

Chapter 1

Introduction

Referral and conduct of the inquiry

1.1 On 25 June 2015, the Senate referred an inquiry into personal choice and community impacts to the Senate Economics References Committee (committee) for inquiry and report by 13 June 2016.¹

1.2 The committee's terms of reference require it to report on:

The economic and social impact of legislation, policies or Commonwealth guidelines, with particular reference to:

- a. the sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;
- b. the sale and service of alcohol, including any impact on crime and the health, enjoyment and finances of drinkers and non-drinkers;
- c. the sale and use of marijuana and associated products, including any impact on the health, enjoyment and finances of users and non-users;
- d. bicycle helmet laws, including any impact on the health, enjoyment and finances of cyclists and non-cyclists;
- e. the classification of publications, films and computer games; and
- f. any other measures introduced to restrict personal choice 'for the individual's own good'.

1.3 In accordance with usual process, the committee advertised the inquiry on its website and wrote to relevant persons and organisations inviting submissions to the inquiry.

1.4 To date, the committee has received 485 public submissions and two confidential submissions. The public submissions are available on the committee webpage.

1.5 The committee has held seven public hearings. At its first public hearing, on 11 September 2015 in Canberra, the committee heard evidence on decision making generally. The other public hearings focused on specific matters in relation to the inquiry terms of reference as follows:

- on 3 November 2015, in Parramatta, the committee heard evidence on proposed restrictions on the activities of fans of the Western Sydney Wanderers Football Club;

¹ *Journals of the Senate* No. 102, 25 June 2015, p. 2832.

- on 16 November 2015, in Melbourne, the committee heard evidence on mandatory bicycle helmet laws in accordance with inquiry term of reference (d);
- on 20 November 2015, in Sydney, the committee heard evidence relating to inquiry term of reference (b) concerning the sale and service of alcohol with focus on Sydney's lockout laws;
- on 9 March 2016, in Sydney, the committee heard evidence regarding inquiry term of reference (a) concerning tobacco, nicotine and e-cigarettes;
- on 11 March 2016, in Sydney, the committee heard evidence regarding the sale and service of marijuana in accordance with inquiry term of reference (c); and
- on 22 April, in Canberra, the committee heard evidence regarding the classification of publications, films and computer games under term of reference (e).

1.6 The witnesses who appeared at the alcohol public hearing on 20 November 2015 are listed at Appendix 1. Additional information in relation to term of reference (b) including questions taken on notice is at Appendix 2.

1.7 The committee thanks all those who have participated in the inquiry so far.

Purpose and scope of this interim report

1.8 This report focuses on the evidence presented to the committee in submissions and at its fourth public hearing in relation to term of reference (b) concerning the sale and service of alcohol.

1.9 During its examination of this specific term of reference, the committee did not focus on alcohol per se. While the committee received evidence of the negative social, health and economic consequences of alcohol misuse and excessive consumption on the individual, family and community, the seriousness of alcohol-related health and social harms was accepted by the committee without debate.

1.10 The focus of this component of the committee's inquiry concerned the various approaches to restricting alcohol sales and the service of alcohol. In particular, restrictions on the opening hours and sale and service of alcohol at licensed venues in certain areas of Sydney implemented in 2014 (commonly described as the Sydney or Kings Cross 'lockout laws', in reference to the most contentious of these measures) were examined in detail.

1.11 The remainder of this chapter provides the framework for Sydney's lockout laws implemented by the NSW Government in 2014.

Sydney lockout laws

1.12 In July 2012, 18-year old Thomas Kelly was fatally assaulted in a 'one-punch' attack within the Kings Cross precinct. In response to public outcry over this incident and alcohol-related violence more generally, the NSW Government introduced several tranches of legislative and policy changes that impact on the sale and service of

alcohol at licensed venues in the Kings Cross district, as well as other areas of central Sydney.

Changes implemented in 2012

1.13 On 15 August 2012, then NSW Premier O'Farrell announced that the government intended to introduce a range of measures including special licencing conditions on 58 'high risk' licenced venues in the Kings Cross precinct.² The objective of the measures was to reduce alcohol-related violence and 'improve safety in and around licensed venues in the Kings Cross precinct'.³ Thereafter, legislation was passed which prescribed the conditions to which licenced premises in the Kings Cross precinct were to operate.

New licenced conditions

1.14 Changes to licensing conditions in the Kings Cross precinct applicable every night of the week included:

- banning glasses, glass bottles and glass jugs after midnight;
- requiring venue managers to immediately notify police of any violence causing injury, and preserve the crime scene;
- requiring all higher risk licensed venues to maintain a digital CCTV system and provide footage authorities within one working day of a request;
- requiring all licensees, staff, crowd controllers and security guards to hold a current recognised Responsible Service of Alcohol (RSA) Competency Card; and
- requiring incident registers to be maintained at all times (rather than just after midnight, as was previously the case).

