

## Senate Economics Legislation Committee

### Trade Practices Amendment (Liability for Recreational Services) Bill 2002

Submission No. 4

Submittor: Australian Amusement Leisure  
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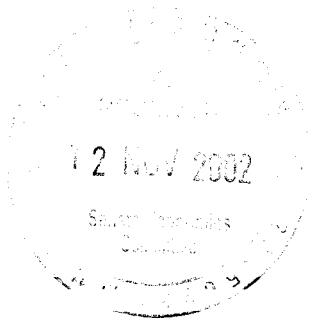
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Attachments? No Attachments

7 November 2002

The Secretary  
Senate Economics Committee  
Suite SG.64  
Parliament House  
Canberra ACT 2600



Dear Sir,

**Re: Submission On Behalf Of AALARA inc To The Senate Economics Legislation Committee Inquiry Into The Trade Practices Amendment (Liability For recreational Services) Bill 2002**

Attached is a brief submission in relation to the above-mentioned act on behalf of the Australian Amusement Leisure and recreation Association Inc. Previously AALARA has made submissions to the panel of eminent persons reviewing the Law Of Negligence and we refer the inquiry to that submission.

The philosophies contained in that submission remain current and many are appropriate to the inquiry that this Committee is undertaking.

AALARA holds that responsible conduct by operators in these industries must be paramount in the Government thinking and that accordingly we recommend that in addition to the wording of the Bill before you now, that consideration be given to ensuring that operators in the recreation industry should operate a standard that will ensure that risk is managed and minimized.

We also make reference to the matter of the form of waivers and the inappropriate nature of signed waivers for the majority of businesses that operate in the recreation industry.

For example it is inappropriate to consider that waivers should have to be signed for large scale recreational activities such as attending theme parks and agricultural shows. The practicalities of such a requirement would be completely unworkable. Hence our recommendation relates to various signage and warning notices and messages being used to advise people where activities containing an element of risk may be present.

AALARA thanks the Committee for allowing us to make a submission and we remain available to assist further in any way possible.

**Regards**  
**AALARA Inc**

**Kelvin O'Reilly**  
**General Manager**

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**AUSTRALIAN AMUSEMENT LEISURE  
AND RECREATION ASSOCIATION INC.**



**SUBMISSION TO THE  
SENATE ECONOMICS LEGISLATION  
COMMITTEE.**

**NOVEMBER 2002**

The Australian Amusement Leisure and Recreation Association Inc ("AALARA") is the peak national body representing the interests of businesses and operators in the amusement, leisure and recreation industries. We respectfully make this submission to the Committee on behalf of our members and these industries in general.

For this reason AALARA submits that the panel should consider the confirmation of the role of "Peak National Bodies" in the establishment of appropriate standards related to operations, warning and exclusion notices and contributory negligence. We contend that the roles of these bodies in these areas of responsibility should be formally recognised.

**We herein submit that**

- Government should recognise that peak national industry bodies be encouraged to, or even be required to establish the standards applicable to their industries in the general operation, liability and negligence definition area.
- Peak bodies that choose to, can and are encouraged to develop industry best practise standards related to OH&S requirements.
- These standards when developed should be registered with some government body as having been developed as the standard by which operators in these industries should be measured in determining the extent (if any) of their negligence in assessing incidents. (Some states already recognise that the development and use of safety advisory standards may provide protection from prosecution under their workplace health and safety legislation. It is reasonable that such standards should also be useful in determining negligence at common law.)

These Standards – are the best practise standards (incorporating all reference to AS3533 and OH&S Regulations) that the Australian Amusement Leisure And Recreation Association Inc (AALARA) has developed for the safe and efficient operation of business operating in these industries.

This Standard recognises that the management and operation of businesses and facilities that offer such services to the broader community must, of necessity be required to be conducted by utilising management models, policies and practices that are at all times underscored by sound risk management practices and which form the basis of a whole of business approach to ensuring the fulfillment of this charter.

