



New South Wales

Liquor Amendment (3 Strikes) Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish a 3 strikes disciplinary system in respect of liquor licences for venues at which multiple breaches of the *Liquor Act 2007* are alleged to have occurred.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Liquor Act 2007 No 90

Schedule 1 [3] inserts a new Part into the *Liquor Act 2007* (the *Principal Act*) that sets out a 3 strikes disciplinary system.

Proposed section 144A makes it clear that the proposed Part operates alongside Part 9 (Disciplinary action) of the *Principal Act* and does not affect the operation of that Part.

Proposed section 144B defines the terms *business owner* (the person who owns the business carried on under the liquor licence), *prescribed offence* (certain specified offences under the Principal Act or offences under the Principal Act or the regulations that are prescribed by the regulations) and *relevant person* (the licensee, and manager of the licensed premises and any employees or agents of those persons) and sets out the circumstances in which a person is taken to be charged with a prescribed offence and the circumstances in which those charges are taken to be withdrawn or dismissed. The proposed section also sets out when offences occurring close together in time are taken to be a single offence and when an alleged offence is taken to cause a strike to be incurred.

Proposed section 144C sets out the consequences of 3 strikes being incurred in respect of a licence under the Principal Act (a *licence*). The licence is automatically cancelled (unless the licence is a club licence) and within 12 months after that cancellation, a person cannot be granted a licence in respect of the premises to which the cancelled licence related (the *subject premises*) if the applicant for the new licence or a close associate of the applicant was the business owner (or was a close associate of the business owner) under the cancelled licence. In addition, the licensee and the manager of the subject premises are permanently prohibited from being the licensee or manager, or an employee or agent of the licensee or manager, of the subject premises. Each of those persons is also permanently prohibited from holding any other licence or being a manager of any other licensed premises, unless the person was not the licensee or manager when the first 2 strikes were incurred, in which case the prohibition is for the period (if any) decided by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the *Director-General*). If a club licence incurs 3 strikes, the secretary of the club is permanently prohibited from being the secretary of the club or from being the manager of the club, or from being an employee or agent of the club or the manager of the club. The person is also permanently prohibited from being a secretary of any other club, holding any other licence or being a manager of any other licensed premises, unless the person was not the secretary when the first 2 strikes were incurred, in which case the prohibition is for the period (if any) decided by the Director-General.

Proposed section 144D permits the Director-General to impose certain conditions on a licence that has incurred one or 2 strikes. These range from requiring the use of plans of management and incident registers through to prohibiting the sale or supply of liquor on the licensed premises at all times for a period of up to 6 months.

Proposed section 144E sets out the circumstances in which a first strike is incurred in respect of a licence. A first strike is incurred if 3 prescribed offences are alleged to have occurred on 3 separate occasions within a 12-month period and one or more relevant persons are charged with those offences. Alternatively, a first strike may be incurred if a relevant person is charged with a prescribed offence and the Director-General decides that a strike should be incurred because of the seriousness of the alleged offence or because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the alleged offence.

Proposed section 144F sets out the circumstances in which a second strike is incurred in respect of a licence. A second strike is incurred if relevant persons are charged with 2 or more prescribed offences that are alleged to have occurred within 12 months after a first strike coming into force and each of the new prescribed offences is the same type of offence (being an offence charged under the same provision) as an offence that caused the first strike. Alternatively, a strike is incurred if a relevant person is charged with committing a prescribed offence that is alleged to have occurred within 12 months after the first strike came into force and the Director-General decides that a strike should be incurred. The Director-General may decide that a strike should be incurred because of the seriousness of the alleged offence or because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the alleged offence. The Director-General may also decide that a strike should be incurred if one or more other prescribed offences are alleged to have been committed by relevant persons since the first strike came into force and the Director-General is satisfied that a strike should be incurred in the circumstances.

Proposed section 144G sets out the circumstances in which a third strike is incurred in respect of a licence. A third strike may only be incurred if a relevant person is charged with a prescribed offence and the Director-General decides that a strike should be incurred in the circumstances. Before making such a decision the Director-General must be satisfied that since the date of the first alleged offence that caused the first strike, at least 6 charges for prescribed offences by one or more relevant persons have been proven by the payment of an amount under a penalty notice in respect of the offence or a finding of guilt (whether or not this finding of guilt has proceeded to conviction). However, if a strike has been imposed in respect of a single charge because of the seriousness of the alleged offence or its harm, the charge for that offence if proven counts as 3 charges towards that required total of 6.

