

McGIRR FAMILY HOTELS

Hotel owners since 1863

ABN 90 890 791 093

OFFICE:
Suite 28, Level 7
58 Pitt Street
SYDNEY NSW 2000
TEL: 9247 7474
FAX: 9251 2414

Our Ref: PMcG:jjg
Your Ref:

3 December, 2015

NSW Office of Liquor Gaming and Racing
GPO Box 7060
SYDNEY NSW 2001

Email: threestrikes.review@olgr.nsw.gov.au

Dear Sir

Re: AHA NSW Multi Hotelier Briefing

Further to our submissions made to the Minister and in our earlier letter, it is also in the writer's opinion, inappropriate for the sale or supply of liquor outside the approved trading hours of the licensed section to incur a strike. This has no relationship to violence or any of the items (b) to (k), particularly in the case and circumstances where the breach may be for as little as 15 minutes.

Various difficulties have arisen in the writer's experience where people are staying in hotels who are related to the owners of hotels or even owners of hotels where the police have been confused as to the appropriate legislation to apply.

There are other offences including persons to be in the bar without having liquor served which only results in a fine.

In the writer's opinion a strike, particularly for a first offence and for circumstances where the trading outside hours is minimal as to time and nature resulting in a strike is totally unfair and draconian. Sometimes publicans are forced to keep patrons on the premises for safety reasons.

Furthermore, a lessor or mortgagee should be informed immediately the strike occurs and should be given the right to object to the strike being imposed upon the building. In view of the fact that most leases and mortgages contain a clause that the lease is cancellable in the event of a strike, the second strikes would become in the writer's experience, theoretical.

The legislation was introduced to curb violence, particularly in Kings Cross. It has been a total failure so far as country hotels are concerned in that a city based law has been applied in a draconian fashion in many country towns for some circumstances which were clearly not intended to be the subject of a strike when the legislation was introduced and in this regard, we refer you to the reading of the Minister when the legislation was introduced. There is no doubt it was introduced to curb violence in Sydney hotels.

The writer greatly regrets that the previous Minister who was responsible for this legislation was not prepared to listen to the country hoteliers, and in particular the writer who warned the Minister that the outcome of the legislation would be unsatisfactory so far as country hotels were concerned. Events have proven this to be correct.

Yours faithfully



Paul McGirr

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Our Ref: PMcG: jg
Your Ref: IM15/25165
Doc 15/018334

3 December, 2015

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GPO Box 7060
SYDNEY NSW 2001

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Dear Sir

Re: AHA NSW Multi Hotelier Briefing

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We refer to the correspondence written both to your office and to the Minister's office concerning the difficulties in relation to the Royal Hotel, Gurley, Canonbar Hotel, Nyngan and Coonabarabran Hotel, Coonabarabran. We ask you to incorporate all such correspondence as our response to your invitation.

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It is important to note also that many of the writer's leases are unregistered due to the short term of them and as such, registration should not be one of the conditions of a person being accepted as a valid lessor/mortgagee for the purpose of the legislation.

If you need clarification, please advise.

Yours faithfully


Paul McGirr

Paul McGirr

From: "Paul McGirr" <paulmcgirr@mcgirrlawyers.com>
Date: Thursday, 3 December 2015 3:20 PM
To: <threestrikes.review@olgr.nsw.gov.au>
Attach: paulmcgirr@mcgirrlawyers.com_20151203_150545.pdf
Subject: 3 strikes legislation

Please see further submissions attached.

Paul McGirr

McGirr Lawyers
Level 7, 58 Pitt Street
Sydney NSW 2000

Tel. 9247 7471
Fax. 9251 2414
email: paulmcgirr@mcgirrlawyers.com

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-----Original Message-----

From: paulmcgirr@mcgirrlawyers.com
Sent: Thursday, December 03, 2015 3:05 PM
To: paulmcgirr@mcgirrlawyers.com
Subject: Scanned image from McGirr Lawyers

Reply to: paulmcgirr@mcgirrlawyers.com <paulmcgirr@mcgirrlawyers.com>
Device Name: McGirr Lawyers
Device Model: MX-3114N
Location: Not Set

File Format: PDF MMR(G4)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated
to view the document.

