

**Submission
No 381**

SYDNEY'S NIGHT TIME ECONOMY

Organisation: ClubsNSW

Date Received: 1 July 2019

ClubsNSW Submission

Inquiry into Sydney's Night Time Economy

Executive Summary

- Registered clubs are major contributors to Sydney's night-time economy through the provision of live music, bars and entertainment. Clubs play an integral role in maintaining a vibrant Sydney night life for people of all ages across all suburbs.
- Registered clubs take their obligation to provide a safe environment seriously and are exceptionally safe venues, with instances of alcohol-related assaults in clubs at record lows. Data from the NSW Bureau of Crime Statistics and Research (BOCSAR) shows that last year there were **8.4 times more** alcohol-related assaults in the Sydney Local Government Area (LGA) alone than in all clubs across NSW combined.
- ClubsNSW submits that the significant reductions in alcohol-related violence in the Sydney LGA and across NSW more broadly are the result of the introduction of the Liquor Act in 2008 and not the suite of measures, including the 1:30am lockouts, introduced in 2014.¹
- BOCSAR data demonstrates that there has been a significant, NSW-wide decline in alcohol-related violence in the last decade, with assaults falling by **51 per cent**. This outcome is the result of a concerted effort by stakeholders, including clubs, the NSW government and NSW Police, to address community concerns about safety.
- Over the same period, alcohol-related assaults in the Sydney LGA, which includes the Kings Cross and CBD precincts, has declined by **41 per cent**. It is important to note that this reduction was underway well before the 2014 laws. Although alcohol-related violence has reduced in the Sydney LGA since then, BOCSAR data suggests that this reduction is part of a long-term trend and has not been accelerated.
- The 2014 laws were introduced in response to a period of highly-publicised, senseless violence and anti-social behaviour in Kings Cross. ClubsNSW appreciates that the measures were well-intentioned and designed to curb acute alcohol-related violence issues in that area.
- However, ClubsNSW questions the efficacy of the 2014 laws given the reduction in alcohol-related violence noticed in the Sydney LGA is less than that experienced in other parts of NSW, where such measures are not in place, and because BOCSAR data indicates that their imposition has made no demonstrable impact in further reducing alcohol-related violence.
- ClubsNSW submits the 2014 laws should not apply on a blanket one-size-fits-all basis. Rather, targeted measures should be imposed on those venues in the Sydney and Kings Cross precincts that have had repeated instances of alcohol-related violence and that have failed to take steps to mitigate risk. Restrictive or punitive measures should be tailored to the problem and targeted toward wrongdoers. Venues that do the right thing and operate responsibly should not be punished for the actions of those that do not.

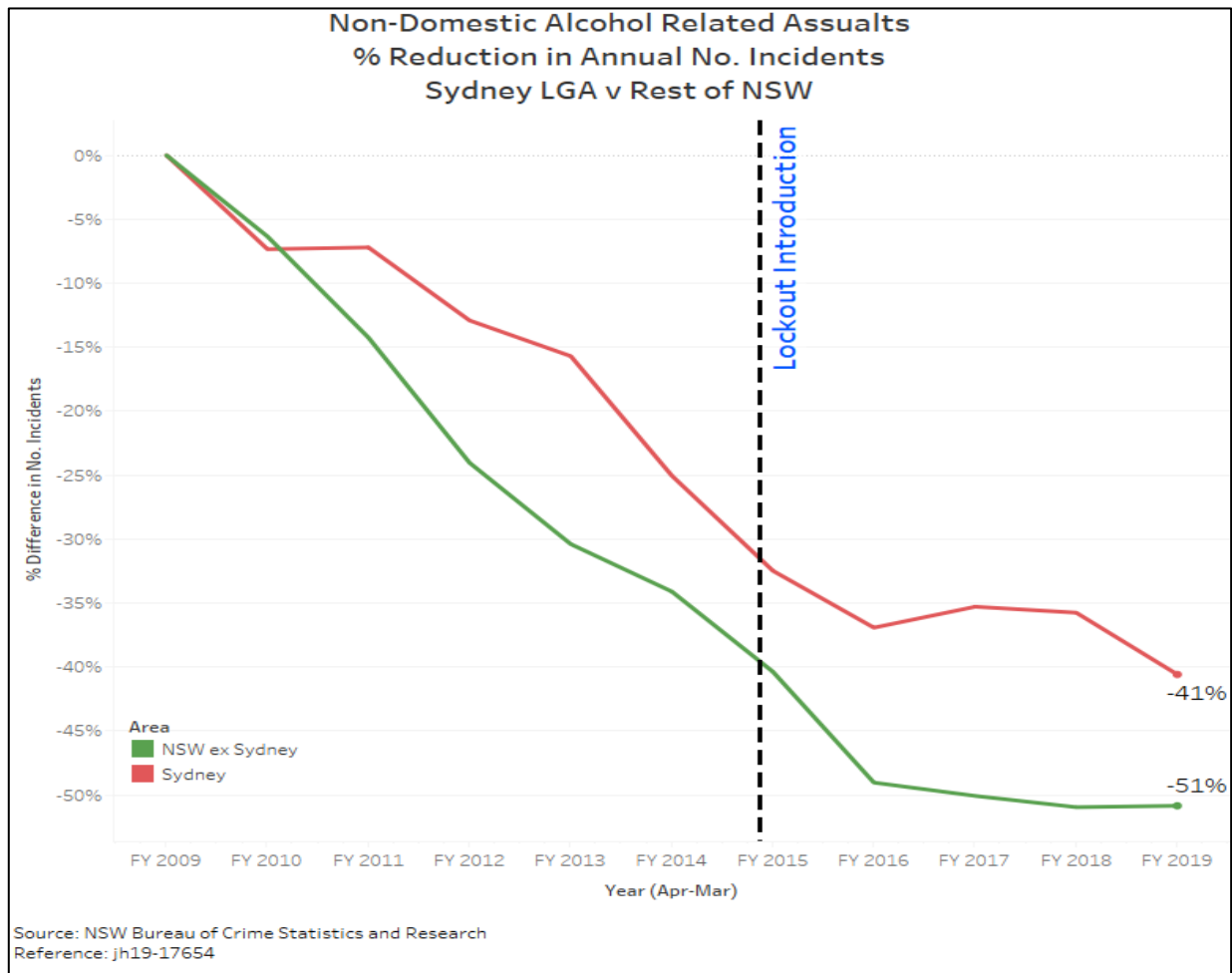
¹ Henceforth, this submission uses the term *the 2014 laws* to refer to the measures included in:

- the *Liquor Amendment Act 2014*,
- the *Liquor Amendment (Transitional) Regulation 2014*,
- the *Liquor Amendment Regulation 2014*,
- the *Liquor Amendment (Sydney CBD Entertainment Precinct) Regulation 2014*, and
- the *Liquor Amendment (Sydney CBD Entertainment Precinct Plan of Management) Regulation 2014*.

- On top of the 2014 laws, ClubsNSW submits that the night time economy is also weakened by measures which impede live music. Impediments to live music are evident in the imbalanced and unfair process by which noise restrictions are placed on licensed premises, as well as the archaic law that clubs – and not other licensed premises – must pay workers compensation premiums for entertainers. These measures impede live music across NSW.

Recommendations

- The 2014 laws, including the lockout laws, should not apply to clubs and other venues which do not have a record of repeated violence, or which have taken appropriate measures to prevent or mitigate violence.
- The regulator should utilise the extensive existing powers in the Liquor Act to take targeted action against those venues in the Sydney area which fail to comply with safety standards or otherwise have a poor-compliance history. Such measures can be re-applied as a 'snap-back' measure on recidivist venues which subsequently do the wrong thing.
- The NSW government should incentivise the provision of more live music and entertainment in clubs by:
 - Modifying the Liquor Act's test for imposing noise restrictions on a licensed premise, so premises are not required to transform their activities because of new residents moving in, or new premises being developed; and
 - Repealing the requirement for clubs to include payments made to contracted entertainers in the calculation of their workers compensation premiums, to remove the competitive disadvantage.