1.15 Additional restrictions to licensing conditions were implemented for weekend (Friday and Saturday) late night trading, namely:

- banning the sale of shots and doubles after midnight;
- restricting individuals to buy no more than four alcoholic drinks at a time after midnight;
- requiring two RSA marshals to be on duty in higher risk venues after midnight (one marshal is required in some lower risk venues); and

2 Eighteen of the 58 venues were not trading at the time. The restrictions were to apply to those venues if and when they resumed trading.

3 The Hon Barry O'Farrell MP, Premier of NSW, 'Restrictions on Kings Cross Licensed Venues', *Media Release*, 15 August 2012, <http://www.premier.nsw.gov.au/sites/default/files/RESTRICTIONS%20ON%20KINGS%20CROSS%20LICENSED%20VENUES.pdf> (accessed 17 February 2016).

- requiring that no alcohol be sold or supplied in the hour before closing.⁴

1.16 The NSW Parliament passed legislation in December 2012 to increase the area of the Kings Cross Liquor Precinct to include parts of Potts Point and Darlinghurst, thereby incorporating a total of 134 licenced venues of which 65 were authorised to trade after midnight.⁵

1.17 A license freeze was implemented, preventing the establishment of any new higher risk venues until December 2015, or the expansion of existing venues where that would result in an increase in the number of persons entering Kings Cross principally to consume alcohol.⁶

Changes implemented in 2013

1.18 Further changes under the Kings Cross Plan of Management were effected in December 2013, through a second tranche of legislation passed by the NSW Parliament. Changes to licensing condition for venues in the Kings Cross included:

- the introduction of a centralised ID scanning system (rolled out in June 2014), with a requirement for all high-risk venues in the Kings Cross precinct to operate a linked identification scanner to prevent banned persons from entering licensed premises;
- the introduction of temporary (48-hour) and long term (up to 12 months) banning orders, linked to the ID scanner system, barring individuals from entering specified venues or the entire Kings Cross precinct on the basis of antisocial and violent behaviour;
- revocation of RSA Competency Cards for breaches of privacy or RSA obligations under the new conditions implemented;
- a requirement for licensees to record daily alcohol sales and report these quarterly to the NSW government across various reporting categories; and
- a requirement for approved managers to be present at certain times in high-risk venues.⁷

Introduction of 'lockouts' and other changes introduced in 2014

1.19 Following another highly-publicised fatality resulting from a one-punch assault on 18 year-old Daniel Christie in Kings Cross on New Year's Eve 2013,

4 NSW Government, *Update on the response to issues in Kings Cross*, June 2013, p. 1, <https://www.nsw.gov.au/sites/default/files/public-update-on-kx-plan-of-management-final.pdf> (accessed 17 February 2016).

5 NSW Government, *Update on the response to issues in Kings Cross*, June 2013, p. 1.

6 NSW Government, *Update on the response to issues in Kings Cross*, June 2013, p. 1.

7 The Hon George Souris MP, NSW Minister for Tourism, Major Events, Hospitality and Racing, Second Reading Speech to the Liquor Amendment (Kings Cross Plan of Management) Bill 2013, 22 August 2013, <http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/65FE68F97C8841EBCA257BCE001B962B> (accessed 14 January 2016).

the NSW Government announced additional measures in an attempt to curb alcohol-related violence and improve public safety.

1.20 The package of measures introduced on 21 January 2014 by Premier O'Farrell were directed at tackling alcohol-related violence as part of the NSW Government's comprehensive package to 'make our streets safer'.⁸ Premier O'Farrell argued:

Recent violent incidents have demanded strong action – the NSW Government is determined to put in place these measures as soon as possible to make our streets safer and tackle drug and alcohol abuse in our community.⁹

1.21 In addition to stricter sentencing laws for relevant offences, the principal provisions under the *Liquor Amendment Act 2013* (NSW) included the introduction of 1.30 am lockouts and 3.00 am cessation of alcohol service provisions, applying across an expanded Sydney central business district (CBD) entertainment precinct encompassing from Kings Cross to Darling Harbour, The Rocks to Haymarket and Darlinghurst (see Figure 1.1).¹⁰ These provisions came into effect on 24 February 2014.

