Submission to Liquor Law Review

The Hon. Ian Callinan AC QC

Dear Sir,

The inquiry into the NSW liquor laws is welcomed. Over the last number of years, the NSW Government has burdened the citizens of the State with an increasing number of regulations purportedly in the interests of safety, however these regulations have had a tremendous impact on civil liberties, freedom, employment, small businesses and the economy.

I recently wrote an article, published on Linkedin, entitled "*Would the last person in Sydney please turn the lights out?*" providing an overview of the damage that these regulations have done on the social, cultural and economic vibrancy of Sydney, as well as its international reputation. This article clearly touched a nerve with the citizens of New South Wales as within a week almost one million people had read the article. A wave of public action soon followed including 15,000 people marching against the lockout laws in a rally organised by Keep Sydney Open. Today a search for "New South Wales" "Lockout Laws" in Google News yields over 5,000 articles written on the topic, the majority being negative on these laws, and other restrictions on civil liberties that have crept in through NSW Government legislation over the last few years.

As the article is 8,400 words long, I am unable to submit directly to the review which has a 2,500 word limit, however I would like to include this by way of reference from this submission, which I understand is possible after correspondence with Mr Jonathan Horton QC, counsel assisting. I attached the link in the bottom of this submission.

I also have written a more detailed background information for my submission, which is also published on LinkedIn and linked below. I found it impossible to convey in 2,500 meaningfully the issues that the inquiry covered, particularly when the material in the terms of reference is longer.

In the background information I outline the misuse of official statistics by government officials and others in order to justify the lockout legislation. I then discuss the issues surrounding the liability of venues and with liquor legislation in New South Wales. I examine what exemptions to these law have been granted, and to what establishments. I then look at the timeline of events and politics surrounding the introduction of these regulations to show that neither major party believed in them in the first place, and that both deliberately misrepresented official data to play petty politics. I also discuss at length the incestuous relationship between the NSW Liberal Party and the casinos which I think warrants further attention. Finally, I show that the only winners from these laws have been the casinos and property developers, and the biggest losers have been small businesses, jobs, the economy, civil liberties, tourism, and the social, cultural fabric and reputation of Sydney.

I ask that your honour also considers the background material I have attached and published at this link:

“The death of Sydney’s nightlife and economic collapse of its night time economy: a detailed submission to the Callinan Inquiry on liquor laws” (LinkedIn)

http://www.linkedin.com/pulse/death-sydneys-nightlife-economic-collapse-its-night-time-matt-barrie

Submission

Commercial businesses, people’s jobs and civil liberties have been punished dramatically for what essentially is a social issue- just for existing within a certain geographic area. What’s worse is that it is an unjustified beat up over a social issue.

The main data used to justify the lockouts, the Fulde et al. (2015) St. Vincent’s paper, and the Bureau of Crime Statistics data, simply do not show that “violence had spiralled out of control” as Premier Mike Baird contends. Instead they show alcohol-related non-domestic violence had been dropping for a decade, and in the years immediately before and after the lockouts has been flat.

The Fulde paper is poorly constructed and the author has a conflict of interest to say the least, being a founding director of the main anti-alcohol lobby group, the Thomas Kelly Youth Foundation. This group is funded primarily by by Crown Casino, the owner of Crown Casino, Macquarie Bank- substantial shareholder and banker to Star, NSW Premier’s Office (who passed the legislation) and City of Sydney (who helped implement the legislation).

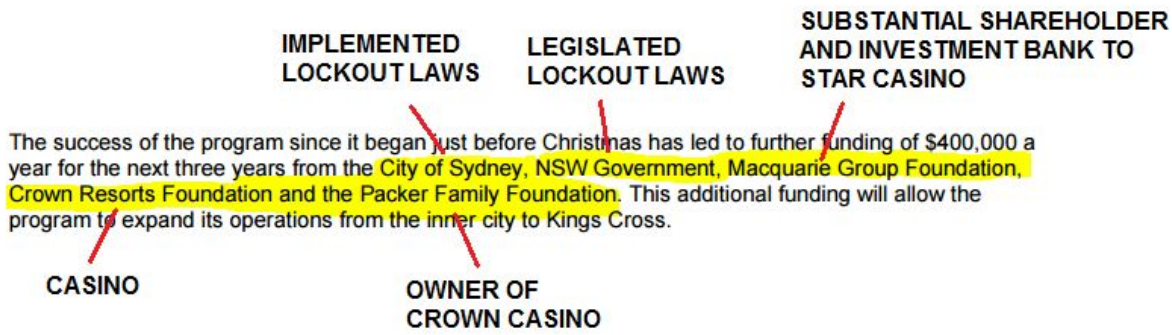


Figure: Paragraph from media release by the Thomas Kelly Youth Foundation

However, despite the huge issues with how the data was researched and recorded that I detail in the background information, even if the paper taken at face value, the difference in severe alcohol-related injuries between the year before and immediately after the lockouts started that are directly attributable to lockout times (1am to 5am) was a total of 25 cases over a year. That’s one every two weeks on average.

Given the nature of the problem, we examined the high alcohol time (HAT) separately; ie, the weekend, from 6 pm Friday to 6 am Sunday. The proportion of alcohol-related serious injury presentations in triage categories 1 and 2 was much higher during HAT (9.1%) than the rest of the week (3.1%; $P < 0.05$). There was a significant decrease in the total number of seriously injured patients during HAT after the introduction of the various control measures in 2014: from 140 presentations (10.4%) in the 12 months before the changes to 106 (7.8%) in period 2 ($P < 0.05$). This was a relative risk reduction of 24.8% (95% CI, 4.3%–40.9%).

Figure: The conclusion of the Fulde et al. (2015) paper. A 24.8% drop in injuries at St. Vincent's is determined by a total delta of 34 patients over one year.

The 24.8% drop in injuries at St. Vincent's is determined by Fulde by **a total difference of 34 patients over an entire year** during the High Alcohol Time.

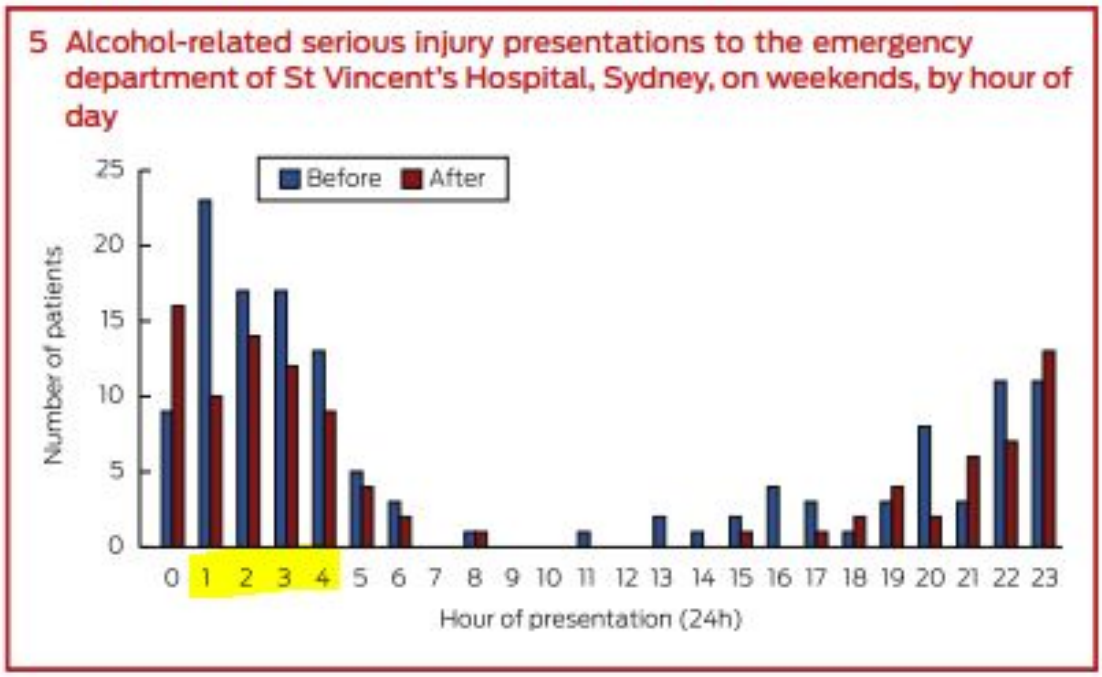


Figure: Taking into account the times affected by the lockout laws, the difference in patients is closer to 25 over the course of a year. Source: Fulde et al. (2015).

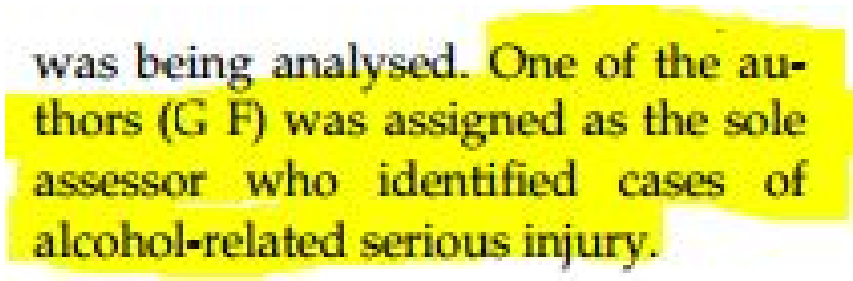

was being analysed. One of the authors (G F) was assigned as the sole assessor who identified cases of alcohol-related serious injury.

Figure: The sole assessor of alcohol related injury was only one of the authors of the paper, G F (Gordian Fulde). Source: Fulde et al. (2015).

The method in which this data has been collected and analysed for this paper is spurious, to say the least.

Certainly if emergency at St. Vincent's was a "war zone" as Dr Fulde describes pre-lockout conditions, then the lockout laws must certainly be a failure given the difference in high injury alcohol related admissions is about one patient every two weeks by his very own data.

There are plenty of more dangerous things that every one of us does daily in their lives than venture into a Sydney CBD Entertainment district, such as climbing out of bed or taking a bath. If we applied a similar logic of banning to those activities there would simply be no economy.

Both major parties in the NSW Government knew this. They are both on record in Hansard in the Legislative Assembly and in the media using BOCSAR statistics to show alcohol-related violence was dropping before the lockout legislation. In the background material I detail at length how BOSCAR data has been misrepresented significantly by the politicians in order to justify the lockouts.

Mr GEORGE SOURIS: The Leader of the Opposition has not done his homework. While there was a 26 per cent reduction in violent incidents in licensed premises in Newcastle between 2008 and 2012 there was a 28 per cent statewide drop in alcohol-associated violence over the same period. During this period, there were greater reductions in violent incidents for other parts of New South Wales—

The SPEAKER: Order! The member for Macquarie Fields will come to order.

Mr GEORGE SOURIS: —according to the New South Wales Bureau of Crime Statistics and Research without the Newcastle conditions. For example, a 38 per cent reduction in violent incidents on licensed premises was recorded in Campbelltown, a 36 per cent reduction was recorded in Gosford and a 40 per cent reduction was recorded for Penrith. This completely debunks the claim that Newcastle-style restrictions are the only pathway to achieving a real reduction of alcohol-related violence.

The SPEAKER: Order! The member for Macquarie Fields will come to order. This is not an opportunity for him to have an argument.

Mr GEORGE SOURIS: The Government looks at each precinct individually and has achieved a significant drop in violent incidents across the State. In 2012 alone assaults on licensed premises across the State fell by 8 per cent compared to 2011. Labor wants to treat every Friday and Saturday night like a major event, with better transport and a strong police presence. This is another swing and a miss. We are already taking this approach in Kings Cross and the Sydney central business district.

Figure: Gaming and Hospitality Minister George Souris using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: Hansard

Mr BARRY O'FARRELL: For all of the criticisms of the Leader of the Opposition and the figures he produces, the one figure he fails to produce is that since March 2011 assaults are down 33 per cent in Kings Cross. Assaults in licensed premises across the State are down by 8 per cent.

Mr Gareth Ward: Just like his approval rating.

The SPEAKER: Order! The member for Kiama will come to order.

Mr BARRY O'FARRELL: I have teenage sons. One assault is one too many.

Mr John Robertson: You can do more.

The SPEAKER: Order! The Leader of the Opposition will come to order.

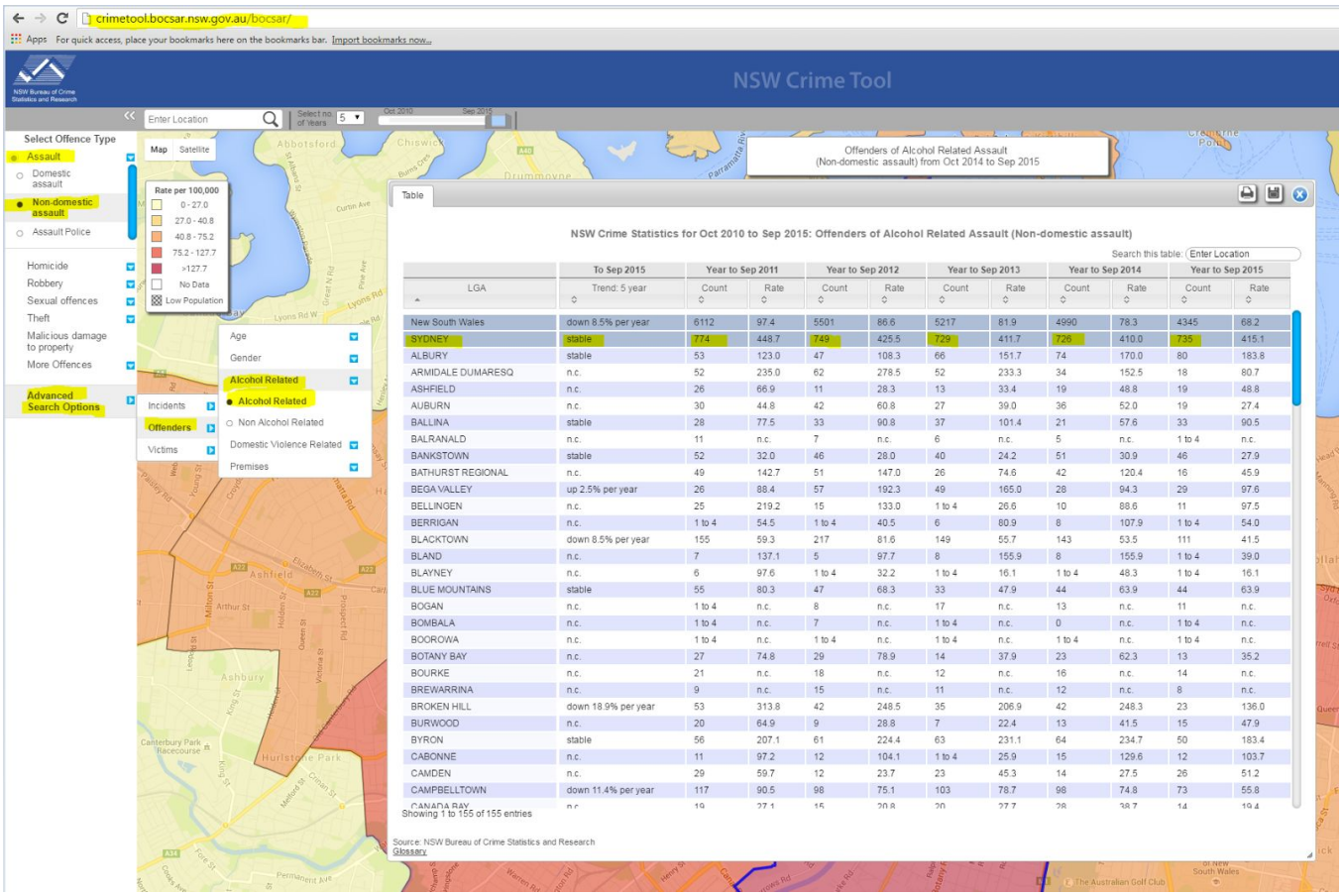
Mr BARRY O'FARRELL: The Leader of the Opposition did nothing on this issue when he was in government. Labor did nothing to improve transport to Kings Cross, crack down on licensing laws or establish the Independent Liquor and Gaming Authority. I ask those opposite to tell me how a 1.00 a.m. lockout will stop someone being killed in the back streets of Kings Cross at 10.30 p.m.

Figure: Premier Barry O'Farrell using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: Hansard

BOCSAR data should be looked at from the perspective of non-domestic assault where the offender is alcohol-related, not from where the victim is alcohol-related. If a lady has a glass of champagne in Kings Cross with dinner and then is assaulted on the way home by a sober perpetrator, this should not be included in the statistics. However, the NSW Government and

other proponents of the lockout laws conflate this data, together with incidents where neither party was alcohol affected.

A simple search by anyone on the BOCSAR Crime Maps for “Assault”, “Non-domestic Assault”, “Advanced Search Options”, “Offenders”, “Alcohol Related”, “Sydney” will show that non-domestic assault where the offender is alcohol related in the Sydney has been flat in the years immediately before and after the lockouts. Looking back longer term, non-domestic alcohol-related assault had been in a downtrend for many years before that.



Year to September	Count	Rate
2011	774	448.7
2012	749	425.5
2013	729	411.7
2014	726	410.0
2015	735	415.1

lockouts introduced 24 Feb 2014

Figure & Table: NSW Crime Statistics from October 2010 to September 2015: Offenders of Alcohol Related Assault (Non-domestic assault). Lockouts started 24 Feb 2014. Source: BOCSAR Crime Maps.

The data shows there has been no rise before, and hence justification for the lockouts and no fall afterwards, clearly showing that the lockout laws have been a failure from the perspective of offenders of alcohol related non-domestic assault.

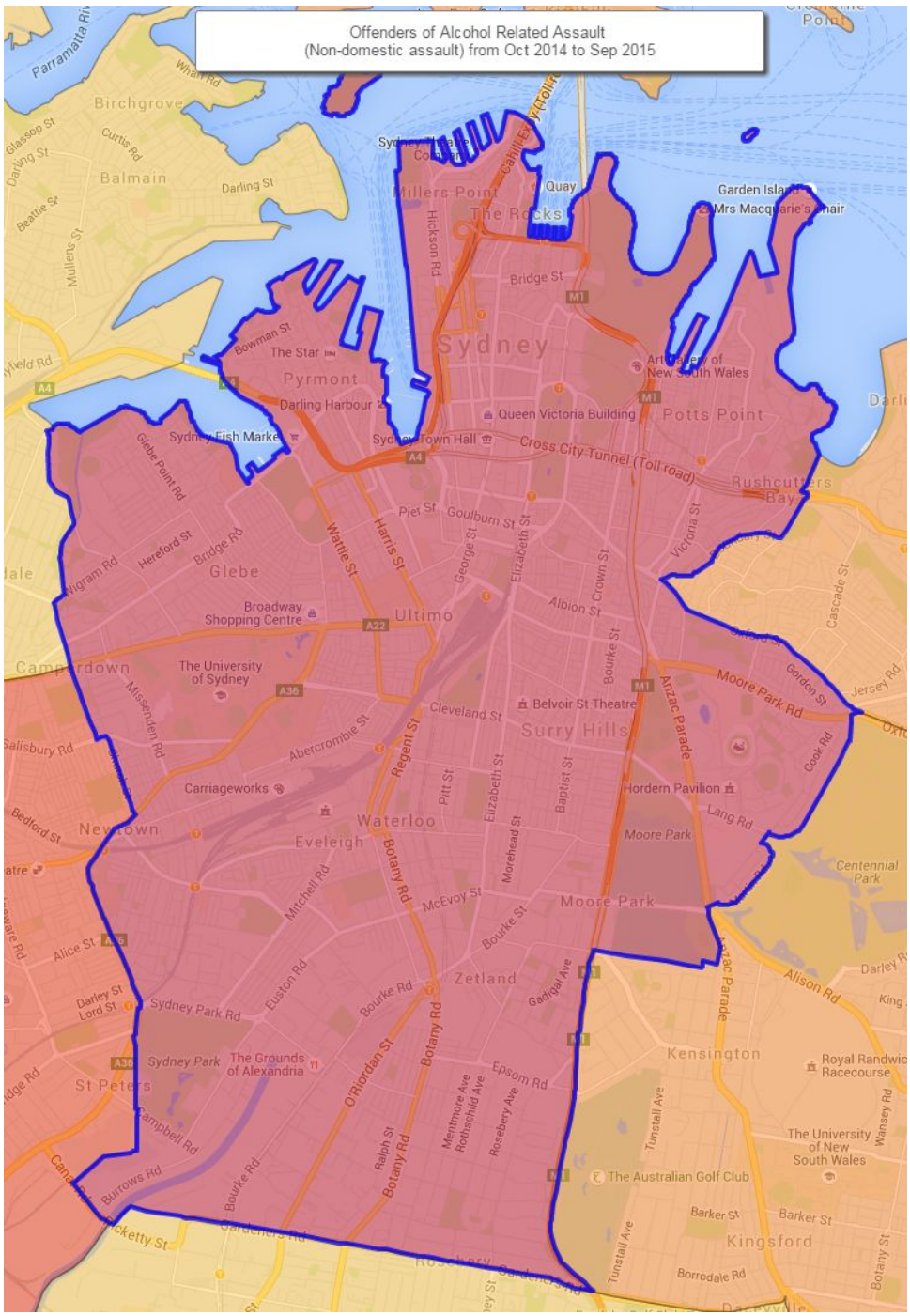


Figure: Boundary of "Sydney" in BOCSAR data.
Source: BOSCAR.

By the City of Sydney's own report, in 2010 when people were polled about why they visited Sydney at night, 58% of respondents said they were "going out socialising". In March 2015 57% of respondents said "they were returning home". This was 3% in 2010.

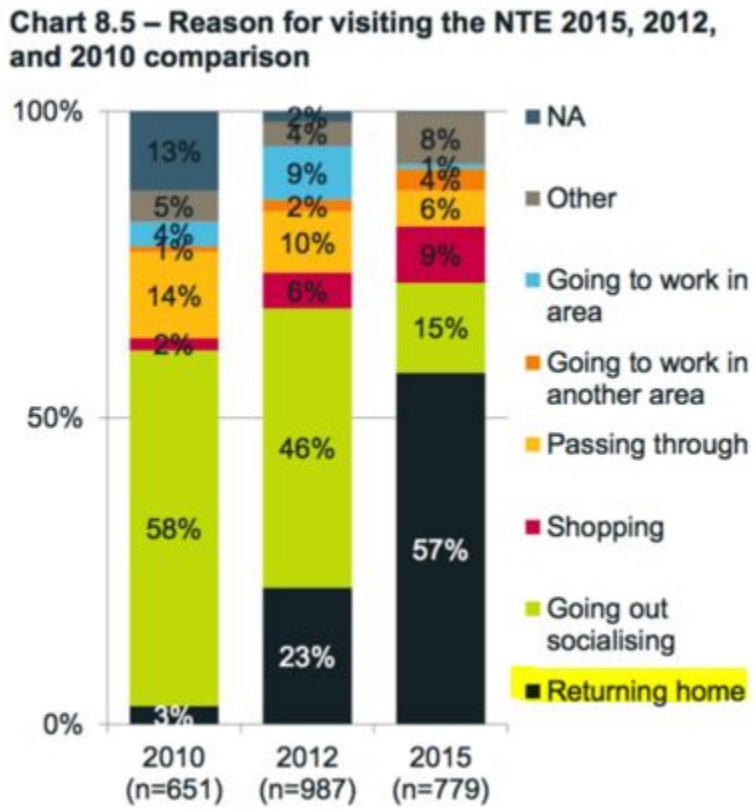


Figure: The City of Sydney's own poll shows the destruction to the social, cultural and business vibrancy of Sydney. Source: City of Sydney.

It's now almost a year later in 2016. By the City of Sydney's own data, the overwhelming majority of people passing through night time entertainment precincts in Sydney are there to do nothing at all except go home to bed. This is devastating for the social and cultural fabric of the city, to say the least of the night time economy.

I outline in the background information how the City of Sydney Late Night Management reports obfuscate the data, that when properly analysis shows the tremendous devastation to small business.

I also show that why, if I were presiding over this inquiry, that rather than relying on the reports listed in the terms of reference, I would ask for the raw data.

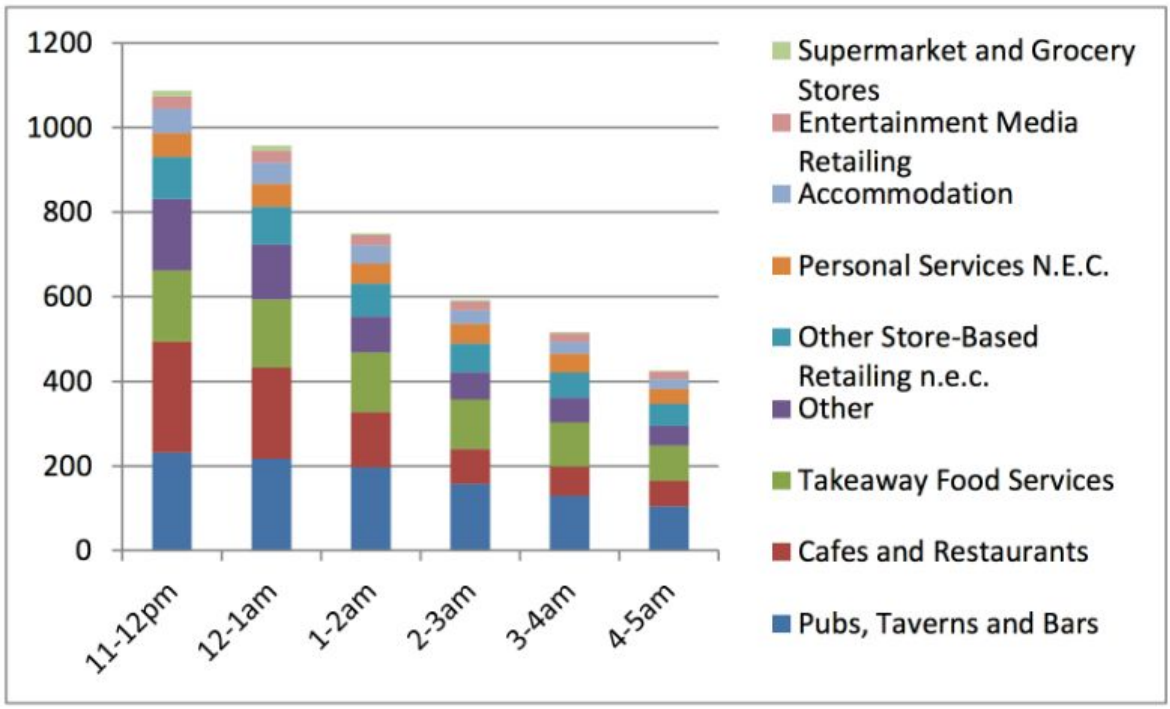


Figure 6.1 Number of businesses of each type open across all precincts

Figure: The Late Night Management Area Research Report 2010

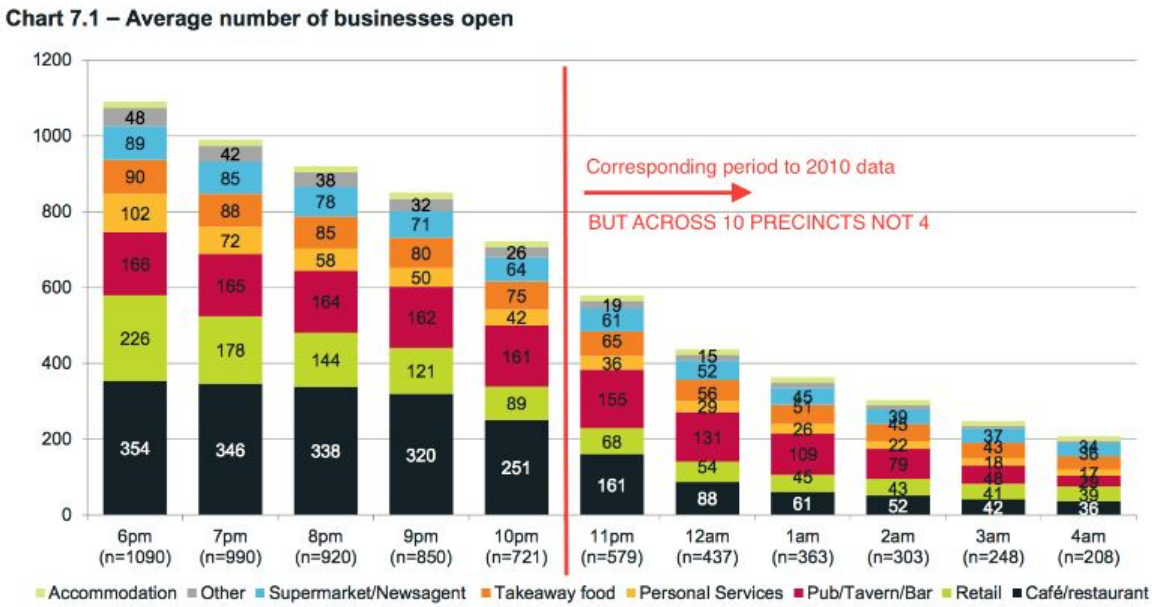


Figure: The Late Night Management Area Research Report 2015 shows gerrymandering of boundaries are used to prop up the vibrancy of small businesses in Sydney at night. Source: City of Sydney.

In 2010 there were about 1,100 businesses open at 11pm across 4 areas, by 2012 this had dropped to 366 across 8 areas, but in 2015 the number was 579 in 10 areas.

In 2010 there were about 750 businesses open at 1am across 4 areas, 212 in 2012 across 8 areas and 363 in 2015 across 10 areas.

And at 4am there were a little over 400 businesses open in 2010 across 4 areas, 110 in 2012 over 8 areas and 208 in 2015 across 10 areas.

The authors of the City of Sydney reports keep increasing the sample sizes to hide the fact that small businesses trading in these areas at night have been absolutely devastated.

On the 11th October 2013, George Souris, the minister responsible for gambling, tourism and alcohol regulation issued a press release through Destination NSW promoting Sydney as the "**safest and friendliest city in the world**" after winning an award for Sydney being the city "**visitors feel safest in the world, with the warmest and friendliest people**". He repeated this in the Legislative Assembly shortly thereafter.

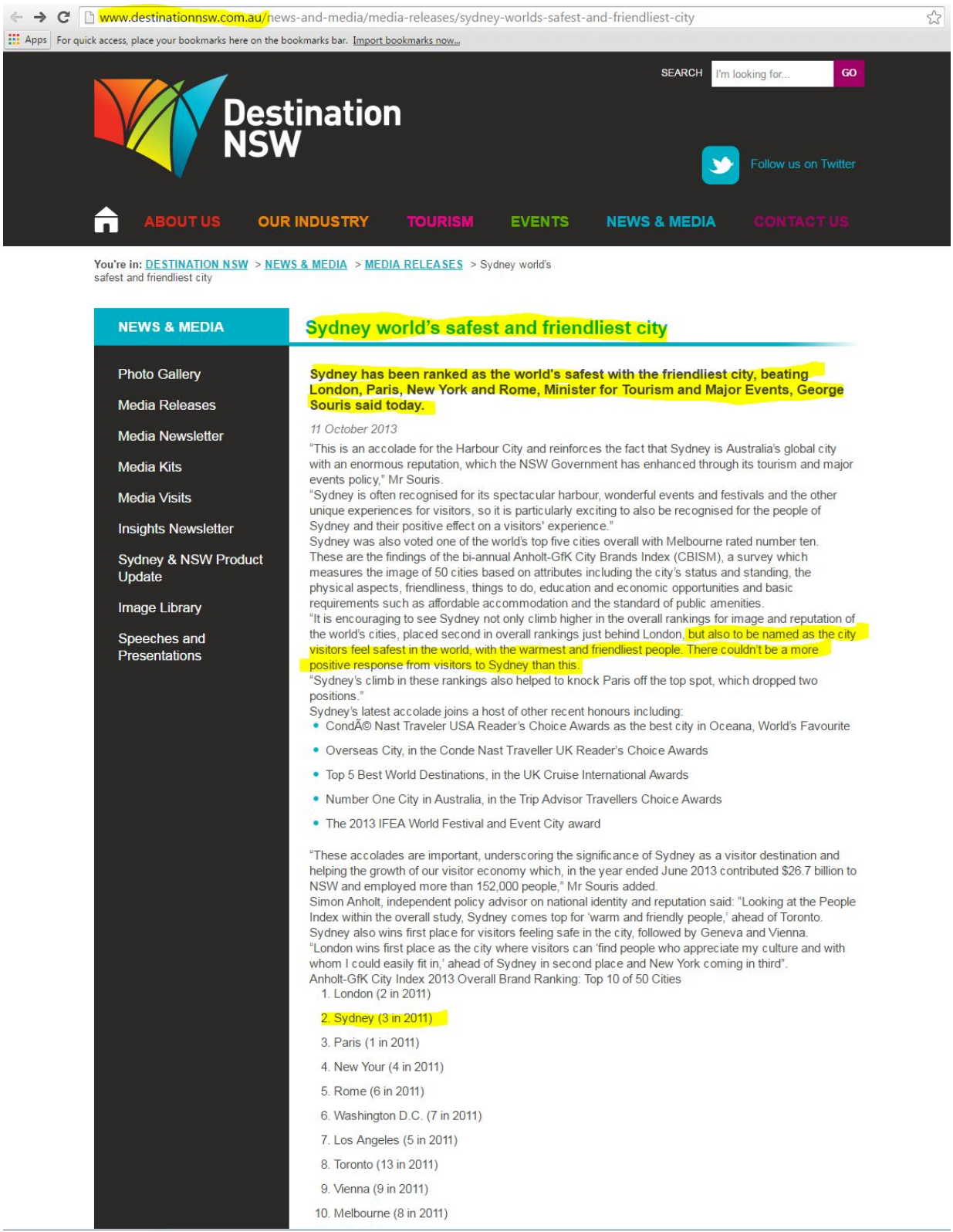


Figure: Screenshot of Destination NSW media release trumpeting Sydney as the safest and friendliest city.. in the world. Source: Destination NSW.

Barry O'Farrell and George Souris, are on record on the 19th November 2013 both ridiculing the lockout laws in the Legislative Assembly.

Both major parties are also on record saying that these laws would not work and would not have saved Daniel Christie & Thomas Kelly's lives.

Yet, on January 30th 2014, after a media frenzy and lobbying by the casino-funded anti-alcohol lobby group, rushed laws were presented at 10am and only allowed a brief debate was allowed before they were passed. The opposition let them pass- because they knew they would fail badly- "at the end of the day, when this legislation fails, the government will wear its decision like a crown of thorns".

The draconian environment around liquor laws and particularly the lockout legislation have resulted in the bankruptcy of dozens of commercial businesses, not just licensed venues, but also completely unrelated businesses. The night time economy has been devastated with hundreds of businesses that were formerly open now being closed at night. Night time foot traffic in the main entertainment precincts of the biggest capital city in the country of Australia has dropped up to 90% (or more). Legislation and regulation that is victim blaming at best, and indiscriminately disastrous to unrelated commercial businesses and landlords at worst. Legislation that is discriminatory to people and businesses just for being within a certain geographic area. Legislation that is discriminatory to shift workers and those that work late.

I detail in the background information how the legislation around liquor regulation, including but not limited to the Lockout Laws, amendments to the Liquor Act, Three Strikes Policy and the Alcohol Linking Program used by the police, have deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes. I detail at length in the background paper attached that these programs **more accurately measures crimes against people who drink than reliable statistics on crime emanating from venues**.because they measure **correlation, not causation**.

They are designed to not just force businesses to manage something they can't measure, but to blame them for incidents that are unrelated and that they have no control over. It imposes on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption which involves burdensome practical consequences which would violate personal autonomy and privacy.

Your honour would of course be well acquainted with the arguments presented by the majority in the decision of *Crown v. Tweed Heads South Rugby Club (2004) [HCA]*. I believe that many of them also apply here.

In the background information, I show that the outcome of these regulations has been a complete collapse in night time foot traffic and trade in the main entertainment precincts in the City of Sydney where drops of at least 84% in Kings Cross and 82% in Oxford Street

have been recorded. This all for a change in 25 alcohol-related admissions to St Vincent's in a year. Which if properly examined might show zero difference or even an increase.

