

Review of the Three Strikes Disciplinary Scheme

Final Report

About this document

This document reports on the review of the Three Strikes Disciplinary Scheme. The review assessed whether the policy objectives of the scheme remain valid, and whether the terms of the scheme remain appropriate for securing those objectives. This report will assist government in determining future policy directions in relation to the Three Strikes Disciplinary Scheme.

Acknowledgements

The review would like to thank:

- stakeholders who participated in the consultation process and provided information and data;
- those who provided a submission; and
- the NSW Bureau of Crime Statistics and Research (BOCSAR) for providing offence and court data to inform the review.

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1. Executive Summary

The Three Strikes Disciplinary Scheme was introduced by the *Liquor Amendment (3 Strikes) Act 2011*, and has been in operation since 1 January 2012. The scheme provides for a system of strikes to be incurred when there are breaches of the most serious offence provisions of the NSW *Liquor Act 2007*.

The objectives of the scheme are to encourage compliance with the most serious offence provisions of the liquor laws, with the aim of:

- reducing irresponsible service and consumption of alcohol;
- reducing liquor law offences that lead to violence, antisocial behaviour and neighbourhood disturbance; and
- discouraging poor management practices in licensed premises.

As required under section 144K of the *Liquor Act 2007*, a review of the Three Strikes Disciplinary Scheme was undertaken to determine whether the policy objectives of the scheme remain valid and whether the terms of the scheme remain appropriate for securing those objectives. In considering these objectives the review examined:

- the nature of any positive and negative community impacts of the scheme;
- the impact of the scheme on compliance with provisions of the Liquor Act that are relevant to the scheme, as well as broader compliance with the law;
- the impact of the scheme on venue practices and behaviour aimed at minimising the risk of incurring strikes; and
- financial and other impacts of the scheme on the owners and operators of licensed premises.

The review was informed by interviews with key stakeholders and a public submission process. In addition, correspondence received by Government relating to the Three Strikes Disciplinary Scheme was examined with regard to the review objectives. Data relating to relevant offences, court outcomes, strikes incurred, and level 1 and 2 violent venues prescribed under the declared premises scheme was also analysed to inform the review.

Key findings

There is compelling evidence that the policy objectives of the scheme remain valid. However, the terms of the scheme require enhancement to secure those objectives. The review found that stakeholders support the objectives of the scheme, and that many stakeholders consider it has been successful in achieving those objectives.

Notwithstanding this generally positive feedback, the consultation process and review of statistical data has highlighted opportunities to further enhance the operation and administration of the scheme, and address a number of unintended consequences.

- **Finding 1** –The policy objectives of the scheme remain valid. However, the terms of the scheme require enhancement to secure those objectives.
- **Finding 2** – Strikes can jeopardise loan arrangements and significantly diminish property values. While this is a significant incentive for behavioural change, it also leads to severe

consequences for third party business and property owners (who support amendments to the scheme to minimise these consequences).

- **Finding 3** – The scheme could make greater use of incentives to encourage regulatory compliance and foster more responsible behaviour.
- **Finding 4** – The scheme could place a greater focus on preventing alcohol-related violence.
- **Finding 5** – There are concerns the scheme takes a blunt approach to the incurrence of strikes and could benefit from more administrative discretion in the awarding of first strikes. However, such a change may significantly weaken the deterrent effect of the scheme and inhibit its efficient operation.
- **Finding 6** – There is a need for greater consistency in how the scheme is enforced, what penalties are incurred and how conditions are applied.
- **Finding 7** – While the scheme is forcing some non-compliant operators out of the industry, there are concerns that it sometimes fails to remove some bad licensees while penalising responsible venue owners.
- **Finding 8** – Some industry stakeholders are concerned that licensed venues don't have a good understanding of the scheme's role in the broader regulatory framework.
- **Finding 9** – The scheme can create incentives for parties to contest strikes in court, which is costly for both the contesting party and government.
- **Finding 10** – The coordination of the scheme across multiple agencies creates information management challenges which could be better addressed.

Recommendations

- **Recommendation 1:** The scheme should be retained, with enhancements made as recommended in this report.
- **Recommendation 2:** Strikes should not continue to be in force when the ownership of the business of a licensed premises changes, although any conditions resulting from the incurrence of a strike should remain in force.
- **Recommendation 3:** It should be possible to have a strike removed after it has been in force for a period of 12 months.
- **Recommendation 4:** Regulators should take action to improve awareness among key stakeholders of the objectives of the scheme and its role in the broader regulatory framework.
- **Recommendation 5:** The scheme should be amended so that when a strike is incurred, the Secretary of the Department is able to impose conditions consistent with the process outlined in section 54 of the Liquor Act.
- **Recommendation 6:** Consideration should be given to amending the law to prevent the courts considering potential scheme outcomes as a factor when hearing and determining matters involving offences that could lead to a strike.
- **Recommendation 7:** Administrative improvements should be made to streamline the reporting and tracking of Three Strikes offence data.
- **Recommendation 8:** The list of offences captured by the scheme in section 144B(b) of the Liquor Act should be amended to more closely reflect the scheme's intent to capture only more serious offences.
- **Recommendation 9:** The scheme should be amended to allow for strikes to be incurred on the basis of inclusion on the violent venues list in Schedule 4 of the Liquor Act 2007.

2. Introduction

Background

The Three Strikes Disciplinary Scheme was introduced under the *Liquor Amendment (3 Strikes) Act 2011*, and is governed by Part 9A of the *Liquor Act 2007*. It has been in operation since 1 January 2012. The scheme provides for a system of strikes to be incurred when there is a breach of the most serious offence provisions of the Liquor Act.

The objectives of the scheme are to encourage compliance with the liquor laws, with the aim of:

- reducing irresponsible service and consumption of alcohol;
- reducing violence, antisocial behaviour and neighbourhood disturbance; and
- encouraging better management practices in licensed premises.

A key principle of the scheme is that a strike can be incurred where a licensee or approved manager is convicted of one of the most serious offences under the Liquor Act. These prescribed offences are detailed in section 144B of the Act and include:

- (a) sale or supply of liquor outside of approved trading hours for the licensed premises;
- (b) breach of a licence condition relating to:
 - conditions imposed under section 144E (i.e. as a result of strikes being incurred)
 - clauses 2A–5 or 7 of Schedule 4 (premises included in the violent venues scheme)
 - Part 6, Division 3 – Kings Cross Precinct special licence conditions;
 - Part 6, Division 4 – Sydney CBD Entertainment Precinct special licence conditions;
- (c) permitting intoxication or indecent, violent or quarrelsome conduct;
- (d) selling or supplying liquor to an intoxicated person;
- (e) permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or a prohibited drug;
- (f) failure to comply with a direction given by the Secretary of the Department;
- (g) failure to comply with a short-term closure order;
- (h) failure to comply with a long-term closure order;
- (i) failure to comply with a notice issued by the Secretary of the Department restricting or prohibiting activities that encourage misuse or abuse of liquor;
- (j) selling or supplying liquor to a minor or allowing such sale or supply; and
- (k) licensees and managers liable for act of employees in respect of a contravention of sections 73(2), 75(3) or 117(1) or (2) (section 149).

