

The Senate

Economics
References Committee

Personal choice and community impacts

Interim report: sale and service of alcohol
(term of reference b)

May 2016

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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/parlment/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.

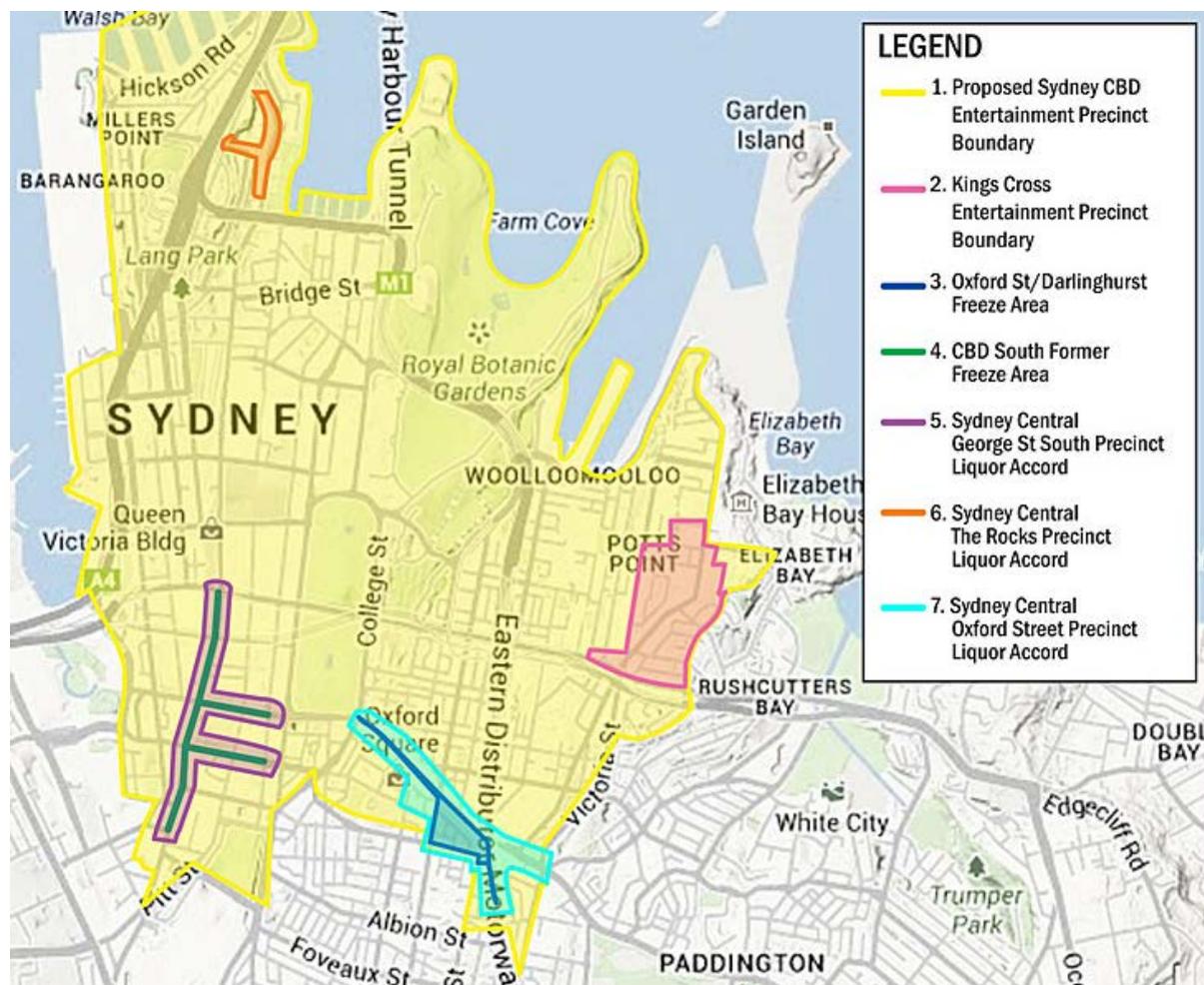
14 *Liquor Amendment Act 2014* (NSW), Schedule 1, clause 47.

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).

Chapter 2

Sydney lockdown laws

2.1 When implementing policy measures directed at reducing harmful outcomes across a population, government is also required to demonstrate proportionality and to ensure that particular groups are not impacted in unintended negative ways and the measures do not inadvertently produce adverse outcomes.

2.2 The stated objectives of Sydney's lockdown laws are to reduce alcohol-related violence and improve community safety. This chapter considers the effectiveness of the lockdown measures in achieving these aims as well as exploring evidence of unintended consequences.

2.3 Some submitters held the view that government regulation should seek to lower overall alcohol consumption on the basis that any level of alcohol use increases the risk of ill-health and injury. They argued that any restrictions on personal choice to consume alcohol resulting from a population-wide approach are acceptable on the grounds that, overall, this policy achieves a greater good.

2.4 Others argued in favour of regulatory measures that are specifically targeted at individuals and groups who over-consume alcohol or engage in violent or high-risk behaviours. These submitters argued that lockdown laws and related regulations, which affect the population as a whole, adversely affect the majority of Australians who drink responsibly, make their own assessment of the involved risks, and manage those risks appropriately.

2.5 The core question for the committee was whether the loss of personal choice vis-à-vis Sydney's lockdown laws, as a population-wide measure, is justified on the grounds of improved overall outcomes. As part of its review, the committee considered evidence claiming there has been inadvertent and disproportionate impacts on particular community groups, the local business community, and the music industry.

2.6 More broadly, the committee considered whether the arguments favouring lockdown laws were justifiable when considered against their direct impacts, given the extent to which lockdown laws involve policing non-criminal behaviour and constraining personal choice.

2.7 This chapter considers the two approaches to regulating alcohol outlined above more broadly before focusing on Sydney's lockdown laws.

Approaches to regulating alcohol products

Population-wide measures aimed at reducing alcohol consumption

2.8 The Foundation for Alcohol Research and Education (FARE) argued that the overall level of alcohol consumption in Australia should be reduced, as a means of reducing alcohol-related harms across the community. Mr Michael Thorn, FARE Chief Executive, told the committee that population-wide approaches are more effective than targeted interventions:

One of the things we need to understand about alcohol-related harms is that, unlike smoking, third-party harms are probably greater than they are to the drinker: the domestic violence, the child neglect, the impact on employers' productivity—the whole gamut of harm that we are dealing with. It is also perverse. We get something which we call the 'prevention paradox'. If you target the entire population, you reduce total harm. If you just target heavy drinkers, you will only reduce harm among them, and that is less than by targeting the entire population.

