



Kings Cross Licensing Accord Association Incorporated

SUBMISSION KINGS CROSS LICENSING ACCORD

REVIEW OF THE THREE STRIKES DISCIPLINARY SCHEME

Submission Lodged by:

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Kings Cross Licensing Accord Association

ABOUT KINGS CROSS LICENSING ACCORD ASSOCIATION

The Kings Cross Licensing Accord Association was the first “Liquor Accord” to be formed in NSW. The Accord was an initiative of the Kings Cross Place Management Project which was established in March 1997. The project to form the first Accord was a joint venture between the NSW Premiers Department and the former South Sydney Council, who worked closely with a selection of licensees within the Kings Cross Local Area Command. The aim was to produce a coordinated set of actions to make the Kings Cross Licensing Accord area safe and to enhance the amenity of the Entertainment Zone.

The Kings Cross Licensing Accord is a non-profit industry body representing licensed premises within the Kings Cross Local Area Command boundary. Our purpose is to liaise with key industry stakeholders to pro-actively manage and develop strategies to reduce alcohol related crime and aggressive behaviour in the Kings Cross precinct.

Boundary Area for the Accord

The Kings Cross Licensing Accord boundary incorporates the demographic encompassed by the Kings Cross Police Local Area Command. The area includes Kings Cross, Woolloomooloo, Potts Point, East Sydney, Darlinghurst, Elizabeth Bay and Rushcutters Bay. The Accord has approximately 270 licensed premises within the demographic which is one of the highest concentrations of licensed premises in NSW

Our Submission

The Kings Cross Licensing Accord Association welcomes the opportunity to provide items for the statutory review of the Three Strikes Scheme that have been provided by premises in the Accord boundary area however for the review particularly premises located in the Kings Cross Precinct.

Review of the Three Strikes Disciplinary Scheme

Brief Background and Key Issues Paper Provided to Industry for the Review

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 range of the most serious offences under the Liquor Act 2007.

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.

Introduction of the Liquor Amendment Three Strikes Bill 2011 – Hansard Transcript

The introduction of the ‘Three Strikes and You’re Out Scheme’ Bill 2011 was introduced into Parliament on motion by the Minister for Tourism, Major Events, Hospitality and Racing and Minister for the Arts, Mr. George Souris as a key election commitment of the NSW Liberal and Nationals Government. The Liquor Amendment Three Strikes Act 2011 commenced on 1 January 2012.

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On introducing the Bill the Minister advised Parliament the Government had carefully considered submissions to ensure this policy targets rogue operators and does not present an adverse impact on responsible licensees. Three Strikes can result in severe penalties, so it is paramount that the scheme operates fairly and effectively to deliver maximum benefits to communities where licensed venues are causing unacceptable impacts. The scheme addresses industry concerns while maintaining a robust system which targets repeat offenders.

Only the most serious offences under the Liquor Act are captured under the revised scheme. The list of offences in the scheme differs from that included in the original bill in that it limits breach of condition offences under schedule 4 of the Liquor Act that are used as triggers for strikes. Only significant conditions are captured, including drink restrictions, lockouts, prohibition on the use of glass containers, the cessation of liquor sales prior to closure and security measures – rather than less significant conditions involving the maintenance of incident registers and distribution of free water.

Three Strikes Disciplinary Scheme – Prescribed Offences – Section 144B of the Liquor Act 2007

Prescribed Offences which can result in 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))
- 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)

Prescribed offences that can result in a strike for the Kings Cross Precinct also incorporate the Special Licence Conditions per Part 6 Division 3, summary listed below.

