



Submission to Senator Chris Evans

Minister for Immigration and Citizenship

457 SKILLED VISA'S

The Australian Mines and Metals Association (AMMA) welcome the opportunity to comment on the operation and effectiveness of the Temporary Skilled 457 Visa available under the Migration Regulations.

AMMA Representation

AMMA membership is drawn from the resources sector across Australia and is the national employer association for the mining, hydrocarbons and associated processing and service industries.

AMMA is also the sole national employer association representing the employee relations and human resource management interests of Australia's onshore and offshore resources sector and associated industries.

AMMA represents all major minerals and hydrocarbons producers as well as significant numbers of coal, construction and maintenance employers in the resources sector



AMMA member companies operate in the following industry categories:

- 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; on shore and offshore
 - Diving
 - Transport
 - Support and seismic vessels
 - General aviation (helicopters)
 - Catering
 - Bulk handling of shipping cargo

Membership feedback to AMMA indicates that all of the above sectors have either experience in using 457 visas or have an interest in using 457 visas as a result of the skill shortage that the Australian resource sector is experiencing.

The 457 visa has been the subject of intense media criticism much of which AMMA believes is unjustified and all of which has little application to the resources sector.

AMMA does not believe that the 457 visa should morph into a guest worker visa as exists in other countries. AMMA is supportive of strengthening the integrity of the subclass 457 visa whilst at the same time maintaining the benefits and attractiveness to resource sector employers in the use of temporary overseas skilled labour.

Australian economic growth has been strong for the last decade. With a more flexible economy as a result of industrial relations reforms and good economic management this growth can continue. This will be subject to continuing strong overseas demand and sustained buyer confidence from countries such as China and India.

Labour shortages and infrastructure bottlenecks have resulted from the strong economic growth. A series of research papers have recognised that Australia cannot supply the skilled labour growth that will be required as baby-boomers retire and the number of young Australian workers declines.

Australia's future requirements for labour will drive increases in demand for sustained and growing immigration. While productivity improvements can be expected to allow some slowing of labour force growth, labour demand is still predicted to be high.¹

McDonald and Withers² contend that future labour requirements are likely to be strong for several reasons:

- the resources boom can be projected to continue as a by-product of Chinese, Indian and other Asian growth, so sustaining demand for workers in mining, transportation and communication;
- major investment in new physical infrastructure can be expected, this will involve a high demand for workers in construction and engineering;
- a concurrent boom in the construction, mineral and energy sectors resulting in direct competition for skilled labour;
- low unemployment rates;
- aging demographics;
- an earlier than average retirement age in the resources and construction sectors;
- average Australian living standards rising in line with ongoing productivity growth creating increased demand for service workers in various labour-intensive sectors to which higher incomes in general are paid;
- operations in remote localities are not attractive to all skilled workers ;
- a trend away from direct employment by major resources companies resulting in a reliance on contractors to source labour on a project basis and
- a declining ratio of experienced to inexperienced employees.

¹ Department of Education, Science and Training *Staffing the Supercycle: Labour Force Outlook in the Minerals Sector, 2005 to 2015*,

² McDonald and Withers, *Population and Australia's Future Labour Force*, Academy of the Social Sciences 2008



Despite efforts that include training of new job entrants, promoting careers in the resources sector and interstate migration, the skill shortage remains an ongoing problem for employers in the resources sector.

The resources sector may be considered 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 the 457 minimum salary level. (Competition for labour and poaching between resource sector employers ensures salaries remain competitive);
- significant training expenditure and ongoing commitment to employing and skilling Australians. The resources sector is proactive in promoting apprenticeships, graduates, indigenous, and female participation; and
- use of overseas recruitment is to source what is essentially a temporary workforce without adversely affecting the long term employment prospects of Australians.

Priority Processing

By far the most significant difficulty with the 457 skilled migration stream is that the arrival of temporary skilled migrants to meet the expected shortfall in particular types of skills lags by a significant period of time, the actual occurrence of the shortage.

AMMA accepts that if applications for sponsorship and the nomination forms lack all the required details, delays in the system are inevitable. However where all requirements are met there is still a protracted period to final approval, periods of up to three months and longer are now the norm.

DIAC Approval Process

The overwhelming response from AMMA members has been that the approval process for 457 visas is cumbersome and lacks any sense of urgency from DIAC. A three month plus; time frame appears the norm for approval of the 457.visa. This lack



of urgency works to frustrate the very purpose of a 457 visa, being to bring skilled persons into Australia to meet an urgent need that cannot be met at the time through the employment of skilled Australian citizens.

