

Fact sheet FS3015

Incentives and Demerit Point System

The Government established the Incentives and Demerit Point System under the *Liquor Act 2007* to replace the Violent Venues, Three Strikes and Minors Sanctions schemes.

The new system introduces the concept of demerit points as sanctions, and provides incentives for responsible operators.

The Incentives and Demerit Point System aims to reduce serious alcohol-related violence and repeated non-compliance with the NSW liquor laws.

Under the system, a demerit point is automatically incurred where a licensee or approved manager commits one of the most serious offences or fails to provide a safe environment for patrons.

Double demerit points attach to offences involving the sale or supply to minors, due to the seriousness

of these types of offences. Demerit points can also be imposed by the Independent Liquor & Gaming Authority (ILGA) where it decides a prescribed complaint has been made out.

Operators who show they are unwilling to meet their obligations and incur multiple demerit points can be removed from the industry. A range of other remedial action can also be taken to help address any risk of further serious breaches.

ILGA can undertake a case review of operators that have received two or more demerit points to consider the most appropriate remedial action.

The system rewards responsible operators that comply with the liquor laws by discounting licence fees. Operators that have received demerit points are not eligible for these discounts and pay higher licence fees as part of the compliance risk loading element of their licence fees.

Which offences can lead to a demerit point?

Offence	Relevant section within the <i>Liquor Act 2007</i>
Category 1 demerit	
Sale or supply of liquor outside of approved trading hours	section 9
Breaching a licence condition that prohibits patrons from entering licensed premises after a lock out time or restricts trading hours – if imposed under the special licence conditions in the precincts, or Via remedial action taken as a result of incurring demerit points	(Division 4 of Part 6) (Subdivision 2 or 3 of Division 4 of Part 9A) section 11(2)
Permitting intoxication or indecent, violent or quarrelsome conduct	section 73(1)(a) or (b)
Selling or supplying liquor to an intoxicated person	section 73(2)
Permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or drug	section 74(1)(b) or (2)
Failure to comply with a direction given by the Secretary	section 75(3)

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Offence	Relevant section within the <i>Liquor Act 2007</i>
Failure to comply with a short-term closure order	section 82(6)
Failure to comply with a long-term closure order	section 84(7)
Failure to comply with a notice issued by the Secretary restricting or prohibiting activities that encourage misuse or abuse of liquor	section 102A(2)
Licensees and managers liable for acts of their employees etc. For example, this includes selling or supplying liquor to an intoxicated person and failure to comply with a direction given by the Secretary	section 149 sections 73(2) and 75(3)
Category 2 demerit	
Selling or supplying liquor to a minor or allowing such sale or supply	section 117(1), (2) or (8)
Licensees and managers liable for acts of their employees etc. For example, selling or supplying liquor to a minor	section 149 sections 117(1) or (2)

Where multiple offences are committed at a venue within a single 24-hour period, they are taken to be a single offence for the purposes of the system. The current system applies to offences committed from January 2021.

Who incurs demerit points under the system?

In most cases, demerit points are incurred by the individual licensee or approved manager that has committed the offence or been the subject of a prescribed complaint. For all registered clubs, demerit

points are recorded against its licence. Demerit points are incurred if:

- ▲ a licensee or manager is convicted of the offence
- ▲ a penalty notice is paid in respect of the offence
- ▲ a penalty notice enforcement order is made against the licensee or manager in respect of the offence or
- ▲ ILGA determines to impose 1 or 2 demerit points as a result of a prescribed complaint.

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What is a prescribed complaint?

