



Mr George Emmanouilidis
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Dear Mr Emmanouilidis

Application for Review of Decision to Incur a Second Strike against Liquor Licence under Part 9A of the *Liquor Act 2007* – Family Hotel, Newcastle

The Independent Liquor and Gaming Authority has completed its consideration of an application for review dated 4 August 2014 made by Mr George Emmanouilidis under section 144H of the *Liquor Act 2007* in relation to the “full” hotel licensed premises now known as the “Family Hotel” (formerly known as the “Silk Hotel”) located at 635 Hunter Street, Newcastle West.

The review application concerns a decision dated 15 July 2014 made by a delegate of the Secretary of the (then) Department of Trade and Investment (now the jurisdiction of the Secretary of the Department of Justice) to incur a second strike against the licence pursuant to the “Three Strikes” disciplinary scheme contained within Part 9A of the Act.

The hotel licence has been dormant since around the time the application for review was made in respect of the premises then known as the Silk Hotel, which closed its doors in August 2014.

After careful consideration of all of the submissions, evidence or material before it in relation to the review application the Authority decided, at its meeting on 8 June 2016, to **confirm** the reviewable decision pursuant to section 144I of the Act. The Authority also determined that no further remedial action need be taken under Part 9A of the Act.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Yours faithfully

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

STATEMENT OF REASONS

INTRODUCTION

1. On 4 August 2014, the Independent Liquor and Gaming Authority (**Authority**) received an application for review (**Review Application**) of a decision made by Mr Paul Newson, a delegate (**Delegate**) of the Secretary of the (then) Department of Trade and Investment (now the jurisdiction of the Secretary of the Department of Justice) to incur a second “strike” pursuant to Part 9A of the *Liquor Act 2007* (**Act**) against the dormant liquor licence attaching to the premises currently known as the “Family Hotel”, located at 635 Hunter Street, Newcastle West (**Premises**).
2. The Review Application was filed with the Authority on 4 August 2014 by Mr George Emmanouilidis (**Review Applicant**), shortly after he had taken control of the hotel business then known then as the “Silk Hotel”. The hotel closed shortly after the Review Application was made and has remained closed to this date.
3. The Review Application was sent to the Authority among submissions made by Mr Emmanouilidis and Mr Vasilis (Bill) Moshos, the former approved manager of the Silk Hotel. At the time of the Review Application Mr Moshos was a director of the former licensee company (Silk Hotels Newcastle Pty Ltd), the former business owner company (Rightclick Holdings Pty Ltd) and a former owner of the premises owner company (Parking Towers International Pty Ltd).
4. The Review Applicant, Mr Emmanouilidis is now a co-director of the premises owner company along with Mr Anthony Moshos, the brother of Bill Moshos. Mr Emmanouilidis now holds the licence to the Premises in his personal capacity and directs the current business owner company, Rightclick Holdings Pty Ltd.
5. The Review Application was filed informally. It was made during the course of submissions made by Mr Emmanouilidis and Mr Bill Moshos in response to an application by New South Wales Police under section 51(9)(b) of the Act seeking to revoke the extended trading authorisation of the Premises (**Police Application**) and a simultaneous complaint made by Police under Part 9 of the Act (**Police Complaint**) seeking disciplinary action against Bill Moshos and the former corporate licensee of the Premises, Silk Hotels Newcastle Pty Ltd.
6. The Police Application resulted in the Authority revoking the extended trading authorisation in a decision dated 9 October 2014. As a consequence of this action, the Premises is now only licensed to trade within the standard trading hours prescribed by section 12 of the Act.
7. The Police Complaint resulted in the Authority taking action, in a decision dated 3 February 2015, disqualifying Bill Moshos’ licensee company Silk Hotels Pty Ltd from holding any liquor licence in New South Wales. The Authority also withdrew Bill Moshos’ approval to be an approved manager of any licensed premises in New South Wales and disqualified Bill Moshos from being a licensee, approved manager or close associate of any licensed premises in New South Wales for a period of 10 years.
8. However, by reason of the ongoing dormancy of the licence, the change in licensee and business owner and the change of name from Silk Hotel to Family Hotel, the Review Application was not progressed. In early 2016, the interested parties were

invited to update the Authority with any further submissions or developments in regard to the Premises.

9. NSW Police have confirmed that the hotel has not traded since August 2014 and have made no further submissions. Liquor and Gaming New South Wales (**LGNSW**) have also made no further submissions other than providing the LGNSW file of all material before the Delegate. The Bureau of Crime Statistics and Research (**BOCSAR**), which the Act requires be consulted on second strike review applications, declined to make a submission, consistent with the usual practice of that agency.
10. The Review Applicant, Mr Emmanouilidis, has made a further brief email submission that is set out below, confirming that the Premises remains closed, with no indication as to when the hotel may reopen.