One of the explanations for that is the nature of drinking. I will try to explain this: it is the sort of episodes of drinking by the entire population that add up to a totality of harm that exceeds the harms of that heavy drinking cohort, which, in this country, is around about 20 per cent of the population...The group of middle-class women who go out to have lunch one day, and one of them ends up in a car accident, or there is a domestic dispute that night when she gets home—those sorts of things. The sum total of that—and there is research evidence to support my claim here—shows that having these population-wide measures, such as introducing a minimum unit price or restricting availability, actually reduces the totality of harms more than just by targeting the harmful drinkers.¹

2.9 Some measures viewed as 'population-wide' and thus aimed at reducing overall consumption were advocated in various submissions to the inquiry, particularly from public health organisations and groups representing various medical professionals. The measures argued for by some or all of these groups included:

- increasing or changing the structure of alcohol taxes (in particular, introducing a volumetric tax on all alcohol products to remove existing discrepancies between the taxation of wine products and other alcoholic beverages);
- introducing further restrictions on when and how alcohol products can be advertised or promoted (such as restricting advertising and sponsorship of alcohol products in relation to sporting and cultural events);
- restricting the physical availability of alcohol products, including when and where they can be sold (this issue is discussed further in relation to lockout laws); and
- mandating that health information labels be placed on alcohol products.²

Measures designed to target specific individuals

2.10 Some submissions argued that population-wide measures aimed at reducing alcohol consumption (such as those mentioned above) are misguided, and that

1 Mr Michael Thorn, Foundation for Alcohol Research and Education, *Committee Hansard*, 20 November 2015, pp 40–41.

2 Victorian Alcohol & Drug Association, *Submission 153*, Attachments 1 and 2; Foundation for Alcohol Research and Education, *Submission 164*, pp 13–18; Public Health Association of Australia, *Submission 172*, pp 11–14; Royal Australasian College of Physicians, *Submission 261*, pp 10–11; Australian Psychological Society, *Submission 425*, pp 8–10.

measures should be specifically targeted at heavy drinkers, anti-social behaviour and at-risk groups. For example, the Brewers Association of Australia and New Zealand argued that alcohol policies that seek to reduce total alcohol consumption in Australia won't reduce misuse but will punish the majority of consumers who already drink responsibly and in moderation. The association continued:

In selecting alcohol policies, government must decide how to encourage some behaviour and discourage others. We believe this is best addressed through targeted interventions.

Interventions cannot be implemented without knowing the drinking behaviour and motivations of the at-risk group in some detail. Selecting interventions that will be effective for particular populations or environments requires getting beneath the data on overall consumption across the population and assessing drinking patterns of those concerned.

Targeted intervention, including a combination of education, laws to reinforce the social norm of responsible and moderate consumption, and strong enforcement of these laws, is far more effective in resolving alcohol misuse without negatively impacting the majority who already consume alcohol responsibly and in moderation and enjoy a balanced, healthy lifestyle.³

2.11 Carlton & United Breweries submitted that targeted interventions include regulatory responses such as drink driving laws, sentences for violent offenders, on-the-spot fines for drunken or violent behaviour, venue bans for individual patrons, and 'one-punch' assault laws.⁴

2.12 The Winemakers' Federation of Australia gave two other examples of targeted interventions:

One example that is gaining acceptance as an effective and cost-efficient targeted intervention is 'brief interventions' by health/medical professionals. Brief interventions, that is, screening and interviewing of patients by primary health care providers, has been shown to be effective in Australia and internationally, both in terms of cost and in decreasing risky alcohol consumption, including in 'at risk' groups.

School-based preventative intervention programs with secondary students have also been studied and shown to be effective in Australia and internationally in terms of reducing the frequency of alcohol use and quantity of alcohol use by adolescents. Programs targeting this age-group offer the potential to minimise alcohol misuse use by the next generation.⁵

2.13 Another targeted measure highlighted by the operators of Kings Cross licenced venues was that of photo identification or ID scanning. ID scanning was first introduced in five entertainment venues in Newcastle in July 2012 and later in Kings

3 Brewers Association of Australia & New Zealand, *Submission 221*, p. 1.

4 Carlton & United Breweries, *Submission 111*, p. 2.

5 Winemakers' Federation of Australia, *Submission 251*, p. 3.

Cross in June 2014 under the *Liquor Act 2007* (NSW).⁶ The Newcastle Entertainment Precinct ID Scanning Policy states:

By allowing us to scan your ID you agree to the following:

1. That we can share your information with other venues should you be banned from this venue.
2. That we can link your information with other venues should you be banned from this venue.
3. That we can make this information available to police and local authorities in the event of an incident.⁷

2.14 Mr Anthony Prior, Chief Executive Officer (CEO) of The Keystone Group explained the Kings Cross ID scanning initiative:

In a coordinated approach, those licensed venues that adopted scanning regulations voluntarily saw some real success. We already proposed that along the way: to take personal responsibility in places. If someone is prepared to scan their ID as they enter a venue, have their identification recorded and then performs an act of misconduct, it is very easy to potentially track them down and hold them to account for that behaviour.⁸

2.15 On 13 June 2014, ID scanners were introduced in 35 licenced venues in Kings Cross.⁹ Under the initiative, all patrons were required to produce photo ID for scanning and could be refused entry if they were unable or unwilling to comply.¹⁰ According to evidence before the committee, the system encouraged a change of behaviour to the extent that people who had been banned from the precinct stopped trying to enter it because they knew that they could be tracked.¹¹

2.16 Under the *Liquor Act 2007* (NSW), the Office of Liquor, Gaming and Racing (OLGR) was required to conduct a review of the initiative twelve months after its

6 Matt Carr, 'ID scanning 'quiet success'', *The Newcastle Herald*, 15 July 2012, <http://www.theherald.com.au/story/205631/id-scanning-quiet-success/>, (accessed 18 February 2016).

7 Newcastle Entertainment Precinct, *Newcastle Entertainment Precinct ID Scanning Policy*, 2016, http://newcastleentertainmentprecinct.com.au/?page_id=84 (accessed 18 February 2016).

8 Mr Anthony Prior, The Keystone Group, *Committee Hansard*, 20 November 2015, p. 5.

9 Ashlee Mullany, 'ID scans hit crime in Kings Cross party precinct', *The Daily Telegraph*, 2 October 2014, <http://www.dailytelegraph.com.au/news/nsw/id-scans-hit-crime-in-kings-cross-party-precinct/news-story/c063b8f6548667ab9c99cf29a2534220> (accessed 18 February 2016).

10 NSW Government, 'ID scanners go live in Sydney's Kings Cross', 13 June 2014, <https://www.nsw.gov.au/news/id-scanners-hit-cross>

11 Mr Douglas Grand, Kings Cross Licencing Accord Association, *Committee Hansard*, 20 November 2015, p. 7.

introduction. The review is expected to inform the separate statutory review of the lockout and last drink legislation that commenced in February 2016.¹²

Sydney lockout laws

2.17 The question before the committee was to ascertain how effective the population-wide measures contained in Sydney's lockout laws have been in achieving their stated objectives. The committee also had to consider evidence regarding the consequences of the laws for the local business community and Sydney's music industry. The committee gave particular attention to evidence regarding the disproportionate and unintended impacts of the laws.

2.18 The committee considered evidence regarding the impact of the lockout laws in relation to the:

- rate of violence and violent assault in the Kings Cross precinct;
- impact on local businesses specifically as well as on Kings Cross as Sydney's night-time entertainment precinct more broadly;
- impact on the local residential population; and any
- unintended consequences, including displacement of anti-social behaviour.

