

ClubsNSW – Initial Submission

Independent Review of the Impact of Liquor Law Reforms

Background

ALCOHOL CONSUMPTION TRENDS

Most Australians consume alcohol responsibly and in moderation; alcohol has always been part of our nation's culture of socialising and relaxation. Although there are popular perceptions that overall alcohol consumption has increased, or that young people are likely to abuse alcohol or experience violence from consumers of alcohol, this is not supported by the evidence.

The 2013 National Drug Strategy Household Survey found:

- Daily drinking declined between 2010 and 2013 (from 7.2% to 6.5%) and was at the lowest level since 1991. Rates fell for both males and females;
- Between 2010 and 2013, there was an increase in the proportion of people who had never consumed a full serve of alcohol (from 12.1% to 13.8%);
- Fewer people aged 12–17 are drinking alcohol; the proportion abstaining from alcohol increased significantly between 2010 and 2013 (from 64% to 72%);
- Younger people are continuing to delay starting drinking; in 2013, the age at which 14–24-year-olds first tried alcohol was 15.7 years, compared to 14.4 years in 1998.¹

Australian Bureau of Statistics figures also show that per capita alcohol consumption has decreased by more than 25 per cent, from 13.09 litres in 1974/75 to 9.7 litres in 2013/2014.²

ALCOHOL RELATED ANTISOCIAL BEHAVIOUR

Much attention is placed on the relationship between the availability of alcohol, consumption levels, and violent or antisocial behaviour linked to alcohol. Unfortunately, subjective reporting often restricts the proper treatment of alcohol issues.

Clubs and government have implemented evidence-based harm minimisation programs and education campaigns to reduce antisocial behaviour. Across NSW, incidents of antisocial behaviour declined from 7,119 in 2008 to 4,484 in 2014 – a reduction of 37% and the lowest on record since 1995, when the NSW Bureau of Crime Statistics & Research's (BOCSAR) record-keeping began.³

Consumed responsibly, alcohol is not associated with harm. The overwhelming majority of alcohol consumption does not lead to violence, nor do most violent episodes involve alcohol.

The relationship between alcohol consumption and violent behaviour is a complex interaction of biochemical, psychological, situational and cultural factors.⁴

When considering “alcohol-related violence”, it is important to acknowledge the fundamental tensions that lie in the term's definition. As highlighted by the UK Social Issues Research Centre, the term “alcohol related” sometimes implies a *direct* causal relationship between alcohol and certain behaviours. More often, the term is used as a *partial* causational factor, with alcohol interacting with

¹ Australian Institute of Health & Welfare, 2013, 'National Drug Strategy Household Survey'

² Australian Bureau of Statistics, 2013-14, 'Apparent Consumption of Alcohol, Australia' (4307.0.55.001)

³ NSW Bureau of Crime Statistics & Research, 1995-2014, sr15-13378

⁴ Social Issues Research Centre, 'Alcohol and Violence', accessed March 2016 at http://www.sirc.org/publik/alcohol_and_violence_1.html

individual, social and environmental factors to influence predisposed behaviour. However, “alcohol related” may also refer to the fact that a violent act simply involved one or more individual who happened to have consumed alcohol – regardless of whether the consumption was a contributing factor to the incident.⁵

In ClubsNSW’s experience, the latter definition is implicitly used by law enforcement agencies when recording incidents, which can make the interpretation of data problematic and demonises the product rather than focusing solutions on perpetrators of violence. In our view, a targeted approach would be more economical and effective, and allow consumers to experience greater freedoms.

ALL LICENSED PREMISES ARE NOT CREATED EQUAL: CLUBS ARE SAFER VENUES

Varied risk factors (some of which are beyond the licensee’s control) may contribute to the probability of a violent incident occurring in or around a given venue, including:

- staff organisation and training;
- security levels, including police visibility;
- quantity of alcohol sold on premises;
- entry and ejection practices for aggressive patrons;
- intoxication of patrons;
- amount of alcohol consumed prior to entering a venue;
- presence or absence of transport options;
- people remaining around the premises;
- demographic and ethnic mix, average age and gender of patrons;
- venue lighting and music/noise levels;
- entertainment; and
- time of day.