SUMMARY OF THE REVIEWABLE DECISION

11. In the Reviewable Decision, the Delegate was satisfied, for the purposes of section 144D(2)(b) of the Act, that a first strike was already in effect against the licence. The first strike arose from the commission of two offences against the Act involving the supply of liquor to minors. Those offences were detected by Police on 11 August 2013.
12. As the two offences occurred within the same 24-hour period, they were deemed by section 144C(3) of the Act to constitute a single “prescribed offence” for the purposes of the scheme under Part 9A of the Act (**Scheme**).
13. Mr Bill Moshos was convicted of those offences at the Newcastle Local Court on 31 March 2014. Upon this conviction, the “commission” of the prescribed offence was perfected for the purposes of section 144C of the Act.
14. The first strike was incurred automatically upon recording of this conviction and the first strike was deemed by section 144D(4) to have come into force from the date that the relevant conduct giving rise to the prescribed offence was “committed” in the ordinary sense of that expression – that is, from 11 August 2013.
15. The Delegate was satisfied that a second prescribed offence was detected on 2 November 2013, when Police detected the offence of permitting intoxication on licensed premises contrary to section 73 of the Act.
16. At that time, Mr Joseph Lannutti was the approved manager of the hotel. A Penalty Notice was issued by Police in respect of this intoxication offence. On 5 February 2014, the State Debt Recovery Office (**SDRO**) issued a Penalty Notice Enforcement Order, and that action perfected the “commission” of the prescribed offence for the purposes of section 144C of the Act.
17. As the incurring of a second strike under the Scheme is a discretionary, rather than automatic process, the Penalty Notice Enforcement Order enlivened the Secretary’s consideration as to whether a second strike *should* be incurred.
18. On 6 May 2014 the Delegate invited submissions from Silk Hotels Newcastle Pty Ltd (the then licensee company operated by Mr Moshos), Rightclick Holdings Pty Ltd (the then corporate business owner directed by Mr Emmanouilidis) and Parking Towers International Pty Ltd (the corporate premises owner, previously solely owned and directed by Mr Bill Moshos and now co-owned by companies controlled by Mr Emmanouilidis and Mr Anthony Moshos).

- 19.** Submissions were also sought from Mr Bill Moshos and Mr Joseph Lannutti. Further submissions were invited from Mr Russell Richardson, who was at that time a prospective purchaser of the hotel.
- 20.** On 12 May 2014 the Delegate received a submission from Newcastle Police arguing that a second strike *should* be incurred for the following reasons:
- Numerous infringements have been issued by Police to hotel management over the past 4 years;
 - The licensee [the Authority notes that the licence was previously held by companies controlled by Mr Moshos] was convicted of 9 breaches of the Act on 19 February 2013 and fined \$17,230 in respect of those breaches;
 - The Premises was the subject of two short term closure orders issued by the Authority on 23 October 2013 and 17 March 2014 in response to the commission or likely commission of serious breaches of the Act;
 - On 31 March 2014 Mr Bill Moshos was personally convicted of 10 offences against the Act and was disqualified by the Newcastle Local Court from being the approved manager of any licensed premises by way of a supplementary penalty issued under Part 10 of the Act;
 - The offence of permitting intoxication on licensed premises that is the subject of the potential second strike is one of the most serious offences that a licensee can commit against the Act.
- 21.** On 26 May 2014 Mr Emmanouilidis responded on behalf of the corporate business owner and the corporate premises owner. He argued that a second strike *should not* be incurred, contending that:
- The prescribed offence detected by Police occurred while the hotel was under the control of a former approved manager, Mr Joseph Lannutti, who ceased to hold the status of approved manager in December 2013;
 - The intoxicated male detected by Police on the Premises is claimed to have consumed a “minimal” amount of liquor while he was actually on the Premises;
 - It is contended that hotel bar staff “likely observed” Police “permit” the intoxicated man to enter the Premises and for this reason staff likely believed that Police did not consider this man to be intoxicated;
 - No “incident of intoxication” occurred on the Premises. That is, there is no allegation that the licensee acted in a “reckless” or “unreasonable” manner that would warrant the imposition of a second strike.
- 22.** On 22 May 2014 the Delegate received a separate submission from O’Sullivan Saddington Lawyers, acting for Mr Russell Richardson, who was then contemplating acquiring the hotel.
- 23.** Mr Richardson submitted that a second strike *should not* be incurred by reason that if he acquires the business the hotel will adopt similar practices to his other established businesses in Newcastle (Argyle House and King Street Hotel) which have been

successful in limiting the commission of prescribed offences or acts of violence on his premises.

24. However, on 3 July 2014 the Delegate received advice from O’Sullivan Saddington Lawyers that the contract to purchase the Silk Hotel had now been rescinded.

Delegate’s Findings and Reasons

25. *On the section 144G(2)(c)(i) issue of whether the Premises was a Schedule 4 “declared premises” when the prescribed offences were committed*, the Delegate was satisfied that the hotel was not a declared premises on 2 November 2013 but that “from 1 June 2014, the hotel is listed as a level 2 violent venue under Schedule 4”.
26. *On the section 144G(2)(c)(ii) issue of whether the size and patron capacity of the premises may impact the ability of a licensee or approved manager to prevent the commission of prescribed offences*, the Delegate observed that the venue’s capacity is approximately 250 persons and that according to the NSW Police Computerised Operational Policing System (**COPS**) event report for the incident, venue security were present at the time of the offence and “had an opportunity to observe the movements and actions of the male patron, particularly at the time of entry”. The Delegate was satisfied that none of the evidence indicates that the venue’s size was a contributing factor for the commission of the prescribed offence.
27. *On the section 144G(2)(c)(iii) issue of the history and nature of prescribed offences committed in relation to the licence or the premises*, the Delegate notes that the first strike was incurred against the licence arising from the prescribed offence of supplying liquor to minors that occurred on 11 August 2013. The Delegate was satisfied that the former approved manager was convicted of this offence by the Newcastle Local Court on 31 March 2014 and disqualified from managing a licensed premises for 12 months from that date.
28. The prescribed offence giving rise to consideration of a second strike was detected by Police while conducting observations at the Premises at about 1:00am on 2 November 2013.
29. Police observed a male appearing unsteady on his feet and smelling of liquor being permitted entry to the Premises and subsequently served a bourbon and coke drink. Police approached the male, who informed Police that he had “worked all day from 9am to 10pm” and had “consumed eight bourbon and cokes and two schooners of beer since finishing work”. Police observed this man to be “very confused and seriously intoxicated”.
30. The second strike offence was “committed” for the purposes of section 144C of the Act on 5 February 2014, when a Penalty Notice Enforcement Order was issued by the State Debt Recovery Office under the *Fines Act 1996*.
31. *On the section 144G(2)(c)(iv) issue of the history and nature of violent incidents that have occurred in connection with the premises*, the Delegate was satisfied that the Premises was “newly listed” as a level 2 violent venue under Schedule 4 as of 1 June 2014 “with 16 incidents attributed to the premises”.
32. *On the section 144G(2)(c)(v) question of whether other action (that is, other than incurring a strike) would be preferable*, the Delegate considered that the Review

