

# **Submission to the NSW Liquor Law Review by Stephan Győry**

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## **Personal Details**

My name is Stephan Györy. I am 42. I have been a resident of Potts Point for 15 years. I have a Bachelor of Psychology from the University of Sydney and maintain a deep interest in the arts and music culture of Sydney (centred around East Sydney), having been involved in the music industry for over 20 years. I have co-owned a bricks and mortar small business (a record store) in Darlinghurst for 12 years.

I am the current president and a founding member of the Darlinghurst Business Partnership [DBP]: a not-for-profit members-based association of small independent businesses in the Darlinghurst area that has been active since 2005.

I have been aware of and involved in the debate around conditions in Sydney's late night trading precincts for many years. I am willing to be interviewed in person by the inquiry.

## **Key Points**

- *That the 'lockout laws' have reduced violence by simply reducing foot traffic*
- *That Australia has a general problem with male aggression*
- *That licensed venues are our natural allies in mitigating alcohol related risk and they are being disincentivised to assist*
- *That current 'entertainment' precincts evolved due to deregulation in the 1980s and our regulatory responses to them are predicated simply on containment*
- *That Sydney's night economies should not solely be managed through the Liquor Act*
- *That Sydney requires more than one late-night art, culture and entertainment precinct to function as an 21st Century international city*
- *That such precincts require a comprehensive plan including co-ordinated legislative and policy development, a detailed communications campaign, and integrated stakeholder co-operation*
- *That Oxford Street & Surrounds is the natural area in which to experiment with a trial precinct*
- *That an early soft sounding by DBP of key stakeholders in Oxford Street area indicates strong support for this approach*

## **An Apparent Success**

The legislation informally known as the 'Sydney Lockout Laws' was introduced in order to achieve a very narrow policy goal: 'reducing alcohol fuelled violence' within a particular prescribed area of Sydney.<sup>1</sup>

There is no doubt that the NSW Government believes this particular legislation has achieved its stated goal. The BOSCAR statistics<sup>2</sup> frequently quoted show a precipitous decline in violent incidents in both the Kings Cross Precinct and across the broader CBD since its introduction in 2014.

However there are problems with the logic employed in the analysis of these statistics.

Levels of violence were already dropping<sup>3</sup> before the implementation of the 2014 measures. The baseline level of violence was very low when considering number of people frequenting the area<sup>4</sup>. The percentage drops in violence are being measured against no known background of total number of people frequenting the areas before or after the 'lock out laws' came into effect.

But the focus on and subsequent response to the perceived problem of 'alcohol fuelled violence' obscures a broader picture.

The lockout laws are a brute force response to a visible face of a far deeper and more complex social issue: violence per se.

It is an approach, the success of which is cynically based to simple mathematics: if you reduce the number of people in any given area you will, by default, reduce any behaviour within that area - social or anti-social.<sup>5</sup> For this reason alone the lockout laws are anti-competitive and inflict economic harm on every single business within the prescribed area.

It is also inconsistent with how the State tackles violence in other arenas.

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<sup>1</sup> In addition, the terms of reference of this inquiry, as simply a review of the legislation, threatens to render this review merely a report card on the legislation itself and what it could be: an analysis of the far broader socio-cultural-economic environment within which the issue of predominantly "young male 'alcohol-fuelled' aggression" exists.

<sup>2</sup> <http://www.bocsar.nsw.gov.au/Documents/CJB/CJB183.pdf>

<sup>3</sup> <http://www.abc.net.au/news/2016-02-10/crime-statistician-refutes-bairds-sydney-assault-figures/7154804>

<sup>4</sup> The number of people using the 'entertainment precincts' was akin to that of a music festival or sports match every weekend and yet there was no detailed plan of management in the way that a festival or sports events are required to have. <http://designingoutcrime.com/project/kings-cross/>

In addition, BOSCAR statistics show that in the NSW population of 7.5 million there were a total of 64,726 total assaults in 2013 (Domestic and Non). This is 185 assaults per day which is a .000024 percent chance of any individual being assaulted in the first place. <http://www.bocsar.nsw.gov.au/Documents/rcs2013.pdf>

Destination NSW proudly declared that Sydney was the world's safest and friendliest city: <http://www.destinationnsw.com.au/news-and-media/media-releases/sydney-worlds-safest-and-friendliest-city>.

