

SYDNEY'S NIGHT TIME ECONOMY

Organisation: Australian Taxpayers' Alliance

Date Received: 3 July 2019

**JOINT SELECT COMMITTEE ON SYDNEY'S NIGHT-TIME ECONOMY—SUBMISSION OF THE
AUSTRALIAN TAXPAYERS' ALLIANCE (ATA)**

- 1 The Australian Taxpayers' Alliance (ATA) thanks the committee for the opportunity to provide comments to the abovementioned inquiry.
- 2 The ATA is a 75,000+ member national grassroots taxpayers' advocacy group which stands for the principles of individual freedom, minimising government waste and rolling back inefficient or ineffective regulatory barriers which impede the progress and prosperity of Australia's economy and the welfare of taxpaying individuals and businesses, as well as ensuring the economic and social freedom of responsible Australian adults who work hard, pay their taxes, and ought to be empowered with the right to make and be responsible for their own choices.
- 3 The ATA's interest in this inquiry stems from our desire to support Sydney's night-time economy, comprised of tens of thousands of small businesses as well as their workers, proprietors and patrons, who have been severely and negatively impacted by NSW's lockout laws and other restrictive regulations intended to uphold their safety.
- 4 It is submitted, on a careful analysis of the evidence, that the lockout laws have not been as effective in reducing drinking-related violence and anti-social behaviour as they are purported to be, have similarly not been responsible for reducing anti-social drinking-related behaviour in comparable jurisdictions overseas, have caused undue damage to countless businesses and their workers, and have undermined the reputation Sydney once held for a thriving night-time economy.
- 5 It is further submitted that measures such as the lockout laws inadvertently and incorrectly promote the notion that drinking (as opposed to irresponsible drinking or antisocial tendencies of the individual) causes violence and anti-social behaviour. In doing so, it is submitted that these laws supplement a drinking culture which sees alcohol as an implicit 'license to transgress' from otherwise accepted social norms by allowing irresponsible or anti-social individuals to excuse their behaviours and to pass on blame for them to a product which is responsibly consumed by a vast majority of Australian adults. It is submitted that evidence for this proposition lies in comparisons between drinking cultures such as Australia, the UK and Scandinavia, and those of 'integrated' drinking cultures such as the Latin American and Mediterranean countries where alcohol is consumed in significant quantities albeit without the same rates of drinking-related violence.
- 6 A range of alternative measures are submitted in these comments which have been employed successfully in comparable cities and jurisdictions and can promote a

thriving night-time economy, whilst mitigating anti-social behaviours related to alcohol consumption or the operation of a night-time economy.

Lockout laws & community safety

- 7 The lockout laws, which prohibited entry into bars and clubs within precincts of the Sydney CBD after 1 30 am and mandated licensed venue closures at 3 am, were prompted by community safety concerns triggered by two fatal 'one punch' assaults targeted at 18-year olds in July 2012 and New Years' Eve 2013, both in the King's Cross area.¹ This was the case even though both assaults took place early in the night, at 10 pm and 9 pm respectively. Both offenders were in a pre-existing state of intoxication prior to entering the King's Cross area, and both offenders were characterised by a "pre-existing history of violent conduct."² Hence, lockout laws would have made no difference to the commission of the two particular fatal assaults, and the incidents cannot be employed to justify the existence of lockout laws.
- 8 Furthermore, it is noted that mandatory ID scanners for licensed high risk venues, were introduced to King's Cross in June 2014,³ little over 3 months since the initiation of lockouts on 24 February 2014.⁴ These must be used between 9 pm and 1 30 am (or 2 am for any venues that are operating with a later 2am lockout time) every night of the week when the venue is trading.⁵ Given that this measure more effectively targets offenders with a pre-existing history of violent conduct or anti-social behaviour than lockouts, it is submitted that their confounding effect discounts the attribution of improved community safety to the introduction of lockout laws. It is further submitted that the hasty passage of lockout laws in the wake of the two aforementioned fatal incidents may be regarded as a knee-jerk reaction which needlessly pre-empted the introduction of more targeted and

¹ Senate Committee, Interim report: sale and service of alcohol (2016) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Personal_choice/Interim%20Report%20b. p.2-4.

² Ibid. p. 26.

³ Liquor & Gaming NSW, 'King's Cross ID Scanner Review' September 2016. p. 5. <https://www.liquorandgaming.nsw.gov.au/documents/reports/kings-cross-id-scanner-review-report-sept-2016.pdf>

⁴ Tom Rabe, "New data casts doubt on lockout laws' effects on violence in Sydney's CBD" *Sydney Morning Herald* 20 June 2019. <https://www.smh.com.au/politics/nsw/lockout-laws-haven-t-curbed-violence-in-cbd-new-research-20190617-p51yi4.html>

⁵ NSW Department of Industry, 'Kings Cross ID Scanner Requirements' April 2019. P. 2. <https://www.liquorandgaming.nsw.gov.au/documents/resource-centre/CP4464-Kings-Cross-approved-ID-scanner-requirements-guideline.pdf>

sensible measures that have lesser impact on the economic interests of Sydney's night-life, and the ongoing viability of profitable night-time businesses.

- 9 Notwithstanding points 7 and 8, the ATA nonetheless notes that while the lockdown laws may have been prompted by the aforementioned fatal 'one punch' assault incidents, the secondary reading speech for the laws indicates that their purpose extends to the mitigation of violence more generally, as well as the mitigation of self-inflicted harm and anti-social behaviour.⁶ The following points and sections will therefore consider the effectiveness of the laws in addressing their stated purpose in light of the evidence.
- 10 **Lockout laws were not responsible for reducing violence:** Although the NSW Bureau Of Statistics, Crime and Research (BOSCAR) found that lockdown laws were followed by a fall in the rate of non-domestic violence incidents in the Sydney CBD (13%) and King's Cross (49%),⁷ the University of Sydney Centre for Transitional Data Science notes that the report's conclusion that assumes a causative link between lockdowns and the decrease in violence is incorrect, as the decline in violence follows a pre-existing decline trend which preceded the lockdowns.^{8 9} Dr Roman Marchant of the Centre for Transitional Data Science notes that any effect which the lockdowns had on non-domestic violence rate declines is indirect at best, as they were followed by a decline in foot traffic to the lockdown zones, including a near 40% decline in foot traffic to King's Cross between 2014 and 2016. Notably, the 2016 Senate Inquiry heard evidence from some submitters that the drop in traffic to King's Cross was as high as 80%.^{10 11}

⁶ Callinan Review (2016),

<http://www.liquorlawreview.justice.nsw.gov.au/Documents/report/LiquorLawReviewReport.pdf> p. 24.

⁷ N Donnelly et al, 'Did the 'lockout law' reforms increase assaults at The Star casino, Pyrmont?' (2016) NSW BOSCAR *Crime and Justice Statistics* No. 114, <https://www.boscar.nsw.gov.au/Documents/BB/Report-Did-the-lockout-law-reforms-increase-assaults-at-The-Star-casino-Pyrmont-bb114.pdf>.

⁸ Tom Rabe, "New data casts doubt on lockout laws' effects on violence in Sydney's CBD" *Sydney Morning Herald* 20 June 2019. <https://www.smh.com.au/politics/nsw/lockout-laws-haven-t-curbed-violence-in-cbd-new-research-20190617-p51yi4.html>

⁹ Centre for Translational Data Science, University of Sydney [data from NSW Bureau of Crime Statistics and Research (BOCSAR)]

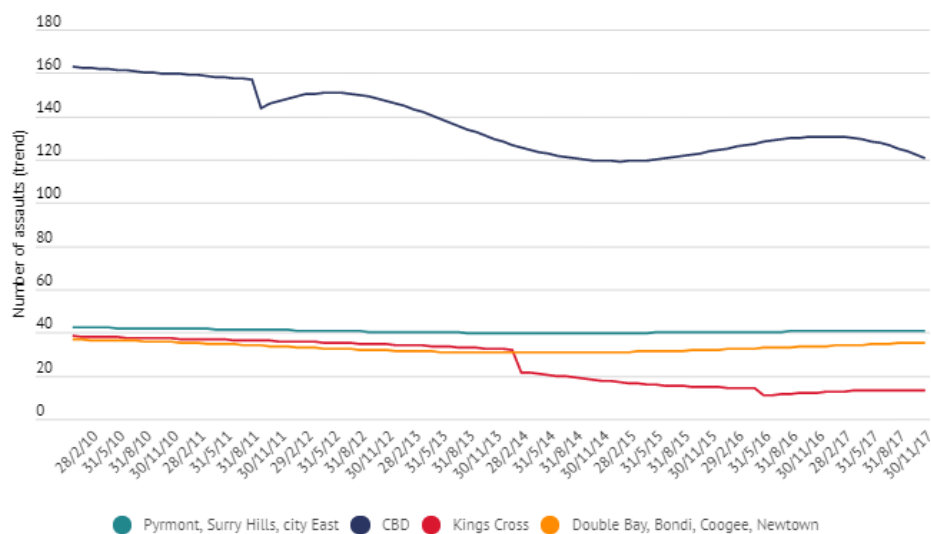
¹⁰ Senate Committee, Interim report: sale and service of alcohol (2016)

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Personal_choice/Interim%20Report%20b. p.14.

¹¹ For a comparison of Kings Cross pedestrian data in 2012 and 2015, see: City of Sydney, Late Night Management Areas Research Phase 4 Report, September 2015, p. 22, <http://www.cityofsydney.nsw.gov.au/vision/towards-2030/business-and-economy/sydney-atnight/late-night-research#page-element-dload> (accessed 3 May 2016).

Number of (non-domestic) assaults reported to police

The lockdown laws restrictions were applied in February 24, 2014 to Kings Cross and the CBD but not the outlying areas.



Note: These trend lines are mean estimates and have associated uncertainty which are not displayed in the visualisation.

- 11 The University of Sydney research conducted by Dr Marchant confirms findings previously made by the Senate Committee Inquiry in 2016 who cite a statement from NSW BOSCAR Director Dr Donald Weatherburn that the dramatic drop in assault rates in 2014 was entirely consistent with and followed on from a slower yet continuous decreasing trend in non-domestic assaults across NSW state from 2008 onwards. Dr Weatherburn further notes in his testimony to the Senate committee, that there has been a general fall in youth alcohol consumption across Australia over recent decades which could have contributed to the decrease in assaults.^{12 13}
- 12 Other confounding factors must be taken into account when inferring any decline in alcohol-fuelled violence or anti-social behaviour as a result of the lockdown laws. For example, alcohol consumption in general across Australia has fallen significantly, meaning that we now consume the lowest per-capita levels of alcohol as a country since the 1960s according to the ABS.¹⁴
- 13 The latest BOSCAR report however, also notes the following in relation to increased violence in proximal and distal displacement areas surrounding the lockdown zones: *“the current analyses also found evidence for geographical displacement of assaults*

¹² Senate Committee, Interim report: sale and service of alcohol (2016)

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Personal_choice/Interim%20Report%20b. p.13-14.

¹³ Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p.22–24.

¹⁴ Euromonitor International. *Alcoholic drinks in Australia*. Euromonitor International Ltd. London, (2012).

to areas immediately adjacent to the Kings Cross and Sydney CBD areas, as well as to other areas that were in easy reach of these Precincts. In both the Proximal Displacement Areas (which includes The Star and other venues around Ultimo and Surry Hills) and the Distal Displacement Areas (which includes Double Bay, Newtown, and Bondi among others) there was a 12% and 17% increase, respectively, in non-domestic assaults after the liquor law reforms took effect; an increase that was not evident to the same extent across other areas of NSW over the same period.”¹⁵

- 14 **Lockout laws endanger life by forcing patrons onto the street, or forcing them to return home early:** The City of Sydney (2016) found that following the lockout laws, alcohol-related incidents peaked at 3 AM when revellers were forced onto the streets.¹⁶ This is an important finding as Australian research indicates that just 9.78% of alcohol-related injuries occur at licensed venues with 36.14% taking place at home, 13% occurring on the street, and 41.07% happening at other locations.¹⁷
- 15 **NSW Alcohol-related incident statistics obfuscate the link between licensed venues and violence:** Under the state-wide ‘Alcohol Linking Program’, an incident is linked to a venue by the police even if the victim simply attended and consumed some quantity of alcohol at the venue prior to becoming the victim of an assault and regardless of whether the perpetrator was affected by alcohol at all or attended the licensed venue.¹⁸ This has resulted in ‘stringent conditions’ being placed on a number of venues in Kings Cross and the CBD. One such venue, Hugo’s Lounge, suffered from 30+ ‘stringent conditions’ and was eventually forced to close in 2015 due to the impact of the lockout laws and the stringent conditions following a 60% decline in revenue.¹⁹ It is submitted that imposing lockouts or similar

¹⁵ N Donnelly et al, ‘The effect of lockout and last drinks laws on non-domestic assaults in Sydney: An update to September 2016’ (2017) NSW BOSCAR *Crime and Justice Bulletin* No 201, <https://www.boscar.nsw.gov.au/Documents/CJB/Report-2017-Effect-of-lockout-and-last-drinks-laws-on-non-domestic-assaults-cjb201.pdf>. P.9-10.

