
REVIEW OF AMENDMENTS TO THE LIQUOR ACT 2007 (NSW)

**Reviews under clause 47 to Schedule 1 of the Liquor Act, clause 50 of
the Liquor Regulation 2008, and at the request of the Executive
Government**

Dated 13 September 2016

I D F CALLINAN AC

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APPENDICES: See Volume 2.

Executive Summary

1. This is an Executive Summary. It should not be read as a substitute for my report. The topics with which the report deals are complex and controversial. The details are relevant.
2. The report consists of three reviews, one made pursuant to cl 47 of Schedule 1 of the *Liquor Act* (which, together with the related provisions, I call the Amendments), another under clause 50 of the Liquor Regulation 2008, and the third at the request of the Minister with respect to some other aspects of the Amendments.
3. The process which I adopted was to review relevant statistics, research and learned papers, more than 1,800 written submissions provided to me, to interview personally more than 50 people, some more than once, and to have my Counsel Assisting Mr Horton QC interview others. During the course of the interviews, we invited interested parties to respond to arguments put against the positions they respectively held.
4. Opponents of the Amendments included customers of licensed premises in Kings Cross and the Sydney Central Business District (**the Precincts**) to which the Amendments applied, other licensees, live entertainers and shift workers.
5. Supporters of the Amendments included the medical profession, many residents, ambulance and emergency service workers, nurses, the Police, abstinence groups and drug and alcohol research centres.
6. The City of Sydney made a written submission. I had a meeting with the Lord Mayor and her officials, and a further meeting with some of her officials. The City of Sydney favours a vibrant nightlife for the city and a healthy night time economy but is conscious of the tensions that arise and need to be managed between visitors to the Precincts and the residents.
7. People on both sides of the issues hold, and have expressed very strong, sometimes strident and dogmatic, views. Of the opponents, many of whom are aged between 18 and 40 years, opposed the Amendments on the basis that they had diminished the attraction of the Precincts to them and others. Licensees, especially of nightclubs and hotels, claim that their turnovers have been heavily affected by the Amendments.
8. In the following table, I summarise and discuss the principal objections of the opponents.

Objection	Discussion
<i>Reduction of choice and mobility in the Precincts</i>	The legislators foresaw and intended earlier dispersal of numbers and a reduction of congestion in the Precincts generally.

Objection	Discussion
	Choice has been reduced because of earlier closing hours.
<i>Ineffectiveness of the Amendments</i>	BOCSAR and Professor Kypri assure me that the statistics of violent incidents show a marked decline after the Amendments and that they are accurate and robust. Those statistics are consistent with those for admissions to the emergency department at St Vincent's and with the day-to-day experience of police, ambulance and other health workers. (The catchment area of St Vincent's includes Bondi, Double Bay and Coogee).
<i>Destruction of vibrancy</i>	Pedestrian traffic is greatly reduced in the Precincts. Some live entertainers have lost their employment or are reduced in their employment as live entertainers. Vibrancy is not to be measured only by the amount of alcohol available or consumed throughout the night. Vibrancy was unfortunately however, accompanied, probably as a function of the numbers and density of visitors to the Precincts, by a degree of anti-social, and in the residents' terms, squalid and sleazy behaviour.
<i>Creative people have left Sydney for Melbourne and are thriving there</i>	Many opponents said this, but I have not found it possible either to verify it or contradict it.
<i>Deterrence of tourists</i>	I am not able to form any concluded views on this topic despite seeking information from relevant agencies.
<i>Reduction of opportunities for live entertainers</i>	This has occurred. I do not understand why some of those opportunities have not migrated to other areas or other times. I am not satisfied that all providers and customers have done all they could to adapt their programmes and habits respectively, at least to reduce the impact of the Amendments upon them. Some licensees have made efforts to adapt but have not achieved pre-Amendments financial results.

Objection	Discussion
<i>Reduction of employment of others</i>	Opportunities for employment in the Precincts have been reduced. Some unquantifiable, but certainly not the same, number of jobs as have been lost there, are likely to have migrated elsewhere.
<i>Impact upon 'creative' people especially</i>	The legislation does not in terms discriminate against any group of people. As with much regulation, responsible non-offending people will be restricted in some respects.
<i>Closure of premises selling alcohol</i>	There have been some closures. The reasons for closure are sometime opaque. The Amendments have probably contributed to some of these.
<i>Prejudice to shift workers</i>	Some casual and shift workers have lost employment opportunities in the Precincts. Some shift workers are unable to access venues as a result of the Amendments.
<i>Damage to the night time economy</i>	The value of the night time economy is variously estimated but always in high numbers. A reduction in numbers, and sales of alcohol in the Precincts have certainly occurred. The contribution that they previously made to the night time economy of the Precincts may have been reduced. Some of that would have migrated to other precincts. The night time economy has many components ranging from symphony concerts to street stalls and prostitution and vans selling fast food. The ABS figures do not distinguish between the night time and day time contributions of most businesses trading during the day and into the night.
<i>Exceptional, indeed unique nature of the Amendments</i>	The lockout was not unique in 2014. The Queensland legislature recently enacted one for the night time entertainment precinct in Brisbane. Lockouts, however, were in place in the Gold Coast during the early 2000s and in Newcastle since 2008. In Melbourne there was one effectively for only three months or so. Glasgow had one for some years until 2004. Other countries and other cities have widely differing hours of operation which change from time to time.

Objection	Discussion
<i>Displacement of violence</i>	The statistics provided by BOCSAR have been reaffirmed by it and indicate no significant displacement of violence to other precincts. Numbers of admissions at emergency departments and doctors' own experience confirm that. (Bondi, Double Bay and Coogee are within the catchment area of St Vincent's and Newtown is within that of Royal Prince Alfred Hospital.)
<i>Reduction in turnover</i>	Turnover has been reduced in the Precincts.
<i>Discrimination in favour of the Casino</i>	The conditions applying to the operation of the Casino are matters of government policy. The Casino does generate revenue for the government. There may have been an increase in violence in the close vicinity of the Casino, but any such increase is much smaller than the decreases in assaults recorded in the Kings Cross and Sydney CBD Precincts following the introduction of the Amendments.
<i>The impact upon licensees and others of the Amendments is a unique legislative one</i>	This is wrong. There are many instances of adverse effect upon different businesses resulting from legislative intervention.
<i>The Amendments are oppressively administrated</i>	I do not doubt that the police are rigorously enforcing the provisions of the Amendments.
<p><i>There are better ways of reducing alcohol-fuelled violence and anti-social behaviour by:</i></p> <ul style="list-style-type: none"> <i>a. more trains</i> <i>b. cultural change and education</i> <i>c. more camera surveillance</i> <i>d. a more numerous and obvious police presence</i> <i>e. better lighting</i> <i>f. more and better-controlled cab ranks</i> 	<p>24 hour public transport (by buses) at intervals of 10 minutes is provided but seriously underutilised. All-night trains would come at more expense (not less than \$2 million directly per year) and to the possible prejudice of the remainder of the network. Cultural attitudes are difficult and slow to change. The legislature in the meantime has to deal with the situation as it exists. Extra policing too comes at a cost. The Amendments have helped to free some police resources for other crime prevention and detection. 'Uber' and super ranks improve point-to-point transport. There are now many more CCTV cameras than there were in previous times in the Precincts. Again, subject to cost, more cameras would be useful. Any additional night time lighting would assist.</p>

Objection	Discussion
<i>The lockout in Melbourne was found to be unnecessary</i>	I have not been able to obtain reliable, relevant Melbourne statistics. The lockout was allowed to lapse there and has not been renewed. The entertainment precincts of Melbourne are not as compact as the Precincts here and naturally lead to greater dispersal of people. The experience with respect to a reduction in alcohol-fuelled violence and anti-social behaviour and the improvement in amenity in the Precincts since the Amendments are similar to those of Newcastle.
<i>The habitués in the Precincts are not as violent or anti-social as those of Newcastle where the lockout remains in place.</i>	
<i>A Night Mayor should be established to coordinate and stimulate the night time economy in the Precincts</i>	That has happened in cities overseas. It would come at a cost to the State or to the City and would duplicate to some extent the energetic attempts of the city administration in various ways to stimulate the night time economy. For example, the City recently made a grant to a provider of entertainment in Kings Cross to enable it to be more versatile in its offerings of entertainment.
<i>Identifying and sanctioning offending licensees</i>	Other provisions of the <i>Liquor Act</i> impose escalating sanctions for repeated non-compliances.

9. Whether the Amendments remain valid and appropriate is, it can be seen from the submissions, hotly contested. The Police, the Emergency doctors and the majority of the residents hold the opinion that the combination, that is to say, the totality of the measures, is what makes them effective, and that each and every one of them is necessary for their continued effectiveness.
10. In my opinion, the objectives of the Amendments are valid. The question whether, however, they are all appropriate, is one upon which informed minds will differ. Of all the groups holding opinions, it seems to me that the medical profession and the emergency workers have the least or no self-interest. Their opinion, formed on the frontline as it were, must carry a great deal of weight. On the other hand, autonomy of the individual and freedom of movement and choice are important aspirations.
11. The contentions of the supporters of the Amendments and a discussion of them are set out in the following table.

Contention	Discussion
<i>Have effected an immediate and very great improvement in the safety and amenity of the Precincts.</i>	The historical character of Kings Cross in particular has been of entertainment and associated activity. Some recently arrived residents would have known this when they chose to live in Kings Cross. Proximity to the city and other amenities have made Kings Cross an attractive and convenient place in which to live.
<i>Have not caused large scale closures of licensed premises, and, in any event, new tenants have taken them up and are conducting viable businesses in them</i>	Some licenced premises have closed as a result wholly or in part of the Amendments. In some instances, new tenants have taken them up and are conducting viable businesses in them. There are, however, also some vacancies, some of which may be as a result of natural attrition. Some former licensed premises have been demolished and replaced or are being replaced by large residential buildings.
<i>Have much reduced admissions to emergency departments</i>	This is true.
<i>Have not displaced violence</i>	The statistics support no significant displacement of violence.
<i>Did not have a large adverse impact on live entertainment which had been in decline before the Amendments</i>	There has been unquantifiable adverse impact on live entertainment, profits and employment opportunities in the Precincts.
<i>Had the effect of reducing usage of premises in which loud and intrusive music was played and which were not, or not readily, adaptable to noise containment</i>	This has occurred to some extent.
<i>Have discouraged and therefore reduced the entry into the Precincts of loud, obscene and abusive (often of women) drivers</i>	This assertion is substantially correct.
<i>Have enabled responsible licensees, especially those operating restaurant and small venues, to flourish.</i>	Some new restaurants have opened which are somewhat different in character from several former establishments and are of a different style from hotels and nightclubs.
<i>Have lessened the burden on a stretched police force, enabling the deployment of more police to detect</i>	The Police confirm this to be so.

Contention	Discussion
<i>and prevent non-alcohol-related crime.</i>	
<i>Have not deterred tourists, many of whom seek safe and welcoming destinations.</i>	I made inquiries of the City of Sydney and analysed Treasury figures. I can find no evidence either way as to the effect, if any, that the Amendments have had on tourism. Many opponents of the Amendments claim, however, that some perhaps many, mainly young tourists are preferring Melbourne to Sydney. On the other hand, Sydney is benefitting from the increasing arrivals of cruise ships.
<i>Have reduced overcrowding.</i>	There are fewer people in Kings Cross during the evening, and fewer therefore entering and re-entering licensed premises.
<i>Have, in effect, caused or contributed to the creation of a less alcoholic but still vibrant night life</i>	So far as both safety, public behaviour and residential amenity are concerned, there has been much improvement. However, less entertainment is being offered there.
<i>Have effected an immediate and very great improvement in the safety and amenity of the Precincts.</i>	

12. The cost of the administration of the sales of alcohol far exceeds the revenue derived from it by the New South Wales Government. The cost of the Department is \$81m and licence revenue is about \$17m only. The cost of administration does not include costs related to alcohol-fuelled violence and damage to health otherwise. Treasury has also calculated a net benefit of approximately \$30m to the State as a result of the introduction of the Amendments. The State may well derive other, indirect, financial returns from the businesses of alcohol (manufacturing, distribution, sale etc) over and above licencing revenue which is difficult to quantify. The State is denied a means of deriving higher revenue from, and thereby of reducing consumption of alcohol, if that be its object, by its legal inability to increase price by imposing what the High Court has held to be an excise tax and therefore solely within the power of the Commonwealth to exact.
13. The sale of alcohol has been heavily regulated for centuries. Regulation has at different times and places served the purposes of revenue-raising, public and private health and public order. In New South Wales, extended hours trading was in 2014 a relatively recent innovation having first been allowed in 1989.
14. The police and the medical profession, the latter of whom are financially and generally otherwise disinterested in the relevant issues, are strongly, adamantly,

of the opinion that it is the Amendments in total and in *combination* that make them effective in reducing alcohol-fuelled violence and anti-social behaviour in the Precincts.

15. The licensees, who are naturally financially interested, and many former frequenters of the Precincts, say that the Amendments are an overreach in regulation.

Conclusions

16. The 'pub crawl' and 'bar hopping' were not invented yesterday. Until at least 1989, they necessarily finished by midnight. The difference now is that people, mainly younger people, tend to start a night out later and to continue it well into the next morning. Before they go out, some have 'pre-loaded' at home and at friends' places. Many of the opponents said that they treasured live music and resented any deprivation of it, which they, as well as numerous licensees, said had occurred and was attributable to the Amendments, in particular the lockout. The Amendments do not proscribe music or any form of live entertainment. Their effect in relation to these is two fold: people who enjoy it may have to make a choice before 1.30am as to where they can enjoy it, and after 3am they cannot enjoy it accompanied by the service of alcohol. If live entertainment is as precious to people in the Precincts as they claim, visitors and providers should be able to programme it so that choice can still be offered up to the lockout, and enjoyed for hours afterwards accompanied by alcohol until 3am. Some supporters of the Amendments said that live entertainment should stand on its own two feet and not be dependent on sales of alcohol.
17. On all of the evidence that I have reviewed, and having regard particularly to the statistics objectively collated and professionally analysed by BOCSAR, and the informed police and medical evidence based on actual experience, I have formed the view that the two Precincts at night were grossly overcrowded, violent, noisy, and in places dirty, before the Amendments, but that after them, they were transformed into much safer, quieter and cleaner areas.
18. I understand that the objectives of the Amendments were to achieve these ends. Those policy objectives are, to answer the statutory question, in my opinion valid.
19. The next question is whether the terms of the Amendments remain appropriate for securing those objectives.
20. The Amendments have made the Precincts, especially Kings Cross, less attractive to large number of former habitués, with the result that the streets there are now less crowded at night, with turnovers of licensees and some other businesses, and numbers of employees of them reduced.
21. Some of the expenditure, discretionary as much of it is, and therefore some of the profits and employees, are likely to have been displaced to other areas including Double Bay, Bondi and Newtown, and to the Casino. Although the

number of visitors displaced is substantial, there has been no significant increase in violence in the displacement areas.

22. The Amendments have come at a cost which is not quantifiable but which should not be exaggerated to employment, live entertainment and the vibrancy of the Precincts.
23. Attempts have been made by some licensees to adapt their business models and programmes to the changed hours, largely unsuccessfully. People nowadays tend to start and end their nights out much later than in the past. So far they have been resistant to changes to earlier hours. The lockout has reduced opportunities to visit and revisit different venues, meet different people and enjoy different entertainment at them, and, in combination with the cessation of service at 3am, has reduced the consumption of alcohol in the Precincts.
24. Subject to the qualifications which I express below, the terms of the Amendments remain appropriate to securing the objectives of them.
25. The sale of takeaway alcohol, whether before or after 10pm, makes little or no contribution to violence and anti-social behaviour in the Precincts, even less so when it is home delivered. Extension of the hours of sale of takeaway alcohol at licensed premises could be extended to 11pm, and of home delivered liquor to midnight. In some regional areas hotels do make a contribution to the social life of the district by sponsoring sport and other community activities. In some places hotels are the only venues for night time entertainment.
26. In-house domestic violence was not a subject of this review. I do record however that many in the medical profession argue that takeaway alcohol makes a substantial contribution to domestic violence, which, as the statistics show, occurs in regional as well as metropolitan areas. Licensees in regional, which includes tourist areas argued that they were a special case and that trading hours for takeaway liquor there should be extended. It needs to be understood however that such an extension may elevate the risk of domestic violence.
27. The Police regard it as important that they receive information in the possession of the Independent Liquor and Gaming Authority (**ILGA**) so that appropriate checks can be made of the suitability of licensees and managements, in order to discharge their functions under sections 42(5), 138(2) and 139(1)(b) of the *Liquor Act*. There ought be some system for Police to be notified automatically of material changes of persons interested in the business or the profits of the business carried on under licences the better to bring to Police attention changes with a view to monitoring criminal activity or influence.
28. I am concerned that live entertainment and those employed in it (including sound and light technicians etc) have lost opportunities of employment.
29. I accept that opportunity for them to reclaim some, at least, of this loss should be considered and trialled. There is difficulty, however, in defining live entertainment and those necessarily employed in support of it. The difficulty

lies in distinguishing genuine live entertainment from a mere mechanical reproduction of it. I draw attention to one form of definition adopted by the Western Australian legislature in the body of my Report.

30. In the end, and not without some hesitation, I have formed the opinion that whether the withdrawal or variation of the measures would impair the achievement of the legislative objectives could only be determined after a trial period and experience of them in a reduced form.
31. Staged relaxation of aspects of the Amendments could be considered. For a trial period of 2 years, genuine entertainment venues in the Precincts might be permitted to open to enable entry to those parts only of those venues offering live entertainment to the capacity of those parts only until 2am, and to serve alcohol in those parts until 3.30am so long as live entertainment is being generally continuously offered throughout the evening until then. Satisfaction of conditions relating to the provision of genuine live entertainment should be the province of ILGA. A relaxation of the Amendments to this effect may go some way to an orderly restoration of vibrancy and employment opportunities in the Precincts. It needs to be understood again however that such a relaxation carries the risk of greater density and consumption of more alcohol in the Precincts. It needs also to be understood that relaxing the Amendments, even in this way, involves risk.
32. The periodic licensing system may have an effect on business viability by increasing the costs of licensing. The underlying rationale for that increase (by having regard to risk and to the likely increased costs of administration) is one that is consistent with the objects of the *Liquor Act*. Some impact upon business viability and vibrancy was foreseen by the legislature as an inevitable consequence to some extent, and is in that respect consistent with the objects of the Amendments.
33. Compliance by licensees can be complicated and expensive. As the recent case of *Stuart v O'Connor* shows, there can also be ambiguity. The *Liquor Act*, including the Amendments and their administration would benefit from revision and harmonisation.

Part One – Introduction and Context

I – Preliminary

- 1.1 I was appointed on 11 February 2016 by the Hon Tony Grant MP, Minister for Police and Emergency Services, to review aspects of the amendments (**the Amendments**) made to the Liquor Regulation 2008 (NSW) by the *Liquor Amendment Act 2014* (**the Amendment Act**). The review is undertaken on three bases:
- a. with respect to the 1.30am lockout and cessation of liquor sales at 3am, pursuant to Clause 47 of Schedule 1 to the *Liquor Act 2007* (a statutory review (**the Statutory Review**));
 - b. for the Minister (clause 5O of the Liquor Regulation 2008) a review of amendments made by the Liquor Amendment (Periodic Licence Fees) Regulation 2014 (NSW), with respect to a system of risk-based licence fees contained in Part 2A of the Liquor Regulation 2008, effectively a Ministerial review (**the Ministerial Review**);
 - c. at the further request of the Minister, an Executive Review, of the prohibition of sales of takeaway alcohol from 10pm across the State (**the Executive Review**).
- 1.2 The first of these is to be undertaken independently of the Executive, although my appointment as reviewer is made by the Minister. Each of the tasks however involves closely related facts, issues and opinions and can conveniently be done together.
- 1.3 Mr Horton QC was engaged to assist me. I acknowledge his major contribution to all aspects of the reviews. I also acknowledge the considerable assistance of Mr Peter Cox, Director, Program Implementation & Improvement, Liquor and Gaming NSW, Ms Samantha Torres, in her capacity as Executive Director,

Liquor and Gaming NSW, and Senior Treasury Officials, whose efforts have been informed and valuable.

1.4 Clause 47 of Schedule 1 to the *Liquor Act* provides:

Review of amendments relating to “lock outs” and cessation of liquor sales at 3 am in Sydney CBD Entertainment precinct

- (1) The Minister is to appoint a person who in the opinion of the Minister possesses appropriate expertise, knowledge and skills and who is independent of the Government to review the amendments made to the *Liquor Regulation 2008* by the amending Act that relate to “lock outs” and the cessation of liquor sales at 3 am and any other provision prescribed by the regulations, to determine whether the policy objectives of those amendments remain valid and whether the terms of those amendments remain appropriate for securing those objectives, and report to the Minister.
- (2) The review is to be undertaken as soon as possible after the end of the period of 2 years following the date of assent to the amending Act and the Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

1.5 Clause 50 of the *Liquor Regulation* provides:

50 Review of amendment relating to periodic licence fees

- (1) The Minister is to review the amendment made to this Regulation by Schedule 1 [1] to the *Liquor Amendment (Periodic Licence Fees) Regulation 2014*, to determine whether the policy objectives of that amendment remain valid and whether the terms of that amendment remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the end of the period of 3 years following the date of commencement of the *Liquor Amendment (Periodic Licence Fees) Regulation 2014* and the Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

1.6 The purpose of the Reviews is to assess whether the relevant policy objectives of the relevant amendments:

- a. remain valid; and
- b. in their terms remain appropriate for securing those policy objectives.

- 1.7 Not all of the measures enacted by the Amendments are expressly the subject of the Reviews. They do however relate to lockouts and the cessation of liquor sales at 3am and therefore provide important context to the Amendments referred to in both Clause 47 of Schedule 1 of the *Liquor Act*, and Clause 50 of the Regulation, as do other provisions including amendments to the *Liquor Act* made in earlier years.
- 1.8 The Terms of Reference for the latter two reviews reflect generally the language of further measures (also part of the Amendments) enacted by the Amendment Act:
- a. the impact of the periodic licensing system on business viability and vibrancy;
 - b. the positive and negative impacts of restriction on takeaway liquor sales after 10pm, with particular regard to the needs of rural and remote communities, and the social and economic impacts of the restriction on those communities.

II - Terms of Reference

1.9 My Terms of Reference (which were accompanied by a Procedural Outline) were stated as follows:

Preamble

- a. On 30 January 2014, the NSW Parliament passed the Liquor Amendment Act 2014 which implemented a package of new reforms to tackle alcohol-related violence. The reforms included the imposition of 1.30am lock out and 3am cessation of liquor sales requirements on venues in the Sydney CBD Entertainment and Kings Cross Precincts. These requirements took effect on 24 February 2014.
- b. Clause 47 of Schedule 1 of the Liquor Act 2007 requires the Minister to appoint an independent person with appropriate expertise, knowledge and skills to review the lockout and 3am cessation of liquor sales provisions to determine whether their policy objectives remain valid and their terms appropriate for securing those objectives.
- c. The review is to be undertaken as soon as possible after two years following the date of assent (5 February 2014) and the Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

Terms of Reference

1. The review will assess the impacts of the 1.30am lock out and 3am cessation of liquor sales requirements on:
 - a. alcohol-related violence and anti-social behaviour in the Sydney CBD Entertainment Precinct, Kings Cross Precinct, potential displacement areas, and the broader community;
 - b. safety and general amenity in the Sydney CBD Entertainment Precinct, Kings Cross Precinct, and potential displacement areas;
 - c. government, industry and community stakeholders, including business, financial and social impacts, and the impacts on patrons and residents (including whether venues continue to trade after 3am when alcohol service ceases).
2. The review will consider the positive and negative impacts of the 10pm takeaway liquor restriction across NSW, with particular regard to be had to the needs of rural and remote communities, and the social and economic impacts of the restriction on those communities.
3. The review will consider the impact of the periodic licensing system on business viability and vibrancy.

Procedural Outline

- An expert advisory group, with knowledge of the issues affecting industry and the community, will be convened to provide advice to the chair of the review.

- Liquor & Gaming NSW (L&GNSW) will provide appropriate secretariat and technical support to the review.
- The review will include consultation with key government, industry and community stakeholders, and will include a written submission process open to all persons.
- The review will include an analysis of both quantitative and qualitative data sources, including data from the NSW Bureau of Crime Statistics and Research relating to alcohol-related violence and anti-social behaviour.
- A final review report will be submitted to the Government for consideration in August 2016.

1.10 The Reviews are compatible, indeed complementary exercises.

III - The Policy

- 1.11 It is necessary first to ascertain the policy objectives of the measures in question.
- 1.12 The purpose or objects, the policy of an Act or statutory rules are to be derived primarily from a consideration of the language used by Parliament read in the context of the enactment as a whole and a consideration of its scope, purpose and objects. Section 33 of the *Interpretation Act* 1987 (NSW) requires that the construction of an Act or statutory rule that gives effect to the purposes or objects underlying it be preferred to a construction that would not do so.
- 1.13 The policy objectives may as a matter of law be discerned or confirmed by reference, not only to the language of the statute, but also to extrinsic materials,¹ including Parliamentary Debates and Speeches, the Second Reading Speech and the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.² The extensive debates which took place in both Houses also provide a clear factual background for the enactment of the Amendments.
- 1.14 The context for the Amendments and the purpose of them were very fully explained by the Premier in his Second Reading Speech.³

The purpose of the Liquor Amendment Bill 2014 and Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 is to make our streets safer by introducing new measures to tackle. Recent months have seen a number of serious violent alcohol- and drug-fuelled assaults in the Sydney central business district [CBD] and elsewhere that shocked the community across the State. The New South Wales Government has heard the community's call for action. We are committed to continuing to address the drug- and alcohol-fuelled attacks on our streets and the increase in violence that is used in those attacks. On 21 January 2014 I announced the Government's response to alcohol-related violence. The response outlined a broad range of tough measures to tackle alcohol- and drug-related crime and antisocial behaviour in the central business district precinct and across New South Wales. There is no single or

¹ *Interpretation Act* 1987 (NSW) s 34.

² See for example, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47] (Hayne, Heydon, Crennan and Kiefel JJ).

³ Parliamentary Debates (Hansard), Legislative Assembly, 30 January 2014, pp 26621-26625.

simple cure-all for those problems, but I am confident that these reforms will make a significant difference in tackling drug- and alcohol-fuelled violence on our streets.

The measures announced today build on the targeted approach to tackling drug- and alcohol- fuelled violence that we adopted since coming to government. Our reforms to date have included putting an extra 420 police officers on our streets since December 2011; implementing a three strikes licensing scheme targeting irresponsible venues; trialling sobering-up centres in Kings Cross, Coogee and Wollongong; introducing a plan of management for Kings Cross that includes new late-night transport options, tough new licence conditions for licensed premises, drink restrictions and new security measures; passing new laws that allow for offenders to be banned from licensed venues in Kings Cross and provide for the use of drug detection dogs in the area without police requiring a warrant, and will result in identification [ID] scanners being used in high-risk Kings Cross venues; strengthening the violent venues scheme, which applies special conditions to the State's most violent venues; extending liquor freezes in Oxford Street, Darlinghurst, and Kings Cross; and launching a multimedia advertising campaign aimed at warning of the dangers of excessive and binge drinking.

The introduction of those reforms has coincided with, according to the Bureau of Crime Statistics and Research [BOCSAR], a reported reduction in alcohol-related violence across the State. However, more needs to be done to improve the safety and amenity of the Sydney central business district, particularly late at night, and that is the basis of these measures. The Government's tough and comprehensive package to tackle this problem will send a strong and consistent message that alcohol- and drug-fuelled violence will not be tolerated. Together, the Liquor Amendment Bill 2014 and Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 will give effect to the Government's reforms to tackle drug- and alcohol-related violence.

The Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 promotes personal responsibility of offenders. The Liquor Amendment Bill 2014 strengthens the Government's existing management approach to licensing.

The Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 introduces a new offence for one-punch assaults where a person unlawfully assaults another who dies as a result of the assault, with a 20-year maximum sentence being introduced. Perpetrators of one-punch killings have previously been prosecuted in New South Wales for manslaughter. This means that when the case goes to court the prosecution has to prove beyond reasonable doubt that the offender should have foreseen that, by doing what he or she did, the victim would be placed at risk of serious injury.