Introduction

ClubsNSW welcomes the opportunity to provide a submission to the Inquiry.

ClubsNSW is the peak body, representing the interests of 1,347 registered clubs in NSW.

Registered clubs are major contributors to Sydney's night time economy through the provision of live music, shows, bars and entertainment. Clubs play an integral role in maintaining a vibrant Sydney night life for people of all ages across all suburbs.

There are 16 clubs located in the Sydney CBD precinct with a combined membership of 45,000 people. The majority of clubs in the CBD precinct do not trade late enough to be directly impacted by the 1:30am lockout and 3am cease-of-trade measures. There are no registered clubs in the Kings Cross precinct.

Registered clubs are member-owned, not-for-profit entities which operate licensed premises for on-premise liquor consumption.²

Clubs, like other businesses which hold a liquor licence, play a critical role in providing a safe environment for patrons to socialise.

Accordingly, ClubsNSW supports legislative and other measures which promote responsible liquor consumption and enhance public safety. ClubsNSW does not support one-size-fits-all, blanket measures that do not account for the superior safety-record of clubs.

ClubsNSW believes clubs, like other industries, should be given the best opportunity to succeed. Running a successful club means generating value for its members and community, as well as adhering to the public's expectations on safety.

Accordingly, a well-designed regulatory system can accommodate the two objectives of preventing alcohol misuse as well as developing the liquor industry.

ClubsNSW believes legislative measures seeking to promote responsible service of alcohol and curb alcohol-related violence should satisfy the following principles:

- all measures should be cost-effective and evidence-based; and
- businesses should be incentivised to succeed by targeting penalties toward venues which do not meet legislative and community expectations.

Five years after introducing the 2014 laws, ClubsNSW believes that now is an opportune time to assess the impact of the laws, as well as explore the best way to make our streets safe and reinvigorate Sydney's night life.

² Some clubs also undertake packaged liquor operations for off-premise consumption.

Clubs are safe venues

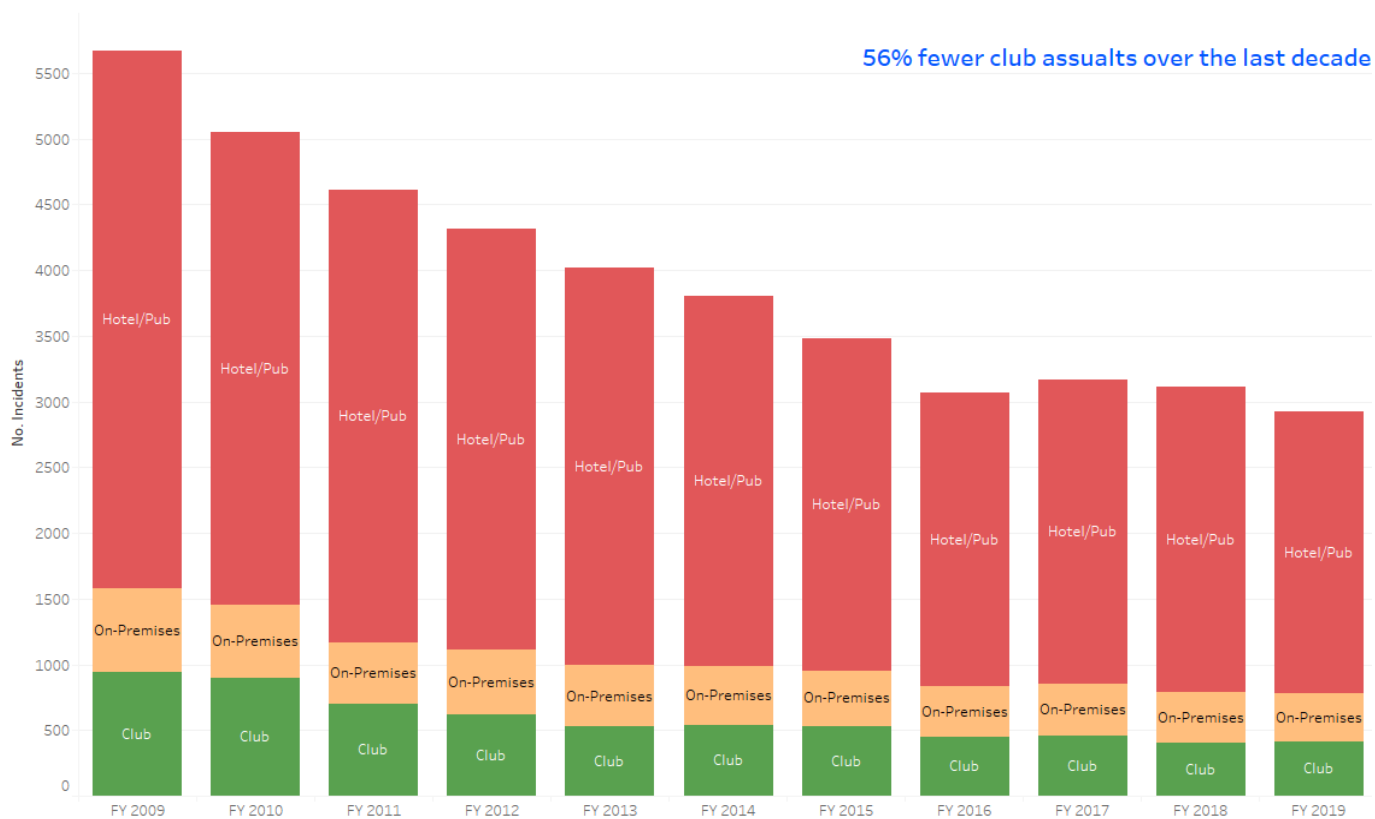
Blanket and indiscriminate restrictions unfairly and disproportionately penalise registered clubs, which are exceptionally safe venues.

Last year there were a combined 416 alcohol-related assaults across NSW's 1,347 clubs, equivalent to 0.3 assaults per club.³

By way of comparison, BOCSAR data shows that in the year to 31 March 2019 alcohol-related violence in the Sydney LGA was 8.4 times greater than the combined total of all clubs in NSW (see page 7).

As illustrated in the graphs below and on the next page, BOCSAR data shows that since 1 April 2008, the percentage change in alcohol-related assaults connected to clubs has declined by 56%, greater than the reduction in other licensed premises types.