Proposed section 144H sets out when strikes are in force with respect to a licence and makes it clear that a strike can only cease to be in force when the Director-General decides. A strike does not automatically cease to be in force even if all of the charges that caused the strike to be incurred are withdrawn or dismissed.

Proposed section 144I sets out the matters that must be taken into account when the Director-General makes a decision under the proposed Part. It also requires the Director-General to notify the licensee, manager and certain other persons of any decision along with reasons for the decision and information about rights to have the decision reviewed.

Proposed section 144J provides for reviews of decision of the Director-General by the Administrative Decisions Tribunal. An application for such a review does not operate to stay any decision of the Director-General unless the Administrative Decisions Tribunal otherwise directs.

Schedule 1 [6] provides that the proposed Part does not apply to offences occurring before the commencement of that Part.

Liquor Amendment (3 Strikes) Bill 2011

Explanatory note

Schedule 1 [4] makes a consequential amendment.

Schedule 1 [1], [2] and [7] update references to Departments.

Schedule 1 [5] permits the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

Liquor Amendment (3 Strikes) Bill 2011

Contents

| | Page |
|---|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| Schedule 1 Amendment of Liquor Act 2007 No 90 | 3 |



New South Wales

Liquor Amendment (3 Strikes) Bill 2011

No. , 2011

A Bill for

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 are alleged to have occurred; and for other purposes.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Liquor Amendment (3 Strikes) Act 2011</i> . | 3 |
| 2 Commencement | 4 |
| This Act commences on a day or days to be appointed by proclamation. | 5 |

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| Schedule 1 | Amendment of Liquor Act 2007 No 90 | 1 |
| [1] | Section 4 Definitions | 2 |
| | Omit the definition of <i>Director-General</i> from section 4 (1). | 3 |
| | Insert instead: | 4 |
| | <i>Director-General</i> means the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services. | 5 6 |
| [2] | Section 47H Restrictions on licence conditions imposed by Director-General | 7 8 |
| | Omit “of Communities NSW” from section 47H (1). | 9 |
| [3] | Part 9A | 10 |
| | Insert after Part 9: | 11 |
| | Part 9A Disciplinary action—3 strikes | 12 |
| 144A | Part does not limit Part 9 | 13 |
| | This Part does not limit the operation of Part 9. | 14 |
| 144B | Definitions | 15 |
| | (1) In this Part: | 16 |
| | <i>business owner</i> in relation to a licence means the owner of the business carried on under the licence. | 17 18 |
| | <i>prescribed offence</i> 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 is alleged to have occurred on or in relation to the premises to which the licence relates: | 19 20 21 22 23 |
| | (a) section 11 (2) (breach of licence condition) but only in respect of conditions imposed under this Part or Schedule 4, | 24 25 26 |
| | (b) section 73 (1) (a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct), | 27 28 |
| | (c) section 73 (2) (selling or supplying liquor to an intoxicated person), | 29 30 |
| | (d) section 74 (1) (b), (2), (3) (b) or (4) (permitting the sale, use or possession of a prohibited plant or prohibited drug), | 31 32 |
| | (e) section 117 (1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply). | 33 34 |

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| <i>relevant person</i> in relation to a licence means the licensee or manager of the premises to which the licence relates or any employee or agent of the licensee or manager. | 1 2 3 |
| (2) For the purposes of this Part: | 4 |
| (a) a person is taken to be charged with a prescribed offence if a penalty notice or court attendance notice has been issued to the person in respect of the offence, and | 5 6 7 |
| (b) any such charge is taken to be withdrawn or dismissed if the penalty notice or court attendance notice is withdrawn or if a court hears the matter and acquits the person, and | 8 9 10 |
| (c) prescribed offences that are alleged to have occurred in relation to a particular licence are taken to be a single prescribed offence with respect to that licence if those offences occurred within a single 24 hour period, and | 11 12 13 14 |
| (d) an offence is taken to cause a strike if a person is charged with the offence and that charge (or that charge along with other charges) causes a strike to be incurred, regardless of whether the charge is subsequently withdrawn or dismissed. | 15 16 17 18 19 |
| 144C Consequences of 3 strikes | 20 |
| (1) Licences other than club licences | 21 |
| The following provisions have effect if 3 strikes are in force in respect of a licence (other than a club licence): | 22 23 |
| (a) the licence is automatically cancelled, | 24 |
| (b) within 12 months after that cancellation, a person cannot be granted a licence in respect of the premises to which the cancelled licence related (the <i>subject premises</i>) if the applicant for the new licence or a close associate of the applicant was the business owner (or was a close associate of the business owner) under the cancelled licence at the time the offence that caused the third strike is alleged to have occurred, | 25 26 27 28 29 30 31 32 |
| (c) any person who was the licensee or manager of the subject premises at the time the offence that caused the third strike is alleged to have occurred is permanently disqualified from holding a licence in respect of, or being appointed to manage, the subject premises, | 33 34 35 36 37 |