¹⁶ City of Sydney (2016), Late Night Management Areas Research – Phase 4 Report: http://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0011/250202/2015-541941-Report-Late-Night-Management-Areas-Research-Final.pdf

¹⁷ Bunker, N., Woods, C., Conway, J., Barker, R., & Usher, K. (2017). Patterns of ‘at-home’ alcohol-related injury presentations to emergency departments. *Journal of clinical nursing*, 26(1-2), 157-169. <https://onlinelibrary.wiley.com/doi/abs/10.1111/jocn.13472> Note: This study was conducted using Emergency department surveillance data sourced from the Queensland Injury Surveillance Unit for 2003-2012. It did not distinguish between domestic and non-domestic alcohol-related injuries.

¹⁸ Wiggers, J. H. (2007). Reducing alcohol-related violence and improving community safety: the Alcohol Linking Program. *New South Wales public health bulletin*, 18(6), 83-85. <http://www.phrp.com.au/wp-content/uploads/2014/10/NB07061.pdf>

¹⁹ David Spicer, “Hugo’s Lounge in Sydney’s Kings Cross forced to close after revenue drop, owner blames lockout laws” *ABC News* 30 July 2015. <https://www.abc.net.au/news/2015-07-30/hugos-kings-cross-to-close-blames-nsw-lockout-laws/6659340>

restrictions on licensed venues as a means of promoting community safety based on these statistics is akin to placing restrictions on bus companies or restaurants because the victim of an assault happened to have used public transport or dined at a restaurant prior to becoming the victim of an assault. It is noted that the effect of these statistics is to confuse correlation with causation. While intoxication of the victim or the perpetrator can certainly be a factor in the commission of a crime, this methodology fails to determine whether they are a factor in the specific incidents classified as alcohol-linked or licensed venue-linked, and fails to ascertain whether the absence of drinking or acts or omissions by the venue would have or could have prevented the incident in question from taking place. It is unconscionable to attribute responsibility for an assault on an alcohol-affected victim to a venue if the victim was not targeted due to their level of intoxication, if the victim did not irresponsibly consume alcohol at the licensed venue, if the victim consumed a significant amount or even most of their alcohol for that night at a previous or subsequent location or if the victim also drank at home or an environment where a venue could not monitor their alcohol consumption. For example, if an individual is robbed on the street after consuming some alcohol at a licensed venue, it does not follow that the robber targeted his or her victim because he perceived them to be in a state of intoxication, nor does it follow that the victim was more susceptible to robbery due to their partial intoxication were it at a sufficiently low level.

- 16 **Lockout laws have 'intensified' crime in the lockout zones:** It is submitted that even if it the decline in non-domestic assaults in the lockout zones consistent with pre-existing trends and confounding factors which may have facilitated the decline is taken as evidence of the lockout laws' effectiveness in improving safety, this too must be discounted. This is because the 40% decline in foot traffic offsets the 13% and 49% declines in non-domestic assaults in the Sydney CBD and King's Cross. The means that the lockout laws have either had a negligible or a negative impact on community safety as individuals who do travel to these places are just as likely or even more likely to be victims of assault.
- 17 It is submitted that the committee should choose assaults per-capita rather than raw level of assaults as the measure for assessing any community safety impacts of lockouts as this is the measure which most accurately speaks to the safety experience of those who are in the area.
- 18 It is further noted that, based on data from St Vincent's Hospital, the number of alcohol-related traumas during the lockout period fell by just 34 cases over a 12-month period, or 2.8 per month.²⁰ This includes many cases of alcohol-related trauma which are completely unrelated to activities in Kings Cross or to the lockouts. For example, it would include admissions related to motor vehicle accidents, alcohol consumption at home, alcohol consumption at nearby major

²⁰ Fulde G., Smith M. & Forster S. (2015), "Presentations with alcohol-related serious injury to a major Sydney trauma hospital after 2014 changes to liquor laws", Medical Journal of Australia 203(9), 2 November 2015.

sporting events at Allianz Stadium or Sydney Cricket Ground which can be hotspots for assaults etc. Notably, this 34 case fall has been cited by some studies as evidence for the effectiveness of lockouts.²¹ However, this increase includes admissions from 6 pm on Friday until 6 am on Monday and therefore includes daytime hours which were not affected at all by lockouts.*

- 19 However, even taking the 34 case figure in conjunction with the 40% foot traffic decline to King's Cross, this means that those who venture out to King's Cross now had at least a 25% higher chance of ending up in the emergency room at St Vincent's Hospital one year after the policy's enactment than they did prior to the lockouts.
- 20 **Lockout laws have 'intensified' crime in the proximal/distal areas:** It is submitted that while the 7% and 12% increase in non-domestic assaults in the proximal and distal areas respectively outside the lockout zones has come with increased foot traffic to these areas, these figures must be offset against the pre-existing declining trend in non-domestic assaults in Sydney more broadly, as well as the pre-existing declining trend in alcohol consumption. It is therefore submitted that lockout laws have not been successful at promoting community safety by mitigating alcohol-fuelled violence. Furthermore, it is likely that the lockouts' negative impact on community safety in the Pyrmont/Star Casino area is significantly even greater than claimed by BOSCAR.
- 21 **Lockout laws made King's Cross significantly less safer between 9 pm and 1 am:** One year after the lockouts took effect, data from St Vincent's emergency room revealed a significant increase in injuries specifically related to alcohol between 9 pm and 1 am. A 2015 study reported that this was specifically due to **"increased alcohol intake earlier in the evening ("preloading")"**.²²
- 22 It is submitted firstly, that this increase is especially significant as it has occurred despite both a decline in foot traffic to King's Cross, and a pre-existing declining trend in alcohol-related injuries and alcohol consumption in Sydney. It is further submitted that emphasis should be placed on the lockout laws' impact on encouraging 'preloading' as this pertains to intoxication taking place in unregulated private environments (instead of licensed venues) where Responsible Service of Alcohol regulations are not enforceable and clandestine behaviour is therefore more likely. Lockouts have encouraged a pre-loading culture as revellers who plan for longer nights out are now likely to start their 'night' earlier than before, that is prior to when individuals are likely to frequent licensed venues. This is an especially

²¹ Ibid.

*- When hours relevant to the lockout are considered (1am-4am) the decrease in cases falls to 25 – around 2 per month.

²² Fulde G., Smith M. & Forster S. (2015), "Presentations with alcohol-related serious injury to a major Sydney trauma hospital after 2014 changes to liquor laws", Medical Journal of Australia 203(9), 2 November 2015. P.3.

dire consequence of the lockouts as the incentivisation of 'pre-loading' means that local nightlife economies not only suffer due to reduced patronage and the reduced purchase of beverages on the premises, but may be forced to turn away even more patrons as they are more likely to receive individuals at the door who present themselves in a state of intoxication which is difficult to precisely determine. Furthermore, it is submitted that a prevalent pre-loading culture incentivises illicit drug consumption which is more difficult in a regulated setting such as a licensed venue due to the presence of security professionals and observant staff. It is noted that at least one of the two fatal assaults which triggered the drafting and enactment of lockout laws in Sydney was conducted by an offender under the influence of illicit drugs which were not consumed on a licensed premises.²³

- 23 **Lockout laws have failed to improve community safety in Queensland:** In 2016, the Queensland state government brought in its own 'lockout laws' to target alcohol-fuelled violence in nightlife precincts. Pubs and bars have to call last drinks by 3 am instead of 5 am. They are also prohibited from selling 'rapid intoxication drinks' like shots. Researchers from Griffith University, University of Queensland and Queensland University of Technology studied the effects of the laws through a combination of blood alcohol level tests, interviews with participants, and crime statistics.²⁴ They found that assault rates, public order offences, and general levels of fear in participants, were not significantly affected by the lockout laws even a year after their implementation. Concerningly, the researchers found that the Queensland lockouts, like the NSW lockouts, had caused an increase in pre-loading, meaning that patrons were actually arriving at nightlife precincts later and were arriving significantly more intoxicated. While 80% of patrons surveyed prior to the lockouts were found to have pre-loaded, that figure rose sharply to 90% after the lockouts. Before the Queensland lockouts, people were arriving at party precincts with an average blood alcohol content (BAC) of approximately 0.07 on average. This figure climbed to 0.09 per cent in the year after the laws were introduced.²⁵ The Queensland government subsequently declined to legislate a 2017 amendment which would have brought the 'last drinks' time even further forward to 1 am.

²³ Jamelle Wells, "Thomas Kelly case: Kieran Loveridge gets more jail time over one-punch death" *ABC News* 4 July 2014. <https://www.abc.net.au/news/2014-07-04/loveridge-gets-more-jail-time-over-one-punch-death/5571222>

²⁴ Tim Swanston "Queensland alcohol laws mean young people are drinking more" *ABC News* 19 June 2019. <https://www.abc.net.au/triplej/programs/hack/queensland-alcohol-laws-mean-young-people-are-pre-drinking-more/11222476>

²⁵ Stuart Layt, "Queensland lockout laws lead to a rise in 'pre-loading'" *Brisbane Times* 19 June 2019. <https://www.brisbanetimes.com.au/national/queensland/queensland-lockout-laws-led-to-rise-in-pre-loading-20190618-p51yzl.html>

- 24 Similar results were reported in the city of Surfer's Paradise, Queensland. A 2016 study analysed both police and ambulance data.²⁶ It showed that the lockdown introduction had no statistically significant impact on rates of crime, violence, head and neck injuries, or intoxication amongst the community over the 2 years post-introduction of the law. Hot spot maps indicated limited spatial shift of crime within Surfers Paradise following the lockdown introduction, with evidence of a temporary intensification of crime in already established incident hot spots. Notably, while the authors found that there was a statistically significant impact on distribution of crime, this only indicated a temporal displacement of crime instead of a reduction.
- 25 **Lockout laws in Newcastle and community safety:** Newcastle enacted its lockdown laws in 2008: a year which coincides with the enforcement of key liquor law amendments (of the 2007 Liquor Act) including small bar licenses, the three-strikes rule, on-the-spot fines for public drunkenness, and further measures in the responsible service of alcohol.²⁷ It is submitted that the effects of Newcastle's lockdown laws must therefore be taken in conjunction with the confounding effects of these amendments and measures. It is further noted that unlike Newcastle's lockdowns, the other amendments of 2008 affected the state of NSW, including Sydney's CBD, King's Cross and the other proximal and distal areas. Notably, alcohol-related violence across NSW which had reached its peak in 2008 after a two year increasing trend, subsequently underwent a 6% per year declining trend between 2008 (when lockdowns limited to the Newcastle CBD were implemented) and 2014 (when Sydney's lockdowns took effect). It is therefore submitted that the committee should attribute a greater degree of responsibility for the reduction in alcohol-fuelled violence in Newcastle since 2008 to measures unrelated to its lockdown laws.
- 26 It is nonetheless noted that the latest review of Newcastle's lockdowns (the 'Horton review') concluded that the rules had been followed by a reduction in alcohol-related violence in Newcastle CBD with no significant displacement effects, and recommended no further changes to trading hours restrictions imposed by Newcastle's lockdowns.²⁸ However, it is also noted that this recommendation was based in significant part on a number of factors outside the impact of Newcastle's lockdowns on community safety. These include the lack of demand from local businesses acclimatised to lockdown restrictions 10 years after they were enacted for

²⁶ De Andrade D, Homel R, Townsley M. Trouble in paradise: The crime and health outcomes of the Surfers Paradise licensed venue lockdown. *Drug Alcohol Rev* 2016;35:564-572.

