SUBMISSION TO THE

PRODUCTIVITY COMMISSION

Annual Review of Regulatory Burdens on Business - Business and Consumer Services

AUSTRALIAN HOTELS ASSOCIATION
NATIONAL ACCOMMODATION DIVISION

February 2010

1. AHA Background

The AHA is the peak hotel association in Australia, representing the interests of 4,800 hotels in all States and Territories. This figure comprises both pubs and accommodation hotels.

Hotels which provide accommodation are key players in the tourism industry in Australia. The AHA represents the most of Australia's 3, 4 and 5 star hotels, with members drawn from leading national and international hotel groups, including Hilton, Hyatt, Accor, Marriott, Four Seasons, Shangri-La, Mirvac, Starwood, Metro Hotels, and many independently owned and operated properties.

According to the Australian Bureau of Statistics licensed hotels in Australia with five or more accommodation rooms employ over 66,000 people. The ABS estimated total industry revenue to be $11.1 billion, and that the total industry value added of Australia's accommodation businesses is $4,774,900,000 or 0.5% of Australia's gross domestic product. The hotel industry is an integral component of Australia's service economy and is a vital part of the nation's economy as a whole, servicing most of Australia's 5.5m international visitors, and 67m domestic overnight travellers, each year.

2. Introduction

The travel and tourism industry is closely integrated within the Australian economic community at local, State and national level. As such, it is affected by almost all commercial, environmental, legislative, social and cultural aspects of daily business.

At an everyday business level, there are a host of specific laws and regulation at all three levels of government that impact on the hotel industry. The AHA acknowledges that this review deals specifically with Commonwealth legislation and regulations, but would like to highlight the overall context. Commonwealth and State legislation often operate in tandem, such as in the areas of privacy and food safety, so it is important to consider this interaction. In addition, there are over 600 local government authorities across Australia, each with their own standards and requirements for businesses to deal with.

The AHA welcomes this initiative and looks forward to real progress in reducing the total overall burden of time and cost of compliance with Commonwealth legislation and regulations. The challenge was acknowledged in 2006 by the Australian Law Reform Commission:

> ...despite the efforts of the Office of Regulatory Review and similar agencies, the sheer volume, complexity and growth of regulation is overwhelming even for the enforcement authorities themselves.[1]

[1] Atherton TC, (2006). Reform Vol 83, Australian Law Reform Commission

3. General Principles

The AHA understands that some level of government regulations are obviously needed to address the extremes of an unfettered market, such as zoning restrictions and environmental regulations, as well as to guard against irrational, unconscionable or risky behaviour by businesses.

The aim is to find the appropriate balance: a minimal level of reasonable and efficient regulations that do not impact on a business's operations, innovation, productivity and flexibility that enables them to maximise profitability, which ultimately benefits the whole economy.

The AHA therefore urges the Productivity Commission to consider these broad principles when considering areas for reform in this review:

a) Seek other ways to address market failure than simply introduce regulations, consider the many options available, including self-regulation.

b) 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.

c) Consider the cost to industry of non-compliance, such as penalties or other sanctions, if the compliance requirement is not fully understood or carried out.

d) Consider the implications of the Australian situation, whereby State Governments often fail to achieve national uniformity in regulations even where the circumstances bear little difference between States, as in the example of innkeepers' liability laws.

e) Take account of the high volume of complex and detailed legislation and regulations imposed by all three levels of Australian governments.

4. Red Tape's Impact on Business

The burden of time and additional cost that compliance with government legislation, regulation and other instruments, known as 'red tape', is well documented and endemic to modern, complex economies. Red tape includes activities such as filling out forms, applying for permits and licences, reporting business information, and collating information for payment of fees and taxes, as well as restrictions or prohibitions on business activities.

A recent study by the NSW Business Chamber[2] surveyed many businesses in the service industries across NSW. As these are part of the same sector targeted in this review, the survey provides a useful snapshot of the current impact of red tape on the accommodation sector.