<sup>5</sup> This is the official position of the DBP that the laws are anti-competitive and that if they are not repealed they should be widened to cover the entire state. <http://www.dbp.org.au/lockout-press-release-2015/>

## **Violence as a Societal Issue**

With domestic violence, bullying and sporting violence, the institutions of marriage, school and sporting clubs are not attacked, punished and locked-out; they are the natural venues from within which to forge change.

They are expected to be involved and address problems and reform by working together with the relevant authorities for comprehensive solutions - which, in fact, licensed venues were doing in conjunction with OLGR with considerable success prior to the introduction of the lockout laws. But, and as will be elaborated below, this belied that fact the main problem was in the street, not in the venues.

So why is 'alcohol fuelled violence' being approached differently to any other violence in our community? I do not know the answer to this, but the 'lockout' reaction smacks viscerally of paternalism, moralism, lazy policy-making and pre-existing agendas.

The issue that government is sweeping aside with the 'lockout laws' is violence, predominately young male aggression. It is a problem as old as we are. It would seem intractable ... except it's not. Aggression is often a physical response to emotional stressors.<sup>6</sup>

We are simply not preparing many of our young men for a modern world; unlike women, they have had no sexual revolution within which to evolve and 20th century tropes still dominate many upbringings.

Many males are not being educated in how to understand or react to their emotions or how to resolve conflict, while at the same time being informed by popular culture and the myth of machismo that the world (and any woman) is still there for the taking by any man. In addition, the prevalence of widely available pornography means that both young men and women are developing completely unrealistic models of relationships and we barely teach them anything different.<sup>7</sup>

Except it is 2016 and we live in a post-feminist<sup>8</sup> world where many adult women are empowered to say no.

This is a simple sketch of the broad problem; the one that the 'lockout laws' pretend to deal with.

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<sup>6</sup> This is, in no way, to deny the correlation between alcohol and violence. Nor that reducing access to alcohol can reduce incidents of violence. But it does mean that the government's current solution to violence is to suppress it by containing the enablers of violence, rather than tackling the causes violence head on. It is a collective punishment response with significant unintended consequences.

<sup>7</sup> Although some are trying and there is a growing awareness of the need to address these issues from a very young age: "Our Watch and Plan International are calling for governments around Australia to further fund comprehensive approaches to respectful relationships education, inclusive of online bullying, harassment and the impact of pornography." <http://www.abc.net.au/am/content/2016/s4417821.htm>

<sup>8</sup> In some instances, young men are still raised with the notion that 'boys don't cry', that they need to be macho and that to be a real man is to bed as many women as possible and that all males are potential rivals to their interests. Music and film and particularly Australian sport still perpetuate the alpha-male myth and so some young men, incapable of expressing themselves emotionally and not equipped with the skills needed to resolve conflict find themselves alienated from the world in which they find themselves as young adults: a world in which women are empowered.

## **Strange Instruments**

On the particular issue of 'alcohol-fuelled violence' in the 'Sydney Entertainment Precinct' the current policy is flawed. The government claims success when it has, in reality, completely abrogated responsibility by instituting curfews and prohibition. It is also difficult to reconcile the 'violence epidemic' narrative with Destination NSW promoting Sydney as the world's safest and friendliest city.<sup>9</sup>

This is not to say that there was no problem with anti-social behaviour, nor am I suggesting that we should accept any level of violence in our society, merely that the problem seems to have been exaggerated and the blame and costs placed on a single segment of the community.

A complex social situation deserves a comprehensive response with a strong educational emphasis and a precise law & order approach, but we have chosen liquor legislation as our preferred instrument? This seems both counterintuitive and manifestly inadequate.

We have turned bars and pubs into a proxy for police while at the same time systematically forcing them out of business.

And on the other hand, the 'Royal Commission into Aboriginal Deaths in Custody' and the closure of most of the Public Mental Hospitals have ensured that police are both unwilling to use their considerably-watered-down powers to arrest the most violent and intoxicated offenders<sup>10</sup> and unable to take mentally disturbed people off the streets.<sup>11</sup>

There is no doubt that some licensed venues were irresponsible but for this we had very strong liquor legislation that, as the States' head crime statistician, Don Weatherburn<sup>12</sup> has pointed out, was already doing its job.

