



7th January 2016

Office of Liquor Gaming and Racing

By email: threestrikes.review@olgr.nsw.gov.au

Dear Sir/Madam,

Submission regarding the Three Strikes Disciplinary Scheme

The City North Liquor Accord (CNLA) is a voluntary representative body for venues situated within the City North LAC. The CNLA welcomes the opportunity to provide a submission on the Three Strikes Disciplinary Scheme including both the positive and negative impacts of the scheme on our member's venues.

The CNLA is a non profit, incorporated body led by a team of voluntary committee members who represent the members of the Accord within the City North LAC. The purpose of the Accord is to liaise with key industry stakeholders on strategy creation and proactive management tactics to reduce alcohol related issues. The CNLA has approx 1200 licensed venues within the accord and 380 registered members.

1. Introduction of Three Strikes Disciplinary Scheme

The Three Strikes Disciplinary Scheme commenced on 1 January 2012. It allows for "strikes" to be incurred by a liquor licence where a licensee or approved manager is convicted of a serious offence under the Liquor Act 2007.

These offences prescribed in the Act include:

- *permitting intoxication on licensed premises*
- *permitting indecent, violent or quarrelsome conduct on licensed premises*
- *selling or supplying alcohol to an intoxicated person or a minor*
- *allowing alcohol to be sold or supplied to a minor on licensed premises*
- *permitting the use or sale of substances which a licensee or manager suspects are illicit drugs*
- *not complying with a direction issued by the Secretary to a licensee or staff*
- *selling or supplying alcohol outside of authorised trading hours*
- *non-compliance with a closure order issued under the Liquor Act to prevent or reduce a significant risk to the public interest where there are serious breaches of the Act, and*
- *a breach of key liquor licence conditions applying to violent venues listed in schedule 4 of the Liquor Act, or conditions imposed on a venue that has incurred strikes.*

*The defendant for these offences is the licensee or the approved manager.**

Patron, staff and general public safety can be adversely affected with the misuse of alcohol where operators have not taken a responsible approach to its service. Regulation and authority maintenance within our industry is vitally important to ensure that operators that do not conform are held accountable for their actions with suitable penalties applying to the offence.

Breaches against a liquor licensee for offences prescribed in the act would be in this instance considered serious and providing the judging of these offences is consistent across the industry, penalties need apply.

2. Introduction of the CBD Plan of Management

On 30 January 2014, the NSW Parliament passed the *Liquor Amendment Act 2014* to introduce changes to the liquor laws, which included the introduction of a Plan of Management for the Sydney CBD Entertainment precinct to roll out on the 24th of February in 2014. This plan of management included a raft of restrictions on the venues within the



zoned precinct, with all conditions enforceable under the Three Strikes Disciplinary Scheme, these include but are not limited to:

- Drink restrictions after midnight
 - Particular drinks and numbers of drinks per person
- Lock outs after 1:30am
- Cease service of alcohol after 3am
- Round the clock incident registers

Penalty for not complying with the special licensed conditions:

“A \$1,100 penalty notice can be issued for a breach of a liquor licence condition. The maximum court imposed penalty is \$11,000, or imprisonment for 12 months, or both.

*Any breaches relating to the Sydney CBD Entertainment Precinct special conditions are also an offence that may incur a strike under the Three Strikes disciplinary scheme.” **

The introduction of the Three Strikes Scheme and the CBD Plan of Management was to address the misuse of alcohol, reduce alcohol fuelled violence and enhance public safety across the CBD.

As an isolated offence, an around the clock incident register **does not** have any tangible reduction in the misuse of alcohol or reduce alcohol fuelled violence, yet venues that have not met this condition have been issued with an automatic strike for what could be considered a minor administration error over the irresponsible service of alcohol. The severity of the punishment in this instance does not appear to be in the spirit of the Scheme, nor consistent with other serious offences under the Three Strikes Disciplinary Scheme.

1. Introduction of the Risked Based Licensing Scheme

In April 2015, every holder of a liquor license is required to pay an annual fee based on the license type, trading hours, capacity, location and compliance history. The scheme set out to provide a financial incentive for premises to adopt and maintain safe, low-risk practices in return for a lower annual licence fee.

A working example of the financial impacts of the scheme:

A particular Hotel in the CBD Entertainment Precinct, who is trading after 1:30am with a licensed capacity for 400 people and who has been trading for many years without any licensing breaches would attract:

- License Type \$500
- Trading hours \$5 000 – post 1:30am
- TOTAL **\$5 500**

In late 2015, as a result of some personnel changes, 2 weeks passed by without an entry into the Incident Register, yet detailed daily entries were recorded in a security log book by the new contractor. During the inspection it was uncovered by compliance officers that entries were not present in the OLGR approved Incident Register, however it could be easily proven by the licensee that the information was on hand and could have been transferred across into the Incident Register. In this instance an offence was recorded and subsequently the licensee received a strike for failure to maintain around the clock incident reporting.

