



New South Wales  
Council for Civil Liberties

**NSWCCL SUBMISSION**

**INDEPENDENT REVIEW OF THE  
IMPACT OF LIQUOR LAW  
REFORMS**

**4 APRIL 2016**

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### **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The Council for Civil Liberties (NSWCCL) thanks NSW Justice for its invitation to make a submission concerning the Liquor Law Review.

The NSWCCL does not possess expertise in liquor licensing policy, cultural policy or health policy. We intend to leave it to others, who possess the relevant expertise, to comment on these matters.

However, the NSWCCL does possess expertise in analysing legislation and policy from the perspective of protecting and ensuring civil liberties. This typically involves utilising the concept of 'proportionality.'

The NSWCCL proposes a tried-and-tested framework through which the measures can be critically assessed, and will produce a result that balances the various interests at play in a fair and rational manner. That framework is the following:

- i. What are the objectives of the measures?
- ii. Are those objectives legitimate?
- iii. Are the measures suitable to achieve those legitimate objectives?
- iv. Are the measures necessary to achieve those legitimate objectives (in the sense that there are no alternative measures which can achieve the same legitimate objectives but which are less onerous or oppressive)?

Through the application of the proportionality framework, we are confident that the outcome of the review will ensure a reasonable degree of public safety without being unduly oppressive.

### **Summary of NSWCCL position**

The primary objective of reducing alcohol-related violence is a legitimate target for reform.

Alcohol-related non-domestic assaults had been steadily declining prior to the introduction of the measures. The effect of the measures in reducing alcohol-related violence has been overstated.

The measures are minimally suitable for addressing alcohol-related violence. They may have had a modest effect on behaviours, but are unlikely to have had any effect on the underlying issue - individual attitudes towards violence.

There are a number of other measures that may have adequately addressed the problem of alcohol-related violence, without inhibiting individual choices concerning how, when and where to socialise, as well as the businesses in the locations subject to the measures.

In summary, we recommend the following:

- i. the adoption of the proportionality framework outlined above;
- ii. the repeal of the measures;
- iii. the adoption of measures that balance the relevant competing interests and ensure a reasonable degree of public safety without being unduly oppressive; and
- iv. if the measures are not repealed, periodic reviews of the measures.

### **What are the objectives?**

According to the background paper,<sup>1</sup> the objectives of the measures are the following:

- i. reduce alcohol-related violence and anti-social behaviour in the precincts;
- ii. improve the safety and general amenity in the precincts, particularly late at night; and
- iii. reinforce to the community that alcohol-fuelled violence will not be tolerated.

These objectives accord with the objectives outlined in the second reading speech of the *Liquor Amendment Bill 2014*. However, on our reading of that speech, the first objective (reducing alcohol related violence) was the *primary* objective.

### **Are the objectives legitimate?**

The objectives are clearly legitimate. There is a strong public interest in public safety. It is trite to say that society should aim to minimise violence - particularly violence of an arbitrary or random nature.

However, we make the following comments about whether public safety was seriously under threat at the time the measures were introduced:

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<sup>1</sup> NSW Justice, *Liquor Law Review, 1.30am lock out 3am cease alcohol sales 10pm take-away liquor & periodic liquor licence fee laws, Department's Background paper*, Updated 21 March 2016. [2.6.3].

- according to BOCSAR, alcohol-related non-domestic assaults in the CBD and Kings Cross had been declining steadily in the years before the measures were introduced;<sup>2</sup>
- Similarly, according to Don Weatherburn of BOCSAR, the number of assaults in NSW had been declining steadily since 2008;<sup>3</sup> and
- the prevalence of alcohol-related assaults was arguably inflated by media furore about two particular incidents of fatal violence.

Consequently, we would argue that:

- the threat to public safety was arguably overstated; and
- although problems with street violence existed at the time the measures were introduced (and continue to exist), we were not experiencing a crisis of the kind that demands extraordinary or urgent measures.

