

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(193) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

In relation to the *Migration Amendment (Employer Sanctions) Bill 2006*, why have the recommendations of the Department's own inquiry in 1999 not been followed? What difficulties do you foresee in applying the test in this Legislation for prosecution of employers for employing illegal migrant workers?

Answer:

The recommendations of the Review of Illegal Workers in Australia (RIWA), which reported in 1999, are being followed. RIWA recommended a scheme of sanctions that included both fault based and strict liability offences for employers of illegal workers. The *Migration Amendment (Employer Sanctions) Bill 2006* includes the fault offences that were recommended by RIWA.

The strict liability offences have been deferred following feedback from industry, employer peak bodies and others in the community. In practice strict liability offences would require employers to check the work entitlements of all new employees to avoid liability – citizens and non-citizens alike. This level of checking is perceived as being unduly burdensome at the present time, particularly given the practical difficulty of identifying Australian citizens.

As a consequence of the strict liability offences being deferred, the infringement notice penalties recommended by RIWA have also been deferred. It is Commonwealth criminal law policy that infringement notice schemes should only apply to strict or absolute liability offences. This ensures that officers tasked with the issuing of infringement notices only have to consider whether the physical elements of the offence are present without having to make any determinations about the state of mind of an offender.

The fault elements of knowledge and recklessness are drawn from the Criminal Code and apply to many other Commonwealth offences. The Department's information campaign on the new offences would explain when employers should consider checking work entitlements to avoid any liability.