

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 of Justice (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 of Justice 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 of Justice. 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 2: 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 (OLGR) 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@olgr.nsw.gov.au

All submissions will be published on the OLGR website after the closing date.