



Mr Damien Morton Licensee Liquorland Shop 20 Eastgate Shopping Centre Ebley Street BONDI JUNCTION NSW 2022 <a href="mailto:orion1388@gmail.com">orion1388@gmail.com</a> cc: <a href="mailto:j.martin@jdklegal.com.au">j.martin@jdklegal.com.au</a>	Senior Sergeant Jacqueline Barlow Central Metropolitan Region Licensing Co- ordinator Sydney City Police Area Command 192 Day Street SYDNEY NSW 2000 <a href="mailto:bar1jac@police.nsw.gov.au">bar1jac@police.nsw.gov.au</a>	Mr John Coady Manager, Compliance Liquor and Gaming NSW Level 9, 323 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:john.coady@liquorandgaming.nsw.gov.au">john.coady@liquorandgaming.nsw.gov.au</a>
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11 January 2019

Dear Mr Morton,

<b>Reference No.</b>	DOC19/002080
<b>Matter</b>	Notification of a potential first strike offence
<b>Notification submitted by</b>	John Coady, Manager Compliance, Liquor and Gaming New South Wales
<b>Licensee</b>	Mr Damien Morton
<b>Licence name</b>	Liquorland
<b>Licence no.</b>	LIQP700301694
<b>Licence type</b>	Liquor – packaged liquor licence
<b>Premises</b>	Shop 20 Eastgate Shopping Centre, Ebley Street, BONDI JUNCTION NSW 2022
<b>Issue</b>	Whether a first strike should be imposed against Mr Damian Morton
<b>Legislation</b>	Section 144E of the <i>Liquor Act 2007</i> (NSW)

### **Determination of a potential first strike offence in relation to Mr Damien Morton, the licensee of Liquorland – Bondi Junction**

On 18 October 2018, Mr John Coady, Manager Compliance, Liquor and Gaming NSW (LGNSW) submitted to the Independent Liquor and Gaming Authority (Authority) notification that the licensee, Mr Damien Morton (Licensee) of Liquorland in Bondi Junction had committed a prescribed offence and potentially incurred a first strike (Notification) pursuant to Part 9A of the *Liquor Act 2007* (NSW) (Act).

At its meeting on 12 December 2018 the Authority considered the Notification material and submissions from the Licensee and New South Wales Police in relation to the matter.

On the evidence and material before it, the Authority is satisfied that a first strike should be imposed against the Licensee pursuant to section 144E(1) of the Act.

The first strike will commence from **12 January 2019** and will expire on **12 January 2022**.

Enclosed with this letter is a statement of reasons for the Authority's decision. Details regarding 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 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 blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford

**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## STATEMENT OF REASONS

### Decision

1. On 18 October 2018, Mr John Coady, Manager Compliance, Liquor and Gaming NSW (LGNSW) provided information to the Independent Liquor and Gaming Authority (Authority) (Notification) advising that Mr Damien Morton (Licensee), the Licensee of a packaged liquor licensed premises trading as Liquorland, located at Shop 20 Eastgate Shopping Centre, Ebley Street, Bondi Junction NSW 2022 (Premises) had committed a “prescribed offence” for the purposes of the “3 strikes” disciplinary scheme in Part 9A of the *Liquor Act 2007* (NSW) (Act).
2. Pursuant to section 144E(1) of the Act, the Authority has decided to impose a first strike against the Licensee.
3. 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, 144K and 144M of the Act and *Liquor Regulation 2018* (NSW) (Regulation).
4. The first strike will commence from **12 January 2019** and will expire on **12 January 2022**.

