant venue directly to discuss their concerns, but 4 survey respondents did not feel that their direct complaints resulted in any remedial action by the relevant venue.¹⁹

Public Awareness

- 2.23 The Committee's survey results particularly highlighted a lack of community knowledge about the appropriate authority with which to lodge different types of noise complaints and how to best submit a complaint. The Committee notes that there also appears to be a lack of

¹⁷ Standing Committee on Planning, Public Works and Territory and Municipal Services, *Survey on Noise Complaints*, 16 July 2010.

¹⁸ Standing Committee on Planning, Public Works and Territory and Municipal Services, *Survey on Noise Complaints*, 16 July 2010.

¹⁹ Standing Committee on Planning, Public Works and Territory and Municipal Services, *Survey on Noise Complaints*, 16 July 2010.

understanding about what actions each authority is able to take in response to noise complaints (e.g. ask a venue to turn music down, issue an infringement notice or send a letter).

- 2.24 Whilst the Committee notes that the results of the noise survey conducted by the Committee are derived from a very limited sample of community members, the survey has raised a key issue about levels of public awareness in relation to noise complaints handling. Despite the details provided in the EPA information sheets, the Committee believes that this information needs to be disseminated more widely.
- 2.25 The Committee believes that the ACT Government should actively enhance public knowledge on the appropriate authorities to contact, the actions available to them and any public feedback mechanisms related to noise complaints.
- 2.26 The Committee notes that the CMC Best Practice Guide also suggests that State and Local governments ‘consider establishing a dedicated webpage resource for entertainment industry agents, managers, venues and performers’.²⁰ In light of this principle, the Committee considers that public awareness of noise issues could, for example, be incorporated with the noise.act.gov.au website initiative.
- 2.27 The Government should provide convenient information for live event venues through a Government website. This includes information about everything to do with setting up and running a live event venue, including planning requirements, noise regulation, liquor licensing.

RECOMMENDATION 3

- 2.28 **The Committee recommends that the ACT Government provide information to the entertainment industry on noise standards, measuring and compliance.**
- 2.29 **A public education campaign could also be implemented to**

²⁰ Cultural Ministers’ Council, *Supporting Australia’s Live Music Industry: Suggested principles for best practice* 2010, p11.

advise the public on the appropriate authority to lodge noise complaints with, the preferred medium for lodging complaints, the actions available to each authority and any public feedback mechanisms.

Noise Complaints Handling

- 2.30 Some of the ten survey respondents who had lodged noise complaints noted a lack of consistency in the way individual authorities handled complaints, as well as mixed levels of feedback provided by authorities to those lodging complaints (e.g. some individuals received a follow-up call from the relevant authority, others said they never heard back).²¹
- 2.31 The Committee notes that the EPA, ACT Policing and ORS aim to redirect complaints to the appropriate authority where a noise complaint received does not fall within their legislative jurisdiction.
- 2.32 The Attorney General advised the Committee that the EPA works closely with officers from the ORS, ACT Planning and Land Authority (ACTPLA), Rangers from Territory and Municipal Services, ACT Fire Brigade and the Australian Federal Police to redirect noise complaints that are not relevant to its operation.²² Similarly, the Attorney General advised that:
- ACT Policing work closely with the EPA, Domestic Animal Services and AirServices Australia to handle noise issues which are not directly a policing matter.²³
- 2.33 He also advised the Committee that the ORS will redirect complaints that are not in relation to a licensed premises.²⁴

²¹ Standing Committee on Planning, Public Works and Territory and Municipal Services, *Survey on Noise Complaints*, 16 July 2010.

²² Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

²³ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

²⁴ Attorney General, *Letter to the Standing Committee on Planning, Public Works and Territory and Municipal Services*, 18 June 2010.

RECOMMENDATION 4

- 2.34 **The Committee recommends that all relevant authorities ensure that timely feedback is provided to all complainants regarding their complaint, including details of any actions that can or have been taken to address the complaint.**

Community Attitudes to Noise

- 2.35 Whilst complaint data on noise pollution collected by the EPA, ACT Police and ORS provides some guidance on community views to noise, the Committee notes that it may also be advisable to collect data on wider community attitudes to the current acoustic environment.
- 2.36 The City of Melbourne, for example, conducted the *City Sounds Community Survey* in 2005 'to determine if noise complaints were representative of wider community attitudes to the acoustic environment'.²⁵ The Council wanted a broader range of 'individual responses to the acoustic conditions and aural experience within the CBD' that they currently collected via noise complaints and noise mapping.²⁶
- 2.37 The survey, developed by the Spatial Information Architecture Laboratory (SIAL) Sound Studios at RMIT University in Melbourne, was used:
- ...to collect more in depth information to assist the Council in developing sound related guidelines, forming information campaigns, and identifying potential acoustic design interventions or other initiatives.²⁷
- 2.38 Similarly, in 2004 a telephone based survey was conducted for the NSW

²⁵ RMIT & University in Melbourne, Spatial Information Architecture Laboratory (SIAL) Sound Studios at available at: <http://www.sial.rmit.edu.au/Projects/File/CitySounds%20-%20Exec.pdf>

²⁶ RMIT, *Projects, 'City Sounds'*, available at http://www.sial.rmit.edu.au/Projects/City_Sounds.php

²⁷ RMIT, *City Sounds: Community Sound Survey, Executive Summary and Background from Full Report*, Prepared for the City of Melbourne, September 2004., available at <http://www.sial.rmit.edu.au/Projects/File/CitySounds%20-%20Exec.pdf>

- Identify current attitudes, knowledge and behaviours in relation to noise issues
- Inform planning, implementation and evaluation of future legislation, programs and initiatives targeting this issue ²⁸

2.39 The Committee considers that these types of community surveys could assist the ACT Government to better understand community attitudes to the acoustical environment and to inform any future legislative changes or other noise related initiatives.

²⁸ NSW Department of Environment, Climate Change and Water, *Neighbourhood Noise Survey – Background*, available at <http://www.environment.nsw.gov.au/noise/nnresearch/index.htm>

3 NOISE STANDARDS

- 3.1 The Committee recommended in its interim report that the ACT Government review the noise standards in the *Environment Protection Regulation 2005* to provide more flexibility for small and medium venues to run live events. The Committee recommended that the review should consider:
- Distinguishing between outdoor and indoor entertainment;
 - Allowing a higher noise standard on Friday and Saturday nights in Zone B²⁹, at least until midnight; and
 - Allowing higher noise standard for New Year's Eve until 1.00am on 1 January.
- 3.2 The Committee believes that the noise standards for the City Centre and Town Centres need to be revised to provide for realistic noise standards that reflect the ambient noise levels of those areas, but only after detailed mapping of current noise levels.

Noise Mapping

- 3.3 Noise is measured in decibels (dBs) and is usually described as either dB(A) or dB(C). dB(A) refers to sound pressure levels for steady or continuous noise sources, while dB(C) is reflects the peak sound pressure level of varying, intermittent or impulse noise such as nail gun or other short, sharp noises. The A-weighting filter also de-emphasises the low frequencies produced.³⁰

²⁹ *Environment Protection Regulation 2005*, Schedule 2 (part 2.1), see Appendix C.

³⁰ SafeWorkSA, Department for Administrative and Information Services, Government of South Australia, *Noise in the Workplace: What you Should Know*, available at: <http://www.artbiusant.org.au/files/Noise%20in%20the%20workplace%20-%20What%20you%20should%20know.pdf>

3.4 The current noise standards in the ACT are:

Location	7am–10pm (8am–10pm Sunday & Public Holidays)	10pm–7am (10pm–8am Sunday & Public Holidays)
Civic centre and other major town centres (Belconnen, Gungahlin, Woden and Tuggeranong)	60 dB(A)	50dB(A)
Group centres such as Dickson and Kingston	55 dB(A)	45dB(A)
Smaller local centres such as Griffith and Lyneham	50dB(A)	35dB(A)
Residential Areas	45dB(A)	35dB(A)

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3.5 As the Committee noted in its interim report, the ACT noise standards acknowledge the different levels of ambient noise in different parts of the Territory, for example, Civic centre and other town centres have a higher noise limit than residential areas.

3.6 Submissions received by the Committee, particularly from musicians and live-music supporters, emphasised the need for the current standards to be reviewed, particularly in the City and Town Centres where ambient and background noise can be higher than standard anyway.³²

3.7 The Committee notes that a few submissions particularly recommended adopting a system that allows noise 10 decibels above the background noise.³³ The Committee believes that any revision of the current standards should only be undertaken after extensive measurement of the ambient³⁴ and background³⁵ noise levels in the relevant zones.

³¹ Department of Environment, Climate Change, Energy and Water, *Live Music and Entertainment Noise*, Business and Industry Information Sheet, 2009.

³² Submission 70, *Proof Transcript of Evidence*, 28 July 2010, p92; Submission 62; Submission 61; submission 55; Submission 51; Submission 49; Submission 46; Submission 45; Submission 40; Submission 38; Submission 37; Submission 27; Submission 24; Submission 17; Submission 4.

³³ *Proof Transcript of Evidence*, 28 July 2010, p92; Submission 70; Submission 73.

³⁴ AMBIENT NOISE: The ambient noise level at a particular location is the overall environmental noise level caused by all noise sources in the area, both near and far, including

- 3.8 The Committee heard from Brisbane City Council about the noise mapping they conducted in Fortitude Valley to assist creating the *Valley Music Harmony Plan*, measuring both dB(A) and dB(C) noise, 24 hours a day for a week at a number of locations to establish the 'current noise environment' and noise patterns.
- 3.9 The Committee believes the ACT Government should conduct a similarly thorough mapping process of noise levels in the City Centre, Town centres and group centres to establish the background and ambient noise levels at different times of day for those areas. Mapping should also be conducted in summer and winter to reflect the likelihood of more venue windows being open, and to reflect the different levels of patronage in the ACT in different seasons. Noise standards in the *Environment Protection Regulation* should then be updated to reasonably reflect the current acoustic environment in ACT centres.

