

17 NOVEMBER 2011

ALERT

NSW LIQUOR AMENDMENT BILL 2011 (NO 2)

3 STRIKES AND YOUR LIQUOR LICENCE MAY BE TERMINATED

OVERVIEW

- Under the revised “three strikes and you’re out” Bill, the right to revoke a liquor licence is at the discretion of regulatory bodies. It is therefore critical for businesses, financiers and landlords of licensed venues to be aware of the types of offences that may incur a “strike” and how to minimise the risk of receiving one;
- Unlike the original Bill, a strike cannot be given unless a conviction is recorded by a court or a relevant penalty notice is paid;
- After receiving a strike, the first strike will remain in force for three years, rather than one year as per the original Bill.

INTRODUCTION

On 22 June 2011, the NSW Government (“**Government**”) introduced a Bill to the NSW Parliament in relation to licensed premises to implement the policy known colloquially as “three strikes and you’re out”. Information regarding this Bill can be found on the [NSW Government Office of Liquor, Gaming & Racing website](#).

Following extensive consultation with a variety of industry stakeholders, a revised Bill was introduced into the NSW Parliament on 18 October 2011. A summary of the changes can be found in Table 1 on page 4. The Government has stated that the changes in the revised Bill will result in an overall strengthening of the enforcement measures contained in the Bill, which will improve its overall effectiveness.

In comparison to the original Bill, the revised Bill provides licensees with greater clarity in respect of how they may be able to incur an initial “strike” against their licence. The second and third strikes are incurred at the discretion of the Director-General of Trade and Investment and the Independent Liquor and Gaming Authority (formerly Casino, Liquor and Gaming Control Authority) respectively. In this regard, it remains to be seen how the respective regulatory bodies will use their discretionary powers.

WHAT DOES THIS MEAN?

If the revised Bill is enacted, there is the potential for liquor licences to be revoked at the discretion of regulatory bodies following “three strikes”. Consequently, it is important for stakeholders such as financiers and landlords of licensed venues, especially leasehold venues, to be aware of the potential risks to the businesses with which they are involved. Some specific considerations stakeholders should be thinking about include:

<p>WHO IS RUNNING THE BUSINESS?</p>	<p>Knowing your current and potential customers/tenants is vital in understanding whether there are any risks of a venue accumulating “three strikes”. Research should be undertaken to understand your customers/tenant’s risk management policies, aptitude of management, owner/licensee’s previous experience, trading history and previous licence breaches or convictions.</p>
<p>SPECIAL CONDITIONS FOR LICENSED CLUBS</p>	<p>Licensed clubs that incur “three strikes” under the revised Bill face penalties such as the disqualification of the club secretary and the board of directors. Additionally, an external administrator may be appointed to manage the club should three strikes be recorded against a club. Stakeholders should therefore ensure that businesses they have exposure to are compliant with liquor licensing and other regulatory requirements.</p>
<p>WHAT TYPE OF VENUE IS IT?</p>	<p>The Government has advised that the scale and type of venue will be taken into account in relation to discretionary rulings on strikes, however some venues are clearly “higher risk” than others. These include venues that have had special licence conditions placed on them due to their trading history. For example, the venue may have special conditions imposed on it due to its size, location or history of breaches/incidents.</p>
<p>CONTINUAL AWARENESS AND MONITORING</p>	<p>The revised Bill has taken into account the need for key stakeholders, such as financiers and landlords, to be informed when a “strike” has occurred against a licensed venue they are involved in. Consideration should be given by stakeholders as to how they can obtain information from their customers/tenants regarding outstanding issues that may contribute to a “strike” being recorded.</p>

At this time there has been no notice of when the Bill is intended to be passed.

HOW CAN TAYLOR WOODINGS HELP?

Taylor Woodings has a detailed understanding of licensing and other regulatory risks faced by businesses in the pub, hotel and licensed club sector. We are able to assist relevant stakeholders identify specific licensing and regulatory risks to minimise the risk of breaches.

Taylor Woodings has previously undertaken a broad range of assignments in the pub, hotel, and licensed club sector including:

- Reviewing operational and financial issues associated with a licenced premises and providing assistance to stakeholders and operators on key performance indicators and other trading challenges;
- Pre-lending reviews and business valuations for financiers considering funding operators in the pub, club and hotel sector, for acquisitions or other capital investments;
- Investigating Accountants Reports to venue operators to provide a clear understanding of issues to the appointing financier;
- Acting as Receivers and Managers to trade on and realise pub and club assets on behalf of secured creditors. We aim to improve trading results as a matter of urgency by utilising our network of industry contacts whilst actioning sales and marketing campaigns that achieve sales above expectations;
- Forensic Accountants reports and acting as expert witnesses in Court matters in relation to commercial disputes; and

- Acting as Voluntary Administrators to a number of licensed clubs, including the successful restructure of several financially distressed operations via deed of company arrangements.