1.22 The NSW Office of Liquor, Gaming & Racing describes the lockout provisions as follows:

Clubs, hotels, general bars and on-premises licences relating to public entertainment (other than a cinema or theatre) and karaoke venues, within the Sydney CBD Entertainment Precinct or the Kings Cross Precinct, are not allowed to let people into their venue after 1:30 am, each day of the week. These venues must not let people into the venue before 5 am, or the authorised opening time, whichever is later. This rule also applies to any declared premises in these precincts.

People already in a venue before 1:30 am can stay until the close of business. They are able to leave at any time, but if they leave after 1:30 am, they are not able to re-enter that venue during the lockout period, or gain entry to any other venue subject to the lockout.¹¹

1.23 The cessation of service provisions are described as follows:

[These venues] are not allowed to sell or supply liquor after 3 am, which is the start of the 'liquor sales cessation period'. This requirement does not apply to venues exempt from the Precinct.

8 The Hon Barry O'Farrell MP, Premier of NSW, 'Lockouts and mandatory minimums to be introduced to tackle drug and alcohol violence', *Media Release*, 21 January 2014.

9 The Hon Barry O'Farrell MP, Premier of NSW 'Lockout to commence from 24 February', *Media Release*, 5 February 2014, <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2014/lockouts-to-commence-feb.aspx> (accessed 24 February 2016).

10 The Hon Barry O'Farrell MP, Premier of NSW, 'Lockouts and mandatory minimums to be introduced to tackle drug and alcohol violence', *Media Release*, 21 January 2014.

11 NSW Office of Liquor, Gaming and Racing, *Fact Sheet: 2014 reforms for liquor regulation in NSW*, July 2014, p. 2, http://www.olgr.nsw.gov.au/news_New_Initiatives_Announced.asp (accessed 14 January 2016).

If a venue's liquor licence allows trading after 3 am, the venue can remain open (but subject to the lockout) for other purposes, such as dining or entertainment, but is not allowed to serve liquor. Liquor sales cannot resume until the commencement of the next trading period, which is 5am or the authorised opening time, whichever is later, for each day of the week.¹²

1.24 Other measures included a ban on takeaway alcohol sales after 10.00 pm across NSW and freeze on new liquor licences and approvals for existing licences across the new Sydney CBD entertainment precinct.¹³

1.25 The legislation also provided for an independent review of the amendments relating to venue lockouts and cessation of service, to be undertaken two years after the laws came into effect (that is, February 2016).¹⁴

1.26 On 11 February 2016, the NSW Government announced the commencement of an independent review of the 1.30 am lockout and 3.00 am last drinks measures in the Sydney CBD and Kings Cross area. The 10.00 pm take away liquor restriction imposed across NSW as well as the periodic liquor licence fee system were also part of the review. To be led by former High Court Justice, the Hon Ian Callinan AC QC, the review is expected to be 'guided by the evidence and the experiences of the people of Sydney and NSW'.¹⁵ Mr Callinan will provide a final report to the NSW Government in August 2016 with a government response to the report due later in the year.

1.27 Following the announcement of the review, Keep Sydney Open held a rally to protest against the lockout laws. Various media reports suggest that between 8000 to 15,000 people gathered in Sydney's CBD to call for a lifting of the restrictions on trading hours. Protestors argued that the laws were a restriction on personal liberty, destroying Sydney's night-life and reputation as a global city, and threatening businesses and jobs in the music and hospitality industry.¹⁶ Reports suggest that protestors were particularly critical of the exemption of casinos from the lockout regime.

1.28 However, the Last Drinks Coalition, a group of unions representing state doctors, nurses, paramedics and police officers called for the laws to remain in place.

