

## **SYDNEY'S NIGHT TIME ECONOMY**

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Partially  
Confidential

# Submission to Sydney's Night Time Economy

**Joint Select Committee  
Parliament of New South Wales**

Dear Members,

The inquiry into Sydney's night time economy is welcomed. Over the last number of years, the NSW Government has burdened the citizens of the State with an increasing number of regulations purportedly in the interests of safety, however these regulations have had a tremendous impact on civil liberties, freedom, employment, small businesses and the economy.

I wrote an article, published on LinkedIn, entitled "*Would the last person in Sydney please turn the lights out?*" providing an overview of the damage that these regulations have done on the social, cultural and economic vibrancy of Sydney, as well as its international reputation. This article clearly touched a nerve with the citizens of New South Wales as within a week almost one million people had read the article. A wave of public action soon followed including 15,000 people marching against the lockdown laws in a rally organised by Keep Sydney Open. Today a search for "New South Wales" "Lockout Laws" in Google News yields over 18,000 articles written on the topic, the majority being negative on these laws, and other restrictions on civil liberties that have crept in through NSW Government legislation over the last few years.

I would like to include this by way of reference from this submission. I have attached the link in the bottom of this submission.

In the following I detail the misuse of official statistics by government officials and others in order to justify the lockdown legislation. I then discuss the issues surrounding the liability of venues and with liquor legislation in New South Wales. I examine what exemptions to these law have been granted, and to what establishments. I then look at the timeline of events and politics surrounding the introduction of these regulations to show that neither major party believed in them in the first place, and that both deliberately misrepresented official data to play petty politics. Finally, I show that the only winners from these laws have been the casinos and property developers, and the biggest losers have been small businesses, jobs, the economy, civil liberties, tourism, and the social, cultural fabric and reputation of Sydney.

I have provided most of the supporting documentation for the arguments below in the following article published on LinkedIn at the following link:

<http://www.linkedin.com/pulse/death-sydneys-nightlife-economic-collapse-its-night-time-matt-barrie>

## Misuse of Official Statistics

One of the major tools that the NSW Government and the City of Sydney have used to justify the lockdown legislation has been through **misquoting and manipulation of their own official statistics and research**. Not only do I expect that these reports will be submitted to the review by the authors, but I note that in the Justice Department's background paper on the Liquor Law Review, there are sections entitled "Key Offence Data" and "Research on impact of the February 2014 intervention" where these are listed.

I would like to address some important issues with this "official" data so that the inquiry may be aware of the bias that the official channels promulgate.

### **Misuse of Fulde, Smith & Forster (2015) paper on St Vincent's identifying critically or seriously injured emergency presentations related to alcohol use.**

The [paper written by Fulde et al. \(2015\)](#) is cited by pro-lockout proponents as the key evidence supporting the lockdown laws. This paper counted trauma cases classified as Australasian triage categories 1 (immediately life-threatening) and 2 (imminently life-threatening, important time-critical treatment, very severe pain) in the 12 months before (24 February 2013 – 23 February 2014; period 1) and the 12 months after (24 February 2014 – 23 February 2015; period 2) the 2014 changes to liquor licensing regulations applied to the precinct.

The key conclusion often quoted from this paper is that there was a relative reduction of 24.8% ( $P < 0.05$ ) in category 1 and 2 injuries during High Alcohol Time (HAT), and that there was a small increase in the number of patients presenting with alcohol-related injuries between 9pm and midnight after the lockdowns were introduced.

Dr Fulde [describes his department before the lockdown laws](#) as a "war zone" and the decrease in severe head injuries since then as "spectacular and terrific".

I wish to bring to your attention a number of substantial issues with this paper.

**Firstly, It is important to note that the paper presents statistics on alcohol-related injuries, not alcohol-caused injuries.**

Quoting directly from the paper, there were 13,110 triage category 1 and 2 presentations to the St Vincent's Hospital emergency department: 6,467 during period 1 (before the lockdowns) and 6,643 during period 2 (after the lockdowns). Overall there were more presentations to St. Vincent's after the lockdowns.

**Results:** In the 2-year study period, there were 13 110 triage category 1 and 2 presentations to the St Vincent's Hospital emergency department: 6467 during period 1 and 6643 during period 2. Of these, 1564 (4.3%) were patients who presented with alcohol-related serious injuries: 318 (4.9%) during period 1 and 246 (3.7%) during period 2 ( $P < 0.05$ ). The proportion of alcohol-related serious

*Figure: Basic arithmetic error in key results summary of Fulde et al's (2015) paper. Regardless, only 4.3% of category 1 & 2 admissions are alcohol-related.*

Of these, the paper says **only 1,564** were patients who presented with **alcohol-related** serious injuries. Right off the bat, to show you how sloppily this paper has been put together and reviewed, **this is a basic arithmetic error- the actual number is 564 (4.3%)**. You can verify this yourself by adding the **318** patients during period 1 to **246** during period 2 which yields **564**.

The paper then looks at High Alcohol Time, which is the weekend, to reach the 24.8% reduction in injuries conclusion. I have included a screenshot by way of reference:

Given the nature of the problem, we examined the high alcohol time (HAT) separately; ie, the weekend, from 6 pm Friday to 6 am Sunday. The proportion of alcohol-related serious injury presentations in triage categories 1 and 2 was much higher during HAT (9.1%) than the rest of the week (3.1%;  $P < 0.05$ ). There was a significant decrease in the total number of seriously injured patients during HAT after the introduction of the various control measures in 2014: from 140 presentations (10.4%) in the 12 months before the changes to 106 (7.8%) in period 2 ( $P < 0.05$ ). This was a relative risk reduction of 24.8% (95% CI, 4.3%–40.9%).

*Figure: The conclusion of the [Fulde et al.](#) (2015) paper. A 24.8% drop in injuries at St. Vincent's is determined by a total delta of 34 patients over one year.*

The 24.8% drop in injuries at St. Vincent's is determined by Fulde by **a total difference of 34 patients over an entire year** during the High Alcohol Time.

Of course, any injury is a tragedy, but putting this into perspective, [an Australian dies every three days in Thailand](#), yet I do not see any travel restrictions being put in place from visiting that country. You are far more likely to die [falling over, out of bed or off a ladder](#) than anywhere near a licensed venue or entertainment precinct in Sydney.

What is the High Alcohol Time? Fulde et al. curiously took this to be from 6pm Friday to 6am Sunday. **When one considers the actual hours affected by the lockdown (1am - 4am, as**

some venues reopen at 5am), the total difference is approximately 25 patients over an entire year. There were more alcohol-related injuries at 6pm, 7pm, 9pm, 11pm and midnight after the lockouts.

**These 25 patients are not exclusively victims of alcohol-caused assault, or even assault for that matter- this is across all causes of injury.** To quote, these cases were “critically or seriously injured emergency presentations that were identified as related to alcohol use”. **Alcohol is not necessarily the direct cause in these cases-** a victim could have a drink and be hurt in a method completely unrelated to alcohol consumption.

**Nor do they exclusively emanate from licensed venues, or even the entertainment precinct.** So, a lady having a glass of champagne at dinner at home, who subsequently falls down a staircase after tripping on a cat would be included in these statistics.

Correlation, not causation, is being recorded here- similar to the Orwellian Alcohol Linkage Program used by police which, as designed, more accurately measures crimes against people who drink than reliable statistics on crime emanating from venues. Later on I will describe how this program actually works.

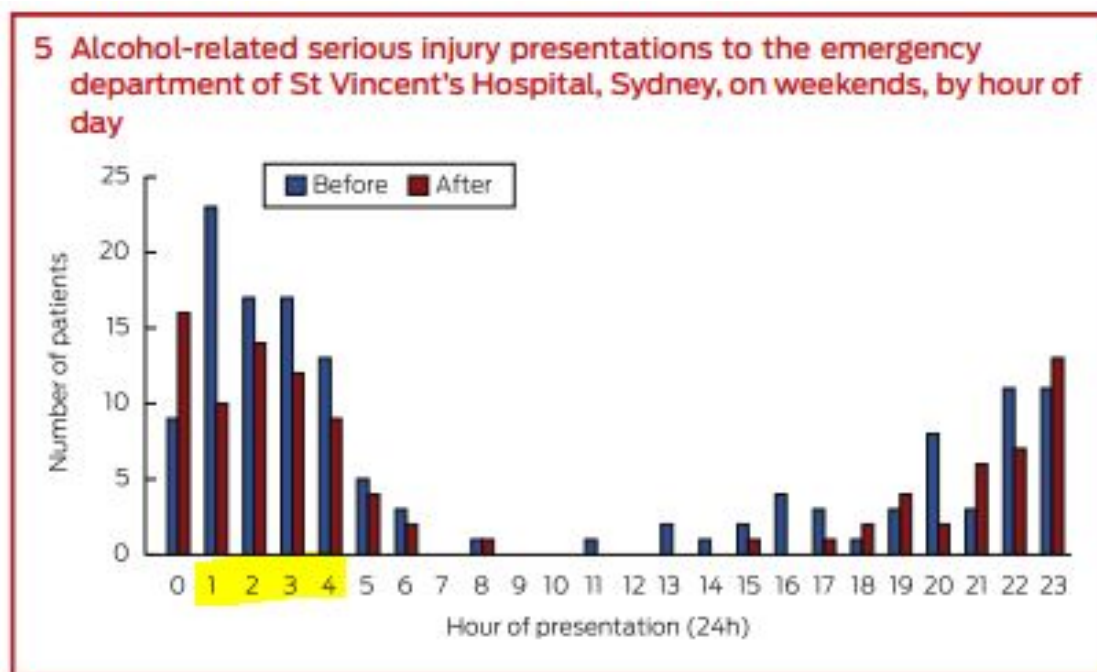


Figure: Taking into account the times affected by the lockout laws, the difference in patients is closer to 25 over the course of a year. Source: [Fulde et al. \(2015\)](#).

However, what is most remarkable isn't just that the difference is only around 25 people, or that the injuries are not all assault related, or that the injuries didn't all come from licensed venues. It's how alcohol related was determined in the first place.

I have asked nurses who work in emergency at the three hospitals whether they routinely measure the blood alcohol level of every admitted patient. They have told me not only do

they most certainly do not do this, but it would be almost impossible to attribute whether alcohol was a mitigating factor or not. Most of the data entered into the notes regarding alcohol consumption is provided voluntarily by the patient.

This is how it was determined whether the injuries were alcohol related in Fulde et al.'s paper:

was being analysed. One of the authors (G F) was assigned as the sole assessor who identified cases of alcohol-related serious injury.

*Figure: The sole assessor of alcohol related injury was only one of the authors of the paper, G F (Gordian Fulde). Source: [Fulde et al. \(2015\)](#).*

**The sole way in which an injury is determined to be alcohol related was by one person and one person only- Gordian himself.**

Not only is this incredibly surprising from an integrity and ethics standpoint (which I will address later), but it simply is not humanly possible for one person, despite being Senior Australian of the Year, to have worked every Friday from 6pm to Sunday 6am for two years straight. As alcohol would wear off, Fulde would have to be relying on whatever notes had been left by the actual staff on duty at the time- and it would be incredibly unlikely that this would be an accurate way of analysing the data. Especially when one is considering a difference of 25 data points over two years of over 13,000 admissions.

Indeed I have been told anecdotally by an emergency staffer (and I stress this is unconfirmed) that "Gordian hasn't worked a Saturday night in a decade". Nor would I expect him to as the head of the department and after three decades of service.

No human being would be perfectly accurate in the detection of whether an injury was alcohol-related, and certainly not perfectly accurate if you are basing that classification from secondary source reports transcribed from someone else's notes. I would argue that the margin of error due to misclassification of false-positive and false-negative classifications (an injury was recorded as alcohol-related when it wasn't, or recorded as not related to alcohol when it was) would well be in the realm of 25 data points out of 13,000 for any human being on the planet.

Although the Fulde paper did not record how many of the 25 were victims of assault and not, for argument's sake, victims of tripping over cats. However it is also unlikely in the case of assault that both the perpetrator and the victim are both admitted to St. Vincent's with serious injuries. Generally for a crime, perpetrators are unlikely to get caught, and if they are caught it is some time later where sobriety is less likely to be noticed or recorded. It is also more likely that the victim of the assault will be admitted to hospital than the perpetrator.



Since most of the data relating to alcohol is voluntarily provided by the patient, how would the sobriety of the offender thus be recorded?

Otherwise this data would mainly be recording the sobriety of victims. So of course one would expect that admissions would drop - because they are simply a factor of less foot traffic and patronage in the CBD entertainment precincts rather than any causal factor due to alcohol. Simply put, people drink at night in the entertainment areas, so less people visiting means less admissions; correlation not causation. There's less people in the area, thus at the same rate of violent alcohol-related incidence we would indeed expect less hospital admissions.