Managing Low Frequencies

- 3.10 The Committee also notes the need to address low frequency noise as it is often the bass frequencies that affect nearby residences.³⁶
- 3.11 The Committee heard from Brisbane City Council that managing bass noise 'was the primary technical issues for a number of reasons'. Low frequency noise is difficult to insulate against as it passes easily through most building materials. There is also very limited guidance on appropriate low frequency noise criteria for designing new apartments.³⁷

all forms of traffic, factories, wind in the trees, birds, insects, animals, etc...
<http://www.aaac.org.au/au/aaac/terminology.aspx>

³⁵ BACKGROUND NOISE LEVEL: Silence does not exist in the natural or built-environments, only varying degrees of noise. The Background Noise Level is the minimum repeatable dBA level of noise measured in the absence of the noise under investigation and any other short-term noises such as those caused by cicadas, lawnmowers, etc. It is quantified by the dBA noise level that is exceeded for 90 % of the measurement period (LA90). Background Noise Levels are determined for the day, evening and night time periods by statistically analysing (typically 15 minute) LA90 measurements over multiple (typically 7) days.
<http://www.aaac.org.au/au/aaac/terminology.aspx>

³⁶ Submission 54.

³⁷ Presentation by Mr Frank Henry, Brisbane City Council, Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010.

- 3.12 The Committee recommends that the ACT Government particularly measure the dB(C) noise levels in Canberra City and Town Centres to help establish the average peak and intermittent noise levels. dB(C) noise should also be managed within the Environment Protection noise standards.

RECOMMENDATION 5

- 3.13 **The Committee recommends that the ACT Government undertake comprehensive noise monitoring and analysis of both dB(A) and dB(C) over a suitable period of time to establish ambient noise levels in Canberra City and Town Centres.**

RECOMMENDATION 6

- 3.14 **The Committee recommends that the dB(A) noise standards be amended to more realistically reflect the ambient and background noise levels in the City and Town Centres as indicated by the monitoring process recommended above.**

RECOMMENDATION 7

- 3.15 **The ACT Government should consider implementing noise standards for the dB(C) range to manage peak and intermittent noise levels.**

Compliance Location

- 3.16 As indicated by the CMC Best Practice Guide, any regulatory approach to noise and venue licensing should avoid unnecessary costs for small scale venues to encourage them to host live music. It should also avoid creating additional work for business owners.³⁸
- 3.17 The Committee noted in its interim report that noise limits in the ACT are measured at the boundary of the land from which the noise is originating. The Committee believes that, whilst it is appropriate that

³⁸ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice* 2010, p7.

compliance with noise standards is not measured at the nearest residence (as it is in some other jurisdictions), the compliance location is still difficult for business owners to regularly monitor their own noise levels.

- 3.18 To reflect the recommendations in the CMC Best Practice Guide, the Committee believes that, whilst the compliance location remain at the venue's property boundary, venue noise levels should be able to be measured by venue operators, staff and/or performers from within the venue itself. It is impractical to expect a performer to measure the sound at the boundary of the parcel of land throughout an evening or performance.
- 3.19 The Committee heard from the Brisbane City Council how they now issue permits for amplified music venues which specify for each venue the indoor noise standards that achieve the outdoor emission levels specified in the local law. Where venues implement additional noise attenuation, the venue is reassessed and issued with a new indoor noise standard. In Brisbane each venue pays for its own assessment.³⁹
- 3.20 The Committee believes that, by providing businesses with this information they are empowered to monitor and adjust their own sound levels throughout a performance at a realistic location (within a few meters from the mixer table or amplifier), and know they are complying with the noise pollution requirements. It may be possible in the ACT to introduce site-specific indoor noise standards within liquor licensing processes.⁴⁰

RECOMMENDATION 8

- 3.21 **The Committee recommends that the ACT Government provide venue operators and owners with a site-specific internal noise standard to enable them to monitor and adjust their own sound levels.**

³⁹ Presentation by Mr Frank Henry, Brisbane City Council, Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010.

⁴⁰ Submission 70.

3.22 The Committee notes that providing venue operators and owners with an internal noise standard for that premises would also assist those employers to measure their sound levels and meet the requirements of the *Occupational Health and Safety Act 1991* as well as the Occupational Health and Safety (OH&S) laws.

Occupational Health and Safety

3.23 The Committee also notes that noise levels are also an OH&S issue for patrons and staff in pubs, clubs, hotels and other event venues with DJ, recorded and/or live entertainment.

3.24 Dr Warwick Williams, Senior research engineer at National Acoustic Laboratories and Dr Anthony Hogan, Fellow at the National Centre for Epidemiology and Population Health, Australian National University (ANU) highlighted to the Committee their concerns about the ‘various pieces of legislation that regulate noise in our society’.⁴¹

3.25 They noted that noise is handled by three separate areas of legislation that ‘do not often talk to each other’⁴², specifically: environmental law (dealing with noise pollution and annoyance), liquor laws (effects of entertainment venue in a public space that can create noise) and OH&S laws. In the ACT the environmental noise laws are the ones applied to licensed premises.

Noise Exposure Limits

3.26 For the purposes of the Safety Standards Regulation, and as outlined in the *Occupational Health and Safety Code of Practice 2008* the exposure limit for noise ‘in the occupational environment’ is ‘an eight-hour equivalent continuous A-weighted sound pressure level of 85 dB(A)’.⁴³ This means

⁴¹ *Proof Transcript of Evidence*, 28 July 2010; Submission 56.

⁴² *Proof Transcript of Evidence*, 28 July 2010, p69.

⁴³ ‘Daily noise exposure level’ is determined in accordance with *AS/NZS 1269.1:2005 – Occupational noise management – Measurement and assessment of noise emission and exposure*

that workers are exposed to excessive noise if, over an 8-hour period, the average noise level entering workers' ears is 85 dB or higher.⁴⁴

- 3.27 For peak or impulse noise the exposure standard is a C-weighted peak sound pressure level of 140dB(C) which if exceeded may create an immediate risk of hearing loss.⁴⁵ Workplaces therefore must ensure workers are not exposed to noise levels greater than 140(dB(C)) at any point.
- 3.28 The exposure to noise is measured at the employee's ear position without taking into account any hearing protection.
- Over long periods, repeated exposure to noise between 75 and 85dB(A) maybe a small risk to some people. With progressively increasing levels, the risk becomes greater. Workplace noise levels lower than the national standard is therefore desirable, if practicable.⁴⁶
- 3.29 Acceptable exposure times to noise levels decrease by half for every 3 decibel increase in noise level, so at 88 dB(A) an employee or patron would be at risk after just four hours of continuous noise, or at 91 dB(A) at risk after two hours.⁴⁷
- 3.30 The table below shows the noise exposure levels and exposure times equal to 8hrs of 85dB(A). Working for just under two minutes in noise levels of 109 dB(A), for example, has the same risk and may cause the same damage as eight hours working in 85 dB(A).

⁴⁴ SafeWorkSA, Department for Administrative and Information Services , Government of South Australia, *Noise in the Workplace: What you Should Know*.

⁴⁵Workplace Health and Safety Qld, *Personal hearing protectors – Selection* , available at: http://www.deir.qld.gov.au/workplace/resources/pdfs/perhearpro_selection.pdf

⁴⁶ Commonwealth of Australia, *Occupational Health and Safety Code of Practice 2008*, Part 3, available at: http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/bodylodgmentattachments/C7F13EFC51B9AF62CA257460001F2451?OpenDocument#_Toc1215397459223

⁴⁷ Commonwealth of Australia, *Occupational Health and Safety Code of Practice 2008*, Part 3.

Noise level measured in dB(A)	Exposure time
85	8hrs
88	4hrs
91	2hrs
94	1hr
97	30mins
100	15mins
103	7.5mins
106	3.8mins
109	1.9mins
112	57secs
115	28.5secs

- 3.31 In terms of live events then, if a concert or performance is likely to go for 2 hours, for example, and staff are going to be working through the whole concert then the maximum noise exposure level for staff would be 91dB(A).
- 3.32 The Committee notes that the standard should also not be interpreted as a safe exposure level, rather it is considered as an acceptable risk for workers. A large percentage of the workforce would expect to incur significant hearing loss by the time they cease working even with the current noise standard, therefore peoples' noise exposure should be kept below the standard to minimise long term effects.⁴⁸

Noise and Health

- 3.33 The Committee heard from Dr Williams and Dr Hogan that the health effects associated with hearing loss are significant and noise is the predominant cause of hearing loss in Australia.⁴⁹

⁴⁸ ARTBIUSANT, *New Noise Exposure Standard*, available at: http://www.artbiusant.org.au/final_noise_article.html

⁴⁹ *Proof Transcript of Evidence*, 28 July 2010, p71.

We are looking at an all-cause mortality rate of 2.58, which means people with hearing loss die 2½ times faster than the average people in the community. We are seeing increased rates of heart disease, blood pressure, diabetes and depression and anxiety associated with hearing loss. So the burden of disease of hearing loss on the community is substantial and the main cause is eminently preventable.⁵⁰

- 3.34 The Committee was advised that residents surrounding a venue are also exposed to potential health problems associated with quality of life and annoyance, which may have effects such as raised blood pressure and pulse rate.⁵¹
- 3.35 Dr Williams and Dr Hogan advised that, whilst most people are aware that a noisy venue may cause short-term hearing problems particularly when they experience short-term tinnitus, people have great difficulty in linking cause and effect because of the time lapse between the two. As hearing loss is bloodless and painless, there is no also way to tell it is happening.⁵²

Managing Noise Exposure

- 3.36 The Committee was advised by Dr Williams and Dr Hogan that there needs to be greater public awareness that hearing loss is cumulative, and just as high levels of sun exposure over time adds up and increases potential skin health problems, noise exposure also adds up has large implications on a person's quality of life. Dr Williams provided the example of a recent revival concert for AC/DC in Sydney where the noise exposure over the two-hour period was equivalent to 25 times the daily acceptable allowance.⁵³ He also advised the Committee that in dance clubs people are typically exposed, in one evening, to 10 times the exposure they would be permitted to have in a workplace.⁵⁴

⁵⁰ *Proof Transcript of Evidence*, 28 July 2010, p71.

⁵¹ *Proof Transcript of Evidence*, 28 July 2010, pp71-2.

⁵² *Proof Transcript of Evidence*, 28 July 2010, pp72-3.