CLUBS’ STRONG SAFETY & COMPLIANCE RECORD

Statistics demonstrate unambiguously that clubs are the safest venues in NSW. The latest BOCSAR data shows that in inner Sydney, 719 assaults were recorded in 2014. Of these, only 9 (1.2%) were attributed to registered clubs. Pubs and hotels accounted for 519 incidents (72%); a further 187 (26%) occurred in on-premises locations such as nightclubs. This difference is particularly striking when one considers that most registered clubs trade seven days a week, while most nightclubs do not trade seven days and generate most of their patronage in a small amount of time – usually Friday, Saturday and Sunday evenings.

State-wide, there were only 730 incidents of violence linked by police to alcohol in a registered club in 2014 – an average of just 0.49 incidents per club and 27% lower than when BOCSAR began collecting such data in 1995. The last three years has seen the lowest number of incidents in clubs on record. By comparison, violent incidents linked to alcohol in hotels comprised over 70% of all incidents on licensed premises in 2014; when nightclub venues are included, this figure rises to over 81%. Hotels experience on average 1.83 incidents per hotel per year – more than three times the rate of clubs.

Clubs are wholly unrepresented on the Violent Venues list (Schedule 4); a club has not appeared on the list since July 2013.⁶

⁵ Social Issues Research Centre, 2002, ‘Counting the Cost: the measurement and recording of alcohol related violence and disorder’, London, United Kingdom

⁶ This is despite the fact that the scheme does not recognise or account for the number of visitors to each venue, meaning a large club with outstanding RSA management is treated as equal to a small nightclub with few patrons and chronic

Why are clubs safer?

Clubs attract all ages within the community and pride themselves on their **family-friendly** ethos. They also appeal particularly to **older patrons** – who are less likely to drink to excess or perpetrate antisocial behaviour.

Clubs generate **only around 16% of their total revenue** from beverage sales (including alcoholic and non-alcoholic);⁷ sale of alcohol is considered a complementary service. Clubs' **not-for-profit business model** and focus on providing **meals and entertainment** to members and guests removes their incentive to serve intoxicated people.

Clubs carefully **monitor and self-regulate** their activities to prohibit the excessive consumption of alcohol. Unlike other licensed venues, where a patron is essentially anonymous, **clubs' strict entry requirements and codes of conduct** – which members must follow or face disciplinary suspension or even expulsion – mean clubs can control patron behaviour more effectively than any other licensed premises. For example:

- **Richmond Club:** 'glassings' attract an automatic life ban, assault or possession of drugs a minimum 12 month suspension;
- **Epping Club:** any member or visitor involved in a violent incident is immediately suspended or barred; and
- **Oak Flats Bowling Club:** zero tolerance approach to antisocial, rude, argumentative, aggressive or violent behaviour, and heavy penalties for those found misbehaving, including being suspended for one month if heard swearing.

Unlike home or party settings, drinking in a club allows for **intervention by staff** to cut off supply when a patron shows signs of intoxication, preventing drinkers from drinking to hazardous levels.

Further, many clubs **go beyond their duty of care, providing courtesy bus services** which help reduce drink-driving, drink walking, and alcohol-related antisocial behaviour around their venues.

ClubsNSW believes the following measures have helped prevent antisocial behaviour in and around clubs:

- participation in local liquor accords;
- multi-venue barring schemes;
- CCTV security;
- demanding personal responsibility through disciplinary action, including potential membership suspension;
- mandatory RSA training and refresher courses for staff;
- upgrading lighting and visibility;
- employment of security personnel and/or RSA marshals;
- signage displaying penalties for RSA breaches;
- targeted restrictions, relevant to specific local risks – such as lockouts, takeaway purchase limits or “no shots” rules;
- banning night clubs; and
- provision of discounted food, water and non-alcoholic beverages.

alcohol related problems. For example, a club attended by 40,000 people each week can be given the same rating as a nightclub with 1,000 weekly patrons, ignoring the scale of the club's attendance.

