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4 April 2016  
Ref: 058452.23L

The Hon. Ian Callinan AC QC,  
By email: [liquorlawreview@justice.nsw.gov.au](mailto:liquorlawreview@justice.nsw.gov.au)

Dear Sir,

**Re: Submission to Review of Lockout and Cessation of Liquor Period and Related Provisions of the Liquor Act, 2007**

## Introduction

*Part of this submission contains privileged financial information that must be redacted from publication on the grounds that it is commercially sensitive.*

We write to you on behalf of the owners and operators of the licensed premises known as the Oxford Art Factory (*the OAF*), located in the basement of 36-46 Oxford Street, Darlinghurst NSW, to assist with your review of the provisions for and related to the 1.30am lockout (*the lockout*) and 3am liquor cessation period (*the cessation period*) imposed under the *Liquor Act, 2007 (the Liquor Act)*.

We note we worked closely with the General Manager and Licensee of the OAF Mark Gerber and owner Simon Tilley in preparing this submission.

With respect to the Terms of Reference and the impacts of the lockout and cessation period, you are required to review, and we provide comment on:

- (a) *Alcohol-related violence and anti-social behaviour in the Sydney CBD Entertainment Precinct, Kings Cross Precinct, potential displacement areas, and the broader community;*
- (b) *Safety and general amenity in the Sydney CBD Entertainment Precinct, Kings Cross Precinct, and potential displacement areas;*
- (c) *Government, industry and community stakeholders, including business, financial and social impacts, and the impacts on patrons and residents (including whether venues continue to trade after 3am when alcohol service ceases).*

This submission also has regard to the Objects of the Liquor Act, which are:

- (1) *The objects of this Act are as follows.*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
  - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
  - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
  - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
  - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

We also provide comment on the periodic licensing system and how that can be amended to improve business viability and vibrancy, particularly having regard to the Objects of the Liquor Act.

We make the following recommendations to improve the outcomes of the Liquor Act and restore balance between the needs and expectations of residents and licensed premises and to assist regulatory bodies in focusing their efforts on the significant, demonstrable adverse impacts associated with the sale and supply of liquor by:

- (a) Incorporating a definition of ***anti-social behaviour*** and ***alcohol-related impact*** that excludes the most obvious impacts associated with City living in defined precincts which will simultaneously protect culturally important venues like the OAF and reduce pressure on statutory authorities to eliminate impacts for which they have no control over;
- (b) Deletion of the lockout period or removal of its commencement time to within half an hour of the cessation period as part of a coordinated phased shutdown of premises in the precincts;
- (c) Removal of the commencement of the liquor cessation period to 4am;
- (d) Making it easier to obtain an exemption to the lockout for premises that have low levels of violence, or alternatively, to apply the lockout only to those most violent premises listed under Schedule 4 of the Liquor Act; and
- (e) Amending the periodic licensing fee system to exclude increases in fees for minor breaches of the Liquor Act or to only impose the higher fees on the most violent and problematic premises.

## **Background**

We are a firm of qualified Town Planners who work predominantly in the field of licensed premises and so have extensive cross-jurisdictional experience between the Liquor Act and *Environmental Planning and Assessment Act, 1979 (the EP&A Act)*. We have been involved with the OAF since its inception, lodging and successfully obtaining the development consent from the City of Sydney Council and having involvement in obtaining the liquor licence from the Liquor Administration Board under the *Liquor Act, 1982*.

In addition to the above we have dealt with more licensed premises than any other firm in Sydney with respect to obtaining development consent and dealing with liquor licensing matters for the Sydney CBD and Kings Cross precincts relating to pubs, nightclubs, live music venues, restaurants and small bars.

The OAF commenced trade in 2007 and was quickly and widely recognised as a world class entertainment premises and arts facility, notwithstanding its relatively modest capacity of 500 persons. At the time of approval it was granted consent to trade between 11am and 6am the following day with a 3am lockout for *new* patrons. The OAF hosts not only international artists, but gives their stage over and opportunities to local and independent artists. A review of their website ([www.oxfordartfactory.com.au](http://www.oxfordartfactory.com.au)) will confirm the dedication to supporting up and coming artists and the live music scene in general. It provides live music and art installations every day it opens – and is required to by a condition of its development consent, offered up voluntarily at the time of the original development application. Without any sense of exaggeration, the OAF is nothing short of a cultural institution for Sydney.

