

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

**Organisation:** NSW Small Business Commission

**Date Received:** 16 July 2019



OUT19/9344

The Hon Natalie Ward MLC  
Committee Chair  
Joint Select Committee on Sydney's night time economy  
By email: [NightTimeEconomy@parliament.nsw.gov.au](mailto:NightTimeEconomy@parliament.nsw.gov.au)

Dear Ms Ward

## **JOINT SELECT COMMITTEE ON SYDNEY'S NIGHT TIME ECONOMY**

The New South Wales Small Business Commission ('NSWSBC') is focused on supporting and improving the operating environment for small businesses throughout NSW. The NSWSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small business within government, and makes it easier to do business through policy harmonisation and reform.

The health of the NSW night time economy is a matter of enduring importance to the NSWSBC. This economy is valued at over \$40 billion per year,<sup>1</sup> and is home to tens of thousands of small businesses in the retail, accommodation, and food services industries. But night economies are also a contested space - where competing community interests and misapprehension give rise to an often contentious discourse. Accordingly, a supportive policy and regulatory environment is particularly critical to the thousands of small businesses that trade in this segment of the economy.

The success of the night time economy in central Sydney - as a natural after-hours congregation point for half a million local workers<sup>2</sup> and 240,000 residents<sup>3</sup> - is particularly important. Indeed, over 6,000 small retail, accommodation, and food service businesses trade within the City of Sydney local government area.<sup>4</sup> In addition, while we unequivocally support the notion that a prosperous night economy is diverse as well as vibrant, we suggest the health of licenced businesses is an important ingredient to the harbour city's successes or shortcomings as an evening destination.<sup>5</sup>

In light of these considerations, the NSWSBC has closely observed the impact of the Sydney 'lockout laws'. We take that term to mean the licensing restrictions affecting the Kings Cross and Sydney CBD Entertainment Precincts ('the lockout zone') first implemented through 2014 amendments to the *Liquor Act 2007* (NSW) - most importantly, the 1:30am lockouts and 3:00am cessation of service requirements.

The NSWSBC welcomes the establishment of the Joint Select Committee on Sydney's night time economy ('the Committee') to investigate both the efficacy of these laws and the health of the city's night time economy broadly.

Plainly, any assessment of the lockdown laws should include an analysis of alcohol-related crime. As then-Premier the Hon Barry O'Farrell stated, the lockdown laws were introduced *"to make our streets safer by introducing new measures to tackle drug and alcohol-related violence."*<sup>6</sup> But we take the view that any properly considered analysis requires community safety to be assessed in conjunction with economic and public health outcomes. This should be the case not only because a complete appraisal must consider the policy from all relevant angles.<sup>7</sup>

Rather, safe, healthy, and successful night economies are closely connected outcomes. In particular, prosperity after dark does not occur at the expense of but in conjunction with public safety; safe streets are a necessary prerequisite for a vibrant night time economy.<sup>8</sup> This relationship is reciprocal: citizens also perceive cityscapes with low foot traffic to be unsafe.<sup>9</sup> As regards community health, there is substantial evidence that abusive use of alcohol is also a determinant of alcohol-related violence.<sup>10</sup>

We recognise that these issues have attracted considerable attention from policymakers in recent years. Likewise, we acknowledge the particular diversity of views they attract - including, reportedly, within Cabinet itself.<sup>11</sup> However, the most prominent evaluations to date have been restricted by too narrow a frame of reference. In particular, the Hon Ian Callinan AC's 2016 review of 2014 amendments to the *Liquor Act 2007* ('the Callinan review') focused heavily on displacement of crime.<sup>12</sup> Similarly, commendable though recommendations of Parliament's 2017-18 Inquiry into the music and arts economy in NSW are, the Committee was not tasked with evaluating either the wider night time economy or the lockdown laws specifically.<sup>13</sup>

The NSW SBC is therefore pleased to provide the following commentary and recommendations, to assist the Committee in its endeavours.

### **Summary of recommendations**

**Recommendation 1:** The Committee should find that the venue lockdowns and cessation of service reforms have adversely and substantially affected the patronage, turnover, and staffing levels of late-trading businesses in the affected areas.

**Recommendation 2:** The Committee should find that the count of small businesses directly affected by the lockdown laws has declined significantly from 2013.

**Recommendation 3:** The Committee should find that the growth rate of small businesses directly affected by the lockdown laws has weakened significantly from 2013.

**Recommendation 4:** The Committee should find that the weak growth rate for lockdown-affected businesses since 2013 has not been replicated elsewhere in NSW and Australia.

**Recommendation 5:** The Committee should find that there is an absence of evidence to support the view that the Sydney lockdown laws have driven the net reduction in violence in the lockdown zone and displacement areas.

**Recommendation 6:** The Committee should find that there is an absence of evidence to support the view that laws similar to the Sydney lockdown laws, applied to other Australian cities, have driven a reduction in violence.

**Recommendation 7:** The Committee should find that there is an absence of evidence to support the view that laws similar to the Sydney lockdown laws, applied to other Australian cities, have reduced alcohol consumption among patrons of affected businesses.

**Recommendation 8:** The NSW Government should permanently repeal:

- The venue lockdown applied to licenced premises in the Sydney CBD and Kings Cross Entertainment Precincts;
- The cessation of service requirement applied to licenced premises in the Sydney CBD and Kings Cross Entertainment Precincts.

**Recommendation 9:** In the alternative to Recommendation 8, the NSW Government should trial and assess equivalent measures over a period of three years.

**Recommendation 10:** The NSW Government should assess moderating the freeze on liquor licences in the Sydney CBD and Kings Cross Entertainment Precincts from 1 June 2020.

**Recommendation 11:** The NSW Government should provide 24-hour mass transit between major transport terminals in central Sydney and Greater Sydney.

**Recommendation 12:** In the alternative to Recommendation 10, the NSW Government should undertake an extended trial and assessment of 24-hour mass transit between major transport terminals in central Sydney and Greater Sydney.

**Recommendation 13:** The NSW Government should provide free night services on the Sydney CBD and South East Light Rail.

**Recommendation 14:** The NSW Government should develop planning regulation to support night time use of spaces occupied by businesses during the day – with a particular view with supporting night time use by small creative businesses.

**Recommendation 15:** The NSW Government should progress reform to facilitate the short-term use of vacant buildings marked for redevelopment as creative arts spaces.

**Recommendation 16:** The NSW Government should implement a single, consistent regulation governing noise generation at licenced businesses.

**Recommendation 17:** The NSW Government should establish a single contact point of engagement on noise regulation matters for licenced businesses.

**Recommendation 18:** The NSW Government should amend noise generation legislation affecting licenced venues to provide that noise measurement must be undertaken on a consistent and scientific basis.

**Recommendation 19:** The NSW Government should prescribe an 'agent of change' approach to planning for proposed developments involving or impacting live entertainment businesses.

**Recommendation 20:** The NSW Government should amend the small bar license to permit licensees to operate a bar with a patron limit of 120.

**Recommendation 21:** The NSW Government should develop regulations that prescribe a maximum density of licenced businesses permissible in any one area.

**Recommendation 22:** The NSW Government should develop interactive maps or other public resources depicting concentration of licenced businesses in night precincts and elsewhere.

**Recommendation 23:** The NSW Government should investigate strategies employed in Amsterdam to plan and manage premises with a high concentration of licenced businesses.

**Recommendation 24:** The NSW Government should provide that licence scanning requirements will only apply to businesses with repeated association with criminal conduct.

**Recommendation 25:** The NSW Government should provide that businesses subject to licence scanning requirements are only required to operate scanners on Fridays, Saturdays, and public holidays.

**Recommendation 26:** The NSW Government should review operational policy applying to liquor licensing authorities - to ensure it supports light-touch enforcement for businesses without a history of non-compliance, and in relation to minor infractions.

**Recommendation 27:** The NSW Government should provide support to increase the number of major arts and cultural events in Sydney.

**Recommendation 28:** The NSW Government should establish an office with responsibility for leading policy development to grow Sydney's night time economy, as well as public engagement to the same end.

**Recommendation 29:** The NSW Government should appoint a person with significant experience in Sydney's night economy, including within the small business sector, to lead the night time economy office.

## **'Measures required to ensure existing regulatory arrangements, including Sydney's lockout laws, remain appropriately balanced'**

The economic impact of the Sydney lockout laws is much-discussed. Business owners, industry groups, local councils and others have spoken out about the negative impact these laws have had on businesses in the affected areas. Low business confidence, reduced revenue, job losses and business closures are all reported. Indeed the NSW Government itself predicted an adverse impact, just months prior to implementing the lockout laws. In November 2013, the report to the Statutory Review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2009* concluded:

*"...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.**"<sup>14</sup>*

However, despite widespread acknowledgement of these serious issues, quantifying the precise impact – including the impact on small business - has remained a challenge. While studies and stakeholders have not arrived at agreed metrics to quantify this decline, the picture that emerges is consistently disturbing.

### **Late-night traders have lost their customer base**

The introduction of the 1:30am lockout and 3:00am cessation of service requirements precipitated a significant fall in foot traffic after midnight in the lockout zone. For late-night traders, this has meant fewer customers, reduced turnover, and staff layoffs.

#### ***Reduced foot traffic***

While we acknowledge there is some professional conjecture around the optimum means by which to measure foot traffic,<sup>15</sup> studies of this metric inside the lockout zone uniformly show a downturn since 2014. This decline has been quantified through a number of surveys measuring both pedestrian activity and business patronage. City of Sydney surveyed pedestrian activity in the following areas in 2012 and 2015: CBD Central, South and North; Kings Cross; Oxford Street; Newtown; Pyrmont; Glebe; Redfern and Surry Hills. These provide that pedestrian numbers decreased from 2012 to 2015 in all but one area affected by the lockouts.<sup>16</sup> Using the data provided by these surveys, stakeholders estimated the following reductions in foot traffic from 2012 to 2015:

- The City North Liquor Accord estimated foot traffic declined by 26% in the CBD;<sup>17</sup>
- The Kings Cross Liquor Accord suggested foot traffic fell by 70 to 80% in Kings Cross - from 22,000 on Friday and Saturday nights to just 5,000 to 6,000.<sup>18</sup>
- Keep Sydney Open estimated that foot traffic in Kings Cross fell by 40%.<sup>19</sup>

In addition, the NSW Department of Justice conducted pedestrian surveys of several areas of the CBD in 2014 and 2015. Using this data, NSW Treasury concluded there was a 20% decline in pedestrian activity after midnight across the areas surveyed. In George Street North, it estimated a 33% decline in pedestrian activity between midnight and 4:00am.<sup>20</sup>

Liquor accords across the affected areas held that the 1:30am lockouts, in particular, have driven customers away. In their 2016 submission to the Callinan review, the Coalition of City of Sydney Liquor Accords, representing 1123 licenced venues in the Sydney CBD Entertainment Precinct, provided, *"lockout is a blunt instrument that discourages patron migration, reduces foot traffic... If no displacement to other precincts can be proved in significant numbers, lockouts simply lock potential patrons from venues..."*<sup>21</sup>

### **Reduced patronage**

When asked directly, business owners and managers in the lockout zone confirm what can reasonably be inferred – patronage, too, has fallen sharply. In their survey of 211 licenced premises in the CBD precinct, NSW Treasury found that 82.9% of businesses open after midnight reported declines in patronage from 2013 to 2015.<sup>22</sup>

This trend is further evinced by the decline in live performance revenue at central Sydney venues. Music copyright fee collector APRA AMCOS recorded a 40% decline in door charge receipts at CBD venues with a live artist performance licence, and a 19% fall in attendance across nightclubs and dance venues, from February 2013 to January 2015.<sup>23</sup>

### **Reduced turnover**

Surveys of businesses by government, liquor accords, and industry groups confirm that turnover has decreased along with patronage.

