



Australian Hotels Association
WESTERN AUSTRALIA

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Public Building Review
Environmental Health Directorate
Department of Health
PO Box 8172
PERTH BUSINESS CENTRE WA 6849

Via email: publichealthact@health.wa.gov.au

MANAGING PUBLIC HEALTH RISKS IN PUBLIC BUILDINGS IN WESTERN AUSTRALIA

Thank you for the opportunity to make a submission to the Department of Health's (DoH) review of the *Health (Public Buildings) Regulations 1992*.

The Australian Hotels Association (AHA) has considered the options outlined in the discussion paper, proposing two options – one to repeal without replacement and two to repeal and replace with new regulations. We have outlined in our submission below, **strong support for Option 1** which aligns with our view that licensed businesses are already subject to sufficient existing regulation to mitigate against the risks to public health.

However, it is recognised there exists high levels of support for continued regulations as proposed under Option 2. Although, not the preferred option, we offer limited support for an appropriate and modest regulatory framework which does not impose an added costly annual registration and compliance framework on businesses.

In addition, specific issues of interest have been identified for consideration by the DoH;

- Public Buildings and Risk Assessment
- Requirement for Registration
- Annual Fee
- Exclusion of Events and Temporary Structures

The AHA has established clear positions in relation to each of these as part of our submission below.

AUSTRALIAN HOTELS ASSOCIATION WA (AHA)

The AHA is the peak industry group representing the interests of tourism, hotel and hospitality businesses across Western Australia. Our membership is broad and spans a range of venues including major tourism facilities, accommodation hotels, resorts, traditional pubs, taverns, small bars and large restaurants. Licensed venues are considered public buildings under the *Health Act 1911*.

OPTION 1 – REPEAL WITHOUT AMENDMENT

Owners and operators of licensed businesses recognise their responsibilities and obligations for public health and safety under a complex range of building, liquor licensing, health, workplace safety and counter-terrorism legislation.

Compliance with requirements under these Acts are monitored and enforced by local government, liquor licensing and workplace safety officers allowing for inspections, maintenance and heavy penalties. Breaches can attract infringements for staff, through to the company board and for maintenance matters allow for daily fines until the issue is remedied or for serious offences the suspension or cancellation of licenses.

Existing provisions provide strong disincentives and avenues for public safety risks to be remedied and it is the AHA's view that this provides more than adequate protection to patrons resorting to licensed premises. In support of our position, a schedule of public risks has been developed outlining how these are currently mitigated. [See Appendix 1]

In addition to the penalties outlined in Appendix 1, the *Public Health Act 2016*, introduced a new General Public Health Duty. This new legal duty is broad and binding on all persons to conduct their activities in a way that does not cause harm to the health of others. In essence, we all have a legal responsibility to protect another person from harm.¹

Authorised officers have powers to enter and investigate, prevent, control or abate any risk to public health. If a person is found to have breached the general duty by putting another person's health at risk, further enforcement action can be taken under the Act.

Enforcement can take the form of an improvement notice or enforcement action. Authorised officers are able to restrict operations. Failure to comply can attract a penalty of \$50 000 or a daily penalty of \$10 000.²

Government is committed to freeing business from the burden of poor regulations and making regulations more effective.³ This objective is strongly supported by business that are all too often adversely impacted by unnecessary, obsolete, or poorly designed regulations that result in increased costs for goods and services being passed onto consumers and discourages entrepreneurs from establishing new and innovative businesses and business practices.

AHA Position: ***The repeal of the Public Building Regulations is strongly supported with existing regulations providing sufficient protection against risks to public safety.***

OPTION 2 – REPEAL AND INTRODUCE NEW AND UPDATED REGULATIONS

The AHA notes that the existing framework which provides guidance to local government officers has been successful in preventing incidents which may have contributed to no mass fatalities occurring in a WA public building.⁴ As such, we recognise that there is support for the continued regulation of public buildings under public health and have identified some key areas that require careful consideration in developing a new regulatory framework for Public Buildings.

¹ [Public Health Act 2016](#), Section 34 – General Public Health Duty

² [Public Health Act 2016](#), Section 216-225

³ [WA Labor, Plan for Jobs - Freeing up Business, page 90](#)

⁴ Managing public health risks in public buildings – Discussion paper, page 15

Definition of Public Buildings and Risk Assessment

A fundamental aspect of Proposal 1 is the introduction of a risk assessment through changes to the definition of public buildings. The AHA is supportive of the introduction of this approach consistent with Proposal 1 which would eliminate the current confusion regarding the application of public building regulations to licensed venues.

However, we have serious concerns in relation to determination of risk and the categorisation of licensed venues.

If the model risk matrix is to be used as a guide, all licensed venues would be designated high risk due to the service of liquor, performance of loud music and dimmed lighting and subject to annual registration and increased compliance obligations, additional to those under Racing, Gaming and Liquor.

