



Submission in response to Discussion Paper

*457 Integrity Review:  
Training Fund Contribution*

*17 August 2015*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcome to ensure the Australian resource industry is an attractive place to invest, do business, and create jobs.

Having actively served resource employers for more than 97 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

Our members include companies working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries.

The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economic activity in Australia<sup>1</sup> (double its share of a decade ago).

Australia's earnings from resources and energy commodities are forecast to increase to around \$178 billion in 2015-16<sup>2</sup>.

First published in 2015 by  
AMMA, Australian Mines and Metals Association

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<sup>1</sup> Reserve Bank of Australia research discussion paper, *Industry dimensions of the resources boom*, February 2013

<sup>2</sup> Office of the Chief Economist, *Resources and Energy Quarterly—June Quarter 2015*

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## EXECUTIVE SUMMARY

- AMMA welcomes the opportunity to provide input to the Department of Immigration & Border Protection's (the Department's) discussion paper on the 457 integrity review's training fund contribution proposals.
- In particular, AMMA welcomes the government consulting with stakeholders on this important issue instead of simply implementing the integrity review panel's recommendations as drafted.
- In this submission, AMMA provides practical suggestions in response to the issues raised in the discussion paper and suggests alternatives in situations where the current proposals will have detrimental impacts on parts of AMMA's membership.
- Many employers in the resource industry invest large amounts of money into the specific and tailored training and upskilling of their own Australian employees via their apprentice and company trainee programs.
- As an employer representative, AMMA does not want to see resource industry employers discouraged from investing in training their own Australian employees simply because they would not be able to offset their company's direct training expenditure against the proposed replacement requirements. On close examination, the panel's recommendation for a per visa holder levy risks punishing those business sponsors who already invest heavily in training Australians unless fair alternatives are also made available.
- Unfortunately, if adopted as the review panel recommended, the proposals would see significantly increased costs incurred by some AMMA member companies who already invest heavily in training as part of their business model (and not just to meet current training benchmarks for the 457 visa scheme).
- Current proposals could act as a deterrent to continued investment in training, to taking on apprentices and trainees, and to businesses upskilling their workforces. There is a risk of punishing those who currently invest the most in training but whom are unable or unwilling to divert their current training expenditure into the proposed new training fund.
- In short, for some businesses, the proposals will act as an extra levy on their business with no justification.
- AMMA has concerns that the levy appears to be a new tax which in our view requires further legal and constitutional considerations. Whilst it is proposed that the Department would "invoice" sponsors annually, the legal power to do so is unclear. AMMA would ideally like to see further information on the legal and

constitutional basis for the Commonwealth to invoice a new levy on employers. This is particularly important given that the proposed training fund would be under no obligation to direct funds obtained from resource industry employers into resource industry-specific occupations.

- AMMA is also yet to be convinced that a new levy impost would actually deliver the targeted benefits identified.
- It is for these reasons that AMMA has proposed alternatives for business, taking into account the fact that there are alternative benchmarks available to choose from under the current scheme for both standard business sponsors and under onhire labour agreements.
- While the existence of AMMA's recommended alternatives is imperative, where money is contributed via the proposed levy into an independent training fund, sufficient input must be harnessed from the resource industry as to where that expenditure is directed.
- AMMA would also like to reiterate that our 2014 [submission](#) to the 457 visa integrity review outlines in detail the many training initiatives currently being undertaken by the resource industry, including under the leadership of AMMA, but for the sake of brevity those are not repeated here.
- AMMA's specific recommendations are detailed in the separate chapter called **AMMA's Recommendations**.

# BACKGROUND TO THE CURRENT PROPOSALS

1. The 457 integrity review panel in September 2014 recommended that the current training benchmarks be replaced by an annual training fund contribution based on each 457 visa holder sponsored, with the contributions scaled according to size of business (**Recommendation 6.1**).
2. A discussion paper was subsequently released in line with the Federal Government's commitment to consult further with stakeholders before implementing the recommendation.
3. **At Recommendation 6.2**, the review panel suggested any funding raised by way of a training contribution from sponsors of 457 visa holders be invested in:
  - Training and support initiatives, including job readiness, life skills, and outreach programmes for disengaged groups, particularly youth who have fallen out of the school system;
  - Programmes allowing employers to take on apprentices/trainees from target groups, including Indigenous Australians and those in rural and regional areas;
  - Mentoring programmes and training scholarships aimed at providing upskilling opportunities within the vocational training and higher education sectors that address critical skills gaps in the current Australian workforce. Target sectors include those industries, such as nursing and the IT sector, that rely heavily on 457 workers; and
  - Training and support initiatives for sectors of critical national priority. Target sectors include industries experiencing significant increase in labour demands, such as the aged care and disability care sectors.
4. **At Recommendation 6.3**, the integrity panel recommended that funds raised through the training contribution be dedicated to this training role and that the government report annually on how these monies are spent by the Department of Industry.
5. **At Recommendation 6.4**, the integrity panel recommended that there be a new sponsor obligation to ensure that the cost to the sponsor of the training contribution cannot be passed onto a 457 visa holder or third party.

