

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [8.50 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

On 22 June 2011 the Liquor Amendment (3 Strikes) Bill 2011 was introduced into Parliament.

That draft bill was introduced with the express commitment that the liquor industry would be consulted and have an opportunity to make submissions about this important legislation.

A range of submissions were received and the Government has carefully considered those to ensure this policy targets rogue operators and does not present an adverse impact to responsible licensees.

Three strikes can result in severe penalties so it is paramount that the scheme operates fairly and effectively to deliver maximum benefits to communities where licensed venues are causing unacceptable impacts.

The bill now before the House introduces a revised "three strikes" scheme.

The scheme addresses industry concerns while maintaining a robust system which targets repeat offenders.

The first key feature of the scheme is that strikes may be incurred only where there is a conviction for a prescribed serious offence.

A conviction will include circumstances where a penalty infringement notice relating to such an offence is paid.

However, strikes will not be incurred where a prescribed offence is proven but no conviction is recorded by the courts.

This change addresses the most serious concern expressed about the original draft bill that strikes could result from unproven allegations.

Under the revised scheme a strike can be incurred following a conviction for a single serious offence rather than requiring multiple offences, as was previously proposed.

Only the most serious offences under the Liquor Act are captured under the revised scheme.

These offences are prescribed in the bill and include:

(a) permitting intoxication on licensed premises

- (b) permitting indecent violent or quarrelsome conduct on licensed premises
- (c) selling or supplying alcohol to an intoxicated person or a minor
- (d) allowing alcohol to be sold or supplied to a minor on licensed premises
- (e) permitting the use or sale of substances which a licensee or manager suspects are illicit drugs
- (f) not complying with a direction issued by the Director General to a licensee or staff
- (g) selling or supplying alcohol outside of authorised trading hours
- (h) non-compliance with a closure order issued under the Liquor Act to prevent or reduce a significant risk to the public interest where there are serious breaches of the Act, and
- (i) a breach of key liquor licence conditions applying to violent venues listed in schedule 4 of the Liquor Act or conditions imposed on a venue following the imposition of a strike.

The defendant for these offences must be the licensee or the approved manager.

It is important to note that under section 149 of the Liquor Act a licensee and approved manager can be liable for liquor-related offences committed by their employees or agents.

It is the licensee or approved manager who carries the responsibility for the management practices of the venue.

To ensure that this scheme is effective and targeted towards those responsible the prescribed offences are directed towards the manager or licensee.

Offences committed within a 24 hour period will be counted as one single offence under the scheme so that if, for example, three underage drinkers are caught on the licensed premises at the same time that will potentially count as one strike.

The list of offences in the scheme differs from that included in the original bill in that it limits breach of condition offences under schedule 4 of the Liquor Act that are to be used as triggers for strikes.

Only significant conditions are captured including drink restrictions, lockouts, prohibition on use of glass containers, cease liquor sale prior to closure and security measures rather than less significant conditions involving maintenance of incident registers and distribution of free water.

A new offence under the Liquor Act is also included in the scheme requiring licensees to comply with a notice restricting or prohibiting an activity that encourages misuse or abuse of alcohol.

This new offence is based on an existing ground for disciplinary action under the Act but will allow action to be taken quickly where irresponsible conduct encourages misuse of alcohol.

It will further reinforce the responsible service of alcohol principles of the liquor laws.

Non-compliance with a notice issued by the Director General will be an offence unless the licensee has a reasonable excuse, which is a similar principle to that applying to the existing arrangements regarding directions issued under section 75 of the Act.

In developing the list of offences to be captured under the revised scheme, care has been taken to ensure that where unauthorised actions of staff result in an offence a defence is available for the licensee or approved manager where appropriate.

It is not considered necessary that defences apply for non alcohol-related offences as under the existing law the licensee is not responsible for actions of staff in circumstances where the offence is not liquor-related.

For other offences captured under the scheme common law defences are considered sufficient.

Under the revised three strikes scheme a first strike will be an automatic outcome of a conviction for a serious offence.

This is similar in principle to the original bill and it ensures that a single conviction for a serious offence is captured and the venue is subject to the strictures of the scheme.

However, the decision that a second strike should be incurred will always be discretionary, in contrast to the original bill where a second strike was automatic in some circumstances and discretionary in others.

This revised scheme is less complex and will help to ensure that licensees are aware of the potential for a strike to be incurred through the due process requirements that apply to discretionary decisions, including notification to the licensee and consideration of submissions by the decision maker.

The decision that a third strike should be incurred will remain discretionary, as was the case under the original bill.

The decision maker will also continue to have the option of considering whether other action should be taken rather than the licensee incurring a third strike.