Furthermore, St. Vincent's, Prince of Wales and Royal Prince Alfred form a trauma network. Data is shared between these three hospitals, and ambulances are regularly routed between the three based on factors including availability, the type of injury, specialisation of the hospitals and so on. It is also possible that during period 2 (after the lockouts) in the study that 25 ambulances over the course of the year (or one ambulance every two weeks) could have routed to one of the two other hospitals more than period 1.

The authors would have known that to measure the statistics at St. Vincent's in isolation would not make sense.

**My point is that the method in which this data has been collected and analysed for this paper is spurious, to say the least.**

**Certainly if emergency at St. Vincent's was a "war zone" as Dr Fulde describes pre-lockout conditions, then the lockout laws must certainly be a failure given the difference in high injury alcohol related admissions is about one patient every two weeks by his very own data.**

Clearly there must be some other non-alcohol related cause, as I doubt that a 25 patient difference out of 13,000 in trauma admissions in two years is anywhere near the biggest issue facing St. Vincent's currently. For example, it was recently reported that [seventy patients were administered the wrong dose of chemotherapy drug](#) by a single doctor, and that you are more [likely to die of malpractice, misadministration or misadventure](#) in a NSW hospital than a licensed venue.

Otherwise it is simply more colourful hyperbole, which has been the main method in which the pro-lockout proponents have argued their case.

## **Sydney's "lock-outs" laws lack evidence and popular support**

I copped a headbutt to the face from a drunk bloke at a house-party a few years back.

It wasn't a pleasant experience. For three months afterward, I was as lucid as Major Tom.

It was unprovoked, unnecessary and unfortunate for all involved.

I share this anecdote, not in an attempt to elicit any sympathy, but because it's irrelevant.

Yet it is emotive anecdotes like this that politicians and media commentator's wheel out to justify our current alcohol regulation.

An anecdote, no matter how tragic, is not a sound basis for policymaking.

A good policy response should address a well-defined problem, preferably with a solution that has been reliably proven to work elsewhere. If the solution is untested, then the government owes it to its constituents to test whether or not it has been effective.

*Figure: Introductory paragraph to "Sydney's "lock-outs" laws lack evidence and popular support" by economist David Taylor.*

Economist David Taylor from Archerfish asked Gordian for his raw data in order to identify and verify how the alcohol classifications were made, but Gordian refused to provide it.

I find this, the main academic paper justifying the lockout laws, curiously constructed and poorly researched. I would have expected that the St. Vincent's ethics committee would have paid more attention to it, particularly in light of the fact that St. Vincent's Hospital [receives millions of dollars from Crown](#), a Melbourne casino. Moreover, I am not sure why a Melbourne casino is donating to a Sydney hospital, in the middle of the Sydney entertainment precinct.

Finally, Dr. Fulde is himself conflicted in publishing this 2015 paper, as he has been a founding director of the Thomas Kelly Youth Foundation since December 17th 2012, the main political lobby group for the lockout laws which was set up with the specific mission to ["reduce the availability and supply of alcohol in our community"](#).

Stranger still, this foundation's main financiers are the Crown Casino, the owner of Crown Casino, Macquarie Bank- substantial shareholder & investment bank of Star Casino, the NSW Premier's office- legislator of the lockout laws and City of Sydney- who helped implement the lockouts. Every year, the foundation conducts a star-studded gala to fund raise at.. Star Casino (while well publicised, the cost of this annual event, I will add, curiously does not appear in the [TKYF's financial accounts](#))..



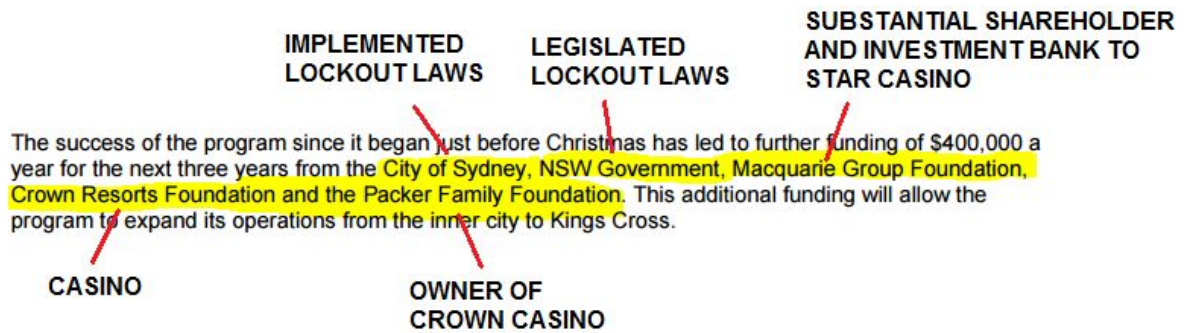


Figure: Paragraph from [media release by the Thomas Kelly Youth Foundation](#)

Gordian, the author, is also the person that suggested on a Q&A special on lockout laws that “nobody is stopping anyone drinking at 1:30am” because [...] “you can go to the casino”. (<https://www.youtube.com/watch?v=GepQ0vIFieE>).



Figure: Snapshot of Q&A special on the lockout laws where Dr. Fulde suggests going to the casino when venues are locked out at 1:30am..

### Misuse of Bureau of Crime Statistics and Research (BOCSAR) data

The data from BOCSAR is the second main source of data used by pro-lockout protagonists as to the effect of the lockouts. However, the data is being frequently manipulated in how it is being used.

Compare the following statements by two NSW Premiers and the Minister responsible for gambling and alcohol regulation, for example:



*Figure: Premier Mike Baird misusing BOCSAR data to explain why he believes in the lockout laws [on Facebook](#).*

**Mr GEORGE SOURIS:** The Leader of the Opposition has not done his homework. While there was a 26 per cent reduction in violent incidents in licensed premises in Newcastle between 2008 and 2012 there was a 28 per cent statewide drop in alcohol-associated violence over the same period. During this period, there were greater reductions in violent incidents for other parts of New South Wales—

**The SPEAKER:** Order! The member for Macquarie Fields will come to order.

**Mr GEORGE SOURIS:** —according to the New South Wales Bureau of Crime Statistics and Research without the Newcastle conditions. For example, a 38 per cent reduction in violent incidents on licensed premises was recorded in Campbelltown, a 36 per cent reduction was recorded in Gosford and a 40 per cent reduction was recorded for Penrith. This completely debunks the claim that Newcastle-style restrictions are the only pathway to achieving a real reduction of alcohol-related violence.

**The SPEAKER:** Order! The member for Macquarie Fields will come to order. This is not an opportunity for him to have an argument.

**Mr GEORGE SOURIS:** The Government looks at each precinct individually and has achieved a significant drop in violent incidents across the State. In 2012 alone assaults on licensed premises across the State fell by 8 per cent compared to 2011. Labor wants to treat every Friday and Saturday night like a major event, with better transport and a strong police presence. This is another swing and a miss. We are already taking this approach in Kings Cross and the Sydney central business district.

*Figure: Gaming and Hospitality Minister George Souris using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: [Hansard](#)*

**Mr BARRY O'FARRELL:** For all of the criticisms of the Leader of the Opposition and the figures he produces, the one figure he fails to produce is that since March 2011 assaults are down 33 per cent in Kings Cross. Assaults in licensed premises across the State are down by 8 per cent.

**Mr Gareth Ward:** Just like his approval rating.

**The SPEAKER:** Order! The member for Kiama will come to order.

**Mr BARRY O'FARRELL:** I have teenage sons. One assault is one too many.

**Mr John Robertson:** You can do more.

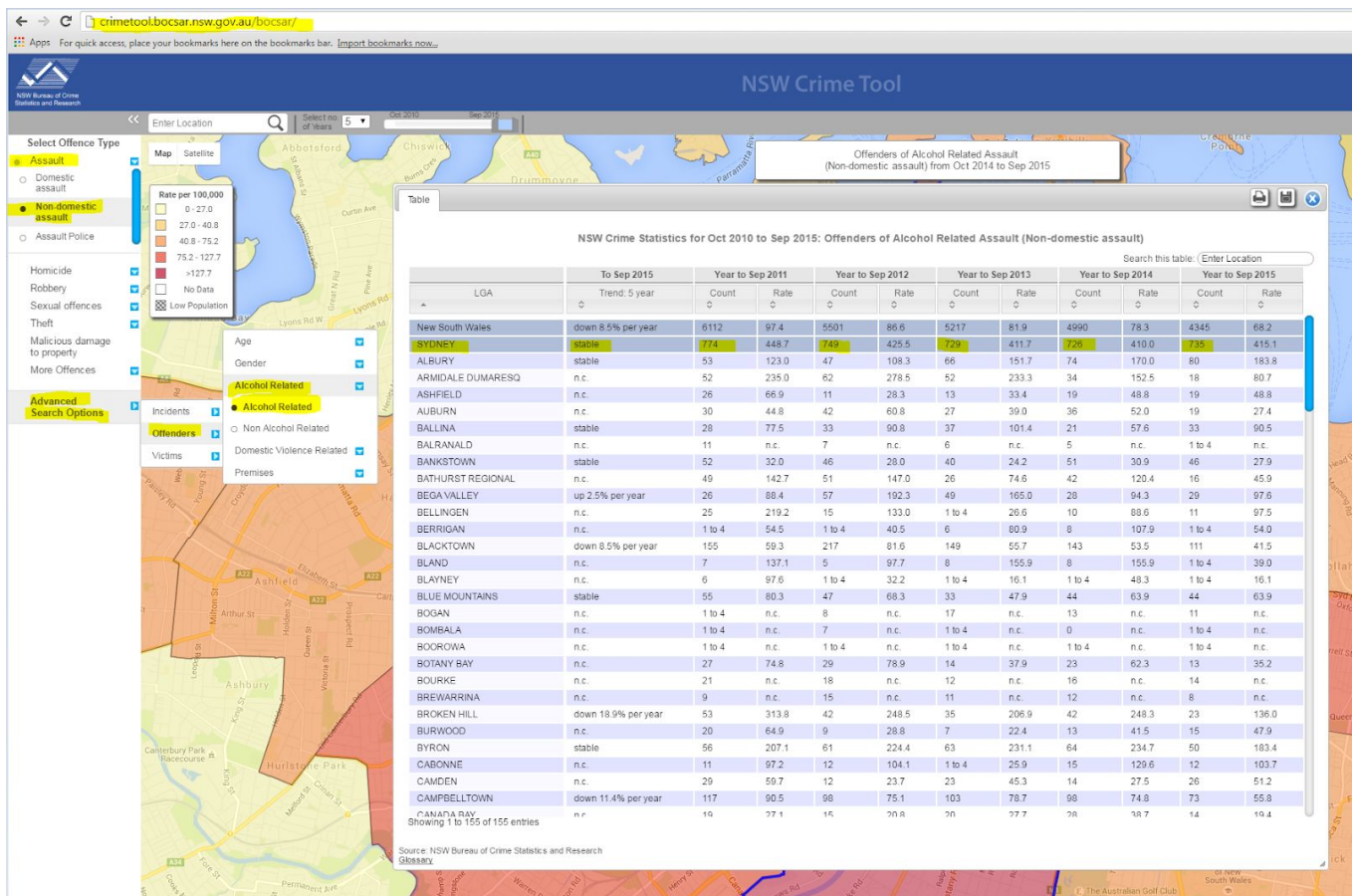
**The SPEAKER:** Order! The Leader of the Opposition will come to order.

**Mr BARRY O'FARRELL:** The Leader of the Opposition did nothing on this issue when he was in government. Labor did nothing to improve transport to Kings Cross, crack down on licensing laws or establish the Independent Liquor and Gaming Authority. I ask those opposite to tell me how a 1.00 a.m. lockout will stop someone being killed in the back streets of Kings Cross at 10.30 p.m.

*Figure: Premier Barry O'Farrell using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: [Hansard](#)*

BOCSAR data should be looked at from the perspective of non-domestic assault where the offender is alcohol-related, not from where the victim is alcohol-related. If a lady has a glass of champagne in Kings Cross with dinner and then is assaulted on the way home by a sober perpetrator, this should not be included in the statistics. However, the NSW Government and other proponents of the lockout laws conflate this data, together with incidents where neither party was alcohol affected.

A simple search by anyone on the [BOCSAR Crime Maps](#) for "Assault", "Non-domestic Assault", "Advanced Search Options", "Offenders", "Alcohol Related", "Sydney" will show that non-domestic assault where the offender is alcohol related in the Sydney has been flat in the years immediately before and after the lockouts. Looking back longer term, non-domestic alcohol-related assault had been in a downtrend for many years before that.



Year to September	Count	Rate
2011	774	448.7
2012	749	425.5
2013	729	411.7
2014	726	410.0
2015	735	415.1

lockouts introduced  
24 Feb 2014

Figure & Table: NSW Crime Statistics from October 2010 to September 2015: Offenders of Alcohol Related Assault (Non-domestic assault). Lockouts started 24 Feb 2014. Source: [BOCSAR Crime Maps](#).