⁷ KPMG, 2012, 'NSW Club Census 2011: Report on the economic and social contribution of registered clubs in NSW', Sydney, Australia

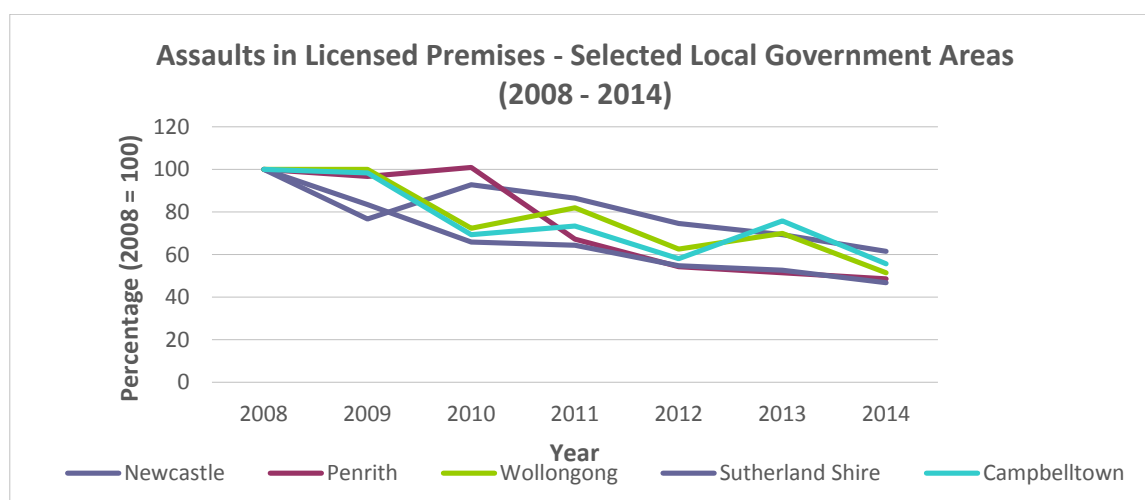
1. Impacts of the 1:30 am lock out and 3am cessation of liquor sales

Nineteen clubs are licensed within the ‘lockout zone’ (see list and map, Appendix 1). The majority of these clubs close by 1:30am and have therefore been unaffected by the lockout and cessation of liquor sales. (However, several venues reduced their trading hours to minimise licence fees.)

Despite their location, these clubs – and the industry broadly – have an impressive record of safety, as outlined above.

Regulation needs to be cost-effective, supported by evidence, and responsive to local circumstances. There may be a case for restrictions in Sydney’s CBD and Kings Cross, but there is no argument whatsoever for clubs to be treated the same as other venues. It should be remembered that the *Liquor Act 2007* already contains provisions that enable the regulator to impose restrictions for *specific* licensed premises on a *case-by-case* basis.

It is also important to note that many LGAs across NSW have achieved consistent and significant reductions in assaults linked to alcohol, without needing to impose lockouts. Assaults in Wollongong fell by 49% between 2008 and 2014; in Penrith, 51%; in the Sutherland Shire, 53%; and in Campbelltown, 44%.



Clubs in Sydney are already subject to extensive harm minimisation-oriented trading conditions (see Appendix 2). These conditions place most of the onus on venues, create a significant and costly compliance burden, and inconvenience the vast majority of patrons who are able to enjoy venues in a healthy way. ClubsNSW considers that future regulation and law enforcement needs to better balance the responsibility for safety between venues and individuals. Patrons currently bear little responsibility for inappropriate behaviour unless it eventuates in a criminal incident, while venues face significant costs and risks over even minor breaches.

