Restaurant & Catering

SAVOUR AUSTRALIA

18 September 2012

Committee Secretary
Senate Standing Committee on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

Restaurant & Catering Australia (R&CA) is the peak national association representing the interests of Australia's 32,000 restaurateurs and caterers.

R&CA are thankful for the opportunity to provide comment on the *Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill* 2012 (the Bill). The Association would like to make the following comments with respect to this Bill.

The Association acknowledges the importance the mining / resource sector plays in Australia's economy by creating many employment opportunities and infrastructure in regional centres as well as creating and attracting investment in Australia. It is noted, however, that much of the employment created by the activity in the resource sector is in other industries, particularly in service industries such as the restaurant and catering industry.

The Association understands the Enterprise Migration Agreement (EMA) is only available to the mining / resource sector to employ overseas workers, however the principle of employing overseas workers applies to other industry sectors.

R&CA have been active in promoting workforce participation, labour mobility and upskilling of existing workers to meet skills and labour demands present across the Australian labour market in the hospitality sector. R&CA recognises that skilled migration acts as an important source of the human capital for Australian industry, serving as a stop-gap measure when the local labour force cannot meet the skills and labour demands of employers.

However, the Association advocates that at a micro level any opportunities for employment and development of skills in any sector should always be given first to local workers, and policy settings need to ensure that this goal is achieved.

R&CA believe there should be no labour market testing, or even labour market analysis, required under the EMA or subsequent labour agreements that direct employers make under the umbrella of an EMA. The main stated rationale for this in the past has been that it will allow labour agreements to be finalised 'off the shelf', streamlining the process and reducing the time involved in negotiating labour agreements.

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R&CA contends that the information exists within Government to determine the labour market conditions in a specific region / industry which is subject to any form of agreement. This information should be considered, in response to a request to determine regional / occupational strategies.

R&CA believes that the proposed amendments pander to the largely simplistic view of labour supply and demand in Australia. Most resources development projects are occurring at considerable distance from major metropolitan centres and in many cases, from regional centres. Regional workforces have shrunk considerably in recent years due to migration of the regional workforce to major regional and metropolitan areas where, in the past, there has been greater opportunity for education and employment. Conversely, those in major regional and metropolitan areas are often reluctant to leave the services and amenity readily afforded in urban areas.

The proposed conditions outlined in the Bill represent an unnecessary duplication of existing guidelines and create an additional layer of bureaucratic and political oversight that may cause significant delays in processing time, causing project delays and increasing costs for the developer.

The *Local Jobs board,* outlined in paragraph 140ZKC (2) places responsibility for the maintenance of the Jobs Board with the Workplace Relations Minister. For some considerable time, the resources sector, led by the Australian Mines and Metals Association, has maintained a highly successful jobs board that has provided employers and potential employees with a medium to advertise and locate potential opportunities for employment in the resources sector.

R&CA believes that a new Local Jobs Board would struggle to gain the reputation and following of the existing service. It is in the best interest of the resources industry and the Australian community more broadly, to have in place a service with proven following and usability, maintained by the industry it services.

Current government jobs boards such as jobsearch.gov.au have struggled to maintain relevance in the current jobs market and are generally considered as a fringe product, rarely used by employers.

R&CA believe the amendment bill would significantly amend the *Fair Work Act 2009* and create unintended consequences, particularly when the primary subject matter to be regulated is dealt with under another piece of legislation in the form of the *Migration Act 1958*. Under the most recent Administrative Arrangements Order signed by the Governor-General on 9 February, the Minister for Immigration and Citizenship is responsible for the latter Act, whereas the Minister for Employment and Workplace Relations is responsible for administering the former. It is unclear how the provisions can operate with two primary decision makers needing to be satisfied of certain matters before making a decision and one Minister's statutory jurisdiction enlivened only when another Minister is satisfied of certain pre-conditions. Where a participant is aggrieved by a decision, this could be agitated with different forms of judicial review given that appeals under the *Fair Work Act 2009* are not consistent with appeals under the *Migration Act 1958.* These unintended consequences would create uncertainty for those participants involved in the EMA scheme, which is intended to provide a level of certainty to participants and large scale projects.

Enterprise Migration Agreements provide a dynamic approach to short term human capital needs in major resource development projects, ensuring a balance in the supply of labour between domestic and overseas workers, based on the capability of the existing workforce. The amendments to the Fair Work Act 2009 and the Migration Act 1958 are strongly opposed, are not necessary and have to potential to jeopardise future resource development projects in Australia.

Yours faithfully

John Hart
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