When considering whether a strike should be incurred the decision maker must have regard to the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence that triggered the strike process.

The types of harm that may be relevant in these circumstances include:

- any harm associated with anti-social or violent behaviour
- health outcomes such as injuries and sickness
- disturbance to the quiet and good order of a neighbourhood
- minors obtaining or consuming alcohol
- costs associated with regulatory health and community infrastructure responses, and

· the undermining of public confidence in the liquor regulatory system through disregard for the law.

While the bill provides that a strike decision must await a conviction for the relevant offence, the strike itself will take effect on the date that the incident underpinning the strike occurred, as was proposed in the original bill.

This will ensure that a licensee is put on notice that they must improve their performance and take remedial management action immediately that a penalty infringement notice or a court attendance notice is issued as there will be the potential for a strike to be incurred from the offence date if a conviction results.

This is a very important feature of the scheme as it will require licensees and managers to take immediate action to minimise the risk of alcohol-related harm once a penalty infringement notice is issued for a prescribed offence irrespective of the legal outcome.

This will ensure an immediate benefit to the community through improved alcohol management practices.

Where a conviction is recorded and a strike is incurred the licensee will be on a path which could lead to the ultimate sanction of licence cancellation and disqualification.

It is clearly in their best interests to ensure action that they take is ongoing and effective.

Under the revised scheme there will be a three-year window from the date of the incident relating to the first strike during which additional incidents could lead to a second and third strike.

It does not matter when the conviction itself occurs as long as the incident relied upon for the second or third strike occurs within this three year period.

While a strike can be incurred immediately following a conviction, the sanctions accompanying a strike will be suspended while any appeal processes relating to the conviction are completed.

This ensures that the three strikes scheme strikes a fair balance between respecting a proper legal process and ensuring that licensees and managers remain accountable for their practices while that legal process occurs.

If there are circumstances where a conviction is overturned on appeal and a strike has already been incurred the strike will cease to have effect.

If it is necessary to take action to address behaviour under the licence during the appeal period existing powers under the Liquor Act to impose conditions can be utilised.

Where a licensee or manager attempts to move from one premises to another after incurring two strikes in an attempt to avoid a third, their fitness to be an approved licensee or manager can be reconsidered under existing provisions of the law.

Industry has raised concerns that business and premises owners, in addition to licensees, need to be aware of a strike being incurred.

This is important as a strike and its associated conditions may impact on business contracts and leasing arrangements.

A number of measures in the revised scheme will address this issue.

The discretionary nature of most decisions will mean that due process is followed.

The bill provides that notice of a proposal to incur second and third strikes be provided by the decision maker to interested persons recorded on official licence records and to premises owners, thereby allowing them to make submissions.

Under the bill a condition can be also imposed on a liquor licence requiring a licensee to notify business and premises owners of strikes.

And it is proposed that the NSW Office of Liquor, Gaming and Racing will maintain a public register of strikes.

The revised three strikes scheme continues to include escalating penalties and restrictions that can be imposed on a liquor licence following the imposition of a strike.

To address industry concerns that conditions may not be relative to the offence which led to a strike, the bill requires that the Director General be satisfied that a condition is a reasonable response to the behaviour that led to strikes being incurred.

Conditions imposed on a licence as a consequence of a strike will continue indefinitely or until varied or revoked. This can occur separately or as a consequence of the imposition of a further strike.

Additionally, the revised scheme provides further incentives for improved management practices with the automatic extinguishment of a strike at the expiration of a three-year period, thereby allowing for a reduction in the number of strikes in circumstances further offences are not committed.

The impact of trading hour restrictions proposed in the original bill was of concern to industry, which noted that the restrictions were not consistent with existing powers to reduce trading hours available under the neighbourhood disturbance provisions of the Liquor Act.

While the revised scheme continues to include powers to limit liquor trading hours where two strikes are in force, those powers have been amended so they are consistent with the neighbourhood disturbance complaint powers.

The option of prohibiting liquor sales prior to venue closure will also continue to be available as an outcome of a second strike under the bill.

The three strikes scheme reflects the principle of escalating penalties to target repeat offenders.

The revised three strikes scheme provides for the imposition of conditions and restrictions where one strike has been incurred such as:

- a requirement for a plan of management or an incident register

- a prohibition on the use of glass and breakable plastic containers
- engagement of dedicated staff to promote responsible service of alcohol, and
- a requirement that members of the governing body of a registered club undertake training.

This bill also provides for more significant conditions and restrictions to be imposed on a liquor licence where two strikes have been incurred including:

- additional security measures
- drink restrictions targeting high strength and rapid consumption drinks
- "lock outs" 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, and
- reductions to liquor trading hours before 1 a.m. or after 11 p.m.

