



Australian Hotels Association

Submission in response to:

Productivity Commission Inquiry into Regulator Engagement with Small Business

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18 March 2013

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About the AHA

The Australian Hotels Association (AHA) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its membership of more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star accommodation hotels located in each state and territory. The AHA's members are serviced by branches located in every Australian capital city and a Canberra-based national office. Accommodation hotels are represented by Tourism Accommodation Australia, a division of the AHA.

The Australian tourism and hospitality industry

Within the \$70 billion Australian tourism industry¹, the hotel sector is the most significant employer, with more than 278,000 persons employed between the pub sector (188,000)² and the accommodation sector (90,000)³, and an annual wages and salaries contribution of \$5.41 billion. In addition there are an estimated 20,000 employees in the casino sector⁴. Estimates of total industry revenue vary between \$11.1 billion (ABS) and \$14.4 billion (IBIS World) per annum.⁵

Although some hotels are large-scale operations with hundreds of employees which form part of national or international chains, the majority of Australian hotels are small, locally-owned businesses serving their surrounding communities. In 2005-06 only 145 of 65,197 businesses in the ABS Accommodation, Cafes & Restaurants sector employed more than 100 people.⁶ In its 2009 report *Australian Hotels: More than just a drink and a flutter*, PricewaterhouseCoopers stated:

*"The industry remains characterised by small, independent pub owners who lack a chain or franchise affiliation. These businesses make up approximately 88% of the market share."*⁷

Around one-third of the AHA's members are located in regional areas, where hotels play central roles as a social hub, a provider of food, entertainment and banking services and a community meeting place, but also as one of the larger employers. Despite this, the ability of the hospitality industry to employ large numbers of Australians is highly volatile. For example, the change in the number of people employed in the industry between 2005 and 2008 fluctuated greatly: an increase of 46,100 in 2005 was followed by a 49,700 decrease in 2006, and a 69,600 increase in 2007 was followed by a 12,700 drop in 2008.⁸

Around one-third of the AHA's members do not operate gaming machines and around ten per cent of members derive the majority of their income from providing overnight accommodation. Although there are a small number of hoteliers who own the free-hold on their land and premises, the majority of hoteliers lease their premises.

¹ Tourism Australia (2011) *2020 Tourism Industry Potential one year on*

² PricewaterhouseCoopers (2009) *Australian hotels: More than just a drink and a flutter*

³ Australian Fair Pay Commission (August 2008), *Accommodation, Cafes and Restaurants Industry Profile, Research Report No. 1/09*

⁴ Australasian Casino Association, *Submission to the Parliamentary Joint Select Committee on Gambling Reform*, 31 January 2011

⁵ PricewaterhouseCoopers (2009), p6

⁶ Australian Bureau of Statistics (2007), *Australian Industry 2005-06*

⁷ PricewaterhouseCoopers (2009), p14

⁸ Australian Bureau of Statistics (2007), p44

General principles

The AHA understands that government regulation of business conduct is necessary in some areas to address to guard against unconscionable, anti-competitive or risky conduct. The aim must be to find the appropriate balance of necessary, reasonable and efficient regulations that have minimal effect on the operation's innovation, productivity, flexibility and aspiration – the factors which allow a business to maximise profitability, which ultimately benefits the whole economy. However the impact of regulation on business is not limited to the prohibition or limitation of certain practices. The burden of time and additional cost that compliance with government legislation and regulation is known as 'red tape' and includes activities such as filling out forms, applying for permits and licences, reporting business information, and collating information for payment of fees and taxes.

The AHA therefore encourages the following broad principles when considering a whole-of-government approach to deregulation:

1. Wherever possible, seek other ways to address market failure than simply introducing more regulation. Consider the many other options available, including working with industry to encourage self-regulation.
2. Always consider the overall costs of compliance, which include the cost of actually informing and training industry in understanding what the regulations are and how to comply. In addition, continually changing regulations also constitutes a cost to business, in training, modifying procedures etc.
3. Consider the cost of industry of non-compliance, such as penalties or other sanctions, if the compliance requirement is not fully understood or carried out.
4. Consider the implications of the Australian situation, whereby state and territory governments often fail to achieve national uniformity in regulations even where the circumstances bear little difference between jurisdictions, as in the example of innkeepers' liability laws.
5. Take account of the high volume of complex and detailed legislation and regulations imposed by all three levels of Australian governments.
6. Consider the time impact when setting standards for reporting frequency or the breadth of information to be required from businesses.

