Senate Legal and Constitutional Affairs Legislation Committee Inquiry into Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

Submission of the

Accommodation Association of Australia

Accommodation Association of Australia – Principal Contact
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EXECUTIVE SUMMARY

- Australian federal human rights/anti-discrimination legislation must ensure that operators of tourism accommodation businesses have the option of refusing to provide accommodation to a person or persons on the basis that they intend to use the accommodation for, or in connection with, lawful (or unlawful) sexual activity on a commercial basis.
- It is imperative that Australia's overall tourism "product" is not damaged in any way in the eyes of consumers, particularly potential visitors to Australia from overseas.
- The amenity of accommodation establishments must be preserved for the benefit of all guests to ensure their tourism experience is enhanced by their stay.
- When guests are involved in activities that disrupt other guests, then the owner, operator, licensee or manager of an accommodation business should have the option to either end the stay of people who engage in such activities or refuse to have them as guests on the basis that disruptive behaviour could take place.
- Businesses must not be able to operate from within accommodation businesses due to the additional costs imposed on the accommodation business and the consequences for insurance, occupational health and safety and building fire safety.

INTRODUCTION

1. The Accommodation Association of Australia welcomes the opportunity to put forward the following submission to be considered by the Senate Legal and Constitutional Affairs Legislation Committee as part of its inquiry into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012.
2. The Association acknowledges that the deadline for submissions was 21 December 2012, however lodging a submission only became a necessity following an assessment of initial submissions which were put forward.
3. Through this short submission, the Association is seeking to respond to points raised in the submission of the Australian Sex Workers Association or "Scarlet Alliance" (Submission number 398).

ABOUT THE ACCOMMODATION ASSOCIATION

4. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for the Australian accommodation industry.
5. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments in metropolitan, regional and rural Australia across all states and territories.
6. The Association's membership base includes almost 2000 properties and more than 110,000 guest rooms.

TOURISM AND ACCOMMODATION – OVERVIEW

7. Tourism directly contributes $34.6 billion to Australia's gross domestic product (GDP), a 2.5 per cent share.[1]
8. Tourism's total contribution to GDP (direct plus indirect contribution) is $73.3 billion, a 5.2 per cent share of Australia's economy.[2]
9. There are 513,700 persons directly employed in the Australian tourism industry – 4.5 per cent of total employment.[3]
10. There are a further 393,400 persons indirectly employed in the Australian tourism industry.[4]
11. Along with education, tourism is Australia's leading services exporter.[5]

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[1] Tourism Industry Facts & Figures (at a glance), Department of Resources, Energy and Tourism/Tourism Research Australia, September 2012, Page 12
[2] Ibid, Page 15
[3] Ibid, Page 13
[4] Ibid, Page 19
[5] Ibid, Page 14

12. Tourism contributes $23.7 billion or 8 per cent of Australia's total export earnings for all goods and services.[6]
13. Accommodation/food services provide 33.3 per cent of tourism's gross value added to the Australian economy, worth $10.454 billion.[7]
14. There are 232,400 persons directly employed in the accommodation/food services sector of the Australian tourism industry and a further 12,000 are indirectly employed, meaning total employment in the Australian accommodation/food services sector is 244,400.[8]
15. There are 4241 tourism accommodation establishments in Australia.[9]
16. There are 226,555 tourism accommodation rooms in Australia and 636,001 bed spaces.[10]
17. Tourism's share of the Australian economy has been declining.
18. The number of domestic overnight trips since 2001 is down by 3.6 per cent.[11]
19. The total number of domestic visitor nights since 2001 has fallen by 6.6 per cent.[12]
20. Tourism has a number of unique characteristics in comparison to other industries. These include:
    - It is highly labour intensive;
    - It requires the input of many service providers to contribute to the experience of the consumer;
    - It is dominated by a significant number of small businesses and has a high proportion of businesses which are located in regional and remote parts of Australia;
    - Tourism competes for the discretionary expenditure of consumers; and
    - Tourism businesses are facing rising taxation, employment and compliance costs.

CONTEXT

21. In 2010, a female sex worker was staying at a motel in Moranbah in Central Queensland (which is located approximately 200km inland from Mackay).
22. The operator of the motel informed the sex worker that she would not in future be provided with accommodation because she was engaging in prostitution and the operator did not want her to engage in prostitution during any future stay. The decision of the operator was motivated, at least in part, by a complaint which was made by another guest at the motel about men coming and going from the room of the sex worker while she was present.
23. The sex worker took legal action against the motel operator on the basis that she was being discriminated against because she was a sex worker and on appeal in July 2012, the

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[6] Ibid, Page 14
[7] Ibid, Page 18
[8] Ibid, Page 19
[9] Ibid, Page 23
[10] Ibid, Page 23
[11] Ibid, Page 38
[12] Ibid, Page 38

Queensland Civil and Administrative Tribunal (QCAT) ruled that Queensland's anti-discrimination act had been breached by the operators of the motel.