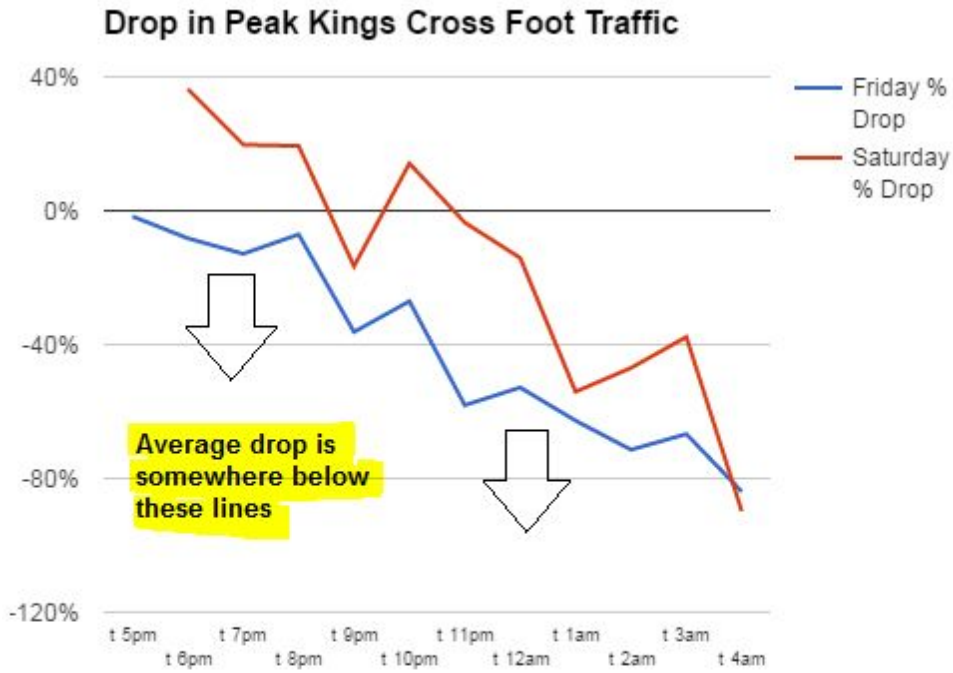


Figure: Drop in Peak Kings Cross Foot Traffic between December 2012 and March 2015

It has resulted in unemployment of hundreds, loss of income and loss in business takings. It has resulted in a severe curtailment of civil liberties and freedom. It has resulted in a huge loss to the international standing and reputation of Sydney as a global city and as a tourist destination.

In the terms of reference of this inquiry, your honour has been asked to assess whether the policy objectives remain valid and their terms appropriate for securing those objectives.
I have clearly shown that from Hansard transcripts at the time that these laws were never passed with a goal of policy - just a circus of politics, media hysteria and pressure from a casino-funded lobby group.

Truly, this is an absurd situation. It is clear from the Hansard transcripts that are included in the background information there was no intended policy in the first place, just politicking.

This politicking has shut down one of the most famous nighttime cities in the world. The city which is shown first celebrating on New Year's Eve in news reports around the world.

The only winners from these laws have been the casinos and property developers, and the biggest losers have been small businesses, jobs, the economy, civil liberties, tourism, and the social, cultural fabric and reputation of Sydney.

Even if the lockout laws are reversed, so much damage has been done to Sydney's nightlife, I doubt it will ever fully recover. The vibrancy that has been destroyed took decades to build. There are simply no people out and about anymore.

I believe the scope of the inquiry should be broadened, as there are many questions that remain unanswered.

- Why would the government implement some of the most draconian legislation in the world, which has completely destroyed the Sydney night time economy, when it knew from BOSCAR statistics that there was no problem and that the proposed laws would not have saved Kelly or Christie's lives?
- Why would the NSW Government and City of Sydney deliberately misrepresent their own statistics in order to justify this?
- Why is the NSW Audit Office not tracking the economic effects of these policies, unlike Victoria and Queensland?
- What would cause the NSW Liberal party, the party that represents itself as believing in "the inalienable rights and freedoms of all people; we work towards a lean government that minimises interference in our daily lives and maximises individual and private-sector initiative" to do the polar opposite of their #1 stated belief and implement interventionist economic policies which are deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes?
- Why would Premier Mike Baird himself say that "violence has spiralled out of control" when not only are there no official statistics to support this, but George Souris, the Minister responsible for tourism, alcohol regulation and gambling in New South Wales, had proclaimed at the time that Sydney was the "safest and friendliest city in the world"?

Cui Bono?

Perhaps Operation Spicer might yield some answers.

Regards,
Matt Barrie

Attachments

Attachments I would like to include by way of reference are as follows:

"*Would the last person in Sydney please turn the lights out?*", Matt Barrie (LinkedIn), https://www.linkedin.com/pulse/would-last-person-sydney-please-turn-lights-out-matt-barrie

"The death of Sydney's nightlife and economic collapse of its nighttime economy: a detailed submission to the Callinan inquiry on liquor laws", Matt Barrie (LinkedIn) http://www.linkedin.com/pulse/death-sydneys-nightlife-economic-collapse-its-night-time-matt-barrie

Cole v South Tweed Heads Rugby League Football Club Limited (2004) [HCA] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2004/29.html

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The Hon. Ian Callinan AC QC

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I recently wrote an article, published on Linkedin, entitled "*Would the last person in Sydney please turn the lights out?*" providing an overview of the damage that these regulations have done on the social, cultural and economic vibrancy of Sydney, as well as its international reputation. This article clearly touched a nerve with the citizens of New South Wales as within a week almost one million people had read the article. A wave of public action soon followed including 15,000 people marching against the lockout laws in a rally organised by Keep Sydney Open. Today a search for "New South Wales" "Lockout Laws" in Google News yields over 10,000 articles written on the topic, the majority being negative on these laws, and other restrictions on civil liberties that have crept in through NSW Government legislation over the last few years.

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I also have written a more detailed public submission to this inquiry, which is also published on LinkedIn and linked below.

In the following I detail the misuse of official statistics by government officials and others in order to justify the lockout legislation. I then discuss the issues surrounding the liability of venues and with liquor legislation in New South Wales. I examine what exemptions to these law have been granted, and to what establishments. I then look at the timeline of events and politics surrounding the introduction of these regulations to show that neither major party believed in them in the first place, and that both deliberately misrepresented official data to play petty politics. Finally, I show that the only winners from these laws have been the casinos and property developers, and the biggest losers have been small businesses, jobs, the economy, civil liberties, tourism, and the social, cultural fabric and reputation of Sydney.

As this covers great territory, and the submission limit for the inquiry is 2,500 words, I have provided most of the the supporting documentation for the arguments below in the following article published on LinkedIn at the following link and herewith only attach brief summary:

http://www.linkedin.com/pulse/death-sydneys-nightlife-economic-collapse-its-night-time-matt-barrie

Misuse of Official Statistics

One of the major tools that the NSW Government and City of Sydney have used to justify the lockout legislation has been through **misquoting and manipulation of their own official statistics and research**. Not only do I expect that these reports will be submitted to the review by the authors, but I note that in the Justice Department's background paper on the Liquor Law Review, there are sections entitled "Key Offence Data" and "Research on impact of the February 2014 intervention" where these are listed.

I would like to address some important issues with this "official" data so that the inquiry may be aware of the bias that the official channels promulgate.

Misuse of Fulde, Smith & Forster (2015) paper on St Vincent's identifying critically or seriously injured emergency presentations related to alcohol use.

The paper written by Fulde et al. (2015) is cited by pro-lockout proponents as the key evidence supporting the lockout laws. This paper counted trauma cases classified as Australasian triage categories 1 (immediately life-threatening) and 2 (imminently life-threatening, important time-critical treatment, very severe pain) in the 12 months before (24 February 2013 – 23 February 2014; period 1) and the 12 months after (24 February 2014 – 23 February 2015; period 2) the 2014 changes to liquor licensing regulations applied to the precinct.

The key conclusion often quoted from this paper is that there was a relative reduction of 24.8% ($P < 0.05$) in category 1 and 2 injuries during High Alcohol Time (HAT), and that there was a small increase in the number of patients presenting with alcohol-related injuries between 9pm and midnight after the lockouts were introduced.

Dr Fulde describes his department before the lockout laws as a "war zone" and the decrease in severe head injuries since then as "spectacular and terrific".

I wish to bring to your attention a number of substantial issues with this paper.

Firstly, It is important to note that the paper presents statistics on alcohol-related injuries, not alcohol-caused injuries.

Quoting directly from the paper, there were 13,110 triage category 1 and 2 presentations to the St Vincent's Hospital emergency department: 6,467 during period 1 (before the lockouts) and 6,643 during period 2 (after the lockouts). Overall there were more presentations to St. Vincent's after the lockouts.

Results: In the 2-year study period, there were 13 110 triage category 1 and 2 presentations to the St Vincent's Hospital emergency department: 6467 during period 1 and 6643 during period 2. Of these, 1564 (4.3%) were patients who presented with alcohol-related serious injuries: 318 (4.9%) during period 1 and 246 (3.7%) during period 2 ($P < 0.05$). The proportion of alcohol-related serious

Figure: Basic arithmetic error in key results summary of Fulde et al's (2015) paper. Regardless, only 4.3% of category 1 & 2 admissions are alcohol-related.

Of these, the paper says **only 1,564** were patients who presented with **alcohol-related** serious injuries. Right off the bat, to show you how sloppily this paper has been put together and reviewed, **this is a basic arithmetic error- the actual number is 564 (4.3%).** You can verify this yourself by adding the **318** patients during period 1 to **246** during period 2 which yields **564**.

The paper then looks at High Alcohol Time, which is the weekend, to reach the 24.8% reduction in injuries conclusion. I have included a screenshot by way of reference:

Given the nature of the problem, we examined the high alcohol time (HAT) separately; ie, the weekend, from 6 pm Friday to 6 am Sunday. The proportion of alcohol-related serious injury presentations in triage categories 1 and 2 was much higher during HAT (9.1%) than the rest of the week (3.1%; $P < 0.05$). There was a significant decrease in the total number of seriously injured patients during HAT after the introduction of the various control measures in 2014: from 140 presentations (10.4%) in the 12 months before the changes to 106 (7.8%) in period 2 ($P < 0.05$). This was a relative risk reduction of 24.8% (95% CI, 4.3%–40.9%).

Figure: The conclusion of the Fulde et al. (2015) paper. A 24.8% drop in injuries at St. Vincent's is determined by a total delta of 34 patients over one year.

The 24.8% drop in injuries at St. Vincent's is determined by Fulde by **a total difference of 34 patients over an entire year** during the High Alcohol Time.

Of course, any injury is a tragedy, but putting this into perspective, an Australian dies every three days in Thailand, yet I do not see any travel restrictions being put in place from visiting that country. You are far more likely to die falling over, out of bed or off a ladder than anywhere near a licensed venue or entertainment precinct in Sydney.

What is the High Alcohol Time? Fulde et al. curiously took this to be from 6pm Friday to 6am Sunday. **When one considers the actual hours affected by the lockout (1am - 4am, as**

some venues reopen at 5am), <u>the total difference is approximately 25 patients over an entire year</u>. There were more alcohol-related injuries at 6pm, 7pm, 9pm, 11pm and midnight after the lockouts.

These 25 patients are not exclusively victims of alcohol-caused assault, or even assault for that matter- <u>this is across all causes of injury</u>. To quote, these cases were "critically or seriously injured emergency presentations that were identified as related to alcohol use". **Alcohol is not necessarily the direct cause in these cases**- a victim could have a drink and be hurt in a method completely unrelated to alcohol consumption.

Nor do they exclusively emanate from licensed venues, or even the entertainment precinct. So, a lady having a glass of champagne at dinner at home, who subsequently falls down a staircase after tripping on a cat would be included in these statistics.

<u>Correlation, not causation, is being recorded here</u>- similar to the Orwellian Alcohol Linkage Program used by police which, as designed, <u>more accurately measures crimes against people who drink than reliable statistics on crime emanating from venues</u>. Later on I will describe how this program actually works.

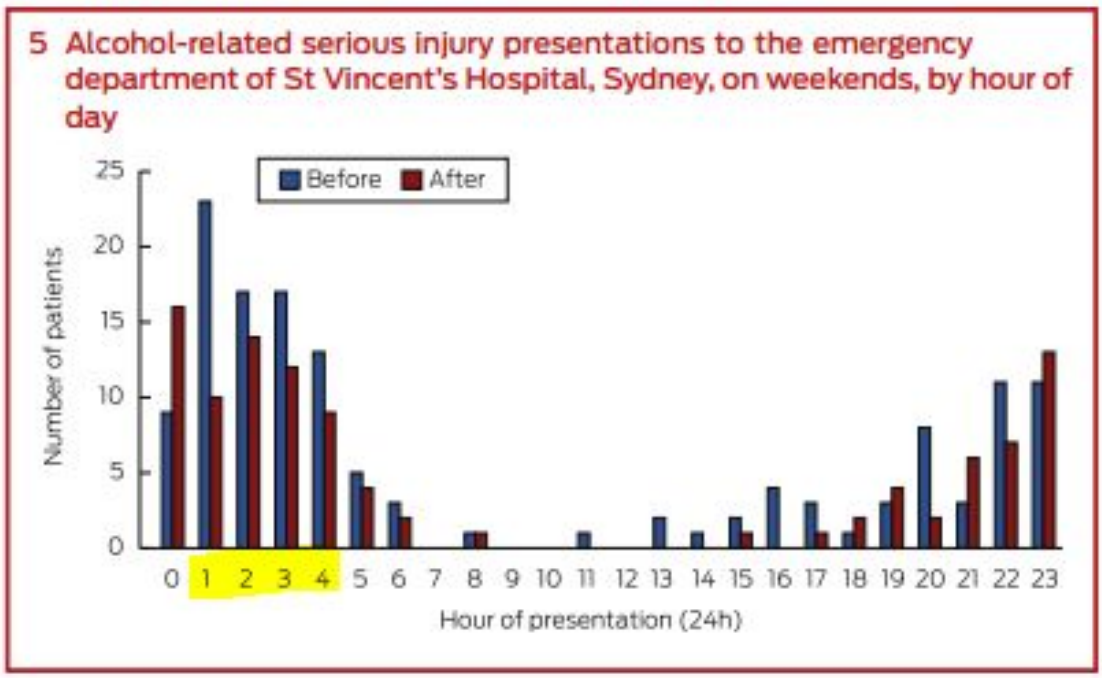


Figure: Taking into account the times affected by the lockout laws, the difference in patients is closer to 25 over the course of a year. Source: [Fulde et al. (2015)](#).

However, what is most remarkable isn't just that the difference is only around 25 people, or that the injuries are not all assault related, or that the injuries didn't all come from licensed venues. It's how alcohol related was determined in the first place.

I have asked nurses who work in emergency at the three hospitals whether they routinely measure the blood alcohol level of every admitted patient. They have told me not only do

they most certainly do not do this, but it would be almost impossible to attribute whether alcohol was a mitigating factor or not. Most of the data entered into the notes regarding alcohol consumption is provided voluntarily by the patient.

This is how it was determined whether the injuries were alcohol related in Fulde et al.'s paper:

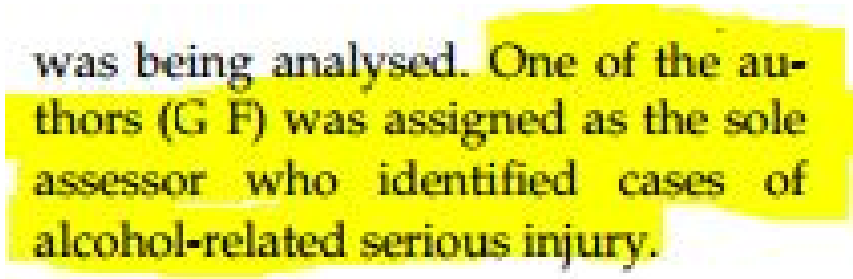

was being analysed. One of the authors (G F) was assigned as the sole assessor who identified cases of alcohol-related serious injury.

Figure: The sole assessor of alcohol related injury was only one of the authors of the paper, G F (Gordian Fulde). Source: Fulde et al. (2015).

The sole way in which an injury is determined to be alcohol related was by one person and one person only- Gordian himself.

Not only is this incredibly surprising from an integrity and ethics standpoint (which I will address later), but it simply is not humanly possible for one person, despite being Senior Australian of the Year, to have worked every Friday from 6pm to Sunday 6am for two years straight. As alcohol would wear off, Fulde would have to be relying on whatever notes had been left by the actual staff on duty at the time- and it would be incredibly unlikely that this would be an accurate way of analysing the data. Especially when one is considering a difference of 25 data points over two years of over 13,000 admissions.

Indeed I have been told anecdotally by an emergency staffer (and I stress this is unconfirmed) that "Gordian hasn't worked a Saturday night in a decade". Nor would I expect him to as the head of the department and after three decades of service.

No human being would be perfectly accurate in the detection of whether an injury was alcohol-related, and certainly not perfectly accurate if you are basing that classification from secondary source reports transcribed from someone else's notes. I would argue that the margin of error due to misclassification of false-positive and false-negative classifications (an injury was recorded as alcohol-related when it wasn't, or recorded as not related to alcohol when it was) would well be in the realm of 25 data points out of 13,000 for any human being on the planet.

Although the Fulde paper did not record how many of the 25 were victims of assault and not, for argument's sake, victims of tripping over cats. However it is also unlikely in the case of assault that both the perpetrator and the victim are both admitted to St. Vincent's with serious injuries. Generally for a crime, perpetrators are unlikely to get caught, and if they are caught it is some time later where sobriety is less likely to be noticed or recorded. It is also more likely that the victim of the assault will be admitted to hospital than the perpetrator.

Since most of the data relating to alcohol is voluntarily provided by the patient, how would the sobriety of the offender thus be recorded?

Otherwise this data would mainly be recording the sobriety of victims. So of course one would expect that admissions would drop - because they are simply a factor of less foot traffic and patronage in the CBD entertainment precincts rather than any causal factor due to alcohol. Simply put, people drink at night in the entertainment areas, so less people visiting means less admissions; correlation not causation. There's less people in the area, thus at the same rate of violent alcohol-related incidence we would indeed expect less hospital admissions.

Furthermore, St. Vincent's, Prince of Wales and Royal Prince Alfred form a trauma network. Data is shared between these three hospitals, and ambulances are regularly routed between the three based on factors including availability, the type of injury, specialisation of the hospitals and so on. It is also possible that during period 2 (after the lockouts) in the study that 25 ambulances over the course of the year (or one ambulance every two weeks) could have routed to one of the two other hospitals more than period 1.

The authors would have known that to measure the statistics at St. Vincent's in isolation would not make sense.

My point is that the method in which this data has been collected and analysed for this paper is spurious, to say the least.

Certainly if emergency at St. Vincent's was a "war zone" as Dr Fulde describes pre-lockout conditions, then the lockout laws must certainly be a failure given the difference in high injury alcohol related admissions is about one patient every two weeks by his very own data.

Clearly there must be some other non-alcohol related cause, as I doubt that a 25 patient difference out of 13,000 in trauma admissions in two years is anywhere near the biggest issue facing St. Vincent's currently. For example, it was recently reported that seventy patients were administered the wrong dose of chemotherapy drug by a single doctor, and that you are more likely to die of malpractice, misadministration or misadventure in a NSW hospital than a licensed venue.

Otherwise it is simply more colourful hyperbole, which has been the main method in which the pro-lockout proponents have argued their case.

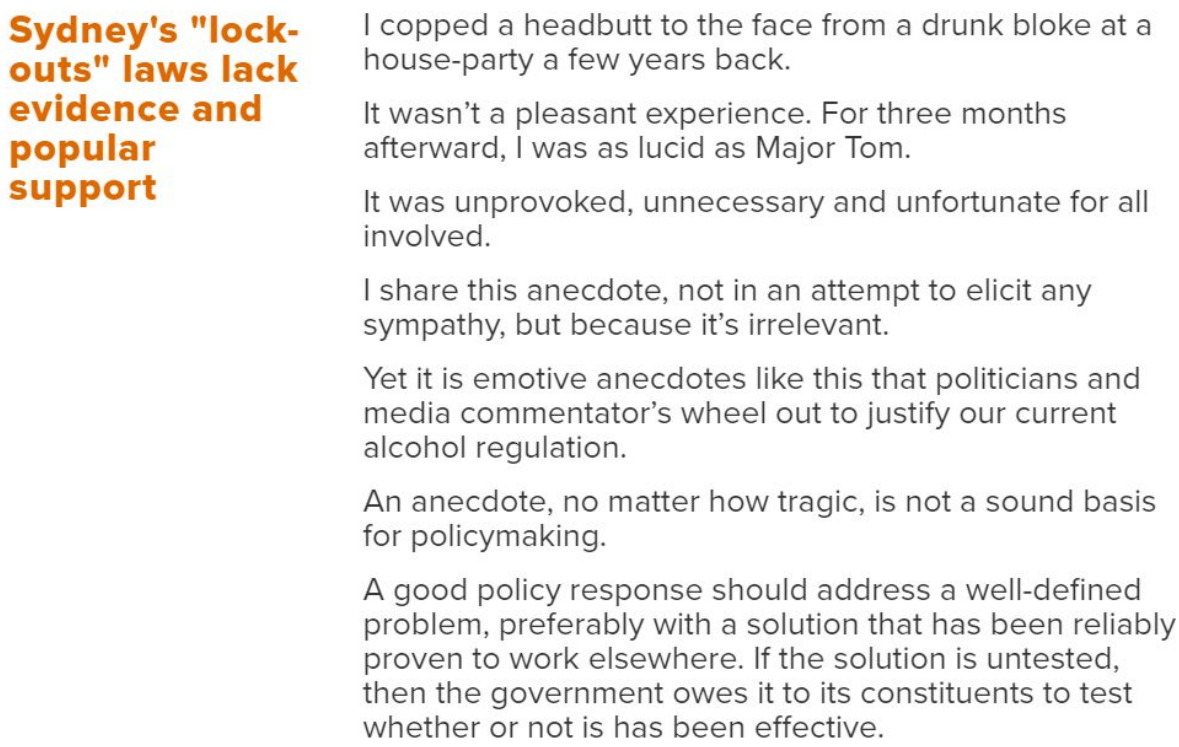


Figure: Introductory paragraph to "Sydney's "lock-outs" laws lack evidence and popular support" by economist David Taylor.

Economist David Taylor from Archerfish asked Gordian for his raw data in order to identify and verify how the alcohol classifications were made, but Gordian refused to provide it.

I find this, the main academic paper justifying the lockout laws, curiously constructed and poorly researched. I would have expected that the St. Vincent's ethics committee would have paid more attention to it, particularly in light of the fact that St. Vincent's Hospital receives millions of dollars from Crown, a Melbourne casino. Moreover, I am not sure why a Melbourne casino is donating to a Sydney hospital, in the middle of the Sydney entertainment precinct.

Finally, Dr. Fulde is himself conflicted in publishing this 2015 paper, as he has been a founding director of the Thomas Kelly Youth Foundation since December 17th 2012, the main political lobby group for the lockout laws which was set up with the specific mission to "reduce the availability and supply of alcohol in our community".

Stranger still, this foundation's main financiers are the Crown Casino, the owner of Crown Casino, Macquarie Bank- substantial shareholder & investment bank of Star Casino, the NSW Premier's office- legislator of the lockout laws and City of Sydney- who helped implement the lockouts. Every year, the foundation conducts a star-studded gala to fund raise at.. Star Casino (while well publicised, the cost of this annual event, I will add, curiously does not appear in the TKYF's financial accounts)..

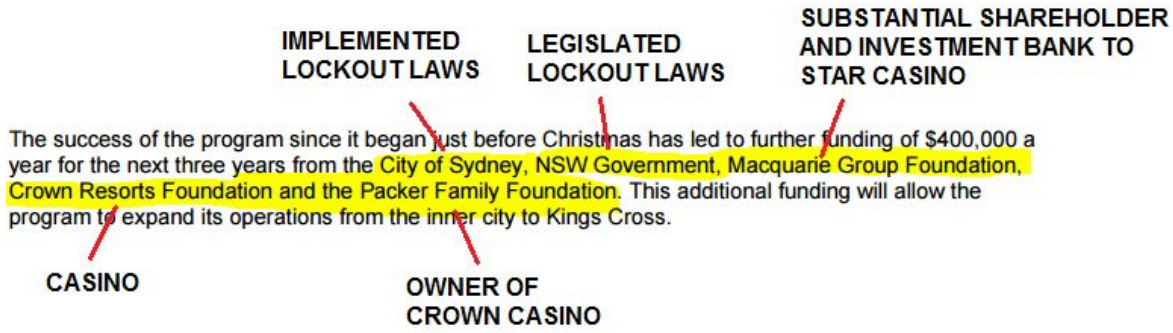


Figure: Paragraph from [media release by the Thomas Kelly Youth Foundation]

Gordian, the author, is also the person that suggested on a Q&A special on lockout laws that "nobody is stopping anyone drinking at 1:30am" because [...] "you can go to the casino". (https://www.youtube.com/watch?v=GepQ0vIFieE).

Figure: Snapshot of Q&A special on the lockout laws where Dr. Fulde suggests going to the casino when venues are locked out at 1:30am..

Misuse of Bureau of Crime Statistics and Research (BOCSAR) data

The data from BOCSAR is the second main source of data used by pro-lockout protagonists as to the effect of the lockouts. However, the data is being frequently manipulated in how it is being used.

Compare the following statements by two NSW Premiers and the Minister responsible for gambling and alcohol regulation, for example:

Figure: Premier Mike Baird misusing BOCSAR data to explain why he believes in the lockout laws [on Facebook](#).

Mr GEORGE SOURIS: The Leader of the Opposition has not done his homework. While there was a 26 per cent reduction in violent incidents in licensed premises in Newcastle between 2008 and 2012 there was a 28 per cent statewide drop in alcohol-associated violence over the same period. During this period, there were greater reductions in violent incidents for other parts of New South Wales—

The SPEAKER: Order! The member for Macquarie Fields will come to order.

Mr GEORGE SOURIS: —according to the New South Wales Bureau of Crime Statistics and Research without the Newcastle conditions. For example, a 38 per cent reduction in violent incidents on licensed premises was recorded in Campbelltown, a 36 per cent reduction was recorded in Gosford and a 40 per cent reduction was recorded for Penrith. This completely debunks the claim that Newcastle-style restrictions are the only pathway to achieving a real reduction of alcohol-related violence.

The SPEAKER: Order! The member for Macquarie Fields will come to order. This is not an opportunity for him to have an argument.

Mr GEORGE SOURIS: The Government looks at each precinct individually and has achieved a significant drop in violent incidents across the State. In 2012 alone assaults on licensed premises across the State fell by 8 per cent compared to 2011. Labor wants to treat every Friday and Saturday night like a major event, with better transport and a strong police presence. This is another swing and a miss. We are already taking this approach in Kings Cross and the Sydney central business district.

Figure: Gaming and Hospitality Minister George Souris using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: [Hansard](#)

Mr BARRY O'FARRELL: For all of the criticisms of the Leader of the Opposition and the figures he produces, the one figure he fails to produce is that since March 2011 assaults are down 33 per cent in Kings Cross. Assaults in licensed premises across the State are down by 8 per cent.

Mr Gareth Ward: Just like his approval rating.

The SPEAKER: Order! The member for Kiama will come to order.

Mr BARRY O'FARRELL: I have teenage sons. One assault is one too many.

Mr John Robertson: You can do more.

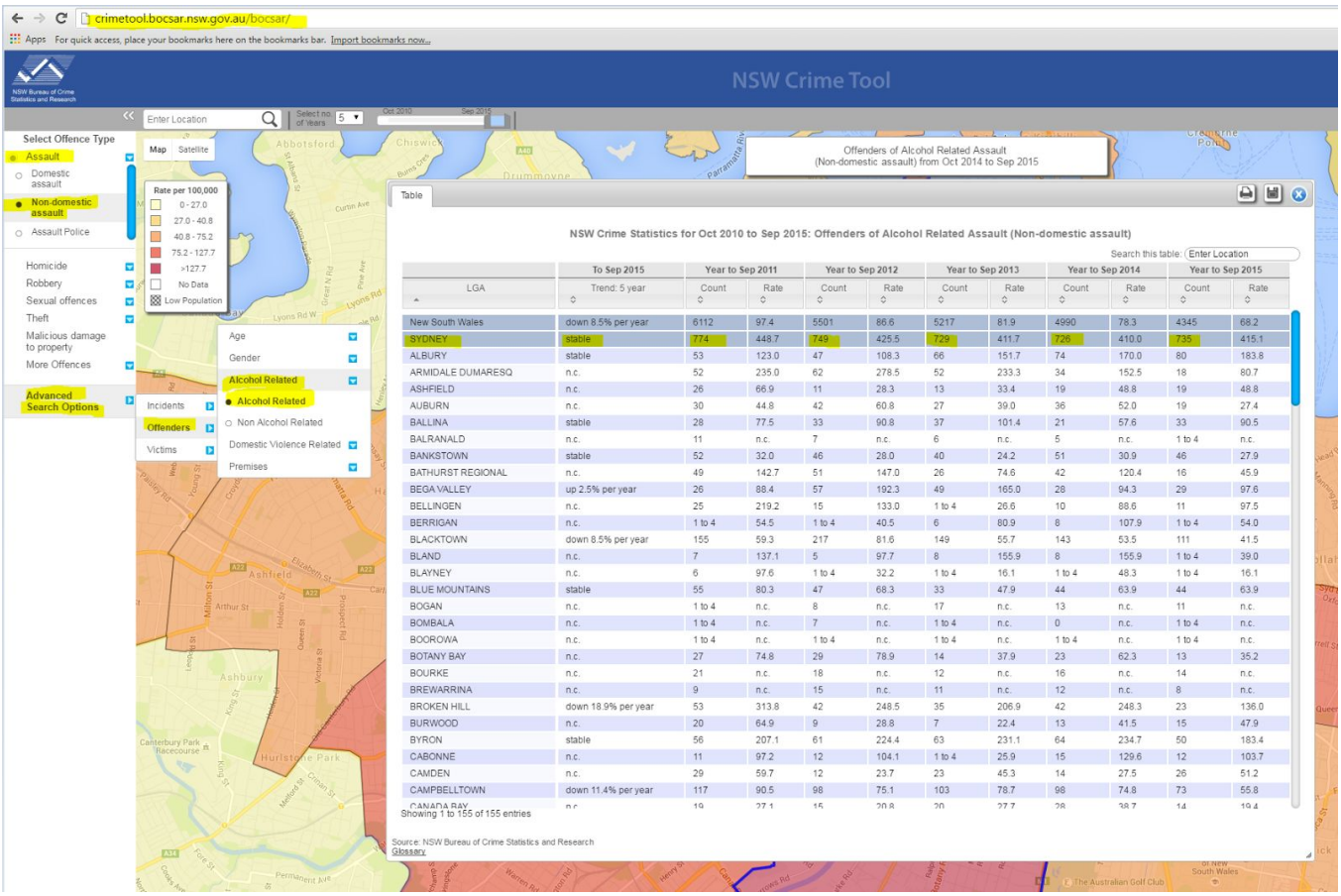
The SPEAKER: Order! The Leader of the Opposition will come to order.

Mr BARRY O'FARRELL: The Leader of the Opposition did nothing on this issue when he was in government. Labor did nothing to improve transport to Kings Cross, crack down on licensing laws or establish the Independent Liquor and Gaming Authority. I ask those opposite to tell me how a 1.00 a.m. lockout will stop someone being killed in the back streets of Kings Cross at 10.30 p.m.

Figure: Premier Barry O'Farrell using BOCSAR data to explain in the Legislative Assembly why lockout laws are unnecessary on November 19 2013. Source: Hansard

BOCSAR data should be looked at from the perspective of non-domestic assault where the offender is alcohol-related, not from where the victim is alcohol-related. If a lady has a glass of champagne in Kings Cross with dinner and then is assaulted on the way home by a sober perpetrator, this should not be included in the statistics. However, the NSW Government and other proponents of the lockout laws conflate this data, together with incidents where neither party was alcohol affected.

A simple search by anyone on the BOCSAR Crime Maps for "Assault", "Non-domestic Assault", "Advanced Search Options", "Offenders", "Alcohol Related", "Sydney" will show that non-domestic assault where the offender is alcohol related in the Sydney has been flat in the years immediately before and after the lockouts. Looking back longer term, non-domestic alcohol-related assault had been in a downtrend for many years before that.



LGA	To Sep 2015 Trend: 5 year	Year to Sep 2011 Count	Year to Sep 2011 Rate	Year to Sep 2012 Count	Year to Sep 2012 Rate	Year to Sep 2013 Count	Year to Sep 2013 Rate	Year to Sep 2014 Count	Year to Sep 2014 Rate	Year to Sep 2015 Count	Year to Sep 2015 Rate
New South Wales	down 8.5% per year	6112	97.4	5501	86.6	5217	81.9	4990	78.3	4345	68.2
SYDNEY	stable	774	448.7	749	425.5	729	411.7	726	410.0	735	415.1
ALBURY	stable	53	123.0	47	108.3	66	151.7	74	170.0	80	183.8
ARMIDALE DUMARESQ	n.c.	52	235.0	62	278.5	52	233.3	34	152.5	18	80.7
ASHFIELD	n.c.	26	66.9	11	28.3	13	33.4	19	48.8	19	48.8
AUBURN	n.c.	30	44.8	42	60.8	27	39.0	36	52.0	19	27.4
BALLINA	stable	28	77.5	33	90.8	37	101.4	21	57.6	33	90.5
BALRANALD	n.c.	11	n.c.	7	n.c.	6	n.c.	5	n.c.	1 to 4	n.c.
BANKSTOWN	stable	52	32.0	46	28.0	40	24.2	51	30.9	46	27.9
BATHURST REGIONAL	n.c.	49	142.7	51	147.0	26	74.6	42	120.4	16	45.9
BEGA VALLEY	up 2.5% per year	26	88.4	57	192.3	49	165.0	28	94.3	29	97.6
BELLINGEN	n.c.	25	219.2	15	133.0	1 to 4	26.6	10	88.6	11	97.5
BERRIGAN	n.c.	1 to 4	54.5	1 to 4	40.5	6	80.9	8	107.9	1 to 4	54.0
BLACKTOWN	down 8.5% per year	155	59.3	217	81.6	149	55.7	143	53.5	111	41.5
BLAND	n.c.	7	137.1	5	97.7	8	155.9	8	155.9	1 to 4	39.0
BLAYNEY	n.c.	6	97.6	1 to 4	32.2	1 to 4	16.1	1 to 4	48.3	1 to 4	16.1
BLUE MOUNTAINS	stable	55	80.3	47	68.3	33	47.9	44	63.9	44	63.9
BOGAN	n.c.	1 to 4	n.c.	8	n.c.	17	n.c.	13	n.c.	11	n.c.
BOMBALA	n.c.	1 to 4	n.c.	7	n.c.	1 to 4	n.c.	0	n.c.	1 to 4	n.c.
BOOROWA	n.c.	1 to 4	n.c.	1 to 4	n.c.	1 to 4	n.c.	1 to 4	n.c.	1 to 4	n.c.
BOTANY BAY	n.c.	27	74.8	29	78.9	14	37.9	23	62.3	13	35.2
BOURKE	n.c.	21	n.c.	18	n.c.	12	n.c.	16	n.c.	14	n.c.
BREWARRINA	n.c.	9	n.c.	15	n.c.	11	n.c.	12	n.c.	8	n.c.
BROKEN HILL	down 18.9% per year	53	313.8	42	248.5	35	206.9	42	248.3	23	136.0
BURWOOD	n.c.	20	64.9	9	28.8	7	22.4	13	41.5	15	47.9
BYRON	stable	56	207.1	61	224.4	63	231.1	64	234.7	50	183.4
CABONNE	n.c.	11	97.2	12	104.1	1 to 4	25.9	15	129.6	12	103.7
CAMDEN	n.c.	29	59.7	12	23.7	23	45.3	14	27.5	26	51.2
CAMPBELLTOWN	down 11.4% per year	117	90.5	98	75.1	103	78.7	98	74.8	73	55.8
CANADA BAY	n.c.	19	27.1	15	20.8	20	27.7	28	38.7	14	19.4

Showing 1 to 155 of 155 entries

Year to September	Count	Rate
2011	774	448.7
2012	749	425.5
2013	729	411.7
2014	726	410.0
2015	735	415.1

lockouts introduced 24 Feb 2014

Figure & Table: NSW Crime Statistics from October 2010 to September 2015: Offenders of Alcohol Related Assault (Non-domestic assault). Lockouts started 24 Feb 2014. Source: [BOCSAR Crime Maps](#).

