



<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 Sergio Pinzon Gutierrez Licensee Il Nostro [REDACTED]</p>	<p>Jacqueline Barlow Senior Sergeant Central Metropolitan Region Licensing Coordinator Sydney City Police Area Command 192 Day Street SYDNEY NSW 2000 bar1jac@police.nsw.gov.au</p>
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8 January 2019

Dear Mr Gutierrez

Reference No. DOC18/236583
Matter Notification of a potential first strike offence
Notification submitted by John Coady, Manager Compliance, Liquor and Gaming New South Wales
Licensee Mr Sergio Pinzon Gutierrez
Licence name Il Nostro
Licence no. LIQO660031551
Licence type Liquor - on-premises licence
Premises 284 King St NEWTOWN NSW 2042
Issue Whether a first strike should be imposed against Mr Sergio Pinzon Gutierrez
Legislation Section 144E of the *Liquor Act 2007*

Determination of a potential first strike offence in relation to Mr Sergio Pinzon Gutierrez, the licensee of Il Nostro

On 12 September 2018, Mr John Coady, Manager Compliance, Liquor and Gaming NSW (L&GNSW) submitted to the Independent Liquor and Gaming Authority (Authority) notification that the licensee, Mr Sergio Pinzon Gutierrez (Licensee) of Il Nostro had committed a prescribed offence and potentially incurred a first strike (Notification).

At its meeting on 14 November 2018, the Authority considered the Notification and submissions made by L&GNSW, NSW Police and the Licensee in response to the Notification.

The Authority, based on the information before it, is satisfied that 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 2007* (Act).

The first strike will commence from 9 January 2019 and will expire on 9 January 2022.

As the prescribed offence highlights significant failures by the Licensee to comply with his legislative requirements, the Authority considers it to be in the public interest that the Licensee undertakes additional training.

For the purposes of managing or reducing the risks that contributed to the commission of the prescribed offence, the Authority has determined the following:

1. Pursuant to section 144F(1) of the Act, the licensee is required to undertake both the Licensee and Advanced Licensee training courses as part of the tiered industry training framework. The training is to be conducted by an approved Registered Training Organisation (RTO) and must be completed within 2 months from the date of this decision.

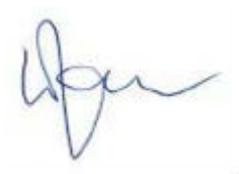
For information in relation to the Licensee and Advanced Licensee training course, please access the following page on the L&GNSW website: <https://www.liquorandgaming.nsw.gov.au/working-in-the-industry/training-to-work-in-the-industry/getting-trained/training-courses>

Enclosed with this letter is a statement of reasons for the Authority's decision.

Details regarding the right 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

A handwritten signature in blue ink, appearing to read 'P. Crawford', enclosed in a thin black rectangular border.

Philip Crawford

Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

Decision

1. On 12 September 2018, Mr John Coady, Manager Compliance, Liquor and Gaming NSW (L&GNSW) submitted to the Authority a notification that the licensee, Mr Sergio Pinzon Gutierrez (Licensee) of Il Nostro (Premises) had committed a prescribed offence (Notification).
2. The Notification included evidence that NSW Police (Police) issued the Licensee a Penalty Notice (PN) for the prescribed offence (Offence) of *'licensee sell/supply liquor outside authorised hours'* in relation to an incident that occurred at the Premises on 25 March 2018.
3. The Notification also included evidence, by way of Revenue NSW data, that the penalty notice was paid on 14 July 2018.
4. The Authority is satisfied that the Licensee has committed a prescribed offence and that there are no other strikes in force against him, and that supplying alcohol outside of the authorised trading hours has the potential to lead to serious harm.
5. In accordance with section 144E of the Act, the Authority has determined to impose a first strike against the Licensee.
6. The Authority has also determined to take further remedial action against the Licensee in the form of additional training pursuant to section 144F(1) of the Act. Notice of this action is provided at the end of this statement of reasons.
7. In reaching its decision, the Authority has had regard to the material before it, the legislative provisions under sections 3, 144B, 144C, 144E, 144F, 144G, 144H, 144M and Liquor Regulation 2008.
8. The first strike will commence from 9 January 2019 and will expire on 9 January 2022.

