



**Submission to
the Migration Program for 2011-12 and beyond**

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Executive Summary

AMMA has prepared this submission at the invitation of Federal Minister for Immigration & Citizenship Chris Bowen and the Department of Immigration & Citizenship (DIAC) to highlight the issues its members in the resource industry are having with the current 457 visa program. AMMA hopes its submission will help to inform DIAC's review of Australia's migration program and policies.

Australia's temporary skilled migration 457 visas play an important role in attracting people with the skills Australia needs. A survey of AMMA members conducted in 2010 revealed that a little more than half of AMMA's members currently utilise the temporary 457 visa scheme to supplement their employment and training of Australian workers.

Unlike some other industries, the resource industry's track record in recruiting and employing overseas temporary skilled workers demonstrates compliance with the spirit and intent of the 457 visa program and AMMA believes this should be acknowledged in any review of the system.

AMMA would like to commend DIAC and former Minister for Immigration & Citizenship Chris Evans for making some much-needed changes to the 457 visa system in recent years. As a result of a Senate inquiry, the Deegan Review and other reform measures, significant changes have been made that have made life easier for AMMA members in the resource industry.

AMMA also welcomes recent changes to the labour agreements stream of the 457 visa system and notes the new system seems to be working well in that regard.

We also welcome the proposed Enterprise Migration Agreement (mega resource projects) stream of labour agreements emanating from the recommendations of the National Resource Sector Employment Taskforce (NRSET).

While these are positive improvements, AMMA contends that the needs of the resource industry would be further assisted by streamlining the 457 visa process, including by allowing for faster processing of applications, particularly where the businesses seeking to access skilled labour from overseas already have an established record of compliance, as many do in our industry.

Concerns and recommendations

- **Visa processing times** - AMMA is concerned that its members in the resources and construction industries will shortly face the prospect of having to delay projects until the skilled labour they require can be accessed from overseas, which in many cases takes months rather than weeks. It is not uncommon for DIAC to take two or three months to process a 457 visa, after which an employee usually has to provide notice to their current overseas employer. It then takes around six weeks for workers to relocate to Australia. All in all, under the current system an employer sponsor faces a

four or five-month waiting time before the skilled worker they require is on deck in Australia. This is obviously not an optimal situation. Resource industry employers have a strong track record of compliance and often need to access temporary skilled labour from overseas in a short timeframe due to operational imperatives.

Recommendation – *Processing times for visa applications in the resource industry should be no more than four weeks. At present, DIAC specifies that applications will take between one and three months to process. While some visa applications are approved much more quickly than this, and processing times have greatly improved on what they used to be, a reasonable processing time is by no means guaranteed for all applications under the current system, despite them being “decision ready”.*

- **Consistency of advice from DIAC** – AMMA members are concerned about the sometimes inconsistent advice they receive from case officers of DIAC about their 457 visa applications. While AMMA understands there are staffing and resourcing constraints within DIAC due to the extremely high volume of applications being processed, it remains difficult for AMMA members to be certain of the specific requirements before lodging each application. Depending on the case officer involved, employer sponsors may have to comply with different processing requirements for the same application. For example, some case officers require passports, birth certificates and qualifications to be certified before being lodged, which means the employer sponsor has to spend more time up-front preparing the application. Other case officers will approve applications without these documents being certified. Unfortunately, there seem to be no hard and fast rules that employer sponsors and their migration agents can rely on.

Recommendation – *DIAC should ensure that all its case officers are working from the same set of rules on which they are trained. Further, DIAC should ensure its case officers give consistent advice on all visa applications. Employers should know up-front what the requirements are before lodging an application rather than taking their chances and finding out later that more information is required. The importance of such consistency of advice cannot be overstated.*

- **Lack of flexibility for short or urgent projects** – AMMA members are concerned that the current 457 visa system is not sufficiently flexible to allow employer sponsors to bring workers in quickly and easily for urgent projects. In the resource industry, it is not uncommon for projects to run for a few weeks to a few months. It is also not uncommon for the lead time before a project commences to be very short. Under the 457 visa system as it currently stands, it can take more time to have applications approved than the worker will actually spend working on a project in Australia. Given the significant contribution of resource projects to the Australian economy, some much-needed flexibility should be built into the system to cater for short-term projects as well as those with a short lead time. Unfortunately, there are no options available to bridge the gap between the 456 visa, which allows work in limited situations for up to 42 days in Australia, and the 457 visa, which allows a worker to remain in Australia for up to four years.

