



Mr Justin Gill A/Manager Compliance Liquor & Gaming NSW [REDACTED] [REDACTED] [REDACTED]	Mr Chris Chang Licensee Haru Fusion Soju Lounge [REDACTED] [REDACTED]	Senior Sergeant Jacqueline Barlow Central Metropolitan Region Licensing Co-ordinator Sydney City Police Area Command [REDACTED] [REDACTED]
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30 August 2019

Dear Mr Chang

Reference No. DOC19/153504
Matter Notification of a potential first strike offence
Notification submitted by Mr Justin Gill, A/Manager Compliance, Liquor & Gaming NSW
Licensee Mr Chris Chang
Licence name Haru Fusion Soju Lounge
Licence no. LIQO624005560
Licence type Liquor - on premises licence
Premises G 262 Castlereagh Street
SYDNEY NSW 2000
Issue Whether a first strike should be imposed against Mr Chris Chang
Legislation Section 144E of the *Liquor Act 2007*

**Determination of a potential first strike offence in relation to
Mr Chris Chang, the licensee of Haru Fusion Soju Lounge, Sydney**

On 8 May 2019, Mr Justin Gill, A/Manager Compliance, Liquor & Gaming NSW (L&GNSW) submitted to the Independent Liquor & Gaming Authority (Authority) notification that Mr Chang, licensee of Haru Fusion Soju Lounge (Premises) had committed a prescribed offence and potentially incurred a first strike (Notification).

At its meeting on 14 August 2019, 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 permit intoxication on licensed premises'* and has decided to impose a first strike against the Licensee in accordance with section 144E of the *Liquor Act 2007* (Act).

The first strike will commence from 30 August 2019 and will expire on 30 August 2022.

Due to the seriousness of harm that occurred as a result of the prescribed offence in the form of two intoxicated patrons being found unconscious on the footpath and road outside the Premises,

the Authority considers that it may be in the public interest to take further remedial action against the licence of Haru Fusion Soju Lounge (LIQO624005560).

The Authority, pursuant to section 144G(1) of the Act, is minded, subject to consideration of any final submissions, to impose the following conditions on the licence:

Plan of Management

- 1) *The licensee must engage a person who holds a class 2A security licence, or is otherwise suitably qualified, to prepare a plan of management (POM) for the licensed premises and submit the POM to the Authority for approval within 1 month.*

The plan should be systems based and adopt a continuing approach to address the following:

- 1) *Compliance with licence conditions and liquor laws.*
- 2) *The responsible service of alcohol.*
- 3) *Minimising disturbance to the neighbourhood particularly addressing effective management of patrons:*
 - a) *who are approaching intoxication, intoxicated, violent, quarrelsome or disorderly,*
 - b) *queuing to gain entry to the premises, and*
 - c) *within and departing the premises.*
- 4) *Effective management and deployment of venue staff particularly addressing:*
 - a) *maintaining an incident register,*
 - b) *security and patron safety,*
 - c) *crime scene management procedures, and*
 - d) *induction and training*
- 5) *Appropriate responses to concerns raised by NSW Police or residents affected by the operation of the licensed premises.*

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

Incident Register

- 1) *An Incident Register will be maintained at the premises. The incident register shall be used at all times the venue is trading and be readily available for inspection at any time the premises are trading by NSW Police and Inspectors of Liquor & Gaming NSW (L&GNSW). The Incident Register shall record the occurrence, at any time of the day, of:*
 - (a) *any incident involving violence or anti-social behaviour occurring on the licensed premises;*
 - (b) *any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the licensed premises and that involves a person who has recently left, or been refused admission to, the premises;*
 - (c) *any incident that results in a person being turned out of the licensed premises under section 77;*
 - (d) *any other incident of a kind prescribed by the Liquor Regulation 2018 with regard to requirements for the maintenance of an Incident Register;*
 - (e) *any third-party disturbance complaint received by the venue in relation to the premises;**and*

- (f) any malfunction of breath analysis equipment, CCTV or noise limitation equipment, and the action taken in relation to all such matters.*

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

CCTV

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

Additionally, the Authority, of its own initiative, pursuant to section 51(9) of the Act, is minded, subject to consideration of any final submissions, to vary the extended trading authorisation hours on the licence to require the Premises to cease trading at 1:00am, seven days per week.