Any strategy to address antisocial behaviour must also address illicit drug use. In light of the clear links between crystal methamphetamine (“ice”) and violent behaviour,⁸ ClubsNSW supports mandatory drug testing of violent offenders. However, if an offender is found to have drugs in

⁸ The use of ice among injecting drug users has jumped by 52% in the past 10 years and 93% of survey respondents in NSW found it “easy” or “very easy” to obtain - Stafford, J. and Burns, L. (2015). Australian Drug Trends 2014. Findings from the Illicit Drug Reporting System (IDRS), Australian Drug Trend Series. No. 127, Sydney, National Drug and Alcohol Research Centre, UNSW Australia

A 2015 Federal Government study of voluntarily-submitted urine samples found 61% of adults in police custody in Kings Cross had amphetamines in their system - Australian Institute of Criminology, 31 August 2015, ‘Drug use monitoring in Australia: 2013–14 report on drug use among police detainees’

his/her system, this should effectively ‘override’ any alcohol consumed, and there should be no regulatory consequence for the venue (as a strike, under the Schedule 4 Violent Venues list, or otherwise), unless there is evidence that the venue was aware of the patron consuming drugs and took no action.

ClubsNSW is also aware of calls for the mandatory introduction of ID scanners in venues. Clubs across the state are already subject to strict sign-in rules, requiring photo identification to be scanned or sighted and personal details recorded. Mandatory ID scanners would therefore be largely redundant in clubs. However, ClubsNSW notes that the cost of installing and maintaining ID scanners is significant; a mandatory requirement for scanners at each entry point will therefore impose a substantial cost on clubs and/or require the closure of certain entrances as a cost-saving measure – which may then cause safety issues.

CASINO LOCKOUT EXEMPTION SHOULD BE REVIEWED

The Star’s current, and Barangaroo’s future, exemption from the lockout laws should be reassessed. BOCSAR figures show:

- Alcohol-related, non-domestic assaults in Pyrmont increased by more than 88.3% for the 12 months from April 2014 – March 2015;
- The number of assaults at the Casino rose to 74 between April 2014 – March 2015, compared to 20 from April 2013 – March 2014 – making The Star the most violent venue in NSW, with more than three times as many violent incidents as The Ivy (23) in 2014; and
- Between February and September 2014, the number of assaults at The Star averaged 6.3 per month, whereas for the same period in 2013 it averaged 3.5 per month.⁹

It has been argued that The Star is excluded from the lockout because of its high patronage. However, in the face of this high incidence of violent behaviour, it seems unreasonable that the Casino is effectively given preferential treatment. Clubs have not appeared on the Violent Venues list since 2013, demonstrating that we can achieve excellent responsible service of alcohol even with high patronage levels – an important contrast to the Star Casino.

Numerous long-established venues in the Sydney CBD, such as the NSW Leagues Club and the Mandarin Club, have closed in the last decade due to unsustainable competition from other venues, especially the Casino, which now generates 27% of its revenue from electronic gaming. The exclusion of the Casino from the lockout laws and the opening of the Crown Casino at Barangaroo will only increase this competition, possibly leading to further closures of clubs.

Economic contribution of clubs

Clubs are important engines of economic activity and job creation, generating significant economic flow-on benefits and acting as catalysts for economic growth, especially in regional areas. Registered clubs’ considerable contribution to the NSW economy includes:

- Annual revenues of approximately \$5.0 billion;
- Employing approximately 41,300 people – including over 20,000 in rural/regional NSW;
- Value added contribution (i.e. the value of production less the value of intermediate goods used in production) of \$3.2 billion, the equivalent of 0.7% of NSW Gross State Product; and
- Over \$100 million in cash and in-kind support directly to their communities.¹⁰

⁹ NSW Bureau of Crime Statistics & Research, ‘Crime & Justice Bulletin April 2015: Lockouts and last drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia’, <http://www.bocsar.nsw.gov.au/Documents/CJB/CJB183.pdf>

