



<p>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></p>	<p>Mr Brenton William Woolston Licensee Dorrigo Show [REDACTED]</p>	<p>Steve Carroll A/Senior Sergeant Northern Region Licensing Coordinator Newcastle City Police District 1 Watt Street NEWCASTLE NSW 2300 <a href="mailto:carr1ste@police.nsw.gov.au">carr1ste@police.nsw.gov.au</a></p>
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9 July 2018

Dear Mr Woolston

<b>Reference No.</b>	DOC18/119416
<b>Matter</b>	Notification of a potential first strike offence
<b>Licensee</b>	Mr Brenton William Woolston
<b>Licence name</b>	Dorrigo Show
<b>Licence no.</b>	LIQL550028174
<b>Licence type</b>	Limited licence - single function
<b>Premises</b>	4180 Waterfall Way DORRIGO NSW 2453
<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 Brenton William Woolston
<b>Legislation</b>	Section 144E of the <i>Liquor Act 2007</i>

### **Determination of potential first strike offence in relation to Mr Brenton William Woolston, the licensee of the Dorrigo Show**

On 5 February 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 Brenton William Woolston, licensee (Licensee) of the Dorrigo Show (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 Licensee.

The Authority, based on the information before it, is satisfied the Licensee committed the prescribed offence of *'licensee sell/supply liquor outside authorised hours'* and has decided to impose a first strike against the Licensee in accordance with section 144E of the Liquor Act (Act).

The first strike will come into effect from 10 July 2018 and expire on 10 July 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 black ink, consisting of a stylized 'D' followed by a checkmark-like flourish.

David Armati  
**Deputy Chairperson**  
For and on behalf of the Independent Liquor and Gaming Authority

## STATEMENT OF REASONS

### Decision

1. On 5 February 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Authority notification that the Licensee of the 2017 Dorrigo Show (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 sell/supply liquor outside authorised hours'* (Offence) in relation to an incident that occurred on the Premises on 24 November 2017.
3. The Authority notes the Premises was subject to a limited single function licence and permitted to operate in accordance with the following approved hours:
  - a. Friday 24 November 2017 6:00 pm to 10:00 pm, and
  - b. Saturday 25 and Sunday 26 November 2017 from 10:00 am to 7:00 pm.
4. The Notification also included evidence, by way of State Debt Recovery Office (SDRO) data report, the PN was paid on 16 December 2017.
5. The Authority notes, in a letter dated 25 November 2017 to Senior Constable Ben Cruickshank, that the Licensee has admitted to knowingly supplying alcohol outside of the authorised trading hours.
6. 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.
7. In accordance with section 144E of the Liquor Act (Act), the Authority has decided to impose a first strike against the Licensee.
8. 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 the Liquor Regulation 2008.
9. The first strike will commence from 10 July 2018 and will expire on 10 July 2021.

### 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, based on the liquor licence document provided in the Notification, that Mr Woolston was the licensee of the 2017 Dorrigo Show.
15. The Authority notes that the Premises was granted a limited single function licence and was subject to the following approved trading hours:
  - a. Friday 24 November 2017 6:00 pm to 10:00 pm,
  - b. Saturday 25 and Sunday 26 November 2017 from 10:00 am to 7:00 pm.