### Material considered by the Authority

5. The Authority has considered the Notification, a submission from LGNSW dated 17 October 2018 (LGNSW Submission), two submissions from the Eastern Suburbs Police Area Command of New South Wales Police dated 14 November 2018 (Police Submission) and a legal submission dated 28 November 2018 made by Mr Jonathan Horton QC on behalf of the Licensee (Licensee Submission).
6. The Licensee Submission refers to and incorporates a separate but related submission prepared by the licensed business owner, Liquorland (Australia) Pty Ltd, dated 28 November 2018 (Liquorland Minors Sanctions Submission) addressing whether the licence should be suspended pursuant to the minors sanctions scheme in Part 7 of the Act (Minors Sanctions Scheme), on the basis of substantially the same facts as detailed in the Notification.
7. 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.
8. 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.

### Legislative framework

9. The Authority has considered the relevant legislative provisions as set out in Schedule B, at the end of this statement of reasons, when making this determination.
10. Briefly, section 144E(1) provides that when determining whether a first strike should be incurred against a licensee, the Authority must be satisfied that:
  - a. the person has committed a prescribed offence, and
  - b. at the time the offence was committed, no other strike is 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.

11. Relevantly, section 144B of the Act defines a “prescribed offence” as including an offence against section 117(1), (2) or (8) of the Act. Section 117(1) of the Act states that: “A person must not sell liquor to a minor”, while section 117(2) states that: “A person must not supply liquor to a minor on licensed premises”. Section 117(8) states that “A licensee must not, on licensed premises, allow liquor to be sold or supplied to a minor”.

## Findings

### The Licensee Committed a Prescribed Offence

12. The Authority is satisfied, on the information provided in the New South Wales Police Computerised Operational Policing System Report (COPS Report) for event number 69821988 created at 9:36 pm on Saturday 17 March 2018, that on that day (being St Patrick’s Day):
- (i) Licensing Police attached to the Eastern Suburbs Police Area Command (Police) were patrolling packaged liquor outlets in the Bondi Junction Central Business District (CBD), when at around 5:45 pm Police observed 8 to 10 males aged 13-16 years of age standing outside the rear entrance to Eastgate Shopping Centre on Ebley Street, Bondi Junction.
  - (ii) Police had previously identified young persons at this location, soliciting adults to buy liquor from the Premises.
  - (iii) Police observed a male aged around 30 years walk down the entrance stairs from the Premises with a case of Carlton Dry beer. He was approaching the young males and supplied the beer to them a short distance away, whereupon Police detained all of these persons.
  - (iv) While speaking to this group, Police detected another young male carrying a six pack of Great Northern beer that was still cold to the touch. The young male was not in possession of any identification, but upon further investigation was established to be 16 years and 6 months of age. He told Police that the beer had been purchased on the Premises and indicated the sales assistant who had sold it to him (Sales Assistant).
  - (v) The Sales Assistant admitted to Police that he had sold the beer to the young male and participated in a notebook interview, when he told Police that he did not ask the young male for any identification as he believed that the male was over 25 years of age. At the conclusion of this interview, another sales assistant refunded the purchase price to the young male after Police returned the beer to the sales assistant.
  - (vi) Police requested that the CCTV footage pertaining to the sales transacted with the 30-year-old male and the young male be retained.
  - (vii) Police then contacted the Licensee, who expressed concern about these events.
  - (viii) A previous offence of selling liquor to a minor was detected in relation to the Premises on 19 June 2015, resulting in the Premises being closed by LGNSW for 14 days.
13. The COPS Report includes a brief notation alleging that both the Sales Assistant and the Licensee committed offences against section 117(1) of the Act, which provides that a person must not sell liquor to a minor. The Authority notes that this is an offence punishable by a maximum penalty of 100 penalty units, 12 months imprisonment, or both.
14. The Authority is satisfied that Mr Morton was, at the time of the offence (17 March 2018), the Licensee of Liquorland at Bondi Junction. An extract of the Onegov record of the packaged liquor licence for the Premises dated 25 July 2018 provided with the Notification material indicates that Mr Morton was recorded as the Licensee, having commenced that position on 30 June 2017.