This is particularly the case where the work is for periods of less than 12 months. An approval time of three months and longer defeats the utility of being able to bring in short term skilled overseas labour to meet a short term skill shortage.

It is understood that there is a current backlog of 457 applications and without additional resources or streamlining of the process this is unlikely to improve.

DIAC Communication

Of concern to employers is the ability to contact a case officer regarding their application and of being kept informed on the progress of their 457 applications.

Case officers responsible for managing files are notoriously difficult to contact and there appears a policy position that case officers are not to be contacted until at least three months has elapsed from the time of lodgment.

This appears to endorse the fact that an application will take at least three months to approve. On most occasions it is difficult to find an appropriate person to accept responsibility for an application. On many occasions an employer may have to deal with up to four or five different case officers all of who are unfamiliar with the employer's business and need to be brought up to speed.

Once contact is made with a DIAC case officer employers are often advised of difficulties that can easily be resolved and which could have been dealt with much earlier if they had been communicated to the employer.

Where a case officer is on leave of any description, that officer's case files do not appear to be reallocated in the short term and further delays occur.

The issue of prolonged processing times appears directly related to DIAC's resources. Without increasing DIAC's resources or streamlining the process the excessive delays experience by employers will only continue.



AMMA contends that the 457 visa requirements and processes should be streamlined and DIAC be provided with the necessary resources to ensure timelines of between four and six weeks are met.

At present no recognition is given to those employers who consistently meet DIAC's requirements and their statutory obligations in bringing into Australia skilled workers. These employers should be given dispensation in terms of the processing times through a recognition that their applications are unlikely to be fraudulent, misleading or contain deficiencies that require close examination.

AMMA believes that a system of priority processing of 457 visa applications for employers who have a proven track record in the use the 457 visas³ should be implemented forthwith to significantly improve the process for those employers who use the temporary 457 visa in the appropriate manner.

X-rays

The chest x-rays that are required with each 457 visa application need to be medically cleared by DIAC approved medical officer of the Commonwealth. This process is only undertaken in the health processing unit in Sydney and also suffers from inordinate delays. There needs to be greater resources directed to this area.

Short Term Visa

The 457 visa is designed for temporary long-term work in Australia. The 457 visa allows employees to work in Australia for up to four years with a right of renewal for a further four year period.

Many resources sector employers have a much shorter requirement for overseas employees to work in Australia for example in construction or expansion projects. Overseas employees may be brought into Australia for trouble shooting for a few days where Australian expertise is not available or for the training of Australian residents for very short periods of time. In these circumstances the obligations required for a 457 visa place an unnecessary and onerous burden upon employers.

³ This was to have effect from 1 July 2007 under a previous policy announcement.



Where actual hands on work is performed for short periods there is no alternative visa to the 457. The 456 Short Stay Business Visitors visa is not a legitimate alternative where actual work is performed.

Not all 457 temporary visa employees reside in Australia, some return to their country of origin in their time off, or immediately after the completion of a specialised task. This is not unusual in the offshore oil and gas industry. With the 457 obligations designed for working and residing in Australia for up to four years, the 457 visa is not an appropriate visa in these circumstances.

An alternate and less cumbersome visa for periods of work for less than 12 months in Australia should be available at short notice and with minimal formality, similar to the 459 visa.

The 456 Visa

The 456 and its electronic equivalents 977 (single entry), 956 (multiple entry), are not working visa's, but business visitor visa's which enable the holder to travel to Australia to attend business meetings. The electronic equivalents (ETA) are only available to the 32 countries listed in the Migration Regulations said to be low risk and the visa holder may stay in Australia periods up to three months only.

The 456 and its electronic equivalents only permit holders to undertake work which is:

- for work of an urgent short term nature which is not ongoing
- highly specialized (ASCO 1-4) and
- generally for not more than 21 days in duration.

New short Term Skilled Visa

AMMA supports a new short-term temporary visa category with less onerous requirements than a 457 temporary skilled visa that will enable employers to sponsor skilled workers for short term work contracts of up to 12 months.

This category may be processed and applied for in a similar fashion to the 459 visa where the onus is placed on the sponsoring employer as opposed to the overseas applicant.

Labour Agreements

Labour Agreements which are designed to deal with circumstances that cannot be addressed through the standard subclass 457 visa, for which a stronger public policy case exists to enable entry.

The negotiation, establishment monitoring and reporting requirements of Labour Agreements must not be highly onerous and burdensome for employers and must provide for a degree of flexibility. Labour Agreements should not be utilised to introduce more restrictive requirements beyond those required of standard business sponsors.