A NSW Treasury survey of CBD businesses found that, on average, turnover fell by more than 20% from 2013 to 2015 for licenced premises trading after midnight.<sup>24</sup>

The Kings Cross Liquor Accord reported that turnover was down among both licenced and non-licenced premises. For some venues, this downturn was as high as 70%.<sup>25</sup>

The Darlinghurst Business Partnership surveyed over 200 Darlinghurst businesses in 2013, 2014, 2015 and 2018. From 2013 to 2015, the average decrease in annual turnover was reported at 27.2%. Among bars, pubs and clubs, the average fall was 31% - while retail businesses reported a 25% decline. In turn, when the partnership asked businesses if their turnover had changed from implementation of the lockout laws to 2018, over 80% said it had decreased.<sup>26</sup>

## ***Reduced staffing***

Lower turnover for businesses in the lockdown zone has led to lower staffing levels. NSW Treasury's survey of CBD licenced premises found that the average reduction in full-time equivalent staff, for operator trading after midnight, was 17.7% from 2013 to 2015. Moreover, 44% of respondents suggested the lockdowns had led to the decrease in staffing levels.<sup>27</sup>

The Darlinghurst Business Partnership survey found that the number of respondents employing over ten full-time staff fell from 20.7% in July 2013 to just 11.8% in July 2015.<sup>28</sup> Moreover, from 2016 to 2018, Darlinghurst businesses indicated their full-time staff levels decreased a full 39% - and that part-time staffing had fallen by 22.5%.<sup>29</sup>

Despite the range of figures presented, the picture painted by this diverse body of evidence is both consistent and clear. The reforms introduced in 2014 – most especially the 1:30am lockdowns and 3:00am cessation of service requirements – have driven a decline in foot traffic, patronage, turnover and employment for late-trading businesses inside the lockdown zone. This impact has not been limited to businesses that hold liquor licenses, with the lockdowns also affecting the viability of businesses not involved in the sale of liquor.

**Recommendation 1:** The Committee should find that the venue lockdowns and cessation of service reforms have adversely and substantially affected the patronage, turnover, and staffing levels of late-trading businesses in the affected areas.

## **Decline in affected small businesses is observable**

The lockdown laws have attracted widespread coverage concerning business closures in the affected areas. While much of this analysis has focused on the count of liquor licenses and information provided by liquor accords, the NSW SBC has performed an analysis of Australian Bureau of Statistics (ABS) business count data.

These business counts reveal that the number of small businesses trading inside the lockdown zone, in industries most affected by the laws, has declined sharply in both absolute and relative terms.

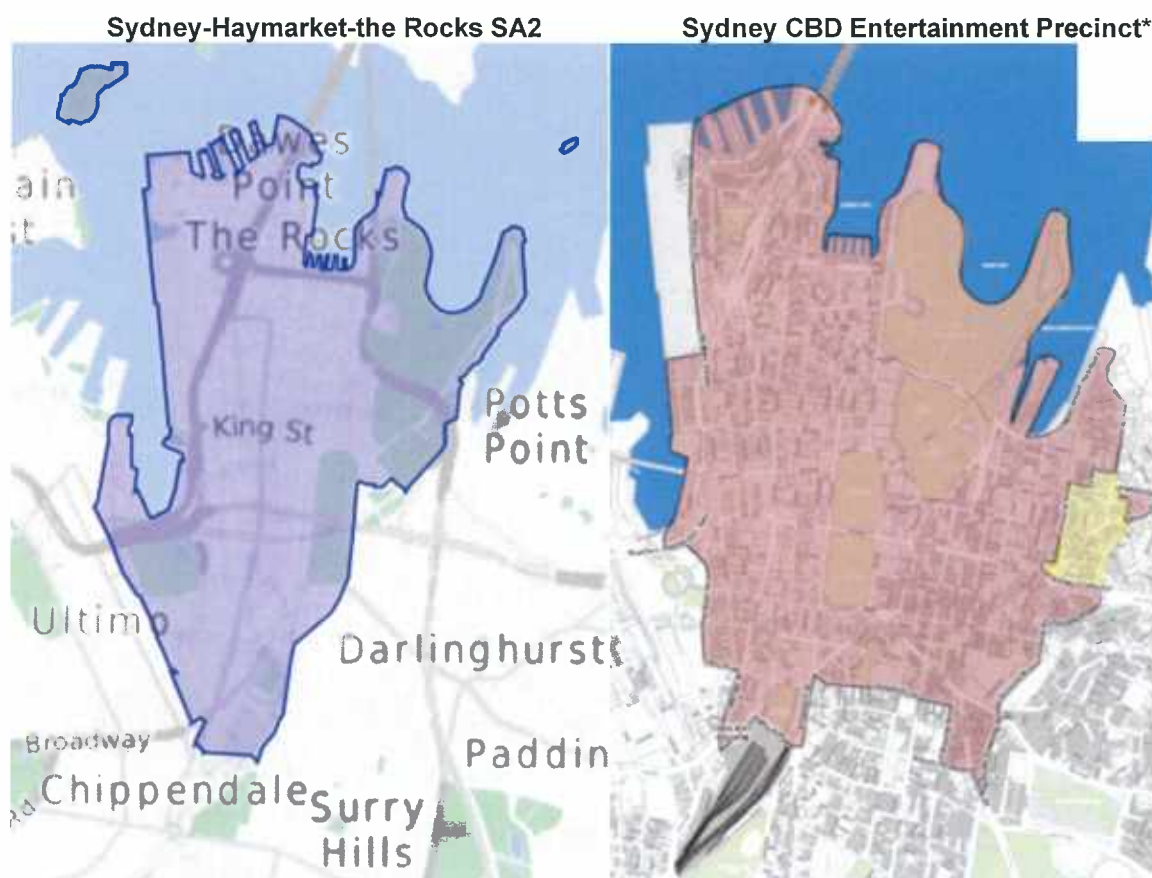
We submit that the pattern of decline is again consistent and genuinely alarming - and that it correlates strongly with the imposition of the lockdown laws (without affirming a causal relationship).

## ***Method***

There is a strong overlap between the Sydney CBD Entertainment Precinct of the lockdown zone and the ABS statistical area titled 'Sydney-Haymarket-the Rocks SA2' ('the central Sydney area'; see also **Figure 1**). For this reason, our analysis focuses on that statistical area.

We analyse food and drink service businesses, as these operators are most directly affected by the lockout laws. Pubs, taverns, bars, clubs, and restaurants, as well as cafes and takeaways, are all observably or reportedly affected by the lockouts. Thus, we use ABS counts of small businesses in the bureau's 'accommodation and food services' statistical division.<sup>30</sup> Pubs, taverns, bars, clubs, cafes, restaurants, and takeaways made up 79% to 83% of NSW small businesses in this division from June 2009 to June 2018. It is therefore a reasonable proxy of businesses most affected by the lockouts.<sup>31</sup>

**Figure 1:** Comparison of Sydney CBD Entertainment Precinct and ABS Sydney–Haymarket–the Rocks SA2 area



*\*Note: Sydney CBD Entertainment Precinct does not include area marked in yellow.*

To measure whether the number of small food and service businesses has changed since imposition of the lockouts, we consider business counts from June 2009 to June 2018.

We focus on small food and service businesses, which we define as those employing less than 20 persons.

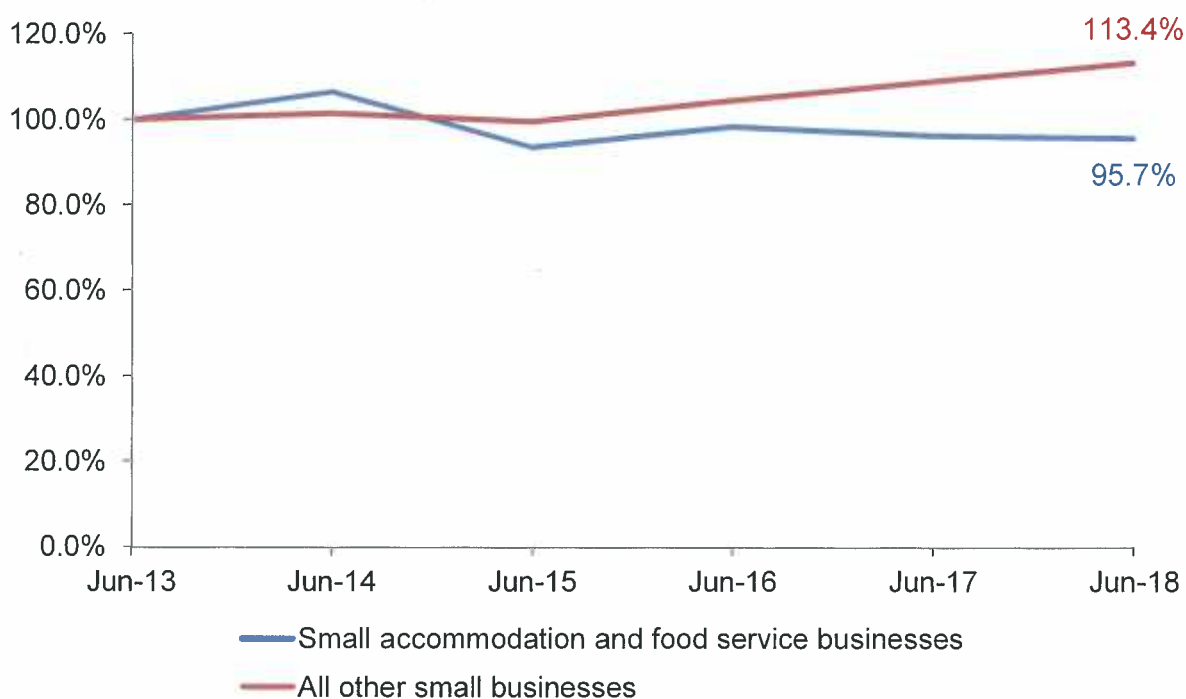
### ***Business counts: a dual narrative***

Two contrasting stories emerge from counts of small accommodation and food services businesses in the central Sydney area from 2013. In June 2013, there were 1,455 such businesses trading in this area. However, by June 2018, that number had

fallen to 1,392 – a decline of 63 (or -4.3%). In sharp contrast, the count of all other small businesses in the area rose from 34,084 in June 2013 to 38,635 in June 2018 – an increase of 4,551 (or 13.4%).

