

**Submission
No 426**

SYDNEY'S NIGHT TIME ECONOMY

Name: Name suppressed
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Partially
Confidential

Introduction and Operation of Submission

This submission is in an essay format, and discusses the operation of the Lockout Laws, and whether they are beneficial to their object of decreasing alcohol-related violence. As it is 10 pages long, I have summarised my main points in the following section, but I would appreciate it if this submission could be read in its entirety. I have placed my details on this document, but would like that to be confidential. I also have included full names of all the people upon whose behalf this submission was written, which I respectfully request to be confidential as well.

Summary

The overall conclusion of the following submission is that the operation of the lockout laws are not effective in achieving its object of reducing alcohol-related violence. Further, they are a detriment to Sydney's status as an international and vibrant city, and I recommend their full repeal. The following are my arguments:

- The laws find their grounds more in negative media portrayals of public intoxication over established legal principle
- They are ineffective in abolishing the culture that the nanny state is imposing – that a public drunk is dangerous to society. Public intoxication is almost never dangerous, and should not be so ignorantly treated as such by the operation of the laws.
- They detriment Sydney's night-time economy, which is a sector that could potentially boost our already high global status as an international city
- They are unfair in their exemption of the Star and Barangaroo Casinos
- They have severely affected the vibrancy of Sydney's nightlife
- There are better alternatives, as observed in European cities like London, Amsterdam and Paris, and even Melbourne
- They merely displace violence to other areas that do not have lockouts, like Newtown, Coogee, and Bondi
- They effectively have reduced violence in the CBD and Kings Cross only because they have majorly reduced the amount of people in those areas, which is an inefficient policy
- It is understood that there needs to be a balance between regulations for safety and freedoms of patrons. The lockout laws represent an unjust emphasis on regulating safety, and do not efficiently operate as a balance between the two necessities.

I recommend:

- The full repeal of the lockout laws; or the full repeal of the *Liquor Amendment Act 2014*
- The appointment of a 'Night Mayor' and other Committees for Sydney's Night-Time Economy to ensure proper regulations of this sector
- The implementation of 24-hour public transport, especially running trains between 1am and 5am on Friday and Saturday nights (at the moment, the

masses of people waiting at Town Hall for the Night Buses are becoming overcrowded to the degree that many buses skip stops).

- The promotion of Sydney as a haven for new and old venues, to ensure a full return to form for nightlife
- A further general revision of alcohol and venue regulations in NSW, including:
 - A relaxation of RSA, including allowing intoxication be present at venues: providing food and water instead of promoting people being cut off or kicked out because of an arbitrary assessment of their degree of inebriation
 - A general revision of the underlying principles of public intoxication being only dangerous, and promoting the light consumption of alcohol in public settings
 - A relaxation of police presence around venues and music festivals, as it is an extensive propagation of the ideal of the public drunk being offensive and dangerous
 - A more efficient object of alcohol regulation, rather than the current one being ‘preventing violence by preventing any access to venues’
 - An embrace of the ‘red-light’ districts by the NSW government, to further ensure more efficient regulations of said districts

A Discussion of the Operation of the Lockout Laws in Sydney

The *Liquor Amendment Act 2014* (NSW) has become infamous for its controversial implementation of ‘lock-out laws’ for bars and nightclubs in the Sydney CBD and Kings Cross, yet it is difficult to uncover how its achievements of minimising violence in specific precincts benefit the whole of Sydney, and its questionable grounds in legislation or principle. Media and particular communities had become concerned at the amount of violence occurring, yet are claiming now that the laws ‘didn’t solve the problem’.¹ The object and implementation, as will be discussed in this essay, of such laws are both blamed for their damage to Sydney nightlife and economy, the increase of violence in surrounding areas, their blame of public intoxication and their disregard of alternative measures, but also approved for the increase in safety of specific areas. It can be seen that the issue of alcohol-related violence is not related to the regulation of venues, but rather to do with the surrounding culture of drinking in Australia.

