

SYDNEY'S NIGHT TIME ECONOMY

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SUBMISSION TO THE
JOINT SELECT COMMITTEE
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NIGHT TIME ECONOMY

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Executive summary

AHA NSW recommends the lockouts and associated precinct restrictions on the Sydney CBD and Kings Cross be removed.

The lockouts send a message that Sydney is closed for business. Our reputation as a vibrant, global city is fading and must be restored.

There are obvious economic costs and potential benefits – the night-time economy is valued at more than \$27b and supports more than 230,000 jobs – but if properly managed, could be worth \$43.3 billion.

The city has changed significantly over the last five years – a large number of venues have closed and many others have radically changed their business models. Assault rates on or near licensed premises have been steadily falling across NSW for more than a decade. The Kings Cross we knew is gone forever.

Transport options have improved with the rise of Uber, rideshare and taxi apps completely changing the way patrons are able to leave an area quickly and safely.

Over the last five years Sydney has proven it can function well, and function safely, without the need for lockouts. Lockouts have been relaxed for events like New Year's Eve and The Sydney Gay and Lesbian Mardi Gras, which have operated with a combination of public education, visible policing, and increased late night transport.

Importantly, the removal of lockouts and other restrictions imposed on venues in the CBD and Kings Cross will not encourage venues to trade poorly. The current *Liquor Act 2007* has more than sufficient power to control and punish licensed venues or patrons acting illegally.

AHA NSW also recommends:

- Removal of the liquor licence freeze in Sydney
- Removal of drink restrictions
- Removal of restrictions on takeaway sales
- Removal of Kings Cross Identification Scanning
- Re-location of the Kings Cross Medically Supervised Injection Centre
- Recognition of the scale of venues
- Removing inconsistencies with live music, entertainment and noise complaints

AHA NSW recommends the following positive solutions:

- Advanced venue management training
- Enhanced and increased policing resources
- Improved public transport options (trains/light rail operating hours)
- Precinct communication and education
- A 'Barred from One, Barred from All' policy
- Increasing the role of local liquor accords to manage local issues
- Allowing venues to manage patrons on-premises
- Enhancing Sydney's night-life with footway dining
- Promotion of Sydney's night-time economy

AHA NSW – a snapshot

The Australian Hotels Association NSW (AHA NSW) is the pre-eminent hospitality industry association in NSW. We have a membership of more than 1,800 licensed premises throughout NSW including hotels, pubs, taverns, small bars, function venues and golf resorts.

We represent nearly 200 liquor licence holders in the Sydney CBD and Kings Cross Precincts, of which 80% regularly trade after midnight and well over half are authorised to trade after 3.00am. These businesses are the heart and soul of Sydney's night-time economy. They have been hard-hit over the last five years and will be instrumental in working to implement any changes recommended by this committee.

Our members provide a range of services for their patrons, with food offerings from 'hatted quality' to traditional pub food, budget to luxury accommodation, and every type of entertainment you would expect – live music, performances, poetry, DJs, dance music, dedicated sports bars and trivia.

Hotels in NSW;

- Employ more than 75,000 people
- Host over 70,000 nights of live entertainment annually
- Donate more than \$25 million per year to charitable, community and sporting organisations in NSW
- Contribute a further \$20 million per year to charitable organisations "in kind"
- Serve 2.5 million meals to visitors and locals each week
- Contribute over a billion dollars in taxes and other levies each year to the NSW Government.
- Provide 14,000 pub accommodation beds in regional NSW

Licensees, their staff and our association play a key role in working to reduce the level of harm in the community. In collaboration with NSW Police and our patrons we have seen reductions in the levels of assaults in the precinct over an extended period. NSW hotels have never been better operated and have never been safer – they provide a regulated environment with appropriate security measures to protect the safety of their patrons, be they locals or visitors.

Recommendation

The lockouts and associated precinct restrictions on the Sydney CBD and Kings Cross be removed.

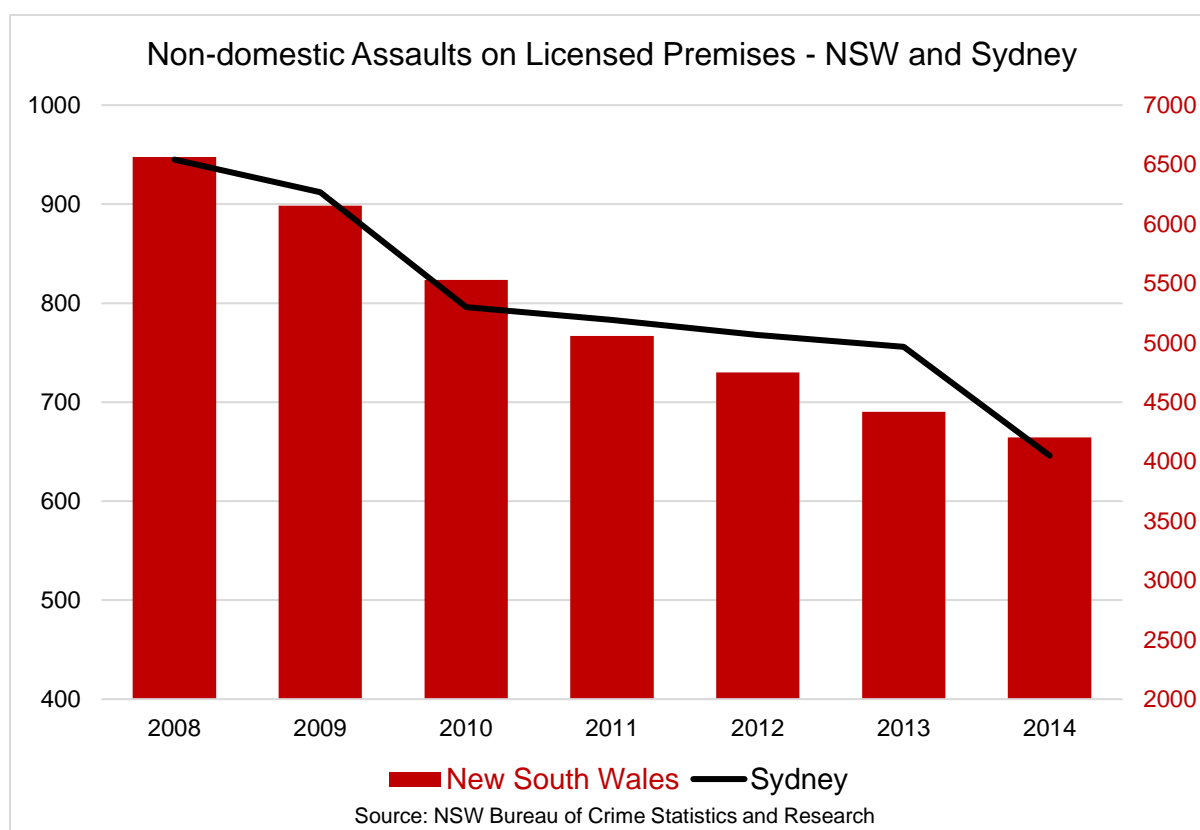
This recommendation is based on the following:

BOCSAR data

Assault rates on or near licensed premises have been steadily falling across the state for more than a decade. In fact, they were down significantly before lockouts were introduced.