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| (d) | any such person is also disqualified from holding any other licence or being appointed to manage any other licensed premises: | 1 |
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| (i) | permanently, or | 4 |
| (ii) | if the person was not the licensee or manager (as the case may be) when the first 2 strikes were incurred, for the period (if any) decided by the Director-General. | 5 |
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| (2) | It is a condition of any subsequent licence issued in respect of the subject premises that a person who is disqualified under subsection (1) (c) must not be employed or otherwise engaged as an employee or agent of the licensee or manager of those premises. | 9 |
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| (3) | Club licences | 14 |
| | If 3 strikes are in force against a club licence, the person who was the secretary of the registered club at the time the offence that caused the third strike is alleged to have occurred: | 15 |
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| (a) | automatically ceases to be the secretary (if that person is still the secretary when the third strike comes into force), and | 18 |
| | | 19 |
| | | 20 |
| (b) | is permanently disqualified from being the secretary of that registered club or from being appointed to manage any of the club's premises, and | 21 |
| | | 22 |
| | | 23 |
| (c) | is disqualified from being the secretary of any other registered club, holding any licence or being appointed to manage any other licensed premises: | 24 |
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| | | 26 |
| (i) | permanently, or | 27 |
| (ii) | if the person was not the secretary when the first 2 strikes were incurred, for the period (if any) decided by the Director-General. | 28 |
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| (4) | It is a condition of a club licence that a person who is disqualified from being the secretary of the club under subsection (3) (b) must not at any time be employed or otherwise engaged as an employee or agent of the club or of the manager of any of the club's premises. | 31 |
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| 144D | Conditions may be imposed if strikes incurred | 36 |
| (1) | The Director-General may decide to impose conditions on a licence (or vary such conditions) in relation to licensed premises if one or 2 strikes are in force in respect of the licence. | 37 |
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| (2) | If one strike is in force, the conditions may relate to any one or more of the following: | 1 |
| | (a) the use of plans of management and incident registers, | 2 |
| | (b) prohibitions on the use of glass or other breakable containers, | 3 |
| | (c) the engagement of persons to promote responsible service of alcohol, | 4 |
| | (d) any other matter that may be prescribed by the regulations. | 5 |
| (3) | If 2 strikes are in force, the conditions may relate to any one or more of the following: | 6 |
| | (a) any matter referred to in subsection (2), | 7 |
| | (b) the implementation of security measures, | 8 |
| | (c) prohibiting patrons from entering at certain times, | 9 |
| | (d) prohibiting the sale or supply of liquor at all times for a period of up to 6 months, | 10 |
| | (e) prohibiting the sale or supply of liquor at certain times, | 11 |
| | (f) prohibiting the sale or supply of certain types of liquor (including liquor with a high alcohol content or liquor that is intended to be consumed rapidly such as a shot), | 12 |
| | (g) prohibiting certain types of entertainment, | 13 |
| | (h) the persons who may be appointed as a manager, | 14 |
| | (i) reducing or changing trading hours, | 15 |
| | (j) any other matter that may be prescribed by the regulations. | 16 |
| (4) | A condition cannot be imposed under this section for a period of more than 24 months. | 17 |
| (5) | The Director-General may decide to revoke a condition at any time. | 18 |
| (6) | A strike ceasing to be in force in respect of a licence does not cause a condition imposed under this section to cease to apply. | 19 |
| 144E | Incurring a first strike | 20 |
| | 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 is charged with committing a prescribed offence (the <i>trigger offence</i>) and: | 21 |
| | (a) within 12 months before the day on which the trigger offence is alleged to have been committed, 2 other prescribed offences are alleged to have been committed | 22 |

