



Mr Sean Goodchild Director, Compliance Liquor and Gaming NSW Level 9 323 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:Sean.goodchild@liquorandgaming.nsw.gov.au">Sean.goodchild@liquorandgaming.nsw.gov.au</a>	Mr Jed Clarke Licensee The Dock Redfern [REDACTED] [REDACTED] [REDACTED]	Jacqueline Barlow Senior Sergeant Central Metropolitan Licensing Coordinator Sydney City Police Area Command 192 Day Street SYDNEY NSW 2000 <a href="mailto:barl1jacpolice.nsw.gov.au">barl1jacpolice.nsw.gov.au</a>
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16 August 2018

Dear Mr Clarke

<b>Reference No.</b>	DOC18/132819
<b>Matter</b>	Notification of a potential first strike offence
<b>Licensee</b>	Mr Jed Clarke
<b>Licence name</b>	The Dock
<b>Licence no.</b>	LIQS220000010
<b>Licence type</b>	Liquor – small bar licence
<b>Premises</b>	182 Redfern Street, REDFERN NSW 2016
<b>Notification submitted by</b>	Sean Goodchild, Director of Compliance Operations, Liquor and Gaming New South Wales
<b>Issue</b>	Whether a first strike should be imposed against Mr Jed Clarke
<b>Legislation</b>	Section 144E of the <i>Liquor Act 2007</i>

**Determination of potential first strike offence in relation to  
Mr Jed Clarke, the licensee of The Dock**

On 2 March 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Independent Liquor and Gaming Authority (Authority) notification (Notification) that Mr Jed Clarke, licensee (Licensee) of The Dock (Premises) had committed a prescribed offence and potentially incurred a first strike.

At its meeting on 11 April 2018, the Authority considered the Notification and submissions made by L&GNSW, NSW Police and the manager/ part owner of the business.

The Authority, based on the information before it, is satisfied the Licensee committed the prescribed offence of *'licensee keep premises open outside authorised hours'* 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 come into effect from 17 August 2018 and expire on 17 August 2021.

Enclosed with this letter is a statement of reasons for the Authority's decision. Details regarding the rights to seek review of the Authority's decision to impose a first strike 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 staff at the Reviews and Secretariat Unit via email at [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford

**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## STATEMENT OF REASONS

### Decision

1. On 2 March 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Authority notification that the Licensee of The Dock (Premises) had committed a prescribed offence (Notification).
2. The Notification included evidence that NSW Police issued the Licensee a Penalty Notice (PN) for the prescribed offence of '*licensee keep premises open outside authorised hours*' (Offence) in relation to an incident that occurred on the Premises on 28 October 2017.
3. The Notification also included evidence, by way of State Debt Recovery Office (SDRO) data report, that the PN was enforced on 30 January 2018.
4. The Authority notes that, in a letter to L&GNSW dated 27 March 2018, the manager admits to knowingly supplying alcohol past the authorised trading hours, including having staff drinks at the Premises with people who are not staff.
5. The Authority is satisfied the Licensee has committed a prescribed offence, that there are no other strikes in force against him, and that operating outside of the approved hours could have led to serious harm.
6. In accordance with section 144E of the Act, the Authority has decided to impose a first strike against the Licensee.
7. In reaching this decision, the Authority has had regard to the material before it, the legislative provisions under sections 3, 144B, 144C, 144E, 144F, 144G, 144H, 144M of the Act and Liquor Regulation 2008 (Regulation).
8. The first strike will commence from 17 August 2018 and will expire on 17 August 2021.

### Material considered by the Authority

9. The Authority has considered the Notification and all submissions received in relation to the Notification.
10. 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.
11. 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

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

### Key findings

13. The Authority is satisfied, based on the liquor licence document provided in the Notification, that Mr Clarke is the licensee of The Dock, Redfern.
14. The Authority notes that the licence is subject to the following approved trading hours:
  - a. Monday to Saturday 12:00 pm to 12:00 am,
  - b. Sunday 12:00 pm to 10:00 pm.
15. The Authority accepts NSW Police's account of the Offence contained in the COPS narrative of events (number 128617602) with which records the following information:

