

Our Ref:
Your Ref:

27 January 2023

The Premier of South Australia
Hon. Peter Malinauskas

The Commissioner of Liquor and Gambling
Mr. Dino Soulio

L A W Y E R S

BY EMAIL

REVIEW OF THE LOCKOUT IN SA

This letter is a submission to the review by The Commissioner of Liquor and Gambling of the Late Night Trading Code of Practice ("the Code") imposed pursuant to the Liquor Licensing Act 1997. A particular focus of the submission is the lockout provisions of the Code ("the lockout").

This office acts for the following parties in relation to the lockout:

1. 111-117 Hindley Street Adelaide best known as Red Square and The Palace;
2. The owner of 121 Hindley Street Adelaide
3. The owner of 114 Hindley Street Adelaide;
4. 85 Hindley Street Adelaide best known as The Plaza Hotel; and
5. UNLOCK Adelaide, including an approximate (and increasing list) of 3000+ signatories to a petition supporting the removal of the lockout.

The review could not have come at a better time for the Entertainment precinct, which has been struggling with the impact of COVID since 2020.

It is hoped that the reviewer sees that the precinct has improved tremendously since the lockout was first implemented in 2013 and any arguments for the restrictions no longer hold any validity. Furthermore, he is invited to adopt Daniel Goldman's five key elements of empathy that are: understanding others, developing others, having a service orientation, leveraging diversity and political awareness.

The reviewer cannot just accept the minority voice that are shouting the loudest but remembering that he is the Liquor and Gaming Commissioner for the whole State and needs to consider that the large majority of members of

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the public drink and behave responsibly and should not be penalised for the few that believe otherwise.

The Adelaide City Council has reported that there are over 25,000 persons that attend the West End Entertainment Precinct every Friday night and over 50,000 persons on a Saturday night.

I provide a copy of my letter of 20 October 2022, to The Premier and note the absence of any written response to that letter. I acknowledge that a meeting with the relevant State government minister and The Commissioner was scheduled subsequent to my letter; a meeting that the minister failed to attend. I will reference that letter on occasions later in this submission.

As outlined in my letter to The Premier, I am passionate about the night time entertainment industry and have a strong personal interest in this issue.

It is noted that one of the roles of the Commissioner of Liquor and Gaming is the regulation of the liquor, gaming, casino, small lottery and charity industries in South Australia. To avoid the perception of a conflict of interest, and the reality of The Commissioner reviewing himself, the review currently being conducted by his office should have been given to a qualified and experienced third party consultant, preferably from another State, to ensure that any recommendations were the result of an independent evaluation of the Code.

This submission seeks significant changes to the Code, particularly the removal of the lockout requirements. Details of suggested recommendations from the review are provided later in this letter.

Physical area of application of the lockout, the evolution of that area and its planning and other controls, the pre-lockout role of licensed premises

I want to look at the characteristics and history of the area to which the lockout applies.

The lockout has mainly affected the Entertainment Precinct ("the precinct") of the city, being predominantly the West End but with the exception of the Adelaide Casino which is excluded from the Late Night Trading Code of Practice.

The precinct was never planned properly, it simply evolved as a result of changing the planning laws. This used to be an area where businesses, cinemas, department stores and banks used to thrive and now they have all disappeared. Therefore, the laws surrounding the precinct were created on containing behaviours and controlling impacts with most of the onus placed on private enterprise. There appears to be no over-arching vision of what a late-night precinct could or should be beyond 'contained'.



Before the introduction of the lockout, venues were meeting their obligations, refusing service to persons who provided signs of intoxication, denying entry to persons who did not meet their standards or being intoxicated as they were required to do by law. But in the streets, it was an arena with many intoxicated people, especially since the offence of intoxication was removed in South Australia. In other words, it is not an offence to be drunk in a public place or in a licensed premises.

Under sec. 7 Public Intoxication Act 1984 (SA) the police may apprehend a person who they reasonably believe to be under the influence of drugs or alcohol in a public place, into custody and take the person home or to a police station or a sobering up centre as they may be in danger or not able to take care of themselves. I wonder how many times this happened over the last financial year. A reporting structure should be put in place statistics to show these statistics??

In South Australia, a person can attend a bottle shop, purchase 4 bottles of scotch, drink unsupervised to the extreme and then wander the street. No offence committed.

The history and mechanics of the lockout, the exclusions from the lockout, the punitive licencing fee structure

I note the following elements of the Code.