L&GNSW or NSW Police can make a prescribed complaint to ILGA in relation to a licensee, approved manager or club licence on any of the following grounds:

Ground	Relevant section within the <i>Liquor Act 2007</i>
The licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption)	section 139(f)
Intoxicated patrons have frequently been on the licensed premises or have frequently been seen to leave the licensed premises	section 139(g)
Acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises	section 139(h)
2 or more serious indictable offences involving violence have been committed within a 12-month period: (i) by persons on the licensed premises, or (ii) near the licensed premises by persons who have been on the licensed premises within a reasonable time before the act occurred, or (iii) near the licensed premises by persons attempting to enter, or who have been refused entry to, the licensed premises within a reasonable time before the act occurred	section 139(ha)
2 or more incidents posing a serious risk to the health or safety of persons have occurred within a 12-month period: (i) involving persons on the licensed premises, or (ii) near the licensed premises by persons who have been on the licensed premises within a reasonable time before the act occurred, or (iii) near the licensed premises by persons attempting to enter, or who have been refused entry to, the licensed premises within a reasonable time before the act occurred	section 139(hb)

The types of evidence that L&GNSW or NSW Police should include to substantiate the prescribed complaint are set out in the ILGA Guidelines at liquorandgaming.nsw.gov.au.

After considering the circumstances of the prescribed complaint, including the seriousness of the grounds and any resulting harm, ILGA may determine to impose 1 or 2 demerit points. The licensee, manager or club will then be invited to make a submission before a final decision about why the demerit points should not be imposed. The ILGA Guidelines set out what ILGA will consider in deciding whether the prescribed complaint is made out and the kind of evidence that can be presented in submissions to ILGA.

If ILGA decides to impose 2 demerit points, further remedial action (such as the imposition of licence conditions) may be taken.

How will I know if I've incurred a demerit point?

L&GNSW must give written notice to the licensee, manager or club of any demerit point automatically incurred as a result of a demerit offence.

ILGA must give written notice to the licensee, manager or club of its decision to impose 1 or 2 demerit points as a result of a prescribed complaint.

All demerit points in force are also recorded on a public Demerit Point Register, which is available at liquorandgaming.nsw.gov.au.

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What are the consequences of a demerit point?

Demerit points result in additional loadings attached to the annual liquor licence fee of a venue. More information on this is available at liquorandgaming.nsw.gov.au.

As the number of demerit points incurred by a licensee, manager or club accumulates, ILGA has an escalating range of remedial actions that it can take.

If you receive more than 1 demerit point, ILGA can take remedial action against you and the licence of the venue where the related conduct occurred.

After 2-3 demerit points are accumulated within a 3 year period, this action is designed to help improve behaviour and address the risks that led to the demerit points being incurred.

However, where rogue operators repeatedly disregard the law and incur 4 or more demerit points, a range of actions may be taken to remove them from the industry – including disqualification and licence suspension.

Note: Any conditions imposed on a licence can be varied or revoked at any time.

Other powers available under the *Liquor Act 2007* may also be used in responding to serious breaches of the liquor laws, including powers available to the Authority and the Secretary, Department of Customer Service, to:

- ▲ impose licence conditions under sections 53 and 54
- ▲ issue directions to licensees and staff under section 75
- ▲ impose conditions resulting from a neighbourhood disturbance complaint under section 81
- ▲ issue closure orders under Division 4 of Part 5
- ▲ take disciplinary action under Part 9, which may also occur in conjunction with a prescribed complaint.

Figure 1 below shows how the remedial action can escalate as demerit points accumulate over a 3 year period.

2-3 demerit points	4-5 demerit points	6 or more demerit points
<ul style="list-style-type: none">▲ Reprimand the licensee, manager or club secretary of a premises▲ Require the licensee, manager, club secretary or member of the governing body of a club to undertake training or instruction considered appropriate by ILGA▲ Impose any condition ILGA considers necessary to address either the risk of a demerit offence being committed or the likelihood of a prescribed complaint being made	<ul style="list-style-type: none">▲ Disqualify the licensee, manager or club secretary for a specified period▲ Suspend the venue’s liquor licence for a period of up to 7 days (not applicable to clubs)▲ Any other remedial action available as a result of accumulating 2-3 demerit points	<ul style="list-style-type: none">▲ Disqualify the licensee, manager or club secretary permanently▲ Suspend the venue’s liquor licence for up to 14 days (not applicable to clubs)▲ Any other remedial action available as a result of accumulating 2-5 demerit points

Figure 1: Escalating remedial action under the Incentives and Demerit Point System

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How long do demerit points (and any remedial action) apply for?