Together with the adoption of measures under Proposal 2, this would result in all licensees regardless of the size of their business being forced to submit to onerous and expensive requirements to engage consultants to develop risk management plans which are likely to attract further penalties for non-compliance.

The adoption of the model risk matrix which categories all licensed venues as high risk is contrary to advice received by the AHA following changes to the interpretation of public buildings in 2002. The result of these changes broadened the interpretation of 'public building' to include all licensed venues, where previously only areas used for functions or entertainment were deemed to be public building areas.

AHA representations to Government and the Department of Health at the time raised concerns about the implication of this change at the time. These included licensed venues having to obtain a Certificate of Approval to determine maximum patron numbers and additional obligations and responsibilities that have historically not included hotels. Together with concerns about the confusion created by different and varying level of enforcement from different local authorities by the amended Public Building Guidelines.

The Minister for Health's response to AHA's concerns states that additional advice had been sought from the Crown Solicitors office which stated:

"I am advised that the definition is in fact much wider than previously thought and additional premises will be captured. However, the premises or areas not previously captured will in the main be considered low risk and the discretion available for approving authorities should not require additional onerous conditions to be set. In the event that an unreasonable condition is set a right of appeal to the Executive Director of Public Health exists. Appeals must be received no later than 14 days of an order being given." - Correspondence dated 20 August 2002

As a result, the Minister directed that the Guidelines be amended to "remove clear direction for local government to approve premises which were not captured previously."

It is apparent based on advice from members that although the application of regulation is at the discretion of Council Environmental Health Officer (EHOs), they are generally applied to all new hotel, tavern and small bar licenses.

This requires licensed businesses to comply with regulations in order to receive planning approval. Once this approval has been received Council is then able to issue the business with a Certificate of Occupancy which introduces different occupancy ratios to those provided under the nationally harmonized Building Code.

AHA Position: *Limited support for risk assessments as outlined in Proposal 1 and subject to further consultation on a risk matrix. The AHA strongly opposes the introduction of a burdensome registration, compliance and enforcement regime on all licensed venues.*

Requirement for Registration

Proposal 2 seeks to prescribe the requirement to operate a public building as a public health risk activity that must be registered.

The following information is proposed for submission with registration applications:

- Application and required documents (Building plans, emergency management plan, risk management plan, fire engineering reports, information on performance solutions, any other required information fire demonstrable safety purposes).
- Review of application by enforcement agency (Conditions can be placed on grants, issue of certificate of registration, request for more information or refusal with reasons which may require inspections)
- Certificate of registration (requirement for visible display of certificate with certificate to include prescribed use, maximum accommodation and any other conditions or performance solutions)

AHA does not support the introduction of prescribed registration process.

Public buildings are already classed as Class 9 and 9B buildings under the NCC and Building Code.

It is inconsistent with attempts to nationally harmonise building structural and safety requirements to introduce different certifications under state public health legislation, in support of only one recorded incident of public risk.⁵

The proposal seeks to introduce a new registration process where assessments would be required to determine risk. This power will be delegated to Local Government and require EHOs to consider plans, risk management documents, fire and emergency plans which they have limited expertise in reviewing in order to grant approvals.

Additional inspection, compliance and administration will require increased resourcing and will impose a considerable cost impost on businesses.

AHA Position: *The introduction of a registration scheme represents unnecessary duplication and additional costs to licensed venues.*

⁵ Department of Health Public Buildings Discussion Paper, Page 11

Requirement for an Annual or Other fee

At present a certification of approval is obtained on application and only reviewed if a change needs to be made. To ensure currency of safety systems and documentation an annual fee is proposed. The proposal is to prescribe an annual or other fee renewal of registration at a pre-determined frequency.

Key features of the proposed registration scheme:

- Fee payment (High = 1 year, Medium = 3 years, Low = 5 years, Very Low = only with change)
- Ongoing management (Proactive management of information, emergency preparedness, through inspection by local government based on risk)
- Change in Use (reassessment with changes in use, structural change, or accommodation)

DoH suggests that the current system is not regulated, inspections are discretionary, and there is no legal requirement to provide updated plans except where change of use or occupancy is proposed. Further DoH suggests that evacuation plans and risk management plans could become outdated and not meet current standards. Regulations under the Public Health Act would allow for the prescription of an annual fee that would allow local government to cost recover associated costs.

Licensed public buildings are already subject to an existing range of obligations to minimise harm or ill-health under liquor licensing, general duties for public health under health and requirements to meet building fire, emergency and safety standards. With licensed venues subject to regular inspections by local government and liquor licensing

State Health public buildings regulations introduce another layer of regulation that duplicate or introduces different standards to those already provided for the National Construction Code.

Registration and compliance would provide for another registration and cost recovered inspection fee. These inspections would be preceded by the engagement of expensive consultancy services to ensure compliance.

AHA Position: AHA does not support the introduction of a prescribed regulatory scheme that allows local government to cost recover fees.