Non-Domestic Alcohol Related Assaults
by Licensed Venue Type

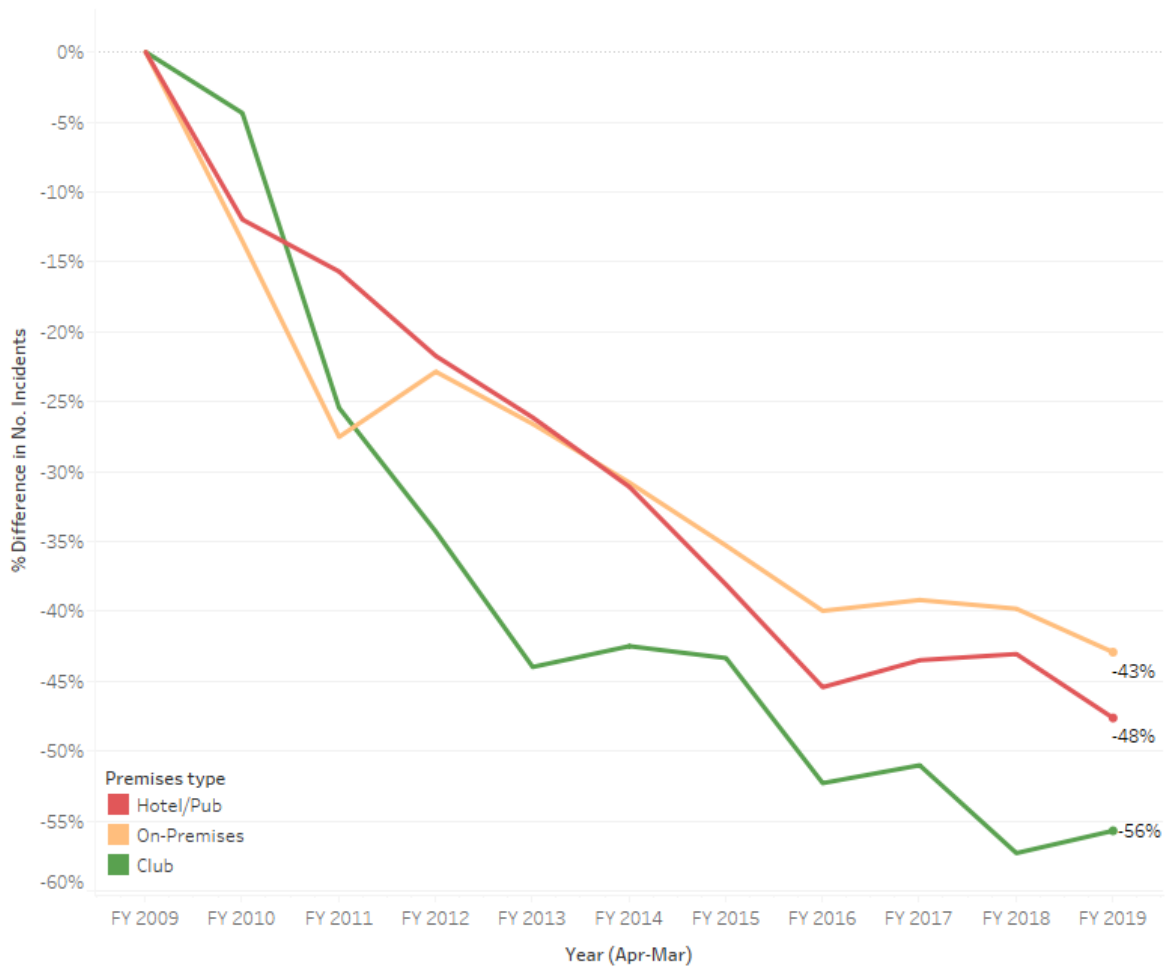


Source: NSW Bureau of Crime Statistics and Research
Reference: jh19-17654

Clubs' safety record is particularly significant when one considers that most registered clubs trade seven days a week and experience significant foot traffic, while many nightclubs do not trade seven days and generate most of their patronage in a small amount of time – usually Friday, Saturday and Sunday evenings.

³ Source: NSW Bureau of Crime Statistics and Research, Reference: jh19- 17654; 'Last year' is the year to 31 March 2019.

Non-Domestic Alcohol Related Assaults Reduction in Annual No. Incidents



Source: NSW Bureau of Crime Statistics and Research
Reference: jh19-17654

The graph above illustrates a significant reduction in alcohol-related assaults across different premises types since 1 April 2008. However, it must be noted that, throughout this period, the incidence of violence connected to clubs has remained especially low. From 1 April 2008 to 31 May 2019, the percentage of alcohol-related violence connected to clubs has always remained less than 5% of all non-domestic, alcohol-related assaults.⁴ These figures demonstrate that clubs are inherently safe venues.

Unfortunately, there will always be some people who believe that violence and anti-social behaviour is acceptable and who go out looking for trouble, however the BOCSAR figures show that clubs are doing the right thing and providing safe, family-friendly environments for the community.

⁴ Source: NSW Bureau of Crime Statistics and Research, Reference: jh19- 17654.

Why are clubs safer?

Clubs attract all ages within the community and pride themselves on their family-friendly ethos.

Clubs generate only around 16% of their total revenue from beverage sales (including alcoholic and non-alcoholic);⁵ with alcohol considered a complementary service. Clubs' not-for-profit business model and focus on providing meals and entertainment to members and guests removes their incentive to serve intoxicated people.

Clubs carefully monitor and self-regulate their activities to prohibit the excessive consumption of alcohol. Unlike other licensed venues, where a patron is essentially anonymous, most club patrons are also club members. The relationship between clubs and their members is governed by a constitution or rules, under which clubs can set standards of behaviour. Members who breach these standards face disciplinary suspension or even expulsion. Where a visitor or other non-member misbehaves, clubs may reject the person's membership, effectively barring the person from re-entering.

Since clubs are able to set and enforce these standards, clubs can control patrons' behaviour more effectively than any other licensed premises. Disciplinary measures adopted by clubs include:

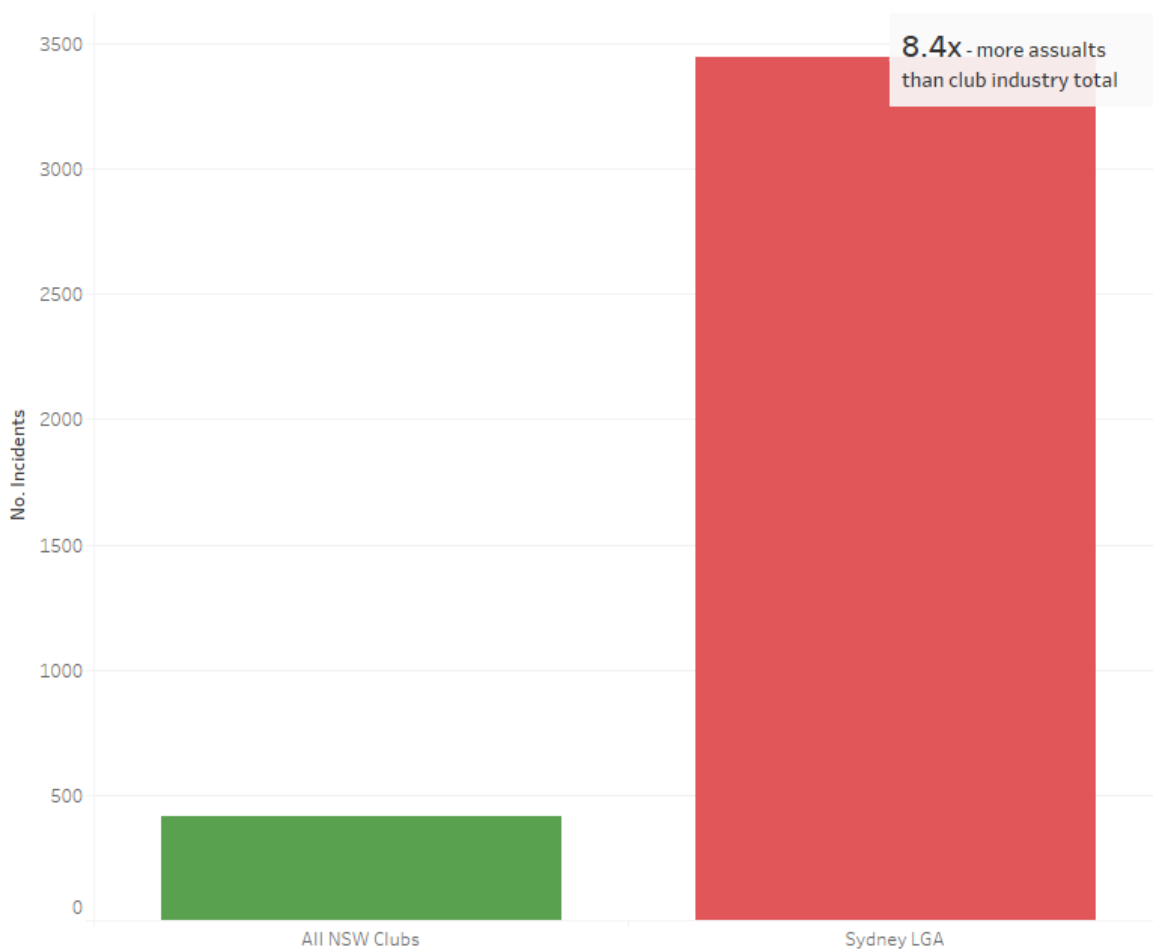
- suspending or permanently barring any member or visitor involved in a violent incident; and
- suspending or permanently barring any member or visitor who engages in antisocial, rude, argumentative, aggressive or violent behaviour.