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

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 NSW Civil and Administrative Tribunal are also 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 '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 8 May 2019, Mr Justin Gill, A/Manager Compliance, Liquor & Gaming NSW (L&GNSW) submitted to the Authority notification that the Licensee of Haru Fusion Soju Lounge (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 permit intoxication on licensed premises*' in relation to an incident that occurred at the Premises on 10 October 2018.
3. The Notification also included evidence, by way of Revenue NSW data, that the PN was paid on 15 April 2019.
4. The Authority is satisfied that the Licensee has committed a prescribed offence and there are no other strikes in force against him.
5. In accordance with section 144E of the Act, the Authority has decided to impose a first strike against the Licensee.
6. The Authority, of its own initiative, is minded, subject to consideration of any final submissions, to take further remedial action against the licence pursuant to sections 51(9), 53(1)(b), and 144G(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, 51, 53, 144B, 144C, 144E, 144F, 144G, 144H, 144M and Liquor Regulation 2018 (Regulation).
8. The first strike will commence from 30 August 2019 and will expire on 30 August 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 the schedule at the end of this statement of reasons.

Key findings

12. The Authority is satisfied, based on the liquor licence document provided in the Notification, that Mr Chang was the licensee of Haru Fusion Soju Lounge at the time the offence occurred.
13. The Authority accepts NSW Police's account of the offence contained in Computerised Operational Policing System (COPS) event report (number 69310419) which records the following information:
 - a. On 11 October 2018 at about 1:35am, Police were called to attend to an intoxicated male outside Sydney Fire Station. Road workers had earlier moved the male from the road, where he had been asleep. Police found the male unconscious and covered in vomit, appearing to have wet himself. The male was roused but had difficulty speaking and was unable to sit up by himself.
 - b. Whilst attending to the male, Police were advised by a passer-by of a nearby unconscious female located on the footpath outside of the Premises.

- c. Shortly after, Police were notified by a friend that the intoxicated persons were part of a group who had attended the Premises and consumed liquor.
- d. The intoxicated patrons were both conveyed by ambulance to hospital for treatment.
- e. A Police review of CCTV footage indicates the following:
 - i. At 5:53pm a group of five patrons arrive at the Premises.
 - ii. From 6:04pm to 10:19pm, the group is served one round of Cass Beer, 17 bottles of Soju, nine of which the bottles were delivered sealed, platters of food and a cake.
 - iii. At 10:27pm one of the male patrons carries one of the female patrons away from the table and towards the counter of the Premises. Police note that while the female appeared to be conscious and laughing, her arms and legs were observed to be limp. He returned shortly after without the female.
 - iv. At 10:48pm one of the males loses his balance and falls to the ground, knocking over his chair. His behaviour becomes increasingly erratic. A female staff member approaches to check on the male and speaks with two of the male patrons. Following this, both males get up and move towards the toilets.
 - v. At 10:52pm the two males return to the table with one appearing to then be sleeping at the table. One of the male patrons attempts to wake the sleeping male. They speak briefly before the other male walks away and he goes back to sleep.
 - vi. At 11:00pm a female staff member walks past the table and observes the sleeping male. She does not approach or speak to the sleeping male. Shortly after, the sleeping male patron is woken by another male and walks towards the toilet area.
 - vii. At 11:27pm two of the male patrons are observed to carry the apparently unconscious female patron from the Premises via the front door.
- f. A manager who was not on duty at the time of the offence was notified of the incident by staff after midnight. He later attended the Premises and moved the intoxicated female patron from the entrance of the Premises to the area in front of the Pharmacy next door. The manager is alleged to have not contacted Police or an ambulance on the basis the female patron was in the company of two male friends.

14. The Authority accepts L&GNSW's submission that the poor practices at the Premises were detrimental to the male and female patrons' wellbeing and safety. Both were found unconscious outside the Premises or nearby and taken to hospital, evidencing the seriousness of the harm that resulted from the offence.

15. The Authority accepts L&GNSW's assertion that Premises staff had ample opportunities to recognise the signs of intoxication and intervene.

16. The Authority acknowledges Police's submission that the Premises staff failed to take the relevant steps set out in the guidelines and under the Act to prevent intoxication on the licensed premises.

17. The Authority acknowledges Police's submission that as the Premises is located in the Sydney City Entertainment Precinct, intoxicated patrons are at risk of becoming victims of crime upon

leaving the Premises, noting the associated costs alcohol-related incidents have on the community, local government, and emergency services.