Applicant's submissions do not suggest an alternative course of action such as "management strategies, staff training and voluntary undertakings".

33. The Delegate was not persuaded that action other than incurring a second strike was the appropriate response, by reason that the Review Applicant's failure to adequately implement appropriate controls to guard against further prescribed offences "suggests an indifference or disregard for obligations under the liquor laws".
34. *On the section 144G(2)(c)(vi) issue of any changes to the licensee, manager or business owner*, the Review Applicant submits that Mr Lannutti, who was the approved manager at the time of the commission of the prescribed offence, no longer holds this position and "there are no channels of communication open between the licensee and Mr Lannutti".
35. *On the section 144G(2)(c)(vii) issue of whether there have been changes in business practices*, the Delegate found that no information was provided on behalf of the (then) business owner or premises owner to indicate a shift in management practices and procedures.
36. The Delegate noted that Mr Richardson, the prospective purchaser, proposed a number of modifications to business practices at the premises, but Mr Richardson did not ultimately proceed with the purchase of the business.
37. The Review Applicant submits that the management plan dated 5 August 2014 provided with the Review Application is intended to facilitate a "turning point" in the management of the premises and to alleviate the "concerns that existed under previous management". The management strategies proposed by the Review Applicant are summarised below.
38. The Delegate noted that two short term closure orders have been granted in relation to the Premises, the first closure order having been issued during Mr Lannutti's tenure as approved manager (on 23 October 2013) and the second whilst Mr Moshos was managing the premises (on 17 March 2014).
39. The Delegate observed that a range of potential harms could be realised due to the prescribed offence of permitting intoxication, including "the harassment of other persons, major or minor injury to the intoxicated person or others, undue disturbance to the neighbourhood, through to an assault on venue staff or a member of the public".
40. The Delegate was satisfied that the facts of the incident giving rise to the potential second strike "demonstrate serious failures by the licensee and approved managers to ensure compliance with the liquor laws" and contributed to an increased risk of alcohol related harm and presented an undue risk of compromising patron and community safety. The Delegate was satisfied that neither the venue security at the door nor the bar staff serving the patron were reported to have engaged with the intoxicated patron to gauge whether he was fit to enter the Premises or be supplied with liquor.
41. The Delegate concluded that "whether the conduct of the licensee is a purposeful or reckless disregard of regulatory obligations, or a lack of adequate skill and diligence, a real consequence is the risk to public safety and undermining of public confidence in the integrity of regulatory supervision".

42. The Delegate was satisfied that a second strike should be incurred on the licence because of the seriousness of the harm that may have resulted from, or been associated with, the commission of the offence.

BRIEF OVERVIEW OF THE THREE STRIKES SCHEME

43. The disciplinary regime provided by Part 9A was inserted into the Act by the *Liquor Amendment (3 Strikes) Act 2011*. Part 9A provides a supplementary scheme for taking disciplinary action against participants in the liquor industry that is separate from, and does not limit, the pre-existing disciplinary provisions contained in Part 9 of the Act.
44. While incurring a “first strike” is an automatic process, once a “prescribed offence” is deemed to have been “committed” in accordance with section 144C of the Act, a decision to incur either a second or third strike is at the discretion of the relevant decision maker – and may not be made until consultation with a range of third parties has occurred and all relevant statutory considerations have been taken into account.
45. With regard to first and second strikes, the primary decision maker is the Secretary of the Department of Justice and those decisions are merits reviewable by the Authority.
46. With regard to the incurring of third strikes, the primary decision maker is the Authority and those decisions are merits reviewable by the New South Wales Civil and Administrative Tribunal (**NCAT**).
47. Notwithstanding the simplicity suggested by its name, the Scheme is reasonably complex, with provisions designating, *inter alia*:
- (i) those offences against the Act that are deemed to be “prescribed offences” which may potentially form the basis of a strike;
 - (ii) the circumstances in which a “relevant person” is deemed to have “committed” a “prescribed offence” in relation to a liquor licence for the purposes of the Scheme;
 - (iii) the parties who must be consulted before a decision maker (the Secretary in respect of a second strike or the Authority in respect of a third strike) may decide that a second or third strike should be “incurred”;
 - (iv) discretionary factors that must be considered before a decision maker may decide that a second or third strike should be “incurred”;
 - (v) the circumstances in which a strike commences, or ceases, to be “in force” against a licence.
48. Briefly, for a “strike” to be incurred, a relevant person must first “commit” a “prescribed offence” in relation to the licensed premises in question. The definition of “prescribed offence” is provided by section 144B of the Act and identifies eleven types of offences. Relevantly to this matter, the section states:

144B Definitions

***prescribed offence**, in relation to a licence, means an offence against any of the following provisions of this Act (or a provision of this Act or the regulations that is prescribed by the regulations) that was committed on or in relation to the premises to which the licence relates:*

- (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 the premises outside of the trading hours for those premises,
- (b) section 11(2) (breach of licence condition) but only in respect of conditions imposed under Division 3 or 4 of Part 6, section 144E or clauses 2A–5 or 7 of Schedule 4,
- (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 Director-General),
- (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 Director-General),
- (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).