A person will be guilty of the new offence of assault causing death as proposed by new section 25A (1) in this legislation if he or she unlawfully assaults another person by intentionally hitting the other person with any part of his or her body, or with an object he or she is holding, causing the death of the other person. The offence will carry a maximum penalty of 20 years imprisonment. A person will be criminally responsible for the offence even if the person does not intend or foresee the death of the other person, and even if the death was not reasonably foreseeable. If the offender was intoxicated by alcohol or drugs at the time of the assault, a minimum mandatory sentence of eight years imprisonment and a

maximum sentence of 25 years imprisonment apply. A "drug" includes a drug under the Drug Misuse and Trafficking Act and a poison, restricted substance or drug of addiction in the Poisons and Therapeutic Goods Act. This will capture steroids as well as psychoactive substances.

...

To ensure that police can enforce the new offences and penalties for alcohol- and drug-related violence, the bill enables police to conduct drug and alcohol testing where they suspect an offender has committed an alcohol- or drug-fuelled violent assault. New sections 138F and 138G in the bill provide police with powers to conduct breath tests and breath analysis, and to require blood and urine samples for analysis. Police will be able to require a breath test from a person at the scene of the alleged offence, or require them to undertake a breath analysis at a police station or other place of detention. Blood and urine samples can be required where police are precluded from taking a breath analysis because of time constraints or because the person has refused to comply or where police reasonably believe that the person is under the influence of a substance other than alcohol. As I have mentioned, if a breath analysis or an analysis of a blood or urine sample confirms a concentration of 0.15 grams or more of alcohol—equivalent to a high-range PCA offence—this will deem intoxication for the purposes of the new offence of aggravated assault causing death.

To make it clear that drugs and alcohol are not an excuse for violent behaviour, voluntary intoxication by drugs or alcohol will be removed as a mitigating factor when courts determine sentences in future. This change reflects the view that the choice to become intoxicated should not lead to reduced culpability. Self-induced intoxication is no excuse for violence. The vulnerability of the victim, including age, will continue to be taken into account, as it is now, in relation to sentencing matters. The bill will insert 50 steroidal agents into the list of prohibited drugs under schedule 1 of the Drug Misuse and Trafficking Act 1985, making them prohibited drugs in New South Wales and allowing heavy penalties to be imposed for their possession and supply. Currently, the New South Wales maximum penalty for the illegal supply and possession of steroids is two years, and this will be increased to 25 years to bring it into line with Victoria. The significant increase will send a very strong message about the seriousness of illegal steroid use.

Alcohol-related violence and antisocial behaviour is not welcome on our streets and, frankly, will no longer be tolerated. It is therefore critical that police can fine those offenders who do behave in such a manner, and that the fine is a sufficient amount to act as a deterrent for this unacceptable behaviour. For this reason, this bill will increase fine amounts for criminal infringement notices routinely used by police in dealing with antisocial behaviour. ...

Turning now to the Liquor Amendment Bill 2014, which will strengthen our risk-based approach to liquor licensing and will build on other reforms that have been introduced since 2011, this bill will allow high-risk precincts to be targeted through the adoption of tailored regulatory measures that are appropriate for that precinct. The Government's view is that a tailored approach is the best approach as it allows the particular problems in an area to be targeted while taking account of local issues. The bill also introduces important liquor reforms across the State. The bill enables the Government to prescribe high-risk precincts in which licensed premises will be subject to regulatory conditions, such as lockouts, 3.00

a.m. last drinks and other restrictions. This approach enables tailored action to be taken immediately within a precinct. The Government has announced the proposed CBD Entertainment Precinct, which will extend from parts of Surry Hills in the south to The Rocks in the north and from Kings Cross in the east to Cockle Bay in the west.

The bill includes new regulations to impose 1.30 a.m. lockouts and the cessation of liquor service at 3.00 a.m., which I will outline in more detail shortly. It also allows other conditions to be imposed. These could include prohibiting the use of glass, restrictions on outlaw motorcycle gangs, requiring the use of responsible service of alcohol [RSA] marshals, restrictions on shots and closed-circuit television requirements. These are similar to the approaches we have already applied in Kings Cross. Importantly, these conditions will be developed over coming weeks and tailored to reflect the unique circumstances of the Sydney central business district, which represents a large and diverse geographical area that includes a mix of commercial, residential, entertainment and tourist facilities.

The bill introduces a 1.30 a.m. patron lockout for hotels, nightclubs, general bars and registered clubs in the Sydney central business district precinct. These venues will also be required to cease alcohol service at 3.00 a.m. However, these restrictions will not apply to small bars, which are those that have a maximum capacity of 60 people and, due to their small patron capacity, are not seen to be as high risk as other licensed venues. Nor will they apply to restaurants and tourism accommodation establishments, which are establishments other than accommodation on a bed or dormitory-style basis rather than in separate rooms, although where tourist accommodation establishments contain a bar that can be accessed from the street the bar will be subject to 1.30 a.m. lockouts and 3.00 a.m. cease liquor service provisions. The Government recognises that these measures will result in some business operators having to reconsider how they operate their licensed premises, and people heading out for a night in the city may have to adjust their plans accordingly. However, these restrictions are needed to improve the safety and amenity of the Sydney CBD Entertainment Precinct, which must be our number one priority.

Importantly, the bill recognises that venues currently approved to trade beyond 3.00 a.m. can continue to operate by providing other services and facilities past the 3.00 a.m. cease liquor service time. These include dining, entertainment, gaming and non-alcoholic drinks service. The bill extends the existing liquor licence freeze provisions that apply in the Kings Cross and Oxford Street, Darlinghurst, precincts across the new Sydney CBD Entertainment Precinct. An exemption from these freeze provisions applies to small bars, restaurants and tourist accommodation establishments as these venues are assessed as being low risk and their development should not be prevented. The expanded freeze will commence when the bill commences and will continue for two years from commencement of the legislation. Amendments to the Liquor Act 2007 that commenced on 6 December last year enable temporary and long-term banning orders to be issued to troublemakers preventing them from entering most licensed premises in the Kings Cross precinct.

This bill extends those temporary and long-term banning order provisions that apply in Kings Cross to the new Sydney CBD Entertainment Precinct. Temporary banning will prevent troublemakers gaining entry to all licensed premises except low-risk restaurants that do not trade beyond midnight. In more

serious circumstances, the police commissioner can apply to the Independent Liquor and Gaming Authority for long-term banning orders of up to 12 months. These orders will prevent entry to all high-risk venues in the CBD Entertainment Precinct. Any long-term banning order made by the Independent Liquor and Gaming Authority can, as currently, be reviewed by the Civil and Administrative Tribunal. ...

The Government is concerned about the impact of the availability of takeaway liquor late at night in contributing to alcohol-related violence and other harm. In particular, concerns have been expressed about the impact of preloading whereby people buy cheap alcohol that is consumed at home before they go to licensed premises later in the night.

To ensure regulatory consistency, the bill applies a prohibition across the State on the sale of takeaway liquor after 10.00 p.m. from liquor stores, and hotels and clubs authorised to sell takeaway liquor either from a designated area or across the bar. These provisions also capture home delivery services of alcohol after 10.00 p.m. In July 2012 the Government commenced a trial of online responsible service of alcohol [RSA] training to provide an option for people required to undertake this training as an entry requirement into the New South Wales liquor industry.

In recent months, the Government has been made aware of instances where the integrity of online responsible service of alcohol training may have been compromised following complaints about the minimal time needed to complete that training. The Government is not prepared to continue to risk the integrity of the responsible service of alcohol training scheme and, therefore, is suspending approvals to conduct online responsible service of alcohol training by training providers until the integrity of the qualification can be improved. Further reforms of responsible service of alcohol will be considered as part of the Government's response to the independent statutory review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007, which was released in December. Responsible service of alcohol training will continue to be available across New South Wales in classroom format for more than 100 training providers, including TAFE, industry associations and private training colleges.

I turn now to the bill's provisions that allow for the introduction of annual liquor licence fees for all licensed premises in New South Wales. The concept of a periodic licence fee to offset the costs associated with the regulation of the liquor industry was identified as part of the 2013 statutory review of the Liquor Act conducted by the former Commissioner of the Office of Liquor, Gaming and Racing, Mr Michael Foggo. The independent report on the review noted that for several years annual risk-based fees have applied in Queensland and Victoria. The report recommended the adoption of a similar scheme for New South Wales to reflect contemporary best-practice regulation. The report noted also that a contemporary licensing scheme—by ensuring that lower-risk business operations would attract lower fees—would encourage the development of New South Wales business models that are associated with lower risk of alcohol-related harms. The bill provides a regulatory framework for the introduction of periodic licence fees that will apply to all permanent liquor licences.

The bill will enable regulations to be made to prescribe the annual fee payable by each liquor licensee. These regulation-making powers will enable a range of risk factors to be taken into consideration in determining the fee for a particular

licence venue, including its licence type, compliance history and trading hours. The fee regime will encourage and reward best practice by the operators of licensed venues. Licensees will be able to reduce their fees through adopting lower-risk business models while ensuring compliance with liquor laws. The bill also provides a framework that will enable a licence to be suspended or cancelled when the annual fee is not paid by the due date. The fees that will apply under the periodic licence scheme will be prescribed by regulation before they first fall due in the first part of this year. Full details on the fee structure that will apply under the periodic licensing scheme will be outlined in a draft regulation to be released ahead of the commencement of the scheme.

Following these measures, the Government will continue to ensure that actions are taken to reduce alcohol-related violence particularly in hot-spot precincts. This issue has no end point; it will take constant vigilance and action to change the culture that drives alcohol- and drug- fuelled violence. This bill will allow the boundaries of the Sydney central business district [CBD] precinct to be varied to accommodate any changes in circumstances, including any spike in alcohol-related violence in adjacent areas. I note that the Bureau of Crime Statistics and Research review of Newcastle showed no occurrence of displacement. I note that the KPMG independent review of the Melbourne changes also showed no displacements. Similar measures to those contained in the Liquor Amendment Bill 2014 can be considered for other high-risk precincts experiencing high levels of alcohol-related violence anywhere in the State.

This legislation enables precincts to be established in other areas across this city and State. Approximately 140 voluntary liquor accords exist already in Sydney suburbs and towns. Last week I spent some time in Tamworth, which has a voluntary liquor accord. Publicans, police and the public put in place in Tamworth a 12.30 p.m. lockout to make that community safe, and it was advertised during my visit. Manly has had similar success, driven again not just by the local member but also by police, publicans and the public. This demonstrates that when communities want to solve this problem and those involved in the alcohol industry are prepared to step up and accept that there is a problem and they are part of the solution, it can be resolved. Should that not happen—should high-risk precincts be required elsewhere because of unacceptably high levels of alcohol and drug-fuelled violence—this legislation gives government the power to act. I urge those communities without voluntary liquor accords and agreements that experience problems to get on board with the liquor accord process, otherwise expect down the track a call from government. The Liquor Amendment Bill 2014 provides that lockouts and cessation of liquor sales in the central business district precinct will be subject to an independent statutory review after two years. The amendments made by the Crimes and Other Legislation Amendment Bill 2014 will be subject to review after three years.

Last week when I announced these reforms I said that the sitting of this Parliament would depend on the ability to draft the legislation. I thank all who were involved in drafting this legislation. It has been a difficult task and provides serious consequences for drug and alcohol-fuelled violence, whether in the Sydney central business district or across the State. This legislation is complex and I make no apologies for wanting to get it operating as quickly as possible. Should the Parliament pass this legislation today, the so-called "one-punch law" will operate this weekend. My determined reason for getting this legislation introduced quickly was highlighted by last weekend's attack in Orange. This legislation may require tweaking from time to time; we will tweak it. We will

make changes that will be designed to make it more effective and improve its operation because the community message has been heard. It is unacceptable to think it is okay to go out, get intoxicated, start a fight and throw a punch. This legislation means that people will face serious consequences.

... we want this legislation to be effective and to send the strongest possible message to people across this State that our determination is to try to change the culture that results in too many serious injuries and deaths from unacceptable behaviour in too many places, including the Sydney central business district. The Government has heard the community's call for action. I am confident these bills will make a significant difference to addressing unacceptable drug- and alcohol-fuelled violence on our streets. ...

- 1.15 At this point I observe that a number of the submissions (to which I refer in more detail later) opposing the lockout are based upon a misconception that the legislation was aimed at the reduction or elimination of alcohol-related fatalities exclusively. Certainly, two shocking deaths (one in July 2012 and the other in January 2014) precipitated them, but, as the Second Reading Speech states, the legislation had additional targets, including violence generally, self-inflicted harm, and anti-social behaviour. Many of those submissions emphasised that the two deaths that occurred in the Precincts did not occur late at night.
- 1.16 Safety was nonetheless an overriding or principal concern. The Government did not expect that the Amendments would entirely solve the problem of drunken violence. It also was aware of the possible effects of them on freedom of movement, activity and enterprise. That violence and antisocial behaviour might be displaced from central Sydney and Kings Cross to areas such as Double Bay, Newtown and Bondi was also within its contemplation.
- 1.17 Personal security is not confined to security against actual physical assault but can extend to security against threatened violence, public nuisance and disturbance. I draw early attention to this form of security and safety because a number of submissions supporting the Amendments, usually by residents, expressed concern about these matters.
- 1.18 The Parliamentary debate on the Amendment Bill on 30 January 2014 confirms a wide, if not quite unanimous or unqualified, acceptance of the policy and

objects as stated in the Second Reading Speech and gives some further context for the better understanding of them.

- 1.19 The Honourable the Leader of the Opposition said in the Legislative Assembly that the Opposition had urged the Government to recall Parliament on 3 January because of the need for ‘*strong bipartisan action to curb alcohol-fuelled violence*’. He said that his Party supported the Amendment Bill and had been calling for lockouts for some time. Some criticisms of the Bill were made, including of an absence of detail as to the operation of the risk-based licensing scheme. Reference was also made to a need for improved public transport to and from Kings Cross by, for example, night trains to Town Hall and Central. The Leader of the Opposition said that the measures contained in the Bill were ‘a start’ and that the Opposition would support them.
- 1.20 The Honourable the Minister for Police and Emergency Services, Mr Michael Gallacher said in the debate in the Legislative Council that the Government had heard the community’s call for action in response to a number of serious violent alcohol-fuelled assaults in the CBD and elsewhere. He affirmed the commitment of the government to address attacks on the streets and their increasing violence. He referred also to a need to improve the safety and amenity of the Sydney CBD particularly late at night. He commended the Bill as a strengthening of the government’s existing management approach to licensing.
- 1.21 The Minister responsible for the administration of the liquor laws, the Honourable Mr George Souris, Minister for Tourism, Major Events, Hospitality and Racing, observed that recent events in Sydney and elsewhere had shown that more work was needed to improve the safety and compliance of licenced venues to reduce levels of alcohol related violence in the community. The Minister recognised that overall levels of alcohol related violence were falling in the Sydney local government area, but noted that it was still six or so times higher than the State average. That is why, the Minister said, the government had chosen the Sydney CBD as the first precinct to be prescribed under the Bill. I read the Minister’s speech as contemplating a staged approach to the problems

then confronting the community and one which would be informed by a monitoring of the implementation of those amendments. These Reviews are part of that undertaking.

- 1.22 The reforms attracted support from an overwhelming majority of the Upper House (26 to 5) and much the same in the Legislative Assembly. The Deputy Leader of the Opposition in the Upper House, the Honourable Adam Searle, said that his Party had committed to the immediate introduction of, among other things, an 18 month trial of a ‘Newcastle-style’ alcohol restriction in Kings Cross and the Sydney CBD, including 1am lockouts, 3am last drinks, and ‘no shots’ after 10pm. He referred to research which underpinned his Party’s policy, a large body of work demonstrating what did and did not work, and the need to restrict the availability of alcohol to curtail alcohol related violence at its source. He saw the availability of packaged alcohol at bottle shops as undermining efforts to reduce alcohol related harm by providing an affordable means to binge drink at home before going out, (pre-fuelling or pre-loading). The Honourable Mr Searle referred to statements reported by the Auditor-General in making this observation:

According to the Auditor-General in New South Wales in 2012 alcohol was responsible for more than 1,300 assaults on police and almost 14,000 non-domestic assaults. It is good that the Government has brought forward legislation to at least attempt to deal with this issue.

- 1.23 I take the point forcefully made by the Deputy Leader of the Opposition in the Upper House, that ‘pre-loading’ with affordable alcohol bought at bottle shops made a large contribution to the problems. It was, with respect, well made. Pre-loading no doubt aggravated the problems in the Precincts, but on any view, the Precincts are a magnet for all of light drinkers, heavy drinkers and ‘pre-loaders’.
- 1.24 Other Members spoke of their grave concern about the rise of violence on the streets. They too referred to the tragic assaults and the deaths that had occurred

in recent times.⁴ Many saw the Amendments as necessary and likely to reduce the problems.

- 1.25 The Greens Party (one Member in the Legislative Assembly and five in the Legislative Council) opposed the Amendments. That Party claimed that there was a lack of evidence to justify the measures: they were, they said, too punitive, and that there would be perverse outcomes. Their leader, Dr John Kaye, said that there were real doubts that the legislation would work and that they represented an unwarranted intrusion into people's rights.
- 1.26 Reverend the Hon Fred Nile stated his Party (of two Members) strongly supported the Bills, and his belief that a relaxation of the hours of operation of hotels and clubs was the cause of the problems confronting the community.
- 1.27 Several members did however express concerns about the high levels and kinds of penalties which could be imposed under the Amendments.
- 1.28 The point was made in debates by the Deputy Premier, Minister for Trade and Investment and Minister for Infrastructure and Services the Hon Andrew Stoner that the measures were part of a package of reforms intended *collectively* to reduce the trend of violence on the streets of Sydney and elsewhere throughout the State [emphasis added]. Special licence conditions and other measures were directed to the improvement of public safety and the reduction of alcohol related violence: there was no one solution.
- 1.29 From the Second Reading Speech, which I take to be consistent with the language policy and meaning of the Amendments, these can be distilled as the principal objects of them:
 - a. safer streets;

⁴ See, for example, the speeches of the Hon Shaoquett Moselmane and the Hon Robert Borsak.

- b. the elimination of alcohol and drug-fuelled assaults (and not merely their displacement to other areas);
- c. a reduction in antisocial behaviour;
- d. the development of a range of measures to deal with these;
- e. the improvement of the safety and amenity of the relevant areas;
- f. the identification of high-risk precincts;
- g. a reduction in the availability of takeaway liquor late at night; and,
- h. the conveying of a legislative insistence on strong measures (by a strong message to people of the State) to achieve these purposes.

1.30 Citing relevant research, the authors of *Alcohol Policy and the Public Good* state not only what is generally scientifically accepted, but also what is readily observable to lay people:⁵

As regards physical consequences, *alcohol* acutely impairs many aspects of psychomotor and cognitive function. Impairment of emotional control can result in violence to others. Alcohol is significantly implicated in intentional self-harm and completed suicide. [Emphasis added]

1.31 Alcohol has had its proponents who praise it for its capacity to stimulate and relax. In a lecture in 1902, the Harvard psychologist and philosopher, William James, described its effects in this way:⁶

The sway of alcohol over mankind is unquestionably due to its power to stimulate the physical faculties of human nature, usually crushed to earth by the cold facts and dry criticisms of the sober hour. Sobriety diminishes, discriminates and says no; drunkenness expands, unites and says yes. It is in fact the great exciter of the Yes function in man. It brings its votary from the chill periphery of things to the radiant core. It makes him for the moment one with truth. Not through mere perversity do men run after it.

⁵ Griffith Edwards et al (Oxford University Press, 1994) p 7 (references omitted).

⁶ William James, *The Varieties of Religious Experience: a study in human nature* (Longmans Green and Co, 1903) p 387.

- 1.32 It is obvious that the more alcohol consumed, and the greater number of people consuming it in proximity to one another, the more likely it will be that violence of various degrees of seriousness will occur.
- 1.33 Anti-social, other than overt violent behaviour, can take many forms. Section 3AA of the *Liquor Control Reform Act 1998* (Vic) for example defines it as including: drunkenness; vandalism; use of profane, indecent or obscene language; using threatening, abusive or insulting language; behaving in a riotous, indecent, offensive or insulting manner; disorderly behaviour; causing nuisance; noise disturbance to occupiers of other premises; obstructing a footpath, street or road; littering. A member of the residents of the Precincts complained of the recurrence of all of these before the Amendments.
- 1.34 Parliament here was of the view that a combination of measures was necessary to deal with the problems. I read the Parliament as accepting, indeed intending, that the measures would be far reaching, wide ranging, and, to some extent, arguably at least, harsh. An indication of the last is the imposition of a mandatory penalty of a minimum of 8 years imprisonment in some circumstances.⁷ The approach was to be a ‘risk-based’ one.
- 1.35 It is easy to see why there would be a tension between the improvement of safety and amenity on the one hand, and on the other, the profits of operators which depend to a large or major extent upon the quantity of alcohol that they can sell.
- 1.36 Some opponents of the Amendments have overlooked that the Government took account of this:⁸

The Government recognises that [the] measures will result in some business operators having to reconsider how they operate their licensed premises, and

⁷ *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* (NSW) amended the *Crimes Act* to impose a mandatory minimum sentence of 8 years imprisonment for assault causing death when intoxicated (s 25B) and maximum penalty of 25 years imprisonment for assault causing death while intoxicated (s 25A).

⁸ See above at para 1.14.

people heading out for a night in the city may have to adjust their plans accordingly.

- 1.37 The Second Reading Speech explicitly stated that the '*number one priority*' was the improvement of the safety and amenity of the Sydney CBD entertainment precinct.
- 1.38 As appears later in this report, I did explore as best I could the question whether, and the extent to which operators may have reconsidered and adapted their modes of operation of their licensed premises, by for example, rescheduling or otherwise changing the way in which they offered entertainment. I also sought to explore whether opponents of the Amendments who '*headed out for a night in the city*' had adjusted their plans to the changed conditions and laws. Mr Koh, who claimed to speak for, and in the voice of a number of people who objected to the laws, said, among other things, that he thought business operators had not made adjustments because they were awaiting the outcome of this review, and that people heading for a night out similarly did not regard themselves as obliged to change their expectations and customary plans. These are matters upon which I expand later.
- 1.39 The Government was apparently untroubled by the financial consequences of the cessation of liquor service at 3am. The Premier in the Second Reading Speech pointed out that operators were not required to cease to carry on business at that time. Dining, entertainment, gaming and the service of non-alcoholic drinks could continue.
- 1.40 Another matter which emerges from the Second Reading Speech is a desire that periodic licence fees be calculated and levied to offset the costs associated with the regulation of the liquor industry. The licence fees in total appear to fall far short of its cost of regulation, let alone the cost of all of the adverse consequences of the sale and consumption of alcohol. As will appear, the licence fees actually paid form part only of the costs of the regulation of the business of selling liquor. The total budgeted expenditure for Liquor & Gaming NSW (including of ILGA) for the past financial year was some \$81 million.

The revenue derived from licence fees was about \$17 million for the same period.

- 1.41 The actual cost of alcohol abuse was assessed by the NSW Auditor-General's Office in August 2013 as being \$1.03 billion for NSW Government service costs, and \$2.84 billion for 'other societal costs', totalling some \$3.87 billion.⁹ No matter how the calculations are done, to the extent that they can accurately be done, it is unlikely that the financial benefits of the manufacture, sale and consumption of alcohol and any associated or subsidized activities such as entertainment, outweigh the financial costs (leaving aside incalculable social costs) of alcohol.
- 1.42 The government stated a further purpose, of encouraging and rewarding good practices in the conduct of businesses selling alcohol.
- 1.43 The issue [of alcohol-related violence] particularly in 'hotspot precincts' was, as the Premier said, not the end point: the culture had to be changed.
- 1.44 In public discussion and law relating to the environment, the *precautionary principle* is sometimes adopted.¹⁰ One example of its expression is the definition of principles of ecologically sustainable development in s 3 of the *Local Government Act 1993* (NSW):

- ...
- (a) the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

⁹ Audit Office of NSW, *Performance Audit: Cost of Alcohol Abuse to the NSW Government*, p 12.

¹⁰ *Precision Products (NSW) Pty Limited v Hawkesbury City Council* [2008] NSWCA 278 at [57] (Allsop P, with whom Beazley and McColl JJA agreed). The Court summarised the principle as one suited to assist decision-makers who are confronted with the task of undertaking environmental assessment of any proposed activity and as requiring them to approach the task from the common sense point of view that if there was a lack of scientific certainty available for the decision maker to rely upon, the decision should be made cautiously. See also *Leatch v National Parks and Wildlife Service* (1993) 81 LGERA 270 and *Telstra Corporation Limited v Hornsby Shire Council* [2006] 67 NSWLR 256 at [128].

1.45 In some respects a similar approach in evaluating the Amendments may be discerned here.

IV – The Process

- 1.46 Upon my appointment, I met formally for about an hour with the Deputy Premier, the Hon Troy Grant and a number of his staff and officials.
- 1.47 An invitation for submissions was advertised between 13 and 16 February 2016 in metropolitan and regional newspapers across the State. It was also published on a website established for the Reviews.
- 1.48 Pending the receipt of submissions, I made contact with those persons, agencies and entities whom I considered likely to have the closest interest in the subject of the Reviews. I have met and conversed with more than 50 people, some more than once. My Counsel Assisting Mr Horton QC met some others who, for one reason or another, it was not then convenient to them or me to speak in person. Some who were interviewed by Mr Horton QC I met later. **Appendix 1** lists the persons I met and, where relevant, the agencies or associations they represented. Those whom Mr Horton QC alone met appear in that Appendix also.
- 1.49 A Background Paper was published by the Office of Liquor and Gaming Regulation on the Review website on 4 March and an amended and updated version of it was published on 21 March 2016. The Paper provided information about the Reviews and some of the matters likely to be of relevance to it.
- 1.50 I received 1,850 or so written submissions in response to the invitation which had a closing date of 4 April 2016. Despite that, I continued to accept submissions up until a few days before today. A list of submitters (except those who wished to remain anonymous) is in **Appendix 2**. The submissions ranged in scope and content from bare support for, or opposition to the Amendments, to reasoned arguments, and vigorously, sometimes stridently stated positions and opinions about them. I read each submission and found them to be of assistance. I deal with the substance of the principal submissions in Parts Four, Five and Six. I might say that even the strident, not always well-reasoned

submissions gave me an insight into the strength of the different views expressed. Residents of Kings Cross and the CBD (the population of which totals just over 205,000¹¹) who responded to the invitation, seem mostly to have supported the measures. Younger people who frequented the Precincts largely opposed them. Shortly after my appointment, opponents of the Amendments demonstrated against them in a public march on 20 February 2016. Organisers estimated their number to be 15,000. Some media reported lower numbers.¹² The Police estimate that there had been a crowd of about 7,000 people. Many shift workers, casual employees and live entertainers wrote in opposition to the Amendments.

1.51 I also (with Mr Horton QC) viewed the city and Kings Cross areas on a Saturday night (14/15 May 2016) escorted by Senior Sergeant Donna Murphy, the Licensing Supervisor of the Kings Cross Local Area Command, and one of her officers. My view began at midnight. I first viewed the immediate localities of most of the major nightclub and hotel venues in central Sydney including those on George Street and on Cockle Bay Wharf. I went next to Kings Cross and was there from about 1am until 2am, the period during which the lockout came into effect. On 24 August 2016 with Mr Horton QC, I inspected the entertainment area of Newtown. On 2 September 2016 I again inspected the Kings Cross Precinct, this time in company with Mr Horton QC and Mr Douglas Grand, the Chief Executive Officer of the Kings Cross Liquor Accord Association.

1.52 I visited the emergency department of St Vincent's Hospital on 24 March 2016. I did so to gain a better impression of its facilities, and the demands upon them, and in order to meet Dr Gordian Fulde, the head of that department. He showed me over the emergency ward and secure rooms reserved for disorderly patients,

¹¹ <http://www.cityofsydney.nsw.gov.au/learn/research-and-statistics/the-city-at-a-glance>. Accessed 21 August 2016. The figure is as at June 2015 and is for the 33 suburbs that comprise the City's area.

¹² See, for example, P Begley, 'Keep Sydney Open: protesters march to 'unlock Sydney's nightlife'', *Sydney Morning Herald*, 22 February 2016. <http://www.smh.com.au/nsw/keep-sydney-open-protesters-march-to-unlock-sydneys-nightlife-20160221-gmzggk.html>. Accessed 28 August 2016.

most of whom were drunk but some of whom were drug-affected. They were ‘safe rooms’ fitted with emergency exits for doctors and other staff.