¹⁰ KPMG Club Census 2011

THE FUTURE: ENSURING THE LOCKOUTS ACHIEVE THEIR AIMS

The lockout laws were introduced in response to a period of highly-publicised, escalating antisocial behaviour in Kings Cross, and growing community expectation that the trend be addressed at a regulatory level. The subsequent drop in assaults in the area would appear to support the appropriateness of the laws in that area¹¹ – but the issues that precipitated them were isolated to that very specific location. Other geographic regions in NSW simply do not have the same challenges as Kings Cross.

It is clear that a minority of hospitality industry participants do not follow responsible service of alcohol practices. However, as the BOCSAR statistics prove, this is demonstrably not the case with NSW clubs, which have an outstanding safety record over the last decade both in regional areas and in metropolitan Sydney.¹²

There is no evidence that supports a broader, statewide rollout of lockouts or other restrictions.

ClubsNSW supports a process whereby individual venues can apply for exemptions from the lockouts, and advocates that lockouts should not apply to club members.

¹¹ Menendez P., Weatherburn D., Kypri K., and Fitzgerald J. in NSW BOCSAR (2015), Lockouts and Last Drinks: The impact of the January 2014 Liquor licence reforms on assaults in NSW, Australia (in Crime and Justice Bulletin Number 183, BOCSAR)

¹² NSW Bureau of Crime Statistics and Research, reference jh12-10558

2. Impacts of 10pm takeaway liquor restrictions

While most clubs consider the sale of takeaway liquor to be an ancillary business, ClubsNSW questions whether there is any evidence that the 10pm restriction has resulted in reduced incidence of alcohol-related harm or antisocial behaviour.

ClubsNSW notes that the restriction has proven to be a frustrating inconvenience for club members – for example, when a member wishes to purchase a bottle of wine to take home after an evening in the club.

ClubsNSW considers that the Government should reassess whether a blanket ban is appropriate, and that it consider removing the restrictions from clubs (and any other venue without a history of alcohol-related incidents).

3. Periodic licensing system

ClubsNSW believes effective and well-considered regulation results from evidence-based policy. On this basis we believe the risk-based periodic licensing system should be levied specifically and exclusively upon CBD venues which are deemed “troublesome” and require a higher level of enforcement/policing.

The “after hours” levy should not be levied state-wide.

Since the 2014-15 financial year, clubs have been subject to an annual liquor licensing fee, now set at \$510, with additional fees imposed for clubs trading after midnight – of \$2,500 up to 1:30am or of \$5,000 up to 5am.

This is an unnecessary and unfair impost. Prior to periodic licensing, every club in NSW had an effective 24/7 trading authorisation unless it was restricted as a result of its DA. This did not cause clubs to become hotspots of violence or nuisance. It is important to note that even though hundreds of clubs in NSW are open past midnight at least one night per week, none of these features on the violent venues list. These clubs are centres of excellence in responsible service of alcohol, risk management and incident response. A number of clubs have altered their trading hours to avoid paying the “past midnight” levy, reducing local amenity and affecting long-term club viability.

The after-hours levy provides a disincentive to clubs to open beyond midnight, even when it is demanded by the community. Perversely, this may actually draw more people to problem areas such as Kings Cross or Pyrmont. If a suburban club is enabled and encouraged to open longer hours, enabling it to provide a vibrant mix of entertainment, patrons are less likely to travel into the city for a ‘big night out’. While ClubsNSW notes the Government’s creation of an exemption for clubs trading in small towns with populations under 1,000, it is our contention that clubs in larger towns and suburban areas should also be exempt.

While a risk loading on the basis of compliance history is reasonable, it is simply unfair for clubs and other venues to be charged a higher licence fee simply on the basis of their opening hours. There is no evidence to support that a club opening past midnight is associated with either increased risk or compliance costs for Government.

