

JOINT SUBMISSION
to Hon. IDF Callinan AC QC

INDEPENDENT REVIEW
NSW LIQUOR ACT 2007
LIQUOR AMENDMENT ACT 2014

1.30AM LOCKOUTS
3AM CEASE SERVICE PROVISIONS

Coalition of City of Sydney Liquor Accords

ABOUT CITY OF SYDNEY LIQUOR ACCORDS

All City of Sydney-based Liquor Accords are non-profit industry bodies constituted in Accordance with Part 8 of the Liquor Act 2007 representing licensed premises within the Sydney LGA. Our purpose is to liaise with key industry stakeholders to pro-actively manage and develop strategies to reduce alcohol related crime and aggressive behaviour in our respective precincts.

Boundary Area for the Accord's

The Coalition of City Liquor Accords encompass the Sydney CBD Entertainment Precinct and the Kings Cross Precinct as defined in the Sydney and Kings Cross Entertainment Precincts Plan of Management.

Who we Represent

The City of Sydney Accords represent the following licence types in the Sydney CBD and Kings Cross Precinct.

	Sydney CBD Precinct	Kings Cross Precinct	Combined
Licence Type	Number of licences	Number of licences	Total
Hotels	200	15	215
Small Bar	20	0	20
Registered clubs	19	0	19
Packaged liquor licences	59	5	64
Producer / wholesaler	38	2	40
Limited Licences	4	0	4
On premise licences	783	79	862
TOTAL	1123	101	1224

Our Submission

The City Accord Co-ordinators welcome the opportunity to provide a submission to the review and, in this submission, provide recommendations that we have agreed upon on a joint basis. We will submit individual submissions relative to our own areas, as needed.

Whilst the Review is to consider the impacts of the 1.30am lock out and 3am cease service provisions, it must be noted that they form part of a suite of measures implemented via the CBD and Kings Cross Plan of Management via special licence conditions.

Special Licence Conditions that apply to the CBD and Kings Cross Precincts:

- 1.30am lockout and 3am last drinks requirement
- Round the clock incident registers
- Crime scene preservation and notification of assaults to police
- A ban on high-risk drink promotions
- No glass after midnight in venues with a history of violence
- Exclusion of the wearing of Outlaw Motorcycle Gang colours or insignia
- Ban on certain drinks during late trading
- Per-person drink sale limits during late trading

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1.30am lockout

The 1.30am lockout is a blunt instrument that discourages patron migration, reduces foot traffic and has had reportedly negative displacement to other precincts in or close to the CBD and Kings Cross Precincts.

If no displacement to other precincts can be proved in significant numbers, lockouts simply lock potential patrons from venues and force them onto the streets and footpaths, increasing unsupervised numbers on the streets and the potential for aggression.

Any claims that the 1.30am lock-out law has-reduced the incidence of assault in the Kings Cross and CBD Entertainment Precincts must be compared against the greatly reduced number of people visiting both areas. Given the reduction in trading hours after 3am at previously late night venues, it would be a calamity if the assault rate had not significantly and correspondingly reduced.

Venue Entertainment

We understand that representatives of the live music industry will lodge a submission however from liaison with our members we can report that the restriction of the 1.30am lockout has been detrimental to the provision of entertainment in the CBD and Kings Cross.

Door charges and bar takings are both significant revenue sources to pay entertainers and for the staging of live and electronic music and were formerly a revenue source up until closing time. Now, due to the lock-out, door charges can only be made until 1.30am and sales stop at 3am so both revenue sources have dwindled to be almost non-existent.

We understand from the live music industry that there has been at least a 40 per cent reduction in door fees alone across the CBD and Kings Cross. This reduction has resulted in venues reducing the number of performance artists in venues and is not in the interest of a vibrant and progressive entertainment offering, one which existed prior to the lockouts being implemented.

New Years Eve

Lockouts were not in force for the 2015 & 2016 New Year's Eves. These nights were correctly treated as major events in a planning and operational sense. There were sufficient police and transportation services on those nights with positive results achieved over both years and a low incident level.

If the same attention was given to each Friday and Saturday night (and the Sundays of long weekends) and the influx of people into the city on these nights was appropriately treated as a major event, then there would be no need for lock-outs.

Recommendation 1

The City Accords recommend that lockouts be removed as a "One Size Fits all Policy" and that a lockout be imposed on a premise under Schedule 4, Level 1 of the Liquor Act, if it has a proven history of on-premise violence.

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3am Cease Service Provision

The introduction of the 3am cease service provision has been a major contributor to a reduction in alcohol fuelled violence, our understanding from many years reviewing assault rates with NSW Police at Accord meetings is that the most violent assaults historically occurred in the 3am and 6am time period. Further studies by leading Australian and International academics also point to the reduction in trading hours and not the lock outs as being the most effective evidence based result. Whilst the CBD and Kings Cross had venues that traded beyond 3am and some exercised 24-hour trading, we would like to point out that it is the cease service which has actually altered patron behaviour.