Precursor to the Law

The Act resulted from media outrage over the isolated deaths of teenagers Thomas Kelly in July 2012, and Daniel Christie in December 2013 as a result of

¹ Heather McNab, ‘Four years from the lockout laws, what’s the state of Sydney night-life?’, *The Daily Telegraph* (Sydney), 21 February 2018, [9].

being punched by strangers in King's Cross. Both criminal cases exploded in the media², leading a university student to state that the media transformed 'two , gruesome albeit isolated deaths – into what they termed an "epidemic" of drug and alcohol-fuelled violence'.³ Luke McNamara commented that these cases were the 'trigger for a number of significant changes to NSW... liquor licensing laws',⁴ while Phillip Wadds commented on the media's role, stating that 'between the 7th and 19th of July 2012, 110 articles were written in the *Sydney Morning Herald* and the *Daily Telegraph* newspapers relating to [Thomas] Kelly's death'.⁵

This indicates that the *Liquor Amendment Act* may largely find its basis in media scrutiny and community concerns rather than in established legal principle. The object itself is to decrease alcohol-related violence within the CBD and Kings Cross, yet it seems that the rationale for this object solely relies on the extensive media coverage of these two king-hit cases. To punish a whole group of venues for the violent behaviour of two individuals is unnecessary and is further contrary to the established legal principles of justice and fairness that NSW law strives to uphold.

The Law Itself

The *Liquor Amendment Act 2014* (NSW) can be summarised in its long title: 'An Act to amend the *Liquor Act 2007* and the *Liquor Regulation 2008* to enable certain areas to be declared to be prescribed precincts in which licensed premises are subject to regulatory conditions... and for other purposes.'⁶ The object of the act Such 'prescribed precincts' are defined under s 53A of the amended *Liquor Regulation 2008* (NSW) as the 'Sydney CBD Entertainment precinct' and the 'Kings Cross precinct'. The implementation of the laws is outlined in s 53B(1): that these laws only apply to 'premises situated in a prescribed precinct'.⁷ Section 53C(1) outlines the lockout period as 'between 1.30 am and the commencement of the standard trading period referred to in section 12 (1) (a) (i) of the Act'⁸. The standard trading period is outlined in the *Liquor Act (No 90) 2007* (NSW) in s 12(1)(a), which defines it as 'the period from 5am to midnight'. Section 53C(3) is the statement of the lockout laws: 'the licensee of subject premises to which this clause applies must not permit patrons to enter the premises during the lock out period'.⁹ The law plainly states, with aid from its long title and the relevant interpretation Act¹⁰ that the lock out period is from

² Luke McNamara and Julia Quilter, 'Public Intoxication in NSW: The Contours of Criminalisation' (2015) 37 *Sydney Law Review* 1, [112]. See also Elizabeth Farrelly, 'Lock out laws shut down Sydney's Oxford Street', *The Sydney Morning Herald* (Sydney), 27 August 2014, [6] – [7].

³ Gabriel Spadaccini, 'The Sydney Lockout Laws' on Georgetown University, *Berkeley Center for Religion, Peace and World Affairs*, 26 April 2016, <https://berkeleycenter.georgetown.edu/posts/the-sydney-lockout-laws>.

⁴ McNamara and Quilter, above n 2, [2].

⁵ Phillip Wadds, *Policing Nightlife: The Representation and Transformation of Security in Sydney's Night-Time Economy* (Doctorate, University of Western Sydney, 2013) 171.

⁶ *Liquor Amendment Act 2014* (NSW), Long Title.

⁷ *Liquor Regulation 2008* (NSW) s 53B(1).

⁸ *Liquor Regulation 2008* (NSW) s 53C(1).

⁹ *Ibid* s 53C(3).

¹⁰ See *Acts Interpretation Act 1987* (NSW).