Impact on violence in Kings Cross and other areas of central Sydney

2.19 The committee heard evidence from various stakeholders about incidences of assault in Kings Cross.

2.20 Research from the New South Wales Bureau of Crime Statistics and Research (BOCSAR) published in April 2015 found that between January 2014 (at the introduction of the lockout liquor reforms) and September 2014, there was a 32 per cent decrease in assault rates in Kings Cross, and a 26 per cent decrease in assault rates in the rest of the Sydney CBD entertainment precinct. Over the same period, there was a nine per cent decline in rates of assault across the rest of NSW.¹³

2.21 Dr Donald Weatherburn, BOCSAR Director, informed the committee that this dramatic drop in assault rates in 2014 was consistent with (and followed on from) a slower, yet continuous, downward trend in the non-domestic assault rate across NSW since 2008.¹⁴ He further noted that from about 2008, there was a general reduction in

12 Liquor and Gaming NSW, 'Kings Cross ID scanner review', NSW Government, <https://www.liquorandgaming.justice.nsw.gov.au/Pages/public-consultation/community-consultation/have-your-say.aspx#KingsCrossIDscannerreview> (accessed 18 February 2016).

13 NSW Bureau of Crime Statistics and Research, 'Lockouts and last drinks: The impact of the January 2014 liquor license reforms on assaults in NSW, Australia', *Crime and Justice Bulletin*, Number 183, April 2015, p. 1.

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

youth alcohol consumption across the country, which may have contributed to the decline in assault rates.¹⁵

2.22 The findings of a forthcoming BOSCAR report focused on non-domestic violent assaults recorded by police from January 2009 to June 2015 (including 16 months post the lockout intervention) confirm this trend:

The report finds statistically significant reductions in the number of non-domestic assaults in the Kings Cross Precinct (down 45.1%) and Sydney CBD Entertainment Precinct (down 20.3%). Most areas adjacent to the Kings Cross or Sydney CBD entertainment precincts or within easy reach of these precincts show no increase in assault.¹⁶

Cause of the reduction in violence

2.23 Several submitters noted that pedestrian traffic had declined by up to 80 per cent in Kings Cross¹⁷ since the introduction of the lockouts, and questioned whether the reduction in assault could be simply due to the fact that patronage was down.¹⁸ In its April 2015 report, BOSCAR noted that:

The January 2014 reforms appear to have reduced the incidence of assault in the Kings Cross and CBD Entertainment Precincts. The extent to which this is due to a change in alcohol consumption or a change in the number of people visiting the Kings Cross and Sydney Entertainment Precincts remains unknown.¹⁹

2.24 When questioned at the committee's public hearing on whether the rate of violent assaults (that is, the number of incidents relative to the number of people present in the area) may have remained the same or increased, Dr Weatherburn elaborated:

That is difficult to say. I would really need continuous data on the foot traffic. Actually, what would be really good is changes in alcohol consumption that I could tie to the assaults. I have no idea whether or not the reduction in foot traffic is bigger or smaller than the reduction in violence, but that is a big research project of its own. All I can say is that it

15 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, pp 23–24.

16 NSW Bureau of Crime Statistics and Research, Lockouts and Last Drinks – Forthcoming Findings, 10 February 2016, http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Lockouts-Forthcoming-Research.aspx (accessed 18 February 2016).

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

18 Kings Cross Licensing Accord Association, *Submission 433*, p. 4.

19 NSW Bureau of Crime Statistics and Research, 'Lockouts and last drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia', *Crime & Justice Bulletin*, Number 183, April 2015 (Revised), <http://www.bocsar.nsw.gov.au/Documents/CJB/CJB183.pdf> (accessed 19 February 2016).

is not clear to us with the data available to us at this stage whether the reduction is because there has been a reduction in the number of people coming to Kings Cross or because those who are coming are drinking less or both.²⁰

2.25 Dr Weatherburn informed the committee that BOCSAR was in the process of completing an extended report analysing assault data to see whether the changes observed to September 2014 were sustained over a longer time period.²¹ Dr Weatherburn indicated that the report would specifically consider whether assault changes by time of day (to determine whether there is a significant fall in the incidence of assault at times when licensed premises would previously have continued to serve alcohol).²² This report is expected to be published in mid-2016.²³

Possible 'displacement' of antisocial behaviour into other areas of Sydney

2.26 The argument was put to the committee that the lockout laws are causing patrons to move to adjacent areas of the city unaffected by these laws, thereby shifting the problem of antisocial behaviour from one area to another rather than solving it. The Kings Cross Licensing Accord Association submitted:

Kings Cross has historically been a late night entertainment precinct destination with patrons arriving into the area later than most other entertainment precincts. The lock-out provision has resulted in displacement to other precincts that do not have any of the restrictions associated with Kings Cross and the CBD. Media has widely reported increased visitation to surrounding suburbs, especially Pymont, Double Bay, Bondi Junction, Newtown, Chippendale, Redfern and Glebe. We also note that alcohol related assaults have increased in numerous suburbs.²⁴

2.27 Ms Stephanie McCarthy, a Sydney musician who was the victim of a violent assault in a Newtown venue in June 2015, told the committee that there has been a significant increase in antisocial behaviour in Newtown since the introduction of the CBD lockout laws:

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- 20 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 23.
- 21 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 24.
- 22 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 24. See also BOSCAR, 'Lockouts and last drinks: The impact of the January 2014 liquor license reforms on assaults in NSW, Australia', *Crime and Justice Bulletin*, Number 183, April 2015, p. 9.
- 23 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 24. See also: Bureau of Crime Statistics and Research, Lockouts and Last Drinks – Forthcoming findings, 10 February 2016, http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Lockouts-Forthcoming-Research.aspx (accessed 18 February 2016).
- 24 Kings Cross Licensing Accord Association, *Submission 433*, p. 2. See also: Keystone Group, *Submission 434*, p. 4

From what people have told me since I was assaulted, I could tell you dozens and dozens of stories about members of the LGBTI community, various subcultures in Newtown and, in particular, women being harassed, being basically sexually abused, on a regular basis on the street, and this is by people who would never have set foot in Newtown before these laws were introduced...

Fewer and fewer locals are going out in the Newtown area. The crowds are still there but they are not locals—they are not Newtown people or Inner West people. They are not there to see the bands, the art shows or the spoken-word shows. They are there to drink and fight, pretty much. There is no cultural contribution to the area at all from these people coming in. I have had police officers in Newtown station say the same thing to me. The numbers are still there on Friday and Saturday nights in Newtown, but it is a totally different breed of punter going into the pubs. They are young, violent men and there are packs of them looking for trouble.²⁵

2.28 The National LGBTI Health Alliance, representing lesbian, gay, bisexual, trans and intersex (LGBTI) people, echoed these concerns and argued that lockout laws should be applied consistently across a region rather than selectively, to reduce any corresponding increase in alcohol-related crime in neighbouring locations.²⁶

2.29 However, BOCSAR's report examining assault rates to September 2014 did not find any significant displacement of assault into surrounding areas. What it did find was a small but statistically insignificant decrease in assault in most surrounding suburbs that would be considered 'displacement' areas from Kings Cross and the CBD; and a small increase in assault in the Star City Casino precinct.²⁷ Dr Weatherburn commented:

[In terms of measuring displacement], we are looking for an increase in assault in an area adjacent to one that has got a decrease. We are looking for evidence—and it is only indirect—that people have stopped going to one location and gone to another. In the case of the casino, it was an obvious site of displacement because it is not very far to go to if you cannot get a drink in King's Cross. And that did show some sign of an increase.