### **Are the measures suitable to achieve those objectives?**

In our view, the measures are moderately suitable to achieving the objectives. Ostensibly, their suitability is borne out in crime statistics released in the two years since their introduction. According to BOCSAR, in the 16 months after the measures were introduced non-domestic assaults decreased by 45% in Kings Cross and by 20% in the CBD.<sup>4</sup>

However, we consider these statistics to have limited value insofar as they are not limited to *alcohol-related* non-domestic violent assaults. This is somewhat puzzling, since BOCSAR clearly collects statistics on alcohol-related non-domestic violent assaults - they are annexed to the Background Paper.<sup>5</sup> Those statistics show that between October 2013 and September 2014 there were:

- 337 alcohol-related non-domestic assaults in Kings Cross; and
- 1622 assaults-related non-domestic assaults in the CBD.

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<sup>2</sup> Ibid. [4.1].

<sup>3</sup> ABC, *Crime statistician Don Weatherburn refutes NSW Premier Mike Baird's assault statistics*, (10 Feb 2016) <<http://www.abc.net.au/news/2016-02-10/crime-statistician-refutes-bairds-sydney-assault-figures/7154804>>.

<sup>4</sup> NSW Justice, *Lockouts and Last Drinks Forthcoming findings*, (Last updated 17 March 2016) <[http://www.bocsar.nsw.gov.au/Pages/bocsar\\_news/Lockouts-Forthcoming-Research.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Lockouts-Forthcoming-Research.aspx)>.

<sup>5</sup> NSW Justice, above n 1, [4.1]

On average, therefore, there were:

- 28 assaults per month within the period in Kings Cross; and
- 135 assaults per month within the period in the CBD.

For the purposes of argument, therefore, we can assume that in February 2014 (when the measures were introduced) there were 28 assaults in Kings Cross and 135 assaults in the CBD.

Applying the same methodology to the statistics collected for the October 2014 to September 2015 period, we can assume that in September 2015 there were 18 assaults in Kings Cross and 125 assaults in the CBD per month. This constitutes a reduction of 10 assaults per month in Kings Cross and 10 assaults per month in the CBD. When compared to the February 2014 averages this amounts to a 36% reduction in alcohol-related non-domestic violent assaults per month in Kings Cross and a 7% reduction in alcohol-related non-domestic violent assaults in the CBD.

We acknowledge that the statistics above are calculated crudely. We mention them only in order to draw attention to the significant difference between the amount of non-domestic assaults and the amount of *alcohol-related* non-domestic assaults. The latter statistic has far greater relevance to the review than the former. As such, we place little weight on the statistics 45%/20% BOCSAR statistics that are commonly used to indicate the success of the measures.

Another issue relevant to the suitability of the measures is whether they simply displaced violence to other areas. The most recent BOCSAR data shows that the displacement effect was negligible (in the sense that the numbers of assaults in displacement areas remained stable).<sup>6</sup> We point out that BOCSAR data released in August 2015 “a new hotspot of the highest density in Pyrmont (outside the intervention area)” which was not apparent before the measures were introduced.<sup>7</sup>

We make the following further comments about the suitability of the measures:

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<sup>6</sup> Ibid [4.1].

<sup>7</sup> NSW Justice, *Mapping the impact of the Sydney lockout laws on assault*, (Last updated 22 Dec 2015) <[http://www.bocsar.nsw.gov.au/Pages/bocsar\\_news/Mapping-the-impact-of-the-Sydney-lockout-laws-on-assault.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Mapping-the-impact-of-the-Sydney-lockout-laws-on-assault.aspx)>.