1:30am until 5am, and patrons cannot be allowed in or be loitering around the premises in the prescribed precincts as these actions are now illegal. Another point of contention is the implementation of the liquor sales cessation period, which dictates that 'liquor must not be sold'¹¹ between '3am and the commencement of the standard trading period'¹² which is 5am, effectively prohibiting liquor sales after 3am.

Criticism – The Death of the “Right”¹³ to a Nightlife and Economy

Lockout laws have been criticised extensively for their role in closures of historic venues within the prescribed precincts, and have further been blamed for the loss of Sydney's nightlife and economy. Some of these venues include Hugo's Lounge, the Exchange Hotel, the Soho and much of Oxford St and Kings Cross, with one 'Closed' sign condemning the 'poorly thought-out Lockout Laws'.¹⁴ An Oxford Street report found that, with over 200 venues polled, there was a 31% drop in annual profit after 2014¹⁵, and another report found that Kings Cross foot traffic had reduced by 20%.¹⁶ The areas have now been described as 'ghost towns'¹⁷ by inhabitants and there is intensive media coverage of the issue. Matt Barrie, CEO of Freelancer Co. wrote a viral essay, referring to both the economic damage to the entertainment premises, and 'the whole economy around it – newsagents, take-away stores, pharmacies, places of accommodation and tourism'¹⁸ caused by the laws.

Attention has been drawn to alternative policies in international cities that reduce violence, yet do not affect the nightlife like Sydney's lock out laws do. Barrie, in his essay, commented on London's 'plan to appoint a "Night Mayor" tasked with championing the interests of late night venues... Amsterdam, Zurich, Paris and Toulouse also have night mayors'.¹⁹ Paola Totaro also added in her newspaper article in the Sydney Morning Herald that 'Amsterdam... has successfully addressed... problems by extending, not restricting club open hours, encouraging staggered closing times.'²⁰ Mirik Milan, Amsterdam's Night Mayor stated that 'If you only act from fear, you always make the wrong decision... we deal

¹¹ *Liquor Regulation 2008* (NSW) s 53D(3).

¹² *Ibid* s 53D(1).

¹³ See Joseph O'Donoghue, 'Is Sydney's Nightlife on Life Support?', *The Daily Review* (Sydney), 1 September 2015, [17]. Media exaggerates the myth that we have a 'right' to a licensed venue, when that is not factual but mere groundless scrutiny.

¹⁴ Matt Barrie, *Would the last person in Sydney turn the lights out?* 3 February 2016 LinkedIn, https://media.licdn.com/dms/image/C5612AQFr2E-Jcy16uO/article-inline_image-shrink_1500_2232/0?e=2125267200&v=beta&t=dAg7lPJn9KWh_TPDlyqnPgPtyGhSv8J-Yhxaycyb6AM.

¹⁵ McNab, above n 1, [14].

¹⁶ Late Night Management, City of Sydney, *Late Night Management Areas Research* (2013), 10. See also Late Night Management, City of Sydney, *Late Night Management Areas Research* (2015), 1.

¹⁷ Matt Barrie, *Would the last person in Sydney turn the lights out?*, 3 February 2016, LinkedIn, <https://www.linkedin.com/pulse/would-last-person-sydney-please-turn-lights-out-matt-barrie>.

¹⁸ *Ibid*, [128].

¹⁹ Barrie, above n 17, [56].

²⁰ Paola Totaro, 'Sydney lockout laws: How cities around the world minimise alcohol-related violence', *Sydney Morning Herald* (Sydney), 12 February 2016, 8.

honestly with lost jobs in the daytime, why not at night?’²¹ It is crucial for Sydney to cease fearing public intoxication, and instead move forward to allow nightlife to continue, and lockout laws are preventing this. If policy was preoccupied more with aiding the nightlife, not restricting it, Sydney could move toward a better future of harmony and enjoyment, as other cities already have.