15. Although copies of the actual Penalty Notices were not provided in the Notification material or any other submission, the Authority is further satisfied, on the basis of a business record provided by Revenue NSW dated 15 May 2018 as part of the Notification material, that Penalty Notice 4936169930 was issued to the Licensee on 6 April 2018 for the offence of selling liquor to a minor on licensed premises which occurred on the Premises on 17 March 2018. The status of this Penalty Notice is "Closed Paid" as at 9 May 2018.
16. Moreover, the Authority is also satisfied, on the basis of a business record provided by Revenue NSW dated 1 May 2018 as part of the Notification material, that Penalty Notice 4936169893 was issued to the Sales Assistant on 22 March 2018 for the offence of selling liquor to a minor on licensed premises which occurred on the Premises on 17 March 2018. The status of this Penalty Notice is "Closed Paid" as at 30 April 2018.
17. Notwithstanding that the actual Penalty Notices were not provided to the Authority in the Notification material or any other submission, the Authority is satisfied, based on the material before it, that both the Licensee and the Sales Assistant were issued with a Penalty Notice for the offence of "*Sell liquor to a minor on licensed premises*" which occurred on 17 March 2018.
18. LGNSW advise in the Notification that "Police issued both the licensee and the employee with penalty notices for the prescribed offence of *sell liquor to a minor on licensed premises*".
19. For the purposes of Part 9A of the Act, prescribed offences that are committed in relation to a particular licence or licensed premises within the same single 24 hour period are taken to be a single prescribed offence pursuant to section 144C(3) of the Act.
20. In the Licensee Submission, the Licensee concedes that the commission of a prescribed offence is not in contest, in that the Sales Assistant sold liquor to a minor contrary to section 117(1) of the Act and the Licensee "allowed" the liquor to be sold, contrary to section 117(8) of the Act.
21. The Authority further notes that although the Licensee himself did not personally sell the liquor to the minor, section 149(a) of the Act provides that, if, in contravention of the Act or Regulation, an employee or agent of a licensee sells or supplies liquor on the licensed premises, the licensee is guilty of an offence and liable to the punishment specified for the contravention.
22. Section 144C(1)(b) of the Act provides that a person "commits" a prescribed offence, for the purposes of this scheme, if an amount is paid under a penalty notice issued to that person in respect of the offence. Although copies of the actual Penalty Notices were not provided to the Authority with the Notification material or otherwise, a business record dated 15 May 2018 from Revenue NSW which forms part of the Notification material establishes that Penalty Notice 4936169930 was issued to the Licensee with a status of "Closed Paid" as of 9 May 2018.
23. On this basis, the Authority is satisfied that the Licensee has *committed* a prescribed offence for the purposes of section 144E(1)(a) of the Act.

#### No Strikes In Force When Prescribed Offence Was "Committed"

24. The Authority accepts the uncontested information provided in the LGNSW Submission that the Licensee has no personal history of committing any prescribed offences. On this basis, the Authority is satisfied that no other strike was in force against the Licensee when this prescribed offence was committed. The Authority notes that while a strike was previously incurred in respect of this same *licence* arising from a previous supply of liquor to a minor on the Premises that occurred on 19 June 2015, clause 57 of Schedule 1 to the Act provides that any strike that was incurred under Part 9A of

the Act and in force immediately prior to the commencement, on 1 October 2017, of amendments to the Act introduced by the *Liquor Amendment (Reviews) Act 2017* (NSW), is revoked.

25. On this basis, the Authority is satisfied that no other strike was in force against the Licensee when this prescribed offence was committed for the purposes of section 144E(1)(b).