## **Submission – Review of the Lockout**

In reviewing the lockout, we have reviewed its stated purpose and whether it has been successful in achieving those ends and outline the impact the lockout has had on the operation of the OAF.

A lockout was first introduced in NSW through the *Liquor Amendment (Special Licence Conditions) Bill 2008*. It was at that time limited to 48 premises in the State of NSW which had the highest number of assaults, for the publicly stated purpose of reducing violence. These controls were imposed following their apparent success in the regional townships of Wollongong and Newcastle.

Having regard to the Objects of the Act, the measures can be readily seen as seeking to achieve those under s. 3(2) of the Liquor Act to minimise violence. It should be noted however that the objectives are s. 3(2) are reserved for those *carrying out* the provisions of the Liquor Act, rather than the Objects of the Act itself. This is confusing and it is not abundantly clear how the lockout provisions mesh with the application of such objectives.

The introduction of a Sydney CBD-wide lockout and cessation period occurred in 2014. Media releases from the time state that the aim of these new provisions is identical to those reasons for introducing the provisions in 2008 to curb violent incidents.

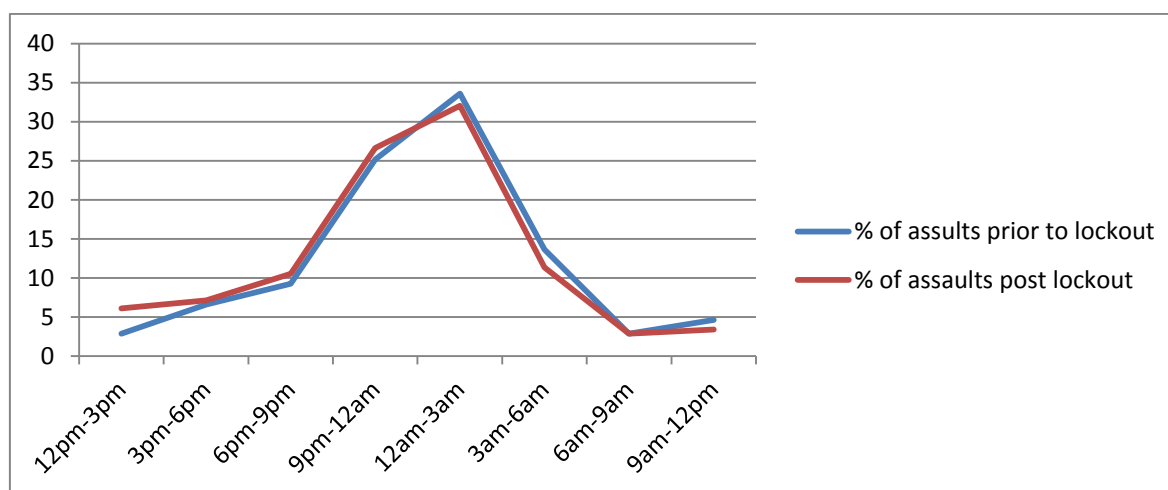
- Impacts on alcohol-related violence, anti-social behaviour and public safety

In our view, there is no argument against the prima facie fact that the lockout and cessation of liquor periods have been successful in curbing late night violence. However, there has also been a precipitous drop in the number of persons attending the precincts during the same period, that in our view, is far greater than the proponents of the legislation had anticipated.

If the aim of the Liquor Act and these provisions is *solely* to reduce violence, it can be said to have been a success; however, that is not the sole aim of the Liquor Act. The provisions and the purpose of the Liquor Act generally must be understood in the context of the other Objects of the Act, in particular, s. 3(1)(b) to facilitate the responsible development of the liquor industry and s. 3(1)(c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

Following the introduction of the lock out provisions, in Kings Cross there was a 32% drop in assaults and in the CBD Precinct (in which the OAF is located) a 26% drop in assaults. Across NSW (where the lockout and cessation provisions did not apply) there was a drop of 9% in assaults.<sup>1</sup> One could therefore argue that given the reduction in assaults generally in areas where the provisions did not apply, that the provisions may be responsible for a reduction in the order of 17%, for the area in which the OAF is located.