INCENTIVISING COMPLIANCE

BOCSAR statistics clearly show a small number of licensed premises are responsible for a disproportionate amount of incidents of antisocial behaviour linked to alcohol. NSW’s response must target the sources of the problem, not whole geographical areas or industry sectors. Registered clubs with proven reputations for outstanding safety should not be targeted or forced to comply with a uniform set of measures because a small number of other venues fail to meet legislative and community standards.

Liquor regulation neither acknowledges that some types of venues (such as clubs) are safer than others (hotels and nightclubs), nor rewards excellent compliance – making liquor regulation a big stick, with no carrot.

ClubsNSW recommends an approach whereby strong compliance is rewarded. While problematic venues should be subject to higher licensing fees (and other case-by-case restrictions), those venues with no history of liquor licence breaches or antisocial behaviour should be rewarded with a reduction in annual risk based licensing fees.

RESOLVING INCONSISTENCY AND COMPLEXITY IN REGULATION

Clubs are subject to increasingly convoluted layers of liquor legislation and regulation, overlapping and duplicating across multiple regulators including councils, police and Liquor & Gaming; this complexity reduces the effectiveness of the regulator and regulatory framework.

Licensees need clear, consistent rules to assist them to achieve best practice and provide safe venues. Allowing an unduly complex system to continue allows licensees that consistently do the wrong thing to continue with bad habits, and punishes operators who strive to operate correctly.

Clubs must currently meet obligations imposed by:

- Responsible Service of Alcohol and Workplace Health & Safety legislation;
- Risk Based Licensing;
- NSW CBD and Kings Cross Entertainment Precinct Lock Out Laws;
- The Three Strikes Disciplinary Scheme; and
- Violent Venues list.

Accompanied by the recent changes to ILGA and OLGR, operators find it increasingly difficult to navigate the system and keep abreast of the rules.

ClubsNSW believes any broader extension of the periodic licensing system would be ineffective in addressing the numerous individual, environmental, social and cultural factors associated with antisocial behaviour linked to alcohol.

LIVE MUSIC IN CLUBS

Considerable attention has been turned to the impact of the lockout laws and other restrictions on live music in NSW venues.

Clubs have historically been strong supporters of live music. A 2011 Ernst & Young/APRA study of live music found that 703 clubs across NSW – more than half the industry – are licensed to provide live music. This accounts for 54% of the 1,296 live music providers in NSW, while hotels comprise 37.8% and nightclubs account for just 0.4% of the state's live music venues.¹³

Across Australia, clubs were the venue for 103,592 live music performances in the 2009-10 financial year, with 12.9 million tickets sold. These performances generated \$300 million in net revenue and payment of over \$100 million to performers.

Clubs usually present live music during the day or in the evening. Some venues host an occasional concert while others provide live entertainment 7 days per week. Larger venues that open longer hours are more likely to host live music, but performances are typically finished before midnight. ClubsNSW is unaware of any evidence that the lockouts have damaged the hosting of live music; any harm would be the exception not the norm.

¹³ Ernst & Young for the Australasian Performing Rights Association, 2011, 'Economic contribution of the venue-based live music industry in Australia'

Conclusion

ClubsNSW believes all liquor regulation needs to be clear, concise and evidence-based, and meet the community's needs.

ClubsNSW would like to see a consistent, easily navigated system of regulation, which supports licensees in their efforts to do the right thing.

ClubsNSW does not support knee-jerk measures such as a state-wide wind-back of trading hours, a moratorium on late-night trading, or the imposition of a broader risk-based liquor licensing system.

A one-size-fits-all scheme is ineffective unless applied to a specific region with a common issue. The way in which individual licensed premises are run is the most important factor in reducing or increasing violent or antisocial behaviour on or around those premises.

While it is clear that the incidence rate of antisocial behaviour linked to alcohol is more prominent in certain licensed premises types, the issue must be addressed with targeted action, not socially regressive whole-of-industry measures. Regulation and enforcement should target only the licensed premises which have repeated serious incidents of violence or other antisocial behaviour, and consistently fail to mitigate the future risk of such incidents.

