

Fact sheet FS3117

Industry information: Changes to the Three Strikes disciplinary scheme

The NSW Government has announced a range of liquor law reforms that will come into effect from 1 October 2017.

The changes will improve the effectiveness of the Three Strikes Disciplinary scheme that targets licensed venues that repeatedly commit the most serious offences under the NSW liquor laws.

Background

The Three Strikes scheme uses a system of strikes that target licensees or managers who wilfully – and continually – breach liquor laws. Not all offences will result in a strike - strikes only apply to serious breaches.

While the Three Strikes scheme (the scheme) has reduced serious breaches of liquor laws by targeting repeat offender venues, it has also had some unintended impacts on the owners and operators and the valuation of their properties. In some cases, it has jeopardised loan arrangements and the overall business viability.

What has changed?

Strikes will be incurred by individual licensees and approved managers for all venues (excluding registered clubs), rather than attaching to a venue's licence or the "bricks and mortar". Strikes will continue to be incurred against registered club licences.

The Independent Liquor and Gaming Authority Board (the Authority) will determine all strikes, with an appeal mechanism to the NSW Civil and Administrative Tribunal (NCAT). This ensures venue

operators can put their case to an independent decision-maker or review body.

When a strike is imposed on a licensee or manager, remedial action can still be taken in relation to the venue's licence to help manage associated risks. These actions can escalate where a venue's licensee or manager incurs multiple strikes and continue to include the possibility of licence suspension or cancellation after a third strike.

The Authority will also be able to consider imposing new escalating remedial actions in relation to the licensee or manager who committed the strike offence. This may range from a requirement to undertake training after a first strike, through to disqualification from holding the position of licensee or manager after a third strike.

Operators that can show they have improved by complying with the liquor laws and any remedial action, and addressing the risks that led to a strike, will have an opportunity to apply for a strike to be revoked after six months, rather than waiting three years for a strike to expire.

Further refinements to the types of offences that can lead to strikes will also ensure the scheme is more effectively targeted at addressing serious cases of non-compliance, such as serving an already intoxicated person, which lead to the most harm.

Existing strikes on venues will be removed when the revised laws come into effect to support a smooth transition to these revised arrangements for the scheme.

When will the changes happen?

The changes will come into effect on 1 October 2017.

Why is the Government making these changes?

These changes will further improve the way the industry is regulated and increase business certainty and viability, while ensuring the scheme remains effective in encouraging venues to provide safe environments for patrons to enjoy themselves.

Why revoke all existing strikes that have been incurred by venues?

This will help ensure a straightforward transition to the revised scheme and provide clarity for the community and industry about its operation going forward. It will mean that two different schemes are not running concurrently. However, any remedial action imposed with existing strikes will remain in place. Liquor & Gaming NSW will continue to monitor venues with an adverse compliance history.

What happens if venues start cycling through licensees merely to remove their strikes?

If this becomes an established practice at venues, and there has been no ongoing improvement in the supervision or management of the licensed operations, the Authority will be able to impose licence conditions to limit this practice. For example, the Authority may impose conditions requiring the employment of a licensee or manager with a certain level of qualification or years' of experience in managing licensed premises.

Why does a different Three Strikes scheme apply to registered clubs?

Clubs are different to privately owned venues. They are community owned and cannot be bought and sold in the same way, and have not faced the same financial impacts from incurring a strike. Current rules will continue for clubs, who would still not have their licence cancelled after a third strike but rather can be required to remove the club secretary or manager.

What is the point of having a Three Strikes scheme when strikes can potentially be revoked by the Authority after a short period of six months?

The Authority may only revoke a strike if satisfied that the licensee or manager has complied with any remedial action imposed by the Authority, and has not committed further serious offences. It must also 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.

What offences can now lead to a strike?

The following offences may lead to a strike under the revised Three Strikes scheme:

- sale or supply of liquor outside of trading hours
- permitting patrons to enter licensed premises after a lockout (where imposed in the Sydney CBD and Kings Cross precincts, or under the Three Strikes or Violent Venues schemes)
- permitting intoxication or indecent, quarrelsome conduct
- selling or supplying liquor to an intoxicated person
- permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or drug
- failure to comply with a direction given by the Secretary of Industry
- failure to comply with a short-term closure order
- failure to comply with a long-term closure order
- failure to comply with a notice issued by the Secretary restricting or prohibiting activities that encourage misuse or abuse of liquor
- selling or supplying liquor to a minor or allowing such sale or supply
- licensees and managers liable for acts of their employees etc, in respect of selling or

supplying liquor to an intoxicated person, selling or supplying liquor to a minor, failure to comply with a direction given by the Secretary of Industry.

More information

For more information and liquor law reform fact sheets visit liquorandgaming.nsw.gov.au