Publicly available data from the independent NSW Bureau of Crime Statistics and Research (BOCSAR) shows between 2008 and the implementation of the lockout in 2014, assaults in NSW had already fallen by 32%.

There were 36% less assaults on licensed premises within the City of Sydney Local Government Area in the year to March 2014 compared to six years earlier.



Assault rates on or near licensed premises have continued to decline since the lockouts.

A 2015 BOCSAR studyⁱ examined the long-term trends in late-night assault and acute alcohol illness in the Sydney CBD Entertainment Precinct, concluding “ambulance and police administrative data sources provided a consistent picture of a recent decline in late-night assault trends”.

The study revealed incidents of grievous bodily harm had more than halved in the Precinct between 2007 and 2013, and late-night ambulance calls for assault in the CBD almost halved between 2008 and 2012. This pre-existing trend, the authors note, saw assaults in 2013 “at the lowest levels in 10 years”.

Reputation of Sydney

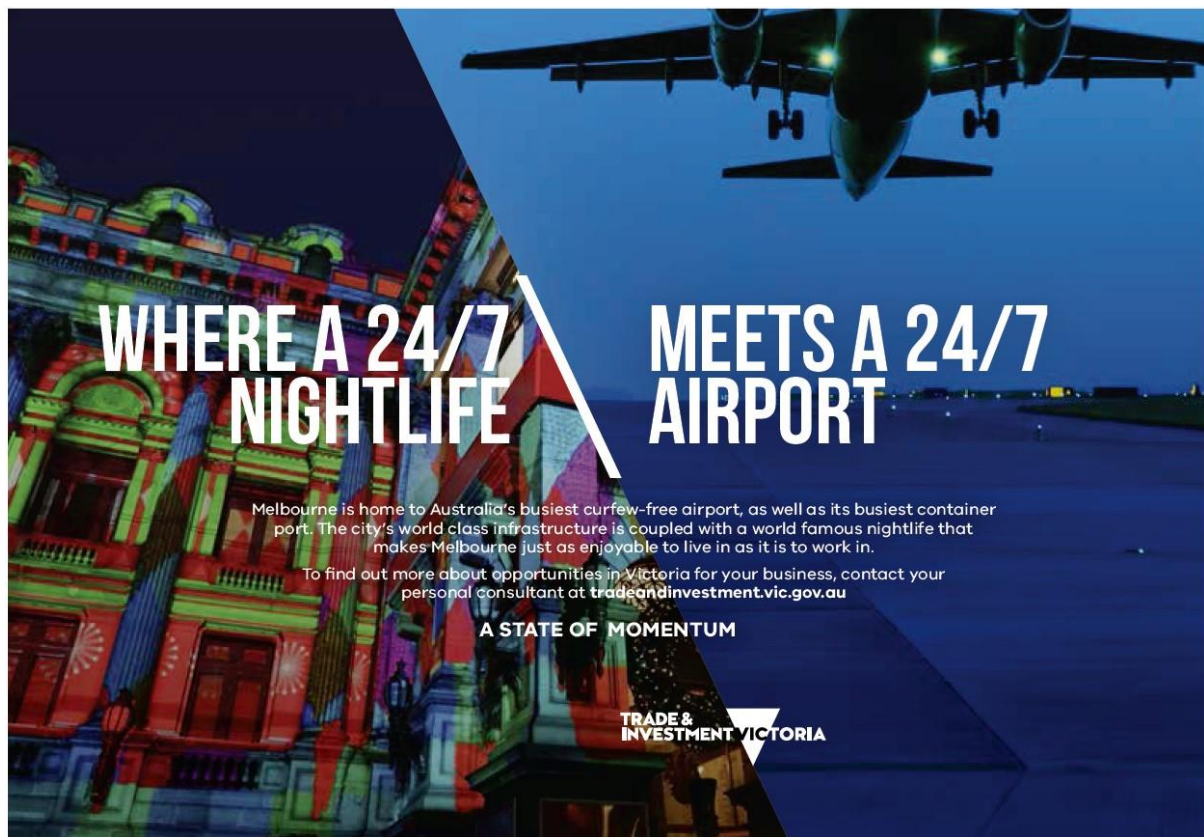
Sydney’s reputation as a vibrant, global city has faded.

Our nation’s largest metropolis has become an international lesson in what not to do.

Sydney is routinely referred to as a ‘ghost town’ at night.

Instead of images of laughing crowds moving under the Coca-Cola sign at the top of William Street, it has become synonymous with images of shuttered-up nightclubs and empty streets.

The city has been openly mocked in tourism marketing campaigns by other states, with cities like Melbourne spruiking their “24 hour airport and 24 hour nightlife”.



In the last five years the term ‘lockout’ has become firmly linked with Sydney, and the negativity associated with it goes beyond just restrictions on drinks and trade.

Lockouts send the message Sydney is closed.

They tell people we are not open for business, that our streets are unsafe, and our citizens are violent and can’t be trusted.

They send a message: we are a place you should not visit. And unfortunately, the message has been getting through.

Lockouts are a 'free kick' to other States, giving them the ability to highlight why they are a more attractive destination than Sydney.

And for those tourists who still choose to come here, or arrive unaware of the restrictions, the visitor experience is not one to write home about.

Tourists who object to having their ID scanned just to have a drink or a meal, who are forced to decant a bottle of wine into a plastic jug after midnight, or who are told they will need to travel out of the area if they wish to watch a late-night sporting event broadcast from their home country are not going to return in a hurry.

This is not the Sydney or the society we want.



The economic cost and potential benefit

The Sydney night-time economy is valued at more than \$27 billion dollars and supports more than 230,000 jobs.

NSW night-time economy establishments account for 34% of the Australian total, while 30% of Australian NTE employment and turnover are also generated in this stateⁱⁱ.

There is significant tangible and anecdotal evidence to suggest the policies introduced in 2014 have resulted in a disproportionately negative effect on night-life.

A number of hotels, award-winning cocktail bars, nightclubs and wine bars have closed since the restrictions were introduced.

Figures from Liquor & Gaming NSW show a net loss of 176 venues in Kings Cross and the CBD, with 418 licensed premises in Kings Cross and the CBD closing since 2014, while 242 small bar and on-premises licenses were granted.

Businesses which do not rely on the sale of alcohol, such as news agencies and food vendors, have also shut their doors as the customer base they relied upon disappeared.

A 2016 report by City of Sydney council showed late-night foot traffic in Oxford Street and Kings Cross was down by 80%.

