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**FEEDBACK**  
on the  
**DRAFT REPORT FOR CONSULTATION**

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**INDEPENDENT REVIEW OF THE NSW REGULATORY POLICY FRAMEWORK**

**19 June, 2017**

## 1. About Keep Sydney Open

- Originally formed by the music industry in response to the 2014 amendments made to the Liquor Act 2007 (Act), Keep Sydney Open (KSO) has since evolved into the peak advocacy group working to replace the lockout laws with global best-practice management of the night time economy (NTE).
- KSO represents creative, hospitality and entertainment industry stakeholders, retailers, taxi drivers, public health experts and residents who are concerned about the management of Sydney's nightlife and its impact on the city's vibrancy.
- Drawing on the expertise of our stakeholders and a global network of academics, policy makers and experts, we are working to propel a smarter, safer and more vibrant Sydney into the top tier of global 24hr cities.
- In doing so, KSO has earned an invitation from the NSW Government to its roundtable discussions on these matters, as well as subsequent invitations to collaborate on areas such as 'small bar' legislation. Our group has also been called upon by the City of Sydney and inner-city MPs.

## 2. Regulation of night-time entertainment precincts offers a valuable case study of the regulatory policy-making deficiencies that the Report seeks to address.

- The Review's Draft Report ('Report') makes for pleasant reading for an organisation like KSO, borne out of frustrations with the development, implementation and enforcement of regulations relating to the NTE. We commend the direction taken in the Report and applaud the bold acknowledgement of the deficit between NSW's current approach to regulatory policy development and global best practice.
- The Report outlines a number of principles fundamental to what could be described as a 'best practice approach to regulation' – early and effective consultation, transparency and the active monitoring and maintenance of regulations to ensure they remain fit for purpose and in the public interest. These align with KSO's core principles and are central to our messaging in the media and submissions to the [Callinan Review](#) and [Greater Sydney Commission's Draft District Plans](#) (click to follow links).
- Regulation of night-time entertainment precincts offers a valuable case study of the regulatory policy-making deficiencies that the Report seeks to address. Had regulators been guided by the principles put forward in the Report, the inadequacy of incumbent regulatory arrangements (pre-2014 reforms) would have been identified long before the tragic deaths that ultimately became a catalyst for change.
  - Even the most cursory monitoring of the existing regulation and consultation with end-users (venues, local business, residents, public and private transport providers and the music industry) would have identified problems stemming from congestion, under policing, poor enforcement and misaligned incentives (see KSO's submission to the [Callinan Review](#) for further discussion).

- Only when there was a “burning platform” (p.28 of the Report), where an emotive media campaign identified existing arrangements as clearly untenable, did the Government act. And had its reactionary response to alcohol-fuelled violence in early 2014 been more holistic and balanced, user-centred, consultative, transparent and dynamic – key components of good policy – the well-documented (and growing) costs to Sydney’s cultural fabric and economy would have been all but avoided.

#### ***Early and effective consultation***

- The Report’s emphasis on proactive consultation to better engage stakeholders with limited time and resources to make themselves heard is music to the ears of a volunteer-run organisation such as KSO. The severity and scope of the collateral damage caused by the lockouts and associated measures were apparent to venues, the music and creative industries and local businesses from the outset. Engaging end-users early in the policy development process could have redirected decision-makers towards a suite of alternative and more cost-effective interventions.
- The Report also identifies the need for policy makers to engage more closely with the lived experience of those they are regulating. This is particularly relevant to stakeholders of the NTE; with no office in the NSW Government responsible for the state’s NTE, there is an inherent tendency to treat the night differently, or even with disdain. As a result, night-time economic activity is often considered as an afterthought, tacked onto government bureaucracies that are geared towards traditional daytime interests.
  - For alcohol licensees, the result is layers of excessive and complex ‘micro regulation’ stifling growth and innovation as documented by the [Australian Senate’s Red Tape Committee](#) and [industry leaders](#). Significant compliance cost coupled with heavy-handed enforcement gives rise to the prevailing perception amongst licensees of a hostile regulatory environment. A **user-centred approach** – where regulators undertake the “compliance journey” (p.28) encountered by licensees – would go a long way in alleviating these pressures.

#### ***Transparency***

- The Report notes the importance of **transparency** to make clear to stakeholders the reasons why a decision was made and whether it was made with or without appropriate policy advice.
  - No explanation has yet been offered to explain why the policy-makers settled on lockouts and trading hour restrictions as the primary tool to address alcohol-fuelled violence in preference for proven pro-growth alternatives such as improved late-night transport options; more inclusive and diverse late-night offerings (retail, cultural etc.); crime prevention through environmental design and more collaborative policing strategies.
  - Nor has there been any effort made to explain why venues have borne the brunt of the regulatory overhaul while those responsible for planning, managing and policing Sydney’s entertainment precincts have been quarantined from scrutiny.
  - The reactionary, contradictory and rushed manner in which the liquor law legislation came into being does nothing to suggest that appropriate policy advice was sought or incorporated into regulatory amendments that would ultimately have such significant and wide-reaching impacts. Only four months after his Minister (Souris) responsible for alcohol regulation proclaimed Sydney as “the safest and friendliest city in the world” and two months after he personally ridiculed Labor’s policy to

introduce lockouts as ill-conceived and unnecessary, Premier O'Farrell backflipped in the face of a media frenzy, ramming the liquor law reforms through parliament with only a brief, chaotic debate.

- KSO wonders how different Sydney would now be had the Premier been advised of [evidence that extending public transport by two hours is more effective in reducing alcohol-related harms than lockouts](#) – evidence embraced by policy makers in Melbourne – and that he had at his disposal a suite of alternative, pro-growth measures to tackle alcohol-fuelled violence.