Unlike home or party settings, drinking in a club allows for intervention by staff to cut off supply when a patron shows signs of intoxication, preventing people from drinking to hazardous levels.

Further, many clubs go beyond their duty of care, providing courtesy bus services which help reduce drink-driving, drink walking, and alcohol-related antisocial behaviour around their venues.

⁵ KPMG, 2012, NSW Club Census 2011: Report on the economic and social contribution of registered clubs in NSW, Sydney, Australia.

Non-Domestic Alcohol Related Assaults
Total No. Incidents (Apr18 - Mar19)
Club Industry v Sydney LGA



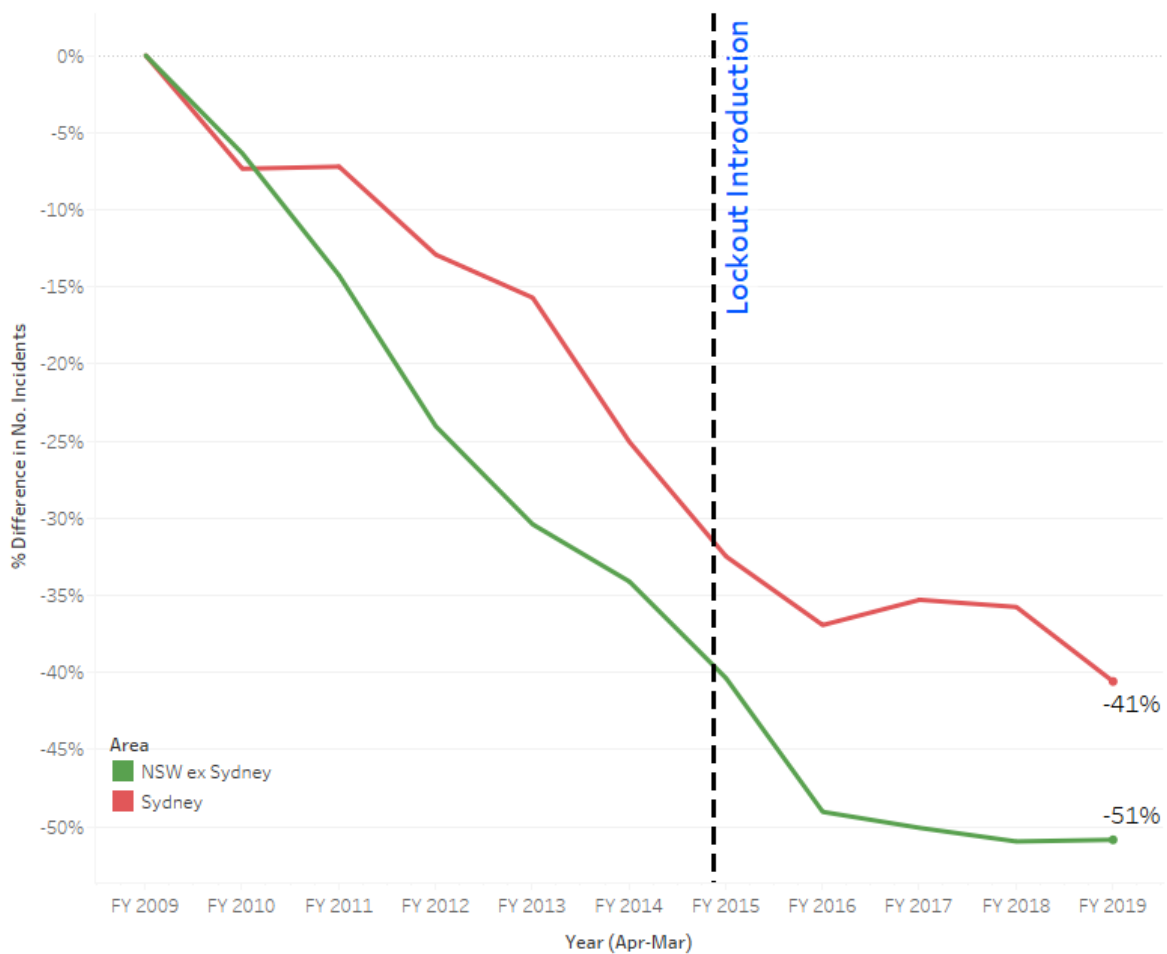
Source: NSW Bureau of Crime Statistics and Research
Reference: jh19-17654

Alcohol-related assaults have declined significantly

As evidenced below, BOCSAR data demonstrates that in the 10-year period since 1 April 2008:

- alcohol-related assaults have fallen significantly across NSW (down 51%), with the Sydney LGA (down 41%) failing to demonstrate a greater drop, including after the 2014 laws were introduced;
- during late-night trade (midnight to 6am), alcohol-related assaults have dropped significantly across NSW (down 62%), with the Sydney LGA (52%) failing to demonstrate a greater drop, again including after the 2014 laws were introduced;
- Many other LGAs, some of which are listed below, have recorded greater reductions in alcohol-related violence than Sydney despite the 2014 laws not applying in those areas.

Non-Domestic Alcohol Related Assaults
% Reduction in Annual No. Incidents
Sydney LGA v Rest of NSW



Source: NSW Bureau of Crime Statistics and Research
 Reference: jh19-17654

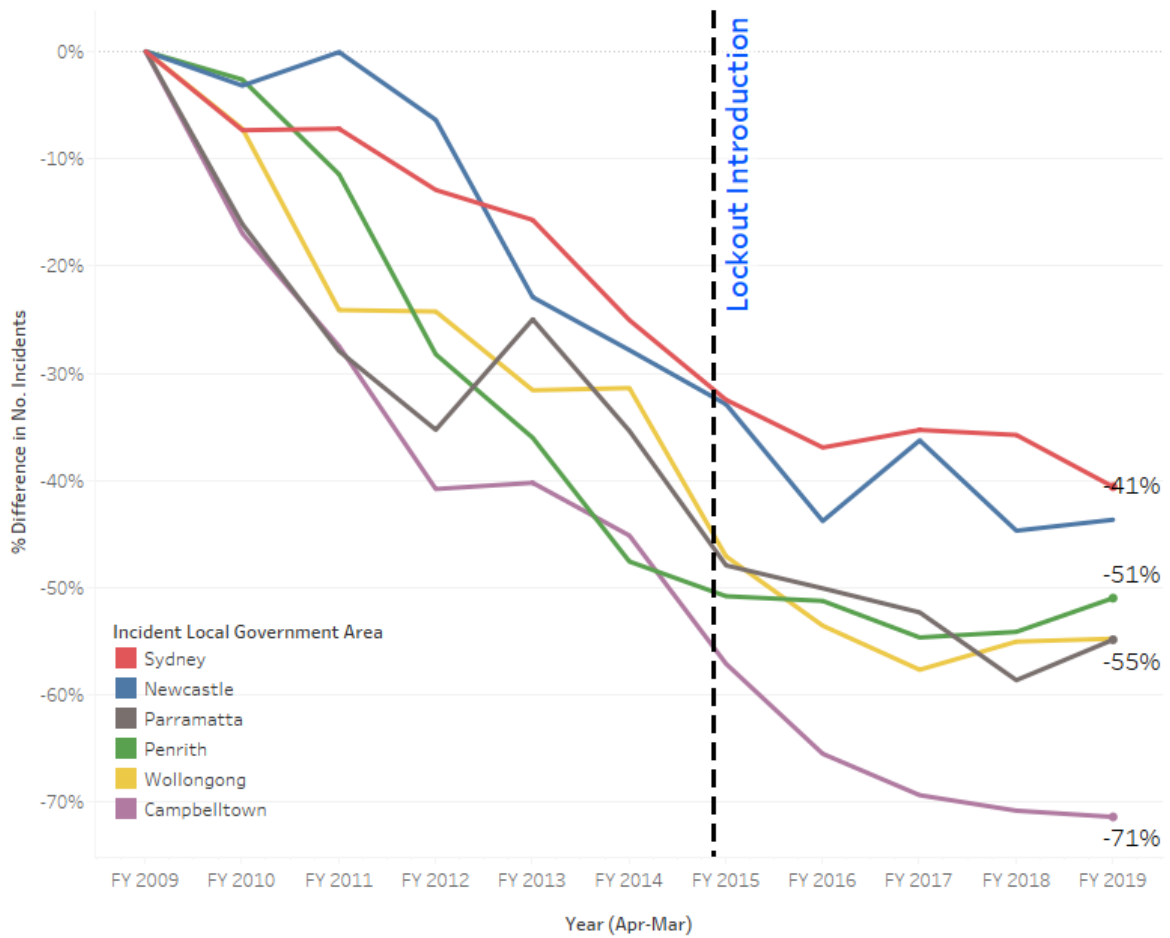
The significant reduction across areas not subject to the 2014 laws (as seen in the graph above) demonstrates that other factors have been responsible for the NSW-wide reduction in alcohol-related violence.