The impact has also been felt in the cultural industries; data released by APRA AMCOS through the Live Music Office revealed there has been a 40% drop in live performance revenue at venues within the Sydney CBD lockout area.

The data also shows a 19% decrease in attendance figures at nightclubs and dance venues since the lockout precinct was introduced in 2014ⁱⁱⁱ.

The overall economic impact of the restrictions has been severe. A recent study by Deloitte indicates although Sydney's night-time economy is still the largest and most concentrated in Australia, a lack of support and underdevelopment is contributing to a \$16 billion shortfall in economic potential^{iv}.

The February 2019 Deloitte Access Economics report estimated Sydney's NTE is worth \$27 billion per year, but if properly managed, could be worth \$43.3 billion.

The report said Australia's night-time economy makes up less than 4% of our overall economy, but makes up around 6% of other economies such as the UK's.

The report claimed nurtured and supported night-time infrastructure and activities would result in increased spending, more employment and more tourism.

The sale and consumption of liquor on licensed premises most commonly occurs in the evening, and the patronage generated by licensed premises is a key driver of other night industries.

But the night-time economy involves more than just the consumption of alcohol. Good food, performance, art and cultural events are all components and hotels are proud to be at the forefront of many.

Declaring Sydney open for business again will bring back much needed jobs and investment.

While the rise in small bars in recent years has been considered a positive by some, Sydney needs diversity.

Our night-life cannot just be about small bars - they simply don't have the capacity to offer the range of music, entertainment, food, fundraising and other community-based activities hotels do best.

The real drivers of the NTE are hotels.

Change

Sydney has changed significantly over the past five years.

A large number of venues have closed forever and many others have radically changed their business models.

Assault rates in licensed premises are at an all-time low across the state, and patron behaviour has permanently changed.

Venues have improved, staff are well trained, and sanctions for bad operators are severe.

Hotels in the city are more sophisticated, leading the way in design and ambience, with food and beverage offerings to rival the best restaurants.

And the drinking public are more sophisticated too - with a flood of whiskey bars, wine bars, craft breweries, and cocktail and rooftop bars becoming popular additions to venues.

There have been huge changes in public transport, with improved taxi services, the rise of Uber and other ride-share companies and the construction of the CBD light rail.

The lockdown restrictions are blanket measures designed for another place and another time. They are no longer relevant and they are no longer needed.

The Kings Cross we knew is gone forever

There is no chance removing lockdowns will see a return to the 'bad old days' in the area commonly referred to as 'the Cross'.

The red-light district, bohemian arts-hub and entertainment district as we knew it is gone forever.

It is no longer possible for Kings Cross to return to its former self. It has become, and will forever remain, a mostly residential suburb close to the CBD.

A total of 36 measures and restrictions have been imposed on licensed venues in Kings Cross since 2012, with 21 on premises in the Sydney CBD Entertainment Precinct.

These measures were imposed prior to proper evaluation of previous measures, so it is unclear what has and what hasn't worked. But one thing is clear - Kings Cross businesses have been decimated.

The chair of the Kings Cross Liquor Accord said 21 of the 35 late night high-risk category venues originally listed in the precinct by NSW Liquor and Gaming have now closed.

Patron capacity in the area has been reduced by more than 50% or more than 5,000 patrons^v.

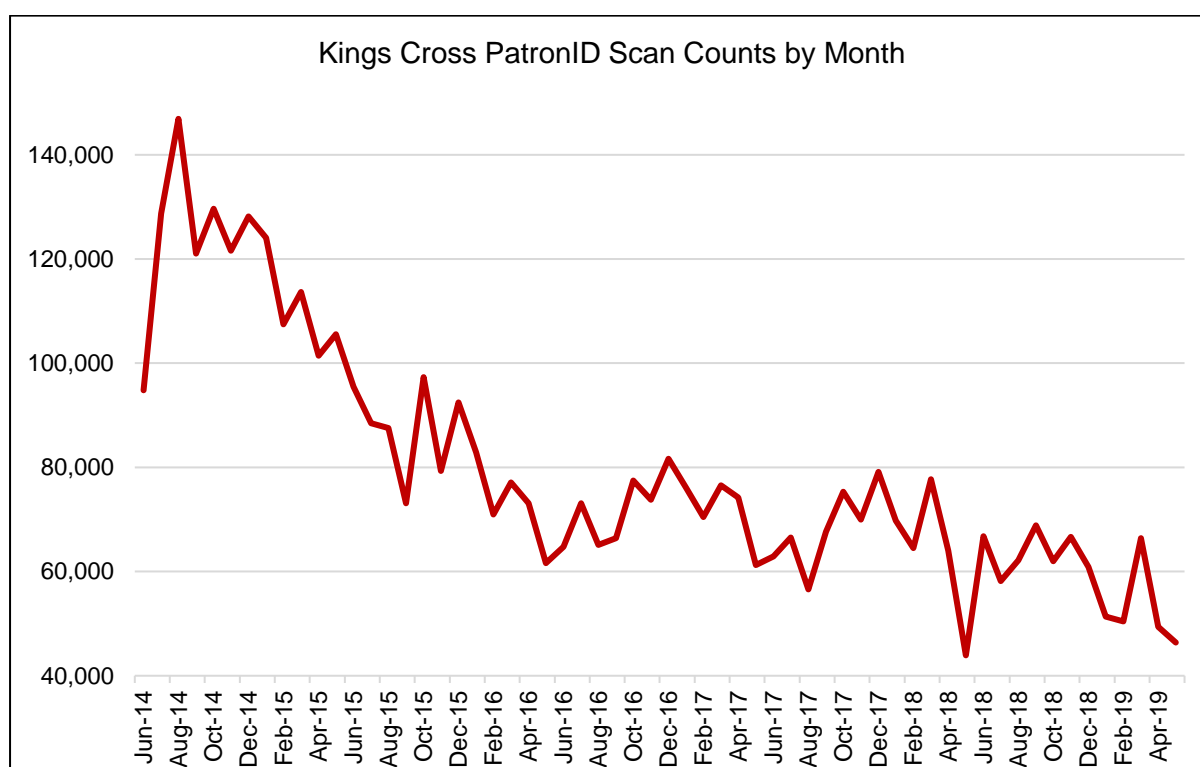
A 2015 survey of more than 200 businesses along Oxford St found they had experienced a 31% drop in annual turnover.

A 2016 report by the City of Sydney Council showed late night foot traffic in Oxford Street and Kings Cross had dropped by 80%.

ID Scanning is compulsory in Kings Cross venues after 9.00pm, seven days a week.

In the 12 months after they were implemented in July 2014, the Kings Cross ID scanners registered 1,423,028 successful scans into venues between 9.00pm and 1.30am.

In the same period in 2018-2019, just 709,545 successful scans were recorded – a drop of 50%.



