

Palais Theatre Lease Project

Fair Competition and Confidentiality Policy Panel Review – Final Report

Summary

Live Nation Australia Venue’s (LNAV) “Palais Theatre Booking Policy” has been reviewed by the Panel and we regard it to be a sound and workable approach in terms of managing potential hirers of the theatre. It aligns with commonly understood industry practice and, assuming it is effectively applied, it should be seen as fair. The issue of confidentiality is addressed in terms of the pre-contract booking process and describes how information will be treated by Management.

The Panel has undertaken a detailed review of all relevant documentation and interviewed LNAV’s Palais General Manager to clarify and confirm various issues. The attached Compliance Table describes each of the six principles, our commentary for each one, our assessments of LNAV’s responses and our conclusions.

It is our agreed view that LNAV have demonstrated their ability and willingness to comply with the Fair Competition and Confidentiality Policy requirements of the lease.

Greg Randall
Panel Chair
14/6/17

Andrew Bell
Barrister

Rob Robertson
Community Member/Industry Expert

Attachment - Compliance Table

	Commentary/Background	LNAV Process/Controls to ensure compliance with Principle	Panel recommendations for improvement	LNAV Response - Status
1. Protection of confidential information at each stage of the venue hire process.	There are two basic stages to this process – Pre-contractual (the Booking process) and contractual (using the Standard Hiring Agreement). Whilst the Booking Process Policy references fairness and confidentiality the Standard Agreement does not have a Confidentiality clause.	The Standard Hiring Agreement has been updated to include a Confidentiality clause.	The Panel provided LNAV with an example form of words that could be used in the Standard Hiring Agreement and the final clause reflects the intentions of our suggestions	Status: LNAV's Booking Policy and Standard Hiring Agreement appropriately support compliance with Principle 1.
2. Maintenance of competitive neutrality between the Tenant's related hirers and other hirers.	The Panel understand that "competitive neutrality" in this context means that there are measures in place that ensure an overall fair market environment is in place and that Live Nation's other entities do not have an unfair advantage in terms of use of and access to the Palais Theatre. (This is different to the use of the term in the context of Government Competitive Neutrality Policy that addresses state owned entities competing in the commercial market place.)	Competitive neutrality is reflected in the Booking Policy is three complimentary ways: 1. the 'pencil/challenge' policy for bookings; 2. provision of a minimum of 150 Availability Commitment dates; and 3. appropriate confidentiality arrangements.	Complies	LNAV response: "We believe this is adequately covered within the bookings policy and the rental policy, however additional measures have been or will be implemented that are not covered in the policy are as follows. - There will only be two people authorised to take a booking, the General Manager and the Marketing/Administration Manager. Which minimise risk of error. - Both of these people will be educated and trained on the booking and rental policies and procedures. - Live Nation Australia Venues are in the process of purchasing an Event Booking System, which will assist the booker which will be designed around meeting our policy objectives and will also have the ability to log dates and times of calls, file correspondence and make file notes regarding conversions. - Live Nation will be treated as per any other potential hirer without fear or favour, Live Nation Australia are already 2 nd and 3 rd pencil on some dates at the Palais Theatre." Status – The Panel believes that LNAV's Theatre Booking Policy and further statements comply with this principle.
3. Transparent and equitable approach to all hirers.	The panel understands that Principle 2 above refers to the relationship between LNAV and other LN enterprises and that Principle 3 references LNAV's dealing	LNAV staff will be obliged as part of their employment contract to act honestly, fairly and in the best interests of their	Reference to these principles including core values and employee obligations could also be incorporated into the	LNAV provided the panel with a copy of their internal rental rate policy and we believe it reflects the needs of a commercial, market driven organisation and aligns with industry practice and expectations with one exception. It has now been updated to include