The condition imposing powers in this bill do not limit the power of regulators to impose conditions under any other provision of the Liquor Act.

For licences other than registered clubs the ultimate sanction that is available under this bill where a third strike is incurred is the cancellation of a liquor licence.

Where a licence is cancelled:

- (a) any person who was the business owner under the cancelled licence at the time the third strike was incurred, and
- (b) any close associate of any such business owner are also disqualified from being granted a licence in respect of the same premises for up to 12 months.

A third strike may also result in disqualification of the licensee or manager.

The responsibility of decision makers under the Liquor Act to have due regard to the need to minimise the harm associated with misuse and abuse of liquor demands that licence cancellation should be seriously considered when three strikes are incurred.

However, there may be circumstances where licence cancellation is not the most appropriate outcome, particularly where the licensee, manager or same business operators have not been responsible for all of the offences underpinning strikes.

Therefore, to provide a fair system and flexibility to regulators to ensure a measured response to poor behaviour, a third strike may instead result in licence suspension for up to 12 months.

Further, the bill also provides for an additional option at the third strike stage to impose, vary or revoke any condition on a liquor licence.

This power is similar to existing powers in the Liquor Act and will provide added flexibility to enable a licensed premises to continue operating under new management because the original licensee has been disqualified.

This power would not be exercised lightly but the individual circumstances considered by the decision makers.

For registered clubs the bill provides that a third strike can result in disqualification of a club secretary, as was proposed in the original bill.

The revised scheme also allows for the dismissal of any or all of the club's directors and/or the appointment of an administrator to the club.

This is supported by a new option whereby a condition requiring directors to undertake training may be imposed if one strike has been incurred.

These are very serious outcomes for a registered club. They result in more equitable action being taken where clubs incur three strikes compared with other types of licensed venues.

They will also facilitate effective action to deal with systemic problems at a registered club that have resulted in strikes being incurred and are consistent with existing powers under the disciplinary provisions of the Registered Clubs Act.

The decision that a third strike should be incurred is a very serious matter given the potential consequences.

To reflect this the bill provides that this decision will be made by the Casino, Liquor and Gaming Control Authority.

This is consistent with existing disciplinary powers in the Liquor Act to suspend or cancel a licence and disqualify a licensee ... which rest with the Authority.

To reflect the existing hierarchy of decision making under the Liquor Act the bill provides that decisions to impose conditions following a first or second strike and decisions that a second strike should be incurred will rest with the Director General. This is consistent with the original bill.

The bill provides that reviews of a second strike and conditions imposed by the Director General following a first or second strike are to be dealt with by the Casino, Liquor and Gaming Control Authority, rather than the Administrative Decisions Tribunal as was proposed in the original bill.

The Authority is a specialist high order decision making body and it is appropriate it be tasked with the responsibility of reviewing regulatory decisions made by the Director General, as it currently does under the Liquor Act.

Reviews of decisions made by the Casino, Liquor and Gaming Control Authority are to be dealt with by the Administrative Decisions Tribunal, as is currently the case for disciplinary decisions made by the Authority.

The bill also provides that a "stay" of a decision is an automatic outcome where an

application for review of any discretionary decision that a strike be incurred is lodged, unless the body conducting the review otherwise directs.

This will help to ensure that business viability is not undermined prior to a review of a decision.

The bill provides that decisions makers be required to take into account the range of matters which the original bill required before a strike is incurred.

These include venue size and capacity, any change of manager or licensee, the compliance and schedule 4 history of the licensed venue, and any changes to business practices.

The bill provides for guidance to be prescribed in the Regulation to assist the Director General and the Authority in considering how these matters will be taken into account when making a decision.

Submissions from the licensee, premises and business owners, the NSW Bureau of Crime Statistics and Research and the NSW Police Force will also need to be taken into account.

Finally, the bill provides that the three strikes legislation is to be reviewed after four years to determine whether the policy objectives remain valid and whether the terms of the legislation remain appropriate for securing those objectives.

The Government's message to the liquor industry from this legislation is that well run licensed venues that implement effective measures to prevent violence, intoxication, underage drinking and use of illicit drugs will minimise their risk of strikes being incurred.

This bill delivers the ultimate sanction to rogue licensees who repeatedly put the safety of patrons and the broader community at risk: loss of licence and disqualification from the industry.

The community should not have to tolerate licensees repeatedly committing serious liquor offences that lead to violence, antisocial behaviour and neighbourhood disturbance.

This legislation forces irresponsible licensees to lift their game.

As I stated when introducing the original bill, this legislation clearly demonstrates that the New South Wales Liberals-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 to address these issues.

The three strikes system introduced in this 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.