<https://www.ncbi.nlm.nih.gov/pubmed/26913775>

²⁷ *Liquor and Gaming Legislation Amendment Act 2018* No 7 [NSW]

http://classic.austlii.edu.au/au/legis/nsw/num_act/laglaa2018n7387.pdf

²⁸ Dr Jonathan Horton QC 'REVIEW OF LIQUOR LICENCE CONDITIONS IN THE NEWCASTLE CENTRAL BUSINESS DISTRICT AND SURROUNDING AREAS: ADVICE TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY' (2018) <https://www.liquorandgaming.nsw.gov.au/documents/ilga/public-consultations/newcastle-licence-review-the-horton-report-2018.pdf>

them to be repealed due to commercial uncertainty about how this would impact the challenges or competition their business faces,²⁹ and satisfaction that these particular businesses had with the exceptions to allow later trading hours for small bars.³⁰ Newcastle is also a regional city which is far smaller both as a city and night-time economy than the Sydney metropolitan area. It is submitted that this too would bear significantly upon demand from local businesses for an extension to trading hours, as well as the extent to which the lockouts in that particular area could displace violence to areas outside the lockout zone.

- 27 Despite the unwillingness of Dr Horton QC to recommend further liberalisation of Newcastle's lockout restrictions, the Horton review also concluded that there was no *"sufficiently cogent case for the reduction in opening hours, or for imposing an earlier closing time ... To curtail them further would be unreasonable to encroach upon the activities of those who enjoy late night and early morning activities, the nighttime economy, and the live music industry."*³¹
- 28 Importantly, the Horton review accepted evidence that the effects of Newcastle's lockouts on community safety were impacted by several key confounding factors: *"The introduction of consequence policing in early 2011; declared premises being 'put on notice' [that the restrictions against venues classified as 'violent' per s11(1)A of the Liquor Act NSW would be enforced strictly against them]; and ... the introduction of ID scanning and group banning [from late 2012]."*³² It is noted that venues subject to the 2008 restrictions still featured prominently on NSW's 'Violent Venues List' until 2012. On 30 May 2012, there were three subject venues listed in the Top 20 on the Violent Venues List: Finnegans (#2), Fanny's (#3) and King Street Hotel (#13). Other Newcastle venues which made the list include The Cambridge and The Queens Wharf Brewery Hotel.³³ It is noted that in c. June 2012, these venues, as members of the 'Newcastle Entertainment Precinct' (NEP), voluntarily funded the establishment of an ID scanning and shared banning network for problem patrons.³⁴ By June 2013, one year after the NEP's voluntary shared banning network was implemented, none of the above-mentioned venues or any other NEP member

²⁹ Ibid para 262.

³⁰ Ibid para 264.

³¹ Ibid para 265.

³² Ibid para 194.

³³ https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0004/204448/Round-8-Level-1-2-and-omitted.pdf

³⁴ <https://newcastleentertainmentprecinct.com.au/> (Accessed: 1 July 2019)

venues were on NSW's violent venues list.^{35 36} It is therefore submitted that private and voluntary interventions, and/or those which target violence or problem patrons rather than imposing blanket restrictions on drinking such as lockouts which apply to responsible patrons and violent or irresponsible drinkers alike, have been demonstrably effective in curbing alcohol-fuelled violence and improving community safety in Newcastle.

- 29 **Lockout laws in the United States:**^{37*} 'Last call' restrictions in the United States vary from state-to-state and operate in a similar fashion to Australian 'lockout' laws by imposing mandated closing times on licensed establishments. It is submitted that the United States as a first-world, anglophone, western liberal democracy, is culturally and economically comparable to Australia. The following chart plots every U.S. state except South Carolina* as a blue dot based on their mandated closing time for licensed establishments set against the rate of adults who engage in 'binge drinking' (having 8 or more drinks on a single occasion for a woman and 15 or more drinks for a man) plus those who engage in 'habitual drinking' (consuming 4 or more alcoholic beverages a week for women and 5 or more drinks for men.) It can be seen that there is no correlation at all between earlier closing times and rates of binge or habitual intoxication.

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https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0003/204447/Round_9_Level_1_2_and_omitted.pdf

36

https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0020/204446/Round_10_Level_1_2_and_omitted.pdf

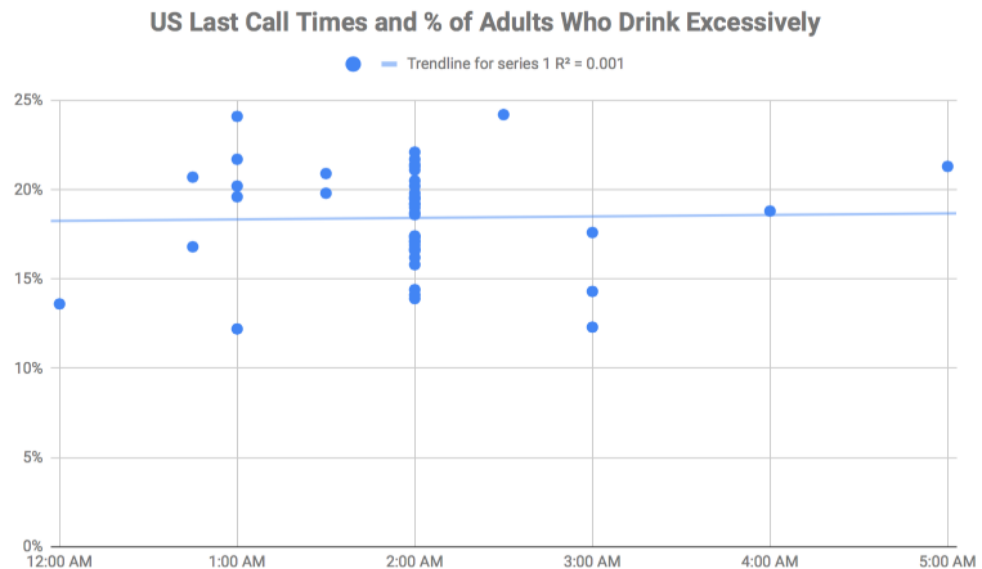
*- South Carolina was excluded as it utilises different 'last call' times for each of its constituent counties.

³⁷ Data for each US state is taken from the United Health Foundation's Annual Report. United Health Foundation's Annual Report. I downloaded their data and combined it with state last call laws.

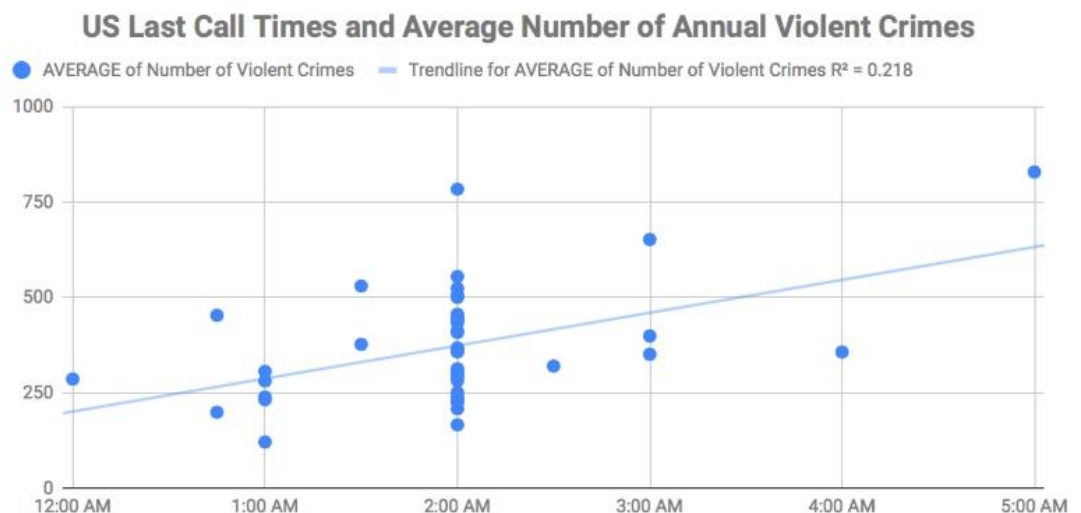
<https://www.americashealthrankings.org/explore/annual/measure/ExcessDrink/state/AR>

*- All data for US states and cities has been collated here:

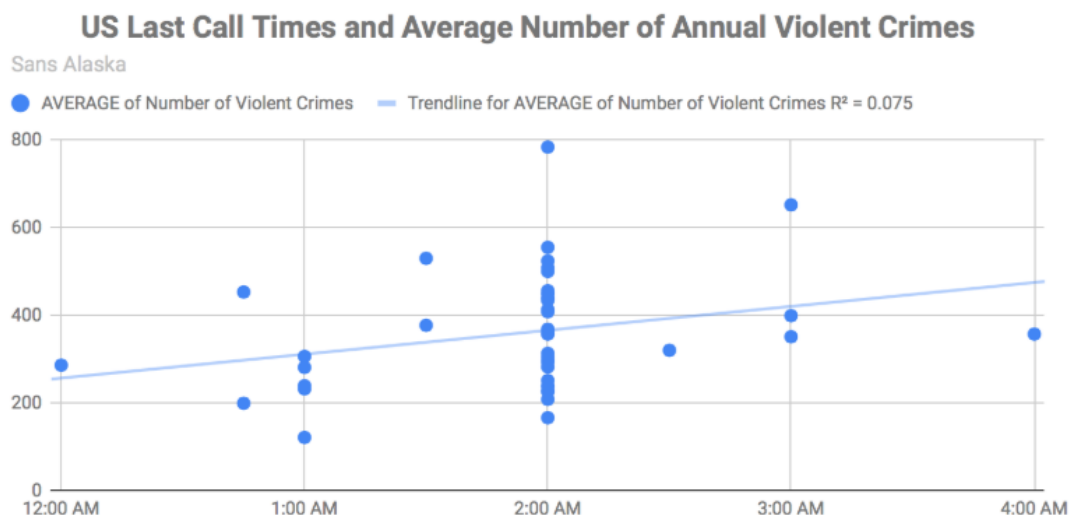
<https://docs.google.com/spreadsheets/d/1ejWj032pkCVCNgThgv8NxFH7FDzC7Y5QmO69-PswwRI/edit?usp=sharing>



- 30 While the following chart (which sets U.S. states except South Carolina by mandated closing time against the per-capita annual rate of violent crimes) appears to show a mild correlation/trend, it is submitted that this trend is due to factors outside of mandated closing times.



- 31 When the outlier state of Alaska which formally allows licensed establishments to remain open until 5 am is removed, the trend is largely eradicated. Last call times now only account for 7.5% of the change in violent crime. Notably, leaving the official closing times aside, Alaska has some of the strictest drinking-related restrictions in the United States. Some of its constituent counties completely ban the consumption of alcohol.



- 32 The outlier state (Alaska), like many other US states, is divided into three categories of county: dry, damp, and wet counties. Dry counties ban the possession, consumption, transportation, and sale of alcohol. Damp counties ban the sale of alcohol, but allow the possession and consumption of alcohol. Wet counties have fully legalized alcohol for adult consumption. The following table shows the average number of violent crimes for all US dry/damp counties and towns, against the same numbers for wet counties. Age-adjusted alcohol related death rates are also shown. There appears to be very little correlation between having dry or damp counties within a state and excessive drinking, violent crime, or Alcohol Associated Deaths. Alaska again is an outlier with 21% of adults reporting excessive drinking, 829 violent crimes a year, and 41 alcohol-associated deaths for every 100,000 individuals. Both violent crime and alcohol related deaths are higher than any other state. Alaskans also have the highest rate of alcohol poisoning in the US. Many of their alcohol-related fatalities also occurred primarily, insignificant part, or in conjunction with amphetamine use, or involved suicide.

