

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

**Organisation:** Merivale

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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 MLC

**Merivale Submission to the Joint Select Committee on Sydney's Night Time Economy**

Merivale welcomes the opportunity to make a submission in relation to this inquiry. We respectfully request that this submission please remain confidential.

We believe that the inquiry is an unprecedented opportunity for all sectors of the community and the NSW Government to contribute to the reinvigoration of Sydney's night time economy; to bring fresh thinking for more effective and realistic governance, diversity, transport solutions and economic benefits to Sydney. The government's review has the potential to ensure enormous flow-on effects to not only licensed premises, but to all businesses in Sydney's CBD and the public at large.

Over the past five years, Sydney's CBD has undergone a significant decline in its vibrancy and attraction to both locals and visitors alike. We no longer have a reputation as a 'destination' city on an international scale. We, the people of Sydney and NSW, have the opportunity to create a vibrant future for our city with a safe, fun and diverse culture that reflects the 24-hour energy of global cities such as Tokyo, London and New York. The key to this revitalisation is allowing businesses to trade 24 hours a day, thereby unleashing our city's full potential for economic prosperity.

This submission relates substantially to our area of expertise - hospitality and licensing – and the impacts the current regulatory regime for licensed venues has on the practical operation of licensed venues, and the significant negative flow-on effect to Sydney's night time economy.

As a family-owned business employing over 3,000 people, we have a personal and visceral connection to the creative, cultural, social and economic growth of Sydney. Unfortunately, Sydney is vastly under-performing, which impacts how we are viewed on the world stage. Sydney must be provided with the tools, infrastructure and regulatory regimes to fulfil its true potential.

## 1.0 ABOUT MERIVALE

Merivale, a private family business, is one of Australia's leading hospitality companies, owning and operating 89 licensed restaurants, bars and event spaces across the Sydney metropolitan area. Merivale has been a hospitality-focused business for over 40 years and is a significant provider of employment in Sydney, with over 3000 staff.

Within Sydney's CBD, Merivale owns and operates 46 hospitality venues under various forms of liquor licensing, being hotel, restaurant and small bar licences. Merivale's contribution to Sydney's social, tourist and economic fabric is enormous, with over 2,000,000 visitors through its doors alone in any one year. The primary core business of Merivale's hospitality venues is food and beverage, gaming and live entertainment, and we continue to create a breadth of beautiful and accessible venues.

Our goal has always been to bring diversity, vibrancy and fun experiences to residents and visitors to Sydney; experiences that appeal to all ages and demographics whilst ensuring the safety of all. Merivale has enormous faith in Sydney. Sydney is the best city in the world and to that end, we have spent hundreds of millions of dollars creating world class venues, employing, training and retaining exceptional staff and implementing security, management and operational procedures to ensure we provide consistently safe, harmonious and beautiful venues.

## 2.0 BACKGROUND

In May 2019, the Joint Select Committee on Sydney's Night Time Economy was established to examine the question *"Is there the proper balance between community safety and maintaining a vibrant night-time economy in Sydney?"*

The key terms of reference to the Committee's ultimate report are to include *"any measures required to:*

- (a) Maintain and enhance community safety;*
- (b) Maintain and enhance individual and community health outcomes;*
- (c) Ensure existing regulatory arrangements in relation to individuals, businesses and other stakeholders, including Sydney's lockout laws, remain appropriately balanced;*
- (d) Enhance Sydney's night time economy;*
- And any other directly relevant matters."*

Although much of the media attention surrounding the Committee's review refers to "Sydney's lock out laws", this review is about much more than just the examination and effect of the 2014 lock out laws imposed upon Sydney's CBD and Kings Cross.

This review is asking the question "What has caused the demise of Sydney's night time economy and what can be done about it?" The overriding answer to that question is that the demise of Sydney's night time economy has been caused by the current regulatory framework that has been imposed on licensed hospitality venues over the past eleven years, including:

2008 – Violent Venues Scheme introduced by Independent Liquor & Gaming Authority under the *Liquor Act 2007*; and

2011 – Three Strikes Disciplinary Scheme; and

2014 – Lockout Laws (including drinking restrictions) introduced by the NSW Government via amendment to the *Liquor Act 2007* and the *Liquor Regulation 2008*.