Since October 2010, there have been approximately two non-domestic assaults per day where the offender is alcohol related in the City of Sydney, and this has been flat for the last five years. Note that the lockouts were introduced on 24 February 2014, so for over three years prior to the lockout and two years after the statistics have been flat. This encompasses

an area bounded by Kings Cross to the east, Glebe to the west, Sydney Harbour to the north and Zetland to the south.

<u>The data shows there has been no rise before, and hence justification for the lockouts and no fall afterwards, clearly showing that the lockout laws have been a failure from the perspective of offenders of alcohol related non-domestic assault.</u>

Any drop in Kings Cross has just moved within this area due to the closing of businesses and subsequent drop in foot traffic.

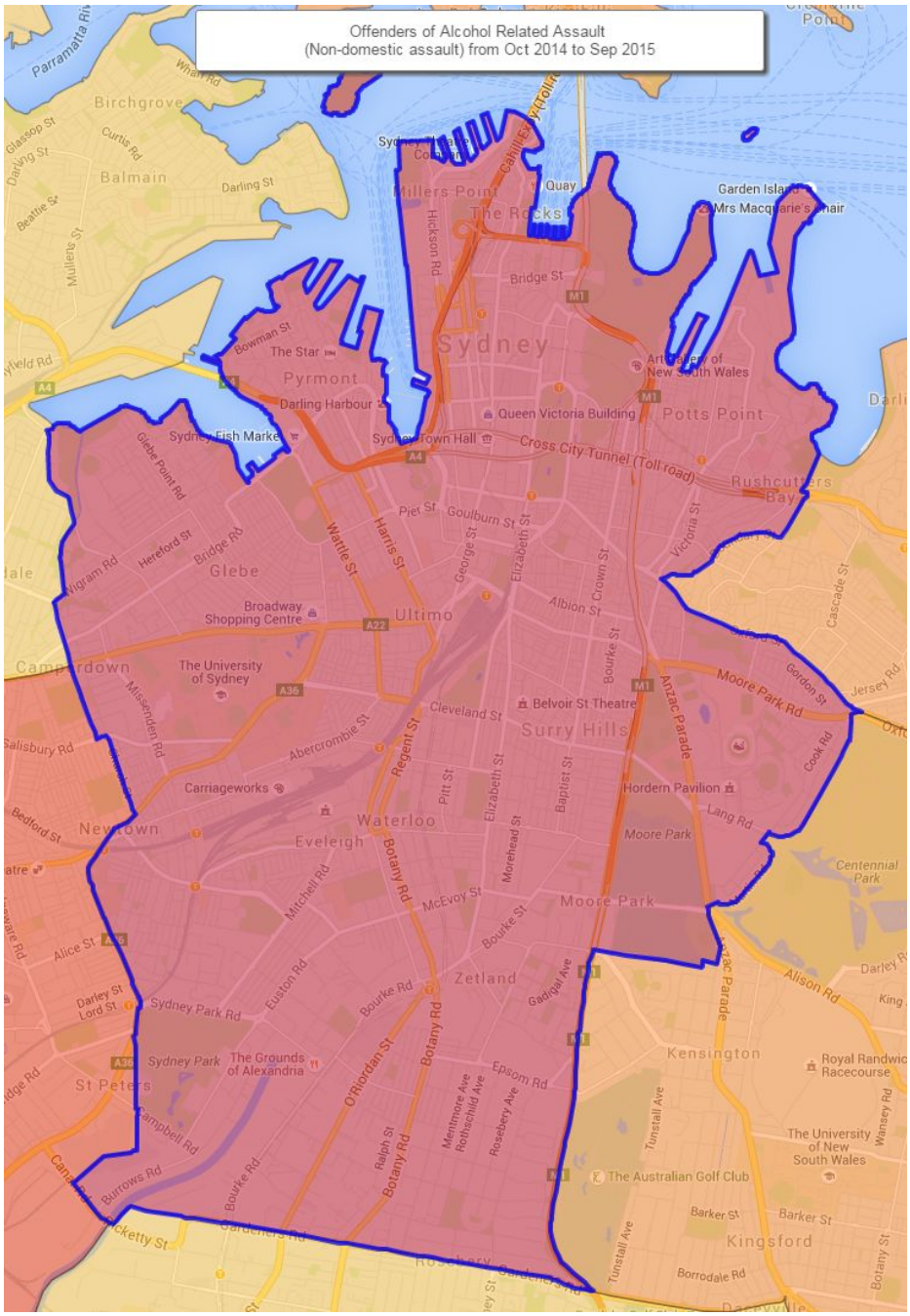


Figure: Boundary of "Sydney" in BOCSAR data.
Source: BOSCAR.

In fact, Premier Barry O'Farrell himself backs this up. In the Legislative Assembly on the 12th September 2013, two months before the lockout legislation was passed and five months before the lockouts started, O'Farrell said that the latest quarterly BOCSAR crime stats were **"good news"- flat to down in 15 of 17 major offense categories- except stealing from retail stores and fraud**.

Mr BARRY O'FARRELL: I thank the member for Campbelltown for his question and for his service to the community as a police officer before he came into this Parliament. He has direct experience with the issue of crime across communities and its impact upon families. Today the independent Bureau of Crime Statistics and Research [BOCSAR] released its latest quarterly report; and overall it is good news. Three major offence types showed a downward trend. Non-dwelling break and enter was down 7.6 per cent; motor vehicle theft was down 11 per cent; and malicious damage to property—and this would be of interest to the Attorney General—was down 5.3 per cent. Twelve categories remained stable, and one of those was non-fatal shooting offences—which will be disappointing to those opposite.

The SPEAKER: Order! The Leader of the Opposition will come to order.

Mr BARRY O'FARRELL: The Opposition never supports the police. Indeed when a fine former police officer stood for public office what did the Labor Party do? It tried to traduce his reputation in the most shameful way. The man who is only Leader of the Opposition because of Eddie Obeid now seeks to traduce somebody else's reputation.

The SPEAKER: Order! There is too much audible conversation in the Chamber. Opposition members will come to order.

Mr John Robertson: Do not worry—we have not started on your reputation yet.

Mr BARRY O'FARRELL: It has not finished for your mob either. Two categories which saw increases were stealing from retail stores and fraud—and I do not mean what we have seen at the Independent Commission Against Corruption. Dr Don Weatherburn, the head of the Bureau of Crime Statistics and Research, has suggested that the increase in fraud was due to increased credit card theft. So I urge people to be vigilant and careful with their credit and bank cards. It is important that we all take the proper precautions, including protecting our PINs and watching out for email scams. As someone who had his own bank accounts skimmed earlier this year, I can tell you that it can happen to anybody. I note that payWave and the like are convenient for consumers, but they do make it easier for fraudsters to illegally access people's credit card details.

Banks should consider these findings and set about to work out ways to better protect themselves and their customers. This is clearly a concern and needs to be fixed, and banks are best placed to do that work. I note that this afternoon police have arrested two men in relation to a nine-month investigation into identity theft and credit card fraud. I congratulate the NSW Police Force on these results which have been released today and overall show that 15 of the 17 major offence categories have remained stable or are going down. Credit goes to Commissioner Andrew Scipione and his men and women in blue across New South Wales. Their strength is now at record levels—this Government is very proud to have already provided an additional 420 officers, putting us on track to deliver our election commitment of having 859 additional police officers across New South Wales by August 2015.

Figure: Excerpt from Barry O'Farrell's speech in the Legislative Assembly on the 12th September 2013, two months before the lockout legislation was passed and five months before the lockouts started, saying that the latest quarterly BOCSAR crime stats were "good news"- flat to down in 15 of 17 major offense categories- except stealing from retail stores and fraud. Source: Hansard.

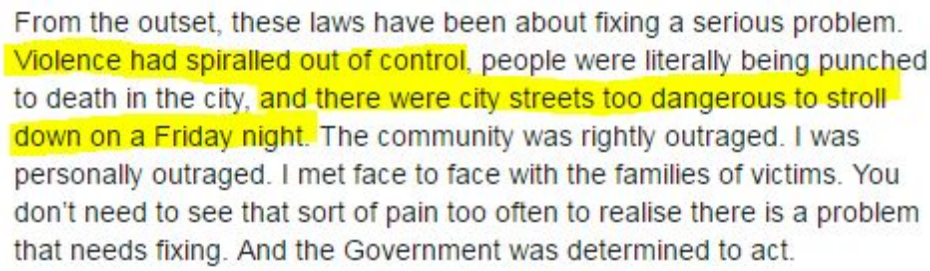

From the outset, these laws have been about fixing a serious problem. Violence had spiralled out of control, people were literally being punched to death in the city, and there were city streets too dangerous to stroll down on a Friday night. The community was rightly outraged. I was personally outraged. I met face to face with the families of victims. You don't need to see that sort of pain too often to realise there is a problem that needs fixing. And the Government was determined to act.

Figure: Excerpt from Premier Mike Baird's Facebook page from February 9, 2015.

What streets was Premier Mike Baird talking about that were "too dangerous to stroll down on a Friday night?" Was it Darlinghurst Road? Victoria Road? Bayswater Road? Oxford Street? Clearly that statement is nothing but more hyperbole from the government.

Indeed violence had not "spiralled out of control" as promoted by Premier Mike Baird. Not only is this clear in the data, but in fact, the same NSW Liberal Government had been boasting in October 2013, a mere four months before the lockouts were introduced, that **Sydney was the safest and friendliest city.. In the world.**

YES, IN THE WORLD.

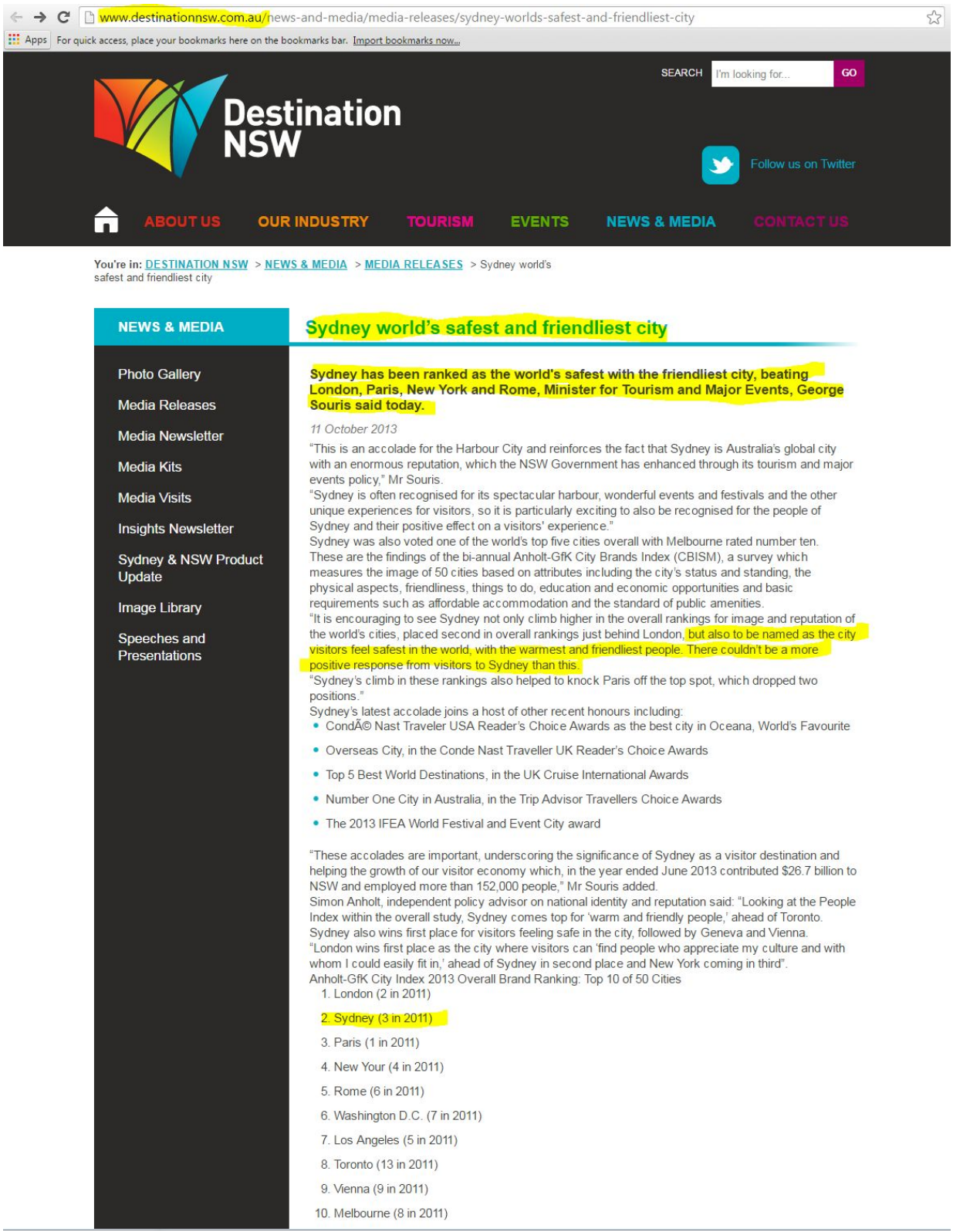


Figure: Screenshot of Destination NSW media release trumpeting Sydney as the safest and friendliest city.. in the world. Source: Destination NSW.

Obfuscation of data in the City of Sydney Late Night Management Reports

The City of Sydney's series of Late Night Management Reports (2010, 2012 and 2015) clearly show the social, cultural and economic damage to the night time economy.

The lockout laws- a blanket ban on commercial trading at night- have been the most blunt and unsophisticated tool that the Government could have used to minimise non-domestic alcohol-related assault.

By the City of Sydney's own report, in 2010 when people were polled about why they visited Sydney at night, 58% of respondents said they were "going out socialising". In March 2015 57% of respondents said "they were returning home". This was 3% in 2010.

It's now almost a year later in 2016. **By the City of Sydney's own data, the overwhelming majority of people passing through night time entertainment precincts in Sydney are there to do nothing at all except go home to bed**. This is devastating for the social and cultural fabric of the city, to say the least of the night time economy.

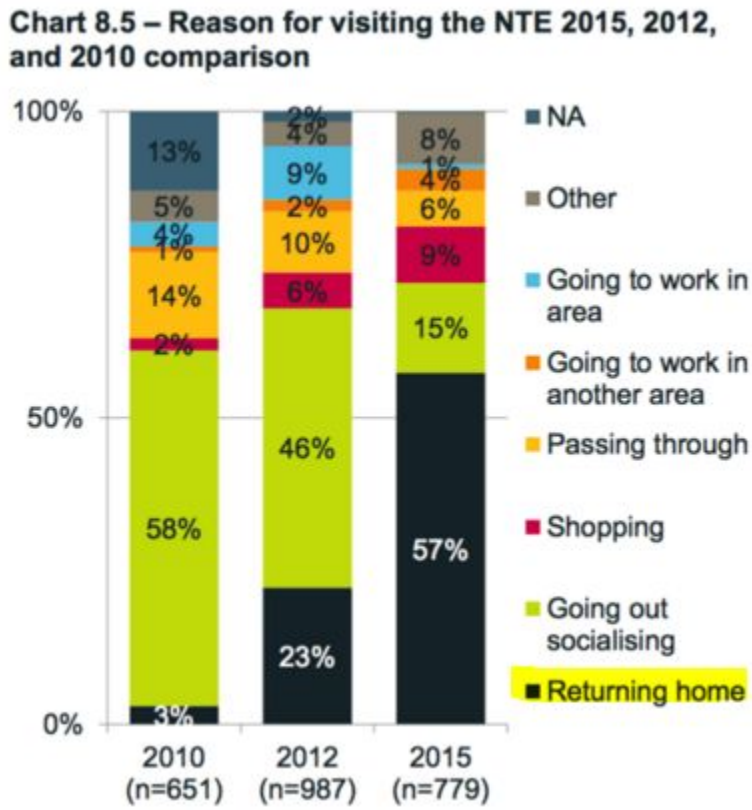


Figure: The City of Sydney's own poll shows the destruction to the social, cultural and business vibrancy of Sydney. Source: City of Sydney.

When looking at more detailed data, the Late Night Management Area Reports are strangely obfuscated and confusing in that while each report has the same objective- to measure business vibrancy, foot traffic and anti-social behaviour- they all measure and present the data in different ways as to make year on year comparisons difficult. This is particularly strange given the exact purpose of commissioning these studies would be to create the

canonical data source used to measure the effectiveness of certain policies on the area over time.

In other words, the fundamental reason these reports have been commissioned is so that they are both the definitive source of data and so that they can be compared to each other. So why is just about every piece of data presented measured and presented in completely different ways in each of the reports?

If Nielsen changed their research methods, demographics samples and sample sizes every year, they would cease to exist as a company because their statistical usefulness would be zero. Yet every piece of key data in the City of Sydney reports is fudged between reports.

In fact, the way data is measured and presented in these reports is so bad that if I was the person writing them and wanted to deliberately make them unable to be compared to each other, this is exactly how I would have put them together.

If I were presiding over this inquiry, rather than relying on the reports listed in the terms of reference, I would ask for the raw data.

For example, to show you how inconsistent each of these reports is with each other, the original 2010 report by Parsons Brinckerhoff, one of the world's leading planning, engineering, program and construction management organisations, measures the data in both March and December. The 2012 report by unnamed authors measures the data in December 2012. The 2015 report by Urbis, small local firm that participated in the successful bid by Echo Entertainment Group on winning the Queensland Government's tender to redevelop Brisbane's Queen's Wharf into a casino, measures the data in March 2015. So in the first instance, data is being measured at unrelated times of year.

Collapse in Sydney's Night Time Economy

In the 2010 Late Night Management Area Research Report the average number of businesses open across all entertainment precincts at 11pm was typically a little less than 1,100. At 1am this dropped to about 750 and at 4am a little over 400.

While at first glance, it might appear that everything is fine when one looks at the 2015 version of this report, one quickly notes that something is very wrong when you realise that the report writer has reported **over a longer time period in the day** and **does not break down the statistics of businesses open by precinct** as in 2010.

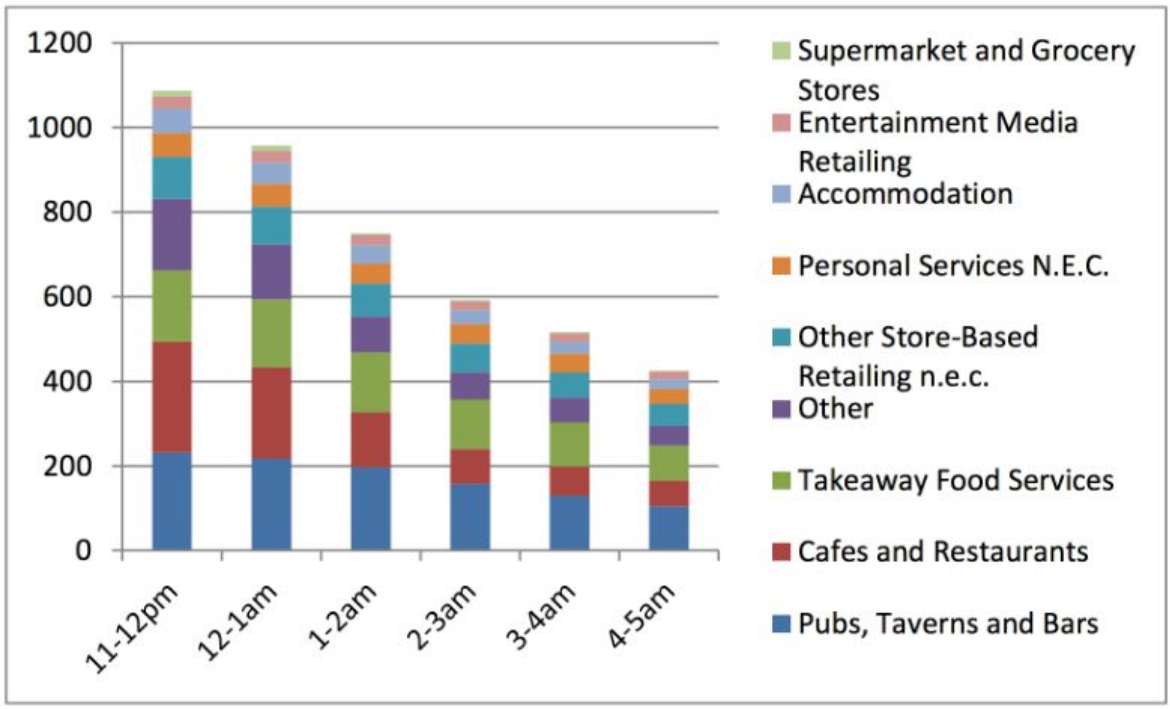


Figure 6.1 Number of businesses of each type open across all precincts

Figure: The Late Night Management Area Research Report 2010

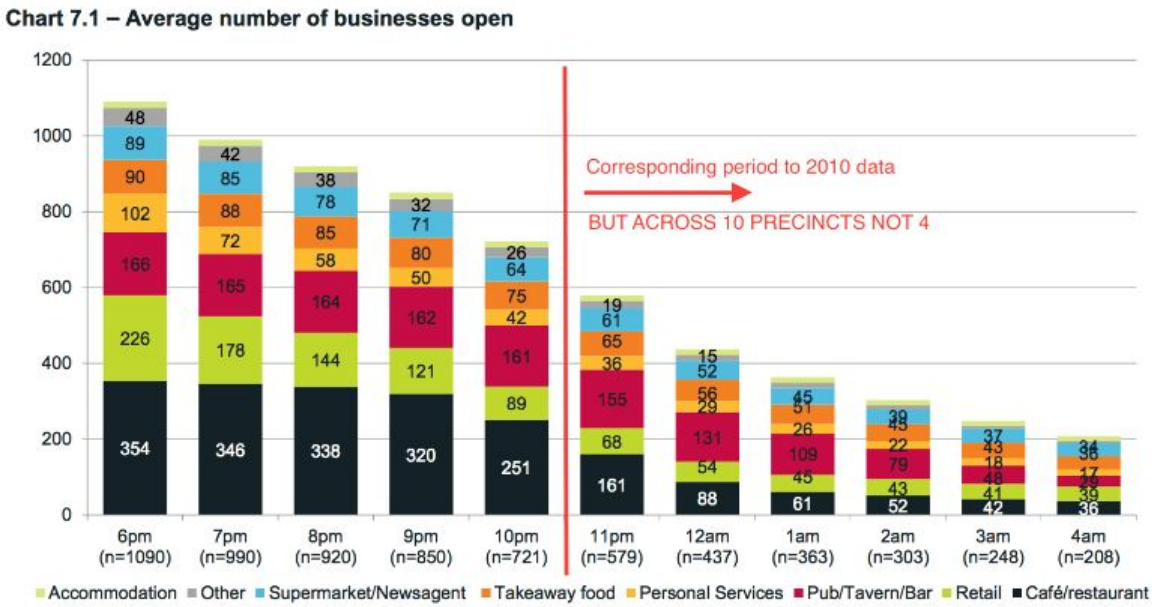
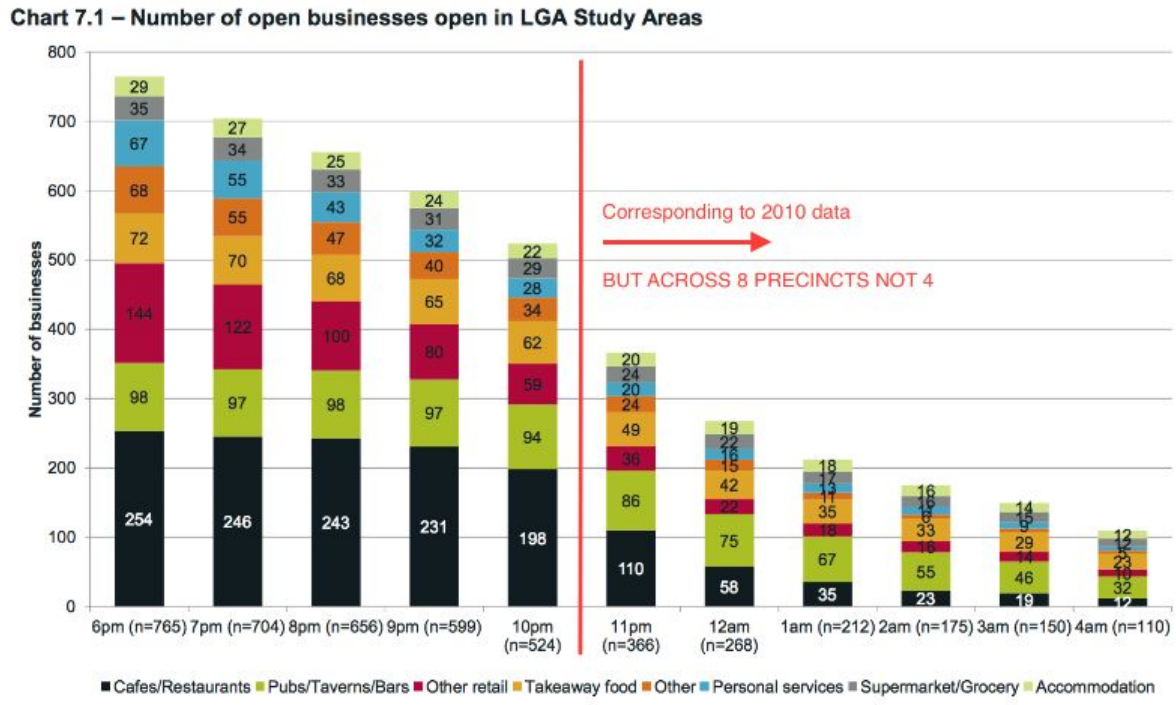


Figure: The Late Night Management Area Research Report 2015 shows gerrymandering of boundaries are used to prop up the vibrancy of small businesses in Sydney at night. Source: City of Sydney.

This fudging of the presentation of the data is compounded when one also realises that the **2010 report measures four precincts** in Sydney- Kings Cross, Oxford Street, the Rocks and the CBD South. **The 2015 report measures the number of businesses open across ten precincts**- five Sydney CBD Entertainment Precincts (Central CBD, North CBD, South CBD, Kings Cross and Oxford Street) and five City Suburban Precincts (Pyrmont, Newtown, Surry Hills, Redfern and Glebe).

While the 2010 report breaks down the data by precinct, the 2015 doesn't, which obfuscates the damage. The writer of the 2015 report has added in six more precincts to prop up the number of businesses reported open by gerrymandering the sample area.



Source: The Late Night Management Area Research Report 2012

Backtracking to the report produced in 2012, the impacts of increasing regulation are more clear. This report measured the number of open businesses in eight areas- George Street, Oxford Street and Kings Cross and five of the City's main streets: King Street, Crown Street, Glebe Point Road, Harris Street and Redfern Street.

In 2010 there were about 1,100 businesses open at 11pm across 4 areas, by 2012 this had dropped to 366 across 8 areas, but in 2015 the number was 579 in 10 areas.

In 2010 there were about 750 businesses open at 1am across 4 areas, 212 in 2012 across 8 areas and 363 in 2015 across 10 areas.

And at 4am there were a little over 400 businesses open in 2010 across 4 areas, 110 in 2012 over 8 areas and 208 in 2015 across 10 areas.

The authors of these later reports keep increasing the sample sizes to hide the fact that small businesses trading in these areas at night have been absolutely devastated.

Clearly the night time economy in Sydney has been run into the ground by the NSW State Government and City of Sydney.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OPENING
HOURS
OPEN FROM
5AM
SEVEN DAYS
THE CREST HOTEL
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UFC
THE CREST HOTEL
Eat, Drink & Play
KENO

Figure: Some of the bankrupted businesses of Sydney's devastated late night economy.

The 2am lockout in Victoria was cancelled after independent auditor KPMG found that it had actually increased violence. Even a senior policy advisor to Premier John Brumby admitted that it was only implemented in the first place due to moral panic.

The Queensland 3am lockout and 5am closures were shown by the Queensland Auditor-General to cost the state economy $10 million. I emailed the NSW Audit Office in July 2014 asking if they were tracking the effect on the economy as both Victoria and Queensland did, but was told curiously that they had no plans to.

Now two years into the lockout in NSW, I would estimate the damage to the NSW state economy would now be into thousands of jobs and hundreds of millions of dollars in lost revenue.

Collapse in Sydney's Night Time Foot Traffic

This damage is of no surprise when one looks at foot traffic in the area **where drops of up to 84% in Kings Cross and 82% in Oxford Street** are directly being noted in the reports

between 2012 and 2015. This is already on top of a drop of up to 60% which occurred from 2010 from 2012 as the increasing regulation around liquor kicked in.

Table 5.9 – Maximum pedestrian counts at top 10 hotspots 2010 vs 2012

Precinct	Location	Day	Hour	2010 Person per hour	2012 Persons per hour	Percentage Change
CBD South	George St at Central St	Saturday	12am-1am	7,600	3,544	-53%
Oxford St	Oxford St (IGA)	Friday	11pm-12am	6,900	2,296	-67%
CBD South	George St at Central St	Friday	12am-1am	6,850	3,644	-47%
CBD South	George St at Central St	Saturday	11pm-12am	6,600	3,924	-41%
Kings Cross	Darlinghurst Rd south of Roslyn St	Saturday	1-2am	5,900	2,496	-58%
CBD South	George St at Central St	Friday	11pm-12am	5,850	4,572	-22%
Kings Cross	Bayswater Rd east of Darlinghurst Rd	Saturday	1-2am	5,400	2,236	-59%
Kings Cross	Darlinghurst Rd between Roslyn St and Bayswater Rd	Saturday	1-2am	5,350	2,798	-48%
Kings Cross	Darlinghurst Rd north of Bayswater Rd	Saturday	1-2am	5,250	3,240	-38%
Kings Cross	Darlinghurst Rd north of Bayswater Rd	Saturday	12-1am	5,200	3,694	-29%

And in 2015:

Table 5.5 – Top 5 hot spots Kings Cross

Location	Day	Hour	Count
Bayswater Rd – near Kellett St	Saturday	00:00	3,888
Bayswater Rd – near Kellett St	Saturday	23:00	3,320
Bayswater Rd – near Kellett St	Saturday	22:00	3,176
Darlinghurst Rd – near Library	Friday	17:00	2,584
Darlinghurst Rd – near Library	Saturday	22:00	2,168

Figure: Drops of up to 67% in peak foot traffic in Sydney's entertainment areas in the years before the lockouts, as increased liquor regulation came in. Source: City of Sydney. Top, 2012. Bottom 2015.

The 2015 report bizarrely shows the change in pedestrians by count, not percent, making them meaningless to the casual reader. It does have one chart showing a comparison of 2015 versus 2012 peak traffic counts, but this is comparing a peak hour on a random day at a random location in March 2015 to a peak hour on a random day at a potentially different random location in December 2012.

Chart 5.14 – Kings Cross pedestrian peaks 2012 vs 2015

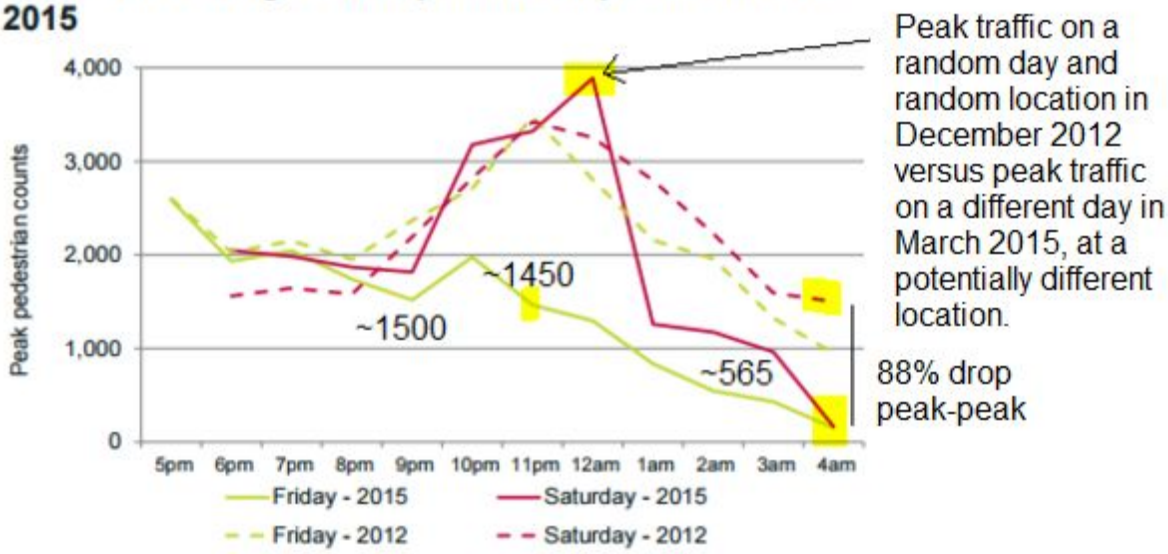


Chart 5.5 – Sydney CBD Entertainment Precincts change in pedestrian peaks 2012 to 2015 – Friday

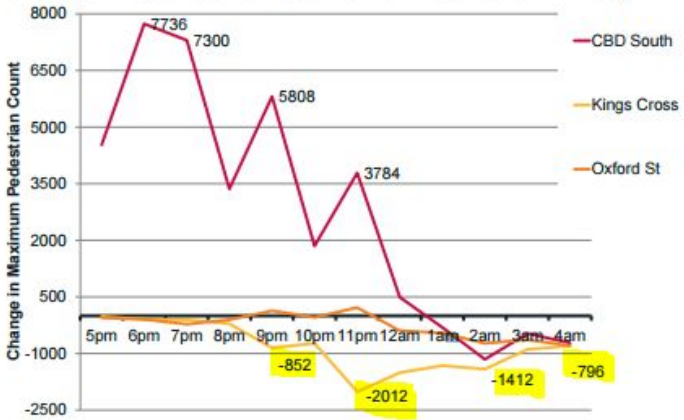
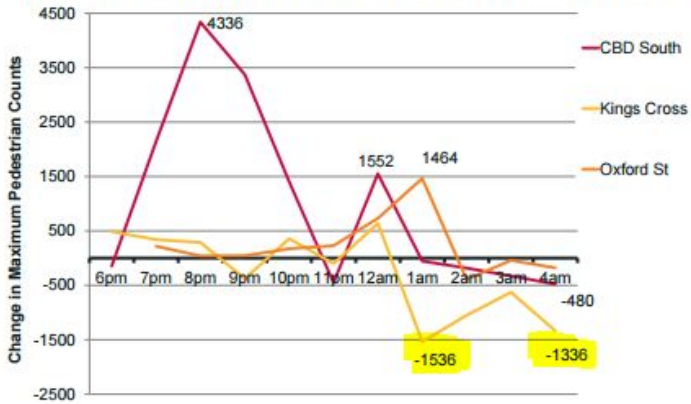


Chart 5.6 – Sydney CBD Entertainment Precincts change in pedestrian peaks 2012 to 2015 – Saturday



Figures: Obfuscated statistics regarding the drop in KX Oxford Street foot traffic from the City of Sydney [Late Night Management Report 2015]

Regardless, reading off the pixels using a computer, if the peak traffic at midnight on a Friday in Kings Cross in 2015 at 11pm is approximately 1450 people, and this has dropped by 2012 people, then there were 3462 people at peak on a Friday in 2012. The traffic at 11pm between these points has dropped 58%.

Since these graphs measure peak traffic, the <u>average</u> drop will by definition be a lot more as only the "best" traffic is measured for a given hour and day of the week in the month. There could have been a special event on in 2015 that abnormally raised the traffic at 11pm on one Friday in the month measured.

