



Submission to the Department of
Immigration and Citizenship
**Review of the permanent employer
sponsored visa categories**

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Date: 16 September 2011

Executive summary

AMMA has prepared this submission at the invitation of the Department of Immigration and Citizenship (DIAC) to review the current operation of the employer sponsored permanent residence visa categories.

This submission highlights the issues our members in the resource industry are experiencing with the current operation of the employer sponsored permanent residence visa categories and provides recommendations. A survey conducted in May 2011 of 200 AMMA members revealed that 86 per cent were already experiencing a skills shortage. Given the current skills environment in the resource industry, there is no doubt the Australian resource industry is in the midst of a serious skills/labour shortage. In the past, shortages have existed for professional occupations. While demand for skilled professionals continues to be the highest of all occupational groups, demand for tradespersons and semi-skilled workers now also exceeds supply.

AMMA would like to commend DIAC and Minister for Immigration and Citizenship, Chris Bowen and his predecessor, for making some much needed changes to the skilled migration program, including the most recent announcement in this year's Federal budget that temporary 457 visa applications will be processed in an average of two weeks. AMMA looks forward to the improved processing times.

AMMA also welcomes the introduction of Enterprise Migration Agreements (EMAs) for 'mega' resource projects with a capital expenditure of \$2 billion or more and a peak workforce of at least 1,500. However, AMMA contends that the capital expenditure threshold should be reduced to \$1 billion, and the peak workforce requirement reduced to 500. This would bring at least another 15 resource projects under the definition of a 'mega' project on top of the 13 to 20 that already qualify, and would allow these extra companies to enjoy the benefits of EMAs.

AMMA strongly urges the government to consider reducing the capital expenditure and peak workforce requirements for EMAs so they can be of benefit more widely to an industry that is already feeling the pinch of a skills shortage that is expected to worsen in the coming years.

While there have been some positive improvements to the skilled migration program, it is important in the current skills environment that programs such as the employer sponsored permanent residence visa categories operate to their maximum effectiveness to ensure Australia can meet its current and future workforce needs.

Please note that the concerns and recommendations raised in this submission only relate to the employer nominated scheme and labour agreements.

1. The Employer Nominated Scheme

A primary objective of the Employer Nominated Scheme (ENS) as stated in the DIAC discussion paper is to make it easier for certain skilled temporary visa holders, such as people living and working in Australia on a temporary business (long stay) subclass 457 visa, to be sponsored for permanent residency after they have worked for an employer for several years and will continue to do so after the permanent residence visa is granted. AMMA acknowledges that the ENS is by far the quickest way of obtaining permanent residency as opposed to other ways such as independent skilled visas (this is not an acknowledgement that the ENS timeframe and process is ideal).

1.1 Inconsistency of the ENS process

AMMA members are concerned about the sometimes inconsistent advice they receive from case officers about their ENS applications. While AMMA understands that there are staffing and resourcing constraints within DIAC due to the 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 assigned, sponsors and applicants may have to comply with different processing requirements for the same application. For example, in two recent ENS applications lodged at the same time and with very similar characteristics- i.e. the same nominated occupation, same sponsor company and both applicants being of the same nationality - one application was approved within three weeks while the other took six months. The case officer assigned to the second application (which had no health and/or character issues) requested far more documents than those needing to be provided for the first, and indeed far more than what is required by checklists available on the DIAC website.

Recommendation - DIAC ensure that all its case officers are working from the same set of rules on which they are trained. Further, DIAC require its case officers to give consistent advice on all visa applications. Employers should know up-front what the requirements are before lodging an application rather than finding out later that more information is required. In line with previous AMMA submissions to DIAC, the importance of such consistency of advice cannot be overstated.

1.2 Processing times

AMMA supports the introduction of 'fast-tracked' visa processing for applicants such as subclass 457 visa holders whom their employers want to sponsor for permanent residency.

The current processing times on DIAC's website for ENS applications are listed as between five and eight months. AMMA members are concerned about the consistency of timeframes in which ENS applications are assessed by DIAC.

Our members' experience is that an ENS application can take anywhere from two weeks to nine months to process. This disparity between processing times is not ideal.

1.3 Employer Nomination Scheme Occupation List

As it currently stands, a separate list of nominated occupations exists for the ENS and temporary 457 visa programs. AMMA members are concerned that, over time, variations between the temporary and permanent employer sponsored lists have emerged. For some occupations nominated under the temporary 457 visa program, an ENS is not an option to permanent residency if the occupation does not exist on the Employer Nomination Scheme Occupation List (ENSOL).

For example, a marine transport professional (ANZSCO 231299) and maintenance planner (ANZSCO 312911) is an approved occupation under the temporary 457 visa program but is not eligible for nomination under the ENS.

Recommendation – that the ENSOL and the 457 skilled occupation lists be reviewed and consolidated to ensure consistency between the two so as not to disadvantage a temporary 457 visa applicant from applying for permanent residency under the ENS program. AMMA recommends that all industry stakeholders be consulted about the occupations and given the opportunity to suggest occupations where a genuine skills shortage exists in the industry.

1.4 English language requirements

ENS visa applicants must demonstrate they have vocational English, which is comparable to a minimum International English Language Testing System (IELTS) score of 5 for each of the four test components – speaking, reading, writing and listening.

AMMA believes the current English language threshold for ENS applications and temporary 457 visas is too high. The standard has been increased in recent years with little or no consultation with industry.

