



New South Wales

Liquor Amendment (3 Strikes) Act 2011 No 58

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Liquor Amendment (3 Strikes) Act 2011 No 58

Act No 58, 2011

An Act to amend the *Liquor Act 2007* to introduce a 3 strikes disciplinary system for licences in respect of premises on which multiple breaches of that Act have occurred; and for other purposes. [Assented to 16 November 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor Amendment (3 Strikes) Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Liquor Act 2007 No 90

[1] Section 102A

Insert after section 102:

102A Director-General may restrict or prohibit activities that encourage misuse or abuse of liquor

- (1) The Director-General may, by notice in writing given to a licensee, restrict or prohibit the licensee carrying on, or permitting on the licensed premises, any activity specified or described in the notice that, in the opinion of the Director-General, is likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).
- (2) A licensee who, without reasonable excuse, fails to comply with a notice under this section is guilty of an offence.
Maximum penalty: 50 penalty units.

[2] Part 9A

Insert after Part 9:

Part 9A Disciplinary action—3 strikes

Division 1 Preliminary

144A Part does not limit Part 9

This Part does not limit the operation of Part 9.

144B Definitions

In this Part:

business owner, in relation to a licence, means an owner of the business carried on under the licence.

prescribed offence, in relation to a licence, means an offence against any of the following provisions of this Act (or a provision of this Act or the regulations that is prescribed by the regulations) that was committed on or in relation to the premises to which the licence relates:

- (a) section 9 (sale or supply of liquor contrary to licence), but only where the offence relates to the sale or supply of liquor on or in relation to the premises outside of the trading hours for those premises,

- (b) section 11 (2) (breach of licence condition) but only in respect of conditions imposed under section 144E or clauses 2A–5 or 7 of Schedule 4,
- (c) section 73 (1) (a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct),
- (d) section 73 (2) (selling or supplying liquor to an intoxicated person),
- (e) section 74 (1) (b) or (2) (permitting the sale, possession or use of a prohibited plant or drug),
- (f) section 75 (3) (failure to comply with a direction given by the Director-General),
- (g) section 82 (6) (failure to comply with a short-term closure order),
- (h) section 84 (7) (failure to comply with a long-term closure order),
- (i) section 102A (2) (failure to comply with a notice issued by the Director-General),
- (j) section 117 (1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply),
- (k) section 149 (licensees and managers liable for act of employees etc) in respect of a contravention of section 73 (2), 75 (3) or 117 (1) or (2).

relevant person, in relation to a licence, means the licensee or manager of the premises to which the licence relates.

remedial action means any action that the Director-General or the Authority is authorised or required to take under section 144E or 144F.

reviewable decision means a decision under Division 2.

144C Committing a prescribed offence

- (1) For the purposes of this Part, a person commits a prescribed offence if:
 - (a) a court convicts the person for the offence (whether or not it imposes any penalty), or
 - (b) an amount is paid under a penalty notice in respect of the offence.
- (2) However, an offence is taken not to have been committed if the conviction for the offence is overturned on appeal and, in such a case, any strike based on the conviction is revoked and any

remedial action taken as the result of the strike ceases to have effect.

- (3) Prescribed offences that are committed in relation to a particular licence within a single 24 hour period are taken, for the purposes of this Part, to be a single prescribed offence.

Division 2 Strikes

144D Incurring strikes

- (1) A first strike is incurred in respect of a licence if no other strike is in force in respect of the licence and a relevant person in relation to the licence commits a prescribed offence.
- (2) A second strike is incurred in respect of a licence if:
- (a) a relevant person in relation to the licence commits a prescribed offence, and
 - (b) one strike was in force in respect of the licence when the offence was committed, and
 - (c) the Director-General decides that a second strike should be incurred because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.
- (3) A third strike is incurred in respect of a licence if:
- (a) a relevant person in relation to the licence commits a prescribed offence, and
 - (b) 2 strikes were in force in respect of the licence when the offence was committed, and
 - (c) the Authority decides that a third strike should be incurred taking the following into account:
 - (i) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence,
 - (ii) any other matter that may be prescribed by the regulations.
- (4) A strike comes into force on the day on which the offence that caused the strike was committed.
- (5) A strike expires on the day occurring 3 years after the day on which it comes into force.

- (6) The expiration of a strike does not affect the continued operation of remedial action taken under this Division in respect of the strike.