In Kings Cross after the implementation of Stage One of the Kings Cross Plan of Management late trading venues had to cease service 1 hour prior to their approved operating times, this meant the majority of late trading venues ceased service at 4am and were not able to re-commence service until 5am or approved hours under their development consent. The reduction in on-premise assaults in year one between January 2013 and December 2013 was 21% on an already reducing scale for Kings Cross and was viewed by the operators as a success.

City Accords are supportive of the cease service provisions however believe that dependent on a venue's compliance history that venues should be able to trade to 4am, subject to satisfying the regulatory bodies that they have sufficient strategies and staff training in place via venue plans of management to suitably manage the later trading time. We believe that this would provide a more staggered approach to the availability of late night transport and be better aligned to the commencement of the train network which re-commences after 5am in the City of Sydney and further provide increased entertainment options for patrons and assist in decreasing patron migration to other local suburbs that do not have the infrastructure in place to manage increased crowds.

We also point out that the peak anti-social behaviour incidents on Saturday occurred at 3am, which coincides with last drinks orders and closing times for the many venues. The closing time at 3am spills many patrons into the public domain, all seeking transport solutions at the same time. Further options for later trading venues will in our opinion take some pressure off the 3am time period, which also coincides with the taxi-changeover period.

Recommendation 2

The City Accords recommend that venues are able to apply for an extension to the current cease provision of 3am to a 4am cease service via an exemption application to Liquor and Gaming NSW which is subject to satisfying sufficient strategies are in place to mitigate risks associated in the late trading period, providing staggered closing times and easing pressure on late night transport options.

Periodic liquor Licence Fee Scheme

The City Accords understand that the scheme was designed to ensure that licensed premises make a fair and reasonable contribution to the cost of regulating the liquor industry and that annual fees collected would go toward increasing the numbers of compliance officers and toward the costs of maintaining and enforcing industry standards.

Whilst our members have generally accepted the introduction of the base fee costs for each licence category we have received many questions and strong objections to additional risk based loadings, late trading loading, compliance history risk loading, location risk loading and patron capacity risk loading.

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The introduction of the fee has come at a time when many late trading venues in particular have reduced income and turnover because of the special licence conditions implemented in the CBD and Kings Cross, namely reduced trading hours, limited entry times and decreased patron visitation.

Late trading loading

- Loading \$2500 between midnight and 1.30am
- Loading \$5000 after 1.30am

City Accord members have indicated that the late night loading should, if it remains, be one fee and consideration be given to a mechanism that would allow it to be applied to any business (not only licensed premises) that trades after 10pm, given that NSW BOCSAR data indicates risk is at the highest level between 10pm and 5am on Friday and Saturday nights.

Recommendation 3

The late night loading fee should be broader based for any business that trades after 10pm in accordance with the risk data from NSW BOCSAR and that revenue raised from any late trading loading be specifically allocated to providing a visible police presence on the streets in the late trading areas especially given that NSW BOCSAR data reports significantly higher assault rates in the public domain than on licensed premises.

Compliance History Risk Loading

The compliance history risk loading places an unfair and onerous cost burden to premises with the impost of \$3,000 for one offence, \$6,000 for two offences and \$9,000 for three offences as at the annual fee assessment date of 15 March. If venues have an offence they already pay a minimum penalty notice fee of \$1100 or up to a maximum \$11000 per offence. City Accords do not support the level of risk loading structure however, if it is to remain, recommend that the risk loading is per the current Liquor Act fine base and the risk loading is a maximum of \$1100 per offence.

We also recommend that the compliance history risk loading is only applied if the offence relates to serious breaches of the Liquor Act and not breaches of a minor nature that have nil effect on the safety of patrons.

Recommendation 4

City Accords recommend that the maximum compliance risk loading fee be \$1100 and only be applied for designated serious breaches of the Liquor Act and not for minor offences.

Prescribed Precinct location risk loading

The further impost of a \$2,000 risk loading applying to the CBD and Kings Cross precincts if a compliance history risk loading is incurred is not supported by City Accords, we view this as a simply gouging additional fees from CBD and Kings Cross licensed venues which does nothing to assist in reducing alcohol related crime.

Patron Capacity Risk Loading

The patron capacity risk loading is not supported by City Accords. It is how a licensed venue is managed, not the capacity which is the risk. That a minor breach may increase costs to the venue dependent upon capacity of up to \$8,000 is not fair or reasonable. All the additional potential cost burdens add expense to venues, whether they are small, medium or large with the end cost having to be at some stage passed on to the patrons, it simply drives costs up for food and beverage.