<i>Dry/Damp Counties/towns</i>	AVERAGE of Percentage of Adults who drink excessively	AVERAGE of Number of Violent Crimes	AVERAGE of Age-Adjusted AAD Rate per 100,000
No Total	19%	355	29.0
Yes Total	18%	397	28.7
Grand Total	18%	377	28.9

- 33 Notably, 31% of alcohol-associated deaths in the USA involve casualties who are under 21 and who are therefore not legally allowed to drink or allowed to legally enter a licensed premises. Closing time restrictions can play no role in mitigating these deaths, and could even be making the problem worse by encouraging younger people to 'pre-load'. The USA's prohibition on consuming alcohol for those under 21 also influences this outcome as it has meant that those under this age engage in drinking in private, unregulated and generally unmonitored settings

where irresponsible or clandestine behaviour is more likely to occur. It is submitted that liberalising access to licensed premises and encouraging the consumption of alcohol in such regulated environments can be beneficial in mitigating deaths associated with excessive intoxication.

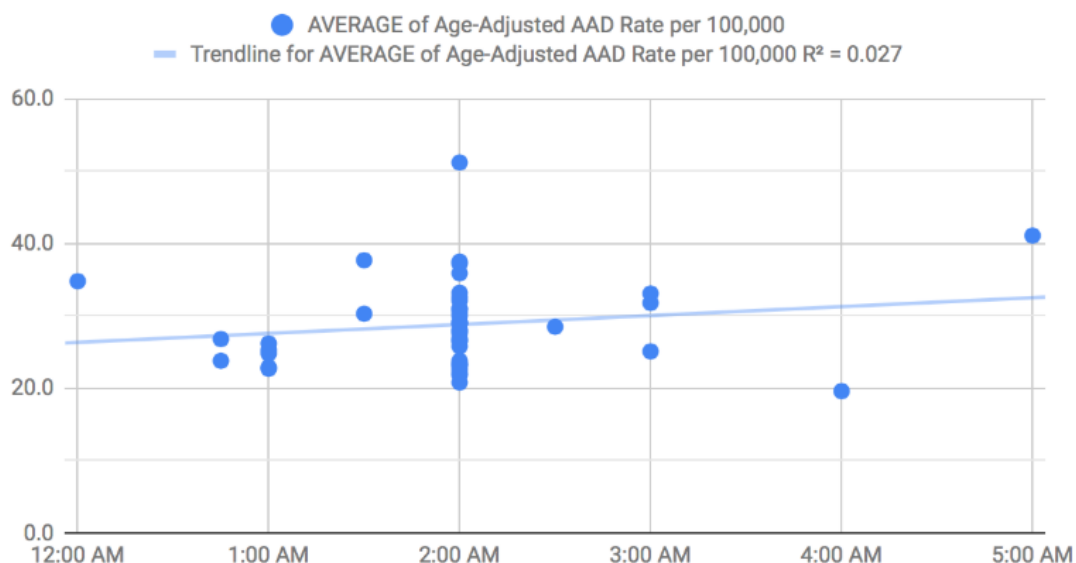
- 34 In the following graphs, each blue dot represents a US state with their last call time set against the number of alcohol-related deaths. Notably again, the trend-line suggesting a correlation, is virtually eliminated when the outlier single state of Alaska is removed. Further notably, New Mexico has an especially high number of 'alcohol-related' deaths despite having a below average rate of excessive drinking and a 2 AM mandated closing time. Many of these deaths occur as a result of individuals freezing to death when they travel between dry and wet counties in the state.^{38 39} The same or similar factors are attributable to many alcohol-related deaths in cold and mountainous US states,⁴⁰ which at least partially explains why states like Minnesota, Alaska and New Mexico have above-average rates of alcohol-related deaths. Alaska and New Mexico are home to large remote 'first nations' (indigenous) communities with high rates of unemployment, low average socio-economic status, and significantly above average rates of alcoholism. These factors do not apply to Sydney or major drinking precincts in NSW. It is therefore submitted that mandated closing times are not correlated with a reduction in alcohol-related deaths, and that liberalised trading hours for licensed venues would in fact help mitigate some of these deaths by lowering the chances of an alcohol-afflicted person being exposed to harsh cold as they will be able to wait for warmer temperatures inside a heated establishment where they remain in the presence of others who they can reach out to in a distress situation.

³⁸ Jackie Jadrnak "N.M. Is Fourth in Freezing Deaths, Alcohol Blamed For Lethal Trend" *Albuquerque Journal* 24 March 2006. <https://www.abqjournal.com/news/state/444652nm03-24-06.htm>

³⁹ Associated Press "New Mexico's annual tragedies: Dying cold, alone and drunk in a field" CBS News 22 December 2015. <https://www.cbsnews.com/news/alcoholism-hypothermia-deadly-recurring-navajo-new-mexico/>

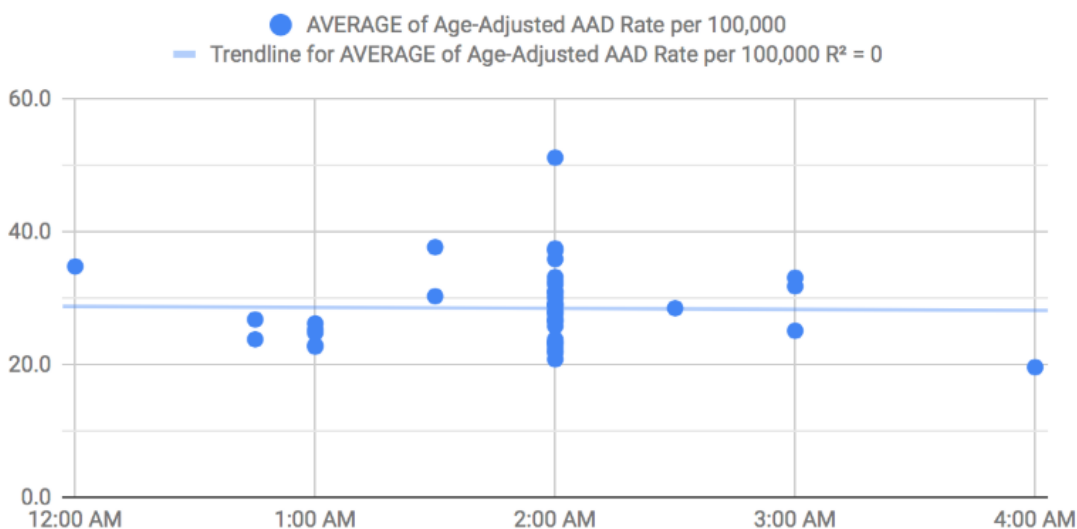
⁴⁰ Maya Rao "Minnesota College Tragedies: Drunk, Frozen and Underage" *Star Tribune* 3 March 2015. <http://www.startribune.com/minnesota-college-tragedies-drunk-frozen-and-underage/294758231/>

US Last Call Times and Alcohol Related Deaths



US Last Call Times and Alcohol Related Deaths

Sans Alaska

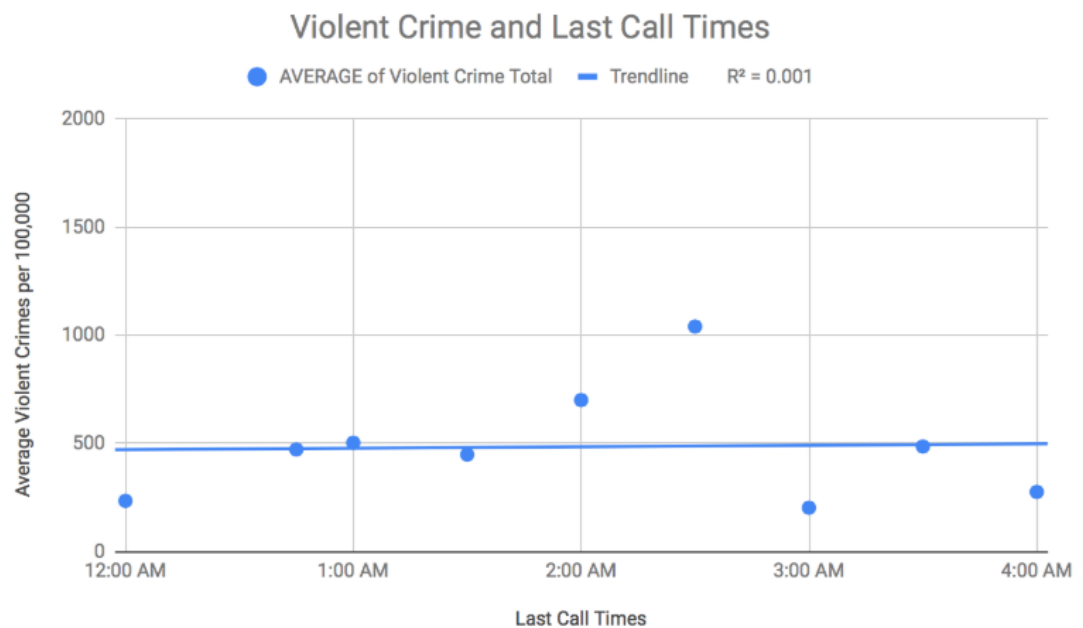


- 35 **US Cities:** The following graph accounts for data from 440 different US metropolitan areas.⁴¹ The average number of violent crimes for every 100,000 residents for the cities at each mandated closing time (based on state data) are plotted. While the averages are significantly lower for cities with mandated venue closing times prior to 2 AM than for those with mandated closing times between 2 AM and 3 AM, the cities with mandated closing time at 3 AM or beyond have lower or comparable rates of violent crime to those with mandated closing times before 2 AM. The data from US city and state jurisdictions therefore strongly suggests that

⁴¹ Violent crime data for each US city was obtained from the US Federal Bureau of Investigation's website.

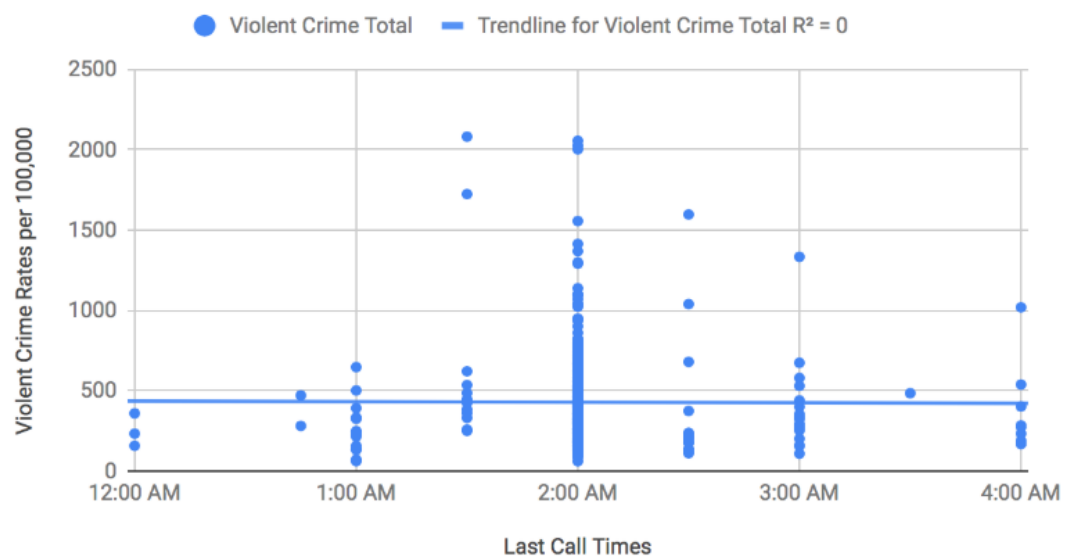
<https://www.ucrdatatool.gov>

laws which mandate last drinks or bar closure times, such as NSW's lockout laws, do not significantly impact community safety, and may even undermine it.



- 36 The following graph provides a more accurate assessment of the lack of correlation between mandated closing times and violent crime in 440 US cities. This graph plots each city as a blue dot based on its last closing time and reveals that the average violent crime figures for 2 AM and 2 30 AM mandated closing time cities in the graph above at point 35 are inflated due to the effect of just a few cities. It is therefore submitted that mandated closing times and similar restrictions such as lockout laws are not correlated with community safety or a lack thereof. It is therefore submitted that they should be repealed in Australia given the US experience as well as the experiences of Melbourne, Queensland and Ballarat.