Repeating this exercise across both sets of graphs yields the follow graph:

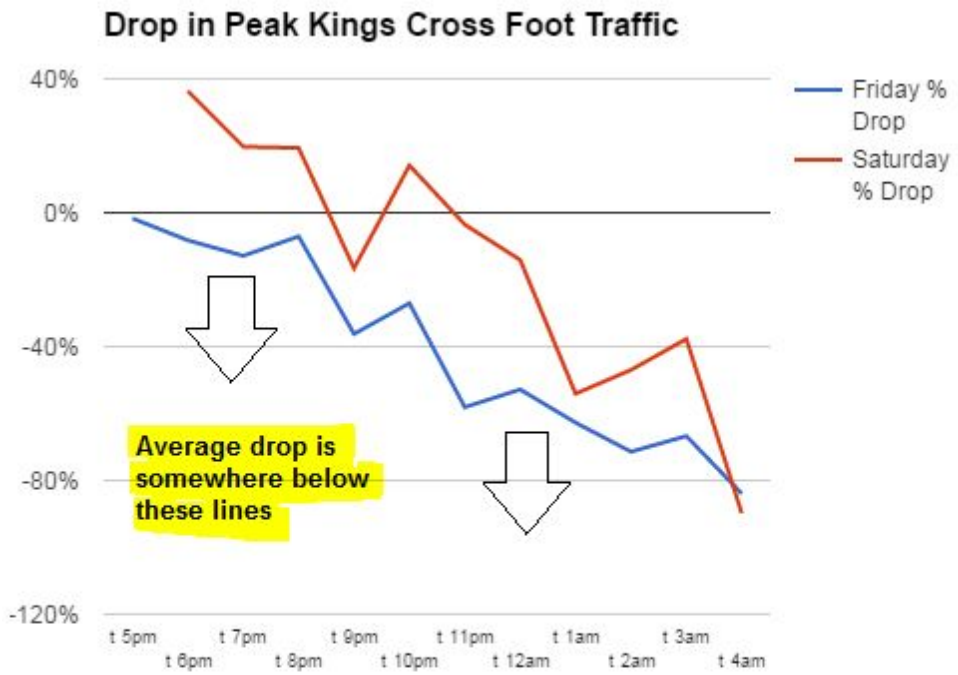


Figure: Drop in Peak Kings Cross Foot Traffic between December 2012 and March 2015

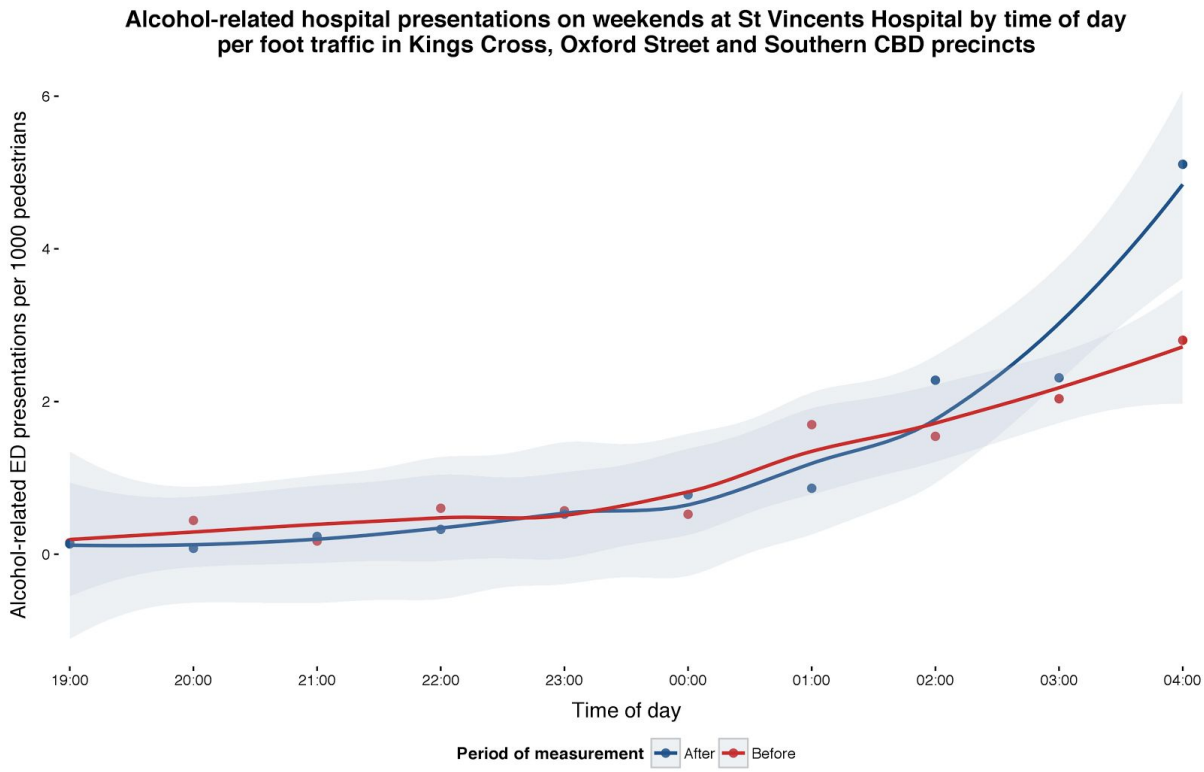
<u>The average drop for each day will be somewhere in the region under both plots as the City of Sydney reports compare peak traffic to peak traffic.</u>

<u>Regardless, no matter how much the drop actually is, at best it shows the lockout law policies are a dismal failure. Up to 90% of foot traffic has been lost in the main entertainment precinct of the biggest city in the country for a change in 25 alcohol-related admissions to St Vincent's in a year. Which if properly examined might show zero difference or even an increase.</u>

Figure: Sydney's main entertainment precincts are now desolate at night.

Figure: The malaise & over regulation has spread throughout the city. St Patrick's Day Celebrations at Bondi Beach, Sydney's main tourist beach.

Indeed, if Dr. Fulde is to be believed that his analysis is rigorous and that deviations in St. Vincent's admissions data is directly related to the lockout legislation alone, **then you are statistically more likely to face alcohol-related harm per visit to Sydney's late night entertainment areas after the lockouts than before**. This is simply because the foot traffic due to the lockout curfew has cratered at a significantly greater rate than admissions. In other words, Kings Cross, Oxford Street & the southern CBD precincts are more unsafe per visit during lockout hours than they were before. I calculated and plotted this below.



Source: Data derived from Fulde et al 2015 & City of Sydney Late Night Management Reports show that if St. Vincent's admissions data deviations are directly related to the lockout legislation then is statistically more unsafe per foot visit to Sydney's entertainment districts after the lockouts.

There are plenty of other riskier endeavours that face us in everyday life. If the NSW Government decided to enact similar policies on all of them we wouldn't be able to leave our homes. Ladders, bathtubs and beds would also be banned since it's far more likely you will hurt yourself with them than when you venture into a Sydney CBD entertainment precinct.

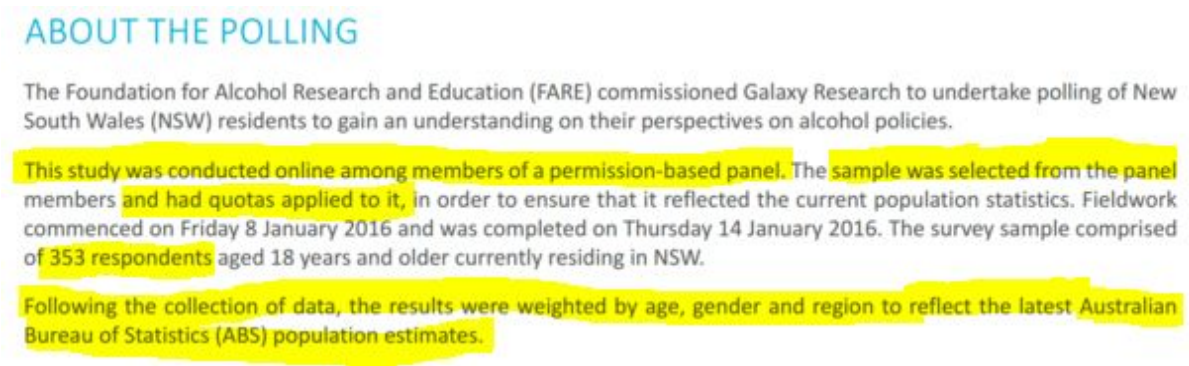
So if Sydney is a very safe place, perhaps the safest city in the world, and the data backs this up, why does the NSW Government want us to feel like we are in the midst of a great alcohol-fueled terror?

Manipulation of Poll Data

On the 21st of February 2016, an article was published in the Sydney Morning Herald entitled “Lockouts: Poll shows two-thirds of NSW residents want laws to stay”. This article stated that “More than two-thirds (68%) of NSW residents support the government's crackdown on alcohol-fuelled violence, including lockouts and 3am last drinks, a Galaxy poll has shown”.

This poll was commissioned by FARE, the government funded Foundation for Alcohol Research and Education. This report shows further government funded manipulation of statistics to make a pro-lockout argument.

If one actually reads the report, one will find that the “sample” used for the poll was based on a “selection” from an online “permission-based panel” of a grand total of 353 respondents.



ABOUT THE POLLING

The Foundation for Alcohol Research and Education (FARE) commissioned Galaxy Research to undertake polling of New South Wales (NSW) residents to gain an understanding on their perspectives on alcohol policies.

This study was conducted online among members of a permission-based panel. The sample was selected from the panel members and had quotas applied to it, in order to ensure that it reflected the current population statistics. Fieldwork commenced on Friday 8 January 2016 and was completed on Thursday 14 January 2016. The survey sample comprised of 353 respondents aged 18 years and older currently residing in NSW.

Following the collection of data, the results were weighted by age, gender and region to reflect the latest Australian Bureau of Statistics (ABS) population estimates.

Figure: Dodgy statistics used by FARE to create the illusion of public opinion. Source: FARE.

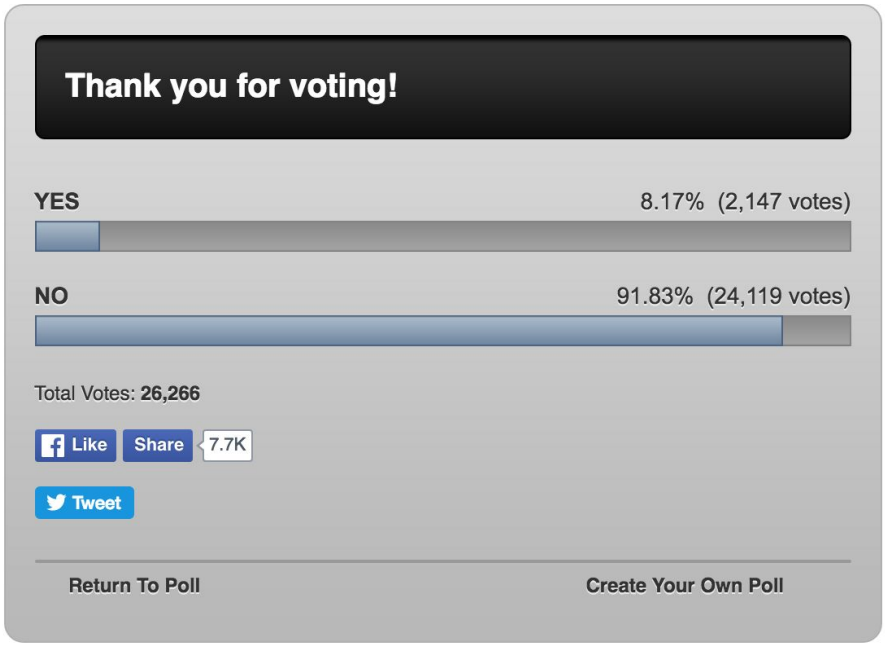
This sample then “had quotas applied to it, to ensure that it reflected the current population statistics”. Following this, the results were weighted by age, gender, region to reflect the latest ABS population estimates.

One can only image what sort of person would submit themselves to a permission based poll from FARE- but from this set, a sample of 353 was hand selected, had quotas applied to modify the sample set distribution, and then subsequently re-weighted.

And this was deemed statistically significant to poll the attitudes of 7.544 million New South Wales citizens. FARE and Galaxy should be ashamed.

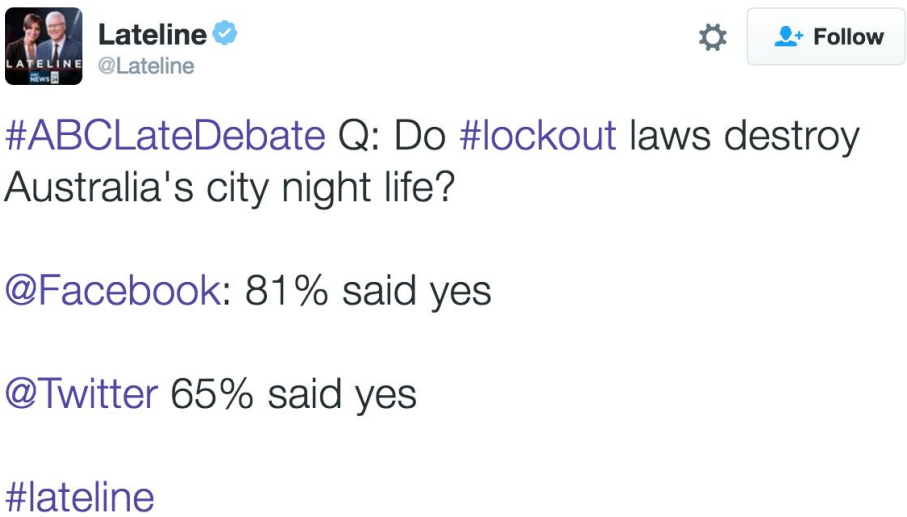
Meanwhile, some more polls were conducted.

Daily Telegraph poll of 26,000:



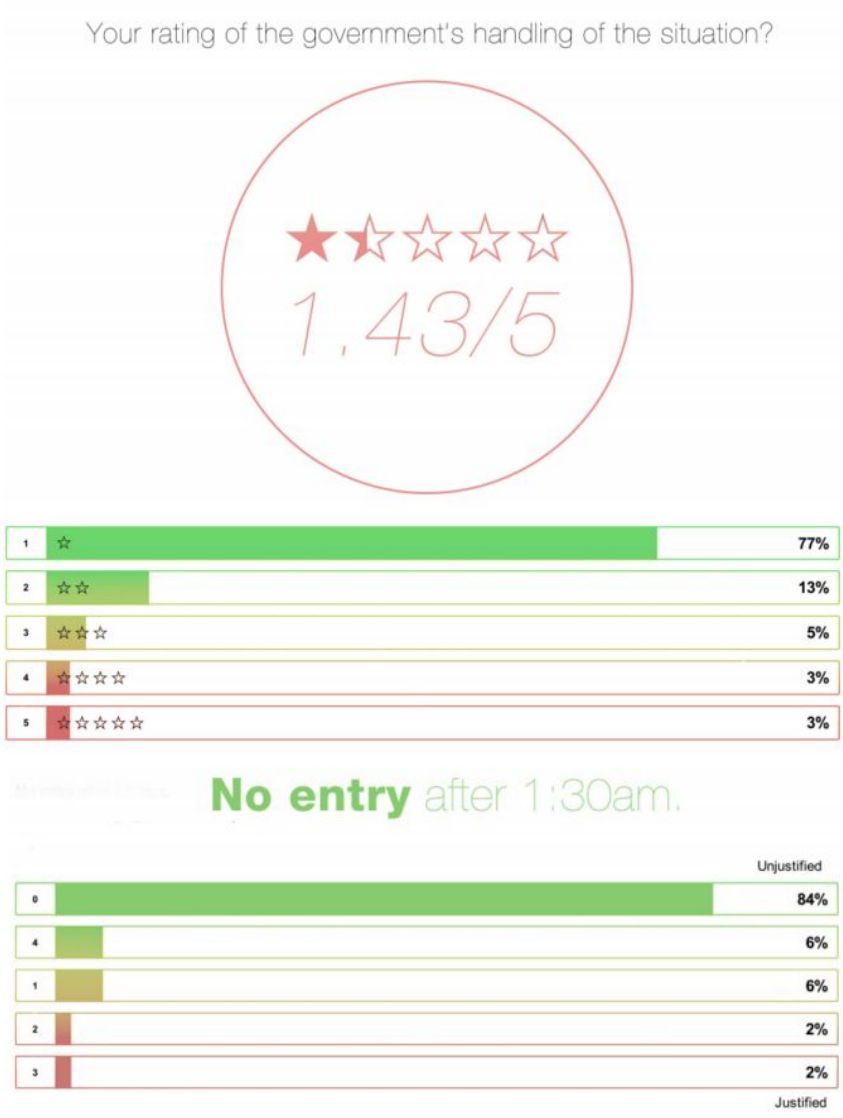
Source: 92% of over 26,000 respondents do not support NSW lockout laws in independent Daily Telegraph poll.

ABC Lateline Poll:

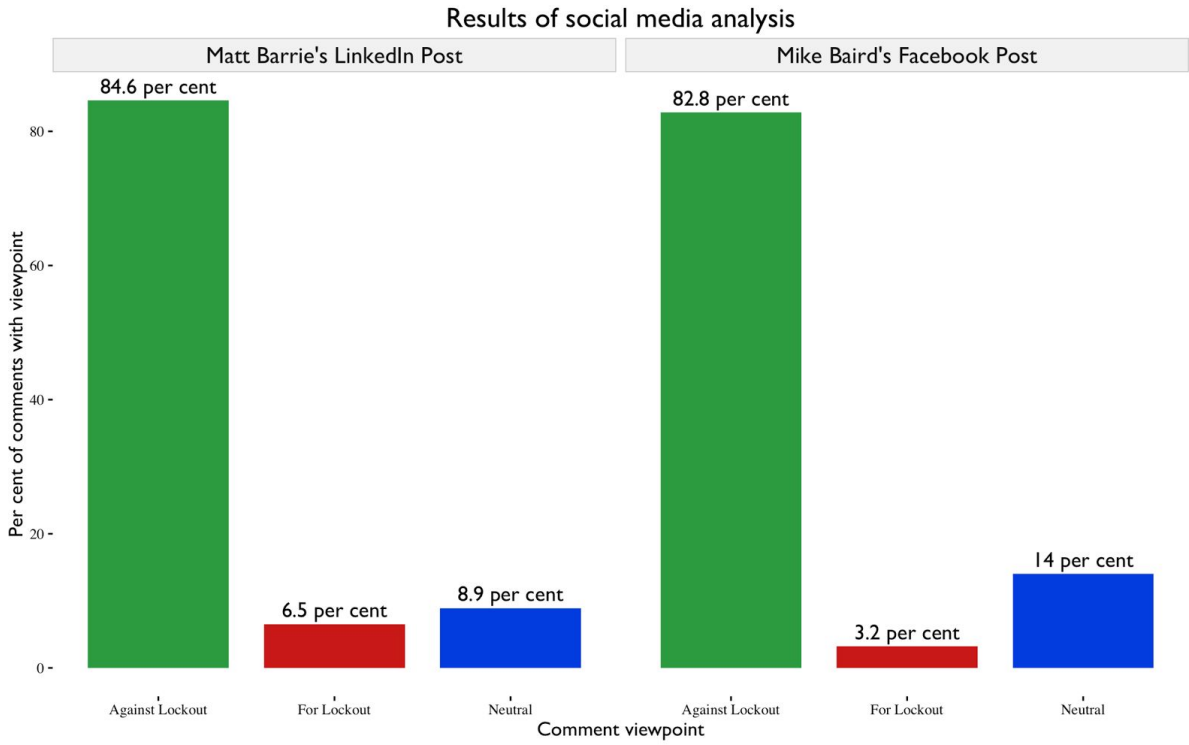


Source: 65-81% of respondents in independent [Lateline] poll says lockout laws have destroyed Australia's nightlife.

The Socialites Poll of 23,000:



Source: 90% of over 23,000 polled disagree with the 1:30am lockout, 84% disagree with the 10pm takeaway ban, and 23,000 give an average rating of 1.43/5.00 of the NSW Government & Mike Baird's handling of the situation. Source: [The Socialites](#).



Source: 84.6 per cent of comments from 927,000 reads of my LinkedIn article, and 83.8 per cent of the 22,314 comments on Mike Baird's Facebook response were 'Against Lockouts'. Source: "[Sydney's "lock-outs" laws lack evidence and popular support](#)" (Archerfish).

Liability of Venues

A business can't be expected to manage something it can't measure.

Intoxication itself is an imprecise concept, but the laws concerning drink driving reflect the fact that a person in charge of a motor vehicle may be at risk of suffering, or causing, injury after three or four standard drinks. That is probably the best known and most clearly foreseeable risk of injury that accompanies the consumption of alcohol. The risk does not necessarily involve a high level of intoxication. There are other forms of risk of physical injury which may accompany the consumption of alcohol, even in relatively moderate amounts.

The state of drunkenness or intoxication can vary greatly in degree. A person may be intoxicated in the sense that his personality is changed, his will is warped, his disposition altered, or his self-control weakened, so that whilst intoxicated to this degree he does an act voluntarily and intentionally which in a sober state he would or might not have done. His intoxication to this degree, though conducive to and perhaps explanatory of his actions, has not destroyed his will or precluded the formation of any relevant intent. Indeed intoxication to this degree might well explain how an accused, otherwise of good character, came to commit an offence with which he is charged.

Some consumers of alcohol respond quickly to its effects, while others can consume a large quantity without much change of appearance or demeanour. People in both categories may be at risk of injury if they drive a car. To impose on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption involves burdensome practical consequences. It provides no answer to say that such a duty comes into play only when a consumer is showing clear signs of a high degree of intoxication. The risk sets in well before that. The NSW Government believes there is a duty on a supplier to "monitor" alcohol consumption. The capacity of a supplier of alcohol to monitor the level of risk to which a consumer may be exposed is limited. If a restaurant proprietor serves a bottle of wine to two customers at a table, the proprietor may not know what either of them has had to drink previously, the proportions in which they intend to share the bottle, or what they propose to do when they leave the restaurant. Few customers would take kindly to being questioned about such matters.

There is a further question of principle bearing upon the reasonableness of the imposition of a duty of the kind for which the NSW Government contends. Most adults know that drinking to excess is risky. The nature and degree of risk may be affected by the extent of the excess, or by other circumstances, such as the activities in which people engage, or the conditions in which they work or live. A supplier of alcohol, in either a commercial or a social setting, is usually in no position to assess the risk. The consumer knows the risk. It is true that alcohol is disinhibiting, and may reduce a consumer's capacity to make reasonable decisions. Even so, unless intoxication reaches a very high degree, the criminal and the civil law hold a person responsible for his or her acts. If somebody who is drunk deliberately or negligently, damages a venue’s property, or caused physical injury to some third party, they would have been liable for the damage. Save in extreme cases, the law makes intoxicated people legally responsible for their actions. As a general rule they should not be able to avoid responsibility for the risks that accompany a personal choice to consume alcohol.

Although there are exceptional cases, it is unusual for the common law to subject a person to a duty to take reasonable care to prevent another person injuring himself deliberately. On the whole people are entitled to act as they please, even if this will inevitably lead to their own death or injury. This principle gives effect to a value of the law that respects personal

autonomy. It is not without relevance to ask what the average person would say if venues were forced to monitor and control all behaviour as the NSW Alcohol Linking Program contends. Whatever exactly they might have to do, it would seem to involve a fairly high degree of interference with privacy, and freedom of action.

It is not difficult to guess what an average person's response would be to a licensee who sold a bottle of wine in the middle of the day and demanded to be told whether the purchaser intended to drink it all by themselves. A duty to take care to protect an ordinary adult person who requests supply from risks associated with alcohol consumption is not easy to reconcile with a general rule that people are entitled to do as they please, even if it involves a risk of injury to themselves. The particular circumstances of individual cases, or classes of case, might give rise to such a duty, but not in the ordinary case.

As a general rule a person has no legal duty to rescue another. How is this to be reconciled with a proposition that the venues have a duty to protect consumers from the consequences of decisions to drink excessively? There are many forms of excessive eating and drinking that involve health risks but, as a rule, we leave it to individuals to decide for themselves how much they eat and drink. There are sound reasons for that, associated with values of autonomy and privacy.

The common law regards individuals as autonomous beings who are entitled to make, but are legally responsible for, their own choices.

Except for extraordinary cases, the law should not recognise a duty of care to protect persons from harm caused by intoxication following a deliberate and voluntary decision on their part to drink to excess.

The voluntary act of drinking until intoxicated should be regarded as a deliberate act taken by a person exercising autonomy for which that person should carry personal responsibility in law.

If the duty existed it might call for constant surveillance and investigation by publicans of the condition of customers as imagined by the NSW Government. That process of surveillance and investigation might require publicans to direct occasional oral inquiries to customers. Inquiries of this kind would ordinarily be regarded as impertinent and invasive of privacy. Quite apart from the inflammatory effect of these activities on publican-customer relations and on good order in the hotel or club, the impact of these activities on the efficient operation of the businesses of publicans would contravene their freedom of action in a gross manner.

The other significant matter is that if a customer reached a state of intoxication requiring that no further alcohol be served and the customer decided to depart, recognition of the duty of care in question might oblige publicans to restrain customers from departing until some guarantee of their safety after departure existed. The Alcohol Linking Laws repeatedly stress the proposition that venues are at fault in permitting the patrons to leave without ensuring that it was safe for them to do so. How are customers to be lawfully restrained? If customers are restrained by a threat of force, prima facie the torts of false imprisonment and of assault

will have been committed. If actual force is used to restrain customers, prima facie the tort of battery will have been committed as well as the tort of false imprisonment. Further, the use of actual force can be a criminal offence: *Crimes Act 1900* , s 59 and s 61. It is a defence to these torts to prove lawful justification - reasonable and probable cause. However, the constitutional significance of the torts in question in protecting the liberties of citizens - they create, after all, important limitations on police power - means that 'lawful justifications' should not lightly be found independently of legislative sanction even outside the immediate police context. Subsections (1) and (3) of s 67A(1) of the *Registered Clubs Act 1976* make it lawful for the secretary or an employee of a registered club to use whatever reasonable force is necessary to 'turn out' of a club intoxicated persons. But the legislation says nothing about using reasonable force to keep intoxicated persons in pending the appearance of some guarantee for their safety after departure.

To extend the duty of care of licensees to the protection of patrons from self-induced harm caused by intoxication would subvert many other principles of law and statute which strike a balance between rights and obligations, and duties and freedoms.

In general - there may be some exceptional cases - vendors of products containing alcohol should not be liable in tort for the consequences of the voluntary excessive consumption of those products by the persons to whom the former have sold them. The risk begins when the first drink is taken and progressively increases with each further one. Everyone knows at the outset that if the consumption continues, a stage will be reached at which judgment and capacity to care for oneself will be impaired, and even ultimately destroyed entirely for at least a period.

Your honour would be quite familiar with this argument, and indeed the very words used above, for they have been quoted almost verbatim from an argument presented by Justices Gleeson and yourself (and Justices Heydon with Santow previously) as part of the majority decision in the seminal case on personal liability in highest court of the Australian judicial system, the High Court *Cole v South Tweed Heads Rugby League Football Club Ltd (2004)*.

Liquor Legislation

Yet the lockout legislation and the regulatory environment around alcohol explicitly suggest the opposite, that venues are completely responsible for the actions of their patrons, even well after they have left the venue. The Alcohol Linking Program still holds the venues responsible well after customers have left the venue- even if the customer falls victim to a completely unrelated crime at some later point.

The regulations around alcohol in NSW have been deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes.

Indeed, while certainly tragic, the deaths of neither Thomas Kelly nor Daniel Christie would have been prevented with these lockout laws- as former Premier Barry O'Farrell said on January 2nd on ABC radio. Both assaults occurred around 10pm, well before curfew hours

that the lockout laws introduced. In the case of Thomas Kelly, the assailant Kieran Loveridge had been drinking heavily at home and in the car, prior to arriving in the city. Loveridge had not been inside a licensed venue in Kings Cross prior to the attack- the venues had done the right thing, refusing entry to the Dragon Lounge and the Club. Not even the police could foresee what would happen next- they intercepted Loveridge immediately prior to the assault and issued him with an infringement notice for behaving offensively.

Yet both major political parties politicised these two tragic deaths to whip up hysteria and score political points.

The lockout legislation that was brought in shortly thereafter has now created a state where landlords are being commercially punished to the point of insolvency due to the actions of a tenant. Where commercial businesses are being punished to the point of bankruptcy due to the actions of their customers. In the case of the two deaths in Kings Cross, where businesses are bankrupted due to the actions of completely unrelated parties, people that have never been a customer or even walked onto the premises. None of the subsequently introduced regulations or restrictions would have stopped those two deaths.

The blanket curfew has bankrupted many unrelated businesses that are not even licensed venues- such as this newsagency that had operated for 83 years. Hundreds of people have lost their jobs that have had nothing to do with the liquor trade.

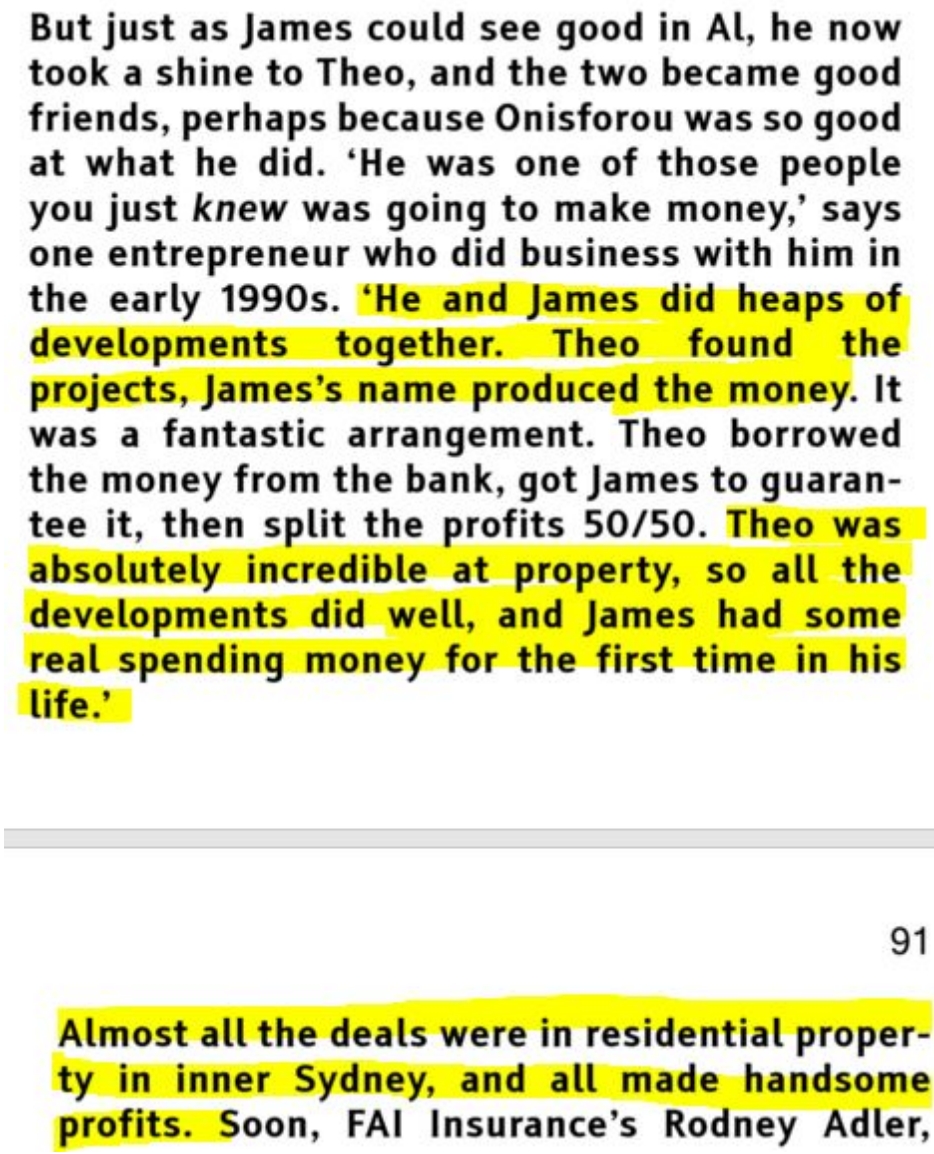
Where asset values are damaged and the owners of properties say that “the ability to drive an income has been marginalised to a point that the highest and best use [...] are now in constant reassessment by the owners”. Which often ends up in fire sales to property developers at distressed prices to build apartments.

According to Jen Melocco of the Wentworth Courier, “One of the city’s high profile and successful property developers, Theo Onisforou, labelled Darlinghurst Rd in Kings Cross the hottest place in Sydney at the moment and expects values to rise further. Investing in the strip has paid off for Mr Onisforou who has seen a building almost identical to one he bought a year ago sell for more than triple his price. Mr Onisforou bought the 51-room Astoria Hotel at 9 Darlinghurst Rd for $6.3 million in September last year. ‘Buying the Astoria on the corner of Darlinghurst Rd and Macleay St was an absolute no-brainer,’ Mr Onisforou said. ‘I have been in property now for 42 years and I have never seen a suburb change so dramatically, so quickly.’”.

Paul Barry, in ‘Who Wants to Be a Billionaire? The James Packer Story” wrote:

James had always been desperate for his father's admiration and had talked about making money ever since he left school. And now that he was in a position of power, he was besieged by people offering him deals. It's an old adage that money makes money and James was able to benefit, even though Kerry gave him none, because he had the Packer name.

One of the most persistent petitioners for his attention was a lawyer called Theo Onisforou, who was working his way up from nothing to become the multimillionaire he is today. At university,



But just as James could see good in Al, he now took a shine to Theo, and the two became good friends, perhaps because Onisforou was so good at what he did. 'He was one of those people you just *knew* was going to make money,' says one entrepreneur who did business with him in the early 1990s. 'He and James did heaps of developments together. Theo found the projects, James's name produced the money. It was a fantastic arrangement. Theo borrowed the money from the bank, got James to guarantee it, then split the profits 50/50. Theo was absolutely incredible at property, so all the developments did well, and James had some real spending money for the first time in his life.'

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Almost all the deals were in residential property in inner Sydney, and all made handsome profits. Soon, FAI Insurance's Rodney Adler,

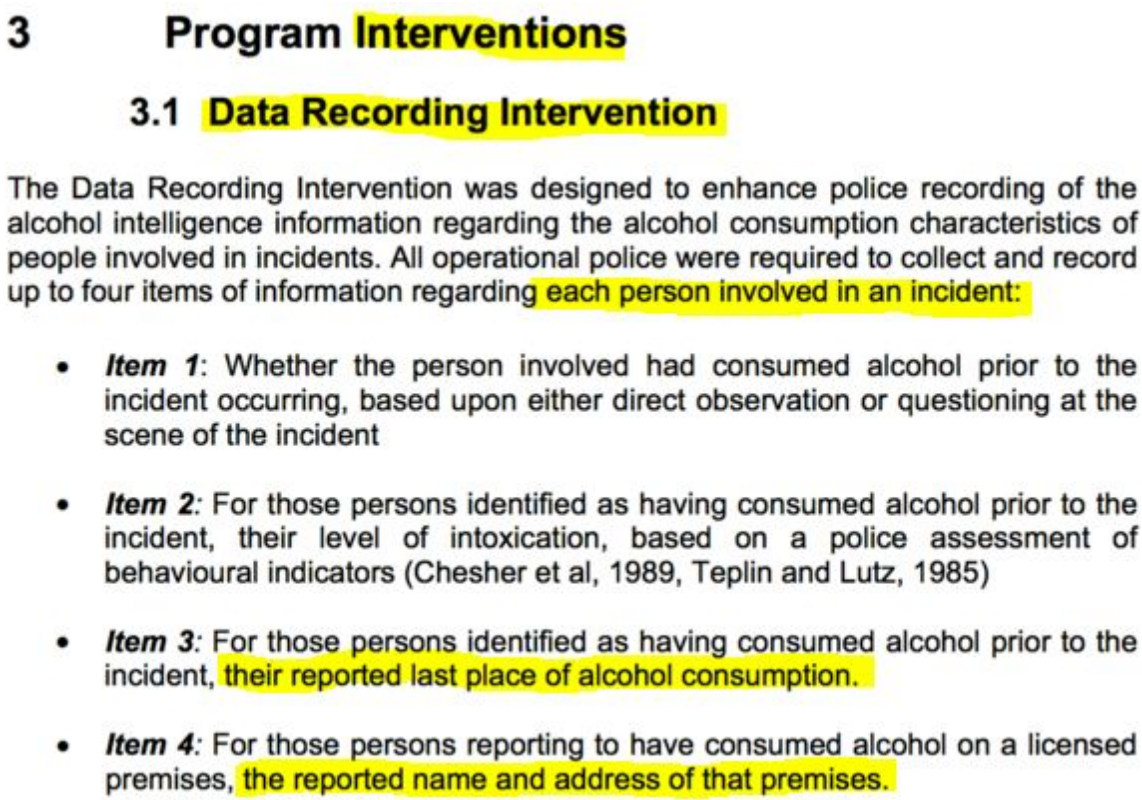
Source: Who wants to be a Billionaire? The James Packer story. By Paul Barry.