Although there is considerable talk about Newtown becoming more violent, we have not seen any convincing evidence of that yet. It may be that the concern people are showing is in relation to intimidation or lower level offences that do not quite constitute assaults. Bearing in mind that the number of assaults does not stand still—it jumps around quite a bit—people can react to what amounts to random variation in the number of assaults. So when we run the test to see if there is any difference, the test is designed to

25 Ms Stephanie McCarthy, private capacity, *Committee Hansard*, 20 November 2015, pp 13 and 15. See also: National LGBTI Health Alliance, *Submission 439*, p. 2.

26 National LGBTI Health Alliance, *Submission 439*, pp 2 and 4.

27 NSW Bureau of Crime Statistics and Research, 'Lockouts and last drinks: The impact of the January 2014 liquor license reforms on assaults in NSW, Australia', *Crime and Justice Bulletin*, Number 183, April 2015, p. 1.

tell us whether the variation could have come about by chance or whether it is probably attributed to chance. At the moment, it is well within the bounds of chance.²⁸

2.30 Dr Weatherburn acknowledged that while the data examined by BOCSAR (to September 2014) had not shown an increase in Newtown, it was unclear whether this was still the case. He noted that the issue would be examined in the forthcoming BOSCAR report.²⁹

2.31 Furthermore, Dr Weatherburn acknowledged the majority of assault incidents are not reported to the police, and that this is particularly the case in relation to the LGBTI community. According to the National LGBTI Health Alliance, violence against LGBTI populations is vastly underreported, particularly in situations that involve alcohol use.³⁰

2.32 However, Dr Weatherburn did highlight that there had been displacement to the area around Star City Casino, which is outside of the lockout precinct in Pyrmont. Dr Weatherburn pointed out this occurred because it was not far to travel for patrons who couldn't purchase alcohol in Kings Cross.³¹ Media reports have indicated that the Star City Casino is busiest between the hours of 1.30 am, when the lockout laws apply, and 3 am, when licenced premises within the lockout precinct lock their doors and stop serving drinks.³²

2.33 Recent statistics reveal that, while the rate of non-domestic (alcohol-related) assaults dropped by 3.7 per cent for NSW as a whole and by 18.2 per cent in Darlinghurst per year over a two year period (October 2013 to September 2015), the rate of such assaults in Pyrmont increased by 22.9 per cent.³³

28 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, pp 24–25.

29 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 25.

30 National LGBTI Health Alliance, *Submission 439*, p. 3.

31 Dr Donald Weatherburn, NSW Bureau of Crime Statistics and Research, *Committee Hansard*, 20 November 2015, p. 25.

32 Emma Reynolds and Andrew Koubaridis, 'Lockout laws' Star attraction: Inside Sydney's biggest after-hours venue', *News.com.au*, 18 February 2016, <http://www.news.com.au/finance/lockout-laws-star-attraction-inside-sydneys-biggest-afterhours-venue/news-story/521a30d553ce92b113b0c01178c34501> (accessed 19 February 2016).

33 NSW Bureau of Crime Statistics and Research, NSW Crime Statistics for Oct 2013 to Sep 2015: Incidents of Assault (Non-domestic assault), <http://crimetool.bocsar.nsw.gov.au/bocsar/> (accessed 29 February 2016).

2.34 Recent media reports and commentary on this issue (notably the 'viral' article by Freelancer CEO Matt Barrie³⁴) have made a great deal of the exemption from the lockouts zone enjoyed by Star City Casino.

Social isolation of marginalised groups

2.35 The National LGBTI Health Alliance raised concerns regarding the lockout laws from the perspective of the LGBTI community. It made the point that while alcohol-related violence had a significant impact on the social life of LGBTI people and their enjoyment of public spaces, some of its members expressed concerns that, by selectively targeting certain locations, the lockout laws had inhibited personal choice and increased social isolation.³⁵

2.36 The National LGBTI Health Alliance noted that the lockout laws apply to neighbourhoods where there are visible numbers of people from populations that have been subjected to multiple forms of marginalisation, including people who may be and/or who are perceived to be sex workers, Aboriginal and/or Torres Strait Islander people, and/or LGBTI people. It raised concerns that many within the LGBTI community had raised concerns that lockout laws contribute to a 'broader climate of discriminatory policies' in which:

...drag queens, people perceived to be Aboriginal and/or Torres Strait Islander individuals, and/or other populations that have experienced historical oppression are often harassed, 'moved on', or otherwise prevented from enjoying equitable access to public spaces. Some respondents also told us that discriminatory policing has had the effect of reducing cultural and ethnic diversity at LGBTI events that occur at venues that serve alcohol.³⁶

2.37 Raising concerns about the unintended yet negative impact of the lockout laws on an already vulnerable community, the LGBTI Health Alliance highlighted the importance of an appropriate police response and the lack of adequate security training that would otherwise support LGBTI people targeted for violence. It recommended that LGBTI-specific security training and safety policies be added to existing requirements for alcohol-related venue licensing. The alliance further argued for police to receive ongoing mandatory training to respond appropriately to LGBTI people targeted for violence and to prevent discriminatory public profiling.³⁷

End of a night-time entertainment precinct?

2.38 A number of local business operators who gave evidence to the committee suggested that when the lockout laws were introduced, they amounted to a blanket set

34 Matt Barrie, 'Would the last person in Sydney please turn the lights out', 3 February 2016, <https://www.linkedin.com/pulse/would-last-person-sydney-please-turn-lights-out-matt-barrie> (accessed 3 May 2016).

35 National LGBTI Health Alliance, *Submission 439*, p. 2.

36 National LGBTI Health Alliance, *Submission 439*, p. 2.

37 National LGBTI Health Alliance, *Submission 439*, p. 4.

of rules imposed on all operators as part of a 'one size fits all' measure.³⁸ They argued that this blanket approach, which simply locked people out, failed to address the underlying problem of managing a small number of anti-social people while inadvertently transforming Kings Cross from a vibrant night-time precinct into a residential area.³⁹

2.39 Mr Prior and other business owners stated that the lockout laws had resulted in a decline in patronage at night-time venues in Kings Cross, and a subsequent downturn in trade for local businesses. The committee heard that 12 licensed venues and 35 non-licensed businesses had closed since the introduction of the regulations, with landlords 'reporting the harshest business conditions in 50 years'.⁴⁰ Reports suggest that patronage in the Kings Cross precinct declined by 85 per cent, with businesses stating they experienced a downturn in trade of between 25 and 70 per cent since the introduction of the lockout laws. At the same time, many licenced premises began to shed staff, amounting to about 500 people.⁴¹ In addition, according to a survey of licenced premises undertaken by the Kings Cross Licencing Accord Association:

The venues have also had to cut back or reduce operational hours for entertainment, security staff and there is a roll on effect to industry suppliers.⁴²

2.40 Representatives from licensed venues suggested to the committee that the 1.30 am lockouts resulted in people choosing not to go to Kings Cross at all, rather than simply leave the Kings Cross precinct earlier in the night. They argued that Kings Cross had lost its role as a truly late-night operating area where people can spend a late night safely.⁴³ Mr Douglas Grand, Chief Executive Officer of the Kings Cross Licencing Accord Association explained:

Kings Cross and Oxford Street were the two historical late-night zones of Sydney, and they relied on the late-night economy where people—especially the young ones—do not come out until a later time. Kings Cross would not normally get busy on Friday and Saturday nights until 11 pm and it would go right through until 5 am or 6 am. The 1.30 am lockout and the first round of measures reduced the trading hours to 4 am in Kings Cross. What it meant was that some of the people who were coming in from the suburbs did not find it as beneficial to get there before 1.30 am and to then leave by 3 am because they are paying high transport costs—they might be

38 Mr Anthony Prior, The Keystone Group, *Committee Hansard*, 20 November 2015, p. 1.

39 Mr Anthony Prior, *Committee Hansard*, 20 November 2015, p. 3; Mr Douglas Grand, Kings Cross Licensing Accord Association, *Committee Hansard*, 20 November 2015, p. 4.