- 1.53 I have read a number of books, research papers and other published learning and data, some of which have been drawn to my attention by submitters. That material ranged from analyses of the effects and costs of alcohol consumption generally, to the efficacy of different regulatory approaches, historical information about alcohol consumption and its regulation, and the number, distribution and density of licenced venues over time, and the nature and place of live entertainment and music in the night time economy.
- 1.54 I travelled to Newcastle on 9 June 2016 for the purpose of better informing myself about the experience of the lockout imposed there in 2008, and to meet Mr Tony Brown who had detailed knowledge of what had occurred there having involved himself closely in the local controversy about alcohol related anti-social behaviour. I also met, while I was in Newcastle, Mr Michael Christie, the father of one of the two young men killed at Kings Cross in the period immediately before the Amendments.
- 1.55 On 12 April 2016, I met Hon. Timothy Anderson, and Mr Dino Soulio in Brisbane. Mr Anderson was then undertaking a review of the South Australian *Liquor Licensing Act*. Mr Soulio is the Commissioner for Consumer and Business Services in that State. Mr Anderson’s report was published on 29 June 2016.¹³ Mr Anderson’s Terms of Reference were wider than mine. They required him, among other things to assess the adequacy, effectiveness and relevance of that State’s liquor licensing regime and recommend improvements to it. I read his report and found the parts of it that were relevant to my tasks helpful.
- 1.56 I had further meetings with some persons and representatives and groups or associations. I met Mr Tyson Koh on 25 May 2016 and subsequently engaged

¹³ See *Review of the South Australian Licensing Act 1997*, 29 June 2016. http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Anderson%20Report%20Review%20of%20Liquor%20Licensing%20Act%201997_June%202016.pdf

in correspondence with him. I had a meeting with Mr Arthur Laundry (with Mr Whelan, Chief Executive of the Australian Hotels Association NSW) on 14 July 2016 whose private companies own several hotels in New South Wales. On 25 August 2016 I met a group of hoteliers accompanied Mr Doug Grand of the Kings Cross Licensing Accord Association.

- 1.57 I take ‘review’ to mean, to look again [at the Amendments], to make an examination of them, to look over them for the purpose of assessing whether they are delivering the underlying policy, or whether they might or should be corrected or improved. Ultimately it will be for the Government and the Parliament, assisted I hope by my Reviews, to determine whether the Amendments should be repealed or varied.
- 1.58 In dealing with the arguments and counter-arguments, I have tried to take into account the different perspectives and experiences which their makers have brought to them. That process has resulted inevitably places in a repetition of various matters but I have thought it important to consider as many aspects of the controversies as is feasible and appropriate.
- 1.59 In doing what I have, I emphasise that I have acted as a reviewer, and have not had the powers of a commission of inquiry. I have tried to consult as widely as is practical and have had regard to the large number of written submissions that I have received. I have also queried various people whom I thought could better inform me. I have not had powers to summon or cross-examine witnesses and submitters. This report therefore represents the best evaluation that I have been able to make of submissions, consultations, books, surveys, reports and learned papers that I have read on the relevant topics.

V - The Legislative Context

- 1.60 The Amendments with which these Review are directly concerned form part only of those enacted in February 2014. The Amendment Act enacted: lockouts at 1.30am at hotels, registered clubs, nightclubs and karaoke bars in the Sydney CBD and Kings Cross Precincts; cessation of the service of alcohol from 3am in those precincts; a risk-based licence fee for all licensed premises in the State varying according to licence type, compliance history, location, patron capacity and trading hours; a freeze on the grant of all new liquor licences and approvals for existing licences in the Sydney CBD Precinct (continuing a like freeze in place since mid-2009 for the Kings Cross Precinct); an extension of the capacity of the Police and ILGA to make temporary and long-term banning orders for licensed premises in the Sydney CBD and Kings Cross Precincts; and a suspension of online responsible service of alcohol training; and a prohibition on the sale of takeaway alcohol from 10pm across the State.
- 1.61 These are self-evidently very wide-ranging and far-reaching measures. In their operation they have the capacity to effect changes in social behaviour and business practices and fortunes. Further, they were enacted into a pre-existing and already complex legislative licensing regime.

VI - The Precincts

- 1.62 The Amendments the subject of the Statutory and the Ministerial Reviews (being the lockout, the 3am cessation of alcohol sales and periodic licence fees) apply to the two precincts: the Kings Cross Precinct (defined by the *Liquor Amendment (Kings Cross Plan of Management) Act 2012*) and the Sydney CBD Entertainment Precinct (defined by the Amendment Act).
- 1.63 Kings Cross has for many decades been a popular destination in Sydney for customers of nightclubs, hotels, entertainment, strip shows and prostitution, the last before and after its legalisation by the *Prostitution Act* of 1979. A high point for some of these was the period of the Vietnam War when United States service personnel thronged the area. During the last two decades of the 20th Century Kings Cross had what a local historian described as a ‘dark manic energy’.¹⁴ The area has had historically, a comparatively high level of drug-taking and crime, earning, in consequence, a reputation as ‘Sin City’.
- 1.64 In modern times, there has been an inevitable trend of gentrification of areas relatively close to the Harbour and the central business district. Kings Cross is one such area. Equally inevitable is the increasing tension between residents, especially recent ones, and those selling, and visitors coming to consume alcohol, and enjoy entertainment there. Kings Cross was in transition before the Amendments were enacted. The streetscape was evolving, and, it has been reported, a reduction in the number of brothels and like establishments had occurred. Richard Guillatt¹⁵ in an article in the *Australian Magazine*¹⁵ colourfully described this evolution, and the increasing presence in the area of fine-dining establishments, ‘cashed-up hipsters’, and upmarket small bars.
- 1.65 The Wood Royal Commission in its report upon the NSW Police Force recommended the establishment of a medically supervised injection facility in Kings Cross. That occurred in May 2001. The Kings Cross Licensing Accord and some residents, say that its existence (it remains to this day) impedes a

¹⁴ Louis Nowra, *Kings Cross: a Biography* (2013).

¹⁵ ‘Sunset Strip’, *Australian Magazine*, 5-6 March 2016 pp 12-16.

progression towards a better amenity and a cleaner and generally less crime-ridden area. Whether this facility is still useful or appropriately located is not a question within my Terms of Reference. I did notice on my daytime inspection of the Kings Cross Precinct a number of people, presumably users, waiting on the footpath near to its entrance.

- 1.66 The number of licensed venues in Kings Cross, Potts Point and Darlinghurst, their residents told me, increased markedly between 2007 and 2013: from about 15 or more main licensed premises in 2007 to some 380 in 2013 (excluding bottle shops). The reasons for that increase, and the greater density of outlets that resulted, the residents attributed to a planning regime that gave, either in its terms or in its implementation, no or insufficient weight to the effect of them on the locality. One problem, of loud noise, arose out of the unsuitability of old residential buildings for noise attenuation without expensive retro-fitting, something that could not practically effectively be done without offending heritage rules or economically.
- 1.67 I asked the representatives of the City of Sydney in my meeting with the Lord Mayor and her officials about the circumstances which led to the alleged proliferation of licensed venues in Kings Cross. In response, the officials provided relevant planning documents, Council resolutions and references to Court decisions in planning cases relevant to this question.
- 1.68 In the late 1990s, the *Liquor Act* 1982 (NSW) was amended to empower the Licensing Court of NSW to grant approval to applicants to extend the trading hours of those premises that had the benefit of a development approval, without further reference to the Council.
- 1.69 On 5 June 2006, the Council unanimously passed a resolution of concern about the cumulative impacts of ‘*the establishment of new, and intensification of [trading at] existing late night licensed premises in the Kings Cross precinct*’.
- 1.70 In December 2007 the Council adopted the Late Night Trading Premises Development Control Plan (DCP). Until then, there had not been any planning

policy specifically applicable to the entire City of Sydney to regulate the trading hours and management of licensed venues whose operators wished to trade late. The DCP was in part at least, a response to successful appeals by licensees to the Land and Environment Court against decisions of Council.¹⁶ One such decision was to refuse a development application for a licensed premises whose operators wished to trade late. What was sought was approval of alterations and change of use of existing commercial premises on Darlinghurst Road, Kings Cross (from a Hungry Jack's restaurant to a licensed restaurant and cocktail lounge, with late night trading until 3 am). Evidence from a Police Officer at the hearing was that *'as far as licensed premises are concerned, [Kings Cross] has reached saturation point'* and, *'the area, at present, [is] the most densely populated as far as licensed premises per capita of its population in Australia'*.¹⁷ The Land and Environment Court (Commissioner Hussey) nonetheless held that there was no substantive evidence enabling an objective assessment of the required kind.

1.71 The Commissioner expressed himself in this way (at [63], [64] and [69]):

... I have given careful consideration to the cumulative impact/saturation point policy in order to apply it on an objective basis. As the underlying rationale and evaluation criteria in terms of the competing objectives to encourage entertainment activities, whilst protecting residential amenity in this precinct is unclear, I have detailed the methodologies suggested by the town planners ... as a basis for such objective evaluation.

... the building alterations are likely to take some 18 months to complete, following which the 12 month trial starts. Therefore, there is a period of some 2½ years to undertake appropriate studies to establish objective evaluation criteria, which hopefully satisfies all stakeholders.

In the ultimate, no substantive, strategy details were presented to the Court, which indicated the overall public interest would not be well served by this development that reasonably satisfies the requirements for development within the Kings Cross Entertainment Precinct. If the saturation point has been reached, I expect some actual details as mentioned in the planners joint conference could have been provided to confirm this situation. ...

¹⁶ See, for example, *Jones-Evans v Council of the City of Sydney* [2006] NSWLEC 628 (Commissioner Moore); *C-INC Pty Ltd v Sydney City Council* [2006] NSWLEC 607 (Commissioner Hussey); *Cross Entertainment Pty Ltd v Sydney CC* [2006] NSWLEC 488 (Commissioner Hussey); *Rifon Pty Ltd v Sydney City Council* [2006] NSWLEC 778 (Commissioner Hussey).

¹⁷ *Rifon Pty Ltd v Sydney City Council* [2006] NSWLEC 778 (Commissioner Hussey) at [42].

1.72 In an earlier appeal in 2005 the Land and Environment Court¹⁸ (Commissioner Moore) had stated the tests for an application for an extension of trading hours for licensed premises, an increase of patron numbers or the addition of attractions such as music and other entertainment. The Court there took an avowedly precautionary approach.¹⁹ The appeal was from a decision of Randwick Council to refuse an application for an extension of a licence. The Court dismissed the appeal because it was not satisfied that additional anti-social behaviour of departing patrons could be managed to protect the nearby residential areas.²⁰

1.73 The DCP introduced by the City of Sydney in 2007 was intended to enable it to assess the performance of management of an hotel or other licensed establishment, and its impact on the neighbourhood amenity. Any extended hours (after 10pm or midnight for some premises and 1am or 2am for others) in the ‘late night management areas’ and ‘Local Centre Areas’ (part of Kings Cross being so designated) were to be subject to a trial period. If the conduct there proved to be unsatisfactory, then trading would revert to ‘base hours’. Trial periods would expire from time to time and require the lodgement of applications for renewals or extensions of approved for extended trading hours. Renewals or extensions were permissible only if Council were satisfied that the premises had demonstrated ‘*good management performance and compliance with a plan of management ... following completion of a satisfactory trial period*’ (s 3.1).

1.74 Following the decision referred to in paragraph 1.71, the Sydney City Council commissioned studies to quantify the cumulative impacts of late night trading premises on alcohol-related crime and to identify strategies to reduce them.²¹ The studies influenced amendments to the 2007 DCP (adopted by Council in December 2010), among other things, to clarify that an application to renew

¹⁸ *Vinson v Randwick Council* (2005) LGERA 27 (Commissioner Moore).

¹⁹ at [92].

²⁰ at [91].

²¹ One example is Monograph No 63 of the National Drug and Alcohol Research Council by A Shakeshaft and S Love and E Wood ‘Alcohol Related Crime in City of Sydney Local Government Area An Analysis for the Council of the City of Sydney’ (2011).

extended trading hours would be required at the end of every trial period, to permit trial periods of five years only in cases where a premises had completed no fewer than 3 years of trial periods, to re-categorise some premises designated previously low impact as high impact, and to clarify that an intensification of operations as high impact premises would require a development application and not merely an application, to modify an existing consent.

1.75 Within a few days of their making by the Council, the amendments were annulled by the then Minister for Planning, the Hon Tony Kelly in exercise of his powers under s 22A of the Environmental Planning and Assessment Regulation 2000.²² The reason given by the Minister for the direction was that:²³

... the system of rolling development consent periods that have been in place since 1 January 2008 ... does not address the growing concerns about the effect of the uncertainty associated with this approach on the late night trading economy of our global city.

1.76 The events that had occurred, successful appeals to the Land and Environment Court against decisions of Councils, and the annulment by the Minister confirmed the substance of what the Mayor of Sydney told me in my meeting with her, meant that the Council was effectively thwarted in its attempts to preserve or improve the amenity of the areas of concern, and to reduce alcohol-related violence in them. It seems to me that the Mayor's response answered a claim by some of the residents that Council, by allowing or causing a proliferation of licensed premises, was a contributor to a deterioration in amenity and an increase in violence.

1.77 The Sydney City Council faced a difficult set of circumstances: Kings Cross was not within the municipality for the period in which longer hours of trading had been permitted in the lead-up to the Sydney Olympics. When that area did come within its control in 2004 it could only seek to regulate the grant of new planning approvals (and not restrict permissions already subsisting).

²² This followed a direction issued under s 74F of the *Environmental Planning and Assessment Act* 1979 (NSW).

²³ Letter dated 14 December 2010 from Hon Tony Kelly to Lord Mayor of Sydney.

1.78 Planning controls by way of highly conditioned approvals are unlikely to be a complete or entirely satisfactory means of regulating the sale and consumption of alcohol and its consequences. The events which I have just summarised show this to be so.

VII - Liquor and the Law in New South Wales and Elsewhere

- 1.79 Some of the submissions opposing the Amendments suggest that regulation, strict or otherwise, of the sale of alcohol was unique and novel. A slight acquaintance with the history of the regulation of the sale of alcohol including in New South Wales, would soon show that nothing could be further from the truth.
- 1.80 In the United Kingdom, beer and cider, the latter in some places as late as the 20th Century, were often drunk in preference to water which was regarded as unpalatable and dangerously polluted.
- 1.81 A number of opponents argued that the Amendments were a blunt instrument. Some contended that the Casino was unfairly advantaged. Each of these objections is the subject of further consideration elsewhere in this report. Some comments should however be made here. Parliament may only use the instruments available to it. One of these, increasing by tax, the price of alcohol, which has been effective to reduce excessive consumption of alcohol and problems that it caused,²⁴ in varying degrees in other places and other times, was denied to the States in 1997 by the High Court's decision in *Ha v New South Wales*.²⁵ Not only were the States thereby denied an instrument of social policy, but also they lost a valuable source of revenue which might otherwise have been applied to beneficial ends such as education and the improvement of health. At the same time the States also lost their power to levy taxes on the sale of tobacco. The lost revenue (excise) on refined petroleum, tobacco and alcohol has been estimated at about \$5 billion annually, some 16% of total State

²⁴ The matter is not uncontroversial. One study has questioned the effectiveness of the benefits of increasing the price of alcohol to reduce the harms associated with alcohol consumption in light of what the authors say is an Australian tendency for high-intensity drinking: J Byrnes et al, 'Can harms associated with high-intensity drinking be reduced by increasing the price of alcohol?' (2013) 32 *Drug and Alcohol Review* 27. Pricing was effective to some extent at least in British Columbia: T Stockwell et al, 'Minimum Alcohol Prices and Outlet Densities in British Columbia, Canada: Estimated Impacts on Alcohol-Attributable Hospital Admissions' (2013) 103 *American Journal of Public Health* 2014.

²⁵ (1997) 189 CLR 465.

revenue.²⁶ Revenue of \$289 million was lost by New South Wales alone.²⁷ State taxes on gambling may go some way towards repairing, although no member of the Executive or the Parliament has told me that this is the case.

- 1.82 In the United Kingdom, between 1729 and 1751, eight sets of legislation were enacted to regulate and tax sales of gin.²⁸ A number of influences were in play: changing social conditions; new and inexpensive means of manufacturing; the cheapness of spirits, their accessibility to poorer people; a surplus of corn which landowners sought to sell to distillers; and the need to raise taxes to fund the European wars in which the British were repeatedly engaged. The effects of the measures were mixed. They did, however, it is generally accepted, make some contribution to a reduction in the consumption of alcohol.
- 1.83 Sydney, right from its first European settlement, was beset with problems of illegal manufacture and consumption of alcohol, attracting close and early regulation by the Governor.
- 1.84 The regulations were often controversial. Governor Phillip attempted to reduce consumption by restricting importation and trade. The NSW Corps (the ‘Rum’ Corps) were notorious for their monopoly of the illicit trade in spirits to the detriment of their proper functions. Governor Hunter prohibited the importation and distillation of spirits without consent. Immediately before the turn of the 19th Century, a regime was introduced for the licensing of hotels by honorary magistrates. The Freemasons Arms at Parramatta was the first licensed hotel. Early in the 19th Century, a Government brewery commenced brewing at Parramatta.

²⁶ See D James, Australian Parliamentary Library, Economics, Commerce and Industrial Relations Group, *Federalism Up in Smoke? The High Court Decision on State Tobacco Tax*, Current Issues Brief 1 (1996-97), Accessed 14 August 2016
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9798/98cib01.

²⁷ Liquor Administration Board, 13th Annual Report, 1995-1996, p 34.

²⁸ Gin was something of a generic term for strong, distilled spirits, almost unpalatable without the addition of fruit and other flavours. See *J Warner, Craze: Gin and Debauchery in an Age of Reason* (Profile, 2013).

- 1.85 By Governor Macquarie's time, the number of liquor licences had climbed to 101. He reduced the number to 31 and established a form of licence for the sale of beer alone. Further regulations introduced during his tenure required those selling spirits to sell beer as well, resulting in a change, it is thought, from the alehouse to the public house.²⁹
- 1.86 The first statute directed to liquor generally was not introduced until 1825. It prohibited Sunday trading but permitted public houses to trade until 9pm Monday to Saturday. In 1830, the *Publicans Licensing Acts Consolidation Act* required that hotels provide a minimum number of sitting rooms and rooms for accommodation.³⁰ Amendments to the *Liquor Act* in 1835 required that spirits not be sold in the 'tap room' but in the bar. Closing time for hotels was extended to 10pm in 1849.
- 1.87 Licensing districts, courts and inspectors were appointed in 1882 pursuant to the first comprehensive *Licensing Act*. The measures enacted by it were intended to reduce the deleterious effects of alcohol. In 1887 the Intoxicating Drink Inquiry recommended a limit on the number of licenses, proportionate to the number of electors, the continued prohibition of Sunday trading, and a closing time of 11pm rather than midnight on weekdays.³¹
- 1.88 Amendments to the *Liquor Act* made in 1905 enacted a minimum drinking age of 18 and forbade the issue of new licences. Many electorates, having been given power to do so under the *Liquor Act* of 1898, reduced the number of licences, with the consequence that some 293 hotels and 46 wine bars closed. It has been estimated that by 1913, 344 hotels had closed for this reason. These measures were encouraged by the temperance movement. The Independent Order of Rechabites had promoted temperance in Australia from the 1870s. In Sydney, the 'Australian Home Companion and Band of Hope Journal',

²⁹ Historic Houses Trust, *Sydney's Pubs: Liquor, Larrikins and the Law*, sheet 3.

³⁰ Section 24.

³¹ 20 September 1887. The Commission was established to make full inquiry into the causes of the excessive use of intoxicating drink by the people of NSW, the perceived deterioration it had produced in public morality and the extent to which legislation had been effective or otherwise in 'repressing the vice of drunkenness' and regulating the traffic in liquor: Votes and Proceedings, 1887-88, Vol 7, p 3.

published between 1856 and 1861, also advocated abstinence. The determination and strength of the Temperance Movement, as well as the Great Depression, probably contributed to increased temperance to the point that consumption in 1932 was only a quarter of what it is per head today.³²

1.89 In 1913, a referendum settled upon a closing time of 11pm.

1.90 The electors of New South Wales in 1916 next approved a closing time of 6pm. The result may have been influenced by a riot that had taken place on 14 February 1916 in which some 15,000 soldiers based at Casula, upon being ordered to increase their hours of training, rampaged through Liverpool and drank, it is said, several hotels dry. Some travelled to Central Station and rioted there. At about that time most States adopted earlier closing times than previously, partly due to wartime austerity.

1.91 In 1923, closing at 6pm was prescribed by legislation. The issue was again put to the people of New South Wales in 1947. The voters did not favour change. A referendum in 1954 by a narrow majority voted to extend the closing time to 10pm, to take effect in 1955.

1.92 A closing time of 6pm was criticised as causing the 'six o'clock swill', rapid and excessive consumption between 5 and 6pm, resulting in accidents and domestic violence in the period immediately after 6pm. A Royal Commission on Liquor Laws was appointed in 1951. The Commissioner (Justice Maxwell) criticised 6pm closing in his report, suggesting it was favoured by operators of licensed premises because it permitted a more rapid return on the sale of liquor, with lower costs than might be incurred in longer hours by the need for more staff, supervision, and service.³³

³² R Room, 'The Dialectic of Drinking in Australian Life: from the Rum Corps to the Wine Column', (1988) 7 *Australian Drug and Alcohol Review* 413-37.

³³ See State Records of New South Wales, NSW Parliament, NRS 1580 *Report of the Commissioner, Royal Commission on Liquor Laws in New South Wales*, vol 1, 1954.

1.93 Late trading to 3am and even later in the morning was permitted, it should be noted, for the first time in 1989.³⁴

Earlier related reforms

1.94 The Amendments with which these Reviews are concerned are (as I have explained earlier), to some extent, only additions to or adaptations of amendments to earlier legislation.

1.95 The *Liquor Act 2007* introduced provisions that amalgamated 21 different types of licences that had existed under the preceding Act into 6 categories: of hotels, clubs, packaged liquor outlets, on-premises, producer/wholesaler and a ‘limited’ licence. By 2014 important changes to the regime of the 2007 Act had already been made.

1.96 *The Liquor Legislation Amendment Act 2008* imposed a period of closure of 6 hours on all licences granted after 30 October 2008, and permitted extended hours of trading for all new licences. *The Liquor Amendment (Special Licence Conditions) Act* of the same year introduced a scheme by which ‘violent venues’ might be made subject to the provisions in Schedule 4 of the *Liquor Act*.

1.97 *The Liquor Amendment (Temporary Licence Freeze) Act 2009* enacted a freeze on liquor licence for part of Sydney City. The area to which the freeze applied included George Street South, Oxford Street, Darlinghurst and Kings Cross. The effect of the freeze, which commenced on 25 June 2009, was the prohibition of the grant of new licences in that locality and included the grant of applications for extended hours trading. The freeze also discouraged, as a number of submitters pointed out, the making of alterations to premises that, if made, would have attracted patrons into the precinct or the venue in question. The problem posed, I was told, was that licensed venue operators were unable to redevelop or refurbish their premises to adapt them to the changed regulatory regime. I have formed a view (which I discuss elsewhere) in the Report, some

³⁴ *Liquor Amendment Act 1989*. Registered clubs had unlimited trading hours from the 1970s until 1 July 2008, at which time they became subject to ‘standard trading hours’ but with 24 hours on-premises trading available on application.

but by no means all, operators may have been resistant to making changes, either to their premises or the operations in the hope that the Amendments might be repealed. The freeze, especially in its operation upon premises which might otherwise have appropriately been adapted or improved, may of itself have contributed to the reduction in the number of visitors to the relevant precinct.

- 1.98 A *Liquor Legislation Amendment Act* was enacted in 2010. It was intended to deal with ‘high risk entertainment precincts’. Another Act, the *Liquor Amendment (3 Strikes) Act 2011 (No 2)* came into force in January 2012 and provided for ‘strikes’ to apply to premises on or near which serious offences under the *Liquor Act* were committed. Pursuant to it, a licence could be suspended for up to 3 months, cancelled suspended or cancelled for up to 12 months, and certain persons disqualified for a period from holding a licence for the relevant premises when three strikes³⁵ had accrued.
- 1.99 In November 2012, the *Liquor Amendment (Kings Cross Plan of Management) Act* came into force. It established the Kings Cross Precinct and conferred power to make regulations identifying and affecting licensed premises for the improvement of safety. The 2013 *Liquor Amendment (Small Bars) Act* created a new type of licence for premises with a capacity up to 60 people. It could more liberally be granted than licences of larger premises. The object was to enable the establishment of smaller premises likely to attract less threatening, less impulsive, more restrained customers, on evidence of the likelihood that this would occur.
- 1.100 The *Liquor Amendment (Kings Cross Plan of Management) Act 2013* conferred power on a police officer to make short term banning order where a person had, among other things, failed to leave relevant licensed premises in the Kings Cross Precinct after being required to do so because the person was intoxicated, violent, quarrelsome or disorderly.³⁶ ILGA was empowered to make orders

³⁵ Three convictions for prescribed offences under the *Liquor Act*: imposition of the second strike is within the discretion of the Secretary. The action that ‘must’ be taken on the third conviction is within the ‘jurisdiction’ of ILGA.

³⁶ See *Liquor Act* s 116AD.

banning a person for a period of up to 12 months who had been charged with, or found guilty of a serious indictable offence involving violence committed in a public place or on relevant premises while that person or any victim of the offence was affected by alcohol.³⁷ The changes in that Act also required that high risk venues install and operate identity scanners to give effect to the system of banning orders.

1.101 A review of the *Liquor Act* was chaired by Mr Michael Foggo and reported in November 2013. Mr Foggo's review made 91 recommendations, some only of which are of relevance to my Reviews.

³⁷ See *Liquor Act* s 116AE.

Part Two - Overview of the Amendments and related legislative provisions

2.1 I have sought in the ensuing Parts of this report, in a virtual maze of complicated legislation, to identify the provisions that are most relevant to my tasks. By using the word ‘maze’ I do not mean to be critical. As the preceding Part shows, the regulation of the sale and consumption of alcohol has rarely been non-controversial or simple. Many competing forces are at work. New measures may have to be formulated and adopted quickly to deal with problems suddenly arising or arising in different places. All of the elements of society may be affected at one time or another. Competition and tensions are inevitable. Continuing legislative responses are therefore understandable.

2.2 The objects of the *Liquor Act* are stated as follows (s 3):

- (1) ...
 - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
 - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
 - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

2.3 The Act requires any person selling³⁸ liquor to have a licence: s 7. The conditions of a licence are imposed by the Secretary (s 53) or by operation of

³⁸ ‘Sell’ is defined to include barter or exchange; offer, agree or attempt to sell; expose, send, forward or deliver for sale; cause or permit to be sold or offered for sale.

the Act itself: s 11(1)(b). Section 11A, which applies to licences granted after 30 October 2008, provides in part:

- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (**the 6-hour closure period**).

I - Trading hours

- 2.4 The ‘*standard trading period*’, for licences is 10am to 10pm on Sundays and 5am to midnight for the rest of the week: s 12.
- 2.5 For packaged liquor sales for consumption away from the licensed premises, the standard trading period ends at 10pm: s 12(1B)-(1C). This latter requirement is the subject of the Executive Review. The *Liquor Act* provides (s 29(1)) that the holder of a packaged liquor licence (across NSW), such as for a bottle shop, must cease selling liquor for consumption away from the licensed premises at 10pm (s 12(1B)-(1C)).
- 2.6 Two particular restrictions, both in the Liquor Regulation, and both commencing on 24 February 2014, apply to each of the Kings Cross Precinct and [to certain premises] in the Sydney CBD Entertainment Precinct.
- 2.7 The first prohibits the sale and supply of alcohol from certain licenced premises in the Kings Cross³⁹ and the Sydney CBD⁴⁰ Entertainment Precincts between 3am and commencement of the standard trading period. Those premises may continue selling food, non-alcoholic drinks, and to offer entertainment and to maintain services and facilities. This requirement as to the cessation of liquor sales from 3am is a subject of the Statutory Review.
- 2.8 The second restriction is the lockout to apply from 1.30am, again in those Precincts. Licensees must not permit patrons to enter the premises between 1:30am to 5am.⁴¹ While patrons may remain in the premises after 1:30am, if they leave after that time they may not re-enter.
- 2.9 Some media reports suggested that the recent decision of the Supreme Court in *Stuart v O’Connor* [2016] NSWSC 1179 may have undermined the

³⁹ Liquor Regulation cl 53D.