Plainly, since 2013, those businesses most affected by the lockouts have struggled into decline, while small business in general has remained healthy. There is a 17.7% difference in the total percentage growth of small accommodation and food services businesses and the rest of the small business community (see **Figure 2**).<sup>32</sup>

**Figure 2:** Index of number of small businesses in Sydney-Haymarket-the Rocks  
June 2013 (base year) to June 2018<sup>33</sup>



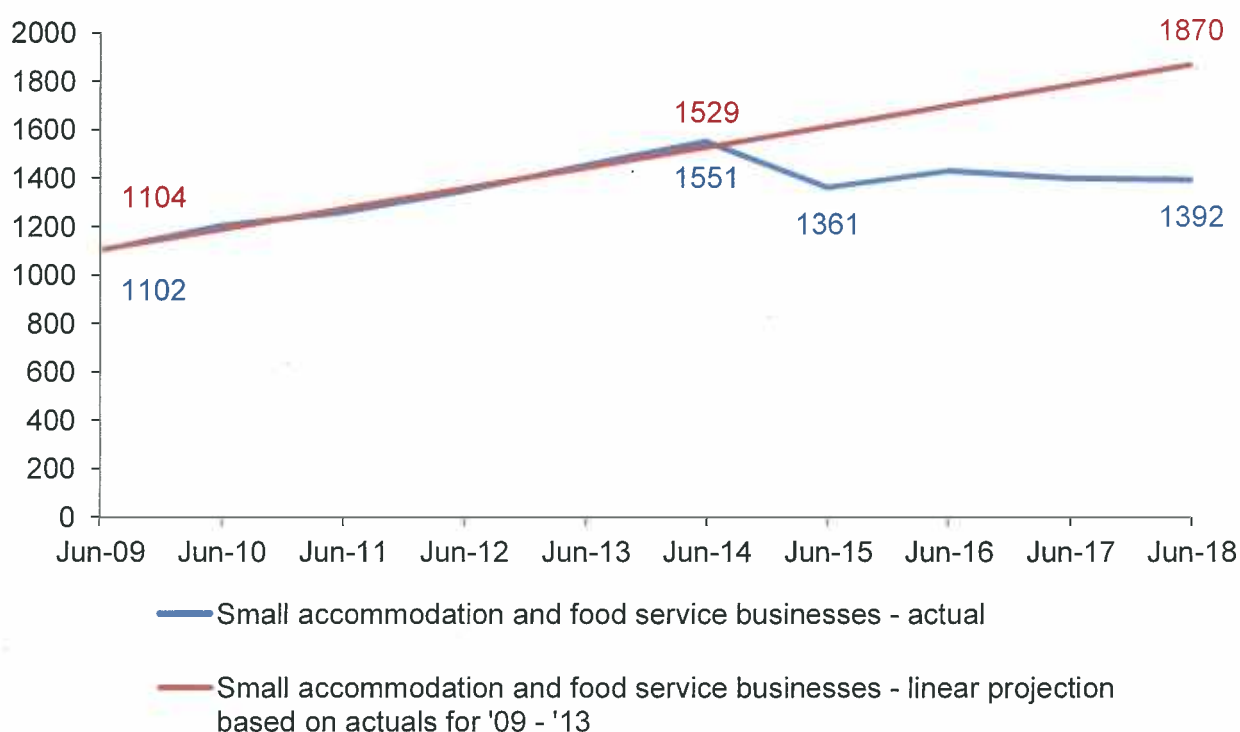
### ***Projected growth, observed decline***

As noted, though the number of small accommodation and food services businesses in the central Sydney area grew steadily from June 2009 to 2014, this trend shifted into reverse from 2015.<sup>34</sup>

If the small accommodation and food services business count had continued to grow at the same rate as from June 2009 to June 2014, a linear projection provides that the count would have increased to 1,870 to 2018 - rather than shrinking to 1,392 as transpired.

This represents a difference of -478 small businesses between the pre-lockout projection and the real decline since (see **Figure 3**).<sup>35</sup> That is, if central Sydney's small businesses had continued on the pre-lockout growth path, an additional 478 small accommodation and food service businesses would have been operating in June 2018.

**Figure 3:** Number of small accommodation and food service businesses in Sydney-Haymarket-the Rocks, June 2009 - June 2018: pre-lockout projection and actual<sup>36,37</sup>



**Recommendation 2:** The Committee should find that the count of small businesses directly affected by the lockout laws has declined significantly from 2013.

### ***Industry to industry comparison***

From June 2009 to June 2013, the count of small accommodation and food services businesses in the central Sydney area increased at a higher rate than most other businesses. The industry's growth rate ranked second among all 19 ABS industry divisions over this period.

But, by marked comparison, from June 2013 to 2018, the growth rate of accommodation and food services in the area ranked only 13<sup>th</sup>.<sup>38</sup> Furthermore, a number of those industries that did experience slower growth than accommodation and food services suffered a wider decline throughout the state. For example, the number of small mining and agriculture, forestry and fishing businesses in NSW decreased by 2%.<sup>39</sup> However, the growth rate for all accommodation and food services businesses in NSW over this period remained strong at 7.5%.

### ***Decline in year-on-year growth***

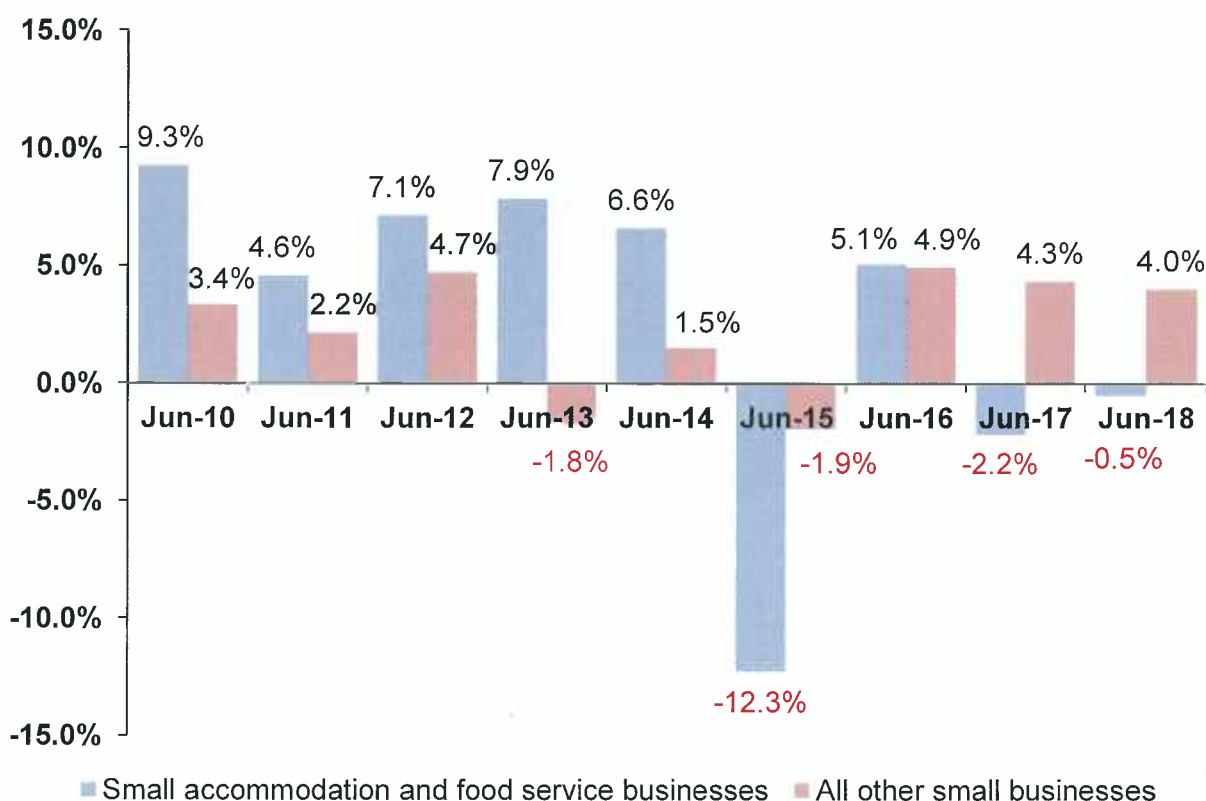
The reversal of the growth trend for affected businesses in the post-lockouts period is particularly stark when analysing year-on-year growth.

From June 2009 to June 2013, average year-on-year growth in counts of central Sydney's small accommodation and food services businesses was 7.2%. But from

June 2014 to 2018, average growth was -2.5%. This constitutes a near 10% difference.