The figures of actual patron numbers may be far worse, as patrons who exited and then re-entered a venue, or patrons who visited multiple premises on the same night, are double-counted in these figures.

Transport

In every study of assaults and anti-social behaviour in the night-time economy in Sydney, Newcastle and comparable cities around the world, transport, or a lack of it, has been a key issue.

There is a consistent and significant relationship between overcrowded environments and patron aggression^{vi}.

Large numbers of people leaving licensed premises at similar times can overwhelm local transport capacity, particularly taxis and buses^{vii}.

With nowhere to go patrons are forced to spend longer in entertainment precincts, creating frustration and competition over resources and increasing the potential for conflict^{viii}.

There have been dramatic improvements to our late-night transport options since the lockouts were introduced, but there is still work to be done.

The last train on a Saturday night from Kings Cross station leaves at 1.44am, from Circular Quay station at 12.57am, and from Town Hall at 1.49am, with services not re-starting until around 5.00am. These train services have not changed.

Nightride buses replace trains to most stations across the greater Sydney network, but run roughly one every hour.

However, by December 2019, the Sydney light rail will be operating from Randwick and Kingsford to Circular Quay.

This service will convey passengers from The Rocks and the City North precinct along George Street to Central Railway, supplementing the heavy rail line. The opening of this tram service provides a unique opportunity to “unlock” and showcase the re-invigorated CBD precinct, from Central to Circular Quay.

However, at this stage the light rail service is planned to cease operations between 1.00am and 5.00am seven days per week.

We need night light rail options to get people out of areas at night. The trams must run Friday and Saturday nights 24/7 at a minimum to ensure patrons in the precinct can be moved quietly and quickly from the CBD to the transport hubs and not be allowed to congest.

By 2024 the Sydney Metro, will bring 60% more train services into new stations at Victoria Cross, Barangaroo, Martin Place, Pitt Street, Waterloo and new underground platforms at Central Station. It is still unclear how late these trains will run, however what we do know is these train services will be driverless, creating opportunities for later travel.

Uber, rideshare and taxi apps

The game changer in transport options since 2014 is the rise of Uber, other ride-share companies and the growing use of Taxi Apps, like GoCatch and Ingogo.

A lack of available taxis was a major problem prior to 2014, particularly when the most common time of night for taxi drivers to change shifts was 3.00am and patrons were left competing for the few still operating with no other option to get home.

In 2009 one journalist documented approaching 106 taxis seeking to go to Bondi Beach from Kings Cross (approximately 8km), resulting in being offered a flat fare by 11 drivers, and having the fare refused 82 times^{ix}.

Long queues at taxi ranks with people attempting to jump ahead and taxis touting for highly inflated rates was a recipe for aggression. But now ride-sharing services like Uber and the other taxi apps have changed the dynamic.

Patrons order transport from inside the venue and watch on their phones as their individual ride approaches.

They depart the area without angst, without pedestrian congestion and without arguing with anyone else over whose ride it is.

However, a lack of kerb space for rideshare drivers to safely pull over is an issue that warrants further attention. Rideshare drivers are not permitted to stop in taxi ranks or loading zones, and a lack of available parking in the CBD compounds this issue.

For the safety of both rideshare drivers and their passengers, consideration should be given to the creation of designated pick up and drop off zones in key night-time economy locations.

Responsibility, personal choice and freedom

In a modern society adults should be treated as adults.

If individual venues do the wrong thing, there are consequences for the venue. If individual patrons behave poorly there is a personal price to be paid.

But it is not fair to punish everyone for the actions of a few, particularly when the number of people doing the wrong thing is declining every year.

We cannot continue to make policy based on the lowest common denominator.

Blanket measures imposed on a geographical area treat all licensed premises as if they are culpable. It impedes investment in the industry and penalises good licensees who are committed to compliance and quality service.

Venues need to be responsible, trading in accordance with their licence and following both the letter and the spirit of the law.

They need to particularly focus on responsible service of alcohol, harm reduction and preventing intoxication.

But patrons also carry a burden of responsibility for their own behaviour.

Patrons need to take ownership of their own, and their companions' behaviour towards others, as well as their level of intoxication.

This is particularly important when patrons are pre-loading or using illicit drugs before arriving at a licensed venue.

We don't arrest everyone in a pub because one patron is doing the wrong thing.

So why do we use blanket measures which put compliant and pro-active venues under the same conditions and restrictions as rogue and recalcitrant operators?

Our society should not be one where government takes a heavy-handed approach to the social lives of its people.

Sydney without lockouts

Over the last five years Sydney has proven time and time again it can function well, and function safely, without the need for lockouts.

Lockouts have been relaxed for events like New Year's Eve and The Sydney Gay and Lesbian Mardi Gras, when the city is at its most crowded, and did not result in any increased violence or other anti-social behaviour.

A Liquor and Gaming NSW media release about the 40th Annual Gay and Lesbian Mardi Gras in February 2019 said relaxing the laws would actually "help manage crowds and give people more time to make their way to nearby LGBTI focused venues after the parade".

These nights were successful because they included a combination of public education, visible policing, and increased late night transport.

If this combination works on the busiest night of the year, logic says it could function permanently.

Case study: Lockouts and New Year's Eve

Lock-outs have been removed in Sydney for every New Year's Eve since 2015.

During these nights additional policing resources are deployed and transport systems operate overnight. The experience of these NYE celebrations has been overtly positive, with no discernible increase in anti-social incidents.

For example, on 1 January 2015, the 1.30am lockout was relaxed, with Police describing the night as the "safest New Year's Eve we've ever had".

Similarly, when the lockout was again not operational on 1 January 2016, police publicly praised the behaviour of revellers, while noting of the 30 arrests made throughout the night, around half were drug-related offences^x.

As a result, Sydney on New Year's experiences little or no substantial issues with the lockout removed. Then Police Association of NSW President and Last Drinks Coalition spokesperson Scott Weber noted during the 2015 New Year's Eve's Operation Devlin,

Over a million people flooded into the city but they saw a great New Year's Eve that was very well structured by the City of Sydney with emergency services out in force, ensuring that most people had a great time^{xi}.

The deployment of additional police officers engaged in high visibility operations, combined with late-night train services to remove the crowds from the Sydney CBD, mean violence and anti-social behaviour are rare occurrences, serving to demonstrate an alternative to the blunt policy instrument of the lockout.

Liquor Act has teeth

The removal of lockouts and other restrictions imposed on venues in the CBD and Kings Cross will not result in a return to the trading conditions and patron behaviour of five years ago.

Everything needed to control and punish licensed venues or patrons acting illegally is already available under NSW law and, in most cases, carries with it significant sanctions.

For patrons, mandatory minimum jail sentences for one punch assaults have been in force in NSW since February 2014 and will remain in place.

For venues, a range of sanctions are available under *The Liquor Act 2007*, ranging from; the revocation or imposition of new licence conditions, fines and compliance loading on fees, licence suspension, licence cancellation, disqualification from having an interest in a business and forced venue closure.