144E 1 or 2 strikes—remedial action

- (1) The Director-General may, if 1 or 2 strikes are in force in respect of a licence, impose conditions on the licence relating to any one or more of the following:
- (a) the use of plans of management and incident registers in respect of the licensed premises,
 - (b) the prohibition of the use of glass or other breakable containers on the licensed premises,
 - (c) the engagement of persons to promote the responsible service of alcohol at the licensed premises,
 - (d) the notification of persons, by the licensee, that the strike has been incurred,
 - (e) in the case of a club licence—requiring members of the governing body of the club to undergo training,
 - (f) any other matter that may be prescribed by the regulations.
- (2) The Director-General may, if 2 strikes are in force in respect of a licence, impose conditions on the licence relating to any one or more of the following:
- (a) the persons who may be appointed as a manager of the licensed premises,
 - (b) the implementation of security measures in respect of the licensed premises,
 - (c) the prohibition of the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both),
 - (d) the prohibition of patrons entering the licensed premises at certain times,
 - (e) the prohibition of the sale or supply of certain types of liquor on the licensed premises (including liquor with a high alcohol content or liquor that is intended to be consumed rapidly such as a shot),
 - (f) the prohibition of certain types of entertainment on the licensed premises,
 - (g) any other matter that may be prescribed by the regulations.
- (3) The Director-General may vary or revoke a condition imposed under this section at any time.

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- (4) The Director-General is not to impose or vary a condition under this section in respect of a licence unless the Director-General is satisfied that the condition (or condition as varied) is a reasonable response to the behaviour that led to any of the strikes being incurred in respect of the licence.
 - (5) A condition imposed under this section remains in force until revoked by the Director-General.
 - (6) Nothing in this section limits the power of the Director-General to impose, vary or revoke conditions under any other provision of this Act.

144F 3 strikes—remedial action

- (1) When 3 strikes are incurred in respect of a licence, the Authority must take action under this section for the purpose of preventing the commission of any further prescribed offences by a relevant person in relation to the licence.
- (2) The Authority must also take action under this section for that purpose if the Authority becomes aware that a relevant person in relation to the licence committed a prescribed offence while 3 strikes were in force in respect of the licence.
- (3) **Licences other than club licences**

If the licence is a licence other than a club licence, the action that the Authority is to take is one or more of the following actions that the Authority considers to be reasonably necessary for the purpose of preventing the commission of any further prescribed offences by a relevant person in relation to the licence:

- (a) suspend the licence for up to 12 months,
- (b) cancel the licence and disqualify (for up to 12 months) any of the following persons from being granted a licence in respect of the premises to which the cancelled licence related (the *subject premises*):
 - (i) any person who was a business owner under the cancelled licence at the time the third strike was incurred,
 - (ii) any close associate of any such business owner,
- (c) disqualify (permanently or for a specified period) any person who was the licensee or manager of the subject premises at the time the third strike was incurred from holding a licence in respect of, or managing, the subject premises or any other licensed premises,

- (d) impose a condition on the licence, or any subsequent licence issued in respect of the subject premises, that a person who is disqualified under paragraph (c) must not be employed or otherwise engaged as an employee or agent of the licensee or manager of those premises,
- (e) impose, vary or revoke any condition on the licence that is not inconsistent with this Act.

(4) **Club licences**

If the licence is a club licence, the action that the Authority is to take is one or more of the following actions that the Authority considers to be reasonably necessary for the purpose of preventing the commission of any further prescribed offences by a relevant person in relation to the licence:

- (a) disqualify (permanently or for a specified period) a person who held any of the following positions at the time the third strike was incurred from holding any of those positions:
 - (i) secretary of the club,
 - (ii) manager of any of the club's premises,
 - (iii) member of the governing body of the club,
 - (b) disqualify (permanently or for a specified period) any such person from being the secretary of any other registered club, holding any licence or being appointed to manage any other licensed premises,
 - (c) appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club,
 - (d) impose a condition on the club licence that a person who is disqualified under paragraph (a) must not be employed or otherwise engaged as an employee or agent of the club or of the manager of any of the club's premises,
 - (e) impose, vary or revoke any condition on the club licence that is not inconsistent with this Act.
- (5) Nothing in this section limits the power of the Authority to impose, vary or revoke conditions under any other provision of this Act.
- (6) The Authority may undo any remedial action taken under this section at any time.