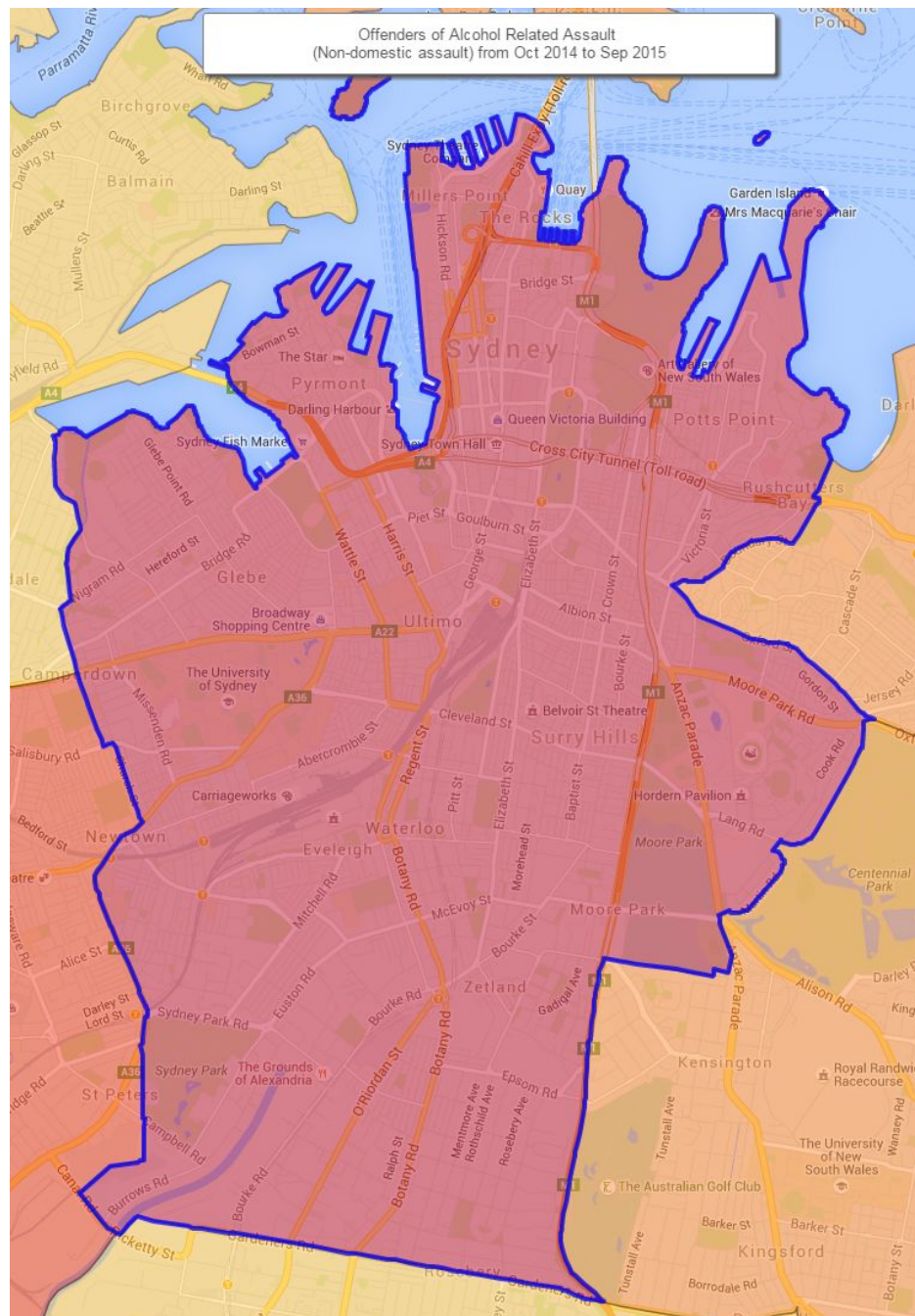
Since October 2010, there have been approximately two non-domestic assaults per day where the offender is alcohol related in the City of Sydney, and this has been flat for the last five years. Note that the lockouts were introduced on 24 February 2014, so for over three years prior to the lockout and two years after the statistics have been flat. This encompasses



an area bounded by Kings Cross to the east, Glebe to the west, Sydney Harbour to the north and Zetland to the south.

**The data shows there has been no rise before, and hence justification for the lockouts and no fall afterwards, clearly showing that the lockout laws have been a failure from the perspective of offenders of alcohol related non-domestic assault.**

Any drop in Kings Cross has just moved within this area due to the closing of businesses and subsequent drop in foot traffic.



*Figure: Boundary of "Sydney" in BOCSAR data.*

*Source: BOSCAR.*

In fact, Premier Barry O'Farrell himself backs this up. In the Legislative Assembly on the 12th September 2013, two months before the lockout legislation was passed and five months before the lockouts started, O'Farrell said that the latest quarterly BOCSAR crime stats were **“good news”- flat to down in 15 of 17 major offense categories- except stealing from retail stores and fraud.**

**Mr BARRY O'FARRELL:** I thank the member for Campbelltown for his question and for his service to the community as a police officer before he came into this Parliament. He has direct experience with the issue of crime across communities and its impact upon families. Today the independent Bureau of Crime Statistics and Research [BOCSAR] released its latest quarterly report; and overall it is good news. Three major offence types showed a downward trend. Non-dwelling break and enter was down 7.6 per cent; motor vehicle theft was down 11 per cent; and malicious damage to property—and this would be of interest to the Attorney General—was down 5.3 per cent. Twelve categories remained stable, and one of those was non-fatal shooting offences—which will be disappointing to those opposite.

**The SPEAKER:** Order! The Leader of the Opposition will come to order.

**Mr BARRY O'FARRELL:** The Opposition never supports the police. Indeed when a fine former police officer stood for public office what did the Labor Party do? It tried to traduce his reputation in the most shameful way. The man who is only Leader of the Opposition because of Eddie Obeid now seeks to traduce somebody else's reputation.

**The SPEAKER:** Order! There is too much audible conversation in the Chamber. Opposition members will come to order.

**Mr John Robertson:** Do not worry—we have not started on your reputation yet.

**Mr BARRY O'FARRELL:** It has not finished for your mob either. Two categories which saw increases were stealing from retail stores and fraud—and I do not mean what we have seen at the Independent Commission Against Corruption. Dr Don Weatherburn, the head of the Bureau of Crime Statistics and Research, has suggested that the increase in fraud was due to increased credit card theft. So I urge people to be vigilant and careful with their credit and bank cards. It is important that we all take the proper precautions, including protecting our PINs and watching out for email scams. As someone who had his own bank accounts skimmed earlier this year, I can tell you that it can happen to anybody. I note that payWave and the like are convenient for consumers, but they do make it easier for fraudsters to illegally access people's credit card details.

Banks should consider these findings and set about to work out ways to better protect themselves and their customers. This is clearly a concern and needs to be fixed, and banks are best placed to do that work. I note that this afternoon police have arrested two men in relation to a nine-month investigation into identity theft and credit card fraud. I congratulate the NSW Police Force on these results which have been released today and overall show that 15 of the 17 major offence categories have remained stable or are going down. Credit goes to Commissioner Andrew Scipione and his men and women in blue across New South Wales. Their strength is now at record levels—this Government is very proud to have already provided an additional 420 officers, putting us on track to deliver our election commitment of having 859 additional police officers across New South Wales by August 2015.

*Figure: Excerpt from Barry O'Farrell's speech in the Legislative Assembly on the 12th September 2013, two months before the lockout legislation was passed and five months before the lockouts started, saying that the latest quarterly BOCSAR crime stats were “good news”- flat to down in 15 of 17 major offense categories- except stealing from retail stores and fraud. Source: [Hansard](#).*



From the outset, these laws have been about fixing a serious problem. Violence had spiralled out of control, people were literally being punched to death in the city, and there were city streets too dangerous to stroll down on a Friday night. The community was rightly outraged. I was personally outraged. I met face to face with the families of victims. You don't need to see that sort of pain too often to realise there is a problem that needs fixing. And the Government was determined to act.

*Figure: Excerpt from Premier Mike Baird's [Facebook page](#) from February 9, 2015.*


What streets was Premier Mike Baird talking about that were “too dangerous to stroll down on a Friday night?” Was it Darlinghurst Road? Victoria Road? Bayswater Road? Oxford Street? Clearly that statement is nothing but more hyperbole from the government.

Indeed violence had not “spiralled out of control” as promoted by Premier Mike Baird. Not only is this clear in the data, but in fact, the same NSW Liberal Government [had been boasting in October 2013](#), a mere four months before the lockdowns were introduced, that **Sydney was the safest and friendliest city.. In the world.**


**YES, IN THE WORLD.**


← → ↻ [www.destinationnsw.com.au/news-and-media/media-releases/sydney-worlds-safest-and-friendliest-city](http://www.destinationnsw.com.au/news-and-media/media-releases/sydney-worlds-safest-and-friendliest-city) ☆

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## Sydney world's safest and friendliest city

**Sydney has been ranked as the world's safest with the friendliest city, beating London, Paris, New York and Rome, Minister for Tourism and Major Events, George Souris said today.**

11 October 2013

"This is an accolade for the Harbour City and reinforces the fact that Sydney is Australia's global city with an enormous reputation, which the NSW Government has enhanced through its tourism and major events policy," Mr Souris.

"Sydney is often recognised for its spectacular harbour, wonderful events and festivals and the other unique experiences for visitors, so it is particularly exciting to also be recognised for the people of Sydney and their positive effect on a visitors' experience."

Sydney was also voted one of the world's top five cities overall with Melbourne rated number ten. These are the findings of the bi-annual Anholt-GfK City Brands Index (CBISM), a survey which measures the image of 50 cities based on attributes including the city's status and standing, the physical aspects, friendliness, things to do, education and economic opportunities and basic requirements such as affordable accommodation and the standard of public amenities.

"It is encouraging to see Sydney not only climb higher in the overall rankings for image and reputation of the world's cities, placed second in overall rankings just behind London, but also to be named as the city visitors feel safest in the world, with the warmest and friendliest people. There couldn't be a more positive response from visitors to Sydney than this."

"Sydney's climb in these rankings also helped to knock Paris off the top spot, which dropped two positions."

Sydney's latest accolade joins a host of other recent honours including:

- Condé Nast Traveler USA Reader's Choice Awards as the best city in Oceania, World's Favourite
- Overseas City, in the Conde Nast Traveller UK Reader's Choice Awards
- Top 5 Best World Destinations, in the UK Cruise International Awards
- Number One City in Australia, in the Trip Advisor Travellers Choice Awards
- The 2013 IFEA World Festival and Event City award

"These accolades are important, underscoring the significance of Sydney as a visitor destination and helping the growth of our visitor economy which, in the year ended June 2013 contributed \$26.7 billion to NSW and employed more than 152,000 people," Mr Souris added.

Simon Anholt, independent policy advisor on national identity and reputation said: "Looking at the People Index within the overall study, Sydney comes top for 'warm and friendly people,' ahead of Toronto. Sydney also wins first place for visitors feeling safe in the city, followed by Geneva and Vienna. "London wins first place as the city where visitors can 'find people who appreciate my culture and with whom I could easily fit in,' ahead of Sydney in second place and New York coming in third".

Anholt-GfK City Index 2013 Overall Brand Ranking: Top 10 of 50 Cities

1. London (2 in 2011)
2. Sydney (3 in 2011)
3. Paris (1 in 2011)
4. New Your (4 in 2011)
5. Rome (6 in 2011)
6. Washington D.C. (7 in 2011)
7. Los Angeles (5 in 2011)
8. Toronto (13 in 2011)
9. Vienna (9 in 2011)
10. Melbourne (8 in 2011)

Figure: Screenshot of Destination NSW media release trumpeting Sydney as the safest and friendliest city.. in the world. Source: [Destination NSW](#).

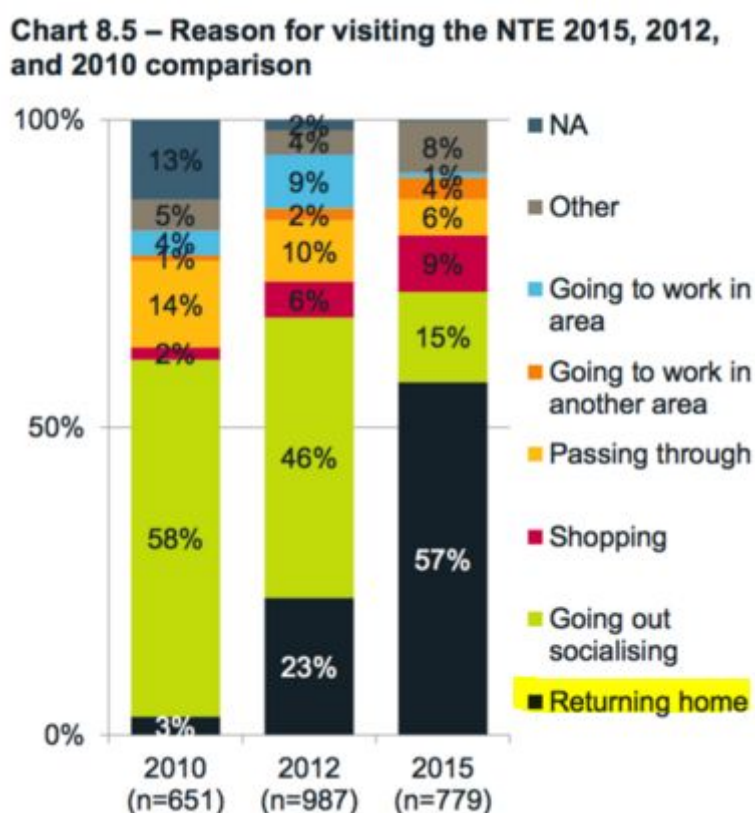
## Obfuscation of data in the City of Sydney Late Night Management Reports

The City of Sydney's series of Late Night Management Reports ([2010](#), [2012](#) and [2015](#)) clearly show the social, cultural and economic damage to the night time economy.

