



<p>Mr John Coady Manager, Compliance Liquor and Gaming NSW Level 9 323 Castlereagh Street SYDNEY NSW 2000 john.coady@liquorandgaming.nsw.gov.au</p>	<p>Mr John Douglas Watt Licensee Harbour View Hotel 18 Lower Fort SYDNEY NSW 2000 accounts@harbourview.com.au</p> <p>cc. Angela Frost Solicitor angelamfrost@bigpond.com</p>	<p>Senior Sergeant Jacqueline Barlow Central Metropolitan Regional Licensing Coordinator Sydney City Police Area Command 192 Day Street SYDNEY NSW 2000 bar1jac@police.nsw.gov.au</p> <p>cc: Sergeant Maryanne Stanford stan4mar@police.nsw.gov.au</p>
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15 February 2019

Dear Mr Watt

Reference No.	DF18/019338
Matter	Notification of a potential first strike offence
Notification submitted by	John Coady, Manager Compliance, Liquor and Gaming New South Wales
Licensee	Mr John Douglas Watt
Licence name	Harbour View Hotel
Licence no.	LIQH400102925
Licence type	Liquor – hotel licence
Premises	18 Lower Fort Street, SYDNEY NSW 2000
Issue	Whether a first strike should be imposed against Mr John Douglas Watt
Legislation	Section 144E of the <i>Liquor Act 2007</i>

Determination of a potential first strike offence in relation to Mr John Douglas Watt, the licensee of Harbour View Hotel

On 2 November 2018, Mr John Coady, Manager Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Independent Liquor and Gaming Authority (Authority) notification that the licensee, Mr John Douglas Watt (Licensee) of Harbour View Hotel had committed a prescribed offence and potentially incurred a first strike (Notification).

At its meeting on 23 January 2019, the Authority considered the Notification and submissions made by L&GNSW, NSW Police, the Licensee and the business and premises owner in response to the Notification.

The Authority, based on the information before it, is satisfied that the Licensee committed the prescribed offences of '*licensee permit intoxication on licensed premises*' and '*licensee permit indecency on licensed premises*' and has decided to impose a first strike against the Licensee in accordance with section 144E of the *Liquor Act 2007* (Act).

The first strike will commence from **16 February 2019** and will expire on **16 February 2022**.

Given the seriousness of harm, in the form of multiple cases of intoxication and acts of indecency as a result of the prescribed offence, the Authority considers that it may be in the public interest, subject to consideration of any final submissions, to take further remedial action against the licence of Harbour View Hotel (LIQH400102925).

The Authority, of its own initiative, is minded, subject to consideration of any final submissions and pursuant to section 53(1)(b) of the Act, to impose the following conditions on the licence:

- 1) The premises is to be operated at all times in accordance with the Plan of Management dated 22 November 2018 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

2) Closed-circuit television (CCTV)

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- 1) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - a) recordings must be in digital format and at a minimum of six (6) frames per second,
 - b) any recorded image must specify the time and date of the recorded image,
 - c) the system's cameras must cover the following areas:
 - i. all entry and exit points on the premises,
 - ii. the footpath immediately adjacent to the premises, and
 - iii. all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

3) Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,

- 3) make direct and personal contact with NSW Police to advise it of the incident, and
 - 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
 - 5) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.
- 4) The licensee or its representative must join and be an active participant in the local liquor accord.
 - 5) The licensee must ensure that whenever there is a function with over 50 attendees at least two RSA marshals are employed at the premises.

At the end of the statement of reasons, the Authority gives notice of its consideration to take the above measures against the licence and invites NSW Police, the Compliance Operations Unit of L&GNSW and the Licensee to provide submissions before making a final decision. The timetable for the making of submissions is provided at the end of the statement of reasons.

Enclosed with this letter is a statement of reasons for the Authority's decision. Details regarding the rights to apply to the Authority after a six month period to seek a review of its decision to impose the first strike or to seek a review of the Authority's decision by the New South Wales Civil and Administrative Tribunal are provided at the end of the statement of reasons.