⁵³ *Proof Transcript of Evidence*, 28 July 2010, p70.

⁵⁴ *Proof Transcript of Evidence*, 28 July 2010, p70.

- 3.37 Dr Williams and Dr Hogan were particularly concerned that environmental laws are set to a level that 'is not a problem for the person across the road', however the 'liquor laws in the ACT do not actually specify noise exposures' and despite OH&S laws they 'can cite a series of studies where the exposures are between 10 and 25 times the safe legal limit.'⁵⁵
- 3.38 They stressed to the Committee that a number of protective measures should be put in place by venues to address the noise exposure concerns and assist venues to meet their duty of care to workers, performers and patrons.⁵⁶ They suggested that warning signs about the noise exposure at events should be displayed as well as providing the option of personal protective equipment when you go to an event (such as ear plugs). Venues should also consider providing quiet space where patrons and staff can be safe from noise exposure and have breaks from noise.⁵⁷
- 3.39 If these measures cannot be put in place, the Committee believes that venues providing entertainment or music have a social responsibility to maintain a noise level that will not increase the risk of noise induced hearing loss for staff, performers or patrons.
- 3.40 It should also be noted that, whilst venues can provide hearing protection devices to workers, and perhaps patrons and performers (such as ear plugs and earmuffs), these are the least effective form of control measure because it relies on individuals using the equipment correctly, as well as the fit and the condition of the protectors.⁵⁸

⁵⁵ *Proof Transcript of Evidence*, 28 July 2010, p71.

⁵⁶ *Proof Transcript of Evidence*, 28 July 2010, p71.

⁵⁷ *Proof Transcript of Evidence*, 28 July 2010, pp71, 74-75

⁵⁸ SafeWorkSA, Department for Administrative and Information Services, Government of South Australia, *Noise in the Workplace: What you Should Know*, p11.

Public and Industry Awareness

- 3.41 Despite OH&S legislation, the Committee notes that industry awareness of the risks from noise may be limited. Submissions to the Committee, for example, generally emphasised the ‘annoyance factor’ of noise rather than the potential long-term health effects from noise exposure.⁵⁹
- 3.42 A study on this issue was conducted by WorkSafe Western Australia from 2004-2006 looking at noise exposure for employees in pubs, nightclubs and taverns in WA, as well as industry awareness to the risk of music noise, employers’ responsibilities for reducing employee noise exposure and the responsibility for employees to protect their own hearing. The results ‘indicated that employees’ daily noise exposure had generally increased significantly since 2000’ and ‘...the industry’s awareness of music noise risk is still very low’ particularly employee awareness.⁶⁰
- 3.43 The study recommended that:
- Employers and people having control of music entertainment venues need to take practicable steps to reduce this risk, such as assessing the risk, considering noise control measures, providing training on noise and hearing protection, and supplying appropriate hearing protectors to employees.
- 3.44 It also proposed that continuous efforts to increase the industry’s awareness are very important.⁶¹
- 3.45 As mentioned above, both Dr Williams and Dr Hogan also advised the Committee that public awareness was a key to reducing noise induced

⁵⁹ Submission 8; Submission 8b; Submission 8c; Submission 9; Submission 10; Submission 10b; Submission 11; Submission 12; Submission 12b; Submission 13; Submission 14; Submission 54; Submission 57.

⁶⁰ *Noise in WA Music Entertainment Venues - A Follow-up Study 2004-2006*, available at: http://www.docep.wa.gov.au/worksafe/Content/Safety_Topics/Noise/Further_information/Noise_in_WA_Music_Entertainmen.html

⁶¹ *Noise in WA Music Entertainment Venues - A Follow-up Study 2004-2006*, available at: http://www.docep.wa.gov.au/worksafe/Content/Safety_Topics/Noise/Further_information/Noise_in_WA_Music_Entertainmen.html

⁶² If a person chooses to smoke they are aware of the potential consequences in the long run, similar information and levels of awareness need to be implemented with regard to noise exposure.⁶³

- 3.46 Venues should also be able to provide staff, performers and patrons the information and therefore power to monitor their noise dosage and to take action to protect from and/or have a break from that exposure.

CMC Best Practice Guide

- 3.47 The CMC Best Practice Guide also identifies noise as one of the hazards in the live music industry which need to be identified and eliminated or controlled in order to meet the duty of care obligations of production companies, event managers, the venue and their workers and contractors.⁶⁴

- To promote the workplace health and safety of workers and others in the workplace, organisations involved in the live music industry should have well documented and easily accessible policies and procedures that aim to protect health and safety.

- Consultations and risk assessments should be undertaken to identify hazards in order to implement appropriate policies and control measures.⁶⁵

- 3.48 As the Committee noted earlier, providing licensed venues with an internal noise standard for that premise would assist venue owners, operators and performers to monitor their own noise exposure and help them to meet Occupational Health and Safety obligations (in addition to environment protection requirements), reducing the risk of noise induced

⁶² *Proof Transcript of Evidence*, 28 July 2010, p73.

⁶³ *Proof Transcript of Evidence*, 28 July 2010, p73.

⁶⁴ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p8.

⁶⁵ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p8.

hearing loss for people in the venue. The Committee notes that venue owners would also need to take into account patron noise (including noise from talking/dancing) when measuring noise against an internal noise standard. The internal standard would therefore need to represent all internal noise, not only the music noise level.

RECOMMENDATION 9

- 3.49 **The Committee recommends that ACT Government should consider implementing a public and industry awareness program to increase industry awareness on the risks of noise and noise-induced-hearing loss.**

RECOMMENDATION 10

- 3.50 **The Committee recommends that the ACT Government review the Environment Protection Laws regarding noise and Occupational Health and Safety legislation.**

RECOMMENDATION 11

- 3.51 **The Committee recommends that any changes to legislated ACT noise standards only be undertaken with serious consideration of Occupational Health and Safety requirements and the significant risks of Noise Induced Hearing Loss for workers, performers and patrons.**

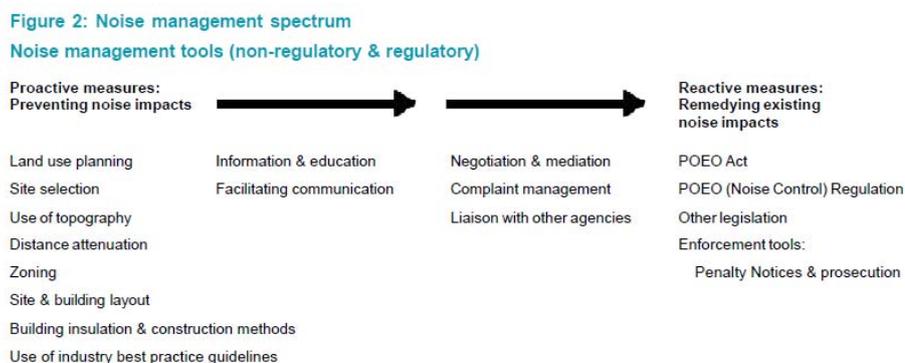
RECOMMENDATION 12

- 3.52 **The Committee recommends that the ACT Government work with the live events industry on the best way to approach patron awareness of noise exposure risks.**
- 3.53 **Venues should also consider providing quiet space where patrons and staff can be safe from noise exposure and have breaks from noise.**

4 PLANNING FOR NOISE MANAGEMENT

- 4.1 In its interim report, the Committee acknowledged that there are a number of approaches to supporting live community events, including front-end proactive measures and back-end reactive measures.
- 4.2 NSW has charted the spectrum of considerations and options, regulatory and non-regulatory, for noise management.

At one end of the spectrum is prevention using long-term strategic approaches that aim to avoid or minimise potential noise impacts before they occur. Land use planning has a key role in helping to prevent potential noise impacts, both at the strategic planning level for an area and at a project-specific level. At the other end of the noise management spectrum is the need to remedy existing noise impacts that are unacceptable and causing disturbance to the community.⁶⁶



- 4.3 The Committee notes that the majority of submissions considered current ACT noise management approaches to be too reactive and emphasised the need for more front-end noise measures, particularly in planning and development requirements.⁶⁷

⁶⁶ NSW, *Noise Guide for Local Government*, p2, available at: <http://www.environment.nsw.gov.au/noise/nglg.htm>

⁶⁷ Submission 72; Submission 70; Submission 68; Submission 65; Submission 58; Submission 50; Submission 49; Submission 46; Submission 42; Submission 41; Submission 37; Submission 36;

- 4.4 The Committee also notes that the CMC Best Practice Guide encourages the use of proactive measures to support the live music industry including the use of entertainment precincts and planning and development processes.⁶⁸

Entertainment Precincts

- 4.5 The Committee notes that the CMC Best Practice Guide recommends that all Australian jurisdictions 'investigate and consider introducing measures to support live music and entertainment in town planning, such as through designated districts or other means'.⁶⁹
- 4.6 The CMC Best Practice Guide identified that any city, suburb or town needs places where 'night economies' can thrive and where venues are available which are able to host live music and entertainment activities with certainty.⁷⁰ It notes that various capital cities have used precincts and zoning under liquor and local government legislation and development control plans to manage late night trading of licensed premises and entertainment venues.⁷¹ The CMC Best Practice guide also proposes that governments:
- Identify naturally occurring or pre-existing night economies or areas where there are live music and entertainment hubs, and investigate what may be appropriate to encourage performance opportunities.⁷²
- 4.7 A number of submissions to the committee supported the notion of entertainment precincts.⁷³

Submission 34; Submission 33; Submission 32; Submission 31; Submission 30; Submission 24; Submission 23; Submission 21; Submission 20; Submission 19; Submission 18; Submission 16; Submission 15; Submission 11; Submission 4; Submission 3; Submission 2; Submission 1.

⁶⁸ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*.

⁶⁹ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p11.

⁷⁰ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p5.

⁷¹ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p6.

⁷² Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p6.

⁷³ Submission 63; Submission 71; Submission 61; Submission 58; Submission 38; Submission 7.