16. The Authority accepts NSW Police's account of the Offence contained in COPS event report (number 65955313) which records the following information:
- a. At approximately 10:43 pm on Friday 24 November 2017, Police attended the Dorrigo Show grounds and entered via the Fernbrook Gate entrance on the south western side.
  - b. Police observed all of the roller shutters on the service bar were open and people were approaching the bar and leaving with alcoholic beverages.
  - c. Police observed approximately 15-20 people sitting and standing in a fenced area around the bar with opened alcoholic beverages either in front of them or in their hands.
  - d. Police observed another 30-40 people standing in a roped off area around the fenced bar talking and consuming alcoholic beverages.
  - e. A male person saw Police and rushed up to the bar and spoke to the bar attendant, who then pulled down all three roller shutters at the bar.
  - f. The Licensee approached Police and stated "I closed at 10:00 pm, but they [the Show Committee] wanted me to open up again as some of the rodeo riders wanted to relax and have a few drinks...."
  - g. Police informed Mr Woolston that he, and not the Show Committee, is the Licensee, and it was his responsibility to close the bar.
  - h. Police also observed more people standing nearby and holding alcoholic beverages.
  - i. On 25 November 2017, the Licensee wrote to NSW Police and admitted to knowingly breaching the approved trading hours of the licence.
17. The Authority acknowledges, on the basis of the Licensee's submission that there may have been some level of confusion between the Licensee and Show Committee as to what time the bar should have been open until on Friday 24 November 2017 at the time of making an application for a limited licence.
18. Despite any confusion, the approved liquor licence document issued on 24 August 2017 clearly specifies the hours endorsed on the licence and the Premises could only trade until 10:00 pm on 24 November 2017.
19. The Authority notes that Mr Woolston may have been pressured by the organisers of the Dorrigo Show into keeping the bar open after the authorised trading hours on Friday 24 November 2017. Notwithstanding this, the Licensee is accountable for operating the bar in accordance with the approved trading hours on the liquor licence not the organiser of the Show.
20. The Authority accepts L&GNSW's submission that intentionally disregarding 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 any incident that might occur at the Premises.
21. The Authority is satisfied that the Licensee was fully aware that it was his responsibility to cease trading at 10:00 pm on Friday 24 November 2017. This finding is supported by the Licensee's submission made in response to the Notification on 2 March 2018, which includes a letter to NSW Police in which he admits to having knowingly breached the approved hours endorsed on the licence.

#### Incurring a first strike

22. Under section 144E of the Act, the Authority, when determining whether a first strike should be incurred against a licensee, must be satisfied that person:
- a. has committed a prescribed offence, and
  - b. there is currently no other strike in force against them, 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.
23. 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.
24. The Authority notes that NSW Police issued the Licensee a PN for the prescribed offence of '*licensee sell/supply liquor outside authorised hours*' on 28 November 2017.
25. The Authority is satisfied, based on the SDRO Data report evidence contained in the Notification, the PN was paid on 16 December 2017.
26. 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.
27. The Authority accepts L&GNSW's submission that whilst the offence of selling liquor outside of the authorised hours is not, in these particular circumstances, towards the most serious end of the spectrum, a sufficiently serious level of harm may have resulted from the Offence. The Authority considers trading hours to be a key component of harm minimisation, allowing NSW Police and L&GNSW to properly plan and resource the monitoring of an event of this type.

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

28. The Authority is satisfied
- (i) Based on the current declared premises list in schedule 4 of the Act, the licensed premises is not a declared premises.
  - (ii) Based on the COPS report, the size and patron capacity (approximately 70 to 100 patrons) at the time would not have prevented the prescribed offence from occurring, as this factor has little relevance to the circumstances of the matter.
  - (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 knowing breach of trading hours.
  - (vi) On the basis of the material provided by L&GNSW, there have not been any changes to the limited licence for the 2017 Dorrigo Show, the relevant period for which has now passed. The Authority notes that Mr Woolston was the licensee for the Dorrigo Show in 2013, 2014 and 2016.
  - (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 out under the limited 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**

29. Having regard to the material before it, the Authority is satisfied that the Licensee has committed a prescribed offence and that there are currently no other strikes in force against him. The Authority is also satisfied that the commission of the prescribed offence could have led to serious harm.
30. Accordingly, the Authority has decided to impose a first strike against Mr Woolston under section 144E of the Act.
31. The first strike will commence from 10 July 2018 and will expire on 10 July 2021.

Yours faithfully



David Armati  
**Deputy 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 5 February 2018, which comprised of:
  - a. Copy of the COPS event 65955313,
  - b. L&GNSW liquor licence records as at 24 August 2017, setting out the key liquor details for the licence of the Dorrigo Show,
  - c. Application form submitted by Mr Woolston for a limited licence (single function) for the 2017 Dorrigo Show, lodged on 7 August 2017,
  - d. Report provided by NSW Police showing details of the prescribed offence committed by Mr Woolston, extracted 3 January 2018, and
  - e. SDRO report provided by NSW Police showing payment of the infringement notice issued to Mr Woolston, extracted 3 January 2018 .
2. Submission from L&GNSW in relation to the Notification, dated 5 February 2018.
3. Email submission from NSW Police in relation to the Notification including photograph of the Penalty Notice issued to Mr Woolston, dated 27 February 2018.
4. Submission from Mr Woolston in relation to the Notification, dated 2 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.