⁴⁰ Liquor Regulation cl 53Z.

⁴¹ Liquor Regulation cl 53C (Kings Cross); cl 53Y.

effectiveness of the Amendments.⁴² What the Court held there needs to be understood as a decision in administrative law with respect to delegation of powers and the making of Regulations. The Court did not hold that what was purported to be done there could not be done, but rather that it had to be done by Regulation rather than by specification by the Secretary. In any event, I am told, the Government has announced there will be an appeal from that decision.

2.10 I received correspondence from a licensee whose premises were subject to the lockout only by reason of the administrative action challenge in the case just mentioned. It would not be appropriate for me to comment further on this in light of the impending appeal. His correspondence with me is **Appendix 3**.

2.11 The premises within these Precincts subject to the requirements include those operated under hotel, club and on-premises (public entertainment venue) licences, those declared by the Secretary to be ‘high risk’; and declared premises to which a level 2 licence relates under Schedule 4 to the *Liquor Act*. (12 premises were listed in the schedule at the time of writing, most of them outside Kings Cross and central Sydney.)

⁴² The decision concerned clauses 53Y and 53Z of the Liquor Regulation 2008 and held them to be *ultra vires* and invalid.

II - Licensing

2.12 Part 3 of the *Liquor Act* lists the types of licences that may be granted. If the primary purpose of a business or activity carried out on the premises is the sale or supply of liquor, then an on-premises licence must not be granted.⁴³ An on premises licence (s 24) is defined in this way:

... [one that] authorises the sale or supply of liquor only if the liquor is sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied or provided to people on the licensed premises

2.13 On-premises licences must specify the business or activity or kind of licensed premises: s 23. Examples of such businesses and activities are a restaurant and 'public entertainment'.

2.14 ILGA (constituted under the *Gaming and Liquor Administration Act 2007* (NSW)) is charged with functions that include the conduct of investigations (s 42) and disciplinary proceedings (Part 9-9A).

2.15 Certain licensing applications must be accompanied by a community impact statement: s 48. Applications for extended trading authorisations for on-premises licences are one example, but the requirement only applies if the late trading is at any time between midnight and 5am: s 48(2)(d). ILGA must not grant a relevant licence, authorisation or approval application unless it is satisfied that that the overall social impact will not be detrimental to the wellbeing of the local or broader community: s 48(5).

2.16 ILGA's powers include the permitting of the sale or supply of liquor for consumption outside the standard trading periods under certain licences, including an on-premises licence (s 49(1)(c)). It may do so for a specified period between midnight and 5am on any day of the week: s 49(2)(b)). Such approvals authorise the sale and distribution of liquor either on a regular basis

⁴³ Exceptions exist for airports and tertiary institutions: s 22.

or on a special occasion until varied or revoked: s 49(5). A threshold for the grant of extended trading is the satisfaction of ILGA that (s 49(8)):

- (a) practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
- (b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

(The threshold for rejection in (b) is a high one, of ‘frequent’ and ‘undue’ disturbance. ‘Undue’ is a word of different meanings to different people.)

2.17 Section 51 makes general provision for licence-related authorisations including extended trading. In granting them, ILGA has the same power as in granting licences generally: s 51(3). It includes the imposition of conditions: s 51(9). Approvals may be revoked or varied by ILGA on its own initiative, or on application by the licensee, the Secretary, or the Commissioner of Police.

2.18 The Minister may impose special conditions for any premises so declared, and may add or remove any relevant license of a ‘*declared premises*’: s 11(1A) and Schedule 4. Declared premises are those to which a level 1 or 2 licence relates (Sch 4, cl 1(i)). Such premises, wherever they are in New South Wales, are identified by name in Schedule 4. Licensees of such declared premises must:

- a. not permit patrons to enter the premises after 1:30am or before 5am: cl 3(1);
- b. ensure that, between midnight and closing time (or 5am if not required to close), no drink is sold or supplied for consumption on the premises in a glass or breakable plastic container: cl 4;
- c. ensure that, between midnight and closing time (or 5am if not required to close), no drinks are sold or supplied on the premises that are ‘shots’ or which contain prescribed levels of spirits, liqueur, or alcohol: cl 5;

- d. that the sale or supply of liquor cease for 10 minutes during each hour between midnight and 5am and the licensee must distribute free drinking water or food to patrons and actively encourage patrons to consume water (cl 6); and
- e. ensure that the declared premises cease to sell or supply liquor 30 minutes before it is required to cease trading.

2.19 A licensee must comply with any conditions to which the licence is subject and the penalty for a contravention is imprisonment for 12 months or a fine, or both: s 11(3).

III - Risk Based Licensing

2.20 Part 4, Div 2A of the Liquor Regulation established a scheme for levying licence fees based on risk to apply to most liquor licences. It does so pursuant to s 58A of the *Liquor Act*. The scheme creates a financial incentive for [operators of] venues to maintain premises that are safe and as low risk as is practicable by setting periodic licence fees comprising the following elements:

- a. a base fee (cl 5D) (the annual fee for clubs and full hotel licences is \$510.00, and \$408.00 for an on-premises licence. Packaged liquor licensees pay \$510.00, \$1,020.000 or \$2,040.00 per licence each year depending upon the total number of such licences as are held);
- b. compliance history risk loading (cl 5E);
- c. trading hours risk loading (cl 5F) (at the time of writing, the loading was \$1,000.00 for a multi-occasion authorisation, \$2,500.00 for trading to 1.30am and \$5,000.00 if the premises trades until after 1.30am);
- d. the location risk loading (cl 5G) (payable only if a compliance history risk loading element is payable); and
- e. patron capacity loading (cl 5H) (payable only if a compliance history risk loading element is payable).

2.21 This scheme was to be phased in. At present, only the base fee and the trading hour risk loading are in effect. The Liquor Regulation was amended in 2016⁴⁴ to postpone the first due date of that element to 29 May 2017. The other elements (location and patron capacity) were, again by Regulation, prescribed not to be payable for the years commencing 15 March 2015 and 15 March 2016. Other adjustments have been made to the scheme since its introduction. For example, the trading hours risk loading is not payable by hotels or clubs that

⁴⁴ By the Liquor Amendment (Fees and Other Matters) Regulation 2016.

relate to a tourist accommodation establishment if the Secretary is satisfied that the establishment is open after midnight primarily for residents and their guests, or persons invited to attend a function or conference.⁴⁵ Licensees in regional and remote localities with a population of fewer than 1,000 for which accessibility to goods, services and opportunities for social interaction is significantly restricted are also exempt from the trading hours risk loading.

2.22 The assessment of a licensee's compliance involves an inquiry whether a prescribed offence occurred in the previous calendar year or if a strike is still in force (s 144D). Strikes remain in force for 3 years from the date of the strike (s 144D). If a compliance history risk loading is payable, then two other elements of total fees payable are engaged:

- a. a location risk loading element (cl 5G) is payable if the premises is located in the Kings Cross Precinct, a prescribed precinct (the Sydney CBD Entertainment Precinct is one) or an area to which a relevant local liquor accord applies; and
- b. a patron capacity loading element (cl 5H) is also payable, based upon the capacity of the premises. The patron capacity loading element is based on the number of patrons the premises is licensed to hold, or, if there is no number attached to the licence, such other number as determined by the Secretary.

2.23 I deal further with the topic of risk-based licensing in Part Eight of this report.

⁴⁵ Liquor Amendment (Fees and Other Matters) Regulation 2016.

IV - Regulation and Control of Licensed Premises

2.24 Part 5 of the *Liquor Act* is directed, among other things, to the prevention of intoxication (s 73) and the exclusion of persons from licensed premises (ss 76-77). It establishes a regime enabling ILGA to make ‘banning orders’ (s 78).

V - Disturbance Complaints

- 2.25 Disturbance complaints may be made under Part 5, Division 3 of the *Liquor Act*. A person may complain to the Secretary that the quiet and good order of the neighbourhood of a licensed premises are being unduly disturbed because of the manner in which the business of those premises is conducted or the behaviour of persons after they leave the premises (s 79). The Secretary may convene a conference to hear submissions in relation to a complaint or invite written submissions from the licensee (s 80). In dealing with the complaint, the Secretary may impose conditions on the relevant licence, or vary or revoke such conditions (s 81(1)(a) and (b)). This regime (albeit in a slightly different form) it will be seen later, was invoked in Newcastle in 2007 and resulted in the imposition of conditions by the Liquor Administration Board.
- 2.26 The conditions that the Secretary may impose include the prohibition of the sale or supply of liquor before 10am and after 11pm, restriction of trading hours of, and public access to the licensed premises, and the participation in and compliance with a liquor accord (s 81(2)).
- 2.27 Closure orders may be made by ILGA against licensed premises (Part 5, Div 4) for either the premises' closure for a short term (72 hours or less) or a long one (more than 72 hours). Closure orders may be made on various grounds, including public health, safety or the risk of serious offences on the premises (s 82). Short term orders may be sought urgently, including by telephone (s 83). The Secretary or the Commissioner of Police may apply for such orders (s 84). Any person may apply to the Local Court for a closure order if there is, or is likely to be, a breach of the peace in the neighbourhood of the licensed premises (s 86).
- 2.28 Late hour entry declarations may be made to prevent patrons' entry during late trading hours, even if the premises are authorised to trade during the period of them (Part 5, Div 5, s 87(2)).

VI - Restricted Alcohol Areas and Precincts

2.29 Within a licensed premises, an area may be declared for the restricted sale, supply, possession or consumption of liquor, including by restricting trading hours and the kinds of liquor which may be sold or supplied (s 115). The *Liquor Act* provides for precincts to ‘be declared by the regulations’ (s 116). Within a prescribed precinct, the Secretary may, with the concurrence of the Commissioner of Police, designate any specified licensed premises to be a ‘high risk venue’ (s 116B(4)). The *Liquor Act* deems any premises within a prescribed precinct that:

- a. allows liquor to be consumed on premises;
- b. is authorised to regularly trade after midnight at least one night a week;
and
- c. has a capacity of 120 people or more,

to be a high risk venue. ID scanning of patrons is required in such venues (ss 116D-E) and persons can be prohibited from entering or remaining on any licensed premises in Kings Cross by banning orders (ss 116F-G).

VII - Liquor Accords

- 2.30 Liquor Accords are the subject of Part 8 of the *Liquor Act*. Its provisions enable the Secretary to approve a liquor accord for a specific area, precinct and/or a specific community event.
- 2.31 The purpose of these is to eliminate or reduce alcohol-related violence or anti-social behaviour or other alcohol-related harm in a specified locality (s 131). Local Liquor Accords provide a forum for licensees, and others, to identify local alcohol related issues and to develop community responses to identified problems. Accords usually have a coordinator and membership is voluntary unless a licensee is directed by the regulations to join one (s 132). The parties to Local Liquor Accord include a licensee, the Secretary, the Police, a local council, and community or residents' groups, among others.
- 2.32 Part 8, Division of 2 of the Act is concerned with Precinct Liquor Accords (these are area-specific) and Community Event Liquor Accords (which are event and time specific). The precinct liquor accord provisions apply in substance to a community event liquor accord. A community event accord is created whenever the Secretary designates a community event as one to which such an accord applies, and approves measures for the area of the event: s 136C. Such a community event liquor accord may only be approved if the Secretary is satisfied of the same matters in relation to the *area* in which the accord is to apply as he or she is required to be satisfied of in approving a *precinct* liquor accord: s 136C(4).
- 2.33 There exists a Kings Cross Accord, but no precinct accord has been put before the Secretary for approval. (I have consulted its Chief Executive, Mr Douglas Grand, on three occasions, once when he was accompanied by five operators of businesses in the Kings Cross and CBD Precincts.)

2.34 Accords are a useful tool, but are not enforceable in the same way as legislation and regulation, depending as they do upon voluntary and complete participation by those selling alcohol.

VIII - Disciplinary Action

2.35 ILGA has a function of taking disciplinary action against licensees. The Secretary may carry out investigations and inquiries to ascertain whether a complaint should be made. The Secretary (and some others) may complain to ILGA in relation to a licensee (s 139(1)). Action that may be taken if a complaint is substantiated includes cancellation of a licence or the imposition of a condition to which a licence is to be subject or the revocation or variation of an existing condition: s 141(2)(a) and (e).

Part Three - The Experience Elsewhere

- 3.1 I was told by many, in the course of interviews of interested parties, and in written submissions, that the arrangements imposed by the Amendments were incompatible with the reputation and lure of Sydney as a ‘world’ or ‘global’ city: that the Amendments put it out of step with all, or certainly very many major international cities such as New York, Amsterdam, Paris, London, Los Angeles, Berlin and Tokyo.
- 3.2 Those who said that, also claimed that the Amendments were likely to discourage, indeed had already discouraged, international (as well as intranational) tourism to Australia. Tourists, it was said, would make the choice to travel to other global and more vibrant cities (including Melbourne) than come to Sydney.
- 3.3 These assertions were also deployed in support of a claim that Australia [Sydney, New South Wales] would be perceived to be ‘un-fun’ and a ‘nanny state’.⁴⁶ Foreign backpackers, it was said, took this view.⁴⁷ Some media outlets made similar assertions.
- 3.4 I explored, as best I could, these claims and those of the damage said to have been done to the night time economy of Sydney. I was assisted in doing so by a number of tables provided by various parties of trading laws in other cities. One was provided by the Police Force, and a second by the Australian Hoteliers Association. A third was produced by the Tourism Accommodation Association. None of them purported to be exhaustive or definitive. Indeed, an analysis by Liquor and Gaming NSW candidly expressed varying levels of confidence in the assertions and the information shown in the tables.
- 3.5 All providers, and those assisting me did their best, but it is not easy to ascertain the exact position in a number of major overseas cities. The table compiled in **Appendix 4** is the product of the various contributions. I have not proceeded on the basis that the information in the table is exhaustive nor precise. In many

⁴⁶ Keep Sydney Open submission p 11.

⁴⁷ Keep Sydney Open submission p 11.

cities, there are different licensing arrangements the practical operation of which may vary according to different and changing administrative approaches, some of which are historical, and may be both or either legislatively or administratively imposed or enforced.

- 3.6 Even taking into account that the information may not be exhaustive or definitive, I am able to draw a number of conclusions from it. First, all but a few major cities in the world impose restrictions on the hours during which alcohol may be sold in licensed venues. Secondly, all specify an age below which consumption of alcohol is illegal. Thirdly, many have restrictions on the hours during which packaged liquor may be sold ‘off premises’. All or most of the States of the USA, have a minimum drinking age of 21. That is another way in which those cities (albeit by State laws) have chosen to reduce the consumption of alcohol. It is true that lockouts are not commonly currently applied in major overseas cities: their like have been. Glasgow was subject to a ‘curfew’, which operated in much the same way as a lockout between 1993 and 2004. Scotland has, as I have said elsewhere in this report, adopted other measures in more recent times to curb the consumption and abuse of alcohol and alcohol-fuelled violence.⁴⁸
- 3.7 It is an overstatement to say that Sydney is *totally* out of step with, or inferior to major international cities because it has a requirement of cessation of service. To the contrary, a requirement of cessation of service is applied in many cities which were described by submitters as global and vibrant. As the table shows, in Paris, Rome and in Los Angeles, and also in Montreal and Vancouver, times of cessation of service are similar to Sydney. The lockout is one regulatory response, albeit currently rare, but one which might be viewed by some as a lesser restriction than a law which makes it illegal for people under 21 years to take alcohol. Accords making provision for a lockout at various times have been agreed in Australia. One in a very qualified form currently exists in Newtown.

⁴⁸ A floor price was one such measure. That response was challenged in the European Court. The Court held in 2015 that, although not invalid, other regulatory approaches ought first be given an opportunity to be trialled.

3.8 States and cities will tailor their own regulatory responses according to the circumstances which they have to confront, circumstances which may change from locality to locality, age group to age group and from time to time. Various cities have differing international visitor profiles. Proximity of venues to residences may vary from place to place. Drinking ages differ. Per capita alcohol consumption is not the same everywhere. Geography, culture (including drinking culture), and societal values will influence both peoples' attitude to alcohol and their response to it.

II - Licensed venues: hours of opening and ‘lockouts’

3.9 Some supporters of the Amendments and others took exception to assertions of the uniqueness of them.

3.10 One example of this was a response to Mr Koh’s assertions that ‘*no other international city worth its salt has [a lockout law]*’⁴⁹ and:⁵⁰

[n]o one has been able to answer the question why Sydney needs lockouts when no other city which has the same amount of people in terms of population, the same cultural diversity – why they don’t have these lockouts. A city like Melbourne, a city like New York.

3.11 The Australian Broadcasting Corporation’s Fact Check Unit investigated these assertions and published its results on 16 March 2016. In doing so, that Unit equated the Lockout laws with the ‘full suite of measures’ introduced by the Amendments (as did many in the submissions made to me). The Unit concluded that the claim was exaggerated. Sydney was not alone, the Fact Check Unit found, in having a last drinks time, and lockouts (known by different names including ‘one way door policies’ and last entry time): these operated in cities in New Zealand (Whangarei), Glasgow (it had a ‘curfew’ in 1993 and it operated until 2004). Lockouts have been in place in at least Melbourne [for a period], Townsville⁵¹, the Gold Coast and now in Brisbane. A ‘last call’ is usual in many cities around the world, including some very large ones. The Fact Check Unit said that they were ‘commonplace’ in the United States. Los Angeles, for example, ceases service at 2am.

3.12 Mr Koh told me that the ABC’s Fact Check Unit had misunderstood or misstated his argument, and that the particular reference to lockouts and the lockout laws in the relevant passage was only to the one-way door requirement that applied after 1.30 am, and not other components of the measures. Mr Koh said that the data which he alleged to be unreliable, incomplete and misleading concerned the combined effect of the measures. (Each of the submitters to whom he referred had made clear that it was not possible to separate out the

⁴⁹ During a radio broadcast on 22 February 2016.

⁵⁰ Channel 7 ‘Sunrise’ Program 22 February 2016.

⁵¹ See, for example, *Walker v Chief Executive* [2004] QCCTL 8.

effect of the one-way door requirement. They made their submissions on the express basis that the data, analysis and conclusions presented were ones which concerned the effect of the measures as a whole).

3.13 Many people have used the term ‘lockout laws’ as shorthand for the measures as a whole.

3.14 I turn to consider the experience of restrictions on licensed premises in Australia in recent times, focusing upon one-way door requirements.

II – Newcastle

- 3.15 Newcastle is a major city within 200 km of the City of Sydney. I visited Newcastle on 9 June 2016 with Mr Horton QC. I met there Mr Tony Brown, who has closely interested himself in the location and operation of licensed venues, behavior at and about them, community attitudes to them, and regulatory responses. Mr Brown conducted me on an inspection of the city and areas close to it in which licensed premises were located.
- 3.16 Supporters of the Amendments point to Newcastle as a successful example of the operation of lockout laws. Opponents say, among other things, that Newcastle is a much smaller city and does not compare in other respects with Sydney. Some opponents even imply that its people and those residing within reach of it are in some way coarser and more inclined to violence than those who frequent the Sydney CBD and Kings Cross. There is no evidence to support such an implication. On any view it is relevant to examine the Newcastle experience.
- 3.17 Newcastle is the sixth largest city in Australia and the largest regional centre in New South Wales. It is a coastal city and a major port. Several of its licensed venues were situated in a relatively small area attracting crowds comparable to the Kings Cross Precinct (up to 20,000 every weekend⁵²). Until March 2008, licensees were permitted to serve alcohol until 5am.
- 3.18 Between 2000 and 2008, the licensees there had adopted a system of self-regulation. Newcastle Police Local Area Command had reported the highest level of assaults. This and other indicators of alcohol-related harm were also confirmed as being high.⁵³
- 3.19 Mr Tony Brown has been a resident of Newcastle for most of his life and helped to frame measures to reduce alcohol-related violence. Mr Brown said that before March 2008, operators of licensed venues in Newcastle had trialled

⁵² See page 5 of the decision of the Liquor Administration Board (Mr Armati) of 14 March 2008.
⁵³ See, for example, Miller et al, 'Dealing with alcohol-related harm and the night-time economy' (DANTE) (2012) (National Drug Law Enforcement Research Fund, Monograph Series 43).

measures such as education, Responsible Service of Alcohol (RSA), marshals, more police, high visibility policing and security, drink restrictions, transport improvements and other measures. They proved insufficient. There were, he said, ‘*no enforceable precinct-wide supply-based reductions in last drinks times*’.

- 3.20 In July 2007, Police lodged complaints to the Liquor Administration Board against four premises in central Newcastle. In 2007, proceedings were commenced in the Liquor Administration Board by the Commissioner of Police under s 104 of the *Liquor Act* 1982 by way of a disturbance complaint against those four. Some residents joined as parties to that application. In early November 2007 Mr Tony Brown also lodged a complaint against the same premises. Other premises⁵⁴ were joined as parties. The Police sought a 1am lockout and a 3am closing for each of the subject premises.
- 3.21 That complaint was decided by the Board (Mr David Armati, Chairman) on 14 March 2008. The decision was that the majority of the respondent licensees must serve last drinks at 2.30am (half an hour before a 3am closing time), and that there be a curfew or restricted entry (ie a lockout) from 1am.
- 3.22 The Board found it to be ‘plainly demonstrated’ that there was a link between late trading at venues and high levels of intoxication, with subsequent criminal and anti-social behaviour. It also found that there was a culture of a high consumption of alcohol on the part of customers of these premises.
- 3.23 These relevantly were the Board’s (Mr Armati’s) actual findings:

The Board is satisfied that the Police request for a 1.00am curfew is appropriate. This will reduce migration and therefore help reduce the number of incidents, and the severity which would be greater with additional drinking time, more than the currently voluntarily imposed 3.00am curfew is likely to further achieve, to the extent it has achieved improvements to date.

The Board is concerned that the mandating of a closure of all of the premises that currently trade up to 5.00am at 3.00am will mean a substantial number of patrons spilling out onto the streets at the same time. ... It is apparent that the limited public transport options currently available will not be sufficient to readily move all these patrons.

...

⁵⁴ Under s 104 of the *Liquor Act* 1982, the complaints related to a ‘licensed premises’.

3.00 am closure was the major outcome sought in this conference and, subject to the variation to 2.30am for some of the premises, is imposed. A number of further initiatives must be adopted in parallel to these matters.

...

3.24 After the decision of the Board was delivered, the Police Commissioner and the licensees agreed to extend the closing and restricted entry times by half an hour as part of a compromise of an appeal by the respondent premises [licensees] from the Board's decision. The relevant venues now close at 3.30 and are subject to a lockout from 1.30am.

3.25 The results of these arrangements have been the subject of substantial research and analysis. That work strongly suggests that the measures have been effective to reduce alcohol-related violence, and to have improved safety and amenity. In the DANTE report⁵⁵, the authors say this:

... the number of assaults in Newcastle dropped significantly during the study period whereas the community-based interventions had no significant effect in Geelong. This is in line with the current literature. Of note is the increase, rather than a decrease, in alcohol-related assault rates after the implementation of the alcohol industry funded 'Just Think' social marketing campaign. The most likely explanation for the different results between Geelong and Newcastle is that none of the interventions in Geelong address alcohol consumption. Interventions that address total alcohol consumption have consistently been found to be the most effective in reducing alcohol-related violence.

3.26 There are, it should be noted however, periods in which an increase in assaults occurred. The overall trend, nevertheless, is a substantial lessening of them. Periodic increases in 2012 may have led the Newcastle police to warn licensees publicly that if there were no reduction in assaults, they would consider applications for further reductions in closing times.

3.27 BOCSAR too has published a study of the effects of these restrictions.⁵⁶ The authors concluded that there had been a significant reduction in alcohol-related assaults in the area affected by the restrictions, but sites which had been adopted for the purpose of comparison did not suffer any relevant increase, in short that

⁵⁵ Executive Summary p 6 of Miller et al, 'Dealing with alcohol-related harm and the night-time economy' (DANTE) (2012) (National Drug Law Enforcement Research Fund. Monograph Series 43) (references omitted).

⁵⁶ C Jones et al, 'The Impact of Restricted Alcohol Availability on Alcohol-Related Violence in Newcastle NSW', *BOCSAR Crime and Justice Bulletin*, Number 137, November 2009.

there appeared to be no geographic displacement of assaults into the neighbouring entertainment district.⁵⁷ Other research undertaken by the School of Medicine and Public Health at the University of Newcastle concluded that a restriction in closing times to 3-3.30am in Newcastle produced a large reduction in relative terms in assaults of 37% compared to a control locality.⁵⁸

3.28 Mr Brown said that the increased safety on the streets was obvious: more patrons were enjoying a more diverse range of smaller and eclectic licensed premises. Newcastle has enjoyed a renaissance of live music. He pointed out that Newcastle has a history of being a ‘crucible’ for live ‘pub rock’ bands and audience. Many, including *Midnight Oil*, *Cold Chisel*, *Angels*, *Screaming Jets* he told me, have credited Newcastle and its audience as a factor in their earlier success. As Mr Brown pointed out, these entertainers achieved their success and large audiences in Newcastle when most hotels closed at 10pm, and *all by midnight* [my emphasis].

3.29 Mr Brown drew attention to the evidence of the success of the Newcastle lockout and succession of service at 1.30am and 3.30am respectively:

- a. a reduction in assaults by 64% (Newcastle Police data) since 2008;
- b. a doubling and more, of the number of licensed premises (mainly restaurants and smaller bars).

3.30 Contrary to the submissions of a number of the opponents, Newcastle is not an unsuitable comparator to Kings Cross making due allowance for the history and character of the latter and the much larger population of the Sydney region.

⁵⁷ C Jones et al, ‘The Impact of Restricted Alcohol Availability on Alcohol-Related Violence in Newcastle NSW’, *BOCSAR Crime and Justice Bulletin*, Number 137, November 2009 p 10.

⁵⁸ K Kypri et al, ‘Effects of restricting pub closing times on night-time assaults in an Australian city’ (2010) 106 *Addiction* 303.

III – Queensland

- 3.31 In February 2016, the Queensland Parliament enacted amendments to the *Liquor Act 1992* (Qld) to restrict the sale of takeaway liquor, trading times and behaviour at and near licensed premises. From 4 March 2016, retail outlets of takeaway alcohol (without an approval for extended trading hours) may not trade past 10pm. From 1 July 2016, all licensed premises must cease service of alcohol at 2am, except those within the ‘safe night precinct’ (defined by the Liquor Regulation 2002). The latter must cease service of alcohol at 3am. The Amendments do not require venues to close, and allow them to continue to trade by selling food and non-alcoholic beverages, and to provide entertainment.
- 3.32 From 1 July 2016, drinks which are designed for rapid consumption and contain a high percentage of alcohol, cannot be sold between 12am and 5am. Drinks of this kind include: shooters, shots, bombs, test tubes, jelly shots, and other similar drinks; a drink prepared on the premises that contains more than 45ml of spirits or liqueur; or a pre-mixed alcoholic drink containing more than 5% of ethyl alcohol (ethanol) or containing more ethanol than 2 standard drinks.
- 3.33 From 1 February 2017, a lockout will apply from 1am in ‘safe night precincts’. Patrons may, however, enter a venue there after 3am (the time at which sales of alcohol are to cease).
- 3.34 At the time of writing it is too early for reliable statistics of the results in Queensland to be available.

IV - South Australia

3.35 Trading hours, over the last 20 years, have been extended to enable late night venues to trade between 9pm and 5am. A Late Night Trading Code of Practice made under s 11A of the *Liquor Licensing Act* imposes a lockout from 3am to 7am. Mr Anderson's review in South Australia, to which I referred in paragraph 1.55, considered the lockout to be the most contentious aspect of trading requirements in that State. Mr Anderson recommended that the lockout continue to operate to test its effectiveness given that it had only been in place for a relatively short period, and because initial anecdotal evidence seemed to suggest some success in reducing harm. He recommended, however, that the lockout be reviewed in two or three years' time.⁵⁹

⁵⁹ See *Review of the South Australian Licensing Act 1997*, 29 June 2016, p 25.
http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Liquor%20licensing/Anderson%20Report%20Review%20of%20Liquor%20Licensing%20Act%201997_June%202016.pdf.

V – Melbourne

3.36 Claims of failure of a lockout in Melbourne require close attention. The claims were associated with an unfavourable contrast of the vibrancy of Sydney with that of Melbourne since February 2014.