Alcohol Linking Program

The core weapon used by the government to financially damage the balance sheets of businesses is an Orwellian and cunning system known as the statewide Alcohol Linking Program.

Most of us have read about the notoriously "violent establishment" and "alcohol related violence". What most people do not realise is these the vast majority of these assaults occur far away from the establishment where the alcohol is consumed and that in the majority of cases the consumer of the alcohol is the victim, not the perpetrator.

You might be a little surprised to hear about how this program actually works. When an incident occurs, the police routinely collect the following information from all persons involved in attended incidents.



3 Program Interventions

3.1 Data Recording Intervention

The Data Recording Intervention was designed to enhance police recording of the alcohol intelligence information regarding the alcohol consumption characteristics of people involved in incidents. All operational police were required to collect and record up to four items of information regarding each person involved in an incident:

- ***Item 1***: Whether the person involved had consumed alcohol prior to the incident occurring, based upon either direct observation or questioning at the scene of the incident
- ***Item 2***: For those persons identified as having consumed alcohol prior to the incident, their level of intoxication, based on a police assessment of behavioural indicators (Chesher et al, 1989, Teplin and Lutz, 1985)
- ***Item 3***: For those persons identified as having consumed alcohol prior to the incident, their reported last place of alcohol consumption.
- ***Item 4***: For those persons reporting to have consumed alcohol on a licensed premises, the reported name and address of that premises.

Figure: The Alcohol Linking program records more statistics about victims than it does about offenders. Source: The Alcohol Linking Program.

For instance, if a young lady drinks a few glasses of champagne in Kings Cross, then catches a bus and is assaulted walking home through Bondi, when she reports the assault to Bondi police the officer is compelled to record the incident as emanating from the last place that she consumed alcohol. The perpetrator is rarely caught, but if they are it is usually sometime after the assault, so that perpetrators sobriety is less likely to be noted. Even if the perpetrator was completely sober, it is still recorded as alcohol related violence.

The data collected by the program includes not just assaults, but also 32 other areas of crime including Lost Property, Missing Person and Gaming offences.

This data then feeds into a premises intervention program. If victims start to emerge from a particular premises their business model is attacked with increasingly severe regulatory demands and covert and overt police visits. These regulatory demands are designed to create cost pressure on an establishment as they attempt to comply with the increased regulatory requirements. Hugo's Lounge, a fairly tame venue which was more known for

fashion shows and models than violence, faced thirty six “stringent conditions” in only a two and a half year period as a result of these programs.

It’s a very cunningly designed program because in effect this system, which is held up to provide the main source of data on licensed premise, is effectively a victim blaming mechanism.

If you had an agenda against restaurants, you could just as easily develop a nonsensical Restaurant Linking Program where you record the last place that victims ate. If you had an agenda against buses, you could develop a Bus Linking Program and record the last bus stop victims got off from.

It’s pure statistical fraud.

The Alcohol Linking Program as designed more accurately measures crimes against people who drink than reliable statistics on crime due to venues.

“High Risk” Venues

In 2014, the Liquor Act was also amended in such a way that it deemed a pizza bar as a “high risk venue”. According to the legislation a “high risk venue” is any place that serves alcohol, is open past midnight at least once a week, has a capacity of 120 people or more, and just happens to be located in the Sydney CBD Entertainment precinct.

(2) A ***high risk venue*** is a venue situated in a prescribed precinct comprising:

(a) licensed premises:

(i) on which liquor may be sold for consumption on the premises, and

(ii) that are authorised to trade after midnight at least once a week on a regular basis, and

(iii) that have a patron capacity (as determined by the Director-General) of more than 120 patrons, or

(b) licensed premises specified by, or of a class specified by, the regulations, or

(c) licensed premises that are designated by the Director-General under subsection (4).

Figure: A “high risk venue” is one with a capacity of 120 or more patrons, open after midnight at least once per week that serves alcohol in the CBD entertainment precinct.

This Orwellian nomenclature is really just a euphemism for a “venue we feel like shutting down” and a trigger for a series of nonsensical rules and regulations to apply that aim to squarely damage trade by making the venue unpalatable for any customer to visit (e.g. use

of plastic cups, plastic carafes for champagne, timeouts, banning scotch on the rocks after midnight, unless it is mixed with a soft drink, but not if it is pre-mixed in a can because that is an “alcopop”).

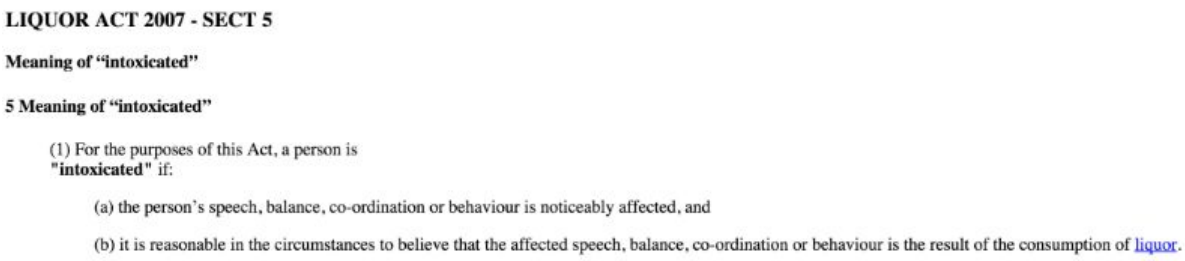
None of this, of course, has anything to do with how the business itself is being operated.

Three Strikes Policy

Venue owners are too afraid to speak out against the draconian rules while they are operating their businesses due to the three strikes policy of the Office of Liquor and Gaming NSW.

This is modeled on the three strikes policy of the United States, which doesn’t prevent crime and has seen absurd tragedies such as the jailing of someone for 25 years to life for bouncing a cheque, or a homeless person for stealing toilet paper from a building site. It’s also been struck down as unconstitutional by the US Supreme Court.

The three strikes policy of the NSW OLGR is designed to allow licensing police enough discretion to close any venue at any time they wish. The terms of offence can be so broadly interpreted that you could walk into any bar in Sydney and find people who are intoxicated- this enables the licensing police to intimidate the licensees into compliance. If they don't comply they risk losing everything, and over time the over regulation creates financial fatigue on the business eventually resulting in it being closed.



LIQUOR ACT 2007 - SECT 5

Meaning of “intoxicated”

5 Meaning of “intoxicated”

(1) For the purposes of this Act, a person is **"intoxicated"** if:

(a) the person’s speech, balance, co-ordination or behaviour is noticeably affected, and

(b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.

Picture: Anyone could walk into any bar in the world and find an “intoxicated” person according to the Liquor Act. Source: Liquor Act.

The three strikes law allows licensing police to effectively use bullying tactics. One venue operator who did not want to be named told me that after being burdened with meeting after meeting, being forced to hand over the names, addresses and phone numbers of all his wait staff and repeated requests for receipts of all food and beverage transactions through the till, that he was threatened with arrest for not turning up to yet another voluntary meeting. This same venue has recorded over 470 on-site inspections by police, often with sniffer dogs, in the last four years.

These laws would be unconstitutional if they were federal laws. The right to operate a business, the right to work, the right to earn a living has been denied to a large number of people simply for being in a certain geographic area.

These laws are discriminatory. The very police that are forced to patrol these laws are also being discriminated by it at the same time, because if they finish their shifts late they are unable to enter a licensed premises.

Exemptions Granted

A number of exemptions have been granted to the lockout laws. Most noticeably, this is the map of the Sydney Entertainment Precinct:

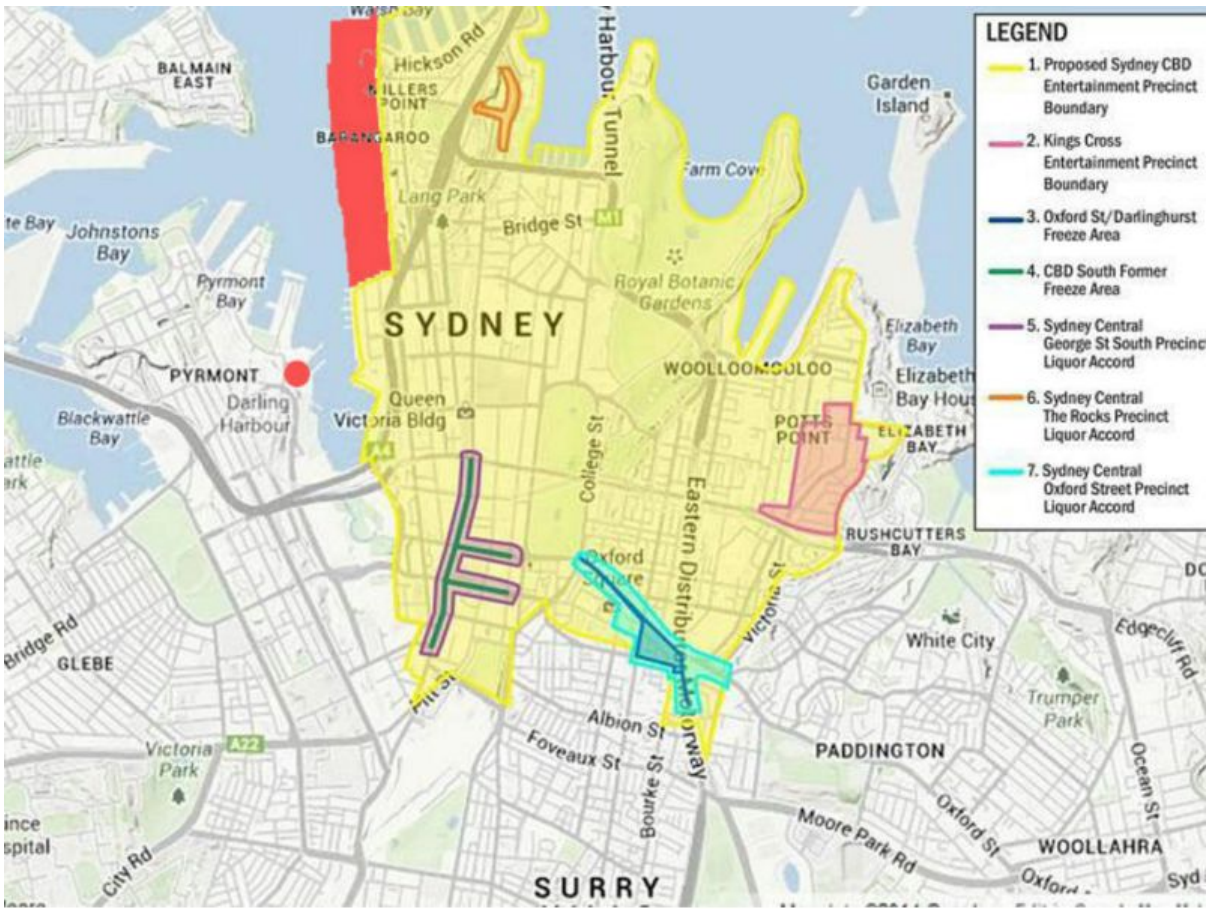


Figure: Map of the Sydney Entertainment Precinct has some noticeable holes.

Completely unnaturally, the Barangaroo development, including Crown Casino and the Barangaroo night time entertainment districts have been carved out from the map. Secondly, Star Casino at Pyrmont, the most dangerous venue in the state for assaults, has been excluded, which the Sydney Morning Herald reports had an average of 6.3 assaults per month between February and September last year. Annualised this is about 75 assaults per year. To put this into context, this is over 10% of all alcohol-related assaults in Sydney (there

were 735 non-domestic offender alcohol-related assaults in the year to September 2015 according to BOCSAR). Yet it, and the site for the new Crown Casino have been excluded by design. The next most violent venue has only 1/3rd the number of assaults.

The Star is also exempt from the "Three Strikes" scheme under which venues face loss of their liquor licence. The most recent annual report of the Independent Liquor and Gaming Authority showed Star was fined or censured 12 times during 2013-14 for licence breaches.

Sixteen Sydney pubs (fourteen in the CBD and two in Kings Cross) have also been granted exemptions to the lockout laws in order to allow people to play poker machines.

According to the most recent statistics from the Australian Government, Australians spent more than $19 billion on gambling in 2008-0, up to 500,000 Australians are at risk of becoming, or are, problem gamblers, and the social cost to the community of problem gambling is estimated to be at least $4.7 billion a year. One in six people who play the pokies regularly has a serious addiction and problem gamblers lose around $21,000 each year. That's one third of the average Australian salary being lost by problem gamblers each year.

Yet these venues, which are ostensibly locked out due to the social costs of problem drinking, have been granted exemptions at the risk of the social costs of problem gambling.

The stunning hypocrisy of the NSW Government is plain to see- about 9.1% of state governments' revenue comes from gambling.

One might argue that with Sydney's entertainment precincts now mostly closed at night, that this amount would now be significantly higher. Some have suggested that this might be a factor in why the lockout laws were implemented in the first place.

Crown Limited alone paid $991 million in tax in fiscal 2015 and $595 million in fiscal 2014.

I have absolutely nothing against the casinos. I believe in personal responsibility and the freedom for one to do as he or she wishes. What I am against is moral grandstanding by politicians and the nanny state.

I think it is great that there is at least one venue open 24x7 in Sydney. But in 2016 there should be a lot more venues open, offering a variety of activities. At least for now, this is supposed to be Australia's largest city, and not the backwards country town that it has regressed to.

Casinos and the NSW Liberal Party

There has long been an incestuous association between the NSW Liberal Party and the casinos.

In February 2012, Crown Casino raised its stake in Echo Entertainment, owner of the Star, to 10%, sparking takeover speculation.

In March 2012, a scandal erupted when an investigation was launched by the the Director General of the Department of Premier and Cabinet over leaked text messages between Gaming Minister George Souris and the Premier's communications director Peter Grimshaw.

Barry O'Farrell's press secretary, Peter Grimshaw, had been Star casino's public relations officer for 16 years previously before joining Barry in January 2011. His girlfriend also worked at the casino as a human resources executive, and had been the victim of an alleged sexual harassment- which led to the sacking of The Star boss Sid Vaikunta.

According to Lateline, the public inquiry into the sacking of Star Casino boss Sid Vaikunta heard that New South Wales Premier Barry O'Farrell had threatened to smash Star casino once he came to power. In 2010 - when Mr O'Farrell was still in opposition - Grimshaw sent a text to his lover saying "I just told Barry what a dick Sid is…he said we might have to give Star a wake-up call…" Later, on November 8, he sent another text saying he'd heard from Mr O'Farrell and "I think they are going to smash Star".

The woman, who is the partner of the Premier's senior media adviser Peter Grimshaw, was dismissed on February 13 for allegedly leaking information about the sacking of the casino's general manager, Sid Vaikunta, whilst her medical bills and worker's compensation were still being paid by the casino as an acknowledged victim of sexual harassment.

A public inquiry was launched, during which on day two, Grimshaw resigned.

On 14 June 2012, Macquarie Bank becomes a substantial shareholder in the Star Casino after Echo Entertainment raised $450 million in a renounceable rights issue at a discount of between 22 per cent and 26 per cent to boost its balance sheet as a takeover defence against James Packer's Crown casino group and Singapore's Genting.

In July of 2012, tragically, Thomas Kelly dies after being punched in Kings Cross, outside venues, shortly after 10pm.

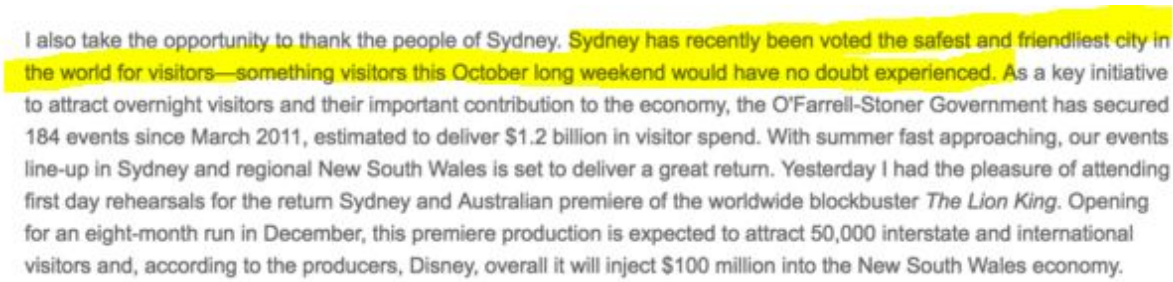
Only a few months later, in October 2012, then NSW Premier Barry O'Farrell announced that Crown had received cabinet approval to proceed to stage two of a three-stage "unsolicited proposals" assessment process for a new casino only a few hundred metres away from Star in Barangaroo.

According to Sean Nicholls from the Sydney Morning Herald, the NSW government relaxed its own rules on unsolicited projects as to avoid public tender on August 17, a week after the Premier, Barry O'Farrell, met Mr Packer to discuss his proposal, and just two weeks before the proposal was formally lodged.

In May 2013, Crown sells its stake in Star.

On October 11 2013, the same George Souris, also Minister for Tourism (in addition to being Minister for Major Events, Hospitality and Racing, and Minister for the Arts), proclaimed Sydney had won an award as "**the safest and friendliest city in the world" in a press release on Destination NSW**.

On October 17, 2013, George Souris repeated that Sydney was "the safest and friendliest city in the world", in the Legislative Assembly, "**something visitors this October long weekend would have no doubt experienced**".



I also take the opportunity to thank the people of Sydney. Sydney has recently been voted the safest and friendliest city in the world for visitors—something visitors this October long weekend would have no doubt experienced. As a key initiative to attract overnight visitors and their important contribution to the economy, the O'Farrell-Stoner Government has secured 184 events since March 2011, estimated to deliver $1.2 billion in visitor spend. With summer fast approaching, our events line-up in Sydney and regional New South Wales is set to deliver a great return. Yesterday I had the pleasure of attending first day rehearsals for the return Sydney and Australian premiere of the worldwide blockbuster *The Lion King*. Opening for an eight-month run in December, this premiere production is expected to attract 50,000 interstate and international visitors and, according to the producers, Disney, overall it will inject $100 million into the New South Wales economy.

Figure: Minister Souris proclaiming Sydney "the safest and friendliest city in the world" on October 17 2013 in the Legislative Assembly. Source: Hansard.

Souris was responsible for the administration of NSW liquor regulation and gambling.

In November of 2013, NSW Labor, despite having an overwhelming minority, pushed for draconian laws that punished the whole state. Their policy was known as Drink Smart, Home Safe and contained a number of pointless ideas about combatting a problem that didn't really exist.

The main aim of the policy was to implement 1am lockouts, 3am last drinks and restrictions on high alcohol content drinks such as shots, doubles and cocktails from 10pm.

On November 19, O'Farrell and Souris, quite rightly, ridiculed this suggestion in parliament as ill-conceived and unnecessary legislation.

Mr BARRY O'FARRELL: Earlier I listened with interest to the Leader of the Opposition give notice of a motion to be accorded priority today, I listened with interest to this question and I read with interest last Sunday's paper.

I looked carefully at the detail of the Leader of the Opposition's only policy and, as he has repeated here again today, it says that there should be last drinks at 3.00 a.m. and a ban on shots. That policy already exists—it is called the Violent Venues Scheme. I bet the member for Toongabbie did not tell the Leader of the Opposition that it existed. It was introduced during the brief tenure of the member for Toongabbie as Premier of this State. The Leader of the Opposition keeps mum when it comes to alcohol and licensing. Earlier this year he promised to put a freeze on 24-hour trading and, if necessary, take it to the next election campaign. Indeed, since 2008 there has been a freeze on 24-hour licences—introduced by the member for Toongabbie. **The O'Farrell Government is getting on with the job.**

The second element of the Leader of the Opposition's policy is to introduce additional transport. The Minister for Transport is doing that. Additional NightRide services have been introduced from Kings Cross to Town Hall and Central railway stations. They run every 10 minutes. This is in addition to secure taxi ranks and more marshals at Kings Cross. The Government is working with the City of Sydney Council to improve other transport arrangements at Kings Cross.

The SPEAKER: Order! The member for Canterbury will come to order.

Mr BARRY O'FARRELL: The muppet from Canterbury—

Mr John Robertson: Point of order: I have two points of order, but I will deal only with the one relating to Standing Order 129, relevance. My question asked when the Premier will apply lockouts, but his derogatory comments expose the fact that he is uncomfortable in giving a proper answer to this question.

The SPEAKER: Order! There is no point of order. The Premier has the call.

Mr BARRY O'FARRELL: Given what the member for Canterbury has accused me of in the past, that is a term of endearment. The third element of the Leader of the Opposition's policy is that he wants to establish an independent liquor regulator. **What does he think the Independent Liquor and Gaming Authority does?** Labor members steer away from bodies commencing with the letter "I" because they are concerned about that body down the road preoccupying so many of its members, both past and present. **Whilst the Leader of the Opposition engages in stunts, the Government is doing hard, detailed and methodical work to clean up the city.** But in response to the question asked, I direct member's attention to what has happened in Manly. **Lockouts to suit local areas have been introduced through the liquor accord process.** Guess what? In Manly there has been a decrease in alcohol-related violence.

The SPEAKER: Order!! The member for Macquarie Fields will come to order. The member for Cessnock will come to order.

Mr BARRY O'FARRELL: For all of the criticisms of the Leader of the Opposition and the figures he produces, the one figure he fails to produce is that **since March 2011 assaults are down 33 per cent in Kings Cross. Assaults in licensed premises across the State are down by 8 per cent.**

Mr BARRY O'FARRELL: The Leader of the Opposition did nothing on this issue when he was in government. Labor did nothing to improve transport to Kings Cross, crack down on licensing laws or establish the Independent Liquor and Gaming Authority. **I ask those opposite to tell me how a 1.00 a.m. lockout will stop someone being killed in the back streets of Kings Cross at 10.30 p.m.**

Mr GEORGE SOURIS: **The Opposition cites these Newcastle-style restrictions as the example to be followed in Kings Cross and the Sydney central business district.** This policy touts the fact that similar measures achieved some success when introduced in Newcastle in 2008. There was a 26 per cent drop in violent venues.

Mr John Robertson: It was a 29 per cent drop.

Mr GEORGE SOURIS: **The Leader of the Opposition has not done his homework**. While there was a **26 per cent reduction in violent incidents in licensed premises in Newcastle** between 2008 and 2012 there was a **28 per cent state-wide drop in alcohol-associated violence over the same period.**

Mr GEORGE SOURIS: —according to the **New South Wales Bureau of Crime Statistics and Research** without the Newcastle conditions. For example, **a 38 per cent reduction in violent incidents on licensed premises was recorded in Campbelltown**, a **36 per cent reduction** was recorded in Gosford and **a 40 per cent reduction** was recorded for Penrith. **This completely debunks the claim that Newcastle-style restrictions are the only pathway to achieving a real reduction of alcohol-related violence.**

Mr GEORGE SOURIS: Those opposite should just listen. **It is easier to make an emergency response to an incident** on a bus on a street, whereas an incident on a train in a tunnel poses significant security and safety difficulties.

Mr GEORGE SOURIS: Those opposite also wish to introduce risk-based licensing fees providing an incentive for hotels and bottle shops to comply with the law. But they sat on their hands for 16 years when in government. **We have introduced a three-strike scheme—the toughest liquor licensing laws in the land.** I will quote Dr Don Weatherburn, the Director of the New South Wales Bureau of Crime Statistics and Research [BOCSAR]—

The SPEAKER: Order! There is too much audible conversation in the Chamber. Government members will come to order.

Mr GEORGE SOURIS: Dr Weatherburn said:

> **This is beginning to pay dividends. … I think people are now being much more restrained in their sale of added alcohol and as a result there are fewer drunk people wandering around the streets and there are fewer assaults**.

Those opposite should take it up with Dr Don Weatherburn, the independent Director of the New South Wales Bureau of Crime Statistics and Research. **More than that, the current compliance program is extremely stringent. There have been 1,200 on-site inspections of licensed venues across the State in 2012-13 to enforce the liquor laws**. This is in addition to police operations. Labor members have called for an independent liquor regulator**. I hate to break it to them, but the Premier already has one. The "I" in the Independent Liquor and Gaming Authority [ILGA] stands for "independent**". It is **independent** of the **Office of Liquor, Gaming and Racing [OLGR].** I wonder whether those opposite know that there are two different bodies, one of which is independent. I would like an extension of time.

Figure: Excerpts from Hansard about the November 19th debate where Premier O'Farrell and Minister Souris ridicule Labour's last drinks policy. Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns, Hansard.

In December 2013, Rod Bruce, chief of staff to former deputy NSW premier Andrew Stoner, left to work for Echo Entertainment, owner of Star Casino.

Tragically, on New Year's Eve 2013, Daniel Christie is admitted to hospital in a coma after he is punched and falls over and hits his head, again outside a venue, at 9:20pm.

On January 2nd, two days later, Barry O'Farrell pointedly says on ABC Radio that the lockout laws would not have helped either of the deaths.

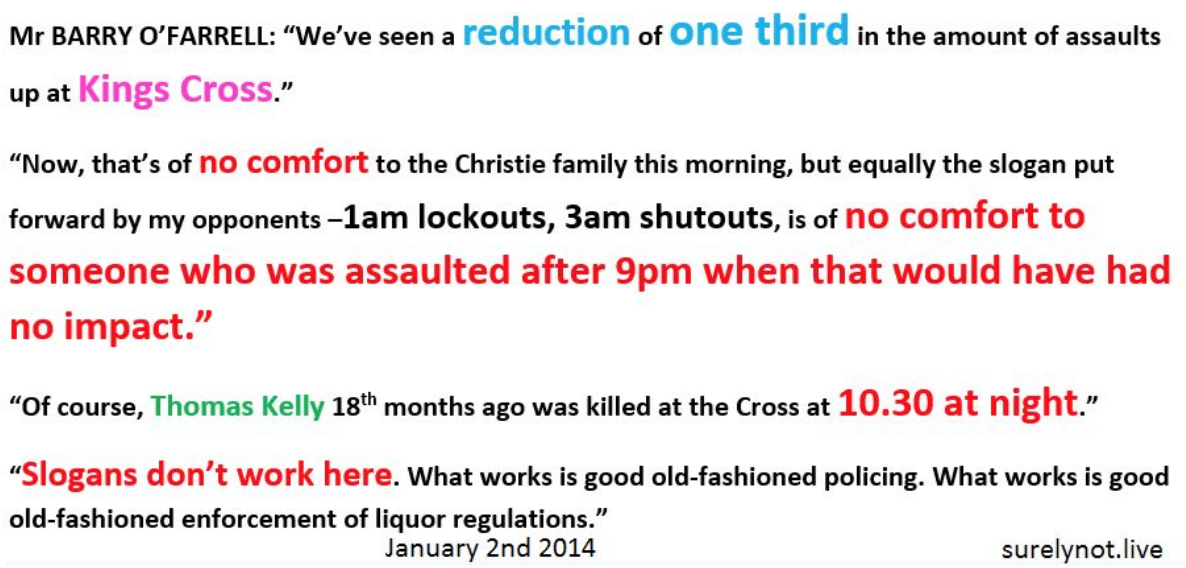


Figure: NSW Premier Barry O'Farrell saying that assaults were dropping and lockout laws wouldn't have helped Thomas Kelly. Source: ABC Radio.

On January 11 2014, Daniel Christie dies in hospital.

After media hysteria and aggressive lobbying by the Thomas Kelley Youth Foundation, the main political action group for the lockouts (**which is funded by Crown Casino, the owner of Crown Casino, Macquarie Bank- substantial shareholder and banker to Star, NSW Premier's Office and City of Sydney**) parliament is recalled early, interrupting the extended summer break that members enjoy each year.

On Thursday 30th January 2014 the controversial Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 and Liquor Amendment Bill 2014 is brought to parliament. However as transcripts of the day's discussion reveals, the legislation was not distributed to members to scrutinise for the first time **until 10am that very morning**. I attached a verbose transcript from Hansard to show the **absurd** debate.

The following are excerpts from Hansard, the official transcripts of debates in government:

Mr JOHN ROBERTSON: The Parliament assembles today with the profound responsibility to address a problem that has destroyed too many lives and caused tragedy for too many families

I pay special tribute to Ralph and Kathy Kelly, parents of Thomas Kelly, **for the work they have done** on this issue. I acknowledge also all the victims of alcohol violence and their families, and the suffering they have endured. Changing the law is tough; changing the culture is harder. It does not happen without passionate and determined advocacy. I am certain **that without the advocacy of these families the Government would not have been forced to recall Parliament.**"

"Having frittered away the summer, the Government tossed the bill in the lap of the Opposition barely an hour ago and demanded it be rubberstamped straightaway. The proposed changes to the law are far reaching and should have been given greater scrutiny than the Parliament is able to afford them on this occasion. That said, I have consistently maintained that this is an issue that should be above politics and Labor will support the one-punch laws."

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Figure: Transcript from Hansard of 30th January 2014 of
John Robertson (Labor) – Member for Blacktown, Leader of the Opposition.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

Dr ANDREW McDONALD: The solution has to be about prevention because no amount of medical care can undo the damage that occurs in the first half second of an assault.

This issue should be above politics because all members in this place care for their communities and want to do the right thing**. That is why it is disappointing that this legislation has been introduced as a cognate bill, or so-called dumpster bill,** in which a couple of bills are cobbled together to be passed as one. The first time most members became aware that the Liquor Amendment Bill 2014 would be introduced was at **10.00 a.m. today when the bills were made available**. The debate has been effectively **gagged**. The people of New South Wales **deserve better notice of how this bill will affect them and their families.**

As recently as 18 January—**two days** before the policy including lockouts was announced—the *Daily Telegraph* reported that **the Government was opposed to lockouts**.

Mr BARRY O'FARRELL: They said lots of things; most of them weren't true.

Dr ANDREW McDONALD: I note the interjection from the Premier that the *Daily Telegraph* says lots of things and most of them are not true. The **fact** that **nobody** told the Office of Liquor, Gaming and Racing about the policy before 20 January shows that it was a **last-minute** change of heart rather than a planned strategy. The fact that **the ink is still wet** on the Liquor Amendment Bill 2014 and that **nobody saw it before 10 o'clock this morning shows just how last minute the change of heart was.**

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Figure: Transcript from Hansard of 30th January 2014 of
Dr Andrew McDonald (Labor) – Member for Macquarie Fields.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns and Hansard.

Mr ALEX GREENWICH: **Members have no right to say that no-one needs to go out after 3.00 a.m**.—I am sure that no-one needs to—but it is **not a crime** to want to go out; nor is it our call to say whether or not people should. I sympathise with those who have done **nothing wrong** but who will be **impacted by the bill's provisions**. I acknowledge that sometimes individual rights must be compromised to protect the common good, but we must aim to strike the **right balance.** **Unfortunately, the issue has been polarised into a wowsers-versus-fun-seekers debate.**

The issue is far more **complex** and we need to **reframe the debate**. **Enough is enough** mantras from Government and Opposition members have **not been helpful** and only lead many to believe Parliament's response is mere **moral panic**. Lockouts and early closures **could** be part of the solution **but** should be introduced only after **detailed consideration** based on **evidence**, and only on a **trial basis**. Times should not just mimic those used in one model; they should reflect **Sydney's unique situation.** Sydney is **very different** to **Newcastle**: it is bigger with **thousands of venues** and more people and late-night options.

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Mr ALEX GREENWICH: Closing times for **Sydney** **should not clash** with **taxi changeover**. Lockouts should **reflect times** to **prevent conflicts** in queues and rushes to larger late-night venues**. Smaller operators** that close early say that fewer people will go to their venues because they risk being stranded if they do not get into larger venues before the lockout will apply. I share the concern that a 1.30 a.m. lockout is **too early.** In devising this bill, the Government should have **worked closely** with managers of **well-run venues** to establish a model for a safe and **vibrant** late-night economy.

Understandably, operators of **good venues** are **angry** at being treated the same as those who run venues **poorly**. They rightly point out that **many performers**, **deejays**, **promoters** and **bar staff** risk **losing their jobs**. This also will impact on the city's **creativity**. The precinct boundaries seem to be arbitrary and fail to take into account impacts on adjacent areas. I am alarmed that the casino in Pyrmont will be exempt**. As is often the case, the casino gets special treatment.** Ridiculously, people will be allowed to get **drunk** and **gamble away their savings at the casino** but will **not be allowed** to have a light beer while watching a drag show in a gay club in **Oxford Street.**

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Figure: Transcript from Hansard of 30th January 2014 of Alex Greenwich (Independent) – Member for Sydney.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns and Hansard.

Despite being on record ridiculing every aspect of the legislation, George Souris said:

> **Mr GEORGE SOURIS:** As Minister responsible for the administration of the liquor laws in New South Wales I am very pleased to support the introduction of the Liquor Amendment Bill 2014. **The bill complements a number of other reforms the Government has introduced over the past three years to improve the safety and compliance standards of licensed venues and reduce levels of alcohol-related violence in the community**
>
> I also acknowledge the remarks made by **key** stakeholders and their support for the introduction of this legislation, including organisations such as the Australian Medical Association, Last Drinks Coalition, Police Association of NSW, St Vincent's Hospital, Public Health Association of Australia, Australian Drug Foundation, Tourism and Transport Forum and Liquor Stores Association. I commend the bills to the House.

Figure: Transcript from Hansard of 30th January 2014 of George Souris (Liberal) – Minister for Tourism, Major Events, Hospitality and Racing and Minister of the Arts. Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

> **Mr PAUL LYNCH: I did not see a copy of the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 or the Liquor Amendment Bill 2014 until 9.52 a.m. I may have something more to say about the precise provisions of the bills when I have read them.** Given that the Government has been forced to move an amendment to what is an abundantly clear provision in the legislation, **it may well have helped if someone in the Government had read the legislation before 10.00 a.m. as well.**
>
> There is considerable evidence that mandatory sentencing is counter-productive and does not work**. No evidence has been produced by the Government** that mandatory sentencing will in any way reduce the incidence of alcohol-fuelled violence. Mandatory sentencing has been tried before in New South Wales and failed. A *History of Criminal Law in New South Wales* by Greg Woods details the nineteenth century attempt to introduce mandatory sentencing. **It was such an abject disaster that it was hurriedly repealed.**
>
> **This approach is also directly opposed to providing appropriate results in individual cases. It advocates a one-size-fits-all approach to justice, which simply cannot be just.**
>
> The Government has not produced one scintilla of evidence to show that there will be any deterrent effect from this legislation—that is not surprising because there is no such evidence.
>
> **The Opposition received a copy of the bill only at 10.00 a.m. Government members should have been reading it for weeks.**

Figure: Transcript from Hansard of 30th January 2014 of Paul Lynch (Labor) – Member for Liverpool.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

> **Ms LINDA BURNEY:** In speaking to the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 and the Liquor Amendment Bill 2014 I will not focus on their content because that has been well canvassed but I will make a number of other important points that some other members of the Labor Party have touched on. I agree with the Premier when he says that this is an incredibly complex area that is difficult to legislate. **Whether or not anyone has said it, in this Chamber today we have a combination of politics and policy.**
>
> They have also made an important point about the changing nature of violence. **The Minister for Tourism spoke about a reduction in the number of assaults. Of course, that is within venues and not outside venues.** That underpins the need for cultural change and shows how the nature of assaults has changed, as the shadow Minister for Health outlined.

Figure: Transcript from Hansard of 30th January 2014 of Linda Burney (Labor) – Member for Canterbury.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

Mr JAMIE PARKER: I welcome this debate and acknowledge the significant negative impact of alcohol and drugs in our community. **I should mention that most of the attacks involving alcohol and violence occur in the home and are carried out by men who assault their female partners**. However, the media and many members of Parliament have become focused on issues in the broader community.

Unfortunately I will not be able to support the bills for not the least reason that mandatory sentencing provisions are included. I know the bills will be passed because the Labor Party will not vote against them and the Government has a majority.

I turn now to address the alcohol measures the Government is proposing. Much has been made of the expanded central business district [CBD] zone, which at 3.00 a.m. will become an exit zone. That initiative concerns people in my electorate—a neighbouring central business district area—because of the displacement that will occur. Areas such as Surry Hills, Chippendale, Bondi Junction, Ultimo, Glebe and Balmain may well become displacement areas with even more problems than Kings Cross and the central business district.