Benefits

- 4.8 The Committee notes the Brisbane Fortitude Valley Entertainment Precinct appears to have worked quite effectively to reduce the conflict between residential developments and entertainment and music venues.
- 4.9 The Committee heard from the Valley Chamber of Commerce that with the introduction of an entertainment precinct, one complaint about noise can no longer close a venue and patron noise is an accepted part of the area.⁷⁴ The Fortitude Valley buffer zones for noise were also increased so that a greater area of development needs to comply with stricter noise attenuation requirements in building, to limit the effect on neighbouring residential areas.
- 4.10 A number of initiatives have also been implemented to manage the operations of the Fortitude Valley precinct. Businesses in the Valley, for example, pay a levy based on their rateable area to fund cleaning and maintenance of the common/public spaces. The management of the precinct was also consolidated in is now managed by Brisbane City Council, however the Chamber of Commerce felt that a precinct authority should be established to manage the area and to provide independent assessment of how well Council implements the levy. The Valley also has a management Committee that involves a variety of stakeholders.⁷⁵
- 4.11 As noted in its interim report, the Committee heard that the Planning Institute of Australia (ACT) supported the concept of entertainment precincts that were not too narrowly defined.⁷⁶ The Committee also heard from the AHA (ACT) that there was some merit to exploring entertainment precincts in the ACT, particularly in Civic as the CBD and a 'prime hospitality district'.⁷⁷ The AHA noted, however that it may not be appropriate to zone an entire city as a precinct, particularly as there is

⁷⁴ Committee site visit to Fortitude Valley, 19&20 March 2010.

⁷⁵ Committee site visit to Fortitude Valley, 19&20 March 2010.

⁷⁶ *Transcript of Evidence*, 6 November 2009, pp60-61.

⁷⁷ *Proof Transcript of Evidence*, 28 July 2010, p98.

a lot of existing residential development and accommodation.⁷⁸

4.12 The Chief Planning Executive of the ACT Planning and Land Authority, Mr Neil Savery, also highlighted to the Committee that increasing residents in the City and Town Centres not only provides patronage and support to the local businesses but also provide passive surveillance for a safer night-time environment.⁷⁹

4.13 The Committee believes that the implementation of entertainment precincts in the Canberra City and in Town Centres may be a suitable way to manage potential conflict between live event venues, other businesses and residential developments.

Risks

4.14 The Committee notes that, whilst there are benefits, there may also be some potential difficulties and risks that should be taken into account if entertainment precincts are to be seriously considered in the ACT.

4.15 As the Committee noted in its interim report, leases in the Territory's commercial centres also generally have multiple permissible uses. Mr Neil Savery advised the Committee that a 'person who has purchased the lease believes they have an entitlement to exercise all of those uses, one or two of those uses, and they can change them through the life of their lease'.⁸⁰ The Committee further heard that:

...the purchaser has, in effect, put a price on the ability to use it for many of those different activities. If we then artificially impose, through an overlay, an area within a commercial centre that is the only place that you can put a nightclub, as an example, and yet there are many other leases in the area that you have just excluded, there is this question about whether you have denied them some of their property rights. That can be tested through legal processes.⁸¹

⁷⁸ *Proof Transcript of Evidence*, 28 July 2010, p98.

⁷⁹ Mr Savery, *Transcript of Evidence*, 6 November 2009, p53.

⁸⁰ Mr Savery, *Transcript of Evidence*, 6 November 2009, p46.

⁸¹ Mr Savery, *Transcript of Evidence*, 6 November 2009, p53.

- 4.16 In light of the ability for lessees to change the permitted use for their venue over time and the risks of limiting commercial leases in the city, the Committee believes that designated entertainment precincts may be difficult to practically implement in the Territory.
- 4.17 Additionally, the Committee notes that confining entertainment and music venues to a singular area (such as one street or a number of blocks) in the city or Town Centres risks creating 'dead spots' and does not take into account the fluidity of business locations. Mr Savery advised the Committee that in creating precincts:
- ...the risk then is that in some respects you create a segregation within the city centre, where part of it is buzzing and the rest of it is dead. That would suit the occupants at certain times, but it might not be the best outcome for the 24-hour life cycle you want in a city centre.⁸²
- 4.18 The Committee also notes that designated entertainment precincts in the city could limit the ability for Town, Group and Local centres to attract new businesses and, in particular, to establish their own night-time economy.
- 4.19 With regard to the Territory Plan, the Committee is aware that the Plan establishes the allowable uses of land in the Territory. It details the types of land uses including commercial, residential, community and service developments that are appropriate and allowable for each zone. The current noise standard zones in the *Environment Protection Regulation 2005* also reflect the different business, residential and other activities that are likely to take place within each Territory Plan zone. The Committee therefore believes that any type of zoning for specific 'entertainment precincts' would also need to complement the Territory Plan.
- 4.20 The Committee believes that the possibility of implementing entertainment precincts in the ACT requires more detailed investigation, taking into account the issues of multiple-use leases, the risk of 'dead spots' in the city and drawing night-time business away from town,

⁸² Mr Savery, *Transcript of Evidence*, 6 November 2009, p53.

group and local centres. Any entertainment precinct would also have to account for existing residential areas and other Territory Plan zoning arrangements.

- 4.21 The Committee also notes, that the experiences of in Brisbane's Fortitude Valley establishing an entertainment precinct have not resulted in the anticipated increase in venues for live music, particularly for emerging and developing artists. The Committee heard from Brisbane City Council that the increased popularity of the area as a night-time activity hub has actually driven rents up and pushed the live music scene to the fringes of the Valley and even out of the Valley itself.⁸³ The Committee is conscious that the ACT does not want live music to be forced out of the City and Town Centres.
- 4.22 The Committee notes that in some parts of the world there has been a successful shift toward attracting live music to industrial areas of cities, where noise is not a problem. The Government should investigate whether there are opportunities to support this in Canberra. Specifically the eastern broadacre study should examine whether any new 'live events' precincts can be established in the coming years in the eastern broadacre zone of Canberra. This would need to be supported with appropriate public transport. The Committee notes that other issues with the use of industrial areas as entertainment precincts need to be addressed, such as safety.

⁸³ Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010.

RECOMMENDATION 13

- 4.23 **The Committee recommends that the ACT Government should give consideration to an entertainment precinct through the eastern broadacre study.**

RECOMMENDATION 14

- 4.24 **The Committee recommends that the ACT Government investigate the possibility of establishing entertainment precincts that align with the Territory Plan zoning, taking into considerations the risks and limitations identified by the Committee.**

Noise Attenuation

- 4.25 As noted earlier, a large percentage of submissions to the Committee strongly supported the need for any new developments to take responsibility for adequate sound attenuation and insulation, be they residential, commercial or community facilities.⁸⁴

Acoustic Insulation

- 4.26 The Committee notes that current requirements for acoustic protection from external noise sources in the Territory Plan appear to be limited. In its interim report the Committee outlined the current noise attenuation requirement in the Territory Plan development codes. Evidence provided to the Committee suggests that the current requirements are not adequate to protect the interests of residents and businesses, particularly in mixed use areas such as Canberra City.⁸⁵

⁸⁴ *Transcript of Evidence*, 27 October 2009 pp18-9; submission 73, Submission 72; Submission 70; Submission 68; Submission 65; Submission 58; Submission 50; Submission 49; Submission 42; Submission 41; Submission 37; Submission 36; Submission 34; Submission 33; Submission 32; Submission 31; Submission 30; Submission 24; Submission 23; Submission 21; Submission 20; Submission 19; Submission 18; Submission 16; Submission 15; Submission 11; Submission 4; Submission 3; Submission 2; Submission 1.

⁸⁵ *Transcript of Evidence*, 27 October 2009 pp18-9; Submission 1; Submission 2, Submission 3; submission 4; Submission 72; Submission 70; Submission 68; Submission 65; Submission 58;

- 4.27 The Committee heard from the AHA (ACT) for example, that ‘developers of residential accommodation located near hospitality venues of major business precincts’ should be required to provide appropriate sound proofing.⁸⁶
- 4.28 The Committee believes that more stringent requirements for noise attenuation need to be incorporated into the Territory Plan housing development codes for developments in the City and Town centres, as well as in any entertainment precincts that may be established and mixed use areas. The requirements should particularly address the existing acoustic environment in those centres, based on noise monitoring as discussed earlier and be able to dampen dB(C) as well as dB(A) frequencies.
- 4.29 Similarly, the Committee believes that commercial businesses seeking to build or seeking a lease for a venue that intends to host live events should be required to meet more stringent noise attenuation requirements that reflect the intended use of the premises.
- 4.30 The Brisbane City Council advised the Committee that incorporating adequate acoustic protection into the design of new residential developments only resulted in an increased cost of \$3 000 to \$5 000 per unit, including adequate glazing to all bedroom and living areas. Whilst this estimate was based on six year old data, the Committee heard that adequate acoustic protection would generally not add more than 10 per cent to the cost of a residential unit.⁸⁷
- 4.31 The Committee notes that such an increase may have an impact on housing affordability which would need further review, however the Committee also heard that residents would get the added thermal insulation benefits from improved glazing which would improve longer-term affordability and liveability.

Submission 50; Submission 49; Submission 42; Submission 41; Submission 37; Submission 36; Submission 34.

⁸⁶ *Proof Transcript of Evidence*, 28 July 2010, p95.

⁸⁷ Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010. BCC

RECOMMENDATION 15

- 4.32 **The Committee recommends that the Territory Plan development codes require reasonable noise attenuation to be incorporated in all new residential developments in the City and Town Centres.**

RECOMMENDATION 16

- 4.33 **The Committee also recommends that the Territory Plan development codes for commercial businesses require reasonable noise attenuation to be incorporated in any new venue or for any new lease where the venue is intending to host live community events.**

Cost of Retrofitting Noise Attenuation

- 4.34 Evidence provided to the Committee also called on improved noise attenuation in existing venues and residential developments.⁸⁸
- 4.35 The Committee heard about the feasibility studies undertaken by the Brisbane City Council which included a cost-benefit analysis on the insulating existing venues. Their study showed that not much could be done without major costs that would most likely have fallen on lessees not owners. The Council also noted in its study that noise insulation was particularly difficult to retro-fit where it affected air-conditioning arrangements, required extra roof structure or where heritage issues existed.⁸⁹
- 4.36 Similarly the Brisbane City Council investigated the costs and benefits of retrofitting existing apartment blocks and came to the same conclusion, it was too costly and raised additional issues such as OH&S considerations of changing apartment glazing (windows).
- 4.37 The Council also advised the Committee that there is no Australian Building Code standard for glazing to prevent the transmission of low frequency sound. The Committee heard that the UK had undertaken

⁸⁸ Submission 70; Submission 58; Submission 41; Submission 20.