If you have any questions about this letter, please contact the Reviews and Secretariat Unit via email at ilga.secretariat@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

Decision

1. On 2 November 2018, Mr John Coady, Manager Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Authority a notification that the licensee, Mr John Douglas Watt (Licensee) of Harbour View Hotel (Premises) had committed a prescribed offence (Notification).
2. The Notification included evidence that NSW Police (Police) issued the Licensee three Penalty Notices for the prescribed offence of '*licensee permit intoxication on licensed premises*' and a further two Penalty Notices for the prescribed offence of '*licensee permit indecency on licensed premises*' in relation to incidents that occurred at the Premises on 3 September 2018.
3. The Notification also included evidence, by way of Revenue NSW data, that the five Penalty Notices were paid on 10 and 15 October 2018.
4. As all five prescribed offences occurred within a single 24 hour period they are to be treated as a single prescribed offence.
5. The Authority is satisfied that the Licensee has committed a prescribed offence and there are no other strikes in force against him.
6. In accordance with section 144E of the Act, the Authority has decided to impose a first strike against the Licensee.
7. The Authority, of its own initiative, is minded, subject to consideration of any final submissions, to take further remedial action against the licence under section 53 of the Act. Notice of this action is provided at the end of this statement of reasons.
8. In reaching its decision, the Authority has had regard to the material before it, the legislative provisions under sections 3, 53, 144B, 144C, 144E, 144F, 144G, 144H, 144M and Liquor Regulation 2018.
9. The first strike will commence from **16 February 2019** and will expire on **16 February 2022**.

Material considered by the Authority

10. The Authority has considered the Notification and all submissions received in relation to the Notification.
11. The Authority is satisfied that procedural fairness was afforded to the Licensee and interested parties regarding this decision, as all parties required to be notified were provided with the opportunity to make submissions.
12. A list of the material considered by the Authority in making this decision is set out in Schedule A at the end of this statement of reasons.

Legislative framework

13. The Authority has considered the Notification in the context of the relevant legislative provisions as set out in Schedule B.

Key findings

14. The Authority is satisfied that at the time of the Offence, based on the liquor licence document provided in the Notification, Mr John Douglas Watt was the Licensee of Harbour View Hotel.
15. The Authority accepts NSW Police's account of the Offence contained in Computerised Operational Policing System (COPS) event report (number 69621874) which records the following information:
 - a. The Offence occurred during the "Mad Monday" celebrations of the Canterbury Bulldogs football team which took place on Monday, 3 September 2018, on the balcony of the Harbour View Hotel. The event was attended by approximately 25-30 club members, who consumed \$6,965 worth of alcohol and food.
 - b. From around 5:16 pm, intoxicated patrons were seen to strip naked and dance, climb on to tables (the same height as the railing around the balcony) and dance naked, fall off stools, perform sex acts on themselves and other patrons, and pour alcohol over their genitals. The

duty manager (who is not the Licensee) is reported to be seen clapping and cheering with the crowd.

