



11<sup>th</sup> January 2016

Office of Liquor Gaming & Racing

E: [threestrikes.review@olgr.nsw.gov.au](mailto:threestrikes.review@olgr.nsw.gov.au)

**RE: REVIEW OF THE THREE STRIKES DISCIPLINARY SCHEME SUBMISSION**

With reference to the Review of the Three Strikes Disciplinary Scheme initiated by the NSW Government Department of Justice, we provide this submission for the Department's consideration. Our submission addresses the fourth objective of the review relating to:

- Financial and other impacts of the scheme on the owners and operators of licensed premises.
- Impact on the NSW economy due to unemployment within the sector.

We provide this submission on the premise that the Scheme is placing undue financial impact on our business as an owner and operator of 18 licensed premises.

Our fundamental objection with the three strikes Scheme is that under the terms of most Debt Facility Agreement with Bank Lenders, including our own, the consequence of a Strike is to unilaterally give the Lenders the right to review the terms and conditions of the Facility and to impose new conditions. This can include an increase in the cost of the debt or a demand that the debt referable to the property against which a Strike has been given be immediately due and payable. Should we be unable to repay the debt immediately, the Lenders would have the further right to take control of the property and sell it to use the proceeds to repay the debt. If this was to occur, the consequence to Merivale would be the loss of hundreds, if not thousands, of jobs with a total annual loss of salaries and casual wages in excess of 70 million dollars: as a flow on affect this would have enormous detrimental impact on the NSW economy.

In this regard, the statutory three strikes Scheme carries the very real potential to limit the trading activities of a licensed premises and the broader Merivale business and, in turn, to reduce the asset value of the business and the premises to which the licence relates<sup>1</sup>. This obviously has repercussions with financiers who view strikes as a threat to the stability of the financial arrangement between the licensed premises' owner and the lender.

This would have serious and broad reaching consequences for our business and ultimately acts in a manner that stifles the potential growth of the hospitality sector without due regard to the level of professionalism of the operator.

---

<sup>1</sup> Tony Hatzis, *Current traps & complexities in NSW liquor licensing*, Law Society Journal (May 2012)



Currently the Scheme provides the Government the opportunity to punish an owner of a licensed premises for the inappropriate actions of a workplace supervisor (Licensee) without consideration of the level of support, training and professional development invested in that individual.

No matter how much training a business owner may provide its staff, there may be occasions where staff make mistakes or act irresponsibly. A mistake by a well trained staff member should not immediately result in the employer being deemed vicariously liable for the Licensee's actions and as a consequence receiving a strike for their actions. In instances where the business owner can demonstrate that 'reasonable steps' have been taken reduce its liability and exposure in this regard (i.e. through comprehensive inductions and routine training sessions etc.) we maintain the awarding of the strike should vest with the Licensee. This is similar to the vicarious liability principles for employers established under Commonwealth anti-discrimination legislation concerning harassment within the workplace.

Hence, we submit that the Scheme should be amended to provide a business owner an opportunity to establish that reasonable steps were undertaken to reduce its liability with respect to the infringement of which the strike relates. In instances where the business owner can demonstrate that it has taken reasonable steps, we firmly believe that the appropriate recipient of a strike should be the Licensee. Our submission is particularly pertinent to the mandatory issuing of a first strike against the licensed premises as it is noted that second and third strikes are discretionary (however by no means is this point intended to limit our submission in any respect).

We maintain that the Scheme in its current form places undue financial hardship and unreasonable risk on the business owner, and perhaps more importantly the potential loss of thousands of jobs.. Future legislation should not continue to extend to punishing a business operator who has acted responsibly but for the independent actions of an individual employee, particularly given the serious financial and economic impact the actions of one individual can have on the entire business and its employees.

The Scheme in its current form has significant consequences to the growth of the hospitality industry. We trust this review will fully consider the financial and employment loss impact that the Scheme is currently having on business owners and make suitable recommendations that the legislation be amended to place responsibility on the most appropriate stakeholder in consideration of the circumstances of the breach.

Yours Sincerely,

Justin Hemmes  
Merivale  
Chief Executive Officer