The requirement to include a comprehensive employment contract, labour market testing and research, and documents containing significant personal information about the health, character, employment history and qualifications of sponsored workers seems excessive for temporary skilled workers who will remain in Australia for less than six months. At present, there is no distinction drawn between the visa requirements for an applicant that will work in Australia for one day as compared to one that will work in Australia for four years.

Recommendation: *DIAC should introduce measures to address the needs of employers on short-term and urgent projects to enable them to access visas more quickly and effectively. This could be by way of an alternative visa that allows employers to access skilled labour for a short-term project of six months or less. This would remove the unnecessary and onerous obligations currently being placed on employer sponsors by requiring them to complete the same comprehensive application for sponsored workers regardless of the length of the project¹. A full working visa for short-term projects in the resource industry lasting up to six months, processed in the same manner as a 456 visa, would be of great assistance.*

- **Lack of transparency about the progress of applications** – It is currently very difficult for employer sponsors to know how long a particular 457 visa application will take to process or to ascertain information about what stage of the process the application has reached. Sometimes DIAC will provide an “acknowledgement receipt” but this is only upon receipt of the application and is not issued in all cases. Other than that, there is no communication from DIAC about the progress of an application. There is also no ability for employers to phone the case officer in question and check on the progress of applications, with employers being specifically told not to contact DIAC about these matters. While these measures have no doubt been put in place to cope with heavily taxed resources within DIAC, AMMA maintains that a more transparent and communicative process would go a long way towards improving the operation of the system.

Recommendation – *Employer sponsors and/or their migration agents should have reasonable access to the case officer handling their applications to ascertain the progress of their applications. This could include the case officer contacting the employer or agent at certain pre-determined stages of the process in situations where, due to a shortage of departmental resources, case officers are not able to take incoming enquiries.*

- **Little flexibility to cope with a change of employer sponsor** – The current system contains unnecessary impediments that arise in situations where workers who are sponsored under 457 visas change employers during their stay in Australia. It is not at all uncommon in the resource industry for these situations to arise and things

¹ AMMA notes that the Australian Taxation Office, as per the International Tax Agreements Amendment Bill 2003, defines a “short-term visit” by a migrant worker as 183 days or six months. It is only after this time that a worker begins to pay tax in Australia as opposed to their home country. DIAC could align its reduced application requirements with this ATO definition and impose different requirements on visas that are intended to last for longer than six months.

could be made much easier for employer sponsors and workers by injecting a more common sense approach into this aspect of the visa process.

For example, at present where a 457 visa worker seeks a new sponsor, once the new sponsor nominates the position, the new arrangements are effective immediately upon the application being approved (workers can continue to work for the former sponsor during any specified notice period but this can be as short as a few days). The problem that then arises is the worker can no longer perform work for the former employer as soon as the new application is approved (barring any notice periods), even if work for the new sponsor has not yet commenced.

Recommendation – *When an employee is working under a 457 visa for one sponsor company and a new employer plans to take over sponsorship, the new sponsor should be able to nominate a date on which the new sponsorship arrangements will apply, i.e. the date on which the worker will begin work for the new employer. Allowing new employers to nominate a start date would be a quick and easy solution to the above problem.*

- **Professional applicants treated the same as semi-skilled** – The resource industry is currently experiencing a severe shortage of applicants for professional roles, in particular in the engineering and geosciences fields. This is not intended to de-value the lack of semi-skilled occupations and tradespeople that also exists in the industry.

Unfortunately, the 457 visa system as it currently stands fails to differentiate between degree-qualified/professional applicants and other applicants with lesser qualifications and skills. AMMA maintains that the system should recognise that professional applicants are far less likely than others to provide fraudulent credentials and/or to be exploited by unscrupulous employers. In the resource industry, in-demand professionals enjoy extremely generous wages and conditions whilst in Australia. While DIAC purports and no doubt aims to offer faster processing of professional applications, the practical reality is that processing times seem to be about the same.