Last Call Times and Violent Crime Rates



- 37 **Cultural factors underpinning alcohol-related violence in Australia:** It is submitted that the issues in Australia concerning “alcohol-related violence” must be viewed in the context of overwhelming international research on the subject spanning decades, and cannot be viewed in isolation. We note that any traveler to the European Continent would find wide-scale drinking in public areas after midnight, with little to no violence occurring as a result. This is in line with research that demonstrates that *“There is enormous cross-cultural variation in the way people behave when they drink”*⁴². As such, the fundamental question that must be addressed is: what are the reasons underpinning criminal actions *in Australia* which do not occur elsewhere – a question addressed overwhelmingly in scientific literature on the topic.^{43 44 45}
- 38 It is noted that multiple controlled experiments conducted under double blind control conditions and longitudinal/cross cultural studies have confirmed that aggressive behaviour is determined by cultural expectations rather than the chemical effects of ethanol.^{46 47} A meta-analysis of the international evidence has concluded that *“From the research evidence available, we can conclude that there*

⁴² Social and Cultural Aspects of Drinking, A report to the European Commission. The Social Issues Research Centre. March 1998 p6

⁴³ *“It is noted that a landmark study looking at alcohol-related aggressive behaviour across the world found that “alcohol-related aggressive behaviour—as measured by male involvement in drunken brawls—is about as likely to be present as it is to be absent”* Alcohol and Disinhibition: Nature and Meaning of the Link, Washington DC: US Department of Health and Human Services, Research Monograph 12, 1983

⁴⁴ *“men engaged in drunkenness in 76% of 60 small societies examined, but aggressive drunken behaviour was found in less than half “* Alcohol and Violence :Exploring Patterns and Responses. International Centre for Alcohol Policies. 2008 p12

⁴⁵ The prestigious journal Criminology has noted that *“The evidence suggests that drinking has a strong effect on adolescent violence in the Nordic and Eastern European countries but has little or no effect in the Mediterranean countries”* Feelson et al, The Cultural Context Of Adolescent Drinking And Violence In 30 European Countries. Criminology. 7 Aug 2011

⁴⁶ *“Reviews of ethnographic evidence show that the behavioural outcomes of drinking are always in accord with what people in a given culture (or sub-culture) expect to happen, and that individuals internalise such expectations during the learning process of socialisation...Experiments conducted under controlled conditions (double-blind, with placebos) in different cultures confirm that aggressive behaviour is determined by cultural expectations rather than the chemical actions of ethanol: in cultures where alcohol is believed to cause aggression, subjects become aggressive even when they have been given a placebo”.* Alcohol and Violence: Cultural Factors. Social Issues Research Centre. sirc.org/publik/alcohol_and_violence_7.html Accessed 4 April 2016

⁴⁷ *“Both comparative studies and controlled experiments have demonstrated, however, that while ethanol produces well-understood neurochemical changes, the wide variations in social and behavioural outcomes of drinking can only be explained with reference to cultural factors, and to culturally determined beliefs about the effects of drinking”* Social and Cultural Aspects of Drinking, A report to the European Commission. Op Cit. p5

is no direct causal relationship between alcohol and violence.^{48 49} Given the overwhelming international evidence of variability and that “alcohol related violence” is not a universal factor, and the evidence demonstrates that cultural factors are at the core of alcohol-related violence, it is submitted that this is what ought to be addressed by policies developed to address the problem.

39 It is submitted that the current approach in NSW and elsewhere inefficiently and ineffectively focuses on the symptoms rather than the underlying issue and that this results in disproportionately negative effects upon local nightlife, consumers and industries complying with the laws and regulations.

40 The academic consensus on the cultural differences between nations is relatively straightforward. “Integrated” cultures, such as in Continental Europe, where societies generally hold positive beliefs and expectancies about alcohol, and children often sip wine from their parents' glass have almost no alcohol related violence. In contrast, in “non-integrated” cultures, such as Australia, public discourse is primarily on the negative effects of drinking and there is a belief in “the disinhibiting powers of alcohol”. In these societies, alcohol is associated with aggression violence and anti-social behaviour.” It is the non-integrated cultures where a relationship arises: *“This variation cannot be attributed to different levels of consumption – most integrated drinking cultures have significantly higher per-capita alcohol consumption than the ambivalent drinking cultures. Instead the variation is clearly related to different cultural beliefs about alcohol, different expectations about the effects of alcohol, and different social rules about drunken comportment.”*^{50 51}

⁴⁸ Alcohol and Violence: Cultural Factors. Social Issues Research Centre.

http://www.sirc.org/publik/alcohol_and_violence_8.html Accessed 4 April 2016

⁴⁹ It is noted that so foreign is the belief that alcohol can trigger violence in European cultures that researchers recently attempted to ask 300 individuals in Italy their perceptions of links between alcohol consumption and disorder/aggression. The note in the report is telling: “Their responses caused some difficulty and our translators were unable to convince many of them that there was not a ‘hidden agenda’ to the questioning. Quite simply, the vast majority of interviewees could not understand how anyone could imagine a connection between drinking alcohol and aggressive behaviour”. Drinking and Public Disorder A report of research conducted for The Portman Group by MCM Research Peter Marsh and Kate Fox Kibby p135

⁵⁰ Kate Fox, BBC Viewpoint 12 October 2011 <http://www.bbc.com/news/magazine-15265317>

⁵¹ Social anthropologist Kate Fox once argued: “I could very easily engineer a nation in which coffee would become a huge social problem – a nation in which young people would binge-drink coffee every Friday and Saturday night and then rampage around town centres being anti-social, getting into fights and having unprotected sex in random one-night stands. There are cultures where drinking is not associated with violence would restrict access to coffee, thus immediately giving it highly desirable forbidden-fruit status. Then I would issue lots of dire warnings about the dangerously disinhibiting effects of coffee. I would make sure everyone knew that even a mere three cups (six “units”) of coffee “can lead to anti-social, aggressive and violent behaviour”, and sexual promiscuity, thus instantly giving young people a powerful motive to binge-drink double espressos, and a perfect excuse to behave very badly after doing so. I could legitimately base many of my scary coffee-awareness warnings on the known effects of caffeine, and I could easily make these

- 41 Paradoxically, the result of government policies and rhetoric in Australia creates “a special alcohol-stamped “license to transgress” so ingrained in society that it has, in itself, become a rule... When intoxicated, drinkers are expected to alter their behaviour and to engage with the crowd in varying degrees of promiscuity, vandalism, public displays of affection, loud and boisterous behaviour, dancing, sex, and other activities that are normally under fairly strict social constraint.”⁵² Rather unsurprisingly, they do so. Expectations not only shape drunken behaviour, they also “enable subsequent rationalisation, justification and excuses.”⁵³ In cultures where there is an expectation that alcohol will lead to aggression, people appeal to the fact that they were drunk in order to excuse their conduct rather than accepting personal responsibility.⁵⁴
- 42 Furthermore, this unscientific belief in alcohol excusing behaviour has previously extended to our judicial system with accused persons pleading for mitigation on the basis that they were intoxicated at the time of the offence. This further connotes a denial of personal responsibility and encourages criminal activities. This is in contrast to cultures where learned expectations about the effects of alcohol are very different whereby “appeals to drunkenness as an excuse for aggressive behaviour would not only fail to be persuasive, they might actually compound the severity of the offence.”
- 43 It is submitted, in light of the evidence outlined in the above points, that lockdown laws and other restrictions which penalise the act of drinking rather than violent or anti-social behaviour itself, should be repealed or wound back as they re-enforce toxic cultural mores which allow drinking to excuse poor behaviour. Only through reversing and rejecting these mores can a culture of personal responsibility be upheld. It is therefore submitted that targeted approaches to promoting community safety which are squarely aimed at illicit behaviour and individuals engaging in such acts should instead be adopted. It is submitted that taxpaying

sound like a recipe for disaster, or at least for disinhibition and public disorder. It would not take long for my dire warnings to create the beliefs and expectations that would make them self-fulfilling prophecies. This may sound like a science fiction story, but it is precisely what our misguided alcohol-education programmes have done” Kate Fox, BBC Op Cit.

⁵² Social and Cultural Aspects of Drinking. Op Cit p13

⁵³ Ibid Op cit p13

⁵⁴ Malcolm Gladwell, writing in the New Yorker, recently examined anthropological studies observing drinking culture in Italian migrant communities in New Haven which determined that it was unheard of for Italians to engage in violent behaviour, despite the fact that they drank as much as their next door neighbour who did. He concluded: “When confronted with the rowdy youth in the bar, we are happy to raise his drinking age, to tax his beer, to punish him if he drives under the influence, and to push him into treatment if his habit becomes an addiction. But we are reluctant to provide him with a positive and constructive example of how to drink. The consequences of that failure are considerable, because, in the end, culture is a more powerful tool in dealing with drinking than medicine, economics, or the law.” Malcolm Gladwell. Drinking Games. The New Yorker. February 15&22, 2010

businesses such as licensed venues are best positioned to implement protocols which allow for the sharing of resources and the targeted banning of anti-social individuals from nightlife precincts based on risk to patrons and the community. Such a strategy was successfully (by private initiative) implemented in the Newcastle NEP (Nightlife Entertainment Precinct) whereby a coalition of major venues implemented a 'ban' list for problem patrons which significantly disincentivised violent or anti-social behaviour and contributed to a sharp decline in violent incidents in the Newcastle CBD.

- 44 **Lockout laws failed in Melbourne, worsened community safety:** Melbourne CBD venues were required to 'lockout' new patrons from 2 AM onwards as part of a trial from June to September 2008.⁵⁵ Independent auditing firm KPMG found that the Melbourne lockout led to an increase in reported assaults between midnight and 2 AM and also between 2 AM and 4 AM. There were also more ambulance trips due to assaults between 8 PM and midnight when compared to the three months prior to the lockout.⁵⁶
- 45 **Lockout laws failed in Ballarat, did not improve community safety:** The regional city of Ballarat, Victoria, introduced 2 AM lockouts prior to Melbourne. These served as the inspiration for Melbourne's failed experiment with lockouts.⁵⁷ A 2012 study looked at 10 years of crime data for Ballarat found the lockout had no significant long-term impact on alcohol-related emergency department attendances.⁵⁸

Lockout laws & public health

- 46 **Pre-loading:** Prior sections of this submission have discussed and cited evidence for the negative impact which lockout laws and other restrictions on drinking at licensed venues have had on public health outcomes by encouraging the unregulated and unmonitored practice of 'pre-loading'. The adverse consequences of this have included that individuals are more likely to engage in irresponsible or excessive alcohol consumption, are more likely to consume more alcohol over the course of their night, and are more likely to arrive at licensed venues or nightlife

⁵⁵ Rennie, Reko (10 November 2008). "[Brumby dumps 2am lockout after increase in violence](#)". *The Sydney Morning Herald*. Fairfax Media. Archived from [the original](#) on 29 January 2016.

⁵⁶ Nicholas Reece: "Sydney lockouts: New location, but the same old mistakes" *Sydney Morning Herald* 24 February 2014. <https://www.theage.com.au/opinion/the-sydney-lockout-new-location-but-the-same-old-mistakes-20140223-33ab4.html>

⁵⁷ Ibid.

⁵⁸ Miller P, Coomber K, S nderlund A, McKenzie S. The long-term effect of lockouts on alcohol-related emergency department attendances within Ballarat, Australia. *Drug Alcohol Rev* 2012;31:370–376. <https://www.aph.gov.au/DocumentStore.ashx?id=1ad382b8-19aa-4532-9db2-16cfa44631d0&subId=411549>

precincts in a heightened state of intoxication. It is submitted that repealing lockout laws or liberalising trading hours for licensed venues will mitigate these issues. It is noted that similar effects have been observed in the United States in relation to that country's legal drinking age of 21 which has failed to prevent widespread 'underage' drinking. Raising the US national drinking age to 21 in 1984 was even followed by an increase in underage drinking over the following few years.⁵⁹ It instead incentivised drinkers under 21 to consume alcohol in private or secluded settings such as university dormitories, homes, apartments or open fields where alcohol-related anti-social or criminal behaviour is more likely to occur.⁶⁰ It is noted that this has helped to drive a 'binge drinking' culture which is harder to maintain on a licensed premises where staff are obliged to remove patrons who appear to be excessively intoxicated.⁶¹ It is therefore submitted that restrictions placed on the operation of licensed drinking venues, including the lockout laws, do not address the health harms of drinking and even exacerbate them by encouraging irresponsible and unregulated drinking, especially among younger drinkers.