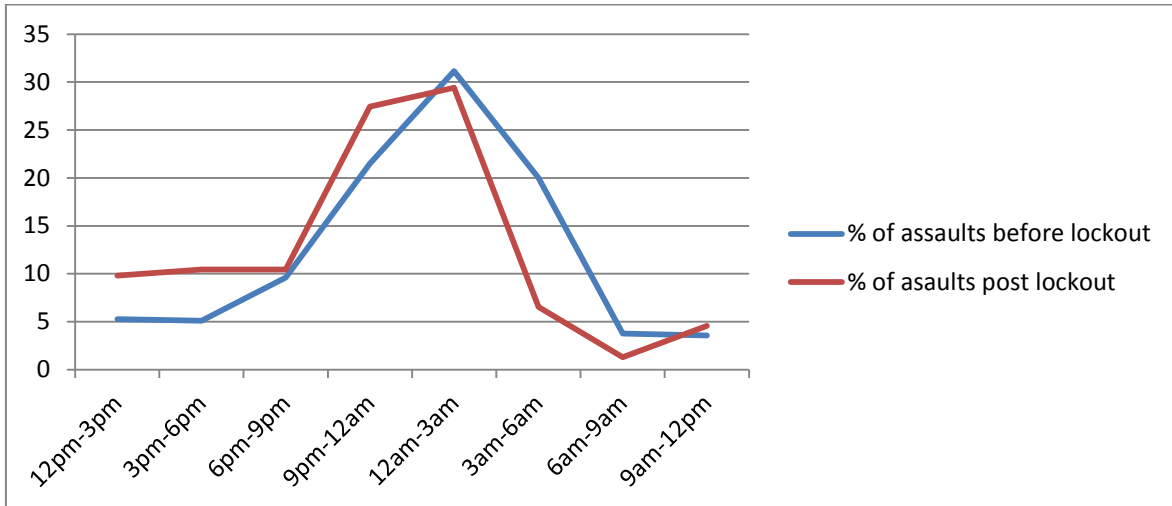
This can however be contrasted with the following interpretation of the same assault data for Saturday nights for the City of Sydney Local Area Command, obtained from the Bureau of Crime Statistics and Research. The following graph shows no significant change in the rates of assaults for any of the assessed time periods before or after the lockout and cessation period.



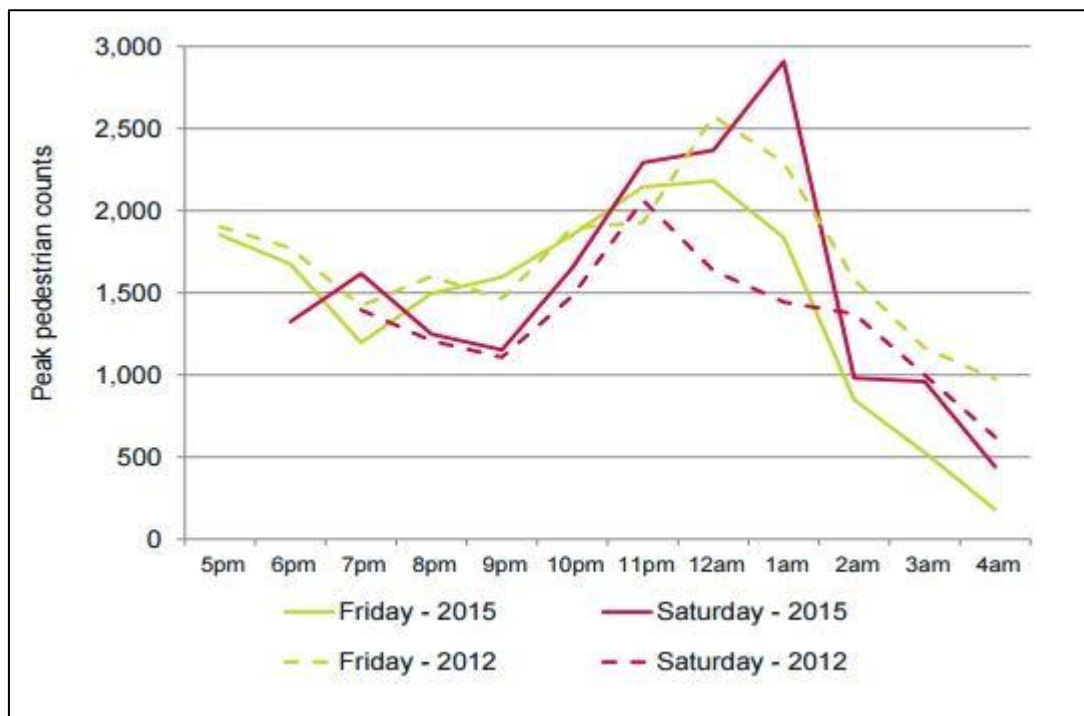
The above graph demonstrates that the lockout has had no impact on the behaviour of patrons and that the likelihood of an assault occurring in the City of Sydney Local Area Command has remained the same, with the frequency and quantum of assault only reducing through reduced attendance.