In further contrast, the count of all other small businesses in the area, year-on-year, grew by an average of 2.1% from 2009 to 2013, and 2.8% from 2014 to 2018 (see **Figure 4**).<sup>40</sup>

**Figure 4:** Year-on-year growth of number of small businesses in Sydney-Haymarket-the Rocks  
Year to June 2010 through to year to June 2018<sup>41</sup>

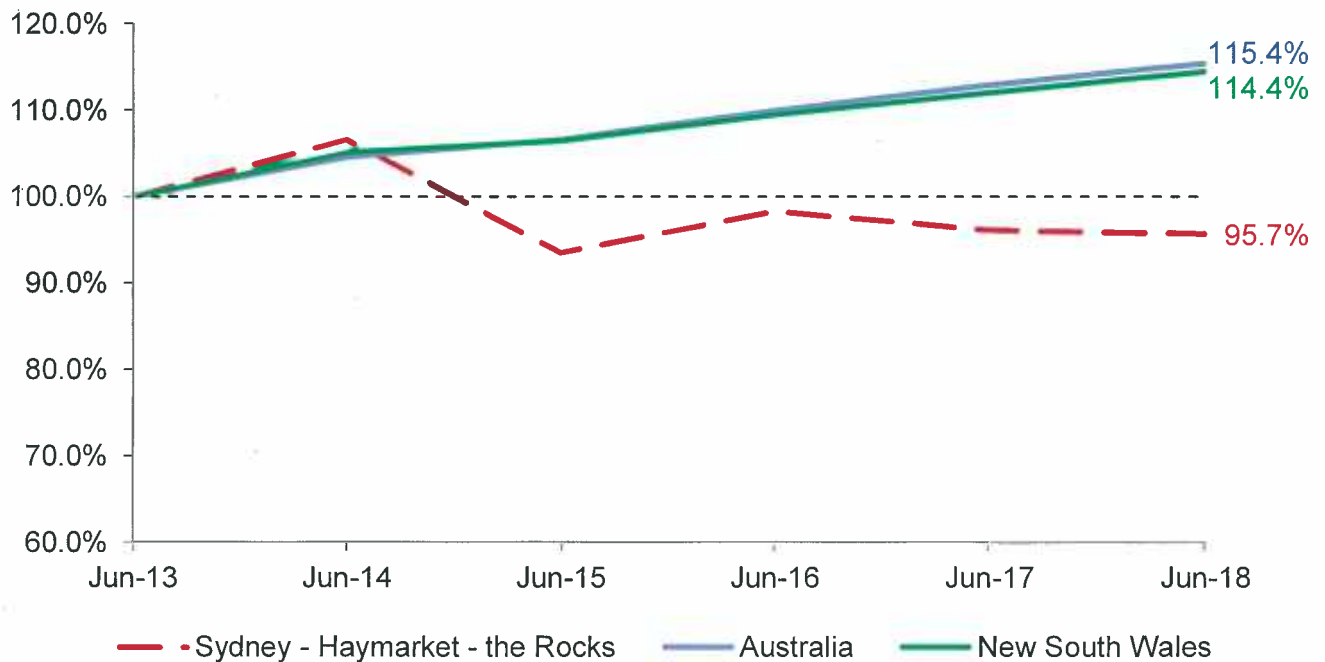


### **Comparison to other areas**

It is important to note that this change in growth trajectory for central Sydney's accommodation and food services businesses was not observed in other regions. Rather, the CBD is very much the outlier.

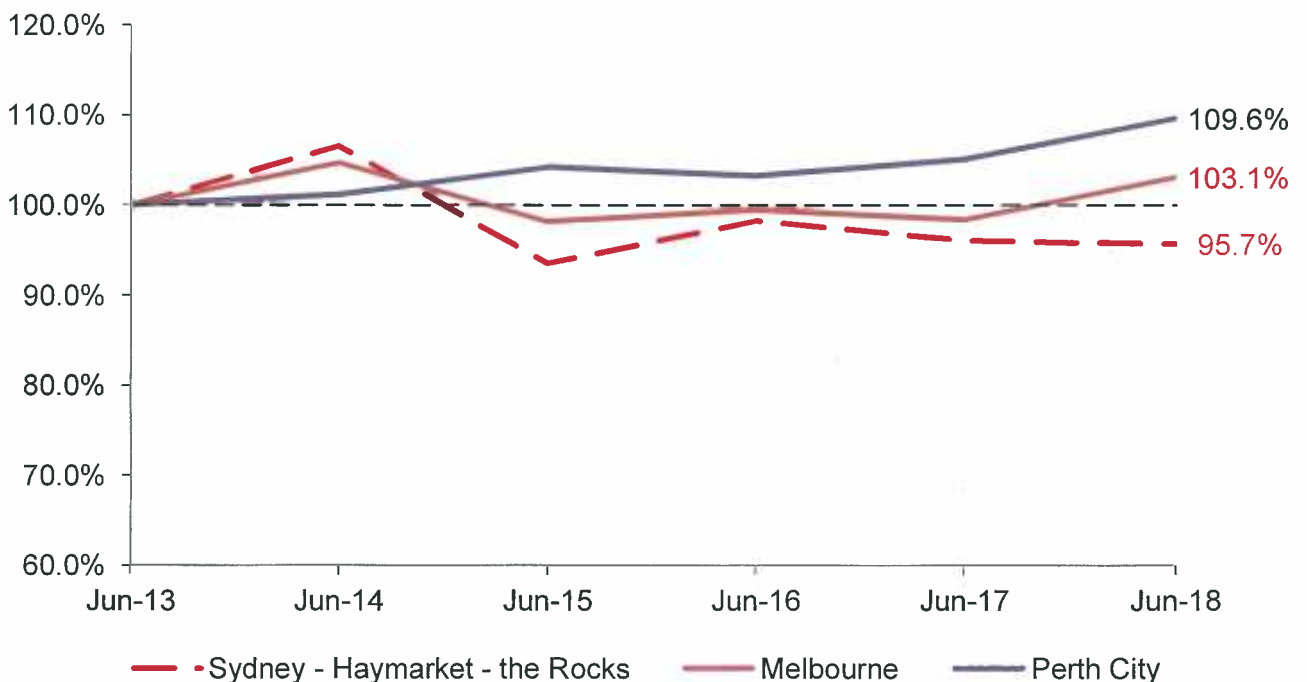
From June 2013 to June 2018, the growth rates for small accommodation and food services businesses in NSW and Australia were 14.4% and 15.4% higher, respectively, than those in central Sydney (see **Figure 5**).

**Figure 5:** Index of number of small accommodation and food service businesses  
June 2013 to June 2018 (various geographical areas) <sup>42</sup>



Likewise, from June 2013, the number of small accommodation and food services businesses in central Melbourne and Perth increased by 7.4% and 13.9% more, respectively, than in central Sydney (see **Figure 6**).<sup>43</sup> Neither of these areas was affected by lockout law-type regulations across this period.

**Figure 6:** Index of number of small accommodation and food services businesses  
June 2013 to June 2018 <sup>44</sup>



These findings further highlight that the dramatic change in central Sydney's growth trajectory coincided with the imposition of the lockout laws - and suggest there were unique circumstances (such as the lockouts) to the consistent decline observed in the city since 2013.

**Recommendation 3:** The Committee should find that the growth rate of small businesses directly affected by the lockout laws has weakened significantly from 2013.

**Recommendation 4:** The Committee should find that the weak growth rate for lockout-affected businesses since 2013 has not been replicated elsewhere in NSW and Australia.

### ***Limitations of liquor license data***

Liquor license data has been used by various stakeholders to highlight that the number of businesses has held steady, or collapsed, in the affected areas due to the introduction of the Plan. However, we posit that there are inherent limitations to using this data for this purpose. As licenses attach to property, not to businesses, changes in license counts over time do not necessarily correlate with business closures.

## **'Measures required to maintain and enhance community safety'**

The NSW SBC's analysis has demonstrated that the imposition of the lockdown laws has wrought a significant impact on small business, as well as the wider business community. However, we acknowledge that the laws cannot be adequately assessed through this prism alone; it is also necessary to assess public safety outcomes. Indeed, improving community safety was the principal objective that drove formulation of the Sydney lockdowns.<sup>45</sup>

In the five years since implementation, the lockdowns have attracted much deliberation concerning their impact on crime. In addition, venue lockdown and cessation of service requirements have been imposed on other Australian cities - attracting further analyses.

It is the view of the NSW SBC that the evidence as a whole is insufficient to support the view that lockdown measures have driven a reduction in alcohol-fuelled violence. This is true in relation to the Sydney lockdown laws specifically, and similar restrictions implemented elsewhere. We support the conclusion reached in one study, that *"...there is no obvious and systemic correlation between the introduction of lockdown laws and a reduction in incidences of alcohol-related violence"*<sup>46</sup> We ask that the Committee finds the same.

### ***Assessments of Sydney lockdown laws***

As regards analysis of the impact of the Sydney lockdown laws on community safety, we suggest that analyses by the NSW Bureau of Crime Statistics and Research ('BOCSAR') have dominated the policy discussion. Most notably, the final report published by the Callinan review refers to BOCSAR's findings on 35 separate occasions<sup>47</sup> – including in direct relation to key findings that support the laws as an effective means of reducing violence.<sup>48</sup> News media coverage of the lockdown laws has also regularly referred to this work.<sup>49</sup>

We suggest that BOCSAR's key findings in relation to the Sydney lockdown laws are detailed in research papers published in 2015 and 2017.<sup>50</sup> These provide that, following implementation of the lockdown laws, the total number of non-domestic assaults in the lockdown zone decreased. Though assaults in proximate entertainment precincts increased – suggesting some level of displacement of violence – this increase was smaller than the fall overserved inside the lockdown zone.<sup>51</sup>

### ***Limitations of Sydney assessments***

The NSW SBC does not question BOCSAR's research as a thorough and considered reflection of the trend it documents: the total number of assaults that have occurred in the lockdown zone and other areas since 2014. Likewise, the NSW SBC categorically does not seek to disparage expert witness testimony that further reflects these findings. In particular, we acknowledge those powerful contributions to the debate made by medical professionals at St Vincent's Hospital Sydney<sup>52</sup> – and especially

that of former Emergency Department Director Professor Gordian Fulde AO<sup>53</sup> - as consistent with the BOCSAR evidence.

However, we suggest that the BOCSAR analyses are an imperfect lens through which to assess the lockouts as a policy intervention to reduce crime. The most obvious limitation of these studies is that the pre and post-lockout environment they depict is not a like for like comparison. As NSWSCB details above, the lockouts have precipitated a major decline in foot traffic within the lockout zone – around 26% in the CBD, and up to 80% in Kings Cross. Yet the bureau's studies only measure assaults in absolute terms, rather than as a proportion of the number of people in the area.

Accordingly, the observed decline in assaults since 2014 may simply reflect the very large reduction in visitors, rather than any fall in assaults per visitor. Indeed, authorities including BOCSAR itself state that this may be the case.<sup>54</sup>

In our submission, assaults as a proportion of a population is a much more significant measure than assaults in total. Plainly, any reduction in the total number of people within a space should correlate with fewer incidents of misconduct, by simple virtue of the population decline. Moreover, in relation to areas that regularly attract very large numbers of temporary visitors, such as the lockout zones, the relevant measure of violent misconduct ought to be assaults per visitor.

