

LIQUOR AMENDMENT (REVIEWS) BILL 2017

Second Reading

The Hon. DAVID CLARKE (15:49): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

In December last year this Government announced an important package of liquor reforms.

The package included, among other things, the Government's response to the recommendations of the Independent Liquor Law Review by former High Court Justice Ian Callinan, as well as to a number of Departmental reviews.

As recommended by the Callinan Review, for genuine "live entertainment venues" in the Kings Cross and central business district [CBD] precincts, lockouts were extended from 1.30 a.m. to 2.00 a.m. Last drinks moved from 3.00 a.m. to 3.30 a.m.

In addition, the 10pm state wide restriction on take-away alcohol sales was extended from 10pm to 11pm. For small bars, the patron capacity was increased from 60 to 100 persons to enhance the viability of the small bar licence and contribute to a more diverse and vibrant industry and night-time economy.

To ensure that venues and the community could benefit from the changes ahead of the busy Christmas and New Year holiday period, as many reforms as possible were implemented via Regulation on 16 December in the Liquor Amendment Regulation 2016.

Today the New South Wales Government is introducing a bill to implement the remaining measures in our publicly announced liquor reform package which were not able to be implemented through Regulation last year, but instead require legislative change.

The measures contained in this Liquor Amendment (Reviews) Bill 2017 will: improve the Three Strikes disciplinary scheme targeting those that repeatedly commit serious offences under the Liquor Act, and address some unintended consequences of the scheme; improve the Minors Sanctions scheme for venues that sell alcohol to under-18s and align it more closely with the Three Strikes scheme; modify the liquor licence freeze provisions and implement the Government's publicly-announced plans to extend the freeze in Kings Cross until 1 June 2018 consistent with the Sydney CBD freeze; and fix an anomaly whereby the Board of the Independent Liquor and Gaming Authority is held responsible for the collection, administration and reporting of fees payable under liquor and gaming legislation.

I now provide further detail on the reforms contained in Schedule 1 to the bill.

The New South Wales Three Strikes scheme aims to encourage compliance with the most serious offence provisions under the Liquor Act.

The scheme uses a system of strikes targeting venues at which there are wilful—and continual—serious breaches of liquor laws. Not all offences will result in a strike against a venue's liquor licence—strikes are intended to only apply to serious breaches.

Strikes can lead to a range of escalating penalties including licence suspensions, cancellations and disqualifications. Indeed, licensed venues that repeatedly commit serious offences can lose their liquor licence under the Three Strikes scheme.

However there have been some unfortunate and unforeseen consequences flowing from the Three Strikes scheme.

Major financial providers have confirmed that the incurrence of strikes against a licence can jeopardise loan arrangements.

In their view, strikes impact negatively on the property value, cash flow and reputation of licensed premises.

In fact some lenders have suggested that first strikes could diminish the value of a property by around 20 per cent.

Some lenders have inserted provisions into loan agreements which specifically note that venues must notify them of a strike being incurred, and that this constitutes a 'review event' which may result in variations to loan conditions.

These loan agreements also indicate that either a second or third strike would constitute a default on the loan.

It is not surprising then that instances have been cited where contracts of sale have been rescinded due to venues incurring strikes, and more broadly industry stakeholders have indicated that selling a premise carrying a strike is very difficult.

While licensed venues must be held responsible for their actions, it is not intended that a strike on a licence should lead to a substantial loss in the value of the attached business, or an inability to sell, or the imposition of difficult loan conditions by financial institutions.

In particular, the Three Strikes scheme should not unfairly penalise new owners and operators of licensed venues who have been unable to remove strikes incurred by previous management.

To address these undesirable outcomes, the bill makes revisions so that strikes will in future be attached to individual licensees and approved managers, rather than against a venue's liquor licence.

Importantly, this will mean strikes will not have the same impact on financial loan arrangements or the potential sale of the venue.

At the same time, attaching strikes to licensees and managers, will continue to encourage these operators to drive positive changes in behaviour at their venues.

Where a licensee or manager continues to incur strikes at the same premises, the venues will still face the same range of escalating and serious penalties that can apply under the current scheme.

Due to some fundamental differences between registered clubs and other types of liquor licences, clubs will continue to incur strikes on their licence. This reflects the fact that clubs, as community-owned, not-for-profit entities, cannot be bought and sold in the same way as other types of licensed venues, and have therefore not suffered the same financial consequences of strikes.

To ensure that the Three Strikes scheme continues to target repeat offenders who will fully commit the most serious offences under the Liquor Act, the bill will refine the offence types that can attract a strike.

Minor breaches of licence conditions imposed as part of precinct conditions, or under the Violent Venues or Three Strikes schemes, should not trigger a strike and will no longer do so under the bill.

For example, this will ensure that a CBD or Kings Cross venue that fails to maintain an "incident register" can no longer receive a strike for this type of offence.

The scheme will continue to target a range of serious offences, such as permitting intoxication or violent conduct on the premises, selling to minors, as well as more significant breaches of precinct licence conditions imposed to restrict trading hours or entry of patrons after certain times.

Further, the bill provides that the Independent Liquor and Gaming Authority Board will determine the application of a first strike, rather than the strike being automatically applied.

The Authority will also be the decision maker in respect to a second strike, rather than the Secretary of the Department.

There will be an appeals mechanism to the NSW Civil and Administrative Tribunal [NCAT].

Together, these changes transfer to an Independent Authority and a Tribunal responsibility for determining the application of strikes.

