

Fact sheet FS3015

Three Strikes disciplinary scheme

The Government established the Three Strikes disciplinary scheme under the *Liquor Act 2007* as part of its plan to tackle alcohol-related violence and anti-social behaviour.

Strikes have consequences for licensees, managers and the venues they work in.

The Three Strikes scheme aims to reduce serious and repeated non-compliance with the NSW liquor laws.

Under the scheme, a strike can be incurred where a licensee or approved manager commits one of the most serious offences.

Operators who show they are unwilling to meet their obligations and incur multiple strikes can be removed from the industry. A range of conditions can also be placed on a venue's liquor licence to help address any risk of further serious breaches.

The scheme does not impact responsible operators that comply with the liquor laws.

Which offences can lead to a strike?

Offence	Relevant section within the <i>Liquor Act 2007</i>
Sale or supply of liquor outside of approved trading hours	section 9
Permitting patrons to enter licensed premises after a lock out time – if imposed under the special licence conditions in the precincts, or Three Strikes or Violent Venues schemes	(Division 4 of Part 6) section 11(2)
Permitting intoxication or indecent, quarrelsome conduct	section 73(1)(a) or (b)
Selling or supplying liquor to an intoxicated person	section 73(2)
Permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or drug	section 74(1)(b) or (2)
Failure to comply with a direction given by the Secretary of the Department of Industry	section 75(3)
Failure to comply with a short-term closure order	section 82(6)
Failure to comply with a long-term closure order	section 84(7)
Failure to comply with a notice issued by the Secretary restricting or prohibiting activities that encourage misuse or abuse of liquor	section 102A(2)
Selling or supplying liquor to a minor or allowing such sale or supply	section 117(1), (2) or (8)
Licensees and managers liable for acts of their employees etc. For example, this includes selling or supplying liquor to an intoxicated person, selling or supplying liquor to a minor, and failure to comply with a direction given by the Secretary of the Department of Industry	section 149 sections 73(2), 75(3) or 117(1) or (2).

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Where multiple offences are committed at a venue within a single 24-hour period, they are taken to be a single offence for the purposes of the scheme. The current scheme applies to offences committed from 1 October 2017.

Who incurs strikes under the scheme?

In most cases, strikes are incurred by the individual licensee or approved manager that has committed the offence. For all registered clubs, strikes are recorded against a club licence. Strikes can be incurred if:

- ▲ a licensee or manager is convicted of the offence
- ▲ a penalty notice is paid in respect of the offence or
- ▲ a penalty notice enforcement order is made against the licensee or manager in respect of the offence.

How are strikes determined?

The decision on whether a strike should be incurred is made by the Independent Liquor & Gaming Authority Board (the Authority).

Before making its decision, the Authority must notify the licensee and the approved manager (if any) of the licensed premises in writing, and invite them to make a submission within at least 21 days.

If the decision is whether a second or third strike should be incurred, the Authority must notify each interested person in the business carried on under the licence whose name has been provided under section 41 or 55 of the *Liquor Act 2007*, and the owner of the licensed premises.

The Authority must take into account submissions from these parties, as well as from the NSW Police Force and Liquor & Gaming NSW. It must also take into account, to the extent it considers relevant:

- ▲ whether the licensed premises were listed as declared premises under the Violent Venues scheme when the offence that led to a strike was committed
- ▲ 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 offences
- ▲ the history and nature of the commission of strike offences captured in relation to the licence or the licensed premises
- ▲ the history and nature of violent incidents that have occurred in connection with the licensed premises

- ▲ whether other action would be preferable
- ▲ whether there have been changes to the persons who are the licensee, manager or business owner
- ▲ whether there have been changes to the business practices in respect of the business carried on under the licence.

Any other matter that the Authority thinks is relevant can also be taken into consideration.

How will I know about a strike decision?

The Authority must give notice in writing of a decision under the Three Strikes scheme – including reasons for the decision, and any right of review in respect of the decision. This must be provided to the licensee, manager (if any) and anyone else required to have been initially notified.

All strikes in force are also recorded on a public Three Strikes Register, which is available at liquorandgaming.nsw.gov.au.

What are the other consequences of a strike?

If it decides to impose a strike, the Authority can impose remedial action against a licensee, manager and the licence of the venue where the related breach occurred.

After a first strike, this action is designed to help improve behaviour and address the risks that led to a strike being incurred.

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

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

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

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

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Figure 1 below shows how the remedial action can escalate after multiple strikes.