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Summary of Conditions

(Premises in the Kings Cross Accord Boundary however not in the Kings Cross Precinct are subject to and incorporate Part 6, Division 4 of the Liquor Act – CBD Special Licence Conditions)

Liquor Amendment (Kings Cross Plan of Management) Bill 2012

Summary of Conditions of Licence for Kings Cross Implemented on 7 December 2012

- ✓ Service of alcohol to cease one hour before closing time on weekends - **(superseded by implementation of Lock-Out and Cease service of alcohol laws in February 2014)**
- ✓ 'Time-Outs' for 24-hour premises on weekends - **(superseded by implementation of Lock-Out and Cease service of alcohol laws in February 2014)**
- ✓ Banning of glass during late trading period on any day
- ✓ Banning of certain drinks and other types of liquor sales prohibited during the weekend late trading period **(increased to daily condition in July 2014)**
- ✓ Requirement for RSA Marshals during weekend late trading period
- ✓ CCTV Systems to be maintained on subject premises
- ✓ 'Round the clock' incident registers to be maintained
- ✓ Additional requirements relating to violent incidents including:
 - ✓ Crime scene preservation
 - ✓ Exclusion of persons from the premises (i.e. members of Outlawed Motor Cycle and Outlawed Gangs) as determined by the NSW Government
 - ✓ Removal of litter from outside of the premises
 - ✓ Promotion of late night transport options
 - ✓ Patron and customer responsibility advice (via poster and postcard)
 - ✓ Establishment and categorisation of deemed 'high risk venues'

Summary of Conditions of Licence for Kings Cross Implemented on 6 December 2013

- ✓ ID Scanning for 'high risk venues' **(delayed implementation due to probity issues, implemented in June 2014)**
- ✓ Temporary Banning Orders – linked to ID Scanners
- ✓ Long Term Banning Orders – linked to ID Scanners
- ✓ Privacy Training for high risk venue licensees, staff and security guards operating ID Scanners
- ✓ All licensees, staff, crowd controllers and security guards must hold a current recognized RSA Competency Card – effective date 1 March 2013
- ✓ Revocation of RSA Competency Cards for breaches of Privacy or RSA obligations under the new conditions implemented
- ✓ Daily / hourly recording of quarterly alcohol sales data across various reporting categories
- ✓ Hours of Operation Signage / capacity of premises / Licensee and licence information
- ✓ Approved Managers for 'high risk venues'
- ✓ All of the Kings Cross special licence conditions become prescribed offences – 'Strikes' under the Three Strikes Disciplinary Scheme

Summary of Conditions of Licence for Kings Cross Implemented on 24 February 2014

- ✓ Lock-Outs from 1.30am and 3am cease service of alcohol
- ✓ Ban on take-away alcohol sales from 10pm across NSW

Summary of Conditions of Licence for Kings Cross Implemented on 18 July 2014

- ✓ Drink restrictions from midnight increased to 7 days per week
- ✓ Drink limits from midnight increased to 7 days per week for Kings Cross e.g. 4 maximum from midnight until 2am and then 2 maximum from 2am to 3am
- ✓ Bans on Promotional activity discounting drinks designed to be consumed rapidly (drinks cards, flyers, vouchers, social media, website, print media or spruiking)

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Three Strikes Register – OLGR Website Report Date 12 November 2015

- Total First Strikes 140
- Total Second Strikes 13
- Total Third Strikes 3
- Total 156

We note that the background and key issues document provided by OLGR indicates that as at 13 November 2015 there were a total aggregate of 189 strikes incurred, for our submission we have reviewed Kings Cross licensed premises on the Three Strikes Register dated 12 November 2015, which reports 156 strikes incurred.

Kings Cross Precinct – Strikes Incurred

- Total First Strikes 12 (7 incurred under Kings Cross Licence Special Conditions)
- Total Second Strikes 1

Of the 12 First Strikes incurred, 7 of them were issued under the Special Licence Conditions for the Kings Cross Precinct and in brief were for breaches in relation to RSA Marshals, High Risk Venue Manager, CCTV, Glass after midnight and ID Scanners.

First or Second Strike – Conditions and Restrictions that Can be Imposed

The Kings Cross Precinct under the Kings Cross Plan of Management commenced in December 2012 via a staged introduction of measures in the precinct. Additional measures were introduced for all venue types with some of the measures only applying if a venue was classified in the high risk category, meaning a venue that traded beyond midnight with a capacity above 120 patrons. High risk venues were determined under a 'one size fits all policy' regardless of their previous trading performance or history of compliance.

Types of Offences for which Strikes may be Incurred

The Kings Cross Precinct has additional measures above and beyond the increased measures that can be imposed via a first or second strike. With the additional measures in place for Kings Cross, is it fair, balanced or reasonable that all measures are subject to incurring a strike?

