

Redfern Legal Centre



THE CITY OF SYDNEY COUNCIL

11 February 2016

Attention: Lisa Simone, CEO, City of Sydney,

Please find attached our policy submission: '**Review of alcohol restriction zones**' in response to the 'Alcohol restrictions review'.

We would welcome the opportunity to appear before the Committee/ meet with you to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

Redfern Legal Centre



SUBMISSION:

'REVIEW OF ALCOHOL RESTRICTION ZONES'

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent community legal centre providing access to justice for disadvantaged individuals in the Redfern area and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies.

Through our exposure to vulnerable clients across this range of legal practice areas, RLC has unique insight into common legal difficulties and the value of potential reform. We work collaboratively with key partners to promote awareness of legal issues and legal rights within the community.

2. RLC's work in Alcohol Free Zones

RLC has a long history of working in the area of police complaints. We currently run the only free statewide policing practice in NSW, currently sponsored by UNSW Law School. We have also been involved in submissions around Alcohol Free Zones since their introduction in NSW.

3. RLC's observations in summary

RLC welcomes the opportunity to comment on the review of alcohol restriction zones, and in particular, Alcohol Free Zones (AFZs).

Recommendation 1: City of Sydney request the NSW Police Local Area Commands of Sydney City, Redfern, Surry Hills, Kings Cross, Leichardt, Newtown, Botany Bay, Eastern Suburbs, and Eastern Beaches, report quarterly on the number of confiscation/tip-outs, with the figures to be publicly available.

Recommendation 2: City of Sydney audit the cost of implementation and maintenance of AFZs, with the figures to be publicly available.

Recommendation 3: City of Sydney seriously consider the establishment of Wet Centres, and other coordinated centralised services as specialised measures to address street drinker's needs.

Observations on existing and proposed AFZs

3.1. AFZs are no longer a support mechanism for effectively reducing anti-social behaviour:

Street drinkers have not stopped drinking alcohol in public places as a result of the establishment of AFZs. Over the same time period, police have been given greater powers, including the use of s 198 of *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) and s 9 of *Summary Offences Act 1988*. These stronger police powers, combined with lock out laws and strict regulation on the sale of alcohol, have become the

preferred enforcement mechanism for preventing alcohol related anti-social behaviour and serious alcohol related crimes.

The NSW Ombudsman's 2014 report into the use of these new powers is indicative of the change to preferred policing methods, moving away from powers available in AFZs, to those contained in s 9 *Summary Offences Act 1988* and s 198 *LEPRA 2002*.¹ Between 2011 and 2012, hotspots for the use of s 9 *Summary Offences Act 1988* and s 198 of *LEPRA 2002* were listed as Sydney CBD, Redfern, Surry Hills, Kings Cross, The Rocks, and the Eastern Suburbs, all locations where long term AFZs are in place. This indicates that AFZs are no longer a primary mechanism for effectively reducing anti-social drinking behaviour, and are a burden on administrative and police resources.²

Costs and resources saved by removing AFZ could then be allocated to combating other alcohol-related crises hidden from the public eye, such as the domestic violence harms experienced disproportionately by women in private settings.³

3.2. AFZs disproportionately impact on vulnerable groups and are potentially discriminatory:

Despite the fact the legislation prohibits the consumption of alcohol within AFZs, police are primarily concerned with suspected 'irresponsible' consumption of alcohol in public, not in general. In practice, this is interpreted to apply to those who are stereotyped as dangerous, rather than displaying actions of 'serious' or 'irresponsible' anti-social behaviour. While the law creates a blanket ban on the consumption of alcohol that is supposed to be applied consistently within a zone, police discretion is the primary factor determining the enforcement of AFZs. As one senior police officer put it, AFZs "were not designed to prevent well-behaved citizens from activities like enjoying a quiet tittle on a picnic".⁴ Yet that is what the legislation says.

Discretionary enforcement on the basis of public perception is problematic for vulnerable groups, as it entrenches the idea that they do not have the same rights in public spaces.⁵ An obvious example is a group of well-to-do members of society consuming alcohol in an AFZ outside an art gallery opening, compared with public perceptions of a homeless person habitually drinking out of a brown paper bag, who nevertheless displays no signs of

¹ NSW Ombudsman, 'Policing Intoxicated and Disorderly Conduct: Review of Section 9 of the Summary Offences Act 1988' (2014) 95.

² McNamara, L., and Quilter, J., 'Public intoxication in NSW: the contours of criminalisation' (2015) 37 *Sydney L. Rev* 1, p 21.