In addition, BOCSAR's analyses consider all non-domestic assaults in the lockout zone, rather than alcohol-related incidents specifically. It follows that these findings relate, at least in part, to incidents other than those alcohol-fuelled incidents which the lockout laws intend to address<sup>55</sup>

We note further than analyses that attempt to account for these considerations have reached conclusions that contrast to those of BOCSAR. Most notably, an analysis published by Keep Sydney Open suggests that the fall in alcohol-related assaults in Kings Cross from 2014 to 2016 was notably smaller than the decrease in foot traffic – suggesting a higher incidence of assault on a per-visitor basis.<sup>56</sup> It also finds a 121% increase in alcohol-fuelled violence in Pyrmont from 2014 to 2016.<sup>57</sup> The latter figure is over ten times higher than an equivalent measure in BOCSAR's analysis of total assaults<sup>58</sup> – giving rise to doubts as to the view that the laws have not driven significant displacement of crime. Indeed, a 2016 Commonwealth Parliament inquiry also found that it is not clear whether the lockouts have, or have not, resulted in displacement of violence and antisocial behaviour.<sup>59</sup>

### **Additional factors affecting Sydney assessments**

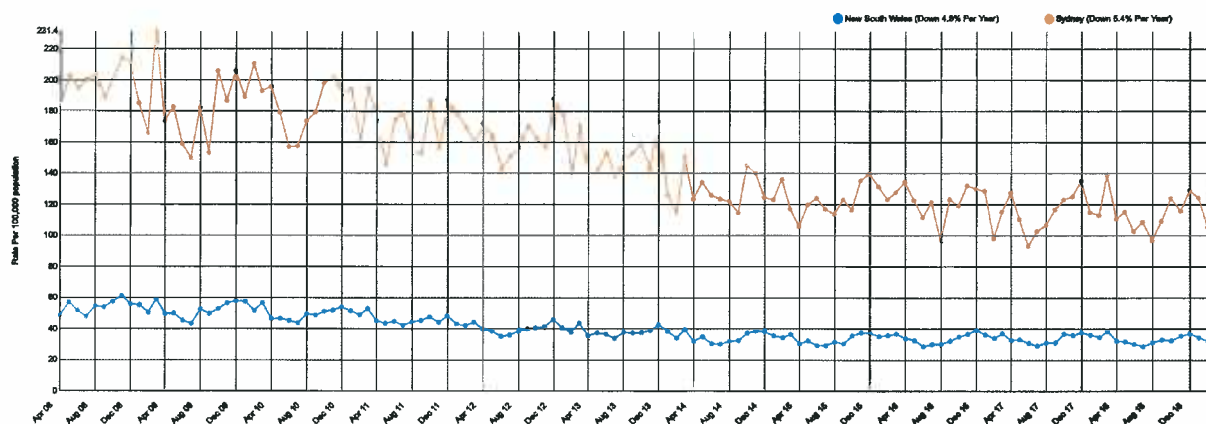
Research into the efficacy of lockout-type measures as a means of addressing misconduct is complicated by the concurrence of other factors that may impact the incidence of alcohol-driven crime.<sup>60</sup> This is certainly true in relation to the Sydney laws – where a range of phenomena, other than or in addition to the lockouts, may have influenced the fall in assaults inside the lockout zone. These factors are not assessed in the BOCSAR analyses. However, they give rise to additional doubts as

to the extent of the link between the lockout laws and the decline in assaults observed. Among a range of potential influencing factors, we note:

### **Longstanding decline in assaults**

The number of non-domestic assaults in central Sydney has markedly and consistently declined over a full 11 years, both in total and on a per capita basis (**Figure 7**).

**Figure 7:** Incidents of non-domestic assault per 100,000 residents - **City of Sydney** and **NSW**, April 2008 to March 2019:



Source: BOCSAR<sup>61</sup>

This decline is also consistent with a state-wide trend; the average decline in total assaults per year in City of Sydney from 2008 to 2019 (-2.7%) is very similar to the decline in the same across NSW (-3%).<sup>62</sup>

A striking, long-term decline in assaults is therefore notable over both the periods predating and following implementation of the lockouts, as well as inside and outside regions affected by the lockouts.

### **Law enforcement**

Law enforcement strategies employed by police forces within a particular area can have a major impact on the frequency of misconduct in that area.<sup>63</sup> This may be true in relation to law enforcement around licenced businesses specifically,<sup>64</sup> and apply even in instances of minor change to police strategy.<sup>65</sup> The extent to which the trend in assaults observed in the lockout zone is attributable to evolving law enforcement techniques employed by the NSW Police Force is unclear.

### **Point to point transport disruption**

As near-any glance at a Sydney streetscape suggests, the point to point transport industry has undergone a radical transformation since 2014. Services delivered through digital platforms by intermediary businesses, in a 'triangular' relationship with drivers and customers,<sup>66</sup> have come to assert a major presence in the Australian point to point market. Rising from a position of virtual irrelevance in 2013,<sup>67</sup> digital

rideshare platforms had captured 60% of the total NSW rideshare market by 2016<sup>68</sup> - with one in five Sydneysiders counting themselves as customers.<sup>69</sup> Revenue growth for these businesses is estimated at 130.5% per year from 2014 to 2019.<sup>70</sup>

This startling growth is not insignificant to the issue of alcohol-related violence. These services support efficient, any-time disbursement of licenced venue patrons - without forcing them to coalesce on a taxi stand or similar to compete for transport. This is particularly important around a venue's closing time - when a large-scale exodus of customers, and a paucity of alternative transport, may cause aggression among would-be taxi customers.<sup>71</sup>

**Recommendation 5:** The Committee should find that there is an absence of evidence to support the view that the Sydney lockout laws have driven the net reduction in violence in the lockout zone and displacement areas.

### **Assessments of lockouts in other Australian cities**

While the most prominent analyses of the Sydney lockout laws are subject to uncertainties, the picture painted by studies of similar restrictions in other Australian cities combine similar indecision with a measure of outright rebuff.

#### ***Newcastle***

Among studies of restrictions on other Australian cities, the NSWSCB suggests that analyses by Kypri et al,<sup>72</sup> concerning a lockout and restricted opening hours policy applied to central Newcastle from 2008, have exerted greatest influence on the Sydney lockouts debate. Most notably, the Callinan review makes frequent reference to this research,<sup>73</sup> including in contending that the Sydney scheme has operated effectively.<sup>74</sup>

These analyses observe a decline in total assaults occurring in the late evening in the Newcastle lockout zone, following implementation of the restrictions. Equally, they show a stable trend in assaults in the neighbouring entertainment district of Hamilton.<sup>75</sup>

The NSWSCB submits that these findings are subject to much the same difficulties, in showing causality, as the BOCSAR findings for Sydney. This is especially so in relation to a failure to measure assaults per visitor or the number of alcohol-related assaults specifically. Indeed, the Kypri analyses explicitly state that it is possible that factors other than the lockouts account for the reduction in assaults which they document.<sup>76</sup>

The use of Hamilton as a point of comparison with the central lockout zone also appears problematic. This is especially true of the analyses published in 2014 and 2016, as Hamilton itself has been subject to a lockout since 2010.<sup>77</sup> It is therefore unclear whether the contrasting trend in assaults in that area should be taken to

suggest the efficacy of the central Newcastle intervention, or the failure of Hamilton's own lockouts policy. It is further suggested that Hamilton may be additionally unfit as a point of comparison in study of central Newcastle lockouts, due to its dissimilar mix of licenced venues, customers, and demographics.<sup>78</sup>

### **Surfers Paradise**

Prior to the implementation of lockouts across Queensland, a 3am lockout was trialled in the Surfers Paradise CBD in 2004.<sup>79</sup> A study of data provided by both police and health services, collected across periods preceding and following the trial, concluded that the measure '*had no significant impact on crime, violence, or injury over time.*'<sup>80</sup>

### **Ballarat**

A 3am lockout was implemented throughout Ballarat in 2003.<sup>81</sup> A study of ten years' of hospital data, for pre and post-lockout periods, concluded that the rate of admissions for alcohol-related assault on weekend nights did not change following this imposition.<sup>82</sup> Admission rates in the lockout zone were observed to increase – even passing those of Geelong (a similar city without lockouts) by 2005.<sup>83</sup>

### **Melbourne**

A short-term trial of a 2am lockout in central Melbourne in 2008 was found to have little impact on alcohol-related antisocial behaviour.<sup>84</sup> In addition, a 2016 study simulated the imposition of 1am and 3am lockouts in Melbourne. It concludes that such measures would be less effective than extending public transport operating hours.<sup>85</sup>

**Recommendation 6:** The Committee should find that there is an absence of evidence to support the view that laws similar to the Sydney lockout laws, applied to other Australian cities, have driven a reduction in violence.

### **'Measures required to enhance community health outcomes'**

As the NSW SBC has noted, a full appraisal of the lockout laws requires stakeholders to contemplate the economic, public safety, and community health impacts of the scheme.

Studies considering the impact of the Sydney lockouts laws on alcohol consumption rates, and consumption-related harm, among patrons of affected venues are not readily available. Neither the BOCSAR studies, nor the influential Kypri-Newcastle analyses, consider consumption of alcohol.

However, studies of laws similar to the Sydney lockdowns, enacted in other Australian cities, consistently suggest that such restrictions have not resulted in a reduction in consumption.

The abovementioned studies of the Surfers Paradise and Ballarat lockdowns measure alcohol consumption as well as crime. The Surfers Paradise lockdowns were observed not to effect intoxication rates in the affected area.<sup>86</sup> Likewise, hospital presentations for intoxication in Ballarat did not consistently decline after that city's lockdowns. Rather, intoxication admissions rose to surpass those in the control city of Geelong two years after implementation.<sup>87</sup>

In addition, a 2019 study considers the impact of recently-imposed licensing restrictions, including a reduction in maximum trading hours, on night entertainment districts in Brisbane.<sup>88</sup> It considers thousands of data points pertaining to the attitudes of patrons, as well as measures of their blood alcohol content (BAC). The results show that, in response to the restrictions, patrons engaged in heavier and more frequent 'pre-drinking' prior to visiting these precincts.<sup>89</sup> This drove significantly greater inebriation among patrons at both the start and conclusion of their visits to the affected areas.<sup>90</sup> The authors suggest the lockdowns supported these outcomes by increasing the "*intrinsic value*" of alcohol<sup>91</sup> - thereby driving cheaper, more available pre-drinking at the expense of drinking at licenced venues.

The suggestion that lockdowns may drive increased consumption also correlates with findings of the aforementioned study simulating a Melbourne lockdown. This suggested that such a policy would increase consumption-related harm among patrons, by shifting drinking from public to private venues.<sup>92</sup> Indeed, the Commission's industry engagement further provides that the pre-drinking undertaken by patrons of venues inside the lockdown zone has increased since 2014.