The study looked at all three levels of government, but the five agencies nominated by most respondents as having a high to moderate level of red tape were all Commonwealth agencies:

[2] Red Tape Survey, (2009) NSW Business Chamber

a) Australian Taxation Office
b) Australian Securities and Investment Commission,
c) Australian Competition and Consumer Commission
d) Australian Quarantine and Inspection Service
e) Department of Employment, Education and Workplace Relations.

Financially –
- 79.9% found that 'paying taxes' is a moderate to high financial cost of compliance;
- 42.0% found that 'employing workers' is a high financial cost of compliance.

In time taken –
- 78.7% found that 'paying taxes' has moderate to high time consumption of compliance;
- 48.0% found that 'employing workers' has a high time consumption of compliance;
- Over 60% of respondents said they spent up to 10 hours per week complying with regulatory requirements, and over 18% spent over 10 hours, with some spending more than 20 hours per week on red tape.

Clearly red tape presents a significant burden to businesses, both as a direct financial cost and indirectly in the time taken to comply.

In particular, it is a serious concern that 'employing workers' bears both a high financial cost as well as a high consumption of time, as hotels proportionally tend to employ more people due to the nature of their business.

The survey also found that over 70 per cent of respondents noticed an *increase* in the last two years in both the cost of compliance and the time taken to comply. This would signify either that there has been an increase in the overall amount of regulation, or that existing regulations have increased their compliance requirements. Either way, the AHA urges the Productivity Commission to recommend actions that will halt this increase as well as reduce the overall total burden of red tape, such as:

a) Clear and measurable *total* time and cost reduction targets for red tape;
b) Reducing frequency of reporting requirements;
c) Reducing or halting growth in new or additional red tape through a 'one in, one out' rule;
d) Better consultation with industry users when considering introduction of new regulations;
e) Streamlining data collection (through one agency, for example) to reduce duplication.

5. Specific Examples

The AHA understands that part of the Productivity Commission's objectives in this review is to identify specific areas of Australian Government regulation that are unnecessarily burdensome, complex or redundant or duplicate regulations or the role of regulatory bodies, including in other jurisdictions.

This section provides specific instances of regulation that affect the accommodation industry.

5.1 A New Tax System (Goods And Services Tax) Act 1999

GST on deposits: interpretation by the Australian Tax Office.

When the GST commenced on 1 July, 2000, the ATO allowed GST payments on deposits to be made when the service has been delivered. This is important for hotels which take small deposits at the time of booking a function, meeting or convention in advance.

In 2007, the ATO issued a ruling that overturned this accepted practice, ruling that when payments are accepted as a security deposit, GST must be paid on the total amount of the supply, not the amount that has been paid as a deposit. The AHA has made formal representations to the ATO to change the interpretation of how GST is charged on deposits (other tourism and hospitality industry associations have made similar requests). The ATO has ruled against these appeals on every occasion.

The AHA requests the review committee recommend changes to the current interpretation of how GST is charged on deposits, so that it does not continue to impose a significant and unfair cash-flow and administrative impact on hotels.

5.2 Trade Practices Act 1974

Component pricing

Under changes to the Trade Practices Act governing component pricing, the common and long-standing industry practice in food and beverage areas of advertising a percentage surcharge to cover additional costs on Sundays and/or public holidays is now likely to breach s.53C.

The AHA understands the intent of the component pricing changes is to ensure that customers clearly understand the full amount they will have to pay for goods and services. In the case of a percentage surcharge on a menu, the AHA holds that customers of food and beverage areas are able to understand fully the price they will be charged, as it is stated as a clear and unambiguous percentage on a total figure, and, as a long-standing and customary practice for both domestic and international customers, is unlikely to be confusing or misleading. Customers in restaurants are also accustomed to calculating a tip for service which is often the same as the Sunday/public holiday surcharge, which makes the component pricing requirement redundant for restaurants.

The need to provide a price for each item that includes what would otherwise be charged as a simple surcharge on a total, entails either extra cost, or complication, or both for restaurants:

a) Having to print and distribute a different menu;
b) Having to show two or more lists of prices on the same menu;
c) Where there are daily changes or blackboard menus, having to amend the blackboard every week on different days.