<sup>1</sup> P Menendez, D Weatherburn, Kypros Kypri and J Fitzgerald, *Lockouts and Last Drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia*, Crime and Justice Bulletin No. 183, April 2015 (Revised)

In Kings Cross however, we can see a significant difference in the period after 3am. As a proportion of assaults, the period for 3am-6am which includes the cessation period changed from comprising 20% of all assaults to 6.5% of all assaults. The midnight to 3am period where the lockout would take effect was largely unaffected. The change in assault rates after 3am could be attributed to the changes under the Liquor Act or the number of venues that closed following the changes.



The overall reduction in assaults can be further contrasted with other data in order to gauge whether they are consistent with other Objects of the Liquor Act. The City of Sydney prepared two reports on the level of foot traffic through certain areas of the Local Government Area. The results are shown in the following graph which was the result of counts undertaken on four occasions.



The above reveals that following the introduction of the lockout at 1.30am there is a sharp decline in the number of people counted on the street, which should be expected. What should also be expected is an increase in the number of persons on the street after 3am when the liquor cessation period commences and licensed premises close. The fact that this is not observed indicates that the majority of patrons leave the area rather than be subject to the lockout. This can, perhaps, be seen in the large peak of foot traffic at 1am, which would also include those patrons seeking out their final venue for the evening. What is also evident is that prior to the lockout commencing in 2014, at 3am more people were counted on the street, even though that prior to the lockout those persons could have remained inside a licensed premises. This again indicates that the effect of the lockout is to encourage people to leave the area.

The above provides strong evidence that the lockout does not just discourage migration between premises and instead acts as a defacto shutdown of premises. Patrons do not want to be subject to a lockout and opt out of the system entirely by simply going home.

This reduction in trade has also been experienced at the OAF and which is addressed in detail in the following section. The reduction in assaults of 17% is much less than the resultant reduction in patron attendance at the OAF. This can be further supported by the raft of public statements by owners of licensed premises – anecdotally at least – but we expect would be supported by data (if it can be obtained) of the number of venues that have ceased trading after midnight.

The lockout provisions and the cessation of liquor provisions cannot be said to be meeting the Objects of the Act under s. 3(1)(b) and (c) where it is quite obviously, and to an extent that we expect was unintentional, impacting adversely on the late night hospitality and live music industry and late night economy.

In the experience of the OAF this is particularly dire for the live music scene which is given specific reference in the Objects of the Liquor Act.

- Financial and other impacts upon owners, operators and patrons of licensed venues

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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<sup>2</sup> <http://www.abc.net.au/news/2015-10-21/oxford-art-factory-for-sale,-owner-says-business-not-for-sale/6874072> accessed 25 March 2016

The above information tangibly demonstrates the adverse financial impact that the lockout has had on bar sales after midnight at the OAF. The OAF is one of the most popular grass roots entertainment premises in the City of Sydney. Many smaller and moderate size bars such as the OAF rely heavily on liquor sales after midnight to subsidise the provision of entertainment earlier in the night.

Larger venues have significantly greater numbers of patrons and can therefore make significantly more money during the shorter periods. The lockout provisions therefore do not facilitate a balanced development of the liquor industry, and instead encourage and entrench the existence of large premises. In this respect it is also anti-competitive.

It relevant to note that the OAF has done all it can to change the attendance patterns of patrons to respond to the impacts of the lockouts. The venue provides two live music shows on Friday and Saturday night, with one commencing at 8pm and another between 11pm and midnight. (The OAF cannot commence shows any later than midnight or else risk patrons seeking entry being locked out whilst queuing to enter). Notwithstanding these changes, the OAF struggles to retain the critical mass of patrons necessary to warrant staying open much longer than midnight.

