

DEMOCRACY DOES WORK!

LOBBYING LEADS TO AMENDMENTS TO WORK HEALTH & SAFETY ACT 2011

It happens all too often. A piece of major legislation works its way through bureaucracy without a great deal of public scrutiny. Before you know it, a draft Bill is tabled in Parliament and the limited publicity then filters down to affected parties. Panic ensues when you realize the proposed new law will have devastating effect on your business.

This was the case with the *Work Health & Safety Bill 2011*, which was a piece of Commonwealth legislation intended to implement a codified work safety regime across the Commonwealth. Whilst the initial Workplace Relations Ministerial Council, which was a meeting of representatives from all states and territories, authorised the drafting of the legislation, it emphasised in its report that the draftsman needed to ensure that the Act did not place inappropriate duties on volunteer organisations.

However, the draft Bill that was tabled in Parliament did not differentiate between penalties imposed on directors of organisations who conducted commercial businesses or undertakings, and organisers of volunteer organisations whose primary objectives were community service. Accordingly, significant potential pecuniary penalties of up to \$3,000,000.00 were incorporated in that legislation to cover such incorporated associations as U3A (University of the Third Age) and VISE (Volunteers for Isolated Youth Education) and Volunteering Australia, all clients of Snedden Hall & Gallop. These organisations had no capacity whatsoever to meet the stringent workplace safety codes and were immediately exposed to potential investigations and penalties. The volunteer directors examined their personal positions and resolved that this legislation would force their closure. There were a large number of other community organisations in Australia, including Rotary and Lions, which, when the penny dropped, immediately reacted to the proposed legislation.

We were tasked with persuading the legislators to change the law.

Our approach was thorough and measured. A retired partner of Snedden Hall & Gallop and retired Senior Member of the AAT, Alan Hall, took a keen interest in the draft bill and his detailed critique was published in *The Canberra Times*. It drew immediate reaction from volunteer organisations but surprisingly no

response from the bureaucrats. We then prepared a detailed submission, highlighting the inadequacies and inequities of the draft bill. This was delivered to local and federal government Ministers and Members, including the Attorney General. Meetings were arranged with the cross bench Members of the House of Representatives, and the local Legislative Assembly. During the ensuing meetings, we were confronted with the cross bench Member being fed with inaccurate information by the bureaucrats and a strong resistance to any suggestions for change. The meetings with senior government bureaucrats were unhelpful.

Approaches were made on the Federal level to Senators and cross bench Members of marginal seats where the volunteers from our client organisation had a high profile and were respected. The federal representatives listened to our concerns and our letter and submissions were referred to in the debates in the Senate on 24 November 2011 (Hansard page 73).

A breakthrough occurred when Alan Hall was invited to talk to the lawyers in SafeWork Australia about our concerns. Our submissions were reviewed and that agency's lawyers acknowledged each of the problems we identified. They agreed to review the legislation and continue discussions.

Over the course of a few weeks, those discussions led to a modification of the model Regulations that followed our submissions to specifically exclude volunteer organisations whose primary object is community service. The new regulation 7(3), was incorporated into the legislation and published on SafeWork Australia's website at the end of November.

The lesson to be learned is that carefully prepared submissions, distributed to the most effective and electorally sensitive legislators and a willingness to confront defensive and at times obstructive bureaucrats can lead to a proper review of legislation and achieve a result in the best interests of clients. This was a case where tenacity, common sense, clear legal analysis and frank discussions with politicians and bureaucrats led to a just outcome. An outcome, which will support the huge volunteer community without which our nation would be the poorer.

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