Incurring a First or Second Strike

A first strike is automatically incurred upon conviction for a single offence. The following conditions and restrictions can be imposed as a result of a first strike:

- (a) a requirement for a plan of management or an incident register
- (b) a prohibition on the use of glass and breakable plastic containers
- (c) engagement of dedicated staff to promote responsible service of alcohol

- (d) notification to persons that the strike has been incurred, and
- (e) in the case of a club licence – requiring members of the governing body of the club to undergo training.

A second strike is discretionary and can be incurred upon conviction for an offence committed where one strike is already in force. The decision that a second strike should be incurred is made by the Secretary of the Department. The following conditions and restrictions can be imposed following a second strike:

- (a) additional security measures
- (b) drink restrictions targeting high strength and rapid consumption drinks
- (c) “lock outs” where patrons cannot be admitted after a certain hour
- (d) a requirement to cease serving alcohol prior to venue closure
- (e) a prohibition on the conduct of types of entertainment
- (f) a requirement that members of a registered club governing body undergo training
- (g) restrictions on who may be appointed as manager of the premises, and
- (h) reductions to trading hours before 10am or after 11pm.

Conditions can be varied or revoked at any time. Where a strike expires, conditions imposed because of that strike remain in effect. Each strike continues to be in force for three years from the date of the offence, although it is not incurred until there is a conviction for the offence. Where multiple offences are committed in relation to a licence within a single 24 hour period, they are taken to be a single offence under the Three Strikes scheme.

Incurring a Third Strike

A third strike is discretionary and can be incurred upon conviction for an offence committed where two strikes are already in force. The decision that a third strike should be incurred is made by the Independent Liquor and Gaming Authority. When “three strikes” are incurred, the Independent Liquor and Gaming Authority is required to take action for the purpose of preventing the commission of any further offences by a licensee or approved manager in respect of the licensed premises. For licences other than registered clubs, a third strike can result in:

- (a) the imposition, variation or revocation of licence conditions
- (b) licence suspension for up to 12 months
- (c) licence cancellation and a moratorium on a new licence for the same business operators or close associates at the licensed premises for up to 12 months, and/or
- (d) disqualification of a licensee for any period of time.

For registered clubs, a third strike can result in:

- (a) the imposition, variation or revocation of licence conditions
- (b) disqualification of a club secretary
- (c) dismissal of any or all of the club directors, and/or
- (d) the appointment of an administrator to manage the club.

The powers available to the Secretary and the Authority under the Three Strikes scheme do not impede other powers available under the Liquor Act, including the power to:

- impose licence conditions under sections 53 and 54
- issue directions to licensees and staff under section 75
- impose conditions from a neighbourhood disturbance complaint under section 81
- issue closure orders under Division 4 of Part 5, and
- take disciplinary action under Part 9.

Overview of strikes incurred

As at 9 February 2016 there were 148 strikes currently recorded against 132 venues, including 13 second strikes, and 3 third strikes. A total of 195 strikes have been incurred since the commencement of the Three Strikes Disciplinary Scheme on 1 January 2012 (177 first strikes, 15 second strikes, 3 third strikes). Table 1 shows the number of strikes that have been incurred each calendar year since the commencement of the scheme.

Table 1: Number of strikes incurred each calendar year since the commencement of the scheme

Year	Strikes
2012	26
2013	40
2014	63
2015	64
2016	2
Total	195

Table 2 provides a breakdown of strikes incurred by licence type. The majority of strikes were incurred by venues with an on-premises licence (53%) or hotel licence (32%).

Table 2: Number of strikes incurred by licence type since the commencement of the scheme

Licence type	Strikes
Club	15
Hotel	63
Limited	1
On-premises	104
Packaged	11
Producer/wholesaler	1
Total	195

Table 3 shows a breakdown of strikes incurred by offence type. The most common offences that have resulted in either a first or second strike are “Licensee permit intoxication on premises” and “Licensee sell/supply liquor outside authorised hours”.

Table 3: Number of strikes incurred for each offence type since the commencement of the scheme

Offence type	Strikes
Licensee allow liquor to be sold to a minor	8
Licensee fail to comply with conditions of licence	38
Licensee keep premises open outside authorised hours	8
Licensee permit indecency/violence/quarrelsome conduct on licensed premises	4
Licensee permit intoxication on premises	59
Licensee sell/supply liquor outside authorised hours	53
Licensee/employee sell/supply liquor to intoxicated person	3
Licensee/employee/agent sell/supply liquor contravene licence	9
Licensee/employee/agent sell/supply liquor not in accordance with authority	4
Sell liquor to a minor on licensed premises	3
Sell liquor to minor	3
Supply liquor to minor on licensed premises	3
Total	195

Of the 195 strikes incurred, 169 (87%) resulted from a penalty notice and 26 (13%) resulted from a court decision. Of the three venues that incurred a third strike, one had its licence cancelled, one had its licence suspended for two weeks, and one licensee was disqualified from holding a licence or managing any licensed premises in NSW for 10 years.

Review of the Three Strikes Disciplinary Scheme

Section 144K of the Liquor Act requires that a review of the Three Strikes disciplinary scheme be undertaken as soon as possible after the period of four years from the commencement of the scheme on 1 January 2012 – i.e. as soon as possible after 1 January 2016. A report is to be tabled in each House of Parliament within 12 months after the end of the period of four years – i.e. before 1 January 2017. The overarching objective of the review was to determine whether the policy objectives of the scheme remain valid, and whether the terms of the scheme remain appropriate for securing those objectives.

In considering these objectives, the review examined:

- the nature of any positive and negative community impacts of the scheme;
- the impact of the scheme on compliance with provisions of the Liquor Act that are relevant to the scheme, as well as broader compliance with the law;
- the impact of the scheme on venue practices and behaviour aimed at minimising the risk of incurring strikes; and
- financial and other impacts of the scheme on the owners and operators of licensed premises.

3. Review methodology

Sources of evidence

The review used a mixed methods approach to data collection involving the collection of qualitative and quantitative data from a range of sources. Qualitative evidence was obtained through public submissions to the review, interviews with key stakeholders, and analysis of Ministerial and other correspondence relating to the scheme. Quantitative data was obtained regarding relevant Liquor Act offences and court decisions about such offences.

Public submissions

Stakeholders were given an opportunity to provide a public submission to inform the review. This process was open to any interested individuals or organisations. The public submission period commenced on 18 November 2015 and closed on 12 January 2016. Stakeholders were notified via the liquor regulator's e-newsletter and an email on 18 November 2015. Information regarding the review and public submission process was published on the liquor regulator's website on this date. This information included a background and key issues paper (**Appendix A**) to guide the public submission process.

In addition to the key stakeholders invited to be interviewed for the review, emails were sent to Local Government NSW, all liquor accord groups across NSW, and the Independent Liquor and Gaming Authority. The review and public submission process were also advertised in the Local Government NSW Weekly on 20 November 2015. A reminder email was sent to stakeholders on 16 December 2015.

In total 45 public submissions were received. All public submissions were published on the liquor regulator's website. A list of individuals and organisations that provided a public submission is at **Appendix B**.

Stakeholder consultations

Key stakeholder organisations were consulted via face-to-face or telephone interviews during November/December 2015. Interview questions focused on the review objectives which most impacted the individual stakeholder groups. They included:

- the nature of any positive and negative community impacts of the scheme;
- the impact of the scheme on compliance with provisions of the Liquor Act that are relevant to the scheme;
- the impact of the scheme on venue practices and behaviour aimed at minimising the risk of incurring strikes; and
- financial and other impacts of the scheme on the owners and operators of licensed premises.

