

15 December 2015

NSW Office of Liquor, Gaming Racing

Dear Sir/Madam,

Submission in relation to 3 Strikes Disciplinary Scheme

This is a joint submission from Redcape Hotel Group Pty Ltd that operates 23 Licensed Hotels in NSW, and RHG Properties Pty Ltd which owns 21 Licensed Hotels in NSW. There are a number of matters we wanted to raise for the review of the 3 Strikes Scheme ("Scheme").

1. Repeat Offenders

The review document references the design of the Scheme as being steered toward the targeting of repeat offenders. In practical operation however, the Scheme has resulted in the targeting of repeat offenders while at the same time also capturing low risk operators.

Low risk operators are targeted due to the application of a strike being an automatic one, even in the instance of a first offence. In essence this is unfair and an ineffective outcome as a strike should not be automatically incurred upon first conviction of a prescribed offence. Instead, a mechanism should be created to assess the circumstances and a determination made by an appropriate group or authority as to the nature of the offence to deem whether it is strike worthy.

2. Ownership of the strike

An issued Strike should be applied to the licenced operator of that premise, either the Licensee or Approved Manager. This is in contrast to the current arrangement that has the property owner wearing the Strike and can result in severe repercussions for banking covenants and loan facilities. Any penalties should be removed from 'bricks and mortar' including the action of suspending or cancelling the hotel license at that location.

3. Minors

Some infringements regarding Minors that constitute a strike are particularly harsh, especially given the other Regulatory Harm Minimisation controls introduced in December 2014 which includes closing the venue for 28 days. Minor-related offences can have a devastating effect on a business when both Strike penalties and action taken under the December 2014 controls are pursued.

In considering this and from the information supplied in the review document, there have been 15 strikes issued for Minors offences which represent 8% of the strikes issued. Minor offences should be included in the scheme but consideration should be taken into account for the circumstances involved in each offence to determine whether the strike severity is required.

If it is deemed that Minor-related offences stay connected to this Scheme, we feel that any penalty relating to Minors should be shared by both the operator and the minor with the penalties for Minors dramatically increased in the Liquor Act to reflect the actions that can be taken against operators.

4. Operating outside of trading hours

More flexibility as to the amount of time permissible after the official ceasing of trading is required. A tolerance of less than half an hour is not a practical timeframe and a Strike penalty is disproportionate to the offence.

5. Penalties for associated parties

The Scheme allows for penalties such as the cancellation or refusal of applications by close associates or business operators. In this regard, it is unfair to penalise a corporate entity or business for a matter where one or two staff actions - which could be erroneous or misguided - have led to barring them from the industry.

Strikes should only be issued for the more serious offences or offences that relate to violence or anti-social behaviour. We feel that the offences under 75(3), and 102A (2) of the Liquor Act (Directions to licensee and staff of licensed premises) does not meet this criteria and should not be included as an offence under this Scheme.

Further, we believe that the licensees and managers liable for employees which covers Sections 73(2), 75(3), 117(1) & (2), and 149 should be removed from the scheme.

6. Second or third strikes

The factors taken into account for issuing a second or third strike under the current system by the Secretary of the Department of Justice and Investment, Independent Liquor & Gaming Authority, may not be exhaustive or correct and should be clearly documented on what is acceptable and measured through the process.

An example of this could be that the history or antecedence would only be considered for the particular operator in question and not the whole history of the venue. Perhaps the antecedence should only be considered since this scheme was introduced in 2012. The current material on the Scheme available is not accurate between website and factsheet and doesn't define the actual step process involved.

7. Positive re-enforcement

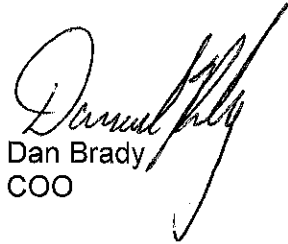
The Scheme needs to allow for a review of conditions placed on venues if a strike is issued. If a venue has demonstrated good behaviour and practices over a sustained period than the ability for a venue to have those conditions reduced or changed should be made available.

8. New owner/operator implications

With regards to the length of time that strikes remain, we feel that three years is fair. As it stands however, there is no current mechanism or system for the resetting of strikes when a business is sold which we believe unfairly penalises the incoming operator or perhaps even prevents the sale of a business.

In summary, we conclude that the Scheme captures the different licensed premises types and applies penalties fairly and accordingly. However, after in-depth consideration, and outlined above, we believe a number of amendments are required to prevent the legislation becoming ineffectual and punishing innocent parties.

Yours faithfully



Dan Brady
COO