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- and charges for those offences have been made against one or more relevant persons in relation to the licence (regardless of whether those charges have been withdrawn or dismissed), or
- (b) the Director-General decides that a strike should be incurred because of the seriousness of the alleged trigger offence or because of the seriousness of any harm that may have resulted from, or been associated with, the commission of that alleged offence.
- 144F Incurring a second strike**
- (1) A second strike is incurred in respect of a licence if one strike (the *first strike*) is in force in respect of the licence and a relevant person in relation to the licence is charged with committing a prescribed offence (the *trigger offence*) and:
- (a) the first strike came into force within 12 months before the day on which the trigger offence is alleged to have been committed, and
- (b) another prescribed offence (the *supporting offence*) is alleged to have been committed since the first strike came into force and a charge for the offence has been made against a relevant person in relation to the licence (regardless of whether the charge has been withdrawn or dismissed), and
- (c) both the trigger offence and the supporting offence (even if different types of offences) are each the same type of offence as an offence that caused the first strike.
- (2) Alternatively, a second strike is incurred in respect of a licence if:
- (a) one strike (the *first strike*) is in force in respect of the licence, and
- (b) a prescribed offence is alleged to have been committed within 12 months after the first strike came into force, and
- (c) a relevant person in relation to the licence is charged with committing the prescribed offence, and
- (d) the Director-General decides that a strike should be incurred.
- (3) The Director-General may decide under subsection (2) that a strike should be incurred only if:
- (a) the Director-General is satisfied that a strike should be incurred because of the seriousness of the alleged offence or the seriousness of any harm that may have resulted

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| from, or been associated with, the commission of the alleged offence, or | 1 |
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| (b) at least one other prescribed offence is alleged to have been committed since the first strike came into force and a charge for the offence has been made against a relevant person in relation to the licence (regardless of whether the charge has been withdrawn or dismissed) and the Director-General is satisfied that a strike should be incurred in the circumstances. | 3 |
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| (4) For the purposes of this section, an offence is the same type of offence as another offence if the offence is charged under the same provision of this Act or the regulations as that other offence or under the same provision as any one of the offences that may be taken to be that other offence because of section 144B (2) (c). | 10 |
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| 144G Incurring a third strike | 15 |
| (1) A third strike may be incurred in respect of the licence if: | 16 |
| (a) 2 strikes are in force in respect of the licence, and | 17 |
| (b) within 12 months after the second of those strikes came into force, a prescribed offence is alleged to have occurred and a relevant person in relation to the licence is charged with the offence and the charge has not been withdrawn or dismissed, and | 18 |
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| (c) the Director-General decides that a strike should be incurred in the circumstances. | 23 |
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| (2) Before deciding that a third strike should be incurred in respect of a licence, the Director-General must be satisfied that since the date of the first alleged offence that caused the first strike, at least 6 charges have been proven for prescribed offences by one or more relevant persons in relation to the licence. | 25 |
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| (3) However, if a strike has been incurred in relation to a charge because of section 144E (b) or 144F (3) (a), that charge, if proven, counts as 3 charges towards the total of 6 charges required by subsection (2). | 30 |
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| (4) For the purposes of this section, a <i>charge is proven</i> if: | 34 |
| (a) an amount is paid under a penalty notice in respect of the offence to which the charge relates, or | 35 |
| | 36 |
| (b) a finding of guilt (being a finding that is not the subject of an appeal) is made by a court in relation to that offence. | 37 |
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| 144H | When strikes are in force | 1 |
| (1) | A strike comes into force: | 2 |
| (a) | on the day on which an offence is alleged to have occurred being the last (or only) offence that caused the strike, or | 3 4 |
| (b) | in the case of a third strike, on the day decided by the Director-General and notified in writing to the licensee. | 5 6 |
| (2) | A strike ceases to be in force on the day decided by the Director-General and notified in writing to the licensee. | 7 8 |
| (3) | The Director-General must decide that one strike ceases to be in force in respect of a licence for each 12-month period that passes without a relevant person in relation to the licence being charged with a prescribed offence. | 9 10 11 12 |
| (4) | The Director-General may also decide that a strike ceases to be in force if one or more of the charges that caused the strike to be incurred are withdrawn or dismissed. | 13 14 15 |
| (5) | A strike does not automatically cease to be in force even if all of the charges that caused the strike to be incurred are withdrawn or dismissed. | 16 17 18 |
| 144I | Matters to be considered by Director-General | 19 |
| (1) | The Director-General must, when making a decision under this Part: | 20 21 |
| (a) | notify the following persons in writing that the Director-General is deciding the matter and invite those persons to make a submission within a specified period of at least 21 days: | 22 23 24 25 |
| (i) | the licensee, | 26 |
| (ii) | the manager (if any) of the premises to which the licence relates, | 27 28 |
| (iii) | if the Director-General is deciding whether a third strike should be incurred, the business owner and the owner of the premises to which the licence relates and any former licensee or manager who may be adversely affected by the decision, | 29 30 31 32 33 |
| (iv) | any other person prescribed by the regulations, and | 34 |
| (b) | take into account any submissions received before the end of the specified period from any of the following: | 35 36 |
| (i) | a person referred to in paragraph (a), | 37 |
| (ii) | the NSW Police Force, | 38 |