- 47 **Most drinking occurs at home:** Euromonitor finds that 80% of all alcohol consumed in Australia is taken at home or is comprised of take-away liquor, and just 20% is consumed at licensed venues.⁶² A similar pattern has been reported in comparable western jurisdictions such as Canada where a 1989 study found that drinking at licensed establishments only accounted for 25% of alcohol consumption, with the rest taking place at home or elsewhere.⁶³ A 2010 report from the UK found that drinking at home was growing at a faster rate than drinking in clubs, bars, cafes and eateries.⁶⁴ It is therefore noted that lockout laws and other restrictions on trading hours do not have bearing on the vast majority of alcohol consumption, and that allowing individuals to access alcohol at licensed establishments when they would

⁵⁹ Engs, R.C. and Hanson, D.J. (1989). Reactance theory: a test with collegiate drinking. *Psychological Reports*, 64 1083-1086. Note: this study involved a survey of students at 56 colleges across the country just a couple years after the legislation passed. It found that "significantly more under-age students drank compared to those of legal age." The conclusion was that "the increase in purchase age appears to have been not only ineffective but actually counter-productive, at least in the short run."

⁶⁰ Eigen, L. D. (1991). Alcohol Practices, Policies, and Potentials of American Colleges and Universities. An OSAP White Paper. <https://files.eric.ed.gov/fulltext/ED350928.pdf>

⁶¹ Wechsler, H., & Nelson, T. F. (2001). Binge drinking and the American college students: What's five drinks?. *Psychology of addictive behaviors*, 15(4), 287. http://archive.sph.harvard.edu/cas/Documents/Five_Drinks/five_drinks-1.pdf Note: This Harvard University study found that most US college students (typically aged between 18 and 22) were binge drinkers and that seven out of ten were consuming more than five drinks in an average drinking session.

⁶² Euromonitor International. Alcoholic drinks in Australia. Euromonitor International Ltd. London, (2012).

⁶³ E Single and S Wortley, Drinking in various settings as it relates to demographic variables and level of consumption: findings from a national survey in Canada. *Journal of Studies on Alcohol*, 54(5), 590–599 (1993).

⁶⁴ Foster, J., Read, D., Karunanithi, S., & Woodward, V. (2010). Why do people drink at home?. *Journal of public health*, 32(4), 512-518.

instead consume a greater amount at home is desirable in order to improve public health by promoting alcohol consumption in a regulated, monitored setting. This is particularly relevant given studies which have found that only 9.78% of alcohol-related injuries take place in licensed establishments, with 36.14% taking place at home, 13% occurring on the street, and 41.07% happening at other locations.⁶⁵ It is therefore submitted that restrictions on licensed venues such as through lockouts, is not an effective or efficient way to promote community safety and health. It is further submitted that, given the higher 13% figure for alcohol-related injuries on the street contrasted with the lower 9.78% figure for at licensed venues, restrictions such as lockouts may be exacerbating community safety and health harms by forcing patrons under the influence of alcohol out on to the street or driving them to 'other' locations where their odds of incurring an alcohol-related injury are greater. Notably, the study used data Queensland between 2003 and 2012 i.e. in an area not subject to lockouts at the time. The figures for alcohol-related injuries at licensed venues relative to other locations would be significantly lower accounting for the influence of lockouts.

- 48 **Excessive drinking more prevalent among older demographics, not young revellers:** In NSW, 14.8% of people over 65 drink daily, compared to a paltry 0.8% for those aged 16-24.⁶⁶ Notably, *"Australians are drinking less alcohol overall, according to the Australian Bureau of Statistics (ABS). This comes as the result of numerous factors, leading to the lowest level of per capita consumption since the 1960s."*⁶⁷
- 49 The impact of lockouts on public health and alcohol consumption is therefore likely to be exaggerated since patrons who typically attend these venues are less at risk of chronic drinking than older demographics, since drinking in licensed venues accounts for only a minority of drinking, and since police and hospital statistics and records do not account for whether 'alcohol-related deaths' or 'alcohol-related assaults' involve alcohol consumption at home or at venues.
- 50 **Alcohol taxes more than compensate for the public costs of alcohol consumption:** Collins & Lapsley estimated the total public and private costs for healthcare and the criminal justice/policing system in Australia as a result of drinking to be \$3.4 billion in their 2008 study which utilised data from 2004-05.⁶⁸ This was well before the

⁶⁵ Bunker, N., Woods, C., Conway, J., Barker, R., & Usher, K. (2017). Patterns of 'at-home' alcohol-related injury presentations to emergency departments. *Journal of clinical nursing*, 26(1-2), 157-169. <https://onlinelibrary.wiley.com/doi/abs/10.1111/jocn.13472> Note: This study was conducted using Emergency department surveillance data sourced from the Queensland Injury Surveillance Unit for 2003-2012. It did not distinguish between domestic and non-domestic alcohol-related injuries.

⁶⁶ Centre for Epidemiology and Evidence (NSW). (2016). *Trends in Alcohol Use and Health-related Harms in NSW: Report of the Chief Health Officer 2016*. NSW Ministry of Health.

⁶⁷ Euromonitor International. *Alcoholic drinks in Australia*. Euromonitor International Ltd. London, (2012).

⁶⁸ Collins D, Lapsley H. The avoidable costs of alcohol abuse in Australia and the potential benefits of effective policies to reduce the social costs of alcohol. DoHA Monograph Series No. 70; 2008 p. 5.

introduction of lockouts and only a few years before the 2008 peak in alcohol-related violence in NSW after two decades of steady rise.

- 51 Even if we assume that the entirety of these costs are borne by the government,* and if we scale these costs to the increase in population in Australia since 2004-05,⁶⁹ this still only produces a figure of \$4.25 billion. By contrast, alcohol excise in the fiscal year 2016-17 alone (at a time when our population was smaller) raised \$6.216 billion.⁷⁰
- 52 It is therefore submitted that the Australian public sector has resources at its disposal which are, at the very least, sufficient to account for all public and a significant amount of the private healthcare, policing and criminal justice costs which are created by alcohol consumption. Indeed, even by the exaggerated estimate outlined in this submission, the public sector would have \$2.167 billion to spare in a single year without accounting for the coverage of a significant proportion of the costs of alcohol consumption by private healthcare providers, insurers, private individuals, fines on businesses etc. It is therefore submitted that, from an economic standpoint, further restrictions or penalties on private businesses outside of fines for specific violations of their licensing requirements or other illegal actions, cannot be justified since the publicly-borne negative externalities of alcohol consumption in Australia sans lockouts can already be accounted for through even lower levels of excise on alcohol than what the federal government currently levies.
- 53 It is therefore submitted that the NSW government should repeal lockouts and negotiate for a greater share of the federal government's revenue from alcohol taxes if there is a shortfall between the estimated public costs for NSW state and the amount of alcohol excise raised in NSW. This will provide sufficient funding and resources for any additional police or hospital resources even if, contrary to the evidence outlined in this submission about lockouts' effects on pre-loading, community safety and public health, the repeal of lockouts is not followed by a reduction in publicly-borne costs and is instead followed by an increase.

[https://www.health.gov.au/internet/drugstrategy/publishing.nsf/Content/0A14D387E42AA201CA2574B3000028A8/\\$File/mono70.pdf](https://www.health.gov.au/internet/drugstrategy/publishing.nsf/Content/0A14D387E42AA201CA2574B3000028A8/$File/mono70.pdf)

⁶⁹ Australia's population was 20.328 million in June 2005 according to the ABS

<https://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/73DCAFE12953D30ACA257134000AD22B?OpenDocument>. The Australian government estimates that the population will reach 25.415 million by the end of 2019, based on the average growth rate of 1.62% a year observed since the 2011 census. <http://www.population.net.au/> Hence, our population stands at 1.25 times what it was in 2005. Multiplying \$3.4 billion by 1.25 gives a figure of \$4.25 billion.

*- a significant proportion of this cost would be borne by private sector entities such as insurance companies, hospital patients, through fines imposed on private entities involved in the liquor industry etc.

⁷⁰ Australian Government Final Budget Outcome (2011-12 to 2016-17); ABS 2017b, *Australian System of National Accounts, 2016-17*, Cat. no. 5204.0, ABS Canberra (viewed at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5204.02016-17?OpenDocument>).

- 54 Lockouts, through their economic costs for private business, therefore impose an immoral burden on responsible, legal (and typically small-to-medium) businesses who are not responsible for a vast majority of the phenomenon of drunken violence or excessive drinking that lockouts were intended to mitigate. They should hence be repealed.

Lockout laws & economic impact

55. **Economic impact on live music:** The evidence since implementation of these laws shows that they have badly damaged both Sydney's once-thriving nightlife economy as well as Sydney's live music industry and scene. As a result, they have damaged the livelihoods of both proprietors of live music venues as well as musicians attempting to earn a living. This is concerning for NSW's broader economy as live music in Australia is directly and indirectly responsible for creating an estimated 64,747 jobs of which 37,652 are full-time;⁷¹ music and performing arts-related businesses account for 1% of small business in Australia and;⁷² the broader Australian music industry contributes \$5-6 billion to the national economy.⁷³
56. The evidence shows that these laws render most live music venues commercially unviable. Figures released by industry body APRA AMCOS show a decline of 40% in revenue generated by live music in the Sydney CBD area lockout zone between the introduction of the laws in 2014 and 2016.⁷⁴ A 19% decline in nightclub attendance over the same period was also reported.⁷⁵ In addition to this economic impact, the decline in live music has had flow-on negative effects upon Sydney's branding as a vibrant city and Sydney's tourism industry, leisure industry (food, beverages etc.) and international image more broadly.
57. Recent research from RMIT University reported by the ABC (2015) charted trends in Australia's urban live music scenes and industry and attests to the importance of avoiding draconian restrictions such as lockout laws that impact live music in our inner-

⁷¹ The Economic and Cultural Value of Live Music in Australia, University of Tasmania (2014)

⁷² Valuing Australia's Creative Industries Final Report (2013) Creative Industries Innovation Centre

⁷³ Estimating the Value of the Music Sector (2005-2014)– Music in Australia Knowledge Base
http://musicinaustralia.org.au/index.php?title=Estimating_the_Value_of_the_Music_Sector

⁷⁴ APRA AMCOS, <http://apraamcos.com.au/news/2016/february/sydney-cbd-sees-drop-in-live-performancerevenue-since-introduction-of-lockout-laws/>

⁷⁵ Ibid.

city areas.⁷⁶ The study found that over the preceding 30 years, live music venues in suburban areas had declined and given way to a greater concentration of venues within the inner city areas of Sydney and Melbourne. It also found that the relative expense of liquor licenses in Sydney had contributed to Melbourne overtaking Sydney in terms of the size and activity of its live music scene. This indicates that laws/regulations which place or contribute to unnecessary cost burdens on venues in turn hurt artists by denying them opportunities to be employed and hence undermine the live music scene more broadly. This is especially concerning as studies have found that Australian musicians rely on live music rather than studio recordings or merchandise sales for over 70% of their income.⁷⁷

58. The severe and disproportionate impact of lockout laws meant to target alcohol-related anti-social behaviour on the live music scene are due to the industry's unique dynamics. Many live music performances start late and can continue until 2 or 3am. During this time, patrons move between venues, and some will see more than one act on one night. Many venues typically present 2 shows: the first from 8pm and the second from midnight. Multiple bands and DJs may be featured. The double show format not only offers a greater platform to prospective performers, but is an economic necessity for venues as typical revenues from food and drink account for more than 80% of their total income. Ticket sales by contrast, account for less than 20%.^{78 79}
59. Venues that start shows earlier are unable to attract the same volume of patrons and this causes a decline in revenue which in turn renders venues unable to provide time slots or platforms to as many artists or performers as they would prefer to. As a result, emerging musicians suffer the most as they are less established, in direr need of viable platforms for their art and in direr need of a platform for honing their craft sufficiently to ensure a successful career as well as the ability to compete internationally against artists from nations and places with fewer impediments to public performance.⁸⁰ This reduction in employment of live musicians and DJs is further exacerbated by the inability of patrons to move between venues after 1 30 am. As a result, venues too suffer due to declines in revenue caused by the difficulty of attracting patrons through

⁷⁶ Australia Broadcasting Corporation (2015) "The changing face of Melbourne and Sydney live music scenes" <http://www.abc.net.au/news/2015-02-12/the-changing-face-of-melbourne-and-sydney-live-music-scenes/6072620>

⁷⁷ Creative Victoria - Music Distribution and Income: A Survey (2011).