The key stakeholders interviewed for this review were:

- NSW Police – Alcohol & Licensing Enforcement Command
- Office of the NSW Small Business Commissioner
- Australian Hotels Association (NSW)
- ClubsNSW
- Liquor Stores Association (NSW)
- Restaurant & Catering NSW
- NSW/ACT Alcohol Policy Alliance (NAAPA)
- NSW Business Chamber
- Mortgage & Finance Association of Australia
- Commonwealth Bank
- St George Bank
- Westpac

The Australian Bankers Association declined to be interviewed for the review, and the Small Bars Association did not respond to an invitation to participate.

Ministerial correspondence

Ministerial correspondence relating to the Three Strikes Disciplinary Scheme was considered with regard to the review objectives. A total of 19 letters/emails were reviewed.

Offence data

BOCSAR provided data for each calendar year from 2008 to 2014 on the number of persons/companies found guilty in finalised court appearances whose principal offence was a charge under the Liquor Act by principal penalty (i.e. fine, conviction without penalty, bond without conviction, no conviction recorded).

Data relating to offences which could lead to the incurrance of a strike from 1 January 2008 to 31 December 2015 were extracted from the liquor regulator's database. Data relating to category 1 or 2 venues under rounds 8-14 of the declared premises scheme under schedule 4 of the Liquor Act were obtained from the liquor regulator.

4. Findings

Summary of stakeholder views

Stakeholders support the objectives of the scheme. They agree with the need for government regulation to ensure the responsible management of licensed venues, and recognise the importance of addressing non-compliance within the industry.

Many stakeholders believe the scheme has been successful in achieving these aims, particularly insofar as it targets instances of non-compliance by operators and has resulted in a number of non-compliant operators leaving the industry.

Notwithstanding broad support for the goals and effectiveness of the scheme, there is a common perception in the liquor industry that these regulatory aims would best be achieved using other existing provisions under the Liquor Act. Concerns were raised that the scheme duplicates many existing provisions and adds more complexity to an already crowded regulatory landscape.

Although many stakeholders consider the scheme is meeting its objectives, some industry stakeholders regard it as an inconsistent and improperly targeted instrument. While it was agreed that the scheme successfully targeted irresponsible operators; there was some concern that it failed to capture all bad licensees and resulted in some good operators being unfairly punished. Furthermore, it was suggested that the scheme was undermined by inconsistent enforcement, with similar offences by operators treated differently based on the discretion of the Police, compliance officers, and the Courts in their sentencing.

A final major area of concern related to the scheme's impact on financial arrangements of venue owners. It was noted that a second or third strike under the scheme could trigger the termination of a loan by a bank due to the potential impact on business cash flow and asset values. Industry stakeholders were of the opinion that this was an unintended outcome of the scheme, which penalised operators beyond what was originally envisaged, and should therefore be reconsidered.

Outline of key findings

Finding 1 – The policy objectives of the scheme remain valid. However, the terms of the scheme require enhancement to secure those objectives.

The review finds that the objectives of the scheme (as outlined in chapter 2) remain valid. The scheme is an effective mechanism in encouraging compliance with key provisions of the liquor laws that seek to:

- reduce irresponsible service and consumption of alcohol;
- reduce violence, antisocial behaviour and neighbourhood disturbance; and
- improve management practices in licensed premises.

The review was advised by a number of stakeholders that the scheme has been successful in achieving its objectives. Feedback provided to the review pointed to the role of the

scheme in encouraging more compliant behaviour in the conduct of licensed premises as a result of the potential for strikes to be incurred and/or the actual incurrence of strikes.

However, the consultation process and subsequent analysis has also highlighted opportunities to enhance the operation and administration of the scheme. This includes the prevention of unintended consequences of the scheme, ensuring an appropriate balance between discretion and consistency in the scheme's operation, and improving administrative processes.

Finding 2 – Strikes can jeopardise loan arrangements and significantly diminish property values. While this is a significant incentive for behavioural change, it also leads to severe consequences for third party business and property owners (who support amendments to the scheme to minimise these consequences).

The incurrence of strikes can jeopardise loan arrangements by impacting negatively on the property value, cash flow and reputation of licensed premises. First strikes may diminish the value of a property by around 20%, and there is evidence of contracts of sale being rescinded due to venues incurring strikes.

Anything that jeopardises cash flow or property value will be of significant concern to a lender, along with the potential for reputational risk and a desire to avoid any perception of association with rogue operators. Some clauses in loan documents may provide for consequences of incurring strikes, or such an occurrence may fall under a 'materially adverse events' clause. First strikes can trigger a review of a loan which may result in loan restructuring, revaluation of the property, changes to the gearing ratio, and a range of other consequences. Second or third strikes may be considered to breach a loan agreement, depending upon the circumstances.

The possibility of licence suspension or cancellation in the event of a third strike will significantly impact upon loan arrangements. It was suggested that the option of licence suspension or cancellation be removed as a penalty under the Three Strikes scheme to minimise the impact of strikes upon loan arrangements. The provision for suspension or cancellation of a liquor licence is available elsewhere within the Liquor Act and could therefore be used in place of a specific sanction under the Three Strikes scheme.

If cancellation or suspension were removed as a penalty, it may help to achieve legislative consistency between hotels and clubs, as club licences cannot currently be suspended or cancelled as a consequence of incurring a third strike. However, clubs operate for the benefit of their members who own the property of the club, and as such it would be inappropriate to cancel or suspend a club licence in response to its governing body managing the venue inappropriately.

For other licences, the removal of the option to suspend or cancel a liquor licence in the event of a third strike may weaken the deterrent value of the scheme and would be inconsistent with its policy intent.

It was suggested that strikes could also be reset to zero upon sale/change of ownership of the business. Such an amendment may provide an incentive for rogue operators to exit the industry without penalising good operators from taking over venues. It may also reduce the

impact of strikes on property values and address the concerns of lenders and the threat of strikes to loan arrangements.

Given the significant financial implications of incurring strikes, it was suggested by industry that they could be attached to individual licensees rather than licensed premises. This would go some way to mitigating the risk of business owners being unfairly penalised by the irresponsible actions of staff, despite their efforts to ensure the venue is compliant with responsible service requirements.

However, proceeding in this direction requires careful consideration. Many licensees are employed by business operator as managers, and do not own or operate the business themselves. Given the period of time that must exist between when an offence for which a strike can be incurred is committed, and a strike is actually incurred, it is likely that licensees who commit such offences will be dismissed by the business operator prior to the strike being confirmed. This would result in strikes not being incurred where offences are committed as the licensee will no longer be employed as such.

Finding 3 – The scheme could make greater use of incentives to encourage regulatory compliance and foster more responsible behaviour.

At present, strikes remain in force for a period of three years from the time of offence, regardless of any steps the venue may take to implement more responsible practices. Consideration could be given to reducing the length of time that strikes remain in force where significant improvements in venue practices can be demonstrated. This has the potential to provide a strong incentive for venues to actively pursue improvements to their management practices in relation to responsible service of alcohol, thus supporting the underlying policy objectives of the Three Strikes scheme.