- c. The COPS report also describes another patron who, on exiting the hotel and sitting on a stool, falls forward, and is helped to his feet by the duty manager and another patron. He later vomits on the footpath outside of the hotel.
 - d. The conduct of the patrons whilst standing on top of tables was viewable by members of the public at street level, and the conduct of all patrons in the outdoor rooftop area was visible by members of the public finishing their Harbour Bridge climb.
16. The Authority notes that the Licensee's submission does not dispute that an Offence was committed by permitting intoxication and indecent behaviour which could have led to serious harm.
 17. The Authority notes that the Licensee was present on the premises on the day in question but was occupied with financial duties and that the duty manager present during the function has since been terminated from employment.
 18. The Authority has considered the L&GNSW submission which states that the lack of appropriate supervision and apparent permissive attitude displayed by Hotel management has led to three cases of intoxication, and multiple acts of indecency in view of the public and that this behaviour falls well short of the community's expectations of how licensed premises should operate, particularly given that the actions were viewable by the public.
 19. The Authority notes L&GNSW's submission that responsible service of alcohol is vital to ensuring that the sale, supply, and consumption of liquor contributes to, and does not detract from, the amenity of community life. Poor practices exhibited at the premises contributed to an increased risk of alcohol-related harm and compromised the safety of patrons.
 20. The Authority notes that L&GNSW recommends remedial action by way of the imposition of a Plan of Management condition on the licence and the Authority has had regard to the Plan of Management prepared by the Hotel.
 21. The Authority has considered the NSW Police submission that the Licensee or staff did not take any prescribed action or preventative measure to prevent the occurrences of intoxication or indecency, which is indicative of poor management practices and a permissive attitude towards the irresponsible consumption of alcohol and indecent conduct.
 22. The Authority notes that NSW Police recommends remedial action by way of the imposition of Plan of Management and RSA Marshal conditions.
 23. The Authority has considered the Licensee's contention that an RSA Marshal condition should not be imposed as most functions at the Hotel occur on Friday or Saturday nights when the hotel is required to provide RSA trained security personnel, however the Authority was not satisfied that such a condition was unwarranted.
 24. The Authority has considered the Licensee's submission that there were a number of ameliorating circumstances, including the fact that there were no members of the public, minors, or women at the function (either as guests or staff); no violence or injury occurred; no complaints were received; and the Hotel has cooperated fully with Police in the provision of CCTV, incident register and statements.
 25. The Authority is satisfied that it is the Licensee's responsibility to ensure the responsible service of alcohol and therefore in this instance a first strike is warranted.

Incurring a first strike

26. Under section 144E of the Act, the Authority, when determining whether a first strike should be incurred against a licensee, must be satisfied that:
 - a. the person has committed a prescribed offence, and
 - b. there is currently no other strike in force against them, and
 - c. the seriousness of any harm that may have resulted from or been associated with the commission of the offence warrants a first strike being imposed.

27. In accordance with section 144C of the Act, a person commits a prescribed offence if an amount is paid under a Penalty Notice in respect of an offence.
28. Based on the material before it, the Authority notes that the Licensee was issued with three Penalty Notices for the prescribed offence of '*licensee permit intoxication on licensed premises*' and a further two Penalty Notices for the prescribed offence of '*licensee permit indecency on licensed premises*' on 3 September 2018.
29. The Authority acknowledges that the Penalty Notices issued to the Licensee were closed paid in the Revenue NSW penalty notice system on 10 and 15 October 2018, which triggered consideration of whether a first strike should be incurred against the Licensee.
30. The Authority is satisfied that the Licensee has committed a prescribed offence pursuant to section 144C of the Act. This finding is made based on the Revenue NSW evidence provided in the Notification, which confirms the Penalty Notices were closed paid on 10 and 15 October 2018.
31. The Authority, based on the material before it, is also satisfied there is no evidence suggesting that any other strike is currently in force against the Licensee.
32. The Authority is satisfied that the offence in this instance warrants a first strike being imposed due to the failure of the Licensee to take any prescribed action or preventative measure to prevent the occurrences of intoxication or indecency.
33. The Authority considers the responsible service of alcohol to be a fundamental responsibility of a liquor licence holder and a basic harm minimisation measure and therefore warrants the imposition of a first strike against the Licensee.