Demerit points remain in force for up to three years from the date they are incurred or imposed.

Where a demerit point expires after three years, conditions imposed because of that demerit point continue in effect unless a further application is made to ILGA to have them removed.

ILGA can consider removing demerit points in two circumstances:

- ▲ for category 1 demerit points, where the licensee or manager has not committed a prior demerit offence in the past 10 years, or
- ▲ where operators can demonstrate they have addressed the risks that led to the demerit offence or prescribed complaint and 12 months have passed since the demerit point was received.

The factors that ILGA will consider in determining an application to remove demerit points and the types of evidence that you should include in your application to remove a demerit point is included in the ILGA Guidelines at liquorandgaming.nsw.gov.au.

Before removing a demerit point, ILGA will consider several factors, including whether the licensee or manager has:

- ▲ implemented measures, or undertaken a course or training or instruction, to manage or reduce the risks that contributed to the demerit offence
- ▲ complied with any remedial action imposed by ILGA, and
- ▲ not committed further serious breaches of the liquor laws.

If a demerit point is removed by ILGA, any remedial action taken as a result of the demerit point continues to have effect unless ILGA decides otherwise.

What if I do not agree with a decision on a demerit point-related matter?

There is an appeal mechanism to the NSW Civil and Administrative Tribunal (NCAT) for ILGA decisions to take remedial action and refusal to remove demerit points. This ensures venue operators can put their case to an independent decision-maker or review body.

An application to review a decision to take remedial action will stay (or postpone) the decision under review unless NCAT directs otherwise. The operation of any

remedial action (e.g. conditions imposed on a licence) is suspended during any period in which a stay applies.

What happens where a conviction for an offence is appealed in the courts?

If the conviction for the offence is overturned on appeal, any demerit point based on the conviction is revoked and any remedial action taken as the result of the demerit point (for example, conditions imposed on a licence) ceases to have effect.

An appeal against a conviction for an offence does not prevent a demerit point being incurred as a result of the commission of the offence or prevent the taking of remedial action. However, an appeal does suspend the operation of any such remedial action until the appeal is determined or withdrawn.

A demerit point is revoked, along with any associated remedial action, where a penalty notice is subsequently withdrawn or annulled, or a person elects to defend the matter at court after the penalty notice has been paid. A demerit point is still incurred if a court subsequently convicts a person of a demerit offence.

What if I 'swap out' a licensee or manager that incurs a demerit point merely to avoid further regulatory action under the system?

Where a demerit point has been incurred or imposed, the system promotes changes to help improve the management and supervision of the licensed operations.

The system is designed to encourage licensees and managers that incur demerit points to make these changes. If they can demonstrate improvement after twelve months, the demerit point can be removed.

If multiple demerit offences or acts leading to a prescribed complaint are committed at a particular venue by different licensees or managers, there may be a case for closer regulatory scrutiny.

ILGA and the Secretary are able to take other regulatory action considered appropriate to improve the supervision and management of the licensed operations – for example, imposing any conditions on the licence they consider necessary under sections 53 and 54 of the Act.

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What happens if I incur a demerit point at a venue and there is a change in my employment?

A demerit point can be incurred against an individual licensee or manager at any time, whether or not they remain employed in the same role. Any demerit points will remain in place against a current or former licensee or manager until they expire or unless revoked by ILGA.

Incentives

Venues whose licensees and managers have not incurred any demerit points in the last three years will be rewarded with a 5% discount on its base licence fee and trading hours risk loading. This will increase to a 10% discount if they have not incurred any demerit points over five years. Venues will first be eligible for a discount in 2024.