Mr JAMIE PARKER, MEMBER FOR BALMAIN: The major issue related to the 3.00 a.m. closure, in particular, and the 1.30 a.m. lockout, is the taxi changeover period and ineffective public transport. It is a recipe for disaster. We know that there is a mixed track record of restricted venue hours. Everybody is talking about the **Newcastle example**, but I notice that **research by the *Newcastle Herald*** examined data provided by the **Bureau of Crime Statistics and Research** from September 2008 to September 2013 and found that there was a **30 per cent reduction in assaults**. During the same period in **Penrith, alcohol-related assaults decreased by 56.16%** in **Wollongong, they decreased by 30.97%**; in the **Sutherland shire, they decreased by 47%** and in **Gosford, they decreased by 28%.** To understand those reductions in violent assaults, it is significant to recognise that the issues are very complex. It is not just about lockouts but rather a whole range of complex issues and we should be closely examining the data and the evidence

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Figure: Transcript from Hansard of 30th January 2014 of Jamie Parker (Greens) – Member for Balmain.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

Ms CARMEL TEBBUTT: I am pleased to speak in the take-note debate on alcohol-related violence and, given the speed with which the bills were passed this morning, to express my appreciation of the Government providing members with an opportunity to contribute to debate on this very important issue**. I know that many members of this House who wished to make a contribution to debate on this matter were not able to do so this morning.**

...Many Australians do not become offenders or victims of violent crimes...

I am firmly convinced that community culture and anger management have to be part of the solution to this issue. One wise constituent wrote to me recently saying:

For the most part I agree with the proposed change of harsher sentencing but especially community awareness campaigns since at heart this is a cultural issue with a small number of young men. Though it may be alcohol/drug fuelled it must be realised that the fire of aggression is already alight in these young boys.

I could not agree more.

Ms CARMEL TEBBUTT: I conclude by saying that it is very **concerning** that, as a **community**, **we find ourselves having to take such draconian steps to address alcohol-related violence in our community** and that a substance that should be a source of **enjoyment** and pleasure has become such a burden.

We must equip our young people—**young men in particular**—with the **ability** to deal with frustration and anger in a **way that does not harm others**. We must ensure that pubs, clubs and liquor outlets understand that having a right to sell alcohol is a **privilege and responsibilities** to which they must adhere come with that right.

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Figure: Transcript from Hansard of 30th January 2014 of Carmel Tebbutt (Labor) – Member for Marrickville.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

> **Mr BARRY O'FARRELL:** in reply: I thank all members of the House who have participated in this debate for their contributions because it is an important debate.
>
> I will touch on a couple of the contributions made, starting with the member for Lake Macquarie, and make the point that I strongly reject his suggestion or implication that this is somehow a summer media invention. **The fact is that drug- and alcohol-fuelled violence has been an issue in this State some would argue since the days of the First Settlement.**
>
> **The member for Balmain and the member for Sydney raised issues around displacement. I say again that the Bureau of Crime Statistics and Research [BOCSAR] did a review of the situation in Newcastle and found no displacement. That is what its review said in 2009. I say again that the independent review by KPMG of reforms in the Melbourne central business district found exactly the same thing—there was no displacement.**
>
> The measures we have put forward are a comprehensive package. The measures we have put forward seek to ensure, as far as any Premier, Chief Minister or Prime Minister can ensure, that we get greater safety on the streets of Sydney and across New South Wales.
>
> That is a direct example of where both education and penalties can have an impact on changing habits. That is before I get to the issue that the Minister for Health is particularly keen on, which is the success in this country, in this State, in relation to anti-smoking campaigns.

Figure: Transcript from Hansard of 30th January 2014 of Barry O'Farrell (Liberal) – Premier.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

> **Mr RON HOENIG:** People are entitled to go about their lawful business without being subjected to violent and unprovoked assaults
>
> The Premier returned from leave and suddenly there was an announcement of a raft of actions—adopting much of what the Opposition had proposed. Mandatory sentence reforms came out of the blue, **some two months after the Government had dismissed that as a non-solution.**
>
> There is no pressing reason for the Parliament to be involved. There is no pressing reason to proceed down a path that is contrary to the views and opinions of the Attorney General of this State and—up until he returned from leave—the Premier of this State.

Mr RON HOENIG: For whatever purpose the State needs leadership, firmness and an appropriate response. These bills were cobbled together to **respond to a media campaign** rather than to ensure—

Mr Ray Williams: Why did you just vote for it?

Mr RON HOENIG: At the end of the day, **when this legislation does not work, the Government** will **wear its decision like a crown of thorns** around its head. The Government is running this State. The Government was supposed to come up with a solution but it never did. Those opposite should accept responsibility instead of interrupting from the opposite side of the Chamber like trained monkeys.

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Figure: Transcript from Hansard of 30th January 2014 of Ron Hoenig (Labor) – Member for Heffron.Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

And so finally we have the real reason for the support for the lockout laws from the opposition. They wanted to see it fail. If this is considered acceptable conduct or a valid reason for passing legislation, something is seriously wrong with the way New South Wales is governed. (Chris Sinclair, Surely Not).

Mr Michael Daley: In November, the Opposition announced its policy—Drink Smart, Home Safe—which was a well thought out policy or contribution to policy to address the escalating problems of alcohol violence and coward punches on our street. **The Premier attacked the policy, arguing that lockouts were not the answer**. He said:

> **The slogan put forward by my opponents of 1 a.m. lockouts, of 3 a.m. shut outs, is of no comfort to someone who was assaulted just after 9 p.m. Of course, Thomas Kelly 18 months ago was killed at the Cross at 10.30 at night.**

The people of New South Wales have the right to ask this Government in its response to alcohol-fuelled violence why was it not ready. What has it been doing under Barry O'Farrell's leadership for the past six or seven years? **The answer is that this is what happens when a political response is cobbled together**. **This response is political**, not personal. **Quite clearly, the Premier does not believe in what he has enacted today.** He has done this **to save his own neck**. The Premier's offering today worried me when he said that these measures represent a comprehensive response. **They do not**.

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Figure: Transcript from Hansard of 30th January 2014 of Michael Daley (Labor) – Member for Maroubra.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

Mr RAY WILLIAMS : A couple of weeks ago additional measures that **were implemented by this Government,** such as the **long-term banning orders**, were introduced in **Kings Cross**, sending a **loud and clear message** that **thugs** have **no place in the precinct**.

A person who is subject to a **long-term ban** faces stiff penalties if they enter, or attempt to enter, a high-risk venue in Kings Cross. **Long-term banning orders are one of the measures introduced to reduce alcohol-related violence and increase safety in Kings Cross**. I believe a further 14 long-term banning orders are now being considered.

Between **1 December 2012 and 30 June 2013, 82 incidents were reported in licensed premises in Kings Cross.** This compares with **110 over the same period in the previous year and represents a 25 per cent reduction**. These figures cover assaults on licensed premises in the Kings Cross precinct.

We are currently considering expanding these measures to other city areas. These are just a handful of the reforms we **have already introduced**, as well as a commitment to **increase** the number of **police officers on the street.**

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Mr RAY WILLIAMS : We all need to **accept responsibility** for the **culture** that has **been created. I am not going to blame venues**, I am **not** going to blame footballers, and I am **not going to blame alcohol**, because **nobody is pouring the grog down the throats of irresponsible people.**

We have allowed **new licensed venues to operate, new wine bars to operate.** Am I blaming them? **No, I am not. The majority of people who go there are responsible people who are there to enjoy themselves.**

Unfortunately, **some people** are walking the streets of Sydney—**a very small number of people**—and, through substance and grog abuse, swinging the most **gutless** and **offensive** punch when someone is not looking and taking a life. **That** problem must be addressed in the **strongest possible way.**

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Figure: Transcript from Hansard of 30th January 2014 of Ray Williams (Liberal) – Parliamentary Secretary & Member for Hawkesbury.
Source: A Crown of Thorns (Surely.not) http://surelynot.live/2016/02/18/a-crown-of-thorns

Later that day, on Thursday 30th January 2014, a few hours after members were handed the bills for the very first time, the controversial Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 and Liquor Amendment Bill 2014 were passed.

And so, on February 5th, just four months after Minister Souris- the minister in charge of gambling, tourism and alcohol regulation in New South Wales- had proclaimed that Sydney was the safest and friendliest city in the world, Premier Barry O'Farrell announces the lockout laws, some of the most draconian legislation globally to affect hospitality, will commence on February 24th of that month.

On the 20th of March 2014, the Crimes Amendment (Intoxication) Bill 2014 was debated, which introduced mandatory sentences for alcohol-fueled violence. In this debate, Michael Daley (Labor), tells Barry O'Farrell that he "should read some BOSCAR reports" when Barry was grandstanding about being tough on alcohol-fueled violence. Both parties clearly knew that BOSCAR data shows that this issue was pure politicking.

Ms Taiba speaks clearly from the heart about the need to adopt the measures the Government is putting in place. She speaks strongly and emotionally against the Labor Party watering down this legislation. Her comments ought to be heeded. It is shameful that we have to remind the Labor Party, the Shooters and Fishers Party and their friends The Greens that it is unacceptable to play politics when the community demands strong action to tackle drug- and alcohol-fuelled violence. I am sure that each of those parties has different motivations. The Greens are never comfortable with any government legislating to restrict people or make them responsible for using and misusing drugs. Of course, the Labor Party is never comfortable with legislation that actually delivers tougher law and order outcomes. Its record in government during the previous 16 years, and earlier, demonstrates that. The Labor Party is happy to posture and pretend but not to ensure that effective legislation is in place.

Mr Michael Daley: You should read some BOCSAR reports, Barry.

The DEPUTY-SPEAKER (Mr Thomas George): Order! The member for Maroubra will come to order. Opposition members will have an opportunity to contribute to the debate.

Mr BARRY O'FARRELL: I hear the bleating of the member for Maroubra, who said I should talk to BOCSAR.

Mr Michael Daley: Yes, go talk to BOCSAR.

Figure: Transcript from Hansard of 20th March 2014 of Michael Daley (Labor) – Member for Maroubra - telling Premier Barry O'Farrell that he "should read some BOCSAR reports" when Barry was grandstanding about being tough on alcohol-fuelled violence. Source: Hansard

In the terms of reference of this inquiry, your honour has been asked to assess whether the policy objectives remain valid and their terms appropriate for securing those objectives. I have attached the above transcripts to clearly show that these laws were never passed with a goal of policy - just a circus of politics and lobby group pressure where neither party really believed in the legislation in the first place .

Truly, this is an absurd situation. There was no intended policy in the first place, just politicking.

In April of 2014, Barry O'Farrell resigns after denying under oath ever receiving an expensive bottle of 1959 Grange Hermitage from Nick Di Girolamo, a fundraiser for the Liberal Party and key player in an ICAC investigation into allegations concerning corrupt conduct involving Australian Water Holdings Pty Ltd and involving NSW public officials and members of parliament.

O'Farrell retired in March 2015 from NSW parliament.

In June 2015, O'Farrell's first gig out of politics was to be appointed an unsalaried five year position as deputy Chair of the Australia-India Council. The council is chaired by Ashok Jacob, a former director of Crown Ltd, and key lieutenant of James Packer.

In August of 2015, Liberal Party President Chris Downy, the former NSW minister for sport and racing, resigns to take up a senior executive role with The Star casino in Pyrmont.

In September of 2015, Barry was paid $52,500 by the Federal Government to lead a three month review into the offshore online gambling industry- the primary competitors of Crown and Echo's casinos.

What I find incredibly strange about all this is that these laws were implemented by the NSW Liberal Party. According to the NSW Liberal Party website, first and foremost it believes in:

- In the inalienable rights and freedoms of all people; we work towards a lean government that minimises interference in our daily lives and maximises individual and private-sector initiative;

What would cause the NSW Liberal leadership to do the complete opposite and implement interventionist economic policies which are deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes?

If a commercial business marketed themselves as one thing but in practice did the complete opposite, the ACCC would investigate them for a breach of Schedule 2 of the Competition and Consumer Act for misleading and deceptive conduct.

The NSW Division of the Liberal Party of Australia works to provide the best possible standard of living for the people of NSW. We believe in individual freedom and free enterprise and if you share this belief, then this is the Party for you.

- In the inalienable rights and freedoms of all people; we work towards a lean government that minimises interference in our daily lives and maximises individual and private-sector initiative;
- In government that nurtures and encourages its citizens through initiative, rather than putting limits on people through the punishing disincentive of burdensome taxes and the stifling structures of Labor's corporate state and bureaucratic red tape;
- In those most basic freedoms of parliamentary democracy – the freedom of thought, worship, speech and association;
- In a just and humane society in which the importance of the family and the role of law and justice are maintained;
- In equal opportunity and tolerance for all Australians; and the encouragement and the facilitation of wealth so that all may enjoy the highest possible standards of living, health, education and social justice;
- That, wherever possible, government should not compete with an efficient private sector, and that businesses and individuals – not government – are the true creators of wealth and employment
- In the Australian Constitution;
- In preserving Australia's natural beauty and environment for future generations; and
- That our nation has a constructive role to play in maintaining world peace and democracy through alliance with other free nations.

Figure: the supposed ethos of the NSW Liberal Party. Source: NSW Liberal Party Website.

Conclusion

Commercial businesses, people's jobs and civil liberties have been punished dramatically for what essentially is a social issue- just for existing within a certain geographic area. What's worse is that it is an unjustified beat up over a social issue.

The main data used to justify the lockouts, the Fulde et al. (2015) St. Vincent's paper, and the Bureau of Crime Statistics data, simply do not show that "violence had spiralled out of control" as Premier Mike Baird contends. Instead they show alcohol-related non-domestic violence had been dropping for a decade, and in the years immediately before and after the lockouts has been flat.

The Fulde paper is poorly constructed and the author has a conflict of interest to say the least, but even if taken at face value, the difference in severe alcohol-related injuries between the year before and immediately after the lockouts started that are directly attributable to lockout times (1am to 5am) was a total of 25 cases over a year. That's one every two weeks on average. Hardly a "war zone" as Dr. Fulde contends, and if there was, it was certainly not solved difference caused by the lockouts.

Certainly, there are plenty of more dangerous things that every one of us does daily in their lives than venture into a Sydney CBD Entertainment district, such as climbing out of bed or taking a bath. If we applied a similar logic of banning to those activities there would simply be no economy.

Both major parties in the NSW Government knew this. They are both on record in Hansard in the Legislative Assembly using BOCSAR statistics to show alcohol-related violence was dropping before the lockout legislation.

It is also clear from the Hansard transcripts, that neither party really believed in the lockout legislation in the first place.

On the 11th October 2013, George Souris, the minister responsible for gambling, tourism and alcohol regulation issued a press release through Destination NSW promoting Sydney as the "safest and friendliest city in the world" after winning an award for Sydney being the city "visitors feel safest in the world, with the warmest and friendliest people". He repeated this in the Legislative Assembly shortly thereafter.

Barry O'Farrell and George Souris, are on record on the 19th November 2013 both ridiculing the lockout laws in the Legislative Assembly.

Both major parties are also on record saying that these laws would not work and would not have saved Daniel Christie & Thomas Kelly's lives.

Yet, on January 30th 2014, after a media frenzy and lobbying by a casino-funded anti-alcohol lobby group, rushed laws were presented at 10am and only allowed a brief debate was allowed before they were passed. The opposition let them pass- because they knew they would fail badly- “at the end of the day, when this legislation fails, the government will wear its decision like a crown of thorns”.

The draconian environment around liquor laws and particularly the lockout legislation have resulted in the bankruptcy of dozens of commercial businesses, not just licensed venues, but also completely unrelated businesses. The night time economy has been devastated with hundreds of businesses that were formerly open now being closed at night. Night time foot traffic in the main entertainment precincts of the biggest capital city in the country of Australia has dropped up to 90% (or more). Legislation and regulation that is victim blaming at best, and indiscriminately disastrous to unrelated commercial businesses and landlords at worst. Legislation that is discriminatory to people and businesses just for being within a certain geographic area. Legislation that is discriminatory to shift workers and those that work late.

This legislation around liquor regulation, including but not limited to the Lockout Laws, amendments to the Liquor Act, Three Strikes Policy and the Alcohol Linking Program used by the police, have deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes.

They are designed to not just force businesses to manage something they can’t measure, but to blame them for incidents that are unrelated and that they have no control over. It imposes on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption which involves burdensome practical consequences which would violate personal autonomy and privacy.

The outcome of these regulations has been a complete collapse in night time foot traffic and trade in the main entertainment precincts in the City of Sydney. It has resulted in unemployment of hundreds, loss of income and loss in business takings. It has resulted in a severe curtailment of civil liberties and freedom. It has resulted in a huge loss to the international standing and reputation of Sydney as a global city and as a tourist destination.

In the terms of reference of this inquiry, your honour has been asked to assess whether the policy objectives remain valid and their terms appropriate for securing those objectives.
I have clearly shown that from Hansard transcripts at the time that these laws were never passed with a goal of policy - just a circus of politics, media hysteria and pressure from a casino-funded lobby group.

Truly, this is an absurd situation. There was no intended policy in the first place, just politicking.

This politicking has shut down one of the most famous nighttime cities in the world. The city which is shown first celebrating on New Year’s Eve in news reports around the world.

The only winners from these laws have been the casinos and property developers, and the biggest losers have been small businesses, jobs, the economy, civil liberties, tourism, and the social, cultural fabric and reputation of Sydney.

I believe the scope of the inquiry should be broadened, as there are many questions that remain unanswered.

- Why would the government implement some of the most draconian legislation in the world, which has completely destroyed the Sydney night time economy, when it knew from BOSCAR statistics that there was no problem and that the proposed laws would not have saved Kelly or Christie's lives?
- Why would the NSW Government and City of Sydney deliberately misrepresent their own statistics in order to justify this?
- Why is the NSW Audit Office not tracking the economic effects of these policies, unlike Victoria and Queensland?
- What would cause the NSW Liberal party, the party that represents itself as believing in "the inalienable rights and freedoms of all people; we work towards a lean government that minimises interference in our daily lives and maximises individual and private-sector initiative" to do the polar opposite of their #1 stated belief and implement interventionist economic policies which are deliberately designed to damage the balance sheets of commercial businesses, and unduly interfere and restrict personal choice and economic freedom in order to achieve nanny state moral outcomes?
- Why would Premier Mike Baird himself say that "violence has spiralled out of control" when not only are there no official statistics to support this, but George Souris, the Minister responsible for tourism, alcohol regulation and gambling in New South Wales, had proclaimed at the time that Sydney was the "safest and friendliest city in the world"?

Cui Bono?

Perhaps Operation Spicer might yield some answers.

Attachments

Attachments I would like to include by way of reference are as follows:

"*Would the last person in Sydney please turn the lights out?*", Matt Barrie (LinkedIn), https://www.linkedin.com/pulse/would-last-person-sydney-please-turn-lights-out-matt-barrie

"The death of Sydney's nightlife and economic collapse of its nighttime economy: a detailed submission to the Callinan inquiry on liquor laws", Matt Barrie (LinkedIn) http://www.linkedin.com/pulse/death-sydneys-nightlife-economic-collapse-its-night-time-matt-barrie

Cole v South Tweed Heads Rugby League Football Club Limited (2004) [HCA] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2004/29.html

Re: Submission to Liquor Law Review - Matt Barrie

Matt Barrie [redacted]

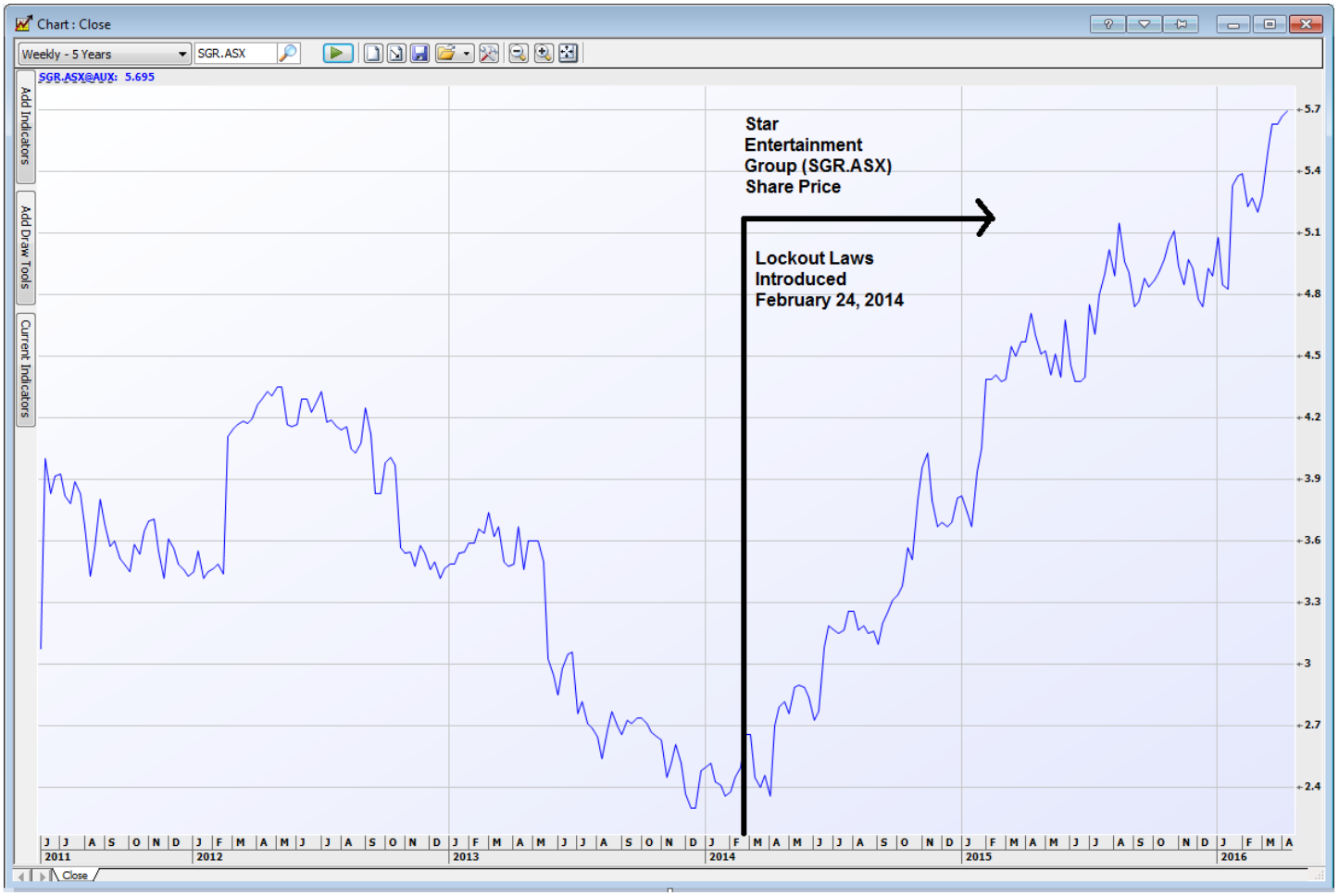
Mon 4/04/2016 2:33 PM

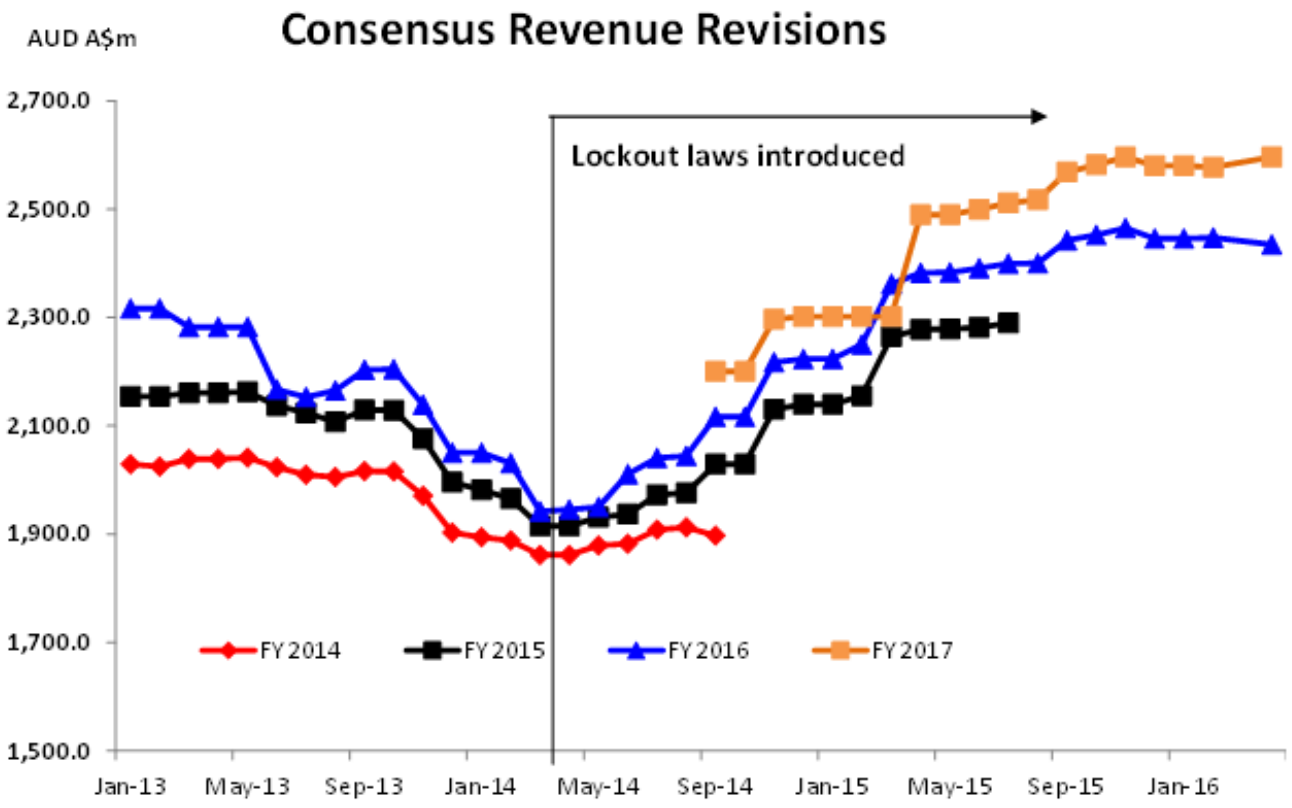
To:Liquor Law Review <liquorlawreview@justice.nsw.gov.au>;

Dear Sir

Two more last minute addendums that might be of interest.

Regards
Matt





On Mon, Apr 4, 2016 at 1:25 PM, Matt Barrie [redacted] wrote:

> The Hon. Ian Callinan QC AC
>
> Dear Sir,
>
> Please find attached my submission for the review.
>
> I have also included background information supporting the submission.
>
> If you have any queries or wish to discuss, I can be reached at [redacted].
>
> Regards
> Matt
>
> --
>
> Regards,
> Matt Barrie
>
> Chief Executive
> Freelancer.com
>
> [redacted]
>
> [redacted]

--

Regards,
Matt Barrie

Chief Executive
Freelancer.com

[redacted]

HIGH COURT OF AUSTRALIA

GLEESON CJ,
McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ

ROSELLIE JONNELL COLE — APPELLANT

AND

SOUTH TWEED HEADS RUGBY LEAGUE FOOTBALL CLUB LIMITED & ANOR — RESPONDENTS

Cole v South Tweed Heads Rugby League Football Club Limited
[2004] HCA 29
15 June 2004
S403/2003

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of New South Wales

Representation:

B W Walker SC with E G Romaniuk and P J Woods for the appellant (instructed by Hamilton Quinlan Fenwick)

D F Jackson QC with R J Carruthers for the first respondent (instructed by Colin Biggers & Paisley)

No appearance for the second respondent

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Cole v South Tweed Heads Rugby League Football Club Limited

Negligence – Duty of care – Appellant seriously injured by motor vehicle shortly after leaving respondent's premises in intoxicated state – Level of specificity of formulation of duty of care – Whether respondent owed duty to take reasonable care to monitor and moderate amount of alcohol served to appellant – Whether respondent owed duty of care to take reasonable care that appellant travelled safely away from respondent's premises – Whether duty of care existed to protect persons from harm caused by intoxication following deliberate and voluntary decision on their part to drink to excess – Whether duty took into account the vulnerability of some persons to alcohol consumption – Relevance of statutory provisions, creating offences in relation to conduct on club premises and requiring police to eject intoxicated persons from premises, to existence or content of duty of care owed by respondent where no allegation made of breach of statutory duty – *Registered Clubs Act* 1976 (NSW).

Negligence – Breach of duty and causation – Appellant seriously injured by motor vehicle shortly after leaving respondent's premises in intoxicated state – Whether respondent's offer of safe transport to appellant discharged any duty owed by respondent to take reasonable steps for appellant's safety – Whether assurance by other patrons that they would look after appellant discharged any onus on respondent – Whether, assuming respondent in breach of duty to monitor and moderate consumption, breach of duty was a cause of injuries ultimately sustained – Remoteness of damage – Reasonable foreseeability.

Words and phrases – "intoxication".

Registered Clubs Act 1976 (NSW), ss 44A, 67A.

1 GLEESON CJ. The appellant, having suffered personal injuries, claims that the first respondent is liable to her in damages for negligence[1]. In the circumstances of this case, it is of little assistance to consider issues of duty of care, breach, and damages, at a high level of abstraction, divorced from the concrete facts. In particular, to ask whether the respondent owed the appellant a duty of care does not advance the matter. Before she was injured, the appellant was for some hours on the respondent's premises, and consumed food and drink supplied by the respondent. Of course the respondent owed her a duty of care. There is, however, an issue concerning the nature and extent of the duty. To address that issue, it is useful to begin by identifying the harm suffered by the appellant, for which the respondent is said to be liable, and the circumstances in which she came to suffer that harm[2]. As Brennan J said in *Sutherland Shire Council v Heyman*[3], "a postulated duty of care must be stated in reference to the kind of damage that a plaintiff has suffered". The kind of damage suffered is relevant to the existence and nature of the duty of care upon which reliance is placed. Furthermore, a description of the damage directs attention to the circumstances in which damage was suffered. "Physical injury", or "economic loss", may be an incomplete description of damage for the purpose of considering a duty of care, especially where, as in the present case, the connection between the acts or omissions of which a victim complains and the damage that she suffered is indirect.

2 The appellant was injured as a result of being run down by a motor car on a public road. The driver of the motor car was also sued, but she is not involved in the present appeal. The respondent had no connection with the motor car, or the driver. The respondent's alleged connection with the appellant's injuries arose in the following manner. At the time she was run down (about 6.20 pm on a Sunday evening), the appellant was walking in a careless manner along the roadway. The motorist was unable to avoid her. The appellant's explanation of her careless behaviour was that she was drunk. The appellant had spent most of the day at or around the respondent's licensed club. The respondent supplied her with some, but not all, of the drink she consumed. The appellant blames the respondent for her presence on the road in an intoxicated state, and for her injuries. Two aspects of the conduct of the respondent are said to involve fault. First, it is said that the respondent supplied the appellant with drink at a time when a reasonable person would have known she was intoxicated. Secondly, it is said that the respondent

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1 It is convenient to refer to the first respondent as "the respondent". The second respondent took no part in the present appeal.

2 cf *Modbury Triangle Shopping Centre Pty Ltd v Anzil* (2000) 205 CLR 254 at 262-263 [13]-[16].

3 (1985) 157 CLR 424 at 487.

allowed the appellant to leave its premises in an unsafe condition, without proper and adequate assistance.

3 Those two allegations of negligence involve disputed assumptions about the nature and extent of the duty of care which the respondent owed to the appellant. Before turning to those assumptions, however, it is important to relate the allegations to the evidence, and the findings of fact, in the case. The allegations are stated at a certain level of generality, and can only be understood sufficiently if made more concrete. It is to be noted that they involve failure to restrain or prevent the appellant from engaging in voluntary behaviour. The appellant's written submissions, filed in advance of oral argument, complained that the respondent permitted the appellant to continue to drink. In oral argument the emphasis was on supplying her with drink, but the supply was in response to her request. The second complaint was of allowing the appellant to leave the respondent's premises in a certain condition. When acts of negligence are said to consist of permitting, or allowing, an adult person to act in a manner of her choosing, even if her judgment is affected by drink, then there is a need for careful attention to the supposed duty, which must be a duty to prevent her from acting in accordance with her intentions.

4 The appellant was a healthy woman of mature age. She did not suffer from any physical or mental disability. The evidence did not suggest that she was an alcoholic; much less that she was known to be such by the respondent. The trial judge, Hulme J, found that the appellant, "voluntarily and in full possession of her faculties, embarked on a drinking spree". The appellant's evidence was that, at a time shortly before the respondent refused to serve her further drink, which was about two hours after the respondent last sold her drink, she was "possibly intoxicated", and "talking to people, having fun".

5 The first allegation of negligence was narrowed somewhat in the course of argument. It began as a complaint about permitting the appellant to drink on the respondent's premises, and later took the form of a complaint about supplying her with drink. The difference is not unimportant. The club premises were near a football ground. People, including the appellant, moved during the course of the day between the club premises and the playing or watching areas. The respondent was not the only source of supply of drink in the vicinity, and the appellant could well have had access to drink in addition to that which the club's employees supplied directly to her. She certainly had access to drink that had been supplied originally to her friend, Mrs Hughes. The trial judge found that the respondent was negligent in supplying the appellant with a bottle of wine at about 12.30 pm. The fact of that supply was not disputed, although the circumstances were contentious. He also found that there was a later supply of a bottle of wine by the respondent to the appellant, and that such supply also was an act of negligence. That second finding of supply was overturned by the Court of Appeal. What is to be noted, however, is that the trial judge's findings of negligence were based on supplying

wine to the appellant, not upon some general permission to her to drink on the respondent's premises.

6 As to the facts relating to supply to the appellant, the following should be noted. The appellant commenced drinking at about 9.30 or 10 am. It seems clear that she continued to drink throughout most of the day. Hulme J found that the appellant purchased a bottle of wine shortly before 12.30 pm. He also found that, at that time, it should have been apparent to employees of the respondent that she was intoxicated. The Court of Appeal reversed that finding. The Court of Appeal also concluded that, although the appellant continued to drink during the afternoon, there was no evidence to support any finding that she was served alcohol by the respondent after 12.30 pm. No successful challenge has been made to the reasoning of the Court of Appeal on those matters of fact. There was evidence as to the appellant's condition at about 2.20 pm, when she told Mrs Hughes that she would not accompany her home, but would stay on at the club. According to Mrs Hughes, the appellant was "very joyous and happy", "an embarrassment" and "totally inebriated", but capable of directing a taxi driver where to take Mrs Hughes, and of making clear her decision to remain at the club with some new-found friends. Between 12.30 pm and 2.20 pm, the appellant had the opportunity to consume a substantial quantity of wine. It is not clear how much, if any, of the bottle she bought at 12.30 pm she drank herself. She shared with Mrs Hughes during the day, but her evidence was that, just as there were times when she was giving some of her wine to Mrs Hughes, so also Mrs Hughes was giving some of her wine to the appellant. The evidence is consistent with the appellant having consumed at least a bottle of wine, and perhaps more, between 12.30 pm and 2.20 pm. That is of significance if one seeks to draw an inference as to her condition at 12.30 pm from the evidence as to her condition at 2.20 pm.

7 At about 3 pm, the wife of the manager of the respondent's club refused to serve the appellant because of her state of intoxication. Thus, on the facts as found by the Court of Appeal, there was no evidence of any supply of alcohol by the respondent to the appellant after 12.30 pm; the evidence did not support a finding that, at the time of that supply, it should have been apparent that the appellant was then intoxicated; thereafter the appellant consumed at least a bottle of wine; she had access to drink in addition to that which the respondent supplied her; and at 3 pm, when next she sought to purchase alcohol from the respondent, she was refused supply.

8 The harm suffered by the appellant was personal injury resulting from her careless behaviour as a pedestrian, the carelessness being attributable to her state of intoxication at 6.20 pm. The argument for the appellant must involve two steps: first, that the respondent, as a supplier of alcohol, owed her a duty to take reasonable care to protect her against the risk of physical injury resulting from her careless behaviour in consequence of her excessive consumption of alcohol; and secondly, that in the circumstances the conduct of the respondent, through its

employees, amounted to a failure to take such care. The Court of Appeal rejected both of those contentions.

9 It is unnecessary, for the purposes of the present case, to endeavour to formulate, in abstract terms, some general proposition as to whether in any, and if so what, circumstances a supplier of alcohol, in either a commercial or a social setting, is under a duty to take reasonable care to protect a consumer of alcohol against the risk of physical injury resulting from consumption of alcohol. The question is whether there was such a duty in the circumstances of this case. The practical consequences of such a duty are worth noting.