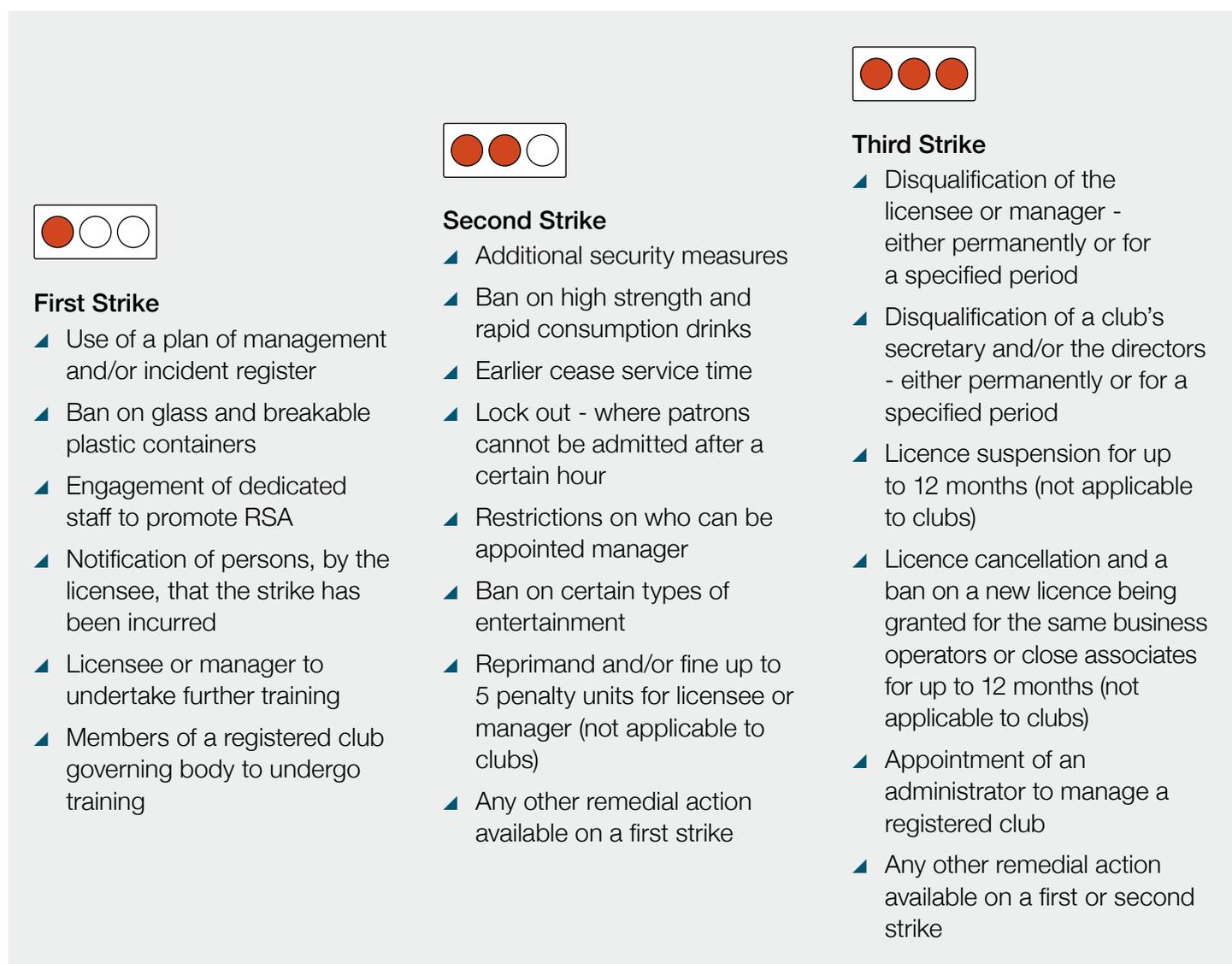


Figure 1: Escalating remedial action under the Three Strikes Scheme

How long does a strike (and any remedial action) apply for?

Strikes remain in force for up to three years from the date they are incurred.

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

In some circumstances, a strike can be revoked earlier by the Authority if a licensee or manager is able to demonstrate ongoing compliance, after at least six months, and that they have proactively taken steps to address the risks that led to a strike.

Before revoking a strike, the Authority must be satisfied that the licensee or manager has:

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

Any conditions imposed with the strike will generally be removed if the Authority decides to revoke a strike on review, unless it determines otherwise.

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

There is an appeal mechanism to the NSW Civil and Administrative Tribunal (NCAT) for all decisions to impose strikes. This ensures venue operators can put their case to an independent decision-maker or review body.

An application for a review will stay (or postpone) the decision under review unless the Authority or the NCAT directs otherwise. The operation of any remedial action taken in respect of a strike (e.g. conditions imposed on a licence) is suspended during any period in which a stay applies.

The decision by the Authority on whether or not to revoke a strike after at least six months on application is not reviewable.

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

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

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

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

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

Where a strike has been imposed, the scheme promotes changes to help improve the management and supervision of the licensed operations.

The scheme is designed to encourage licensees and managers that incur strikes to make these changes. If they can demonstrate improvement after six months, the strike can be revoked.

If multiple strikes are committed at a particular venue by different licensees or managers, there may be a

case for closer regulatory scrutiny. The Authority can impose licence conditions on the venue to limit any practice of swapping out licensees merely to avoid further regulatory action.

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

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

A strike can be incurred against an individual licensee or manager at any time, whether or not they remain employed in the same role. Where imposed, any strikes will remain in place against a current or former licensee or manager until they expire or unless revoked by the Authority.

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

For further information

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

 liquorandgaming.nsw.gov.au

 contact.us@liquorandgaming.nsw.gov.au

 1300 024 720

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