40 Kings Cross Licensing Accord Association, *Submission 433*, p. 3.

41 Mr Andrew Lazarus, Hotel Pursuits trading as Soho Bar, *Committee Hansard*, 20 November 2015, p. 2; Mr Anthony Prior, The Keystone Group, *Committee Hansard*, 20 November 2015, p. 2; Kings Cross Licensing Accord Association, *Submission 433*, p. 5.

42 Kings Cross Licensing Accord Association, *Submission 433*, p. 5.

43 Mr David Jank, Arcadia Liquors, *Committee Hansard*, 20 November 2015, p. 2.

paying \$150 for a cab ride. So they have tended to stay in areas where there are no restrictions.⁴⁴

2.41 Similarly, Mr Andrew Lazarus, Director of Soho Bar noted that:

When people stop coming then other people do not want to come because the vibe is not there for them...I do not think the intention was ever to drive 85 per cent of total business away from the Cross, but once it gets to 30 per cent it keeps dropping and dropping, and the snowball effect is that people have stopped coming altogether.⁴⁵

2.42 According to evidence from the Kings Cross Licencing Accord Association, what was a crowd of 22,000 people in Kings Cross on Friday and Saturday nights has now declined to a crowd of 5,000 to 6,000.⁴⁶

2.43 Witnesses to the committee described a number of other ways in which changes to their business practices were effectively forced upon them as a consequence of the lockout laws. In this regard, Mr Anthony Prior, CEO of The Keystone Group, noted that the regulations had the effect of restricting the clientele of its hotel by virtue of how the hotel was required to trade:

The business model is now changed to one of heavy reliance on gaming, heavy reliance on food—which is not a problem—but looking at more limited avenues to generate revenue than we had in the past. I do not think we are necessarily catering to the equivalent audience that we used to, so I think we have restricted who can come to the business now by virtue of how we trade.⁴⁷

2.44 The committee was also informed of the impact on the live music and cultural scene in Sydney. Mr Tyson Koh, Campaign Manager for Keep Sydney Open, an advocacy group for the advancement of music, cultural and social spaces in Sydney, explained that there was a false link between live music venues and violence. He continued:

The evidence does show that venues that offer more of a cultural focus are actually safer than their counterparts that might just have cheap jugs of beer, gambling and TAB outlets and all that kind of stuff.⁴⁸

2.45 Mr Koh contended that promoting smaller performance venues has a positive effect on patron safety, and that this has been curtailed under the lockout restrictions:

When small bars were allowed to open, in 2008, we saw an increase in the number of venue spaces that were available for musicians to perform at. Incidentally, between 2008 and 2013, just before the lockout, there was a dramatic drop in the number of alcohol fuelled assaults, even within Kings

44 Mr Douglas Grand, *Committee Hansard*, 20 November 2015, p. 3.

45 Mr Andrew Lazarus, Soho Bar, *Committee Hansard*, 20 November 2015, p. 3.

46 Mr Douglas Grand, Kings Cross Licensing Accord Association, *Committee Hansard*, 20 November 2015, p. 3.

47 *Committee Hansard*, 20 November 2015, p. 1.

48 Mr Tyson Koh, Keep Sydney Open, *Committee Hansard*, 20 November 2015, p. 20.

Cross. That goes to what I was saying earlier: having more venues disperses crowds and makes entertainment precincts safer. But, since the lockout, a lot of these smaller venues have shut down. Unfortunately, it is the big beer barns with pokies that remain. They have 50- to 60-year-old guys boozing it up at midday on Wednesday and putting money into the pokies. So their business model is intact. Meanwhile, smaller venues that rely on late-night trade have shut down. Therefore, the music scene in the city is less vibrant.⁴⁹

2.46 The Australasian Performing Rights Association (APRA) reported a 40 per cent drop in live music revenue in Sydney's lockout zone since the laws were introduced. APRA further noted that figures revealed a 19 per cent drop in patrons at nightclubs in affected areas.⁵⁰

2.47 The committee also received evidence which directly contrasted with that of local licence holders, and some of the evidence relating to the negative impact of the lockout laws on local businesses was contested by other witnesses. Mr Thorn from FARE argued that at least four of the closed 12 licenced outlets had in fact closed prior to the introduction of the lockout laws.⁵¹

2.48 Furthermore, in relation to evidence regarding reduced business activity, Mr Paul Klarenaar, Director of the Australian Health Promotion Association (AHPA) stated:

[P]olice data from the integrated ID scanning [introduced in June 2014] suggests that the claims of reduced business activity have been overstated... The capacity within venues in Kings Cross is about 9,000, and the police ID scanning data suggests that that capacity is still basically being met, so the number of people inside venues is not particularly changing.⁵²

2.49 In fact, the NSW Office of Liquor, Gaming and Racing (OLGR) provided evidence that the average number of ID scans on Saturday nights in Kings Cross venues between June 2014 (four months after the introduction of the lockout laws) and September 2015 was 9,049 (or 7,576 if only counting the number of unique ID scans).⁵³

49 Mr Tyson Koh, Keep Sydney Open, *Committee Hansard*, 20 November 2015, p. 20.

50 Lucy McNally, 'Music industry representatives claim 40 per cent drop in live music revenue since Sydney lockout laws', *ABC News*, 19 February 2016, <http://www.abc.net.au/news/2016-02-19/figures-show-40-per-cent-drop-in-sydney's-live-music-revenue/7183024> (accessed 19 February 2016).

51 Mr Michael Thorn, Foundation for Alcohol Research and Education, *Committee Hansard*, 20 November 2015, p. 42.

52 Mr Paul Klarenaar, Australian Health Promotion Association, *Committee Hansard*, 20 November 2015, p. 44.

53 Information provided in relation to a question taken on notice at a public hearing held in Potts Point on 20 November 2015, received from the NSW Office of Liquor Gaming and Racing on 13 January 2016, p. 1.