	<p>with all external hirers.</p> <p>Given the Palais will be operated commercially and for profit by LNAV (within a framework that also has community benefit obligations) not every hirer will be charged the same fees nor will every interested party be granted permission to use the venue. Commercial contractual arrangements will and must be held in confidence.</p> <p>These two issues may seem at odds with the ideals of transparency and equity and disputes may well arise if not carefully managed.</p>	<p>employer. It is assumed “in the best interests of their employer” in this instance that LNAV are regarded by the industry and community as operating fairly in the context of a for profit business.</p>	<p>documentation referred to above and a grievance process outlined that can be used if and when required.</p>	<p>reference to how venue rental deposits are to be levied</p> <p>LNAV have also now published an informative “rate card” that indicates to hirers the key rates and conditions of hire.</p> <p>http://palais theatre.com.au/sites/default/files/Palais%20Theatre%20-%20Commercial%20Venue%20Hire%20Details%20WEBSITE.pdf</p> <p>It terms of the broader issues of transparency and equity LNAV’s Response (below) outlined how all hirers would be treated fairly and equitably in terms of the booking policy and standard agreement. They did however outline the reality that the issue of fees would be commercial in confidence and either subject to specific lease conditions or negotiated individually.</p> <p>LNAV response “All hirers will be treat equitably from a Venue Hire Agreement and bookings prospective, it is not possible to treat all parties the same from a hire fee prospective for a wide range of reasons such as but not limited to:</p> <ul style="list-style-type: none"> -Our lease agreement requires us to provide a discount to local schools and charities -Our lease agreement requires us to provide the venue at minimal charge to the CoPP on a lease specified number of occasions each year -Live Nation Australia Venues (LNAV), want to be able to offer other parties discounted rates from time to time to encourage filling of empty days and periods in the boeing schedule. This is needed if we are to be commercially competitive -LNAV from time to time will be bidding to secure shows against other venues in Melbourne and what we bid will be subject to our rental policy. -All staff who have access to see the booking system will be briefed and trained regarding the need for confidentiality and that all hirers at all times are to be treated in a fair, professional and equitable matter. -LNAV from time to time, may decide to co- promote an event with a hirer to fill empty periods in the calendar.” <p>Status: <i>The panel believes that LNAV’s articulated position and formal policies comply with this principle.</i></p>
<p>4. Implement a standard hiring agreement to apply to all hirers.</p>	<p>The Standard Hire Agreement is being reviewed by the Panel but at this stage appears sound with the exception of the absence of clause specifically dealing with Confidentiality.</p>	<p>Standard Hire Agreement drafted and with the exception of a confidentiality clause aligns with standard industry practice</p>		<p>Status – Complies, Confidentiality Clause now included in Standard Agreement</p>

<p>5. Implement a venue hiring fee policy to apply to all hirers.</p>	<p>There is a difference between a fee policy and a schedule of fees. Deals will be negotiated and not all hirers will pay the same fee.</p> <p>Hirers seeking to hire the venue outside of a "normal" type of use such as long term with few performances, long run musical type shows, small attendances etc may also have special fees and conditions negotiated.</p>	<p>LNAV provided the detailed internal use policy that they have developed.</p>		<p>Status – Complies <i>Standard Rates¹ and Conditions has been published on the Palais website</i> http://palais theatre.com.au/sites/default/files/Palais%20Theatre%20-%20Commercial%20Venue%20Hire%20Details%20WEBSITE.pdf</p>
<p>6. Venue to be operated at arm's length from remainder of Tenant's related entities' business.</p>	<p>This is similar in nature to point 2</p>			<p>LNAV 's response:</p> <p>"The Palais Theatre General Manager reports to the senior vice president venues who is based in Singapore</p> <ul style="list-style-type: none"> -All staff report directly to the General Manager Palais Theatre -Live Nation Australia Venue staff will be based out of the Palais Theatre once the upgrade works have been completed, Live Nation Australia will be based from their head office in Cremorne. -Live Nation Australia Venues will have a separate mail address, once the staff have moved in to the Palais Theatre -All full time /part time staff will be trained on appointment regarding the relationship between Live Nation Australia Venues and Live Nation Australia to ensure clear separation on all matters related to the entertainment and bookings. -Please keep in mind we will still have a relationship with Live Nation Australia Finance (who will be producing the P&L and Human Resources departments and this was clearly articulated in the bid document." <p>Status: Complies with the principle</p>

¹ Technical Specs and Ancillary Charges <http://palais theatre.com.au/sites/default/files/2017%20Palais%20Theatre%20Technical%20Specifications%20%28June%202017%29.pdf>