⁸⁹ Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010.

similar studies to Brisbane on double glazing and both had similar results. They found that double glazing actually amplifies bass tones. The greatest sound reduction came from 'winter gardens' or glazed balcony 'rooms' that acted as a second layer of air and glass. The Committee heard that the minimum air gap between two sheets of glass to dampen bass frequency is 200mm.

Partial Compliance

4.38 As noted above, the Brisbane experience found that retrofitting existing venues to improve sound attenuation can be costly and in many cases not technically possible.

4.39 The CMC Best Practice Guide, acknowledges these limits and highlighted the difficulties for existing venues in meeting higher building standards as they can be 'technically difficult to achieve'. The Guide therefore proposes that:

Policies developed within building legislation frameworks should be flexible in how they assess existing buildings when alterations are made or a change of use is initiated.⁹⁰

4.40 The Committee considers this approach to be appropriate as there will be cases where existing venues have very limited ability to enhance their sound insulation.

Government Support

4.41 In light of the potential cost limitations, a number of submissions to the Committee proposed the need for Government assistance for existing venues, particularly community facilities, and in some cases residential developments to upgrade their soundproofing for noise attenuation where it is technically possible.⁹¹

⁹⁰ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice 2010*, p5.

⁹¹ Submissions 66; Submission 38; Submission 37; Submission 20; Submission 18; Submission 15; Submission 4; Submission 3.

- 4.42 The Committee notes that many musicians work individually or through small not-for-profit organisations such as the Canberra Musicians Club and Canberra Blues Society in order to perform and develop their talent and audiences. These groups and individuals seek out venues that are not cost-prohibitive to hire, which often means community facilities and halls.
- 4.43 Mr McRae of the Canberra Musicians Club advised the Committee that ‘it might be easier if, instead of soundproofing everything else around them, the government had some sort of support for [venues] to soundproof themselves’.⁹² He suggested that an acoustical consultant could advise venues what would be required, preferably at minimal cost and with a government subsidy for any improvements.⁹³
- 4.44 The Committee notes that would be similar to the home energy audits funded by the ACT Government where a small fee enables homeowners to obtain an energy audit of their house and, if they spend at least \$2 000 on energy efficiency improvements identified during the audit, a rebate is available. Another current ACT Government initiative that supports improvement of commercial buildings is Tune Up Canberra, a dollar-for-dollar grants program ‘that offers financial incentives to encourage owners of commercial office buildings to make their buildings more energy and water efficient’⁹⁴.
- 4.45 The Committee envisages that this kind of support program could be implemented to assist existing venues to improve the noise attenuation measures on their premises. This kind of program would also support the development of live music by assisting more venues to become suitable for use as live music venues, thereby supporting the ‘night time economy’ and arts culture in Canberra. The Committee considers that any assistance to venues could also include a reciprocal requirement to be

⁹² *Proof Transcript of Evidence*, 28 July 2010, p92.

⁹³ *Proof Transcript of Evidence*, 28 July 2010, p92.

⁹⁴ ACTPLA, *Tune Up Canberra*, ‘incentives to ‘green’ commercial office buildings’: available at http://www.actpla.act.gov.au/topics/design_build/regulation2/tune_up_canberra

placed on those venues to regularly host local musicians and performers, particularly young and emerging artists.

RECOMMENDATION 17

- 4.46 **The Committee recommends that the ACT Government investigate the possibility of funding a grant or other incentive program to assist small and medium business owners of existing live entertainment venues to improve the noise attenuation measures on their premises.**

Acoustical Star Ratings

- 4.47 The Association of Australian Acoustical Consultants (AAAC) is a not-for-profit peak body 'representing professionals who are involved in delivering acoustic solutions to a wide range of clients and the community'. The AAAC notes, just as the Committee did in its interim report, that the Building Code of Australia (BCA) does not deal with acoustical issues such as noise intrusion from external noise or noise generated by building services.⁹⁵
- 4.48 The AAAC has therefore developed an *Acoustical Star Rating for Apartments and Townhouses*, in response to concerns from their members 'that there are no building regulations or standards that encompass all aspect of the acoustical qualities of apartments, townhouses and other multi-tenancy dwellings'.⁹⁶ The *Acoustical Star Rating for Apartments and Townhouses* has been designed to complement the requirements of the Building Code of Australia, Australian Standards and 'local authority building ordinances'.⁹⁷ It relates to the actual acoustic performance of a completed apartment or townhouse.

⁹⁵ Association of Australian Acoustical Consultants, *Acoustical Star Rating for Apartments and Townhouses*, p3.

⁹⁶ Association of Australian Acoustical Consultants, *Acoustical Star Rating for Apartments and Townhouses*, p3.

⁹⁷ Association of Australian Acoustical Consultants, *Acoustical Star Rating for Apartments and Townhouses*, p4

- 4.49 The Committee notes that the star rating guide has been developed by the AAAC principally for use by AAAC members but has potential for greater use, particularly to inform apartment or townhouse purchasers of noise attenuation performance. This rating system, or a similar system could present a great opportunity to better inform property buyers and renters in the same way house energy star ratings are now required to be publicised at the time of sale. It may also encourage greater acoustical performance to be incorporated into new residential developments.
- 4.50 The Committee is, however, aware that implementing a rating system for acoustical performance of apartments and townhouses would require more comprehensive research and analysis before a system could be implemented Territory wide, particularly as it may be costly for many parties. A star rating system for acoustical performance could be implemented gradually, starting with voluntary reporting, particularly as good acoustical design would potentially give new residential developments a competitive advantage.⁹⁸

RECOMMENDATION 18

- 4.51 **The Committee recommends that the ACT Government examine the Association of Australian Acoustical Consultants' Acoustical Star Rating for Apartments and Townhouses and assess the potential for that rating system or a similar system to be implemented Territory-wide.**

Education and Awareness

- 4.52 The Committee notes that another important approach to encourage the incorporation suitable noise attenuation when designing residential developments and commercial venue buildings is through industry and consumer education and awareness of the opportunities and products

⁹⁸ Government of Western Australia, Department of Culture and the Arts, *Keeping it in the Mix*, 'Developers: communicating your advantage', available at: <http://www.sasp.dca.wa.gov.au/developers.html#4>

available. The Committee believes that improved building design for noise attenuation is particularly important in mixed use areas.

- 4.53 For example, in addition to the City Sounds Community Survey, the SIAL Sound Studios at RMIT have since developed *CitySounds2*, an acoustic design resource, created in partnership with the City of Melbourne. The resource provides technical design and construction information ‘designed to assist residents and industry’ and is provided in an ‘accessible, interactive format.’⁹⁹ The resource uses web design and audio software to create a virtual CBD living space, and lets users hear real sounds of Melbourne and learn ways to reduce noise entering residential premises.¹⁰⁰
- 4.54 The Committee believes that there is greater scope in the ACT for accessible information on noise attenuation products and approaches to be available for developers, designers and purchasers. In comparison to public understanding of the need for thermal insulation, public awareness of noise attenuation approaches appear to be limited.
- 4.55 The ACT Government could work with peak bodies such as the Master Builders Association and the Australian Institute of Architects (AIA) to provide clear and readily available information on acoustic design approaches and acoustic products, particularly product uses and performance rating. The Committee also believes that more information needs to be available on the noise-dampening properties of some thermal insulation products, if any. As suggested earlier, the www.noise.act.gov.au website may provide a suitable central location for this type of information to be publically accessible.

⁹⁹ RMIT, *CitySounds2- Acoustic Design Resources*, project information available at: http://www.sial.rmit.edu.au/Projects/Citysounds_2.0_-_ADR.php

¹⁰⁰ RMIT, *CitySounds2- Acoustic Design Resources*, resource available at: <http://sound.sial.rmit.edu.au/ADR/>

RECOMMENDATION 19

- 4.56 **The Committee recommends that the ACT Government work with local peak building and design bodies to provide readily available information on acoustic design approaches and products.**

5 THE LIQUOR LICENSING REGIME

- 5.1 The Committee acknowledges that in 2008-2009 the Attorney General initiated a review of the *Liquor Act 1975* including consultations with government stakeholders including the Chief Ministers Department, ACT Health, Department of Education and Training, Office of Regulatory Services, ACT Policing, and ACT Emergency Services Agency.
- 5.2 The exposure draft of the Liquor Bill 2010, resulting from the review, states that 'the Liquor Bill will replace the *Liquor Act 1975* and has introduced many new initiatives to make a difference to the culture of binge drinking and minimise violent and anti-social behaviour.'¹⁰¹
- 5.3 The main objectives of the Bill fall into three areas:
- strengthening the licensing regime to better reflect harm minimisation and community safety principles;
 - stronger enforcement of ACT liquor laws to better ensure compliance; and
 - streamlining the licensing regime to promote more efficient regulatory action.¹⁰²
- 5.4 The proposed changes that may have an impact on the provision of live entertainment and events by licensed premises include:
- Harm minimisation and community safety criteria;
 - Additional licence conditions;
 - Risk Assessed Management Plan; and
 - Community Consultation Notices.

¹⁰¹ *Exposure Draft, Liquor Bill 2010*, March 2010.

¹⁰² Attorney General, *Review of the Liquor Act 1975*, Final Report p5, Available at: http://www.jcs.act.gov.au/eLibrary/OtherReports/LiquorActReview/Final_Report%20Internet%20version.pdf

Harm Minimisation and Community Safety Criteria

- 5.5 The proposed harm minimisation changes would allow the Commissioner to consider community safety criteria in the application process for licenses and permits, including 'consideration of the same factors...as may already be considered for complaints and disciplinary action, such as loss of amenity and undue disturbance'.¹⁰³ The changes are also aimed at giving the public a voice in the licensing process.