The AHA requests that the ACCC or other appropriate agency be empowered to exempt restaurants from the requirements of s.53C where it can be shown that the cost to business is unreasonable, and the benefit to the customer is not demonstrable, as in this case.

5.3 National Greenhouse and Energy Reporting Act

Data capture and reporting requirements

AHA members have noted that the initial registration process and dealings with the Department of Climate Change have been satisfactory overall.

However, the main issue reported is that those who were captured by the legislation needed to have had a robust and flexible system in place to begin with in order to capture and report on the necessary data. If this was not the case, hotels have had to employ additional people and invest in tools and technology to establish such a system, which has been an additional expense on their books. The monitoring and reporting systems also need to be able to maintain and store this data.

For future reference, with reference to effectiveness of communications, the Department was seen as less effective in communicating whether hotels needed to register for reporting, if they did not already hold the data, which caused some uncertainty and confusion.

5.4 Australian Bureau of Statistics

Surveys on energy and water consumption

The ABS energy and water surveys require extremely detailed information. These surveys duplicate the information required by the NGERS reporting scheme, in that the NGERS data is a subset of the ABS requirement. The ABS surveys require other corporate information as well.

The ABS forms are differently formatted and laid out but essentially require the same information. In addition, owners as well as operators of hotels received the same surveys, and some effort had to go into convincing the ABS that one response to these surveys would be sufficient. AHA members found that the ABS tends also to have a rather heavy-handed approach to its data collection and is very inflexible in its approach to hotels completing the surveys. The ABS data collection was imposed at the same time as the NGERS data requirement, which made it very difficult and costly for hotels to allocate resources to complete both compliance tasks.

There is a concern that there is now the potential for this duplication to be entrenched and repeated each year if the NGERS data is not streamlined with the same data that the ABS collects.

5.5 Anti-Money Laundering and Counter Terrorism Financing Act (2006) (AML/CTF)

Many AHA members, and other operators who are not members, operate hotel schemes whereby the apartment owners lease their apartments back to the Hotel operating the Scheme for the purpose of leasing it to guests. The revenue thus generated is pooled and shared amongst all scheme members, with the operator deducting necessary operating costs.

The term of the leases range from 5 to 10 years, and are renewable, with income distributed on a monthly basis. To exit such schemes, the owner of the apartment must give notice in writing usually of 3 to 6 months. If the owner wanted to sell the apartment or villa that is part of the scheme, they have to find a buyer privately, or use a real estate agent.

Most of these schemes are registered Managed Investment Schemes ("MIS"), and are ASIC regulated. On 31 January 2008, AML Regulations came into effect to ensure that companies issuing or selling interests in MISs are caught under item 35 of table 1 of the AML/CTF Act.

The 'Ongoing Customer Due Diligence' obligations of the AML/CTF Regime (otherwise known as Phase 4) are significantly more onerous and costly than the AML obligation of collecting and verifying customer ID. Transaction monitoring for example requires a dedicated data collection and monitoring system to be implemented. This functionality is currently not required for the purposes of managing the scheme effectively and few hotels have the data integration and the sophisticated systems that can be updated for transaction monitoring purposes.

These AML obligations impose an enormous compliance burden to manage a negligible risk. If "dirty money" is involved, it is more likely to be used when the apartment is purchased that at any other point in the chain. Once the apartment is purchased and leased back to the Hotel operating the scheme, the income generated is 'clean' as it is derived from various hotel guests staying in the hotel. The pooling arrangement does not permit a single owner to control revenue allocation.

Unlike a bank account where a customer can deposit or withdraw funds, members of these hotel schemes can only receive a rental income that is payable to their designated bank account. Other than the occasional change of bank details or address, the only transactions in these accounts are generated by the operator of the scheme in the form or rent payment, rather than initiated or controlled by the customer.