By placing the venues that serve alcohol under immense regulatory and financial pressure, we alienate what should be our natural ally in the constant struggle to maintain the balance between civil liberties and law and order.<sup>13</sup>

The 'strike system' discourages the reporting of incidents; it literally punishes the very people we would want keeping the closest eye on potential troublemakers. The reason we have licenced venues, the reason we legislate around alcohol at all is because we know, through long experience, that while it is a cherished part of our society, it has the capacity for great harm, so we serve it in establishments with security personnel and cameras and trained service staff.

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<sup>9</sup> Op. cit. <http://www.destinationnsw.com.au/news-and-media/media-releases/sydney-worlds-safest-and-friendliest-city>

<sup>10</sup> It is my understanding that Kieran Loveridge was given an on the spot fine for offensive behaviour after he had been refused entry from four venues and assaulted several people before Police moved him on. This was clearly the inappropriate action taken by Police which ended with Thomas Kelly being killed only a short time after the Police interaction.

<sup>11</sup> A particularly disheartening account of this from an ex-police officer be found in APPENDIX B.

<sup>12</sup> Op. cit. Pp1. <http://www.abc.net.au/news/2016-02-10/crime-statistician-refutes-bairds-sydney-assault-figures/7154804>

<sup>13</sup> The current laws are also having the perverse effect of forcing smaller, more nuanced operators out first. The very venues that were a key plank in the City of Sydney's OPEN Sydney strategy to diversify Sydney's nightlife. [http://www.cityofsydney.nsw.gov.au/\\_data/assets/pdf\\_file/0014/132224/2013-054826-OPEN-Sydney-Strategy-and-Action-Plan-FINAL-version-February-2013.pdf](http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0014/132224/2013-054826-OPEN-Sydney-Strategy-and-Action-Plan-FINAL-version-February-2013.pdf)

I have been informed by some local venue owners, good operators with no strikes, that they no longer report violent incidents for fear of incurring penalties and fines. One wonders if this is happening in 'displacement' precincts as well.

The impending periodic liquor licence fee threatens to place additional financial burdens on venues, many of who have been simply told to close earlier to avoid them. Once again this seems to be part of a concerted push to reduce the numbers of licenced venues and the hours in which they trade.

None of this goes anyway to actually addressing the roots of 'violence'. It is merely tinkering with the correlation between availability of alcohol and incidents of alcohol-fuelled, which is akin to removing cars from the road to reduce auto incidents; i.e. it does not address underlying behaviours.<sup>14</sup>

The background document<sup>15</sup> for this review states that licence fees contribute to OLGR's ability to fund the operation of the liquor regulatory scheme and the suggestion is that risk based licensing fees will contribute further to OLGR's budget, but this seems to ignore that fact that alcohol revenues contribute over \$7 billion annually to Australia's bottom line.<sup>16</sup>

Granted, the referenced report points to an even greater cost borne by society related to alcohol consumption, but pricing venues out of the game in an effort to reduce consumption does not address the underlying health, productivity and violence issues associated with alcohol, it just shuts down venues<sup>17</sup>. How long before tragic death occurs at an unsupervised house party and the subsequent media outcry forces more hasty legislation?

A majority of people consume alcohol without issue and history shows us that we cannot prohibit the substance from existing; it needs to be managed and tax revenues from the sale of alcohol should be used to manage it. It bears repeating, licensed venues are our allies in this, but the way they are being policed suggests we view them as the problem.

The fundamental question we need to address is: *'does Sydney want or need a nightlife that is enjoyable for the majority of residents and visitors?'*

The short answer would seem that significant parts of Sydney City's community indeed want one<sup>18</sup>, but from the Premier's quip<sup>19</sup> about impulse buying a bottle of Chardonnay at 10pm it is clear that he does not understand this.

So the question is: how do we address all of these things in a sensible and comprehensive manner?

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<sup>14</sup> Indeed, we do not remove cars from the road; we remove drunk drivers from the road. We do, however, have provisional driver's licenses for younger drivers and it is odd that, in this society, for the consumption of alcohol, we ban it completely for older teens, even under the supervision of their parents, then simply send them on their way at age 18 to drink to their heart's content often supervised by no one and in the company of large amounts of peers and the pressure to act out that this cohort brings to bear.

<sup>15</sup> <http://www.justice.nsw.gov.au/justicepolicy/Documents/background-paper-stat-review-lockouts-last-drinks-1.pdf>, point 2.9.9.

