AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007
Web: www.aha.org.au

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Employer Sanctions Reform
Department of Immigration & Citizenship
employer.sanctions.reform@immi.gov.au

Submission in response to the draft legislation

As the representative body for over 5,000 employers in the hospitality and accommodation industries which collectively employ almost 300,000 people across Australia, the Australian Hotels Association (AHA) is pleased to have the opportunity to attend the Department's recent briefing in Canberra and comment on the exposure draft legislation relating to employer sanctions.

Hotels in many parts of Australia are suffering from a shortage of labour. A recent report commissioned by the Department of Resources, Energy & Tourism found the tourism industry is facing a shortage of 36,000 workers[1], which is expected to rise even further in coming years. It is essential for many hotels that they are able to access workers from overseas to meet demand for labour that is not being met by the local workforce. The AHA therefore supports a reasonable, open and fair regulatory and compliance regime to ensure the ongoing integrity of the immigration system while still allowing employers to access the labour they require from overseas workers.

The AHA notes that the Howells Report estimates there could be as many as 100,000 people working illegally in Australia, but points out that this is far less than one per cent of all employment contracts. The Department's *Policy Commentary* states that the exposure draft "reflects the Government's determination to address the problem of illegal work hire practices without creating additional obligations on business". The AHA's concerns with the draft legislation are to do with what we see as significant additional obligations on all businesses (and all workers) as an inefficient way of addressing a relatively small-scale and isolated problem.

The proposal to incorporate the concept of sole responsibility and implementing contractual obligations on labour hire providers among the statutory defences available to employers are welcome outcomes which recognise that employers cannot be responsible in every instance where illegal work occurs.

The draft legislation proposes that the only defence to strict liability civil penalties available to employers is evidence that the worker's eligibility status was checked using the Government's VEVO system or, for non-visa holders, that evidence of Australian citizenship was sighted. Examples of such evidence would be a citizenship certificate, birth certificate or passport.

The AHA welcomes the Department's advice that improvements will be made to the VEVO system and resources devoted to awareness and education for employers on how to utilise the service. We remain concerned, however, that VEVO provides records only for visa-holders. Any worker who claims to be an Australian citizen will not show up in VEVO, which means employers would need to

[1] *Australian Tourism Labour Force Report* (2011), Deloitte Access Economics

sight evidence of citizenship for every job applicant and current employee who claims to be Australian. Apart from the enormous impost of red tape, this also raises concerns for employers about being subject to claims of discrimination on the grounds of age or race, because the documents that will be used as proof of citizenship will in most cases also contain personal information such as the date and place of birth – information that employers are currently prohibited from seeking under discrimination legislation.

The AHA understands the Australian Chamber of Commerce & Industry (ACCI) has referred its concerns in this area to the Australian Law Reform Commission and the Australian Human Rights Commission. We suggest that the responses of these organisations should be considered by the Department prior to the introduction of the Bill in Parliament.

The AHA also has significant concerns with the proposal to remove self-incrimination protections in the manner set out in the *Policy Commentary*. This is a significant departure from common legal principles which go beyond the recommendations of the Howells Report. From discussions at the recent seminar in Canberra, it is understood that the Department's intention is to limit the use of information obtained in this manner to seeking civil rather than criminal penalties, but there should be further limitations on the use of information seized under this provision. The AHA submits that the use of such information be limited to seeking civil penalties under migration legislation only, and not for seeking penalties under other legislation such as the *Fair Work Act 2009* or state/territory liquor licensing legislation, for example.

Rather than place these excessive and onerous obligations on employers, it is suggested that the Australian Taxation Office develop the capacity to offer employers a similar online facility where employers can check working rights of Australian citizens and permanent residents in a similar fashion to the VEVO service for visa-holders. This would allow employers to satisfy the requirements of the employer sanctions legislation while reducing their compliance obligations and protecting the privacy of workers.

Thank you for the opportunity to contribute these comments to the consultation process.

Yours sincerely

Des Crowe
National Chief Executive Officer