## 2.1 Need for Reform

The CBD entertainment precinct is suffering economically, culturally and reputationally by having an underperforming night time economy. Sydney's CBD is not taking full advantage of its location and temperate climate, nor its economic, social and cultural opportunities. The immediately recognisable ramifications of this underperformance are reduced employment opportunities, finite revenue opportunities for businesses – small and large – and a back seat on the world stage with a reputation as a boring and unsophisticated city, limiting our attraction to visitors, businesses and investors. This is certainly evidenced by:

- In March 2019, *TimeOut* voted Sydney as being one of the 10 worst cities in the world, whereby voters were asked to rate Sydney on eating, drinking, culture, nightlife, relationships, happiness and more. Sydney placed 39th out of 49 of the cities studied. That's 10th worst in the world – compared with Melbourne's placing of second best in the world.
- The Deloitte *Imagine Sydney/Play* 2019 report states, "In the UK, the Night Time Economy (NTE) comprises 6% of the nation's economy, while in Australia it makes up only 3.8%. If the NTE in Australia was supported and nurtured, so that it matched the UK NTE, the estimated value of the NTE in Greater Sydney could be \$43.3 billion" per annum.
- In 2017, the Committee for Sydney established a Commission on the night time economy in Greater Sydney, the results of which have been comprehensively reported in its March 2018 report "Sydney as a 24-Hour City". That report found, "The central focus of the Commission's work has been unashamedly economic. Put simply, we believe that Greater Sydney is losing out economically and financially by having an underperforming night-time economy".
- Merivale's own Ivy\* revenue figures for the period 2014 to 2019 evidence the following:

*Ivy revenue tendered off at Ivy after 1:00am between 2014 and 2019.*



*FY19 revenue is 47% of FY14 revenue which represents a 53% decline*

*\*Ivy is Merivale's largest CBD venue, which operates under a hotel licence. It includes over 20,000 sqm of food and beverage spaces, welcomes over 2,000,000 customers per annum and is located in the heart of Sydney's CBD on George Street.*

Our submission is that the first step to Sydney CBD's reinvigoration is the removal of the "Lock Out Laws", **including drinking restrictions**, and a carefully considered amendment to the *Liquor Act 2007*, as detailed in the following pages.

### **3.0 LIQUOR REGULATORY REGIME**

#### **3.1 Overview**

The Violent Venues Scheme (introduced 2008), the Three Strikes Disciplinary Scheme (introduced 2012) and the Lock Out Laws/drinking restrictions (introduced 2014) were all introduced as amendments to the *Liquor Act 2007* & *Liquor Regulation 2018* in an effort to curb alcohol-related violence and to provide a legislated operation and penalty regime.

This suite of reforms was introduced at the time with good intentions to ensure that licensed venues were operated lawfully, professionally and conscientiously, and to deal with the issues of the day. However, these three regimes require careful assessment and amendment so as to remove the blanket measures they currently contain and to include more venue-specific operational and penalty regimes that can be accurately applied to specific licensed venues.

Under the current legislation, venues that are compliant with the law are imposed with the same conditions, restrictions and penalties as rogue and disobedient operators. Indeed, venues that undertake additional measures of their own volition, do not receive any regulatory recognition for their efforts. This is not an accurate and proportionate regulatory framework or policy response to the perceived issues facing Sydney. Similarly, the legislation provides that a venue with 2,000,000 patrons per annum is subject to the same penalty level regime as a venue that serves 10,000 customers per annum. This framework provides an enormously inequitable penalty regime on a per capita basis.

In summary, a 'one size fits all' philosophy is unbalanced and discriminatory when applied across different venues with significant differences in compliance history, size, patron numbers and location.

#### **3.2 Violent Venues Scheme (Schedule 4 of the Liquor Act 2007 introduced on 1 December 2008)**

The Violent Venues Scheme (VVS) has been in operation in New South Wales for a decade, and, together with other policy initiatives, appears to have contributed to an improvement in operational practices and patron safety at licensed venues.

In broad terms, the VVS operates via a tiering system for venues trading under a hotel licence. A venue is assessed in relation to the number of attributable incidents that have occurred, then placed in either a Tier 1, Tier 2 or Tier 3 category.