#### Should A Strike Be Imposed?

26. As a result of the Authority's findings in relation to section 144E(1)(a) and (b) discussed above, the Authority is empowered to *consider* imposing a strike against the Licensee under section 144E(1)(c).
27. In the Licensee Submission, the Licensee submits that the circumstances for imposing a strike under section 144E(1) are not satisfied in this case because all measures had been taken by the business owner, Liquorland, to avoid the commission of the offence and to avoid harm to minors. The Licensee further submits that no actual harm resulted from the sale of liquor to the minor on 17 March 2018.
28. The Licensee submits that when considering each of the statutory considerations under section 144M(1)(c) of the Act, the Authority should have regard to: the Licensee's "unblemished" compliance record; his not being present on the Premises at the time of the offence; the Licensee's co-operation with Police and the positive response by Liquorland to this incident. The Licensee further submits that the risk of harm on the particular facts of this offence – the potential consumption by a minor of a six pack of beer - is at the "lower end of the spectrum" in terms of the "seriousness".
29. While the Authority accepts that no *actual* harm occurred, section 144E(1) requires the Authority to consider whether a strike *should* be imposed because of the seriousness of harm that *may* have resulted from, or been associated with, the commission of the *prescribed offence*.
30. The Authority is satisfied that the consumption of a six-pack of beer by a minor poses the most direct risk of serious harm by way of intoxication of the minor in question, but that is not the only harm that may have occurred. The Authority considers that a range of serious harms may arise from, or be associated with, the prescribed offence of selling liquor to a minor. This is by reason of their relative lack of physical and psychological maturity with respect to the consumption of liquor, the elevated risk of intoxication from the irresponsible consumption of alcohol and the real risk of consequential harm flowing to an alcohol affected minor, or those who may be impacted by the acts or omissions of an alcohol affected minor. That is, there is a spectrum of potentially quite serious harm that may arise from the commission of this prescribed offence.

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

*Section 144M(1)(c)(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.*

31. The uncontested information provided in the LGNSW Submission establishes that the Premises has never been designated by the Secretary of the Department of Industry as a "declared premises" pursuant to the scheme for the regulation of violence occurring on licensed premises under Schedule 4 to the Act. The Authority is further satisfied, on the information regarding "Round 20" of the Schedule 4 scheme that is published on the LGNSW website, that the Premises was not a "declared premises" at the time that this prescribed offence occurred, on 17 March 2018.

*Section 144M(1)(c)(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*

32. In the LGNSW Submission, the agency contends that the failure by the Licensee to prevent the commission of this prescribed offence is “significant” on the facts, since both staff and management were present on the Premises when the sale of liquor to the minor occurred. In the Licensee Submission, the Licensee counters that it is not obvious how this statutory consideration is relevant to this case.
33. While size and patron capacity are factors that are *potentially* relevant to the capacity of a licensee to monitor and manage the risk of supply of liquor to minors, there is no evidence or submissions indicating how these matters may have positively or negatively contributed to the occurrence of this prescribed offence. It is a neutral factor for the purposes of determining whether or not a strike should be imposed in this instance.

*Section 144M(1)(c)(iii) – the history and nature of the commission of prescribed offences by the licensee or manager*

34. The Authority notes that it is common ground in the LGNSW Submission and the Licensee Submission that the Licensee has not committed any prior prescribed offence.
35. The Authority accepts the uncontested information provided in the Licensee Submission that the Licensee has been a Liquorland store manager since 2016 and has been employed in the liquor industry since 2013.
36. A Onegov licence record for the Premises as at 25 July 2018, attached to the Notification, establishes that the Licensee commenced in that role on the Premises on 30 June 2017. This information confirms that the Licensee was not responsible for the Premises when a previous prescribed offence occurred on the Premises involving the sale of liquor to a minor, resulting in a 14-day suspension and a first strike.

*Section 144M(1)(c)(iv) – the history and nature of violent incidents that have occurred in connection with the licensed premises*

37. In the LGNSW Submission, the agency contends that there have been no recorded incidents of violence attributed to the Premises. In the Licensee Submission, the Licensee submits that none of section 144M(1)(c)(iv) is relevant to this decision.
38. The Authority finds no evidence or information in the Notification, LGNSW Submission, Police Submission or Licensee Submission or any other material before the Authority indicating that the Premises has *any* history of violent incidents occurring in connection with the Premises.