Statutory considerations under section 144M(1)(c) of the Act

The Authority is satisfied:

- (i) Based on the current violent venue list in schedule 4 of the Act, the licensed premises is not a declared premises.
- (ii) On the basis of the material provided by L&GNSW, there is no evidence to indicate that the venue size and patron capacity at the time hindered the Licensee's ability to prevent the prescribed offence from occurring.
- (iii) On the basis of the material provided by L&GNSW, the Licensee has no history of committing prescribed offences.
- (iv) On the basis of the submission made by L&GNSW, since Round 1 of the Violent Venues Scheme, the Hotel has been either 'below threshold' (between 1 and 7 violent incidents) or not captured at all. L&GNSW records show that since June 2015, one indecent assault and seven common assaults have occurred on or in the vicinity of the hotel.
- (v) On the basis of the submission made by L&GNSW, other action in the form of the imposition of a Plan of Management condition may be warranted.
- (vi) On the basis of the material provided by L&GNSW, there have not been any changes to the licence for Harbour View Hotel.
- (vii) On the basis of the material provided by L&GNSW, there have not been any relevant changes to the business practices in respect of the business carried out under the licence.
- (viii) On the basis of the material provided by L&GNSW, there are no other matters prescribed by the regulations the Authority is required to consider.

Conclusion

34. Having regard to the material before it, the Authority is satisfied that the Licensee has committed a prescribed offence and there are no other strikes in force against him.
35. Accordingly, the Authority has decided to impose a first strike against Mr Watt under section 144E of the Act.
36. The first strike will commence from **16 February 2019** and will expire on **16 February 2022**.

37. Given the seriousness of harm that occurred as a result of the commission of the prescribed offence, the Authority considers that it may be in the public interest, subject to consideration of any final submissions, to take further remedial action against the licence under section 53 of the Act.
38. Remedial action is intended to minimise the harm associated with the misuse and abuse of liquor and encourage responsible attitudes and practices towards the promotion, sale, supply and consumption of liquor.

Notice of proposed action against the licence under sections 53(1)(b) of the Act

39. In accordance with section 53(1)(b) of the Act, the Authority, of its own initiative, is minded, subject to consideration of any final submissions, to impose the following conditions on the licence:

- 1) The premises is to be operated at all times in accordance with the Plan of Management dated 22 November 2018 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

2) Closed-circuit television (CCTV)

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- 1) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - a) recordings must be in digital format and at a minimum of six (6) frames per second,
 - b) any recorded image must specify the time and date of the recorded image,
 - c) the system's cameras must cover the following areas:
 - i. all entry and exit points on the premises,
 - ii. the footpath immediately adjacent to the premises, and
 - iii. all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

3) Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
 - 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
 - 3) make direct and personal contact with NSW Police to advise it of the incident, and
 - 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
 - 5) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.
- 4) The licensee or its representative must join and be an active participant in the local liquor accord.
 - 5) The licensee must ensure that whenever there is a function with over 50 attendees at least two RSA marshals are employed at the premises.
40. NSW Police and L&GNSW are invited to provide submissions in response to the Authority's consideration to take the above action and will have until **1 March 2019** should they wish to do so.
41. Pursuant to section 53(4) of the Act, the Licensee will then have until **15 March 2019** to provide any final submissions in reply before the Authority makes its final decision.
42. Submissions should be made to the Reviews and Secretariat Unit via email at ilga.secretariat@liquorandgaming.nsw.gov.au and a copy provided to each of the parties to whom this letter is addressed.

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Important Information:

In accordance with section 144O of the *Liquor Act 2007* the licensee or manager of whom the strike relates may, after a period of six months following the date on which the strike was imposed, apply to the Authority for a review of its decision to impose the strike.

An application under this section must be accompanied by the fee prescribed by the regulations.