³ McNamara, L., and Quilter, J., 'Public intoxication in NSW: the contours of criminalisation' (2015) 37 *Sydney L. Rev* 1.

⁴ Wollongong Police crime manager Detective Inspector Joe Thone, quoted in Kate McIlwain, 'Wollongong Alcohol-free Zones to be Extended', Illawarra Mercury (online), 6 June 2014 <http://www.illawarramercury.com.au/story/2334939/wollongong-alcohol-free-zones-to-be-extended/>, in McNamara, L., and Quilter, J., 'Public intoxication in NSW: the contours of criminalisation' (2015) 37 *Sydney L. Rev* 1, p. 23.

⁵ Evans, J., 'Supportive measures, enabling restraint: governing homeless 'street drinkers' in Hamilton, Canada' (2012) 13(2) *Social & Cultural Geography*, p. 185-200..

anti-social behaviour. As McNamara and Quilter note, avoiding discriminatory bias holds its comfort in faith rather than law, as such discretion is reliant on “the ability of police to make necessary distinctions accurately and fairly.”⁶

This discretionary power warrants further scrutiny, given it is well established that disadvantaged groups, particularly ATSI populations, are disproportionately affected by police enforcement of public intoxication laws.⁷

While there is no publicly available data on how enforcement impacts on vulnerable groups who are perceived as dangerous in AFZs, the NSW Ombudsman’s 2014 report on s 9 *Summary Offences Act 1988*, indicates that enforcement impacts heavily on vulnerable groups who display serious alcohol related anti-social behaviour. In the first year of its operation, the Ombudsman reported 40% of all fines and charges for offences were issued to marginalised groups, 31% of which comprised of Aboriginal people and/or people who were experiencing, or who had a recent history of, mental illness.⁸

Given that, in obvious instances of anti-social behaviour, police have adequate powers at their disposal to deal with such cases, as discussed above,⁹ there is an opportunity to improve the well-being of the vulnerable groups of the City of Sydney. Rather than continue the expansion of AFZs and the improper targeting of vulnerable groups based on passive perceptions of danger, additional community services could instead be implemented to address the root causes of alcohol dependency as a health problem, restoring a balance between social inclusion and equity for disadvantaged groups, and the need for world class amenity and safe public environments.

3.3. AFZs demand an increase in dynamic, coordinated, and corresponding support services

The decriminalisation of public intoxication during the 1980s and 1990s was a key recommendation of the *Royal Commission into Aboriginal Deaths in Custody*, and recognised that punitive measures alone failed to reduce the impact of anti-social behaviour or increase public safety.¹⁰ Instead, policy emphasised that for progress to be made on the negative impacts of public intoxication, street drinking needed to be treated from the perspective of a health issue, rather than a criminal one.¹¹ The Council’s own strategic guidelines, including the *Street Drinking Strategy*, the *Drug and Alcohol Strategy*,

⁶ McNamara, L., and Quilter, J., ‘Public intoxication in NSW: the contours of criminalisation’ (2015) 37 *Sydney L. Rev* 1, p. 24.

⁷ Parliament of Victoria, ‘*Drugs and Crime Prevention Committee: Public Drunkenness in Victoria – Discussion Paper 2000*’, p. 102-103; McNamara, L., and Quilter, J., ‘Public intoxication in NSW: the contours of criminalisation’ (2015) 37 *Sydney L. Rev* 1, p. 7-16.

⁸ NSW Ombudsman, ‘*Policing Intoxicated and Disorderly Conduct: Review of Section 9 of the Summary Offences Act 1988*’ (2014) 95, Foreword; p. 3.

⁹ Specifically s 9 *Summary Offences Act 1988* and s 198 *LEPRA 2002*.

¹⁰ McNamara, L., and Quilter, J., ‘Public intoxication in NSW: the contours of criminalisation’ (2015) 37 *Sydney L. Rev* 1, p. 7-16.

¹¹ *Ibid.*

and the *Sustainable Sydney 2030 Community Strategic Plan*, rightly recognise that street drinkers mostly comprise of those who are seriously disadvantaged in our communities, and are reliant on emergency and community services. The displacing effect of expanded AFZs means that those in our communities who live in the margins, are pushed further away and alienated from the services they desperately require. The effectiveness of these support services are contingent on being located in close proximity to high concentrations of street drinkers.¹² In its *Street Drinking Strategy*, the Council itself recognises that without a mobile, coordinated and holistic support network of services available to such vulnerable populations, AFZs alone will only further entrench disadvantage.¹³