**Recommendation 7:** The Committee should find that there is an absence of evidence to support the view that laws similar to the Sydney lockdown laws, applied to other Australian cities, have reduced alcohol consumption among patrons of affected businesses.

### **The lockdowns – aggregate impact and way forward**

Plainly, the Sydney lockdown laws give rise to interconnected policy considerations. A genuine appraisal of their impact requires analysis of not only the business environment in the affected zone - but the scheme's successes and shortcomings in driving reduced crime and improved health outcomes.

For the business community – and especially small businesses – the decline experienced in all key metrics since 2014 is nothing short of alarming. The venue lockdowns and cessation of service reforms appear to have played the most notable role in driving this downturn.

As regards public safety, the decline in total assaults in the affected zone over the last five years has dominated the public safety narrative around the lockouts. But this is a blunt means of assessing the policy's impact, and does not account for competing explanations.

Moreover, as regards both violent crime and alcohol consumption rates, the picture that emerges from other Australia cities affected by venue lockout and no service measures is less than reassuring.

Given the totality of this evidence, the Commission submits that there is a strong case for the NSW Government to repeal key elements of the lockout laws. Plainly, most important is the permanent revocation of the 1:30am lockout and 3:00am cessation of service reforms.

In the alternative, we submit that there is a substantial merit in trialling such a rollback over an extended period. Should the Committee resolve not to support permanent repeal, we suggest a three-year trial, followed by a thorough evaluation of the impact of this relaxation – including its effect on the city's night time economy.

**Recommendation 8:** The NSW Government should permanently repeal:

- The venue lockout applied to licensed premises in the Sydney CBD and Kings Cross Entertainment Precincts;
- The cessation of service requirement applied to licensed premises in the Sydney CBD and Kings Cross Entertainment Precincts.

**Recommendation 9:** In the alternative to Recommendation 8, the NSW Government should trial and assess equivalent measures over a period of three years.

We note also that the freeze on liquor licences in the Kings Cross and CBD precincts will apply until 1 June 2020.<sup>93</sup> With particular regard to the disturbing trends observed in counts of businesses most affected by the lockouts, the NSW Government should give consideration to moderating the freeze from that date.

**Recommendation 10:** The NSW Government should assess moderating the freeze on liquor licences in the Sydney CBD and Kings Cross Entertainment Precincts from 1 June 2020.

## **'Measures required to enhance Sydney's night time economy'**

Crucial as the lockout laws are to the proper investigation of Sydney's night time economy, the NSW SBC firmly submits that a simple 'lockouts or no lockouts' perspective is myopic.

As we have outlined, there is a wealth of evidence to support overturning these restrictions – most especially in support of Sydney's small businesses. But an end to the lockouts would in no way necessitate a return to the regulatory environment of old. To suggest as much is to invoke a false dichotomy.

Further, while the lockout laws have served as a millstone on central Sydney's night economy, they do not represent the totality of policy shortcomings in facing these businesses throughout the city.

We therefore submit that government must look beyond repeal alone. We suggest a suite of further interventions are required. A bold reform agenda, such as that we advocate, should not be looked upon as a cost burden. Rather, a thriving night time economy in Sydney could generate growth measurable in billions.<sup>94</sup>

However, we suggest that only reforms of genuine ambition will realise the emerald city's vast potential after dark. We therefore ask the Committee to support such a shift - towards a night economy that is at once vibrant, diverse, and thoroughly welcoming; the envy of Australia and the world.

### ***Public transport***

The NSW SBC contends that extending late-night mass transport options is an essential intervention to drive the night economy in central Sydney forward. This is especially important on Friday and Saturday nights, where more citizens are able and disposed to accessing late trading businesses.<sup>95</sup> At present, the last train out of Town Hall station departs at 1:46am on Friday night and 1:30am on Saturday night.<sup>96</sup> The last ferry departs Circular Quay at 12:20am on both Friday and Saturday evening.<sup>97</sup>

We note general support for such measures in the literature considering the impact of lockout laws on violent crime and public health.<sup>98</sup> In particular, the simulation of policy interventions in central Melbourne finds that extended public transport would be more effective in reducing verbal aggression and consumption-related harm than a venue lockout.<sup>99</sup> Support for extended public transport for the CBD and surrounds is also a strong and recurring theme of the Commission's stakeholder engagement.

The NSW SBC acknowledges that NSW Treasury's 2016 evaluation of the CBD Entertainment Precinct Plan found that demand for public transport peaked well before midnight, and gradually reduced until cessation of services.<sup>100</sup> But we suggest that such measures are an improper lens through which to assess the efficacy of extending mass transport. Given the subdual of central Sydney's night time economy, due in major part to the lockout laws, it should be expected that night

demand for mass transit is low. We suggest that transport should be seen as a means of inducing demand within the night time economy, rather than simply responding to it.

Finally, we note that 'night rider' buses are an inadequate substitute for conventional mass transit. The public has generally poor regard for these services, due to the inadequacy of stop locations and poor customer experience (the latter seeming to arise in part from a perception these services are not safe).<sup>101</sup>

In this light, the Commission submits that the NSW Government should offer 24-hour mass transit to and from major transport terminals in central Sydney, and equivalents in the wider city region. It should provide more frequent services on Friday and Saturday nights. At the least, the Government should instigate an extended trial of 24-hour services on Friday and Saturday evenings – and investigate its success in driving the night time economy thereafter.

**Recommendation 11:** The NSW Government should provide 24-hour mass transit between major transport terminals in central Sydney and Greater Sydney.

**Recommendation 12:** In the alternative to Recommendation 10, the NSW Government should undertake an extended trial and assessment of 24-hour mass transit between major transport terminals in central Sydney and Greater Sydney.

An important component of successful night precincts is not just the availability, but the accessibility, of frequent and accessible public transport. In Melbourne, for example, a free tram zone operates as a loop around the CBD, linking major precincts and attractions such as Docklands, Victoria Markets, Federation Square and major theatres.<sup>102</sup>

Similarly, a free bus shuttle also operated around Sydney's CBD until 2015. The 555 service ran every day, at a 10 minute frequency.<sup>103</sup> The route was discontinued with reorganisation of bus services to accommodate construction of the Sydney CBD and South East Light Rail.<sup>104</sup>

However, completion of the Sydney light rail in the near future<sup>105</sup> also provides a valuable opportunity for Sydney to again offer free transport within the CBD at night time. We note the light rail route runs through or near many existing night entertainment precincts in both the Sydney CBD and Surry Hills.<sup>106</sup> Free night transport on the light rail – for example, after the evening commuter peak - would strongly complement concurrent efforts to revitalise the night time economy. It may also build patronage for the new service.

**Recommendation 13:** The NSW Government should provide free night services on the Sydney CBD and South East Light Rail.

## **Diversity of choice**

A strongly recurring theme of both NSWABC's stakeholder engagement and the literature is that successful and safe night economies offer patrons a diversity of options<sup>107</sup> - including, but certainly not limited to, diverse types of licenced premises.

We recognise that policymakers at both the state and Council levels have already taken meaningful steps to support such diversity. In particular, *Easy to do Business* - a collaborative initiative led by the NSWABC and Service NSW - is delivering a simpler, streamlined process for entrepreneurs to open a café, restaurant, or small bar.<sup>108</sup> Furthermore, the NSWABC strongly supported City of Sydney's recent overhaul of its Late Night Trading Development Control Plan - not least due to its supportive provisions for both licenced and non-licenced businesses.<sup>109</sup>

But providing for diversity represents an ongoing and multifaceted challenge, traversing disparate problems and policy areas. We suggest the following measures - which focus on supporting the creative arts, live entertainment, and small bars - to further the positive steps taken to address this issue to date.

### ***Night time utilisation of occupied space***

In recent years, the NSW Government has made approving comment in relation to measure that would allow for more diverse use of space by businesses trading in the night economy. The government's '*Response to the Sydney Night-Time Economy Roundtable*' includes a commitment to support "*the temporary use of spaces and places for live music and performance*."<sup>110</sup> More recently, its response to the Parliamentary Inquiry into the music and arts economy in NSW endorsed adaptive use of space for creative businesses.<sup>111</sup>

The Commission welcomes these expressions of support. We call for measures to support and streamline the concurrent use of spaces occupied by businesses trading in daytime hours by night-time operators. For example, a hairdresser or retail store may be support to host a small performance space after hours.<sup>112</sup> Planning reforms to support such initiatives would appear most beneficial. Recommendation 40 of the music and arts Inquiry endorsed reforms of this type: "*introduce exempt and complying development for low impact entertainment*."<sup>113</sup>

We suggest that such measures would be especially beneficial for small creative businesses, which are less likely to have easy access to performance spaces. It is also most likely to benefit central Sydney - home to both the state's most important night time economy, as well as a significant proportion of its performing arts industry.<sup>114</sup> Property purchase and rental prices in this area remain significantly higher than in most parts of NSW.<sup>115</sup> We suggest this trend - in consort with the lockout laws, and prioritisation of gaming machines by some venues<sup>116</sup> - has driven a reduction in dedicated performance spaces in the area. One estimate provides that 30 such venues closed from 2014 to 2018.<sup>117</sup>

**Recommendation 14:** The NSW Government should develop planning regulation to support night time use of spaces occupied by businesses during the day - with a particular view with supporting night time use by small creative businesses.

## ***Utilisation of vacant space***

In addition to supporting concurrent use of occupied property, the NSW SBC notes that the Response to the Sydney Night-Time Economy Roundtable commits the NSW Government to “investigate opportunities to use vacant government property and commercial spaces for art and cultural offerings”.<sup>118</sup>

For the same reasons outlined above, the Commission strongly supports measures to provide for adaptive use of vacant space by creative businesses. We commend City of Sydney for providing its own properties to creative projects in periods between tenancies.<sup>119</sup> But we advocate for further support in the same vein from the state.

Reforms to planning regulation could support the temporary use, for creative arts purposes, of empty buildings marked for redevelopment - irrespective of the zone applied to the land's permanent use. Opportunities to support such initiatives could be identified through a review of the *Environmental Planning and Assessment Act 1979* (NSW) and accompanying regulations.

**Recommendation 15:** The NSW Government should progress reform to facilitate the short-term use of vacant buildings marked for redevelopment as creative arts spaces.