Current tiering levels are as follows, with each level of categorisation having an escalating level of extra conditions imposed upon the individual liquor licence:

- Level 1: 19 incidents and over
- Level 2: 12-18 incidents inclusive
- Level 3: 8-11 incidents inclusive

While there are a number of other issues with the VVS, including inconsistency in assessments, burden of proof for venues regarding alleged incidents, incident notification requirements depending on licence conditions and lack of consideration regarding provable risk management practices, there are four incontrovertible problems with the VVS categorisation system as follows:

**3.2.A The VVS does not take into account the physical size of a venue, patron numbers of a venue or hours of trade:**

The current structure disadvantages medium and large sized venues. Venues operating seven days per week and accommodating over 4,500 patrons at a time with over 20,000 square metres of floor space are assessed in exactly the same manner as a bar with a capacity of 100 patrons and a size of 200 square metres. Similarly, large scale venues that only operate one or two nights per week are subject to the same regime. The VVS must be reformed to operate on a per-capita basis.

**3.2.B The VVS does not differentiate between incidents that are violent and non-violent:**

The current structure has NO differentiation between the severity of classifiable incidents. 'Attributable Incidents' data under the VVS captures everything from a minor push or shove through to manslaughter and treats these incidents as equal and subject to the same penalties. The result of this inequity means that venues in which only minor incidents have occurred (ie a push and shove argument, with no bodily harm), are treated exactly the same under the VVS as a venue with multiple criminal incidents (grievous bodily harm, sexual assault, manslaughter).

**3.2.C The definition of 'intoxicated' under the Liquor Act is unclear and may be applied so broadly that it leads to artificial, impractical and unfair outcomes:**

The Liquor Act currently defines a person to be 'intoxicated' if "(a) the person's speech, balance, coordination or behaviour is *noticeably affected*, and (b) it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor." The subjective application of 'noticeably affected' leads to incidents being categorised as an 'alcohol-related violent incident' when very little alcohol has been consumed. For example, if a person has had one, two or even three drinks and, while dancing, accidentally trips and falls into someone and gives that person a bruise, then that incident can be deemed an alcohol related violent incident and is therefore attributable under the VVS.

A sensible and practical interpretation would acknowledge that this must be assessed in the context of normal behaviour for patrons socialising in licensed premises. Ordinarily, this would include loud conversation, laughing, flirting, dancing, hugging and other forms of friendly boisterous behaviour. On a sensible and practical interpretation, such behaviour would **not** be characterised as 'noticeably affected' for the purposes of the definition.

### **3.2.D Risk Management Practices:**

The VVS does not give any consideration to a venue's risk management process or framework. Many venues have comprehensive risk-management plans, developed in conjunction with Security Risk Management consultants and the police. Venues that conduct routine risk assessments and implement the recommendations or findings of specialists should be rewarded for utilising best practice risk mitigation and management.

The VVS classification of our CBD venue, Ivy, demonstrates how outdated and disproportionate the VVS is. For the 11-year period since the introduction of the VVS in January 2008, we have achieved an extraordinarily low average incident rate of 1 incident per 66,000 customers per annum (or .0015%), making Ivy on a per capita basis, one of the safest venues in the country. Notwithstanding this achievement, Ivy has been categorised as either a level one or level two-tiered venue since the introduction of the scheme.

The current VVS structure impacts upon venues as a result of the incorrectly-perceived risks that are taken into account by a venue's financiers, insurers and employees – and patrons.

While the legislation applying to licensed venues is NOT calculated on a per capita basis specific to each venue, the BOCSAR reports all other crime statistic calculations on a per capita basis. By way of further example, Transport for NSW also calculates violence at railway stations on a per capita basis.

To remove red tape and simplify the operation of the Liquor Act, the aims of the VVS should be incorporated into the Three Strikes Disciplinary Scheme (see below), in a manner which properly distinguishes between violent and non-violent incidents, considers a venue's scale and annual patron visits and takes into account a venue's risk management practices.

### **3.3 Three Strikes Disciplinary Scheme (Part 9A of the Liquor Act 2007)**

The Three Strikes Disciplinary Scheme (TSS) was implemented in 2011 to govern venues operating under any sort of liquor licence in relation to the prevention of intoxication, the service to minors and other anti-social behaviours generally.