The lockout laws- a blanket ban on commercial trading at night- have been the most blunt and unsophisticated tool that the Government could have used to minimise non-domestic alcohol-related assault.

By the City of Sydney's own report, in 2010 when people were polled about why they visited Sydney at night, 58% of respondents said they were "going out socialising". In March 2015 57% of respondents said "they were returning home". This was 3% in 2010.

It's now almost a year later in 2016. **By the City of Sydney's own data, the overwhelming majority of people passing through night time entertainment precincts in Sydney are there to do nothing at all except go home to bed.** This is devastating for the social and cultural fabric of the city, to say the least of the night time economy.



*Figure: The City of Sydney's own poll shows the destruction to the social, cultural and business vibrancy of Sydney. Source: [City of Sydney](#).*

When looking at more detailed data, the Late Night Management Area Reports are strangely obfuscated and confusing in that while each report has the same objective- to measure business vibrancy, foot traffic and anti-social behaviour- they all measure and present the data in different ways as to make year on year comparisons difficult. This is particularly strange given the exact purpose of commissioning these studies would be to create the

**canonical** data source used to measure the effectiveness of certain policies on the area over time.

In other words, the fundamental reason these reports have been commissioned is so that they are both the definitive source of data and so that they can be compared to each other. So why is just about every piece of data presented measured and presented in completely different ways in each of the reports?

If Nielsen changed their research methods, demographics samples and sample sizes every year, they would cease to exist as a company because their statistical usefulness would be zero. Yet every piece of key data in the City of Sydney reports is fudged between reports.

In fact, the way data is measured and presented in these reports is so bad that if I was the person writing them and wanted to deliberately make them unable to be compared to each other, this is exactly how I would have put them together.

**If I were presiding over this inquiry, rather than relying on the reports listed in the terms of reference, I would ask for the raw data.**

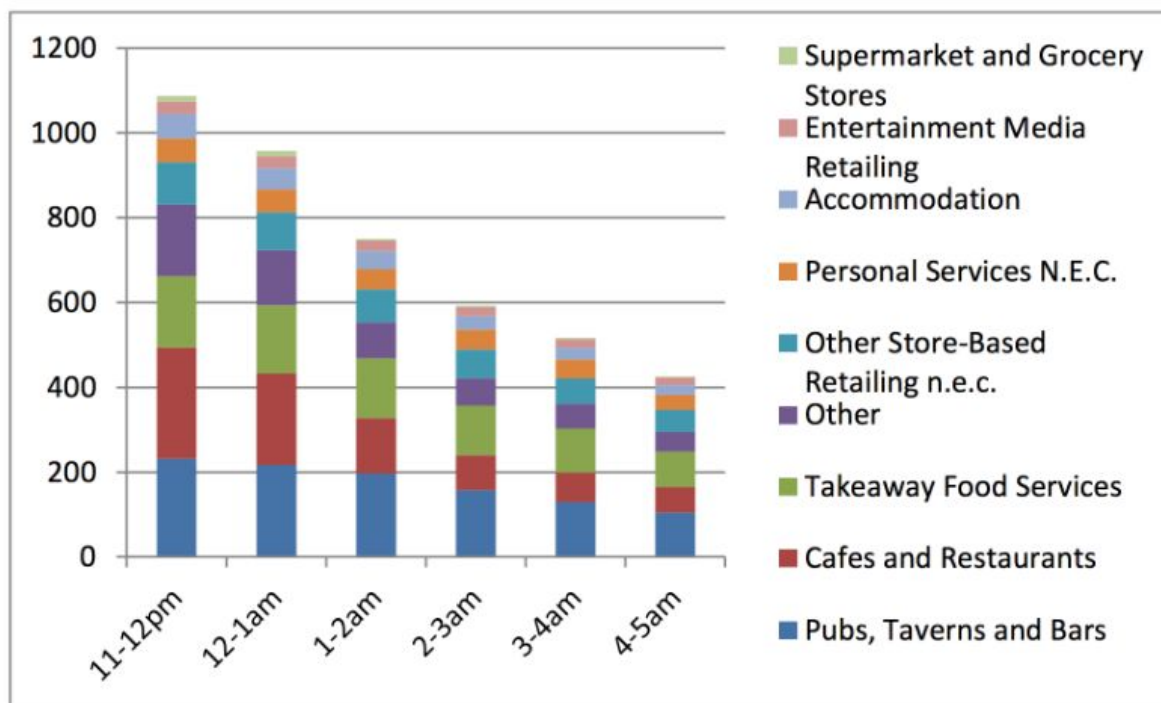
For example, to show you how inconsistent each of these reports is with each other, the original 2010 report by Parsons Brinckerhoff, one of the world's leading planning, engineering, program and construction management organisations, measures the data in both March and December. The 2012 report by unnamed authors measures the data in December 2012. The 2015 report by Urbis, small local firm that [participated in the successful bid by Echo Entertainment Group](#) on winning the Queensland Government's tender to redevelop Brisbane's Queen's Wharf into a casino, measures the data in March 2015. So in the first instance, data is being measured at unrelated times of year.

## **Collapse in Sydney's Night Time Economy**

In the 2010 [Late Night Management Area Research Report](#) the average number of businesses open across all entertainment precincts at 11pm was typically a little less than 1,100. At 1am this dropped to about 750 and at 4am a little over 400.

While at first glance, it might appear that everything is fine when one looks at the [2015 version of this report](#), one quickly notes that something is very wrong when you realise that the report writer has reported **over a longer time period in the day** and **does not break down the statistics of businesses open by precinct** as in 2010.





**Figure 6.1** Number of businesses of each type open across all precincts

Figure: *The Late Night Management Area Research* [Report 2010](#)

**Chart 7.1 – Average number of businesses open**

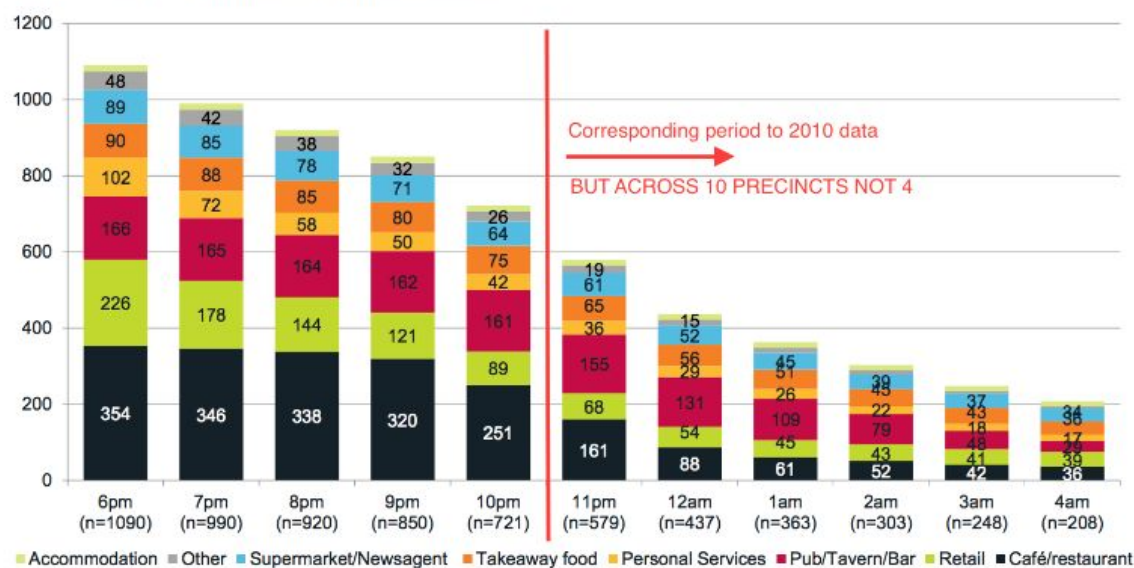


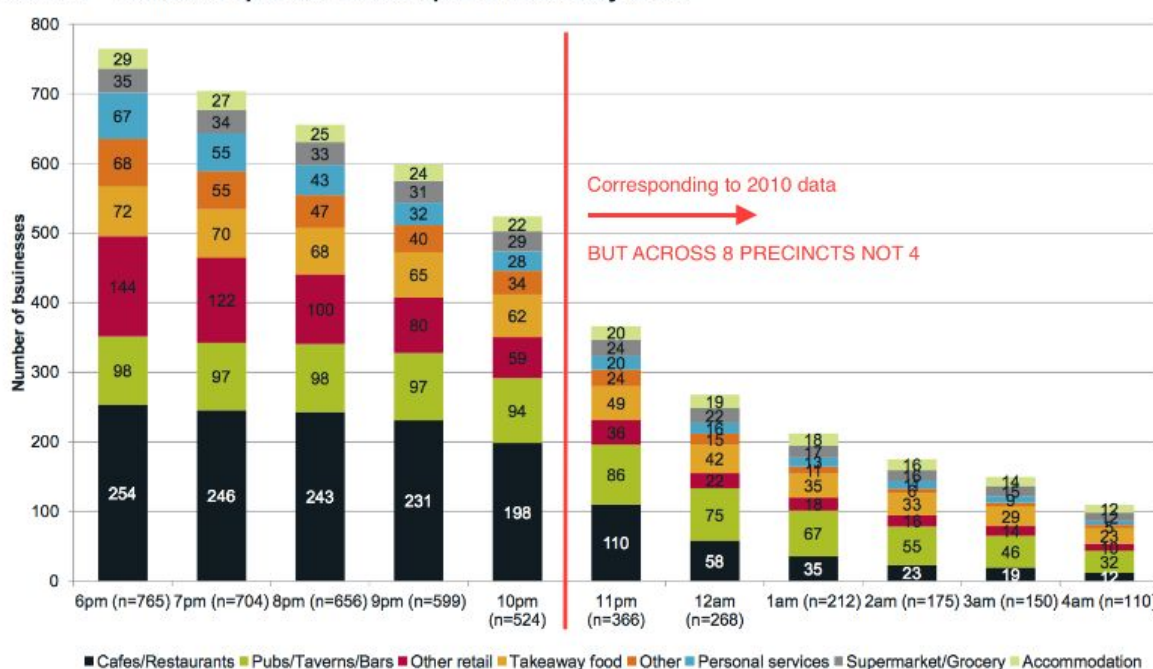
Figure: *The Late Night Management Area Research Report 2015* shows gerrymandering of boundaries are used to prop up the vibrancy of small businesses in Sydney at night.

Source: [City of Sydney](#).

This fudging of the presentation of the data is compounded when one also realises that the **2010 report measures four precincts** in Sydney- Kings Cross, Oxford Street, the Rocks and the CBD South. **The 2015 report measures the number of businesses open across ten precincts**- five Sydney CBD Entertainment Precincts (Central CBD, North CBD, South CBD, Kings Cross and Oxford Street) and five City Suburban Precincts (Pyrmont, Newtown, Surry Hills, Redfern and Glebe).

While the 2010 report breaks down the data by precinct, the 2015 doesn't, which obfuscates the damage. The writer of the 2015 report has added in six more precincts to prop up the number of businesses reported open by gerrymandering the sample area.

**Chart 7.1 – Number of open businesses open in LGA Study Areas**



*Source: The Late Night Management Area Research Report 2012*

Backtracking to the report produced in 2012, the impacts of increasing regulation are more clear. This report measured the number of open businesses in eight areas- George Street, Oxford Street and Kings Cross and five of the City's main streets: King Street, Crown Street, Glebe Point Road, Harris Street and Redfern Street.

**In 2010 there were about 1,100 businesses open at 11pm across 4 areas, by 2012 this had dropped to 366 across 8 areas, but in 2015 the number was 579 in 10 areas.**

**In 2010 there were about 750 businesses open at 1am across 4 areas, 212 in 2012 across 8 areas and 363 in 2015 across 10 areas.**



And at 4am there were a little over 400 businesses open in 2010 across 4 areas, 110 in 2012 over 8 areas and 208 in 2015 across 10 areas.

The authors of these later reports keep increasing the sample sizes to hide the fact that small businesses trading in these areas at night have been absolutely devastated.