<sup>16</sup> [http://www.aic.gov.au/publications/current\\_series/tandi/441-460/tandi454.html](http://www.aic.gov.au/publications/current_series/tandi/441-460/tandi454.html)

<sup>17</sup> This is itself highly problematic when venues, especially in minority communities, are sometimes the only safe place where these people can be and feel safe and be themselves. This issue has been covered in depth by Associate Professor Kane Race: [http://sydney.edu.au/arts/gender\\_cultural\\_studies/staff/profiles/kane.race.php](http://sydney.edu.au/arts/gender_cultural_studies/staff/profiles/kane.race.php)

<sup>18</sup> <http://www.dailymail.co.uk/news/article-3456752/15-000-streets-protest-against-lockout-laws-Sydney-open.html>

<sup>19</sup> <https://www.facebook.com/mikebairdMP/posts/1041779695950271>

## **Trouble in the Street**

In 2013 the streets of Kings Cross at night were a *mêlée*. Venues were doing their jobs, refusing service, denying entry – as they were required by numerous laws. But the streets were a zoo with many, already intoxicated people, flocking to the area due to its nature as one of Sydney's only 'go-to' late night precincts. On more than one occasion at community meetings<sup>20</sup> I witnessed State, Council and Police pass the buck on whose job it was to actually control the street. This was perplexing at the time, but it has since become clear to me why.

The 'entertainment' precincts we have: Kings Cross, CBD & Oxford Street, were never planned, they simply evolved as a result of deregulation in the 1980s, as did our regulatory responses to them. Thus, the laws surrounding our precincts are predicated on containing behaviours and controlling impacts with most of the onus placed on private enterprise. There appears to be no overarching vision of what a late-night precinct could or should be beyond 'contained'.

Sydney's Late Night Trading Development Control Plan [DCP]<sup>21</sup> is startling in its lack of vision for what a true sophisticated nighttime economy should be. The opening sentence of the strategy reads; *"The main aim of this DCP is to assist in the management of the impacts of late night trading premises on the sites and neighbourhoods in which they are located, and in particular, protect the amenity of residential properties."*

The decision that needs to be made is 'does Sydney City want to have a sophisticated, safe and appealing nightlife that caters to all elements of society in a 24-hour globalised context?'

I believe it does, as do a large number of other people that I know. More importantly it is now being recognised globally that the next generation want to move into and live in cities that are fundamentally different to the ones we have grown accustomed to, outside of the career-oriented 9-5 paradigm<sup>22 23</sup>.

Major cities around the world are realising this and Amsterdam has gone so far as to create a 'Night Mayor'<sup>24</sup>.

But in Sydney, other than the DCP and its related Local Environment Plan [LEP], the only other place I know of where legislation talks about plans of management for the 'entertainment' precincts of Kings Cross and the CBD (into which Darlinghurst is unceremoniously dumped) is liquor legislation. So the only instrument with which we choose to shape our 24-hour economy is through the regulation of private business using the concepts of containment and enforcement to guide us?

This is insufficient.

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<sup>20</sup> The large capacity venue a King's Cross hotel, I might add.

<sup>21</sup> This is one of the few places in N.S.W. legislation that even talks about Sydney's 'entertainment precincts'.  
[http://www.cityofsydney.nsw.gov.au/\\_data/assets/pdf\\_file/0006/119508/LateNightTradingDCP2007.pdf](http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0006/119508/LateNightTradingDCP2007.pdf)

<sup>22</sup> <http://www.economist.com/news/special-report/21688591-millennials-are-brainiest-best-educated-generation-ever-yet-their-elders-often>

<sup>23</sup> <http://www.forbes.com/sites/katetaylor/2013/08/23/why-millennials-are-ending-the-9-to-5/>

<sup>24</sup> Following this lead, Paris, Toulouse, and Zurich now all have night mayors, while London and Berlin are considering creating their own. This model is being closely looked at by other major cities too.  
<http://www.citylab.com/cityfixer/2016/01/night-mayor-amsterdam-mirik-milan/433893/>

## **Trialling a Specially Designated Arts' Culture and Entertainment Precinct**

It could be suggested that the 'entertainment precinct' model itself is flawed and that desaturation through dispersal of venues is the solution, but a city such as Sydney, with its limited space and condensed residential populace is not amenable to such a solution.

Granting that then, what any late night trading precinct needs is a vision, a willing populace, a comprehensive plan of management and deft, but tough, policing.<sup>25</sup> And it will require a thorough shakeup of NSW state Government legislation to achieve this.<sup>26</sup>

But even this falls short of the mark because we should not be talking about late night precincts in isolation from activity occurring in these areas during the rest of the day.