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 that at the time of the Offence, based on the liquor licence document provided in the Notification, Mr Gutierrez was the licensee of Il Nostro.
14. The Authority accepts NSW Police's account of the Offence contained in Computerised Operational Policing System (COPS) event report (number 67027135) which records the following information:
 - a. At about 12:45am on Sunday 25 March 2018, Police patrolling King Street, Newtown, observed the Premises to have all its doors wide open and loud music emitting from within the venue.
 - b. Police observed about 40 patrons in attendance on the ground floor and a further 20 patrons on the first floor area at that time.
 - c. Police observed most patrons to have an alcoholic beverage of some description (mainly beer or mixed spirits) and that patrons were being served and consuming liquor on the premises.
 - d. Police also observed that no food appeared to be available for service and that there was no food to be seen on any of the tables.

15. The Authority accepts the L&GNSW submission that maintaining lawful trading hours is a fundamental responsibility of a liquor licence holder and a basic harm minimisation measure to prevent any negative impact on local residents or businesses in the community.
16. The Authority also accepts the L&GNSW submission that an intentional disregard of authorised trading hours offends the community's expectations as to how the licensed premises should operate, and increases the risk of alcohol-related harm and disturbance. Adding to this risk is the fact that the venue appears to have been trading in contravention of its licence type by not having food available.
17. The Authority accepts the Police submission that the premises was trading for 45 minutes outside of its authorised trading hours while continuing to sell "shots" and other alcoholic beverages.
18. The Authority notes the Licensee's submission which states that subsequent to the offence having occurred he met with Police and has started to implement Police suggestions.
19. The Authority accepts that the Licensee has discussed the plan of management with staff since the prescribed offence so that they have a better understanding of their responsibilities.
20. The Authority notes that the Licensee was sick over the weekend that the offence occurred and was not present at the venue; however the Authority considers that ensuring staff understand and adhere to licensed trading hours is a fundamental requirement of a Licensee.

Incurring a first strike

21. Pursuant to 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.
22. 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.
23. Based on the material before it, the Authority is satisfied that the Licensee was issued a PN for the prescribed offence of *'licensee sell/supply liquor outside authorised hours'* on 25 March 2018.
24. The Authority is also satisfied that the PN issued to the Licensee was paid on 14 July 2018, which triggered consideration of whether a first strike should be incurred against the Licensee.
25. The Authority is further 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 PN was paid on 14 July 2018.
26. The Authority, based on the material before it, is also satisfied there is no evidence suggesting any other strike is currently in force against the Licensee.
27. The Authority considers that maintaining lawful trading hours is a fundamental responsibility of a liquor licence holder and a basic harm minimisation measure and therefore the offence on this occasion 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 suggest the venue size and patron capacity at the time hindered the Licensee's ability to prevent the prescribed offences 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, there is no record of violent incidents occurring in connection with the venue.
- (v) On the basis of the submission made by L&GNSW, the Licensee has no history of committing prescribed offences.
- (vi) On the basis of the material provided by L&GNSW, there have not been any changes to the licence for Il Nostro.
- (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

- 28. 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, and that there was potential for serious harm to occur as a result of the commission of the offence.
- 29. Accordingly, the Authority has decided to impose a first strike against Mr Gutierrez under section 144E of the Act.
- 30. The first strike will commence from 9 January 2019 and will expire on 9 January 2022.
- 31. As the prescribed offence highlights significant failures by the Licensee to comply with his legislative requirements, the Authority considers it to be in the public interest that the Licensee undertakes additional training.
- 32. 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 further remedial action under section 144F(1) of the Act

- 33. In accordance with section 144F of the Act, the Authority has determined the following:
 - 1. The licensee is required to undertake both the Licensee and Advanced Licensee training courses as part of the tiered industry training framework. The training is to be conducted by an approved Registered Training Organisation (RTO) and must be completed within 2 months from the date of this decision.

For information in relation to the Licensee and Advanced Licensee training course, please access the following page on the L&GNSW website:

<https://www.liquorandgaming.nsw.gov.au/working-in-the-industry/training-to-work-in-the-industry/getting-trained/training-courses>

Yours faithfully



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

Important Information:

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/>.

This decision will be published on the L&GNSW website at:

<https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/First-and-Second-Strike-Decisions>

<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 12 September 2018, which comprised of:
 - a. Copy of COPS event 67027135.
 - b. L&GNSW liquor licence records as at 14 August 2018 setting out the key liquor details for the licence of Il Nostro.
 - c. Extract of Revenue NSW penalty notice data as at 17 July 2018.
2. Submission from L&GNSW in relation to the Notification, dated 12 September 2018.
3. Submission from the Licensee in relation to the Notification, dated 12 October 2018.
4. Submission from NSW Police in relation to the Notification, dated 24 October 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.