49. Section 144C sets out those circumstances in which a “prescribed offence” is deemed to have been “committed” for the purposes of the Scheme. The section states:

144C Committing a 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 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 within a single 24 hour period are taken, for the purposes of this Part, to be a single prescribed offence.

50. Section 144H contains general provisions relating to reviews made under Part 9A of the Act. As noted above, a decision to incur a second strike is made by the Secretary of the Department of Justice and is reviewable by the Authority.

51. Additionally, a review application made under this Part automatically operates to stay a reviewable decision unless an order is made to the contrary. Section 144H of the Act states as follows:

144H Reviews generally

- (1) *An application for the review of a reviewable decision may be made by a person who is required to be notified of the decision under section 144G no later than 21 days after the person receives the notification.*
- (2) *An application is to be made:*
 - (a) *in the case of a decision of the Secretary – to the Authority, and*
 - (b) *in the case of a decision of the Authority – to the Civil and Administrative Tribunal as an application for an administrative review of the decision under the Administrative Decisions Review Act 1997.*
- (3) *Part 2 of Chapter 3 of the Administrative Decisions Review Act 1997 does not apply to an application to the Civil and Administrative Tribunal for an administrative review of a decision by the Authority under this Part.*
- (4) *An application for a review operates to stay the reviewable decision unless the body conducting the review otherwise directs.*
- (5) *The operation of any remedial action taken in respect of a strike is suspended during any time that the decision to impose the strike is stayed.*
- (6) *In determining an application for review under this section, the body conducting the review must take into account any matter that was required to be taken into account in making the reviewable decision that is the subject of the review.*

Requirements for a First, Second or Third Strike

52. Under the Scheme, a first strike is *automatically* “incurred” once a “prescribed offence” has been “committed”.
53. By contrast, incurring a second or third strike is a matter requiring that an assessment be made by the relevant decision maker as to whether the strike *should* be incurred, having regard to the seriousness of the harm that *may* have resulted from, or been associated with, the commission of the prescribed offence and a number of other statutory considerations listed below.
54. For a first strike to be “incurred,” section 144D(1) prescribes that there must be *no strike* already incurred in relation to the liquor licence and that a relevant person must “commit” a prescribed offence.
55. For a second strike to be “incurred”, section 144D(2) prescribes that a “relevant person” must have “committed” a “prescribed offence” in circumstances where *one strike* is already “in force” in relation to the licence. The Secretary must then decide whether a second strike *should* be incurred “because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence”.
56. For a third strike to be incurred, section 144D(3) prescribes that a “relevant person” must have “committed” a “prescribed offence” in circumstances where *two strikes* are already “in force” in relation to the licence.
57. The Authority must then decide whether a third strike *should* be incurred, 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, and

- (ii) any other matter that may be prescribed by the regulations [the Authority notes that the *Liquor Regulation 2008* (**Regulation**) does not prescribe any such matters for the purposes of this section of the Act].

Parties who must be consulted

58. Section 144G(2)(a) of the Act lists those third parties who must be notified and invited to make a submission, within a specified period of at least 21 days, when a decision maker (the Secretary or the Authority, as the case may be) makes a reviewable decision. They include:

- (i) the licensee;
- (ii) the approved manager (if any);
- (iii) any person whose name is provided to the Authority as an “interested person” in the business if notified to the Authority under section 41 or section 55 of the Act, and the owner of the licensed premises;
- (iv) if the decision is whether a third strike should be incurred – each former licensee or manager of the business who may be adversely affected by the decision;
- (v) any other person prescribed by the regulations [the Authority notes that the Regulation does not prescribe any other parties for the purposes of this section of the Act].

59. Furthermore, section 144G(2)(b) of the Act requires a decision maker to notify and have regard to any submissions received within the specified time period from:

- (i) the New South Wales Police Force;
- (ii) Liquor and Gaming NSW within the Department of Justice; and
- (iii) the New South Wales Bureau of Crime Statistics and Research within the Department of Justice.