3.37 In 2006, the Victorian Government amended the *Liquor Control Reform Act* 1998 (Vic) to meet community concerns about alcohol-related violence in parts of Victoria. Those amendments gave the Director of Liquor Licensing power to make ‘late hour entry declarations’ (in effect lockouts) for an area or locality in certain circumstances.⁶⁰

3.38 In December 2007, the *Liquor Control Reform Act* was further amended to include a provision for the making of temporary late hour entry declarations in these terms:

58CA Temporary late hour entry declaration

- (1) Despite anything to the contrary in section 58C, the Director may make a late hour entry declaration under section 58B without giving written notice under section 58C if the Director believes on reasonable grounds that—
 - (a) alcohol-related violence or disorder has occurred in the area or locality to which the order is to apply; and
 - (b) a late hour entry declaration in relation to the area or locality is reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area or locality.

...

3.39 On 1 May 2008, the Director of Liquor Licensing made late hour entry declarations and announced an intention to impose a temporary 2am lockout on licensed premises in Melbourne, Port Phillip, the City of Yarra and the City of Stonnington. The lockouts at those locations operated from 2am on a temporary basis for three months commencing 3 June 2008. Some 487 premises were

⁶⁰ *Liquor Control Reform Act* 1998 (Vic) ss 58B, 58C and 58D.

subject to the lockout.⁶¹ The basis for the exercise of the power was satisfaction of the matters in s 58CA(1)(a) and (b), an apparent escalation in violent incidents in late night entertainment precincts, and in the severity and intensity of such events.

VCAT proceedings

3.40 The Victorian Civil and Administrative Tribunal (**VCAT**), on the application of operators of venues affected by the lockout, stayed the operation of the late hour entry declaration. It did so for some 120 venues (about one quarter of each of the venues subject to its declarations). Conditions were then agreed between the Director of Liquor Licensing and licensees in a mediation to govern the manner of trading after 2am, and, for example, to control crowds.

3.41 *128 Bourke Street Pty Ltd v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 1276 is an early published decision concerning the grant of stays. There, Senior Member Davis granted a stay in respect of a premises that was not, he found, contributing to alcohol-related violence. The Member construed s 58CA as applying, not to the whole locality without exception, but as permitting exemptions for a particular premises if it did not in any way contribute to violence, and did not cause rowdy and bad behaviour capable of affecting the community.

3.42 The grant of the stays was never tested, as I understand it, in a Superior Court.⁶² As the orders lapsed, neither VCAT nor the Supreme Court made any substantive rulings on the proper meaning of s 58C. In *Colosimo v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 1616, a decision handed down on 24 June 2008, Kevin Bell J recorded that VCAT had received some 141 applications for review of the decision to make late hour entry declarations of a total of 467 premises affected by such a declaration (at [6]). Some 120 of the applications had by that time been dealt with at mediation. Five cases had not been determined by the Tribunal (at [7]). In his decision, Justice Kevin Bell declined to grant leave to the Director to seek a

⁶¹ KPMG (2008) *Evaluation of the Temporary Late Night Entry Declaration: Final Report* pp 1-4.
⁶² Section 148 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) provides for appeals from VCAT.

declaration for the final hearing of those five applications because the licensees had participated in a mediation that produced an agreed result. His Honour's view was that no useful purpose would be served by granting leave.

3.43 It can be seen from this short summary, that the 'lockout laws' in Victoria were ambiguous in their meaning and reach, and, had in any event, a very brief life, about three months.

The KPMG Report

3.44 Following the lapse of the temporary lockout, the Victorian Department of Justice engaged KPMG to produce an independent report to assess its effectiveness in reducing or preventing alcohol-related violence and disorder, and, more generally the efficacy of lockouts as a tool to address alcohol-related issues.⁶³

3.45 The authors of the KPMG Report formed the view that there had been a general decrease in alcohol-related violence and related issues during the short period that the lockout did operate. They noted however, that there had been an increase in reported assaults between the hours of midnight at 2am, and an increase in assault-related transports by ambulance between 8pm and midnight.⁶⁴

3.46 In my opinion, little can be drawn from the Melbourne experience. The lockout there was not accompanied by other measures of the kind enacted by the Amendments. The authors of the KPMG report made clear the difficulty they had in reaching any conclusive findings '*due to the range of variables at play*'.⁶⁵ One of those variables was the way in which VCAT had construed the temporary lockout orders.

3.47 On the topic of the stays granted by VCAT, KPMG said this:⁶⁶

As a result of the granting of stays by VCAT, the potential for the temporary Lockout to be fully effective was significantly compromised, due to its uneven coverage between venues and between locations within Melbourne.

⁶³ KPMG (*op cit*) p 5.

⁶⁴ KPMG (*op cit*) pp 6-7.

⁶⁵ KPMG (*op cit*) p 9.

⁶⁶ KPMG (*op cit*) p 53.

Given that one of the fundamental objectives of a Lockout was to prevent patrons from moving between venues thus minimising opportunities for violence and anti-social behaviour to occur, the decision of VCAT to exempt venues has had *a critical and negative impact on the capacity of the temporary Lockout to achieve the intended outcomes*. [Emphasis added]

The granting of stays by VCAT has meant that patrons were able to enter and re-enter approximately 25 per cent of venues across the affected [areas] and restricted the capacity of the temporary Lockout to limit bar/venue hopping (after 2am). From the outset the temporary Lockout was fundamentally compromised and this significantly impacted on the ability of evaluation to meaningfully assess the effectiveness of the temporary Lockout in reducing alcohol related violence and disorder.

3.48 Neither these findings nor the short duration of the operation in Melbourne were mentioned in many media reports that argued that the Melbourne experience was an '*abject failure*'.⁶⁷

3.49 KPMG's assessment, was that, although it had been difficult to reach conclusive findings, in general terms, lockouts, when accompanied by other measures were capable of achieving reduction in violence.⁶⁸

... Regardless of these limitations, experience in other jurisdictions where permanent Lockouts have been implemented does suggest that, particularly, when undertaken as part of a broader suite of initiatives to address alcohol-related issues over a sustained period of time (in excess of one to two years), a Lockout can be a useful tool to address the complex issues of alcohol-related violence, anti-social behaviour and amenity issues.

3.50 The Victorian Government for its own reasons seems to have decided not to impose lockouts as a matter of policy.

⁶⁷ <http://www.news.com.au/finance/business/other-industries/calls-for-melbourne-to-look-again-at-alcohol-restrictions-as-brisbane-examines-lockouts/news-story/53de7a25306574f24cb23b91fc394ad8>. Accessed 13 September 2016.

⁶⁸ KPMG (*op cit*) p 9.

VI - Gold Coast

- 3.51 On any view, the Gold Coast is both a tourist and entertainment area. The population of some half a million people of permanent residents is almost always subject to inflation by numbers of visitors and holiday makers from elsewhere in Australia and overseas.
- 3.52 In 2004, closing times for 27 venues on the Gold Coast operating under extended hours permits were brought forward from 5am to 3am by the imposition of licence conditions to that effect.⁶⁹ In a challenge to that decision in the Queensland Commercial and Consumer Tribunal (CCT), the trading hours were restored to 5am, subject to a condition of a lockout at 3am. The Tribunal said that it was in the public interest that there be a lockout.⁷⁰
- 3.53 After a year of operation, the Council and the Police (whose attitudes to the question were ones the legislation required be taken into account) considered circumstances to be such that a lockout was no longer required.
- 3.54 Other cases with respect to lockouts were decided by the Queensland CCT. *Fame and Fever Nite Club v Chief Executive* [2004] QCCTL 5 is one. It involved a challenge by a number of licensees to a decision of the Chief Executive to impose a lockout on them. There was before the Tribunal a deal of evidence on the effect on amenity in the vicinities of the relevant premises. The Tribunal concluded that the evidence did establish alcohol-related disturbances, instances of public disorder, and anti-social and violent behaviour in and in the vicinity of the night club precinct of Surfers Paradise (at [182]). The Tribunal expressed itself in this way:

194 The Tribunal recognises that the Chief Executive has since 1995 imposed lock-out conditions as a way of addressing the inability of licensees to control the behaviour of those persons who could reasonably be expected to be in the vicinity of late night licensed venues in the early hours of the morning. It is clear that lock-out provisions cannot be in every case justified having regard to all the facts. Nevertheless, having carefully

⁶⁹ *Liquor Act* 1992 (Qld) ss 107C and 121.

⁷⁰ *Surfers Paradise Rock & Roll Cafe P/L and Meshlawn Pty Ltd v Chief Executive* [2004] QCCTL 6 at [36].

examined the evidence before us, we are of the view that the licensees in this case have not demonstrated that the amenity of the community concerned would not be adversely affected by the grant of an unfettered extended hours permit, and we find that there is adequate material on which to justify a determination to limit the permits for extended hours beyond 3am. We are satisfied that the imposition of the lock-out provision is justified in the circumstances as they exist in the Surfers Paradise entertainment precinct at the present time and that, for fairness and effectiveness, such a condition ought to be imposed on all the premises joined in this application.

193 (sic) The Tribunal also recognises that the lock-out condition will not of itself necessarily be sufficient to eliminate the problems in the Surfers Paradise precinct. However, we consider the imposition of a lock-out may lead to cooperative strategies implemented by the operators which directly address the issues of concern and minimise the alcohol related disturbances and public disorder in the locality.

3.55 It is not accurate, as some opponents said, sometimes categorically, that lockout laws have always failed whenever and wherever they have been tried.

Part Four – Submissions and Issues

- 4.1 Of the 1,850 or so written submissions, slightly fewer than two thirds (about 1116) favoured repeal of the Amendments wholly or in part and about 590 favoured their retention, indeed in some cases their expansion.
- 4.2 Numerous of the opponents relied on a pro forma submission, in substance as follows:

As a Sydney resident and a peaceful participant of its once vibrant nightlife, I am grateful for the opportunity to make this submission. I am writing to you because I have personally experienced the impacts that the lockout laws have had on our city – I have seen businesses close, witnessed the loss of jobs, lamented the lack of places to socialise with my friends and mourned the dwindling opportunities to listen to live, local music.

We all agree that safe streets are a priority, but there are better ways to achieve this. Evidence and common sense suggests that a better planned response could have a greater effect on reducing alcohol related violence *without* having the unintended consequences that the lockout laws have had.

What happened?

Sydney's night time economy had an awkward start to life. It grew up and out too quickly and without being properly planned for. Before we knew it, tens of thousands of people were coming into a few precincts every Friday and Saturday night, and yet instead of being managed on the scale this required, Kings Cross was left to its own devices. The police were not willing or able to deal with the belligerent or violently inclined. The venues were packed and the streets were chaotic. When it all got too much or you decided it was time to go home, the busses and trains had stopped and the fight for a cab was a long one.

Then, tragically, two young men lost their lives. The city mourned and rightly decided things had to change. The government's response, however, chose to deflect the blame and rushed through blanket laws without consultation. The lockout laws have been a failure.

What needs to change?

The lock out laws have caused irreparable damage to the economic, social and cultural fabric of Sydney. Instead of the 1:30am lockout and 3.00am cease of service, the 7 key actions below should be implemented together to curb the violence and keep Sydney open for all to enjoy.

- 1 Developing best practice policing strategies;
- 2 Investing in 24/7 public transport;
- 3 Implementing integrated urban planning reform;
- 4 Encouraging diversification of after dark activities;
- 5 Establishing anti violence education & intervention campaigns;
- 6 Incentivising well run venues; and
- 7 Appointing a Night Mayor.

- 4.3 Of the supporters, some were residents who made submissions in terms similar to one another.⁷¹ Many residents spoke of high levels of the violence and anti-social and illegal behaviour that occurred before the Amendments, causing some to fear for their safety. They complained of the very loud noise from revellers, emergency services vehicles (sirens) and men driving round and round shouting, often obscenities at women, and of the vandalism, the rubbish, even human excrement that was left after each weekend. Some of these residents commented that the area has seen an improvement in residential amenity since the enactment of the Amendments. They said that new businesses have moved into the area, leading to a more family friendly environment.
- 4.4 There were many opponents who said that the Amendments stigmatised youth and restricted nightlife and enjoyment of it, some 82% or so. The next most common basis of objection was economic impact. 65% of objectors mentioned this as a concern. Relatively few (19%) sought in terms to make a case that the Amendments did not achieve the objects of them. About half of the opponents suggested that the Amendments were an overreach or over-regulation.
- 4.5 The supporters of the Amendments principally (56%) argued that the Amendments had improved public safety and amenity. 49% said they had reduced harm, and 17% said the Amendments improved amenity. A very small percentage (6%) supported the Amendments on the basis of their personal opinion or that they enhanced public and private morality.
- 4.6 Very few of those who made submissions expressed an opinion on the 10pm prohibition of sales of packaged alcohol after 10pm. 81% of submitters made no comment about it at all. 12% of all submitters expressed opposition to it, and 6% expressed a supporting view. Those who opposed it did so mainly, as

⁷¹ See, for example, the submissions of Katherine Goldman, John Howard, Jim Harvey, Jenny Green, Geoffrey Hooper, Geoff Field, Duncan Matheson, David Heads, Alan Lawrence, Klaus Kessenich, Lesley Rawnsley, Cornelis Vankesteren, Clive West, Ann and Rev Geoffrey Usher and Jane Dawson.

with the wider objections, because of a restrictive effect on youth and nightlife, economic viability, and an aversion to [over-]regulation.

- 4.7 Risk-based licensing attracted little interest from submitters in this Review. Very few (about 45 submitters) mentioned it as an issue. Those who did were divided: 22 in opposition and 23 in support of it. I understand from reading the submissions to Liquor and Gaming NSW in its consideration of the ‘Three Strikes Disciplinary Scheme’ (sanctions based upon risk referable to repeated offending by past conduct) that licensees in general regarded automatic increases after ‘strikes’ as oppressive.
- 4.8 The emphatic way in which many of the submitters expressed themselves is an indication of the range and extremities of opinion that the Amendments have attracted. The Police Force and the Ambulance Service, the medical profession and the residents almost overwhelmingly have welcomed the Amendments and urge their continued operation. Hoteliers and night club proprietors are, unsurprisingly, strongly opposed to them. So too entertainers and the musical profession see them as reducing opportunity and income. There have been numerous objections by part-time, casual and shift workers including students, who argue that they have lost jobs or hours of employment and accordingly, income. A number of opponents described themselves as creative people, uniquely or in some way targeted by or specially disadvantaged by the Amendments. Some gay opponents said that whereas Kings Cross had a history of tolerance, ‘different areas’ sometimes presented a threatening or unfamiliar environment for them.
- 4.9 It has been difficult, and remains so, to discern the full truth on some issues. It is notorious that statistics can be manipulated or misrepresented. Some opponents have contended that businesses have closed as a result of the operation of the laws. I am not satisfied that this has happened on any large scale. That having been said, it is clear that the values of some businesses have been reduced with the result that loan to value ratios may have changed and that owners are at risk of forced and distressed sales or foreclosures. So too, there has been a large decline in the number of visitors to Kings Cross and the

Sydney CBD at night time, a result which was foreseen, indeed intended by the legislature, with the possibility of financial detriment to businesses other than licensees in the vicinity.

- 4.10 One impression – I emphasise that it is an impression only – is that both customers, and providers to some extent, have been unwilling, or hesitant, or perhaps as a matter of practicality unable, to change their habits and business models to accommodate, indeed even perhaps to take advantage of the changed conditions that the laws have created. I explored this matter in correspondence with the Kings Cross Licensing Accord Association and in meetings with licensees. Some action was taken, by way of publicity, advertising and the like, as well as the training of employees and in renovating licensed premises, or converting parts of them for other alternative uses.
- 4.11 I have not found persuasive the assertion that the laws have turned Sydney into a international laughing stock, and that Sydney fails as a ‘global city’ because of the Amendments. Paris, Los Angeles, Toronto, Montreal and Rome are all cities in respect of which some laws of a similar kind (except as to lockout) are in force. It is true that in Berlin, London and some other cities there is a generally unrestricted licence to trade continuously over 24 hours. I would think it unlikely that Berliners who might turn their minds to Sydney would be very concerned about its trading hours and the lockout in part only of inner Sydney. I have sought, but been unable to obtain any statistics about alcohol fuelled violence, ‘king hits’ or anti-social behaviour in Berlin or London. I doubt however that none occur there. The point remains however that each country and city, although looking to, and being informed by other experience must fashion its own laws to suit the problems of its own cultures, practices and habits.
- 4.12 It is possible to gain the impression from submissions by some owners of licensed premises that they are engaged in an altruistic endeavour unrelated to profit from sales of liquor. In making this observation, I do not in any way disparage the legitimate objective of carrying on a business for profit. But unfortunate social consequences flowing from the conduct of the business of

selling alcohol can no more be expected to be ignored by legislatures than those flowing from other business activities potentially harmful such as, for example, selling tobacco.

4.13 Musicians and other entertainers have been adversely economically affected by the laws. It is beyond dispute that sales of alcohol (as well as door charges) finance live entertainment. The extent to which such entertainers' livelihoods have been adversely affected cannot, however, be calculated. I was told by a number of licensees and entertainers that the clientele of establishments offering music were unwilling to adapt their programmes to the different hours within which establishments may now open and must cease serving alcohol. It is only two years or so since the laws were enacted. New habits are not always easily learned. I have to say that I am not satisfied that operators have necessarily made sufficient effort for long enough to re-educate their customers to the changed hours and circumstances applying under the laws. It would not require very much initiative to offer perhaps slightly shorter performances earlier in the evening than they did before the laws were introduced to enable customers to enjoy entertainment at different venues on the one night. Many many businesses have had to adapt to changing conditions, including of law, in the last decade or so. The weight of change upon, for example, taxi operators, carriers, retailers of most kinds and the Post Office imposed by the digital revolution has not been a light one.

4.14 One instance of a successful adaptation is GoodGod Small Club. One of the Club's two proprietors, Jimmy Sing, although opposed to the lockout, made it clear that he had succeeded by changing his business model. Formerly, his principle activities had been frequent smaller events and late night dancefloor hours. After the Amendments, he held larger events that drew customers to the Club and focused on the earlier food hours. The closure of the venue, he made clear, was not because of the Amendments but due to the proprietor's decision to pursue other interests.⁷²

⁷² J Nail, 'Goodgod Founder on the Sydney Club's Closing: "We Never Set Out to Start a Venue"' (2015) Rolling Stone <http://rollingstoneaus.com/music/post/goodgod-founder-on-the-sydney-clubs-closing-we-never-set-out-to-start-a-venue/2839>. Accessed 13 September 2016.

4.15 A number of opponents advocated the appointment of a Night Mayor as has been done in some cities overseas. As I understand it, the role of a Night Mayor is to encourage and coordinate entertainment and to enhance the night time economy of a city. In Australia there are already three arms of government with large supporting administrations often duplicating, as well as contesting areas of power and influence. To add another, whether as a Department or otherwise of one of these three, would be expensive and likely to lead to further competition with respect to the exercise of power. In any event, the City of Sydney is already well disposed towards, and seeks to enhance the quality and diversity of night time entertainment, and to increase the night time economy.

Part Five – Views of the Opponents

I - The Night Time Economy

- 5.1 The Mayor of Sydney and her advisors with whom I met, stressed the importance to the City of the night time economy. Very large sums of money were said to be involved in this. Numerous studies have been made to try to value that economy in other places. The measurement of night time economies remains problematical. As the TBR report, commissioned by the National Local Government Drug and Alcohol Committee records, much of the data is non-compatible and varied. Offsetting or negative factors, such as the cost of crimes against the persons, damage to health, absenteeism, the relationship of night time activities to alcohol and drug usage, the impact of anti-social behaviour, ambulance costs, police and other services, including litter collection, have generally not been taken into account. Much of the expenditure in a night time economy is discretionary spending. Liquor sales and entertainers are only two components of it. The night time economy is not confined to the area affected by the lockout. Parts of the night time economy of the Kings Cross and CBD Precincts have migrated to other proximate areas where licences are less restricted. Money not spent in Kings Cross and the CBD might now be spent in productive and other useful ways, or might now be being saved for other purposes. An assumption that some at least of that money would not be conducive to employment of some kind elsewhere seems unlikely.
- 5.2 The ‘night-time economy’ is a fairly recent term. It is discussed by Hobbs, Hadfield, Lister and Winlow in *Bouncers: Violence and Governance in the Night-time Economy*. There, the authors quote many sources in examining the role of ‘bouncers’ employed at liquor outlets throughout the United Kingdom. They might say that the night-time economy is centred on youth.⁷³ Various estimates of the value of the night-time economy are quoted there.⁷⁴ The

⁷³ Hobbs et al *Bouncers: Violence and Governance in the Night-time Economy* (2003) p 24.
⁷⁴ Hobbs et al pp 25-26.

authors adopt as a description of the labour market one offered by Montgomery:⁷⁵

[the labour market] is to a large extent flexible and casual: jobs are often part-time, temporary or even supplementary to a day job. For these reasons it is very difficult to gauge the amounts of money which circulate in the evening economy in relation to the goods and services sold and the labour bought ... this informal dimension is one of the defining features of an evening economy.

5.3 Hobbes et al then say:⁷⁶

Night-time economic activity in Britain has traditionally been dominated by the licensed trade, in public houses, bars, restaurants, nightclubs, theatres, and music venues, and by gambling establishments such as casinos and bingo halls. However, bar and club economies have also developed ancillary industries to capitalize on the influx of money and market opportunities now flourishing on the crowded streets of our towns and cities. For instance, the hunger that alcohol often inspires has led to the proliferation of fast-food outlets in and around city centres, usually within close proximity to popular bars and clubs. Other trades and services have also recognized the market opportunities offered by the developing night-time economy, 'after midnight on a weekend, the streets are awash with taxis speeding between fares', their drivers favouring night-time working hours over scrambling for fares during the day. Some hotels will rent rooms by the hour, late opening restaurants 'staffed by abuse-resistant waiters', gear both their fare and service delivery to a drunken clientele, and street traders stress the aphrodisiac qualities of plastic roses to drunken and hormonally-charged young men. [References omitted]

5.4 A deal of what I have just quoted is applicable to Kings Cross and the CBD on Friday and Saturday nights and their economy.

5.5 A night time economy has many components including traditional ones: the cinema; live theatre; meals and drinks at restaurants; take away liquor and meals; hire cars; after hours gambling; retail shopping; fast foods; special night time events; sporting fixtures; and nightclubs and hotels and other venues serving alcohol formed part of this economy. The licensed premises of Kings Cross and of Central Sydney are only a subset of part of all of this.

5.6 One assessment of the night time economy, commissioned by the National Local Government Drug and Alcohol Committee and undertaken by TBR economics consultants in March 2016 noted that the night time economy has never been viewed as an economic sector and that, although some studies have

⁷⁵ Hobbs et al p 23.

⁷⁶ Hobbs et al p 23.

attempted its measurement both in Australia and the United Kingdom, recognised that there was a need for caution in drawing conclusions about it.

- 5.7 I asked Treasury and the City of Sydney a series of questions about the nature and composition of the night-time economy and the reliability of the assessments that have been made about it. The questions I asked, and the answers to them, are given in considered memoranda by The Treasury and the City of Sydney. They appear in **Appendix 5** to this report.⁷⁷ The answers provided by Treasury suggest that some (about 20%) of expenditure in the night time economy may be made after midnight and before 6am, but there is nothing to indicate how much of that is spent between midnight and 1.30am, or during any other intervals between 1.30am and 6am, or where precisely that expenditure occurs, whether, for example, in the Casino or in gambling elsewhere or purchases of alcohol.
- 5.8 I also had regard to reports of Roundtables conducted by Liquor and Gaming NSW. Those consultations resulted in several reports: a Final Report, a Summary Report, a Youth Consultation Forum Summary and an Action Plan. The subject of the Roundtables was not the same as those of my Reviews. Although the participants in the Roundtables considered the impact of the Amendments, including the lockout, the focus of them was upon ways to improve the safety and vibrancy of Sydney's night time economy. I have had regard to those Reports. They show a genuine concern to preserve and enhance night time activity in the city and to promote the city to tourists as offering all that might be expected of a thriving city of Sydney's size. The youth forum in particular emphasised a connexion between cultural vibrancy and safety. The reports are a useful exploration of views held about how best to maintain and achieve a variety of interesting night time activities without compromising the safety of those who participate in it, and those might be affected by people who do.

⁷⁷ I have not included in the Appendix two lengthy supporting documents which the City of Sydney sent in its letter of response.

5.9 In all of the circumstances I have formed the view that licensees carrying on business, entertainers and other employees of licensed premises and some satellite businesses such as fast food vendors forming part of the night time economy in Kings Cross and the CBD have adversely affected financially, but it is possible that, to some extent, others elsewhere have benefited because of the dispersal of people, and their discretionary expenditures, to other areas not subject to the Amendments.

II - Public Transport

- 5.10 A number of opponents argued that an absence or insufficiency of public and other transport was a major contributor to violence. Aggressive arguments, they said, often developed at taxi ranks. One unsympathetic submitter responded by saying that anyone with enough wit and money to find his or her way to Kings Cross and to pay \$10 for a drink there, should be able to work out how to find the way home. I have ascertained that there buses that conveniently run throughout the night at 10 minute intervals, but few people choose to travel in them. The last train does run at 1:40am, but the Department of Transport says that if trains were to be run throughout the night as urged by some, there would be shortages of trains during periods of genuinely high and consistent demand because times (of less demand) are used and required for maintenance of lines. The direct cost, without allowing for any increased maintenance, disruption and policing is calculated by Transport for NSW at about \$2 million each year.
- 5.11 Contact was made with the Taxi Association. Its spokesman chose not to comment on Uber but said that some taxi drivers are unwilling to take fares to or from Kings Cross because of the violent and aggressive behaviour to which they have been subjected when they did. Uber and other ride sharing services are no longer illegal in New South Wales and are now available for point-to-point transportation.

III - Violence and displacement

- 5.12 Elsewhere in this Report I deal in detail with the question of displacement of violence. Notwithstanding submissions that Newtown and other places have changed in character and have become much more violent, the evidence is that there has in fact been little displacement. Dr Fulde, the Head of the Emergency Department at St Vincent's Hospital in Darlinghurst (whose catchment includes most of the Kings Cross and CBD Precincts as well as Coogee, Double Bay and Bondi) says he can discern none of significance there.
- 5.13 Dr James Edwards is the Acting Director of the Emergency Department at Royal Prince Alfred Hospital at Camperdown. Newtown is a part of the catchment of that hospital. He told me that he had detected no increase in assault trauma related presentations in the area around the hospital. Research undertaken by the Head of Research and Trauma there concludes that the Amendments have not resulted in a shift in alcohol related violence to neighbouring city entertainment areas.⁷⁸ Dr Edwards pointed out that emergency departments around the country have become busier with the demands of an ageing population. If there were to be as many alcohol-related presentations to emergency departments as there were before the Amendments, then these departments would be even more stretched than they are presently.
- 5.14 Mr Richard Anderson is the President of the Newtown Liquor Accord. He says that there have few problems and no rise in assaults notwithstanding a considerable influx of new customers in the area. As to a suggestion of any intolerance there, he says that there was an assault on a transgender person which came to prominence, an event which has not been repeated. He said an Accord with respect to entry and re-entry was in place there but I formed the view that it is a highly qualified one which is relatively permissive and, as I saw

⁷⁸ M Dinh, Letter to the Editor: 'Has there been a shift in alcohol-related violence to neighbouring inner city "lockout law" exclusion areas in Sydney?' (2016) *Emergency Medicine Australasia*.

on my inspection of Newtown, its layout considerably more linear and accordingly less confined in accessibility and dispersal than Kings Cross.

- 5.15 Another related objection to the laws can conveniently be further discussed here. It is that the fatalities which did occur in the lockout areas were random, and not the result of anything that curable by the lockout laws. Those laws were intended not only to prevent or reduce fatalities, but also were intended to reduce all forms of violence, as well as anti-social behaviour throughout the night. The statistical evidence shows that in combination with other measures, they have done that.
- 5.16 It was suggested by some opponents that the Amendments would increase the incidence of warehouse parties. They are often entrepreneurially conducted on short notice in vacant buildings remote from residential or entertainment precincts and without liquor licences. Warehouse parties had been happening before the Amendments and probably continue to happen. These events take place in areas outside the Precincts and therefore not subject to the lockout or 3am cessation of alcohol service. A reveller's choice of a warehouse party over a licensed venue is not something that can therefore be attributed to the Amendments. Kings Cross and the CBD are unlikely to be in competition with warehouse parties. They offer an entirely different form of night time entertainment from warehouse parties and raves.
- 5.17 Opponents of the laws state accurately that the incidence of violence was trending downwards before the introduction of the Amendments. The fact is, however, that the reduction has very much been accelerated by the laws.