Specifically, the current powers of the *Liquor Act 2007* include:

Three Strikes (s.144 A-P)

The Three Strikes Disciplinary Scheme is the cornerstone of the disciplinary provisions of the Act specified under Part 9A in relation to serious breaches of the legislation in relation to preventing intoxication, the service to minors and other behaviours.

Annual Liquor Licence Fees (s.58 A-C)

The Compliance Loading that sees licensees imposed with substantial additional fees on their licence where they have incurred a strike under Three Strikes or for other breaches of licences provides an additional and previously unmeasured incentive for compliance, not only in the precincts but across NSW.

Licence cancellation

- Section 141 (2)(a): Disciplinary powers of Authority
 - The Authority may also take a range of disciplinary actions under this provision to determine a complaint made under Part 9
- Section 130E (Minors):
 - Automatic licence cancellation for third offence

Disqualify a person from having an interest in the business

- Section 141 (5) and (6)

Licence suspension

- Section 141 (2)(b): Disciplinary powers of Authority
 - The Authority may also take a range of disciplinary actions under this provision to determine a complaint made under Part 9
- Section 130C & 130D (Minors):
 - The Secretary may order suspension for the first offence
 - Automatic licence suspension for second offence

Other measures that can continue to be imposed

- Section 52: Authority may impose special licence conditions
 - This provision permits the Authority to impose conditions on a licence prohibiting or restricting activities that could encourage misuse or abuse of liquor.
- Section 53: Authority may impose, vary or revoke licence conditions
 - This provision permits the Authority to impose conditions on a licence.
- Section 54: Secretary may impose, vary or revoke licence conditions
 - This provision permits the Secretary to impose conditions on a licence.
- Section 82: short-term closure of licensed premises
 - This provision permits the Authority to order licensed premises to close on a short term basis;
- Section 84: Order by Authority for long-term closure of licensed premises
 - This provision permits the Authority to close licensed premises for a longer period than section 82 subject to meeting certain criteria.
- Section 85: Further long-term closure orders
 - The Authority may grant two or more orders in respect of premises under section 84.
- Section 87: Secretary may make late hour entry declaration
 - This allows the Secretary to make a declaration to prevent patrons entering licensed premises during late trading hours.

The *Liquor Act* can be used to sanction rogue operators and remove them from the industry. In recent times, we have seen examples of these powers being exercised, and the significant impact they have, with licensees and close associates receiving substantial sanctions and/or banning from being involved in the industry for ten years, and in some cases life.

Case Study: Action against a King Cross venue operator

On 10 December 2017, a disciplinary complaint was made by NSW Police to the Independent Liquor and Gaming Authority (ILGA) under Part 9 of the Liquor Act. The Complaint was made in relation to Mr Ulysses Flevotomos, the former licensee of Dollhouse Nightspot.

The complaint alleged Mr Flevotomos had failed to contact police after an assault occurred on the premises, had failed to preserve the crime scene, had failed to maintain an incident register, and had, in fact, himself participated in the assault on the victim.

Further, Mr Flevotomos had failed to comply with a prohibition on glass drinking vessels, failed to engage appropriate RSA Marshals, failed to comply with a licence condition mandating the use of CCTV on the premises, failed to comply with the compulsory use of

ID Scanners in order to admit patrons, failed to comply with the 1.30am lockout condition, and consistently permitted indecent conduct and sexual activity on the premise, including breaching a licence condition that performers wear at least a G-string (the “G-string condition”). Police also alleged there was a high volume of illicit drug use by both patrons and staff on the premises.

ILGA concluded Mr Flevotomos was not a fit and proper person to hold the regulated roles; licensee, business owner and close associate of the licence.

ILGA placed a condition on the licence of the Dollhouse: Mr Flevotomos was not to have any involvement whatsoever with the business conducted on the premises. Mr Flevotomos was disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales for life, disqualified from being a close associate of a licence for a period of ten years, and ordered to pay a monetary penalty of \$10,000.

Lockouts – evaluation & impact

The CBD and Kings Cross lockouts are a blunt policy instrument; they prevent entry to anyone not inside a licensed premises at the time the lockout is imposed, regardless of their sobriety, demeanour or frailty. They also keep persons inside licensed premises who may otherwise filter away, as they will not be able to gain entry elsewhere without leaving the precinct.

Lockouts can cause conflict. Without lockouts the only people refused entry are those assessed, or re-assessed as being intoxicated, violent or quarrelsome. Lockouts cause additional conflict from persons who are refused entry;

- despite them only just completing their shift and having not had anything to drink,
- when they are looking to meet up with friends who are inside the premises,
- when they are seeking to retrieve items left at the premises,
- when they assist friends leaving the premises safely and then wish to re-enter themselves, or
- when they intend to enjoy the venues facilities (e.g. live music) without drinking at all.

Of all the measures imposed upon licensed premises, the lockout is the measure with the least academic support. Although crime rates in Kings Cross and the Sydney CBD appear to have fallen since February 2014, there is no evidence of causation that can be attributed to the ‘lockout’ measure specifically. An evaluation by Professor Kypros Kypri and colleagues of the ‘Newcastle Solution’ found there was no evidence the lockout measure had any impact on rates of assault^{xii}.

A 2.00am lockout was trialled in Victoria between June and September 2008, with a subsequent review by KPMG finding the restriction actually increased assaults^{xiii}. The Victorian Government declined to extend the trial, and has consistently argued against the efficacy of lockouts since. Then Victorian Minister for Liquor Regulation Jane Garrett

characterised the attempt to impose a lockdown in Melbourne as "a disaster for the fabric of our social and cultural identity"^{xiv}.

In Queensland, a review of a Gold Coast lockdown found no statistically significant impact on crime, violence, head and neck injuries, or intoxication, and identified violence intensified in some pre-existing hot spots^{xv}. Studies on other locations which have a lockdown, such as Ballarat^{xvi}, Adelaide^{xvii} and Geelong^{xviii} identify a range of problematic issues generated by the policy, such the unintentional promotion of illicit drugs. Professor Ross Homel labelled the Queensland lockdown;

"...a complete, absolute 100 per cent failure from all of the data that we have been able to observe... It is what I regard as a politically attractive but completely ineffective strategy. But it is effective in the sense that it got the problem off the front page for a while"^{xix}.

The most comprehensive review of the existing academic evidence on and support for various alcohol policies, funded by The National Drug Law Enforcement Research Fund (NDLERF), examined lockdown interventions and concluded,

"...the balance of the evidence suggests that precinct-wide lockdowns are ineffective in reducing alcohol-related harm in night-life districts, and are associated with some negative consequences"^{xx}.

Imposed lockdowns are not an effective strategy and the detrimental consequences to business substantially outweigh any perceived benefits.