Relevant Considerations

60. Section 144G(2)(c) of the Act provides a list of statutory considerations which a decision maker must take into account, to the extent that the decision maker considers them relevant to a decision whether to incur a second or third strike:

- (i) whether the licensed premises were “declared premises” within the meaning of Schedule 4 to the Act at the time 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 relevant persons in relation to the licence or on or in relation to the licensed premises;

- (iv) the history and nature of violent incidents that have occurred in connection with the licensed premises;
 - (v) whether other action would be preferable [to incurring a strike];
 - (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 [the Authority notes that no such matters are prescribed by the Regulation at the time of this decision letter].
- 61.** Section 144G(3) provides that nothing in section 144G prevents a decision maker from taking into account “any other matter that the decision maker thinks is relevant to the proper making of a decision under this Part”.
- 62.** Timing is important under the Scheme. Pursuant to section 144D(4) a strike “comes into force” on the day upon which the “offence that caused the strike” was “committed”.
- 63.** Notwithstanding that section 144C of the Act provides a specific requirement as to when a prescribed offence is formally “committed” (that is, upon conviction for an offence or if a Penalty Notice is issued, payment of that Notice or the issue of a Penalty Notice Enforcement Order for an unpaid Notice) the Authority has interpreted the reference to “committed” in section 144D(4) as meaning that once a prescribed offence has been the subject of a conviction and a strike is *incurred*, that strike is then taken to have commenced *effect* from the date when the conduct giving rise to that prescribed offence occurred (that is, the offence was “committed” in the ordinary sense of that word, not the deemed sense for the purposes of section 144C).
- 64.** For example, if an intoxication on premises event is detected by Police on 5 June 2015 and the matter is defended, but no conviction is recorded by a Local Court until 10 June 2016, it is the *conviction* in the Local Court that perfects the “commission” of the prescribed offence for the purposes of section 144C.
- 65.** However, once the strike is incurred that strike is deemed to commence from the date of the misconduct giving rise to the prescribed offence – that is, 5 June 2015.
- 66.** Section 144D(5) provides that a strike against a licence *expires* three (3) years after the day upon which it came into force. So a licensed premises with strikes against its record may eventually lose those strikes with the elapsing of time so long as it avoids committing any further prescribed offences.

MATERIAL BEFORE THE DELEGATE

- 67.** LGNSW has provided a bundle of all the material before the Delegate when the Reviewable Decision was made (**LGNSW File**). It comprises the following:
- Internal briefing from LGNSW staff dated 3 July 2014 (**LGNSW Briefing Memo**) regarding the proposed second strike.
 - **Tab A to the LGNSW Briefing Memo** – Document titled “Three Strikes Disciplinary Scheme – Silk Hotel 1 – Timeline” showing that the first prescribed

offence occurred on 11 August 2013 (in respect of which a first strike was incurred on 21 March 2014) and the second prescribed offence occurred on 2 November 2013 (and that this prescribed offence was “committed” on 5 February 2014).

- **Tab B to the LGNSW Briefing Memo** – NSW Police Briefing Note – 3 Strikes Narrative in relation to the prescribed offence which occurred at the Premises on 2 November 2013.
- **Tab C to the LGNSW Briefing Memo** – Letter from LGNSW to the (then) licensee Mr Vasilis Moshos dated 6 May 2014, advising that the Secretary is considering whether to impose a second strike on the licence for the Premises.
- Also part of **Tab C to the LGNSW Briefing Memo** is a letter dated 21 February 2014 from LGNSW to the licensee (Vasilis Moshos) and copied to NSW Police advising that a first strike has been imposed on the licence for the Premises, and attaching a copy of the Police 3 Strikes Narrative for the prescribed offence that occurred on 2 November 2013.
- **Tab D to the LGNSW Briefing Memo** – Email from Mr Emmanouilidis on behalf of the business owner, Rightclick Holdings Pty Ltd and the premises owner, Parking Towers International Pty Ltd to LGNSW attaching submissions in relation to the second strike notification, dated 26 May 2014.
- **Tab E to the LGNSW Briefing Memo** – Letter from *O’Sullivan Saddington Lawyers* to LGNSW dated 22 May 2014, advising that they act for Russell Richardson, that Mr Richardson’s company Rumo Property Pty Ltd agreed to purchase the Premises on 17 April 2014, and that “we are instructed that the Purchaser shall rescind the Contract if a second strike is imposed”.
- Also part of **Tab E to the LGNSW Briefing Memo** is an email dated 5 June 2014 from Mr Richardson to LGNSW describing an “outline of what our company intends on doing with the current hotel”, and attaching “all information relating to our intended purchase of Silk Hotel”. The attached material comprises:
 - A document titled “Décor inspiration” with photographs of different “late night hotels”;
 - Floor plans showing proposed alterations and additions to the hotel;
 - Brief “bio” for Mr Russell Richardson;
 - Brief “bio” for Mr Greg Mathew (Mr Richardson’s business partner);
 - *Venue Safety Plan* for King Street Hotel, Newcastle; and
 - *King Street Hotel Plan of Management*.
- Also part of **Tab E to the LGNSW Briefing Memo** is an email dated 5 June 2014 from Mr Richardson to LGNSW advising that the patron capacity of the Premises is “around 250” and a further email from Mr Richardson to LGNSW dated 3 July 2014 advising that the contract for sale of the Premises has been rescinded.
- **Tab F to the LGNSW Briefing Memo** – Submission from NSW Police, Newcastle City Local Area Command to LGNSW in relation to the second strike notification for the Premises, undated but attached to an email from NSW Police dated 12 May 2014. In this submission Police advise that the Premises has been “issued some 19 Liquor Infringement notices for various breaches” of the Act

over “the last 4 years” and submit that permitting intoxication “is perhaps the most serious offence that can occur upon a licensed premises”.