IV - Sydney as a vibrant international city

- 5.18 Opponents said that Sydney was no longer a vibrant global city. Hours of opening, closing and sales are different from city to city, both in Australia and elsewhere. Brisbane has recently adopted lockout laws. Melbourne has abandoned them. Abandonment of the lockout in Melbourne occurred before its effectiveness and impacts could be assessed.
- 5.19 Some opponents say that safety has been reduced, rather than increased since the lockout laws were enacted: the venues have closed, the streets are less crowded and the ambient light is lower. Any apprehension of reduced safety is misconceived. Safety has been enhanced.
- 5.20 Vibrancy can mean different things to different people. One submitter expressed himself in this colourful way:⁷⁹

Ears slightly ringing, lightly sheened with sweat, legs and arms tired, exhausted but euphoric, system flooded with endorphins and the glorious feeling of well-being of having danced all night to a pounding sound system.

- 5.21 On the other hand, a resident painted a different picture:⁸⁰

There were sirens all through the night, cars full of hoons blocking William Street through to 'the loop' of Kings Cross, tooting horns, screaming abuse at the people, ambulances trying to remove injured people, motor bikes revving up. The buskers playing loud amplified music on the footpaths. The streets full of glass, wrappers from take away food all over the streets and footpaths.

- 5.22 As I mention elsewhere, I did undertake a view of the CBD and Kings Cross Precincts between midnight and 2am on 15 May in the company of senior Sergeant Murphy and her assistant. In that relatively short period, I did notice more than one instance of obviously drunk, shoeless women seated, and two sprawled across the footpath. I saw one aggressive confrontation with a minor tussle between men on the footpath which, fortunately, did not escalate because

⁷⁹ Submission of Dan Conway.

⁸⁰ Submission of Carole Ferrier.

of the intervention of another man. An intervention of that kind can have its own perils. Although there were numbers of people mostly walking on the footpaths it did not appear to me that there was any crowding or problem at or about cab ranks. I also observed and strong and obvious police presence at Kings Cross.

- 5.23 The findings of the sentencing Judge in the case of *R v McNeil*⁸¹ who delivered the punch that killed young Daniel Christie convey a picture of a dark underside of Kings Cross, of drugs and alcohol and the violence to which they may lead:⁸²

As the offender and Ms W came to the pedestrian crossing over Victoria Street they came across three young men, JF, TS and TG. The evidence of what transpired between them varied but it will suffice to say that there was a conversation initiated by the young persons in which the offender was offered drugs but said he was not interested. He later told police that comments were made about Ms Walker's appearance to which he took exception. He also claimed that Ms Walker had been pushed but that is not supported by any other evidence.

Fighting broke out between the offender and the three young men. It included the offender being punched at least twice (he sustained a laceration to his inner upper lip). He punched JF, causing him to fall down on the pedestrian crossing, and then kicked him. One of the witnesses described the kick as 'savage'. The offender returned to where Ms Walker was standing on the footpath. She appeared to remonstrate with him and he returned and helped JF up to his feet. The Crown alleged that the offender then threw a punch at TG as he and JF moved down into Victoria Street. The offender went in that direction as well. There was no good reason for him doing so. Ms Walker was calling out loudly, (almost screaming she said), "Come on Shaun, it's almost 9 o'clock, lets go. Just leave it, come on".

Daniel and Peter Christie were walking on the footpath in Victoria Street after having just turned right from Darlinghurst Road. They heard something and looked back and saw a person who Peter Christie described as 'fairly young' (JF) sitting on the pedestrian crossing. They were sufficiently concerned to stop and watch what was happening. A short time later, there was a young person near to them who told them, 'This dude hit all of us'. Peter Christie saw a man (the offender) helping the young person on the crossing to get up. It was his perception that the offender then 'ushered' or 'directed' the young person down Victoria Street. As they came closer, Peter Christie heard the offender say to the young person in 'an aggressive sort [of] manner', 'I'm an MMA fighter'. He described the offender as 'sort of like beefing up to look big'; 'he physically looked aggressive, or had an aggressive stance'.

According to JF, Daniel Christie asked the offender, 'Why are you hitting kids?'

⁸¹ (No 4) [2015] NSWSC 1198.
⁸² At [6]-[12].

Peter Christie gave evidence that as the offender came towards Daniel, the offender said something, not all of which Peter Christie heard. It commenced with 'If you think I'm a ...'. Daniel Christie took a step back and put his hands up with his palms facing outwards and said, 'No, no, no, no, no'. The offender then delivered a single punch to the face of Daniel Christie, likely to the left jaw. Daniel immediately went limp and fell backwards onto the roadway, striking the back of his head heavily. His brother said that he heard 'a very loud definite crack'.

Peter Christie immediately challenged the offender as to what he was doing. For his trouble, he was punched to the mouth causing him to stumble back. He sustained a split lip which bled (later described as a 'full thickness lip laceration' which required three sutures). Peter then turned and directed his attention to his brother while the offender walked back towards Darlinghurst Road.

Uniformed police officers were quickly on the scene and the offender was arrested. Emergency aid was given to Daniel and he was taken to St Vincent's Hospital. Efforts to save him were in vain. His life support system was turned off on 11 January 2014 and he died.

The offender was interviewed at the Kings Cross police station. He gave an account which was to the effect that he had been assaulted by a number of young men at the crossing. When he went down into Victoria Street he thought he was going to be attacked by more people in the same group so he responded by delivering a single punch. (There was a question as to whether he was talking about the punch to Daniel Christie or the later punch to Peter Christie but I am satisfied he was talking about the former.) When detectives eventually told the offender that the person he had punched was not part of the group of young persons he immediately looked anguished and admitted that he was in the wrong. He apologised repeatedly. His remorse appeared to be genuine.

5.24 I spoke to a very distressed Mr Michael Christie, the father of Daniel, in Newcastle on 9 June 2016. He informed me that the three boys referred to by his Honour who were aged only in their early teens, were selling and had recently taken drugs.

5.25 As little restriction as possible of freedom of choice of entertainment, movement, and the autonomy of the individual are important and desirable goals of any democratic society. In any such society, however, accommodations and compromises to achieve competing objectives of safety and good amenity are necessary. The questions asked of me are very specific ones, focusing as they do upon the objectives of the Amendments and their impact. Those responsible for them, the Parliament, and the Government who introduced them, were aware that some freedoms would be affected and indeed, that there could be economic consequences. Many of the opponents of the

Amendments accurately said they were law-abiding people whose conduct had never been, and would never be a threat to others or to themselves. Criminal and other laws (restrictive to some extent of freedom) and the imposition of sanctions are not, however, made or enforced to ensnare the law abiding. Very careful alert young drivers with excellent reflexes might, for example, quite safely drive at 70 kilometres per hour in an area in which the speed limit is 60 kilometres per hour. In practice, the law is unable fairly to discriminate between those, and another driver who might be a threat driving at 50 kilometres per hour. Many other examples can be found. That does not mean that blunt laws should not be sharpened if that can practically be done.

5.26 A distinction needs to be made between ‘vibrancy’ on the streets and vibrancy inside venues. It is with the nature of the former that my review is primarily concerned, keeping in mind that what happens outside may be a consequence of what has occurred or allowed inside. Live entertainment can be a very important element of vibrancy inside venues. That is a matter to which I give consideration in that part of my Report in which I address the submissions with respect to the effect upon entertainment of the Amendments.

5.27 Overall there has been a reduction in visitors to the Precincts, more so probably in Kings Cross than in the CBD. There has also been a reduction in live entertainment inside venues. The numbers of venues serving alcohol is now fewer. The exact extent of all of these reductions is contested by the opposing sides on the issues. No quantification can be an exact one. Until 1989 no licensees could open after midnight. Even so, live bands and other entertainers flourished. A survey by the Department of Justice finds the fall in pedestrian traffic to be about 20%. And as for closures, some only can be said to be a result of the Amendments solely.

V – Adverse effects upon business

5.28 I made enquiries about business closures of both licensed premises and other business premises in the Precincts, and the effect of the Amendments upon businesses generally.

Mr Koh's submissions

5.29 Mr Koh in his submission, said that approximately 30 licensed venues had closed in the areas affected by the Amendments. He accepted that the closures may not all have been solely attributable to 'the lockout laws' but said that they *had* been a contributing factor. He provided a confidential appendix to his submission. That appendix comprised two statutory declarations: one from the manager of a licensed premises in Kings Cross, and the other from the owner of a small bar in Redfern. The Kings Cross premises the subject of the first statutory declaration was both a restaurant and a bar. It opened in about 2001 and closed in 2015. It customarily closed at midnight. The premises was exempt from a number of the requirements of the Amendments, including the prohibition on the use of glass and the service of certain kinds of drinks during late trading, and the use and maintenance of CCTV.⁸³ The declarant says that '*due to the ill conceived lockout laws*', the business was forced to close its doors and the company went into liquidation with large unpaid debts and causing hundreds of staff to lose their jobs. He deplored a move away from personal responsibility [of patrons] to the imposition of responsibility on the operator of the licensed premises. In the circumstances (particularly of its customary hours of operation and its exemptions) I cannot be satisfied that the closure was caused by the Amendments.

5.30 The other premises in Redfern was a small bar. It has been open for about three years. Its proprietor says it was subject to a '*suspicious and negative attitude displayed by both council and police towards [it]*'. He cites one example. The premises [licensee] had recently reapplied for extended trading hours. The

⁸³ Liquor and Gaming New South Wales, 'Exemptions granted to Kings Cross Precinct special conditions under clause 53P of the Liquor Regulation 2008' <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/law-and-policy/precincts/kings-cross-precinct-exemptions.aspx>. Accessed 13 September 2016.

application was approved, but an extra condition was imposed, of cessation of service of all food and alcohol 15 minutes before closing time. The declarant says that such a condition ‘*undermines our ability as a professional bar operation to act responsibly and in according to the law*’: the imposition was ‘unnecessary, distrustful and patronising’. He states that the Council did not consult with him before imposing the condition, an omission which he suggests hints at an ‘attitude that licensed venues must simply accept random conditions imposed at will by council’. Again, this case does not provide a firm basis for a conclusion that the Amendments caused the closure of venues (this venue was not one that closed).

- 5.31 I was provided with information from various sources as to the reasons why licensed premises in Kings Cross operating before the enactment of the Amendments might have closed. The Police provided a summary of the factors that affected particular venues. I accessed publicly available ILGA decisions about particular licensed premises, widely available news and online reports, and interviewed and was escorted on an inspection of the Kings Cross Precinct on 2 September 2016, by Mr Douglas Grand, CEO of the Kings Cross Licensing Accord Association.
- 5.32 I also consulted and corresponded with four licensees in the Kings Cross Precinct: Mr Rod Lawson, Group General Manager of Iris Capital (Bourbon and Empire Hotels) and Chairman of the Kings Cross Liquor Accord; Mr Simon Barbato, Operations Manager of the Keystone Group (Sugarmill Hotel) and Chairman of the City North Liquor Accord; Mr Greg Turton, General Manager Operations of the World Bar; Mr Ben Stephens, Operations Manager of Solotel (Kings Cross Hotel); and Mr Bruce Solomon, Managing Director of Solotel.
- 5.33 Of the 30 or so closures referred to by Mr Koh, more than a small number were explicable by causes other than the Amendments exclusively. I make the following observations with respect to a number of the premises listed in Mr Koh’s submission:

Venue	Comments
Backroom	The premises closed in October 2014, by which time it was subject to two ‘strike’ offences.
Iguana Bar	This premises continues to trade, but under the name ‘Dollhouse’ and as a strip club rather than a late-night bar.
Piano Room	This premises closed before the Amendments were enacted.
Soho (formerly ‘YU’)	The licensee’s son was convicted of raping a female customer in the rear lane behind the premises. This attracted media attention.
The Bank Hotel	This premises closed before the Amendments were enacted and after a series of incidents linked to the premises. Police raised concerns about incoming lessee.
The Crest Hotel (<i>Goldfish</i>)	The property in which this premises was situated was sold to a developer and is currently being redeveloped for residential and retail purposes. The ground floor (where <i>Goldfish</i> was located) has not, I was not, been able to be re-let.
Trademark Hotel	The Trademark Hotel closed and was replaced by the Studio X Hotel. The premises was subject to intense police activity following violent incidents that included the manslaughter of a man by security guards, two stabbings and glassing’s.

The World Bar

5.34 The General Manager of the World Bar (Mr Turton) made a detailed submission and I met him (along with other licensees) to discuss his concerns.

5.35 He says that the entertainment provided by his bar in Kings Cross includes live bands and jazz, theatre, cabaret, stand up comedies, DJ’s and producers. Space was also made available for rehearsal and performance by artists. He believes that the laws have had a ‘devastating’ impact on the arts vibrancy and culture of Kings Cross. He dismisses that there is evidence that lockouts reduce alcohol-related violence. He further asserts that there is no evidence that the lockouts worked in Newcastle or Melbourne. As appears elsewhere in this report, I do not accept that the lockout laws have not contributed to a major reduction of violence in Newcastle. The experience in Melbourne, for the reasons I have earlier stated, is different from that of Sydney. Mr Turton is another submitter

who refers to the randomness of the deaths of Daniel Christie and Thomas Kelly. Foot traffic was down, he claims, by 80% in Kings Cross: as soon as the lockouts came in, they took away the appeal of the area. People simply stopped coming. No statistics that I have seen show a reduction of pedestrians by anything like 80%. Estimates and counts that I have seen show a reduction of 20% (for the period midnight to 4am).

5.36 Mr Turton says that [other] businesses have closed, and that property developers have started snapping up property and building residential towers. I accept that there have been such closures, but I think that the numbers of these may have been exaggerated. Characters of areas can change with and without legislative or government intervention. There are obviously features of Kings Cross which might attract developers and residents of apartment buildings.

5.37 As Mr Turton contends, there are a number of people now patronising establishments in Newtown in preference to Kings Cross and perhaps the CBD. Opal card data for Newtown railway station shows a growth of some 129% for the night time period in 2014-2016. Not all this growth is necessarily attributable to the Amendments, but it does well exceed that for the Eastern suburbs rail Line (Bondi Junction, Edgecliff and Kings Cross) for the same period. Newtown station was upgraded in late 2012. But there is no evidence that Newtown is at or near breaking point. Nor is there evidence (as argued by others) that violence is inflicted upon the gay and transgender communities in this area. Some harassment may have occurred, but nothing which has led to any serious or recurrent problems. These views are consistent with what the President of the Newtown Accord said of the circumstances there.

5.38 Mr Turton says (as do others) that the Casino is the beneficiary of the Amendments. I accept that it probably has benefitted to some extent. Foot traffic has increased on Pyrmont Bridge, for example, one of the main routes from the City to the Casino and other venues at Darling Harbour. The Amendments must have conferred a commercial advantage upon many areas not affected by them. This may be seen as an inevitable consequence of the expressed purpose of reducing numbers in the congested Precincts.

- 5.39 Mr Turton provides details of a marked decline in his business, which there is no reason to doubt. That decline has resulted in a reduction in employment and of expenditure on live entertainment. Even though waste collection, he says, costs less money, he has had to pay an increase of 27% in insurance premiums. Mr Turton attributes the fall in receipts mainly to an inability to charge entrance fees after 1:30am. He says that a door charge is the means by which businesses pay for live entertainment. Further, other hoteliers argue that sales of alcohol, and not just entrance fees, subsidize live entertainment. No part of the Amendments prevents live entertainment throughout the night.
- 5.40 Mr Turton said out that two years ago, six bands would play each Friday evenings at the World Bar, whilst now only two play there now on that night. He does not say at what times the bands play, for example, how many play after 1:30am or 3am, for how long they play, and where, within the venue they played. I asked him what steps he took to adapt his operations as a result of the Amendments. He engaged a public relations firm to counter what he described as negativity, he renovated the front of the building to encourage earlier patrons, converted a top floor function room into a dance studio and rented it out and renovated the nightclub area to be used as a theatre in the evening (for which he received a grant from the City of Sydney). None of these seemed to be directed towards the programming of live entertainment, or encouraging customers to adapt their behaviour by attending his establishment within the changed hours.
- 5.41 Mr Turton says that he has noted 35 signs advertising leases of premises in the area. I do not know to which premises he is referring, and nor is it established that their vacancy is exceptional, and not the result of natural commercial attrition, or rather directly or indirectly the result of the Amendments, or further will not lead to other more versatile operations by other occupants. I deal elsewhere with various of his other objections because they are similar to those of some other opponents. I question, however, Mr Turton's claim that the Amendments [necessarily] operate to separate people from their friends who wait on the streets, or leave a venue early to stay with friends. It does seem to me that people old enough to consume alcohol lawfully are likely to be able to

make arrangements to meet or to socialise with their friends, either by social media or otherwise, within the hours prescribed by the laws. ‘Bar hopping’ and ‘pub crawls’ are not modern innovations. They took place when trading hours were much more restricted than now.

5.42 Mr Turton thinks a number of the measures onerous and that compliance with them is expensive and difficult. He says that his compliance cost, of scanners, marshals, CCTV upgrades, licence fees, insurance, data reporting, and management approval costs amount to more than \$200,000 per year. That is certainly a high cost of compliance. I accept that there are many diverse and complex obligations imposed upon licensees.

5.43 Figures published by the Australian Bureau of Statistics (ABS)⁸⁴ show that of new small businesses which entered the market between 2011 and 2012, 27% had ceased to exist by June 2013, just under half had ceased to exist by June 2014, and that only half survived a further year. These figures may not be representative of businesses in the Precincts, but they do show that the small business people do suffer a very high rate of natural attrition.

5.44 He makes suggestions for changes. Others have made similar suggestions which I consider in other places.

Economic effect

5.45 I am satisfied that the operation of the Amendments has had an adverse economic effect on a large number of licensees in the Precincts in various ways.

5.46 If trading hours are reduced, it is inevitable that there will be a reduction, if not necessarily a corresponding or proportionate one, in turnovers. If, for example, the commodity being traded were a necessity of life, it could be expected that the reduction of sales of it might be less than it would be of discretionary commodities: the same or a similar quantity of the necessity would still need to

⁸⁴ Australian Bureau of Statistics, *8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015* (26 February 2016) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8165.0Main+Features1Jun%202011%20to%20Jun%202015?OpenDocument>>. Accessed 13 September 2016.

be bought within the reduced period for sale. So too, if the number of the people (as the Amendments contemplated) who partook of the commodity (liquor) is reduced in the precincts where it is sold, then inevitably the vendors of it will sell a reduced quantity of it there.

- 5.47 The people possibly and most directly adversely affected fall into several principal categories: the owners of licensed premises; licensees; wholesalers of food and liquor; employees, musicians and satellite business operators such as fast food vendors.
- 5.48 The owners of licensed premises as lessors will only suffer loss if their lessees as licensees are unable to continue in business or unable to pay the agreed rent, and the owners are unable to find a replacement tenant capable of paying an equivalent rent. I have not received any objection to the Amendments in the course of this review which makes a complaint of this kind, but it is clear that owners could be financially disadvantaged in this way.
- 5.49 The laws distinguishes small bars from other operations by defining them as premises on which the number of patrons does not exceed 60 (or a greater number as prescribed) and upon which food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied.⁸⁵ Such premises must be open to the general public.⁸⁶
- 5.50 Those licensees of small bars and others who mentioned this have tended to oppose to the Amendments on the basis that the limit on capacity, 60, is too small.⁸⁷ This objection needs to be considered from two perspectives: the legislative intent of dispersal of numbers to avoid overcrowding and the friction

⁸⁵ *Liquor Act* s 4 (definition of small bar), 20C(1).

⁸⁶ *Liquor Act* s 20C(2): the requirement is that the business carried out under a small bar licence must not be, or include one that is limited to the sale or supply of liquor only to persons invited to use or attend the small bar or to a particular class, or particular class, of persons using the small bar.

⁸⁷ The City of Sydney advocates an increase in this number to 120, including through its 2012 Development Control Plan.

which it sometimes causes, and, the arbitrariness, it is said, of the adoption of such a low number. In this connexion I refer to the Melbourne experience.

5.51 Victoria's liquor law distinguish between late night (or ordinary) on premises licences and restaurants/cafes.⁸⁸ The latter may trade from 7am to 11pm, Monday to Saturday (two public holidays), 10am to 11pm on Sunday and 12 noon to 11pm, ANZAC Day and Good Friday.⁸⁹ Additional trading hours can be approved. Tables and chairs must be available for at least 75% of patrons attending the premises at any one time. Live music is not permitted, and nor is recorded music on the premises at higher than background level at any time outside ordinary trading hours (unless for a function). Premises operating under these licences do not require a late night licence if they continue to trade after 1am. As a result, they avoid the freeze presently in place (until 30 June 2019) that applies to late night licence applications in the Local Government areas of Melbourne (including Docklands), Port Phillip, and Yarra.⁹⁰

5.52 Melbourne has faced similar problems to those in Sydney associated with late night consumption of alcohol, and the density of venues and, consequently, with patrons attending them. Decision making guidelines made under the *Victorian Commission for Gambling and Liquor Regulation Act 2011* in July 2015 record:

The inner Melbourne municipalities attract large numbers of patrons to their entertainment precincts, many of whom will consume alcohol in, or purchase alcohol from, licensed premises. The harms caused by increased access, over-supply and the irresponsible consumption of alcohol include alcohol-fuelled violence and anti-social behaviour. On the evidence available to the Victorian Government, there is a correlation between anti-social behaviour in the early hours of the morning and the operation of licensed premises that supply liquor after 1.00am

5.53 These factors are ones that contributed to the freeze on late night on premises in Melbourne (including Docklands), Port Phillip, Stonnington and Yarra.

⁸⁸ Liquor Control Reform Act 1998 (Vic) s 7.

⁸⁹ Liquor Control Reform Act 1998 (Vic) s 9A.

⁹⁰ The 'freeze' was effected by Decision-Making Guidelines issued under s 5 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011*.

5.54 It seems to me that there is likely to be no or little serious adverse financial impact upon the holders of small bar licences *as a result of the Amendments* because those licences were introduced in 2013, that is a year before the Amendments. In any event, those business people may apply, if they have the space available, for approval of a larger capacity, under other licence types, such as a Hotel (General Bar) licence and on premises (restaurant) licence (with a primary service authorisation).

5.55 Each of about five operators of hotels made a separate submission. In substance the hoteliers say that there has been a marked impact on their profitability. Figures were provided. Understandably I was asked to keep the details confidential, which I do.

5.56 The figures (which are not audited) show percentage decreases in turnover, wages paid, and profitability as follows:

Hotel A: made a net profit of \$662,144 in 2011, and losses of \$5,808, 289,214 and 1,092,883 in 2013, 2014 and 2015 respectively. Its wages costs fell over that period, as did the cost of goods sold. Gross profit margin remained about the same, but sales almost halved.

Hotel B: this venue experienced reductions in the income for each of its bars within the premises when a comparison is made between 2013 and 2016. Food takings too were down by similar or greater proportions. Spending on wages fell by 40%.

Hotel C: another venue reported a fall in revenue by over \$1m (35%) between January and June 14. (ID scanning was reported by this venue as resulting in the loss of customers, because on occasion a large group arrives, and one or two of them were not carrying identification capable of scanning. Sometimes a whole group may leave when that occurs.) Net losses of \$5.78 million are said to have been incurred over the past 18 months.

Hotel D: [owned by] a large and experienced group operating premises outside the Sydney CBD and Kings Cross (as well as within those Precincts). The Amendments have produced benefits for this group which has been able to capitalise on the greater number of customers attending its premises outside the Precincts. This operator says, however, that it derived, in 2016, about half the revenue it did in 2012 from liquor sales, that the amount spent on wages has fallen by over a third (\$1m or so per annum) and that revenue from door charge is now but a fraction of what it was before the lockout.

Hotel E: this venue experienced a fall in gross profit of about 20% from 2013 to 2015. Payroll costs are down 30% in 2016 compared to 2011.

5.57 The sale of alcohol wholly or partly subsidizes the entertainment. It is not clear precisely how many hoteliers offered live entertainment before the Amendments, or which of them did so afterwards (whether to a reduced extent or otherwise). In discussing financial impact, it is necessary to take into account the net cost after allowing for the cost of live entertainment no longer provided.

5.58 Anecdotally, I have been told, especially by the residents, that hotel entertainment, especially pub bands, have long been in decline in Sydney. The best years, I was told, for these were the 80s and the 90s. It may be that, in any event, the installation of poker machines has in some establishments to a degree supplanted live entertainment: poker machines require fewer staff; somewhat less space; and, are not entirely compatible with loud music and large crowds in confined areas listening or dancing to it. As a result of the Amendments, hoteliers in the Precincts are certainly selling less alcohol and employing fewer staff. The numbers with which I have been provided do not enable me to make an assessment of the net financial impact of the Amendments on licensees *en bloc*.

- 5.59 Night club operators are usually holders of hotel licences (general bar). That licence allows the sale of alcohol on premises only, but not the operation of gaming machines. It allows dining, accommodation and public entertainment to be offered.
- 5.60 I did ask the Kings Cross Accord and the operators of four venues in Kings Cross to tell me whether and how they had sought to adapt to the changes effected by the Amendments, and whether they had tried to educate or encourage their customers to adapt their attendance and patronage among other things, to drink, dance, listen and socialize earlier and after 3am, more abstemiously. The responses mentioned some measures that were taken, including renovating premises and converting parts of them for other uses, as well as advertising and attracting publicity to counter what was described as negativity that the Amendments produced.
- 5.61 It would be surprising if the business of night clubs had not been negatively affected. The purpose of the Amendments is to reduce alcohol-fuelled violence and anti-social behaviour in the two relevant precincts. One of the legislative means of doing this is self-evidently to reduce the consumption of alcohol by reducing the number of persons consuming it in the Precincts, and their access to alcohol there generally. The lockout itself was intended not just to discourage, but to prevent entry and reentry to licensed premises after 1:30am. Not all of the turnover and profits lost have been unnecessarily lost to the business of selling alcohol. Some of it, I cannot, and nobody has suggested to me that they could quantify, the extent to which turnover and profits may have migrated elsewhere. It is interesting that, in an interview with hoteliers, one of them told me that his family had been in business in the Precincts for almost 80 years, and that there had been a huge decline in pedestrians and patrons in Kings Cross since the Amendments. I raised with him that the residents said that some of the entrants to the Precincts came from far afield, including the northern and the western suburbs. The hotelier whom I just mentioned, owns an hotel in the western suburbs, and has noticed a considerable increase in business there. Those whose businesses are confined to the Precincts do not have the opportunity of recouping the profits lost there as this operator has, but it seems

to me to be safe to assume that a deal of the money not spent in Kings Cross and the CBD on alcohol is being spent elsewhere. The second point is that the Amendments may have accelerated to some extent a trend of gentrification which was already emerging in Kings Cross. The hoteliers whom I saw complained about this. They said that the Precinct had historically enjoyed a night time entertainment culture. Having complained about the burden of excessive regulation, one of them was now suggesting that there be regulation as it were, to prevent or reduce gentrification. Areas do change in character. Sometimes the change will take much longer than at other times and in other places. Proximity to the metropolitan area and all of its supporting infrastructure, including of transport, as Kings Cross is, makes it just as or more attractive to residents than it has historically been to night time revellers.

5.62 I received few submissions from manufacturers and wholesalers of liquor and food. Those I did see showed a decline in sales and profits after the Amendments came into effect. It seems to me that the figures provided which were of sales overall did not enable me to identify the extent to which falls could be sheeted home to the Amendments.

Employment

5.63 Employment in other callings, for example, hospitals, ambulance services and policing have not suffered. My inquiries have satisfied me that rather than reduce staff, managers have been able to deploy them more efficiently and deservedly. Waiting times in emergency wards and for ambulances have been reduced. Police formerly engaged in dealing with alcohol-related incidents have been able to be re-deployed in containing drug-related crime⁹¹ giving the impression perhaps that drug-taking has increased since the Amendments. During my meeting with the Commissioner of Police and his senior staff, I was told that drug related crime has not increased since the Amendments, and that the equivalent of eight police officers formerly employed in dealing with alcohol-related crime have been efficiently and effectively redeployed in containing drug-related crime.

⁹¹ See further paragraphs 6.28 and following, where I consider the submissions made by the Police Force.