It is the OAF's experience that the idea of being 'locked in' to a venue, particularly a live music venue which is loud, hot and crowded, actively discourages patrons from attending the venue. Patrons need to have access to an area outside of the premises so they can take a break for air, to sit, to walk around, to eat or simply to socialise with friends. The current regime diminishes the options for the late night economy by locking patrons into one late night option from around 1am, rather than to encourage greater diversity and choice, through its stated aim of improving safety by reducing violence.

Consequently, the effect of the lockout is to cease the operation of premises within the CBD Entertainment Precinct many hours earlier than commencement of the cessation period.

- Positive and negative community impacts, including impacts on residents and potential displacement of impacts to other areas

This section deals primarily with outlining what should be the proper scope in considering positive and negative community impacts and amenity in the Sydney CBD and Kings Cross Precinct. At present, the current discussion about community impacts under the Liquor Act is considered to be far too broad and must be narrowed to focus on impacts that can be controlled by, and for which, licensed premises should be responsible.

The stated purpose of the lockout is to reduce alcohol related violence. We suggest that cannot be the case given that all it achieves is to prevent patrons from leaving one venue and entering another after 1.30am. They are free to consume as little or as much alcohol as they would ordinarily be able to until 3am absent the lockout. In our view, this is a counterintuitive measure that increases the likelihood of intoxication. A lockout discourages licensed premises (which are businesses) from undertaking a rigid or preventative approach to addressing intoxication because they cannot replace the patrons they eject. Businesses are therefore more likely to wait until absolutely sure that a patron is intoxicated before ejecting them, rather than intervening at an earlier time. Thus, it can be



concluded that the direct effect of the lockout cannot be to reduce alcohol related violence – it does however achieve that indirectly.

The lockout indirectly achieves the aim of reducing alcohol related violence by encouraging patrons to leave the CBD and Kings Cross Precincts. That, must have been unintended, because the cessation period was the provision by which it was intended patrons would be encouraged to leave the CBD and Kings Cross Precincts.

The only remaining likely outcome of a lockout is to prevent bar hopping and patron migration. The effect of this is to reduce the number of people on the street, and consequently, to reduce impacts associated with alcohol and anti-social behaviour on residents. The lockout has been effective in reducing these impacts – however, that has only been through discouraging patrons to attend the area in the first place. That is a poor outcome.

In our experience in dealing with licensed premises, the application of the terms “anti-social behaviour” and “alcohol-related impacts” are far too wide. The majority of complaints about premises and objections to licensed premises applications concern matters such as yelling, shouting, horse play, footpath congestion, public drinking and urination; which are trivial when compared to issues such grievous bodily harm and death resulting from assaults. On most measures these trivial impacts should be anticipated when one chooses to live in a City of millions of people that permits trade and the sale of liquor until early in the morning. They are to a large degree unavoidable, and, there are other more effective strategies that can be put in place to minimise such impacts including the use of ‘pop-up urinals’ (trialled by the City of Sydney), imposition of a special levy on late trading businesses or bottle shops to deal with litter or actively policed transport hubs and public chill-out areas.

To eliminate such low-level impacts is to eliminate the late night economy. There is presently no intention to eliminate the late night economy, and in our view, in order to save it and the associated hospitality and live music industries these general impacts need to be excluded from the Liquor Act. This will avoid the association of what are widely recognised impacts associated with City living with the sale and supply of liquor and reduce pressure on regulatory bodies to deal with them.

*Recommendation: Insert a definition for anti-social behaviour and alcohol-related impact that excludes the normal impacts associated with City living such as high background noise levels, litter, footpath congestion and public urination from the assessment of complaints or applications. This will reduce pressure on regulatory bodies to deal with such minor matters that diminish what should be the primary focus on tangible and serious impacts associated with alcohol consumption. This could be readily achieved to exempt such impacts in the CBD and Kings Cross Precincts. In more sensitive areas where such impacts should not be expected, such an exemption should not apply.*

As an example of such impacts being laid at the feet of all licensed premises, in 2010 Design Collaborative assisted the OAF with a complaint lodged by a number of residents against it and the adjoining licensed premises the Exchange Hotel (now closed due to the lockout) and the Gaff (now closed and replaced with a smaller venue). The complaints stated that street drinking in Norman and Riley Streets (which is located *behind* the subject premises and *behind* the Oxford Street entertainment precinct) was affecting their amenity

through loss of sleep and intimidation and other low-level anti-social behaviour such as litter and urination. The complaints noted that the frequency of incidents peaked on Friday and Saturday nights between 11pm and 6am.