18. The Authority notes the Licensee's submission that he was not on the Premises when the offence occurred and was notified a day or two after the incident. Furthermore, when the female patron displayed signs of intoxication, she was "cared for" by Premises staff with the bartender also refusing to serve the group. They were permitted to stay on premises to care for the intoxicated female.
19. The Authority further notes the Licensee's submission that the staff member serving the table failed to engage with the group to assess them for potential signs of intoxication in accordance with her training.
20. While the Authority has considered the measures to prevent intoxication at the Premises as detailed by the Licensee, the material provided does not support the assertion this incident can be attributed to one rogue staff member. While the manager on duty eventually "cut off" the patrons from further service, this was not done in accordance with the *Intoxication Guidelines* and the steps under section 73(5) of the Act. This section further provides that, the intoxicated person must also be asked to leave the Premises with Police contacted to assist when necessary in removing the intoxicated person from the Premises.
21. The Authority acknowledges the Licensee's length of experience in the restaurant industry, references provided, as well as action taken since the offence occurred including additional training for all staff including the manager. The Authority notes the Licensee's concerns as to the effect a strike would have on his character and reputation within certain communities.
22. The Authority has considered the differing submissions between Police and the Licensee as to the number of standard drinks and the amount of food served but finds that, on either scenario, the amount of liquor consumed in the time period gave rise to unacceptable risks of patron intoxication on the Premises.

Incurring a first strike

23. Under section 144E of the Act, the Authority, when determining whether a first strike should be incurred against a licensee, must be satisfied that:
 - a. the person has committed a prescribed offence, and
 - b. there is currently no other strike in force against them, and
 - c. the seriousness of any harm that may have resulted from or been associated with the commission of the offence warrants a first strike being imposed.
24. 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.
25. Based on the material before it, the Authority notes that the Licensee was issued a PN for the prescribed offence of '*licensee permit intoxication on licensed premises*' on 10 October 2018.
26. The Authority is satisfied that the Licensee has committed a prescribed offence pursuant to section 144C of the Act. This finding is made based on the Revenue NSW evidence provided in the Notification, which confirms the PN was closed paid on 15 April 2019.
27. 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.
28. The Authority considers the responsible service of alcohol to be a fundamental responsibility of a liquor licence holder and a basic harm minimisation measure.

29. The Authority is satisfied, based on the material provided, two patrons became intoxicated to the point of becoming unconscious and had to be taken to hospital. The Authority considers this harm to be of a serious nature to warrant 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 Schedule 4 of the Act, the licensed premises is not a declared premises.
- (ii) On the basis of the material provided by L&GNSW, there is no evidence to indicate that the Premises size and patron capacity hindered the Licensee's ability to prevent the prescribed offence from occurring.
- (iii) On the basis of the submission made by L&GNSW, the Licensee has no history of committing prescribed offences.
- (iv) On the basis of the submission made by L&GNSW, two incidents of common assault have been attributed to the Premises in the past 36 months.
- (v) On the basis of the material and submissions received from L&GNSW and Police, remedial action may be necessary in the form of licensee training, a plan of management as well as maintenance of high quality CCTV at the Premises. The Authority notes the Licensee was required to complete mandatory licensee training by 21 July 2019 in alignment with the renewal of his RSA competency card.
- (vi) On the basis of the submission made by the Licensee, there have not been any relevant changes since 10 October 2018.
- (vii) On the basis of the submission made by the Licensee, there have been recent changes to the business practices of the Premises. Additional training will be provided to all staff, advanced licensee training for the Licensee and manager, as well as an updated plan of management for the Premises.
- (viii) On the basis of the submission made by L&GNSW, there are no other matters prescribed by the regulations the Authority is required to consider.

Conclusion

30. Having regard to the material before it, the Authority has determined to impose a first strike against Mr Chang under section 144E of the Act.

31. The first strike will commence from 30 August 2019 and will expire on 30 August 2022.

32. Given the serious harm that occurred as a result of the prescribed offence, the Authority considers that it may be in the public interest, subject to the consideration of any final submissions, to take further remedial action against the licence of Haru Fusion Soju Lounge (LIQO624005560).