2.50 The performance of OLGR and its licensing police was questioned at the committee's public hearing by Mr Koh of Keep Sydney Open, who cited anecdotal concerns from licence holders about instances of unprofessional conduct and intimidation by licensing police.⁵⁴

2.51 Some stakeholders also suggested that while there has been a decline in trade and closure of some businesses for licensed venues in Kings Cross, other businesses have opened since the introduction of the lockout laws. The 2011 Residents' Association, a group representing residents of suburbs in the 2011 postcode,⁵⁵ submitted that, since the introduction of the lockout provisions, new daytime trading businesses were opening in Kings Cross, creating 'a better balance among the night time and day time economies – not one at the expense of the other'.⁵⁶

2.52 It was claimed that real estate and specifically apartment prices in Potts Point increased by 25 per cent in the first year after the laws were introduced. According to local real estate agents, a mixture of investors and young professionals had 'flocked' into the Kings Cross area. In sharp contrast, commercial property values in the Kings Cross area declined substantially with rents down as much as 50 per cent on commercial properties.⁵⁷

2.53 During the committee's hearing, Mr Lazarus noted that Kings Cross was undergoing a transformation from an entertainment precinct to a residential area. He noted that some property which could be converted into residential housing had increased in value by more than 50 per cent.⁵⁸

2.54 Ms McCarthy observed that the only people who were winning from the lockout laws were the property developers. She suggested that:

Shortly, Kings Cross is going to be blocks of apartments with cafes. This is a world renowned entertainment precinct that has been going for 60 or 70 years, and it has been destroyed in two years. The same thing is happening to Newtown. So, where do the people go from there? Is Marrickville next? Is Leichhardt next? Pretty soon there is going to be no live music scene in Sydney and there is going to be no art scene in Sydney. And for what? It does not solve the drinking problem.⁵⁹

54 *Committee Hansard*, 20 November 2015, pp 18-19.

55 The 2011 post code incorporates Kings Cross, Potts Point, Elizabeth Bay, Rushcutters Bay and Woollahooloo.

56 2011 Residents' Association, *Submission 421*, p. 5.

57 Jessica Irvine, 'Lockout laws a winner for Potts Point and Kings Cross apartments', *Sydney Morning Herald*, 29 February 2016, <http://www.smh.com.au/business/the-economy/lockout-laws-a-winner-for-potts-point-and-kings-cross-apartments-20160228-gn5ys8.html> (accessed 29 February 2016).

58 Mr Andrew Lazarus, Soho Bar, *Committee Hansard*, 20 November 2015, p. 2.

59 Ms Stephanie McCarthy, private capacity, *Committee Hansard*, 20 November 2015, p. 14.

Impact on local residents

2.55 There are some 19,000 residents in Kings Cross.⁶⁰ The committee heard evidence from the 2011 Residents' Association about how the lockout laws and other restrictions placed on licensees in the Kings Cross area had affected locals living in the area.

2.56 The Residents' Association argued that a change in zoning regulations in 2007 led to an 'explosion' in the number of licensed venues selling alcohol in the early hours of the morning between 2007 and 2013, with an associated increase in antisocial behaviour.⁶¹ Ms Helen Crossing, Convenor of the Residents' Association stated:

This was all part of a plan promoted and supported by local government to create what was called 'a night-time economy'. There was a policy to cluster nightclubs and other similar venues, thereby [creating] an entertainment precinct in the middle of what was, at the time, the most densely populated residential area in Australia. People from outside the area were encouraged to come and party at a free for all, and they did. Some 20,000 people every hour were clocked in the vicinity of Bayswater Road, Kellett Street, Darlinghurst Road and Victoria Street. It was mayhem.⁶²

2.57 While not intended, the lockout laws led to a reduction in foot traffic to the precinct that residents welcomed. For the residents, the lockout laws inadvertently addressed their concerns regarding overcrowding and noise. Ms Crossing described the scene prior to the lockout laws:

The noise from early evening through to the early hours of the morning was horrendous. Stress and distress were feelings that residents experienced as a consequence of the fights and violence and an electrical level of tension from highly inebriated people looking for an argument or a fight. There was nonstop screaming, yelling and arguing...It took three or more struggling police to quell brutal fights. We know that at St Vincent's [Hospital] they were under stress to deal with the victims and were also personally assaulted while trying to assist.⁶³

2.58 According to the Residents' Association, the introduction of the lockout laws in February 2014 caused an 'instant and dramatic change' in the area:

It released the stranglehold that pubs and clubs had on the area which was to its detriment. The legislation essentially restored life and amenity for residents, similar to what they enjoyed in the early 2000s, but different

60 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 30.

61 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, pp 30 and 34-35; Document tabled by the 2011 Residents' Association at a public hearing held in Potts Point on 20 November 2015, p.1.

62 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 30.

63 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 30.

because there have been changes in society including changes to our entertainment preferences.⁶⁴

2.59 Ms Crossing observed that under the current regime, a lot of small bars and restaurants have opened, with different entertainment which has attracted different people, fewer of whom are drunk.⁶⁵ She also claimed strong support from residents in the area for the lockout laws to be continued:

There needs to be regulations to preserve the interests of residents. You cannot have interests for one and not the other. We now live in a safe environment where we can enjoy the amenity of the suburb we chose to live in; 19,000 people deserve to have their rights respected. They are now enjoying the changes. There is more diversity in the businesses that are opening. We see health food shops on the strip now, an antique in Orwell street, more small bars and restaurants, and new cafes. People are doing well, and there are now new developments and more residential apartments. Check out our neighbourhood now, it is a place where people want to come and live. It has diversity. People love that, and what we most love is that we can live here now in safety.⁶⁶

2.60 Ms Crossing's observations are consistent with comments made by Mr Lazarus at the hearing:

I have owned my building for 20 years come January and it was built in 1939. It has traded continuously ever since but it got to the point where it was no longer economically viable to continue trading so I took the decision to shut it and look at alternative uses for the building. More recently, because there has been so much publicity about Kings Cross changing from an entertainment precinct to a residential area, a lot of developers have been coming into the market with the view that it is never going to go back to being an entertainment precinct. I have been approached consistently for the last couple of months by property developers to buy the site. They take the view that it is going to be residential in the future.⁶⁷

2.61 Mr Grand of the Accord Association argued that the 2011 Residents' Association has long advocated for the protection of their residential amenity, even at the expense of live music and late night entertainment:

The 2011 Residents' Association and DRAG, the Darlinghurst Resident Action Group, have basically been espousing for the closure of premises for the last decade that I know of. I attend [Central Sydney Planning Committee] meetings at the police station on a quarterly basis. It was made very clear at some of those meetings that they wanted midnight closing then. We are talking about a decade ago. So it does not surprise me. A lot of these are older residents. Again, they would prefer more of a

64 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 30.

65 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 37.

66 Ms Helen Crossing, 2011 Residents' Association, *Committee Hansard*, 20 November 2015, p. 31.

67 Mr Andrew Lazarus, Soho Bar, *Committee Hansard*, 20 November 2015, p. 2.

residential zone than an entertainment zone. So it is that clash of culture between those two.⁶⁸

Effect of lockout provisions versus other licensing conditions

2.62 The Kings Cross Licensing Accord Association questioned whether the introduction of the lockout provisions in February 2014 was justified, when there had already been a downward trend in alcohol-related assaults prior to this point and the effectiveness of measures already in place had not been reviewed:

The major issue for Kings Cross licensed premises with regard to the lockout condition imposed in February 2014 was the fact that conditions already imposed under the [Kings Cross Plan of Management] were not given the opportunity to be properly reviewed for their effectiveness on an evidence basis. In fact NSW BOCSAR Statistics showed alcohol related assaults in the precinct had reduced by 37 [per cent] between the period 2007 and 2012 and a further 21 [per cent] after the implementation of the [Plan of Management] between December 2012 and December 2013.⁶⁹

2.63 The Accord Association also noted that the lockouts were implemented in February 2014 despite the fact that ID scanners were yet to be introduced in all venues, which would complete the Kings Cross Plan of Management conditions.⁷⁰ It argued that the reduction in incidence of assaults in the area could have been achieved without recourse to the imposition of lockouts. Accord Association CEO, Mr Douglas Grand commented:

If you look at the Kings Cross Plan of Management stage 1, which reduced the trading hours from some premises...the 6 am closures or the 24-hour venues then closed at 4 am, and we got big reductions immediately. Obviously the St Vincent's [Hospital] data was starting to drop from that point. There are a number of things that we believe have worked. If you add the ID scanners to the cease-service, we believe they are the most effective measures. You did not need the lockout.⁷¹

2.64 The NSW Government had released the Kings Cross Plan of Management in September 2012 to provide 'a comprehensive set of measures to reduce alcohol-related violence and improve the safety and amenity of Kings Cross'.⁷² The plan provides a range of measures which apply to licensed premises depending on the 'licence type, trading conditions, and the history or risk of violence on or around the premises'.⁷³

68 *Committee Hansard*, 20 November 2015, p. 11.

