

9 January 2016

New Hampton Hotel



9-15 Bayswater Road,
Kings Cross NSW 2011

RE: 3 Strikes Disciplinary Scheme

Email: threestrikes.review@olgr.nsw.gov.au

Dear Sir,

In August 2013 after four months of tough negotiations we signed a lease with the Toga Group. Under the lease the Toga Group permitted our company 'New Hampton Pty Ltd', the lessee use of their Hotel Liquor Licence which included 18 Poker machine entitlements.

One of the main sticking points for the negotiation of the lease was the "3 Strike Disciplinary Scheme". The landlord in an effort to protect their hotel liquor licence imposed a condition whereby the landlord can terminate our lease under certain conditions if we incur just two "Strikes". The annexure below shows this clause in our lease.

I believe the '3 Strike legislation' has helped accelerate the departure of business owners like 'Hugo's Lounge' from the industry and is stifling future investment. In our situation if we incur just two 'Strikes' we will lose a \$2,800,000 investment. I think it's completely unfair that almost all offences lead to a Strike against a venue. For example, we can get an automatic first 'Strike' for litter outside our premises. Under the existing legislation it has become too risky to own and operate a business.

Furthermore a 'Strike' can significantly reduce the value of a business.

For example; if your business is valued at say \$3,000,000 with an unblemished record and a new barman accidentally serves an alcoholic shot after midnight. You would automatically receive a 'Strike.' What is your business now valued at with only 2 Strikes remaining? Maybe \$2,000,000

What if you get a second Strike for accidentally serving a beer in a GLASS after midnight, what is your business now value at? Perhaps \$1,000,000 assuming you could find a buyer crazy enough to buy a business with only one 'Strike' remaining.

Moreover I suspect you may have great difficulty getting a loan from a bank once you have two Strikes. What bank would take on that kind of risk?

As a business owner I live in terror every time the police walk into our venue as there are so many ways to incur a 'Strike' under the scheme. A first Strike is automatically incurred upon conviction for a single offence. Any breach relating to the 'Kings Cross Special Conditions' is an offence that can incur a Strike. We could for example incur a 'Strike' if we accidentally ...

- 1) Serve a drink in a glass after midnight
- 2) After 2am serve 3 alcoholic drinks to one person
- 3) Serve a drink 20 minutes prior to closing
- 4) A malfunction with our CCTV camera system ...
 - a) CCTV time and date is incorrect
 - b) CCTV camera is not focussed on the entry or exit point
- 5) Round the clock Incident Register

- 6) Removal of Litter from outside the premise
- 7) Promotion of Late night transport options
- 8) Hours of Operation Signage
- 9) Alcohol Sales data not sent by the due date
- 10) ID scanning requirements
- 11) Approved manager on premises every night after 9pm
- 12) RSA Marshalls

Surely some of these offences are not serious enough to warrant a Strike?

A significant fine would be more reasonable way to address these offences. If every offence is a Strike offence then we have no option but to fight every potential breach in court as strenuously as possible.

Therefore I believe you should overturn the '3 Strike legislation' or at the very least amend it so that you can only get a 'Strike' for 'serious offences' because a 'Strike' has such a dramatic impact on the value of a business and your ability to sell.

I would suggest an amendment to the '3 Strike legislation' whereby if the business was sold to a completely new entity that the business would no longer have any Strikes recorded. The new owner would have to prove that they were indeed a new and independent entity. This amendment would still allow the government to rid the industry of bad operators whilst protecting investment in the industry.

I would also suggest an amended to the current legislation to protect the landlord, it would than become unnecessary for these types of Strike clauses in new leases.

It was my dream to own a pub but it has become a nightmare, I can't even enjoy a drink with my staff after we close for fear of incurring a Strike.

Yours Sincerely
Danny McPherson



New Hampton
9-15 Bayswater Road,
Kings Cross NSW 2010



ANNEXURE

Agreement for Lease, The Hampton

Lessor: Toga Development No. 50 Pty Limited

Lessee: New Hampton Pty Ltd

Part 25.5 Obligations Regarding Use of the Liquor Licence

- (a) The Lessee at its own Cost must ensure that the Liquor Licence is not surrendered, in peril, prejudiced, suspended, forfeited or cancelled and must take all steps necessary and expend all moneys necessary to maintain the Liquor Licence.

(aa) Strikes

If:

- (i) a second, third or subsequent "Strike" (as defined under Part 9A of the Liquor Act 2007) is current in respect of the Premises:

AND

- (ii) there is a likelihood of remedial action being taken in consequence of the Strike of which:
 - (a) The sale or supply of liquor is prohibited at any time before midnight; or
 - (b) Patrons are prohibited from entering the Premises at any time before midnight; or
 - (c) The implementation of security measures is required which are substantially greater than security measures previously required by any Authority or previously required pursuant to any Law and/or greater than security measures in fact employed at the Premises by the Lessee; or
 - (d) All forms of entertainment at the Premises are prohibited; or
 - (e) The Licence may be cancelled; or
 - (f) The operation of the Licence may be suspended for a period of more than 72 hours.

The Lessor may terminate this Lease on 14 days written notice to the Lessee. The Lessee must notify the Lessor within 7 days of the incurring of any "strike" in respect of the Licence.