In order to remedy this complaint the Oxford Art Factory increased the frequency of patrols of this rear lane, even though it already provided patrols, and even though there was no tangible link back to the premises. It was our view at the time and the experience of OAF through their security guards that these persons attending Norman and Riley Streets were not patrons of the premises. It is worth noting too that at the time, between those three (3) adjoining licensed premises they provided nine (9) security guards over a distance of approximately 100 metres as required by Council and OLGR to, among other tasks, prevent footpath congregation. This “no loitering” policy (which continues to be pressed by Police and Council to prevent footpath congestion) is why people move from a commercial street where there would be no direct impacts on residents to a residential area that resulted in increased impacts. The OAF regularly witnesses the use of s. 197 of the *Law Enforcement (Powers and Responsibilities) Act, 2002* by the Police to issue “move-on” orders to persons loitering in the public domain.

In our view, the above represents an imbalance in the system for the regulation of licensed premises. It diminishes and distracts from the focus on more serious impacts such as on-premises violence for which licensed premises can take some responsibility. It also impacts adversely on the enjoyment of entertainment precincts by constantly haranguing patrons with requirements of where they can stand, how loud they can be, where they can smoke, how to queue, to control their behaviour and so on to an extent that is antithesis to the purpose of such precincts which are supposed to have a lower expectations for formal behaviour than at other times. The lockout further diminishes the enjoyment of these precincts by even more severely restricting movement and choice.

In contrast to the above, there is no onus on the owners of residential dwellings to secure their own premises from adverse acoustic impact nor is there any provision in the Liquor Act for licensed premises that can be relied up against complaints or objections of adverse impacts that are most accurately described as being associated with the din of City living.

- The times at which the measures take effect

The City of Sydney is marketed by the NSW Government as a Global City in the same vein as cities like Paris, London Shanghai and New York. In a commercial sense, that cannot be considered to be true when in Sydney there is limited retail trading outside of the standard business hours and no 24 hour retail trading precincts. No Global City shuts at midnight. In meeting the social and recreational needs and aspirations of the community – which is nearly entirely meet by licensed premises such as the OAF – the vast majority of licensed premises now close at midnight, the streets are emptied or emptying by 1am with options for socialising after 1.30am reduced to a single location.

It is our strongly held view that the lockout should be removed entirely. We can see no public policy reason that warrants its imposition if Sydney is to have a thriving and active late night economy. The impacts for which the lockout directly reduces are limited to the noise and activity associated with people being in the public domain. They cannot be avoided if we are to have a late night economy and so must be accepted.

The lockout, either intentionally or inadvertently, results in an earlier closing period for licensed premises. If that is intentional then it is disingenuous and the Liquor Act should be amended accordingly so the discussion of appropriate closing times can take place.

We also suggest that the liquor cessation period commences at 4am, rather than 3am. There is presently limited research of which we are aware that tracks the patterns of attendance in the late night economy. There is anecdotal evidence however, particularly from community groups who oppose the lockout and cessation period, that suggest a substantial majority of the patrons of the late night economy do not start their nights out until very late, generally between 11pm and midnight. The experience of the OAF is that peak trade before the lockout occurred between 11pm-1am. Peak trade now occurs around 9pm-10pm, but it is half the peak that was experienced prior to the lockout later in the evening. This is also considered to be reflected in the reduction in trade due to the lockout which is provided above in the OAF's financial information.

A later cessation period would also move the final shutdown of premises away from the taxi change over period and allow for a more staggered closing of licensed premises which reduces the number of patrons on the street at any one time and avoids a large exodus, which would be more likely to result in impacts upon residents.