**Clearly the night time economy in Sydney has been run into the ground by the NSW State Government and City of Sydney.**











*Figure: Some of the bankrupted businesses of  
Sydney's devastated late night economy.*

The 2am lockout in Victoria was cancelled after independent auditor KPMG found that it had actually increased violence. Even a senior policy advisor to Premier John Brumby admitted that it was only implemented in the first place due to [moral panic](#).

The Queensland 3am lockout and 5am closures were shown by the Queensland Auditor-General to cost the state economy \$10 million. I emailed the NSW Audit Office in July 2014 asking if they were tracking the effect on the economy as both Victoria and Queensland did, but was told curiously that they had no plans to.

Now two years into the lockout in NSW, I would estimate the damage to the NSW state economy would now be into thousands of jobs and hundreds of millions of dollars in lost revenue.

### **Collapse in Sydney's Night Time Foot Traffic**

This damage is of no surprise when one looks at foot traffic in the area **where drops of up to 84% in Kings Cross and 82% in Oxford Street** are directly being noted in the reports



between 2012 and 2015. This is already on top of [a drop of up to 60%](#) which occurred from 2010 from 2012 as the increasing regulation around liquor kicked in.

**Table 5.9 – Maximum pedestrian counts at top 10 hotspots 2010 vs 2012**

Precinct	Location	Day	Hour	2010 Person per hour	2012 Persons per hour	Percentage Change
CBD South	George St at Central St	Saturday	12am-1am	7,600	3,544	-53%
Oxford St	Oxford St (IGA)	Friday	11pm-12am	6,900	2,296	-67%
CBD South	George St at Central St	Friday	12am-1am	6,850	3,644	-47%
CBD South	George St at Central St	Saturday	11pm-12am	6,600	3,924	-41%
Kings Cross	Darlinghurst Rd south of Roslyn St	Saturday	1-2am	5,900	2,496	-58%
CBD South	George St at Central St	Friday	11pm-12am	5,850	4,572	-22%
Kings Cross	Bayswater Rd east of Darlinghurst Rd	Saturday	1-2am	5,400	2,236	-59%
Kings Cross	Darlinghurst Rd between Roslyn St and Bayswater Rd	Saturday	1-2am	5,350	2,798	-48%
Kings Cross	Darlinghurst Rd north of Bayswater Rd	Saturday	1-2am	5,250	3,240	-38%
Kings Cross	Darlinghurst Rd north of Bayswater Rd	Saturday	12-1am	5,200	3,694	-29%

And in 2015:

**Table 5.5 – Top 5 hot spots Kings Cross**

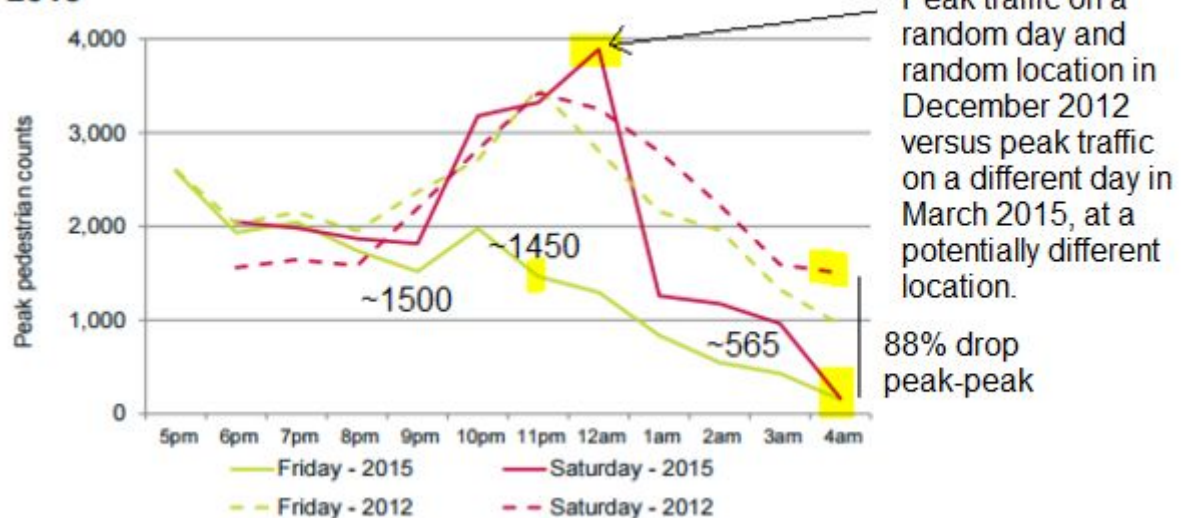
Location	Day	Hour	Count
Bayswater Rd – near Kellett St	Saturday	00:00	3,888
Bayswater Rd – near Kellett St	Saturday	23:00	3,320
Bayswater Rd – near Kellett St	Saturday	22:00	3,176
Darlinghurst Rd – near Library	Friday	17:00	2,584
Darlinghurst Rd – near Library	Saturday	22:00	2,168

*Figure: Drops of up to 67% in peak foot traffic in Sydney's entertainment areas in the years before the lockouts, as increased liquor regulation came in.*

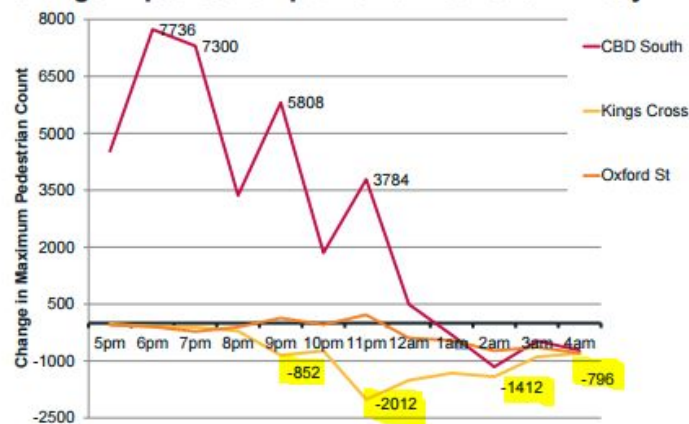
*Source: City of Sydney. Top, [2012](#). Bottom [2015](#).*

The 2015 report bizarrely shows the change in pedestrians by count, not percent, making them meaningless to the casual reader. It does have one chart showing a comparison of 2015 versus 2012 peak traffic counts, but this is comparing a peak hour on a random day at a random location in March 2015 to a peak hour on a random day at a potentially different random location in December 2012.

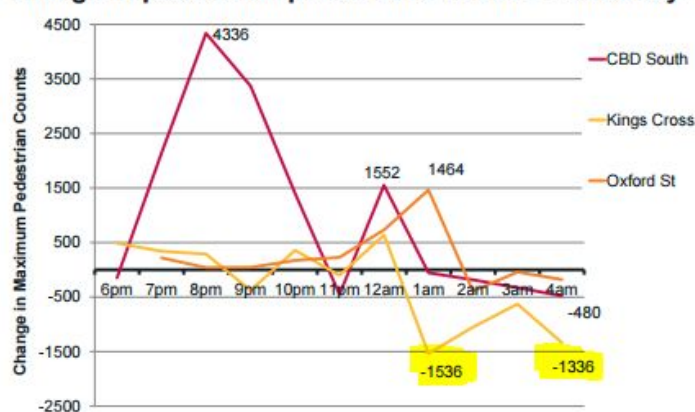
**Chart 5.14 – Kings Cross pedestrian peaks 2012 vs 2015**



**Chart 5.5 – Sydney CBD Entertainment Precincts change in pedestrian peaks 2012 to 2015 – Friday**



**Chart 5.6 – Sydney CBD Entertainment Precincts change in pedestrian peaks 2012 to 2015 – Saturday**



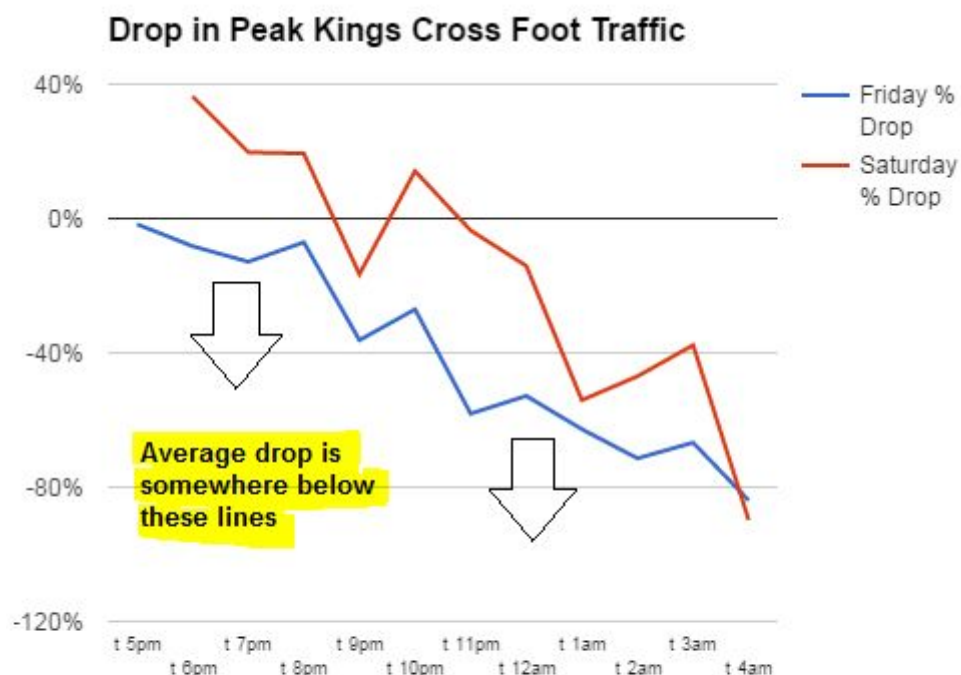
Figures: Obfuscated statistics regarding the drop in KX Oxford Street foot traffic from the City of Sydney [Late Night Management Report 2015](#)



Regardless, reading off the pixels using a computer, if the peak traffic at midnight on a Friday in Kings Cross in 2015 at 11pm is approximately 1450 people, and this has dropped by 2012 people, then there were 3462 people at peak on a Friday in 2012. The traffic at 11pm between these points has dropped 58%.

Since these graphs measure peak traffic, the average drop will by definition be a lot more as only the “best” traffic is measured for a given hour and day of the week in the month. There could have been a special event on in 2015 that abnormally raised the traffic at 11pm on one Friday in the month measured.

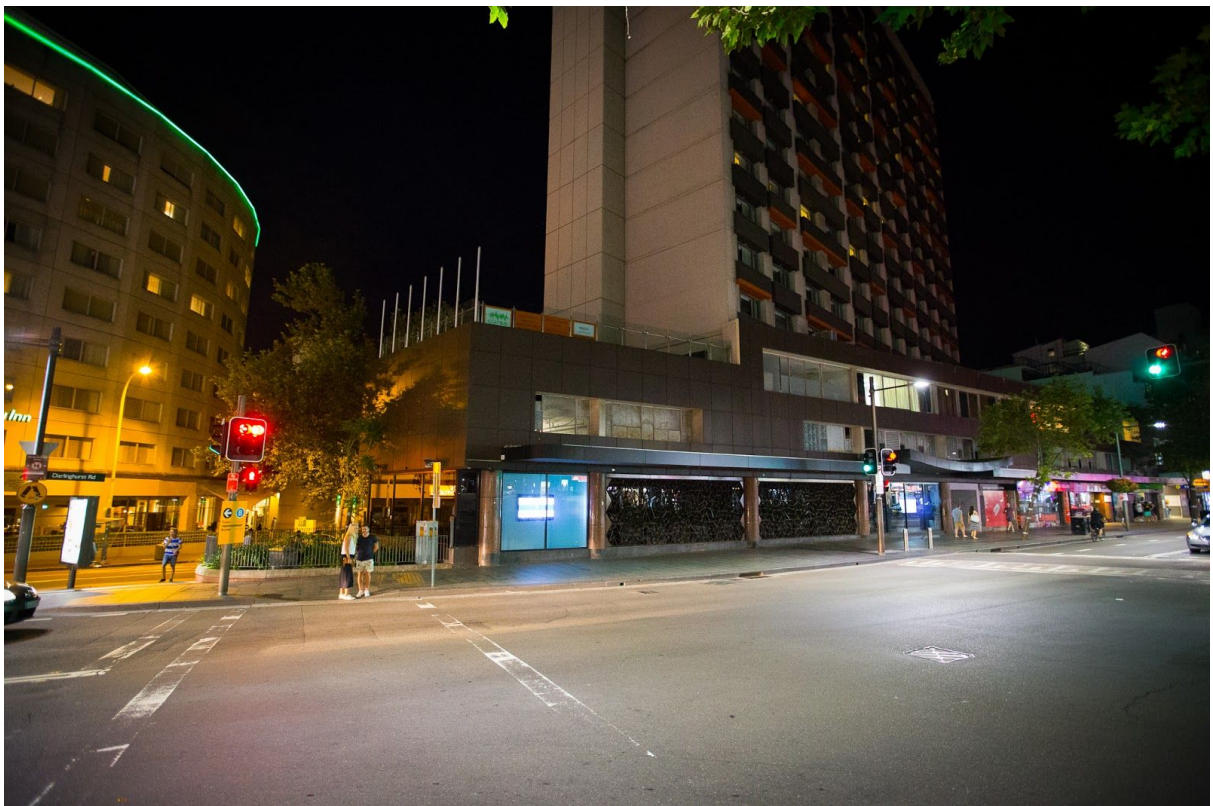
Repeating this exercise across both sets of graphs yields the follow graph:



**Figure: Drop in Peak Kings Cross Foot Traffic between December 2012 and March 2015**

The average drop for each day will be somewhere in the region under both plots as the City of Sydney reports compare peak traffic to peak traffic.