As demonstrated in the graph below, BOCSAR data shows that alcohol-related assaults have declined in:

- Wollongong by 55%;
- Penrith by 51%;
- Newcastle by 44%;
- Parramatta by 55%; and
- Campbelltown by 71%.

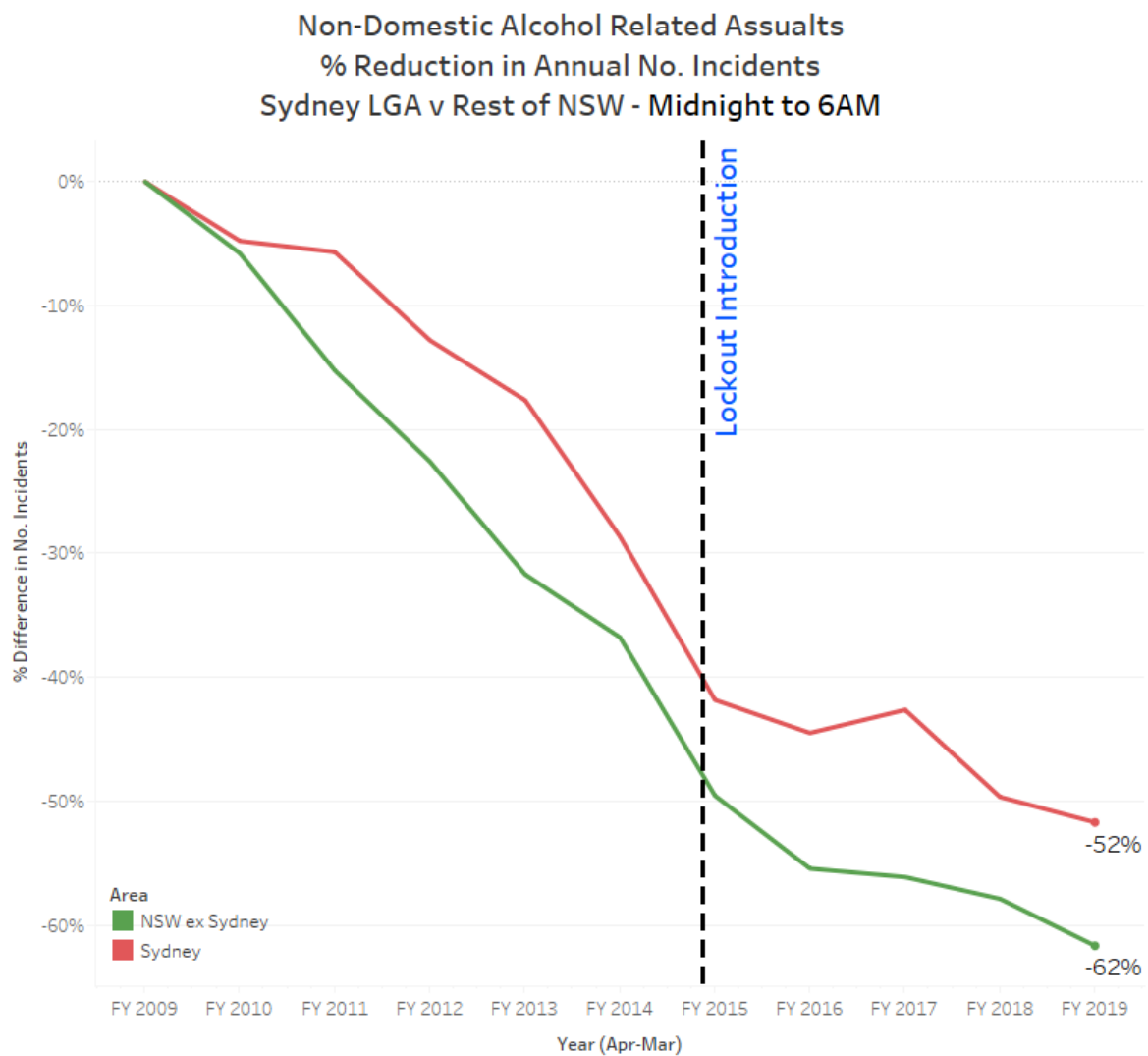
None of these areas are subject to the 2014 laws or similar restrictions yet each have experienced a larger reduction in alcohol-related violence than in Sydney.

Non-Domestic Alcohol Related Assaults % Reduction in Annual No. Incidents Selected LGAs



Source: NSW Bureau of Crime Statistics and Research
Reference: jh19-17654

BOCSAR figures also illustrate a 10-year trend of declining alcohol-related violence in the late-night trading period (midnight to 6am).



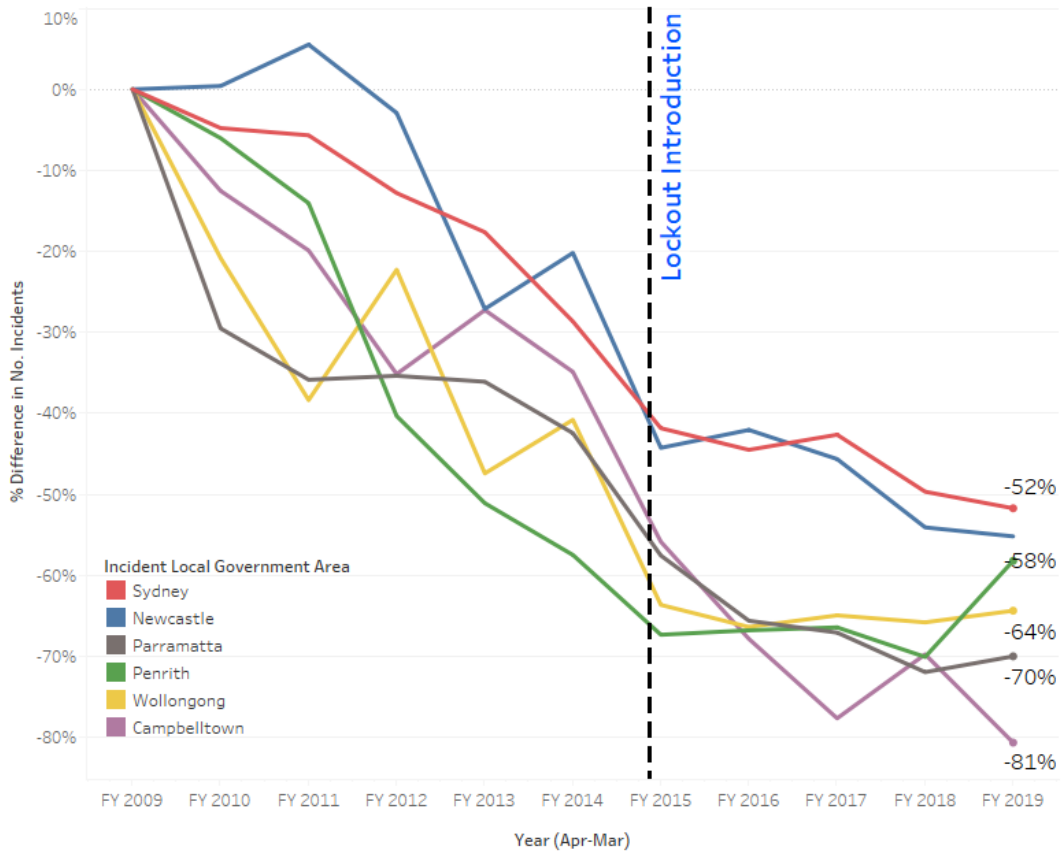
Source: NSW Bureau of Crime Statistics and Research
 Reference: jh19-17654