Given the significant penalties in the event of a first strike, where a first strike is incurred it was suggested during the stakeholder consultation process that consideration be given to limiting the period during which it is in force for those venues that demonstrate a commitment to improved behaviour and compliance.

Responsible venue management, venue practices and a strong record of compliance are factors that can be taken into account in the operation of the scheme. However, this must be done in a way that ensures the scheme is efficient and does not impose an unreasonable resource burden on administrators.

Finding 4 – The scheme could place a greater focus on preventing alcohol-related violence.

While there is evidence that the scheme encourages compliance with the liquor laws, there is only limited evidence to support the notion that the scheme actively targets venues which contribute to alcohol-related violence. Few venues on the violent venues list prescribed in Schedule 4 of the Liquor Act have received strikes.

Examination of the relationship between the Schedule 4 violent venues list and those venues which have incurred strikes demonstrates there is little overlap between the two. Table 4

outlines the number of venues on either Category 1 or 2¹ of Schedule 4 which incurred strikes in the same period which resulted in their Schedule 4 listing from round 8 to round 14 of the declared premises scheme.

Table 4: Venues which incurred a strike in the same period which resulted in their Schedule 4 listing

Round	Date period covered	Cat 1 venues which incurred a strike	Cat 1 venues which incurred 2 strikes	Cat 2 venues which incurred a strike	Cat 2 venues which incurred 2 strikes
8	1 Jul 11 – 30 Jun 12	0	0	0	0
9	1 Jan 12 – 31 Dec 12	0	0	0	0
10	1 Jul 12 – 30 Jun 13	0	0	1	0
11	1 Jan 13 – 31 Dec 13	0	0	1	0
12	1 Jul 13 – 30 Jun 14	0	0	2	0
13	1 Jan 14 – 31 Dec 14	0	0	1	0
14	1 Jul 14 – 30 Jun 15	1	0	0	0

Table 4 shows that no venue which has appeared on the violent venues list as either a Category 1 or Category 2 venue during the operation of the Three Strikes scheme has ever received a second strike. During the operation of the scheme only six venues (five Category 2 and one Category 1) received a strike during the time period which resulted in them being listed under Schedule 4 (e.g. if assaults are measured from 1 Jan 13 – 31 Dec 13 then the strike would have to have occurred during that period to be counted here).

There is an argument to be made that the scheme provides a powerful incentive for licensed venues to take stronger steps against violent and anti-social behaviour due to the fear of incurring a strike. However, the scheme's ability to adequately address alcohol-related violence and whether this is a focus of the scheme is not clear.

Finding 5 – There are concerns the scheme takes a blunt approach to the incurrence of strikes and could benefit from more administrative discretion in the awarding of first strikes. However, such a change may significantly weaken the deterrent effect of the scheme and inhibit its efficient operation.

The scheme has been criticised for not giving sufficient consideration to mitigating factors when determining penalties for strike offences, particularly given the first strike is applied automatically. Stakeholders suggested the current approach may result in a first strike being awarded without due consideration of the severity of the offence, or the existence of extenuating circumstances. To address this issue, it was suggested a first strike could be subject to administrative discretion in the same manner as second and third strike offences.

Other proposals to address this issue raised during the review include an appeals process with operators receiving a strike entitled to have this decision reviewed under certain circumstances. Under such a scheme, operators could be entitled to seek a review when an

¹ Category 1 venues are those with greater than 18 assaults in a year. Category 2 venues are those with 12-18 assaults in a year.

offence has occurred despite the existence of compliant venue management practices. This could make the scheme fairer, as operators would no longer be penalised for irresponsible staff behaviour, which they are unable to control in all instances.

The increased use of discretionary decision-making and appeal processes may give further assurance to stakeholders that breaches which may lead to strikes being incurred are enforced and penalised consistently and with reference to relevant circumstances and mitigating factors. However, it is also evident that incorporating such additional processes would add time, complexity and cost to the management and operation of the scheme. It is important to ensure the scheme maximises the use of discretionary decision-making while ensuring the efficient and effective operation of the scheme.

While not all offences for which a strike may be incurred are necessarily of equivalent severity, each has been deemed of a sufficiently serious nature to qualify as a potential strike. Section 144B(b) of the Liquor Act, which lists prescribed offences under the scheme, operates as a catch-all for some s11(2) breach of licence condition offences, imposed under Division 3 or 4 of Part 6, section 144E or clauses 2A-5 or 7 of Schedule 4. This subsection ensures that breaches of the Sydney CBD Entertainment Precinct and Kings Cross Precinct special licence conditions, and certain conditions imposed through the Violent Venues Scheme, are prescribed offences for the purposes of the scheme. Listing these as prescribed offences in general is designed to give additional weight to measures designed to reduce alcohol-related harm.

However, it is noted that the wording of s144B(b) captures less significant breaches that may lead to disproportionate outcomes when a strike is imposed. For example, the Kings Cross Precinct special licence conditions include conditions requiring that venues submit alcohol sales data to L&G NSW on a quarterly basis, and that licensees collect litter, promote transport options and display an hours of operation sign at the premises.² As these form part of the special licence conditions imposed by Part 6 of the Act, a failure to comply with the conditions could result in a first strike automatically imposed on the venue's licence.³

Evidence suggests the severity of potential penalties for breaching special licence conditions may provide an incentive for liquor regulators to refrain from issuing penalty or court attendance notices when enforcing the provisions of the scheme. For example in 2014, a number of first strikes were automatically incurred for a failure to submit alcohol sales data. Those penalty notices were subsequently withdrawn as it was acknowledged that a first strike for such an offence was a disproportionate outcome. Figure 1 and Figure 2 (see below) highlight the difference in pre and post scheme compliance activity for offences for which a strike can be incurred. These figures highlight that the likelihood of being issued a penalty notice for such an offence has decreased while the likelihood of being issued a compliance notice (a warning) has increased.

² Refers to clauses 53L to 53O of the Liquor Regulation 2008.

³ It is noted that licensees always have the option to have infringement notices heard in court, with less serious offences being more likely to attract a section 10.

Figure 1: Pre Three Strikes scheme compliance activity for strike offences (2008-11)

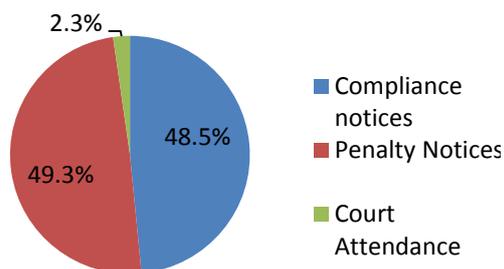
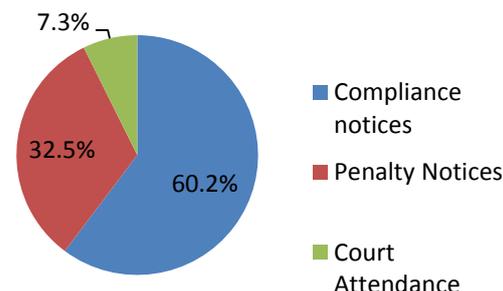


Figure 2: Post Three Strikes scheme compliance activity for strike offences (2012-15)



A sliding scale of penalties may better reflect variation in the severity of offences for which a strike can be incurred. However, the scheme's deterrent effect is predicated on its simple and unambiguous nature. In this context, there is a risk that reducing penalties for some offences and establishing a sliding scale of penalties would diminish its deterrence and overall effectiveness. In addressing stakeholder concerns, it is important that a balance is struck to ensure regulatory settings accord with the severity of offences without unnecessarily complicating the scheme or diminishing its deterrent effect.