# AMMA'S RECOMMENDATIONS

## Collection / administration

6. If the 457 integrity review panel's recommendations were adopted as originally proposed, this would see significantly increased costs incurred by some AMMA member companies.
7. By way of example, one AMMA member currently employs over 40 apprentices, with wages totalling around \$2.15 million annually. Not including the company's other expenditure on dedicated internal training officers and external training, this expenditure on apprentice wages alone accounts for more than 1.8% of total payroll as a standard business sponsor, which would exceed the current direct training expenditure requirement of 1% of payroll. However, without the option of continuing to meet the 1% of payroll on direct training, this company would have to pay an additional per visa holder levy under current proposals.
8. This is one of many examples among AMMA's membership where similar expenditures are occurring in the training area and in relation to which a further levy cannot be justified.
9. AMMA understands the review panel's recommendation for a per visa holder levy would extend to on-hire labour agreements unless an alternative is available. By way of example, one AMMA member company in that category currently employs around 1,000 trainees and apprentices on wages totalling over \$36 million a year (or more than 4.4% of total payroll). If this company were to sponsor 75 employees under 457 visas each year, contributing an extra amount per visa holder in the realm of \$800 as proposed in the discussion paper based on business size, that would cost the company an additional \$60,000 a year on top of the millions it already spends on trainee and apprentice wages. Such an additional cost impost seems unreasonable when that business, and others like it in the resource industry, already invest heavily in employing apprentices, trainees and graduates.
10. AMMA remains concerned that if panel recommendations are adopted without amendment, the lack of a fairer alternative will punish those companies already expending significant funds on training their own Australian employees and contributing significantly to the national skills pool.
11. AMMA would welcome the opportunity to work with the government on implementing the specifics of our proposed alternatives given this is a complex and highly technical area with many interactions across the training and skilled migration frameworks that may not be readily apparent.

12. In any case, if the proposed annual levy per visa holder is to be implemented as per the recommendations in the discussion paper to which AMMA is responding, AMMA recommends the following alternatives:

- **For standard business sponsors:**

- I. A per visa holder levy, paid at the time the nomination is approved and each year on the anniversary of the nomination's approval. An appropriate amount would be no more than \$400 at approval of nomination and \$400 annually for each 457 nomination regardless of business size (this would replace current Training Benchmark A for standard business sponsors); OR
- II. Annual provision of evidence that at least 1% of payroll annually is spent on directly training Australians (retaining the current Training Benchmark B for standard business sponsors).

- **For onhire labour agreements:**

- I. AMMA recommends the existing three training benchmark options for onhire labour agreements be retained as an alternative to the per visa holder levy that would become a fourth option (listed first below). AMMA's recommendations for training requirements in this area in response to the discussion paper proposals would be as follows:
  - A per visa holder levy paid at the time the nomination is approved and each year on the anniversary of the nomination's approval. Again, an appropriate amount would be no more than \$400 at approval of nomination and \$400 annually for each 457 nomination regardless of business size; OR
  - Annual provision of evidence that if the company has a workforce of predominantly ANZSCO skill level one or two, that 5% of its skilled workforce is recent Australian graduates (as currently contained in Training Benchmark 1 for onhire labour agreements); OR
  - Annual provision of evidence that 15% of the company's workforce is Australian apprentices or trainees (as currently contained in Training Benchmark 2 for onhire labour agreements); OR
  - Annual provision of evidence that the company has a training expenditure equating to 2% of total gross wages

on training Australians (as currently contained in Training Benchmark 3 for onhire labour agreements).