*Section 144M(1)(c)(v) – whether other action would be preferable*

39. In the LGNSW Submission, the agency submits that it is open to the Authority to consider imposing remedial action, pursuant to the 3 strikes scheme, by way of a requirement that the Licensee undergo training or instruction, while contending that this Licensee was in fact well informed of his obligations with respect to the responsible service of alcohol.
40. In the Licensee Submission, the Licensee argues that imposing conditions upon the licence would be preferable to imposing a strike against the Licensee, while not actually proposing any specific licence conditions. Rather, the Licensee submits that should the Authority see fit to impose new conditions to enshrine and embed controls that are already in place (such as the deployment of security, as well as training for team members each year, spirits being kept behind glass and two team members being rostered on at all times), Liquorland seeks to engage with the Authority on whether these measures should be imposed through a Plan of Management or the imposition of specific licence conditions.

41. When considering whether some other action would be preferable, the Authority has considered all of the submissions from LGNSW, Police and the Licensee. The Authority accepts that the Licensee has a personal compliance record that is unblemished. The Authority accepts, as discussed below, that the business owner has implemented a range of harm minimisation measures specifically directed to avoiding the supply of liquor to minors both prior to and after the occurrence of the 17 March 2018 prescribed offence. The Authority accepts that the Licensee is personally well versed in his obligations.
42. The Authority accepts the contention made in the LGNSW Submission that the procedures and controls in place on the Premises were ineffective in preventing minors from being sold or supplied liquor on this occasion. The Authority accepts the LGNSW contention that the poor practices demonstrated on the day contributed to an increased risk of alcohol-related harm and compromised the safety of a minor.
43. The Authority has considered the observations in the Police Submission that this is the second instance of a prescribed offence that has been captured by the three strikes scheme and that numerous additional processes were implemented on the Premises following the 19 June 2015 prescribed offence, which have served to minimise minor supply events until the current incident. The Authority accepts that this is the case and accepts Police advice that the Licensee, senior management and staff have been cooperative, proactive and receptive to Police and that this current contravention was the product of "human failings" on the part of the Sales Assistant.
44. Notwithstanding that the previous strike is now revoked, and did not occur on the current Licensee's watch, the Authority finds that the previous supply of liquor to a minor is a relevant factual matter going to whether a strike should be incurred in so far that it underscores the challenges faced by this particular liquor store in managing the risk of the supply of liquor to minors.
45. While the Authority accepts that the Licensee had an unblemished prior record, and that the Licensee has otherwise presented to Police as a responsible and diligent person, the Authority remains satisfied that the imposition of a strike remains the preferable course of action by reason of the seriousness of this incident.
46. Notwithstanding the harm minimisation practices and procedures in place on the Premises and accepting that the Licensee was not present when the prescribed offence occurred, it is apparent from the Barrington Audit Report dated May 2018 that despite all of the systems in place, the Licensee left this packaged liquor business in the hands of a quite junior member of staff (who according to the Licensee Submission was 19 years of age) on a St Patricks Day Saturday in a busy shopping centre located liquor store engaging in a high volume of sales. The COPS Report establishes that the young male carrying liquor away from the Premises was readily identified by Police on the street, while conducting a general surveillance of licensed businesses in the Bondi Junction CBD.
47. The Authority has also considered the observation made in the Barringtons Audit Report of May 2018 that this prescribed offence event was the product of employee culpability. The consultant notes that the CCTV indicates that the young male patron in question did not appear to be over 25 years of age. The consultant details the systems and training that were in place at this store to prevent the supply of liquor to minors and advises that the Sales Assistant had been provided with "ID25" training (requiring the production of identification for persons who appear to be under 25 years of age) only 18 days prior to the incident. Barringtons conclude that the systems are "best practice" and a "model" for other licensed businesses.
48. The Authority accepts this information and opinion but finds that Liquorland's procedures were not observed at a time when this store was left in the hands of a very junior staff member on a high-risk trading day. The Authority accepts the information provided in the COPS Report that store that is known to Police as being at risk of being targeted by minors seeking liquor. The Authority agrees with

the observation made by Police that the store requires “experienced attendants” on “high risk trading days”.