Finding 6 – There is a need for greater consistency in how the scheme is enforced, what penalties are incurred and how conditions are applied.

There is a perception amongst some stakeholders that the enforcement and penalisation of offences for which a strike can be incurred are not applied consistently.

There are claims that breach notices are awarded inconsistently with the likelihood depending on variables such as the venue's reputation, relationship with compliance officers (i.e. police and liquor inspectors) and type of offence committed. Compliance officers possess significant discretion in the performance of their duties. Consequently, it has been suggested that the decision-making process for issuing a breach and the resulting incurrance of a strike may lack transparency. Furthermore, a number of offences for which a strike may be incurred, such as patron intoxication, can be perceived as subjective and prone to varying interpretations. This combination has the potential to create an uncertain regulatory environment and erode the confidence of venue operators in the scheme's operation.

There may also be inconsistency in the penalisation of offences for which a strike may be incurred due to discretion being exercised by the Courts in the sentencing process. In some cases, convictions may not be recorded and strikes not incurred despite determinations of guilt. Magistrates can consider a wide range of ameliorating circumstances and mitigating factors in the sentencing process and, based on these considerations, may elect not to record a conviction under Section 10 of the *Crime (Sentencing Procedures) Act 1999*. As strikes can only be incurred after a conviction is recorded, different judgments may result in inconsistent penalties awarded for similar offences.

In addition, under the current scheme, the conditions imposed on a licensed venue are determined by the level of strike incurred. However, section 54 of the Liquor Act also

authorises the Secretary of the Department to impose conditions on a licence for such reasons, or in such circumstances, as considered necessary or appropriate.

Due to this overlap in the regulatory framework, it may be appropriate to modify the scheme and adopt a more consistent approach. This could be achieved by aligning the remedial action for the imposition of strikes under sections 144E and 144F of the Liquor Act with the Secretary's authority under section 54.

By removing this added layer of regulation, the process for applying conditions would be more consistent and may therefore be more easily understood by stakeholders.

As outlined in Finding 5, there has been a call for the greater use of discretionary decision-making in the administration of the scheme to reflect the existence of mitigating factors and the variable nature of offences. Ultimately, a balanced approach is required to ensure relative consistency in the enforcement and penalisation of offences whilst exercising consistent, yet discretionary, decision-making which is supported by a transparent review process.

Finding 7 – While the scheme is forcing some non-compliant operators out of the industry, there are concerns that it sometimes fails to remove some bad licensees while penalising responsible venue owners.

The scheme's enforcement powers and deterrent effect does result in more responsible venue management and the successful removal of some bad operators from the industry. Three venues have so far received the maximum number of strikes, with one having its licence cancelled. Several operators with one or two strikes have also voluntarily relinquished their licence. However, there is some question as to the effectiveness of the scheme in removing bad operators, particularly if incurring a strike reduces a venue's value thereby discouraging a bad operator from selling their business and leaving the industry.

The threat of receiving a strike, rather than just the penalty they may incur, is also an important factor in encouraging responsible venue management. However, the deterrent effect may act as a double edged sword, with the threat of strong penalties such as the suspension and cancellation of a licence in circumstances, which are difficult for a licensee to have control over, prompting good operators to leave the industry. Concerns were raised that the scheme unfairly penalises responsible operators who establish good venue management practices yet still incur penalties due to the poor behaviour of staff which they may be unable to prevent in all instances.

Finding 8 – Some industry stakeholders are concerned that licensed venues don't have a good understanding of the scheme's role in the broader regulatory framework.

A number of stakeholders in the liquor industry including ClubsNSW, the AHA and the LSA, are concerned the scheme adds an extra layer of regulation to an already crowded regulatory landscape. They argue the scope and objectives of the scheme overlap with existing regulatory instruments. For example, the AHA noted that the Three Strikes scheme and the Annual Liquor Licence Fee Scheme are designed to penalise many of the same offences. They claim this duplication may result in venues being penalised multiple times under different regulations for the same offence. They say it can also magnify penalties beyond what was originally intended.

Due to the layers of regulation, venue operators, particularly smaller ones, may not have a clear understanding of the intended purpose of the scheme, or how it relates to other regulatory provisions. More resources could be invested into raising awareness of the scheme, with a greater focus on education to prevent the incurrence of strikes.

The scheme could also be integrated more seamlessly with other regulatory instruments, including the declared premises scheme. There is some suggestion that this might make the scheme, and the liquor regulatory regime generally, easier to understand for industry stakeholders. However, it is also important that the three strikes scheme continue to have a profile that encourages more responsible venue management practices.

Ultimately, it is important that key stakeholders are aware of the scheme and its place within the broader regulatory framework. It is also important to address any potential irregularity within the regulatory framework to ensure the scheme is consistent with other provisions within the Liquor Act.

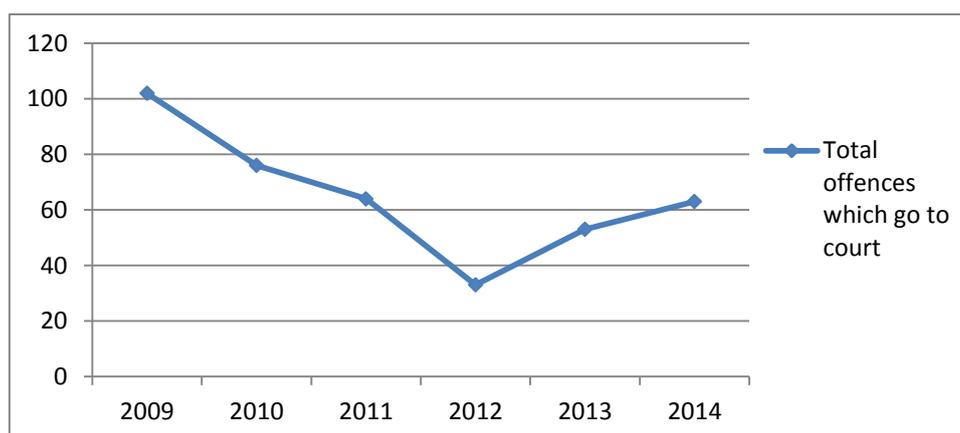
Finding 9 – The scheme can create incentives for parties to contest strikes in court, which is costly for both the contesting party and government.

Because strikes impose such significant costs, there is an incentive to contest breach matters in court. These costs include both the potential loss of value to the business as a result of it having strikes and the increased licensing costs as detailed earlier in this report. This could lead to a disproportionate financial burden in comparison to the offence for the duration of the strike. For example: a small restaurant in the Sydney CBD Entertainment Precinct is required to pay an annual licence fee of \$400 (adjusted for inflation). If the small restaurant does not record a particular incident that occurs on the premises in a register it is required to keep, the restaurateur can be fined \$1,100 for the offence and incur a strike. The occurrence of this strike can have a significant financial impact on the business. As noted previously in this report, a strike may lead to difficulty obtaining loans, a reduction in the net worth of the business and is often seen by third parties as a clear step towards license cancellation.

