



AUSTRALIAN HOTELS ASSOCIATION

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4 April 2011

Mr. Tom Phillips AM
Chair
Safe Work Australia
GPO Box 641
CANBERRA ACT 2601

Dear Mr Phillips,

Re: Public Comment Period Draft Model Work Health and Safety (WHS) Regulations and Model Codes of Practice

The Australian Hotels Association (AHA) acknowledges the invitation of Safe Work Australia of 7 December 2010 to participate in the development of the above Regulations and Codes of Practice.

In accordance with the invitation please find attached the Public Comment Submission and the Public Comment Response Form.

In submitting the attached documents, in particular the Public Comment Response Form, the AHA considered it necessary to provide a covering comment paper to highlight aspects of its assessment of the Draft Regulations and Draft Codes of Practice.

The AHA is an organisation of employers in the liquor and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. It represents around 5,000 members across Australia serviced by branches based in each state and territory plus a Canberra-based national office.

The AHA provides services both on a National and State perspective through the operation of its State Branches in all States and Territories. Consequent to the provision of specialist industry services to their respective members, the State/Territory Branches deliver specialist Occupational Health, Welfare and Safety services as prescribed by the specific legislation proclaimed in each State and Territory.

The AHA through its Branches provides advice and representation in eight different jurisdictions relating to Occupational Health, Welfare and Safety. As a consequence, we operate under eight different statutory and legislative systems.

The potential impact of the National Model Work Health and Safety Legislation is therefore not of a simple 'one size fits all' approach. Each of the AHA eight Branches will be impacted in different ways that will either increase or decrease the obligations of its members, associated Industry and their employees, as a whole component of the national harmonisation approach.

The hotel industry is a significant employer, with more than 278,000 persons employed between the pub sector (188,000)¹ and the accommodation sector (90,000)², and an annual wages and salaries contribution of \$5.41 billion. In addition there are an estimated 20,000 employees in the casino sector³. Although some hotels are large-scale operations with hundreds of employees which form part of national or international chains, the majority of AHA members are small, locally-owned businesses serving their surrounding communities.

In addition to the comments provided in the attached Response Form specific to the Chapters of the Regulations and the published Codes of Practices, the AHA provides the following specific broad comments on the impact of the Model Work Health and Safety Act, Regulations and Codes of Practice:

1. The Legislation in terms of its consultation and Health and Safety Representative and Committee requirements apply to all businesses irrespective of the size of the business.

Subsequently, it appears whether a business has one employee or 1000 employees the same obligations, responsibilities and potential penalties for non-compliance will comply.

This is considered a significant impost on Small Businesses which constitute approximately 70% of venues covered by the AHA, i.e. less than 50 employees.

This is a significant change to the provisions of state-based legislation in certain jurisdictions which exempt businesses in the range of 20-25 employees from having health and safety representatives and committees.

2. The Offence and Penalty provisions as contained in the WHS Act, Part 2 – Division 5, are linked by the Draft Regulations prescribing breaches and penalty provisions on a far broader range for potential prosecution, with the size of the penalties increasing exponentially.

Of particular concern are the significant increases in the penalties to be applied to an officer of a PCBU (Person Conducting a Business or Undertaking) and a body corporate for each of the three (3) categories of offences (Sections 31 to 33 of the Act).

3. Improvement/Infringement Notices – the Act prescribes five types of notices, i.e.
 - Section 90 - 102 – Provisional Infringement Notice (PIN);
 - Section 191 - 194 – Improvement Notice;
 - Section 195 - 197 – Prohibition Notice;

¹ PricewaterhouseCoopers (2009) *Australian hotels: More than just a drink and a flutter*

² Australian Fair Pay Commission (August 2008), *Accommodation, Cafes and Restaurants Industry Profile, Research Report No. 1/09*

³ Australasian Casino Association, *Submission to the Parliamentary Joint Select Committee on Gambling Reform*, 31 January 2011

- Section 198 - 201 – Non Disturbance Notice;
- Section 243 – Infringement Notice.

NOTE: Sections 191, 195 and 198 are all contained in Part 10: Enforcement Measures, of the Act.

While the State and Territory Legislations contain Improvement/Infringement Notices of the same type and coverage, this is not consistent across the application of those jurisdictions.

Consequently, the potential increase in notices of non-compliance and the subsequent breaches in particular being applied nationally is clearly of concern.

In providing the above comments from a national perspective with regard to the potential impact of the all-encompassing Model Work Health and Safety Bill, Regulations and Codes of Practices, we expect the changes to have a significant impact on our industry and accordingly a pragmatic transition period is essential.

The implementation of the Model Work Health and Safety Legislation will require a significant information and education campaign to ensure understanding and compliance of the new requirements.

The establishment of the Federal Modern Award system in the Industrial Relations Jurisdiction, bringing over 4,400 Awards into 122, has been introduced with a five-year transition period, recognising the burden on industry of implementing such significant change.

It is submitted that a transitional period for the implementation of the Model Work Health and Safety Legislation and the related Regulations and Codes of Practice should occur within a similar time frame.

If the five-year period is not applied, the minimum period should not be less than two years from 1 January 2012, with full compliance/application occurring from January 2014.

The AHA appreciates the opportunity to provide its comments to the Draft Regulations and Codes of Practice and will participate in the ongoing implementation of the National Legislation.

For any further information regarding this submission please contact Trevor Evans from the Australian Hotels Association – South Australia Branch on (08) 8232 4525, or email tevens@ahasa.asn.au.

Yours sincerely



Des Crowe
National Chief Executive Officer
Australian Hotels Association