## ***Live music – noise generation regulation***

The NSW SBC advocates for the provision of live music as an especially important component of a diverse night economy. This is quintessentially night time activity with wide appeal across demographic lines. It is also a valuable subset of the NSW night time economy - its value estimated at over \$3.6 billion per year.<sup>120</sup> In addition, the overwhelming majority of working musicians and live music venues are small businesses.<sup>121</sup>

Noise generation is an inherently greater concern for live venues than other licenced businesses. However, the regulatory regime concerning noise generated at these premises is highly complex, confusing, and difficult to operate in. This is particularly so for resource-restrained small businesses.

Currently, three pieces of legislation govern the generation of noise at such venues: the *Environmental Planning and Assessment Act 1979* (NSW), *Protection of the Environment Operations Act 1997* (NSW), and *Liquor Act 2007* (NSW). The issue is further addressed in the *Protection of the Environment Operations (Noise Control) Regulation 2017*<sup>122</sup> - and the *Environmental Planning and Assessment Regulations* includes detailed provisions concerning interpretation of the Act. Live entertainment businesses are also required to comply with any noise-related clauses in their area's Local Environment Plan.<sup>123</sup>

The obligations set out in this regime are manifold and sometimes contradictory. For example, the *Protection of the Environment Operations Act* regulates prohibited noise generation with reference to ‘offensive noise’. However, the *Environmental Planning and Assessment Act* refers to ‘environmental impact’: a discrete and significantly broader concept. The regime also allocates compliance and

enforcement responsibilities across multiple authorities: the relevant Council, NSW Police, and Liquor & Gaming NSW.

We note that the Government's response to the Inquiry into the NSW music and arts economy states, generally, that it is '*working to streamline noise approval processes*'.<sup>124</sup> We submit this should include development of a single regulation governing noise generation at licenced venues.

In addition, we implore the Government to implement Recommendation 52 of the Inquiry, by establishing a single contact point as a 'one stop shop' for licenced businesses engaging with government on noise generation issues.<sup>125</sup>

**Recommendation 16:** The NSW Government should implement a single, consistent regulation governing noise generation at licensed businesses.

**Recommendation 17:** The NSW Government should establish a single contact point of engagement on noise regulation matters for licenced businesses.

### ***Live music - assessment of noise***

In addition to imposing a fractured and confounding regulatory framework on live music businesses, the laws that regulate noise generation in this setting define prohibited noise in decidedly uncertain terms.

The *Protection of the Environment Operations Act 1997*, for example, employs the term '*offensive noise*'. This is defined as, "*noise that by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances: Is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or, interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted.*"<sup>126</sup>

Similarly, the *Environmental Planning and Assessment Act and Regulation* do not establish how the 'environmental impact' of noise generated by a development should be assessed. The *Liquor Act* is silent on how noise should be measured.<sup>127</sup>

These definitions allow for enforcement authorities to assess noise generated at live music and entertainment venues without the use of sound measurement instruments or other scientific means – that is, subjectively. Different people have differing tolerance of noise, and an individual's noise sensitivity may vary according to their mood.<sup>128</sup> These definitions thus impose uncertainty on all live music and entertainment businesses, and allow them to be impacted by unreasonable complaints.

We submit that subjective noise assessment practices are an arbitrary and unreasonable imposition on live music and entertainment venues. Accordingly, the NSW Government should enact reforms as necessary to provide that noise generation at licenced businesses is measured and determined on a consistent and scientific basis. This would be consistent with Recommendation 50 of the Inquiry into

the music and arts economy - which calls for an objective test for 'offensive noise' in the *Environmental Planning and Assessment Act* specifically.<sup>129</sup>

**Recommendation 18:** The NSW Government should amend noise generation legislation affecting licensed venues to provide that noise measurement must be undertaken on a consistent and scientific basis.

### ***Live music – 'agent of change' regulation***

Many parts of Greater Sydney, and especially of inner Sydney, now take on a high or higher density character.<sup>130</sup> This is a natural consequence of the protracted and dramatic rise in residential property prices throughout the city over this decade.<sup>131</sup> In this more confined urban environment, live music and entertainment venues are more likely to be subjected to noise complaints from nearby residents – including when their businesses predate the development in which the complainants reside.

This engenders uncertainty for all live entertainment businesses situated in areas of infill and rising density. NSW SBC's stakeholder engagement suggests that many such businesses are forced to incur high costs to reduce the impact of noise on their new neighbours - while others are forced to another location or out of business entirely.

To address this issue, the Commission proposes the Government mandate an 'agent of change' approach to regulation of residential developments involving or impacting entertainment businesses.

We advocate the implementation of a model replicating, or resembling, that proposed by City of Sydney in 2017. Under this approach, new residential developments situated within 100 metres of a pre-existing entertainment venue would be required to manage the noise impacts of the venue on its residents through the design, construction, and operation of the development. In turn, a new or expanded entertainment venue would be required to protect pre-existing residents from its own noise by the same means.<sup>132</sup> The Parliamentary Inquiry into the music and arts economy endorsed an agent of change also broadly endorsed this approach.<sup>133</sup>

This would represent a much fairer way of allocating responsibility for managing noise generated by live music and entertainment venues. It would ensure that the costs of managing noise are borne by the party driving change - rather than by existing, often longstanding businesses. This approach would also provide much needed certainty for these businesses.

**Recommendation 19:** The NSW Government should prescribe an 'agent of change' approach to planning for proposed developments involving or impacting live entertainment businesses.

### ***Small bar patron limit***

The NSW SBC welcomes NSW Government's commitment to supporting the continued development of small bars in Sydney. Small bars are the epitome of diversity among licensed venues principally dedicated to alcohol service. A great many of Sydney's small bars offer a genuinely bespoke aesthetic and ambience.

Moreover, small bars pose "*lower risks*" of driving poor policy outcomes than large establishments.<sup>133</sup> In particular, it is also observed that small bars may foster a drinking culture less associated with excess consumption.<sup>134</sup>

The Commission strongly supported the government's development of the dedicated small bar license,<sup>135</sup> as well as the decision to increase the patron limit for small bars to 100 persons.<sup>136</sup> We now implore the government to further liberalise small bar regulation, to streamline the continued growth of these establishments.

In particular, we note support in both our industry engagement, and from the City of Sydney,<sup>137</sup> for further increasing the patron limit applied to small bar licensees. The NSW Government should align the limit with equivalent licences in South Australia<sup>138</sup> and Western Australia,<sup>139</sup> by increasing the limit to 120. We submit that this would deliver substantial support to small bar operators, as well as an attractive incentive to prospective licensees. In turn, this modest concession would still require licensees to operate genuine small bars.

**Recommendation 20:** The NSW Government should amend the small bar license to permit licensees to operate a bar with a patron limit of 120.

### **Policing and licensing**

The Commission supports a dual approach to venue policing and licensing in place of the blunt instrument that is the lockout laws.

First, authorities must carefully manage clusters of licensed venues - in order to realise the notable benefits of such areas, while mitigating downside risk. We also advocate policing and licensing practices that target genuinely recalcitrant licensed venues without unduly restricting other businesses.

### ***Night precincts***

The Commission notes both the inherent benefits and risks in night precincts that include a heavy concentration of licensed businesses. Many patrons are attracted to spending time in areas that offer a multitude of licensed venues in a confined area.<sup>140</sup> In addition, such precincts, if well-managed, can support a concentration of police resources and public transport offerings, thereby driving savings for government.<sup>141</sup>

However, we also acknowledge the common suggestion of a correlation between concentration of licensed businesses and anti-social behaviour.<sup>142</sup> Though the body

of literature “[has] produced mixed results,”<sup>144</sup> we suggest that such precincts are nonetheless perceived to attract such conduct – particularly by local residents. This perception may also engender a view that night time economies are generally unsafe.

The Commission therefore posits that deliberate, careful, and active management of night time precincts is necessary, such that authorities may realise the benefits of such areas while addressing concerns.

As an important starting point, government should develop clear parameters that prescribe a maximum density of licenced premises to be permitted within any one area.

Clearly, this would represent a delicate matter, and require multifaceted research and engagement. However, it is important that this regulation is sufficiently nuanced to account for the fact a venue’s impact on its surrounds will vary according to its characteristics. Business size is most relevant to this calculus; smaller venues, including small bars, are likely to pose less downside risk.<sup>145</sup>

Such an initiative could also afford potential licensees clarity as to the feasibility of any new venue, and reassurance to local residents. To support these outcomes, the NSW Government could develop interactive maps depicting venue density - in a manner resembling its ‘*Crime Tool*’<sup>146</sup> or ‘*Population Explorer*’<sup>147</sup> resources.

**Recommendation 21:** The NSW Government should develop regulations that prescribe a maximum density of licenced businesses permissible in any one area.

**Recommendation 22:** The NSW Government should develop interactive maps or other public resources depicting concentration of licenced businesses in night precincts and elsewhere.

The Commission notes further Committee for Sydney’s research regarding strategies employed in Amsterdam to plan and effectively manage areas with a heavy concentration of licenced premises. Notable measures include place-making measures to discourage criminal activity, the deployment of social workers, and a preference for multi-use venues by licensing authorities.<sup>148</sup> In developing strategies for night precinct management in Sydney, there would be substantial merit in close consideration of the successes of the Dutch capital.

**Recommendation 23:** The NSW Government should investigate strategies employed in Amsterdam to plan and manage premises with a high concentration of licenced businesses.

## **ID scanners**

In 2013, the NSW Government implemented regulation that would require certain venues in the Kings Cross Entertainment Precinct to supply and maintain an approved ID scanner, and to scan all patrons who attempt to enter the licenced premises after 9pm.<sup>149</sup>

The venues required to adhere to this requirement are those defined as ‘*high-risk*’<sup>150</sup> – that is, those in the relevant precinct that a) sell liquor for on-premises consumption, b) are authorised to trade after midnight at least once a week, and c) have a capacity of more than 120 patrons.

It is the Commission’s view that this definition assumes that a broad subset of venues are inherently poor operators. Regardless of their incident history, these venues are required to bear the cost of maintaining and operating an ID scanner each and every day. Based on our stakeholder engagement, we understand this cost per annum per business to be between \$100,000 and \$120,000. This represents a highly prohibitive cost for many late-trading businesses - many of whom are not focussed primarily on serving liquor.

Recent reporting highlights the issues arising from this definition of ‘*high risk*’ premises. The requirement to use ID scanners is restricting access to venues such as burger restaurant *Milky Lane*, putt-putt venue *Holey Moley*, and café *Silly Tart Kitchen*. Even delivery drivers collecting food are required to scan in.<sup>151</sup>

Indeed, many businesses captured by the current definition constitute smaller venues. As discussed, other jurisdictions deem venues with patron capacities of 120 small<sup>152</sup> - and a key determinant of a venue’s risk is its size.<sup>153</sup> Clearly, small, low risk venues with no history of poor behaviour should not be required to expend six figure sums annually to operate ID scanners.