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Paul McGirr

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From: "Paul McGirr" <paulmcgirr@mcgirrlawyers.com>
Date: Thursday, 3 December 2015 12:36 PM
To: <threestrikes.review@olgr.nsw.gov.au>
Attach: paulmcgirr@mcgirrlawyers.com_20151203_121957.pdf
Subject: 3 strikes legislation

Please see attached

Paul McGirr

McGirr Lawyers
Level 7, 58 Pitt Street
Sydney NSW 2000

Tel. 9247 7471
Fax. 9251 2414
email: paulmcgirr@mcgirrlawyers.com

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-----Original Message-----

From: paulmcgirr@mcgirrlawyers.com
Sent: Thursday, December 03, 2015 12:19 PM
To: paulmcgirr@mcgirrlawyers.com
Subject: Scanned image from McGirr Lawyers

Reply to: paulmcgirr@mcgirrlawyers.com <paulmcgirr@mcgirrlawyers.com>
Device Name: McGirr Lawyers
Device Model: MX-3114N
Location: Not Set

File Format: PDF MMR(G4)
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3/12/2015

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If you need clarification, please advise.

Yours faithfully


Paul McGirr

Paul McGirr

From: "Paul F T McGirr" <paulmcgirr@mcgirrlawyers.com>
Date: Monday, 16 November 2015 9:08 AM
To: <john.green@ahansw.com.au>
Subject: Fwd: Three Strikes Legislation

Herewith CBA letter

Yours Faithfully

Paul FT McGirr

Begin forwarded message:

From: "McCormack, Alexander" <alex.mccormack@cba.com.au>
Date: 15 November 2015 12:55:05 pm AEDT
To: Paul McGirr <paulmcgirr@mcgirrlawyers.com>
Subject: **Three Strikes Legislation**

Paul,

In relation to our discussion on Friday in relation to the Three Strikes Legislation, please refer below to the conditions of approval that are in place for all hotel operators (both leasehold, going concern and investors) since the legislation was put into place by the NSW Government:

If, under the NSW Liquor Act 2007 (Act), a first strike is incurred in respect of a licence issued under the Act, which is used in, or is relevant to, the operation of any business in which the Borrower is involved (Licence), the Borrower;

(i) must notify the Bank in writing of the first strike within 7 days of it coming into force (Start Date);

(ii) must give a written report to the Bank every 3 months following the Start Date (or at such other times required by the Bank), detailing any matters which may constitute, or are relevant to, an offence for which a second strike or a third strike could be incurred on the Licence; and

(iii) (a) agrees that when a first strike occurs, it will constitute an event (Review Event) which enables the Bank to review the terms of the facility(s) offered in this letter (Facility(s));

(b) (i) agrees that within 30 days of any Review Event, the Borrower is to meet with the Bank to consult in good faith with the intention of agreeing a strategy to minimise the risk of further strikes occurring in respect of the Licence; and

(ii) agrees that following the meeting, or even where no meeting took place, the Bank may by written notice to the Borrower (Review Notice) state that with effect not later than the period specified in the Review Notice (Notice Period) it intends to vary the terms of the Facility(s) as specified therein in which case, the Borrower must either:

(A) do everything reasonably required by the Bank to give effect to the varied terms within the timeframe required by the Bank; or

(B) before the last day of the Notice Period (Last Day), notify the Bank in writing that it does not accept the variation, in which case:

(a) the Facility(s) will be cancelled with effect on and from the Last Day; and

(b) the Borrower must repay the total amount outstanding under the Facility(s) not later than 30 days after the Last Day.

Further to this:

The Current Terms and Conditions for Business Finance are amended by adding the following bullet point

16/11/2015

Paul McGirr

From: "John Green" <John.Green@ahansw.com.au>
Date: Monday, 16 November 2015 9:43 AM
To: "Paul F T McGirr" <paulmcgirr@mcgirrlawyers.com>
Subject: RE: Strike Notices & Loan conditons

Thanks for arranging these Paul,

John

From: Paul F T McGirr [mailto:paulmcgirr@mcgirrlawyers.com]
Sent: Monday, 16 November 2015 9:10 AM
To: John Green
Subject: Fwd: Strike Notices & Loan conditons

Herewith Westpac letter

Yours Faithfully

Paul FT McGirr

Begin forwarded message:

From: "Vukovich, Tom" <tvukovich@westpac.com.au>
Date: 13 November 2015 10:56:21 am AEDT
To: Paul McGirr <paulmcgirr@mcgirrlawyers.com>
Subject: Strike Notices & Loan conditons

Notification of Strike

Immediately following the recording of a strike in respect of [*Name of Hotel*] on the register maintained by NSW Office of Liquor Gaming and Racing ("**Strike Register**") the Borrower must notify the Lender in relation the strike.