49. These matters, considered alongside the facts of the prescribed offence, move the Authority to find that the preferable course is to impose the strike and not take some alternative action, such as the imposition of conditions. Imposing a strike will provide further rigour to the proper resourcing of this liquor store’s compliance procedures. Risk management policies are only as effective as the staff who are left responsible for their implementation at all times.
50. The Authority has considered the submissions in the Licensee Submission that the imposition of a first strike would impact the Licensee personally, “greatly and adversely, and especially in a reputational sense”. The Licensee Submission also refers to paragraph 11 of the Liquorland Minors Sanctions Submission and submits that it would be “oppressive” for this incident to result in a “double punishment” in respect of Part 7 of the Act (the Minors Sanctions Scheme) and Part 9A of the Act (the 3 strikes regime).
51. The Authority finds this aspect of the Licensee’s case to be somewhat overstated. The Authority accepts that the imposition of a strike will have a *moderate* reputational impact upon the professional record of the Licensee, for the duration of the strike, but that is a natural consequence of the operation of the Part 9A scheme. A first strike has the purpose of spurring a regulated person to redouble their efforts to avoid the recurrence of prescribed offences in the future. It enables the Authority to consider moderate remedial action and is but one step in a scheme of escalating regulatory responses should further prescribed offences occur within a relatively short period of time, while strikes remain in force.
52. The Authority has taken into account the recent action it has taken, in a decision dated 21 December 2018, to suspend the licence from 14 January 2019 to 23 January 2019 inclusive pursuant to the Minors Sanctions Scheme, in respect of the same supply of liquor to a minor. The Authority does not accept the Licensee’s submission imposing a first strike would be oppressive or an instance of “double punishment”.
53. Both the Minors Sanctions Scheme and the disciplinary scheme in Part 9A serve their respective protective purposes. The purpose of imposing a first strike is to signal to the recipient that the commission of the prescribed offence warrants the *commencement* of a regulatory process that may result in an escalating regime of remedial action. It is a prompt to ensure greater vigilance with respect to all prescribed offences (not simply minors offences) and sends a message to other regulated persons of the potential consequences of committing prescribed offences.
54. The Authority considers that imposing a strike will better signal to the Licensee (and others with an interest in the Premises) the importance of ensuring that compliance systems are implemented at all relevant times. It will also signal to other regulated persons in the industry the consequences of committing prescribed offences with respect to the supply of liquor to minors, and the regulatory risks associated with leaving a licensed business in the hands of very junior staff, particularly in high volume trading environments and on high risk trading days.

*Section 144M(1)(c)(vi) – whether there have been changes to the persons who are the licensee, manager or business owner*

55. The Authority accepts the information provided in the LGNSW Submission that there have been no relevant changes. There is no indication in the Notification, LGNSW Submission, or the Licensee Submission that there have been any changes to the Licensee, approved manager or business owner in respect of the Premises.

*Section 144M(1)(c)(vii) – whether there have been changes to the business practices in respect of the business carried on under the licence*