AMMA notes that skilled and semi-skilled employees from countries such as Korea, Estonia, Hong Kong, Taiwan and Germany on working holiday visas can work for up to 12 months on resource projects without being required to demonstrate any level of English language competency whatsoever.

The increased requirement, therefore, cannot be justified on the grounds of safety and goes further than ensuring adequate survival skills in the social or workplace contexts.

AMMA members have reported that the increased requirements for applicants to obtain a test score of at least 5 in each of the four test components has reduced the pass rate by a minimum of 30% to 40% of applicants undergoing the test. Anecdotal evidence further suggests that many applicants simply do not sit the test for fear of failing.

The Deegan 457 Integrity Review recommended that the current English language requirements attached to the subclass 457 visa program be retained for all occupations included on the new standard list of occupations, with the exception that applicants should also be

found to have met their requirement should they achieve an average score of 4.5 without reference to the written component.

The recommendation to exclude the written component from the testing regime was not taken up.

Recommendation - AMMA acknowledges that the English language requirement can be waived under the ENS provided the visa applicant can demonstrate exceptional circumstances. This implies there is flexibility around the English language standard. However, AMMA contends that the current English language requirements should be reviewed for all skilled visa programs, and the IELTS score should be reduced.

2. Labour agreements

A primary objective of the DIAC review is to ensure programs such as labour agreements meet the government's commitment to simplify the visa structure and create a robust visa program that will reduce bureaucratic red-tape for employers. Another objective is to make the visa process easier to understand for employers and visa applicants. AMMA welcomes this initiative, in particular, making the process easier to understand for employers. However, despite these commendable aims, AMMA members are still reluctant to take up labour agreements due to the fact that the benefits are far often outweighed by the time and resources it takes to negotiate them.

The National Resources Sector Employment Taskforce (NRSET) noted in its 2010 'Resourcing the future' report the low take-up by resource industry employers of labour agreements. It noted that at the time of writing the report there were fewer than 10 active agreements in place, only one of which related to a significant resource project.

NRSET noted that one of the reasons for the low take-up rate was that employers perceived they took too long to negotiate and process.

2.1 Timelines

DIAC suggests the average processing time for a labour agreement is between six and nine months once it is received by DIAC. However, before agreements get to the lodgement stage, negotiations can take an exhaustive amount of time. Currently, one major resource project

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has been working to finalise a labour agreement for four years and the application remains open. This extraordinarily long timeframe does not make labour agreements an attractive option for the resource industry. It is also currently very difficult for employers to know how long a labour agreement will take to process.

AMMA maintains that a more transparent and communicative process would go a long way towards improving the operation of the system and processing times.

Recommendation – The labour agreements approval process be made more user friendly and subject to rapid processing to allow resource companies to respond more quickly to the current skills shortage. A labour agreement should take no longer than three months to finalise once DIAC has received a completed application. A reduction in the processing timeframe would make labour agreements a more attractive option for the resource industry.

2.2 Onerous conditions attached

Our members have reported that the low take-up rate for labour agreements is not only a product of them taking far too long to negotiate.

While labour agreements have the advantage of allowing semi-skilled as well as skilled workers to be recruited from overseas, acting as a further deterrent to their take-up are the obligations they place on employers in the form of training commitments and employment quotas, making the agreements unattractive for employers. The labour agreements stream is not user friendly and has far more onerous conditions attached than does the standard business sponsorship for skilled migrants.

Another requirement that is part of the negotiation of a labour agreement is to consult with the relevant unions. ‘The intent of this was to assist with transparency and encourage public acceptance of the wider use of labour agreements.’¹ This type of consultation is often complicated by a union’s outright opposition to bringing in skilled or semi skilled workers from overseas despite the empirical evidence of a skill shortage. With the aim of working through some of these issues, AMMA has agreed, at the invitation of the Federal Government, the Australian Manufacturing Workers Union (AMWU) and the ACTU, to

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participate in a tripartite body comprised of government, industry and unions in the resource industry. The body will have the aim of developing better relationships and coming to a better understanding of the needs of all stakeholders involved.

Recommendation –AMMA recognises employers should be required to make a tangible commitment to the training of Australians in the skills they seek under the labour agreement, but a more streamlined set of procedures could easily be adopted. Provided an employer can demonstrate a commitment to training its existing workforce and despite, these efforts still be suffering from a skills/labour shortage, the application for a labour agreement should be approved.

¹ Visa Subclass 457 Integrity Review, *'Issues Paper #1: Minimum Salary Level / Labour Agreements'*, July 2008.

Conclusion

Access to both temporary and permanent overseas skilled labour remains a small but important part of the resource industry workforce. The long-term intentions of employers in the resource industry are to train, up-skill and supplement the Australian workforce rather than replace it with skilled and semi-skilled migrants.

The resource industry does not take the view that access to skilled migration, by means of temporary skilled migration and/or permanent employer sponsored visa categories, such as ENS and labour agreements, are a quick and easy process to supplement their workforce where a shortage of skills and/or labour exists. As outlined above, the programs place onerous and stringent obligations on employers.

Despite the resource industry's best efforts, which include training new job entrants and promoting careers in the resource industry along with interstate migration, in addition to employing extra graduates, apprentices and trainees, the skills/labour shortage remains an ongoing problem for the industry.

With this in mind, the multi-faceted approach needed to tackle the skills shortage in the short and long-term needs to include sensible and sustainable skilled migration on the understanding that this reaps benefits for industry, the economy, workers and their families.

AMMA welcomes further discussions with DIAC on any or all of the above issues.



Geoff Bull
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16 September 2011