Liquor & Gaming NSW defines the TSS as *"Licensed venues that repeatedly commit serious offences can lose their liquor licence under NSW's Three Strikes scheme. The scheme uses a system of strikes that target licensees or managers who wilfully – and continually – breach liquor laws. Not all offences will result in a strike - strikes only apply to serious breaches."* (Serious breaches include common assault, actual bodily harm, riot/affray, sexual assault, assault officers, indecent assault, drink spiking, violent disorderly, grievous bodily harm, aggravated assaults.)

Any hotel venue, regardless of its size or annual patronage, may lose its liquor licence if three strikes are incurred against any licensee of that venue – which would inevitably lead to that business' collapse. A strike remains in force for three years from the date it was incurred.

The policy objectives of the TSS have merit. However, as this submission demonstrates, the current scheme:

- 1) provides the police with completely subjective and improperly defined methods of imposing PINS against a licensee;

- 2) provides a disproportionately expensive pathway through the court system to defend a PIN; and
- 3) subjects the licensee to the subjective review of ILGA.

As a result, for the reasons described below, the TSS provisions in the Act are ambiguous, unwieldy and potentially unfair – and require reform.

### **3.3.A Process for Issuing PINs/Strikes**

The TSS operates under a system whereby venues can be issued Penalty Infringement Notices (PINs) by the Police in instances where the Police feel the Licensee of the venue has breached any licensing laws. Similar to a driving infringement, PINs are issued and a licensee can either pay the infringement and incur a Strike (depending upon the categorisation of offence as referenced above), or can elect to oppose the matter in Court.

If a licensee feels he/she is unable to prove their innocence under the definition of the Liquor Act via the court process, or if the licensee believes he/she was guilty of the offence, the PIN would be paid by the due date. Once that occurs, if the offence is a strikeable offence, ILGA will then obtain recommendations from both the Police and internally and will ask the licensee if they wish to make a submission for leniency as to why a strike should not be issued. ILGA then makes a determination.

The alternate process is that if the licensee elects to fight the infringement via the court process and is subsequently found guilty (if a strikeable offence), a strike will be automatically imposed or, if the judge so determines, even if there has been a finding of guilt, a section 10 dismissal may be ordered, which is a dismissal of charges without a recording of the conviction.

### **3.3.B ILGA's discretion in issuing strikes**

When deciding to impose a strike or licence conditions following a strike, ILGA states that it will consider:

- if the venue is captured by the violent venues scheme;
- venue size and patron capacity;
- change of licensee, manager, or business owners;
- changes to business practices;
- compliance and incident history and crime statistics.

ILGA also states that if it decides to impose a strike, it can impose remedial action against a licensee, manager, and the licence of the venue where the related breach occurred. After a first strike, this action is designed to help improve behaviour and address the risks that led to the strike being incurred. However, where operators repeatedly disregard the law and incur three or more strikes, a range of actions may be taken to remove them from the industry – including disqualification, licence suspension and cancellation.

There is no other pathway under the Act to comply with a PIN and fight the imposition of a strike. This is where the system falls down.



### 3.3.C Procedural Fairness issues for Licensees

For the process where PINS may be issued by the Police against a venue, the inequities in the TSS as currently drafted include:

1. The difficulties that arise from the definition of “intoxicated” (see point 3.2.C in VVS above), which can result in a substantial extension of a licensee’s deemed guilt, under s 73(4) of the Liquor Act, on the offence of permitting an intoxicated person on licensed premises.

This then puts the onus upon the licensee to prove that he/she is not guilty through the provisions governing the statutory defences under the Act. Simply put, the current wording of the first of these defences (under s 73(4)(a) and s 73(5) – if read literally - mean that the Licensee must prove that he/she undertook ALL THREE of the following ‘relevant steps’:

2. (a) asked the intoxicated person to leave the premises; and  
(b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises; and  
(c) refused to serve the person any alcohol after becoming aware that the person was intoxicated.

However, this interpretation leads to impractical, and even absurd, results. For example:

- A. Licensing police often rely upon close circuit video footage, routinely maintained by licensed premises, as evidence of an alleged offence of allowing an intoxicated person to have been on licensed premises which they obtain from the venue (via a Notice to Produce) at a time that is often well after (days or weeks) the alleged intoxication occurred.
- B. If such video footage indicates an apparently intoxicated person departing the premises, licensing police may allege that this is direct evidence of the offence being committed;
- C. On this scenario, if that person had left the premises of their own accord, a literal interpretation could require the licensee to, nonetheless prove (in effect retrospectively), that:
  - (i) the person had been asked to leave the premises (even though that person has already left the premises); and
  - (ii) police assistance had been sought to remove the person from the premises (even though that person has already left the premises); and
  - (iii) staff had ‘refused’ to serve any more alcohol to the person (even though that person had already left the premises).