There is also little evidence to suggest 3.00am cessation of service has much impact. Research in other jurisdictions has found no evidence of a link between extended trading hours and rates of violent assault, and some countries have in fact introduced longer trading hours in order to prevent the harms associated with early fixed closing times^{xxi}.

For example, in the United Kingdom following the introduction of 24-hour trading under the *Licensing Act*, there were reductions in per-capita alcohol consumption, binge-drinking, violent crime, alcohol-related emergency department admissions, and late-night traffic accidents^{xxii}. Similarly, many cities in the US have liberalised trading hours, resulting in net reductions in violence^{xxiii}.

The Foggo Review ^{xxiv}

In 2013 the statutory review of the *Liquor Act 2007* by the former Commissioner of the Office of Liquor, Gaming and Racing Michael Foggo made many observations and recommendations which remain relevant today.

The review received 100 submissions from the community, government agencies, local councils, the liquor industry and the health sector containing over 1500 pages of comments, research material and discussion^{xxv}. The review found by and large the objects of the *Act* remain valid.

The Foggo Review made 91 separate recommendations, including a number relevant to the precinct-wide conditions which would be imposed in February 2014.

Foggo Review - 1.30am Lockout

“The adoption of a standard set of conditions to be applied to all existing late trading venues is not supported.” (Recommendation 31)

“The [pre-lockout] strategy of applying a targeted approach to reducing alcohol-related problems associated with licensed premises is supported and should continue.” (Recommendation 30)

Foggo Review – 3.00am Cease Service of Alcohol

“While many of the submissions supported a 3.00am closure, (along with other prescribed conditions), there is insufficient research to inform the review that this is the optimal closure hour that would result in an acceleration of the rates of decline in alcohol-related violence evidenced since 2008.

The review also notes that closure of all late trading premises at a particular hour may result in considerable demand for the limited transport available at that time. Resulting queues and frustration experienced by patrons may present significant management problems for licensees, other businesses operating at those times, and law enforcement.

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

Illicit drugs

Any examination of the issues impacting Sydney’s night-life would not be complete without at least acknowledging the harm generated by illicit drug and steroid consumption.

While the deaths of eleven young people at music festivals across NSW since 2013 serve as tragic illustrations of the inherent dangers of illicit drugs, the use of these substances prior to heading out in Sydney is different.

The impact of people affected by illicit substances, or pre-loading with a mixture of both alcohol and drugs then attending licensed premises causes challenges for staff, security and other patrons due to the behaviour and actions of those persons.

To some extent, the attractiveness of illicit substances may be explained by the increasing comparative affordability of drugs compared to alcohol. While the price of alcohol is indexed to the Consumer Price Index and thus consistently rises year on year, research has shown the price of ecstasy and amphetamines has remained stable or fallen since 2000^{xxvi}.

Although the scale of the problem is difficult to quantify, one study estimated between 20 and 40% of people attending Night Time Entertainment Districts in Australia had used some form of illicit drug^{xxvii}.

According to BOCSAR figures, use and possession of cocaine has risen 689% in NSW since 2008, use and possession of ecstasy is up 388%, use and possession of amphetamines is up 221%, dealing and trafficking cocaine has increased 491% and dealing and trafficking amphetamines is up 116% since 2008.

Alarming, over 60% of methamphetamine users admit to problems with aggression, and 47% to committing a violent crime^{xxviii}. Given the proven links between illicit substance use, aggressive behaviour, and recidivist violent offending^{xxix}, the issue of illicit drug use in the night-time environment needs to be acknowledged.

Further Recommendations

Removal of the Liquor licence freeze in Sydney

In 2008, the then Government imposed a “temporary” liquor freeze for 12 months in the Sydney CBD. It was aimed at preventing development or licence changes which would “intensify” the number of people consuming alcohol in the precinct.

Every year since, consecutive governments have extended the freeze, occasionally tinkering around the edges by exempting small bars and restaurants from new applications, or increasing the operating hours of small bars to 2.00am (from midnight).

In reality the freeze has prevented hotels and other existing venues from renovating or refurbishing, in case those actions inadvertently lead to intensification of use.

There is no need for this freeze restriction. Modern, improved venues are more conducive to better behaviour and provide a different entertainment experience.

We need to move to a more nuanced process where the clustering of venues which enhance safety and vibrancy are embraced, without creating an oversupply in one area.

A licence cap is supported, where a set number of existing premises have been established through a community impact process and are then allowed to operate and renovate or refurbish as required.

Removal of drink restrictions

Many of the measures introduced in 2014 relate to the types and quantities of alcohol permitted to be served during the late trading period.

Premises are prohibited from selling:

- more than four alcoholic drinks or the contents of one bottle of wine after 12.00am
- more than two alcoholic drinks after 2.00am.
- any drinks referred to as a “shot”, a “shooter” or a “bomb” after 12.00am,
- any drink containing more than 50% spirits or liqueur after 12.00am,
- any ready-to-drink beverage with an alcohol by volume content of more than 5% after 12.00am, or
- any drink prepared on the premises that contains more than 30ml of spirits or liqueur after 12.00am.

The apparent goal is to manage and reduce the rapid consumption of alcohol, but they target beverage categories, rather than patterns of consumption.

Research on alcohol consumption across the globe has found “there is no general pattern which holds across cultures of more or less trouble being associated with a particular beverage type”^{xxx}. It is the way people drink, rather than what they drink, that matters.

A schooner of beer, a small glass of wine, a double Bailey’s on ice, and a neat 18-year-old single malt scotch all have roughly the same overall alcohol content, and it is difficult to argue any are designed to be consumed rapidly. However, after midnight in the Sydney CBD and Kings Cross, the beer and wine would be permitted to be served, while the Bailey’s and neat scotch would not.

These restrictions are inconsistent and contradictory and create a great deal of confusion and resentment amongst patrons. They are bad for tourism and bad for our city’s reputation. And, like the lockout laws themselves, they are unnecessary. There already exists a significant penalty - up to and including closure of a venue - for serving intoxicated people.

Similarly, restrictions on serving drinks in glass after midnight should also be removed. Plastic cups just do not fit with some venues and if an adult wants to enjoy a drink from a glass they should be able to. There also is a process in place for police or the regulator to make application for these restrictions on individual premises should there be a risk.

If the responsible adults who run venues and those who visit them flout the law, there are consequences.

Removal of restrictions on takeaway sales

A ban on takeaway alcohol sales after 10.00pm was also implemented as part of the raft of restrictions introduced in 2014.

This was brought in state-wide and ended up having a huge impact far from Sydney – in rural and regional areas.

Large metropolitan liquor barns close at 9.00pm so were not affected at all, but in the bush pubs and hard-working patrons were hit hard.

Many rural hotels are isolated and not near public transport. Patrons come in for dinner and then pick up a bottle of wine or a six-pack on the way home. In summer many farming communities do not head into town until late, when the work is done, and they have to travel a distance to get there. They want to have food and then get BYO or take-away, but weren't allowed to because of issues related to the Sydney CBD.