### ***Periodic review***

The Report conceptualises the stock of regulation as an asset that “needs regular maintenance and continuous monitoring to ensure that it remains fit for purpose and in the public interest” (p3) and that desired policy outcomes are being achieved and unintended outcomes identified and managed. In this vein, the announcement of an Independent Review of the liquor amendment act 2014 by Premier Baird was welcomed by KSO as an opportunity to reset the tone of the debate, take stock of unintended consequences, fully consider alternatives and consult widely. But even at this stage, the regulatory policy-making process failed. The Report’s observes that “regulatory assessments tend to be used to justify rather than inform” (p.35). The Callinan Review into the 2014 liquor-law amendments was a case in point.

- The Callinan Review was announced as an "independent, open and transparent assessment of the state's liquor laws, focusing on the facts, to advise the NSW Government on the future of these laws". Yet, its terms of reference gave minimal reference to broader impacts of the laws and failed to take account of alternative policy approaches to the problem of violence in the NTE.
- As such, the Review assessed of the impact of the reforms against a counterfactual of ‘no lockouts’. With the discussion framed as ‘lockouts vs no lockouts’ and viable alternatives off the table, the ‘assessment’ could be used to justify the incumbent regulation.
- ‘Lockouts vs no lockouts’ also limited the scope of the problem. To assess whether the liquor laws remained in the public interest and were having unintended outcomes, the Review would have needed to consider displacement of consumption to private venues (where rates of harms are higher than in licensed venues) and associated costs of domestic violence; displacement of consumption to alternative unregulated venues and associated costs of underage drinking and indoor smoking.

### 3. Embed culture and night-time vibrancy into the regulatory policy framework

The Report's silence on the impact of regulation on culture and night-time or the specific challenges posed by the night economy is a key deficiency of an otherwise promising body of work. **KSO strongly urges the Review to embed culture and night-time vibrancy into the regulatory policy framework.** Lived experience from a number of global cities demonstrates that the interdependent outcomes of safety, productivity and vibrancy can be mutually reinforcing.

- The Report identifies safety and consumer protection, productivity and efficiency, and innovation as 'interdependent outcomes of an effective regulatory policy framework' (p.7) but makes **no reference to the impact of regulation on culture or the specific challenges posed by the night-time economy.**
- **Cultural and night-time vibrancy are also interdependent outcomes that merit equal consideration in the regulatory policy environment.** Night-time vibrancy is a hallmark of global cities such as New York, London, Paris and Melbourne and something previous NSW Governments sought to foster. There is significant value in live music, night-time culture and creativity to both the economy and social well-being.
  - According to the Live Music Office, live music spending delivers at least a 3:1 benefit-to-cost ratio, with the sector generating over \$15 billion per year and 65,000 full and part-time jobs nationally.
  - A Deloitte Access Economics report observed that venue-based live music makes a significant contribution to the social and cultural landscape, and helps develop music careers and incubate talent. The report also found benefits from attendance including social wellbeing and connectedness, with 92% of patrons finding that live-music improved their quality of life.
  - Australia is increasingly defined by its location in the Asia-Pacific, a region full of cities like Bangkok, Hong Kong, Singapore, Jakarta, Kuala Lumpur, Seoul and Tokyo that are famous for their late-night cultures. In the 'Asian century' we find ourselves competing on a global stage for tourists, students and skilled migrants from across the region with an expectation for other dynamic and forward-thinking cities to accommodate late-night lifestyles as well.
- **As Sydney's recent experience demonstrates, costs can amass swiftly when culture and night-time vibrancy are ignored or enter into the equation as an afterthought (or at best of secondary importance).** Costs associated with a loss of cultural and night-time vibrancy are non-monetary – affecting the creativity, social fabric and liveability of a city – and monetary, in the form of direct job and revenue losses, and indirect reputational impacts.
  - A 2012 census conducted by City of Melbourne and Music Victoria found that live music in Melbourne alone generated more than \$1bn in spending at small venues, concerts and festivals, supported 116,000 annual full-time equivalent jobs, and generated significant positive spill-overs to restaurants, hotels, transportation companies and other providers.

- By contrast in Sydney, the live music industry has experienced a sharp decline as a result of 2014 reforms. The Live Music Office, a federally funded body, reported that between January 2013 and February 2015 ticket sales from Sydney’s live venues fell 40%, venue attendance dropped 20%, and venues reduced their spending on performers by 15%. We expect a similar trend across other areas of the performing arts.
  - This has meant that artists in Sydney have had to forego the expectation of living off their craft, as they do in other cities. Venues have also borne the brunt of these impacts, with over thirty venues closing since the 2014 reforms in what was already a scant scene.
  - With the rate of venue openings far-outstripped by closures, the pressure of gentrification is increased. Accompanied by perceptions of an inhospitable regulatory climate for venues and licensed premises, these businesses are often sold for their land to residential property developers. Surviving venues are then exposed to an increased likelihood of noise complaints. This all results in precincts, formerly enjoyed for their late-night vibrancy, being stripped of their ability to service Sydney’s entertainment and cultural needs after dark.
- **As observed in recent years, damage to a Sydney’s cultural and late-night vibrancy extends well beyond the music and creative industries, from [retailers \(day- and night-time\)](#) and [taxi drivers](#) to its nascent tech industry which is finding it [increasingly difficult to attract young talent](#) in the absence of a vibrant 24hr economy. Regulation that weighs on the NTE is antithetical to the cultural demands of a globally-connected tech and creative hub.**
  - The Report’s silence on these matters is a key deficiency of an otherwise promising body of work. **KSO strongly urges the Review to embed culture and night-time vibrancy into the regulatory policy framework.** Lived experience from a number of global cities demonstrates that the interdependent outcomes of safety, productivity and vibrancy can be mutually reinforcing.