We have strong relationships with industry stakeholders including, valuers, agents, operators, consultants, regulators, potential purchasers and specialised legal advisers. Taylor Woodings has seen an increase in the number of enquiries and appointments to pubs, clubs and hotels.

A highlight of our experience in this industry is our appointment to the Compass Hotel Group. Taylor Woodings was appointed as Investigating Accountant and subsequently Receivers and Managers of a group of 12 iconic hotels and 12 large-scale retail outlets in Western Australia. During our appointment, we stabilised and improved trade and sold the Group's assets through a national expression of interest campaign. Taylor Woodings recently entered into a contract to sell the portfolio of hotels to the Woolworths controlled Australian Leisure and Hospitality Group Pty Limited, in a well-publicised sale.

For more information on our Entertainment, Pubs, Clubs and Taverns industry experience please refer to the Taylor Woodings website or [click here](#).

Should you require any additional information regarding the contents of this alert or wish to discuss a specific matter involving a financially stressed business, please contact Taylor Woodings in Sydney, Perth, Melbourne or Brisbane.

More Information

Quentin Olde
Partner in Charge, Sydney
Team Leader - Entertainment,
Pubs, Clubs and Taverns
Taylor Woodings
+61 2 8247 8000
quentin.olde@twcs.com.au

Ross Blakeley
Partner in Charge, Melbourne
Taylor Woodings
+61 3 9604 0600
ross.blakeley@twcs.com.au

Mark Englebert
Partner, Perth
Taylor Woodings
+61 8 9321 8533
mark.engagebert@twcs.com.au

taylorwoodings.com.au

Nathan Landrey
Associate Director, Sydney
Taylor Woodings
+61 2 8247 8000
nathan.landrey@twcs.com.au

Ian Morton
Senior Manager, Melbourne
Taylor Woodings
+61 3 9604 0600
ian.morton@twcs.com.au

Liam Healey
Manager, Sydney
Taylor Woodings
+61 2 8247 8000
liam.healey@twcs.com.au

Table 1: Changes to the Key Features of the Bill

Issues	Revised Bill 18 October 2011	Original Bill 22 June 2011
Prescribed Offences	<p>New offences added:</p> <ul style="list-style-type: none"> ▪ Sale or supply of liquor outside authorised trading hours; ▪ Failure to comply with a direction or notice from Director-General; ▪ Failure to comply with a short term closure order; and ▪ Licensee/Manager liable of act of employee in certain offences. 	<p>Five Prescribed Offences:</p> <ol style="list-style-type: none"> 1. Permitting intoxication or indecent, violent or quarrelsome conduct; 2. Selling or supplying liquor to an intoxicated person; 3. Permitting sale, use or possession of drugs; 4. Selling, supplying liquor to a minor; and 5. Breach of schedule 4 condition (special licence conditions).
Strike Policy	<p>One conviction rather than a breach equals one strike. Once convicted, strike begins from the date of the act that the conviction was recorded for. The second and third strikes are at the discretion of the Director-General of Trade and Investment and the Independent Liquor and Gaming Authority (formerly Casino, Liquor and Gaming Control Authority) respectively.</p>	<p>Three breaches = strike one Two Breaches = strike two One Breach = strike three</p>
Expiration of Strikes	Three years	One Year
Penalties	<p>No longer automatic cancellation of licence, other options exist:</p> <ul style="list-style-type: none"> ▪ Suspension of licence for up to 12 months; ▪ Cancel licence of business owner and associates; ▪ Disqualify (possibly permanently) a licensee or manager involved in three strikes. <p>Impose, vary or revoke a condition on the licence.</p>	Automatic licence cancellation at third strike.
Other	<p>Strikes can only be incurred on the basis of convictions, rather than “allegations”.</p> <p>Requirement for the notification of parties interested in the business carried on under the licence and owner of licensed premises.</p>	Strikes could be incurred on the basis of breaches which may disadvantage operators where action was taken on the basis of allegations which had not been proven.

Source: NSW Government - Office of Liquor, Gaming & Racing