The graph above demonstrates that, even after the 2014 laws were introduced, the Sydney LGA did not evidence a steeper decline in alcohol-related violence during late-night trade than the rest of NSW.

Likewise, the graph below shows that other LGAs have experienced a greater reduction in the late-night period than in Sydney, with alcohol-related violence declining in:

- Wollongong by 64%;
- Penrith by 58%;
- Newcastle by 55%;
- Parramatta by 70%; and
- Campbelltown by 81%.

Non-Domestic Alcohol Related Assaults
% Reduction in Annual No. Incidents
Selected LGAs - Midnight to 6AM



Source: NSW Bureau of Crime Statistics and Research
 Reference: jh19-17654

It is accepted that the practical experience over the past five years illustrates that the 2014 laws significantly reduced the number of people attending the prescribed precincts, leading to diminished vibrancy, amenity and business viability.

However, BOCSAR data shows that the 2014 laws have had no demonstrable impact in accelerating the reduction in alcohol-related violence, both in general and in the 'late-night' period. As evidenced above, although assaults have declined in Sydney, this reduction is consistent with the rest of NSW and is part of a long-term trend.

ClubsNSW believes BOCSAR's figures demonstrate the overwhelming success of the current liquor regulatory framework, which took effect in 2008 with the commencement of the *Liquor Act 2007*. The process to design the existing framework took several years, ultimately stemming from the 2003 NSW Summit on Alcohol Abuse and extensive consultation on exposure draft legislation.

Among other things, the existing liquor framework promotes collaboration between community stakeholders including clubs and other licensed premises, the NSW government, police, local councils, residents, Aboriginal communities and health authorities.⁶ This collaboration often leads to tailored local solutions to help curb alcohol-related violence and anti-social behaviour. The significant NSW-wide reduction in alcohol-related violence illustrates the important contribution of all these groups.

Lower overall incidence of alcohol misuse

ClubsNSW also notes that the reduction in alcohol-related violence has been accompanied by an Australia-wide reduction in general alcohol misuse.

The 2016 National Drug Strategy Household Survey, carried out by the Australian Institute of Health and Welfare (AIHW), demonstrates that alcohol consumption outcomes continue to improve in Australia. The Survey found:

- 5.9% of Australians drank alcohol daily; a decline from 6.5% in 2013 and over 10% in 1991;
- 82% of young people aged 12-17 abstained from alcohol entirely; a significant increase from 72% in 2013 and 54% in 2004;
- 22% of people were victims of an alcohol-related incident; a decline from 26% in 2013 and 30% in 2007.

The AIHW research demonstrating lower alcohol consumption is consistent with data recorded by the Australian Bureau of Statistics (ABS), which found the per capita consumption of alcohol in 2016-17 was the lowest level since 1961-62, and 4% lower than 2013-14 when the 2014 laws commenced.⁷

The 2014 laws fail to strike the right balance

The 2014 laws contain a suite of measures, most notably the 1:30am lockout period, which are particularly restrictive.

These measures were introduced in response to a period of highly-publicised, senseless violence and anti-social behaviour in Kings Cross. ClubsNSW appreciates that the laws were well-intentioned and designed to curb acute alcohol-related violence issues in that area.

The Sydney area is different from other areas in terms of patronage, the density of licensed premises and its focus on tourism and entertainment. As BOCSAR data shows (on the next page), the Sydney area is also an outlier in terms of alcohol-related violence, with there being more alcohol-related assaults in the area than in any other LGA in NSW, thus justifying its differentiated treatment.

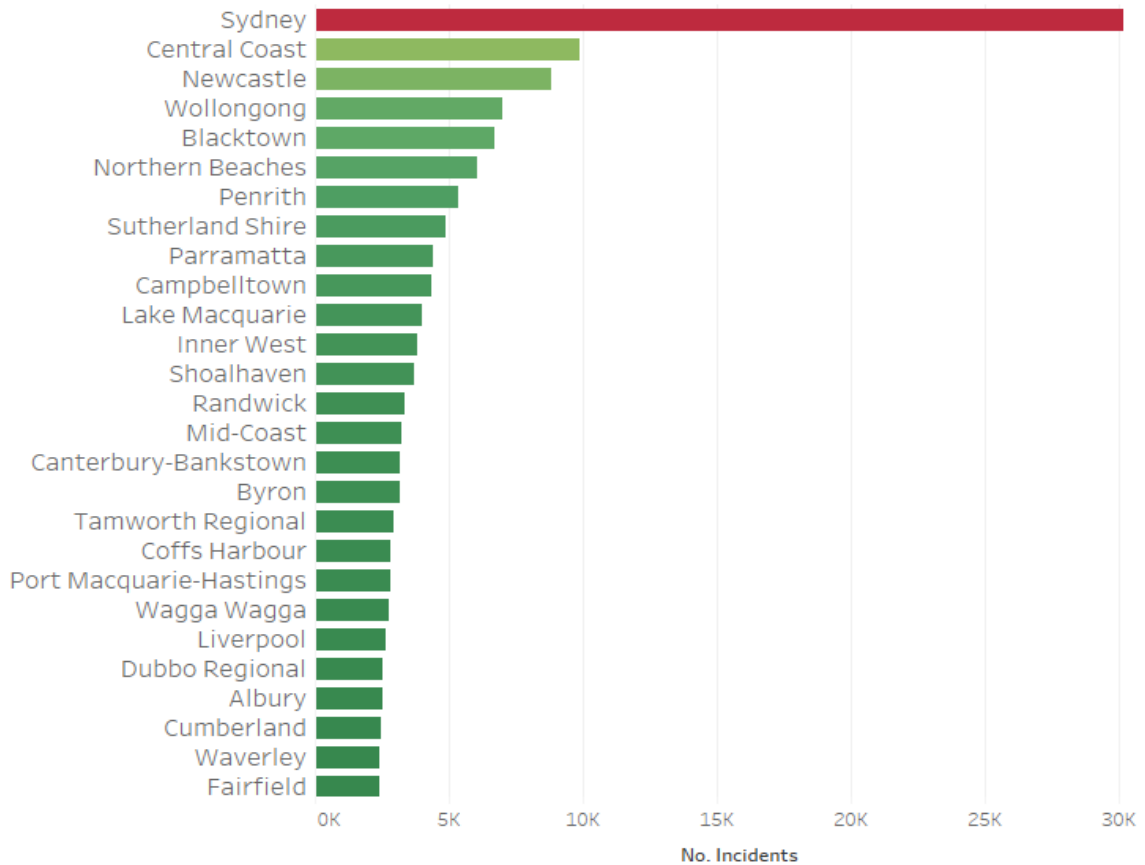
From April 2008 to January 2014 (just prior to the introduction of the 2014 laws) there were 30,191 alcohol-related assaults in the Sydney LGA, more than three times the next highest LGA (Central Coast; 9,902 alcohol-related assaults).