13. AMMA believes that including the above options as alternatives to the per visa holder levy will be fair to those businesses already investing heavily in training so as not to deter that continued investment or to impose an arbitrary extra levy on those businesses without justification.
14. Having the levy paid at the time the nomination is approved rather than at the time the nomination is made means employers and the Department will not be required to apply for or process refunds should the nomination not be approved, thus minimising the regulatory burden.

## **Exemptions**

15. AMMA supports the exemptions proposed in the ACCI submission from the requirement for annual “proof” of expenditure on training (as an alternative to the per visa holder levy) in certain circumstances. Proposed exemptions are that for small businesses (ie those employing fewer than 20 employees), if they can show they have employed at least one apprentice in an occupation related to the nominated position, the requirement for proof of meeting a minimum spend should be waived. This will minimise the regulatory burden on employers and the Department.
16. AMMA also supports the same exemption for medium-sized businesses employing from 20 to 199 employees where they can prove they have employed one additional apprentice in a related occupation to the one nominated (ie two apprentices in related occupations).
17. AMMA also supports an exemption from the per visa holder levy for short-term 457 visa stays of up to six months. However, this may be difficult to implement in a way that does not impose an extra regulatory burden on employers given that the maximum stay is often over-estimated so that businesses are not forced to apply for a new 457 visa if the originally planned stay is exceeded.
18. While AMMA supports such an exemption in principle, it must be done via a mechanism that would not impose a significant extra regulatory burden on business.

## **Investment focus**

### **Upskilling and retraining**

19. Where money is contributed under the proposed per visa holder levy into a training fund, the body that decides how the funds are spent should do so with sufficient input from resource industry stakeholders.

20. To help inform future consultation over those issues, one potential option for directing funds on behalf of the resource industry would be to “upskill” employees with training in the oil and gas sector. This is an area of continued demand for skills and is one of the sectors in the resource industry that has been least affected by the current downturn.
21. The skills most needed in oil and gas at present are operations and maintenance occupations.
22. It would therefore be beneficial to upskill and redirect areas of the resource industry workforce that are made redundant in other parts of the resource industry in professional and trades areas to equip them for work in the oil and gas sector. Examples of relevant training courses in that sector include:
  - **For professional employees:**
    - Introduction to the Oil and Gas Industry
    - Certificate IV in Process Plant Operations
    - Certificate IV / Diploma in Gas Supply Industry and Operations
    - Gas Operations and Maintenance Statutory Obligations
    - Pipelines Gas and Liquid Petroleum for Maintenance Engineers / Project Managers / Professionals.
  - **For maintenance trades:**
    - Hazardous Areas Courses
    - Flange Integrity Management Levels 1 and 2
    - Basic Hydraulics
    - High Voltage Awareness.
23. AMMA and its members would be pleased to provide more information about transference of people to the oil and gas sector via retraining and upskilling and could help inform the agency that administers the training funds. We would see investment in this area as an immediate win for Australian industry and the economy with the transference of skills easier than retraining in a completely new skill and / or discipline.

### **Apprenticeships and traineeships**

24. Should funds contributed under the proposed levy include a proportion directed to apprenticeships and traineeships to reduce youth unemployment

and increase indigenous employment (two goals which AMMA supports), the following apprenticeships and traineeships would be relevant to the resource industry at the present time (however, these will change with the evolving mix of projects, the investment pipeline and the commodity cycle):

- Fitter and turner
- Boilermaker
- Heavy vehicle fitter
- Electrical apprentice
- Apprentice diesel technician
- Mechanical fitter
- Apprentice plant mechanic
- Diesel fitter
- Jumbo operator trainee
- Carpenter.

## THE CURRENT TRAINING BENCHMARKS

25. Outlined below are the current training benchmarks and how they apply under the 457 visa program for standard business sponsors and onhire labour agreements.
26. These are important because AMMA's recommended alternatives to the current proposals (as outlined in the AMMA Recommendations chapter) are based in part on the current training benchmarks that AMMA members using the 457 visa program already meet (and often exceed).

### Standard business sponsors

27. Under the current 457 visa scheme, standard business sponsors who have been trading for more than 12 months must show they have contributed to the training of Australians by meeting one of two benchmarks:
  - **Training Benchmark A** – Recent expenditure to the equivalent of at least **two per cent** of the payroll of the business, in payments allocated to an industry training fund that operates in the same industry as the business.
  - **Training Benchmark B** – Recent expenditure to the equivalent of at least **one per cent** of the payroll of the business, in the provision of training to employees of the business who are Australian citizens or Australian permanent residents.
28. Businesses must provide evidence of expenditure relating to the training benchmarks when they submit their sponsorship application.