12 NSW Office of Liquor, Gaming and Racing, *Fact Sheet: 2014 reforms for liquor regulation in NSW*, July 2014, p. 2.

13 The Hon Barry O'Farrell MP, 'Lockout to commence from 24 February', *Media Release*, 5 February 2014.

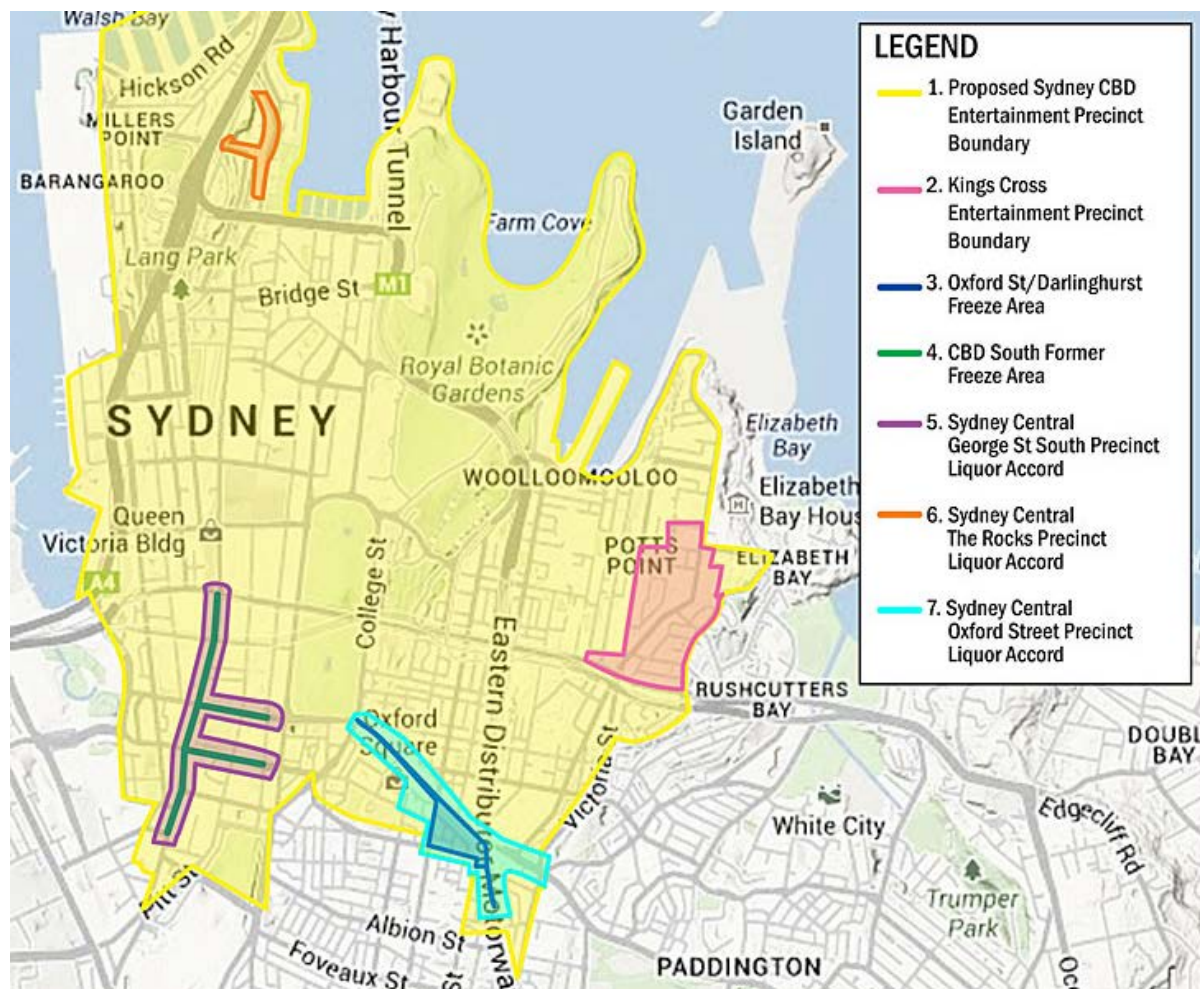
14 *Liquor Amendment Act 2014* (NSW), Schedule 1, clause 47.

15 Department of Justice, 'Public to have its say in Independent Review of Lockouts, Last Drinks and 10pm Liquor Laws', *Media release*, NSW Government, 11 February 2016, <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/mr-liquorlawreview.aspx> (accessed 22 February 2016).

16 Lauren McMahan, 'Thousands protest against lockout laws in Keep Sydney Open rally', *News.com.au*, <http://www.news.com.au/national/nsw-act/news/thousands-protest-against-lockout-laws-in-keep-sydney-open-rally/news-story/3093c5f3279899db2fd0132e9d10d5bc> (accessed 22 February 2016).

Coalition spokesperson, Dr Tony Sara stated that a 32 per cent decrease in assaults in Kings Cross was a 'statistic too great to ignore'. He concluded that the laws 'have saved lives'.¹⁷

Figure 1.1 – Sydney CBD Entertainment Precinct¹⁸



17 #KeepSydneyOpen: Thousands of protesters call for Sydney's lockout laws to be revoked', *ABC News*, 21 February 2016, <http://www.abc.net.au/news/2016-02-21/about-8000-protest-against-sydney-lockout-laws/7187372> (accessed 22 February 2016).

18 Sean Nicholls, 'Barry O'Farrell announces 'tough' laws to combat alcohol-fuelled violence', *Sydney Morning Herald*, 21 January 2014, <http://www.smh.com.au/nsw/barry-ofarrell-announces-tough-laws-to-combat-alcoholfuelled-violence-20140121-315wg.html> (accessed 14 January 2016).