Patrons have refused to change their behaviour to accommodate the lockout by going out earlier and have instead opted to go home earlier when the lockout commences. Given that, in order for patrons to enjoy the full range of activities that should be available in the late night economy sufficient time needs to be provided to do so. A night out, like a day out for most people, is longer than three (3) hours. The lockout further diminishes choice by locking patrons **into** a single licensed premises around 1am. It eliminates the choice to take a break from being inside a licensed premises and to partake in other activities at a different location other than consuming alcohol.

Cessation of liquor between 4am and 10am is sufficient time to permit the City to be cleaned and reinvigorated; to permit sufficient time for those that choose to do so to enjoy the night time economy and its social and recreational offers and short enough to limit long periods of drinking.

The City of Sydney pedestrian survey provided above demonstrates that overall activity on the street reduces in the lead up to 4am without intervention.

*Recommendation: The lockout should be removed and commencement of the liquor cessation period moved to 4am. If, however, both the lockout and the liquor cessation period are to be retained, they should be retained cognisant of the effect the lockout has on patron behaviour. Therefore, the lockout should be moved later as part of a phased shut down of premises at 3.30am in preparation for the recommended cessation period of 4am.*

- The types of venue to which the requirements apply

The Liquor Act permits venues to apply for an exemption from the lockout. If the lockout is to be retained, we suggest that the present exemption sets too high a bar. Exemptions may only be granted if:

- 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
- 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.

We are aware of no premises that has successfully argued that they meet the above exemption requirements without ceasing the supply and service of liquor – few have tried. The reason for this is that in order to satisfy the test, an applicant must demonstrate approval would result in *no increased anti-social impact* or alcohol-related violence in the *entire precinct* – an area so wide so as to be completely outside the applicant’s control. Moreover, the lack of definition in the Liquor Act for anti-social behaviour or alcohol-related impact means the clause captures general impacts associated with City living that cannot be readily separated from those that are actually alcohol related.

As suggested above, defining anti-social behaviour to exclude the typical impacts associated with City living and late night trade would go a significant way to resolving these difficulties.

In our view, an exemption from the lockout should only be assessed against those impacts that occur on premises, such as alcohol related violence. In this respect, it would be preferable for a lockout to only be imposed on the most violent venues so that well-managed and safe venues would not need to apply for an exemption.

*Recommendation 1: If the lockout is to be retained the focus should be on assessing alcohol related violence on the premises.*

*Recommendation 2: If the lockout is to be retained, rather than having venues seek an exemption the onus should be reversed so that premises listed under Schedule 4 of the Liquor Act are subject to the lockout, consistent with the original imposition of the lockout in 2008.*

### **Submission – Periodic Liquor Licence Fee System**

The periodic licence fee system, which is tied to the strike system, discourages the cultivation of varied and interesting live music and hospitality venues. The strike system requires a significant and unprecedented focus on procedural compliance which increases red tape and detracts from the relaxed and social atmosphere that was historically associated with licensed premises.

The OAF was issued with a breach of the Liquor Act late last year for failing to comply with an advertising requirement that prohibits the advertising of shots. If convicted, that breach carried with it an automatic strike against the licence. Prior to midnight, the OAF like all other premises, is permitted to sell shots. The OAF had erected internal signage promoting the availability for purchase of a shot and a beer for the price of \$12, which is equivalent to a \$3 discount from its usual price if purchased separately. The signage stated that the shots were not available after midnight, consistent with the restrictions under the Liquor Act.

The Liquor Act however prohibits the advertising of shots for premises located within the CBD Precinct.

Consequently the OAF was issued a breach, pleaded guilty but no conviction was recorded and thus avoided a strike against its licence. This innocent and fairly minor error could have led to a significant increase in periodic licence fees. A single breach increases the periodic fees for the OAF from \$5000 to \$23,000 every year for three years. This is because once a strike occurs it activates further licence loading fees: for the strike (\$3,000) locational factors (being located in a declared precinct - \$2,000), trading hours (trading past 1.30am - \$5,000) and patron capacity (more than 300 patrons - \$8,000). That seems fundamentally unfair in this instance when the risk associated with the strike can be resolved immediately, but the strike remains for three years along with the higher fees, and where the fine associated with strike (a maximum of \$5,500) is absolutely dwarfed by increased licence fees. Over the course of three years, a strike would cost the OAF an additional \$54,000 in periodic licence fees.

These fees should only be higher for those premises that draw more on the public purse, thus it should be restricted to those premises that require significant Police or regulatory intervention during their operation.