### Onhire labour agreements

29. Businesses requesting an onhire labour agreement need to demonstrate they have a satisfactory record of, and an ongoing commitment to, the training of Australians.
30. It should be noted that labour hire companies are required to enter into a labour agreement in order to sponsor 457 visa holders as they cannot do so directly via the standard business sponsorship route.
31. For each year of the onhire labour agreement, at least one of the following benchmarks must be met:
  - **Training Benchmark 1** - If the company has a workforce that is predominantly ANZSCO skill level one or two, the Commonwealth is satisfied that five per cent of its skilled workforce is recent Australian

graduates and those graduates are provided with structured training linked to professional development and / or licensing requirements.

- **Training Benchmark 2** - If the company satisfies the Commonwealth that 15 per cent of the company's workforce is Australian apprentices (or trainees) or recent Australian apprentices (or trainees) (with less than 12 months post-qualification employment experience) including those under contract to group training organisations but whose placements are coordinated by the business.
- **Training Benchmark 3** - The company has training expenditure equating to two per cent of total gross wages on training Australians. This benchmark requires:
  - I. Payments made to an industry training fund.
  - II. Payments for a formal course of study for the business' Australian employees.
  - III. Payments to external providers to deliver training to Australian employees.
  - IV. Funding a scholarship in a formal course of study approved under the Australian Qualifications Framework for the business' employees who are Australian citizens and Australian permanent residents or, for TAFE or university students, as part of the organisational training strategy.
  - V. Gross wages paid to graduates, apprentices or trainees – provided certain conditions are being met.
  - VI. Wages (or a proportion of the wages) of an employee who trains the business' employees who are Australian citizens and Australian permanent residents as a key part of their job.

## July 2013 changes to training benchmarks

32. **Before 1 July 2013** – the above benchmarks required the business to commit to maintaining that level of expenditure in each fiscal year, for their term of approval as a sponsor.
33. **After 1 July 2013** - Meeting the training benchmarks is now an ongoing and enforceable sponsorship obligation, rather than a commitment, although the thresholds remain the same.

34. In addition, sponsors are now obligated to maintain records relating to training. This includes start-up businesses (i.e. businesses trading for less than 12 months) who initially provide an auditable training plan.
35. Previous sponsors must also demonstrate that they continue to meet the benchmarks during their sponsorship term when applying for a new sponsorship, varying the terms of their current sponsorship, or nominating an employee for permanent residence.
36. In short, since 1 July 2013 the training benchmark requirements have not changed but are more enforceable.

## FURTHER RESPONSES TO IMPLEMENTATION QUESTIONS

37. In addition to AMMA's key recommendations outlined earlier, AMMA addresses below further key questions posed in the discussion paper.

### **At what point in the 457 application process should the contributions be collected?**

38. If the training levy proposal is adopted, and in AMMA's view this should only happen if there are alternatives available for those companies that invest heavily in training already (see AMMA Recommendations for details), the initial fee should be levied at the time of nomination approval, rather than at time of application.
39. Similarly, if there is to be a second or annual payment, this should occur on the anniversary of approval of the 457 nomination.

### **What are your views on the proposal for a sliding scale of training contributions based on business size for the first year?**

40. This appears to AMMA and its members as an arbitrary scaling of contributions. The whole point of a "per visa holder" levy on the face of it to make fees more commensurate with the number of 457 visa holders employed.
41. AMMA can see no obvious rationale for a sliding scale of fees based on business size but would welcome further clarification on that point. AMMA maintains that a fee of no more than \$400 would be reasonable to apply upon approval of a nomination and as an annual levy regardless of business size, provided the alternatives AMMA proposes are available and there is a sound legal and constitutional basis for such a levy.
42. This would make the administration of the system easier for the Department as it would not require proof of business size and simpler for business to understand as one flat fee would apply to all.

### **What impact will the proposed training contribution have on employer use of the 457 visa programme?**

43. It is AMMA's view that the proposals will not result in lower numbers of 457 visas being used in the resource industry given that the program is only used where domestic skills are not available.

44. What it risks doing, however, is punishing resource industry employers who spend considerable amounts on training by levying an additional and ongoing fee on them for using 457 visas.
45. This will impact most heavily on businesses that cannot restructure their training expenditure due to their business requirements and instead would incur an additional levy.