Additional Licence Conditions

- 5.6 It is also proposed to 'give the Commissioner power to impose conditions on all licences and permits when granting a new licence or permit, on renewal of a licence, or at any other time'.¹⁰⁴ These conditions could include special trading hours or noise restrictions to take account of public needs near the proposed licensed establishment.¹⁰⁵ It may also outline other allowable or prohibited activities besides the services of alcohol (e.g. entertainment).¹⁰⁶
- 5.7 The Committee notes that NSW has similar provisions in place. The NSW Office of Liquor, Racing and Gaming:
- ...may place environmental noise conditions on the licence. These conditions typically include a requirement that the noise from pubs and clubs should not be heard inside any home between midnight and 7am on any night.¹⁰⁷
- 5.8 The Committee considers that any license conditions imposed on venues need to be carefully considered in the context of supporting the live music industry and community events. Additionally, any conditions imposed should not contradict the environment protection noise standards.

¹⁰³ Attorney General, *Review of the Liquor Act 1975*, Final Report, p32.

¹⁰⁴ Attorney General, *Review of the Liquor Act 1975*, Final Report, p26.

¹⁰⁵ Attorney General, *Review of the Liquor Act 1975*, Final Report, p32.

¹⁰⁶ Liquor Act Review, *Summary of Proposed Major Government Reforms*, p3.

¹⁰⁷ NSW, Environment, Climate Change and Water, *Dealing with neighbourhood noise*. Available at: www.environment.nsw.gov.au/noise/neighbourhoodnoise.htm

Risk Assessed Management Plan (RAMP)

5.9 The Liquor Bill also proposes an amended approach to risk assessment, requiring:

‘...applicants for a licence and commercial permit to submit a risk assessment management plan (RAMP) outlining details and arrangements for conducting the business of selling liquor at the premise or event. The Commissioner may approve the RAMP only if satisfies that the RAMP is consistent with the harm minimisation and community safety principles.’¹⁰⁸

5.10 A RAMP considers community safety issues such as the likely number of patrons, the layout of the premises, and any special security or transport and service concerns the licensed premises may face in serving alcohol. It would also assess the availability of public transport close to the licensed premises for patrons to use late at night.¹⁰⁹ Once lodged and approved by the Commissioner, licensees are bound to operate in accordance with the RAMP.¹¹⁰

Community Consultation Notices

5.11 The changes proposed to the *Liquor Act 1975* include a requirement for community consultation on liquor license applications, to allow the community to comment on the suitability of the proposed premise location.

The Liquor Act should be amended to require applicants for a liquor licence to post a public notice in the vicinity of the proposed establishment and a public notice in the *Canberra Times*, inviting the public to lodge any concerns with the Commissioner for Fair Trading for consideration and determination.¹¹¹

5.12 The Committee notes that this provision is not dissimilar to community impact statements required in NSW where a potential applicant for a

¹⁰⁸ Liquor Bill 2010, *Explanatory Statement*, p3.

¹⁰⁹ Attorney General, *Review of the Liquor Act 1975*, Final Report, p33

¹¹⁰ Attorney General, *Review of the Liquor Act 1975*, Final Report, p33.

¹¹¹ Attorney General, *Review of the Liquor Act 1975*, Final Report, p34.

liquor licence or a licence-related authorisation undertakes consultation between the applicant and the local community about any issues and concerns with a proposed application. A summary of that consultation is provided to the liquor authority for consideration when applying for a liquor licence of permit.¹¹²

- 5.13 Under the proposed changes, ACT community would also be given a greater voice to complain to the Commissioner about noise disturbances from licensed premises in their neighbourhood. If the complaint is substantiated, the Commissioner would issue a written binding direction to a licensee and staff concerning any matter relating to the licensed premises.¹¹³
- 5.14 Again, the Committee is concerned that this approach reinforces the ability for a single complaint to seriously affect the operations of a live event venue. The Committee considers that a more cooperative and consultative approach should be adopted, including consideration of Order of Occupancy principles in assessing noise complaints.

Liquor Regulation

- 5.15 The Committee notes that the Exposure Draft of the *Liquor Regulation 2010* also proposes changes that may impact on the provision of live community events. In particular, the Committee notes that the Commissioner 'must consider the impact of premises together with other licensed and permitted premises near the premises'¹¹⁴, i.e. the cumulative impact of licensed premises in the locality, when reviewing the suitability of premises for licensing.
- 5.16 The Committee notes that the proposed regulation considers the number of premises in the locality but not the type of premises. The Committee is concerned that this provision may ignore the different risks associated

¹¹² NSW Office of Liquor, Gaming and Racing, *Community Impact Statements*, available at: http://www.olgr.nsw.gov.au/liquor_CIS_home.asp

¹¹³ Attorney General, *Review of the Liquor Act 1975*, Final Report, p7.

¹¹⁴ *Exposure Draft, Liquor Bill 2010*, March 2010, S16.

with various types of venues and may prevent serious consideration of entertainment precincts.

Committee Comments

- 5.17 The Committee is concerned that the above changes proposed to the liquor licensing laws appear to focus on the ability for the Commissioner to limit or prohibit certain activities, and give the community greater ability to stop the operations of licensed venues. The Committee would prefer to see a more cooperative, consultative approach taken to deal with community concerns, particularly where the changes currently proposed may limit the ability for licensed premises to act as venues for live community events.
- 5.18 The CMC Best Practice Guide suggests that :
- Liquor legislation should acknowledge that the live music sector may be associated with the provision of alcohol. It should also help to ensure that the live music and entertainment industry are considered in licensing matters.¹¹⁵
- 5.19 The Committee believes that the proposed changes to the Liquor Act and Liquor Regulations should be reviewed against the best practice regulatory principles outlined by the CMC Best Practice Guide to ensure that the amended liquor legislation would not impose unreasonable barriers to the presentation of live community events at licensed premises. The Interdepartmental Committee may be an appropriate forum to conduct such a review.
- 5.20 The Committee notes that the objects of the liquor licensing regime should also refer to developing the live music industry. It should note the importance to Canberra of live music and entertainment, and this should be relevant for the Commissioner when considering relevant license decisions (such as occupational discipline for causing disturbance, or other complaints relating to noise).

¹¹⁵ Cultural Ministers' Council, *Supporting Australia's Live Music Industry: Suggested principles for best practice* 2010, p7.

54 STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND TERRITORY AND MUNICIPAL SERVICES

5.21 The Committee notes that recent proposed changes to licensing in Melbourne threatened the continued existence of many small live entertainment venues due to a sharp increase in licensing fees. The Committee considers it important that the licensing regime continues to not treat “live music” as an additional risk factor that would result in higher license fees.

RECOMMENDATION 20

5.22 **The Committee recommends that the ACT Government review the proposed changes to the *Liquor Act 1975* against the “Cultural Ministers’ Council Best Practice Guide for Supporting Australia’s Live Music Industry” and ensure that the amended Act would not impose unreasonable barriers to the presentation of live community events.**

6 ORDER OF OCCUPANCY

- 6.1 In its interim report, the Committee discussed the concept of order of occupancy and reviewed arrangements in place in other Australian jurisdictions.
- 6.2 As outlined by Live Music Revolution, order of occupancy considerations are also known as ‘agent of change’ where the onus is on the party who has made the recent move by either introducing live events/music or by moving into the locality.¹¹⁶ These considerations in noise complaint arbitration processes ‘can help protect against unreasonable expectations of what types of activities can be expected in inner city areas’¹¹⁷ which are increasingly mixed use.
- 6.3 The Committee recommended that the *Liquor Act 1975* enable the Commissioner to consider order of occupancy principles when investigating complaints in relation to a licensee. It also recommended that the ACT Government investigates the best ways to ensure that people moving into residential areas where live entertainment is provided are made aware of order of occupancy principles.
- 6.4 These recommendations are supported by the CMC Best Practice Guide which states that:

Order of occupancy principles allow regulators to consider the order of occupancy between a venue and a resident when any changes, such as structural alterations in either premises or the activities conducted in licensed premises, are being considered. These considerations provide scope in complaints arbitration processes to enable venues and residents to resolve noise complaints and amenity issues within a broader context.

¹¹⁶ Live Music Revolution, *Liquor regulation*, available at: www.livemusicrevolution.com.au/?page_id=226

¹¹⁷ Live Music Revolution, *Liquor regulation*.

- 6.5 The CMC Best Practice Guide also proposes that:
- Order of occupancy principles should inform consideration of noise and amenity complaints and can be given added weight through a reference in the objects or aims of liquor licensing legislation.
- 6.6 Additional evidence to the Committee generally supported the concept of order of occupancy.¹¹⁸ Mr Fanner General Manager of the Australian Hotels Association (ACT), for example, advised the Committee that the AHA was keen to see order of occupancy principles adopted into planning and licensing legislation to protect business owners from the significant cost and risks arising from noise complaints.¹¹⁹ He noted that in order to be fair a 'newcomer' should not be able to effectively shut down and established business which is merely conducting its day-to-day business. Mr Fanner also advised the Committee that in many cases new residential developments promote the proximity to local bars and restaurants as a 'key hook in the sales process' and therefore residents were generally aware of the proximity of their homes to hospitality venues.¹²⁰
- 6.7 The Committee agrees that order of occupancy principles can be given added weight by including a reference to them in the *Liquor Act 1975*.
- 6.8 The Committee also heard from Mr Mark Higgins, General Manager at the Waldorf Apartment and Hotel about the ineffective nature of the current development requirements when it came to cohabitation of residential developments and live event venues. He advised the Committee that the current approach to noise management and infill development in the city were not working, emphasising the noise leakage problems experienced by residents in the Waldorf from nearby venues. Mr Higgins stressed to the committee that venues and residential

¹¹⁸ Submission 72; Submission 68; Submission 58; Submission 51; Submission 50; Exhibit 1; Submission 44; Submission 38; Submission 37; Submission 33; Submission 27; submission 20; Submission 19; Submission 15; Submission 12b; Submission 5; Submission 3; Submission 2.

¹¹⁹ *Proof Transcript of Evidence*, 28 July 2010, pp94-5.