If the strategic outcome of increasing public safety is to be met, a dynamic set of support services is required to address the root causes of alcohol related anti-social behaviour and create systemic change in street drinking culture. At present, the necessary services required are either inadequate or have not been implemented. Intoxicated Persons Units (IPU) have been a costly failure and need greater accessibility and more resources to be effective. Currently, the only available IPU is a mandatory, police-run centre in Sydney central, that charges fees that act as an additional punishment for the disadvantaged groups the IPU detains.¹⁴

In NSW, Wet Centres are an untried prevention measure to address antisocial behaviour in a constructive, non-criminalising way. Wet Centres have been successful in Britain and consistently receive widespread support from local communities. In NSW, they have previously received support from the Lord Mayor and Members of NSW Parliament. Wet Centres are designed to provide a safe and inclusive environment, where vulnerable street drinkers can seek assistance without the fear of stigmatisation or police reprisal. Crucially, Wet Centres house a network of complementary support services, such as street outreach, health, substance misuse and housing support, that work in close partnership with the centre for essential referrals. The Centres provide an accessible and pragmatic approach to encouraging healthier lifestyles than chronic alcoholism and allows the health and safety of street drinkers to be monitored in a controlled environment while decreasing the risk to public safety.

While different to Wet Centres, the NSW Department of Family and Community Services' RedLink program, located in the Redfern public housing towers, provides a centralised outreach service to deliver earlier and better responses to the needs of public housing residents. The program includes health, legal, social, and housing services. RLC has been involved in the provision of legal services at Redlink.

¹² Crane, M. and Warnes, A., 'Wet day centres in Britain' (2005) 12 *Drug and Alcohol Findings*; City of Sydney, 'Street Drinking Strategy 2006-2011'.

¹³ See also NSW Department of Local Government, 'Ministerial Guidelines on Alcohol Free Zones 2009'

¹⁴ McNamara, L., and Quilter, J., 'Public intoxication in NSW: the contours of criminalisation' (2015) 37 *Sydney L. Rev* 1, p. 31-33.

The centralised support service has been successful, with NSW Police reporting call outs have dropped significantly. As a case study, the success of a centralised preventative service like RedLink warrants serious consideration by the City of Sydney into establishing Wet Centres as a specialised measure to address street drinker's needs.

Culturally specific night patrol and warden programs are another policy option available that have had success in the Northern Territory. The programs acts as a form of community policing in instances of anti-social alcohol related behaviour. The groups work closely with police and provide assistance in cases of sobering up, domestic violence, referrals, and medical services. Such programs act as a buffer between the criminal justice system and provides a cultural platform to reduce the antisocial behaviours of street drinkers as a health problem and not a criminal one.¹⁵ Sydney's diverse cultural mix, particularly in the CBD, admittedly means that the option may not be appropriate for all communities.

4. Conclusion

The establishment of AFZs have not stopped street drinkers from drinking alcohol in public places. Police have been given greater powers over the same time period, with these powers now the preferred enforcement mechanisms for preventing alcohol related anti-social behaviour and serious alcohol related crimes.

As a result, AFZs are redundant as they are no longer a supporting mechanism for effectively reducing anti-social behaviour, and are problematic insofar that they appear to be discriminatory in their application. Given that police have adequate powers to deal with anti-social behaviour, there is little benefit in continuing with the expansion and use of AFZs.

This presents an opportunity for the City of Sydney to increase the well-being of its vulnerable populations by treating those who habitually consume alcohol in public as benefiting from support services rather than police reprimands. Additional community services need to be implemented to address the root causes of alcohol dependency, which complement the key outcomes contained in the Council's *Street Drinking Strategy*, *Drug and Alcohol Strategy*, and *Sustainable Sydney 2030 Community Strategic Plan*, by providing a platform for progress in balancing social inclusion and equity for disadvantaged groups, and the need to provide world class amenity and safe public environments.

5. Recommendations

- 1) City of Sydney request the NSW Police Local Area Commands of Sydney City,
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¹⁵ Parliament of Victoria, *Drugs and Crime Prevention Committee: Public Drunkenness in Victoria – Discussion Paper 2000*, p. 46-47..

Redfern, Surry Hills, Kings Cross, Leichardt, Newtown, Botany Bay, Eastern Suburbs, and Eastern Beaches, to report quarterly on the number of confiscation/tip-outs that occur in AFZs, with figures to be made available to the public.

- 2)** City of Sydney to audit the cost of implementation and maintenance of AFZs, with figures to be made available to the public.

- 3)** City of Sydney to seriously consider the establishment of Wet Centres, and other coordinated centralised services, as specialised measures to address street drinker's needs.