

Liquor Law Review Information

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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 lockdown 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 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 lockdown 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.

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Figure: How the NSW Government and City of Sydney welcome tourists.

Misuse of Official Statistics

One of the major tools that the NSW Government and City of Sydney have used to justify the lockdown 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 lockdown 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 lockdowns were introduced.

Dr Fulde describes his department before the lockdown 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.

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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:

*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 lockdown (1am - 4am, as some venues reopen at 5am), the total difference is approximately 25 patients over an entire year.** There were more alcohol-related injuries at 6pm, 7pm, 9pm, 11pm and midnight after the lockdowns.

These 25 patients are not exclusively victims of alcohol-caused assault, or even assault for that matter- this is across all causes of injury. 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.

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

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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:

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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.

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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 lockdown 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 lockdown 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 lockdown laws and City of Sydney- who helped implement the lockdowns. 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)..

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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”.

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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.

Watch the video at: <https://www.youtube.com/watch?v=GepQovIFieE>

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:

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

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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

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Figure: Premier Barry O'Farrell using BOCSAR data to explain in the Legislative Assembly why lockdown 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 lockdown 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 lockdowns. Looking back longer term, non-domestic alcohol-related assault had been in a downtrend for many years before that.

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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 lockdowns 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.

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.

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

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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.**

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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.

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*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 [sic] 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.

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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.

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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.

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Figure: The Late Night Management Area Research Report 2010

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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.

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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.

They need to do this, because the over regulation and over policing has spread the malaise far and wide. It's not just limited to the entertainment precincts

anymore. Councils around Sydney are implementing lockout laws on kebab shops and bakeries.

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Figure: Istanbul on King in Newtown, a favourite kebab shop of locals and late night revelers, is located outside the lockout zone. It has opened until 4am for a decade with little attention from the authorities.

Now the City of Sydney has given it it's own lockout law.

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Figure: Crispy Inn Bakery in Newtown, outside the lockout zone, is open 24 hours no longer. The City of Sydney has likewise given it is own lockout law.

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

The 2am lockdown 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 lockdown 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 lockdown 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 at least 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.

And in 2015:

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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.

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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 average 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:

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

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.

Regardless, no matter how much the drop actually is, at best it shows the lockdown 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.

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

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Figure: The malaise & over regulation has spread throughout the city. St Patrick's Day Celebrations at Bondi Beach in 2016, 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 be 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.

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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.

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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:

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

ABC Lateline Poll:

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

The Socialites Poll of 23,000:

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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.

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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).

These laws are deeply unpopular.

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Figure: An estimated 15,000 people rally to #KeepSydneyOpen on the 21st February 2016. Source: The Daily Mail.

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 very greatly in degree. A person may be intoxicated in the sense that their personality is changed, their will is warped, disposition altered, or self-control weakened, so that whilst intoxicated to this degree they do an act voluntarily and intentionally which in a sober state they would or might not have done. Their intoxication to this degree, though conducive to and perhaps explanatory of his actions, has not destroyed their 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 they are 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:

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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.

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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.

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.

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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**”.

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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.

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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 lockdown laws would not have helped either of the deaths.

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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 lockdowns (**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:

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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>

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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.

□

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:

□

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>

□

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>

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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>

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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>

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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>

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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>

□

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).

□

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>

□

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.

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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 Pymont.

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.

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Figure: Star Entertainment Group Share Price (SGR.ASX) since Lockout Laws introduced. Source: IRESS.

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Figure: Consensus Revenue Revisions for Star Entertainment Group (SGR.ASX) indicate the lockout laws possibly saved the company. Source: CapitalIQ & Canaccord.

"The expected revenue for each financial year of the Star Entertainment group (which is primarily a one asset company – The Star Casino 70% of group revenue) inverted at exactly the time the lock out laws were introduced. The consensus amongst analysts at these global investment banks is that the contribution to the groups revenue (and thus offsetting loss to small businesses in Sydney) for the financial year 2016 between April 2014 and today amounts to approximately \$500m" - Owen Humphries, Senior Analyst, Canaccord.

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.

□

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.

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 and had stated on record in parliament that 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”?

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Thanks,

Jacob Ennever