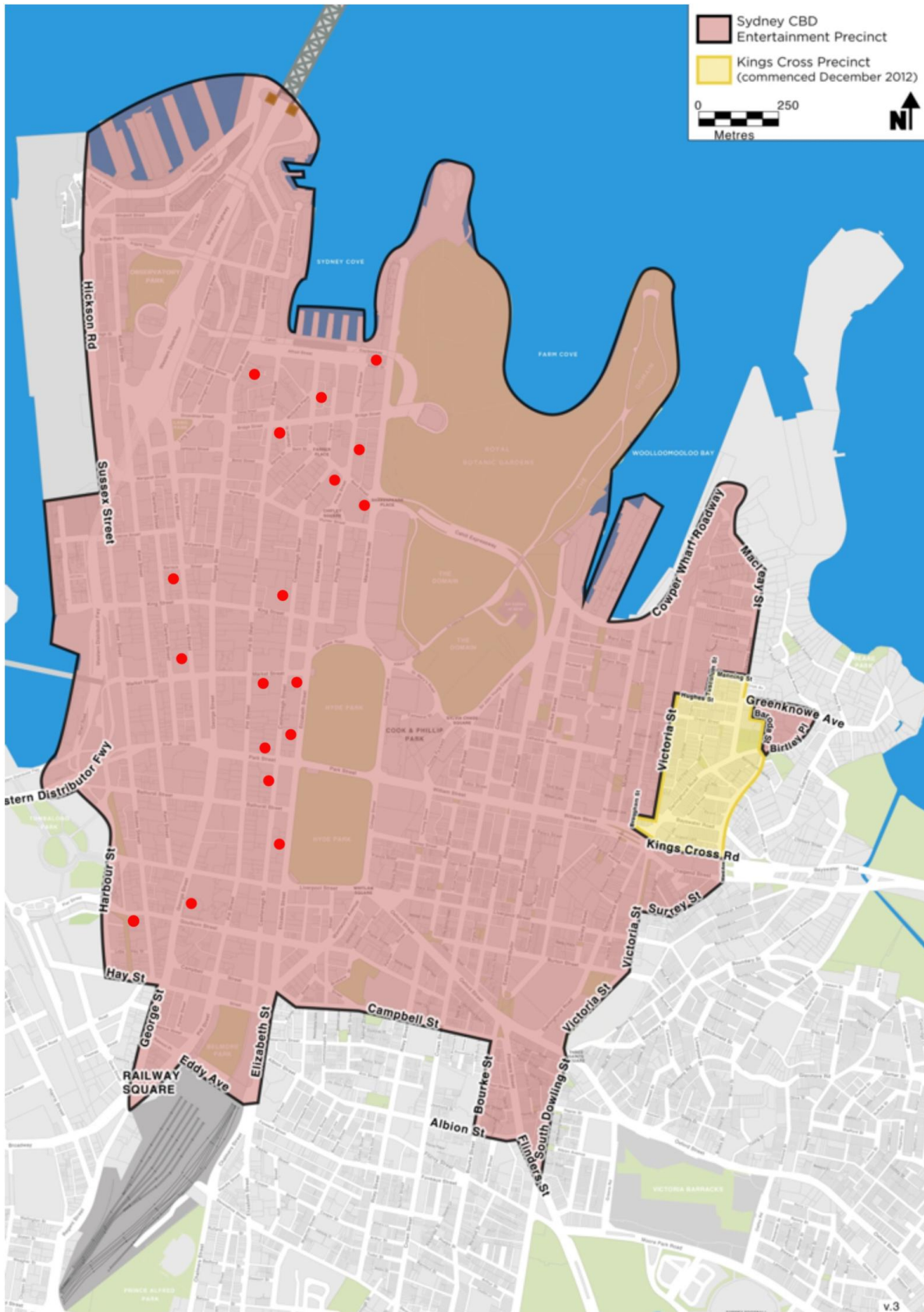
Failing to penalise those venues, while simultaneously conducting enforcement activities and increasing the cost of trading in small venues without a history of alcohol incidents, only undermines the credibility of the scheme.

