

Bill introduced on motion by Mr George Souris.

Agreement in Principle

Mr GEORGE SOURIS (Upper Hunter—Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts) [11.06 a.m.]: I move:

That this bill be now agreed to in principle.

Alcohol-related violence and antisocial behaviour are of significant concern for the community and the Liberal-Nationals Government intends to do something about the problem. That is why we are implementing a series of election commitments to tackle irresponsible alcohol service and consumption which result in neighbourhood disturbance, offensive behaviour, vandalism assaults and other violent incidents. The Government's election commitments include measures which reinforce the need for individual responsibility on the part of drinkers—such as expanded move-on powers for police which were recently passed by this Parliament. Other commitments which emphasise personal responsibility include a new intoxicated and disorderly offence and the trial of sobering up centres.

The Government is also taking action to apply tough sanctions to rogue licensees and licensed venues that are repeatedly associated with violent behaviour or refuse to abide by the law. The centrepiece of the Government's approach to problem licensees and venues is a "three strikes and you're out" policy. There are more than 14,000 licensed premises in New South Wales. The vast majority of these are not problem venues and are not associated with serious breaches of the liquor laws. Regulatory and enforcement agencies provide guidance and assistance to licensed venues to help them manage and reduce their risk of alcohol-related harm through a range of initiatives. Examples of resources available to industry include a range of safety and management plans and best practice guidelines. These resources complement the work of liquor regulators who provide direct assistance to licensees as well as our targeted enforcement programs and general law enforcement.

The aim of the Government's three strikes policy is for its deterrent effect to complement these regulatory and enforcement programs, thereby leading to improved compliance with the law, safer licensed premises and reduced levels of alcohol-related harm—including alcohol-related violence and antisocial behaviour. It is therefore appropriate that the three strikes system targets licensed venues that are repeatedly associated with serious offences under the Liquor Act. The bill establishes a three strikes system under which strikes can be incurred where repeated non-compliance with these offence provisions is reported.

The prescribed offences include: permitting intoxication or violent conduct on licensed premises, selling or supplying alcohol to an intoxicated person or to a minor, allowing alcohol to be sold or supplied to a minor, permitting the sale, possession or use of illicit drugs on licensed premises and breaching key liquor licence conditions, including a condition imposed under the new three strikes system. These offences contribute to alcohol-related violence and antisocial behaviour and to other problems associated with the irresponsible service of alcohol and careless venue operations. They underline the fact that licensees and venue staff have responsibilities to take action to prevent harmful conduct, including violent conduct such as alcohol-related assaults.

The bill provides that a first strike is automatically incurred where there are three prescribed offences within a 12-month period. Alternatively the director general has discretion to decide that a first strike should be incurred after only one alleged offence because of the seriousness of that offence or because of the seriousness of any harm that may have resulted from or been associated with the commission of that offence. The bill provides that a second strike is automatically incurred where there are two additional alleged offences in the 12 months since the first strike and those offences are the same type of offences as those which led to the first strike.

The director general also has discretion to decide that a second strike should be incurred where two additional offences are not the same type having regard to the circumstances of the alleged offences. As is the case with a first strike, the director general can also decide that a second strike should be incurred after only one additional alleged offence because of the seriousness of that offence or because of the seriousness of any harm that may have resulted from or been associated with the commission of that offence. Allowing the director general to impose a first or second strike following one alleged offence is appropriate because there are circumstances where licensees or staff could have taken action to help prevent the incident which led to a serious offence occurring.

Examples of serious offences are expected to include: permitting an assault that results in severe injuries, serving large numbers of intoxicated persons during a function, providing a large amount of alcohol to a minor, allowing significant numbers of people to possess or use illicit drugs during an evening on licensed premises and breaching a number of key licence conditions at the same time. The bill provides that a third strike can be incurred after only one additional offence within 12 months of a second strike being incurred. Importantly, a third strike is always discretionary and can only be incurred where sufficient alleged offences have led to findings of guilt.

The discretionary nature of a third strike reflects the very serious consequences that follow. Firstly, the bill provides that a third strike results in cancellation of the liquor licence, except in the case of a registered club. It also results in permanent disqualification of the licensee or approved manager from holding a liquor licence or being an approved manager of licensed premises, except in specified circumstances, and it results in a 12-month prohibition on an application being granted for a liquor licence for the same premises where the applicant 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 of the offence. For registered clubs the bill provides that the imposition of a third strike results in permanent disqualification of the secretary from being a club secretary or an approved manager of a licensed premises.

A separate penalty regime for a third strike incurred by a registered club recognises the severe impact that cancellation of a club's liquor licence and a prohibition on a licence for a club's premises can have on club members who ultimately own the club's property. The bill also allows for non-permanent disqualifications following a third strike where the licensee, club secretary or approved manager has not been responsible for all of the incidents which led to strikes being incurred. In this circumstance the director general has discretion to decide that a lesser period of disqualification should apply. However, it will be a condition of any subsequent licence issued for the same premises that a person who is disqualified must not be employed or engaged as an agent of the licensee or manager of those premises.