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| (iii) | the Office of Liquor, Gaming and Racing, Department of Trade and Investment, Regional Infrastructure and Services, | 1 2 3 |
| (iv) | the Bureau of Crime Statistics and Research of the Department of Attorney General and Justice, and | 4 5 |
| (c) | take into account each of the following to the extent that it is relevant to the decision: | 6 7 |
| (i) | whether the premises to which the licence relates (the <i>licensed premises</i>) were declared premises within the meaning of Schedule 4 when the offences that caused a strike are alleged to have occurred, | 8 9 10 11 |
| (ii) | whether any of the charges that caused a strike to be incurred have been withdrawn or dismissed, | 12 13 |
| (iii) | 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 occurrence of prescribed offences, | 14 15 16 17 |
| (iv) | 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, | 18 19 20 21 |
| (v) | the history and nature of violent incidents that have occurred in connection with the licensed premises, | 22 23 |
| (vi) | whether other action would be preferable to imposing a condition or deciding that a strike should be incurred, | 24 25 26 |
| (vii) | whether there have been changes to the persons who are the licensee, manager or business owner, | 27 28 |
| (viii) | any other matter prescribed by the regulations. | 29 |
| (2) | Nothing in this section prevents the Director-General from taking into account any other matter that the Director-General thinks is relevant to his or her proper making of a decision under this Part. | 30 31 32 |
| (3) | The Director-General 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 the Director-General is required to notify under subsection (1) (a) in respect of the decision. | 33 34 35 36 37 |
| (4) | A submission provided to the Director-General under subsection (1) (b) (i) may not be used for the purposes of prosecuting an offence under this Act. | 38 39 40 |

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| 144J | Reviews | 1 |
| (1) | An application for the review of a decision of the Director-General under this Part may be made to the Administrative Decisions Tribunal by any person that the Director-General is required to notify under section 144I in respect of the decision. | 2 3 4 5 6 |
| (2) | Any such application is to be made no later than 21 days after the applicant receives notice in writing of the Director-General's decision under section 144I. | 7 8 9 |
| (3) | Part 2 of Chapter 5 of the <i>Administrative Decisions Tribunal Act 1997</i> does not apply to an application to the Administrative Decisions Tribunal for a review of a decision of the Director-General under this Part. | 10 11 12 13 |
| (4) | An application for such a review does not operate to stay the decision of the Director-General unless the Administrative Decisions Tribunal otherwise directs. | 14 15 16 |
| (5) | In determining an application for review under this section, the Administrative Decisions Tribunal must take into account any matter that the Director-General is required to take into account in making the decision that is the subject of the review. | 17 18 19 20 |
| [4] | Section 150 Penalty notices | 21 |
| | Insert "or 9A" after "Part 9" in section 150 (5). | 22 |
| [5] | Schedule 1 Savings and transitional provisions | 23 |
| | Insert at the end of clause 1 (1): | 24 |
| | <i>Liquor Amendment (3 Strikes) Act 2011</i> | 25 |
| [6] | Schedule 1, Part 6 | 26 |
| | Insert after Part 5: | 27 |
| | Part 6 Provisions consequent on enactment of Liquor Amendment (3 Strikes) Act 2011 | 28 29 |
| 32 | Offences occurring before commencement of Part 9A | 30 |
| | Part 9A does not apply to or in respect of an offence committed, or alleged to have been committed, before the commencement of that Part. | 31 32 33 |

Liquor Amendment (3 Strikes) Bill 2011

Schedule 1 Amendment of Liquor Act 2007 No 90

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| [7] Schedule 4 Special licence conditions for declared premises | 1 |
| Omit “Attorney General’s Department” from clause 9 (3). | 2 |
| Insert instead “Department of Attorney General and Justice”. | 3 |