144G Matters to be considered by Director-General and Authority

- (1) In this section:
decision-maker means the Director-General or the Authority.
- (2) A decision-maker must, when making a reviewable decision in relation to a licence:
- (a) notify the following persons in writing that the decision-maker is deciding the matter and invite those persons to make a submission within a specified period of at least 21 days:
- (i) the licensee,
 - (ii) the manager (if any) of the premises to which the licence relates (the *licensed premises*),
 - (iii) if the decision is whether a second or third strike should be incurred—each interested person in the business carried on under the licence (but only if the person's name has been provided to the Authority under section 41 or 55) and the owner of the licensed premises,
 - (iv) if the decision is whether a third strike should be incurred—each former licensee or manager who may be adversely affected by the decision,
 - (v) any other person prescribed by the regulations, and
- (b) take into account any submissions received before the end of the specified period from any of the following:
- (i) a person referred to in paragraph (a),
 - (ii) the NSW Police Force,
 - (iii) the Office of Liquor, Gaming and Racing, Department of Trade and Investment, Regional Infrastructure and Services,
 - (iv) the Bureau of Crime Statistics and Research of the Department of Attorney General and Justice, and
- (c) take into account each of the following to the extent that the decision-maker considers it to be relevant to the decision:
- (i) whether the licensed premises were declared premises within the meaning of Schedule 4 when the offences that caused a strike are alleged to have been committed,
 - (ii) the size and patron capacity of the licensed premises and how this may impact on the ability of the

- licensee or manager to prevent the commission of prescribed offences,
- (iii) the history and nature of the commission of prescribed offences by relevant persons in relation to the licence or on or in relation to the licensed premises,
 - (iv) the history and nature of violent incidents that have occurred in connection with the licensed premises,
 - (v) whether other action would be preferable,
 - (vi) whether there have been changes to the persons who are the licensee, manager or business owner,
 - (vii) whether there have been changes to the business practices in respect of the business carried on under the licence,
 - (viii) any other matter prescribed by the regulations.
- (3) Nothing in this section prevents a decision-maker from taking into account any other matter that the decision-maker thinks is relevant to the proper making of a decision under this Part.
- (4) A decision-maker must, as soon as practicable after making a decision under this Part, give notice in writing of the decision, the reasons for the decision and any right of review in respect of the decision to each person that is required to be notified by the decision-maker under subsection (2) (a) in respect of the decision.
- (5) A submission provided to a decision-maker under subsection (2) (b) (i) may not be used for the purposes of prosecuting an offence under this Act.
- (6) The regulations may prescribe guidelines setting out how the matters referred to in subsection (2) (c) are to be taken into account by a decision-maker.

Division 3 Reviews and appeals

144H Reviews generally

- (1) An application for the review of a reviewable decision may be made by a person who is required to be notified of the decision under section 144G no later than 21 days after the person receives the notification.
- (2) The application is to be made to the Authority in the case of a decision of the Director-General and to the Administrative Decisions Tribunal in the case of a decision of the Authority.

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- (3) Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* does not apply to an application to the Administrative Decisions Tribunal for a review of a decision of the Authority under this Part.
 - (4) An application for a review operates to stay the reviewable decision unless the body conducting the review otherwise directs.
 - (5) The operation of any remedial action taken in respect of a strike is suspended during any time that the decision to impose the strike is stayed.
 - (6) In determining an application for review under this section, the body conducting the review must take into account any matter that was required to be taken into account in making the reviewable decision that is the subject of the review.

144I Reviews by Authority

- (1) In determining an application for review under this Division, the Authority may:
 - (a) confirm the decision the subject of the application, or
 - (b) vary the decision, or
 - (c) revoke the decision.
- (2) The Director-General is to give effect to any decision of the Authority under this Division to vary or revoke the decision the subject of the application for review.
- (3) The Authority may not make any decision in relation to an application for review under this Division unless a member of the Authority who is or has been a Judge, or has been an Australian lawyer for at least 7 years, is present at the meeting of the Authority or the committee of the Authority at which the decision of the Authority is made.

144J Appeals

- (1) An appeal against a conviction for a prescribed offence does not operate to prevent a strike being incurred as a result of the commission of the offence or to prevent the taking of remedial action in respect of such a strike but an appeal does operate to suspend the operation of any such remedial action until the appeal is determined or withdrawn.

Note. If the appeal is successful and the conviction is overturned a strike based on the conviction is revoked and any remedial action taken as a result of such a strike ceases to have effect.

- (2) The Director-General or the Authority may, if satisfied that circumstances have changed during the period that the operation of remedial action is suspended under this section, replace the remedial action with any remedial action that the Director-General or the Authority could have taken had those changed circumstances applied when the relevant strike was incurred.

144K Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 4 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years.

[3] Section 150 Penalty notices

Insert “or 9A” after “Part 9” in section 150 (5).

[4] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor Amendment (3 Strikes) Act 2011

[5] Schedule 1

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provision consequent on enactment of
Liquor Amendment (3 Strikes) Act 2011**

Offences occurring before commencement of Part 9A

Part 9A does not apply to or in respect of an offence committed before the commencement of that Part.

[Agreement in principle speech made in Legislative Assembly on 18 October 2011
Second reading speech made in Legislative Council on 9 November 2011]

BY AUTHORITY