33. The Authority, of its own initiative, is proposing to take the following additional action against the licence:

- a. under section 144G(1) of the Act, impose a condition on the licence requiring the Licensee to engage a person with a class 2A security licence or otherwise suitably qualified person to prepare a plan of management,
- b. under section 144G(1) of the Act, impose a condition on the licence requiring the Premises to be operated in accordance with an approved plan of management at all times,

- c. under section 144G(1) of the Act, impose a condition on the licence requiring the Premises to maintain an incident register at all times,
- d. under section 53(1) of the Act, impose a condition on the licence requiring the Premises to maintain a CCTV system at all times, and
- e. under section 51(9) of the Act, to vary the extended trading authorisation hours in order to require the Premises to cease the sale and supply of liquor at 1:00am each night of the week.

34. NSW Police and L&GNSW are invited to provide submissions in response to the Authority's consideration to take the above action and will have until 13 September 2019 should they wish to do so.

35. Pursuant to section 53(4) of the Act, the Licensee will then have until 27 September 2019 to provide any final submissions in reply before the Authority makes its final decision.

36. Submissions should be made to the Reviews & Secretariat Unit via email at ilga.secretariat@liquorandgaming.nsw.gov.au and a copy provided to each of the parties to whom this letter is addressed.

Yours faithfully



Philip Crawford

Chairperson

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

Important Information:

In accordance with section 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/>.

This decision will be published on the Liquor and Gaming website at: <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/decisions-of-interest>.

All strikes in force are also recorded on a public Three Strikes Register, which is available at: <https://www.liquorandgaming.nsw.gov.au/resources/three-strikes-scheme>.

Schedule A – Material considered by the Authority

1. Notification of potential first strike from L&GNSW, dated 8 May 2019, which comprised of:
 - a. Copy of COPS event 69310419.
 - b. Copy of penalty notice 4942799548.
 - c. Liquor licence number LIQO624005560 as at 17 April 2019.
 - d. Extract of Revenue NSW penalty notice data, dated 16 April 2019
2. Submission from L&GNSW in relation to the Notification, dated 8 May 2019.
3. Submission from NSW Police in relation to the Notification, dated 24 May 2019.
4. Submission from Hatzis Cusack Lawyers which included a statement from the Licensee in relation to the Notification, dated 2 August 2019.

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.

51 General provisions relating to licence-related authorisations

(1) This section applies to the following authorisations granted by the Authority under this Act:

- (a) an extended trading authorisation,
- (b) a drink on-premises authorisation,
- (c) any other authorisation that may be granted by the Authority under Part 3 (other than a licence),
- (d) a minors area authorisation,
- (e) a minors functions authorisation.

(2) An application for an authorisation to which this section applies must:

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

(3) In determining an application for an authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.

(4) If, before an application for an authorisation is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including information provided

under this subsection), the applicant must immediately notify the Authority of the particulars of the change.

(5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for an authorisation.

(6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the authorisation.

(7) The regulations may prescribe, or provide for the determination of, a fee in respect of the granting of an authorisation. If any such fee is prescribed or determined, the authorisation does not take effect unless the fee has been paid.

(8) The Authority may, in granting an authorisation, specify requirements that are to be complied with before the authorisation takes effect. The authorisation does not take effect until such time as any such requirements have been complied with.

(9) An authorisation:

(a) is subject to such conditions:

(i) as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or

(ii) as are imposed by or under this Act or as are prescribed by the regulations, and

(b) may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Secretary or the Commissioner of Police.

(10) Any such application by a licensee to vary or revoke an authorisation (including any conditions to which the authorisation is subject that have been imposed by the Authority) must be accompanied by the fee prescribed by the regulations.

(11) For the purposes of this Act, any condition to which an authorisation is subject is taken to be a condition of the licence to which the authorisation relates.

(12) An authorisation has effect only while all the conditions to which it is subject are being complied with.

(13) The Authority must not impose a condition on an authorisation, or revoke or vary an authorisation, other than a variation made on application by a licensee, unless the Authority has:

(a) given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision, and

(b) taken any such submissions into consideration before making the decision.

(14) This section does not authorise the revocation or variation of a condition to which an authorisation is subject if the condition is imposed by this Act or is prescribed by the regulations.

53 Authority may impose, vary or revoke licence conditions

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

(a) on application by the Secretary or the Commissioner of Police, or

(b) on the Authority's own initiative,

impose conditions on a licence.

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

(a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and

(b) restricting the trading hours of, and public access to, the licensed premises.

(2) The Authority may at any time:

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

vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.

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

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

(4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has:

- (a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and
- (b) taken any such submissions into consideration before making the decision.

(5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.

(6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.