Although high risk venues may apply for exemption from the ID scanner requirements,<sup>154</sup> this arrangement unjustifiably reverses the onus of proof. Venues without any history of regular misconduct should not be made to bear the costs associated with lodging an application for exemption.

Furthermore, the primary justification for imposition of the ID scanning was to aid enforcement of banning orders in the Kings Cross precinct. As then-Minister the Hon George Souris stated, “*this is an appropriate and necessary measure to complement the banning order provisions, and to help licensees and staff ensure that those who have been issued with a banning order can be stopped at the door and not jeopardise the safety of patrons and staff inside licensed premises...*”<sup>155</sup>

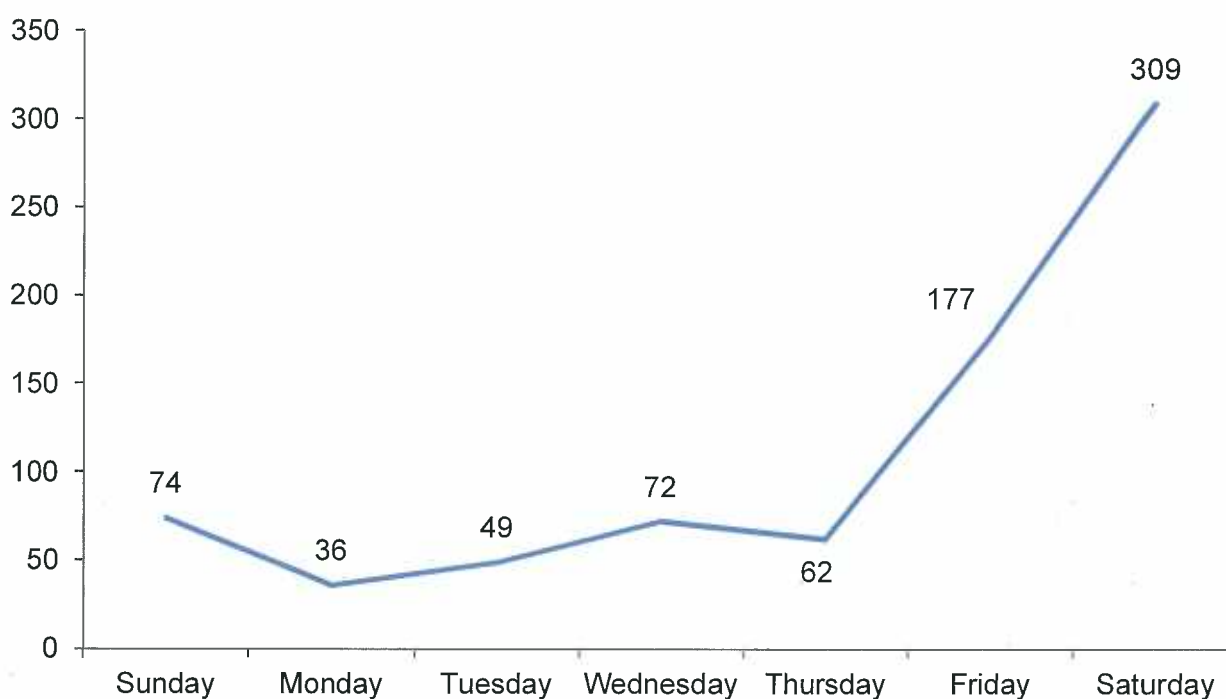
However, data provided to the Commission by BOCSAR suggests that few banning order-related offences are currently identified through the ID scanners. This potentially indicates that banning orders not commonly employed by Police or the Independent Liquor and Gaming Authority. Only a single finding of guilty for breach of a long-term banning order<sup>156</sup> was made in 2015 – with four each in 2016 and 2018. This suggests a meagre return - particularly in light of the heavy compliance cost borne by affected businesses.

In light of these considerations, we submit that venues should be subjected to licence scanning requirements if and only if they have a repeated association with criminal conduct.

**Recommendation 24:** The NSW Government should provide that licence scanning requirements will only apply to businesses with repeated association with criminal conduct.

We further propose that venues should only be required to operate ID scanner on Fridays and Saturdays (as well as public holidays). Visitation data highlights that measures of unique visits per venue are multiples higher on Friday and Saturday nights.<sup>157</sup> The average unique daily visits after 9pm on Friday and Saturday nights was over four times the equivalent on Sunday to Thursday between June 2014 and March 2016 (see **Figure 8**). This much decreased patronage does not warrant the significant additional staffing costs associated with ID scanning over a further five nights per week.

**Figure 8:** Daily average unique visits per venue by day – ‘high risk’ Kings Cross Entertainment Precinct venues: June 2014 to March 2016



**Recommendation 25:** The NSW Government should provide that businesses subject to licence scanning requirements are only required to operate scanners on Fridays, Saturdays, and public holidays.

### ***Targeted enforcement***

The NSW SBC's industry engagement suggests that liquor licensing authorities have sometimes imposed substantial penalties on venues in central Sydney for minor and

technical infractions. While we accept that authorities are empowered to undertake enforcement in this manner, we suggest it is clearly unhelpful to efforts to support the city's night time economy. Small operators face particularly difficulty with unduly high compliance costs.<sup>158</sup>

We suggest a proportionate approach would require the regulator to adopt a light-touch approach to enforcement. This should particularly apply in the case of minor licensing infractions where venues evince no pattern of non-compliance. This approach would also allow authorities to focus compliance resources on venues engaged in serious misconduct.

We suggest the NSW Government review operational policy for licensing authorities, to ensure it supports the enforcement of licensing requirements that balances these concurrent imperatives.

**Recommendation 26:** The NSW Government should review operational policy applying to liquor licensing authorities - to ensure it supports light-touch enforcement for businesses without a history of non-compliance, and in relation to minor infractions.

### **Major arts and cultural events**

It is self-evident that Sydney successfully hosts a range of major arts and cultural events – for example, Vivid and the Sydney Festival, as well as Parramatta's Lanes and Winterlight events. These events are designed to attract and appeal to a broad cross-section of the community. They also successfully utilise a range of different precincts across the city.

By drawing tourists to precincts with a litany small food and beverage service businesses, these events also create new customers for these operators. Based on engagement with stakeholders, events that focus on arts and culture have significant spill-over benefits for surrounding small businesses, as attendees explore options within the various precincts.

Supporting more arts and cultural events represents an opportunity of significant scale for small businesses in Sydney. Arts and cultural events can, and have, drawn staggering visitor numbers. From June 8 to June 10 2019 alone, over 600,000 people attended Vivid Sydney.<sup>159</sup>

Sydney's history of successful events to-date can and should be built on, to serve as a central means of revitalising the night economy.

**Recommendation 27:** The NSW Government should provide support to increase the number of major arts and cultural events in Sydney.

### **Centralised responsibility**

The NSW SBC notes that the appointment of an official to support growth in a city's night time economy is consistently endorsed in our industry engagement, as well as

by other stakeholders.<sup>160</sup> Such officials are often referred to as '*Night Czars*' or similar.

We submit that centralising responsibility in this manner represents a practical and efficient means of managing night economy policy. As this submission has demonstrated, the relevant issues are clearly much greater than the remit of any one Department.

The Commission therefore proposes that the NSW Government establish an office to grow the night time economy - in central Sydney and throughout the city. This office should be tasked with leading policy development in this space.

Given its policy responsibilities, the office should also be tasked with leading liaison with industry, local government, and the public around issues affecting the night time economy. This would also assist in developing public profile for the office – fostering goodwill and signalling the government's commitment to growing the night economy.

We suggest that, for two important reasons, the office should be situated within the Department of Premier and Cabinet. First, this is a logical position for an office tasked with interagency engagement and coordination. Second, it would underscore that supporting Sydney's night time economy is a genuine priority for government.

**Recommendation 28:** The NSW Government should establish an office with responsibility for leading policy development to grow Sydney's night time economy, as well as public engagement to the same end.

Given its responsibilities, we suggest it is appropriate that the person appointed to lead this office is an individual with significant experience in, and knowledge of, Sydney's night time economy. Small businesses - such as small bars and creatives - play a particularly important role in driving diverse and safe night time economies. As such, experience in this sector should constitute a priority for the appointment.

**Recommendation 29:** The NSW Government should appoint a person with significant experience in Sydney's night economy, including within the small business sector, to lead the night time economy office.

### **Further engagement**

The NSW SBC welcomes further engagement with the Joint Select Committee - concerning the Sydney lockdown laws, the night time economy, or any related matter to which the Committee turns its attention. Please contact Thomas Mortimer, Senior Advisor, Advocacy and Strategic Projects, on [REDACTED] or [REDACTED]

Yours sincerely

[REDACTED]  
**Robyn Hobbs OAM**  
**NSW Small Business Commissioner**

16 July 2019

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June-09	June-10	June-11	June-12	June-13	June-14	June-15	June-16	June-17	June-18
ABS 8165.0 - June 07 - 11			ABS 8165.0 - June 08 - 12	ABS 8165.0 June 11 - 15			ABS 8165.0 - June 14 - 18		

For the purposes of the count data relating to state and Australian-level data, we have utilised the estimates from the *'Businesses by Industry Class by Main State by Employment Size Ranges'*. Below provides a breakdown of the released version used for each year considered for this category of data in the analysis:

June-13	June-14	June-15	June-16	June-17	June-18
<a href="#">ABS 8165.0 – June 10 - 14</a>	<a href="#">ABS 8165.0 – June 11 - 15</a>		<a href="#">ABS 8165.0 – June 13 - 17</a>	<a href="#">ABS 8165.0 – June 14 - 18</a>	

Note the variation between releases used for given years across SA2 and state and Australia-level analysis – this was unavoidable due to differences in the data released across geographical areas.

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<sup>34</sup> Ibid.

<sup>35</sup> Calculated by taking a linear regression of the small accommodation and food service business counts from June 2009 to June 2013, deriving the following equation:  $y = 85.1x + 1018.5$ . This trendline had a high degree of fit, with an  $R^2$  of 0.99. This formula was then used to predict each subsequent period's value. For example, June 2018 is the tenth period in the series, and therefore the linear projection for June 2018 is equal to  $85.1 \times 10$  (for the tenth period) +  $1018.5 = 1869.5$ . Values presented were rounded to whole numbers.

<sup>36</sup> Ibid.

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