A city is a living, breathing organism from which culture is an emergent property. A city can be understood in the same terms as the human brain, from whose complexity intelligence emerges. And just as we do not take a piecemeal approach to neuroscience, we can ill-afford to do so with our cities.

Melbourne understands this. In 2008 the City of Melbourne released its 24-hour City Strategy<sup>27</sup>: a framework from within which to understand the pulse of the city organism: its phases. The tone of the Melbourne document is striking in its contrast to Sydney's 'Late Night Trading' DCP:

*The City of Melbourne's Policy for the 24 Hour City comes at a pivotal time. Over the past decade the city has successfully attracted a diverse and vibrant mix of residents, visitors and business that use the city 24 hours a day seven days a week. This rich tapestry has underpinned economic and cultural development which has seen the city develop into an internationally recognised location to live, work, visit and socialise.*

If one believes that the International City Status that Sydney desires necessitates a 24-hour economy, then Greater Sydney will need multiple precincts that function late into the night and well into the morning. And if we are to have such precincts, they need to be planned holistically and managed with sophistication.

In the current political climate, it is hard to envisage the 'lockout laws' being repealed because, as stated in the introduction, they have the appearance of having achieved their very narrowly defined goal and the wider electorate sees this as a success.<sup>28</sup>

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<sup>25</sup> In fact, work has been done in this area, but without a comprehensive strategy or plan beyond containment and enforcement, Sydney will continue to grapple with the underlying issues.

<http://designingoutcrime.com/tag/entertainment-precincts/>

<sup>26</sup> NOTE: bottle shop closing times across the state are a separate matter where local issues come into play. They should be looked at independently and on a area-by-area basis.

<sup>27</sup> Pp6: [https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/Lists/CouncilMeetingAgendaItems/Attachments/1959/CSC\\_53\\_20080909.pdf](https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/Lists/CouncilMeetingAgendaItems/Attachments/1959/CSC_53_20080909.pdf)

<sup>28</sup> It must also be noted that the State government is comprised of representatives from across NSW, including rural, regional, suburban metropolitan regions, while the inner city of Sydney is a unique environment in the context of the entire State, and an environment in which, it is entirely reasonable to conclude, that State government decision makers from outside of these areas do not have the real life experience of living in and understanding the complex functioning of these high density, vibrant, rarely slowing down zones.



This poses somewhat of a conundrum for Sydney, because to be the Asia-Pacific tech-hub<sup>29</sup> that it wishes to be it cannot go completely to sleep at 10pm, or midnight, or 1:30am or 3am.

A young tech start-up that finishes coding or seals a deal at 3am wants to be able to go out and celebrate this fact. The waitress or waiter that pours your wine at dinner deserves to be able to go out after their shift and enjoy that same privilege that you enjoyed: a meal and a drink and, more than likely, as a younger person, a dance. And they should not have to travel from one urban centre to another to achieve this.

To overcome this impasse, Sydney needs a test case. A new way of doing the old things that seeks to provide proof of concept to a sceptical government and populace. This should be trialled for a period of time and studied, reported on and, if successful, replicated across the states urban areas.

Kings Cross/Potts Point, the site of Daniel Christie and Thomas Kelly's tragic deaths, is too sensitive and has an older population that struggles with the concept of late-nightlife. The CBD is a currently a construction site. The one remaining area within the already demarcated area is Oxford Street its surrounds.

Darlinghurst has the highest percentage of Gen X/Y and Millennial population in the country<sup>30</sup>. It has a noisy six-lane highway running through it and a large number of small, independent licensed venues with which to work that have so far survived the spate of closures rolling through Kings Cross. It also has a proud LGBTQ history steeped in social protest and change.

Having been ignominiously lumped in with the geographically and demographically distinct CBD under the 'lockout laws', Darlinghurst is the natural area to test out a wholesale rethink of how we plan and manage nighttime economies. This trial could take the form of a "Darlinghurst Arts, Culture and Entertainment Precinct" with a diversified offer, reliable transport and 'smart' security and policing. This would require changes in a number of legislative and regulatory areas that seek to balance the needs of all stakeholders.

I am not an expert in drafting but legislation have complied a list of these changes, which can be found in **APPENDIX A**. This list is not exhaustive and surely not complete, but they are suggestions and ideas that have occurred or been made to me along the way in the course of researching this issue.