The hotel regulatory environment

The hotel industry is heavily regulated by a combination of local, state and federal government agencies in a manner which is often inconsistent, unsystematic and difficult to comprehend. For an industry that remains dominated by small owner-operators, compliance with various regulatory and legislative requirements is a burden on time and productivity. Hotels are subject to various planning, zoning and access regulations from local councils, to liquor licensing, gaming and wagering and food safety regulations from state governments, and an increasing amount of federal regulation administered by agencies such as the Australian Taxation Office, Australian Competition and Consumer Commission, AUSTRAC, Australian Bureau of Statistics and the Fair Work Ombudsman.

The hotel industry is facing significant pressures in many parts of the country which are not benefitting from the mining boom, which is resulting in reduced profitability and increasing business uncertainty. The AHA estimates that around three-quarters of Australia's hotels have suffered adverse trading conditions and reduced revenues in 2011-12. These pressures include:

- Rising wage costs and a lack of flexibility in employment regulations.
- Rising utility costs (water, energy) which have increased further with the introduction of the carbon tax on 1 July 2012.
- The continued strength of the Australian dollar acting simultaneously as a disincentive to inbound tourism and as an incentive for Australians to holiday overseas instead of locally.
- The increasing dominance of the retail alcohol sector is seeing an ever greater share of alcohol consumption taking place away from hotels and other licensed premises as consumers take advantage of below-cost prices available from bulk retail liquor outlets.
- Concerns about the threat of looming regulation in the areas of gaming (pre-commitment for gaming machines) and preventative health (alcohol regulations) which are impacting on investor sentiment in the industry.

The AHA welcomes the Commission's interest in this important subject for the hotel industry and is pleased to provide the following comments in response to the discussion paper.

A common definition of 'small business'

As the Commission notes in the discussion paper, small business is defined in different ways by regulators with almost no consistency in definition across Government agencies. The threshold for unfair dismissal laws has changed several times in recent years and has been more of a political tool than a considered definition of what is or is not a small business. Other small business definitions not included in the discussion paper relevant to the hotel industry include AUSTRAC cost recovery and compliance (15 or fewer gaming machines), and the various payroll tax thresholds applied by the states and territories.

The AHA agrees there is merit in determining a consistent approach to defining a small business across Federal Government regulatory agencies. This would lead to improved data collection and analysis for better informed policy making and better understanding of eligibility for small business concessions, and

Always consider small business exemptions

The AHA accepts the Commission's statement in the discussion paper that because the vast majority of businesses are small, blanket exemptions for small business would see regulation not achieve its objective. However, the impact of red tape and compliance costs are proportionally greater when applied to small businesses, often impacting directly on the capacity of the small business to expand or to operate profitably. The principle of imposing lower levels of red tape on small business is essential to fostering economic growth and innovation and should be adopted by regulators wherever possible.

The AHA refers to the submission of the Australian Chamber of Commerce & Industry (ACCI), which contains detailed quantitative and qualitative evidence of the impact of regulation on small business.

Avoid unnecessary Federal intervention

One area of frustration for many AHA members is the seemingly increasing level of Federal involvement in areas of business already regulated by the states and territories. These Federal interventions are confusing for business, arbitrarily create winners and losers, and very often impose a 'one size fits all' model where the final result does not reflect local realities. Some examples of inefficient Federal interference in the hotel industry include:

- The establishment of AUSTRAC and its Anti-Money Laundering / Counter-Terrorism Financing regulation of hotels with gaming machines, despite widespread acceptance that hotels are at very low risk for this type of criminal activity.
- The establishment of the Australian National Preventative Health Agency and its recent inquiry into alcohol advertising that includes consideration of promotions undertaken by licensed venues. This is in ignorance of the fact that state and territory liquor licensing legislation already imposes conditions on venues that are enforced by well-resourced inspectors.
- The introduction of mandatory pre-commitment for gaming machines through Federal legislation even though each state and territory regulates the gaming industry through its own legislative framework and despite the vast differences in the structure and distribution of gaming machines between states and territories.

Conclusion

The Australian hotel industry is a major contributor to the national economy and also to the social fabric of local communities, but it is primarily a highly regulated small business industry in which operators must engage in a constant, daily struggle to comply with various regulations imposed by local, state and federal governments. The AHA is pleased to see consideration being given to a consistent definition of small business and supports special consideration for small businesses when regulatory compliance regimes are devised. Consideration should also be given to the cumulative impact of regulation and to opportunities to streamline regulatory activities within industries.

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