⁶ The involvement of these stakeholder groups is reflected by the:

- process for declaring restricted alcohol areas under s 116 of the *Liquor Act 2007*;
- composition of local liquor accords under s 132 of the *Liquor Act 2007*; and
- community consultation process under cl 29 of the *Liquor Regulation 2018*.

⁷ Australian Bureau of Statistics, Alcohol consumption lowest in half a century, September 2018, available at <https://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/4307.0.55.001Media%20Release12016-17>.

Total Non-Domestic Alcohol Related Assaults by LGA (Apr08 - Jan14)



Source: NSW Bureau of Crime Statistics and Research
Reference: jh19-17654

Blanket, one-size-fits-all measures are unjust and ineffective

While the targeting of the Sydney LGA is justified from a risk-based perspective due to it having significantly higher rates of alcohol related violence compared to other LGAs, the blanket application of the 2014 laws is problematic because:

- it is unfair and unjust to indiscriminately penalise responsible businesses; and
- by penalising businesses irrespective of their conduct or compliance, licensed premises are not incentivised to take additional measures to exceed the legislative requirements. While most businesses will take every possible measure regardless of the regulatory framework, rewards and punishments should nevertheless be designed to promote good behaviour.

Despite their intention, the measures have the effect of penalising responsible licensed premises, many of which have a strong record on compliance and safety.

The problems associated with “one-size-fits-all” measures, including issues of fairness and effectiveness, were noted in a 2013 statutory review of the Liquor Act 2007:

... the review does not support calls for blanket trading hours or a ‘one size fits all’ policy. Such a measure would unfairly penalise the vast majority of late trading venues that consistently operate within the law and make a positive contribution to the late night economy. The measure would also have a significant impact on local employment and economic activity.

... A ‘one size fits all’ approach does not take into account environmental risks or fit well with calls for targeted enforcement action. The current legislative framework is considered sufficient to deal with risk areas through a variety of enforcement initiatives ...⁸

Blanket restrictions such as the 2014 laws are inconsistent with the targeted application of penalties and punishments currently contained in the Liquor Act.

The Liquor Act contains extensive targeted enforcement powers

The Liquor Act imposes the following targeted penalties, among many others, on businesses holding a liquor licence, on a case-by-case basis:

- intoxication or violence taking place on the premises may result in the business incurring a monetary penalty of up to \$21,000;⁹
- the Independent Liquor & Gaming Authority (ILGA) may cancel or suspend the licence, or impose a significant monetary penalty of up to \$210,000;¹⁰
- the sale of illicit drugs taking place on the premises may result in the business incurring a monetary penalty of up to \$21,000;¹¹
- where there is a significant threat or risk to the public interest:
 - a police officer may order the closure of a venue for up to 72 hours;¹² and/or
 - the ILGA may order the closure of a venue for up to six months;¹³
- a business which sells or promotes an ‘undesirable liquor product’ incurs a monetary penalty of up to \$10,500;¹⁴
- the ILGA and department may place conditions on a venue’s liquor licence imposing lockouts, ‘last-drinks’ and other such measures;¹⁵
- the sale of liquor to a minor attracts additional escalating sanctions including the automatic cancellation of a venue’s liquor licence for the third offence in a 12-month period;¹⁶

⁸ M. Foggo, Report on the Statutory Review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007, November 2013, pp 58-59.

⁹ *Liquor Act 2007*, s 73(1).

¹⁰ *Liquor Act 2007*, ss 139(3)(h), 141(2).

¹¹ *Liquor Act 2007*, s 74(1)(b).

¹² *Liquor Act 2007*, s 82.

¹³ *Liquor Act 2007*, s 84; *Liquor Regulation 2018*, cl 43.

¹⁴ *Liquor Act 2007*, ss 100-102.

¹⁵ *Liquor Act 2007*, s 52; s 87.

¹⁶ *Liquor Act 2007*, ss 130A-130F.

- the ILGA can disqualify an individual from managing a licensed premises and holding a liquor licence for such period as it sees fit, up to and including for life;¹⁷
- a business which incurs 3 strikes (an example of a strike is permitting intoxication) may have its licence suspended for up to 12 months;¹⁸
- a business connected to 12 or more violent incidents may incur a range of prohibitive trading measures.¹⁹

The liquor framework obligates licensed premises to proactively take steps to ensure their patrons do not engage in prohibited behaviour, both inside or outside their premises.

As the steps to be taken by businesses are not prescribed, the liquor framework has a mechanism which recognises that good operators have the sound judgement to do what is best for their business.

While the Liquor Act holds venues responsible for the conduct of their patrons, the Act also empowers authorities to take action against individual wrongdoers:

- where a person is denied entry to, or ejected from, licensed premises – the person may incur a monetary penalty of \$10,500 (or a \$550 on-the-spot fine) if they disobey the instruction, or attempt to re-enter within 24 hours;²⁰
- the ILGA may make an order banning a person from entering or remaining on licensed premises.²¹

Enforcement powers are also contained in various criminal penalties applying to violent conduct.

Enforcement powers targeted toward individuals reflect the reality that, despite the best efforts of licensed premises, some anti-social behaviour is regrettably unavoidable because certain people may have a tendency to engage in violence. Accordingly, it is necessary for the enforcement framework to recognise that people have a personal responsibility to refrain from violent conduct.

ClubsNSW believes that police should strictly enforce their suite of existing powers, to keep violent or troublesome individuals away from responsible venues and their patrons.

Targeted application of the 2014 laws

ClubsNSW believes that the way in which individual venues are run is the most important factor in mitigating or increasing the likelihood of alcohol-related violence on or around those premises.

ClubsNSW submits that the 2014 laws should not apply to venues, such as clubs, which have a proven safety record and are responsibly managed.

As outlined above, the Liquor Act contains a suite of strong measures that can be imposed on a venue in a targeted fashion.

¹⁷ *Liquor Act 2007*, s 141

¹⁸ *Liquor Act 2007*, s 144G.

¹⁹ *Liquor Act 2007*, Schedule 4.

²⁰ *Liquor Act 2007*, s 77; *Liquor Regulation 2018*, Schedule 6.

²¹ *Liquor Act 2007*, s 78.

ClubsNSW recommends that the existing provisions in the Liquor Act should be utilised to apply restrictions on those venues in the Sydney and Kings Cross precincts that have repeated serious incidents of violence or antisocial behaviour and which consistently fail to mitigate the future risk of such incidents, on a case-by-case basis.

Encouraging live music and entertainment

Clubs have had a long and proud, if often understated connection, with the music and entertainment industry in NSW. Clubs have been incubators for Aussie talent for generations, supporting artists such as Midnight Oil, Cold Chisel, AC/DC, INXS, Powderfinger, Johnny Farnham and The Whitlams. The industry provides a range of opportunities for artists at all stages of their career, as well as providing opportunities for supporting staff.

Clubs are not by definition 'music venues'. However, by their very nature clubs have a large patron capacity and geographic footprint and, as a result, almost 90 per cent of clubs provide music and entertainment facilities to their local community,²² ranging from large, multi-purpose entertainment facilities such as performing arts centres and exhibition halls to smaller auditoriums and dancefloors. Importantly, in many regional areas of NSW clubs are the only providers of such facilities in their community.

The contribution clubs provide to the live music industry is substantial. A 2011 report by Ernst & Young found that the NSW club industry generates \$202.4 million in live music revenue, adds \$111.2 million in value to the industry and employs 2,536 full time staff as a direct result of live music.²³ These three measures indicate the importance of the live music industry to clubs in NSW and vice versa.

Noise restrictions

ClubsNSW submits that the current noise regulation framework serves as an impediment to clubs hosting live music and entertainment. This issue is relevant, but not limited, to the Sydney area.