In accordance with section 144N of the *Liquor Act 2007* a relevant person (a person who was required to be notified of the decision) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 21 days after the person receives notification and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor and Gaming website at:

<http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx>

Schedule A – Material Considered by the Authority

1. Notification of potential first strike from L&GNSW, dated 2 November 2018, which comprised of:
 - a. Copy of COPS event 69621874.
 - b. L&GNSW liquor licence records as at 2 November 2018 setting out the key liquor details for the licence of the Harbour View Hotel.
 - c. Extract of Revenue NSW penalty notice data as at 16 October 2018.
2. Submission from L&GNSW in relation to the Notification, dated 2 November 2018.
3. Submission from NSW Police in relation to the Notification, dated 19 November 2018, which comprised of:
 - a. Facts of Penalty Notices.
 - b. Copies of Penalty Notices 4942804653, 4942804644, 4942804635, 4942804626 and 4942804662.
 - c. Statement of General Manager of Canterbury Bulldogs Football Club, dated 5 September 2018.
 - d. Record of interview with the Duty Manager of the Harbour View Hotel on 6 September 2018.
 - e. Statement of the owner of Harbour View Hotel, dated 5 September 2018.
4. Submission from the Licensee's legal representative in relation to the Notification, dated 4 December 2018, which comprised of:
 - a. Undated submission from the Licensee in relation to the Notification.
 - b. Plan of Management for Harbour View Hotel, dated 22 November 2018.
 - c. Letter from the business and premises owner, dated 3 December 2018.
 - d. Letter from Hospitality Courses Pty Ltd, dated 3 December 2018.

Schedule B – Legislative Framework

3 Objects of Act

(1) The objects of this Act are as follows:

- (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
- (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

(2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:

- (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
- (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
- (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

53 Authority may impose, vary or revoke licence conditions

(1) Without limiting any other provision of this Act, the Authority may at any time:

- (a) on application by the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative,
- impose conditions on a licence.

(1A) The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions:

- (a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and
- (b) restricting the trading hours of, and public access to, the licensed premises.

(2) The Authority may at any time:

- (a) on application by the licensee, the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative,
- vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.

(3) An application under subsection (1) or (2) must:

- (a) be in the form and manner approved by the Authority, and
- (b) in the case of an application by a licensee—be accompanied by the fee prescribed by the regulations, and
- (c) be accompanied by such information and particulars as may be prescribed by the regulations, and
- (d) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
- (e) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

- (4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has:
- (a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and
 - (b) taken any such submissions into consideration before making the decision.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.
- (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.

144B Definitions

(1) In this Part:

business owner, in relation to a licence, means an owner of the business carried on under the licence.

prescribed offence means an offence against any of the following provisions of this Act or any other provision of this Act or the regulations that is prescribed by the regulations for the purposes of this definition:

- (a) section 9 (sale or supply of liquor contrary to licence), but only where the offence relates to the sale or supply of liquor on or in relation to licensed premises outside of the trading hours of the premises,
- (b) section 11 (2) (breach of licence conditions), but only in respect of a condition imposed under:
 - (i) Division 4 of Part 6, or
 - (ii) Division 2 or 3 of this Part, or
 - (iii) Schedule 4,

that restricts the trading hours of licensed premises or prohibits patrons from entering licensed premises at certain times,

- (c) section 73 (1) (a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct),
- (d) section 73 (2) (selling or supplying liquor to an intoxicated person),
- (e) section 74 (1) (b) or (2) (permitting the sale, possession or use of a prohibited plant or drug),
- (f) section 75 (3) (failure to comply with a direction given by the Secretary),
- (g) section 82 (6) (failure to comply with a short-term closure order),
- (h) section 84 (7) (failure to comply with a long-term closure order),
- (i) section 102A (2) (failure to comply with a notice issued by the Secretary),
- (j) section 117 (1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply),
- (k) section 149 (licensees and managers liable for act of employees etc) in respect of a contravention of section 73 (2), 75 (3) or 117 (1) or (2).

remedial action means any action that the Authority is authorised to take under section 144F, 144G or 144J.

reviewable decision means a decision (including a decision to impose a condition on a licence) made by the Authority under this Part.

(2) A reference in this Part to the licensee or manager of licensed premises includes a reference to a former licensee or manager of licensed premises.