There is no evidence to support earlier closure of bottle shops having an impact. One hour has already been restored with no effect. The restriction should now be removed altogether.

Removal of Kings Cross Identification (ID) Scanning

ID scanning in Kings Cross was legislated prior to the imposition of the CBD Plan of Management, but was implemented in July 2014.

ID scanning is expensive to run, everyone entering a premises after 9.00pm seven days a week must be scanned, and all venues have to use the same ID scanning company.

ID scanning is no longer needed in Kings Cross. As we have outlined earlier, the issues with crowds and people visiting multiple venues has all but disappeared.

All scanning does is perpetuate the feeling of the 'nanny state' and turn off customers who do not want to participate in a society where every move is tracked.

Scanning alienates tourists who may not have the appropriate ID with them, and creates conflict for staff who have to turn groups of sober, potential paying customers away because one of them does not have the correct ID.

Re-location of the Kings Cross Medically Supervised Injection Centre

In the 1980s and 1990s, Kings Cross was notorious for the open supply and use of heroin and similar substances, including by residents, sex workers and others who travelled to the area. There were numerous ambulance call-outs and deaths resulting from overdoses, both on the streets and in Kings Cross premises^{xxxi}.

Following the 1999 Drug Summit, the Medically Supervised Injection Centre (MSIC) was established in 2001. The MSIC was situated in the heart of Kings Cross on Darlinghurst Road, at a time when heroin was the drug of choice and a large number of users of the facility lived within proximity to Kings Cross.

Whilst the number of non-domestic assaults and incidents attributable to licensed premises in the Kings Cross Police Area Command have reduced substantially since 2012, a number of other incidents which continue to occur are attributable to drug affected persons.

We also understand there is a protocol between NSW Health and police whereby persons in the vicinity of the MSIC are not searched or engaged by police.

Consideration should be given to the re-location of the MSIC away from Kings Cross - rather than act as a destination in Kings Cross, accessible by one train line.

Recognition of scale

When the performance of venues is measured by regulators there needs to be consideration given to the size and number of patrons who frequent a venue.

It is unfair to treat a hotel which has more than 100,000 people through its doors over the weekend in the same way as a hotel which has just 300.

The Violent Venues Scheme that commenced with the “Top 48” restricted venue list in 2008 – when 48 venues had more than 18 assaults – is an example of how measuring based on raw statistics can negatively impact a larger venue. Whilst out-of-scope for this inquiry, at a time when there are NO premises in the top tier of Schedule Four of the Liquor Act (Violent Venues), and six venues in the second tier, consideration should be given to the ongoing value of the scheme.

Live Music, Live Entertainment and Noise

Any examination on Sydney’s night-time economy must include some discussion around issues surrounding noise, and live performances.

A NSW Parliamentary Inquiry into the Music and Arts Economy was held late last year with its findings tabled on 15 November 2018. AHA NSW endorses the findings of that inquiry, and in particular advocates a blended policy across the CBD, comprising designated entertainment precincts where liquor licence, noise, safety and amenity are a focus, complimented by agent of change laws which ensure new developments are built to dampen the infiltration of sound into newly constructed dwellings.

Whilst the *Liquor Act 2007* contains provision for “first occupancy” between venues and residents being considered in the finalising of a decision on any disturbance complaint, other agencies do not have to consider first occupancy.

This inconsistency needs to be rectified so that for all agencies and local Government, order of occupancy should be considered at the complaint initiation stage, so vexatious or trivial complaints regarding reasonable noise are dispensed with at the earliest juncture.

As identified in the Music and Arts Economy Inquiry, further work needs to be done in simplifying existing regulatory arrangements and associated duplication in responsibilities, closely examining the enforcement and compliance structure that sees Police, Liquor and Gaming NSW, and local councils regulating and enforcing laws on noise, intoxication and compliance.

To complement the removal of lockouts there should be a suite of positive solutions and strategies to enhance community safety and help the night-time economy in Sydney and Kings Cross.

Venue management

There needs to be advanced training for all managers operating venues in the CBD after midnight.

Licensee and advanced licensee courses have been developed by Liquor and Gaming NSW in collaboration with industry associations, liquor-related Registered Training Organisations and specialist NSW Police liquor licensing officers.

The courses cover updated liquor legislation, working with key stakeholders, as well as information on working in a higher-risk environment after midnight.

Enhanced and increased policing resources

The advantages of highly visible, pro-active policing resources throughout entertainment precincts is a well-recognised world-wide strategy proven to impact upon safety and amenity.

Additional uniformed police resources need to be deployed to locations where clusters of licensed premises operate.

The New Year's Eve case study provided earlier in this submission highlights the benefits of highly visible, pro-active policing in entertainment precincts. The experience during each year's Vivid festival of light and other key events only serve to reinforce the deployment of police provides reassurance and safety to areas where needed.

In areas throughout France and other parts of Europe, uniformed police using "segways", (two-wheel motorised personnel vehicles) allow for rapid deployment by police, which are more clearly visible due to the markings on the vehicle, and the height of the rider atop a platform above the wheels. In NSW, the use of the world's oldest continuous Mounted Police Unit meets this task in open areas.

Extra 'event' police are regularly allocated to a football match at the SCG with 40,000 people or the races at Royal Randwick. This should also be the case in the CBD on a Friday or Saturday night when just as many people visit the precinct.

Precinct communication and education

There needs to be a formal communication channel set up between CBD venues.

It would involve all venue management and security staff in a precinct being on 'what's app' or another similar encrypted mobile phone system so they can be in constant communication throughout the evening.

This will be particularly important when a person or group has been removed from a venue and attempts to migrate to others nearby. This communication channel could notify neighbouring venues.

This system is currently underway in Newtown, and has recently commenced as a trial in the Hastings Liquor Accord where seven venues in Port Macquarie were given pre-paid mobile phones and through a 'what's app' group can jointly refuse entry to violent or intoxicated patrons.

Accord members found the mobile phone communication was more reliable, had more range and was more discreet than the old two -way radio system.

Any system, like the one being trialled in Port Macquarie, must be complemented by a strong education campaign.

Patrons need to be informed all venues in the area are in constant communication about bad behaviour and if they are removed from one venue, they are highly unlikely to get into another.

Patrons must also be informed of laws requiring patrons to leave when told, and the monetary penalties involved – called "Fail to Quit"

One issue which has been identified constantly in crime reports about assaults in and around licensed premises is many people do not understand NSW laws relating to a requirement to leave the premises when they become intoxicated whilst in a venue, not attempt to enter a venue when refused access, and moving more than 50 metres away from that venue.

All too often patrons in these scenarios, be they international/interstate tourists or even those from other parts of Sydney, flatly refuse to leave or become aggressive and abusive when told to leave.

