

Consultations on the Howells Review of Employer Sanctions

The Australian Workers' Union Submission

September 2011

SUMMARY

The AWU broadly supports the *Howells Review of Employer Sanctions* to examine the current legislative regime – *Migration Amendment (Employer Sanctions) Act 2007*.

The problem of illegal workers being employed in the Australian economy will continue to worsen if left unchecked by an appropriate legislative mechanism.

Illegal employment of this manner exploits individuals in our community who are vulnerable and erodes the working rights, wages and conditions of Australian workers and families.

The current regime is clearly ineffective, as evidenced by the lack of any contested prosecutions and just one recorded conviction.

Previous investigations by the Howard Government effectively rendered the employer sanction regime a toothless tiger – unable to adequately deal with the issue on both economic and social terms.

The AWU seeks to ensure that the efforts by industry to dilute the operative elements of the previous regime are not repeated under the Howells Review.

Industry, Government and Unions all acknowledge that the use of illegal workers in the Australia economy is a serious problem that must be dealt with.

Therefore, steps must be taken to ensure workers rights are protected and not eroded in a meaningful and enforceable manner.

The current regime which was 'hands off' in respect to most businesses has failed – as has been clearly stated by the Howells Review. The community now rightly expects that the regime be altered to ensure that those who continue to breach the law are not allowed to do so with impunity.

The AWU notes public comments made by Minister for Immigration and Citizenship, Chris Bowen, in support of the report and further notes he has agreed in principle to adopting the recommendations put forward by the Howells Review.

COMMENTS ON THE REPORT

Removing a subsidy

The AWU acknowledges that the vast majority of Australian businesses abide by the law in respect to the employment of illegal workers – and it is for this very reason the AWU supports a strong employer sanction regime for those that do break the law.

It is in the interests of the majority of Australian businesses – the very businesses that Industry Groups represent – to ensure that all businesses operate on a level playing field and abide by the law.

Illegal workers amount to a business subsidy by reducing the cost of labour inputs and associated costs of production e.g. safety, conditions and superannuation.

The AWU considers that any compliance cost for law-abiding businesses associated with the implementation of this regime would be more than offset by the benefit that would accrue to those businesses through the leveling of the competitive environment.

The AWU also notes that compliance costs would likely be a once off adjustment involving an information transaction between employer and employee similar to the provision of a Tax File Number.

The AWU would expect the Government to ensure that any compliance costs associated with information validation and checking would be streamlined and as cost and time neutral as possible to ensure a minimal imposition on business.

Resourcing and Enforcement

The AWU notes that all parties present at consultation were in agreement that more must be done to resource the department to ensure that it is able to monitor and enforce any laws proposed.

Adequate resourcing for the purposes of enforcement is vital, given that this is a large, economy wide problem that will require significant investigation.

The AWU however does not view that resourcing alone can address this problem. It is clear that the legislative regime as it stands now is clearly ineffective in dealing with the issue of illegal workers and must be strengthened.

Head Contractor Penalty

This regime must be effective in acting as a deterrent to the practice of hiring illegal workers.

It is therefore crucial that Head Contractors are subject to penalties as a result of any breach of the regime.

Back-pay for Exploited Workers

The AWU supports all workers.

Workers who are exploited by illegal activities of their employers should not be penalised or vilified.

The regime should ensure that all workers who are employed under illegal conditions are paid the entitlements that they would have otherwise received if employed under legal Australian workplace conditions.

This would also serve to act as further specific and general deterrent to those who seek to exploit illegal workers.

Union Powers of Referral

The AWU expects that Unions would be afforded powers to refer a business directly to the Minister's office for the investigation of illegal worker practices.

This would be done on a 'reasonable cause for suspicion' basis – serving to ensure a further process of review, monitoring and deterrence is incorporated into the regime.

'2 or more' definition for penalty

Currently, the Howells Review suggests that a penalty would only apply to businesses accused of hiring '2 or more' illegal workers.

The AWU considers this to be an arbitrary figure and seeks that all instances of illegal worker exploitation are treated equally before the law.

All defences would be applicable to an instance where one worker was hired e.g. an honest and reasonable mistake. Therefore, there seems no logistical reason for the exemption to exist.

Furthermore, a business that has only hired one illegal worker may have done so in a particularly egregious manner and would escape sanction.

On this basis, the AWU seeks for this exemption to be deleted.

Linking with procurement

Many businesses benefit from the work and contracts undertaken by the Government at all levels.

Australian taxpayers rightly expect that businesses which rely on Australian Government contracts also foster Australian standard workplace conditions and do not seek to illegally undermine conditions or exploit workers.

Strong sanctions – such as the ineligibility to tender for Government work – should be considered for businesses that breach illegal worker laws.

Penalty Regime

The AWU is broadly supportive of the definitions envisaged in the penalty regime.

The AWU would expect that the legislation would allow for a 'catch all' provision that would be allowed to evolve through the common law court system.

Clarity on other visa issues

Page 45 of the Howell's Review discusses alternative visa arrangements for guest workers and sector skills shortages in general terms.

The AWU would seek greater guidance from the Minister's Office and the Department as to how they view these recommendations and any issues that they may be pursuing as a result of this element of the Review.

The AWU would wish to be consulted on any further discussion and implementations of these instruments.

CONCLUSION

The AWU supports the adoption of a strong, effective and enforceable penalty regime that has been conceived in the Howells Review, subject to the policy suggestions as listed above.

The AWU strongly opposes any attempt by industry or government to water down the recommendations in such a way that would revisit the previous regime – a regime that has been ineffective in curtailing the practice of illegal workers being used in the Australian economy.

The AWU notes the problem of illegal workers is acknowledged by all stakeholder groups, and encourages support for the adoption of a strong and enforceable regime that can truly address this growing problem.