Licensee

The Borrower must notify the Lender immediately of any proposed change to the Licensee. If required by the Lender the Borrower must do anything required by the Lender to otherwise perfect the Lenders Security including if necessary transferring the Licensee into the Borrowers name or procuring the new Licensee to grant a Security Interest in favour of the Lender.

Review Events

In addition to the Lender rights to conduct a review of this Agreement under clause 4.10 of the General Conditions Schedule the Lender may conduct a review of all facilities with the Lender if any of the following occurs (whether or not within the Borrower's control) if:

- a- the revenue in relation to bar, food and gaming is less than [90%] of the revenue assumed in the [*Name of Hotel*] most recent valuation, the revenue will be measured yearly on receipt of annual accounts;
- b- second strike is incurred against the [*Name of Hotel*] on the Strike Register;
- c- the Borrower enters into an agreement or contract that does not comply with relevant gambling and liquor legislation; and
- d - any licence held by the Borrower is cancelled, revoked, surrendered or suspended for more than 7 days.

Paul above are extracts of conditions that could be included on our Business Finance Agreement in relation to 3 Strike policy we discussed yesterday.

Obviously If such an event occurs we need to be advised & aware of the background however we do not move to default upon Strike 1.

As you suggested, our mortgage does address all broad events that effect our position within the document however we feel it is better placing conditions in our offer documentation to reference clearly our position so the business is aware of our requirements upfront.

Carolyn will be happy to talk to you from L& K Gates as I mentioned.

Hope this helps you in some way

Tom Vukovich

Senior Relationship Manager Commercial Banking Bankstown | Westpac Retail & Business Banking
 Level 6, 14 Meredith Street Bankstown NSW 2200

IMob 0408 146 814 | Phone +61 2 9354 0969 Fax +61 2 9707 3160 tvukovich@westpac.com.au



16/11/2015

Paul McGirr

From: "Paul FT McGirr" <paulmcgirr@mcgirrlawyers.com>
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 Level 6, 14 Meredith Street Bankstown NSW 2200

| Mob 0408 146 814 | Phone +61 2 9354 0969 Fax +61 2 9707 3160 tvukovich@westpac.com.au



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16/11/2015

Paul McGirr

From: "Dan O'Hara" <dan@oharagroup.com.au>
Date: Friday, 13 November 2015 1:31 PM
To: "John Whelan" <John.WheLAN@ahansw.com.au>; "Phillip Ryan" <Phillip.Ryan@ahansw.com.au>;
"Dan Brady" <dan.brady@redcape.com.au>; "ohara9" <ohara9@bigpond.com>; "Paul McGirr"
<paulmcgirr@mcgirrlawyers.com>
Subject: suggestions for amendment to gaming machine act / regulation

john phil dan and paul

as there is some talk that there may be some ammendments to the Gaming Act could I respectfully request that the AHA consider making representations to the government regarding;

1. hotels can buy / sell entitlements to other hotels within the same LGA Band classification. i.e. a Sydney city hotel (Band 3 classification) could sell entitlements to a hotel in Fairfield (band 3 classification)
2. politically I think it could be possible, as you are reducing the number of entitlements in band 3 areas around the state (due to forfeiture on trade) and the machines are moving to areas which are likely to generate higher gaming tax revenues to the state government.

