



UNIVERSITY
OF WOLLONGONG
AUSTRALIA

4 April 2016

The Hon Ian Callinan AC
Chair
Liquor Law Review
GPO Box 7060
Sydney NSW 2001

By email: liquorlawreview@justice.nsw.gov.au

Dear Mr Callinan

Re: Review of the effectiveness of the 1.30am lock outs, 3am cessation of liquor sales, 10pm take-away liquor laws and the annual liquor licence fee program

1. Thank you for the opportunity to contribute to this important Review to determine whether the policy objectives of the *Liquor Amendment Act 2014* (NSW) (the 2014 Liquor Law amendments) remain valid and their terms appropriate for securing those objectives.

2. The specific Terms of Reference (ToR) for the Liquor Law Review are:

1. The review will assess the impacts of the 1.30am lock out and 3am cessation of liquor sales requirements 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).
2. The review will consider the positive and negative impacts of the 10pm takeaway liquor restriction across NSW, with particular regard to be had to the needs of rural and remote communities, and the social and economic impacts of the restriction on those communities.
3. The review will consider the impact of the periodic licensing system on business viability and vibrancy

3. This submission deals with three matters of relevance to ToR (1)(a) and (b):

- i. the need to address the impact of the 2014 Liquor Law amendments not only on *alcohol-related violence* but also on *anti-social behaviour*;
- ii. the need to consider the impact of other measures that were part of the 2014 reform package, including changes to penalties under the *Summary Offences Act 1988* (NSW); and
- iii. the need to support non-regulatory strategies for reducing alcohol-related threats to safety and general amenity.

School of Law

Faculty of Law, Humanities and the Arts

University of Wollongong NSW 2522 Australia

Telephone +6142213456 Facsimile +612 42213301

lha-enquiries@uow.edu.au lha.uow.edu.au CRICOS PROVIDER No. 00102E

Impact of Liquor Law amendments on anti-social behaviour

4. The rationale behind the 2014 Liquor Law amendments was not only to reduce ‘alcohol-related violence’ but also to reduce ‘anti-social behavior’.¹

5. We submit that it is important that discrete treatment be given to the assessment of anti-social behaviour. Anti-social behavior is not synonymous with criminal behaviour; indeed, it is a phrase generally regarded as referring to undesirable behaviour that does not involve criminal harm (eg loud or boisterous behaviour in public; public urination) – but may give rise to an offence.

6. We note that the Department of Justice Background Paper² contains no data on whether anti-social behaviour has been reduced. We submit that such data should be collected and analysed. Although not exhaustive of the category ‘anti-social behaviour’ we submit that the following data, routinely collected by the NSW Bureau of Crime Statistics Research, should be obtained by the Review and analysed:

- i. charges for offensive conduct under s 4 of the *Summary Offences Act 1988* (NSW);
- ii. Criminal Infringement Notices (CINs) issued for offensive conduct under s 4 of the *Summary Offences Act 1988* (NSW);
- iii. charges for offensive language under s 4A of the *Summary Offences Act 1988* (NSW);
- iv. CINs issued for offensive language under s 4A of the *Summary Offences Act 1988* (NSW);
- v. charges for continuation of intoxicated and disorderly behaviour under s 9 of the *Summary Offences Act 1988* (NSW); and
- vi. CINs issued for continuation of intoxicated and disorderly behaviour under s 9 of the *Summary Offences Act 1988* (NSW).

7. Data should also be gathered from NSW Police on the number of intoxication move-on directions issued under s 198 of the *Law Enforcement (Powers and Responsibilities Act) 2002* (NSW), and the number of charges and penalty notices for non-compliance.

8. This data will provide valuable insights into whether the 2014 Liquor Law amendments have achieved the objective of reducing anti-social behaviour in the relevant precincts.

Impact of changes to the *Summary Offences Act 1988* (NSW)

9. The Liquor Law changes effected by the *Liquor Amendment Act 2014* (NSW) were not introduced on their own, but were part of a legislative package that included the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* (NSW). We submit that the impact of the amendments to the *Liquor Act 2007* (NSW) on anti-social behavior should not be considered in isolation, but alongside relevant changes effected by the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* (NSW).

10. Relevantly, the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* (NSW) increased the value of a CIN for three offences under the *Summary Offences Act 1988* (NSW):

- i. offensive conduct in a public place (s 4) – from \$200 to \$500;
- ii. offensive language in a public place (s 4A) – from \$200 to \$500; and

¹ NSW Department of Justice, *Liquor Law Review*. Department’s Background Paper (21 March 2016), [2.6.3], [2.7.1]

² Ibid.

- iii. continuation of intoxicated and disorderly behaviour in a public place (s 9) – from \$200 to \$1,100.

In addition, the maximum penalty for the s 9 offence was increased from 6 penalty units (\$660) to 15 penalty units (\$1650).

11. The significant increases in the value of CINs greatly exceed the suggested ratio of a penalty notice fine to the maximum penalty recommended by the NSW Law Reform Commission (25%).³

12. The potential for harsh and disproportionate impact of these changes is high.

13. These public order laws are enforced in high numbers each year.⁴ The introduction of the option of ‘on-the-spot’ enforcement of ss 4 and 4A of the *Summary Offences Act 1988* (NSW) in 2007 produced a net increase in enforcement actions.⁵ Associated police powers, such as the power to order an apparently intoxicated person to ‘move on’ are also frequently employed.⁶

13. The risk of over-enforcement of these public order offences and over-deployment of associated police powers is exacerbated by the vague and highly subjective standard on which they turn (specifically, ‘offensiveness’⁷); and a lack of clarity over their elements.⁸

14. These offences and powers have a long history of disproportionate impact on Indigenous persons, implicating them in the over-representation of Indigenous persons in the criminal justice system.