#### **Should any exemptions be put in place?**

46. Yes. AMMA is of the view that if businesses spend more than a specified amount on direct training, they should be able to “opt out” of the new levy system as proposed in AMMA's Recommendations.
47. This would have dual advantages for relevant businesses because those spending significant direct amounts on trainees and apprentices as part of their business model could continue to do that without diverting that money into a separate training fund over which they have no control.
48. Those businesses would also not incur an additional fee where existing training benchmarks are already being met and exceeded.
49. AMMA also supports the discussion paper's suggestion that consideration be given to providing limited exemptions from the new training contribution where a visa is granted for short-term periods to meet an urgent skills need.
50. AMMA suggests that a period up to six months in Australia would be a suitable period for which an exemption should be granted.

#### **Are the proposed implementation dates workable?**

51. In AMMA's view the proposed implementation dates may not give businesses sufficient time to prepare and may create an un-level playing field.
52. Instead of having 1 July 2016 as the start date for levies for new business sponsors, both new and existing sponsors could start at the proposed date for existing sponsors (1 July 2017).
53. This would have the benefit of levelling the playing field and not disadvantaging new business sponsors or those renewing their business sponsorship sooner rather than later.
54. It is unclear whether legislation needs to pass through the parliament to enact the proposals but if so, that will take time, assuming the relevant constitutional requirements are met for such legislation being enacted.

## Investment focus

### Are the areas of investment identified appropriate?

55. For monies contributed to an external training fund under these proposals, some businesses will lose the ability to target their training expenditure according to their business needs and / or the current and future needs of the industry.
56. Adopting the alternatives proposed by AMMA will mitigate against the negative consequences of this for those businesses that spend a significant amount on training.
57. In terms of how that money is spent, there are opportunities for retraining and redeployment from onshore mining and construction into the oil and gas industry. Given the high-risk nature and unique circumstances in the offshore resources environment, most businesses will not even consider employing someone who does not have experience in the offshore oil and gas environment.
58. For that reason, AMMA suggests one option would be to direct funds into training courses that could upskill workers who are made redundant in other parts of the resource industry (further details of this proposal are included in the AMMA Recommendations chapter).
59. The resource industry is committed to training and employing indigenous Australians and there are numerous examples of where this occurs.
60. As such, AMMA supports proposals for programmes allowing employers to take on apprentices / trainees from target groups, including indigenous Australians and those in rural and regional areas and has identified in the AMMA Recommendations chapter some relevant apprenticeships at present for the resource industry.

### How can appropriate input from industry stakeholders be assured?

61. Given that AMMA represents all parts of the resources and allied industries, AMMA would be happy to be part of the group of stakeholders that informs the body that will choose where training funds are allocated.

### Should the focus on the investment of funds to training activities focus more heavily on addressing current workforce needs or reducing the overall dependence on migrant workers?

62. This is not an easy question to answer. It is often not a simple case of looking at which occupations in geographical locations are the biggest users of 457 visas and deciding to train more Australians in those occupations.

63. This is why it is important to get the practical insights from industry on the most effective way to target funds. The aforementioned example of upskilling redundant workers for oil and gas is a clear and relatively simple way to ensure existing skills are able to be transferred to a different part of the industry – the skills are often the same but the context is different.
64. It also needs to be kept in mind that the need for skilled overseas labour is sometimes generated by the fact that Australian workers do not want to live in or travel to remote areas for work on a regular basis. So deciding to train 1,000 people to fill skills gaps in remote areas may not work because those people, once trained, may not necessarily want to relocate there.

**How will the programme be measured to ensure it yields job outcomes for Australians?**

65. The domestic unemployment rate is influenced by a number of factors that have very little to do with the use of skilled labour from overseas.
66. What we do know is that the current demand-driven 457 visa program tracks roughly in line with the unemployment rate in Australia. There is an inverse relationship whereby as the domestic unemployment rate increases, applications for 457 visas decrease, and that is as it should be.
67. However, it would be difficult to prove that the training funds allocated under the proposed scheme have had an impact on reducing unemployment and / or reducing dependence on a 457 visa workforce.
68. Also, as AMMA pointed out in its 2014 [submission](#), only around 20% of 457 visa use is for occupations that could be subject to apprenticeships in any case, so at most only 20% of 457 visas currently being used would ever be able to be filled with domestic apprentices.
69. AMMA would be pleased to provide further information or answer any follow-up questions in relation to this submission.