

15 January 2016

Mr Andrew Cappie-Wood
Secretary
NSW Department of Justice
GPO Box 7060
SYDNEY NSW 2001

Dear Secretary

SUBMISSION TO REVIEW OF THE THREE STRIKES DISCIPLINARY SCHEME

The NSW Alcohol Policy Alliance (NAAPA) welcomes the opportunity to provide a submission to the review of the Three Strikes Disciplinary Scheme.

NAAPA supports the concept of the Three Strikes Disciplinary Scheme (the Scheme). Similar to driver's licence demerit points, this deterrence scheme escalates penalties for repeated non-compliance. However, the current Scheme is falling short of meeting its objectives; in particular, the Scheme's ability to 'target repeat offenders'. Its inconsistent and subjective enforcement is the central flaw in its administration and application. Moreover, accountability of authorities to the Scheme and licensees to the strike conditions is low. The net result of which is that venues are getting away with risking the safety of patrons and compromising the amenity of local communities, and are profiting from this recklessness.

Consequently, the current Scheme fails to effectively serve the public interest in harm minimisation.

This situation has come about in part because:

- Regulators, do not push for strikes against problematic venues; instead, preferring an approach where they 'deal with' the problem venues' licensees.¹
- OLGR are reluctant to impose a strike unless a serious harm has occurred. There is considerable inconsistency in their policy decisions
- Decisions on strikes by the Office of Liquor, Gaming and Racing (OLGR), the departmental secretary responsible for OLGR, and the minister responsible for OLGR are not published.
- The remit of the Scheme does not extend to premises where repeated alcohol-related violent incidents occur within a prescribed time period. Incurring the strike to the licence rather than the licensee is key in order to change business operations and raise the level of professionalism across this industry.

There is evidence from NSW Police COPS data and NSW Violent Venues Lists that problematic venues are not incurring strikes they deserve to bear (as prescribed under the *Liquor Act 2007*). Data has shown that premises collect a number of records of offensive conduct before incurring a strike. Premises can also 'host' alcohol-fuelled violent incidents without ever incurring a strike, or being obliged to change operations so as to avoid such incidents from recurring. There are also cases where strikes 'disappear' after proprietors of venues threatened with a strike remove the licensee or approved manager - employing a new person in their place. Such cases are discussed in further detail in the private citizen submission to this Review from Mr Tony Brown of Newcastle, NSW.

For the Scheme to achieve its policy objective and adhere to harm minimisation, the Government must stop discretionary allowances for offending venues. Instead, the Government must do their utmost to prevent or deter offensive conduct prescribed under the Act from recurring. NAAPA proposes that the NSW Government should:

- Revise the Scheme to ensure 'swift and certain' enforcement of the Scheme's administration and application which is objective and consistent.
- Publish all submissions and the list of stakeholders that were consulted as part of the Review.
- Consolidate disciplinary schemes by extending the remit of the Three Strikes Scheme to include the NSW Violence Venues Scheme (for premises where repeated alcohol-related violent incidents occur within a prescribed time period).

It is important that this review does not distract from the Government's two-year statutory review of the liquor laws introduced to the Sydney CBD (due in February 2016). Strengthening the way that the Scheme is enforced and administered is essential. These efforts should happen in conjunction with and support the Government's commitment to reduce alcohol harms.

NAAPA welcomes OLGR publishing the submissions on their website and welcomes the opportunity to strengthen this transparency by publishing stakeholder consultation meetings. Increasing the transparency in the process will help inform stakeholders of final outcome of the review.

On behalf of NAAPA, I thank you for the opportunity to provide input to the review of this important mechanism for public safety and wellbeing.

Yours sincerely



MICHAEL THORN
ON BEHALF OF NAAPA

¹ Base Backpackers Pty Limited v Sydney City Council [2014] NSWLEC 1249, paragraph 33.
<https://www.caselaw.nsw.gov.au/decision/54a63ffd3004de94513dc9a5>