Regardless, no matter how much the drop actually is, at best it shows the lockout law policies are a dismal failure. Up to 90% of foot traffic has been lost in the main entertainment precinct of the biggest city in the country for a change in 25 alcohol-related admissions to St Vincent's in a year. Which if properly examined might show zero difference or even an increase.



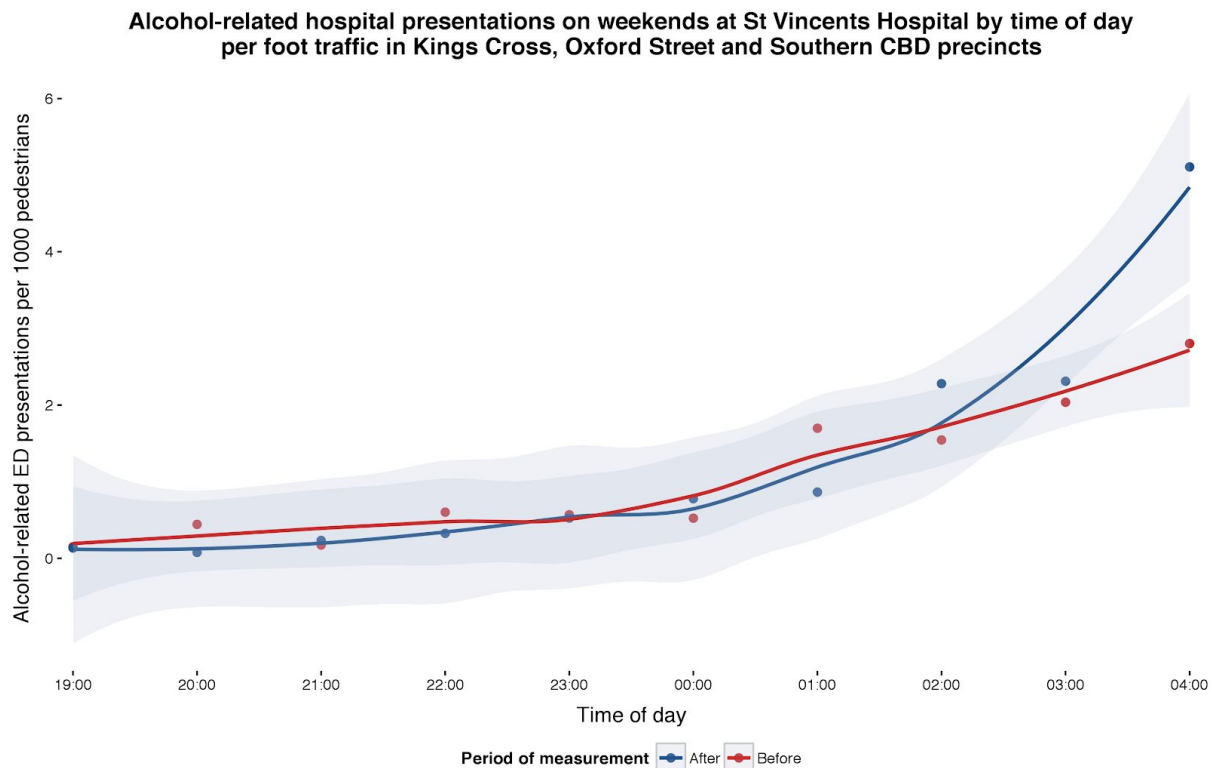
*Figure: Sydney's main entertainment precincts are now desolate at night.*





*Figure: The malaise & over regulation has spread throughout the city. St Patrick's Day Celebrations at Bondi Beach, Sydney's main tourist beach.*

Indeed, if Dr. Fulde is to be believed that his analysis is rigorous and that deviations in St. Vincent's admissions data is directly related to the lockout legislation alone, **then you are statistically more likely to face alcohol-related harm per visit to Sydney's late night entertainment areas after the lockouts than before.** This is simply because the foot traffic due to the lockout curfew has cratered at a significantly greater rate than admissions. In other words, Kings Cross, Oxford Street & the southern CBD precincts are more unsafe per visit during lockout hours than they were before. I calculated and plotted this below.



*Source: Data derived from Fulde et al 2015 & City of Sydney Late Night Management Reports show that if St. Vincent's admissions data deviations are directly related to the lockout legislation then is statistically more unsafe per foot visit to Sydney's entertainment districts after the lockouts.*

There are plenty of other riskier endeavours that face us in everyday life. If the NSW Government decided to enact similar policies on all of them we wouldn't be able to leave our homes. [Ladders, bathtubs and beds](#) would also be banned since it's far more likely you will hurt yourself with them than when you venture into a Sydney CBD entertainment precinct.

So if Sydney is a very safe place, perhaps the safest city in the world, and the data backs this up, why does the NSW Government want us to feel like we are in the midst of a great alcohol-fueled terror?

## Manipulation of Poll Data

On the 21st of February 2016, [an article was published](#) in the Sydney Morning Herald entitled "Lockouts: Poll shows two-thirds of NSW residents want laws to stay". This article stated that "More than two-thirds (68%) of NSW residents support the government's crackdown on alcohol-fuelled violence, including lockouts and 3am last drinks, a Galaxy poll has shown".

This poll was commissioned by FARE, the government funded Foundation for Alcohol Research and Education. This report shows further government funded manipulation of statistics to make a pro-lockout argument.

**If one actually reads the report, one will find that the "sample" used for the poll was based on a "selection" from an online "permission-based panel" of a grand total of 353 respondents.**

### ABOUT THE POLLING

The Foundation for Alcohol Research and Education (FARE) commissioned Galaxy Research to undertake polling of New South Wales (NSW) residents to gain an understanding on their perspectives on alcohol policies.

This study was conducted online among members of a permission-based panel. The sample was selected from the panel members and had quotas applied to it, in order to ensure that it reflected the current population statistics. Fieldwork commenced on Friday 8 January 2016 and was completed on Thursday 14 January 2016. The survey sample comprised of 353 respondents aged 18 years and older currently residing in NSW.

Following the collection of data, the results were weighted by age, gender and region to reflect the latest Australian Bureau of Statistics (ABS) population estimates.

*Figure: Dodgy statistics used by FARE to create the illusion of public opinion. Source: [FARE](#).*

**This sample then "had quotas applied to it, to ensure that it reflected the current population statistics". Following this, the results were weighted by age, gender, region to reflect the latest ABS population estimates.**

One can only image what sort of person would submit themselves to a permission based poll from FARE- but from this set, a sample of 353 was hand selected, had quotas applied to modify the sample set distribution, and then subsequently re-weighted.

And this was deemed statistically significant to poll the attitudes of 7.544 million New South Wales citizens. FARE and Galaxy should be ashamed.

Meanwhile, some more polls were conducted.

Daily Telegraph poll of 26,000:



Source: 92% of over 26,000 respondents do not support NSW lockdown laws in independent [Daily Telegraph poll](#).

ABC Lateline Poll:

**Lateline**   
@Lateline

Follow

[#ABCLateDebate](#) Q: Do [#lockout](#) laws destroy Australia's city night life?

[@Facebook](#): 81% said yes

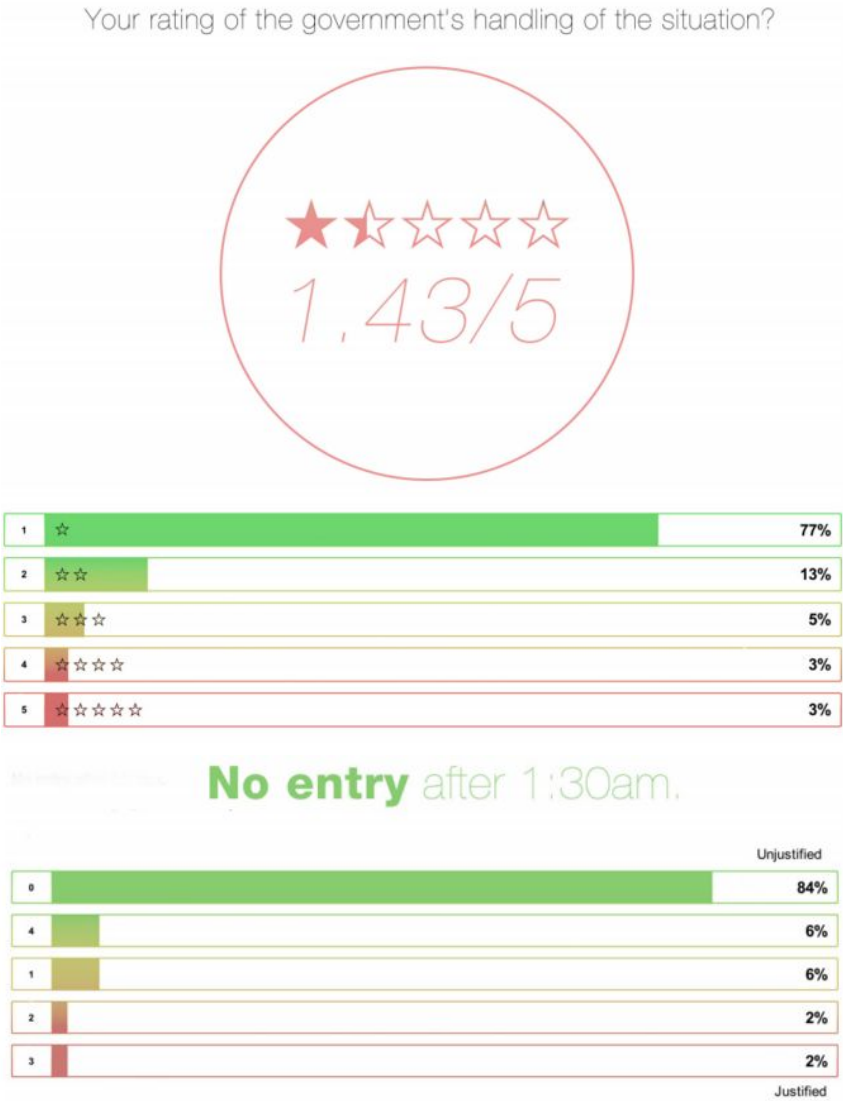
[@Twitter](#) 65% said yes

[#lateline](#)

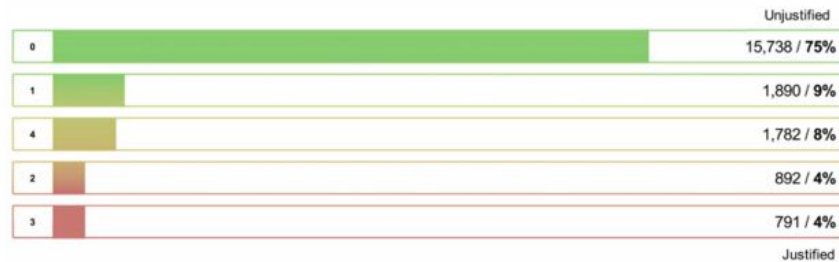


Source: 65-81% of respondents in independent [Lateline](#) poll says  
lockout laws have destroyed Australia's nightlife.