The AHA proposes that hotel schemes that are defined as Registered Managed Investment Schemes be exempted from AML Phase 4 as the risk of laundering money through these schemes is negligible and the compliance burden disproportionate to the risk. It is the AHA's understanding that other property management schemes of similar low risk profiles have been exempted from this compliance burden under this rationale, and therefore the AHA advocates that this exemption be extended to the hotel schemes described here.

5.6 Building Code of Australia – Proposed Disability (Access to Premises – Buildings) Standards

The Federal Government is shortly to prescribe standards for disabled access room requirements which will be enacted through the Building Code of Australia (BCA). Currently, hotels, as Class 3 buildings, require approximately 3.5% of their rooms to be accessible as defined in the BCA. The proposed new standards will increase this requirement to approximately 4.5%. Two issues are at play here: firstly, that Class 2 buildings (apartment buildings) will be exempt from this requirement, even though many of these buildings are currently engaged in letting apartments in the short term stay market. Secondly, a national survey* conducted by the AHA and the Tourism and Transport Forum has shown that the current levels of average demand and occupancy of accessible rooms does not warrant the increase proposed in the Disability (Access to Premises) Standards.

The adverse effects on the industry of the higher accessible room requirement include lost revenue from lower occupancy rates, lost revenue from the floor space given over to accessible rooms, and opportunities lost to Class 2 buildings which are competing in the market without having to maintain the same room standards.

The AHA has made representations to the Federal Government on this issue, and seeks the following:

- A reduction in the current BCA ratio of accessible rooms in Class 3 buildings to 2% of rooms;
- Inclusion of the 2% ratio in the proposed Disability (Access to Premises) Standards;
- Application of the Standards to Class 2 buildings where they are engaged in marketing and letting apartments in the short-term accommodation market (as outlined in Section 6.1).

** The full report of the survey and results will be provided to the Productivity Commission as soon as possible.*

6. Further areas for reform

The AHA proposed that the Productivity Commission consider the following areas of reform which have the potential to deliver productivity gains to the economy as a whole through enabling hotel businesses to operate and invest with confidence across Australia with clear and consistent operating conditions across State and local government borders.

6.1 National uniformity in dealing with unregulated short term letting of residential properties

Serviced apartments are a relatively new phenomenon in the accommodation sector. As a result, many local government authorities have yet to fully understand and recognise the role they play in the market. Accordingly, there is inconsistency across State and local government legislation and regulations in dealing with residential apartments that are converted for use as short-term 'serviced apartments' and a general failure to implement adequate safeguards to ensure compliance with the existing requirements.

When operated appropriately, serviced apartments add to the overall accommodation market and can enhance the attraction of a destination. They provide an additional and different accommodation option for travellers and complement the more traditional hotel accommodation.

Most State and local governments in Australia do not adequately monitor short-stay accommodation providers (average length of stay under 28 days), including those operating out of CBD unit complexes. Short-term accommodation can generally be operated with no reference to government. These rooms are not regulated or monitored and are not required to provide minimum levels of facility or service.

This poses a number of problems for the tourism sector, government and industry, as well as for users of the accommodation and residents in surrounding areas. These include:

a) Devaluing the tourism brand;
b) Stifling investment in the industry by creating uncertainty in the market. As a result, properties deteriorate as facilities and rooms are not renovated or developed;
c) Loss of income to government through failure to pay appropriate rates, general taxes and GST which apply to commercial properties as opposed to residential properties;
d) Chaotic infrastructure and land use planning that is inappropriate to the needs of the area;
e) Reduced employment opportunities; and
f) Reduced level of public safety though failure to apply appropriate fire and access standards.

As much of the legislation relating to property development approvals sits at a State level, the AHA recognises that standardisation of practices is difficult. Despite this, a range of consistent principles could apply to local and State government planning instruments:

1. Must clearly differentiate between short stay accommodation and residential apartments;
2. Must recognise the differences in usage and thereby the differing infrastructure and amenity needs;
3. Should include reference to tourist and visitor accommodation;
4. Must include as part of the approval process a means to ensure compliance with the Disability Discrimination Act, the Building Code of Australia and fire regulations as they apply to different classes of building;
5. Require the conversion of residential apartments to short stay accommodation (and vice versa) to be subject to approval. This approval process must generate a full submission to council, including impact assessment and an opportunity for public comment. It should not be self-assessable; and
6. Must prohibit approvals that allow the conversion of apartments from residential to serviced, and vice versa, at any time.