The simplest of errors made by a venue in Kings Cross and Potts Point are subject to 'strike' provisions as per the summary of conditions via the Special Licence Conditions in the precinct; this leaves no margin of error for the venues.

Financial Impacts upon owners and Operators of licensed premises

The KXLA is aware of a licensed premise in Kings Cross who has a condition of lease that if a second or third strike is incurred and that it is likely that additional conditions are to be imposed upon the licence, then the Lessor may terminate the lease on 14 days written notice to the Lessee. The financial impacts and investment of the Lessee if strikes were incurred in this instance would be devastating and provides obvious incentive to maintain compliance with the Liquor Act. We understand the venue will be providing a submission.

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The ramifications in incurring a strike are a costly exercise that also may affect venues bank facilities and loan arrangements via increased reporting, scrutiny and perceived risk on behalf of the lender and potentially trigger amendments to bank covenants.

Risk Based Licence Fee's – Increased Costs

If a 'strike' is incurred by a venue it now also triggers increased fees payable under the Risk Based Licensing Scheme. As the strikes are incurred for a **three** year period, this is a large financial burden for premises. The strike triggers increased fees for venues via:

- ✓ Compliance history loading
- ✓ Patron Capacity risk loading
- ✓ Location risk loading for Kings Cross and CBD

- ✓ For a small bar licence with a capacity of 60 patrons and closing on midnight the risk based fee would increase from a base fee of \$200 per annum to \$6,200 per annum for 1 strike-able offence and an additional \$18,000 in licence fees for the strike due to the three year period.

- ✓ For a restaurant / bar on premise licence with a capacity of between 60 and 120 patrons and closing on midnight the risk based licence fee would increase from a base fee of \$400 per annum to \$8,400 per annum for 1 strike-able offence and an additional \$24,000 in licence fees for incurring one strike.

- ✓ For a Hotel licence (full) with a capacity of between 121 and 300 patrons and closing after 1.30am the risk based licence fee would increase from a base fee of \$5,500 per annum to \$15,500 per annum for one strike-able offence and an additional \$30,000 in licence fees over a three year period for incurring one strike.

The additional costs for venues over a three year period after incurring one strike are extremely onerous; we would suggest that the scheme operates on a one year period providing the venue can demonstrate increased harm minimisation measures and educational programs under its Plan of Management. We would suggest this is more fair and balanced approach given the additional measures in place in the Kings Cross and CBD Precincts, where strikes have been incurred for relatively minor errors, such as failing to maintain a round the clock venue incident register, when the incident is already recorded in the security operatives incident register. The financial impost of making such an error in these precincts far outweighs the nature of the incurred strike.

The operational costs for venues in Kings Cross has already increased exponentially with ID Scanners, Approved Managers, RSA Marshals, Quarterly Alcohol Sales Reporting, Drink Restrictions, Lock Outs, Cease Service Provisions and CCTV (full venue coverage), the impost of a strike also adding further expense for a three year period when all of the additional Special Licence requirements are in place is an unfair onerous burden for small business operators.

Summary

The KXLA believes that the Three Strikes Scheme should operate under a level playing field for all liquor licence types in NSW and be incurred in line with the original intention and key principles of the scheme for the most serious offences under the Liquor Act 2007.

Our view is that the scheme in its current capacity does not serve the policy objectives of its original intention and in particular in the Kings Cross and CBD Precincts which have additional operational requirements under Special Licence Conditions subject to the Three Strikes Scheme.

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The scheme was supposed to be designed to target repeat rogue and recalcitrant licensees, however in our submission all licensees in Kings Cross are targeted if they breach the many conditions specific to the Kings Cross Precinct, as even one strike has the ability to see a financial institution claim a licensee has defaulted on their loan agreement, plus the burden placed onto a venue by the annual liquor licence regime.

The Accord therefore considers that the scheme in its current capacity is not a fair or balanced approach or appropriate for securing its original objectives.

The Accord Executive appreciates the opportunity for this submission to the review and welcomes any further questions in relation to the submission.

Yours sincerely

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Kings Cross Licensing Accord Association