In determining a strike, the Authority may also impose any remedial action necessary to reduce the risks that led to the offence being committed.

While the type of remedial action that the Authority can impose as a condition of a venue's licence is not being changed, the bill introduces the ability for remedial action to be taken against an individual licensee or manager.

This can include: requiring the person to undertake further training after they incur a first strike; reprimanding the person or imposing a minor monetary penalty after incurring a second strike; or disqualifying the person from being a licensee or manager of a licensed premises, either permanently or for a specified period of time, after incurring a third strike.

Another key change to the scheme will enable licensees, managers and clubs to apply to the Authority for a strike to be revoked after it has been in place for six months.

However, the Authority will only be able to revoke a strike if there is evidence of improvement in management practices, so it must be satisfied that: any remedial action imposed with the strike has been complied with; the

licensee or manager has implemented measures or undertaken training to manage or reduce the risks that led to the strike offence; and no other strike offence has been committed since the strike was incurred by the licensee, manager or club.

The bill also includes a mechanism that allows the Authority to respond to venues that "cycle through" licensees or managers in an attempt to frustrate regulatory action and avoid further sanctions under the scheme.

In this case, the Authority will be able to impose conditions relating to the employment of a new licensee or manager, for example requiring the employment of a person with a certain level of qualification or experience in managing licensed premises.

This action will be available where the Authority considers there has been no improvement in the management of a venue, despite other licensees or managers having been employed.

The bill will also improve the Minors Sanctions Scheme—the escalating sanctions scheme that imposes significant penalties on venues that sell liquor to minors.

As with the changes to the Three Strikes scheme, the reforms to the Minors Sanctions scheme transfer to the Independent Liquor and Gaming Authority Board certain decision-making responsibility—including for determining whether to suspend a venue's licence for up to 28 days for a first offence.

Currently, that sanction is determined by the Secretary of the Department of Industry, and is final and not reviewable.

This change reflects the Authority's primary role in determining high impact and contentious matters, noting the severe financial consequences a licence suspension can have on venues and staff.

As with Three Strikes, there will be an appeals mechanism to NCAT.

The bill modifies certain aspects of the existing liquor licence freeze.

The freeze was implemented in Sydney CBD and Kings Cross to curb the proliferation of higher risk venues and thereby help contain the risk of alcohol-related violence and crime.

For high impact venues such as hotels, clubs, and bottle shops in the precincts, the freeze prevents the granting of new liquor licences, and extended trading authorisations, and places restrictions on licence removals, change of boundary applications, and the grant of development consent by the City of Sydney.

However the Callinan Review found that the freeze may have prevented some venues from adapting or improving their premises.

The bill therefore modifies the operation of certain freeze provisions so they no longer inadvertently restrict existing venues from receiving consent to adapt or improve their facilities.

Importantly, these changes will mean that businesses in the precincts have greater opportunity to refurbish, and provide more diverse and sophisticated offerings, so they can better adapt to changes in their environment.

The bill will extend the modified freeze to the Kings Cross precinct until 1 June 2018, consistent with the Government's announced plans for the freeze, ensuring consistency with the current Sydney CBD freeze.

Further, the bill will remove current freeze restrictions in place for producer/wholesaler licences, given the lower risk profile of these operators.

The bill will also enable the Kings Cross precinct to be recognised as a "prescribed precinct", consistent with the Sydney CBD Entertainment precinct.

Specifically, it repeals legislative provisions relating to the Kings Cross precinct that are currently replicated under the 'prescribed precinct' framework in Division 4 of Part 6 of the Liquor Act.

This change will help to standardise and simplify the operation of the framework by ensuring there is a common mechanism, being the prescribed precinct framework, used to implement regulatory interventions at the precinct level.

In relation to ID Scanners, the bill will make the Secretary of the Department of Industry, rather than the Minister responsible for determining exemptions from the ID scanning requirements currently in place for high risk venues in Kings Cross.

This designation is considered appropriate given the Secretary has other comparable operational decision-making responsibilities under the liquor legislation.

I now wish to turn to Schedule 2 of the bill, which relates to the 2015 structural reforms to gaming and liquor regulatory framework.

Those reforms resulted in the establishment of Liquor & Gaming NSW as a "fit for purpose" regulator, and a shift in the role of the Independent Liquor & Gaming Authority.

In this regard, the Authority was refocused as an independent statutory board with eight part-time members responsible for determining contentious licensing and disciplinary matters.

Despite this change, the 2015 reforms did not relieve the Authority of its obligation to collect, and report on, fees and charges collected under the various pieces of gaming and liquor legislation.

This situation needs to be rectified so that the Authority, as a statutory decision-making body, can focus its efforts accordingly rather than undertaking these financial administration activities.

The bill therefore addresses this issue by amending relevant provisions under the Casino Control Act, the Gaming and Liquor Administration Act, the Gaming Machines Act and the Registered Clubs Act.

These amendments ensure that where any fees, taxes or costs are payable to the Authority, or it is implied that fees or costs are payable to the Authority, those monies will instead be payable to the Secretary of the Department.

This is a change that has been requested by the Chair of the Independent Liquor and Gaming Authority, Mr Philip Crawford.

Importantly, this change merely relates to the responsibility for the ongoing administration of the monies, and has no effect on the use of the revenue.

The package of reforms contained in this bill implements the Government's remaining liquor law reforms.

The reforms will further improve the regulation of the liquor industry, support business certainty and viability, while at the same time promoting effective measures to minimise risks of alcohol-related violence and harm in the community.

I commend the bill to the House.