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With one of largest issues for the industry and government being the number of young persons who are pre-fuelling prior to going out, placing additional onerous fine structures on venues and increasing delivery costs to the end user, only exacerbates this problem by making off-premise prices so much cheaper.

Recommendation 6

City Accords do not support patron capacity loading linked to compliance risk loading and recommend that the risk loading is reviewed in its entirety. We believe that continually targeting venues with increased potential costs will lead to smaller investment into the night time economy and ultimately lead to less cultural vibrancy in Sydney and damaging its international reputation.

Three Strikes Policy Scheme

If a 'strike' is incurred by a venue it now also triggers increased fees payable under the Risk Based Licensing Scheme. As the strikes are incurred for a **three** year period, this is a large and untenable financial burden for premises. The strike triggers increased fees for venues via:

- Compliance history loading
- Patron Capacity risk loading
- Location risk loading for Kings Cross and CBD
- For a small bar licence with a capacity of 60 patrons and closing at midnight, the risk based fee would increase from a base fee of \$200 per annum to \$6,200 per annum for 1 strike-able offence and an additional \$18,000 in licence fees for the strike due to the three year period that a strike remains on the licence.
- For a restaurant / bar on-premise licence with a capacity of between 60 and 120 patrons and closing at midnight the risk based licence fee would increase from a base fee of \$400 per annum to \$8,400 per annum for 1 strike-able offence and an additional \$24,000 in licence fees for incurring one strike.
- For a Hotel licence (full) with a capacity of between 121 and 300 patrons and closing after 1.30am the risk based licence fee would increase from a base fee of \$5,500 per annum to \$15,500 per annum for one strike-able offence and an additional \$30,000 in licence fees over a three year period for incurring one strike.

The additional costs for venues over a three year period after incurring one strike are extremely onerous; we would suggest that the scheme operates on a one year period providing the venue can demonstrate increased harm minimisation measures and educational programs under its Plan of Management. We would suggest this is a more fair and balanced approach given the additional measures in place in the Kings Cross and CBD Precincts, where strikes have been incurred for relatively minor errors, such as failing to maintain a round the clock venue incident register, when the incident is already recorded in the security operatives incident register. The financial impost of making such an error in these precincts far outweighs the nature of the incurred strike and the original intent of the Three Strikes Scheme.

Recommendation 7

City accords recommend that if a strike is incurred and is associated with compliance history risk loading that it only operates in the year the strike was received and does not impost on venues for the period the strike remains on the licence for three years.

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Transport

Over the years, many representations to NSW Government have been made by Liquor Accords, the City Council and by industry to more effectively and efficiently disperse people from late night areas by adding early morning train services from Kings Cross and the City. The usual response for not running suburban trains after 1.30am (or even 'sprint services' to major railheads) – and a demonstration of the Government's lack of willingness to address late night needs – is the additional cost to the taxpayer or the need for overnight essential track maintenance and the only concession by the bureaucracy was the introduction of a shuttle bus which took passengers to other bus services and which patrons found inconvenient and have refused to use.

In contrast, it is amazing but disappointing that for the three nights of Madonna's 'Rebel Heart' concerts in late-March 2016, Sydney Trains saw that as a major event and agreed to schedule additional late night services until 4am, at no cost to either the concert organisers or passengers and merely 'in case' Madonna's concerts ran late.

When trains have run through the night for special events such as New Year's Eve, the rates of assault are reduced and Police report that the availability of trains greatly assists in dispersing crowds quickly rather than having crowds waiting for hours to catch a train to their destination, given the high cost of catching a taxi or when late night buses are not available. We note that in Melbourne additional late night trains have been introduced to support their late night economy and provide viable options for young people to get home safely.

The City Accords also note that secure taxi ranks across the City have been successful with patrons knowing that security is in attendance and the ranks are also linked to the Police. We recommend that areas without suitable ranks e.g. The Rocks are reviewed as soon as practicable to assist in the provision of additional options for patrons, it is vitally important that patrons do not have to walk great distances for transport options and potentially meet other groups that may then escalate into anti-social behaviour.

Recommendation 8

The City Accords recommend that a six month trial be undertaken on Saturday nights with Sydney Trains to run the trains on a 24-hour basis or operate the trains earlier on Sunday mornings, at present the last train is at approximately 1.15am across the network and comes back online at approximately 5.15am, we suggest that trains re-commence from 3.15am.

Accredited Licensee Training for Venues

The volume of restrictions implemented under the CBD and Kings Cross Plans of Management has placed increased pressure on venue operators and owners to have suitably qualified licensees in place who are able to professionally manage and direct staff in the late night economy. Licensees also are regularly audited in the late night economy by Liquor and Gaming Compliance Officers, City of Sydney Compliance Officers, Alcohol Licensing Enforcement Command Inspectors, NSW Licensing Police and regular operational Police. Managing venues has increasingly become more onerous and attracting experienced operators has become difficult.