- According to Professor Peter Miller of Deakin University, there is no evidence that lockouts (as distinguished from alcohol restrictions) result in fewer alcohol-related assaults.<sup>8</sup>
- We question whether the measures are suitable in order to reinforce to the community that alcohol-fuelled violence will not be tolerated (the third objective stated above). While it is possible that the measures have had some effect in changing behaviours associated with alcohol-fuelled violence, they do nothing to change individuals' attitudes towards violence. Although it is possible the amendments to criminal laws which were introduced at the same time as the measures affect individuals' attitudes towards violence, it seems that any effect (if measurable) would be extremely modest. It is naive to consider that individuals rationally consider likely penalties while drinking alcohol, or to assume that those same individuals make the erroneous equation between law and morality. Regardless, those amendments to criminal laws are beyond the scope of this review.
- We question whether the 10 pm closure of bottle shops is a measure which is suitable to reduce consumers 'preloading' on alcohol before going out. We question whether consumers who are actively planning their alcohol consumption before going out would not simply apply the same foresight and planning to the time at which they purchase alcohol at a bottle shop. However, we have not been able to find a data set which measures the effect of the 10 pm closure of bottle shops on 'preloading.'
- If we assume there is evidence which shows that restricting access to alcohol and venues reduces alcohol related violence, there is no basis for excluding the Star Casino (which has a 24 hour license and no lockout) from the measures. Indeed, the August 2015 BOCSAR statistics indicated an increase in assaults in Pymont<sup>9</sup> (where the casino is located) militate strongly in favour of the measures being extended to apply to the casino.

### **Are the measures necessary to achieve those objectives?**

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<sup>8</sup> Benedict Brook, *Melbourne lockout laws were dumped in months, while Brisbane looks to trial laws modelled on Sydney*, (9 Feb 2016) <<http://www.news.com.au/finance/business/other-industries/calls-for-melbourne-to-look-again-at-alcohol-restrictions-as-brisbane-examines-lockouts/news-story/53de7a25306574f24cb23b91fc394ad8>>.

<sup>9</sup> NSW Justice, *Mapping the impact of the Sydney lockout laws on assault*, (Last updated 22 Dec 2015) <[http://www.bocsar.nsw.gov.au/Pages/bocsar\\_news/Mapping-the-impact-of-the-Sydney-lockout-laws-on-assault.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Mapping-the-impact-of-the-Sydney-lockout-laws-on-assault.aspx)>.

This test may alternatively be expressed in the following way: could any other measures have achieved the legitimate objectives with a lower cost (including non-financial cost)?

The measures inhibit individuals' choices regarding how and where they socialise. Accordingly, close attention should be directed to whether and to what extent (if any) it is necessary to inhibit individual choice in pursuing the objectives identified above.

First, it is necessary to assess both the financial and non-financial cost of the measures. In this regard the NSWCCCL does not possess the expertise necessary to comprehensively assess the financial and non-financial cost of the measures. However, we take the opportunity to make the following observations:

- The non-financial cost of the measures to the city's cultural institutions is illustrated by the number of live music and nightlife venues which have closed and cited the measures as a major cause. This has had a detrimental effect on the cultural vibrancy of the city. In considering the non-financial cost of the measures, we encourage the review to consult extensively with Keep Sydney Open and other groups dedicated to assessing the impact of the measures on nightlife and culture.
- The financial cost of the measures is illustrated by the drastically reduced nighttime pedestrian traffic in Kings Cross and the CBD.<sup>10</sup> This has undoubtedly had a flow-on effect for local businesses. We are unable to assess this financial cost accurately.