144C Committing prescribed offence

(1) For the purposes of this Part, a person commits a prescribed offence if:

- (a) a court convicts the person for the offence (whether or not it imposes any penalty), or

- (b) an amount is paid under a penalty notice in respect of the offence, or
- (c) a penalty notice enforcement order under the Fines Act 1996 is made against the person in respect of the offence.

(2) However, if:

- (a) the conviction is overturned on appeal, or
- (b) the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or
- (c) the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled,

any strike under this Part that is based on the conviction, penalty notice or enforcement order is revoked and any remedial action taken as the result of the strike ceases to have effect.

(3) Prescribed offences that are committed in relation to a particular licence or licensed premises within a single 24 hour period are taken, for the purposes of this Part, to be a single prescribed offence.

144E Strikes incurred by licensees or managers of licensed premises

(1) A first strike is incurred by a person who is the licensee or manager of licensed premises if:

- (a) the person commits a prescribed offence, and
- (b) no other strike is in force against the person when the offence was committed, and
- (c) the Authority decides to impose the first strike because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.

(2) A second strike is incurred by a person who is the licensee or manager of licensed premises if:

- (a) the person commits a prescribed offence, and
- (b) 1 strike was in force against the person when the offence was committed, and
- (c) the Authority decides to impose the second strike because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.

(3) A third strike is incurred by a person who is the licensee or manager of licensed premises if:

- (a) the person commits a prescribed offence, and
- (b) 2 strikes were in force against the person when the offence was committed, and
- (c) the Authority decides to impose the third strike after taking the following into account:
 - (i) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence,
 - (ii) any other matter that may be prescribed by the regulations.

144F Remedial action against licensee or manager of licensed premises

(1) If the licensee or manager of licensed premises incurs 1 strike that is in force, the Authority may, by order in writing, require the person to undertake such courses of training or instruction as the Authority considers appropriate for the purposes of managing or reducing the risks that contributed to the commission of the prescribed offence in respect of which the strike was incurred.

(2) If the licensee or manager of licensed premises incurs 2 strikes that are in force, the Authority may do any one or more of the following:

- (a) take any action specified in subsection (1),
- (b) reprimand the person,
- (c) order the person to pay, within the time specified in the order, a monetary penalty not exceeding 5 penalty units.

(3) If the licensee or manager of licensed premises incurs 3 strikes that are in force, the Authority may do any one or more of the following:

- (a) take any action specified in subsection (1) or (2),
- (b) by order in writing, disqualify (permanently or for a specified period) the person from being the licensee or manager of any licensed premises.

(4) Any monetary penalty ordered to be paid under this section is payable to the Secretary.

144G Remedial action—imposition of licence conditions

(1) Remedial action for 1 strike

If a person who is the licensee or manager of licensed premises incurs 1 strike that is in force, the Authority may impose conditions on the licence that relate to any one or more of the following:

- (a) the use of plans of management and incident registers in respect of the licensed premises,
- (b) the prohibition of the use of glass or other breakable containers on the licensed premises,
- (c) the engagement of persons to promote the responsible service of alcohol on the licensed premises,
- (d) the notification of persons, by the licensee, that the strike has been incurred,
- (e) any other matter that may be prescribed by the regulations.

(2) Remedial action for 2 strikes

If a person who is the licensee or manager of licensed premises incurs 2 strikes that are in force, the Authority may impose conditions on the licence that relate to any one or more of the following:

- (a) in the case where the licence is held by a corporation—the persons who may be appointed as a manager of the licensed premises,
- (b) the implementation of security measures in respect of the licensed premises,
- (c) the prohibition of the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both),
- (d) the prohibition of patrons entering the licensed premises at certain times,
- (e) the prohibition of the sale or supply of certain types of liquor on the licensed premises (including liquor with a high alcohol content or liquor that is intended to be consumed rapidly such as a shot),
- (f) the prohibition of certain types of entertainment on the licensed premises,
- (g) any matter referred to in subsection (1),
- (h) any other matter that may be prescribed by the regulations.