¹²⁰ *Proof Transcript of Evidence*, 28 July 2010, p9.

developments can cohabit with the appropriate undertakings such as soundproofing existing venues. The Committee was advised that Mr Higgins supported the concept of order of occupancy and believed that any new development, be it residential or live music venue, should take responsibility for adequate noise attenuation.¹²¹

- 6.9 The Committee also heard from Mr Nigel McRae of the Canberra Musician Club that order of occupancy considerations would help existing venues, but only two remain in Canberra City. He advised the committee that order of occupancy considerations risk hindering the creation of new City and Town Centre based venues, as many residential developments will have been established first.¹²² Mr McRae did note, however, that other venues in Town Centres still existed that would benefit from order of occupancy considerations in the noise dispute processes.¹²³
- 6.10 The Committee still believes that order of occupancy considerations should be included in noise complaints arbitration processes as there is scope for new venues to be established if they are adequately soundproofed.¹²⁴

RECOMMENDATION 21

- 6.11 **The Committee recommends that order of occupancy principles be reflected in the objects or aims of the *Liquor Act 1975*.**
- 6.12 The Committee heard from the Waldorf and Transit Bar that their noise issues are generally managed through private agreement between the parties.¹²⁵ The Committee recommends that the Government examines ways it can facilitate mediation between venues and complainants. It

¹²¹ *Proof Transcript of Evidence*, 28 July 2010, pp78-84.

¹²² *Proof Transcript of Evidence*, 28 July 2010, p91.

¹²³ *Proof Transcript of Evidence*, 28 July 2010, p92.

¹²⁴ NOTE: the Committee recommended in the interim report that the Liquor Act 1975 enable the Commissioner to consider Order of Occupancy principles when investigating complaints in relation to a licensee (interim Recommendation 3).

¹²⁵ *Proof Transcript of Evidence*, 28 July 2010, p78.

may be possible to empower Government authorities to mediate and create 'noise agreements' between parties, similar to the 'environmental protection agreements' already available under the *Environment Protection Act 1997*.

- 6.13 The Government should also investigate whether, in situations where particular venues and complainants agree on an approach to noise management, the agreements can be formalised, or at least a consideration for any future complaints.
- 6.14 The Committee believes that there may be merit in further investigating the information that is provided to purchasers at the time of sale or transfer of a property.

RECOMMENDATION 22

- 6.15 **The Committee recommends that the ACT Government should investigate how it can empower relevant authorities to facilitate mediation between venues and complainants.**

7 OTHER ISSUES

Performance Permits

- 7.1 In its interim report, the Committee noted that the Outdoor Concert Noise Environment Protection Policy enables the EPA to grant environmental authorisations for outdoor concert venues, including Canberra (Bruce) Stadium and Exhibition Park in Canberra. As noted in that report, the authorisations only apply to venues capable of holding more than 2,000 people.¹²⁶ The Committee also recommended in its interim report that the ACT Government should provide more flexibility for small and medium venues to run live events.
- 7.2 Further to that, the Committee believes that there needs to be an authorisation system for smaller events. The Committee also notes that there does not appear to be an authorisation system for organisations to host outdoor events such as the Trinity Block Party, which had a limited capacity and where a large portion of ticket sales went to the Oxfam charity.¹²⁷

RECOMMENDATION 23

- 7.3 **The Committee recommends that the ACT Government consider implementing an authorisation system to enable venues (both indoor and outdoor) that hold less than 2000 people to be able to seek authorisation for one-off events that are likely to exceed the noise standards.**

RECOMMENDATION 24

- 7.4 **The Committee recommends that the ACT Government consider**

¹²⁶ Environment ACT, *Outdoor Concert Noise Environment Protection Policy*, 2001, Part 2.

¹²⁷ Submission 24, Submission 73.

implementing an authorisation system to enable organisations to host one-off, or once-a-year outdoor events.

Transport

- 7.5 The Committee notes that, in order to develop a strong night-time economy in the ACT, adequate late-night transport options needs to be available year-round, particularly on Friday and Saturday nights where night-time social and cultural activities are more prominent.¹²⁸
- 7.6 The Committee heard that, in the Brisbane Fortitude Valley experience, it was extremely important to get patrons out of the entertainment precinct to other major areas (VCC), particularly to reduce the incidents of night time and alcohol related violence. The City glider service, for example, was in the process of being established as a rapid service to get patrons to other major train stations.¹²⁹
- 7.7 The Committee was also advised by the AHA (ACT) that transport was an important factor in establishing a successful night economy. Mr Fanner advised the Committee that at present ‘Canberra’s public transport system is almost non-existent, particularly late at night’.¹³⁰ He noted that the AHA strongly supports the ACTION Nightrider bus service that operates for around a month over the summer in the lead up to Christmas and New Years Eve. He noted that it helps to get thousands of people out of the city and to the town centres quickly, reducing the risk of antisocial behaviour in the City. The Committee was advised that the AHA would like to see the Nightrider service offered throughout the year.¹³¹
- 7.8 The Committee also heard from the AHA that taxi numbers in the ACT were too low for it to be a suitable transport mode, and is a major

¹²⁸ Submission 71, Submission 58; Submission 44.

¹²⁹ Valley Chamber of Commerce, *Committee Site Visit to Fortitude Valley Brisbane*, 19 March 2010.

¹³⁰ *Proof Transcript of Evidence*, 28 July 1020, p97.

¹³¹ *Proof Transcript of Evidence*, 28 July 1020, p97.

consideration for people thinking of opening a venue or trading later in outer areas.¹³² The Committee was advised by the Brisbane Fortitude Valley Chamber of Commerce that, whilst the Valley was lucky to have a high number of taxi drivers, the taxi ranks in the Valley were also now supervised by an attendant provided through the Queensland department of transport and paid for by the Brisbane City Council.

RECOMMENDATION 25

- 7.9 **The Committee recommends that the ACT Government investigate the viability of extending the ACTION Nightrider service year-round on Friday and Saturday nights.**

RECOMMENDATION 26

- 7.10 **The Committee recommends that the ACT Government consider reinstating taxi-rank supervisors on Friday and Saturday nights at prime locations (including Canberra City, busy Town centres, Manuka and Kingston) to facilitate smooth exit of patrons from the City to other town centres and home.**

Venue Availability and Community Facilities

- 7.11 The Committee noted in its interim report the lack of suitable facilities in Canberra for live community events, particularly live music to be performed.
- 7.12 In the Government Response to the Committee's interim report on Live Community Events, the Chief Minister identified a number of emerging themes that the Interdepartmental Committee on reduction of barriers to the production of live music in the ACT will be further investigating, including:
- Ways of promoting cultural/social economies in group centres including consideration of Order of Occupancy provisions;

¹³² *Proof Transcript of Evidence*, 28 July 1020, p97.

- Improved sound attenuation measures, including for existing community facilities;
- Availability of community venues for live events;
- Availability of rehearsal spaces and performance venues for developing and emerging bands;
- Information for licensed venues regarding the presentation of live music; and
- Potential changes to timing of noise restriction in group and local centres.¹³³

7.13 The Committee agrees that these are generally well aligned with the Committee's interim report recommendations, particularly those relating to the need for appropriate performance and rehearsal venues, including community facilities. The Committee looks forward to the results of the IDC consultation processes.

Review of Arts in Canberra

7.14 The Committee also notes that the *Review of the Arts in Canberra* report prepared by Peter Loxton and Associates Pty Ltd for the ACT Government suggested that one of the more practical ways to support all artists (young, amateur, emerging, professional and community artists) is by providing or funding improved access to reasonable-cost, appropriate, multi-purpose and accessible arts facilities.¹³⁴

7.15 Evidence provided to the Committee appears to support this focus, particularly for community and emerging artists.¹³⁵ Mr McRae, for example, advised the Committee about the lack of suitable facilities for members of the Canberra Musicians Club to rehearse and perform in the

¹³³ *Government Response on the Standing Committee on Planning, Public Works and Territory and Municipal Services' Inquiry into Live Community Events Interim Report- December 2009*, Tabled 1 July 2010.

¹³⁴ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010, pp10, 156-8, 165.

¹³⁵ Submission 73; Submission 67; Submission 66; Submission 64; Submission 63; Submission 62; Submission 58; Submission 52; Submission 48; Exhibit 1; Submission 45; Submission 44; Submission 43; Submission 40; Submission 38; Submission 36; Submission 35; Submission 7; Submission 1.

ACT, particularly medium sized venues that hold 300-400 people.¹³⁶

- 7.16 Mr Loxton also proposed that 'any new or redeveloped arts facilities should be built to the highest environmental standards'.¹³⁷ In terms of environmental standards, the Committee notes that to be truly multi-purpose, any arts venue would need adequate sound insulation so that it can be used as a suitable performance space for musicians whilst meeting the environmental noise pollution standards.
- 7.17 The Committee notes that appropriate venues also need to be affordable for small not-for-profit groups and allow flexibility in rehearsal and performance times.

RECOMMENDATION 27

- 7.18 **The Committee recommends that the ACT Government look to provide reasonable-cost, appropriate, multi-purpose and accessible arts facilities.**
- 7.19 The Committee also believes the ACT Government could take a variety of measures to support live events venues to stay open in Canberra, and for new venues to open, including improved access to Government-owned facilities.

RECOMMENDATION 28

- 7.20 **The Committee recommends that the ACT Government investigate making existing facilities easier to access for live events.**

¹³⁶ *Proof Transcript of Evidence*, 28 July 2010, pp85-7.

¹³⁷ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010, p163

RECOMMENDATION 29

- 7.21 **The Committee recommends that the ACT Government explore whether the Government can incorporate public liability insurance into the cost of hiring Government-owned facilities and venues.**
- 7.22 The Committee is aware that it may also be possible to adapt some of Canberra's empty office space in the city for short, or longer-term live event venues. This may be achieved, for example, through support for an organisation similar to 'Renew Newcastle', a not for profit company limited by guarantee that (with Government support) finds short and medium term uses for buildings in Newcastle's CBD that are currently vacant, disused, or awaiting redevelopment. Renew Newcastle finds artists, cultural projects and community groups to use and maintain these buildings until they become commercially viable or are redeveloped.