24. On 9 August 2012, Queensland Attorney-General, Hon Jarrod Bleijie publicly announced: "The (Queensland) Government stands on the side of business owners and supporters their ability to make decisions about what does or does not occur on their premises. If a conflict exists between the Anti-Discrimination Act 1991 and the Liquor Act 1992, the Government will change the laws to ensure this inconsistency is resolved. This will also give certainty to our business owners that they are in control of their establishments."[13]
25. On 1 November 2012, new laws to specifically deal with this issue took effect in Queensland. On that day, Mr Bleijie said: "The changes will mean business owners can refuse a sex worker accommodation or evict them if they have reason to believe they are operating a business from their premises. If someone is running a business out of a hotel or motel room and the operator or manager receives complaints from other patrons, they should be able to do something. Under the liquor act, an operator can evict an unruly or rowdy patron for disturbing the peace by holding a party or playing music loudly. It is about levelling the playing field so the laws suit the majority, not the minority."[14]
26. Victoria's Equal Opportunity Act 2010 authorises a person in Victoria to refuse to provide accommodation to another if the other intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis.

Impact on Australia's Tourism Industry

27. The highest priority for Australia's tourism industry is ensuring that visitors to their businesses have a high level of satisfaction.
28. This maximises the chances of them returning, as well as recommending their business to others.
29. It is imperative that Australia's overall tourism "product" is not damaged in any way in the eyes of consumers, particularly potential visitors to Australia from overseas.

Accommodation Industry Policy Position

30. On behalf of the accommodation industry, the Accommodation Association's policy position on this issue is that the amenity of accommodation establishments must be preserved for the benefit of all guests to ensure their tourism experience is enhanced by their stay.
31. When guests are involved in activities that disrupt other guests, then the owner, operator, licensee or manager should have the option to either end the stay of people who engage in such activities or refuse to have them as guests on the basis that disruptive behaviour could take place.

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[13] Hon Jarrod Bleijie, Media Release, "Attorney-General will challenge QCAT decisions", 9 August 2012

[14] Hon Jarrod Bleijie, Media Release, "Hotel and motel owners can refuse sex workers under proposed laws", 1 November 2012

32. Businesses must not be able to operate from within accommodation businesses due to the additional costs imposed on the accommodation business and the consequences for insurance, occupational health and safety and building fire safety, among other things.

Accommodation Industry's Approach to Anti-Discrimination

33. In its submission, the Scarlet Alliance is seeking greater anti-discrimination "protection" in federal legislation for sex workers against "ongoing, systemic and historic discrimination".
34. The Accommodation Association emphatically rejects that there is ongoing, systemic and historic discrimination against sex workers in the accommodation industry. The Association's policy position is that operators should have the option of refusing to provide sex workers with accommodation – and that some may choose not to take up this option. Indeed, there are a select group of accommodation businesses who are members of the Association which regularly have sex workers as guests at their premises and the Association is not seeking to prevent this from continuing to occur.
35. The Scarlet Alliance has raised concerns that a person could be evicted if an accommodation provider reasonably believes that there is an intention to undertake sex work in the future, therefore, the Alliance claims, the recent changes to Queensland legislation mean that it is lawful to discriminate against someone because they are intending to do something legal in Queensland. The Accommodation Association contends that there are an enormous number of other activities that are legal in Queensland, yet a person can be denied accommodation on the basis that they intend to carry out these activities. One example is a person who intends to consume alcohol to become intoxicated – on this basis, such a person is, in the overwhelming majority of cases, likely to be refused accommodation, due to the potential for such behaviour to disrupt other guests and disturb the amenity of the accommodation establishment.

Accommodation Industry Recommendation

36. The Accommodation Association recommends that the new federal human rights/anti-discrimination legislation must ensure that operators of tourism accommodation businesses have the option of refusing to provide accommodation to a person or persons on the basis that they intend to use the accommodation for, or in connection with lawful (or unlawful), sexual activity on a commercial basis.

Conclusion

37. The Accommodation Association looks forward to further engagement with the committee as part of this inquiry on what is a most important issue for Australian tourism.

Date: 31 January 2013