- Also part of **Tab F to the LGNSW Briefing Memo** is a letter dated 27 May 2014 from NSW Police to LGNSW advising that “Police have been aware of the proposed sale of the hotel and note that the sale has not been finalised”, and that “regardless of the sale being finalised, Police are not in a position to view the current action as unnecessary”.
- **Tab G to the LGNSW Briefing Memo** – *OneGov* licence record for the Premises as at 1 July 2014.
- **Tab H to the LGNSW Briefing Memo** – Document (apparently prepared by Police) titled “Facts in the matter of Silk Hotel” setting out the conditions attaching to the licence for the Premises and the facts of prescribed offences alleged to have occurred at the Premises.
- Also part of **Tab H to the LGNSW Briefing Memo** is a Certificate of Conviction of the Newcastle Local Court in the matter of *R v Bill Floros Moshos* dated 23 April 2014.
- **Tab I to the LGNSW Briefing Memo** – *LGNSW Compliance Detail Report* for the Premises dated 3 July 2014.
- Letter from LGNSW dated 15 July 2014 to the (then) licensee, Silk Hotels Newcastle Pty Ltd advising of the second strike determination and noting that no submission was received from the licensee in relation to the second strike.
- Letter from LGNSW to the business owner, Rightclick Holdings Pty Ltd dated 15 July 2014, advising of the second strike determination.
- Letter from LGNSW to the premises owner, Parking Towers International Pty Ltd dated 15 July 2014, advising of the second strike determination.
- Letter from LGNSW to the former approved manager, Mr Joseph Lannutti dated 15 July 2014, advising of the second strike determination and noting that no submission was received from Mr Lannutti in relation to the second strike.
- Letter from LGNSW to Mr Vasilis Moshos dated 15 July 2014, advising of the second strike determination and noting that no submission was received from Mr Moshos in relation to the second strike.
- Letter from LGNSW staff to the prospective purchaser of the hotel, Mr Russell Richardson dated 15 July 2014, advising of the second strike determination.
- Letter from LGNSW dated 15 July 2014 to Commander Kelly Kortlepel, Alcohol and Licensing Enforcement Command, NSW Police advising of the second strike determination.
- Copy of the Reviewable Decision dated 15 July 2014.

REVIEW APPLICATION MATERIAL SUBMITTED BY MR EMMANOULIDIS

68. The Review Application Form dated 4 August 2014 was signed by Mr George Emmanouilidis on behalf of the premises owner company, Parking Towers International Pty Ltd (a company previously solely controlled by Mr Moshos) and seeks the revocation of the Reviewable Decision.
69. In a short submission attached to the Review Application Form, the Review Applicant submits that an “Outline of Compliance Management Plan” (attached to the Application) will “resolve many of the concerns” of the Delegate and should be considered by the Authority in determining whether a second strike should be recorded on the licence for the Premises.
70. The Review Applicant further submits that in making the Reviewable Decision the Delegate did not properly consider the fact that the prescribed offence occurred while Mr Lannutti was approved manager of the Premises and that Mr Lannutti’s employment was subsequently terminated and there was a change in the licensee and management at the Premises. The Review Applicant contends that the Delegate placed “too much emphasis” on “events and circumstances other than” the alleged prescribed offence.
71. Attached to Mr Emmanouilidis’ submission is the *Proposed Compliance Management Plan for Family Hotel, Newcastle (Silk Hotel)* dated 5 August 2014. A brief summary of this *Plan* is as follows:
- The objective of the Plan is to “create a safe, stable and enjoyable environment for customers, staff and the surrounding community of the proposed Family Hotel Newcastle”.
 - The proposed new name for the Premises will create a “turning point” and a “new vibe” with a focus on comedians and local bands.
 - The new premises will be open 4 nights per week – on Wednesdays, Fridays and Saturdays from 8:00pm to 3:30am and on Sundays from 6:00pm to 10:00pm.
 - Staff will receive specific training on “issues of concern that existed under previous management”, namely intoxication and minors gaining entry to the Premises, including through ID scanning and monitoring patron activity.
 - Security will be outsourced to a “reputable security company” with experience in “hotel and venue security”. Security staff will ensure that all customers have their valid ID scanned prior to entry onto the Premises, and that regular perimeter and internal checks are carried out.
 - “Regular weekly staff meetings” will be held to discuss the previous week’s trading and potential “measures for improvement”.
 - Management will engage in “open communication” with other late night venues through the “linked radio network” to ensure that “problem patrons” do not attempt to create disturbance elsewhere or to gain entry to the Premises.
 - Staff will be dedicated to ensuring patrons leave the Premises quickly and quietly as closing time approaches, and closing time will be announced over the hotel’s

PA system at fifteen minute intervals for the final hour of trading and at five minute intervals for the final fifteen minutes of trading.

- Staff will not sell or supply liquor for consumption off the Premises.
- Staff will assist patrons to find their way home “either through a taxi or a bus”.
- The Family Hotel “understands that there will be no tolerance of any management failings that may have existed under previous management”.