In an independent review of the Act, former judge Ian Callinan found that the Act has had an ‘adverse economic effect on a large number of licensees in the Precincts in various ways’.²² Callinan’s review also found that appointing a Night Mayor would be ‘expensive’²³ but did not entirely dismiss the idea. The purpose of these Amendments were to halt alcohol-fuelled violence, yet their implementation also, evidently, severely affect Sydney’s nightlife and economy today. Even Melbourne tried the lockout laws, and received such an economic and cultural backlash – not unlike the Sydney laws are receiving today – that they were dropped months later. The approach of introducing around-the-clock public transport options has been quite effective in promoting Melbourne’s nightlife. It is time that the NSW Parliament learns from other similar cities, and integrate both public opinion and established legal principle more thoroughly.

Criticism – Assault Statistics and the ‘Tailored Approach’²⁴

Explaining the purposes of the *Liquor Amendment Act* in Parliament, then-Premier Barry O’Farrell stated that the best approach to reducing alcohol-fuelled violence is the ‘tailored approach... as it allows the particular problems in an area to be targeted while taking account of local issues.’²⁵ In order to evaluate how the laws have achieved this, the NSW BOCSAR (Bureau Of Crime Statistics And Research) released data in September 2016, with an aim to ‘assess the longer-term effects of the 2014 NSW liquor law reforms on levels of violence in the inner Sydney area’.²⁶ The results show dramatic drops in non-domestic violence in the targeted areas, with Kings Cross decreasing by 49% and the CBD decreasing by 13%, indicating the lockout laws are in fact working to O’Farrell’s stated purpose. However, the failure of the Act to acknowledge other parts of Sydney is continually scrutinised, as below.

A point of contention is the fact that both the Star and the planned Barangaroo casinos are exempt from the prescribed precinct zones, even though the Star has seen an increase in violence since 2014. BOCSAR also reported that in areas surrounding the prescribed precincts such as Pymont, Surry Hills and Chippendale there was a 12% increase in violence, while in places like Newtown

²¹ Ibid, 10 – 12.

²² Ian Callinan, Parliament of NSW, *Review of Amendments to the Liquor Act 2007 (NSW)* (2016), 105.

²³ Callinan, above n 19, 88.

²⁴ New South Wales, *Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 Liquor Amendment Bill 2014 Second Reading*, NSW Legislative Assembly, 30 January 2014, (Barry O’Farrell), 11.

²⁵ Ibid.

²⁶ Bureau of Crime Statistics and Research, NSW Parliament, *The effect of lockout and last drinks laws on non-domestic assaults in Sydney: An update to September 2016* (2017) 1.

and Bondi there was a 17% increase.²⁷ Whilst the legislation had anticipated displacement of patrons, it is clear from this data that it has underestimated the influx of patrons and potential assaults into other areas. The exemption of the Star Casino is, as Lee Murray comments, ‘simply unfair and unjust’,²⁸ further finding that ‘if the Star were counted as a single venue...it would be by far the most violent venue in NSW according to assault data.’²⁹ The legislation creates a perception of favouritism, with the government being ‘soft on their “mates in high places”’,³⁰ and further does not reflect the purpose of lowering alcohol-fuelled violence if the Star is continually exempt.

However, Ian Callinan in his independent review drew attention to another lesser objective of the lockouts as ‘to disperse visitors and to reduce their density in the Precincts’,³¹ and found that his and the laws’ ‘Terms of Reference are concerned... not with the morality or legislative preference (if any) of gambling’.³² This standpoint may be true, but it still does not waive the perceived bias and shortcomings of the lockouts in achieving their object if more violent venues are exempt from this ‘tailored approach’³³.

Criticism – Media Portrayals, ‘The Image of the “Public Drunk”’³⁴ and International Alternatives

A main point of criticism of the lockouts laws is the fact that their grounds are in media hysterics and portrayals of the two aforementioned cases, and the brutalisation of the public drunk, especially young males. Julia Quilter opines that the NSW Government ‘was under enormous community and media pressure to [enact the legislation]’,³⁵ but also determined that the ‘Government could not be accused of a crude “knee-jerk” policy’³⁶, essentially stating that the laws were thought out to an extent, yet are still unsatisfactory. Quilter notes the significance of the media and community concerns in the creation of lockout laws, posing that:

Anxiety about alcohol-fuelled violence, and resolve to stop it, so dominated the political climate and media discourse of the day that there was little or no space in which to ventilate concerns about the merits of the Government’s strategy.³⁷

²⁷ Ibid, 10.