The current framework around how noise complaints from hosting music and entertainment should be handled is, in ClubsNSW's view, complex and duplicative.

Under Division 3, Part 5 of the Liquor Act, a complaint by an aggrieved resident can result in a noise abatement condition being imposed on a licensed venue.

Common noise conditions include:

- noise emitted from the premises cannot exceed the background noise by more than 5 decibels (dB); and
- amplifiers or noise generating equipment must be connected to a noise limiter device.

To demonstrate how 5 dB compares to other common noises:

- standing 90 metres away from heavy traffic produces approximately 60 dB; and
- being present in a quiet suburban area during night will produce noises at 40-50 dB.²⁴

²² KPMG, 2015 NSW Club Census, 2016.

²³ Ernst & Young (2011), Economic Contribution of the venue-based live music industry in Australia.

²⁴ California Department of Transportation, Loudness Comparison Chart, available at <http://www.dot.ca.gov/dist2/projects/sixer/loud.pdf>.

Accordingly, once noise-restrictions have been imposed, businesses experience practical difficulties operating live music. For instance, a business with noise conditions could almost certainly not host a guitarist or vocalist to play in an outdoor area of the premises.

Noise restrictions may be appropriate to prevent businesses from unreasonably interfering with a resident's right to use and enjoy their home.

However, noise restrictions are increasingly being imposed on licensed premises which are otherwise complying with their trading hours and other conditions.

Moreover, many complainants which instigate the noise restriction process moved to their property after the business was already in operation. In some instances, the property housing the complainant was not built at the time the business was established.

For instance, Narrabeen RSL Club has been in operation at its current address since 26 March 1956. Despite the Club's long-lasting presence at its location, its licence recently became subject to noise restrictions based on a complaint from a person that moved to an adjacent property after the club was operating.

The Liquor Act requires consideration of the order of occupancy before imposing noise restrictions.²⁵

However, based on recent decisions to impose noise restrictions on licensed businesses, the order of occupancy may have little influence. For instance, in the decision to impose noise restrictions on Narrabeen RSL Club, Liquor & Gaming NSW acknowledged the order of occupancy was in favour of the Club, but still decided to impose restrictions because the club was in "very close proximity to residential properties" and the club's provision of amplified live entertainment, including on weeknights, resulted in undue disturbance.

Accordingly, the order of occupancy did not negate the residential premises' close proximity to the club and impact of live music based on that proximity. Therefore, even where a venue does not prolong its trading hours or exceed its ability to conduct live music activities, an adverse noise condition may still be imposed.

Such an assessment treats licensed premises unfairly by effectively moving their goalposts after residential premises are built nearby.

The assessment required by the Liquor Act appears to depart from common law of private nuisance, which places considerable emphasis on order of occupancy.

While court decisions addressing private nuisance caused by noise are rare,²⁶ the operative nature of order of occupancy was made clear in a recent decision of the Supreme Court of Western Australia. In that decision, a resident sought an injunction to restrain a nearby hotel from playing music in an outdoor area. The resident had moved to his apartment long after establishment of the hotel.

²⁵ *Liquor Act 2007* (NSW), s 81(3) requires the order of occupancy to be considered, as well as changes to the structure of, and activities conducted by, the licensed premises.

²⁶ *Ammon v Colonial Leisure Group Pty Ltd*, [2018] WASC 280, para 16.

Notably, the judge considered that, even if the music emanating from the hotel was unreasonable, a noise-restricting injunction would still not have been imposed because order of occupancy favoured the hotel:

The plaintiff may not have anticipated the level of noise that presently emanates from [the hotel] but he bought next to a hotel. To now seek to shut down the operations of that hotel, even to the limited extent now sought, is not in my view appropriate.²⁷

ClubsNSW is also concerned that, while the Liquor Act requires noise complaints to account for the complainant's circumstances, stakeholders opposing noise conditions are rarely considered.

For instance, several aggrieved neighbours may want noise conditions imposed on a licensed premise while dozens of other neighbours may oppose noise conditions because they may enjoy the amenity provided by their local club.

The interests of musicians are also not considered, despite noise restrictions undermining their ability to seek work. For instance, where noise restrictions prevent clubs from hosting live music, the club must unfortunately notify musicians that they cannot play at the club.

ClubsNSW believes that the Liquor Act's test for imposing noise restrictions on licensed premises should be amended so:

- the decision-maker should be required to give more weight to order of occupancy, so that a licensed premises' permissible noise level and activities are not reduced or limited when new neighbours move nearby or when new residential premises are built;
- a test should be imposed on the complainant to demonstrate what, if any, attempt was made to resolve the dispute with the venue directly, prior to making a complaint;
- any assessment of a disturbance complaint involving noise should also account for the interests of persons opposing noise restrictions, such as club member, local residents and musicians;
- the decision-maker should be required to consult with a dedicated body representing the interests of musicians.

More broadly, ClubsNSW would welcome consideration of a streamlined approach to noise complaints to remove duplication and regulatory overlap. Noise complaints against a licensed venue can be dealt with by seven separate bodies including Liquor & Gaming NSW, local councils, the NSW Police Force, the NSW Environment Protection Authority, Roads and Maritime Services, the NSW Department of Planning and Environment, and Property NSW.²⁸

Each agency has their own standards and rules and, as a result, complainants have the effective ability to "jurisdiction shop" to any or all agencies to seek the most favourable outcome.

The inefficiency stemming from this duplication was the subject of criticism by the NSW Legislative Council Committee on Planning and Environment, in its 2018 inquiry into the music and arts economy:

... the current dispute resolution system for noise complaints is deeply flawed and unpragmatic. There are simply too many regulatory bodies in the mix; a single regulatory agency should be responsible for managing noise from licensed venues.²⁹

²⁷ Ibid, para 88.

²⁸ Portfolio Committee No. 6 - Planning and Environment, The music and arts economy in New South Wales, November 2018, paras 8.2-8.3.

²⁹ Ibid, para 8.48.

ClubsNSW supports streamlining the noise complaint handling process so that one body is responsible for dealing with complaints. ClubsNSW recommends that Liquor & Gaming NSW deal with all noise complaints against licensed premises, in accordance with the modified standards recommended above.

Workers Compensation payments

Another impediment to clubs hosting live music is the requirement for clubs to include payments made to contracted entertainers in the calculation of their workers compensation premiums.

The *Workplace Injury Management and Workers Compensation Act 1998* (NSW) deems entertainers to be “workers” when they perform in a club. This means that clubs must factor wages paid to these performers into their calculation for workers compensation insurance and therefore pay significantly more than any other licenced venue.

Clubs are the only industry which is subject to these provisions. This requirement imposes a significant cost on clubs in booking entertainers and is a competitive disadvantage.

There is no logical basis why contracted entertainers are deemed to be workers when they perform at clubs. No other industry is subject to such deeming provisions for the purposes of workers compensation, nor is this legislation duplicated in any other state or territory.

The current provisions put clubs at a significant cost disadvantage compared to other industries for the supply of entertainment at their premises. Twin Town Services Club in Tweed Heads is known as an entertainment destination and features a 1,500-seat showroom which is regularly utilised by large acts such as Olivia Newton John and Akmal. This is in addition to their standard “lounge acts” that most other clubs also feature. The Club reports that their additional Workers Compensation Premiums, when factoring in the additional ‘wages’ of their performers is in excess of \$3 million.

There is little utility in having entertainers deemed to be workers of the club given that most entertainers are already covered by their own insurance arrangements and if not, would be covered by the Club’s Public Liability Insurance if they were not deemed employees under the Act.

The requirement to pay workers compensation premiums is a barrier for clubs to host live music and entertainment. ClubsNSW recommends repealing s 15(1)(d) from the *Workplace Injury Management and Workers Compensation Act 1998* as doing so will encourage more clubs to host live music.