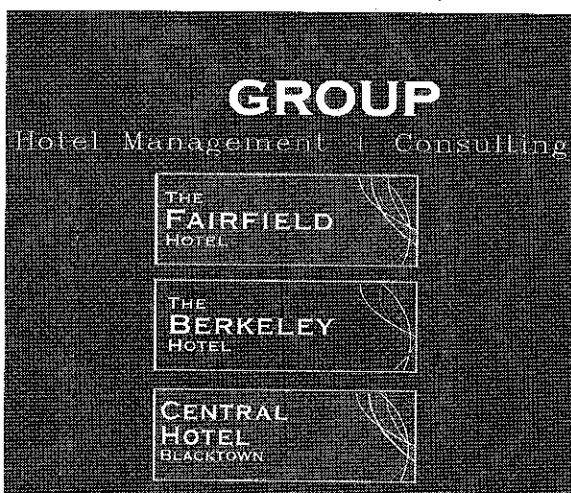
should you have any queries regarding the above please don't hesitate to call me.

Many thanks,

Dan O'Hara

0402 214 679

dan@oharagroup.com.au



Paul F T McGirr

L.I.B (University of Sydney)

SOLICITOR and GRAZIER

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COONAMBLE NSW 2829
TEL: 6844 2260
FAX: 6844 2260

Our Ref: PMcG:jj
Your Ref: IM15/25165
Doc 15/018334

5 November, 2015

The Hon. Troy Grant MP
Minister for Gaming and Racing
Box 5341 GPO
SYDNEY NSW 2001

Dear Minister

Re: Canonbar Hotel Nyngan and Coonabarabran Hotel-3 Strikes Legislation

We have received 2 letters from Rosemary Caruana Acting Executive Director of Justice Office of Liquor, Gaming and Racing and thank you for your help. The Canonbar Hotel is no longer subject to the 3 strike penalty as no offence has taken place in 2015. The offence occurred in 2014.

Review -2016

M/s Caruana's letter refers to a review in early 2016 but with respect this review is too late for the Coonabarabran Hotel as the penalty is imposed in March 2016.

Furthermore the Department has had so many representations from me and the AHA which were ignored by Mr Souris who is renowned as the worst Minister to ever hold the portfolio. Surely the Department does not need any more representations on this specific issue to make a recommendation to correct an expensive injustice on blameless lessors and mortgagees.

INTERIM SOLUTION

The simple solution to the problem would be to allow an amendment to the legislation providing

“the lessor/mortgagee of the licensed premises shall have the right to apply to have the strike removed on giving satisfactory evidence to ILGA

- (a) that the hotel has different and adequate managerial practices and
- (b) has no interest in the business or relationship to the previous

licensee/business owners other than as lessor/mortgagee of the building pursuant to a lease or mortgage entered into prior to the strike offence”

This was proposed by me and the AHA to Mr Souris but he would not listen and gave no reason although it was believed he was being advised by some anti-lessor/mortgagee departmental officers inherited from the previous government.

For the reasons set out below it is apparent all fair politicians from all parties will support rectifying this injustice this year by the minor legislative amendment.

Coonabarabran Hotel Facts

The offence occurred on 16th January 2015.

The strike offence occurred we believe when the licensee/tenant was told by the licencing Sergeant to go from the bar which he agreed to and poured himself a beer “to take to bed” and was promptly charged with serving an intoxicated person.

Whilst the behaviour of the former tenant is to be deplored, the circumstances of the alleged offence involved no violence and there was no service to a member of the public. The tenant had held a liquor licence for many years and was well known to the lessor as of good fame and repute. His wife was well known to the writer as the daughter of a former tenant of 30 years.

The Lessor was never informed of the strikes (and still has had no official notification). Upon obtaining possession from the tenant/licencee the lessor heard of the strike through gossip in June 2015 when the appeal time had expired. In any event as the present legal position exists, the Lessor is given no opportunity to appeal as the Lessor was not the person who committed the offence (it was the tenant/Licensee). Indeed if the licensee pays the fine there is no Appeal available in any circumstances in any event.

So the silly position is: the innocent lessor receives no notice, cannot appeal and yet is required to pay loadings of \$5,000 per annum x 3 years = \$15,000 when the licensee has been evicted or absconded.

Under our management and since 16th January 2015 there have been no strike or similar offences but the penalty remains operative for next year.

Adverse effect on Country hotels

It is not good for country towns for these small businesses (a) to be penalised to the same extent as city hotels, or (b) for lessors/mortgagees to suffer impositions through circumstances to which they had no connection.