There is no standard accredited training for licensees in NSW, given the complexities of development consents, community expectation and increasing regulatory compliance under the NSW Liquor Act we recommend that a suitable industry body be tasked with delivering an accredited licensee training program.

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We view this as an important component to increase and improve upon venue management, especially in the late trading periods, not only in the City of Sydney but across NSW. The availability of accredited training will also benefit venue operators and relieve some of the burden of in house training and in the long term provide increased trained personnel. We also believe that in the absence of the licensee in the late trading period and where approved managers are operating a venue they too should be subject to an accredited training program, albeit possibly a sub-set of the recommended licensee accredited training program recommendation.

Recommendation 9

The City Accords recommend that hospitality industry and regulatory bodies develop and deliver a certified accredited program for licensee training to improve and maintain expected standards of compliance and patron management.

Mandatory Accord Participation and Fee Structure towards Strategies

Liquor Accords play an important role in the City of Sydney in supporting local venue operators to understand the level of restrictions in place across all licence types. In fact, the workload for Accords has expanded greatly since the introduction of the CBD and Kings Cross Plan's of Management. Our support to members has included liaising with Liquor and Gaming NSW, NSW Police, City of Sydney Council and NSW Health and providing relevant information from those agencies to our members.

Many venue operators and managers utilise and rely on Accords as their first point of contact if they have questions regarding liquor law or their individual licence conditions, or to request the correct contact at the various agencies, or simply to arrange consultative meetings with local licensing police. Accords also are a first point of contact for the various agencies who regularly request Accords to forward relevant information, newsletters and bulletins to licensed premises.

City-based Accord meetings are very strongly supported by the relevant agencies who give-up their time to contribute and report on issues related to licensed premises and the local area and we believe it is vital for all premises to keep themselves informed and up to date and contribute to the harm minimisation efforts to reduce alcohol related and anti-social behaviour in our precincts whether small, medium or larger premises. It is the only way to achieve improved standards and to work collaboratively towards precinct regulation and improvement at a local area level.

As with all Accords across NSW, the larger venues are generally keen to be involved. However, there is reluctance by small to medium venues and particularly restaurants to become actively engaged with their local Accords and therefore they do not receive timely information relevant to their local community.

Recommendation 10

We recommend that Accord membership, in all areas within City of Sydney LGA and in other major population centres, be made mandatory, through an amendment to the Liquor Act and as a condition on all Development Consents, to ensure participation of all licensed premises so they remain informed and collaboratively working towards identified goals and in support of community expectations.

Our understanding is that the City of Sydney supports mandatory fees, this will also assist the City Accords meeting on a regular basis and supporting and exploring best practice across the City precincts.

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Patron Responsibility

Whilst the majority of the special licence conditions are targeted towards licensed premises, we believe that there also needs to be a much stronger emphasis on patron responsibility. NSW BOCSAR assault rates still show that the assault rate is up to three times higher in the public domain than inside the licensed venues. We point out that venues are a controlled environment and the public domain is not and, in the absence of high visibility policing, a small minority of persons still seem to have a total lack of regard for the safety of others or public infrastructure. We believe that a zero tolerance approach to anti-social behaviour should be implemented to more effectively deliver the message that violence will not be tolerated, along with appropriate fines and community service.

For too long it has been up to the venues' management and security personnel to explain the liquor laws related to 'fail to quit' and 'refusal of entry' and it is these two issues which create more argument and potential for violence than anything else – when patrons are refused entry or service due to high levels of intoxication and pre-fuelling.

A state-wide campaign should be undertaken by the NSW Government to explain the law and also be delivered in senior schools as part of the curriculum. We accept that cultural behaviour takes time however it must commence at some point, otherwise this issue will remain for decades to come.

Currently it is not an offence to be intoxicated in a public place, we believe that the government should review the law in order to be able to impose fines on intoxicated persons who are also displaying disorderly conduct. Many times we have viewed examples where persons have been abusive and aggressive and merely 'moved on' by police, which simply moves the problem elsewhere and therefore does not provide any deterrent for the person to amend or properly consider their behavioural issues. They get away with it once and do it all again the following week.

Recommendation 11

The City Accords recommend that (i) high visibility policing be increased and the late night economy managed as a major event each weekend providing appropriate resources to police to implement a zero tolerance approach to violence along with the courts administering appropriate fines and community service; (ii) that the offence for intoxication in a public place be reintroduced; and (iii) the NSW Government develop and undertake a public education campaign covering major elements including entry refusal, responsible service, drink restrictions, 'move-on' directions, banning orders and personal responsibility.

The City Accord's Executives appreciate the opportunity to make this submission and will welcome any further questions from the Review.

Kings Cross Liquor Licensing Accord

Surry Hills Liquor Accord

The Rocks / City North Liquor Accord

City South Liquor Accord

Darling Harbour Liquor Accord