A more sensible interpretation may be that only one of these steps need be taken in order to establish statutory defence. However, that also remains unclear.

- D. A further example is that if the licensee refused to serve the person any more alcohol while still in-venue, it remains unclear under the Act whether or not the person would be permitted to remain on the premises until other health

and safety concerns for the person could be addressed. Again, this allows the Police to issue the licensee with a PIN.

- E. As the Act is currently drafted, the onus or burden of proof involves a reversal of the onus of proof that usually applies in criminal proceedings. This means that an artificially literal approach to the definition of “intoxicated person” will result in a much wider operation of the Act, such that a Licensee is automatically ‘taken to be’ guilty of the offence of permitting intoxication on licensed premises, unless the Licensee can prove that at least one of the above statutory defences applies.

All of the above are practical complications as they substantially affect the capacity of a licensee to prove his or her innocence, in circumstances where he or she has been deemed guilty of an offence and the usual criminal onus of proof has been reversed.

### **3.3.D Size and Scale of Venues not adequately considered under current scheme design**

Similar to the issues raised above in the section dealing with the VVS regarding the size of venue and severity of incidents, a critical change to the TSS is required to more accurately record the per-capita level of violence in a venue by modifying the current formula for determining the level of each venue as follows:

- (a) Inclusion of a mechanism that considers the scale of the venue; and
- (b) Inclusion of a mechanism (via a weighting system) that distinguishes between the severity of incidents when attributing penalties.

These changes should provide a clearly quantifiable formulae for every venue and would significantly improve the equity and administration of the scheme, leading to improved safety outcomes and informed reporting to the public at large.

As outlined above, the Scheme should be revised to include a mechanism largely based on venue capacity and average days per week of trade. By having different categories based on this categorisation, the number of incidents that would put a venue in a particular tier would vary considerably. This would more accurately reflect the per-capita level of incidents in a venue.

These reforms would not only promote the equity and fairness of the Scheme, but also more accurately reflect the actual risk of violence at licensed venues for patrons. They would ensure that venues with high levels of per-capita violence have appropriate restrictions applied to ensure safety and prevent violent incidents from occurring.

### **3.3.E Impacts of Illicit Drug Use on Licensed Premises**

The unfortunate prevalence of illicit drug use in our society has significant impacts upon the operation of licensed venues under the TSS. While the obligation on licensed venues to ‘prevent intoxication’ relates only to alcohol, licensees are often issued PINS due to perceived intoxication, when in fact all indications point to intoxication not by alcohol, but by illicit substances consumed against the wishes and against the knowledge of the

licensee. However, unless a toxicology screen is undertaken (which licensees are not legally able to request), it is impracticable for a licensed venue to prove that the individual was not intoxicated by alcohol. Following on from that, as the legislation is currently worded, even if an individual is definitively proven to have taken an illicit substance, if they have had only one drink on the licensed premises, the licensee might still be issued with a PIN for “allowing intoxication” and thereby being placed in a well-nigh indefensible situation.

The legislative framework must acknowledge this issue and provide appropriate measures which acknowledge that people may be affected by illicit substances which could lead to violence within licensed venues.

#### **4.0 LOCK OUT LAWS AND ALCOHOL RESTRICTIONS**

Sydney’s Lock Out Laws and alcohol restrictions were introduced in 2014 in a further effort by the NSW government to combat alcohol related violence. Interestingly, simple research conducted via available data from the BOCSAR clearly evidences a pre-existing downward trend in non-domestic assaults on licensed premises across New South Wales. This downward trend is also evidenced in Sydney’s CBD. Between 2008 and immediately prior to the implementation of the lockout in 2014, assaults had already fallen by 34.8%.

The Lock Out Laws and alcohol restrictions were introduced after two tragic deaths had occurred, which were attributed to alcohol fuelled violence. However, neither of those instances occurred in a licensed venue, nor had either of the perpetrators consumed alcohol in a licensed venue prior to the incidents. One perpetrator had been drinking in an unlicensed hostel and the other had pre-fueled via alcohol he had purchased from a bottle shop in an outer western suburb. Despite this, the Lock Out Laws and alcohol restrictions only sought to curtail licensed venues.