The following seven elements are considered to be the cornerstone foundation elements of the Standard. All amusement, leisure and recreation industry businesses must follow these philosophies at all times:-

1. Strict compliance at all times with the AALARA Code Of Ethics.
2. A demonstrated culture of safety in all operational areas of their business.
3. A commitment to risk identification, hazard management, and risk minimisation in their business.
4. A commitment to the conduct of appropriate training and induction procedures for their staff.
5. A commitment to ensure compliance with relevant Occupational Health and Safety requirements in each of the states in which they operate.
6. A commitment to recording all appropriate information related to the safe and efficient operation of their business.
7. A commitment to working towards general best practices in the management of their business.

## **MANAGEMENT OF THE DUTY OF CARE, OF RISK, FORSEEABILITY OF HARM, CONTRIBUTORY NEGLIGENCE AND THE ASSUMPTION OF RISK BY PARTICIPANTS.**

Businesses must be expected to operate at best practice standards (the "Standards") (as firm and formal policy determined by the industry itself with regulation through independent, peak body sanctioned audit processes) – nothing less can reasonably be accepted. If businesses are operating at less than best practice standards in operational areas that will affect their ability to satisfy the duty of care owed to their staff and guests. AALARA has developed a comprehensive set of standards for the safe operation of businesses that operate in these industries and has established an implementation system to ensure that such businesses can achieve compliance and henceforth a safer industry for all who use it.

Industry lead audit and OH&S credentialing must form part of the platform of the review to determine the level of potential contributory negligence that an operator may have in the event of a permanent disability assessment.

The general public cannot be expected to know or understand the relative quality of OH&S principles followed by individual companies – many of which to whom they may have had no previous exposure. Nor can they be expected to ascertain for themselves the standard of the duty of care that a company will provide to them while they are in, or using their facilities. Accordingly, there must be an easily understood benchmark, promoted at point of entry and externally, that assists them to form the correct conclusion about the operating standards of the particular business with whom they are dealing.

Without an industry lead best practice standard being applied, it is not possible therefore for most visitors to a site, business or facility to form the correct conclusions about the foreseeability of harm and the remoteness of risk.

Certification programs that evaluate the worthiness of businesses for certification based on marketing programs, quality of uniforms, aesthetics and the presentation of the facility without placing the majority emphasis on the quality of those businesses OH&S policies, procedures and systems, fail the consumer quite badly.

## **GENERAL AND OVERRIDING PRINCIPLES**

### **USE OF LEISURE, RECREATION AND AMUSEMENT EQUIPMENT, DEVICES AND RIDES TO BE APPROPRIATE FOR THE BILL.**

AALARA believes that the definition of recreational services as contained in the bill is appropriately broad to allow for the various activities undertaken at our member's facilities to be encompassed under the bill.

### **WARNING AND EXCLUSION NOTICES TO BE RECOGNISABLE AS 'WAIVERS'**

Appropriate warning and exclusion notices by the operators of amusement and leisure facilities and activities should, and indeed must be recognised as legitimate tools to limit liability to operators who have established and identified compliance with industry regulated best practise standards of OH&S practises (the Standards).

Many activities pursued in the amusement leisure and recreation industries do carry a slight element of risk associated with them. Many such activities could be adequately covered through the use of appropriately worded and signed waivers. However, the application of such devices is not practical in very many instances. These particularly relate to the more popular activities such as attending amusement parks, agricultural shows, festivals where it is not possible or practical to explain the detail of necessity contained in a waiver to each an every person entering such facilities.

In additional contributory negligence provisions must have adequate weight placed upon their importance in the determination of negligence.

### **FORMULATION OF DUTIES AND STANDARDS OF CARE**

#### **Insistence Upon Industry Best Practice Standards For Risk Management In All Businesses**

- Insistence that industries adopt best practice standards of risk management specific to the conduct of their industry and their businesses and that such standards be set by the appropriate industry representative bodies (in conjunction with Government as required.)

#### ***AALARA recommends that:***

- ***An owner and operator of an amusement ride or amusement device or facility must at all times comply with the Standard (which recognise Australian Standard AS3533 and appropriate OH&S regulations).***
- ***An amusement ride or device is not able to be made available for use by the public unless it complies with the Standard and AS 3533 as applicable to the amusement ride or device.***

### **THE 'STANDARDS' THAT SHOULD BE APPLIED**

#### **DEFINITIONS**

**"Amusement park"** means a place used principally as a location for permanent amusement rides available for use by the public. This term does not include locations principally used for temporary amusement rides.

