

Clubs Legal Update: In Brief December 2011

Liquor Amendment (3 Strikes) Act 2011

On 16 November 2011, the *Liquor Amendment (3 Strikes) Act (3 Strikes Act)* received Royal Assent and is expected to take effect in the near future, most likely in January 2012. The 3 Strikes Act amends the *Liquor Act 2007 (NSW) (Act)* to introduce a three strikes disciplinary system. Strikes can be incurred against a Club's licence if a prescribed offence is committed.

This article does not cover all of the changes introduced, however, our team can advise on the full amendments on request. Rather, this article focuses on the serious implications that paying a penalty notice can now have, even for something that may seem to be a relatively minor offence.

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Recording Strikes

The first strike is incurred automatically when there is a conviction for a 'prescribed offence'. The Director General of Communities NSW, and Casino, Liquor and Gaming Control Authority (**Authority**) respectively, have a discretion with regard to imposing second and third strikes. A strike comes into force on the day in which the original offence that caused the strike was committed. The strike will expire after a period of three years.

What is a 'prescribed offence'?

'Prescribed offences' currently include:

- selling or supplying liquor contrary to licence conditions or an authority under the Act;
- breaching conditions imposed after strikes are recorded or breaching certain special licence conditions imposed on violent venues;

- permitting intoxication or indecent, violent or quarrelsome conduct;
- permitting the sale, possession or use of a prohibited plant or drug;
- selling or supplying liquor to an intoxicated person;
- failure to comply with a short term or long term closure order; and
- selling or supplying liquor to a minor or allowing that to occur.

These offences may be added to in the Regulations at any time, so Club managers and Boards need to ensure they remain up to date.

Committing a prescribed offence

A person is taken to have committed a prescribed offence if:

- a court convicts the person of the offence (whether or not a penalty is imposed); or
- an amount is paid under a penalty notice in respect of the offence.

Impacts of Penalty Notices

Paying any amount under a penalty notice for a prescribed offence will result in a conviction. This can have serious effect, as a strike against the Club's licence will be incurred. If three strikes are incurred, the Authority may:

- disqualify (permanently or for a specified period) the Club's Secretary, a manager of any of the Club's premises, or any director of the Club, from their position at that particular Club and any other registered club;
- appoint a person to administer the affairs of the Club which excludes the Board from its usual role; and
- impose, vary or revoke a condition on the Club licence.

Reviews and appeals

Decisions regarding second strikes may be reviewed by the Authority, whereas decisions regarding third strikes may be reviewed by the Administrative Decisions Tribunal. These reviews operate as stays on the imposition of the strike or remedial action taken following a strike being incurred.

An appeal against a conviction for a prescribed offence does not act as a stay against the imposition of a strike, but suspends the operation of remedial action until the appeal is determined or withdrawn. If the appeal against conviction is successful, the strike ceases to have effect.

Tips for Clubs

The potential consequences of a strike being incurred and remedial action being taken by the Authority are significant for both a Club, its Secretary and other managers, and for its Board.

Clubs should regularly review their compliance programs and ensure that all relevant staff are aware of the new laws and the implications of committing a prescribed offence.

Clubs might also consider implementing a procedure to ensure that penalty notices are referred immediately to the Club Secretary and/or Board to ensure that they are aware of all such incidents and can take appropriate action. Penalty notices should also be assessed to ensure that they are compliant with the Act and to identify whether there are any grounds on which the Club may defend the notice.

For further information or a confidential discussion, please contact our team.

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