Regardless though, Merivale supports legislation that provides a sound regulatory framework around liquor licensing, including **accurate and appropriate legislation** to discourage, monitor and curtail alcohol related violence.

While both the Deloitte and Committee for Sydney reports reference research for Greater Sydney, Sydney’s CBD commercial and entertainment district has undoubtedly been the hardest hit.

There is an accelerated diminishing of the economic viability of the CBD post sundown. The Lock Out Laws and alcohol restrictions have not only adversely impacted the CBD post midnight, they have also resulted in a substantial impact on life in the city post-sundown. The reality is that as night falls, Sydney’s CBD quickly and quietly becomes a ghost town. This is particularly obvious to visitors and tourists, resulting in substantial damage to Sydney’s international reputation and as a city and destination.

Our Lock Out Laws preclude patrons from accessing licensed venues from 1:30am and mandatory last drinks at 3am (for venues with live entertainment, that timing is 2am lock out access and last drinks at 3:30am). Included in the Lock Out Laws are various drinking restrictions from midnight that restrict the types of alcohol that patrons can order.

We have a CBD lock out law “precinct” which is bound by Kings Cross, Darlinghurst, Cockle Bay, The Rocks and Haymarket. Inner city suburbs, such as Newtown and Enmore, aren’t subject to any similar lock out law or alcohol restrictions.

Of note, the current CBD precinct does NOT include enormous licensed venues such as Star City Casino or the Sydney Cricket Ground, nor the entire Barrangaroo precinct within the CBD (including the nearly completed Crown Casino). If the Lock Out Laws and alcohol restrictions were created to govern licensed venues and to protect our community at large, the question needs to be asked why are these huge venues given an exemption from the current regime?

Our submission relates to the social growth and positive development of the Sydney CBD precinct and not the Kings Cross precinct. We believe that these two areas are significantly disparate, insofar as the Sydney CBD is a majority commercial district with a large proportion of the inner Sydney hotel sector yet with a very small percentage of residential properties – in contrast to the Kings Cross precinct which is predominantly residential. Both areas also have dissimilar public transport infrastructure, with the CBD – especially with the imminent completion of the light rail project – enjoying vastly superior transport options.

There will be those who argue that the Kings Cross precinct has been hardest hit by the Lock Out Laws and alcohol restrictions, however, as a primarily residential precinct, it is common sense that it must be subject to legislation that protects its residential environment as it relates to licensed venues.

We would therefore submit that the two precincts should be treated separately when examining new legislative and regulatory framework moving forward.

#### **4.1 Current effects of the Lock Out Laws and alcohol restrictions on Sydney’s night time economy**

Post sundown, Sydney’s CBD activity exponentially diminishes as the evening wears on. With the early closure of inner city venues, people are discouraged from remaining in the city. They move out to the residential suburbs where there are less restrictions on venue operating hours and the types of drinks that can be consumed at different times.

Most major international cities enjoy a vigorous and vibrant night life past 4am, with traditional busy social periods only getting started at midnight. Under the current Lock Out Laws and alcohol restrictions, from midnight patrons cannot order a neat whiskey or tequila, for example, or a martini. From 2am, customers are not permitted to purchase a bottle of champagne or wine. With proper RSA practices in place, venues must manage intoxication levels no matter what a guest is ordering to drink.

The appeal for the public to stay in the city to socialise and enjoy what our city could offer later into the evening is greatly diminished if they cannot move between venues from 1:30am and the venues must close at 3am. As a result of there being far fewer people in the city, venues close much earlier to conserve costs. It is a no win situation for licensed venues and for the public at large as either way, most venues are closed. After 10pm at night, it is even extremely difficult to find a venue within the CBD where you can simply have a coffee or enjoy a meal.

With customer levels quickly deteriorating to an all-time low from 8pm, venues are closed and employment shifts are therefore reduced. This is an enormous lost employment opportunity.

Many people want late night shift work, such as students who are at university or other study during the day, and people who need second jobs. These are people who need the funds to purchase homes, to raise their families, varying child care needs, to save and to travel – who are all contributing to our economy, yet their employment opportunities are vastly curtailed as a result of the Lock Out Laws and alcohol restrictions.