RECOMMENDATION 30

- 7.23 **The Committee recommends that the ACT Government investigate whether a scheme such as that run by 'Renew Newcastle' would be appropriate for implementation in the ACT.**

RECOMMENDATION 31

- 7.24 **The Committee recommends that the application process should be as user friendly as possible.**
- 7.25 The *Review of Arts in Canberra* report also recommends that:
A full audit of arts and cultural facilities in the ACT is needed across all agencies to develop a consolidated list of community, amateur and professional venues and facilities including the number, location, nature, repairs and maintenance issues, ownership and rental arrangements.¹³⁸
- 7.26 Additionally, the report recommends that all rents and access arrangements to art studios and facilities need to be reviewed to ensure

¹³⁸ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010, p158.

clarity and consistency and reflect Government arts goals and priorities.¹³⁹ Mr Loxton proposed that those goals and priorities should predominantly be to increase participation in the arts and attract and develop artists and quality art.¹⁴⁰

- 7.27 The Committee notes the possible relevance of recommendations number 30, 49, 57, 59, 84 and 92 of Mr Loxton's Review.¹⁴¹

Policing and Security

- 7.28 The Committee notes that policing and security issues are integral to the issue of supporting live community events.¹⁴² The Committee recommends that additional assessment and consultation on these issues needs to be undertaken.

RECOMMENDATION 32

- 7.29 **The Committee recommends that the ACT Government undertake further assessment of security and policing arrangements necessary to support a night-economy.**

¹³⁹ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010, p158.

¹⁴⁰ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010, p7 & 152.

¹⁴¹ See Appendix B.

¹⁴² Submission 71; Committee Site Visit to Fortitude Valley Brisbane, 19 March 2010.

8 CONCLUDING COMMENTS

- 8.1 The Committee notes that noise issues are one of the greatest concerns for submitters to this inquiry. By managing noise issues for both residential developments and live event venues can more happily cohabitate in city and town centres, the live music and arts communities can develop will fewer hindrances. Canberra's night economy can hopefully flourish, increasing the vibrancy of the city and town centres.
- 8.2 The Committee believes noise can be managed through a range of regulatory changes, as well as raising public awareness and a range of direct and indirect support for live event venues and organisations.

Acknowledgements

- 8.3 The Committee would like to thank those that assisted the Committee with its inquiry including Ministers and officials, and those who appeared as witnesses before the Committee.
- 8.4 The Committee would also like to thank venue owners and operators in Brisbane and Canberra, the Australian Hotels Association (ACT) for arranging the Canberra Committee's tour, as well as the Brisbane City Council, Valley Chamber of Commerce, Valley liquor Accord and the Katarzyna Group General Manager for the Brisbane tour.

Mary Porter AM MLA

Chair

20 August 2010

Appendix A Submissions and Exhibits

Number	Author
1	Canberra Blues Society
2	APRA/AMCOS
3	Into Tomorrow and Liquid Enterprises
4	ACT Democrats
5	George Harcourt Inn
6	ACT Government
7	Ben Drysdale (Cardboard Charlie)
8	Mark Higgins - Waldorf
8b	Mark Higgins – additional comments
8c	Mark Higgins – additional comments
9	Andrew Stewart
10	Dianne McGrath
10b	Dianne McGrath – additional comments
11	Herve Meslin
12	Keith Porritt
12b	Keith Porritt – additional comments
13	Romina Lau Diaz
14	Masuda Sheikh
15	Andrew Mottram
16	Nick Walsh
17	Caroline Powick
18	Anne Clarke
19	Chris Finnigan
20	Madeline Fairhall-Wald
21	Nicholas Simon

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Number	Author
22	Thomas Lee
23	Holly Pither
24	Elisa Macie
25	Marc Grainger, General Manager Transit Bar
26	Gabriel Kite-Gilmour
27	Gavin Findlay
28	Maurice Timbers
29	Charles Lewis
30	Kate Walton
31	Christina Gee
32	James Rann
33	Scott Adams
34	Lauren Cunningham
35	Karen Radford (FasterLouder Canberra)
36	Robert Mitchell
37	Andrew Muller
38	Canberra Musicians Club
39	Anthony Payten
40	Julianne Cowley
41	Morgan Quinn
42	Nerissa Ryan
43	Erisa Linky
44	Robin Shannon
45	Andrew Rowell
46	Steve Paillas
47	<i>Considered as an Exhibit</i>
48	James Fahy
49	James Spring

Number	Author
50	John Scown
51	Vincent Emerson
52	Daniel Boyle
53	Confidential
54	Brendan Mackey
55	Sam Richmond
56	Warwick Williams and Anthony Hogan – ANU and National Acoustic Laboratory
57	Anonymous
58	Canberra Musicians Club (Nigel McRae)
59	Sian Rinaldi
60	Cynthia Shannon
61	Cameron Stack
62	Al Phemister
63	Simon Milman
64	Simone Swensen
65	Deborah Cleland
66	Andrew Kaye
67	Damian Flanagan
68	Emily Delves
69	Ann Cleland
70	David Caffery
71	Who's Ya Daddy Pty Ltd (WYD)
72	Australian Hotels Association (Steven Fanner)
73	Kicks Entertainment (Ryan Phillips)

Exhibit	Author
1	Julia Winterflood

Appendix B Review of the Arts in Canberra

Recommendations¹⁴³

30. Government should support all art forms including emerging art forms such as new media and digital arts. However, it should also identify art forms, organisations, facilities and activities that demonstrate clear potential as a national or international area of excellence, such as the Canberra Glassworks, and provide additional support.
49. The main focus of funding for community arts should be the provision of appropriate, accessible facilities.
57. A full audit of arts and cultural facilities in the ACT is needed across all agencies to develop a consolidated list of community, amateur and professional venues and facilities including the number, location, nature, repairs and maintenance issues, ownership and rental arrangements.
59. Rental rates for arts organisations and access to arts studios and facilities for artists are based on a variety of ad hoc and historical arrangements. There is an important and pressing need to review all rents and access arrangements to ensure clarity and consistency, reflecting Government arts goals and priorities.
84. The ACT Government and artsACT should embed commitments to environmental sustainability into all aspects of its arts policies and activities. There is great awareness of the importance of the environment in the arts and in the ACT and there is an opportunity to provide leadership in linking positive arts and environmental outcomes. Any new or redeveloped arts facilities should be built to the highest environmental standards, and there should be a commitment that funded organisations, events, festivals and activities should be aware of the need to be environmentally responsible and to aim to be carbon neutral.

¹⁴³ Peter Loxton and Associates, *Review of the Arts in Canberra*, June 2010.

92. There needs to be greater clarification of the differentiation between the ACT Government's funding priorities for, and expectations of, professional and community arts and artists. The major focus of ACT Government's arts funding in the future should be on the support for and development of professional artists and quality art. Increased participation in community arts should remain a high priority, to be encouraged and assisted with more clearly targeted strategies, and especially through the provision of reasonable-cost, multipurpose facilities.

Appendix C Noise Zones

Environment Protection Regulation 2005, Schedule 2 (Part 2.1)

Part 2.1 Noise zones

2.1 Definitions for pt 2.1

In this part:

broadacre zone means an area designated as a broadacre zone in the territory plan.

Central National Area (City) means the area designated as Central National Area (City) in the national capital plan.

Note See s 67 (Displacement of Legislation Act, s 47 (5) and (6)).

Central National Area (Fairbairn) means the area designated as Central National Area (Fairbairn) in the national capital plan.

Central National Area (The Parliamentary Zone; Barton; sections 39, 40 and 41 of Yarralumla; Acton; Anzac Parade and Constitution Avenue; Russell; Duntroon, ADFA and Campbell Park; Development Nodes and Clubs of Lake Burley Griffin and Foreshores) means the area of that name in the national capital plan.

city centre means the area identified as the city centre in the City Centre Precinct Code in the territory plan.

commercial CZ4 zone means an area designated as a commercial CZ4 (Local Centres Zone) zone in the territory plan.

commercial CZ5 zone means an area designated as a commercial CZ5 (Mixed Use Zone) zone in the territory plan.

community facility zone means an area designated as a community facility zone in the territory plan.

group centre means an area identified as a group centre in the Group Centres Precinct Code in the territory plan.

industrial zone means an area designated as an industrial zone in the territory plan.

leisure and accommodation zone means an area designated as a leisure and accommodation zone in the territory plan.

national capital plan means the national capital plan as in force from time to time.

Note *National capital plan* is defined in the Legislation Act, dict, pt 1.

office site means an area identified as an office site outside the city centre, group centres and town centres in the territory plan.

Queanbeyan city business zone means a business zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

Note See s 67 (Displacement of Legislation Act, s 47 (5) and (6)).

Queanbeyan city industrial zone means an industrial zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

Queanbeyan city special uses zone means a special uses zone under the *Queanbeyan Local Environmental Plan 1998*, as in force from time to time, made under the *Environmental and Planning Assessment Act 1979* (NSW).

restricted access recreation zone means an area designated as a restricted access recreation zone in the territory plan.

town centre means an area identified as a town centre in the Town Centres Precinct Code in the territory plan.

TSZ2 services zone means an area identified as a TSZ2 (Services Zone) zone in the territory plan.

Table 2.1

column 1 item	column 2 noise zone	column 3 ACT land	column 4 NSW land
1	zone A	land in an industrial zone	land in the Queanbeyan city industrial zone
2	zone B	land in the city centre and town centres land in the Central National Area (City)	land in the Queanbeyan city business zone
3	zone C	land in group centres and office sites land in the Central National Area (The Parliamentary Zone; Barton; sections 39, 40 and 41 of Yarralumla; Acton; Anzac Parade and Constitution Avenue; Russell; Duntroon, ADFA and Campbell Park; Development Nodes and Clubs of Lake Burley Griffin and Foreshores)	
4	zone D	land in a commercial CZ4 zone	
5	zone E	land in— <ul style="list-style-type: none"> • a restricted access recreation zone • a broadacre zone 	
6	zone F	land in— <ul style="list-style-type: none"> • a commercial CZ5 zone • a TSZ2 services zone • a community facility zone • a leisure and accommodation zone 	land in the Queanbeyan city special uses zone
7	zone G	all areas other than Central National Area (Fairbairn)	other NSW land

Note The territory plan is available at www.actpla.act.gov.au.