69 Kings Cross Licensing Accord Association, *Submission 433*, p. 1.

70 Kings Cross Licensing Accord Association, *Submission 433*, p. 2.

71 Mr Douglas Grand, Kings Cross Licensing Accord Association, *Committee Hansard*, 20 November 2015, p. 7.

72 The Hon George Souris, Minister for Tourism, Major Events, Hospitality and Racing, NSW, Second reading speech, *Legislative Assembly Hansard*, 22 August 2013.

73 NSW Government, 'Kings Cross precinct – special licence conditions', http://www.olgr.nsw.gov.au/liquor_kingscross_precinct.asp#POM (accessed 6 November 2015).

2.65 Mr Grand further contended that it will never be possible to eradicate night-time assaults around venues entirely:

[Even under the lockout laws], you still do not get rid of that small percentage that is going to cause you that violent problem. From that, if you look at the Kings Cross Plan of Management [introduced in 2012], which we believe was working without the lockouts, on licensed premises the reduction in the first year was 21 per cent, which is a big lump. It went from 142 in the second year of the plan of management down to 103, another 27 ½ per cent. Then, with the introduction of the ID scanners, it has dropped 19 per cent. But, when you look at it in actual raw numbers, you are talking about a drop from 103 down to 83. You are still always going to have that percentage of people that are going to cause a problem, whatever you do.⁷⁴

2.66 Business owners also highlighted the fact that the two one-punch assaults that were the primary catalysts for the increased regulation on license holders in Kings Cross both involved assaulters with a pre-existing history of violent conduct, and both occurred relatively early in the night (at around 10 pm and 9 pm respectively) at a time that would have been unaffected by lockout laws.⁷⁵

Committee view

2.67 The issue of licensing restrictions currently in place in Kings Cross and the broader Sydney CBD is divisive, with strong views expressed in favour of, and in opposition to, these regulations from various affected stakeholders.

2.68 The committee acknowledges that there is an inherent tension between attempting to create an environment which provides reasonable community safety and public amenity, without unduly restricting the freedom of individuals to enjoy late-night entertainment areas. It is regrettable that the actions of a small number of violent individuals have resulted in regulations that affect all patrons of the precinct.

2.69 The committee welcomes the first set of data published by BOCSAR indicating a significant reduction in the number of violent assaults in Kings Cross and the Sydney CBD in the period February 2014 to September 2014. It is unclear, however, whether this reduction in the number of assaults can be attributed to lower alcohol consumption in licensed venues, or whether it is due to the decline in patronage to the area since the introduction of the lockouts.

2.70 Nor is it yet clear whether the lockouts have resulted in a displacement of violence and antisocial behaviour to other parts of inner Sydney. While anecdotal evidence received by the committee indicates concerning changes along these lines in Newtown, the statistical data on assaults and hospitalisations is not yet of sufficient clarity to support or negate such claims. What is clear, however, is that there has been

74 Mr Douglas Grand, Kings Cross Licensing Accord Association, *Committee Hansard*, 20 November 2015, p. 7.

75 Mr Douglas Grand, Kings Cross Licensing Accord Association, *Committee Hansard*, 20 November 2015, pp 10–11.

an increase in alcohol-related violence in Pyrmont in the vicinity of the Star City Casino.

2.71 The committee looks forward to the publication of BOCSAR's next round of research data on the impact of the lockout laws, which will paint a much clearer picture of the impact of the laws through 2015, including any displacement effects.

2.72 Given the negative impact of the lockout laws on vulnerable groups, local businesses and the music industry, it is imperative that the upcoming statutory review of the measures introduced in February 2014 be conducted swiftly and thoroughly, without any predetermined notions as to the preferred outcome. All options, including removing the 1.30 am lockout component of the laws, should be considered as a matter of urgency.

2.73 The committee is concerned at what appears to be the normalisation of restrictive legal measures directed at entire populations, rather than at the individuals who break the law.

2.74 The committee believes claims about reducing alcohol-related health harms must be distinguished from claims about reducing alcohol fuelled violence. If an individual harms his or her health by consuming too much alcohol, that is a private matter and not a matter for the state. By contrast, if individuals assault others and some or all of the violence can be attributed to the consumption of alcohol, then the state has a legitimate interest.

2.75 The committee encourages all relevant parties to cooperate to ensure the vibrancy of the cultural and entertainment scene in the Kings Cross and Sydney CBD area is maintained and strengthened, including through the continued existence of late-trading venues, as is befitting and necessary for a city of Sydney's international stature.

Senator Chris Ketter

Committee Chair

Additional comments

Senator Sean Edwards – Liberal Party of Australia

1.1 Senator Edwards disputes the view expressed in 2.73. A stated objective of the NSW lockout laws was to reduce violent assaults in key areas and Senator Edwards notes 2.69 of the committee report which indicates that this objective is being met.

1.2 In addition, there is no indication that a ‘normalisation’ of restrictive measures has occurred as a result of this public health policy and the statement expressed in 2.73 is overreach.

1.3 Senator Edwards notes the falsity of the view expressed in 2.74 relating to the damage caused by overconsuming alcohol being limited to the individual. The impacts of alcohol overconsumption are not always benign. Harms to public health and safety include impacts on the individual’s family and friends, destruction of public property and assaults on individuals as well as the burden on the public health system.

1.4 For these reasons the states and territories are obliged to encourage the responsible consumption of alcohol through appropriate legislation.

Senator Sean Edwards

Liberal Party of Australia

Additional comments

Senator David Leyonhjelm – Liberal Democratic Party

1.1 I am in broad agreement with the committee's interim report. I have only minor observations to add. I also have one piece of evidence from *Hansard*—to which the committee refers in passing—that should be exposed to a wider audience.

1.2 I will group these items under three headings – 'advertising', 'evidence', and 'the greater good'.

Advertising

1.3 As discussed in the first interim report—which focussed on theory—the question of whether advertising has the effects that various parties claim for and against it fell outside the inquiry's terms of reference.