As a result, licensed venues are more likely to challenge a penalty notice in court as even with the cost of legal representation, the total expense to the business will be significantly less if they escape conviction. This results in a greater resource burden on government. The number of Liquor Act offences going to court had declined substantially over the four years from 2009 to 2012. However, since the introduction of the Three Strikes scheme, the number of court appearances for offences for which a strike can be incurred has almost doubled.⁴

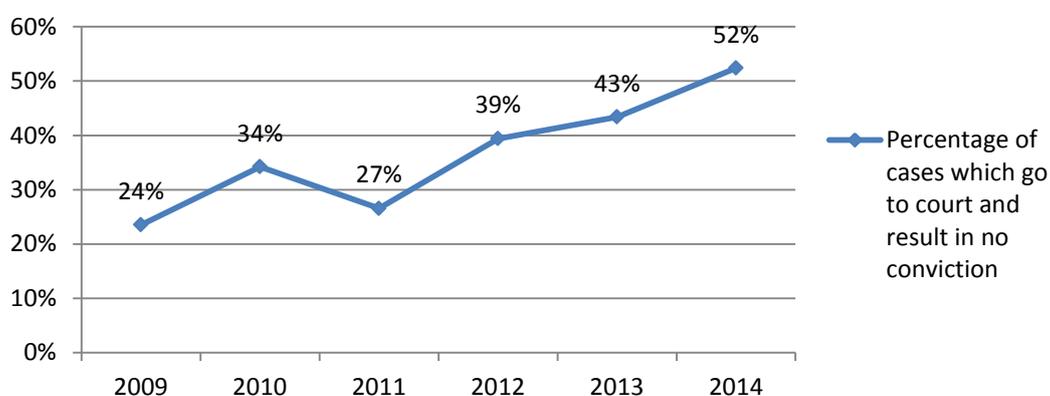
⁴ Data obtained from the NSW Bureau of Crime Statistics and Research.

Figure 3: Number of strike offences contested in court each calendar year from 2009 to 2014.



Many parties currently contest breaches in the hope of receiving a “Section 10”,⁵ which results in no conviction being recorded and therefore no strike incurred. In the three years preceding the scheme, the average percentage of court cases in which a venue was found guilty of an offence for which a strike can be incurred where no conviction was recorded was 28%. Since the scheme was introduced there has been a noticeable increase in cases that have no conviction recorded. In 2014, 52% of all court cases in which a venue was found guilty of such an offence had no conviction recorded compared to 27% in 2011 (See Figure 4: Percentage of court cases in which a venue is found guilty of a strike offence that results in no conviction 4). This suggests the potential of a strike being incurred may be a factor as to why the Court should not impose a conviction.

Figure 4: Percentage of court cases in which a venue is found guilty of a strike offence that results in no conviction



The proportion of offences for which a strike can be incurred that are being considered by the courts since the introduction of the Three Strikes scheme has risen. In addition, more of those matters which do go to court result in a “Section 10” and escape conviction.

⁵ Section 10 of the *Crime (Sentencing Procedures) Act 1999* allows a defendant to be found guilty but not have a conviction recorded, which does not result in a strike being incurred.

Finding 10 – The coordination of the scheme across multiple agencies creates information management challenges which could be better addressed.

The review identified inefficiencies in the current system around the process of reporting of strikes and their transition through the system. These process inefficiencies are essentially centred on data duplication and rework amongst different agencies. There also appears to be significant time investment needed in the form of human capital and insufficient automation currently built into the process.

Administration of the scheme is highly labour intensive and creates a significant administrative burden. Compliance officers have had to adapt to implement the technical requirements of the scheme as well as support its administrative decision making function. The NSW Police Force and State Debt Recovery Office are tasked with providing weekly data to facilitate the scheme's administration. Improvements to better support lower level administrative functions such as data entry, monitoring, and preliminary assessment of remedial measures should be considered.

5. Recommendations

Recommendation 1: The scheme should be retained, with enhancements made as recommended in this report.

As discussed throughout this report, the policy objectives of the scheme remain valid, and it continues to constitute an important and necessary tool to encourage responsible venue management practices.

However, there are some enhancements that could be implemented to ensure it meets these objectives in a more effective and efficient manner. It is important to strike the right balance between addressing stakeholder concerns and ensuring the scheme continues to achieve its objectives.

Recommendation 2: Strikes should not continue to be in force when the ownership of the business of a licensed premises changes, although any conditions resulting from the incurrence of a strike should remain in force.

It is recommended that the scheme be amended so that strikes are re-set to zero upon the sale or transfer of the ownership of the business of a licensed premises. It is considered appropriate that while the number of strikes is re-set to zero, any conditions imposed under the scheme should remain in force.

This amendment will provide an incentive for bad operators to exit the industry without penalising good operators from taking over licensed venues. It will reduce the impact of strikes on property values (and the consequent impact on innocent third parties such as premises owners), and help to address the concerns of lenders and the threat that strikes have on loan arrangements.

It is noted that this recommendation will not wholly address industry concerns about the impacts suffered by business operators where licensees (who are employed as managers) incur strikes in circumstances that may be beyond the business operator's control. As noted earlier, it was suggested that the scheme be refocused so that strikes apply to licensees, and not to the licensed premises, in order to address this issue. The review has not recommended this course of action for reasons outlined in this report. If this was to occur, the review notes that other aspects of the scheme will require consequential changes as part of such a refocus to reduce the risk that the scheme's effectiveness would be diminished.

Recommendation 3: It should be possible to have a strike removed after it has been in force for a period of 12 months.

It is recommended that strikes continue to remain in force for a period of three years from the time of offence (as is currently the case). However, the scheme should be amended to allow an affected party to apply for strikes to be removed after a period of 12 months where significant improvements in venue practices can be demonstrated. If introduced, this incentive should be applied retrospectively to licensed venues with existing strikes, provided the strike has been in effect for a minimum of twelve months.

This will provide a strong incentive to actively pursue improvements to venue practices in relation to the responsible service of alcohol, thus supporting the underlying policy objectives

of the Three Strikes scheme. It is recommended that the removal of strikes, after a period of 12 months, only be considered where no further breaches during the 12 month period have been incurred, where active steps to improve venue practices in relation to the responsible service of alcohol have been taken, and where the Secretary is satisfied that the improvements implemented significantly reduce the risk of any further strikes being incurred.

Recommendation 4: Regulators should take action to improve awareness among key stakeholders of the objectives of the scheme and its role in the broader regulatory framework.

While there is awareness by many key stakeholders of the scheme's requirements and penalties, feedback suggests some stakeholders have a less well developed understanding of its purpose and contribution to the broader regulatory regime. This poor understanding results in concerns by stakeholders about 'over-regulation' of licensed venues. To address this misconception, it is recommended that action be taken to more actively raise awareness among stakeholders of the policy rationale for the scheme and the way in which it operates within the regulatory framework.

Recommendation 5: The scheme should be amended so that when a strike is incurred, the Secretary of the Department is able to impose conditions consistent with the process outlined in section 54 of the Liquor Act.

