

# ClientUpdate

Hospitality Bulletin

July 2004

## **OCCUPATIONAL HEALTH & SAFETY AND RISK ASSESSMENTS**

It used to be "Buyer Beware" now it is "Employer Beware". The *Occupational Health & Safety Act, 2000* requires that employers and controllers of workplaces take steps to ensure an absence of risk to the health and safety to both employees and non-employees alike. In the context of a hotel or a club, this means that both the employees and, for example, patrons are owed identical duties. The law now requires that in discharging this duty an employer must undertake a risk assessment. The risk assessment, which should be in writing, will identify possible risk to health and safety and settle upon control measures. Staff must be instructed and trained in the control measures. Evidence of the involvement of staff in the creation of the risk assessment and evidence of training in the control measures adopted should also be in writing.

In a hotel setting, from time to time unfortunately fights will break out between patrons. Hotel or security staff may be called upon to eject the patrons from the premises. Frequently a staff member may be punched or otherwise injured. Has the Occupational Health & Safety Act been breached by the Hotelier? The answer will most often be yes. For example, the unruly patrons may well have been served far more alcohol than was wise or in accordance with the liquor licensing laws. Serving a person who is drunk is against the licensing laws and contrary to the responsible service of alcohol policies of most hotels. If the patrons involved in the fight had been served alcohol in breach of the liquor licensing laws and these policies, the hotel would have an almost impossible task of defending a prosecution

brought in relation to this incident. If a risk assessment is undertaken of hotel premises, it is almost without question that the risk of drunken patrons causing fights would be identified and the control measure would involve declining further service of alcoholic beverages to the person and the implementation of strategies to encourage the person to leave the premises without incident.

It may be considered somewhat tough or hard upon the Hotelier that the Hotelier can be held liable for what could be seen to be unauthorised, even criminal acts on behalf of the patron. But the fact is Hoteliers are well aware that fights will occur particularly if patrons are drunk, and steps must be taken to eliminate this risk. It means that the observance of the liquor licensing laws and the responsible service of alcohol policies become even more crucial in terms of their rigorous implementation as this will have a beneficial flow on effect in terms of occupational health and safety compliance. n

### **Key Contact**

Gerard Phillips

Partner  
Phone 02 9291 7166  
gphillips@codea.com.au



**CARROLL  
& O'DEA**  
LAWYERS

19TH LEVEL, ST JAMES CENTRE  
111 ELIZABETH STREET  
SYDNEY NSW 2000

GPO BOX 7105  
SYDNEY NSW 2001  
DX: 183 SYDNEY

TELEPHONE: 02 9291 7100  
FAX: 02 9221 1117  
www.codea.com.au