And ultimately, we cannot limit ourselves to a single area like this. A large problem that we had in Kings Cross was busloads of people coming in from far and wide with the specific intention of getting wasted. Numbers far too large for a single area to manage. The work choices and lifestyles of generation X, Y and the Millennial's are chafing against the strictures of the old 9-5 work paradigm, and ultimately, all dense urban centres are going to have create a late night offer. The only choice that remains is whether or not we are going to be reactive or proactive.



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<sup>29</sup> <http://www.smh.com.au/technology/innovation/baird-announces-silicon-valleystyle-tech-hub-for-sydney-20151022-gkfocz.html>

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<http://www.abs.gov.au/ausstats%5Cabs@.nsf/mediareleasesbyCatalogue/72D4A8F0C7957E85CA257A6A0012F5A0?Opendocument>

## **APPENDIX A**

The following is a list of legislative and policy areas that would need to be addressed in the creation of a special Sydney Arts, Culture and Entertainment Precinct. I do not have the expertise to make more than general statements and I am wary of the many complexities in the detail behind them. Any plan must be holistic in design and cognizant of potential unintended consequences of making changes.

Diversity of offer and a sophisticated understanding of space are essential and we would do well to understand why distal displacement areas such as Newtown have seen a rise in attendance without a corresponding rise in violence; i.e. looking at what's right and not wrong, could be a place to start.

[Professor Murray Lee](#), a Professor of Criminology at the University of Sydney Law School made some interesting comments to this effect at a talk called "Sydney's Lockout Laws: Cutting Crime or Civil Liberties?" put on by the University of Sydney's Institute of Criminology on the 14th March, 2016.

### **City of Sydney Policy**

- 2030 Economic Development Strategy
  - Recognise the village of Darlinghurst as Sydney's benchmark 24 hour economic hub, built around arts, culture, and entertainment
  - Increase level of public transport to 24 hours on weekends
  - Follow precedents set in Tokyo, Berlin, London, Melbourne
- Retail Action Plan
  - Default shop opening for village of Darlinghurst 24 hours Thursday to Saturday
- Tourism Action Plan
  - Apply significant resources to the heart of Sydney's EastSide fine grain tourism initiatives
- Visitor Accommodation Action Plan
  - Short term holiday letting definition becomes exempt development under SEPP
  - Student housing and backpacker hostels be given same development concessions as social housing
- OPEN Sydney Strategy and Action Plan
  - Role of Night Mayor created to focus on the night time economy, advising Lord Mayor, Councillors, and State Government

### **Planning, Building, EPA**

- Sydney Development Control Plan 2012 and Late Night Trading Premises DCP 2007
  - New defined precinct of Darlinghurst
  - 'Agent of Change' principles protecting existing uses, especially arts and entertainment
  - Higher threshold of noise insulation requirements for new inner city high density residential development, replicate in Building Code and EPA
  - Extend outdoor dining licences from 10pm
  - Prescribed minimum mix of social housing, low cost housing, student housing, creative spaces, backpacker hostels, and hotel / guesthouse accommodation
  - Target trading mix of late night operators across licensed venues licenses classes, food, general retail, cinema, theatre, galleries etc

## Liquor/Gaming

- Darlinghurst Entertainment Precinct Plan of Management
  - Collaborative, self regulating private security amongst licensed venues in precinct (already under way in pilot program)
  - Extended trading hours for venues less than 200 persons, live music venues, and venues offering food (Melbourne precedent)
  - New class of licence for live music venue different to general hotel licence
  - Increase level of public transport to 24 hours on weekend
- More effective regulatory system biased to keeping good operators engaged in the industry
  - 3 Strike System replaced to be more appropriately scaled and encourage reporting
  - Police to work with venues, reduce the adversarial relationship between police and licensees

## Justice:

- A wholesale revision of the police powers of arrest is needed.<sup>31</sup> To avoid the mistakes of the past we need to avoid giving police discretionary powers but ensure that they have the power and inclination to serve and protect.

Violent and heavily intoxicated offenders must not be moved on, they must be arrested.

- Police powers have a complex history and I am not claiming to be able to solve the myriad issues surrounding them here.

However, if we have arrived at a situation where potential killers are cautioned and moved on, while law-abiding businesses have become the target of police enforcement, then something needs to change

- We should outfit police with body cameras so ensure greater accountability and protect police officers from malicious claims.