Old Strikes

Strikes incurred by a licensee, manager or club under the old Three Strikes Scheme have been revoked. This, however, does not affect the operation of any remedial action taken by ILGA as a result of the strike.


Note: This fact sheet should be used as a guide only, and does not contain legal advice. You should speak to your legal adviser if you require specific advice about your situation and the Incentives and Demerit Point System.

For further information

To find out more about the liquor laws, contact L&GNSW:

 liquorandgaming.nsw.gov.au

 contact.us@liquorandgaming.nsw.gov.au

 1300 024 720

You can also access the *Liquor Act 2007* and the Liquor Regulation 2018 at legislation.nsw.gov.au.

INCENTIVES FOR NO DEMERIT POINTS

3-5 years no demerits =
5% discount on annual liquor licence fee

5 years+ no demerits =
10% discount on annual liquor licence fee

No compliance loading on
annual liquor licence fee

HOW DEMERIT POINTS ARE APPLIED

DEMERIT POINTS ARE GIVEN FOR:

1. Serious breaches of liquor laws

- **Category 1 offences = 1 demerit**
(not related to minors)
e.g. sell/supply liquor to an intoxicated person.
- **Category 2 offences = 2 demerits**
(related to minors)
e.g. sell/supply liquor to a minor.

2. Prescribed complaints

(made under section 139 of the *Liquor Act 2007*)

- The Authority* might impose **1-2 demerits** for liquor law breaches known as 'prescribed complaints'. These include encouraging risky drinking, frequent intoxication and/or violence at the venue, multiple serious indictable offences or incidents putting the health or safety of the public at risk.

DEMERIT POINTS:

- Apply for up to 3 years.
- Apply to a licensee or a manager. Except for registered clubs, where the demerits are applied to the licence.
- Result in compliance risk loading of 40 fee units being added to a venue's annual liquor licence fee. This loading is paid once for each demerit point.
- Are published on a public register.
- Can be removed on application in certain circumstances (see below). They can also be reinstated if the removal was based on inaccurate or incomplete information.

ESCALATING REMEDIAL ACTION FOR MULTIPLE DEMERITS

2+ demerits = heightened monitoring, engagement and supervision by L&GNSW, and an Authority* case review which might result in:

- **2+ demerits** - reprimand of licensee, manager or club secretary, training requirements and more conditions on the venue.
- **4+ demerits** - temporary disqualification of licensee, manager, or club secretary (in addition to the above actions).
- **6+ demerits** - permanent disqualification of the licensee, manager or club secretary, or temporary disqualification of a member of the club's governing body (in addition to the above actions).

TEMPORARY LICENCE SUSPENSION

The Authority might take more action when licensees or managers have multiple demerits in a 3 year period at the same premises:

- **4+ demerits** - licence suspended for up to 7 days.
- **6+ demerits** - licence suspended for up to 14 days.

For any prescribed complaint - the Authority has existing powers to suspend a licence for up to 12 months, or up to 24 months in aggravated circumstances.

REMOVAL OF DEMERIT POINTS

3 years

Demerits are removed after 3 years.

Early demerit point removal

There are 2 ways to have demerits removed early.

1. By applying to the Authority* for good behaviour and if:

- The licensee or manager has a clear 10 year record.
- The demerit is for a Category 1 offence.
- No remedial action was taken regarding the demerit.
- The offence didn't lead to serious harm.
- Practices are in place to prevent it happening again.
- No other serious breaches of the Liquor Act occurred.

2. By applying to the Authority* after 12 months and demonstrating that the risk that led to the demerit has been addressed. For example by:

- Installing voluntary ID scanners and digital incident registers.
- Running extra training for staff, managers and security, e.g. patron management technique training.
- Employing Responsible Service of Alcohol (RSA) Marshals.
- Becoming an active liquor accord member.

The Authority = Independent Liquor & Gaming Authority | L&GNSW = Liquor & Gaming NSW | NCAT = NSW Civil and Administrative Tribunal

*The Authority's decisions may be reviewed by NCAT