Secondly, it is necessary to ask whether there are other measures which could have achieved the legitimate objectives with a lower cost. Again, we note that we do not possess expertise in developing and analysing licensing policies, cultural policies and health policies. However, we make the following suggestions as to alternative measures which may have achieved the legitimate objectives with a lower cost:

- interventions aimed at addressing the 'violence' component of alcohol-related violence, rather than the 'alcohol' component. Such interventions would include education and media campaigns aimed at addressing violent behaviour at its roots. We note that, prior to introducing the measures, the government conducted a "multimedia advertising

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<sup>10</sup> <http://www.cityofsydney.nsw.gov.au/vision/towards-2030/business-andeconomy/sydney-at-night/late-night-research>



campaign aimed at warning of the dangers of excessive and binge drinking.”<sup>11</sup> We interpret this to mean that the campaign was aimed at warning of the *health* dangers of alcohol consumption - but we are unaware of any corresponding campaign aimed at addressing violent attitudes and aggression. Limiting access to alcohol may be one piece of the puzzle, but changing attitudes to violence is another. In our view, the former has been zealously pursued, while the latter has fallen into the ‘too hard’ basket. We seek a rebalancing of these two strategies so that less is done to limit alcohol and more is done to change behaviour;

- 24 hour transport;
- restricting alcohol without imposing lockouts (as many other cities around the world do)<sup>12</sup>;
- stronger RSA training and enforcement;
- adoption of physical measures aimed at reducing the consequences of violence such as rubberised pavements in areas with multiple late night venues; and
- licensing restrictions for venues with a track record of violent incidents, but not for others.

In light of the significant cost of the measures, and the range of less restrictive alternatives which could achieve the legitimate objectives, we conclude that the measures are disproportionate and should be modified. It is the view of the NSWCCCL that inhibiting or restricting individuals’ choice on when, where and how they socialise should be a measure of last - not first - resort.

We anticipate that some may argue that the measures are proportionate because venues may access an exemption from the measures if they can satisfy the following two conditions:<sup>13</sup>

- the exemption is unlikely to result in an increase in the level of alcohol-related violence, anti-social behaviour, or other alcohol-related harm in the precinct; and

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<sup>11</sup> NSW Parliament, *Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 Liquor Amendment Bill 2014*, (30 Jan 2014)  
<[http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/bb87f6864d9693c1ca257c6f007fec0e/\\$FILE/2R%20Crimes%20and%20Liquor.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/bb87f6864d9693c1ca257c6f007fec0e/$FILE/2R%20Crimes%20and%20Liquor.pdf)>.

<sup>12</sup> ABC, *Fact check: Do world class cities lack lockout laws?*, (16 Mar 2016)

<<http://www.abc.net.au/news/2016-03-16/fact-check-do-other-world-cities-have-lockout-laws/7225790>>.

<sup>13</sup> NSW Justice, above n 1, [2.7.1]

- other measures are in place on the premises, and those measures will be effective in reducing the risk of alcohol-related violence or anti-social behaviour on or about the premises.

In our view, these conditions are ambiguous, imprecise and difficult to satisfy. As a result, the granting of exemptions is highly discretionary. Therefore, the exemption does little to ameliorate that harsh, blunt and blanket restrictions imposed by the measures. Furthermore, having reviewed the exemptions granted to date, it appears that venues have generally only been granted exemptions to the lockout requirement if they agree to cease the sale of alcohol at the lockout time (1.30 am). In our view, this compromise is likely to still have a significant financial and non-financial cost by negatively impacting patronage and cultural activity. Therefore, we reiterate, the exemption does nothing to ameliorate the harshness of the measures.

### **Recommendations**

1. the proportionality framework outlined in this submission be applied to the review of the measures;
2. the end of the lock out regime, 3am cessation of alcohol sales and the statewide 10pm take away liquor restriction;
3. the adoption of measures that balance the relevant competing interests and ensure a reasonable degree of public safety without being unduly oppressive, critically assessed using the proportionality framework outlined in this submission; and
4. if the measures are not repealed, a further review of amendments relating to lock outs, the cessation of liquor sales at 3am and any other provisions prescribed by the regulations be conducted at regular 2 year intervals.

This submission was prepared by Adam Zwi, Julian Brezniak, Kate Douch and Harry Edwards on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance to the Liquor Law Review.

Yours sincerely,

*Therese Cochrane*

**Therese Cochrane**  
**Secretary**  
**NSW Council for Civil Liberties**

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