10 Intoxication is an imprecise concept, but the laws concerning drink driving reflect the fact that a person in charge of a motor vehicle may be at risk of suffering, or causing, injury after three or four standard drinks. That is probably the best known and most clearly foreseeable risk of injury that accompanies the consumption of alcohol. The risk does not necessarily involve a high level of intoxication. There are other forms of risk of physical injury which may accompany the consumption of alcohol, even in relatively moderate amounts. Consistently with the appellant's argument, if she had gone home in the early afternoon, tripped on a doorstep, and suffered a broken wrist, she may have had a cause of action against the respondent.

11 In *R v O'Connor*[4], a case concerning the effect of intoxication upon criminal responsibility, Barwick CJ said:

> "The state of drunkenness or intoxication can vary very greatly in degree. A person may be intoxicated in the sense that his personality is changed, his will is warped, his disposition altered, or his self-control weakened, so that whilst intoxicated to this degree he does [an] act voluntarily and intentionally which in a sober state he would or might not have done. His intoxication to this degree, though conducive to and perhaps explanatory of his actions, has not destroyed his will or precluded the formation of any relevant intent. Indeed intoxication to this degree might well explain how an accused, otherwise of good character, came to commit an offence with which he is charged."

12 Some consumers of alcohol respond quickly to its effects, while others can consume a large quantity without much change of appearance or demeanour. People in both categories may be at risk of injury if they drive a car. To impose on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption involves burdensome practical consequences. It provides no answer to say that such a duty comes into play only when a

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4 (1980) 146 CLR 64 at 71.

consumer is showing clear signs of a high degree of intoxication. The risk sets in well before that. The appellant argued that there is a duty on a supplier to "monitor" alcohol consumption. The capacity of a supplier of alcohol to monitor the level of risk to which a consumer may be exposed is limited. If a restaurant proprietor serves a bottle of wine to two customers at a table, the proprietor may not know what either of them has had to drink previously, the proportions in which they intend to share the bottle, or what they propose to do when they leave the restaurant. Few customers would take kindly to being questioned about such matters.

13 There is a further question of principle bearing upon the reasonableness of the imposition of a duty of the kind for which the appellant contends. Most adults know that drinking to excess is risky. The nature and degree of risk may be affected by the extent of the excess, or by other circumstances, such as the activities in which people engage, or the conditions in which they work or live. A supplier of alcohol, in either a commercial or a social setting, is usually in no position to assess the risk. The consumer knows the risk. It is true that alcohol is disinhibiting, and may reduce a consumer's capacity to make reasonable decisions. Even so, unless intoxication reaches a very high degree (higher than that achieved by the appellant in this case), the criminal and the civil law hold a person responsible for his or her acts. If, in the present case, the appellant, deliberately or negligently, had damaged the respondent's property, or caused physical injury to some third party, she would have been liable for the damage. There is no suggestion that she lacked the mental capacity to form the necessary intent. Save in extreme cases, the law makes intoxicated people legally responsible for their actions. As a general rule they should not be able to avoid responsibility for the risks that accompany a personal choice to consume alcohol.

14 The significance of a need for coherence in legal principle and values, when addressing a proposal for the recognition of a new form of duty of care, was stressed by this Court in *Sullivan v Moody*[5]. Although there are exceptional cases, as Lord Hope of Craighead pointed out in *Reeves v Commissioner of Police of the Metropolis*[6], it is unusual for the common law to subject a person to a duty to take reasonable care to prevent another person injuring himself deliberately. "On the whole people are entitled to act as they please, even if this will inevitably lead to their own death or injury." This principle gives effect to a value of the law that respects personal autonomy. It is not without relevance to ask what the appellant says the respondent should have done by way of monitoring and controlling her behaviour. Whatever exactly it might have been, it would seem to involve a fairly high degree of interference with her privacy, and her freedom of action. It is not

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5 (2001) 207 CLR 562 at 581 [55].

6 [2000] 1 AC 360 at 379-380.

difficult to guess what the appellant's response would have been if the person who sold her a bottle of wine at 12.30 pm had demanded to be told whether she intended to drink it all herself. A duty to take care to protect an ordinary adult person who requests supply from risks associated with alcohol consumption is not easy to reconcile with a general rule that people are entitled to do as they please, even if it involves a risk of injury to themselves. The particular circumstances of individual cases, or classes of case, might give rise to such a duty, but we are not here concerned with a case that is out of the ordinary.

15 Again, as a general rule a person has no legal duty to rescue another. How is this to be reconciled with a proposition that the respondent had a duty to protect the appellant from the consequences of her decision to drink excessively? There are many forms of excessive eating and drinking that involve health risks but, as a rule, we leave it to individuals to decide for themselves how much they eat and drink. There are sound reasons for that, associated with values of autonomy and privacy.

16 Counsel for the appellant drew attention to a provision in the *Registered Clubs Act* 1976 (NSW) (s 44A) which makes it an offence to supply liquor to an intoxicated person. This may explain why the appellant was refused service at 3 pm. It was not argued that the appellant had a cause of action based on breach of statutory duty. On the facts found by the Court of Appeal, there was no breach. For other reasons, as well, the provision does not assist the appellant's argument. A person may be at risk of physical injury following the consumption of alcohol even if the person is well short of the state of intoxication contemplated in the provision. As has been noted, the most obvious example of such a risk is that involved in driving a motor vehicle, and the risk becomes real and significant well before a person has reached the state at which a supplier is legally obliged to refuse service. If the argument for the appellant is correct, the legal responsibility of a supplier is more onerous than that imposed by s 44A. Indeed, as a guide to the responsibilities of suppliers, s 44A would be something of a trap.

17 It is possible that there may be some circumstances in which a supplier of alcohol comes under a duty to take reasonable care to protect a particular person from the risk of physical injury resulting from self-induced intoxication[7]. However, the appellant cannot succeed in this case unless there is a general duty upon a supplier of alcohol, at least in a commercial setting, to take such care. I do not accept that there is such a general duty. I would add that, if there were, it is difficult to see a basis in legal principle, as distinct from legislative edict, by which it could be confined to commercial supply. When supply of alcohol takes place in

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7 cf *Desmond v Cullen* (2001) 34 MVR 186 at 187. It is to be noted that the Canadian case *Jordan House Ltd v Menow* [1974] SCR 239 involved knowledge of the plaintiff's propensities, and placing him in a situation of known danger.

a social context, there may be a much greater opportunity for appreciating the risks of injury, for monitoring the condition of the consumer, and for influencing the consumer's behaviour. In a social, as in a commercial, context, the risk of injury associated with the consumption of alcohol is not limited to cases where there is an advanced state of intoxication. Depending upon the circumstances, a guest who has had a few drinks and intends to drive home may be at greater risk than a guest who is highly intoxicated but intends to walk home. If there is a duty of the kind for which the appellant contends, it would be the degree of risk associated with the consumption of alcohol, rather than the degree of intoxication, that would be significant. In many cases the two would go together, but in some cases they would not.

18 The consequences of the appellant's argument as to duty of care involve both an unacceptable burden upon ordinary social and commercial behaviour, and an unacceptable shifting of responsibility for individual choice. The argument should be rejected.

19 Even if there were a duty on the respondent to take reasonable care to protect the appellant from the risk of physical injury resulting from careless behaviour in consequence of excessive consumption of alcohol, the evidence does not establish failure to take reasonable care.

20 At the level of breach, as at the level of duty, it is material to consider that the appellant was a healthy, mature woman who, for her personal enjoyment, decided to embark upon a drinking spree.

21 The Court of Appeal concluded that reasonableness did not require any more of the respondent, by way of care for the safety of the appellant, than was actually done. Two aspects of the conduct of the parties are of particular significance. First, the Court of Appeal found that there was no supply of alcohol by the respondent to the appellant at any time after 12.30 pm, some six hours before her injury, and that at that time there was no reason for the employee who supplied the bottle of wine to regard the appellant as significantly intoxicated. The next time the appellant sought supply from the respondent, at 3 pm, she was refused. There was no further supply to the appellant by the respondent.

22 At about 5.30 pm, the appellant's disorderly behaviour drew attention. She was in the company of two men, who themselves were apparently sober. The manager of the respondent's club asked her to leave the premises. He offered to provide her a courtesy bus to drive her home. Alternatively, he said that, if she preferred it, he would call for a taxi to take her home. She refused both offers in blunt and abusive terms. One of her male companions told the manager to "leave it with us and we'll look after her". A few minutes later the appellant and the men left.

23 The appellant is not complaining of damage to her liver from drinking too much. The harm she suffered was the direct and immediate consequence of her own careless behaviour as a pedestrian, about half an hour after she left the club. There is no evidence as to how she spent that half-hour. On the evidence, the club refused to sell her drink the first time she asked for it in a significantly intoxicated condition. It did not sell her any drink after that. When she was asked to leave the premises, the club offered to provide free transport home or, alternatively, to obtain a taxi to take her home. She declined those offers. Two reasonably sober male companions then said they would look after her, and she left.

24 There is no reason to disturb the Court of Appeal's finding that the respondent took reasonable care to protect the appellant from the risk of injury that ultimately occurred. That the offers of a courtesy bus and a taxi were part of the club's procedures no doubt reflects the fact that the most obvious risk to someone who has consumed excessive amounts of alcohol is the risk associated with drink driving. It was a standard procedure for the club, even in the case of people who might have had much less to drink than the appellant. It was a useful and sensible facility for customers. The appellant's rejection of the manager's offers might have reflected the fact that her judgment was affected by drink. It might have reflected her enjoyment of the company that was available to her. It could simply have been the result of resentment at being asked to leave. There is no way of knowing. Whatever the reason for the rejection of the offers, they were made in good faith, and if they had been accepted it is unlikely that, half an hour later, the appellant would have been walking on the roadway. Furthermore, the respondent had no reason to doubt the genuineness of the intention of the two men to look after the appellant, or their capacity to do so.

25 As to causation, the appellant's condition of intoxication was never so extreme that she was not legally responsible for her actions. The respondent did not eject her from the club onto the roadway. She refused an offer to be driven home. What then went on between the time she left the club and the time she was run down by the car is not known. Her rejection of the offer of transport to take her home would be material if an issue of causation had arisen. For the reasons already given, no such issue arises.

26 The appeal should be dismissed with costs.

27 McHUGH J. The question in this appeal is whether a licensed club is legally responsible for the injuries sustained by a customer when she was struck by a motor vehicle shortly after leaving the club after spending most of the day drinking in the club and becoming highly intoxicated.

28 In my opinion the club is legally responsible for the injuries suffered by the customer. The facts of the case are set out in other judgments. I need not repeat them. Because my view of the case is a dissenting one, I can state my conclusions summarily by reference to basic principle and without the necessity to embellish the judgment with an extensive discussion of case law.

29 Basic principle in the law of negligence holds that a defendant is liable in negligence only when the defendant owed a duty of care to the plaintiff[8], breached that duty, and, as a result, caused injury to the plaintiff of a kind that was reasonably foreseeable. If the defendant owed a duty of care to the plaintiff, breach of duty is determined by considering whether an act or omission of the defendant gave rise to a risk of injury to the plaintiff that, by the exercise of reasonable care, could have been foreseen and avoided. In determining the breach issue, what the defendant knew or ought to have known is critical. If the duty has been breached, the defendant will be responsible for any injury suffered by the plaintiff that, as a matter of common sense, is causally connected with the breach and is of a kind that was a reasonably foreseeable consequence of the breach.

30 The common law has long recognised that the occupier of premises owes a duty to take reasonable care for the safety of those who enter the premises. That duty arises from the occupation of premises. Occupation carries with it a right of control over the premises and those who enter them. Unless an entrant has a *proprietary* right to be on the premises, the occupier can turn out or exclude any entrant – even an entrant who enters under a contractual right. Breach of such a contract will give an entrant a right to damages but not a right to stay on the premises.

31 The duty of an occupier is not confined to protecting entrants against injury from static defects in the premises. It extends to the protection of injury from all the activities on the premises. Hence, a licensed club's duty to its members and customers is not confined to taking reasonable care to protect them from injury arising out of the use of the premises and facilities of the club. It extends to protecting them from injury from activities carried on at the club including the sale or supply of food and beverages. In principle, the duty to protect members and customers from injury as a result of consuming beverages must extend to

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8 Or, in cases where the plaintiff sues in respect of injury to a third person – such as cases under Lord Campbell's Act, or in actions for nervous shock or *per quod servitium amisit* – the third person.

protecting them from all injuries resulting from the ingestion of beverages. It must extend to injury that is causally connected to ingesting beverages as well as to internal injury that is the result of deleterious material, carelessly added to the beverages.

32 If the supply of intoxicating alcohol by a club to a customer gave rise to a reasonable possibility that the customer would suffer injury of a kind that a customer who was not under the influence of liquor would be unlikely to suffer, the club is liable for the injury suffered by the customer provided the exercise of reasonable care would have avoided the injury. That statement is subject to the qualification that the injury must be of a kind that was reasonably foreseeable. However, it is not necessary that the club should reasonably foresee the precise injury that the customer suffered or the manner of its infliction. It is enough that the injury and its infliction were reasonably foreseeable in a general way.

33 Mrs Cole commenced drinking at the Club around 9.30am. No later than lunchtime, signs of her inebriation were plain to anyone who cared to look. A friend of Mrs Cole said that at midday she was drunk and carrying on and arguing and that her speech was "a bit funny". At 3pm, Mrs Cole was so intoxicated that the wife of the Club manager refused to serve her any more liquor. At around 5.30pm, the manager said that she was "very, very drunk". She had to be held up. She was behaving so badly that the manager told her to leave the premises.

34 Upon these facts, the inference is irresistible that, by early afternoon, liquor supplied by the Club had reduced Mrs Cole to such a physical and mental state that there was a real risk that she would suffer harm of some kind. The inference is also irresistible that the more she drank the more opportunities there were that she would suffer harm and the greater the likelihood that the harm would be serious. If the Club ought to have foreseen that her consumption of alcohol had reached a point that further alcohol might expose her to an alcohol-induced risk of injury, it does not matter whether she purchased the further alcohol she drank or whether her companions purchased the alcohol that she drank. The Club owed her a personal duty not to expose her to the risk of injury and, by directly supplying her, or by permitting her companions to supply her, with further alcohol, the Club breached the personal duty of care that it owed to her. It is not relevant to the breach of duty issue that her conduct in drinking an excessive amount of alcohol brought about her intoxicated condition. That conduct is relevant in assessing whether she was guilty of contributory negligence and, if so, to what extent that contributed to the harm that she suffered. It may also be relevant to the issue of causation. But it has nothing to do with the breach of duty issue. The Club had the right to control the conduct of Mrs Cole and her companions and could enforce that right in various ways including ejecting her and her companions from the Club premises. Like employers, teachers, professional persons, guardians, crowd controllers, security guards, jailers and others who have rights of control over persons, property or situations, the duty owed by clubs to entrants extends to taking affirmative action to prevent harm to those to whom the duty is owed. It may extend from the giving

of advice and warnings to the forcible ejection from the premises of one or more of those present.

35 Upon the evidence, the Club ought to have foreseen by early afternoon at the latest that Mrs Cole's drinking had the effect that she was exposed or becoming exposed to the real possibility of suffering injury and taken action to prevent it. It is not to the point, as the learned judges in the Court of Appeal thought, that this might require the Club to constantly survey the condition of those drinking alcohol on the premises. The need to monitor the conduct of others and to intervene by advice, warning or more drastic action are frequent characteristics of affirmative duties. No one could plausibly deny that, if a club's failure to monitor the conduct of persons on the premises led to a club member sustaining injury, the club would be liable in negligence for its failure. And where, as here, a club has a duty to protect an entrant from injury, it is beside the point that the discharge of its duty may require the club to monitor the conduct including the sobriety of persons on the premises. Not much experience of clubs and hotels is needed to know that, in many – probably most – of them, management is constantly monitoring the conduct and condition of those on the premises. Indeed, many clubs and hotels employ personnel for no other purpose than to monitor and, where necessary, control the conduct of patrons.

36 Nor is it to the point that alcohol affects persons differently and that it is often very difficult to judge the extent to which a particular person is affected by liquor. Clubs, hotels, restaurants and others are held to the standard of reasonableness, not mathematical precision. It may be an axiom of business management that you can't manage what you can't measure. But in this area of management control, precise measurements are not required. It is not a question of whether the plaintiff had a blood alcohol reading of .11 or .15 or some other figure. It is a question of whether a reasonable licensee, having the opportunity to observe a customer, would think that further drinking by the customer might give rise to a real possibility that the customer would suffer harm.

37 Nor is any question of the autonomy of Mrs Cole or the management of the Club involved in this case. The autonomy of the management is not involved because the Club, through its management, owed a duty of care to Mrs Cole and that duty extended to taking affirmative action. Questions concerning a defendant's autonomy are relevant in determining whether the defendant owed a duty of care to the plaintiff. But once it is held that a duty is owed – especially when the duty extends to taking affirmative action – the autonomy of the defendant is, to the extent of the duty, curtailed.

38 Nor does the autonomy of Mrs Cole enter into the issue of breach of duty. It is a central thesis of the common law that a person is legally responsible for his or her choices. The common law regards individuals as autonomous beings who are entitled to make, but are legally responsible for, their own choices. But like all common law doctrines, there are exceptions. One of the most important is that a

person will seldom be held legally responsible for a choice if another person owes the first person an affirmative duty of care in relation to the area of choice. An employer does not automatically escape liability for failing to lay down a proper system of work because its employee took it upon himself to do the work in a manner that caused his injury. Particularly where the duty owed extends to protecting the plaintiff, it is unlikely that the voluntary choice of the injured person will preclude a right of action. Such a choice is likely to exclude liability only when it can be said that the choice is the sole cause of the plaintiff's injury. Hence, a club that has breached its duty to protect a member from harm resulting from intoxication cannot automatically escape liability for a member's injury because the member voluntarily consumed the alcohol. If a club member's intoxication causes him or her to fall down a flight of stairs, the club cannot escape liability merely by asserting that the intoxication was self-induced.

39 Nor does it matter whether several hundred persons were on the Club's premises at various times that day or whether Mrs Cole went out to watch the match that was being played. The Club had a duty to monitor the behaviour and condition of those present. In any event, it had numerous opportunities to observe Mrs Cole's increasingly intoxicated condition. She was at the bar buying wine at 12.20pm and 3pm and sitting at a table inside the Club between 12.20pm and 2.20pm and between 3pm and 5.30pm. Yet, despite the Club's opportunities to observe her condition, it is impossible to resist the inference that the Club took no steps to prevent her drinking, until probably close to 5.30pm when the manager told her to leave. Once the Club through its employees should reasonably have foreseen that the time had come for Mrs Cole to stop drinking if she was to avoid a serious risk of injury, the Club had an affirmative duty to take steps to prevent her drinking. The Club may have discharged its duty by advising or warning her that she had had too much to drink. Or more drastic steps may have been required. If she refused to take advice or a warning to stop drinking, discharge of the Club's duty may have required the Club to remove her from the premises. As long as the Club had acted promptly in removing her from the premises after it ought to have been aware that further drinking might result in her suffering harm, the Club could not be responsible for what happened to her outside the premises. That is because on that hypothesis the Club would not be in breach of its duty. However, the Club did not discharge its duty by refusing to *sell* her any more liquor at 3pm. Discharge of its duty required the Club to prevent her from drinking more alcohol after the time when it ought to have realised that any further drinking by her could result in her suffering harm.

40 Once it became apparent that Mrs Cole was so intoxicated that her condition gave rise to a significantly increased risk of harm that she would not be exposed to if she were sober, the Club's failure to prevent her drinking more alcohol constituted a breach of the duty owed to her. It is not necessary in this case, as it might be in other cases of this kind, to specify the precise time when the breach of duty occurred. That is because, on any view of the evidence, the Club permitted her to drink long after it should have taken steps to stop her drinking and

because her rising intoxication increased the chance that she would suffer injury of the kind that she did.

41 Accordingly, sometime in the early afternoon, the Club breached the duty that it owed to Mrs Cole to take reasonable care to protect her from harm. With great respect to those who take the contrary view, it is a mistake to see the question of breach as arising at or about the time Mrs Cole was leaving the premises. What occurred at that stage is relevant to the causation issue but, in the circumstances of this case, it has nothing to do with the breach issue. The Club was in breach of its duty long before Mrs Cole left the premises. If she had fallen over and injured herself as the result of her intoxication at (say) 4pm, she would have had an action against the Club because by then the Club had been in breach of its duty for some time, probably for close to three hours.

42 Furthermore, unless Mrs Cole's refusal of management's offer of a courtesy bus and driver or, alternatively, a taxi broke the causal chain between the Club's breach of duty and her injury, Mrs Cole must succeed on the causation issue. Her injury was the direct result of the alcohol consumed by her as the result of the Club's breach of duty. Under the common law doctrine of causation, however, the voluntary choice of a plaintiff to take a course of action that leads to injury may destroy the causal link between breach of duty and the injury even though the breach contributed to the injury. But that principle has no application where the voluntary choice of the plaintiff or the intervening act of a third party is the direct result of the defendant's breach of duty. The plaintiff who elects to jump aside to avoid the risk of injury from a negligently driven vehicle is not deprived of a cause of action because no injury would have been suffered if the plaintiff had remained where he or she was.

43 In the present case, Mrs Cole's abusive rejection of management's transport offers was just the kind of response that might be expected to flow from the Club's breach of duty in permitting her to continue to drink alcohol on the Club's premises. Her refusal of the offers of transport, therefore, no more broke the causal link between the Club's breach of duty and her injury than the voluntary act of the thief breaks the causal chain between a security company's breach of duty and the plaintiff's loss from theft. Nor was the causal chain broken by the offer of Mrs Cole's new-found companions to look after her. Going off with those persons might have founded an intervening cause argument if it had been established that their conduct had contributed to the injuries that she suffered. But there was no such evidence. The fact that she left the premises in their company is therefore not an intervening act that severs the causal connection between the Club's breach of duty and Mrs Cole's injuries.

44 The most difficult question in the case is that of remoteness of damage. Was it reasonably foreseeable in a general way that, as a result of the Club's breach of duty, Mrs Cole might suffer injury of the kind and in the general way that she did? It is not necessary that the Club should reasonably foresee the precise injury

or the manner of its occurrence. The received doctrine is that a defendant, in breach of duty, is liable for injury causally connected to the breach if the injury and the manner of its occurrence were reasonably foreseeable in a general way. Hence, the issue of remoteness has to be determined by asking: was it reasonably foreseeable in a general way that permitting Mrs Cole to continue to drink after the Club should have stopped her drinking might lead to her being struck by a car in the vicinity of the Club's premises up to 50 minutes after she left the Club?

45 Given Mrs Cole's state of intoxication, it was reasonably foreseeable that that state might result in her suffering injury for up to an hour or even longer after she left the Club premises. Furthermore, injury as a pedestrian was high up on the list of injuries that she was at risk of suffering as the result of her intoxication. Accordingly, given that it is not necessary that either the precise injury or the manner of its infliction should be foreseen, her injury was reasonably foreseeable. It was reasonably foreseeable in a general way that within 50 minutes of leaving the Club she might be struck by a motor vehicle while walking on the road.

46 The rigorous application of basic negligence doctrine requires the reversal of the Court of Appeal's decision and the restoration of the trial judge's verdict in favour of Mrs Cole. No doubt some minds may instinctively recoil at the idea that the Club should be liable for injuries sustained by a drunken patron who is run down after leaving its premises. But once it is seen that the Club had a legal duty to prevent her drinking herself into a state where she was liable to suffer injury, the case wears a different complexion. The Club has a legal responsibility for the injury. Instinct must give way to the logic of the common law.

Order

47 The appeal should be allowed with costs.

48 GUMMOW AND HAYNE JJ. On Sunday, 26 June 1994, the first respondent ("the Club") held a champagne breakfast at its clubhouse, next to grandstands built beside the Club's football ground. Several football matches were played at the ground that day, from about 11.30 am to about 5.00 pm.

49 The appellant went to the breakfast with three friends. The appellant consumed a lot of liquor. One of the friends who went to the Club with her later gave evidence that, by about 1.45 pm, the appellant was "absolutely drunk". Two of the appellant's friends left the Club at about noon; the third, Mrs Fay Hughes, left during the early part of the afternoon. The appellant, having met some New Zealanders, decided to stay at the Club.

50 At about 6.00 pm, approximately eight hours after the appellant had first arrived at the Club's premises, she was asked to leave the clubhouse. (The appellant and her companions were said to have been touching each other indecently.) The Club's manager offered the appellant safe transport home, either by the Club's courtesy bus, or by taxi. She bluntly (and crudely) refused both offers. One of her companions told the Club's manager that they (her companions) would "look after her". A few minutes later she and her companions had left the premises, whether together or separately the evidence does not reveal.

51 At about 6.20 pm, on a road about 100 metres north of the Club's premises, the appellant was struck by a four wheel drive vehicle driven by the second respondent. No one was then with the appellant. The appellant's blood alcohol content was later found to be 0.238 gm per 100 ml. It was estimated that to reach this blood alcohol result she would have had to have consumed 16 standard drinks[9].

The proceedings below

52 The appellant brought an action in the Supreme Court of New South Wales for damages for the injuries she sustained in the collision, naming as defendants the Club and the driver of the vehicle that struck her. At first instance, the appellant obtained judgment against both the Club and the driver[10]. The primary judge (Hulme J) found the appellant to have been contributorily negligent and apportioned responsibility between the parties, as to 30 per cent against the driver, 30 per cent against the Club and 40 per cent against the appellant.

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9 A "standard drink" was defined as a drink delivering 10 gm of alcohol: 285 ml of full strength beer, 30 ml of spirits or 120 ml of table wine.

10 *Cole v Lawrence* (2001) 33 MVR 159.

53 On appeal to the Court of Appeal of New South Wales (Heydon and Santow JJA and Ipp AJA), the Club's appeal and the driver's cross-appeal were both allowed[11]. The judgment entered at trial was set aside and, in its place, judgment was entered for the Club and the driver.

The issues

54 By special leave, the appellant now appeals against only those parts of the judgment of the Court of Appeal which related to the liability of the Club.

55 Special leave was granted to examine what, if any, duty of care the Club, as a seller of liquor, owed to the appellant. The appellant alleged that her collision with the driver's vehicle was caused, or contributed to, by the Club's negligence.

56 In *Graham Barclay Oysters Pty Ltd v Ryan*[12], McHugh J observed:

> "Ordinarily, the common law does not impose a duty of care on a person to protect another from the risk of harm unless that person has created the risk."

His Honour also emphasised[13] that the more specific the terms of the formulation of the duty of care, the greater the prospect of mixing the anterior question of law (the existence of the duty) with questions of fact in deciding whether a breach has occurred. On the other hand, the articulation of a duty of care at too high a level of abstraction provides an inadequate legal mean against which issues of fact may be determined.

57 The present litigation was pleaded and conducted in such a fashion as to conflate asserted duty and breach of that duty and to make it inappropriate to decide on this appeal any issue respecting the existence or content of a duty of care.

58 Although put in several different ways, the appellant's case in this Court was anchored in two complaints. First, it was alleged that the Club had been negligent in continuing to serve the appellant alcohol when the Club knew or should have known she was intoxicated. Secondly, it was said that the Club was negligent in allowing her to leave the premises in an intoxicated state. Thus the duties relied on were duties first, to take reasonable care to monitor and moderate

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11 *South Tweed Heads Rugby League Football Club Ltd v Cole* (2002) 55 NSWLR 113.

12 (2002) 211 CLR 540 at 575-576 [81].

13 (2002) 211 CLR 540 at 585 [106].

the amount she drank, and second, to take reasonable care that she travelled safely away from the Club.

59 These reasons will seek to show that whether the Club owed either of those duties need not be decided. If the Club owed the appellant a duty to take care that she did not fall into danger of physical injury when she left the Club, it discharged that duty of care by offering her safe transport home, only to be met by her refusal and the offer, from her apparently sober companions, to look after her. If the Club owed the appellant a duty to take care in monitoring and moderating the amount of liquor she took, any breach of that duty was not a cause of the injuries she sustained.

A disputed question of fact

60 It is convenient to deal first with a question of fact about which the Court of Appeal differed from the primary judge. How much alcohol did the Club serve the appellant?

61 About 100 people attended the regular Sunday morning champagne breakfasts held by the Club. At each breakfast, two dozen bottles of spumante were provided by the Club for those attending. On the day of the accident, these 24 bottles were consumed in the period between about 9.30 am and 10.30 am, or a little later. Mrs Hughes, one of the friends who had come to the Club with the appellant, said that she, herself, would have had "around about eight" glasses of the free wine. She was unable to say how much the appellant had of the free wine but there is no reason to think it would have been significantly less than Mrs Hughes drank. By contrast, however, another member of the party, Mrs Hughes' husband, took no alcohol.

62 Once the free wine ran out, Mrs Hughes bought another bottle of the same wine. The appellant and Mrs Hughes consumed that bottle.

63 At about 12.30 pm Mrs Hughes saw the appellant drinking straight out of another full bottle of spumante. There was no direct evidence that the appellant had bought this bottle herself, but the primary judge found that she did, and the Court of Appeal did not overturn that finding. It may be accepted, therefore, that at about 12.30 pm the Club sold her this bottle of wine ("the 12.30 pm bottle").

64 The primary judge found that it was probable that the Club served the appellant alcohol *after* serving her with the 12.30 pm bottle[14]. As Ipp AJA rightly

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14 (2001) 33 MVR 159 at 170 [63].

pointed out in the Court of Appeal[15], drawing the inference that the appellant bought alcohol from the Club after the 12.30 pm bottle did not take into account other possibilities that were inconsistent with that inference. Ipp AJA referred to her buying alcohol from persons other than Club employees, and it may be that, as the appellant submitted, this possibility can be discounted. But what cannot be discounted is the real possibility that those in whose company the appellant spent the afternoon at the Club, watching football, gave her the alcohol that she most likely drank during that afternoon. She had, after all, refused to go home with Mrs Hughes because she preferred to stay with others. When it is recalled that there was evidence which the primary judge accepted that the Club refused to serve liquor to the appellant at about 2.30 pm or 3.00 pm, it is evident that the Court of Appeal was right to conclude that the evidence did not permit the primary judge to infer, as he did, that the appellant bought more liquor from the Club after 12.30 pm. All that the evidence showed was that it was more probable than not that she consumed more alcohol during the afternoon. The evidence was silent about who supplied it to her and was silent about whether those who supplied alcohol to the appellant did so from stocks they brought with them to the ground or from purchases made at the Club.

A duty to monitor and moderate the appellant's drinking?

65 The appellant's contention that her collision with the driver's vehicle was caused or contributed to by the Club's negligence in continuing to serve her alcohol, when the Club knew or should have known that she was intoxicated, was a contention that depended upon taking a number of steps, some (perhaps all) of which may be contested.

66 First, what exactly is meant by "serving" the appellant alcohol? Does it encompass, or is it limited to, selling alcohol which it is known that the appellant will consume? Does it extend to selling, to others, alcohol which it is suspected that the appellant will consume? How is the Club to control what other patrons may do with bottles of alcohol which the Club sells them? Given the uncertainties about how and from whom the appellant obtained alcohol during the second half of the day, these are questions that go directly to the formulation of the duty which is said to have been breached.

67 Secondly, the evidence of what the Club knew, or could reasonably be taken to have known, of what alcohol the appellant took during the day was very slight. Mrs Hughes described the appellant as "flitting around and dancing" at about noon. She described the appellant drinking directly from a bottle at about 12.30 pm but she said that then the appellant went outside the clubhouse to "the

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15 (2002) 55 NSWLR 113 at 135 [140].

football area". To do that she passed from an area where Mrs Hughes was playing a poker machine and would have been "in the view of anyone if they had been looking for her to see her for at least 3 or 4 seconds". There was no evidence about how the "football area" was or could have been monitored by Club staff. There was no evidence about whether patrons coming to watch matches could or did bring alcohol with them. Again, these are questions which would have to be considered in deciding whether the Club owed the appellant a duty which it breached.

68 Unsurprisingly, there was no evidence which would have revealed that servants of the Club could have (let alone reasonably should have) been able to observe how much the appellant drank during the morning. That is, as we say, unsurprising when it is recalled how many patrons attended the Club. About 100 or 120 had attended breakfast. Some of those patrons stayed at, and no doubt others came to, the clubhouse and the ground to attend the several football games to be played that day. There was, therefore, a large and shifting population to observe. If it is said that the Club owed the appellant a duty to monitor and moderate the amount that she drank, it owed *all* its patrons such a duty. All that the evidence showed was that there were points during the day where Mrs Hughes recognised that her friend was drunk and that in the afternoon the appellant was refused service. Presumably she was then evidently intoxicated. But whether, or when, her intoxication should have been evident to others, and in particular Club staff, was not revealed by the evidence.

69 Next, what level of intoxication is said to be relevant? Does it mean not lawfully able to drive a motor car? Some drivers may not drive a motor car if they have had any alcohol. Other drivers may be unfit to drive after very few glasses of alcohol. Does "intoxicated" mean, as the primary judge held, "loss of self-control or judgment which is more than of minor degree"[16]? If that is so, many drinkers will arrive at that point after very little alcohol.

70 All of these questions would have to be answered in deciding what duty of care was owed. None can be answered in isolation. All would require consideration of the purpose for which it is said that the duty alleged is to be imposed.

71 In this case, the appellant alleged that the collision in which she was injured was caused by the Club negligently continuing to serve her alcohol. Thus, "intoxicated" must refer to some state in which her capacity to care for herself was adversely affected, and the nature of the duty said to be imposed on the Club must

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16 (2001) 33 MVR 159 at 169 [58].

be one to take reasonable steps to prevent her reaching *that* state. But if that is so, it is evident that other considerations must intrude.

72 Is the content of the duty to be imposed on the Club to vary according to what it knows, or what it should know, about what arrangements the appellant had made (if any) to leave the Club? Or are all patrons to be treated alike, regardless of whether they have made arrangements to be safely taken home? Where, until about midday, the appellant was in a party of four people of whom one did not drink at all, was the Club under a duty to moderate her drinking or not? Could it rely on there being one member of the party who would be responsible for shepherding the party home safely? What steps was the Club expected to take during the afternoon, or after the point it is said that it should have recognised that she was intoxicated? If it should have not supplied her alcohol in the afternoon, it was not shown that the Club did so after the 12.30 pm bottle. If it should have done more than refuse her service, what exactly was to be expected of it?

73 All of these, and more, questions would have to be answered to identify the duty alleged to exist. And in answering them it would be necessary to pay due regard to the facts that the appellant and others in the Club were adults, none of whom could be expected to be ignorant of the intoxicating effects of the alcohol they voluntarily consumed.

The statutory context

74 The appellant submitted that it was relevant to notice that the Club was registered under the *Registered Clubs Act* 1976 (NSW) and that, under s 44A of that Act, it was an offence to permit intoxication on Club premises and an offence to sell or supply liquor to an intoxicated person. It was also said to be relevant to notice that s 67A of the *Registered Clubs Act* required a member of the police force, when requested by the secretary or an employee of the Club, to turn out or to assist in turning out of the premises of the Club any person who was then intoxicated, violent, quarrelsome or disorderly.

75 Both of these provisions appear to have been directed chiefly, if not exclusively, to the maintenance of order in registered clubs' premises, not to the safety of the intoxicated patron. Whether or not that is so, no allegation was made of breach of statutory duty, and these provisions shed no light on the problems now presented.

Any breach of duty to monitor and moderate not causative

76 Even assuming the various difficulties identified about the formulation of a duty of care to monitor and moderate the amount of liquor the appellant drank could be overcome, the breach of such a duty, however it is expressed, was not a cause of the injuries the appellant sustained. That is revealed by considering the

case, contrary to the facts found by the Court of Appeal, that the Club carelessly sold the appellant further liquor during the course of the afternoon, when it knew or ought to have known that she was intoxicated. In such a case the fact would remain that, before turning the appellant out of its premises, the Club offered her safe transport home. This she refused and once she refused it, the Club could do nothing more to require her to take care. In particular, it could not lawfully detain her. If, as happened here, she left the Club and was injured, any carelessness of the Club in selling her liquor was not a cause of what happened. Why that is so is revealed by considering the allegation that the Club breached its duty by allowing her to leave in an intoxicated state.

Breach of a duty by allowing her to leave?

77 The appellant contended that the Club broke its duty by allowing her to leave its premises in an intoxicated state. It was said that the Club should have "counselled" her before she left, to impress upon her the dangers that might await her. Why that should be so when she was willingly in the company of two apparently sober men offering to look after her is far from clear. And exactly what form this counselling might usefully have taken is equally unclear.