1.4 However, it was raised again at the hearing and in submissions on this issue. Some of the claims by public health bodies with respect to advertising were quite controversial, including claims that people are so easily persuaded by advertising they lose their ability to exercise preferences:

We need to be free from being addicted to tobacco and alcohol. Our children need to be free from being harassed by alcohol and tobacco advertising and promotions. We need to be able to walk down the street free from the fear of being mowed down by a drunk driver or a speeding driver. We need to be free from restrictions caused by being obese, or from chronic disease.¹

1.5 This was contradicted by Christopher Snowden of the UK's IEA, who pointed out that '[t]here is a huge amount of economic evidence showing that advertising does not increase the size of a given market and is only useful in increasing market share for a given company'.²

1.6 The Institute of Public Affairs also pointed out that the evidence base suggesting advertising influences subsequent behaviour is weak.³

1.7 Similarly, attempts to correlate media consumption with later behaviour in other fields—playing violent video games and subsequently committing crimes of violence, for example—have never been borne out by research.⁴

1 Mr Paul Klarenaar, Australian Health Promotion Association, *Committee Hansard*, 20 November 2015 p. 39.

2 *Submission 186*, p. 1.

3 *Submission 160*, p. 26.

4 See: Paul Adachi and Teena Willoughby, 'The Effect of Video Game Competition and Violence on Aggressive Behavior: Which Characteristic Has the Greatest Influence?' *Psychology of Violence*, vol. 1, no. 4, October 2011, pp 259 –274.

Evidence

1.8 On page 22 of the committee's interim report, evidence about the behaviour of the NSW Office of Liquor, Gaming and Racing and its licencing police given by Mr Tyson Koh of Keep Sydney Open is noted and footnoted. That evidence is disturbing. Given Mr Koh's long involvement in the music industry and extensive knowledge of Sydney's nightlife, I have included here it in its entirety:

CHAIR: There are a couple of other points in your submission, Mr Koh, that I want you to expand upon, if you will. The very bottom one intrigues me: Reports of unprofessional conduct and intimidation from licensing police. What are you referring to there?

Mr Koh: I have spoken to a lot of venues that have dealt with licensing police in Surry Hills and Newtown. What I have been finding is quite a common tale, where a lot of licensing police will turn up and issue fines to the order of several thousand dollars for really small infractions which have no ramifications whatsoever on safety. A lot of venues end up paranoid and trying to keep the licensing police happy, rather than trying to run their venues the best they can in the most orderly and safe fashion. There have been a lot of reports of threats and blackmail from certain licensing police, particularly in the Surry Hills area. The venues are viewed in an adversarial frame, rather than realising that these venues are providing a necessary function in our community by keeping people happy and giving them a place to socialise. Instead they are treated automatically as criminals.

There has been a lot of anecdotal evidence about licensing police and also some conduct that, when I first heard about it, sounded a bit shady. That is why I mentioned in the opening statement that we need to recognise that these venues are not the enemy. They are here to provide a valuable function for society and we need to recognise that. The other thing which I have also noticed from talking to people is that venues which do not offer any gambling—that is, pokies or a TAB outlet—tend to be treated more harshly by licensing police.

It is the view of certain licensees it is because they do not bring in as much revenue for the state government, so they get targeted.

CHAIR: Have you encouraged any of these people you have been talking to to make formal complaints about their treatment?

Mr Koh: I have, actually. In the Darlinghurst area, particularly along Oxford Street, a few venues are starting to get together to form their own dialogue so they can compare the way that they have been treated. What I have been hearing is basically that they have been intimidated to the point where they say that, if they do make a complaint, the police will do stuff like issue a \$6,000 fine or raise their risk rating. That is what I am referring to when I say there has been a little bit of blackmail. Basically there is a bit of a culture of fear that has been imposed by the licensing police. A lot of venues are so paranoid about getting these fines and getting in trouble with the law that they are too scared to confer with each other. That is something which they are just starting to do now. In one case, there was video evidence of licensing police issuing a fine which was completely unjustified. They captured the licensing police high-fiving each other as

they were writing out the fine, and the venue ended up complaining about it. I am not sure who they complained to, but what they said was, 'Okay, we'll write off this fine, but we don't want you complaining about this any further.' That is some of the stuff that I have been hearing about from venues.⁵

The greater good

1.9 During the course of the hearing—as well as in submissions—I became increasingly troubled by appeals for the enactment of legislation on the basis of 'the greater good' from representatives of public health organisations.⁶

1.10 I think it is fair to say this approach represents utilitarianism of the crudest sort.

1.11 Utilitarianism—sometimes mistakenly called consequentialism, of which it is a component—is a serious and important part of the Western liberal political tradition.

1.12 However, it has long been recognised—including by consequentialists—that legislation focussing on good outcomes for the majority at the expense of the minority is morally troubling. It becomes possible, for example, to justify subjecting 10 per cent of the population to misery if positive gains to the 90 per cent remaining are greater than the misery inflicted on the 10 per cent.

1.13 By this logic, Sydney's lockouts would be justified simply because there are more members of the 2011 Residents' Association than there are people—musicians and hospitality workers—who have lost their jobs as a consequence of the lockouts. This is not an approach to the development of public policy that has any place in a liberal democracy.

1.14 Historically, some truly repellent behaviours—including slavery and genocide—have been justified on the basis of 'the greatest good for the greatest number'. It has a long and dishonourable history and needs to be interrogated robustly whenever is assayed.

Senator David Leyonhjelm

Liberal Democratic Party

5 *Committee Hansard*, 20 November 2015, pp 18-19.

6 See, for example: *Committee Hansard*, 20 November 2015, p. 39.

Appendix 1

Tabled documents

1. Document tabled by the 2011 Residents' Association at a public hearing held in Potts Point on 20 November 2015.

Additional information received

1. Response from NSW Police to adverse comments by Mr Tyson Koh made at a public hearing in Potts Point on 20 November 2015, received 21 January 2016.
2. Additional information provided by Mr Matt Barrie on 22 February 2016.
3. Statistical analysis provided by Mr Matt Barrie on 22 February 2016.

Answers to questions on notice

1. Answers to questions on notice from a public hearing held in Potts Point on 20 November 2015, received from the NSW Bureau of Crime Statistics and Research on 24 November 2015 and 2 December 2015.
2. Answers to questions on notice from a public hearing held in Potts Point on 20 November 2015, received from the Foundation for Alcohol Research and Education on 3 December 2015.
3. Information provided in relation to a question taken on notice at a public hearing held in Potts Point on 20 November 2015, received from the NSW Office of Liquor, Gaming and Racing on 13 January 2016.

Appendix 2

Public hearings and witnesses

POTTS POINT, 20 NOVEMBER 2015

CROSSING, Ms Helen, Convenor, 2011 Residents' Association

GRAND, Mr Douglas, Chief Executive Officer/Coordinator, Kings Cross Licensing Accord Association

JANK, Mr David, Director, Arcadia Liquors

KLARENAAR, Mr Paul, Director, Australian Health Promotion Association

KOH, Mr Tyson, Campaign Manager, Keep Sydney Open

LAZARUS, Mr Andrew, Director, Hotel Pursuits trading as Soho Bar

McCARTHY, Ms Stephanie Gabrielle

PRIOR, Mr Anthony, Chief Operating Officer, The Keystone Group

THORN, Mr Michael Thomas, Chief Executive, Foundation for Alcohol Research and Education

WAGNER, Mr Paul, Committee Member, 2011 Residents' Association

WEATHERBURN, Dr Donald James, Director, New South Wales Bureau of Crime Statistics and Research