**"Amusement device"** means any arrangement of equipment through or on which a rider moves where the desired effect is primarily achieved by virtue of the rider's self powered motion.

**"Amusement ride"** means an arrangement of structural and mechanical elements (or both) or an animal, which has as its prime function the movement of riders in some controlled manner such that the riders are not necessarily required to move themselves to obtain the desired effect. This term includes:

- A go-kart, dodgem car or other motorised vehicular ride where riders have control over the speed and steering of the vehicle which moves within the confines of an enclosed track but does not include a vehicle used for sport or racing or any kind;

- An aquatic amusement device where riders are intentionally, either partially or fully, immersed in water for a short period of time at some stage during the ride, such as waterslides; and
- A chairlift or other motorised lifting system used to transport riders to a location.

**“Controlled substance”** means:

- Alcohol;
- A prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985, not being a substance specified in the regulations as being excepted from this definition, and
- Any other substance prescribed as a drug for the purposes of this definition

**“Parent”** means a parent, custodian or guardian responsible for the control and safety of a minor rider and includes any other person who stands in loco parentis to the minor.

**“Instruction”** includes:

- A pre-recorded message; or
- Oral instruction provided by an operator to riders prior to the commencement of, or during, the use of an amusement ride or amusement device; or
- Signage

**“Operator”** means the person responsible for controlling or operating the controls of an amusement ride or an amusement device.

**“Owner”** means any individual who, or corporation which, owns or leases and controls or manages the operation of an amusement ride or amusement device.

**“Rider”** means a person who is:

- Waiting in the immediate vicinity to get on an amusement ride or amusement device;
- Getting on an amusement ride or amusement device;
- Using an amusement ride or amusement device;
- Getting off an amusement ride or amusement device; or
- Leaving an amusement ride or amusement device and still in its immediate vicinity.

But does not include employees, agents or servants of the owner of the amusement park amusement device.

**“Sign”** means any symbols or words used to communicate information to riders or their parents and includes:

- A placard, notice or illustration; and
- A video presentation.

**“Standard”** means the best practise standards (incorporating all reference to AS3533 and OH&S Regulations) that the Australian Amusement Leisure And Recreation Association Inc (AALARA) has developed for the safe and efficient operation of business operating in these industries.

This Standard recognises that the management and operation of businesses and facilities that offer such services to the broader community must, of necessity be required to be conducted by utilising management models, policies and practices that are at all times underscored by sound risk management practices and which form the basis of a whole of business approach to ensuring the fulfillment of this charter.

The following seven elements are considered to be the cornerstone foundation elements of the Standard. All amusement, leisure and recreation industry businesses must follow these philosophies at all times;

1. Strict compliance at all times with the AALARA Code Of Ethics.
2. A demonstrated culture of safety in all operational areas of their business.
3. A commitment to risk identification, hazard management, and risk minimisation in their business.

4. A commitment to the conduct of appropriate training and induction procedures for their staff.
5. A commitment to ensure compliance with relevant Occupational Health and Safety requirements in each of the states in which they operate.
6. A commitment to recording all appropriate information related to the safe and efficient operation of their business.
7. A commitment to work towards general best practices in the management of their business.

**“Temporary amusement ride”** means an amusement ride or amusement device, which is relocated at least once per year with or without disassembly.

## **USE OF WARNING AND EXCLUSION NOTICES**

***AALARA recommends that in circumstances when it is found that the operator of a business, facility, rides or device has complied with the Standards related to warnings, instructions and exclusion notices, that negligence cannot be found to exist unless there is established a material breach in the operator’s duty of care through non compliance with these Standards.***

AALARA has determined the minimum standards applicable to maintain a safe environment for guests and visitors to facilities. These standards follow:

### **Instructions**

- An operator of an amusement ride or amusement device shall ensure that riders are issued sufficient instructions in order to safely participate in the amusement ride or amusement device.
- An owner shall ensure that every operator of an amusement ride or amusement device issues instruction in accordance with subsection (1).

