



29 October 2018

Mr Lex Davidson
Strategy Advisor – Live Music and Performance
City of Sydney

Dear Lex

Arts Law's Submission on the City of Sydney Busking Policy and Aboriginal and Torres Strait Islander Cultural Practice Policy and Protocols

The Arts Law Centre of Australia (**Arts Law**) welcomes the opportunity to contribute to the public consultation on the proposed changes to the City of Sydney Busking Policy and Aboriginal and Torres Strait Islander Cultural Practice Policy and Protocols.

Arts Law is the national community legal centre for the arts. Arts Law was established 1983 with the support of the Australia Council and provides expert legal and business advice, publications, education and advocacy services each year to over 5,000 artists and arts organisations throughout Australia.

About our clients

Our clients not only reside in metropolitan centres, but also contact us from regional, rural and remote parts of Australia, and from all Australian states and territories. Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them. The comments that we make in this submission are informed by our clients' profile, which is that they are usually:

- earning low/limited incomes;
- both Indigenous and non-Indigenous, and rural, remote or urban;
- limited in their ability to enforce their rights (and as a result increasingly vulnerable to the abuse of those rights);
- dedicated to the creation of art across all disciplines;
- either new, emerging artists or established arts practitioners or arts organisations;
- operating arts businesses;
- working in both traditional and digital media;
- self-reliant in business;

- eager for accessible legal information, although they typically have limited legal education; and
- eager to comply with laws which apply to them and their work.

Documents Considered

In making the below comments, Arts Law has had an opportunity to review the following material:

- City of Sydney Busking Policy and Guidelines Review 2018;
- Draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice;
- Busking Act Categories;
- Draft Protocols for the Practice of Aboriginal and Torres Strait Islander Cultures in Public Spaces; and
- Example of Code of Practice for Busking – “Sydney Busking Code”.

Priority 1 – Recognise that practice of Aboriginal and Torres Strait Islander culture is not busking

Arts Law acknowledges and supports the City of Sydney’s proposed changes to exempt Aboriginal and Torres Strait Islander cultural practice from the activities that require a busking permit. Arts Law, through its Artists in the Black program, is a strong advocate for the respect and protection of Aboriginal and Torres Strait Islander cultural heritage and traditional knowledge. In principle we support, the City of Sydney’s proposal to exempt cultural practice from the busking approvals process and the development of protocols to support this practice.

Arts Law recognises and supports that the City of Sydney has developed these policies and protocols with reference to the *United Nations Declaration on the Rights of Indigenous Peoples* and in consultation with the Aboriginal and Torres Strait Islander Advisory Panel and community.

Arts Law has had an opportunity to review Part 1 of the Draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice and notes that there are some discrepancies which require further clarification between this policy and Part 2 – Busking Approvals. Specifically, the time and duration of cultural practice is limited to a period of ‘two hours per location per day per individual or group’. In contrast, busking activities are divided into three categories for Low Impact, High Impact and Extended Duration Acts with varying time limits between 1 hour and 8 hours per day per location. Arts Law recognises that the majority of our Indigenous clients are visual artists and that their artistic practice is closely linked to their cultural practice. This type of activity would appropriately fall within the Extended Duration category if it were classified as busking but it appears to be unduly restricted in circumstances where it is conducted as a part of cultural practice. Arts Law suggests that the time and duration of cultural practice for activities that have a minimal impact on their surroundings be further reviewed and clarified.

Further, Arts Law strongly opposes the unethical and misleading exploitation of Indigenous culture by non-Indigenous people and businesses. This is most recently demonstrated by Arts Law’s involvement in the Fake Arts Harms Culture campaign. Arts Law acknowledges that the draft protocols focus on working with the Aboriginal and Torres Strait Islander Advisory Panel and community to ensure that cultural practice is conducted with:

- respect;
- Aboriginal and Torres Strait Islander control and self-determination;
- integrity and authenticity; and

- the intention to preserve and promote continuing cultures.

Arts Law recommends that a clear process be developed with the Aboriginal and Torres Strait Islander Advisory Panel and community to avoid the exploitation of this exemption by non-Indigenous people.

Priority 2 – Advocate for consistent Busking Rules and/or Permit Systems across Sydney

Arts Law supports the City of Sydney's intention to advocate for a consistent busking system across Sydney. The issues identified with respect to the incompatibility of the different permit systems and difficulties faced by buskers seeking to work within the geographical footprint of the Sydney CBD and surrounding areas place a significant limitation upon buskers to access and engage in their craft.

Arts Law recommends that in seeking to develop a consistent busking system, City of Sydney should also seek to lead the conversation and advocate for the establishment of consistent recognition for Aboriginal and Torres Strait Islander cultural practice in these areas.

Priority 3 – Make information about busking clearer and more easily accessed, for everyone

Arts Law supports City of Sydney's draft Sydney Busking Code and agrees with the need to make the information more accessible and easier to understand. As stated above, Arts Law's clients have demonstrated that they are eager to comply with laws which apply to them and their work but find it difficult to easily access the information that relates to their rights and obligations.

Arts Law submits that the accessibility issue may be further resolved through the steps that City of Sydney will take in addressing Priorities 2 and 6.

Priority 4 – Change the language we use to describe busking (to facilitate cultural change)

Whilst Arts Law supports the shift in language to be more supportive of the value that buskers contribute to a community, the change in language is limited to the policies and regulations of which the primary audience will be buskers. Arts Law submits that a more effective use of the change in language and policy would be in around the communications and marketing of busking to the wider community by City of Sydney.

Priority 5 – Advocate for a more busker friendly city

Arts Law supports City of Sydney's plan to provide better infrastructure for buskers across the city and to integrate them with pre-existing landholders of key busking pitches. Arts Law believes that the simplification and accessibility of a Sydney Busking Code along with support and advocacy of City of Sydney to acknowledge the value of busking in the community, will assist with compliance by buskers, and satisfaction of the wider community.

Arts Law submits that this priority should be supported by Arts Law's recommendation for effective communication to the wider community under Priority 4.

Priority 6 – Simplify and clarify busking regulation and better involve buskers in writing the rules

Arts Law supports City of Sydney's proposal to engage buskers in the process of developing the regulations and rules that apply to them. Involvement of the busking community will improve accessibility and understanding of the regulatory framework by its key stakeholders.

Summary

Upon review of the City of Sydney's proposed changes to its Busking Policy and Aboriginal and Torres Strait Islander Cultural Practice Policy and Protocols, Arts Law supports each of the proposed changes in principle and has made recommendations for additional changes to further strengthen and clarify the policies and protocols for the benefit of the busking community and the Aboriginal and Torres Strait Islander community.

Please do not hesitate to contact Arts Law if you would like further information or clarification.

Kind regards



Robyn Ayres
Chief Executive Officer



Daniel Roe
Solicitor