With greatly reduced late-night foot traffic in the CBD, other non-licensed businesses are not encouraged to remain open. Shops should be open for business, galleries and cultural centres should be thriving late into the night, and more events should be scheduled – more people around creates a bigger demand for services, space and products.

#### **4.2 Practical repercussions at Merivale venues due to Lock Out Laws and alcohol restrictions**

A sample of international visitors who have been affected by Lock Out Laws and alcohol restrictions:

Smashing Pumpkins lead singer Chris Cornell: (internationally renowned music group): **Entry refused** at Palmer & Co (CBD venue) due to arriving at 1:35am.

Madonna (does she need an introduction?): **Entry refused** at Ivy (largest CBD entertainment venue) because she arrived at the venue post 1:30am.

Diego Costa's coach (Chelsea Soccer team): **Entry refused** at Establishment. The entire Chelsea Soccer team were inside Establishment and Mr Costa was now allowed to enter and join them.

Chelsea Soccer Team: Wished to move from Establishment (CBD venue) to Ivy (CBD venue two blocks south) **refused** due to time being post 1:30am.

Steven Gerrard (former Liverpool Football Club player and Captain for England): Wished to move from Establishment (CBD venue) to Ivy **refused** due to time being post 1:30am.

James Harden (professional American NBA basketballer): Wished to move from Establishment (CBD venue) to Ivy **refused** due to time being post 1:30am.

British Rugby Lions (international rugby team): Most of the team were at Ivy celebrating, however, several players were delayed due to having injuries treated post-game were **refused entry** due to arriving post 1:30am.

#### **4.3 Safety and Violence**

Safety in the CBD must be assessed on a per-capita basis. It is often claimed by those in favour of punitive lock-out laws that the CBD is now statistically safer at night than prior to the introduction of the laws, however, this must be assessed against the significantly decreased foot traffic.

Having no people in the city is not the answer to safety concerns. Having more and more people and activity in the city at all times of day and night creates visibility, light, security and social interaction.

Sydney is seeing unprecedented levels of infrastructure being built. The city is opening walkways and the light rail on George Street very soon, which will create a pedestrian-friendly and safe precinct for locals and tourists who want to shop, visit galleries, gyms and cultural events, eat, drink and socialise in around-the-clock venues.

Sydney in 2019 is a very different city to what it was when many of the laws surrounding licenced venues were introduced. The city, through both public transport being built, as well as the development of new transport options through the gig economy (Uber, Lyft, etc.), now has many additional ways to disperse crowds and get people home safely.

There is good research to be found which evidences there to be no link between extended trading hours and rates of violent assault, and that some countries have in fact introduced longer trading hours in order to prevent the harms associated with early fixed closing times.

In January 2015, anthropologist Dr Anne Fox released a whitepaper titled 'Understanding behaviour in the Australian and New Zealand night-time economies'. In summary, the report examined the root causes of violence and anti-social behaviour in the night time economy. To reduce violence in the night time economy, Dr Fox recommended making night time economies more vibrant and attractive to a variety of residents to increase diversity; improving alcohol education; improving security training; offering more late-night transport options; improving venue design; focusing on personal responsibility as the key driver of behaviour, rather than alcohol. She examined both greater restrictions on licence density, opening hours or harsh licence conditions. **She found that those measures are not supported by the evidence.**

The current Lock Out Laws and alcohol restrictions regime punishes everyone, and does not target the few individuals who misbehave. The removal of the Lock Out Laws and alcohol restrictions must ensure that the levels of alcohol related violence are minimised and that safety is maintained. The revised laws must incorporate changes as to how alcohol related violence is assessed, recorded and penalised. As detailed throughout this submission, the current system is inequitable and does not consider the severity of an assault nor the patronage nor size of a venue in which an incident might occur – all of which undermine the primary objective of accurately identifying when and where alcohol related violence is more likely to occur.

Our city of Sydney has matured. As a large hospitality owner, operator and employer in the CBD, we have seen first hand over the past five years that mindless anti-social behaviour has been dealt with swiftly and professionally by NSW Police and appropriate punishments have been handed out to the offending individuals. This not only relates to licensed premises, but individual behaviour in general. There is now much greater focus on individual accountability and responsibility, and this must be pressed to continue.