²⁸ Lee Murray, ‘Sydney’s Lockout Laws: For and Against’ 2016 28(1) *Current Issues in Criminal Justice* 117, [11].

²⁹ Ibid.

³⁰ Ibid.

³¹ Callinan, above n 19, 122.

³² Callinan, above n 19, 123.

³³ New South Wales, *Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 Liquor Amendment Bill 2014 Second Reading*, NSW Legislative Assembly, 30 January 2014, (Barry O’Farrell), 11.

³⁴ McNamara and Quilter, above n 2, [123].

³⁵ Julia Quilter, ‘Sydney’s Lockout Laws: Cutting Crime or Civil Liberties?’ (2016) 28(1) *Current Issues in Criminal Justice* 93, [5].

³⁶ Ibid.

³⁷ Ibid, [6].

Media should not have a role in pressuring the government to quickly enact laws that may not be as reasonable and calculated as other legislation, and therefore to be unbiased, the lockouts should be revisited and revised.

Further to the criticism of media exaggeration is the argument of the over-criminalisation of public intoxication, especially relating to young men, which seems to be the underlying root of the lockout laws' enactment. Asher Flynn notes in his article "Emblematic Violence" that 'there has long been a celebration of forms of hegemonic masculinity in Australia that values physical strength and aggressions as positive attributes'.³⁸ Luke McNamara also agreed that 'people (particularly young men) who are drunk in public are now widely seen as dangerous... need to reconsider the policy and law reform preoccupation with *public* intoxication'.³⁹ The lockout laws are seen as just another step towards total criminalisation of public intoxication, and it is completely unnecessary. Both Dnaiel Christie and Thomas Kelly's deaths were isolated incidents and were positioned away from certain venues, and both perpetrators had a history of crime⁴⁰, yet the focus of policy is not on preventing particular people from entering venues, but preventing *all* people from entering, which is unfair and unreasonable. Some other cases like *Stuart v O'Connor* further undermined the lockout laws by declaring some parts invalid.⁴¹ Public intoxication is almost never as dangerous to society as it is portrayed to be, and therefore this root of lockouts laws is quite unrealistic. McNamara further agrees and concluded that:

A sound evidence-based policy and law reform response to the personal violence and other risks associated with alcohol and drug use is one which avoids, rather than reproduces, the traditional tendency to treat criminal offending that occurs in public as more deserving of the State's attention than offending that occurs in private.⁴²

While I was in Europe, I also observed how different their culture and regulations were in relation to alcohol and venues. In Paris and Rome, they drank out in the open on picnics, bouncers did not come in every 10 minutes to take someone out because they were dancing too much, and most importantly, they embraced the nightlife. They gave people water and food instead of kicking them out straightaway, and venues provided entertainment, live music, bands, DJs, etc. to ensure that people always had something to do. Conversely, the regulation of venues in NSW is choking the life and vibrancy out of Sydney's nightlife, but somehow is not more efficient than its European counterparts.

Approval – Targeted Areas and Safety

³⁸ Asher Flynn, 'Emblematic Violence and Aetiological Cul-De-Sacs: On the Discourse of "One-Punch" (Non) Fatalities' 56(1) *British Journal of Criminology*, 179-85.

³⁹ McNamara and Quilter, above n 2, [125] (emphasis in original).

⁴⁰ See *R v McNeil (No 4)* [2015] NSWSC 1198, [15] for McNeil's history. See also *R v Loveridge* [2014] NSWCCA 120, [61] – [88] for Loveridge's history.