The overwhelming majority of alcohol consumption does not lead to violence, but is conducted responsibly and is an accepted part of Australia's social fabric.

Clubs are widely recognised as safe, family friendly, member-based venues, supported by official data from BOCSAR that shows that levels of violent behaviour linked to alcohol in clubs is at its lowest rate on record.

Registered clubs have a proven reputation for outstanding safety. It is incongruous that our venues should be forced to comply with a uniform set of measures that do not address any of their specific safety concerns. ClubsNSW recommends that clubs be excluded from any further restrictions to be imposed, in recognition of their unique social and economic contribution as well as their proven low incidences of alcohol related antisocial behaviour.

APPENDIX 1: Location of operating clubs in “lock-out” zone



CLUB	ADDRESS	WALKING DISTANCE TO CASINO
Castlereagh Club (Catholic Club Limited)	199 Castlereagh Street	1.8km
Australian Club	165 Macquarie Street	2.3km
Bowlers Club of NSW Ltd	95-99 York Street	1.4km
Chinese Cultural Club	25-29 Dixon Street	1.7km
City of Sydney RSL & Community Club Limited	565 George Street	1.7km
City Tattersalls Club	194 Pitt St	1.5km
Combined Services RSL Club Co-operative Ltd	5-7 Barrack Street	1.5km
CTA Business Club Ltd	19-29 Martin Place	1.9km
Gallipoli Memorial Club Ltd	12 Loftus Street	2.5km
Hellenic Club Ltd	L 2 251 Elizabeth St	2.0km
NSW Masonic Club	169 Castlereagh Street	1.8km
Royal Automobile Club of Australia	89-91 Macquarie Street	2.7km
The Royal Exchange of Sydney	1 Gresham Street	2.7km
Rugby Club Ltd	Off 31 Pitt St	2.4km
Tattersalls Club	181 Elizabeth St	1.8km
The Queen's Club Limited	137 Elizabeth St	1.7km
Union, University & Schools Club of Sydney	25 Bent St	2.3km
Union, University & Schools Club of Sydney (Philip St)	60 Philip Street	2.4km

APPENDIX 2

Below are some of the conditions applying licensed venues in the CBD as part of the Sydney CBD and Kings Cross Plans of Management.

There is no evidence that these measures have contributed in any way to reduce antisocial behaviour in clubs, but exemplify the weight of red tape and compliance burdens on clubs and other venues.

The following measures apply to all venues in the CBD and Kings Cross, irrespective of their compliance history.

New drink restrictions for all venues every night after midnight:

- No shots, slammers, shooters or bombs;
- No doubles (does not apply to genuine cocktails listed on a cocktail menu);
- No ready-to-drink packaged beverages with an alcohol by volume content exceeding 5 per cent;
- Drink sales limited to 4 per patron at a time;
- After 2am, drink sales are limited to two per patron at a time.

Restrictions on drink promotions:

- Venues are restricted from promoting high-risk drinks, including promotion by way of drink cards, flyers, vouchers, social media, website, print media or spruiking.

Incident registers:

- Venues are required to maintain an incident register at all times to record incidents involving violence and/or anti-social behaviour.

The following additional measures apply to venues designated 'high-risk'; ClubsNSW is unaware of any club being designated as such.

- **Glass vessels** prohibited after midnight in any high-risk venue where there is evidence of violence, as designated by the Secretary of NSW Trade and Investment; and
- **RSA Marshals** to be employed at high-risk periods to ensure enforcement of the responsible service of alcohol, in any high-risk venue where there is evidence of violence or intoxication, as designated by the Secretary of NSW Trade and Investment.