National uniform standards to reflect and enforce these principles would assist the industry by having clarity and consistency across State and local government jurisdictions.

6.2 Clarification and enforcement of regulation: GST payable on short-term accommodation services

Room rates for guests staying in hotel rooms are regarded as a service, therefore the room rate attracts GST. However, residential tenancies do not incur GST. The AHA and its members are aware of instances where owners of residential apartment properties are using different means, such as through real estate agents, to let their properties on a short-term basis. These arrangements are for all intents and purposes similar to that of a hotel, often with a licensed restaurant on the premises, but they do not charge GST. This gives them a significant price advantage over hotels, but because they are ostensibly classified as 'residential' they are able to escape the application of GST. As raised in item 6.1 above, such properties have been zoned for residential use only, yet the rooms are being marketed and sold as short-stay (or hotel-style) accommodation.

Member hotels have made the AHA aware of instances where the requirement that such properties must charge GST is being applied in an inconsistent manner by the Australian Tax Office. The AHA seeks a clarification of GST Ruling 2000/20 to ensure that the application of GST to short term letting of rooms is applied across the board to all properties engaging in this activity.

6.3 Mutual recognition of 'responsible service of alcohol' training

Currently in Australia, most States require that liquor licensees and staff with liquor service responsibilities undertake mandatory responsible service of alcohol courses prior to being able to work in hotels.

The different state regulatory bodies have different requirements surrounding regulatory compliance with Responsible Service of Alcohol (RSA), which mainly relate to knowledge of the local licensing laws. The actual responsible service training is by and large consistent. These differences across State and Territory borders can present a significant obstacle to the ability to employ trained staff in hotels. Employees of licensed hospitality venues are unable to obtain a portable RSA certification to work in the industry across Australia. This leads

inevitably to additional costs in each jurisdiction as training must be replicated, and is a significant obstacle to the mobility of labour across borders.

The AHA seeks the mutual recognition of responsible service of alcohol qualifications across State and Territory boundaries, to reduce the cost and red tape burden in this area.

7. Summary of AHA Recommendations

GENERAL:

a) Clear and measurable *total* time and cost reduction targets for red tape;
b) Reducing frequency of reporting requirements;
c) Reducing or halting growth in new or additional red tape through a 'one in, one out' rule;
d) Better consultation with industry users when considering introduction of new regulations;
e) Streamlining data collection (through one agency, for example) to reduce duplication.

SPECIFIC

a) Change the current interpretation of how GST is charged on deposits, so that it does not continue to impose a significant and unfair cash-flow and administrative impact on hotels.

b) The ACCC or other appropriate agency should be empowered to exempt restaurants from the requirements of s.53C where it can be shown that the cost to business is unreasonable, and the benefit to the customer is not demonstrable, as in this case.

c) Improve communications from the Department of Climate Change to industry on registration and reporting requirements.

d) Streamline and standardise NGERS data with the collection of ABS data.

e) Hotel schemes that are defined as Registered Managed Investment Schemes should be exempted from AML Phase 4 as the risk of laundering money through these schemes is negligible and the compliance burden disproportionate to the risk.

f) Reduce the current BCA ratio of accessible rooms in Class 3 buildings to 2% of rooms; include the 2% ratio in the proposed Disability (Access to Premises) Standards; and apply the Standards to Class 2 buildings where they are engaged in marketing and letting apartments in the short-term accommodation market.

g) Apply and enforce consistent local and State government controls on short term letting of residential apartments.

h) Clarify GST Ruling 2000/20 to ensure that the application of GST to short term letting of rooms is applied across the board to all properties engaging in this activity.

i) Mutual recognition of responsible service of alcohol qualifications across State and Territory boundaries, to reduce the cost and red tape burden in this area.