## **5.0 OTHER CONSIDERATIONS**

### **5.1 Night Time Governance**

It is going to be a mammoth job to properly reinvigorate Sydney's night time economy. A robust strategy will be required to be established with consideration to all facets – good and not so good – which will be encountered. We would recommend that the government appoint a Night Time Mayor. This is a common role in cities around the world. The Night Time Mayor's role would be to shape government policy and planning to create a vibrant night time economy while maintaining safety. Importantly, this role would include acting as a conduit between the regulatory bodies and night life businesses.

The Deloitte *Imagine Sydney 2019* report estimates that Sydney is missing out on **an additional \$16.1bn** of night time business. This is an incredible amount of missed opportunity for Sydney's night time economy.

Therefore, to ensure the successful reinvigoration and continued economic benefits of Sydney's night time economy, a leader must be appointed whose mandate is to provide a cohesive representation of all stakeholder bodies, including police, licensing, business groups, local government.

## **5.2 Petition in Support of the Removal of the Lock Out Laws and Alcohol Restrictions**

As a major Sydney hospitality owner and operator, every day we hear first-hand from our customers and staff, many comments and complaints about the Lock Out Laws and alcohol restrictions and the terrible effect they have had on Sydney socially, commercially and economically. In evidence of the enormous support of the public at large, last Thursday, 11 July, we initiated a petition for signature by those who are in support of the withdrawal of Sydney's Lock Out Laws and alcohol restrictions. In only five days, 7,920 signatures have been recorded, providing irrefutable evidence of the public's overwhelming desire for Sydney's CBD to return to a 24-hour city. As discussed with the Committee Manager's office earlier today, as the file is too large to email, a hard copy of the petition signatures will be delivered by hand tomorrow.

## **6.0 CONCLUSION**

### **6.1 Recommendations Summary**

- De-coupling of the Sydney CBD and Kings Cross/residential "precincts" under the Lock Out Laws;
- Removal of the Lock Out Laws and alcohol restrictions entirely (**including drinking restrictions**) within the CBD entertainment precinct;
- Removal of the VVS altogether and appropriately incorporate its intent into the TSS;
- Instigate within the TSS a comprehensive risk assessment matrix for licensed venues based on the severity of assaults and the scale of venues so as to accurately monitor levels of alcohol-fueled violence and identify problem venues or areas and to ensure equity, fair process, legal clarity, sensible regulatory review paths with court action the final option;
- Review the ambiguities and inequities within the Liquor Act as they relate to the application of licensing laws by licensees and regulatory bodies to allow the night time economy to prosper and flourish, with the objective of providing a regulatory context that is clear, can be practically and consistently applied, and strikes the appropriate balance between proper regulation and the lawful conduct of patrons and operators of licensed premises; and
- Implementation of a government appointed Night Time Mayor for the Sydney CBD.

Sydney has the potential to be not only the number one city in Australia, but one of the most vibrant, fun and exciting cities in the world. Merivale is excited about the next chapter of the Sydney night time economy, and looks forward to working closely with the NSW Government to make sure we end up with the appropriate balance between the safety of the community and the need to have a vibrant and exciting night life.

When absorbing all of the above, it should be borne in mind that **drinking alcohol is not illegal**.

When properly and legally managed, with the appropriate and practical statutory framework together with personal accountability, licensed venues will absolutely be at the forefront of the reinvigoration of Sydney's night time economy.

Let's open up Sydney's CBD night time economy for trade. Let's put this wonderful city back on the tourism map and let's build a 24 hour city that we can all be proud of. With the imminent opening of the multi-billion dollar light rail system and the pedestrianisation of George Street, now is the time to return Sydney to a vibrant world class city.

We take this opportunity to thank Premier Berejiklian and the NSW Government for undertaking this legislative review. If there is anything further we can do to assist in this respect, please let me know as we would be more than happy to assist.

Yours sincerely

  
**Justin Hemmes**  
Chief Executive Officer

**End Notes**

*Committee for Sydney's report, Sydney as a 24-Hour City March 2018*

*Committee for Sydney's 2018 report, Sustaining the Advantage: Benchmarking Sydney's Performance*

*Deloitte report, Imagine Sydney PLAY 2018*

*TimeOut report March 2019*

*Dr Anne Fox "Understanding behaviour in the Australian and New Zealand night-time economies" January 2015*

CC:

