Overseas workers in the hospitality industry

A guide for hospitality industry employers prepared by the Australian Hotels Association and the Attorney General’s Department – February 2012
What is people trafficking?
People trafficking is the physical movement of people across and within borders, through deceptive means, coercion or force, for the purpose of exploitation. People trafficking is different from people smuggling, which is the organised, illegal movement of people across borders, usually on a fee for service basis.

Men, women and children from all backgrounds are trafficked in a range of industries including hospitality. Opportunities to traffic people into Australia are limited because of our strong migration controls, labour regulation and geographic isolation. However, Australia is seen as a destination country for victims of trafficking. Any kind of people trafficking is a crime in Australia under the Criminal Code Act 1995.

What does people trafficking have to do with hotels?
There are several areas of the hospitality industry that can come into contact with people trafficking.

• Employment of overseas workers: Hospitality is one of many industries which can be used by people traffickers, particularly in areas such as cookery, where engagement of workers from overseas is commonplace.
• Contracted labour: Many hotels also engage private labour hire companies to provide workers at short notice or during labour shortages. In these cases workers in the hotel are not employed by the hotel but by a third party provider.
• Supply chain: By sourcing a variety of products and services from numerous sources, hotels may also come into contact with suppliers utilising exploitative labour conditions on their workers.

With the support of the Australian Government through the Attorney General’s Department, the AHA is pleased to prepare this guide providing advice to employers in the hotel industry on how to help combat people trafficking and providing advice on the legal employment of overseas workers.

What penalties apply to employers?
The Migration Act 1958 makes it an offence to knowingly or recklessly employ or refer for work a person who does not have a valid visa or is working in breach of their visa conditions. Penalties are up to $13,200 and two years’ imprisonment for individuals and up to $66,000 per illegal worker for companies.

For aggravated offences - where a person is exploited through forced labour, sexual servitude or slavery (section 245AH) - maximum penalties rise to $33,000 and five years imprisonment for individuals and $165,000 per illegal worker for companies.

Why are people trafficked?
The most visible form of trafficking involves the sexual exploitation of women or children. But across the world, men, women and children are trafficked for a wide range of other purposes, including forced industrial, domestic or sweatshop labour, illicit adoption, street begging, forced recruitment into militia and the harvesting of body organs.

What is the Australian Government doing?
The Commonwealth Attorney General’s Department has funded the AHA to conduct the Labour Exploitation Awareness Project for employers in the hotel industry. The Project is part of an anti-trafficking strategy which addresses the full trafficking cycle, from recruitment to reintegration, and includes measures for prevention, detection, prosecution and victim support.

Since 2003 the Australian Government has committed more than $100 million towards a range of domestic, regional and international anti-trafficking initiatives.

How do I know if a person has been trafficked?
There are a number of signs that can indicate that a person is a victim of people trafficking. Watch out for the following:

• The person appears to be servicing a debt to a third party (such as a recruitment service);
• The person is unable to terminate their employment at any time;
• Personal documents, such as passports or residency documents, are being held by the employer or a third person, and the worker is not allowed to access these documents when they wish to do so;
• There are indications that the worker is being subjected to, or threatened with, violence in connection with their employment;
• The person is being confined or isolated in the workplace or only leaves at odd times;
• The person is living at the workplace, or another place owned/controlled by their employer;
• The person is subject to different or less favourable working conditions than other employees because he/she comes from overseas;
• The person is in the control of another person and is not allowed to speak for himself/herself;
• The person has an intermediary who “holds” or “invests” the person’s money for him/her; and
• The person does not understand the terms or conditions of his/her employment.

What can employers do to combat people trafficking?
As an employer you can help fight people trafficking. Some of the steps you can take are:

• Be aware of, and educate staff on, practices that might constitute people trafficking or forced labour;
• Ensure your company policy sets out the rights and responsibilities of employees under the law, including on minimum wages, working hours and overtime;
• Ensure that all employees have a written contract, and understand the terms or conditions of their employment;
• Use only reputable recruitment and employment agencies as a source of contract labour, and make yourself aware of their practices. Carefully monitor agencies that supply your company with contract labour, in particular from overseas workers;
• Treat overseas workers fairly, and ensure they are not subject to different or less favourable working conditions than other employees;
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An Australian Government Initiative

• Check supply chains to ensure slave labour has not been used and ensure that the human rights of workers are upheld in the workplace;
• Provide training to managers and human resource personnel on identifying exploitative labour practices, and advice on how to seek appropriate remedies;
• Build bridges between government, workers and law enforcement agencies, promoting cooperation in action against exploitative labour practices;
• Check with the Department of Immigration & Citizenship whether prospective workers are entitled to work in Australia. This can be done online at www.immi.gov.au/visa/vevo.htm; and
• Encourage and share best practice in employment conditions. Some useful resources may be found on the AHA’s national website www.aha.org.au.

What if you suspect someone has been trafficked?
If you are aware of, or suspect someone has been trafficked, reporting it to the Australian Federal Police by calling 131 AFP (237). If you are aware of someone subjected to exploitative working conditions, report it to the Fair Work Ombudsman by calling 13 13 94. In an emergency, call 000.

The Australian Government provides support for victims of trafficking through the Support for Trafficked People Program, which is run by the Australian Red Cross. The 24-hour service operates 365 days per year to deliver support services to trafficking victims including accommodation, income support, medical treatment, counselling, legal and migration advice, skills development training (including English language training) and social support.

Legally employing overseas workers
Ensuring that a prospective worker is legally entitled to work in Australia is the responsibility of the employer. All applicants for employment should be required to confirm they are either an Australian resident or hold an appropriate visa enabling them to work in Australia. The Department of Immigration and Citizenship offers an Employers’ Immigration Hotline (call 1800 040 070) which allows employers to check the working rights of potential employees.

Australia's employment migration system – Types of Visas
Australia has a number of employment migration programs each with a different purpose. A range of visa options available to overseas workers in the hospitality industry are outlined on the back cover of this brochure.

The most commonly used visa used in the hospitality industry is the Temporary Business (Long Stay) Visa, also known as the 457 Visa. This is a temporary visa providing working rights for eligible skilled migrants whose residency in Australia is conditional on being sponsored by an employer. The most common occupations in the hospitality sector for 457 visas are cooks, chefs, cafe/restaurant managers, hotel/motel managers, pastry cooks, sales and marketing managers, project administrators, marketing specialists, and accountants. A complete list of eligible occupations under the 457 Visa Program is available from the Department of Immigration & Citizenship website at www.immi.gov.au/skilled/skilled-workers/legislative-instruments.

If the vacancy in your business is not an eligible occupation you will not be able to use the standard 457 Visa. The only option available to employ a 457 Visa holder for ineligible occupations is to negotiate a 'labour agreement' with the Department of Immigration and Citizenship for those workers. The Department is currently developing a template labour agreement for tourism and hospitality employers.

There may also be opportunities for employers to engage the holders of Working Holiday Visas, which are available for people aged 18 to 30 years of age and allows the holder to work in any occupation for a maximum of six months per employer.

Student Visas also permit work in any occupation, although holders are limited to 20 hours of work per week when their course of study is in session.

Employer requirements
To nominate skilled overseas workers for a 457 Visa, the employer must first become an approved standard business sponsor, which includes demonstrating you are a lawfully operating business, having a strong record of employing local labour and non-discriminatory working practices, and demonstrating a strong record of training Australian workers.

457 Visa sponsors must also ensure that overseas workers are paid at least as well as equivalently experiences Australians in the same workplace. Essentially this means that overseas workers cannot be used to undercut Australian wages or conditions. In addition, the employer must also demonstrate that the annual market salary rate paid to the 457 Visa holder is at least equal to the Temporary Skilled Migration Income Threshold, which is currently $49,330.

Worker requirements
There are also a number of requirements made on overseas workers, and employers must be aware of these. For example, all 457 Visa applicants must provide evidence of health insurance for the period of their intended stay in Australia. They must also be able to speak, write and understand a sufficient level of English to satisfy the International English Language Testing System that relates to their specific occupation.
**Visa information for employers**

This information is for comparison only and does not represent an exhaustive list of visas or their requirements. For more information and updates go to www.immi.gov.au

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<th>Type of visa</th>
<th>Visa duration</th>
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<th>Pathways to permanent visa types/citizenship</th>
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<td><strong>Long Stay</strong></td>
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<tr>
<td>Temporary Business (457)</td>
<td>One day up to four years</td>
<td>Yes, by an employer</td>
<td>Must continue to work in the nominated occupation for the sponsor. The terms and conditions of employment must be no less favourable than those that are provided to an Australian performing equivalent work</td>
<td>Occupation must be on the relevant legislative instrument</td>
<td>Dependants have full work/study rights. Employers have additional obligations.</td>
<td>May apply for ENS with a formal skills assessment or after two years continuous work in the occupation. May apply for RSMS.</td>
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<td><strong>Employer</strong></td>
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<td>Nomination Scheme (121 and 856)</td>
<td>Permanent</td>
<td>Yes, by an employer</td>
<td>Must be offering full time work for at least two years. Employees to be paid minimum salary with equivalent working conditions in line with relevant Australian legislation</td>
<td>Skills assessment by relevant Australian authority. Three years full time work experience and registration or licensing if required</td>
<td>Must have English language skills unless exceptional circumstances apply</td>
<td>Occupation must be on the Employer Nomination Scheme Occupation List (ENSOL) and meet the minimum salary requirement</td>
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<td>Regional Sponsored Migration Scheme (119 and 857)</td>
<td>Permanent</td>
<td>Yes, by a regional employer</td>
<td>Must be offering full time work for at least two years</td>
<td>Relevant diploma or higher qualification and registration or licensing if required</td>
<td>Must have English language skills unless exceptional circumstances apply</td>
<td>A certification process applies</td>
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<td>Labour Agreement (LA)</td>
<td>Dependent on terms negotiated under the agreement</td>
<td>Yes, by an employer who has entered into an agreement with the department</td>
<td>Dependent on terms negotiated under the agreement</td>
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<td>Labour agreements can provide a flexible response to industries with ongoing skill shortages while ensuring that employment and training opportunities for Australians are not undermined</td>
<td>Dependent on terms negotiated under the agreement</td>
</tr>
<tr>
<td><strong>Skilled – Independent</strong></td>
<td>Permanent</td>
<td>No</td>
<td>Unrestricted</td>
<td>Nominated occupation must be on Skilled Occupation List (SOL) and skills assessed by relevant assessing authority</td>
<td>Must have recently completed an Australian qualification in Australia or have recent skilled employment</td>
<td>May apply for citizenship after four years of lawful residence in Australia including at least 12 months of permanent residence</td>
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<tr>
<td><strong>Skilled – Sponsored</strong></td>
<td>Permanent</td>
<td>Yes, by a state/territory government or an eligible Australian relative</td>
<td>Unrestricted</td>
<td>Nominated occupation must be on SOL and skills assessed by relevant assessing authority</td>
<td>Must have recently completed an Australian qualification in Australia or have recent skilled employment</td>
<td>May apply for citizenship after four years of lawful residence in Australia including at least 12 months of permanent residence</td>
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<td><strong>Skilled – Regional</strong></td>
<td>Three years with option to apply for one further 12 month visa</td>
<td>Yes, by a state/territory government agency or an eligible Australian relative</td>
<td>Must live/work/study in a specified regional area in Australia</td>
<td>Nominated occupation must be on SOL and skills assessed by relevant assessing authority</td>
<td>Must have recently completed an Australian qualification in Australia or have recent skilled employment</td>
<td>May apply for the Skilled - Regional visa after 2 years residence and 12 months full-time work in a Specified Regional Area. May apply for a visa under the RSMS at any time.</td>
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<td><strong>Skilled – Regional (provisional)</strong></td>
<td>Permanent</td>
<td>No</td>
<td>Unrestricted</td>
<td>Must have lived for at least two years and worked full time for at least 12 months in a Specified Regional Area while holding a provisional GSM visa</td>
<td>This visa is not points tested</td>
<td>May apply for citizenship after four years of lawful residence in Australia including at least 12 months of permanent residence</td>
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<td><strong>Skilled – Graduated</strong></td>
<td>18 months</td>
<td>No</td>
<td>Unrestricted</td>
<td>Nominated occupation must be on SOL, skills assessed by relevant assessing authority and English language threshold met</td>
<td>This visa is for overseas students who have completed an Australian qualification in Australia in the last six months and need additional time to gain the skills needed to apply for a permanent GSM visa</td>
<td>May apply for a permanent GSM or employer sponsored visa at any time</td>
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<td><strong>Skilled – Recognised Graduate</strong></td>
<td>18 months</td>
<td>No</td>
<td>Unrestricted</td>
<td>Must have completed a bachelor degree or higher qualification in a specified discipline at a recognised overseas educational institution in the past 24 months</td>
<td>This visa is for engineering graduates from recognised overseas educational institutions who have skills in demand in Australia</td>
<td>May apply for a permanent GSM or employer sponsored visa at any time</td>
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**Disclaimer**

This document has been produced by the Australian Hotels Association with funding by the Australian Government through the Attorney General’s Department’s Labour Exploitation Project Funding Scheme. The Scheme aims to assist organisations like the AHA to help identify and support victims of people trafficking and increase awareness of this issue in Australia. Further information to assist hotel industry employers in understanding people trafficking may be found on the AHA’s website, www.aha.org.au.