Now under the Risked Based Licensing Scheme the annual fee includes:

- License Type \$500
- Trading hours \$5 000 post 1:30am
- Compliance History \$3 000 1 offence (incident register)
- Capacity \$8 000 300+ patrons



- Location \$2 000 Sydney CBD Entertainment Precinct
- TOTAL **\$18 500**

\$13 000 in additional licensing fees for a minor administrative error (in the scheme of possible offences) that sits against the venue for 3 years. A Total of \$39 000 to be paid until the strike is removed.

When the Three Strikes Disciplinary Scheme is combined with the CBD Plan of Management and Risked Based Licensing Scheme, this working example hardly seems in the spirit of the scheme that was initially set out to ensure the policy targets “rogue” operators and not present an adverse impact on responsible licensee’s.

Where the Three Strikes Disciplinary Scheme can work positively

- In isolation as an independent scheme to ensure poor and consistently negligent operators are targeted for failure to run a compliant venue
- Raised awareness of the importance of running a compliant venue
- Financial motivation for operators to ensure they maintain a clean compliance record

Where the Three Strikes Disciplinary Scheme has negative impacts

- The introduction of the CBD Plan of Management has led to disparity between the offences leading to strikes – selling to a minor and not filling in an incident register carries the same penalty, yet is hardly the same offence. The before mentioned example of \$39 000 in additional licensing fees for an incident register offence is hardly comparable to some venues with a track record of negligent service of alcohol, or serving minors.
- Timeframe in which the strike sits on a license. 3 years is too long. 12 months and one round of increased Risked Based Licensing expense is ample, providing improvements have been made to the operation of the venue and the venue is not a declared premises.
- The license is attached to the venue, not the licensee. A strike against the license places substantial financial impact on the owner of the building and the owner of the license, financial institutions list strikes as a possible default clause on loan agreements and this also has an adverse effect on the value of the property at the time of sale.

How to move forward

- Review the severity of penalty surrounding minor offences, administration mistakes are not comparable to negligent service of alcohol
- Ensure that compliance officers work on a consultative basis as well as focusing on enforcement.
- Review timeframe of which a strike sits on a license, especially those in the Kings Cross and CBD Entertainment Precincts where additional fees are incurred due to location as described in the Risk Based Licensing Scheme.
- A change in licensee or ownership of the venue could bring with it a 6 month good behaviour bond and the strikes should be reviewed.



In summary

The CNLA supports the need for regulation and penalties to be in place for Licensees and organisations that fail to operate their venues in a compliant manner, both initially and after consultation with the relevant authorities after complaints have been raised.

In isolation and under the initial conditions listed under the Three Strikes Disciplinary Scheme, the penalties would therefore be fair and just considering the serious nature of the offence that is committed:

- *permitting intoxication on licensed premises*
- *permitting indecent, violent or quarrelsome conduct on licensed premises*
- *selling or supplying alcohol to an intoxicated person or a minor*
- *allowing alcohol to be sold or supplied to a minor on licensed premises*
- *permitting the use or sale of substances which a licensee or manager suspects are illicit drugs*
- *not complying with a direction issued by the Secretary to a licensee or staff*
- *selling or supplying alcohol outside of authorised trading hours*
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- *a breach of key liquor licence conditions applying to violent venues listed in schedule 4 of the Liquor Act, or conditions imposed on a venue that has incurred strikes. **

“A \$1,100 penalty notice can be issued for a breach of a liquor licence condition. The maximum court imposed penalty is \$11,000, or imprisonment for 12 months, or both.”*

The CNLA understands that the initial intention of the Three Strikes Disciplinary Scheme as presented by The Minister for Tourism, Major Events, Hospitality and Racing, Mr George Souris was to:

- Ensure that the policy targeted rogue operators and was not intended to present an adverse impact on responsible operators.
- That the scheme was to operate fairly and effectively to deliver maximum benefit to communities where licensed venues are causing unacceptable impacts
- That the scheme addressed industry concerns whilst maintaining a robust system that targets repeat offenders

If the initial intention of the scheme was policed and enforced for serious offences under the Liquor Act and in isolation from the CBD Plan of Management and Risk Based Licensing Scheme, the CNLA does not object to the nature Scheme as presented by Minister Souris.

However, the additional offences listed under the CBD Plan of Management that attract a “strike” need also be considered “serious” and in line with the original intention of the Three Strikes Disciplinary Scheme to be supported by the CNLA and no doubt broader industry and to not of a minor nature.

The CNLA supports the need for Harm Minimisation methods to be in place, however what could be considered minor administrative errors by reputable operators, should not be considered as “serious” and attract the same penalties as a “rogue” operator who has been convicted of selling alcohol to an intoxicated minor. We feel that the level of regulation that has been placed upon us as an industry has been taken too far and is not targeting the right issues we face and therefore needs to be reviewed.

Yours faithfully,

Simon Barbato
President
City North Liquor Accord