Under the bill strikes can be incurred where a relevant offence is alleged to have been committed. First and second strikes will not automatically be removed if a penalty notice for an offence is not paid or there is ultimately not a finding of guilt by a court, although the director general has discretion to do so. This recognises that while an alleged offence may not ultimately be proven beyond reasonable doubt, the need for compliance action to be taken in the first place can point to more fundamental problems with the management or operation of licensed premises that should not have arisen. A key message from this legislation is that well-run licensed venues that implement effective measures to prevent violence, intoxication, underage drinking and the use of illicit drugs will minimise the risk of strikes being incurred. The Government appreciates that venues can change their ways by taking positive action to reduce harm and eliminate irresponsible alcohol service.

Therefore, in recognition of sustained improvements in venue operations the bill provides that one strike will be removed where there are no relevant alleged offences relating to a liquor licence for 12 months. To ensure due process in any circumstances where the imposition of a strike is discretionary the director general must provide a licensee or manager with at least a 21-day opportunity to make submissions. Where a third strike is proposed the director general must also provide the business owner and the owner of the premises to which the licence relates, along with any former licensee or manager who may be adversely impacted by the decision, with an opportunity to make submissions. The director general must take any submissions made into account. Any information provided by a licensee or manager can only be used by the director general to make a determination under the three strikes system. It may not be used in any prosecution of the licensee or manager for the underlying offence.

The bill also provides for escalating penalties in the form of licence conditions and restrictions that can be imposed on liquor licences that have incurred strikes. Conditions following a first strike can include a requirement for a plan of management or an incident register, a prohibition on the use of glass and breakable plastic containers and the engagement of dedicated staff to promote responsible service of alcohol. If a condition requiring a plan of management is imposed, it is expected that the plan will refer to the measures that the licensee must take to reduce the potential for a repeat of the circumstances which led to the alleged offence which preceded the imposition of the strike.

Conditions and restrictions following a second strike can be extended to include matters such as additional security measures, drink restrictions targeting high strength and rapid consumption drinks, lockouts where patrons cannot be admitted after a certain hour, a requirement to cease serving alcohol prior to venue closure, a prohibition on the conduct of types of entertainment, restrictions on who may be appointed as manager of the premises, reduced trading hours, and prohibiting the sale or supply of liquor under the licence for up to six months. The bill provides that the director general can vary or revoke conditions imposed on licensed venues which have incurred a strike. The bill also defines various matters that the director general must take into account when determining whether a strike should be incurred or a licence condition should be imposed under the three strikes legislation.

These matters include: whether the premises were captured under the violent venues scheme in schedule 4 of the Liquor Act when the alleged offences occurred; whether any of the charges that gave rise to strikes have been withdrawn or dismissed; 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 offences; the history and nature of the commission of

relevant offences at the licensed premises; the history and nature of violent incidents that have occurred in connection with the licensed premises; whether other action would be preferable to imposing a condition or deciding that a strike should be incurred; and whether the licensee manager or business owner has changed over the relevant time period.

This will assist the director general in understanding the environment in which the venue is operating, particularly the challenges that may arise for larger venues in effectively managing higher numbers of patrons compared with smaller venues. It will help to establish the effectiveness of measures that have already been taken by management to reduce alcohol-related violence inside and in the immediate vicinity of the licensed premises. The director general must also take into account any advice from the New South Wales Office of Liquor, Gaming and Racing, the New South Wales Police Force and the New South Wales Bureau of Crime Statistics and Research when making decisions relating to strikes or licence conditions. It is expected that this advice may relate to issues such as trends in local crime statistics and the results of research into effective responses to alcohol-related crime. Advice from other expert stakeholders may also be considered.

The bill provides for the director general to revisit conditions imposed on a liquor licence given that there may be circumstances where a condition requires finetuning following operational experience. A licensee could also seek to have conditions varied or revoked. Alterations to conditions can only be determined following due process—that is, notification to the licensee and consideration of any submissions made. This condition-imposing provision is a new power for the director general. It will not affect other existing powers of the director general to impose conditions on liquor licences, such as under section 54 of the Liquor Act or via a precinct liquor accord.

Finally, the bill provides for reviews by the Administrative Decisions Tribunal of any discretionary decision made by the director general under the three strikes legislation. An application for a review by the Administrative Decisions Tribunal must be made within 21 days of the director general's decision. Review applications can be made by the licensee or manager and also by the business or premises owner in the case of a third strike. A review application will not stay the director general's decision unless the Administrative Decisions Tribunal grants a stay.

This bill clearly demonstrates that the New South Wales Liberal-Nationals Government will implement tough measures to tackle alcohol-related violence and antisocial behaviour, irresponsible service and consumption of alcohol and poor management of licensed premises. These are issues that rightly concern many in the community and this Government is taking real action in response to those concerns. The three strikes system introduced in the bill will act as a strong deterrent to the small minority of liquor licensees and licensed venues that do the wrong thing. It is an extra and necessary layer of protection for the public. I commend the bill to the House.

Debate adjourned on motion by Ms Carmel Tebbutt and set down as an order of the day for a future day.