The business of live entertainment

- 5.64 Live entertainers have suffered. Entertainers cover a wide spectrum. They range from those who do no more than play recorded music with little or no commentary, in the form in which others have created it, to those who mix, make transitions between tracks and use turntables, compact cassettes, digital devices and software to do so with skill and musicality, to a live performer or performers, singing covers or original compositions, and of course bands.
- 5.65 Not all entertainers have been affected. Many live entertainers, actors, singers, bands, conductors, orchestras, and others who perform in venues at which liquor is not sold or its sale is not a priority, or who ordinarily complete their performances by 1.30am at night are not affected. Nor are those who customarily perform at, for example, licensed clubs and other places.
- 5.66 I have asked those who have lost money or opportunity as a result of the Amendments whether it might be possible to stem their losses by reprogramming live entertainment by, for example, sessions of it earlier, and perhaps condensing some sessions. Some hoteliers told me that they have certainly attempted to do this, but that their efforts had not been successful. I am not satisfied that further, perhaps earlier, and well thought out re-programming could not be done.

VI - Live Entertainment

5.67 MusicNSW made a detailed submission in which it sought to collect the various legislative endeavours to define live entertainment. These are well described in its submission of 20 June 2016. A later joint submission between MusicNSW and the Live Music Office propounded a definition in these terms which it urged should be adopted to enable the continuation of alcohol service after 3am at venues offering live entertainment:

1. Premises in respect of which the primary business or activity is the provision of entertainment to members of the public by a person who is physically present on the premises and is actually providing the entertainment.
2. 'live entertainment' means—
 - (a) event at which a person is employed or engaged to play music (live or pre-recorded); or
 - (b) a performance at which the performers, or at least some of them, are present in person; or
 - (c) a performance of a kind declared by regulation to be live entertainment;
3. The premises must not operate solely as a nightclub and shall be a venue which has a market orientation toward art, live performances, and supporting cultural events and endeavours.
4. Additional indicators of primary purpose live music arts and cultural presentation would comprise ticketing for events, APRA AMCOS licensing, involvement in festivals as well as previous operating history.

5.68 Regulation 8A of the Liquor Control Regulations 1989 (WA) defines live entertainment in this way:

live entertainment —

- (a) means continuous entertainment provided by one or more persons present in person; but
- (b) does not include any of the following —
 - (i) entertainment provided by way of recorded music (including music videos), whether or not by a disk jockey, unless merely incidental to the continuous entertainment to which paragraph (a) applies;
 - (ii) the presentation, visually or acoustically (or both), of entertainment taking place at another venue, where what is presented is received

from a broadcast or any other transmission (including Internet streaming) in real time or with a delay;

5.69 If the Government and the legislature were minded to allow an exemption of the kind sought by MusicNSW, very careful attention would need to be paid to the proposed provisions. Whether the primary business or activity of an enterprise is the provision of entertainment to the public may be contentious. Does the term ‘primary business or activity’ mean that, say, more than 50% of the revenue or turnover of the business is derived from the entertainment aspect of it? It is difficult to see how the primary business of very many of those affected by these laws could be entertainment because it seems to be accepted by all concerned that the sales of alcohol is necessary at least to subsidise the provision of entertainment, especially live entertainment.

5.70 I draw attention also to the definition of live entertainment in its unqualified reference to pre-recorded music. Any definition would need to ensure that anyone engaged to play pre-recorded music does more than mechanically reproduce the creativity of others. An entertainer needs to bring his or her engagement some genuine additional creative element, otherwise it would be easy to evade the operation of the laws. So too, the expression ‘market orientation’ would need clearer definition.

One musician’s opinion

5.71 One helpful submission was made by a young Sydney musician and performer who asked not to be identified. My [redacted] correspondence with him is attached as **Appendix 6**. Included in that correspondence is a set of questions and his answers to them together with a response to claims of statistical inaccuracy on the part of BOCSAR and others. Among other things, he says that proprietors of venues have either had to close down or completely change their business models to focus solely on selling alcohol. As I say elsewhere in this Report, it is by no means clear that very many venues have closed as a result of the Amendments. And it may be that in some cases that some closures that did occur were not entirely the consequence of the Amendments, although they may have been a contributing factor to the closures.

- 5.72 The experience of the entertainer with whom I corresponded is that he has lost the opportunity, on average, of two engagements per week which cost him some \$600 each week. Those engagements that he can obtain now barely cover his living expenses. I accept that he and probably others have been no less affected.
- 5.73 The problem he says is that many licensees provided several shifts of live music and DJs. For example, three years ago, he was able to play the early shift at the Trademark Hotel with a band and then move to *Goldfish* (a bar inside the Crest Hotel) where he performed with a different band. He would start at 8pm and finish at around 3am. DJ engagements would finish even later. Both of the venues to which he referred have closed.
- 5.74 He did not know of a venue other than The Star that now has more than 1 x three hour slot (the standard length for live music) because the venues are not open for the second slot to begin.
- 5.75 I do not doubt what this musician said in relation to the standard length of engagements. If however a standard performance were to last about 3 hours, there would be time for two performances (perhaps marginally shorter ones) to be completed before 1.30am to enable the next to begin before the lockout started, and for patrons to move on before the lockout to another venue. This confirms the impression that I had obtained from interviewing other people and the submissions that I have received that more effort could be made to adapt to the Amendments by the operators of licensed premises. It also provides some confirmation of the fact that without the capacity to sell alcohol, licensees are unable, or perhaps unwilling, to pay for live entertainment.
- 5.76 The Amendments were intended to achieve their purpose, among other things, by causing dispersion and reduction of numbers and crowding. They have succeeded in that regard. It follows that there are fewer customers in the Kings Cross and the CBD Precincts, and accordingly, fewer sales.

- 5.77 Entertainers are unfortunate casualties of the Amendments. They may also be casualties of an inability or unwillingness of operators to adjust programming and, or, the unwillingness of customers to change their habits. I am unable to agree with the musician's proposition that '*most industries' downturns do not rest on a government law such as this*'. Government regulation and Parliamentary law in numerous other fields can have the effect of decreasing opportunities and income, or of requiring operators and employees to make major adaptations.⁹² As the history of the regulation of alcohol which I briefly summarized earlier shows, alcohol has long been heavily regulated. Anyone embarking upon a business relying on the sales of alcohol well knows that he or she is entering a highly regulated area of business. Changes in town plans and planning legislation can have the effect of 'stranding' otherwise valuable assets.
- 5.78 When an operator applies for a licence, he or she does not acquire or buy an asset of a proprietary kind such as was the case with taxi licences which, before Uber and other ride sharing services, were auctioned by the Government for as much as \$220,000.⁹³ And nor does a licensee buy any assurance of immutability of regulation.
- 5.79 Disruption can occur in other ways. Just as digital disruption has had an adverse effect upon publishers and newspapers, and large recording companies, it may also have provided some opportunities. The musician himself says digital downloads (that is to say digital disruption) has reduced music sales by more than 50% of what it was before 2000. People are however now enabled to publish and promote themselves on line either for nothing or very inexpensively, not that I do suggest for one moment that live entertainment is not different and generally more engaging and exciting than recorded entertainment.

⁹² Eg personal injuries law for lawyers, the legalisation of Uber and legislative withdrawal of subsidies for major industry in, for example, deregulation of the dairy and sugar industries and other primary production, financial planning, regulation of road and sea transport and heritage legislation etc.

⁹³ The average for four transfers in August 2016.

- 5.80 The musician says that our most successful musicians built their careers by playing in bars and clubs. It should not be overlooked that those bars and clubs where these entertainers performed, until relatively recently, closed at midnight.
- 5.81 ‘Vivid’ is certainly a popular occasion in Sydney. A greater frequency of such occasions is to be encouraged.
- 5.82 Whether gambling is a substitute for, or consumes income which might be better spent otherwise, especially at places where live entertainment is offered, is a matter of policy and not one upon which I should or could express a preference. This musician is not alone in contending that there is a ‘drinking culture’ which needs to be addressed. The fact is that to the extent that there is such a culture, unless and until it is fully addressed, measures need to be in place to deal with it. It would be a matter for the Government and Parliament to decide whether, as suggested by this submitter, a percentage of gambling revenue should be spent in support of live entertainment, and if it were, how and where it should be spent.
- 5.83 He speaks about the need for the responsible service of alcohol and urges that there be heavier penalties for failures in ensuring that. Some aspects of responsible service are not able to be universally and minutely policed. It is not always easy to detect how intoxicated particular customers are.⁹⁴ People have different tolerances. I have been told that sometimes it is only when a customer is leaving the premises that there is any real indication that he or she has had too much to drink. Fully responsible service of alcohol is a highly desirable aspiration and its requirement is an important element in any system of regulation of the consumption of alcohol, but history tells that it has never been and it is unlikely ever to be, anything like a complete solution to the problem of excessive consumption and its consequences.

⁹⁴ See for example K Coomber et al, ‘Observable Characteristics associated with alcohol intoxication within licensed entertainment venues in Australia’ (2016) *International Journal of Drug Policy* 8.

- 5.84 That more money should be spent on increased security presence at licensed venues, that a visible police presence should be increased, and that trains should be run for 24 hours to and from the relevant precincts are all alternatives to a lockout and cessation of service that a number of opponents see as a preferable solution. None of these however attempt to quantify the cost or the practicability of these.
- 5.85 The musician says that there have been job losses for bar tenders and other employees at licensed premises. He names three venues in particular that have closed. These are *Backroom* and *Soho* (formerly *YU*). I deal elsewhere with the major closures that I have been able to identify since the Amendments. There will be others which have not been identified.
- 5.86 This submitter is to be commended for his advocacy of the culture of live entertainment and the genuine and energetic effort that he had made to assist.
- 5.87 The Amendments may only have enlarged or accelerated a fairly long-term trend. The City of Sydney said that:⁹⁵

In recent years our local live music and performance scene has declined – venues have closed, there are fewer opportunities for live music performance, and there are challenges such as balancing live music with amenity of residents.

⁹⁵ City of Sydney, *Live Music and Performance Action Plan*, Lord Mayor's Message, March 2014, p 4.

VII - The Casino

- 5.88 A number of submissions commented on what was said to be the anomalous and favoured position of the Casino. Its location, many submitters said, had been ‘exempted’ from the Sydney CBD Entertainment Precinct. As a large venue it holds a number of liquor licences and has many patrons: it should be subject to the same restrictions and regulatory controls as licensed venues in the CBD and in Kings Cross, opponents said.
- 5.89 The Casino lies outside any part of Sydney traditionally regarded as the CBD. It is situated to the west of the City, on an inlet to Darling Harbour on the western side. The line which marks the eastern boundary of the Sydney CBD Entertainment Precinct stops short of Darling Harbour and Pyrmont (where the Casino is). The Casino is not alone in falling outside the CBD Precinct. Other licensed venues are similarly located: the Pyrmont Bridge Hotel is one. Although it is correct to say that the boundary does not extend to include the Casino, it may therefore be misleading to say that the Casino was singularly exempted from the area to which the Amendments apply.
- 5.90 It is not for me to make any judgment whether gambling generally or gambling in a casino is morally inferior to selling or consuming alcohol.
- 5.91 The Casino, as with most or all Casinos in Australia, is licensed and governed by legislative arrangements peculiar to it.⁹⁶ The size and nature of such venues lend themselves to regulation tailored to the risks they pose, the facilitation and regulation of the activities in them, and the taxation arrangements to which they are subject. Governments derive large revenues from gaming income of casinos. The management of The Star, which I visited, told me that it paid \$326 million in government taxes and levies in 2015. Gaming tax accounted for \$222.1 million of this.⁹⁷ It is the sole contributor to the Responsible Gambling

⁹⁶ For the Star Casino, it is the *Casino Control Act* 1992 (NSW) and the Casino Control Regulation 2009.

⁹⁷ Star Supplementary Information 2 June 2016 p 2.

Fund which was \$21.4m in 2015. Much income is drawn from overseas residents visiting Sydney.

5.92 Before and during my reviews, statistics of violent incidents in, or near the Casino were published by BOCSAR. Some submitters pointed to them as evidence of displacement of the problems that the Amendments sought to avoid, and some suggested that they showed that the Casino had been afforded preferential treatment: violence there had not been met with a regulatory response, whereas Kings Cross and the CBD has laboured under the tight regime of the Amendments.

5.93 BOCSAR's analyses are contained in a paper published in 2015, *Lockouts and Last Drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia* (Crime and Justice Bulletin No 183), and one in April 2016, *Did the 'lockout law' reforms increase assaults at The Star casino, Pyrmont?* (Issues Paper no 114).

5.94 The latter concluded that the Amendments in 2014 'may have' increased the number of assaults in Pyrmont, particularly at the Star Casino, but that the increase is:⁹⁸

very small compared with the reduction in assaults found in the Kings Cross and CBD entertainment precincts following the reforms.

5.95 That analysis records a total of 154 non-domestic assaults in Pyrmont in 2015. 76 of them are attributed to The Star overall: inside (48), at the entrance to it (9), at the cab rank immediately outside the Casino (14) and on the street outside it (5). The management of The Star argues that assaults other than inside the Casino are not necessarily attributable to the Casino, its service of alcohol and its management of patrons. BOCSAR has attempted to make an appropriate apportionment by identifying the assaults on, for example, the nearby party boat dock, and the streets and footpath in the vicinity of the

⁹⁸ *Did the 'lockout law' reforms increase assaults at The Star casino, Pyrmont?* (Issues Paper no 114).

Casino. BOCSAR recognises that it is difficult to be definitive in ascribing responsibility for an assault to a particular premises or place: 50 of the 154 incidents were excluded owing to ‘missing address information’,⁹⁹ and the numbers were different depending upon how much precision was required in the details of address,¹⁰⁰ and the question whether the analysis was ‘narrative’ or more strictly cast. The Star said in its submission that it does not have the formal opportunity review BOCSAR statistics with NSW Police. Its own reviews show that some of the assaults attributed to the Casino occurred away from it, and, in some cases involved people or groups who had not attended the Casino. Any natural boundary between the Casino, its area of effect and influence, the cab rank, the dock, other public spaces and the area of effect and impact upon, for example, the Pymont Bridge Hotel cannot easily be drawn.

5.96 BOCSAR’s conclusion was that there had been a ‘statistically significant’ increase in such assaults but that this did not prove (albeit that it *suggested*) that the Amendments were, in effect, the cause.

5.97 It should be concluded that non-domestic assaults in or about the Casino have increased in the manner and to the extent that BOCSAR thought they had. Even so, BOCSAR said this:

... the increase in assaults at this site [The Star] is not very substantial. In absolute terms, there are about two additional assaults per month at The Star casino than there were prior to the 2014 reforms. This increase is very small compared with the reduction in assaults found in the Kings Cross and CBD entertainment precincts following the reforms.

5.98 I asked the Police for any statistics, records or analyses they had of alcohol-related violence at or near the Star. According to them, in the 12 months to April 2016, there were 58 incidents, and in the preceding year (12 months to April 2015) there were 78, a decrease of 26%.¹⁰¹

⁹⁹ See fig 1, sheet 2 and footnotes 5 and 6, and 8 and 9.

¹⁰⁰ See Footnote 10.

¹⁰¹ Letter from Detective Superintendent Reynolds dated 24 June 2016, sheet 2.

5.99 The Casino and the Police are said by the Casino's General Manager External Affairs, Mr Chris Downy, to have reached the opinion that a figure of 47 is the appropriate one (rather than BOCSAR's 76) for the year. Different tests were applied to arrive at the respective figures. BOCSAR's figures are those for incidents in which the Star is *mentioned*. The Police attribute relevant incidents to the Star on the basis that the perpetrator last consumed alcohol there. The Star has voluntarily assumed the obligations imposed by the 'violent venues' scheme under s 11(1A) and Sch 4 of the *Liquor Act* under which licensees and Police assess incident data to ascertain which of them are to be attributed to the relevant venue.

5.100 The imposition of a lockout and of a requirement of last drinks at 3am were likely in my view to have some impact on the Casino and its environs. Pyrmont is within walking distance of Sydney. As I suggest elsewhere, the Amendments provide opportunity for some, including licensees outside their areas of operation, as well perhaps as for some within them. It is difficult to think of a locality near central Sydney to which the boundary of operation might have been moved to avoid some displacement of people.

5.101 It was stated to be an objective of the Amendments to disperse visitors and to reduce their density in the Precincts. The small (to use BOCSAR's description) increase in non-domestic assaults in Pyrmont is similar to the increase in Newtown, Double Bay and Bondi. Had the result been an increase in non-domestic assault anywhere near the levels that had been experienced in Kings Cross and central Sydney before the Amendments came into effect, then one or more of their policy objectives would have been questionable.

5.102 The effect of the Amendments on the Casino has, its management says, not been entirely beneficial. Although a larger number of patrons have sought entry to the Casino following the Amendments, so too did more 'unsuitable' persons (aggressive, intoxicated). The Star said that refusals on the basis of responsible service of alcohol rose from 15,956 in 2013 to 23,318 in 2014. The situation

later stabilised, with refusals in 2015 returning almost to the levels of 2013, that is of 16,320.¹⁰²

5.103 Star says that, statistically speaking, there are very few (maybe as low as 1) incidents per 211,000 visitors.¹⁰³ The numbers of assaults, whether they are as BOCSAR reported them or lower, do not of themselves justify change to the terms of the Amendments. As BOCSAR has noted, the increase in assaults ‘around’ the Casino was much smaller in absolute terms than the fall in assaults in the Kings Cross and CBD Precincts.¹⁰⁴

5.104 Many opponents drew attention to what they said was discrimination in favour of the Casino at Pyrmont. Different laws, generally unrestricted hours of trading, do apply there, but contrary to assertions by some objectors, only statistically insignificant increases in violence have occurred there since the Amendments came into law. It is not within my Terms of Reference to discuss the moral equivalence or otherwise of laws designed to reduce the consumption of alcohol with laws that might encourage gambling. As I have said, since *Ha’s Case* decided by the High Court,¹⁰⁵ the States have not had recourse to alcohol taxes [excise], but they may lawfully raise gambling taxes. My Terms of Reference are concerned ultimately with the curbing of violence and the direct economic impact of the laws, and not with the morality or legislative preference (if any) for gambling.

5.105 I visited the Casino on 24 May 2016. I was escorted through and around it by management. I was told of, and observed many of the means adopted to reduce violence and anti-social conduct there and in its vicinity. These included multiple closed circuit cameras within and outside the casino, a heavy personal security presence and strict rules for staff for the responsible service of alcohol. Management argued that it was not in the interests of the business to have

¹⁰² Submission by The Star, p 6.

¹⁰³ Supplementary Submission by The Star 2 June 2016 p 3.

¹⁰⁴ P Menendez P et al, ‘Lockouts and last drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia’ (2015) 183 *Crime and Justice Bulletin* New South Wales Bureau of Crime Statistics and Research p 8.

¹⁰⁵ (1997) 189 CLR 465. See also paragraph 1.81 above.

rowdy or aggressive people on the premises who would disrupt the principal activity of gambling. Management said that it made contributions to the community by provision of live entertainment, the provision of a theatre for plays and musicals, and the provision of event spaces for banquets, conferences, cocktail functions, balls and galas, award ceremonies, and other special events. Last year it submitted that it contributed \$326 million in tax in 2015. Another point was made that sometimes the Casino was erroneously associated with noise, violence, anti-social conduct of people affected by alcohol disembarking from harbour cruises at the nearby wharf, and drinkers from the Pymont Bridge Hotel located only about 250 metres away, and just outside the of the CBD Precinct.

Part Six – Views of the Supporters

I – The Research

- 6.1 I was provided with and read numerous learned papers, studies and analyses of the burden that excessive consumption of alcohol places upon consumers and society. Some of them I have already discussed. All of them make a case for the regulation of the sale and consumption of alcohol.
- 6.2 I was referred to a substantial body of persuasive evidence to support these basic propositions:
- a. the number and density of licensed premises can be linked to the problems of alcohol-related violence and other related harm in those localities;¹⁰⁶
 - b. as at December 2010, there were 15,193 liquor licences in New South Wales,¹⁰⁷ in a State with a population of some 5,601,746 persons aged 18 or over, that is about 1 venue per 369 adults of drinking age;¹⁰⁸
 - c. during the last two or three decades, alcohol has probably been more accessible and cheaper, owing partly to a policy of liberalisation influenced to some extent by National Competition Policy;
 - d. increases in the number of licences tend to reduce amenity¹⁰⁹;

¹⁰⁶ M Livingston, *The effects of changes in the availability of alcohol on consumption, health and social problems*, PhD thesis, Medicine, Dentistry & Health Sciences - School of Population Health, The University of Melbourne (2012).

¹⁰⁷ There are, at the time of writing, some 15,929 liquor licences in New South Wales.

¹⁰⁸ E Manton et al (eds), *Stemming the Tide of Alcohol: Liquor licensing and the public interest* (Foundation for Alcohol Research and Education, 2014) pp 10-11.

¹⁰⁹ Amenity in this context can mean, for example, the quality that the area has of being pleasant and agreeable (see, for eg s 3A *Liquor Control Reform Act* 1998). See also the definition of that term in *Liquor Act* 1992 (Qld) which includes ‘comfort or enjoyment derived from the community or locality by persons who live in, work in or visit the community or locality’. Amenity is a wide ranging and flexible concept: *Broad v Brisbane City Council* [1986] 2 Qd R 317; (1986) 59 LGRA 296.

- e. with increased alcohol consumption comes an increased likelihood of presentation of consumers to emergency departments of hospitals;¹¹⁰
- f. regulation (and stringently enforced laws) do reduce the average consumption of alcohol;¹¹¹
- g. in the last 13 years young people as a group, particularly those aged under 25, have markedly reduced their consumption; with increases in abstinence among young adults driven by both changes in the cultural makeup of the population and the ageing of abstaining teenage cohorts into adulthood;¹¹²
- h. late night trading is consistently associated with increased alcohol-related harms and violence, primarily driven by increased levels of intoxication.¹¹³

¹¹⁰ C Cherpitel et al, 'The Effect of Alcohol Consumption on Emergency Department Services Use Among Injured Patients: A Cross-National Emergency Room Study' (2006) 67 *Journal of Studies on Alcohol* 890.

¹¹¹ N Carragher et al, 'Developing an alcohol policy assessment toolkit: application in the western Pacific' (2014) 92 *Bulletin of the World Health Organisation* 726–733.

¹¹² M Livingston, *Understanding Recent Trends in Australian Alcohol Consumption* (2015), Foundation for Alcohol Research and Education (FARE) pp 4-5.

¹¹³ K Coomber et al, 'Observable Characteristics associated with alcohol intoxication within licensed entertainment venues in Australia' (2016) *International Journal of Drug Policy* 8 at 12.

II – Medical and Related Workers

- 6.3 Almost universally, the medical profession and others whose work brings them into contact with injured and ill people support the Amendments. The latter include ambulance workers, nurses, paramedics, social workers, emergency services workers, and of course the Police. The views of the medical profession are disinterested, indeed largely altruistic ones. They are also well informed, not only by the statistical evidence to which I refer in this Report, but also by their day-to-day personal experience.
- 6.4 During the course of my work, I visited the emergency ward at St Vincent's Hospital Darlinghurst where I met Dr Fulde who is well known as an advocate of the Amendments. Dr Fulde was was senior Australian of the year in 2016, and has become responsible for all aspects of trauma training and administration for more than 200 staff at the hospital. He is Professor of Emergency Medicine at the University of New South Wales and Notre Dame University, and a Founding Fellow of the Australasian College for Emergency Medicine.
- 6.5 He escorted me around the ward and showed me the 'safe rooms' in which it had been necessary to hold heavily intoxicated and violent people likely to harm themselves. Those rooms were equipped with concealed escape mechanisms to enable a doctor or nurse or an ambulance worker to leave if in danger, as happened from time to time. Dr Fulde told me that the rooms have become much less needed since the enactment of the Amendments. I asked him whether they had been used to restrain people addicted to or affected by other drugs, in response to which he agreed, and told me also that told me that it was 'common' to see them used for patients affected by alcohol and frequently suicidal. Dr Fulde said that before 2014, the ward on Saturday and Sunday mornings was like a military field hospital. People were bleeding, vomiting and unable to control their bladders in the ward. The Amendments, he said, had resulted in a transformation of the ward at the weekend. There is no reason to, and I do not, doubt what Dr Fulde told me.

6.6 I received submissions from medical bodies including the Royal Australasian College of Surgeons, the Australasian College of Emergency Medicine, the Australian Medical Association (NSW), the New South Wales Nurses, the Midwives' Association, St Vincent's Health Australia and the Royal Australasian College of Physicians. Each of these made a reasoned defence of the Amendments. The College of Surgeons noted that St Vincent's Hospital in Darlinghurst, whose catchment includes all or most of the Kings Cross and CBD Precincts, as well as Bondi, Coogee and Double Bay, recorded a reduction of 24.8% in critically injured alcohol-related presentations during peak alcohol periods, and a 60 per cent reduction in admissions to the hospital for assaults and single punch attacks in the period since the Amendments came in to force. *There were 26 single punch attacks known to be alcohol-related in the two years before the Amendments, compared with just three since the period in which the Amendments have operated [emphasis added].* The costs of a traumatic brain injury were estimated to be between \$2.5 million to \$4.8 million for each moderate to severe case. The Surgeons say that the risk-based licensing system is appropriate because it takes into account cost to the community and applies it to licensed venues that generate harm. In a more general sense the Surgeons point to what they say are the devastating impacts of alcohol-related harm. They are regularly confronted with the shocking effects of road traffic trauma, interpersonal violence and personal accidents caused by excessive alcohol consumption. It increases the total burden on the community, of liver failure, gastrointestinal bleeding, upper gastrointestinal bleeding and oropharyngeal cancer and infections related to malnutrition arising out of or contributed to by the drinking of alcohol. One of the problems is that, by attending to injuries and incidents caused by alcohol, they are diverted from illnesses and injuries that are not as preventable. The Surgeons also support the retention of the 10pm prohibition on takeaway sales. They draw attention to BOCSAR's reporting of a further 9 per cent State-wide reduction in non-domestic assaults. Regional members of the College have described the restriction as a 'God send' matched by a decrease in presentations in emergency departments for domestic and non-domestic assaults.

- 6.7 The College of Physicians supports the Amendments. Its members see them as effective evidence-based measures for reducing alcohol-related violence. The Physicians, as with other medical organisations and researchers, point to the well-established nexus between alcohol consumption and violence, domestic and non-domestic. Reduced availability of alcohol can be linked with a marked decrease in assaults. Earlier closures, they say, are particularly well established as reducing violence. Evidence with respect to reduction of violence because of a lockout alone is less conclusive. A point made by the Physicians is that the reduction in inter-personal violence is only one of a number of problems that alcohol causes.
- 6.8 The Australian Medical Association drew attention to the direct impact of alcohol misuse on doctors. Almost all emergency personnel have experienced physical assaults and threats from drunk patients. Doctors and nurses report being punched, spat upon, vomited on, and abused by drunk patients. Recent studies¹¹⁴ show that drinking a single glass of wine doubles a person's risk of presentation to an emergency department. Three glasses presents a five-fold increase, and ten standard drinks increases the risk of a need to attend an emergency department 10-fold for men, and 14-fold for women. A very great number of presentations to emergency departments are alcohol-related. The AMA points generally to a problem that Australia has with alcohol and strongly supports the Amendments, including a closing time of 10pm for bottle shops.
- 6.9 The College of Emergency Medicine refers to alcohol-related presentations in emergency departments as one of its priorities. That College too supports the Amendments. It too points to the large number of emergency department presentations attributable to alcohol, the demand this imposes on resources, the already busy nature of those departments, and the necessary curtailing of care to other patients that these presentations cause. The College perceives the need for a cultural shift in Australia's relationship with alcohol, and that the night time

¹¹⁴ See for example, C Cherpitel et al, 'The Effect of Alcohol Consumption on Emergency Department Services Use Among Injured Patients: A Cross-National Emergency Room Study' (2006) 67 *Journal of Studies on Alcohol* 890.

economy [too readily] revolves around the ready availability and consumption of alcohol.