Recommendation – *DIAC should fast-track the processing time for professional and/or degree qualified applicants if all the required information is submitted with the application.*

- **Streamlining the visa renewal processes** – At present, when an employer sponsor seeks to renew a 457 visa during a worker's stay in Australia, it is required to go through the entire visa application process afresh, including having to nominate the position again. AMMA maintains that in situations where a visa is simply being renewed, the process should be streamlined.

Given that DIAC already has the workers' certificates and other documents on file, the employer should not have to resubmit those with renewal applications unless something has changed. Shorter forms that simply require employer sponsors to state that all aspects of the role are the same, aside from the new expiry date for the visa, should be available for visa renewals.

Recommendation – *Employer sponsors seeking to renew a 457 visa should not have to go through the entire application process again. In particular, they should not have to re-nominate the position unless the job or market pay rates associated with that role need updating.*

- **The market rates ceiling** – Recent changes to the minimum salary levels for 457 visa holders have, in addition to setting an increased minimum salary, introduced the requirement for visa holders to be paid the “market” rate where this is higher than the stipulated minimum salary. There is, however, a salary threshold above which the market rate no longer applies, which is set at the ATO’s top tax rate of \$180,000 a year. This rate was established without any industry consultation and is simply far too high.

Significantly, sponsorship obligations for 457 visa holders include employers being required to comply with the *Fair Work Act 2009*. The current federal government has frequently stated that employees who earn six-figure salaries are capable of looking after themselves in key areas of workplace regulation, with the government having excluded high-earning, non-award covered employees from access to the *Fair Work Act’s* unfair dismissal jurisdiction. The threshold in that jurisdiction is currently set at \$113,800 a year (indexed). The federal government has also stipulated a high-income threshold for its paid parental leave legislation, which has the effect of excluding those who earn more than \$150,000 a year from receiving paid parental leave benefits under the scheme.

Recommendation – *The market rate threshold under the 457 visa program should be reduced to align with the unfair dismissal threshold for high-income earners under the Fair Work Act, which is currently set at a level of \$113,800 a year.*

About AMMA

The Australian Mines and Metals Association (AMMA) represents all major minerals, coal and hydrocarbons producers and associated processing and service industries, plus a significant number of construction and maintenance employers in the resource industry.

In particular, AMMA member companies operate in the following industry areas:

- Exploration for minerals and hydrocarbons;
- Metalliferous mining, refining and smelting;
- Non-metallic mining and processing;
- Coal mining;
- Hydrocarbons production (liquid and gaseous);
- Associated services such as:
 - Construction and maintenance;
 - Diving;
 - Transport;
 - Support and seismic vessels;
 - General aviation (helicopters);
 - Catering; and
 - Bulk handling of shipping cargo.

The resource industry

The Australian resource industry makes a significant contribution to Australia's wealth and prosperity, underpinning critical supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport industries.

The industry contributed just under \$160 billion to export earnings in 2008–2009², along with more than 80 per cent of total commodities exports, close to 70 per cent of total merchandise exports and 56 per cent of total goods and services exports.

The growth of mineral commodity exports since 2003–04 has been phenomenal, driven largely by strong demand, particularly for iron ore and coal. The value of iron ore exports

² Parliamentary Library, 23 September 2010, Background Note: The Australian Resources Sector – its contribution to the nation and a brief review of issues and impacts.

increased from \$5.3 billion in 2003–04 to \$34.2 billion in 2008–09. Metallurgical and thermal coal increased in value from \$6.5 billion to \$36.8 billion and \$4.4 billion to \$17.9 billion respectively over the same period.

Feedback from AMMA's members indicates that the industry is very much experiencing a skills and/or labour shortage, with the vast majority of members having had experience using 457 visas or expressing interest in doing so in future.

AMMA believes the industry is a best practice user of the 457 visa in that it is characterised by:

- Employers with national and international reputations;
- Best practice occupational health and safety practices;
- The payment of salaries considerably higher than those in other industries;
- Significant training expenditure and ongoing commitment to employing and skilling Australians, including promoting apprenticeships, graduates, indigenous and female participation; and
- Overseas recruitment only being used to source what is essentially a temporary workforce without adversely affecting the long-term employment prospects of Australians.

In short, 457 visas in the resource industry are used to satisfy a shortage of skilled labour that cannot be sourced from within the Australian workforce. The visas are not seen by the industry as a way of sourcing inexpensive labour or providing an alternative to existing skilled Australian labour.