56. In the LGNSW Submission, the agency submits that there have been no relevant changes. In the Licensee Submission, the Licensee submits that none of section 144M(1)(c)(vii) is relevant.
57. Although the Licensee has submitted that section 144M(1)(c)(vii) is not relevant, the Licensee Submission does refer to paragraphs 18 to 28 of the Liquorland Minors Sanctions Submission, which refers, at paragraphs 22(a) to (o), to certain measures that Liquorland has taken since the 17 March 2018 offence occurred.
58. To the extent that these matters may amount to changes in business practices, the Authority has taken them into account when deciding whether or not a strike should be imposed. Very briefly, the post 17 March 2018 measures included: suspending the Sales Assistant on 19 March 2018; terminating the employment of the Sales Assistant on 23 March 2018; meeting with Police; employing a security guard; face-to-face refresher training on the ID25 programme; a tailored presentation about ID25 and sale to minors; re-rostering of team members to ensure senior staff were placed on registers; implementing a new store-specific recruitment tool; completion of a new responsible liquor retailing online module; external and face-to-face RSA training; conducting an independent audit of the Premises; increased activity for independent third-party mystery shopper program; increased secondary supply training; the appointment of an additional senior assistant store manager; increased centre management engagement; a police presentation and information session and engaging with LGNSW to address post-incident actions.

*Section 144M(1)(c)(viii) – any other matter prescribed by the regulations*

59. The Authority notes that LGNSW in the LGNSW submission submit that there are no other matters prescribed by the Regulation and that the Licensee in the Licensee Submission submits that section 144M(1)(c)(viii) is not relevant.
60. The Authority is satisfied that the Regulation does not prescribe any other matters that the Authority is required to consider when making a decision of this kind.

## **Conclusion**

61. Having regard to all of the material before it, the Authority is satisfied that the Licensee has committed a prescribed offence and there were no other strikes in force against him when the offence was committed. Having regard to the seriousness of any harm that may have resulted from, or been associated with, the commission of the prescribed offence of selling liquor to a minor, the Authority has decided to impose a first strike against Mr Damien Morton pursuant to section 144E(1) of the Act.
62. The first strike will commence from **12 January 2019** and will expire on **12 January 2022**.
63. In making this decision the Authority has had regard to all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to the consideration in section 3(2)(a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), and 3(2)(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.

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* (NSW) a person who was required to be notified of the decision may apply to the New South Wales Civil and Administrative Tribunal (NCAT) for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

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/>.

## Schedule A – Material Considered by the Authority

1. Three-page notification of a potential first strike from Mr John Coady, Manager Compliance, Liquor and Gaming New South Wales (LGNSW) lodged with the Independent Liquor and Gaming Authority (Authority) on 18 October 2018 (Notification). This Notification was accompanied by:
  - (a) Computerised Operational Policing System Event 69821988 dated 17 March 2018.
  - (b) Onegov record of key liquor licence details for Liquorland at Bondi Junction LIQP700301694 as at 25 July 2018.
  - (c) Revenue NSW business record dated 15 May 2018 (extracted on 6 June 2018) indicating that Eastern Suburbs Local Area Command of NSW Police (Police) issued Mr Damien Morton (Licensee) with Penalty Notice 4936169930 in the amount of \$1100 for the offence of *Sell liquor to a minor on licensed premises* which occurred on 17 March 2018 at the Liquorland Bondi Junction premises. This record indicates that the status of the Penalty Notice as at 9 May 2018 was recorded as “Closed Paid”.
  - (d) Revenue NSW business record dated 1 May 2018 (extracted on 19 June 2018) indicating that Police issued a sales assistant with Penalty Notice 4936169893 in the amount of \$1100 for the offence of *Sell liquor to a minor on licensed premises* which occurred on 17 March 2018 at the Liquorland Bondi Junction premises. This record indicates that the status of the Penalty Notice as at 30 April 2018 was recorded as “Closed Paid”.
2. A three-page submission from LGNSW in relation to the Notification dated 17 October 2018.
3. An eight-paragraph email submission from Licensing-Leading Senior Constable Jamie Zahra of Police in relation to the Notification dated 14 November 2018.
4. A three-paragraph email comprising the second submission from Licensing-Leading Senior Constable Jamie Zahra of Police in relation to the Notification dated 14 November 2018.
5. A nine-page submission from Counsel for the Licensee, Mr Jonathan Horton QC, in relation to the Notification dated 28 November 2018. This submission is accompanied by the following documents:
  - i. A thirteen-page submission from Mr Jonathan Horton QC dated 28 November 2018 in relation to a related notification under the minors sanctions scheme of the *Liquor Act 2007* (NSW) (Act) on behalf of Liquorland (Australia) Pty. Ltd.
  - ii. Consolidated index to bundle of documents.
  - iii. Report on the independent audit of Liquorland Bondi Junction prepared by Barringtons (a consultant engaged by Coles Liquor) dated May 2018.
  - iv. Report on the independent audit of Liquorland Bondi Junction prepared by Barringtons dated November 2018.
  - v. A decision with reasons of the Liquor Commission of Western Australia in the matter of *Liquorland Gateways* dated 27 March 2017, decision No LC 07/2017.
  - vi. A decision with reasons of the Victorian Commission for Gambling and Liquor Regulation in the matter of *Liquorland Spring Street Reservoir* dated 12 October 2018.
  - vii. Liquorland compliance and training material comprising:
    - Licensing and safe trading booklet.
    - Coles liquor house policy for the responsible service of alcohol (RSA).
    - Coles liquor NSW management strategies.
    - House policy for RSA and tobacco.
    - ID25 sale to minors team talk dated 20 March 2018.
    - ID25 sale to minors team talk dated 26 March 2018.
    - Module 1 – Liquor and tobacco acknowledgment.
    - Module 2 – ID 25 and checking ID.
    - Module 3 – Unaccompanied minors and secondary supply.
    - Module 4 – Store manager responsibilities.
    - ID25 – Check it! Don't guess it! dated February 2018.
    - ID25 – Your responsibilities team talk dated February 2018.
    - Store manager responsibilities training dated 29 January 2018.
    - Compliance myth buster 1 – sales to minors dated February 2018.