⁷⁸ Ernst & Young for APRA AMCOS (2011): Economic contribution of the venue-based live music industry in Australia.

⁷⁹ Submission by Music Australia to the Lockout Laws Review, March 2016. <http://musicaustralia.org.au/wp-content/uploads/2016/03/Music-Australia-submission-on-lockout-laws-March-2016.pdf> Accessed: 7 March 2018.

⁸⁰ Ibid.

live

music.⁸¹

60. The damage caused to the live music scene in Sydney by lockout laws has negative flow-on effects. Research estimates that 3 dollars circulate back into the wider economy for every dollar spent on live music and the decline in live music revenue due to lockout laws hence adversely impacts the wider Sydney economy.⁸²
61. Patrons and music fans migrate to areas not subject to lockout laws, placing pressure on public infrastructure and transport services while causing potential conflicts with local residents over land use and noise pollution. There is anecdotal evidence that this has already occurred in Newtown once lockout laws were introduced in the Sydney CBD area.⁸³ By contrast, centrally-located entertainment precincts are areas with an efficient flow of trade from lunch to dinner, to evening entertainment and put little to no additional strain on resources or infrastructure while delivering affordable, efficient and convenient transport between venues and events.⁸⁴
62. The decline of live music in Sydney also adversely impacts Sydney's reputation as a vibrant and attractive city relative to other Australian cities such as Melbourne which are not subject to lockout law restrictions and enjoy a thriving live music scene. Melbourne prides itself on being a hub for live music despite possessing a smaller population than Sydney. The city had at least 460 live music venues as of 2016.⁸⁵ The 2012 Melbourne Music Census noted that each every Friday and Saturday night, 38,805 patrons attended live music performances in the Melbourne CBD alone.⁸⁶
63. Global music cities' are those which have exploited their unique identity created through music, whereby Toronto, London, Nashville, Berlin and Austin are examples of those which have reaped significant economic rewards and gains in international reputation and tourism due to making music central in their cultural and economic policies. For example, the music industry of Austin, Texas, a metropolitan area with a

⁸¹ Ibid.

⁸² The Economic and Cultural Value of Live Music in Australia, 2014, University of Tasmania.

⁸³ "Newtown gets busy as King's Cross empties" Sydney Morning Herald, 2015.
<http://www.smh.com.au/nsw/newtown-gets-busy-as-kings-cross-empties-20150619-ghseco.html>

⁸⁴ Government of South Australia, 'Adelaide After Dark – A Submission to the Citizen's Jury' – July 2013.

⁸⁵ Submission by Music Australia to the Lockout Laws Review, March 2016. <http://musicaustralia.org.au/wp-content/uploads/2016/03/Music-Australia-submission-on-lockout-laws-March-2016.pdf> Accessed: 7 March 2018.

⁸⁶ Victorian Live Music Census: 2012.

- population of approximately 2 million,⁸⁷ raises \$1.6 billion annually and the 2013 Austin White Paper identified live music as crucial for attracting people to the city.⁸⁸ By contrast, the approximate Australian population is 28 million,⁸⁹ yet the live music industry of the entire nation generates just \$1.5-2 billion annually.⁹⁰
64. Lockout laws preclude Sydney from the opportunity to become a thriving music city despite holding the largest and one-of-the fastest growing urban populations in Australia.
65. Furthermore, and as a matter of principle, it is unconscionable that patrons seeking to enter venues purely to experience live music should be deprived of that experience because of laws purported to address anti-social behaviour due to irresponsible or immoderate alcohol consumption. There is no empirical evidence identifying live music as a cause for anti-social behaviour.⁹¹ One study notes that *"bands, even loud ones, do not cause aggression and violence....Quality bands that entertain an audience generate a positive social atmosphere that has been observed to counteract other negative variables."*⁹² A Deloitte study for Arts Victoria (2011) found that 92% of surveyed patrons believed that live music in venues improve quality of life and 84% believed that they provide a safe and welcoming environment. The patrons further noted that live music draws the crowd's focus away from consuming alcohol and towards the music/artistic performance which was the specific reason given for attending the venue by 63% of patrons.⁹³ Another survey of venues and patrons identified live music attendance as a source of health and wellbeing.⁹⁴
66. It is therefore submitted that lockout restrictions should be further wound back or repealed in order to further support a thriving live music scene in Sydney which can stay competitive against Melbourne where lockout laws do not apply.

⁸⁷ United States Census Bureau (April 2017)

<https://web.archive.org/web/20170409055505/https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

⁸⁸ The State of the Austin Music Industry, Austin Music People (2013)

⁸⁹ ["Population clock"](#). [Australian Bureau of Statistics](#) website. Commonwealth of Australia. Retrieved 7 March 2018.

⁹⁰ E&Y for APRA Economic contribution of the venue-based live music industry in Australia (2011) & 2014 Ticket Attendance and Revenue Survey Live Performance Australia (2015)

⁹¹ Carter, D., & Muller, P. (2016). Value of Live Music in Sydney Final Report.

⁹² Homel, R., Tomsen, S., & Thommeny, J. (1992). Public drinking and violence: Not just an alcohol problem. *Journal of Drug Issues*, 22(3), 679-697.

⁹³ Deloitte for Arts Victoria (2011) The economic, social and cultural contribution of venue-based live music in Victoria

⁹⁴ The Economic and Cultural Value of Live Music in Australia, 2014, University of Tasmania. P.28-29.

67. **Economic impact on property and land owners:** Commercial asset values in the lockdown zone fell significantly following the introduction of lockdown laws. This was to the advantage of property developers who were able to acquire land at distressed prices from the original owners.
68. In late 2015, the NSW Valuer General offered to lower the land value of at least eight commercial properties in Kings Cross by up to \$1.25 million (14% per property on average), following the owners' lodgement of land tax objections which followed on from a reduction in commercial rents.⁹⁵
69. The office of Land and Property Information proposed land value reductions between 5-20% on properties including the Kings Cross Hotel, Carlisle House and Iguana Bar. Prior to this, another property, the heritage-listed Minton House, was earlier in the year devalued by almost 35%, from \$10 million to \$6.58 million.
70. Malcolm Gunning, president of the Real Estate Institute of NSW and a member of the Land Valuation Advisory Group, a committee of property industry groups and stakeholders that advises the Valuer General, noted in late 2015 that rents for some properties had fallen by half.⁹⁶
71. It is submitted that, given the evidence outlined in this submission that lockdowns themselves cannot be significantly credited for increasing community safety and evidence that lockdowns are making streets more dangerous due to forcing patrons out at set times of night, the lockdown laws ought to be repealed. This will allow closure times for venues in areas that have now taken on a more residential character to be subject to council ordinances and other means of redress for the local community instead of blanket lockdowns. In the process, it will restore more thriving nightlife businesses and help raise the value of existing commercial property by allowing these properties to generate higher rents which will in turn allow the NSW government to recoup more land tax and stamp duty revenue- all while maintaining the stamp duty and land tax benefits of residential land.
72. **Economic impact on restaurants and nightlife establishments:** The 40% drop in foot traffic in Kings Cross, which translated to drops of up to 80% at night-time peaks,⁹⁷ resulted in massive losses of revenue for business. In 2010, of 58% of respondents polled by the City of Sydney about why they visited Sydney at night said that they were going out to socialise.⁹⁸ When the same poll was conducted in March

⁹⁵ Michael Koziol, "Golden Mile a 'basketcase' as commercial properties lose value" *Sydney Morning Herald* 21 November 2015. <https://www.smh.com.au/national/nsw/golden-mile-a-basketcase-as-commercial-properties-lose-value-20151120-gl3wcw.html>

⁹⁶ Ibid.

⁹⁷ City of Sydney (2016), Late Night Management Areas Research – Phase 4 Report: http://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0011/250202/2015-541941-Report-Late-Night-Management-Areas-Research-Final.pdf

⁹⁸ Ibid.

- 2015, 57% of respondents said that they were returning home. Only 3% of respondents in 2010 said the same thing.
73. Hugo's Lounge, voted the best nightclub in Sydney,⁹⁹ was forced to close by mid-2015 due to a whopping 60% reduction in revenues.¹⁰⁰ As a result, 70 staff lost their jobs due to that one venue's closure alone. The lockdowns did not just hurt nightclubs and bars. Hugo's Lounge hosted the 130-set Hugo's Pizza restaurant which had not just won Best Pizza Restaurant in Australia at the Australian Restaurant & Catering Awards, but was also chosen as the World's Best Pizza in the American Pizza Challenge in New York.
 74. The Sydney Morning Herald reported that between early 2014 when the lockdowns were introduced and late 2015, 30 businesses had closed in King's Cross alone.¹⁰¹ These included dozens of bars and nightclubs as well as eateries like Jimmy Licks, a Southeast Asian restaurant, which closed its doors in 2016 after 14 years of operation in Kings Cross citing the lockdown laws.¹⁰²
 75. World Bar reported that its revenue decreased by a quarter between 2014 and 2016 and blamed lockdowns.¹⁰³ World Bar closed for good in **November 2018**.¹⁰⁴ **By this time, Liquor and Gaming NSW figures showed that 418 licensed venues had closed since the 2014 implementation of lockdowns.**¹⁰⁵
 76. Other prominent venues which have closed for good since the lockdowns were implemented include Flinders Hotel in Darlinghurst, The Soho, The Exchange Hotel, Beach Haus and most recently Sydney's Hudson Ballroom.¹⁰⁶
 77. **Deloitte Report:** A recent report from Deloitte Access Economics has found that the night-time economy of Australia accounts for just 3.8% of the country's economy,

⁹⁹ Jonathan Seidler "Hugo's Bows Out of the Cross" *Broadsheet* 30 July 2015.

<https://www.broadsheet.com.au/sydney/nightlife/article/hugos-bows-out-cross>

¹⁰⁰ David Spicer, "Hugo's Lounge in Sydney's Kings Cross forced to close after revenue drop, owner blames lockdown laws" *ABC News* 30 July 2015. <https://www.abc.net.au/news/2015-07-30/hugos-kings-cross-to-close-blames-nsw-lockout-laws/6659340>

¹⁰¹ Michael Koziol, "Golden Mile a 'basketcase' as commercial properties lose value" *Sydney Morning Herald* 21 November 2015. <https://www.smh.com.au/national/nsw/golden-mile-a-basketcase-as-commercial-properties-lose-value-20151120-gl3wcw.html>

¹⁰² M Barrie, 'Would the last person in Sydney please turn the lights out?' (2016) *LinkedIn*, <https://www.linkedin.com/pulse/would-last-person-sydney-please-turn-lights-out-matt-barrie/>

¹⁰³ Hennessy, James (2 May 2016). "[Sydney icon World Bar reveals how hard the lockdown laws have hit 'em'](#)". *Pedestrian.tv*. Archived from [the original](#) on 5 May 2016.

¹⁰⁴ Charlotte Willis "Iconic Kings Cross venue The World Bar falls victim to lockdown laws" *News.com.au* 28 November 2018 <https://www.news.com.au/lifestyle/food/restaurants-bars/iconic-kings-cross-venue-the-world-bar-falls-victim-to-lockout-laws/news-story/0022ddb8c92c76b2015cd9a38bb5c822>

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

- whereas in the UK it accounts for 6%.¹⁰⁷ British cities, like London, are notable for their lack of restrictions on night-time trading relative to Sydney.
78. The report found that if needless restrictions on the night-time economy across Australia were removed and it was allowed to thrive and reach the same scale relative to the rest of the economy as the UK, then Greater Sydney's night-time economy alone (the most concentrated in the country) would grow from a \$27.2 billion annual industry to a \$43.3 billion annual industry. This is an increase of a whopping \$16 billion+ a year and represents an immense increase in business and employment opportunities which will help to mitigate slowing nationwide real wages growth.
 79. Given that elected City of Sydney councillors unanimously voted for a new Late Night Trading Plan which grants 24-hour trading permission across the city centre, up to 2 AM for low impact food and drink venues,¹⁰⁸ it is submitted that there is no reason why the NSW government should not repeal the lockout laws which place a handbrake on the full economic development of Sydney's night-time economy.
 80. It is noted that City of Sydney residents will remain capable of voting for council ordinances that impose similar restrictions if they so choose in the future. It is further noted that allowing licensed alcohol-serving establishments to remain open will increase foot traffic to nightlife precincts, thereby growing the night-time economy as a whole outside the alcohol service sector.