We should allow and enable police to detain, without charge, for a maximum of 24 hours, a violently drunk or otherwise seriously belligerent person on the basis of independently verified video evidence.

We should have a mental health professional stationed at the police station to ensure that at-risk people do not self-harm.

We should issue warnings, call parents and keep records. This will put repeat offenders on notice and help capture those in need of mental health treatment.

- Inebriation cannot and should not be used as a mitigating defence for any criminal behaviours. Freedom entails responsibility.

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<sup>31</sup> See **APPENDIX B** for an account by an ex police officer of the issues being faced in this regard.

## **APPENDIX B**

### **An account of watering down of police powers by an ex-police officer**

The 1987 Royal Commission into Aboriginal Deaths in Custody recommended that if less people were taken into custody there would be less deaths in custody.

It also found that intoxicated persons presented a higher of risk of death in custody.

After the Royal Commission into Police Corruption the Powers of Arrest were changed away from the Crimes Act which provided that Police required reasonable grounds to arrest to the Law Enforcement Powers and Responsibilities Act (LEPRA) which directed Police to only arrest if it was the last resort and they must use the means of least resistance to the offender.

LEPRA directed Police to where possible use

- a Caution,
- a Move on Direction,
- An On the Spot Fine,
- A Future Court attendance Notice (CAN)

Specifically in relation to the Intoxicated Persons Act the changes were as follows,

Previously a Constable had to satisfy him/herself that a person was intoxicated in a public place and going to cause harm to someone or themselves. If that was the case the person would be taken directly to a Police Station and detained in a Cell overnight.

This was changed because it was not nice to treat people like this.

The use of the Intoxicated Persons Act was changed to the following

- If a person was detained they had to be taken to a Proclaimed Place not a Police Station like a Homeless hostel. (problem is that they are always full)
- If the Proclaimed Place is full the Police must contact a responsible adult to release the intoxicated person into their custody. (problem Mum and Dad don't want to come in to collect him or they have been drinking and can't drive. The other issue is the responsible adult can't control the intoxicated person.
- If the above fails the Police have to drive the Intoxicated Person home taking them out of their area for a long time which impacts on the service levels delivered by the Local Area Command.
- In addition if all else fails they can use the Police cell but a prisoner for Police ratio has been established that requires more Police to be taken off Patrol duties and deployed to supervise prisoners in the Cells. This also impacts on the Local Area Command to maintain service levels because if you have too many prisoners all you patrol cars are off the road and can't respond.
- In addition to this Station Sergeants who are in charge of accepting custody of Intoxicated Persons are very resistant to accepting responsibility for anyone who is intoxicated due to the risk of a death in custody incident on their watch.

The end result is that street Police use the Move On Directions or On the Spot Fines when it is clearly not the correct course of action to protect the public safety.

Example Kieran Loveridge was given an on the spot fine for offensive behaviour after he had been refused entry from four venues and assaulted several people before Police moved him on. This

was clearly the inappropriate action taken by Police which ended with Thomas Kelly being killed only a short time after the Police interaction.

The other event that has fed into the problem Police have controlling the street was the Richmond Report into the Mental Health industry which paved the way for most of our Public Mental Hospitals to be closed and the Mentally Ill being left on the streets.

The Police use to use schedule 8 of the Mental Health Act to detain persons who appeared to be mentally ill and take them to a mental hospital to be assessed for 24 hours. This has also stopped and the Police have no way of dealing with the mentally ill as well.

This significantly changed the culture of the NSW Police from arrest and detention to move on and disperse.

In relation to the Summary Offences Act it was replaced with the Offences in Public Places Act which basically covered the same offences however the Judiciary have watered down the effectiveness of this legislation by setting a precedent that Police Officers are not reasonable people and therefore can not be offended by bad language so they can not be the witness who was offended.

In relation to the existing Sobering Up Rooms which are the old Central Police Cells. Police are only allowed to take people there during certain hours of certain days and from designated streets only. If an intoxicated person is showing signs of aggressive behaviour Police don't take them there because they have to be assessed by a nurse and they can't put the nurse at risk. So instead the really aggressive ones are given the Move On Direction.

As a result of these poor policies we have more high risk persons on our streets and their behaviour is reinforced as acceptable because there has been NO CONSEQUENCE for their appalling behaviour.

I have personally witnessed people swearing at Police and threatening them and they are told to Move On.