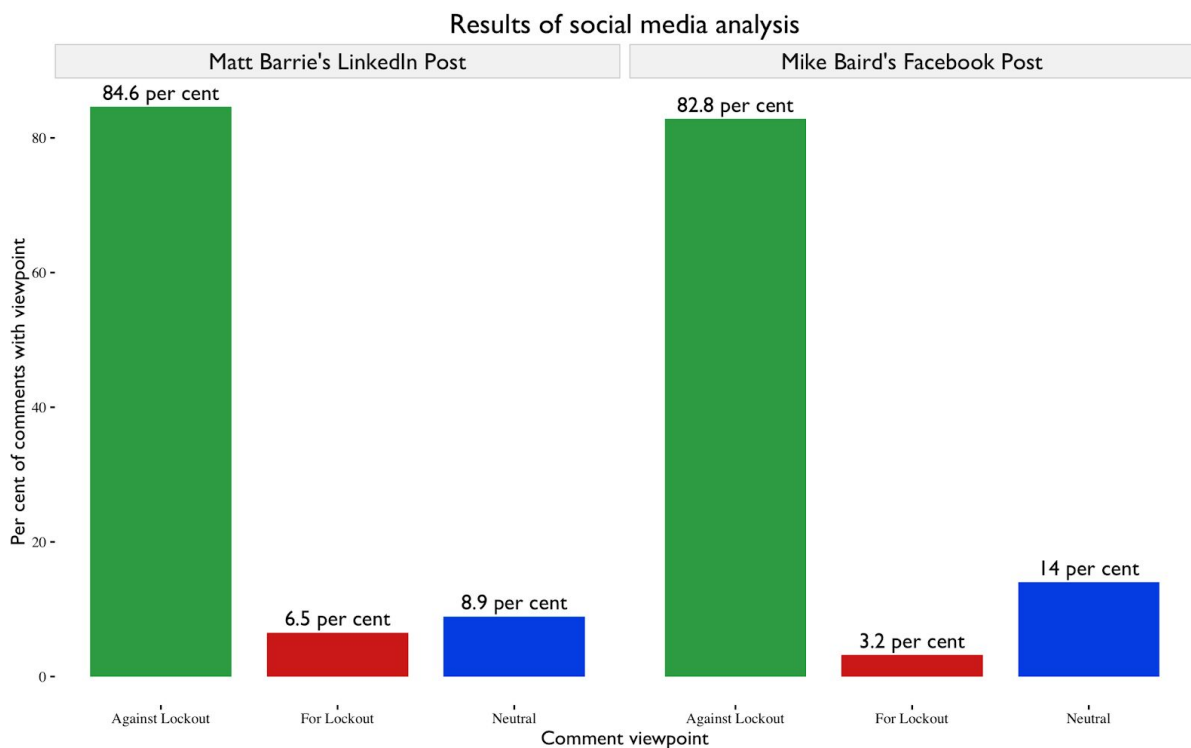
The Socialites Poll of 23,000:



## Takeaway ban after 10:00pm.



Source: 90% of over 23,000 polled disagree with the 1:30am lockout, 84% disagree with the 10pm takeaway ban, and 23,000 give an average rating of 1.43/5.00 of the NSW Government & Mike Baird's handling of the situation. Source: [The Socialites](#).



Source: 84.6 per cent of comments from 927,000 reads of my LinkedIn article, and 83.8 per cent of the 22,314 comments on Mike Baird's Facebook response were 'Against Lockouts'.

Source: ["Sydney's 'lock-outs' laws lack evidence and popular support"](#) (Archerfish).

## Liability of Venues

A business can't be expected to manage something it can't measure.

Intoxication itself is an imprecise concept, but the laws concerning drink driving reflect the fact that a person in charge of a motor vehicle may be at risk of suffering, or causing, injury after three or four standard drinks. That is probably the best known and most clearly foreseeable risk of injury that accompanies the consumption of alcohol. The risk does not necessarily involve a high level of intoxication. There are other forms of risk of physical injury which may accompany the consumption of alcohol, even in relatively moderate amounts.

The state of drunkenness or intoxication can vary greatly in degree. A person may be intoxicated in the sense that his personality is changed, his will is warped, his disposition altered, or his self-control weakened, so that whilst intoxicated to this degree he does an act voluntarily and intentionally which in a sober state he would or might not have done. His intoxication to this degree, though conducive to and perhaps explanatory of his actions, has not destroyed his will or precluded the formation of any relevant intent. Indeed intoxication to this degree might well explain how an accused, otherwise of good character, came to commit an offence with which he is charged.

Some consumers of alcohol respond quickly to its effects, while others can consume a large quantity without much change of appearance or demeanour. People in both categories may be at risk of injury if they drive a car. To impose on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption involves burdensome practical consequences. It provides no answer to say that such a duty comes into play only when a consumer is showing clear signs of a high degree of intoxication. The risk sets in well before that. The NSW Government believes there is a duty on a supplier to "monitor" alcohol consumption. The capacity of a supplier of alcohol to monitor the level of risk to which a consumer may be exposed is limited. If a restaurant proprietor serves a bottle of wine to two customers at a table, the proprietor may not know what either of them has had to drink previously, the proportions in which they intend to share the bottle, or what they propose to do when they leave the restaurant. Few customers would take kindly to being questioned about such matters.

There is a further question of principle bearing upon the reasonableness of the imposition of a duty of the kind for which the NSW Government contends. Most adults know that drinking to excess is risky. The nature and degree of risk may be affected by the extent of the excess, or by other circumstances, such as the activities in which people engage, or the conditions in which they work or live. A supplier of alcohol, in either a commercial or a social setting, is usually in no position to assess the risk. The consumer knows the risk. It is true that alcohol is disinhibiting, and may reduce a consumer's capacity to make reasonable decisions. Even so, unless intoxication reaches a very high degree, the criminal and the civil law hold a person responsible for his or her acts. If somebody who is drunk deliberately or negligently, damages a venue's property, or caused physical injury to some third party, they would have been liable for the damage. Save in extreme cases, the law makes intoxicated people legally responsible for their actions. As a general rule they should not be able to avoid responsibility for the risks that accompany a personal choice to consume alcohol.

Although there are exceptional cases, it is unusual for the common law to subject a person to a duty to take reasonable care to prevent another person injuring himself deliberately. On the whole people are entitled to act as they please, even if this will inevitably lead to their own death or injury. This principle gives effect to a value of the law that respects personal

autonomy. It is not without relevance to ask what the average person would say if venues were forced to monitor and control all behaviour as the NSW Alcohol Linking Program contends. Whatever exactly they might have to do, it would seem to involve a fairly high degree of interference with privacy, and freedom of action.

It is not difficult to guess what an average person's response would be to a licensee who sold a bottle of wine in the middle of the day and demanded to be told whether the purchaser intended to drink it all by themselves. A duty to take care to protect an ordinary adult person who requests supply from risks associated with alcohol consumption is not easy to reconcile with a general rule that people are entitled to do as they please, even if it involves a risk of injury to themselves. The particular circumstances of individual cases, or classes of case, might give rise to such a duty, but not in the ordinary case.

As a general rule a person has no legal duty to rescue another. How is this to be reconciled with a proposition that the venues have a duty to protect consumers from the consequences of decisions to drink excessively? There are many forms of excessive eating and drinking that involve health risks but, as a rule, we leave it to individuals to decide for themselves how much they eat and drink. There are sound reasons for that, associated with values of autonomy and privacy.

The common law regards individuals as autonomous beings who are entitled to make, but are legally responsible for, their own choices.

Except for extraordinary cases, the law should not recognise a duty of care to protect persons from harm caused by intoxication following a deliberate and voluntary decision on their part to drink to excess.

The voluntary act of drinking until intoxicated should be regarded as a deliberate act taken by a person exercising autonomy for which that person should carry personal responsibility in law.

If the duty existed it might call for constant surveillance and investigation by publicans of the condition of customers as imagined by the NSW Government. That process of surveillance and investigation might require publicans to direct occasional oral inquiries to customers. Inquiries of this kind would ordinarily be regarded as impertinent and invasive of privacy. Quite apart from the inflammatory effect of these activities on publican-customer relations and on good order in the hotel or club, the impact of these activities on the efficient operation of the businesses of publicans would contravene their freedom of action in a gross manner.

The other significant matter is that if a customer reached a state of intoxication requiring that no further alcohol be served and the customer decided to depart, recognition of the duty of care in question might oblige publicans to restrain customers from departing until some guarantee of their safety after departure existed. The Alcohol Linking Laws repeatedly stress the proposition that venues are at fault in permitting the patrons to leave without ensuring that it was safe for them to do so. How are customers to be lawfully restrained? If customers are restrained by a threat of force, *prima facie* the torts of false imprisonment and of assault



will have been committed. If actual force is used to restrain customers, prima facie the tort of battery will have been committed as well as the tort of false imprisonment. Further, the use of actual force can be a criminal offence: [Crimes Act 1900](#), s 59 and s 61. It is a defence to these torts to prove lawful justification - reasonable and probable cause. However, the constitutional significance of the torts in question in protecting the liberties of citizens - they create, after all, important limitations on police power - means that 'lawful justifications' should not lightly be found independently of legislative sanction even outside the immediate police context. Subsections (1) and (3) of s 67A(1) of the [Registered Clubs Act 1976](#) make it lawful for the secretary or an employee of a registered club to use whatever reasonable force is necessary to 'turn out' of a club intoxicated persons. But the legislation says nothing about using reasonable force to keep intoxicated persons in pending the appearance of some guarantee for their safety after departure.

To extend the duty of care of licensees to the protection of patrons from self-induced harm caused by intoxication would subvert many other principles of law and statute which strike a balance between rights and obligations, and duties and freedoms.

In general - there may be some exceptional cases - vendors of products containing alcohol should not be liable in tort for the consequences of the voluntary excessive consumption of those products by the persons to whom the former have sold them. The risk begins when the first drink is taken and progressively increases with each further one. Everyone knows at the outset that if the consumption continues, a stage will be reached at which judgment and capacity to care for oneself will be impaired, and even ultimately destroyed entirely for at least a period.

Your honour would be quite familiar with this argument, and indeed the very words used above, for they have been quoted almost verbatim from an argument presented by Justices Gleeson and yourself (and Justices Heydon with Santow previously) as part of the majority decision in the seminal case on personal liability in highest court of the Australian judicial system, the High Court [Cole v South Tweed Heads Rugby League Football Club Ltd \(2004\)](#).

## Liquor Legislation

Yet the lockout legislation and the regulatory environment around alcohol explicitly suggest the opposite, that venues are completely responsible for the actions of their patrons, even well after they have left the venue. The [Alcohol Linking Program](#) still holds the venues responsible well after customers have left the venue- even if the customer falls victim to a completely unrelated crime at some later point.

The regulations around alcohol in NSW have been deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes.

Indeed, while certainly tragic, the deaths of neither Thomas Kelly nor Daniel Christie would have been prevented with these lockout laws- as former Premier Barry O'Farrell said on January 2nd on [ABC radio](#). Both assaults occurred around 10pm, well before curfew hours

that the lockdown laws introduced. In the case of Thomas Kelly, the assailant Kieran Loveridge had been drinking heavily at home and in the car, prior to arriving in the city. Loveridge had not been inside a licensed venue in Kings Cross prior to the attack- the venues had done the right thing, refusing entry to the Dragon Lounge and the Club. Not even the police could foresee what would happen next- they intercepted Loveridge immediately prior to the assault and issued him with an infringement notice for behaving offensively.

Yet both major political parties politicised these two tragic deaths to whip up hysteria and score political points.

The lockdown legislation that was brought in shortly thereafter has now created a state where landlords are being commercially punished to the point of insolvency [due to the actions of a tenant](#). Where commercial businesses are being punished to the point of bankruptcy due to the actions of their customers. In the case of the two deaths in Kings Cross, where businesses are bankrupted due to the actions of [completely unrelated parties](#), people that have never been a customer or even walked onto the premises. None of the subsequently introduced regulations or restrictions would have stopped those two deaths.

The blanket curfew has bankrupted many unrelated businesses that are not even licensed venues- such as this [newsagency that had operated for 83 years](#). Hundreds of people have lost their jobs that have had nothing to do with the liquor trade.

Where [asset values are damaged](#) and the owners of properties [say that](#) “the ability to drive an income has been marginalised to a point that the highest and best use [...] are now in constant reassessment by the owners”. Which often ends up in fire sales to property developers at distressed prices to build apartments.

[According to Jen Melocco](#) of the Wentworth Courier, “One of the city’s high profile and successful property developers, Theo Onisforou, labelled Darlinghurst Rd in Kings Cross the hottest place in Sydney at the moment and expects values to rise further. Investing in the strip has paid off for Mr Onisforou who has seen a building almost identical to one he bought a year ago sell for more than triple his price. Mr Onisforou bought the 51-room Astoria Hotel at 9 Darlinghurst Rd for \$6.3 million in September last year. ‘Buying the Astoria on the corner of Darlinghurst Rd and Macleay St was an absolute no-brainer,’ Mr Onisforou said. ‘I have been in property now for 42 years and I have never seen a suburb change so dramatically, so quickly.’”.

Paul Barry, in ‘Who Wants to Be a Billionaire? The James Packer Story’ [wrote](#):

James had always been desperate for his father's admiration and had talked about making money ever since he left school. And now that he was in a position of power, he was besieged by people offering him deals. It's an old adage that money makes money and James was able to benefit, even though Kerry gave him none, because he had the Packer name.

One of the most persistent petitioners for his attention was a lawyer called Theo Onisforou, who was working his way up from nothing to become the multimillionaire he is today. At university,

But just as James could see good in Al, he now took a shine to Theo, and the two became good friends, perhaps because Onisforou was so good at what he did. 'He was one of those people you just *knew* was going to make money,' says one entrepreneur who did business with him in the early 1990s. 'He and James did heaps of developments together. Theo found the projects, James's name produced the money. It was a fantastic arrangement. Theo borrowed the money from the bank, got James to guarantee it, then split the profits 50/50. Theo was absolutely incredible at property, so all the developments did well, and James had some real spending money for the first time in his life.'