The lockout, prohibiting entry into licensed premises after 3.00 a.m., has been in place for 10 years. The Adelaide Casino is excluded from the Late Night Trading Code of Practice. A risk-based licence fee regime has been put in place and is in keeping with the objects of the Liquor Licensing Act 1997.

The adverse effect of the lockout vis-à-vis the provision of facilities for tourists and locals, on the economy as a whole and on specific businesses

In my letter to The Premier, I noted the lockout has had significant adverse social and economic effects. Many businesses have failed. Employment opportunities, especially for younger workers, have diminished. Adelaide as a tourism destination has been diminished. Entertainment options have been reduced.

Our city is a living, breathing organism in which culture and lifestyle is an emergent factor. This can be likened to the human brain, from the complex functioning of which intelligence emerges.

Melbourne understood this. In 2008 the City of Melbourne released its 24-hour City Strategy, a framework that understood the pulse of the city, its organism and its phases. The tone of the Melbourne document is striking in its contrast to Sydney.



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.

In an article a few weeks ago it reported that Melbourne was destined to overtake Sydney in becoming the largest city in Australia due to its lifestyle and choice amongst its visitors, migrant and young demographic aged between 20 and 35 years.

From past research and reports, Adelaide has consistently been classified as one of the world's most liveable and affordable cities. The lockout laws appear to serve a small minority, while punishing the majority of law-abiding citizens. The people inside venues are not violent. Venues are safe.

A review of the "reduce alcohol-fuelled violence" rationale for the lockout, and the effectiveness of the lockout in achieving this

The primary, or it could be said, sole, justification for the imposition of the lockout is that it assists in the reduction of so-called "alcohol-fuelled violence". That claim requires very close scrutiny.

Of course, comments made in this submission are not to say that there was or is no problem with anti-social behaviour, nor am I suggesting that we should encourage binge drinking or accept 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 and that being for licensed premises operating between 3.00am and 7.00am on any day (excluding the Adelaide Casino).

In accordance to SA Health, alcohol use in Australia has remained stable over the past 10 years. In 2019, 79.2% of South Australians had consumed at least one full serve of alcohol in the last 12 months. The national percentage was 76.6%.

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/health+statistics/alcohol+and+drug+statistics/alcohol+use+statistics>

The following comments are relevant to a discussion of this particular issue.

Societal context of violence

The majority of people consume alcohol responsibly without issue.

Our history shows us that we cannot prohibit alcohol from existing; it needs to be managed and tax revenues from the sale of it used to manage it.



None of the incidents of “alcohol-fuelled violence” will go away until the roots of violence are addressed. The problem is one of violence and aggression perpetrated by a small minority. The closure of most public mental health institutions has contributed to the most violent and intoxicated offenders, mentally disturbed people, left to wander our street.

Contrast the approach of using the lockout to control “alcohol-fuelled violence” with the way our society deals with motor vehicle misuse.

We have cars being sold in Australia that are capable of reaching 350 KMH and yet the maximum speed limit is 110 KMH. Drivers as young as 16 years of age can drive a high-powered car with no restrictions. How foolish is this? We do not remove cars from the roads permanently when they are being driven dangerously or with excessive speed; we impound them for 28 days and place a hefty fine for their release, and suspend a driver’s licence.

We remove drunk drivers from the road by suspending their licence for a period. Furthermore, we do have provisional driver’s licence for younger drivers and it is strange that for the consumption of alcohol, we ban it completely for older teens, even under the supervision of their parents, then simply allow them at the age of 18 to drink unsupervised; often as ‘*binge drinking*’ and ‘*pre-load*’ before they go out to socialise.

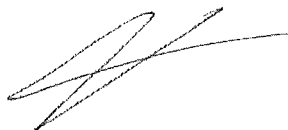
The lockout is merely attempting to permanently repair the correlation between availability of alcohol and incidents of “alcohol-fuelled violence”, which is akin to removing all cars from the road to reduce car accidents; and neither addresses underlying behaviours.

The role of the Police

It is inarguable that control of “*violence*” is the responsibility of the Police, but the lockout has been used to shift that responsibility. Bars and pubs have been turned into a proxy for police while at the same time systematically forcing them out of business or increasing their responsibilities

In reality, the control of the street can only be mandated to the Police who have the authority, are specially trained and have all the means to ensure public safety. This ‘*buck*’ cannot be passed on. Through the introduction of the lockout, and the removal of the offence of intoxication, the authorities have completely abrogated their responsibility by instituting the curfew and prohibition. Alcohol related risks and the late night economy should not solely be managed through the Liquor Licensing Act. Liquor legislation has been chosen as the preferred instrument. This seems both counterintuitive and manifestly inadequate.