### **Signs**

- An owner shall display signs indicating:
  - Safety responsibilities of riders;
  - Operational instructions, if any;
  - Restrictions of the use of the amusement ride, if any;
  - Behaviour that is prohibited;
  - Words to the effect that “state law requires riders to obey all warning and instructions and that failure to comply is punishable by fine
- An owner shall display a sign or signs of the type outlined above at:
  - Each entrance to the premises; and
  - Each amusement ride or amusement device.
- Where (Australian Standard) AS 3533 does not apply to an amusement ride or amusement device, signs for the control of riders, the safe use of an amusement ride or amusement device or the operating restrictions for ride or device shall be prominently positioned, clearly legible and of a consistent presentation. The information on such signs should include the following:
  - The minimum or maximum allowable physical dimensions of riders;
  - Advice on physical strength required where forces created by the ride or device may demand limb use or body control
  - Advice for riders who are ill, under medication or under the influence of alcohol or drugs;
  - Advice on the potential for motion sickness or other possible effects the use of an amusement ride or amusement device may have on riders;
  - The inherent risks in the participation in or on the amusement ride or amusement device;
  - The responsibilities of riders based upon this Standard;
  - Any other advice specific to the safe operation of the ride or device.



## **CONTRIBUTORY NEGLIGENCE**

### **Duty to obey rules**

- A rider is responsible for obeying the signs and instructions of the owner or operator relating to an amusement ride or amusement device and shall comply with the provisions of this Division at all times while within the amusement park or while within the immediate vicinity of a temporary amusement ride.
- A rider must not act in any manner contrary to a sign or instruction while boarding, riding on or dismounting from any amusement ride or amusement device

### **Conduct of riders**

- A rider must not board or dismount from an amusement ride or amusement device except at a designated boarding area if one is provided
- A rider must not throw or expel any object or matter either from or in the general direction of an amusement ride or amusement device
- A rider must not engage in any reckless act or activity which may tend to injure themselves or others
- While using an amusement ride or amusement device that requires steering or control by the rider, every rider shall maintain reasonable control of his or her speed and course at all times. A rider shall not steer the amusement ride or amusement device in such a manner as to intentionally harm either themselves or another person
- A rider must not disconnect, disable or attempt to disconnect or disable any safety device, seat belt, harness or other restraining device before, during or after movement of the amusement ride or amusement device has started except a the express instruction of the operator
- A rider must not disembark or attempt to disembark from any amusement ride or amusement device before, during or after movement of the ride or device has started except upon the express instruction of an operator
- A rider must not board or attempt to board any amusement ride or amusement device if they are under the influence of alcohol or any controlled substance greater than the prescribed amount or to an extent which effects the ability of the rider to safely use the ride or device and abide by the signs and instructions.
  - An operator may prevent a rider who is perceptibly or apparently under the influence of drugs or alcohol from riding on an amusement ride or amusement device
  - An operator who prevents a rider from boarding an amusement ride or amusement device in accordance with this provision shall not be criminally or civilly liable in any manner or to any extent whatsoever if the operator has reasonable basis for believing that the rider is under the influence of drugs or alcohol.
- A rider must not alter or enhance the intended speed, course or direction of an amusement ride amusement device in any manner not authorised by the operator or in any manner contrary to the rules of the ride or device.
- A rider shall not attempt to gain access to controls of any amusement ride or amusement device designed solely for the use of operators.

### **APPLICATION OF THE LAW TO MINORS**

- A parent of a minor rider shall ensure that they are in direct supervision of the minor rider at all times whilst within the amusement park, or whilst in the immediate vicinity of a temporary amusement ride
- A parent shall make every reasonable endeavour to ensure that the minor rider over whom they have supervision complies with the provisions to the duty to obey rules and to the conduct of riders as if those provisions applied to the minor rider and the responsibility of compliance with those provisions shall be that of the parent.

### **EXCEPTIONS**

This part shall not apply to riders who because of deafness, blindness, mental limitation or a language harrier are not capable of understanding the posted rules or oral instructions.