144B Definitions

(1) In this Part:

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

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

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

(iii) Schedule 4,

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

(c) section 73 (1) (a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct),

(d) section 73 (2) (selling or supplying liquor to an intoxicated person),

(e) section 74 (1) (b) or (2) (permitting the sale, possession or use of a prohibited plant or drug),

(f) section 75 (3) (failure to comply with a direction given by the Secretary),

(g) section 82 (6) (failure to comply with a short-term closure order),

(h) section 84 (7) (failure to comply with a long-term closure order),

(i) section 102A (2) (failure to comply with a notice issued by the Secretary),

(j) section 117 (1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply),

(k) section 149 (licensees and managers liable for act of employees etc) in respect of a contravention of section 73 (2), 75 (3) or 117 (1) or (2).

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

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

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

144C Committing prescribed offence

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

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

(b) an amount is paid under a penalty notice in respect of the offence, or

(c) a penalty notice enforcement order under the Fines Act 1996 is made against the person in respect of the offence.

(2) However, if:

(a) the conviction is overturned on appeal, or

(b) the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or

(c) the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled,

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

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

144E Strikes incurred by licensees or managers of licensed premises

- (1) A first strike is incurred by a person who is the licensee or manager of licensed premises if:
 - (a) the person commits a prescribed offence, and
 - (b) no other strike is in force against the person when the offence was committed, and
 - (c) the Authority decides to impose the first strike because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.
- (2) A second strike is incurred by a person who is the licensee or manager of licensed premises if:
 - (a) the person commits a prescribed offence, and
 - (b) 1 strike was in force against the person when the offence was committed, and
 - (c) the Authority decides to impose the second strike because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.
- (3) A third strike is incurred by a person who is the licensee or manager of licensed premises if:
 - (a) the person commits a prescribed offence, and
 - (b) 2 strikes were in force against the person when the offence was committed, and
 - (c) the Authority decides to impose the third strike after taking the following into account:
 - (i) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence,
 - (ii) any other matter that may be prescribed by the regulations.

144F Remedial action against licensee or manager of licensed premises

- (1) If the licensee or manager of licensed premises incurs 1 strike that is in force, the Authority may, by order in writing, require the person to undertake such courses of training or instruction as the Authority considers appropriate for the purposes of managing or reducing the risks that contributed to the commission of the prescribed offence in respect of which the strike was incurred.
- (2) If the licensee or manager of licensed premises incurs 2 strikes that are in force, the Authority may do any one or more of the following:
 - (a) take any action specified in subsection (1),
 - (b) reprimand the person,
 - (c) order the person to pay, within the time specified in the order, a monetary penalty not exceeding 5 penalty units.
- (3) If the licensee or manager of licensed premises incurs 3 strikes that are in force, the Authority may do any one or more of the following:
 - (a) take any action specified in subsection (1) or (2),
 - (b) by order in writing, disqualify (permanently or for a specified period) the person from being the licensee or manager of any licensed premises.
- (4) Any monetary penalty ordered to be paid under this section is payable to the Secretary.

144G Remedial action—imposition of licence conditions

(1) Remedial action for 1 strike

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

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

(2) Remedial action for 2 strikes

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

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

(3) Remedial action for 3 strikes

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

- (a) by order in writing, suspend the licence for up to 12 months,
- (b) by order in writing, cancel the licence and disqualify (for up to 12 months) any of the following persons from being granted a licence in respect of the premises to which the cancelled licence related (the subject premises):
 - (i) any person who was a business owner under the cancelled licence at the time the prescribed offence resulting in the third strike being incurred was committed,
 - (ii) any close associate of any such business owner,
- (c) impose a condition on the licence, or any subsequent licence issued in respect of the subject premises, that a person who is disqualified under paragraph (b) must not be employed or otherwise engaged as an employee or agent of the licensee or manager of those premises,
- (d) impose a condition on the licence relating to any matter referred to in subsections (1) and (2),
- (e) impose, vary or revoke any other condition on the licence that is not inconsistent with this Act.

144H Authority may impose other conditions in certain circumstances

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

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

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

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

144M Requirements relating to making of reviewable decisions

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

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

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

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

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

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

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

(vi) whether there have been changes to the persons who are the licensee, manager or business owner,

(vii) whether there have been changes to the business practices in respect of the business carried on under the licence,

(viii) any other matter prescribed by the regulations.

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

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

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

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