Studies/statistics/data reviewing the effectiveness of the lockout in reducing “alcohol-fuelled violence”



There are several comments I want to make in this regard, and a media report, which I will reference.

The argument that the lockout has reduced violence by simply reducing foot traffic is flawed, as the broader problem is one of violence and aggression perpetrated by a small minority.

The precinct has simply evolved over time. There is an absence of any background or base data against which any current data can be measured to argue that the lockout has contributed to a reduction in "alcohol-fuelled violence"; no constructive assessment can be made. Furthermore, in the statistics publicly available on data.sa (attached), it is clear to see that total offences against the person and against the property in annual filtered searches of the Adelaide CBD were already declining for three consecutive years *prior* to the lockout being introduced. One can conclude that the lockout did not attribute to this decline. The data, however, does show we have now reached our record high of both offences against the person and against the property, surpassing annual total offences of any year since the lockout was introduced, as well as the three years prior. This could lead one to conclude that the introduction of the lockout has unintentionally resulted in a higher total number of offences against the person and offences against the property in the Adelaide CBD. As filtering of results to determine whether any of these offences were alcohol-related is not possible, nor is the filtering of time of offence to determine whether these offences also occurred between 3.01 am and 7.00 am, it is impossible to objectively and more accurately determine the effectiveness of the lockout for its intended purpose.

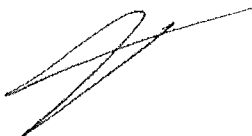
In an article by Shannon Molloy on the 19 June 2019 in relation to Queensland, the following comments were made:

<https://www.news.com.au/national/the-damning-verdict-on-lockout-laws-from-extensive-longterm-research/news-story/5f90965eca08189dcec0b310e183a63c>. :

A study into controversial lockout laws has found they offer virtually no benefit in reducing violence, stemming heavy intoxication and making patrons less fearful.

Researchers from The University of Queensland, Griffith University and Queensland University of Technology conducted research on the effectiveness of legislation in trouble-prone spots in the state's southeast.

From 2014 to 2017, the team carried out blood alcohol readings on members of the public as they entered and exited designated night-time entertainment districts (NEDs) and also interviewed patrons about their drinking behaviours.



Finally, they collected crime data to look at instances of alcohol-fuelled violence.

Their verdict, released today in the journal PLOS ONE, is damning for governments who stand by contentious lockout laws and their supporters.

People entering night-life areas were considerably drunker and arrived much later, consumed no less alcohol while inside and were more likely to have also taken drugs at home.

On top of that, there was no reduction in violent assaults or people's fear of being assaulted while out.

"Study results were consistent with our predictions that following the introduction of the legislation, patrons increased their alcohol preloading and entered NEDs later," Griffith University Associate Professor Grant Devilly said.

"People were substantially more inebriated as they entered the NEDs after the legislative change."

Dr Devilly, an expert at the uni's School of Applied Psychology and the Criminology Institute, said there was also a noticeable fall in the number of people entering NEDs with a zero alcohol reading.

"Exit blood alcohol readings were less consistent but showed some evidence of an increase. Crime statistics and patrons' self-reported experiences of violence did not change," he said.

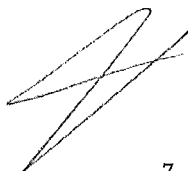
Dr Devilly said legislative changes should focus on encouraging people to come out earlier and reduce their alcohol preloading.

Alcohol consumption in "a controlled environment" should be encouraged, he said, especially in establishments that also provided food.

There has been a push to review Queensland's laws, which have been in place for several years.

"We need interventions to address the specific needs of the night-time economies in Queensland," he said.

"Alcohol-related problems in the city's entertainment districts need to both increase the community's understanding of alcohol's effects and take preloading into account. If these steps were added to Queensland's approach, the impact on alcohol misuse and related violence is likely to be much greater."



This is the first study of its kind to collect extensive blood alcohol data, substance use and assaults both before and after the introduction of legislation.

It raises questions about the effectiveness of such laws in other jurisdictions where they have had a negative impact on business and lifestyle, particularly in Sydney.

The conduct of the review by the Commissioner of Liquor and Gambling, particularly the need for the review to be open and to be based on accurate data

I have noted the terms of reference for the review by The Commissioner that were published in "YOUR SAY" (<https://yoursay.sa.gov.au/late-night-code-review>). In my opinion they are unclear and ambiguous. I exhort The Commissioner to be objective and thorough in his review and to include the lockout as a clear focus of the review.