78 The appellant was an adult woman whose only disability at the time she was turned out of the Club was the state of intoxication she had induced in herself. There was a thinly veiled suggestion that, because it seemed that the appellant's companions may have had sexual designs upon her, they were "unsafe" companions with whom to allow her to leave the Club. But what business would the Club have had to attempt to look after the moral wellbeing of the appellant?

79 It was suggested that the Club should have called the police[17]. But again it must be asked: to do what? If the police had been called they would have been bound (by s 67A of the *Registered Clubs Act*) to turn the appellant out of the Club's premises. But what else is it suggested that the police might have done? No satisfactory answer was given to this question. All that was said was that it could not be supposed that the police would have left her to fend for herself. That assumes that the appellant would have reacted differently to a suggestion that she take the courtesy bus or a taxi – differently, that is, from her crudely blunt response to the Club's manager.

80 Again, even if there were some duty to take reasonable care not to allow her to leave the premises except by a safe means of transport, the Club did not breach that duty. It took reasonable steps to make safe transport available to her.

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17 cf *Jordan House Ltd v Menow* [1974] SCR 239 at 247-248 per Laskin J.

Questions of duty of care not decided

81 In these circumstances it is neither necessary nor appropriate to decide any question about the existence of a duty of care. It is not necessary to do so for the reasons given earlier. It is not appropriate to do so because any duty identified would necessarily be articulated in a form divorced from facts said to enliven it. And, as the present case demonstrates, the articulation of a duty of care at a high level of abstraction either presents more questions than it answers, or is apt to mislead.

82 Here, as in so many other areas of the law of negligence, it is necessary to keep well in mind that the critical question is whether the negligence of the defendant was a cause of the plaintiff's injuries. The duty that must be found to have been broken is a duty to take reasonable care to avoid what *did* happen, not to avoid "damage" in some abstract and unformed sense. Thus asking whether it is careless to sell liquor to an obviously intoxicated patron may, when the question is cast in that abstract form, appear to invite an affirmative answer. And giving an affirmative answer may be thought to conduce to the careful and responsible service of a product which, if misused, can be dangerous. But as the events which give rise to this appellant's claim demonstrate, the simplicity of a question framed in the way described serves only to obscure the complexity of the problems that lie beneath it.

83 The appeal should be dismissed with costs.

84 KIRBY J. A problem with the consumption of alcohol, persisted with beyond small quantities, is that it has a capacity to destroy the ability of the consumer to make reasoned choices, to observe proper self-protection and to behave in a civil and rational way.

85 These facts are generally known to supplier and consumer alike. However, the consumer may be a person highly vulnerable to alcohol-induced conduct that is harmful and self-destructive. What for most members of the community is, if taken in prudent quantities, an enjoyable and relaxing pastime is for a small minority of consumers a highly dangerous and potentially lethal poison. Even for those who do not fall into the category of highly vulnerable people, alcohol, of its nature, has the capacity to affect adversely people with full faculties, when it is consumed to excess. Vulnerable people are not only those who drink to excess. Alcohol adversely affects many people in different ways.

86 A rational system of law will recognise these differentials. It will not allow suppliers, who have a commercial interest in supplying alcohol to consumers, to wash their hands of legal responsibility for the safety of those to whom the alcohol they supply becomes the cause of serious injuries. That is what the appellant alleges happened in her case.

Conclusions at trial and on appeal

87 The primary judge in the Supreme Court of New South Wales (Hulme J)[18] approached the contest between Mrs Cole (the appellant) and the respondent Club ("the Club") with the foregoing realities in mind. He found that the Club, with relevant statutory duties and with economic and physical control over the supply of alcohol to patrons on its premises, owed the appellant a duty of care in accordance with the common law of negligence. He concluded that the Club had breached its duty of care and was partially the cause of the serious injuries suffered by the appellant. Those injuries were a result of the appellant's disorientation on a public road 100 metres from the Club's premises soon after she had left those premises in a serious state of intoxication.

88 On the evidence proved in this case, the primary judge was entitled to reach the conclusions of fact and law that he did. The Court of Appeal was not warranted to disturb the judgment which the appellant recovered against the Club. This Court is not concerned with the issue of the liability of the driver of the motor vehicle that struck the appellant. However, the judgment at trial in favour of the appellant against the Club should be restored.

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18 *Cole v Lawrence* (2001) 33 MVR 159.

The Club owed the appellant a duty of care

89 Two central problems were said to stand in the way of recovery by the appellant. The first was the suggested absence of a duty of care owed in law to a person in the position of the appellant to ensure that she did not become so seriously intoxicated that she might be confronted with the foreseeable risks of the kind that befell her and, if she did become so intoxicated, to ensure that she was taken home or to some other safe place where she could recover further from the alcohol-induced intoxication before venturing beyond the Club's premises to circumstances potentially of great danger.

90 The reasons of Gummow and Hayne JJ ("the joint reasons") prefer to postpone resolution of the issue of the duty of care although hinting at difficulties which their Honours see in its availability[19]. The reasons of Gleeson CJ[20] and Callinan J[21] deny the existence of a duty of care. Their Honours' reasons are, with respect, replete with expressions reflecting notions of free will, individual choice and responsibility[22]. This is reinforced in the reasons of Callinan J by his Honour's references to the opinion of Heydon JA in the Court of Appeal from which the appeal comes[23]. Whatever difficulties free-will assumptions pose for the law in normal circumstances[24], such assumptions are dubious, need modification and may ultimately be invalidated having regard to the particular product which the Club sold or supplied to patrons such as the appellant, namely alcoholic drinks. The effect of that product can be to impair, and eventually to destroy, any such free will. This fact imposes clear responsibilities upon those who sell or supply the product in circumstances like the present to moderate the quantity of the supply; to supervise the persistent sale or supply to those affected; and to respond to, and ameliorate, the consequences of such sale or supply where it is clear that the recipient has consumed enough of the product to be in a temporary state of

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19 Joint reasons at [57], [59], [65]-[73].

20 Reasons of Gleeson CJ at [18].

21 Reasons of Callinan J at [125].

22 Reasons of Gleeson CJ at [13]-[14]; see also for an example the statement in the joint reasons at [78]: "The appellant was an adult woman ... [in a] state of intoxication she had *induced in herself.*" (emphasis added)

23 Reasons of Callinan J at [130] referring to *South Tweed Heads Rugby League Football Club Ltd v Cole* (2002) 55 NSWLR 113 at 115-116 [4]-[7].

24 See eg discussion of one such difficulty in Taylor, "Should Addiction to Drugs be a Mitigating Factor in Sentencing?", (2002) 26 *Criminal Law Journal* 324 citing *R v Smith* [1987] 1 SCR 1045 at 1053; *Lawrence* (1988) 10 Cr App R (S) 463.

inability to take proper care for his or her own safety. On the findings of the primary judge, such was the case of the appellant.

91 The law of tort exists not only to provide remedies for injured persons where that is fair and reasonable and consonant with legal principle. It also exists to set standards in society, to regulate wholly self-interested conduct and, so far as the law of negligence is concerned, to require the individual to act carefully in relation to a person who, in law, is a neighbour[25]. The Club had a commercial interest to supply alcohol to its members and their guests, including the appellant. Doing so tended to attract them to an early morning breakfast, to induce them to use profitable gambling facilities in the Club's premises and to encourage them to use the restaurant and other outlets where alcohol would continue to be purchased or supplied to the profit of the Club. As McHugh J points out in his reasons[26], with which I agree, the common law has long recognised that the occupier of premises owes a duty to take reasonable care for the safety of those who enter the premises. That duty arises from the occupation of premises. It extends to protection from injury from all of the activities on the premises, including, in registered premises such as the Club's, the sale of alcoholic drinks[27].

92 In such circumstances, to hold that the Club owed no duty of care by the standards of the common law of negligence, to patrons such as the appellant, is unrealistic. Such a patron was a person who, in the reasonable contemplation of the Club and its employees, was potentially vulnerable to harm as a result of its commercial activities. Such harm was reasonably foreseeable in the given circumstances. The appellant was within the proximity of the Club in a physical sense. The policy reasons, concerned with free will and personal autonomy, that might in other circumstances justify withholding the imposition of a duty of care are overridden, in the case of the Club, by the commercial interest it had in the presence of the appellant on its premises and the known propensity of the alcoholic product, made available there, to expose at least some individuals to the risk of serious harm.

93 With all respect to those with doubts or holding contrary views, I therefore have no hesitation in concluding that the Club owed the appellant a duty of care of the kind posited. There is much support for this proposition in Canada:

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25 *Donoghue v Stevenson* [1932] AC 562 at 580.

26 Reasons of McHugh J at [30].

27 Reasons of McHugh J at [31].

Jordan House Ltd v Menow[28] and *Stewart v Pettie*[29]. There are many decisions elsewhere that support the general proposition that a person in control of licensed premises owes a duty of care in negligence to take reasonable precautions in the circumstances not to contribute to a danger to others: *Chordas v Bryant (Wellington) Pty Ltd*[30] and *Munro v Porthkerry Park Holiday Estates Ltd*[31]. The withered view of community and legal neighbourhood propounded by Gleeson CJ and Callinan J is one that I would reject.

94 There is no reason for this Court to endorse the narrower legal principle for Australia. There is every reason for it to follow an approach similar to that taken in other jurisdictions[32]. The social and legal environment in Australia is similar to those countries where the duty has been upheld. This conclusion is also endorsed by the indications of the purposes of Parliament in the statutory provisions regulating control of, and standards in, registered licensed clubs in the State of New South Wales where the appellant's injuries occurred[33]. Although these provisions do not themselves give rise to a statutory cause of action (and none was alleged) they do shed light on the problems presented because they make plain the purpose of Parliament that intoxicated persons are not to be sold, or supplied with, alcohol on such club premises. Doing so is a criminal offence in proof of which the onus of establishing innocence is exceptionally placed on the club secretary, not the accuser.

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28 [1974] SCR 239.

29 [1995] 1 SCR 131; cf *Desmond v Cullen* (2001) 34 MVR 186. See also *Oxlade v Gosbridge Pty Ltd* unreported, New South Wales Court of Appeal, 18 December 1998 per Mason P; *Rosser v Vintage Nominees Pty Ltd* (1998) 20 SR (WA) 78; cf *Johns v Cosgrove* (1997) 27 MVR 110. There were particular features of these cases that do not exist in the present case and vice versa.

30 (1988) 20 FCR 91.

31 [1984] TLR 138 per Beldam J. See Orr, "Is an innkeeper her brother's keeper? The liability of alcohol servers", (1995) 3 *Torts Law Journal* 239; Solomon and Payne, "Alcohol Liability in Canada and Australia: Sell, Serve and Be Sued", (1996) 4 *Tort Law Review* 188. See also O'Halloran, "Social Host And Vendor Liability For Driving-Related Injuries Caused By Intoxicated Guests And Customers", (1987) *Annual Survey of American Law* 589.

32 Solomon and Payne, "Alcohol Liability in Canada and Australia: Sell, Serve and Be Sued", (1996) 4 *Tort Law Review* 188 at 189.

33 See reasons of Callinan J at [125], fn 46, [127] citing ss 44A and 67A of the *Registered Clubs Act* 1976 (NSW): see also reasons of Gleeson CJ at [16]; joint reasons at [74]-[75].

95 Statutory provisions of such a kind can only be explained by Parliament's recognition, and acceptance, of the special risks that selling, supplying or condoning the sale and supply of excessive quantities of alcohol to sometimes vulnerable patrons on such premises occasions to them and to others. The principles of the common law of negligence remain to be expressed in the context of these realistic statutory provisions. They reinforce the conclusion, which commonsense affirms, that the Club owed a duty of care to the appellant as claimed. In the circumstances of this case, they help to overcome the common law's usual reluctance to impose on strangers duties of affirmative action to take care of others. Here the appellant was not a legal stranger to the Club. The *Registered Clubs Act* 1976 (NSW) imposed duties in respect of her. To the appellant, the Club was, in law, a neighbour.

96 The Club, a registered purveyor of alcoholic drinks that began the day with a breakfast with the supply of free bottles of spumante in large quantities and thereafter tolerated the continued presence on its premises of a patron who became drunk, and who eventually was obviously drunk (drinking at one stage directly from a bottle of wine and acting in a disordered, sometimes indecent and even offensive manner), cannot say that it owed no duty of care to her. It cannot do so when soon after she left its premises the virtually inevitable motor accident occurred with serious injuries to her person.

97 There was no error in the conclusion of the primary judge on the duty issue. The Court of Appeal erred in disturbing his conclusion.

A breach of duty contributed to the appellant's damage

98 That leaves the issues of breach and causation. Once the duty of care is accepted, the breach of duty is clearly established because the Club had the right to control the conduct of the appellant on the Club's premises. This included in the supply of alcoholic drinks for her consumption, the termination of such supply and her ejection from the Club premises long before it became highly dangerous to do so[34]. The Club breached its duty long before any issue of causation arose to be decided[35]. The real possibility that the appellant would suffer injury, as she did, was clearly foreseeable in the circumstances.

99 Causation is the substantial issue in this appeal. Its resolution ultimately reduces to the question of whether the Club did enough by offering the appellant transport home in a "courtesy bus" or taxi at about 6.00pm on the day of her

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34 Reasons of McHugh J at [34].

35 cf reasons of McHugh J at [41].

injuries. Relevant to the decision on this issue is the intervention of two male New Zealander companions of the appellant who said they would "look after her". Was this sufficient? Did it sever the link between, on the one hand, the duty of care and the breach of that duty found by the trial judge and, on the other, his Honour's conclusion that the acts and omissions of the Club were partly the cause of the damage suffered by the appellant soon after she left the Club's premises?

100 I accept that the situation of the appellant at about 6.00pm on the day of her injuries presented the Club and its secretary/manager with a difficult situation. It was, however, one partly, even substantially, of their own making. What they were to do was governed by the circumstances then arising. Those circumstances included the very prolonged course of supply of alcohol to the appellant, one way or another, on the Club's premises following the spumante breakfast. The obvious state of intoxication of the appellant over a long interval and the profound effect this had on the appellant's intellectual and motor capacity – as well as the obvious risks she faced if she were left to her own devices on or near a public highway on leaving the Club's premises – made the possibility of an accident reasonably foreseeable in the circumstances of her condition.

101 By 5.30pm or 6.00pm on the day of the accident the secretary/manager of the Club saw the appellant in a condition which was described as "grossly intoxicated". At around 3pm, Mrs Pringle, wife of the secretary/manager, had refused to serve her and described her as unsteady on her feet. At 2.15pm to 2.30pm, the appellant's friend Mrs Hughes had described her as "totally inebriated" and "an embarrassment". This was not, therefore, a case of chance or unexpected intoxication at a late hour. It was an instance of prolonged and obvious drunkenness on the Club's premises over an extended period.

102 It is not adequate to respond with Sunday School horror to the fact that the appellant said to Mr Pringle "get fucked" when he told her, at last, at about 6.00pm, that she would have to leave the premises and offered her transport home. An object of the law applicable to this case, statutory and common law, is to prevent things coming to such a pass. If the appellant had by that hour, indeed much earlier, dropped her "ladylike" behaviour, this was precisely the outcome of serving her with, or permitting the sale or supply to her of, much more alcohol than it was safe for her to consume.

103 In his report received into evidence, Dr Starmer, an expert pharmacologist, explained features of such alcohol consumption that are largely within common knowledge. He summarised its elements:

> "Alcohol exerts its major effects on the structures of the brain which are responsible for balance and co-ordination. Alcohol also affects mental and cognitive ability (ie judgement, reasoning, memory). Alcohol reduces peripheral awareness as well as impairing speed and distance judgements. The ability to successfully divide attention between two or more inputs is

> significantly degraded at blood alcohol concentrations as low as 0.05g/100ml and impairment increases exponentially with rising blood alcohol concentration. Glare resistance is also reduced under alcohol and perspective is distorted. In many collisions involving alcohol-intoxicated pedestrians, although the pedestrian has been shown to have detected the presence of an oncoming vehicle, she has continued to cross the road. This has usually been attributed to an alcohol-induced increase of the time-intervals between detection, decision and action. Another feature common to many such collisions is an increase in uncertainty on the part of the intoxicated pedestrian. Often, the pedestrian realises her miscalculation and stops or hesitates just before the impact. If an avoidance strategy is decided upon, then the intoxicated pedestrian experiences other difficulties, in terms of decreased agility and lack of co-ordination. These deficits taken together with increased perception and reaction times, substantially reduce the chances of successfully avoiding an impact."

The proper operation of the law of tort

104 Either this Court accepts that the law imposes a duty of care on those in effective control in such circumstances (the Club and its employees) or it transfers responsibility solely to a person whose capacity to exercise responsibility had been repeatedly and seriously diminished over a very long time by the type of conditions that existed in the Club's premises, as described in the evidence. If responsibility – even partial – is imposed on the Club by the law of negligence a message is sent that control is not just a formal duty imposed on the Club and its officers by Parliament and by statutory offences unlikely to be prosecuted often. A holding of liability in negligence would reinforce such duties[36] by visiting civil consequences that would sound in direct liability to the injured, with a resulting increase in insurance premiums that might stimulate a desirable change of culture and conduct. The Club's eventual response to the appellant's conduct can be seen for what it was: an instance of too little, too late. By their decision, the majority of this Court tolerate and perpetuate this state of affairs. I dissent from their view. It is not the concept of the law of tort that I hold.

105 Some Australians find such drunkenness amusing and socially tolerable. Sometimes, in certain environments and some degrees, it may be so. But the picture portrayed in the case of the appellant's behaviour at the Club's premises is of a human being who eventually became profoundly affected by alcohol over an extremely long period, actually ill, and was effectively turned out of the Club's premises drunk, on the flimsy possibility that new-found male companions would "look after" her. Unsurprisingly, given her condition, they did not do so. Soon

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36 Young, "Dram Shop Liability: A Sobering Thought for Licensees", (1998) 18(1) *Proctor* 30 at 33.

after, she was wandering onto the highway where she was struck by a motor vehicle and seriously injured. This consequence was readily foreseeable if not inevitable. Certainly, it was one of a number of serious risks that it was open to the primary judge to conclude were reasonably foreseeable in the circumstances.

106 For those in the Club's premises who had a large (certainly the primary and also the statutory) responsibility for her state, what was offered was not enough. It was proposed far too late. The common law required more. The trial judge was right to so hold. The rejection of this appeal will reinforce indifference and belated and formal offers of transport by a club where proper standards of reasonable care require a significantly more prompt and higher standard of attention to the case of such a vulnerable individual. Until that higher standard is imposed by the law, including the common law of negligence, purveyors of alcoholic liquor will continue to gather significant profits with no substantial economic contribution to the occasional victims who are injured as a result, such as the appellant.

107 As a matter of principle, the result in this appeal is contrary to my view of the operation of the Australian common law of negligence. The case joins an increasing number of decisions where judgments of negligence in favour of plaintiffs at trial are taken away not by statutory deprivation but by appellate courts endorsed by this Court, despite the advantages the trial judge has in evaluating all of the evidence relevant to the multifunctional assessment of the existence of a duty of care and to the commonsense assessment of whether breach of that duty caused the plaintiff's damage[37].

108 By the standards of commonsense the Club, through its secretary/manager and employees who also had important statutory duties to observe, should have taken steps much earlier to prevent sale or supply of more alcohol to the appellant. The Club, the secretary/manager and the employees should have been more strict about it. If necessary, they should have called the police as the applicable legislation contemplates. Doing so would doubtless have put in motion a realistic and enforced procedure for taking the appellant home by transport supplied by the Club. That, in my view, is what the common law required, and should require, of a vendor of alcoholic drinks in circumstances such as these. The appellant was unlikely to have responded to the police as she did to the secretary/manager of the Club. Had she done so, I do not doubt that, at the least, the police would, properly, have taken her in hand, put her off the premises and insisted on her taking the proffered transport home. Clearly, this is what would once have happened in Australia as it happened elsewhere[38]. I do not see that the law today condones a

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37 Luntz, "Torts Turnaround Downunder", (2001) 1 *Oxford University Commonwealth Law Journal* 95; Stapleton, "The golden thread at the heart of tort law: Protection of the vulnerable", (2003) 24 *Australian Bar Review* 135.

38 cf *Jordan House Ltd v Menow* [1974] SCR 239 at 248.

lesser standard of care in our community for a person rendered substantially dependent on others for her physical safety, even her life, by the commercial operations of those with full lawful charge over the sale and supply of alcohol to vulnerable recipients.

109 Greater firmness on the part of the Club and its employees in handling the predicament to which the appellant had been brought was essential. Instead, the Club secretary/manager's position was one of weakness, indecision and ultimate inaction. This was conduct substantially in keeping with the sale and tolerated supply of alcohol to the appellant over a long day starting with breakfast and continuing until about 6.00pm. As to suggesting that the appellant remain on the premises until she was fit to travel in a world of fast-moving motor vehicles proceeding in the dark, the secretary/manager was asked:

> "Q. And you didn't think to ask the lady to remain until perhaps she became more composed?
>
> A. After the confrontation, I was involved in other duties and didn't really take notice again until after.
>
> Q. You were just anxious to get her off the premises?
>
> A. Basically, yes."

Conclusions and orders

110 The majority of this Court disagrees with my conclusion. However, in my opinion the expressed attitude of the Club's secretary/manager and the conduct and "blind eyes" of the other employees of the Club did not reach the standards of the common law. The Club was not a kindergarten. But it was not a place for substantial indifference to a person who became steadily, obviously and seriously intoxicated. Statute imposed, or implied, relevant duties on those in charge of the Club and its premises. And so did the common law. It was open to the primary judge to so conclude. The Court of Appeal erred in interfering in the judgment in favour of the appellant against the Club based on the trial judge's assessment.

111 The appeal should be allowed with costs. The orders of the Court of Appeal of the Supreme Court of New South Wales in pars (a), (d) and (e) should be set aside to the necessary extent. In place thereof, it should be ordered that the appeal against the judgment entered at trial against the respondent South Tweed Heads Rugby League Football Club Ltd be dismissed with costs.

112 CALLINAN J. Mrs Cole, the appellant, had worked in a buffet car on the railways, as a waitress in a restaurant on South Molle Island, in a nightclub for two periods, and at a tavern as a function manager at the Gold Coast. She was 45 years old at the time of the events with which this Court is concerned. It is inconceivable that by then, in 1994, she had not had ample opportunity to observe and come to understand the universal effects of the consumption of alcohol.

113 The appellant systematically and deliberately drank herself into a state of intoxication at or in the vicinity of the licensed premises of the first respondent ("the respondent"), starting at about 9.30am and continuing throughout the day of 26 June 1994. It is far from clear how much of the liquor that she drank during that day was supplied to her by the respondent.

114 The appellant spent some of the day at the premises talking to, and drinking with friends. For part of the time she played gambling games. Unsurprisingly, she could not account for her movements and activities at other times although she remembers, as the primary judge found, that "she had a very good time"[39]. Equally unsurprisingly, by one-thirty in the afternoon the appellant was manifesting to some people signs of her inebriation. Her friend Mrs Hughes said that as early as midday the appellant was drunk, carrying on and arguing, and her speech was "a bit funny". Mr Pringle, the manager of the respondent spoke to the appellant at about 5.30pm. He saw a bottle of wine on the table where she was seated and later described her as then being "very, very drunk". He thought that she was being held up by someone else. He said to her "You are affected by alcohol, I won't tolerate your behaviour, you will have to leave". Because Mr Pringle thought the appellant needed help to reach her home safely, he offered her the use of the club's courtesy bus and driver. The alternative of a taxi was offered, which again was a service provided by the respondent from time to time. The appellant's response to both offers was, as Mr Pringle recalled, "Get f.....". Mr Pringle told the appellant that he would not tolerate her behaviour. One of two Maori men who were then in the appellant's company told Mr Pringle to "leave it with [them] and [that he would] look after her". Within a matter of minutes the Maori men and the appellant left. Mr Pringle had already told the men in the group that because of their behaviour, they would not be served again. They did not however appear to him to be drunk.

115 The appellant must have consumed a very great quantity of alcoholic liquor. All of her consumption was entirely voluntary. Some time after she finished drinking the content of alcohol in her blood was 0.238. The evidence, contrary to the finding of the primary judge, did not establish that the respondent had supplied the appellant with any alcohol after about 12.30pm. In fact Mrs Pringle, who was assisting at the club, had refused to serve her at about 3.00pm.

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39 *Cole v Lawrence* (2001) 33 MVR 159 at 160 [5].

116 The appellant's last recollection of events before she was injured was of speaking to the driver of a taxi cab to tell him the address to which her friend should be taken, and of returning to the club to watch a football match in progress on a playing field in front of it. Her next recollection is of waking up in hospital in Brisbane.

117 A further sighting of the appellant, a very brief one, was made by Mrs Lawrence in the headlights of the motor vehicle that she was driving in a southerly direction along Fraser Drive in the vicinity of the respondent's premises at about 6.20pm in darkness. The appellant was walking towards her on Mrs Lawrence's side of the roadway but near the edge of the bitumen carriageway. The appellant was wearing dark clothing. Mrs Lawrence initially saw only her face. The vehicle struck the appellant. She suffered serious injuries.

118 The appellant sued Mrs Lawrence and the respondent in the Supreme Court of New South Wales[40]. The case was heard by Hulme J. In one passage in his judgment he described the appellant's conduct in walking on the roadway in this fashion[41]:

> "Thus, despite the almost unbelievable stupidity (at least for a sober person) of continuing to walk towards, or stand in the way of, a lighted oncoming car at night, it seems to me that the probabilities are that that is what the [appellant] did. Of course, it may be that it was a case of her just not moving off the carriage way in time and for enough time for the car to pass."

His Honour found both Mrs Lawrence and the respondent to be negligent. His conclusion in relation to the respondent was as follows[42]:

> "There can be no doubt that the supply of alcohol in the form of what I may call the 12.30 bottle and the later one, was a contributing cause of the injury she later suffered."

119 The primary judge apportioned liability for the appellant's injuries, as to the appellant herself 40 percent, and as to Mrs Lawrence and the respondent, 30 percent each[43].

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40 *Cole v Lawrence* (2001) 33 MVR 159.

41 *Cole v Lawrence* (2001) 33 MVR 159 at 167 [44].

42 *Cole v Lawrence* (2001) 33 MVR 159 at 170 [68].

43 *Cole v Lawrence* (2001) 33 MVR 159 at 173 [81].

120 Both Mrs Lawrence and the respondent successfully appealed to the Court of Appeal of New South Wales[44] (Heydon and Santow JJA and Ipp AJA) and in consequence, the appellant's action was dismissed with costs. As will appear, I agree with the decision of the Court of Appeal which I regard as an inevitable one.

121 The Court of Appeal held that when the appellant purchased a bottle of wine from the respondent at 12.30pm her state of intoxication would not have been known to the respondent's employees. Likewise, the evidence was not capable of establishing on the balance of probabilities that, after 12.30pm, the appellant bought alcohol from the respondent or that it supplied alcohol to her. The source of alcohol she acquired during the afternoon is a matter of speculation. Except for extraordinary cases, the law should not recognise a duty of care to protect persons from harm caused by intoxication following a deliberate and voluntary decision on their part to drink to excess. The voluntary act of drinking until intoxicated should be regarded as a deliberate act taken by a person exercising autonomy for which that person should carry personal responsibility in law. The respondent owed the appellant only the ordinary general duty of care owed by an occupier to a lawful entrant. Heydon JA, with Santow JA agreeing held that to extend the duty to the protection of patrons from self-induced harm caused by intoxication would subvert many other principles of law and statute which strike a balance between rights and obligations, and duties and freedoms[45].

The appeal to this Court

122 The appellant appeals to this Court against the exculpation by the Court of Appeal of the respondent only. The answer to the last of the appellant's grounds of appeal provides an answer to the whole of the appellant's appeal. That ground is:

> "that the Court of Appeal erred in holding that the first respondent's offer of safe transport to the appellant whilst intoxicated discharged any duty that the first respondent might have had to take reasonable steps for the appellant's safety."

123 It is convenient to deal with it immediately.

124 The appellant submits that the respondent was under a duty, either to attempt "to achieve a sobering up of the appellant and/or the actual sobering up of

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44 *South Tweed Heads Rugby League Football Club Ltd v Cole* (2002) 55 NSWLR 113.

45 *South Tweed Heads Rugby League Football Club Ltd v Cole* (2002) 55 NSWLR 113 at 116 [7].

the appellant ... [i]n effect, facilitating the regaining of composure by the appellant." It was said that:

> "Mr Pringle decided to avoid further confrontation rather than assist or facilitate the appellant regaining some composure. Assisting or facilitating the regaining of composure would have materially affected the appellant's ability to get home safely. It could have been achieved with a relative minimum of effort: ceasing service of alcohol, preventing consumption of alcohol, supplying non-alcoholic drinks and beverages and when some composure has been regained or some sobriety obtained, again offering transport to the appellant when she was not in a state where she had lost complete control and when a more reasoned and rational response was probable. Mr Pringle knew that the appellant's rudeness and rejection of his suggestion was similar to the conduct of 'most drunks' to 'get upset when you turn the grog off' and common experience informs that grossly intoxicated persons can be troublesome, disinhibited and non-compliant when compared to sober persons acting rationally."

125 Let me assume, contrary to what I would hold to be the case, that the respondent owed a duty of care of the kind suggested, to the appellant before and at about the time that she left its premises. There was no breach of such a duty. The notion that the appellant, as far gone and as offensively abusive as she was, would have been amenable to counselling, or simple restraint, or indeed to any measures intended to restore her composure, is fanciful. Forceful restraint was out of the question. No sensible person would ever remotely contemplate such a course, capable, as it would be, of leading to a physical altercation, an assault, and the possibility of criminal and civil proceedings in relation to it. The same consequences could equally flow from any attempt to induce the appellant to regain her sobriety in a room or other quiet place at the respondent's premises. As for the suggestion made in oral argument, that a police officer could and should have been called, these responses should be made. It is highly improbable that a heavily pressed police force would have had, or would have been likely if it did have them, to provide, sufficient personnel to enable a police officer or officers to make a timely and effective visit to the premises. And in the unlikely event that a police officer did make a timely call at the premises, it is equally unlikely that his or her official duty could have been discharged otherwise than by doing what the respondent itself did, that is, "turn [the appellant] out ... of the premises of the club"[46]. There is another complete answer to this ground of appeal. It is that the

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46 This was a requirement of s 67A of the *Registered Clubs Act* 1976 (NSW) which at the relevant time provided as follows:

> **"Removal of persons from premises of registered club**

(Footnote continues on next page)

appellant when she left did so voluntarily and apparently with a group of men. The men said that they would look after her. In those circumstances there was nothing that the respondent could do. There is no obligation upon anyone to engage in a futility.

126 Even assuming a relevant duty of care the respondent would have fully discharged it by doing what it did, offering the appellant the use of a courtesy bus, or a taxi.

127 Reference was made in argument by the appellant to s 44A of the *Registered Clubs Act* 1976 (NSW) which was as follows at the relevant time[47]:

Where a member of the police force is requested by the secretary or an employee of a registered club to turn out, or to assist in turning out, of the premises of the club any person –

(a) who is then intoxicated, violent, quarrelsome or disorderly;

(b) who, for the purposes of prostitution, engages or uses any part of the premises;

(c) whose presence on the premises renders the club or the secretary of the club liable to a penalty under this Act; or

(d) who hawks, peddles or sells any goods on the premises,

it is the duty of the member of the police force to comply with the request and he may, for that purpose, enter the premises and use such reasonable degree of force as may be necessary."

47 The section was amended in 1996 by the amendment of s 44A(3) and the insertion of s 44A(4). These sub-sections now provide:

"(3) If a person on the premises of a registered club is intoxicated, the secretary is taken to have permitted intoxication on the premises unless it is proved that the secretary and all employees selling or supplying liquor took the steps set out in subsection (4) or all other reasonable steps to prevent intoxication on the premises.

(4) For the purposes of subsection (3), the following are the relevant steps:

(a) asked the intoxicated person to leave the premises,

(b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,

(Footnote continues on next page)

"**Conduct on club premises**

44A (1) A secretary of a registered club who:

(a) permits intoxication on the club premises; or

(b) permits any indecent, violent or quarrelsome conduct on the club premises,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person who, in a registered club, sells or supplies liquor to an intoxicated person is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) If a person on the premises of a registered club is intoxicated, the secretary is taken to have permitted intoxication on the premises unless it is proved that the secretary and all employees selling or supplying liquor took all reasonable steps to prevent intoxication on the premises."

128 Although that section provides some indication of the nature of the responsibilities of clubs it was not suggested that it gave rise to any statutory causes of action. In any event, the respondent probably complied with the section by taking the step of asking the appellant to leave the premises. The evidence, even as to whether the respondent did permit the appellant to be intoxicated on the premises, certainly after 12.30pm, was to say the least obscure. The section does not assist the appellant in this case.

129 What I have so far said is sufficient to dispose of the appeal. Nonetheless I would wish to endorse fully and explicitly some of the propositions stated in the judgments of the Court of Appeal. I think this desirable not only because those propositions are correct, but also because the statement of them achieves a high degree of certainty with respect to the duty to customers of vendors of alcoholic liquors, the matter which excited the interest of the Court on the application for special leave.

(c) refused to serve the person any alcohol after becoming aware that the person was intoxicated."

130 I agree with these pronouncements by Heydon JA[48]:

"Ipp A-JA has identified several factors pointing decisively against the recognition of a duty of care owed by publicans not to serve customers whom they know will become or have become intoxicated in order to prevent the customers causing injury to themselves.

Underlying those factors are two matters of particular significance both for potential plaintiffs and for potential defendants.

One is that if the duty existed it might call for constant surveillance and investigation by publicans of the condition of customers. That process of surveillance and investigation might require publicans to direct occasional oral inquiries to customers. Inquiries of this kind would ordinarily be regarded as impertinent and invasive of privacy. Quite apart from the inflammatory effect of these activities on publican-customer relations and on good order in the hotel or club, the impact of these activities on the efficient operation of the businesses of publicans would 'contravene their freedom of action in a gross manner'.

The other significant matter is that if a customer reached a state of intoxication requiring that no further alcohol be served and the customer decided to depart, recognition of the duty of care in question might oblige publicans to restrain customers from departing until some guarantee of their safety after departure existed. The [appellant's] arguments in this case repeatedly stressed the proposition that the club was at fault in permitting the [appellant] to leave without ensuring that it was safe for her to do so. How are customers to be lawfully restrained? If customers are restrained by a threat of force, prima facie the torts of false imprisonment and of assault will have been committed. If actual force is used to restrain customers, prima facie the tort of battery will have been committed as well as the tort of false imprisonment. Further, the use of actual force can be a criminal offence: *Crimes Act* 1900, s 59 and s 61. It is a defence to these torts to prove lawful justification – reasonable and probable cause. However, the constitutional significance of the torts in question in protecting the liberties of citizens – they create, after all, important limitations on police power – means that 'lawful justifications' should not lightly be found independently of legislative sanction even outside the immediate police context. Subsections (1) and (3) of s 67A(1) of the *Registered Clubs Act* 1976 make it lawful for the secretary or an employee of a registered club to use whatever reasonable force is necessary to 'turn out' of a club intoxicated persons. But the legislation says nothing about

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48 *South Tweed Heads Rugby League Football Club Ltd v Cole* (2002) 55 NSWLR 113 at 115-116 [4]-[7].

> using reasonable force to keep intoxicated persons in pending the appearance of some guarantee for their safety after departure. In short, if the tort of negligence were extended as far as the [appellant] submitted, it would 'subvert many other principles of law, and statutory provisions, which strike a balance of rights and obligations, duties and freedoms'."

131 I am also of the opinion that in general – there may be some exceptional cases – vendors of products containing alcohol will not be liable in tort for the consequences of the voluntary excessive consumption of those products by the persons to whom the former have sold them. The risk begins when the first drink is taken and progressively increases with each further one. Everyone knows at the outset that if the consumption continues, a stage will be reached at which judgment and capacity to care for oneself will be impaired, and even ultimately destroyed entirely for at least a period.

132 It follows that I would disagree with any propositions to the contrary deducible from the Canadian cases referred to in argument: *Stewart v Pettie*[49] and *Jordan House Ltd v Menow*[50].

133 The appeal should be dismissed with costs.

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49 [1995] 1 SCR 131.

50 [1974] SCR 239.

Callinan J