6.10 St Vincent's Health, the largest Catholic health provider in Australia, in its submission, makes reference to evidence supporting the Amendments in addition to its own experience of them. It is an organisation that provides public, private and aged care services, including major tertiary hospitals in the centre of Sydney and Melbourne. St Vincent's Hospital Darlinghurst experiences first hand the large volume of trauma and injuries presenting to its emergency department as a result of alcohol. Studies in the Netherlands, Norway, Germany and New York it said, showed that reductions of closing times of alcohol outlets, and the converse, has a close relationship to crime and alcohol-related injury. The Norwegian study across 18 cities found a 16% increase in violent crime associated with every hour of trading, and a converse reduction for every reduced hour of trading. The experience of St Vincent's Hospital, according to its written submission and the oral support of it by Dr Fulde, is, in summary, that in the year following the enactment of the Amendments, the number of serious or critical alcohol-related presentations to the emergency department was 246 compared to 318 the year before, there was a 25 per cent fall in alcohol related serious and critical injuries in the 'high alcohol consumption period' between Friday night and Sunday morning, that neurosurgeons saw a decrease in the number of patients presenting at night with serious head injuries (from 26 down to 11 in the first year after the Amendments), and, in a study yet to be published, St Vincent's Plastic and Reconstructive Surgery Department says there has been a 69% reduction in alcohol-related facial fractures requiring surgery. Facial fractures are injuries which are commonly and can be reliably and frequently linked, I was told, with alcohol. St Vincent's considers that the weight of evidence is that a restriction in trading hours (including of take-away liquor) is *strongest* in terms of the reduction of alcohol-related violence [emphasis added].

6.11 The Nurses and Midwives Association also firmly support the Amendments. That body sees them as having been extremely effective in reducing alcohol-fuelled violence. It argues for an extension of them across the State. Its

members' attitude to the laws is influenced by their experience of recurrent threats and verbal abuse by patients under the influence of alcohol. On some occasions there have been physical assaults. These difficult conditions add an extra burden to nurses already overworked in busy emergency departments. They have observed a decrease in the level of aggression, and in the number of incidents since the Amendments were enacted. One other particular difficulty nurses face is dealing with intoxicated patients in proximity to, for example, elderly patients in distress. The presence of an intoxicated patient, often young and physically powerful, poses difficulties for wider emergency management.

6.12 Criticisms were made by opponents of the reliability of the statistics to which professionals referred, and even of the opinions that they held. In evaluating these, as with evidence generally, it is necessary and appropriate to have regard to the interests, both of a personal and financial nature, of the critics. Unlike licensees and other opponents, the medical and other professionals are not interested in any financial sense, and seek to speak in a broad public interest.

6.13 In Part One, Section VII above, I touched on the history of attempts to curb excessive consumption of alcohol. Prohibition has rarely succeeded: indeed, it largely failed in the United States for various reasons. There is no suggestion in my terms of reference that I should explore the far-reaching issues to which prohibition gives rise. It is nonetheless obvious that the more alcohol that is sold and consumed, the greater the consequences for its consumers and the public there will be. Price can have an effect on consumption. (This has recently found to be so in Glasgow, the circumstances of which and its relationship with alcohol are the subject of discussion in Part Three of this report.) For present purposes it is relevant to point out that New South Wales and other State governments are limited in their capacity to increase price by taxes and, since 1995, this capacity has been that of the Commonwealth's only. (Returns of GST to the States are not directly related to excise collected on sales of alcohol in those States.)

6.14 I should not conclude my discussion of the medical experience and opinion without making these comments. Some harsh, indeed quite intemperate,

accusations have been made against Dr Fulde and others in the medical profession in submissions. Mr Koh described the doctors as ‘shady’ in my interview with him. In an email of 5 July 2016, he said that data with which the review has been provided was, unreliable, lacking in credibility in the case of data presented by St Vincent’s hospital, ‘misleading’, and on the part of the Australasian College of Surgeons, a tactic to curtail freedoms and to destroy Sydney’s cultural vibrancy.

6.15 I was concerned about these allegations and asked Mr Koh to explain them more fully, to identify the evidence that he thought contradictory, and to identify the basis for the assertion that the College’s purpose was tactical. Mr Koh responded in a detailed paper entitled ‘*An evaluation of key evidence submitted to the independent liquor law review*’. I sent a copy of his paper (which I have included in **Appendix 7**) to Dr Weatherburn of BOCSAR and to Dr Fulde to obtain their views. The former said that the criticism made by Mr Koh that the evaluation took no account of the pre-existing downward trend in assault before enactment of the Amendments was false. The analyses by Menendez et al (2015) and by Donnelly et al (2016) controlled for pre-existing trends and seasonal effects, and therefore took into account pre-existing trends. Of Mr Koh’s criticism that the BOCSAR evaluation took no account of the fall in pedestrian traffic, BOCSAR agreed that the traffic was less, but was not overlooked as a possible factor. A lack of reliable data meant that BOCSAR had been unable to take into account changes in pedestrian traffic. BOCSAR speculated that the decline in assaults might be due to a reduction in visitors to the Kings Cross and CBD Entertainment Precincts.¹¹⁵ (I interpolate here that dispersal and reduction of numbers were seen as and intended as a factor in reducing violence.)

6.16 The criticism (by Mr Koh) that more recent data showed clear evidence of displacement, was met with the point that this evidence was based on the observation that the number of assaults in Newtown, Bondi, Coogee and Double

¹¹⁵ See, for example, paragraph 2, page 9 of P Menendez P et al, ‘Lockouts and last drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia’ (2015) 183 *Crime and Justice Bulletin* New South Wales Bureau of Crime Statistics and Research.

Bay is higher than would be expected from a linear extrapolation of pre-existing trends (and especially where attention is restricted to alcohol-related assaults). Mr Koh's argument, it was said, begs the question whether the fall in assaults is linear, and no basis was given by him for this: the preferable reading of the data is that the number of assaults in these locations is lower than it was before the Amendments. Mr Koh also claimed that the proportion of alcohol-related assaults had increased since the Amendments. BOCSAR considered there to be two problems with this claim. Police recording of alcohol-related assaults is not entirely reliable for statistical purposes. The determination of an assault as alcohol related is made by the attending officer. No formal testing is done. BOCSAR conducted its analysis on all assaults rather than just those identified by police as alcohol-related. Moreover, Mr Koh had made no attempt, BOCSAR said, to test whether the apparent increase in the proportion of assaults was statistically significant.

6.17 BOCSAR also disputed the claim that its methods of statistical analysis had been inappropriate, by pointing out that its report was subjected to independent blind review by the Professor of Statistics at Monash University and that other separate studies (not of BOCSAR) had arrived at conclusions similar to those that BOCSAR did. BOCSAR did not, as it was alleged to have done, use OLS (ordinary least squares) regression.

6.18 BOCSAR's study, which expanded upon an earlier one,¹¹⁶ examined and compared the rates of assaults between January 2009 and June 2015 in each of the following areas:

- a. the Kings Cross and CBD Precincts;
- b. the area contiguous with the Kings Cross and CBD Precincts (the 'proximal displacement' area);

¹¹⁶ P Menendez P et al, 'Lockouts and last drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia' (2015) 183 *Crime and Justice Bulletin* New South Wales Bureau of Crime Statistics and Research.

- c. the aggregate of various well-known nightspots with large numbers of licensed premises such as Double Bay, Newtown, Coogee and Bondi (the 'distal displacement' area); and
- d. the rest of New South Wales.

6.19 The authors said this:

The results show that the January 2014 reforms were followed by substantial reductions in assault in Kings Cross and Sydney CBD Entertainment Precincts. There is no evidence that assaults increased in areas adjacent to these Precincts or in other entertainment areas within easy reach of these Precincts.

...

The [method of the study] allows us to rule out the possibility that the decline in assault is merely an extension of a pre-existing trend or some artefact of seasonal variation. The fall in police-recorded assaults in the target areas ... rule[s] out the possibility that the results are due to some change in the willingness of people to report assaults or some change in the way police record them. The abruptness of the decline in assaults and the fact that it occurred in the target areas but not in the proximal or distal displacement areas militates against a purely economic (or any general) explanation for the decline. It is also worth noting in this context that alcohol sales data collected by the NSW Department of Liquor, Gaming and Racing show a steep fall in litres of alcohol sold in Kings Cross between the first quarter of 2014 and the first quarter of 2015.

...

The [proximal displacement area] and the [distal displacement area] showed no reduction in assault following the January 2014 reforms in any time period. The CBD, however, shows a reduction in assault at the time when the 1.30am lockout begins and an even larger reduction in assault at the point where cessation of alcohol service begins. Both effects are present on weekdays and weekends. As expected, no change in assault is observed in the CBD between 6.00pm and 1.30am on weekends or on weekdays when the restrictions are not in effect. The [Kings Cross Precinct] precinct shows significant and substantial reductions in assault on weekdays and on weekends when the 3.00am cessation of alcohol service begins. On weekends in [Kings Cross Precinct] there is also a significant and substantial reduction in assault at 1.30am when the lockout begins. The only anomaly in relation to [Kings Cross Precinct] is that, during the week there is a significant reduction in assault in the 6.00pm to 1.29am period but no decline in the 1.30am to 2.59am period.

6.20 This was the conclusion of the authors:

There were large reductions in the number of assaults in the [Kings Cross Precinct] (-45%) and the CBD (-22.9%) but no change in the trend of assaults in the rest of NSW. The combined intervention areas [Kings Cross and the CBD] show a decreased of 27.1% after the [Amendments]. There is no evidence of geographical displacement of assaults to either of the [proximal displacement area] or the [distal displacement area].

- 6.21 Professor Kypri, one of the authors of a BOCSAR paper, also responded to Mr Koh's criticisms. I had not provided to him, Mr Koh's response to me but he obtained a copy of it, I presume, from BOCSAR. He considered the evaluation to have misrepresented his research and to be misleading. He pointed out that Mr Koh had concentrated his criticisms on the BOCSAR paper, but apparently overlooked that it was later published in the international peer-reviewed journal of high standing, *Addiction*, and received praise from a leader in this field, Professor Tim Stockwell. There is much else that could be said about the academic standing of the paper, but what I have said demonstrates sufficiently Mr Koh's criticisms of it to be misconceived.
- 6.22 Mr Koh thought the evidence concerning Newcastle to have been misrepresented by reference to a hierarchy of evidence for an Australian policy proposed by an economist (not a statistician). But in doing so, Mr Koh mischaracterises the evidence as being low in the hierarchy when, even if that hierarchy were appropriate, it is one that has a control site and justifies recognition higher on the scale.
- 6.23 Professor Kypri says that many other reputable international studies suggest that late-night trading hours lead to increased consumption and related harms, a conclusion that is consistent with the BOCSAR findings. Professor Kypri's letter to me is also included, along with Dr Weatherburn's written response on that topic, and a letter from St Vincent's Health Network (Associate Professor Schembri), in **Appendix 6**.
- 6.24 Dr Fulde did not respond in writing to Mr Koh's evaluation of the research he had published, and the comments he had made publicly about the Amendments and their effect. But he made comments orally to the effect that Mr Koh had misunderstood that Dr Fulde's focus had been on critically injured patients and that he had the benefit of personal observation and experience to underpin the statistics to which he had access. Dr Fulde also said that his research did not provide answers to all of the questions in the field, but did make contributions to them within his expertise and experience.

- 6.25 I am satisfied that the data provided by these experts and the analysis they offered was accurate.
- 6.26 In making their submissions, I took Dr Fulde and the other doctors and their professional associations to be doing no more than acting in an honourable tradition of concern for public health. As early as January 1726, the Royal College of Physicians campaigned to encourage legislators and the public to understand that health was a source of wealth, and that alcohol, in particular gin, as it was then called, was being for the first time very widely and excessively consumed in the United Kingdom. There were further campaigns in 1739 and 1751. One member of the College, George Cheyne, wrote an essay on health and long life in 1724. Cheyne was a reformed drunkard and condemned strong liquors for their contribution to disease and disorder.¹¹⁷
- 6.27 It will be apparent from what I have discussed in this Part that there is a polarisation of opinion on the issue of the consumption of alcohol and its benefits on the one hand, and on the other, the price that it exacts on society's health and wellbeing.

¹¹⁷ J Warner, *Craze: Gin and Debauchery in an Age of Reason* (Profile, 2003) p 94.

III - Police

- 6.28 The Police strongly support the retention of all measures contained in the Amendments. Their submission emphasised that the initiatives as a whole produced major benefits to law enforcement, emergency services and the community. The Police likened the regular situation in Kings Cross before the Amendments to a major public event without the supporting infrastructure, planning and resources. The unacceptable levels of alcohol-related violence and anti-social behaviour gave rise to reduced public amenity and personal safety. The implementation of locally-developed measures (which I take to include those which the Kings Cross Accord had implemented or had planned) had failed to resolve these problems.
- 6.29 The Police support the retention of the 10pm restriction on takeaway liquor sales, on the basis that Western Region Crime Managers have observed a reduction in alcohol-related violence and anti-social behaviour in their localities since their inception.
- 6.30 Both the Sydney City and the Kings Cross Local Area Commands have observed a marked decrease in alcohol-related anti-social, and violent behaviour. They say that they have been able to redirect resources that would otherwise have been absorbed by addressing alcohol-fuelled violence in the Precincts to detecting and enforcing the law in, for example, drug-related crime.
- 6.31 Likewise, the Newcastle Command strongly supports the combination of measures that comprised the Amendments. Superintendent Gralton of that Command commends the lockout as a measure on its own, and says that it brings a sense of calm across the city between 1.30am and 3am. It reduces the likelihood of encounters between intoxicated patrons in the city, hence the possibility of conflict.
- 6.32 The Police, I learned in my consultation with them, used to receive notification from the Liquor Administration Board or Licensing Court of changes in the

identify of persons normally or financially interested in a licence or the profits of the business conducted under it. The Police regard it as important that they receive, such information as ILGA and others have in this respect so that appropriate checks can be made of the suitability of such persons, and in order to discharge the police functions under sections 42(5), 138(2) and 139(1)(b) of the *Liquor Act*. There ought be some system for Police to be notified of material changes of persons interested in the business or the profits of the business carried on under licences the better to bring to Police attention changes with a view to monitoring criminal activity or influence.

6.33 The NSW Police Association also supported the retention of what its submission described as the ‘alcohol harm reduction measures’, including the 1.30am lockout. Some media reports suggested that the Association’s position had changed since its submission was made. The Association wrote to me disclaiming that, and drawing my attention to a Motion passed by its Executive reaffirming ‘*strong support for the current suite of alcohol measures ... in place in the greater CBD area*’ and noting the ‘*unequivocal evidence that the measures work to reduce ... alcohol-related violence*’. It advocates extension of the measures across the State.

Part Seven – 10pm takeaway sales restriction

- 7.1 I have been asked to give consideration to the ban on the sale of packaged alcohol after 10pm. Almost universally, the medical profession says, this has had an effect of reducing domestic violence. Some of the objections to the ban overlook that alcoholic beverages are not very perishable commodities. Some opponents say that it is a great inconvenience not to be able to make (on impulse or otherwise) a purchase after 10pm of packaged alcohol. Some said that they sometimes entertain late because they have first to put their children to bed, and that it was a hardship not to be able to telephone a home delivery service to obtain wine or beer after 10pm. After experiencing one such occasion of inconvenience, a householder might, one would think, have enough foresight to lay in a supply of a few bottles of wine or beer a day or two before, or even on the day of home entertaining.
- 7.2 Regional hoteliers complained that they were especially disadvantaged. Their patrons would often wish to buy alcohol after they had spent some time at the hotel and were leaving it at 10pm or later. Again one such experience of deprivation of the opportunity to purchase alcohol after 10pm ought discourage its repetition.
- 7.3 Hoteliers at tourist venues said that they too were especially disadvantaged, because people coming to those venues sometimes arrived after 10pm, and were disappointed that they were unable to buy packaged alcohol then. One would have thought that the public, including tourists, would soon learn that packaged alcohol would not be available for purchase after 10pm.
- 7.4 Many submitters supported this restriction on the ground that it lessened domestic violence. I was provided with figures by Liquor and Gaming NSW which suggested that, since the enactment of the Amendments, alcohol-related domestic assaults had decreased by 8.1% for the State as a whole, by 12.3% in regional areas and by 4.4% in metropolitan areas. In regional areas, the reduction of such assaults had fallen 16.7% between 11pm and midnight.

Home Delivery Service

- 7.5 I received a submission from a home alcohol delivery service, Jimmy Brings, and many by its customers in support of it. The service commenced in 2011. It has grown rapidly since. It offers fast delivery of alcohol, does not deliver to public places, and uses a photographic identification scanner on a technology-based platform. The ordinary considerations of the responsible service of alcohol apply to the company, and it employs a system to ‘blacklist’ customers who have been unable to present photographic identification, or who are intoxicated. The cost of services is added to the price of alcohol. That tends to place this service out of the reach of some. I was provided with figures on a confidential basis which seem to show that this business had suffered since the Amendments. Its owners did try to compensate for the loss of revenue and growth by increasing the area of delivery and increasing its opening areas substantially.
- 7.6 Most deliveries by this company are to places outside the CBD and Kings Cross. Some is delivered to the North Shore, more to the eastern suburbs, and some to the west and south of the city.
- 7.7 Opponents said that the delivery of alcohol to places outside the Precincts is consistent with the objective of the Amendments to disperse crowds and to the reduction of the density in the CBD and Kings Cross. A number of submitters said that they use the service to order alcohol after dinner if they decided to stay home or to return there with friends to socialise and drink. If the service were not available, those submitters said, and if they had not organised themselves ahead of time, then they would be more likely to go out to a licenced venue and perhaps in the CBD or Kings Cross. The consumption of alcohol at home, they argued, is consistent also with the objective of the Amendments to minimise alcohol-fuelled violence on the streets, albeit that the delivery of alcohol to residential addresses does not invariably mean that there will not be disturbance or violence on the streets of those neighbourhoods, although it seems less likely.
- 7.8 Those who favour an extension of hours of availability of home delivered alcohol were not alone in tending not to address the evidence, statistical and

otherwise, of the association of alcohol with domestic violence and its impact on children.

Part Eight – Periodic Licence Fees

- 8.1 Some 75% of businesses pay only a base annual fee of between \$102 and \$2,040 (indexed annually to CPI). The fee varies according to licence type and the risks considered to be associated with the type of operations it authorises.
- 8.2 I set out below the applicable base fee for each type of licence.

Licence type	Base fee for 2016 <i>per licence</i>
Club licence	\$510
Hotel licence (full hotel)	\$510
Hotel licence (general bar)	\$255
On-premises licence	\$408
Producer/wholesaler licence (not 'small')	\$204
Small bar licence	\$204
Packaged liquor licence (less than 4 outlets)	\$510
Packaged liquor licence (4 to 9 outlets)	\$1,020
Packaged liquor licence (more than 9 outlets)	\$2,040
Limited licence (multi-function)	\$102
Hotel licence (former community liquor licence)	\$102

- 8.3 Licensed venues that trade after midnight also pay an extra loading in recognition of higher regulatory costs and risk factors associated with late night liquor sales and consumption. A fee of \$2,500 loading applies to venues authorised to trade regularly between midnight and 1:30 am. Those venues which are authorised to trade regularly after 1:30 am incur a loading of \$5,000.
- 8.4 An exemption from the risk loading may be given where, for example, the relevant licence is for a premises in a regional or remote locality with a population of fewer than 1,000 persons, and where access to goods, services and

social interaction is restricted due to location. Other exemptions are available, including for tourist accommodation establishments, some restaurants, accommodation premises, airport and catering services, producers and wholesalers, and small bars not located in a 'freeze precinct'.

- 8.5 Licensees permitted to trade after midnight may reduce their annual liquor licence fees by accepting an occasional extended trading condition. This condition permits them to trade past midnight or 1.30am on up to 12 occasions per year. Licensees subject to such a condition who only occasionally trade after midnight are not required to pay a trading hours loading. Licensees, however, who have the benefit of that condition allowing regular trading up until 1.30 am, and occasional trading after 1.30 am, are required to pay a trading hours risk loading of \$2,500.
- 8.6 The Compliance history risk loading was part of the Amendments but is not yet in operation. It would apply to licensed premises with a poor compliance history and be calculated on the following basis:
- a. \$3,000 if one offence is committed in the previous calendar year, or one strike is in force as at the fee assessment date of 15 March;
 - b. \$6,000 if two offences are committed in the previous calendar year, or if two strikes are in force or the venue is a level 2 declared premises under schedule 4 of the *Liquor Act* as at the fee assessment date of 15 March;
 - c. \$9,000 if three or more offences are committed in the previous calendar year, or if three strikes are in force or the venue is a level 1 declared premises under schedule 4 of the *Liquor Act* as at the fee assessment date of 15 March.
- 8.7 A \$2,000 location risk loading would apply when a compliance history risk loading is incurred and the venue is located in a prescribed precinct such as Kings Cross or Sydney CBD.

- 8.8 The following patron capacity risk loading would also apply where a compliance risk loading is incurred:
- a. \$1,000 loading for venues with a capacity of fewer than 60 patrons;
 - b. \$3,000 loading for venues with a capacity of between 61 and 120 patrons;
 - c. \$5,000 loading for venues with a capacity of between 121 and 300 patrons; and
 - d. \$8,000 loading for venues with a capacity of greater than 301 patrons.
- 8.9 My Terms of Reference require me to consider the impact of the periodic licensing system on business viability and vibrancy. The operators of licensed premises opposed these Amendments on the grounds that they made their businesses less profitable and, in some cases, unprofitable. There was no other wide scale opposition to this component of the Amendments, probably because its direct effect was upon the venue operators only and because the operation was postponed.
- 8.10 The Policy objectives of the system appear from the Second Reading Speech I quoted in Part One. They are to encourage the development of business models that are associated with lower risk of alcohol-related harms and, as I said at paragraph 1.40 above, to offset costs associated with the regulation of the liquor industry.
- 8.11 Regulatory arrangements that give financial incentives to businesses to comply with the law and to take action to avoid risky activities are not uncommon.
- 8.12 A liquor licence, unlike say, a taxi licence, is not of a proprietary kind 'sold' by government. The objective is, as well as the encouragement of good practice, the recoupment (of some) of the cost incurred in the administration of the liquor industry. I set out at paragraph 1.40 some relevant figures. In my opinion it is

valid and appropriate for a government to seek to recover the direct costs it necessarily incurs in administering an industry. There are other costs not always calculable, for example, of hospital admissions, ambulance and police services, treatment of alcohol caused illnesses, and domestic violence. It is also relevant at this point to notice that the Amendments which are in operation have, according to a cost benefit analysis made by Treasury, produced a net benefit of \$29.8 million between February 2014 and December 2015.

- 8.13 The imposition of higher licence charges according to the risk in the nature, the scale, the time at which the activity is conducted and the history of the operator's compliance with the law are appropriate ways of securing the objectives of offsetting some the costs associated with administration and the provision of financial incentives to businesses to comply with the law and avoid risk.

Part Nine - Conclusions

- 9.1 The 'pub crawl' and 'bar hopping' were not invented yesterday. Until at least 1989, they necessarily finished by midnight. The difference now is that people, mainly younger people, tend to start a night out later and to continue it well into the next morning. Before they go out, some have 'pre-loaded' at home and at friends' places. Many of the opponents said that they treasured live music and resented any deprivation of it, which they, as well as numerous licensees, said had occurred and was attributable to the Amendments, in particular the lockout. The Amendments do not proscribe music or any form of live entertainment. Their effect in relation to these is two fold: people who enjoy it may have to make a choice before 1.30am as to where they can enjoy it, and after 3am they cannot enjoy it accompanied by the service of alcohol. If live entertainment is as precious to people in the Precincts as they claim, visitors and providers should be able to programme it so that choice can still be offered up to the lockout, and enjoyed for hours afterwards accompanied by alcohol until 3am. Some supporters of the Amendments said that live entertainment should stand on its own two feet and not be dependent on sales of alcohol.
- 9.2 On all of the evidence that I have reviewed, and having regard particularly to the statistics objectively collated and professionally analysed by BOCSAR, and the informed police and medical evidence based on actual experience, I have formed the view that the two Precincts at night were grossly overcrowded, violent, noisy, and in places dirty, before the Amendments, but that after them, they were transformed into much safer, quieter and cleaner areas.
- 9.3 I understand that the objectives of the Amendments were to achieve these ends. Those policy objectives are, to answer the statutory question, in my opinion valid.
- 9.4 The next question is whether the terms of the Amendments remain appropriate for securing those objectives.

- 9.5 The Amendments have made the Precincts, especially Kings Cross, less attractive to large number of former habitués, with the result that the streets there are now less crowded at night, with turnovers of licensees and some other businesses, and numbers of employees of them reduced.
- 9.6 Some of the expenditure, discretionary as much of it is, and therefore some of the profits and employees, are likely to have been displaced to other areas including Double Bay, Bondi and Newtown, and to the Casino. Although the number of visitors displaced is substantial, there has been no significant increase in violence in the displacement areas.
- 9.7 The Amendments have come at a cost which is not quantifiable but which should not be exaggerated to employment, live entertainment and the vibrancy of the Precincts.
- 9.8 Attempts have been made by some licensees to adapt their business models and programmes to the changed hours, largely unsuccessfully. People nowadays tend to start and end their nights out much later than in the past. So far they have been resistant to changes to earlier hours. The lockout has reduced opportunities to visit and revisit different venues, meet different people and enjoy different entertainment at them, and, in combination with the cessation of service at 3am, has reduced the consumption of alcohol in the Precincts.
- 9.9 Subject to the qualifications which I express below, the terms of the Amendments remain appropriate to securing the objectives of them.
- 9.10 The sale of takeaway alcohol, whether before or after 10pm, makes little or no contribution to violence and anti-social behaviour in the Precincts, even less so when it is home delivered. Extension of the hours of sale of takeaway alcohol at licensed premises could be extended to 11pm, and of home delivered liquor to midnight. In some regional areas hotels do make a contribution to the social life of the district by sponsoring sport and other community activities. In some places hotels are the only venues for night time entertainment.

- 9.11 In-house domestic violence was not a subject of this review. I do record however that many in the medical profession argue that takeaway alcohol makes a substantial contribution to domestic violence, which, as the statistics show, occurs in regional as well as metropolitan areas. Licensees in regional, which includes tourist areas argued that they were a special case and that trading hours for takeaway liquor there should be extended. It needs to be understood however that such an extension may elevate the risk of domestic violence.
- 9.12 The Police regard it as important that they receive information in the possession of the Independent Liquor and Gaming Authority (ILGA) so that appropriate checks can be made of the suitability of licensees and managements, in order to discharge their functions under sections 42(5), 138(2) and 139(1)(b) of the *Liquor Act*. There ought be some system for Police to be notified automatically of material changes of persons interested in the business or the profits of the business carried on under licences the better to bring to Police attention those changes with a view to monitoring criminal activity or influence.
- 9.13 I am concerned that live entertainment and those employed in it (including sound and light technicians etc) have lost opportunities of employment.
- 9.14 I accept that opportunity for them to reclaim some, at least, of this loss should be considered and trialled. There is difficulty, however, in defining live entertainment and those necessarily employed in support of it. The difficulty lies in distinguishing genuine live entertainment from a mere mechanical reproduction of it. I draw attention to one form of definition adopted by the Western Australian legislature in the body of my Report.
- 9.15 In the end, and not without some hesitation, I have formed the opinion that whether the withdrawal or variation of the measures would impair the achievement of the legislative objectives could only be determined after a trial period and experience of them in a reduced form.

9.16 Staged relaxation of aspects of the Amendments could be considered. For a trial period of 2 years, genuine entertainment venues in the Precincts might be permitted to open to enable entry to those parts only of those venues offering live entertainment to the capacity of those parts only until 2am, and to serve alcohol in those parts until 3.30am so long as live entertainment is being generally continuously offered throughout the evening until then. Satisfaction of conditions relating to the provision of genuine live entertainment should be the province of ILGA. A relaxation of the Amendments to this effect may go some way to an orderly restoration of vibrancy and employment opportunities in the Precincts. It needs to be understood again however that such a relaxation carries the risk of greater density and consumption of more alcohol in the Precincts. It needs also to be understood that relaxing the Amendments, even in this way, involves risk.

9.17 The periodic licensing system may have an effect on business viability by increasing the costs of licensing. The underlying rationale for that increase (by having regard to risk and to the likely increased costs of administration) is one that is consistent with the objects of the *Liquor Act*. Some impact upon business viability and vibrancy was foreseen by the legislature as an inevitable consequence to some extent, and is in that respect consistent with the objects of the Amendments.

9.18 Compliance by licensees can be complicated and expensive. As the recent case of *Stuart v O'Connor* shows, there can also be ambiguity. The *Liquor Act*, including the Amendments and their administration would benefit from revision and harmonisation.

Signed:



I D F CALLINAN AC

Dated: 13 September 2016

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