One of the tools used to justify the lockout has been the misquoting and manipulation of official statistics and research. It is imperative that the community can be satisfied that the information that informs The Commissioner's decisions has been based on evidence, is transparent and is not seen to be producing "*predetermined political outcomes*". All data provided by any group or persons, whether it is a government department, the police or licensees, should be made public, so it is known who is saying what, and able to be independently verified.

It is hoped that clear and transparent facts are provided to the reviewer having the task of considering them as to what should occur with the lockout. In other words, no manipulation of statistics by the departments that have the responsibility of providing them.

Suggestions for changes to the regulation of the premises currently subject to the lockout

I want to provide some general comments, together with a number of specific suggestions for changes to the Code, and other recommendations, which could be proposed as a result of the Commissioner's review.

All licensees should be used as allies in mitigating alcohol related risks, and the late night economy should not solely be managed through the Liquor Licensing Act.

It is abundantly clear that the only instrument chosen to shape the 24-hour economy is through the regulation of private business using the concepts of containment and enforcement; with the exception of the Adelaide Casino. This is inadequate.



A complex social situation deserves a comprehensive response with a strong educational emphasis and a precise law & order approach.

The precinct requires comprehensive plans to include legislative and policy development in a detailed communications campaign integrated with the co-operation of all stakeholders. It bears repeating, licensed venues should be used as allies in this, but the way they are being policed suggests that they are viewed as the problem.

Why is 'alcohol fuelled violence' being approached differently to any other violence in our community such as domestic violence, bullying and sporting violence? The institution of marriage, schools and sporting clubs have not been attacked, punished and locked-out. Perhaps these areas are the natural venues in which to forge changes from within.

The issue that the authorities are sweeping aside with the 'lockout laws' is violence, predominately young male aggression. It is a problem as old as we are, as aggression is most often a physical response to emotional stressors. Of course, this is in no way to deny the correlation between alcohol and violence. But it should be noted that most of the incidents of violence have been '*coward punches*' occurring in the street and away from licensed premises, and well before midnight.

It can be said that the current solution to violence (introduction of the lockout) is to suppress the sale of alcohol by containing the enablers of violence rather than dealing with the causes of violence. In other words, it is a collective punishment response with unintended consequences.

Entertainment Precinct

A temporary freeze or moratorium period on the issuing of further licences in the precinct and in particular licences for extended late night venues, until a master plan is created and further consideration is given to ensure that strategies to improve safety in the street can be discussed amongst stakeholders, put in place and take effect.

The moratorium would give the city time to study the way the Entertainment precinct should be managed and improved and make additional recommendations to better support it.

Licensing Conditions

All licensed premises that sell alcohol should be distinguished up to midnight and after midnight with specific conditions that should apply to all premises and not to some and not others. It is nonsensical to be allowed to drink after midnight in one venue using glassware and in other premises to be in plasticware. Give individuals the responsibility they deserve and not treat

them as a 'child'; not knowing how and when to drink and what type of drink or container their drink should be in.

Accord

Before the introduction of the Lockout in SA there was the Adelaide accord that was the first accord in South Australia, a local community-based initiative between SA Police, Adelaide City Council, Licensing Authorities, AHA, security officers and licensees to which the writer was a founding member. This was based on the first accord in Australia, which was in Geelong, Victoria.

The Geelong accord's main objectives are: (as found in their attached publication):

To encourage and promote a high standard of behaviour in and around licensed premises and the Geelong Central Activities Area (GCAA). To ensure and maintain proper and ethical conduct within all licensed premises in line with the local industry Accord and promote the responsible service, sale and consumption of alcohol philosophy within the Geelong Region".

There are close to 60 licensed premises who are members of the Geelong Central Activities area. All the regulatory authorities attend their meetings and actively contribute to the improvement of the industry and not just by enforcement or compliance.

In fact, in Adelaide, licensed venues were meeting their obligations and cooperating in conjunction with all the above stakeholders with considerable success prior to the introduction of the lockout laws. Furthermore, the main problem has always been and still is in the street, not in the venues.

The Accord was a most valuable avenue where useful information was shared and in particular discussed in relation to the management of alcohol related problems (if any). It encouraged a collaborative approach in working together to achieve a positive result. This was later legislated and in particular adopted in Part 9A of the Liquor Licensing Act 1997.