72. Also attached to Mr Emmanouilidis’ submission is a copy of the submission previously made to the Delegate dated 26 May 2014. Briefly, Mr Emmanouilidis’ previous submission may be summarised as follows:

- A penalty notice was “never” issued to the licensee in relation to the alleged prescribed offence of permitting intoxication on the premises on 2 November 2013.
- If a penalty notice was issued, the offence “would be ‘Approved manager permit intoxication on licensed premises’, not ‘Licensee permit intoxication on licensed premises’”.
- The licensee had “no control” over the approved manager, Mr Lannutti’s conduct.
- Mr Lannutti has not been approved manager of the Premises since December 2013 and his removal is a “very relevant factor” in determining whether to place a second strike on the licence.
- The alleged intoxicated person was removed by Police while he was in the process of taking his “first sip” of an alcoholic beverage purchased at the premises and therefore under section 73(4)(b) of the Act the licensee has a defence as the intoxicated person “did not consume alcohol on the licensed premises” (or, in the alternative, the “amount of alcohol consumed would have been extremely minimal” and would not “objectively have increased the level of his intoxication”).
- It “would be likely” that bar staff saw Police enter the premises on 2 November 2013, believed Police to be “monitoring the alleged intoxicated person” and therefore held a “reasonable belief” that Police “did not understand the alleged intoxicated person to be intoxicated”.
- The alleged intoxicated person did not become intoxicated at the Premises and there could be no allegation of “reckless or unreasonable behaviour” on the part of the licensee to warrant the imposition of a second strike

73. The Review Application also includes a copy of the Reviewable Decision.

CONSULTATION ON THE REVIEW APPLICATION

74. On 9 March 2016, the Authority sent the Review Application material to LGNSW, Newcastle Licensing Police and BOCSAR for comment.

75. On 9 March 2016, in accordance with its usual practice, BOCSAR advised by email that it did not propose to make a submission on this matter.

76. On 21 March 2016, Sergeant Wayne Buck of Newcastle Licensing Police (who was involved with the 2014 Police Application and Police Complaint and previous Short Term Closure Applications for the Silk Hotel) advised as follows:

Thank for the opportunity to make a submission in relation to this hotel. Unfortunately Police have nothing further to add to the Second Strike Review, the Silk hotel has not traded since around August 2014.

77. In an email dated 8 April 2016, LGNSW advised that it too had nothing further to add to the review.
78. On 8 April 2016 the Authority emailed Mr Emmanouilidis in his capacity as licensee, director of the corporate business owner (Rightclick Holdings Pty Ltd) and his capacity as director of the corporate premises owner (Parking Towers International Pty Ltd) inviting him to make any updated submission to the Authority in support of the Review Application. Any submissions in response to the review were requested within 21 days.
79. On 19 April 2016, Mr Emmanouilidis sent the following brief response from his Rightclick Holdings email address:

Thank you for your email. I note that since the Application for Review was lodged on 4 August 2014, there has been further action taken by ILGA in relation to the licence, namely, the revocation of the ETA.

However, I note that in the application for review, a proposed management plan was attached, as prepared under the licence conditions which existed as at August 2014, that is, with the ETA in place. Notwithstanding this, the principles of the management plan still will apply generally.

Presently, the situation remains that renovations to the premises and especially rectification works after the April 2015 super storm that hit Newcastle, have been undertaken, and are yet to be undertaken. This has meant that the licensed premises are not yet in a position to reopened [sic]. Also, negotiations are being undertaken with third parties to potentially effect a change in the business owner. Ultimately, the situation remains that, as discussed previously, the licensed premises are not presently trading. I am hopeful that trading will recommence within three to four months.

In saying this, I note that the change of name application of the premises to the "Family Hotel Newcastle" has been formally approved.

When the licensed premises are ready for trading, I note that a management plan, in accordance with the existing licence, will be in place.

DECISION ON REVIEW AND REASONS

Findings on Relevant Statutory Considerations in section 144G(2)(c) of the Act

80. The Authority has considered the Review Application and all of the submissions, evidence or other material before it pertaining to the Review Application.
81. On the section 144G(2)(c)(i) issue of whether the Premises was a Schedule 4 "declared premises" when the prescribed offences were committed, the Authority is satisfied that the hotel was not a declared premises on 2 November 2013 but that from 1 June 2014, the hotel was listed as a level 2 violent venue under Schedule 4.

82. However, the hotel licence has been held in a dormant capacity since August 2014 and it is unclear when, if at all, the hotel business on the Premises will recommence trading. The hotel is not listed as a “declared premises” in Schedule 4 at this time.
83. *On the section 144G(2)(c)(ii) issue of whether the size and patron capacity of the premises may impact the ability of a licensee or approved manager to prevent the commission of prescribed offences*, the Authority is satisfied, on the basis of the Delegate’s findings in the Reviewable Decision, that the venue’s capacity is approximately 250 persons and that according to the NSW Police COPS event report for the incident on 2 November 2013, venue security were present at the time of the offence and “had an opportunity to observe the movements and actions of the male patron, particularly at the time of entry”. The Authority is satisfied, on the basis of the material now before the Authority, that there is no persuasive evidence or other material to indicate that the venue’s size was a contributing factor for the commission of the prescribed intoxication offence now under consideration.
84. *On the section 144G(2)(c)(iii) issue of the history and nature of prescribed offences committed in relation to the licence or the premises*, the Authority is satisfied, on the basis of the Delegate’s findings in the Reviewable Decision, that a first strike was incurred against the licence arising from the prescribed offence of supplying liquor to minors that occurred on 11 August 2013. The former approved manager was convicted of this offence by the Newcastle Local Court on 31 March 2014 and disqualified from managing a licensed premises for 12 months from that date.
85. The Authority is satisfied, on the balance of probabilities and on the material before the Authority regarding the offence, that an offence against section 73 of the Act of permitting intoxication on licensed premises did occur on the hotel Premises at about 1:00am on 2 November 2013.
86. The Authority is satisfied that a Penalty Notice Enforcement Order was then issued by the NSW State Debt Recovery Office under the *Fines Act 1996* in respect of this offence on 5 February 2014. Upon that action occurring, the “commission” of the relevant prescribed offence was perfected for the purposes of section 144C of the Act, enlivening the Secretary’s discretion as to whether a second strike should be incurred on the licence because of the seriousness of the harm that *may* have resulted from, or been associated with, the commission of the offence.
87. *On the section 144G(2)(c)(iv) issue of the history and nature of violent incidents that have occurred in connection with the premises*, the Authority is satisfied, on the basis of the Delegate’s findings in the Reviewable Decision, that the Premises was designated a “level 2” violent venue under Schedule 4 as of 1 June 2014 and that 16 incidents of violence had been attributed to the Premises at the time of the Reviewable Decision.
88. *On the section 144G(2)(c)(v) question of whether other action (that is, other than incurring a strike) would be preferable*, the Authority notes the Review Applicant’s submissions that the hotel has not been trading since August 2014, but that “when the licensed premises are ready for trading, I note that a management plan, in accordance with the existing licence, will be in place”. The Authority has considered the Review Applicant’s submissions and its plans, but in the absence of a positive trading history since the hotel closed its doors, the Authority does not have confidence that such *plans*, which are yet to be put into effect, provide a persuasive reason for finding that some alternative action would be preferable.