It is for this reason that investors and mortgagees are frightened to invest or lend on country hotels and one of the reasons why so many of them are presently in

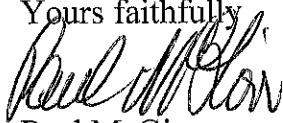
financial difficulties and/or closing (E.G. Overlander at Nyngan and Royal at Coonabarabran both closed recently).

We ask that you please have your Department respond to this request for urgent justice.

My knowledge of this government is that it is fair and always keen to address these injustices, particularly in small businesses.

Minister the effort you put in is much appreciated and much more productive than previous Ministers and I thank you and apologise for troubling you again on this issue.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul McGirr', written in a cursive style.

Paul McGirr



Justice
Office of Liquor, Gaming & Racing

IM15/25165
DOC15/018334

Mr Paul McGirr
McGirr Family Hotels
Suite 28, Level 7
58 Pitt Street
SYDNEY NSW 2000

Dear Mr McGirr

Thank you for your letter to the Deputy Premier regarding the 3 strikes disciplinary scheme, the liquor licence 'owner in possession' rules and gaming machine entitlement leasing. The Deputy Premier has asked that I reply to you on his behalf.

I appreciate your concerns regarding the potential impact of the 3 strikes scheme, and the new 'owner in possession' rules on you as a hotel lessor. While the Deputy Premier is unable to meet with you to discuss these matters I can advise you that the NSW Government will be undertaking a statutory review of the 3 strikes scheme in early 2016. I encourage you to submit your views on how the legislation could be changed to address the issues you have raised.

The changes to the 'owner in possession' rules under *Liquor Act 2007* were needed to prevent situations where hotels were operating without a licensee. The new provisions give the owners of licensed premises sufficient opportunity to make the necessary arrangements to transfer a licence before it is suspended.

I note your comments regarding the leasing of gaming machine entitlements. The Government made a commitment to consider options for entitlement leasing under its 2014 Memorandum of Understanding with ClubsNSW. At this time, the Government has not yet established its position on entitlement leasing.

Should you require additional information on this matter, please contact Ms Brenda Hurst, Principal Policy Officer, on (02) 9995 0996 or by email at brenda.hurst@olgr.nsw.gov.au.

Yours sincerely

Rosemary Caruana
A/Executive Director

19 October 2015

No contact No.
(02) 8574 6800

Shirley 9289 5536



Justice
Office of Liquor, Gaming & Racing

DOC15/028556
IM15/30553

Mr Paul McGirr
McGirr Family Hotels
Suite 28, level 7
58 Pitt Street
SYDNEY NSW 2000

Dear Mr McGirr

Thank you for your letter of 1 October 2015 to the Hon. Troy Grant MP, Deputy Premier, concerning the Canonbar Hotel and the annual licence fee scheme. I have been asked to respond to you directly on his behalf.

I can advise that there is no strike in force and no offence has taken place for 2015 as at 27 October 2015 and the compliance history risk loading and patron capacity loading will not apply for the 2015/16 licence fee. Fees will be assessed on 15 March 2016. If a prescribed offence is committed in 2015, the loadings will apply to the licence.

The scheme is designed to provide venues with a financial incentive to adopt and maintain safe, low risk practices in return for a lower annual licence fee. Compliance loadings escalate to reflect the level of risk that a premises poses and high risk business operators with a poor compliance history will attract the highest fees.

Should further information be required, please contact Mr Troy Zarb, Project Officer at the Office of Liquor, Gaming & Racing on (02) 9995 0456 or via email at troy.zarb@olgr.nsw.gov.au.

Yours sincerely

Rosemary Caruana
A/Executive Director

28 October 2015



Justice
Office of Liquor, Gaming & Racing

IM15/31250
DOC15/028612

Mr Paul McGirr
McGirr Family Hotels
Suite 28, Level 7
58 Pitt Street
SYDNEY NSW 2000

Dear Mr McGirr

Thank you for your letter of 8 October 2015 to the Hon. Troy Grant MP, Deputy Premier, concerning the strike imposed on the Coonabarabran Hotel under the three strikes disciplinary scheme. The Deputy Premier appreciates the reasons why you have written and has requested that I respond to you directly.