The extent of the skills shortage

There is no doubt the Australian resource industry is experiencing difficulties securing sufficient skilled labour and professionals to meet its operational requirements. While shortages have traditionally existed for professional personnel and demand for these roles continues to be the highest of all the occupational groups, demand for tradespersons and semi-skilled workers now also exceeds supply.

Systematic feedback sought by AMMA from its members via surveys conducted in 2010 indicates that around 75 per cent of AMMA members are currently experiencing a skills and/or labour shortage, with this situation expected to deteriorate in the next 12 months.

Of AMMA members that are currently experiencing a skills shortage:

- 74 per cent said they were experiencing a shortage of professionals;
- 53 per cent said the shortage was of other "skilled" workers; and
- 48 per cent said the shortage was of tradespeople.

Of those experiencing a skills shortage, 77 per cent said things were expected to deteriorate in the next 12 months while 23 per cent expected things to stay the same. No respondent expected the skills shortage to improve in the next 12 months.

Of the 23 per cent of AMMA members that are not currently experiencing a skills and/or labour shortage:

- 80 per cent expected to be in the next six months;
- 80 per cent expected to be in the next 12 months;
- 50 per cent expected to be in the next two years; and
- 43 per cent expected to be in the next five years.

While feedback from AMMA members indicates there is some level of skills/labour shortage in most occupations in the industry, specific and dramatic shortfalls are currently being experienced for the following occupations:

- Professional engineers;
- Geologists;
- Surveyors;
- Metallurgists;
- Project managers;
- Construction managers;
- Tradespeople;
- Plant operators;
- Production Superintendents; and
- Chefs.

Professionals are in the highest demand

Professional or degree-qualified employees are the number one occupational group that AMMA's members are expecting to have to recruit from overseas in the near future, with 84.6 per cent of respondents to a 2010 survey saying they would have to recruit professionals from overseas within the next five years.

Specific occupations within the professional ranks that will need to be recruited from overseas in the next five years include:

- Professional engineers, including mineral processing and geotechnical engineers;
- Mining and mechanical engineers;
- Surveyors and survey technicians;
- Construction managers;
- Project managers;
- Heavy duty fitters;
- Geologists;

- Plant operators;
- Managers and superintendents;
- Quality assurance professionals;
- Drillers; and
- Metallurgists.

Professionals are also the most common occupational group currently being recruited from overseas, with 84.6 per cent of respondents who recruited workers from overseas having recruited professionals.

Training of overseas workers

AMMA members also invest in training the skilled workers they recruit from overseas, with respondents to a 2010 survey saying overseas workers would require further training once they were in Australia in areas including:

- Australian occupational health and safety standards;
- English language training;
- Senior first aid training;
- Working at heights training;
- Local conditions training;
- Industry inductions;
- Cultural familiarisation;
- Product and technology training;
- Australian rules and regulations;
- Australian mining processes and laws; and
- On-the-job training.

Reasons for the skills shortage

Preliminary results of a recent survey of AMMA members attribute the current skills/labour shortage to, in order:

- Competition with other industries;
- Not enough applicants for the roles available;
- Applicants not having the specialised skills the industry needs;
- Difficulties associated with recruiting from overseas;
- An ageing workforce; and
- A lack of local training for local people to build the skills needed by the industry in specific areas.

Interestingly, some respondents believed the skills did exist in Australia but were currently:

- Working with other companies;

- Working remotely or in the construction industry on higher salaries; and
- Working in the major city centres and mining operations.

Member feedback about problems with the current 457 visa scheme

Asked about the issues they were having with the operation of the current 457 visa scheme, 81.8 per cent of respondents to an AMMA survey conducted in 2010 cited visa processing times as having had a negative impact on their business.

Asked what changes they would like to see in the area of skilled migration, respondents recommended the system:

- Fast-track the visa application process;
- Consider migration in terms of project-specific needs and timeframes;
- Offer a better way to determine market rates in situations where there were no incumbent workers and no existing enterprise bargaining agreements covering the roles;
- Have clearer requirements on skills assessments;
- Have clearer processes for visa renewal applications;
- Focus immigration primarily on the skills needed in Australia over the next five years;
- Review individual companies' needs;
- Provide more open communication on the status of visas;
- Include easier processing of labour agreements for companies that demonstrate a commitment to local training;
- Provide consistent advice regarding visa processing times and procedures;
- Offer faster processing times for degree-qualified applicants; and
- Ensure applications are passed onto other DIAC officers in the event a case officer embarks on a period of leave.