89. *On the section 144G(2)(c)(vi) issue of any changes to the licensee, manager or business owner*, the Authority notes that the Police Complaint under Part 9 of the Act against the (then) licensee, Mr Vasilis Moshos, resulted in the Authority taking action in February 2015 to disqualify Mr Moshos' licensee company Silk Hotels Pty Ltd from holding any liquor licence in New South Wales, withdraw Mr Moshos' personal approval to be an approved manager of any licensed premises in New South Wales and disqualify Mr Moshos from being a licensee, approved manager or close associate of any licensed premises in New South Wales for a period of 10 years.
90. The Authority is satisfied, on the basis of the Review Applicant's submissions, that Mr George Emmanouilidis now directs the business owner company, Rightclick Holdings and that he also holds the licence in his personal capacity.
91. The Authority is further satisfied, on the basis of the Review Applicant's submissions, that Mr Lannutti, who was the approved manager at the time of the commission of the prescribed offence, no longer holds this position and "there are no channels of communication open between the licensee and Mr Lannutti".
92. These changes have been taken into account by the Authority, but they have not been decisive by reason of the absence of any positive trading history under the new licensee and business ownership.
93. *On the section 144G(2)(c)(vii) issue of whether there have been changes in business practices*, the Authority notes that the Police Application under section 51(9)(b) of the Act resulted in the Authority deciding to revoke the extended trading authorisation in a decision dated 9 October 2014. As a consequence of this action, the hotel premises is now only licensed to trade within standard trading hours.
94. However the Authority is satisfied, on the basis of the submissions from Police and the Review Applicant, that the hotel licence has been held in a dormant capacity since August 2014 and it is unclear when, if at all, the hotel business on the Premises will recommence trading.
95. The Authority has considered the Review Applicant's submission that the management plan dated 5 August 2014 is intended to facilitate a "turning point" in the management of the premises and to alleviate the "concerns that existed under previous management".
96. However, the Authority is unable to give great weight to those submissions as the Authority has yet to see those plans put into effect, given the ongoing dormancy of the licence.

Does the Commission of the Prescribed Offence Warrant a Second Strike?

97. The Authority is satisfied that the seriousness of harm that *may* have occurred from the prescribed offence of permitting intoxication on the Premises is manifest. The Authority concurs with the Delegate's summary of the range of potential harms that could be realised from the prescribed offence of permitting intoxication, including "the harassment of other persons, major or minor injury to the intoxicated person or others, undue disturbance to the neighbourhood, through to an assault on venue staff or a member of the public".
98. The Authority concurs with the Delegate's findings that the facts giving rise to the potential second strike demonstrate serious failures by the licensee and approved

managers to ensure compliance with the liquor laws and contributed to an increased risk of alcohol related harm.

99. The Authority notes that the Review Applicant has resubmitted the submissions that he made to the Delegate before the Reviewable Decision was made, adding only limited additional material, including a *Compliance Plan* for the proposed new Family Hotel.
100. By reason of the ongoing dormancy of the licence, there is no evidence of a positive trading history to warrant an alternative course of action to incurring a second strike against the licence. The Authority has not had the opportunity to assess the operation of the *Family Hotel Compliance Management Plan* or the identified change in management, nor any change in patronage or culture of the Premises.
101. The extensive course of misconduct prior to the hotel's closure and the facts of the prescribed offence now under consideration militate against taking an alternative action to confirming the strike.

CONCLUSION

102. In conclusion, having regard to the facts and circumstances of this case and the statutory considerations described above, the Authority has determined that a second strike should be incurred, in light of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence of permitting intoxication on the Premises.
103. The Authority has decided to **confirm** the Reviewable Decision under section 144I of the Act and to incur a second strike against the licence in respect of the prescribed offences that are currently before the Authority.
104. In making this decision, the Authority has had regard to the statutory objects and considerations provided by section 3 of the Act, which states:

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.*

NO REMEDIAL ACTION AGAINST LICENCE OR LICENSEE

105. The Authority has decided that it is not necessary to take remedial action in relation to the second strike, having regard to the substantial regulatory action that was taken against the former Silk Hotel in 2014 and 2015, the change of licensee and the extended and ongoing dormancy of the licence.

Yours faithfully

Philip Crawford
Chairperson
Independent Liquor and Gaming Authority

29 June 2016