An advertising and information campaign using social media, convenience advertising and public transport signage, developed in collaboration with police, licensees and industry associations targeting this behaviour should be a priority.

Barred from One, Barred from All

As a component of the CBD and Kings Cross conditions, offenders charged with acts of violence in the precinct are issued short or long-term banning orders.

These have proven effective. However, the process for licensees to be able to bar patrons for other reasons has only recently been enacted at the request of licensees.

A process that has been effective in many local liquor accords across NSW is colloquially called “Barred From One – Barred From All”. This strategy sees people who commit prescribed offences including assaults, drug supply, consorting and other offences barred from all venues in the liquor accord for a period of time, or life by using s.134 of the Liquor Act in entering a term of the accord, which allows all venues to refuse entry or exclude a person under s.77 (2) (e) of the Act.

Any person who enters or seeks to enter a premises once barred commits an offence under this section. Hotels in the CBD and Kings Cross precincts are willing to implement this scheme, which will further address individual patron behaviour.

Sydney CBD / Kings Cross Liquor Accords

Liquor accords are voluntary partnerships comprising licensees, police, government agencies and other key stakeholders which look to develop local solutions to local problems.

Liquor Accords in closed communities like Wagga Wagga in regional NSW voluntarily introduced lockouts knowing they would work, because patrons had no other easy options.

The liquor accords in the Sydney CBD and Kings Cross Precincts have some of the largest potential membership numbers and diverse premises types.

They face greater challenges than a local accord in a regional town, or a suburb, because patrons come into the CBD from varied locations. These include residents, office employees, visitors from throughout Sydney, NSW and interstate as well as tourists from across the globe.

The Sydney CBD and Kings Cross Prescribed Precincts are serviced by five accords in three Police Area Commands – Sydney City, Surry Hills and Kings Cross. These local liquor accords have been at the forefront of working with key stakeholders in developing localised strategies targeting issues impacting upon safety and amenity including “Ask for Angela”, fail to quit, domestic violence and other relevant campaigns.

Currently, work is being done within these accords to align processes and structures to more effectively represent their members. In Melbourne a periodic CBD forum, comprising key stakeholders across the larger CBD including emergency services, business chambers, industry associations, Government agencies, and of course licensed premises exists. This forum examines at a strategic level the objectives the group should be striving for, harnessing the collective strength of the number of venues and patrons/businesses they support. In enhancing Sydney’s Night Time Economy, the examination of a larger strategic forum makes good sense.

Case Study: Newtown Liquor Accord – Local Solutions

In mid-2015 the Newtown Liquor Accord discussed local issues impacting upon their venues following the introduction of the CBD Plan of Management. As a pro-active strategy, the accord voluntarily introduced a series of measures on Friday and Saturday nights only;

- No new patrons after 3.00am
- Drink restrictions after midnight
- A Code of R.E.S.P.E.C.T. developed for patrons and staff

- Conflict resolution training for late-trading venue staff and security funding by City of Sydney Council

The locally developed strategy received the support of Newtown MP Jenny Leong, Police, Liquor and Gaming NSW and then Deputy Premier Troy Grant MP. The measures have been effective and have ensured Newtown's on-going vibrancy and safety, despite an increase in patron numbers.

Manage patrons on-premises

Venues across NSW have a legal obligation under the Liquor Act not to admit any patron in a state of intoxication, or permit intoxication on their premises.

Should a patron become intoxicated, the licensee or their staff must ask them to leave, or remove them from the premises. Currently, a patron approaching intoxication is often asked to leave, refused entry or removed as well.

The penalties for permitting intoxication on licensed premises are severe, and include potential loss of licence under the Three Strikes disciplinary scheme.

It is a concern the legal imperative for venues to remove those patrons has the unintended consequence of leaving them on the street in a vulnerable state and outside with any intoxicated people who were refused entry in the first place.

The recently introduced music festival licence allows an exemption for a music festival licensee, where an intoxicated person is permitted to stay on licensed premises if the intoxicated person is moved to a harm reduction area. This allows for supervision of those patrons and ensures they receive attention from medical or other staff.

Similarly, Queensland legislation allows venues to refuse service to patrons if the person is unduly intoxicated or disorderly, but does not compel the venue to remove the patron from the premises.

Queensland licensees are afforded some discretion when dealing with intoxicated patrons - for example, if they are concerned that by evicting an intoxicated patron they may not be capable of getting themselves home safely, licensees may choose to allow the patron to wait for friends to finish their drinks before taking them home, allow the patron to wait for a spouse or friend to collect them, for a staff member to finish duty before taking the patron home, provide them with water, coffee, food and time to sober up before tackling public transport.

Venues in Kings Cross, the Sydney CBD and throughout NSW are safe, well-run spaces and take the safety of their patrons seriously. The AHA NSW supports giving hotels and other venues the option of managing patrons who are approaching intoxication on their premises.

Enhancing Sydney's nightlife - footway dining

The European model of footway, or outdoor dining has many advantages and should be encouraged in the CBD.

Footway dining areas, and the look and feel generated by them add to local character, increase the feeling of safety and perception of vibrancy of a suburb and reduce the perception of those areas as sterile.

Footway dining is restricted to 8.00pm in some parts of the CBD and 10.00pm in others. In the summer months when a Sydney sunset can occur as late as 8.10pm and darkness after 8.30pm, prime facilities in outdoor areas are wasted.

Allowing footway dining areas outside hotels to trade until a minimum of 10.00pm, with the potential in appropriate locations to have footway dining until midnight, would expand the vibrancy of Sydney, and take advantage of the city's climate.

Night-time promotion

The balanced development of the liquor industry and the responsible development of related industries are objects of the *Liquor Act 2007*. The sale and consumption of liquor on licensed premises most commonly occurs in the evening, and the patronage generated by licensed premises is a key driver of other night industries.

Activities which occur after dark are key drivers of the economy, and the industries that support those activities should be cultivated and advocated for. The role of the Sydney CBD and Kings Cross Precincts in job creation, economic development, cultural production and enhancing the international reputation of Sydney should be acknowledged and defended.

The night-time economy involves more than just the consumption of alcohol. Good food, performance, art and cultural events are all components and hotels are proud to be at the forefront.

City of Sydney should be acknowledged for its recent efforts in recognising the value of the late-night economy, particularly through the Nightlife and Creative Sector Panel and recent amendments to the Late Night Trading Development Control Plan which further opens up opportunities in the Council area.

The AHA NSW believes a more significant commitment should be made to co-ordinate the activities of the numerous departments, agencies and tasks required. There has been on-going discussion and proposals regarding the need for a person to be tasked with promoting the night-time economy, recommending the appointment of a Night Mayor, Ambassador, or Tsar as in other cities throughout the world including London and Amsterdam.

The creation of an office of Night Time Commissioner, modelled on the structure of the office of Small Business Commissioner, should be established for this purpose.

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