⁴¹ See *Stuart v Acting Deputy Secretary of the Department of Justice* [2016] NSWSC 1179 (25 August 2016). It ruled ss 53Y and 53Z invalid of the amended *Liquor Act*, which undermined the lockout laws' ability to continue to achieve its stated purpose, and further placed doubts in the public's mind of the laws' effectiveness.

⁴² McNamara and Quilter, above n 2, [126].

For all their flaws, lockout laws have succeeded in their purposes mentioned above, and to an extent have been beneficial to the community. BOCSAR in their same report found that there was a 48.7% decline in assaults in Kings Cross from 2014-2017, and that there were 613 fewer assaults in the CBD in the same period,⁴³ which is a victory for the lockout laws. Murray also criticised newspapers for implying a ‘right’ to a nightlife, stating ‘we do not have a “right” to access a licensed venue whenever we want... [it is] surely proper for a government to... regulate to ensure public safety’.⁴⁴

Callinan also concluded in his review that after the lockouts, the ‘[CBD and Kings Cross] were transformed into much safer, quieter and cleaner areas... terms of Amendments remain appropriate’⁴⁵. However he also stated the laws would ‘benefit from revision and harmonisation’.⁴⁶ It can also be reasonably established that the drop in violence in the CBD and Kings Cross areas is because of the severe drop of foot traffic in those areas, which in turn is caused by the lockout laws. The laws cannot fully prevent alcohol-related violence by simply disallowing people to enter venues at a certain time; they merely displace it to private rooms, Meriton suites, venues that do not have lockout laws, and even promote a more frustrated night time climate. It does not deal fully with the underlying issues of the drinking culture, and the image of the public drunk as expressed above.

Conclusion

The *Liquor Amendment Act 2014* (NSW) or the ‘Lockout Laws’ are paradoxical, controversial, beneficial to an extent, harsh on the nightlife, victorious in creating a safer environment and fulfilling their tailored object, yet also succeeding in brutalising youth. In the end, they do not consider the whole of Sydney as a city with many hubs of venues, and their implementation have caused many to lose opportunities to experience the nightlife, and many more to lose their jobs. They find their grounds mostly in media scrutiny and exaggeration, rather than legislation and legal principle. They continue to publicly and unfairly criminalise public intoxication, and create a disappointing reputation for Sydney’s nightlife as a whole. I agree with Ian Callinan, in saying that they are beneficial to cleaning up the prescribed precincts, but would benefit from revision and less preoccupation with generalising and persecuting the citizens that try to enjoy Sydney’s nightlife.

Recommendations

I would recommend a complete overhaul of the lockout laws; they have majorly had negative effects on Sydney, and are not an appropriate measure to deal with alcohol-related violence. I fully support their repeal, and an implementation of 24-hour public transport, *especially* trains from 1am to 5am on Friday and Saturday nights. The build up of masses at Town Hall waiting for the buses have

⁴³ BOCSAR, above n 22, 4.

⁴⁴ Murray, above n 24, [4] – [5].

⁴⁵ Callinan, above n 19, 10.

⁴⁶ *Ibid*, 12.

illustrated the many negative sides of public intoxication that lockout laws apparently have erased from the CBD. I recommend the appointment of a Night Mayor, and to have a Committee on the Nighttime Economy of Sydney, in order to ensure correct regulations in the future. I also recommend the government promoting old much-loved venues to return once the laws are repealed. Most of all, I recommend that the NSW government realises that there will always be an aspect of Sydney that is 'red-light', and ignoring this fact will only encourage the frustrated climate I observe every night I go out.

As university students, we are being introduced to Sydney's nightlife, while also hearing about the nightlife that was present when our parents were going out. It is embarrassing to observe how much of a nanny state this city has become. Venues in Coogee, Bondi, Newtown, and Marrickville are bulging with the weight of the masses flocking from the prescribed precincts, while venues in the CBD and Kings Cross are left to fend for themselves. For the benefit of this beautiful city and its existing venues, its faltering live entertainment sector, and for the sake of vibrancy, I support a complete repeal of these detrimental laws.

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The following 25 persons also support this submission:

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