Exclusion of Events and Temporary Structures

DoH has proposed to remove events not held in a permanent building from the definition of public buildings and a new set of regulations be developed for events.

Permanent buildings are subject to higher requirements under the Building Code which are integrated into the design of the building and critical to securing planning approval. Building Codes represent nationally agreed building standards which have been developed to mitigate against public safety risks.

In contrast, events are typically intended to cater to a large number of people and often require the construction of temporary structures such as marquees, grandstands and staging to accommodate patrons.

It is appropriate to develop separate regulations that address the unique characteristics and requirements for these large scale events. However, it is critical that requirements reflect on

standards established under the Building Code and mirror them, as closely as possible to ensure adequate public safety.

It is also noted that this would allow for better alignment with the development of a separate Racing Gaming and Liquor Directors Policy to guide the approval of Temporary Bar Licences.

AHA Position: Separate regulations be developed for events and temporary structures under the Public Health Act 2016

CONCLUSION

The AHA has indicated its strong preference for the Public Building Regulations to be repealed but accepts that there will be support for continued regulation.

In the absence of support for Option 1, the AHA is supportive of Option 2, Proposal 1 which will assist in providing better clarity in guiding compliance with new regulations based on risk. However, this should be subject to proper consultation on a risk matrix that does not unfairly designate all licensed venues high risk and subject to higher administrative and compliance costs.

We have provided other matters for consideration, which we hope will help inform the DoH's review of the regulation and in arriving at a recommendation.

Should further information be required in support of this submission, we would welcome a meeting to discuss this further. Please contact Victoria Jackson, AHA Government Relations Manager on 9321 7701.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bradley Woods', with a horizontal line underneath.

BRADLEY WOODS
CEO

APPENDIX 1:

SCHEDULE OF PUBLIC HEALTH RISKS ADDRESSED IN OTHER EXISTING REGULATIONS

Death or injury from crowd crush at egress or within a venue / or ingress

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code AS 2293 Building Act 2011 Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	7, 7A, 7B, 14, 15, 16, 32, 41, 56, 62,
Racing, Gaming and Liquor - Directors Policy: Standards of Licensed Premises	Racing, Gaming and Liquor	Impose work orders	Up to \$1,000 per day	7, 7A
Racing, Gaming and Liquor - Directors Policy: Fire Safety Measures in Licensed Premises	Racing, Gaming and Liquor	Impose work orders	Up to \$1,000 per day	14, 15, 16, 26, 32, 41, 56, 39, 62
Racing, Gaming and Liquor - Section 99 of the Liquor Control Act.	Racing, Gaming and Liquor	Impose work orders	Up to \$1,000 per day	9B

Death or injury from fire / smoke

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code - AS 2293 - AS 3745 - AS 130 1300:2009 Building Act 2011 and Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	14, 15, 16, 25, 26, 32
Racing, Gaming and Liquor - Directors Policy: Fire Safety Measures in Licensed Premises	Racing, Gaming and Liquor	Impose work orders	Up to \$1,000 per day	14, 15, 16, 25, 26, 32

Slips, trips, falls

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code - AS 1428 Building Act 2011 and Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	11, 13
Occupational Safety and Health Act 1984	WorkSafe	Issue notices, investigate incidents or penalties	Penalties by level of offence from 1-4 ranging from \$5,000 to \$625,000	11, 13

Death or injury from a terrorist incident

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code - AS 3745 - AS 130 1300:2009 Building Act 2011 and Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	26
Racing, Gaming and Liquor - Directors Policy: Fire Safety Measures in Licensed Premises	Racing, Gaming and Liquor	Impose work orders	Up to \$1,000 per day	26
Australia's strategy for protecting crowded spaces from terrorism	WA Police			

Injury from pepper spray or release or other chemical release

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
Australia's strategy for protecting crowded spaces from terrorism	WA Police			

Injury or death from electrical faults

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code AS 2293 AS 3002 Building Act 2011 Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	10, 28, 32, 36, 44
Occupational Safety and Health Act 1984	WorkSafe	Issue notices, investigate incidents or penalties	Penalties by level of offence from 1-4 ranging from \$5,000 to \$625,000	10, 28, 32, 36, 44
Electrical (Licensing) Regulations 1991	WorkSafe	Issue notices, investigate incidents or penalties	Fines from \$50,000 to \$250,000	10, 28, 32, 36, 44

Injury or death from structure collapse eg staircases, balustrades, temporary structures

Guidelines or Regulations	Regulatory Body	Enforcement	Penalty	Relevant Section – PB Regulations
National Construction Code AS 1428 Building Act 2011 Building Regulations 2012	Dept. of Mines, Industry Regulation and Safety – Building Commission	Issue notices, work improvement orders, or penalty	Up to \$10,000	11, 13
Occupational Safety and Health Act 1984	WorkSafe	Issue notices, investigate incidents or penalties	Penalties by level of offence from 1-4 ranging from \$5,000 to \$625,000	11, 13