Respondents also suggested the department look at what the business itself does. One respondent said they had experts based in Holland, the UK, Singapore and the US who flew in and out for projects around the globe. These people did not want to live in Australia but wanted to live in their home country while doing their job.

While 62.5 per cent of respondents believed the current 457 visa program operated effectively, there were difficulties being experienced in the areas cited throughout this submission, most notably in the area of visa processing times.

How many workers are being sponsored from overseas?

Skilled labour from overseas is only used by the resource industry to fill a temporary shortfall of very specific and highly in demand skills. In an AMMA member survey conducted in 2010, members were asked how many workers they would sponsor from overseas in 2010 and 2011. Numbers ranged from 1 to 50 in 2010 and 1 to 150 in 2011.

Enterprise migration agreements

Asked to comment on reported government proposals to introduce “enterprise migration agreements” that would enable employers on “mega” projects to get pre-approval to fast-track the import of overseas labour, 100 per cent of respondents to a recent AMMA survey said that option should apply to all projects, no matter the size, and to all phases of a project, not just the construction phase.

As one respondent said: “The entire labour market needs supply increases where skills shortages exist and not just the mega projects.”

AMMA-sponsored research into 457 visas

AMMA is proposing to embark on a research study in collaboration with Edith Cowan University in Western Australia entitled: *Employing 457 temporary visa workers: The benefits and costs for business, migrant families and the community.*

AMMA and Edith Cowan this year applied for Australian Research Council (ARC) funding for the project which, if approved, will commence in late 2011. AMMA is committed to funding this research, which has been underwritten by an AMMA member company, for the three-year life of the project, pending approval from the ARC which is expected in the latter part of 2011.

The study will assist AMMA to provide data on the benefits and costs to Australian businesses, migrant workers and the community when workers are engaged on temporary 457 visas.

The study will focus on collecting industry, community and temporary workers’ perceptions in order to explore the costs and benefits of employing temporary workers from different stakeholder points of view.

Questions to be addressed in the review will include:

- What is the impact on business, the community and on the workforce?
- What are the associated costs for business, the community and the workforce? and
- What are the associated benefits for business, the community and the workforce?

Analysis of the data will focus on producing recommendations to improve the support for businesses employing temporary workers on 457 visas as well as for migrant families working under such schemes and the community, social and educational services involved in their welfare.

Conclusion

As the resource industry continues to strive for efficiencies with continuous improvement, taking advantage of what technology can offer, the demands for highly skilled employees will continue.

Downstream mineral and petroleum processing is becoming more complex, resulting in more highly-skilled design, construction and maintenance employees being required. New industries such as chemical manufacture and advanced technologies like sub-sea engineering require knowledge and experience which is rare in Australia.

AMMA contends that the existence of a skills/labour shortage in the Australian resources industry and the potential adverse impact this will have on productivity is now beyond doubt.

The skills shortage is in part a result of the rapid acceleration of demand and the resulting exponential growth of Australia's resource industry required to meet the increased global demand for its products. The pace and scale of this growth is unprecedented in the mining, oil and gas industries.

Unwarranted restrictions on the ability for employers in these industries to source skilled labour from overseas could provide a ceiling on future growth or lead to projects being relocated outside Australia. As happened during the global financial crisis, the demand for temporary overseas skilled labour in the resource industry declines when there is a downturn in the industry. So too does demand increase when the industry recovers.

Employers in the industry have attempted to offset the negative effects of the skills shortage by employing extra graduates, apprentices and trainees. Federal and state governments have assisted by introducing fiscal measures to ease the financial burden of employing semi-skilled and unskilled labour.

But despite employers' best efforts, which include training new job entrants and promoting careers in the resource industry along with interstate migration, the skills/labour shortage remains an ongoing problem for the industry.

Access to temporary and permanent overseas skilled labour is a small but important component of a resource industry employer's workforce. The intention of employers in the industry in the long term is to up-skill and supplement the Australian workforce, not replace it.

In short, employers in the resource industry properly use the temporary 457 visa to meet their labour needs and as a result provide a demonstrable benefit to the Australian economy.