The OAF does not require significant Police intervention, notwithstanding its capacity of 500 persons.

The currently wide array of strikes for many matters that should be considered minor, such as failing to properly complete an incident register, advertising of shots or failing to comply with any liquor licence condition should be removed from the strike scheme. In particular, it is noted the scheme brings in licence conditions which in themselves may be minor. Moreover, if a condition requires compliance with a Plan of Management, the entire Plan of Management must be rigidly observed. This could bring in up to 100 (or more) additional basis on which a breach could be issued – the vast majority of which would be minor and readily resolvable.

Whilst the OAF is not subject to a condition requiring compliance with its Plan of Management (at this stage), it is our experience that all new venues and following the making of any application such a condition is imposed. Examples of provisions from the OAF's current Plan of Management include:

- The premises shall not materially affect the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise;
- The licensee and staff shall take all reasonable steps to control the behaviour of patrons of the premises as they enter and leave it;
- Providing four (4) metres of clearance along the adjoining footpath from patrons.
- The roles and deployment of security; and
- Waste disposal and delivery times.

It seems abundantly unfair that a misstep in any of the above examples, whilst managing and seeking to create a fun and relaxed atmosphere for its patrons, could cost an additional \$54,000 in periodic licence fees.

Whilst all licensed premises should be expected to adhere to the requirements of their voluntarily offered Plans of Management, the risk of non-compliance with those provisions which do not form a core part of the statutory regime should not be subject to such a significant penalty as a strike and the resultant increase in periodic fees. This leads to over regulation of licensed premises and requires an almost authoritarian level of control over patrons that diminishes the enjoyment of licensed premises.

*Recommendation: Strike offences be limited to significant non-compliances with core requirements of the Liquor Act such as permitting intoxication, supplying alcohol to minors and trading outside of licensed trading hours or to those premises declared as Level 1 in Schedule 4 of the Liquor Act (that is, with 19 or more assaults for the previous year).*

## **Conclusion**

This submission has sought to demonstrate Design Collaborative's experience and view of the lockout, cessation period and related matters as they have impacts on the Oxford Art Factory and its patrons. We have demonstrated that:

- The current regime's obsessive (but unstated) focus on eliminating low level impacts associated with City living has been and will be harmful to the long term success of Sydney's late night economy.
- The presently dispatched solutions to violence and anti-social behaviour are ruining the positive experience of the late night economy for its patrons through over regulation of behaviour and resulting in its wholesale abandonment.
- Live music venues such as the OAF rely heavily on late trade to subsidise the provision of live music. Without a late night economy these fine grain, grass roots premises will not survive long term and Sydney will be left with large venues and without a sense of its own culture and character.
- The lockout and cessation period have been ineffective at changing the likelihood of, or patron behaviour related to, alcohol-related violence.

In light of the above conclusions, we make the following recommendations to improve the outcomes of the Liquor Act and restore balance between the needs of residents and licensed premises and to assist regulatory bodies in focussing their efforts on the significant, demonstrable adverse impacts associated with the sale and supply of liquor by:

- (a) Incorporating a definition of ***anti-social behaviour*** and ***alcohol-related impact*** that excludes the most obvious impacts associated with City living in defined precincts which will simultaneously protect culturally important venues like the OAF and reduce pressure on statutory authorities to eliminate impacts for which they have no control over;
- (b) Deletion of the lockout period or removal of its commencement time to within half an hour of the cessation period as part of a coordinated phased shutdown of premises in the precincts;
- (c) Removal of the commencement of the liquor cessation period to 4am;

- (d) Making it easier to obtain an exemption to the lockout for premises that have low levels of violence or alternatively to apply it only to those most violent premises listed under Schedule 4 of the Liquor Act; and
- (e) Amending the periodic licensing fee system to exclude increases in fees for minor breaches of the Liquor Act or to only impose the higher fees on the most violent and problematic premises.

Should you have any enquiries regarding the above please do not hesitate to contact us to discuss.

Yours sincerely,  
DESIGN COLLABORATIVE PTY LTD



James Lidis  
Director

On behalf of, and in conjunction with,  
General Manager and Licensee Mark Gerber - [REDACTED]  
Owner Simon Tilley - [REDACTED]

