

12 January 2016

To: Office of Liquor, Gaming & Racing NSW
By email: threestrikes.review@olgr.nsw.gov.au

Re: Statutory review of the 'Three Strikes' disciplinary scheme

Dear OLGR,

Pursuant to your department's call for feedback on the above matter, I have provided this written submission for your perusal.

I am a representative of a licenced venue and have worked in the Kings Cross area for over ten years. The contents in this document are based on real experiences and facts:

1. At a federal level, the Government has acknowledged that small businesses are the backbone of the country's economy;
2. At a state level, the Government and its agencies aren't known to assist licenced businesses with compliance, or to encourage them to grow their (often) night time reliant business in terms of productivity and employment. Their objectives seem to be to pursue, breach and penalise. Often, there is no discretion shown for trivial or general matters.

There have been many instances where Government agencies have in their time of need, informally encouraged a 'Let's work together' approach with industry stakeholders. However, when this need is not required, it then becomes a 'Them versus Us' ideology;

3. The 'Three Strikes' disciplinary scheme:
 - is targeted towards those businesses which promote and/or sell liquor in NSW. This scheme is in addition to the monetary (and other) penalties businesses may encounter as per the NSW Liquor Act;
 - does not alter how a patron will conduct themselves in or around a licenced premises, since the scheme does not target them;
 - can penalise a business for the actions (whether accidental or not) of a licenced venue staff, contractor or patron. That is, it does not always target the perpetrator;
 - can have detrimental effects on a licenced premise's longevity, staff and contractor employment, local economy and other businesses which rely on licenced premises being operational (especially at nights);
 - can cause a licenced venue to incur a strike for a misdemeanour such as litter accumulating in front of the premises (ie on public property);
 - is often administered inappropriately by those empowered with its use. There have been instances where Government agencies cannot distinguish (even amongst themselves) between what incident constitutes a 'strike', and what doesn't, and any decisions can often rest with the thought pattern of these agencies and/or their representatives;
 - In one particular case, plain clothes police who had entered a licenced venue, claimed the venue was serving drinks in glass vessels after midnight, yet the venue

stopped this practice two years before it had become mandatory. Through an appeal with senior licencing Police, the venue had to pay a fine to settle the matter;

- does have some merits. In a genuine situation where NSW Police, OLGR, Council of City of Sydney etc have correctly identified severe misconduct and/or non-compliance of a business, appropriate penalties may be administered;

Conclusion

4. The 'Three Strikes' disciplinary scheme is a system designed to fail. There is overlapping legislation and red tape, and different agencies (with different agendas and interpretations) involved in its administration.

When you over-regulate, more non-compliance/breaches are probable. The punishment does not always fit the breach or its severity.

What is needed is an effective, yet not overly-regulated, system of ensuring business compliance and growth. In most cases, there are sufficient penalties contained within the Liquor Act to act as preventive measures;

5. This review should have occurred sooner than the statutory four year period, and as expected, too much business destruction has occurred since the scheme's introduction;
6. People and businesses which legislation specifically targets should play an important role in the consultation phase prior to implementation of said legislation. Currently, it is common practice to seek consultation only when an issue or problem arises and the regulator doesn't know how to address it effectively;
7. Any person who has never been self-employed, or never worked in private enterprise, will find this and other similar submissions, difficult to understand and/or accept. For the purpose of effective portfolio management, policy makers need to gain a practical hands-on approach, and not rely on media outlets who over-sensationalise many issues;
8. The Government should make decisions based on what is right, rather than what is popular.

Regards,

G.A