(3) Remedial action for 3 strikes

If a person who is the licensee or manager of licensed premises incurs 3 strikes that are in force, the Authority may do any one or more of the following:

- (a) by order in writing, suspend the licence for up to 12 months,
- (b) by order in writing, cancel the licence and disqualify (for up to 12 months) any of the following persons from being granted a licence in respect of the premises to which the cancelled licence related (the subject premises):
 - (i) any person who was a business owner under the cancelled licence at the time the prescribed offence resulting in the third strike being incurred was committed,
 - (ii) any close associate of any such business owner,
- (c) impose a condition on the licence, or any subsequent licence issued in respect of the subject premises, that a person who is disqualified under paragraph (b) must not be employed or otherwise engaged as an employee or agent of the licensee or manager of those premises,

- (d) impose a condition on the licence relating to any matter referred to in subsections (1) and (2),
- (e) impose, vary or revoke any other condition on the licence that is not inconsistent with this Act.

144H Authority may impose other conditions in certain circumstances

(1) If, in relation to licensed premises, the Authority is satisfied that:

- (a) there is or has been a practice of terminating the employment of persons as the licensee or manager of the premises primarily for the reason of avoiding remedial action being taken in respect of the licence as a result of strikes incurred by such persons, and
- (b) there has been, with the subsequent employment of any person as the licensee or manager of the premises, no improvement in managing or reducing the risks that contributed to the commission of the prescribed offences in respect of which those strikes were incurred,

the Authority may impose conditions on the licence to limit the practice referred to in paragraph (a) or to manage or reduce the risk of the commission of prescribed offences on the licensed premises.

(2) The conditions that the Authority may impose under this section include conditions relating to the employment of a person as the licensee or manager of the licensed premises.

144M Requirements relating to making of reviewable decisions

(1) The Authority must, in making a reviewable decision:

(a) notify the following persons in writing that the Authority is deciding the matter and invite those persons to make a submission within a specified period of at least 21 days:

- (i) the licensee or manager in respect of whom the decision relates,
- (ii) if the decision is whether a second or third strike should be imposed—each interested person in the business carried on under the licence concerned (but only if the person's name has been provided to the Authority under section 41 or 55) and the owner of the licensed premises,
- (iii) any other person prescribed by the regulations, and

(b) take into account any submissions received before the end of the specified period from any of the following:

- (i) a person referred to in paragraph (a),
- (ii) the NSW Police Force,
- (iii) Liquor and Gaming NSW, Department of Industry, and

(c) take into account each of the following to the extent that the Authority considers it to be relevant to the decision:

- (i) whether the licensed premises were declared premises within the meaning of Schedule 4 when the offences that caused a strike are alleged to have been committed,
- (ii) the size and patron capacity of the licensed premises and how this may impact on the ability of the licensee or manager to prevent the commission of prescribed offences,
- (iii) the history and nature of the commission of prescribed offences by the licensee or manager,
- (iv) the history and nature of violent incidents that have occurred in connection with the licensed premises,
- (v) whether other action would be preferable,
- (vi) whether there have been changes to the persons who are the licensee, manager or business owner,
- (vii) whether there have been changes to the business practices in respect of the business carried on under the licence,

(viii) any other matter prescribed by the regulations.

(2) Subsection (1) does not prevent the Authority from taking into account any other matter that the Authority considers relevant to the proper making of a reviewable decision.

(3) The Authority must, as soon as practicable after making a reviewable decision, give notice in writing of the decision, the reasons for the decision and any right of review in respect of the decision to each person that is required to be notified by the Authority under subsection (1) (a) in respect of the decision.

(4) A submission provided to the Authority under subsection (1) (b) (i) may not be used for the purposes of prosecuting an offence under this Act.

(5) The regulations may prescribe guidelines setting out how the matters referred to in subsection (1) (c) are to be taken into account by the Authority.