- Liquor compliance checklist [not included with material].
  - Liquor ID25 – Coaching discussion template.
  - RSA ID25 failure to perform ID check – discussion record.
  - Compliance alert – ID25 NSW and ACT dated May 2017.
  - Compliance alert – new liquor laws in NSW FAQ's dated June 2017.
  - Compliance alert – acceptable ID dated 25 September 2017.
  - Point of sale ID prompt update dated 2 January 2018.
  - Proof of age ID check 2018 – acceptable proof of age ID (NSW and QLD).
  - Licensing and safe trading focus week communications dated February 2018.
  - ID25 yammer activity.
  - Ways of working ID25.
  - Licensing and compliance focus week – planner content – community in mind dated 29 January 2018.
  - Licensing and compliance participant workbook 2017.
  - Refusal of service guidelines.
  - Regulatory incident management – stores.
  - Responsible promotion and advertising of alcohol policy.
  - Sale to minors team talk dated February 2017.
  - School uniform policy.
  - Self-exclusion agreements policy – NSW.
  - Tobacco compliance manual.
  - Trespass notice policy.
  - Licensing folder signoff dated 28 February 2017.
  - Licensing and safe trading focus week – our community in mind – 2018.
  - Liquor accords meetings policy.
  - Compliance update – new licensing and safe trading booklet, refusal of service pamphlets and signage on its way dated March 2017.
  - Our community and mind signage and pamphlet.
  - Schoolies – your responsibilities team talk dated 6 November 2017.
  - ID25 schoolies signage.
  - Schoolies communication and team talk dated November 2018.
  - Licensing and safe trading at Christmas communication.
  - Code of conduct.
  - Training transcripts and competency cards.
- viii. Letter from the Area Manager of Coles Liquor NSW dated 9 November 2018.
- ix. Letter from State Manager of Coles Liquor NSW dated 9 November 2018.
- x. Letter from Operations Manager of Coles Liquor NSW dated 9 November 2018.
- xi. Letter from Mr M Jahn (a former employee of Liquorland Edgecliff) dated 19 November 2018.
- xii. Letter from Mr A Morton (the Licensee's brother) dated 18 November 2018.
- xiii. Curriculum Vitae of the Licensee.

## 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.