I note that the Coonabarabran Hotel incurred a strike in May 2015 when it was operated by a licensee who has since vacated the premises. I also note your concern about the impact of the three strikes scheme on business owners, given the additional risk based loadings due to apply from 2016, under the annual licence fee scheme when strikes are in force.

The three strikes disciplinary scheme aims to reduce alcohol-related harm by improving the safety and operation of the State's licensed premises and increasing compliance with the liquor laws. The scheme targets the most serious offences under the *Liquor Act 2007* such as permitting intoxication, selling to minors, breaching conditions relating to a prescribed precinct or declared premises and trading outside of hours.

The imposition of a strike is not a matter that is taken lightly. The licensee, NSW Police and other stakeholders are consulted when the strike assessment comes before the Office of Liquor Gaming and Racing and the Independent Liquor and Gaming Authority in relation to second and third strikes. All parties are given the opportunity to make submissions before a second or third strike is imposed to ensure natural justice is afforded.

The licensee or approved manager can also appeal a conviction through the court system, and if that appeal is successful, the related strike can be overturned.

As you are aware, the scheme was implemented so that strikes apply to the licence and the premises, rather than to the licensee. This is intended to help ensure consistency with the way in which liquor licences are issued for specific premises, so that operators who repeatedly breach the liquor laws could not simply swap out licensees to avoid additional strikes.

It is noted that industry is concerned about the implications of ongoing strikes for the owners of licensed businesses and the premises, particularly as premises owners may not be managing business operations.

The NSW Government is aware of these issues, which are expected to be a matter for consideration as part of a wider statutory review of the scheme in 2016. The input that you have provided will help to inform this review. The statutory review in 2016 will examine more broadly whether the policy objectives of the three strikes disciplinary scheme remain valid, and whether the terms of the legislation remain appropriate for achieving those objectives.

I trust that this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rosemary Caruana', written in a cursive style.

Rosemary Caruana
A/Executive Director

2 November 2015



**Trade &
Investment**
Office of Liquor, Gaming & Racing

Ref. C15/0015809

Mr Warren Frank
Licensee
Coonabarabran Hotel
John St
COONABARABRAN NSW 2357

By email and post: wazchantele@gmail.com

First Strike – Notification
Coonabarabran Hotel – LIQH400111126

Dear Mr Frank

The Government's Three Strikes disciplinary scheme for licensed premises commenced on 1 January 2012.

Under the scheme, strikes can be incurred where a licensee or approved manager commits one of a range of the most serious offences under the *Liquor Act 2007* (the "Act"). Restrictions can be imposed on a licence which has incurred strikes, and a third strike can have very serious consequences for a licensee and venue operator. The attached **Fact Sheet** contains details of the scheme.

This Office has been provided with data which indicates a penalty notice was paid for the prescribed offence of '*licensee permit intoxication on licensed premises*'. The offence was detected at the premises on 16 January 2015.

In accordance with the Three Strikes legislation, you are advised that a first strike has now been incurred on your liquor licence. The strike will also be recorded on the public register at http://www.olgr.nsw.gov.au/liquor_3_strikes_register.asp.

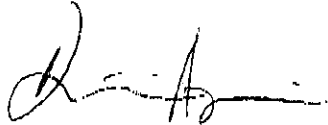
Where strikes have been incurred, section 144E of the Act provides that the Secretary, NSW Trade & Investment, may take remedial action by imposing conditions on a licence. Where remedial measures are considered, you will be provided with an opportunity to make submissions.

You are encouraged to review your venue's operations to ensure appropriate practices are in place to lessen the likelihood of strike offences occurring. The Office of Liquor, Gaming and Racing website (www.olgr.nsw.gov.au) contains information that may assist you in this process.

As licensee you are responsible for the day to day operation of the licensed premises. If there is a contractual or similar arrangement between yourself and other parties in relation to the licensed premises, you should inform those parties of this letter.

Should you require further information on this matter, Ms Laura Player, Compliance Officer, can be contacted on (02) 9995 0369 or at laura.player@olqr.nsw.gov.au.

Yours sincerely



16/6/15

Dimitri Argeres
A/ Program Coordinator

Encl.

CC: Alcohol and Licensing Enforcement Command, NSW Police.