Alternative measures to address alcohol-related violence

81. It is submitted that, in light of the evidence outlined in this submission, interventions which do not needlessly burden private businesses and those dependent upon night-time economics for their livelihood with increased costs are preferable. It is submitted that measures which target illicit behaviour and those who engage in it rather than the vast majority of responsible drinkers are also preferable and more likely to be effective in promoting community safety.
82. An effective measure to reduce general violence is sharing of police and emergency room data within the wider community in order to develop appropriate policies and other prevention strategies.¹⁰⁹

¹⁰⁷ Deloitte Access Economics analysis, September 2018. Note: these estimated values are based on the national revenue of the financial year 2016–17, with a total Australian revenue of \$3,253.6 billion <https://www2.deloitte.com/au/en/pages/future-of-cities/articles/imagine-sydney.html> p. 34.

¹⁰⁸ AAP, "GREEN LIGHT FOR SYDNEY'S 24-HOUR CITY" *AUSTRALIAN FINANCIAL REVIEW* 14 MAY 2019. [HTTPS://WWW.AFR.COM/NEWS/POLITICS/GREEN-LIGHT-FOR-SYDNEY-S-24-HOUR-CITY-20190514-P51N78](https://www.afr.com/news/politics/green-light-for-sydney-s-24-hour-city-20190514-p51n78)

¹⁰⁹ Florence C, Shepherd J, Brennan I, Simon T. Effectiveness of anonymised information sharing and use in health service, police, and local government partnership for preventing violence related injury: experimental study and time series analysis. *BMJ* 2011; DOI: 10.1136/bmj.d3313. <https://www.bmj.com/content/342/bmj.d3313.full>

83. In this regard, police officers following the rules outlined in the Alcohol Linking Program which link violent incidents to licensed venues on the basis that the victim had drunk at the venue prior to the incident should amend procedures to include greater clarification about whether the consumption of alcohol at that particular venue was a material factor in the occurrence of the incident.
84. With regard to violence related to intoxication, voluntary alcohol interventions with licensees, community alcohol accords, police programs and community action projects are considered effective in reducing alcohol-related injuries and assaults.¹¹⁰
85. **ID Scanners:** It is submitted that the use of ID scanner technology by high-risk venues, or those which voluntarily choose to implement this technology, is a proven beneficial way to promote community safety. A 2016 Liquor and Gaming NSW inquiry found that the implementation of ID scanners by Kings Cross venues deemed to be 'high risk' (as required by law since 2014) were "*an appropriate and effective way to reduce alcohol-related crime and violence in Kings Cross.*"¹¹¹
86. It has been noted previously in this submission that the reduction in violence which followed the introduction of lockout laws in Newcastle, NSW is more readily attributable to the installation of ID scanners by key venues which have gone on to voluntarily share data with each other on problem patrons in order to put in place a 'banned patron's list'. Similarly, such scanners were found to have reduced alcohol-related violence following their implementation in the city of Geelong, Victoria.¹¹²
87. It is however, noted that while effective, these scanners impose significant expenses in operation and administration costs for venues.¹¹³ As such, it is submitted that they should not be made mandatory outside of the existing Kings Cross zone, and that mandatory scanners in the Sydney CBD area who breach their license conditions or act illegally, instead of fines or license revocation.
88. It is further submitted that the recommendations of the 2016 NSW government review of mandatory ID scanners in Kings Cross (which *did not* recommend the extension of

¹¹⁰ Graham K, Homel R. Raising the bar: preventing aggression in and around bars, pubs and clubs. Laycock G, ed. London: Willan, 2008.

<https://pdfs.semanticscholar.org/812e/4388cd1a6465bc4a62ba6158d9e6cc59e832.pdf>

¹¹¹ <https://www.liquorandgaming.nsw.gov.au/documents/reports/kings-cross-id-scanner-review-report-sept-2016.pdf> p.6.

¹¹² Dr Jonathan Horton QC 'REVIEW OF LIQUOR LICENCE CONDITIONS IN THE NEWCASTLE CENTRAL BUSINESS DISTRICT AND SURROUNDING AREAS: ADVICE TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY' (2018) <https://www.liquorandgaming.nsw.gov.au/documents/ilga/public-consultations/newcastle-licence-review-the-horton-report-2018.pdf> para 66.

¹¹³ The Callinan Inquiry heard (at 5.42) that for one venue owner, "*the compliance cost, of scanners, marshals, CCTV upgrades, licence fees, insurance, data reporting, and management approval costs [collectively] amount to more than \$200,000 per year.*" Callinan Review (2016), <http://www.liquorlawreview.justice.nsw.gov.au/Documents/report/LiquorLawReviewReport.pdf#page=4>

- mandatory ID scanners outside Kings Cross)¹¹⁴ be implemented as these measures would make the operation of scanners more effective in targeting anti-social patrons or violent behaviour.
89. Special emphasis is placed on the importance of recommendations 3 and 4 i.e. that *"ID scanners should be configured so licensed venues are able to enter venue initiated (section 77) patron bans, subject to confirmation that implementation of this recommendation would not place at risk existing privacy controls and would adhere to relevant privacy legislation."* and that *"ID scanners should be configured so licensed venues can share venue initiated (section 77) patron ban data with other high risk venues in the Kings Cross precinct when a banned person attempts to enter a venue, subject to confirmation that implementation of this recommendation would not place at risk existing privacy controls and would adhere to relevant privacy legislation."*¹¹⁵
90. It is further noted that these recommendations are supported by the experience of the Newcastle Entertainment Precinct where information sharing between major scanner-utilising venues in the Newcastle CBD enhanced the effectiveness of a collective 'banned list' and was found to have mitigated the issue of anti-social behaviour and violence.¹¹⁶ Moreover, this constitutes an effective voluntary intervention which does not impose undue costs on venues which are unable or would find it too onerous to implement mandatory scanners.
91. However conversely as a cautionary note, the following finding of the Horton Inquiry on Newcastle's ID scanners for licensed venues is also highlighted: *"scanners are not a cure-all, and that operators need to believe in the ethos in it to be a part of it and to consistently meet the standard considered appropriate by those operators who are presently a part of it. There needs to be trust between venues that each will responsibly and not arbitrarily conduct itself ... I agree, that the system's efficacy would be threatened if venues were permitted to join whose licensees lacked the high standards and the necessary discipline properly and responsibly to bar patrons and to keep and share sensitive information."*¹¹⁷ These considerations must be taken into account prior

¹¹⁴ <https://www.liquorandgaming.nsw.gov.au/documents/reports/kings-cross-id-scanner-review-report-sept-2016.pdf> p.6.

¹¹⁵ <https://www.liquorandgaming.nsw.gov.au/documents/reports/kings-cross-id-scanner-review-report-sept-2016.pdf> p.6.

¹¹⁶ Dr Jonathan Horton QC 'REVIEW OF LIQUOR LICENCE CONDITIONS IN THE NEWCASTLE CENTRAL BUSINESS DISTRICT AND SURROUNDING AREAS: ADVICE TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY' (2018) <https://www.liquorandgaming.nsw.gov.au/documents/ilga/public-consultations/newcastle-licence-review-the-horton-report-2018.pdf> para 216, 241.

¹¹⁷ Dr Jonathan Horton QC 'REVIEW OF LIQUOR LICENCE CONDITIONS IN THE NEWCASTLE CENTRAL BUSINESS DISTRICT AND SURROUNDING AREAS: ADVICE TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY' (2018) <https://www.liquorandgaming.nsw.gov.au/documents/ilga/public-consultations/newcastle-licence-review-the-horton-report-2018.pdf> para 211.

to determining whether a venue should be required to implement an ID scanner and prior to a venue joining the shared data/ID scanner network.

92. Notably and in line with the findings of the Horton Review, venues which do not utilise ID scanners and therefore cannot join a shared information network between ID scanners, can still benefit from access to a shared data network with other venues including those which utilise ID scanners as is the case in the Newcastle Entertainment Precinct.¹¹⁸
93. **Fines:** In Geelong, Victoria, a city which experienced issues with alcohol-related violence, a strategy to use fines, rather than arrests, to deal with antisocial behaviour was followed by a decrease in presentations to hospital emergency rooms.¹¹⁹ This strategy included increasing on-the-spot fines for a range of offences including being drunk and disorderly, failing to leave a licensed venue when requested, and failing to move on.¹²⁰
94. **Night-time mayor:** See point 101.

Recommendations

95. That given their economic impact as well as redundancy and ineffectiveness in promoting community safety and public health, NSW's lockdown laws should be repealed. Mandated venue closing times should instead be subject to local council ordinances.
96. That the recommendations of the 2016 NSW government inquiry into enhancing the effectiveness of ID scanners be implemented, especially recommendations 3 and 4 which facilitate the creation of a 'banned list' for problem patrons which can be shared between venues. (see point 89.)
97. That venues which do not utilise ID scanners be allowed to access a shared data network (subject to privacy considerations and requirements) with those that do in order to identify patrons who have engaged in drunken violence or who could be a danger to others present.
98. That on-the-spot fines be increased for violent or threatening behaviour, whether under the influence of intoxicants or not.
99. That the data on alcohol-related incidents collected by police under the Alcohol Linking Program be collected with greater clarity about the precise determinative or determinative role of alcohol in the occurrence of incidents deemed to be 'alcohol-related' in order to ensure that venues do not suffer from unjustified stringent

¹¹⁸ Ibid para 241.

¹¹⁹ Miller et al, 'Dealing with alcohol-related harm and the night-time economy (DANTE)' (April 2012) National Drug Law Enforcement Research Fund. NOTE: this study was not adjusted for seasonal/temporal trends.

120 *Ibid.*

conditions where they are not responsible for misconduct. It will also ensure more accurate and clarified data for informing future alcohol policies.

100. That the implementation of any measures by the committee which require or would require public funding be funded by the existing substantial revenue pool of federal alcohol excise, rather than tax hikes or depletion of other revenue sources. The requisitioning of this revenue can be achieved by lobbying the federal government through the COAG forum.
101. That Sydney appoint a 'night-time mayor' in the same vein as leading world nightlife economies like Amsterdam,¹²¹ and London.¹²² This will ensure that the mitigation of anti-social behaviour associated with the night-time economy is achieved through the efficient cooperation of stakeholders on the ground including businesses, community groups, and the police- all through a specialised mayor who has a better understanding of the issues faced by the affected stakeholders on the ground. The description of the night mayor's role is to ensure *"a dynamic nightlife [in the city] and helping to build bridges between the business owners specific to nightlife in the city, and the city council, the mayor, residents and the public to create a pleasant, safe environment without damaging the night-life's attractive and vibrant economy"*.¹²³ This will also ensure that undue state government intervention in the future does not cause crippling damage to Sydney's night-time economy as it did after the enactment of the lockdown laws.



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¹²¹ Bernard Zuel "Night mayor may save the dream of Sydney's nightlife: live music advocates" *Sydney Morning Herald* 8 July 2016. <https://www.smh.com.au/entertainment/music/night-mayor-may-save-the-dream-of-sydneys-nightlife-music-advocates-20160708-gq1bqu.html>

¹²² <https://www.london.gov.uk/what-we-do/arts-and-culture/24-hour-london/night-czar>

¹²³ Bernard Zuel "Night mayor may save the dream of Sydney's nightlife: live music advocates" *Sydney Morning Herald* 8 July 2016. <https://www.smh.com.au/entertainment/music/night-mayor-may-save-the-dream-of-sydneys-nightlife-music-advocates-20160708-gq1bqu.html>