15. While they appear to be a relatively benign form of criminal law enforcement, penalty notices (particularly those that carry heavy fines) can have serious flow-on consequences. For example, unpaid fines can result in license disqualifications, driving offences and, ultimately, imprisonment for driving whilst disqualified.⁹ Again, these cumulative penalties have been shown to impact disproportionately on Indigenous persons in regional, rural and remote communities.¹⁰

16. Although the primary focus of the current Review is the effect of the 2014 Liquor Law amendments in the Sydney CBD Entertainment and Kings Cross precincts, it is important to recognise that the changes to the *Summary Offences Act 1988* (NSW) effected by the *Crimes and*

³ See New South Wales Law Reform Commission, *Penalty Notices*, Report No 132 (2012) at Rec 4.5(a).

⁴ See NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics 2014* (2015), Table 1.1; D Brown, D Farrier, L McNamara, A Steel, M Grewcock, J Quilter & M Schwartz, *Criminal Laws: Materials and commentary on Criminal Law and Process of New South Wales* (Sydney: Federation Press, 6th ed, 2015), pp 536-537; and L McNamara and J Quilter, ‘Public Intoxication in NSW: The Contours of Criminalisation’ (2015) 37(1) *Sydney Law Review* 1 at 30.

⁵ NSW Ombudsman, *Review of the Impact of Criminal Infringement Notices on Aboriginal Communities* (August 2009); New South Wales Law Reform Commission, *Penalty Notices*, Report No 132 (2012).

⁶ NSW Ombudsman, *Policing Intoxicated and Disorderly Conduct: Review of Section 9 of the Summary Offences Act 1988* (2014).

⁷ L McNamara and J Quilter, ‘Turning the Spotlight on ‘Offensiveness’ as a Basis for Criminal Liability’ (2014) 39(1) *Alternative Law Journal* 36.

⁸ J Quilter and L McNamara, ‘Time to define “the cornerstone of public order legislation”: the elements of offensive conduct/language under the *Summary Offences Act 1988* (NSW)’ (2013) 36(2) *UNSWLJ* 534.

⁹ See *Fines Act 1996* (NSW) s 60(1)(c) and s 66, and *Road Transport Act 2013* (NSW) s 54(5). See also B Saunders, G Landsdell, A Eriksson & M Brown, ‘The Impact of the Victorian Infringements System on Disadvantaged Groups: Findings from a Qualitative Study’ (2014) 49(1) *Australian Journal of Social Issues* 45.

¹⁰ Law Council of Australia, *Addressing Indigenous Imprisonment: National Symposium*, Discussion Paper (November 2015), p 18; R Ivers and J Byrne, ‘Indigenous Australians need a licence to drive, but also to work’, 19 September 2014, <https://theconversation.com/indigenous-australians-need-a-licence-to-drive-but-also-to-work-31480>

Other Legislation Amendment (Assault and Intoxication) Act 2014 (NSW) are not geographically limited and operate across all of NSW.

17. We submit that it is important that the Review gathers and analyses data about the effects of the changes outlined here in all parts of NSW, with a focus on evaluating whether the 2014 amendments have had an adverse impact on marginalized groups, including the homeless, and Indigenous persons.

Non-punitive solutions to anti-social behaviour concerns

18. We submit that the Review should examine the availability and effectiveness of strategies that operate outside the regulatory environment established by the *Liquor Act 2007* (NSW), the *Summary Offences Act 1988* (NSW), and the *Law Enforcement (Powers and Responsibilities Act) 2002* (NSW). This is particularly appropriate in relation to conduct that relates to the ‘diminishing amenity end’ of the criminal harm-anti-social behaviour spectrum.

19. For example, public urination (often after consumption of alcohol) is a frequent reason for charges and CINs for offensive conduct in a public place under s 4 of the *Summary Offences Act 1988* (NSW).¹¹ Solutions that do not require police involvement, including the escalation of risk associated with encounters between police and intoxicated persons, should be encouraged. These include, the wider availability of public toilets, including ‘permanent pop-up public urinals at identified sites within the late night entertainment precincts of Kings Cross, Oxford Street, and George Street’.¹²

Please feel free to contact us should you require any further information

Sincerely

Associate Professor Julia Quilter
School of Law
University of Wollongong

[Redacted]
[Redacted]

Professor Luke McNamara
Faculty of Law
University of New South Wales

[Redacted]
[Redacted]

¹¹ J Fitzgerald, ‘On-the-Spot-Fines and offending: Has the NSW Criminal Infringement Notice scheme increased legal actions for public order offences and shoplifting?’ Paper presented at Australian & New Zealand Society of Criminology Conference, Brisbane, 3 October 2013.

¹² City of Sydney, *Public Toilet Strategy* (2014), p 3; J Robertson, ‘Sydney Rate-payers to pay a pretty penny for pop-up urinals’ *The Sydney Morning Herald*, 8 April 2014, <http://www.smh.com.au/nsw/sydney-ratepayers-to-spend-a-pretty-penny-on-popup-urinals-20140408-36any.html>. It would also be useful to find an equivalent toilet for use by females in public spaces.