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91

Almost all the deals were in residential property in inner Sydney, and all made handsome profits. Soon, FAI Insurance's Rodney Adler,

Source: [Who wants to be a Billionaire?](#) The James Packer story. By Paul Barry.

### Alcohol Linking Program

The core weapon used by the government to financially damage the balance sheets of businesses is an Orwellian and cunning system known as the statewide [Alcohol Linking Program](#).

Most of us have read about the notoriously "violent establishment" and "alcohol related violence". What most people do not realise is these the vast majority of these assaults occur far away from the establishment where the alcohol is consumed and that in the majority of cases the consumer of the alcohol is the victim, not the perpetrator.



You might be a little surprised to hear about [how this program actually works](#). When an incident occurs, the police routinely collect the following information from all persons involved in attended incidents.

### 3 Program Interventions

#### 3.1 Data Recording Intervention

The Data Recording Intervention was designed to enhance police recording of the alcohol intelligence information regarding the alcohol consumption characteristics of people involved in incidents. All operational police were required to collect and record up to four items of information regarding **each person involved in an incident:**

- **Item 1:** Whether the person involved had consumed alcohol prior to the incident occurring, based upon either direct observation or questioning at the scene of the incident
- **Item 2:** For those persons identified as having consumed alcohol prior to the incident, their level of intoxication, based on a police assessment of behavioural indicators (Chesher et al, 1989, Teplin and Lutz, 1985)
- **Item 3:** For those persons identified as having consumed alcohol prior to the incident, **their reported last place of alcohol consumption.**
- **Item 4:** For those persons reporting to have consumed alcohol on a licensed premises, **the reported name and address of that premises.**

*Figure: The Alcohol Linking program records more statistics about victims than it does about offenders. Source: [The Alcohol Linking Program](#).*

For instance, if a young lady drinks a few glasses of champagne in Kings Cross, then catches a bus and is assaulted walking home through Bondi, when she reports the assault to Bondi police the officer is compelled to record the incident as emanating from the last place that she consumed alcohol. The perpetrator is rarely caught, but if they are it is usually sometime after the assault, so that perpetrators sobriety is less likely to be noted. Even if the perpetrator was completely sober, it is still recorded as alcohol related violence.

The data collected by the program includes not just assaults, but also 32 other areas of crime including Lost Property, Missing Person and Gaming offences.

This data then feeds into a premises intervention program. If victims start to emerge from a particular premises their business model is attacked with increasingly severe regulatory demands and covert and overt police visits. These regulatory demands are designed to create cost pressure on an establishment as they attempt to comply with the increased regulatory requirements. Hugo's Lounge, a fairly tame venue which was more known for

fashion shows and models than violence, faced thirty six “stringent conditions” in only a two and a half year period as a result of these programs.

It’s a very cunningly designed program because in effect this system, which is held up to provide the main source of data on licensed premise, is effectively a victim blaming mechanism.

If you had an agenda against restaurants, you could just as easily develop a nonsensical Restaurant Linking Program where you record the last place that victims ate. If you had an agenda against buses, you could develop a Bus Linking Program and record the last bus stop victims got off from.

It’s pure statistical fraud.

The Alcohol Linking Program as designed more accurately measures crimes against people who drink than reliable statistics on crime due to venues.

### “High Risk” Venues

In 2014, the Liquor Act was also amended in such a way that it deemed a pizza bar as a “high risk venue”. According to the legislation a “high risk venue” is any place that serves alcohol, is open past midnight at least once a week, has a capacity of 120 people or more, and just happens to be located in the Sydney CBD Entertainment precinct.

- (2) A **high risk venue** is a venue situated in a prescribed precinct comprising:
- (a) licensed premises:
    - (i) on which liquor may be sold for consumption on the premises, and
    - (ii) that are authorised to trade after midnight at least once a week on a regular basis, and
    - (iii) that have a patron capacity (as determined by the Director-General) of more than 120 patrons, or
  - (b) licensed premises specified by, or of a class specified by, the regulations, or
  - (c) licensed premises that are designated by the Director-General under subsection (4).

*Figure: A “high risk venue” is one with a capacity of 120 or more patrons, open after midnight at least once per week that serves alcohol in the CBD entertainment precinct.*

This Orwellian nomenclature is really just a euphemism for a “venue we feel like shutting down” and a trigger for a series of nonsensical rules and regulations to apply that aim to squarely damage trade by making the venue unpalatable for any customer to visit (e.g. use

of plastic cups, plastic carafes for champagne, timeouts, banning scotch on the rocks after midnight, unless it is mixed with a soft drink, but not if it is pre-mixed in a can because that is an “alcopop”).

None of this, of course, has anything to do with how the business itself is being operated.

### **Three Strikes Policy**

Venue owners are too afraid to speak out against the draconian rules while they are operating their businesses due to the [three strikes policy](#) of the Office of Liquor and Gaming NSW.

This is modeled on the three strikes policy of the United States, [which doesn't prevent crime](#) and has seen absurd tragedies such as the jailing of someone for 25 years to life for bouncing a cheque, or a homeless person for stealing toilet paper from a building site. It's also been [struck down as unconstitutional](#) by the US Supreme Court.

The three strikes policy of the NSW OLGR is designed to allow licensing police enough discretion to close any venue at any time they wish. The terms of offence can be so broadly interpreted that you could walk into any bar in Sydney and find people who are [intoxicated](#)- this enables the licensing police to intimidate the licensees into compliance. If they don't comply they risk losing everything, and over time the over regulation creates financial fatigue on the business eventually resulting in it being closed.

#### **LIQUOR ACT 2007 - SECT 5**

##### **Meaning of “intoxicated”**

##### **5 Meaning of “intoxicated”**

(1) For the purposes of this Act, a person is “intoxicated” if:

- (a) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
- (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of [liquor](#).

*Picture: Anyone could walk into any bar in the world and find an “intoxicated” person according to the Liquor Act. Source: [Liquor Act](#).*

The three strikes law allows licensing police to effectively use bullying tactics. One venue operator who did not want to be named told me that after being burdened with meeting after meeting, being forced to hand over the names, addresses and phone numbers of all his wait staff and repeated requests for receipts of all food and beverage transactions through the till, that he was threatened with arrest for not turning up to yet another voluntary meeting. This same venue has recorded over 470 on-site inspections by police, often with sniffer dogs, in the last four years.

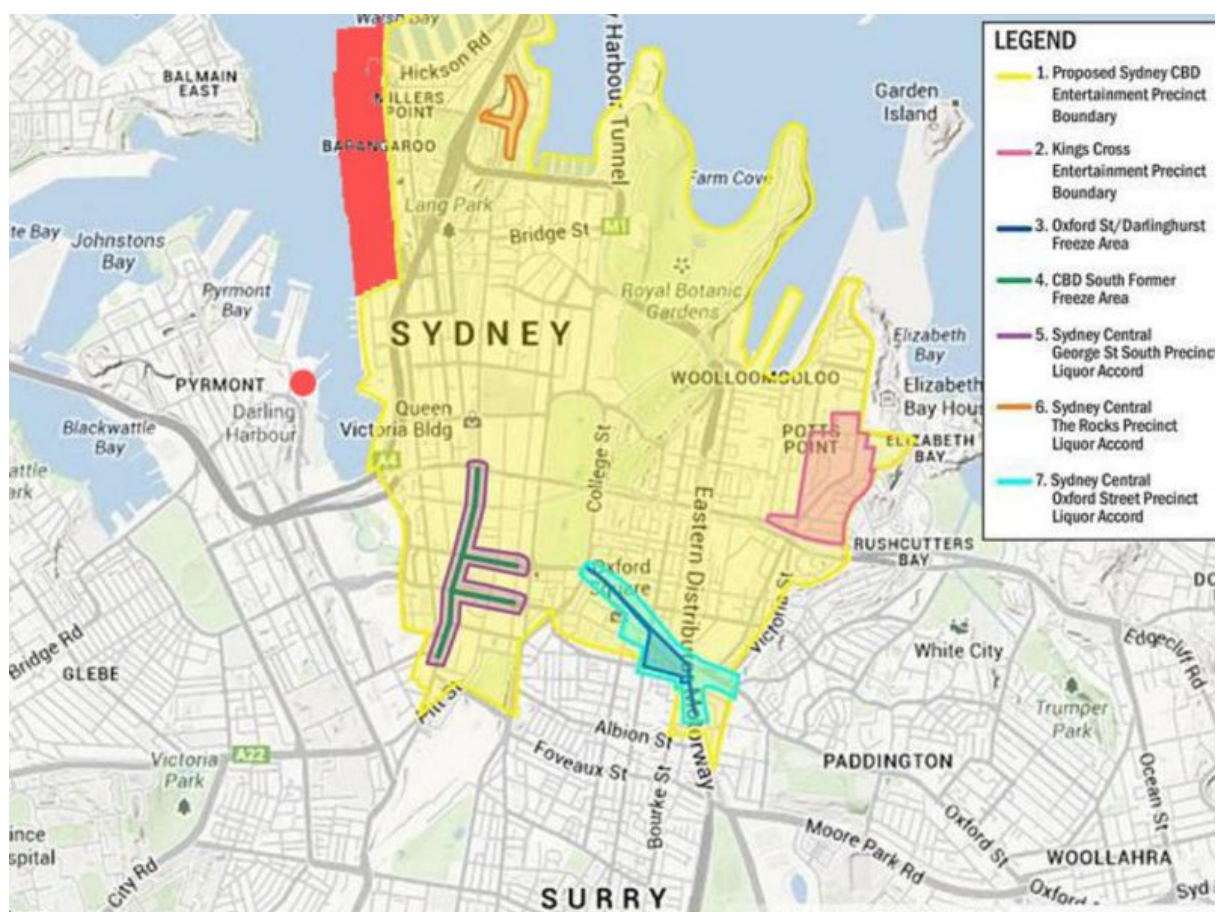


These laws would be unconstitutional if they were federal laws. The right to operate a business, the right to work, the right to earn a living has been denied to a large number of people simply for being in a certain geographic area.

These laws are discriminatory. The very police that are forced to patrol these laws are also being discriminated by it at the same time, because if they finish their shifts late they are unable to enter a licensed premises.

## Exemptions Granted

A number of exemptions have been granted to the lockout laws. Most noticeably, this is the map of the Sydney Entertainment Precinct:



*Figure: Map of the Sydney Entertainment Precinct has some noticeable holes.*

Completely unnaturally, the Barangaroo development, including Crown Casino and the Barangaroo night time entertainment districts have been carved out from the map. Secondly, Star Casino at Pyrmont, [the most dangerous venue in the state for assaults](#), has been excluded, which the Sydney Morning Herald reports had an average of 6.3 assaults per month between February and September last year. Annualised this is about 75 assaults per year. To put this into context, this is over 10% of all alcohol-related assaults in Sydney (there



were 735 non-domestic offender alcohol-related assaults in the year to September 2015 according to BOCSAR). Yet it, and the site for the new Crown Casino have been excluded by design. The next most violent venue has only 1/3rd the number of assaults.

The Star is also exempt from the "Three Strikes" scheme under which venues face loss of their liquor licence. The most recent annual report of the Independent Liquor and Gaming Authority showed Star was fined or censured 12 times during 2013-14 for licence breaches.

Sixteen Sydney pubs (fourteen in the CBD and two in Kings Cross) have also been granted exemptions to the lockout laws [in order to allow people to play poker machines](#).

According to the most recent [statistics from the Australian Government](#), Australians spent more than \$19 billion on gambling in 2008-0, up to 500,000 Australians are at risk of becoming, or are, problem gamblers, and the social cost to the community of problem gambling is estimated to be at least \$4.7 billion a year. One in six people who play the pokies regularly has a serious addiction and problem gamblers lose around \$21,000 each year. That's one third of the average Australian salary being lost by problem gamblers each year.

Yet these venues, which are ostensibly locked out due to the social costs of problem drinking, have been granted exemptions at the risk of the social costs of problem gambling.

The stunning hypocrisy of the NSW Government is plain to see- [about 9.1% of state governments' revenue](#) comes from gambling.

One might argue that with Sydney's entertainment precincts now mostly closed at night, that this amount would now be significantly higher. [Some have suggested](#) that this might be a factor in why the lockout laws were implemented in the first place.

Crown Limited [alone paid \\$991 million in tax in fiscal 2015](#) and \$595 million in fiscal 2014.

I have absolutely nothing against the casinos. I believe in personal responsibility and the freedom for one to do as he or she wishes. What I am against is moral grandstanding by politicians and the nanny state.

I think it is great that there is at least one venue open 24x7 in Sydney. But in 2016 there should be a lot more venues open, offering a variety of activities. At least for now, this is supposed to be Australia's largest city, and not the backwards country town that it has regressed to.

[REDACTED]

[REDACTED]