Under the current scheme, the conditions imposed on a licensed venue are determined by the level of strike incurred. This is provided for under sections 144E and 144F of the Liquor Act. Under section 54 of the Liquor Act, the Secretary has the authority to impose conditions on a licence for such reasons, or in such circumstances, as considered necessary or appropriate.

Given the Secretary has this authority under section 54, it is considered appropriate to align the remedial action for the imposition of strikes under sections 144E and 144F of the Liquor Act with the Secretary's authority under section 54. As a result, it is recommended that the scheme be amended so that when a strike is incurred, the Secretary is able to impose conditions consistent with the authority granted under section 54.

Recommendation 6: Consideration should be given to amending the law to prevent the courts considering potential scheme outcomes as a factor when hearing and determining matters involving offences that could lead to a strike.

There is a concern that the prevalence of 'Section 10' decisions by the courts for offences captured under the three strikes scheme is encouraging venues to contest penalty notices in court, imposing additional burdens on the court system, and is also weakening the deterrence factor of the scheme. It is therefore recommended that consideration be given to amending the law to prevent the courts considering potential scheme outcomes as a factor when hearing and determining matters involving offences that could lead to a strike.

Recommendation 7: Administrative improvements should be made to streamline the reporting and tracking of Three Strikes offence data.

It is recommended that an internal process review be conducted to identify possible areas of duplication of work and improvements which could be made to the administration process for

the Three Strikes scheme. It was identified through the review that there is a duplication of tasks and extensive staff hours required across several agencies to manage the scheme. A process review would help to identify process improvements and efficiencies to improve the overall performance of the scheme and lessen the resource burden on government.

Recommendation 8: The list of offences captured by the scheme in section 144B(b) of the Liquor Act should be amended to more closely reflect the scheme's intent to capture only more serious offences.

The purpose of the Three Strikes scheme is to focus on the most serious offences under the Liquor Act, such as permitting intoxication, supplying liquor to minors and supplying liquor to an intoxicated person. The list of prescribed offences in section 144B largely reflects this intent.

However, the list also captures breaches of the Sydney CBD Entertainment Precinct and Kings Cross Precinct special licence conditions, conditions imposed as remedial conditions following the imposition of a strike, and certain conditions imposed through the Violent Venues Scheme.

Listing those offences as prescribed offences gives additional weight to measures designed to reduce alcohol-related harm. While in principle this is sound, section 144B(b) also captures certain minor breaches which can lead to a disproportionate outcome if a strike is incurred. This is inconsistent with the initial intention of the scheme as the administrative conditions for which the venue may receive strikes do not necessarily directly relate to irresponsible venue practices. An exemption from receiving a strike for such offences would be more consistent with the initial intention of the scheme.

Recommendation 9: The scheme should be amended to allow for strikes to be incurred on the basis of inclusion on the violent venues list in Schedule 4 of the *Liquor Act 2007*.

The scheme may be enhanced and may target violent and anti-social behaviour more effectively by ensuring that a strike is incurred where a venue appears in the list prescribed in Schedule 4 of the Liquor Act. It is recommended that further consideration be given to whether strikes should apply to just Level 1 venues, or to both Level 1 and 2 venues. Applying a strike to Level 3 venues (which are not prescribed in Schedule 4) is not supported.

This would link the three strikes and violent venues and reinforce the need for a reduction of violence and alcohol related harm on licensed premises. This message would be consistent with the NSW Government's stance towards alcohol-related violence and reorientate the three strikes scheme more towards violent venues. This would address stakeholder concerns that the scheme does not do enough to minimise alcohol-related violence and anti-social behaviour.

Consideration should also be given to the removal of strikes where a venue reduces its level of violence and is removed from the Schedule 4 lists. This would provide a strong incentive to venues to improve their venue practices to minimise the likelihood of violent incidents in the future.

Appendix A: Key Issues Paper for the review of the Three Strikes Disciplinary Scheme



Review of the Three Strikes Disciplinary Scheme

Background & Key Issues

What is the Three Strikes Disciplinary Scheme?

The Three Strikes disciplinary scheme is governed by Part 9A of the *Liquor Act 2007*. The scheme applies to specific Liquor Act offences committed by licensees and approved managers. The scheme has been designed so that it targets repeat offenders. A key principle of the scheme is that strikes can be incurred where a licensee or approved manager is convicted of one of a range of the most serious offences under the *Liquor Act 2007*.

The Three Strikes disciplinary scheme applies where the following prescribed offences (detailed in section 144B of the *Liquor Act 2007*) are committed which can result in the incurrance of a strike:

- a)** sale or supply of liquor outside of the approved trading hours for the licensed premises (section 9)
- b)** breach of a licence condition (section 11(2)) relating to:
 - conditions imposed under section 144E (i.e. as a result of strikes being incurred)
 - clauses 2A–5 or 7 of Schedule 4 (applying to premises included in the violent venues scheme)
 - Part 6, Division 3 of the Act - Kings Cross Precinct special licence conditions
 - Part 6, Division 4 of the Act - Sydney CBD Entertainment Precinct special licence conditions
- c)** permitting intoxication or indecent, violent or quarrelsome conduct (section 73(1)(a) or (b))
- d)** selling or supplying liquor to an intoxicated person (section 73(2))
- e)** permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or a prohibited drug (section 74(1)(b) or (2))
- f)** failure to comply with a direction given by the Secretary of the Department (section 75(3))
- g)** failure to comply with a short-term closure order (section 82 (6))
- h)** failure to comply with a long-term closure order (section 84 (7))
- i)** failure to comply with a notice issued by the Secretary of the Department restricting or prohibiting activities that encourage misuse or abuse of liquor (section 102A (2))
- j)** selling or supplying liquor to a minor or allowing such sale or supply (section 117 (1), (2) or (8)), and
- k)** licensees and managers liable for act of employees etc in respect of a contravention of sections 73(2), 75(3) or 117(1) or (2) (section 149).

Incurring a First or Second Strike

Under the scheme, a first strike is automatically incurred upon conviction for a single offence. The following conditions and restrictions can be imposed as a result of a first strike:

- (a) a requirement for a plan of management or an incident register
- (b) a prohibition on the use of glass and breakable plastic containers
- (c) engagement of dedicated staff to promote responsible service of alcohol
- (d) notification to persons that the strike has been incurred, and
- (e) in the case of a club licence – requiring members of the governing body of the club to undergo training.

A second strike is discretionary, and can be incurred upon conviction for an offence committed where one strike is already in force. The decision that a second strike should be incurred is made by the Secretary of the Department. The following conditions and restrictions can be imposed following a second strike:

- (a) additional security measures
- (b) drink restrictions targeting high strength and rapid consumption drinks
- (c) “lock outs” where patrons cannot be admitted after a certain hour
- (d) a requirement to cease serving alcohol prior to venue closure
- (e) a prohibition on the conduct of types of entertainment
- (f) a requirement that members of the governing body of a registered club undergo training
- (g) restrictions on who may be appointed as manager of the premises, and
- (h) reductions to trading hours before 10am or after 11pm.

Conditions can be varied or revoked at any time. Where a strike expires, conditions imposed because of that strike continue in effect. Each strike remains in force for three years from the date of the offence, although it is not incurred until there is a conviction for the offence. Where multiple offences are committed in relation to a licence within a single 24 hour period, they are taken to be a single offence under the Three Strikes scheme.