Labour Agreements are granted at the discretion of the Minister, and the policy requirements are constantly changing. Employers seeking labour agreements are now be required to consult with “relevant” industrial stakeholders, including peak bodies, professional associations and unions, about the proposed agreement and forward their views to the DIAC.

This new requirement ignores the fact that some workforces are entirely non union and the employers may not wish to engage unions in any form to deal with their business. This additional requirement will remove Labour Agreements as an option for some employers. It will also cause difficulties for those employers who are only seeking guidance and preliminary approval from DIAC/DEWR regarding a Labour Agreement to have to announce to unions and other bodies of their intention to obtain a Labour Agreement prematurely.

Currently the waiting time for Labour Agreements can take 12 months and longer. As the processing time is so long, employers end up with different obligations than existed when they first made application. It is difficult to find any one person at DIAC to take ownership of a particular application. One member has reported a wait of over two years and is still unaware of the status of their application for a Labour Agreement.



While there is a necessity to keep the process open and transparent, there should also be certainty in what is required to achieve an Agreement; with the rules remaining constant at least while an application is being processed.

Minimum Salary Level

The resources sector is a leader in human resources and people management; the nature of work demands that employees are highly trained, skilled and well paid.

The resources sector is not an area where employers are attempting to or desire to replace the Australian workforce or to reduce wages and conditions through the use of temporary overseas labour. Wages in the resources sector exceed the overall average by a factor of two.

The sector maintains high standards as employers of choice, through the provision of education and training, career development, equal opportunity, competitive salaries and conditions and the provision of a safe and healthy working environment.

The current minimum salary is \$41,850 per annum gross. This salary excludes:

- accommodation/rental assistance;
- incentives/bonuses;
- vehicle/vehicle allowance;
- living away from home allowance;
- superannuation contributions; and
- other allowances or entitlements in accordance with a company's international assignment, expatriate or relocation policy.

AMMA accepts that a minimum salary threshold for 457 visa holders is appropriate.



AMMA contends, however, that the indexed rate should recognize guaranteed payments common in the resources sector. Currently there is no recognition of payments other than the guaranteed salary. Many resource companies make other payments such as:

- tax equalisation on salaries,
- cost of living/assignment allowances,
- salary gross ups,
- field bonuses, and
- regular penalty payments;

These should be recognized as contributing toward the minimum salary threshold.

Large multinational companies provide generous remuneration packages for employees on international assignment. Base salaries are not be adjusted for an international assignment as they are set on a company-wide policy basis.

The failure to recognise guaranteed payments in the nature described above results in employers needing to ensure base salaries alone meet the threshold in circumstances when an employee's role may not have changed, only their location of employment. While the total remuneration for the employee remains the same, companies are forced to compromise internal remuneration practices with an alternative salary arrangement. This can impact on the ability to repatriate the employee back to their country of origin.

In other instances employees are guaranteed remote location allowances which is also not recognized for the salary threshold.

The recognition of these alternate salary payments does no injustice to maintaining a legitimate minimum salary but acknowledges the various remuneration arrangements of multinational companies. The s.457 reporting requirements can easily identify whether employees are receiving a guaranteed package that equates to or exceeds the salary threshold on an annual basis.



Training Requirements

To establish that a visa applicant is a skilled worker, the worker's classification needs to fall within the Australian Standard Classification of Occupations (ASCO) range of Groups 1 to 4 or for regional sponsorship and Labour Agreements, Groups 1 to 7.

ASCO is no longer a current and comprehensive list of skilled occupations for Australian industry. Employers are forced to either modify the duties of a classification to match an ASCO classification or to claim exceptional circumstances and request the Department of Employment and Workplace Relations establish the skill rating.

A more contemporary referencing system should be developed or used such as the Australian and New Zealand Classification of Occupations (ANZCO).

AMMA members have expressed their dissatisfaction with the failure of existing process to acknowledge experience over qualifications. In the hydrocarbons industry and minerals exploration drilling industry overseas employees have built up specialist experience and knowledge but may lack formal qualifications that recognize this expertise. The resources sector can not afford to engage overseas employees in circumstances where the work can be adequately performed by Australian residents or where the overseas employee does not possess the requisite skills.

The s.457 requirements should be more flexible in recognizing prior learning.

AMMA also contends that a number of classifications are incorrectly categorised as labourers and related workers. Operators of equipment and machinery are not given due recognition in the system, particularly as these skills are a limited resource in Australia.

AMMA

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