- a. At approximately 1:30 am on Saturday 28 October 2017, Police attended a small bar named The Dock at 182 Redfern Street, Redfern, on the basis that people were detected as being inside the bar, consuming alcohol and playing music, at 1:30 am.
  - b. Police attempted to enter the Premises, observing that the door was locked from the inside and the music playing could be heard from further down Redfern Street.
  - c. Upon announcing themselves, Police heard a female voice yelling obscenities and observed female buttocks being pressed against the glass door.
  - d. As Police could not be heard knocking on the door, a torch was used to gain the attention of the persons inside the bar, to which a male was heard confirming that it was in fact the Police at the door and the music was turned off.
  - e. Police spoke with a male who opened the door to the Premises and asked to speak with the manager.
  - f. Police asked the manager what time the bar was meant to close and how many people were on the Premises, to which the manager responded they were having staff drinks and there were six people on the Premises.
  - g. Police observed an additional two females in the bathroom facilities on the Premises and counted a total of eight people present, four of whom were current staff members.
  - h. On 2 November 2017, Police interviewed the manager, Mr Daniel O'Leary, who was working at the Premises on the night of the offence.
  - i. In the interview Mr O'Leary acknowledged he was aware that staff drinks only applied if the staff member was working on the licensed premises immediately before the premises was required to cease trading.
16. The Authority acknowledges that the exemption in clause 70C(2) of the Regulation allows staff members who have worked immediately before the premises is required to cease trading to enjoy staff drinks for a maximum of two hours on the premises after the cessation of trade.
  17. The Authority however remains concerned about the actions of the manager and part owner of the business, given that he acknowledged awareness of clause 70C(2) in his interview with Police and therefore knowingly breached the legislation by hosting people who were not staff and supplying them with alcohol outside of trading hours.
  18. The Authority accepts L&GNSW's submission that an intentional disregard of authorised trading hours may subvert the ability of L&GNSW or Police to provide proper regulatory oversight of the Premises and could also impact the ability of emergency services to respond to an incident at the Premises in the event one occurred.
  19. The Authority is satisfied that the manager and part owner of the business was fully aware of his responsibilities to cease trading at 12:00 am on Saturday 28 October 2017, or else only permit staff to remain on the premises after this time until 02:00 am. This finding is supported in the Licensee's submission made in response to the Notification on 27 March 2018, which includes an email to L&GNSW in which he admits to knowingly breaching the legislation.

#### Incurring a first strike

20. 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. 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.
21. 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.
22. The Authority notes that NSW Police issued the Licensee a PN for the prescribed offence of '*licensee sell/supply liquor outside authorised hours*' on 8 November 2017.
23. The Authority is satisfied, based on the SDRO Data report evidence contained in the Notification, the PN was paid on 31 January 2018.
24. Having regard to the information before it, the Authority is also satisfied there is no evidence suggesting any other strike is currently in force against the Licensee.
25. The Authority accepts L&GNSW's submission that while the offence of having patrons on the premises outside of the authorised hours is not towards the most serious end of the spectrum in this instance, a serious level of harm could have resulted from the Offence.

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

26. The Authority is satisfied
- (i) On the basis of the current violent venue list in schedule 4 of the Act, the licensed premises is not a declared premise.
  - (ii) On the basis of the COPS report, the size and patron capacity at the time would not have prevented the prescribed offence from occurring because the Licensee knowingly traded the premises outside of the approved hours.
  - (iii) On the basis of the material provided by L&GNSW, the Licensee does not have a history of committing prescribed offences.
  - (iv) On the basis of the material provided by L&GNSW, the licensed premises does not have a history of violent incidents.
  - (v) On the basis of the submission made by L&GNSW, other action in the form of conditions or training is not warranted on this occasion given the offence related to a blatant and intentional breach of trading hours.
  - (vi) On the basis of the material provided by L&GNSW, there have not been any changes to the licence for The Dock Redfern. The Authority notes that Mr Clarke has been the licensee for The Dock Redfern since 10 January 2014.
  - (vii) On the basis of the material provided by L&GNSW, there have not been any changes to the business practices in respect of the business carried on 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**

27. Having regard to the material before it, the Authority is satisfied that the Licensee has committed a prescribed offence and there are currently no other strikes in force against him and the commission of the prescribed offence could have led to serious harm.
28. Accordingly, the Authority has decided to impose a first strike against Mr Clarke pursuant to section 144E of the Act.
29. The first strike will commence from 17 August 2018 and will expire on 17 August 2021.

Yours faithfully



Philip Crawford

**Chairperson**

**For and on behalf of the Independent Liquor and Gaming Authority**

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) 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 28 days of notice of this decision being published on the liquor and gaming website <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> 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/>.

## **Schedule A – Material before the Authority**

### **Material considered by the Authority**

1. Notification of potential first strike from LGNSW, dated 2 March 2018, which comprised of:
  - a. Copy of the COPS event 128617602,
  - b. L&GNSW liquor licence records as at 2 January 2018, setting out the key liquor licence details for LIQS220000010 The Dock Redfern,
  - c. Report provided by NSW Police showing details of the prescribed offence committed by Mr O'Leary, extracted 2 January 2018, and
  - d. SDRO report provided by NSW Police showing payment of the infringement notice issued to Mr Clarke, extracted 13 February 2018.
2. Submission from L&GNSW in relation to the Notification, dated 2 March 2018.
3. Email submission from NSW Police in relation to the Notification, dated 8 March 2018 and including a statement from Constable Thomas Grant on 2 November 2017 and a record of interview between Senior Constable Philip Tucker and Mr Daniel O'Leary conducted on 2 November 2017.
4. Submission from Mr O'Leary in relation to the Notification, dated 27 March 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.

### 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.