Incurring a Third Strike

A third strike is discretionary, and can be incurred upon conviction for an offence committed where two strikes are already in force. The decision that a third strike should be incurred is made by the Independent Liquor & Gaming Authority.

When “three strikes” are incurred, the Independent Liquor & Gaming Authority is required by law to take action for the purpose of preventing the commission of any further offences by a licensee or approved manager in respect of the licensed premises. For licences other than registered clubs, a third strike can result in:

- a)** the imposition, variation or revocation of licence conditions
- b)** licence suspension for up to 12 months

- c) licence cancellation and a moratorium on a new liquor licence being granted for the same business operators or close associates at the licensed premises for up to 12 months, and/or
- d) disqualification of a licensee for any period of time.

For registered clubs, a third strike can result in:

- a) the imposition, variation or revocation of licence conditions
- b) disqualification of a club secretary
- c) dismissal of any or all of the club directors, and/or
- d) the appointment of an administrator to manage the club.

The powers available to the Secretary and the Authority under the Three Strikes scheme do not impede other powers available under the *Liquor Act 2007*, including the power to:

- impose licence conditions under sections 53 and 54
- issue directions to licensees and staff under section 75
- impose conditions resulting from a neighbourhood disturbance complaint under section 81
- issue closure orders under Division 4 of Part 5, and
- take disciplinary action under Part 9.

Overview of strikes incurred

As at 13 November 2015, there are 130 first strikes, 11 second strikes, and one third strike in place. A total of 189 strikes have been incurred since the commencement of the Three Strikes Disciplinary Scheme on 1 January 2012 (171 first strikes, 15 second strikes, 3 third strikes). Table 1 shows the number of strikes that have been incurred each calendar year since the commencement of the scheme,

Table 1: Number of strikes incurred in each calendar year since the commencement of the Three Strikes Disciplinary Scheme on 1 January 2012.

Year	Number of strikes incurred
2012	26
2013	40
2014	63
2015	60
Total	189

Table 2 provides a breakdown of strikes incurred by offence type. The most common offences that have resulted in either a first or second strike are “Licensee permit intoxication on premises” and “Licensee sell/supply outside authorised hours”.

Table 2: Number of strikes incurred for each offence type since the commencement of the Three Strikes Disciplinary Scheme on 1 January 2012.

Offence type	Number of strikes incurred
Licensee allow liquor to be sold to a minor	7
Licensee fail to comply with conditions of licence	37
Licensee keep premises open outside authorised hours	8
Licensee permit indecency/violence/quarrelsome conduct on licensed premises	4
Licensee permit intoxication on premises	57
Licensee sell/supply liquor outside authorised hours	53
Licensee/employee sell/supply liquor to intoxicated person	3
Licensee/employee/agent sell/supply liquor contravene licence	9
Licensee/employee/agent sell/supply liquor not in accordance with authority	3
Sell liquor to a minor on licensed premises	3
Sell liquor to minor	3
Supply liquor to minor on licensed premises	2
Total	189

Table 3 provides a breakdown of strikes incurred by licence type. The majority of strikes were incurred by venues with an on-premises licence (53%) or hotel licence (32%).

Table 3: Number of strikes incurred by licence type since the commencement of the Three Strikes Disciplinary Scheme on 1 January 2012.

Licence type	Number of strikes incurred
Club	15
Hotel	61
Limited	1
On-premises	101
Packaged	10
Producer/wholesaler	1
Total	189

Of the 189 strikes incurred, 163 (86%) resulted from a penalty notice and 26 (14%) resulted from a court decision.

Of the three venues that incurred a third strike, one had its licence cancelled, one had its licence suspended for two weeks, and one had its licensee disqualified from holding a licence or managing any licensed premises in NSW for 10 years.

Review of the Three Strikes Disciplinary Scheme

Section 144K of the *Liquor Act 2007* requires that a review of the Three Strikes disciplinary scheme be undertaken to determine whether the policy objectives of the scheme remain valid and whether the terms of the scheme remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of four years from the commencement of the scheme on 1 January 2012 – i.e. as soon as possible after 1 January 2016. A report is to be tabled in each House of Parliament within 12 months after the end of the period of four years – i.e. before 1 January 2017.

The overarching objective of the review is to determine whether the policy objectives of the scheme remain valid, and whether the terms of the scheme remain appropriate for securing those objectives.

In considering these objectives, the review will examine:

- the nature of any positive and negative community impacts of the scheme;
- the impact of the scheme on compliance with provisions of the *Liquor Act 2007* that are relevant to the scheme, as well as broader compliance with the law;

- the impact of the scheme on venue practices and behaviour aimed at minimising the risk of incurring strikes; and
- financial and other impacts of the scheme on the owners and operators of licensed premises.

Key Issues for Stakeholder Comment

The review is seeking public submissions on the matters discussed above, as well as any other matter that is relevant to the operation of the scheme. Comments on the following aspects of the scheme are particularly sought.

1. The operation of the scheme. This may include:
 - a) the types of offences for which strikes may be incurred and the timeframes in which those offences are committed for the purposes of the three strikes scheme;
 - b) the types of licensed premises to which the legislation applies and the differential treatment of those venues under the scheme;
 - c) the entity to which incurred strikes apply;
 - d) the process for determining whether or not strikes are incurred; and
 - e) the length of time for which strikes remain in force.
2. The nature of any positive and negative impacts of the scheme. This may include:
 - a) financial and other impacts upon owners and operators of licensed premises;
 - b) positive and negative community impacts;
 - c) impacts upon venue practices and behaviour, including compliance with the Liquor Act and with other relevant requirements; and
 - d) resourcing and regulatory impacts on Government.

The escalating sanctions regime, which applies significant penalties where alcohol is sold to minors on licensed premises, is not within scope for this review.

How to Make a Public Submission

The Office of Liquor, Gaming and Racing (L&G NSW) is seeking public submissions on any matters relating to the operation of the Three Strikes Disciplinary Scheme until 12 January 2016.

Submissions can be emailed to threestrikes.review@L&G NSW.nsw.gov.au

All submissions will be published on the L&G NSW website after the closing date.

Appendix B: List of individuals or organisations that provided a public submission

Andrew Denmeade - Corrimal Hotel	McGirr Family Hotels
Andrew Denmeade	Merivale
Australia Hotels Association (AHA)	New England Hotel
Beach Hotel	New Hampton Hotel
Beaches Hotel	NSW/ACT Alcohol Policy Alliance (NAAPA)
Bittini Pty. Ltd.	Oriental Hotel
Blake Johnson	Red Cape Hotel Group
Border Inn Hotel	Redmond Company
Calligeros Hotel Group	Regal Hotel
City North Liquor Accord	Richard Coulston
ClubsNSW	Scubar Down Under Australia
Coast Hotel	Settlers Inn Port Macquarie
Coonamble RSL Club	Sportsman's Hotel
Dave Cox	Talai Estate Wines
Dave Parker	The Australian Heritage Hotel
David Auld	The Golden Sands Tavern
Geoff Moulding	The Oaks Hotel
Goran Aleksic	Toby Richardson
Harold Park Hotel	Tony Brown
Illawarra Catholic Club	Tudor Hotel Redfern
Kellys Irish Pub	Universal Hotels
Kings Cross Liquor Accord	White Cliffs Hotel
Liquor Stores Association (LSA)	