A recommendation to establish an Accord again in similar terms to the Geelong Accord should be one outcome of the Commissioner's review. It is unknown as to why it was scrapped in Adelaide in the first place.

Responsible Service of Alcohol

The training of management and staff in the responsible service of alcohol, and the implementation of those principles, plays a very important role as it has an influence on the subsequent behaviours of patrons and the culture of licensed premises.



The ability of bar staff and management to identify signs of intoxication and patrons' potential misbehaviour has contributed to a safer environment and in reducing alcohol-related harms for the following reasons:

- enforcement by licensee and its staff;
- assess intoxication levels;
- interventions and consistent practices adopted by the establishment;
- continuing improvement between management and customers' service expectations.

An updating of training materials and strict mandating of training requirements in the responsible service of alcohol should be one outcome of the Commissioner's review.

Licensing Fee Structure

In South Australia risk-based licensing fees have been adopted since November 2019 under the cover of being in response to the harms that have resulted from the increased availability of alcohol. This of course applies mainly to the late night venues that operate after 2.00 a.m. However, when statistics are compared, the venues that operate after 2.00 a.m. contribute less than 1% of total sales of all licensed premises.

One outcome of the review should be a change to the licence annual fee calculation such that all licensed premises contribute to a licence fee system instead of just being based on:

Licence Class
Consumption off premises risk
Prescribed activity fees (adult entertainment)
Endorsement fee
Trading Hours risk fee
Capacity loading
Prescribed location (Hindley Street)
Bottle Shop Fee

The above approach can conclude that the adoption of risk based licensing structures reflects a continuing evolution from reactive prescriptive regulatory approaches to more proactive, preventative, performance based approaches. In other words, a readiness to accept certain levels of risk MUST EXIST otherwise the trading hours risk fee could not apply.

24/7 Public Transport

There should be, at least on **Friday and Saturday**, well-structured public transport put in place to transport patrons who attend the city and the Entertainment precinct. With the rise of popularity of Uber, the ability of people to safely and quickly disperse when they leave their favourite venue is



assisting further in transport. An outcome of the review could be a strong recommendation to government along these lines.

After Dark Activities

The review could also recommend to government that it encourage the provision of more evening and late night activities in the city offering facilities and services that do not have alcohol involved. Examples are opening the library, art gallery, cinemas and museums after hours or midnight matinees. This would provide more choices, instead of just premises offering alcohol or the Adelaide Casino that is gambling based, and broaden the spectrum of persons visiting the city.

Freedom of choices should be available to members of the public and even shopping areas like Rundle Mall be open to those who want to open and trade without restrictions.

Other legislative amendments

I acknowledge that these are issues somewhat beyond The Commissioner's realm of influence, but a recommendation from this review may act as a catalyst for action to be taken.

Anti-violence education & intervention programs,

Establish programs, including the provision of relevant courses, aimed at the reduction of violence and better anger management. There should be mandatory attendance by all persons that have been convicted for offences against the person and/or barred from the Entertainment precinct or Licensed Premises to undergo special anti-social programs before they are allowed back in the public realm and/or the precinct.

Prior to this, we should be continuing to support the education of our youth on the effects of drugs and alcohol with initiatives such as the P.A.R.T.Y programme. Other progressive marketing schemes could also include addressing mindset, aggression, violence and behavioural management, that are relatable and absorbable by our target demographics so that once they reach legal drinking age, they are more self-aware and better equipped at being responsible for themselves, their network, and their surrounds.

The offence of Intoxication introduced

The offence of intoxication should be introduced mirroring the laws in NSW.

Legal defence of intoxication

Currently in SA the state of intoxication is deemed a possible submission to make in mitigation of an offence and not as an offence itself. A person's responsibility for his action should never be transferred to a third party unless there are special circumstances.



Conclusion

The lockout has been in place for 10 years and the authorities should now reach the conclusion that it no longer fulfils any legislative purpose, if, indeed, it ever did, and remove it from the Late Night Trading Code of Practice.

Furthermore, and in support of the above contention, it is noted that Victoria introduced a trial lockout lasting 3 months in 2008, and scrapped it as it was assessed by the then Victorian Government headed by John Brumby not to be effective. And it is further noted that lockdowns previously in place in Kings Cross in New South Wales have also been abolished.

Please treat this, together with the attachments, as a written submission towards the review.

Sincerely

FLETCHER & LAWSON

A handwritten signature in black ink, appearing to read 'Antonio Tropeano', written over a horizontal line.

ANTONIO TROPEANO LLB LLM Notary Public
Legal Practitioner