Submission to the Senate Standing Committee on Legal and Constitutional Affairs

Inquiry into the framework and operation of Subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements

By the Australian Mines & Metals Association (AMMA)

April 2013

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

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

First published in 2013 by

AMMA, Australian Mines and Metals Association

GPO Box 2933

Brisbane, QLD, 4001

Contact: Luke Achterstraat – Policy Advisor

Website: www.amma.org.au

ABN: 32 004 078 237

Contents

INTRODUCTION 1
TOR (a) – EFFECTIVENESS AND IMPACT ON TRAINING 5
TOR (b) – ACCESSIBILITY AND TESTING 6
TOR (c) – OCCUPATIONAL LISTING AND OVERSIGHT 7
TOR (d) – GRANTING VISAS AND MONITORING 8
TOR (e) – TESTING AND EMPLOYMENT IMPACTS 9
TOR (f) – ECONOMIC BENEFITS 9
TOR (g) – WORKFORCE FORECASTING 11
TOR (h) – ENFORCEMENT OF RIGHTS 12
TOR (i) – EMPLOYMENT AGENCIES 12
TOR (j) – IMPACT OF RECENTLY PROPOSED CHANGES 13
TOR (k) – RELATED MATTERS 16

INTRODUCTION

1. On 18 March 2013, the Joint Standing Committee on Migration tabled its *Inquiry into Migration and Multiculturalism in Australia* report. The opening paragraph of the report stated that:

> *"1.1 Since Federation, Australia has relied on migration to enhance its international trade and investment flows, diversify domestic industries, and contribute to the overall national productive capacity of the state. Australia's migration policy has been consistently designed to address both the long-term and short-term needs of the economy by attracting prospective migrants whom possess the skills relevant to Australia's economic demands. The current flexibility of Australian employers to sponsor overseas skilled workers on a temporary basis through the subclass 457 visa is a practical example of this."*

2. This statement recognises the role that skilled migration, including the subclass 457 visa program, plays in the diverse fabric of our multicultural society but also in maintaining our competitiveness and productivity in a global economy. Australia's reputation as the 'lucky country' – a desirable place to live and work – provides an ability to attract the world's best and brightest to our shores.

3. It is in this context that the recent demonisation of 457 visa workers is extremely damaging. AMMA is particularly concerned at the politically charged context in which the government announced further changes to the system for 457 visas, and the lack of essential consultation with industry as a cirtical interest in the effective operation of both short term and ongoing skilled labour migration.

   a. The depiction of skilled migrants as foreigners that need to be 'put at the back of the queue', and that Australians are being 'discriminated against', is base rhetoric that borders dog-whistling and invites allegations of industrial xenophobia.

   b. These emotive claims also ignore the reality that current rules require labour to first be sourced from the local workforce.

   c. In no sense are skilled migrants able to displace the employment prospects of Australian workers. It is in fact up to $60,000 more expensive to employ a foreign worker than an Australian, meaning this avenue is pursued by employers as a last resort.

   d. The depiction that skilled migrants compromise the wages of domestic workers is incorrect, and ignores the reality that employers must not only comply with legally required wages under Australian law, but to also pay market rates of pay to threshold levels and meet a raft of other sponsorship obligations. Managers and professionals, who together accounted for 66% of the total number of 457 visas approved in the program year to February 2013, had combined average total remuneration of $100 000.

   e. This is not a low paid option and the concerns prompted by comparatively lower rates of pay are not applicable to skilled overseas migrants entering Australia under 457 visas.

4. These misleading depictions have arguably tarnished our reputation as an openly engaged economy ready to do business with the world. . If Australia aspires to be a middle power in the world and to offer global and regional leadership we simply can't indulge in such base politics at home.

5. Australia does not exist in a vacuum but rather we compete in global markets to secure capital, technology, skills and expertise. We also compete in a global and regional market for skilled permanent migrants, which the 457 visa program is an important avenue to securing.

6. Globally significant resource projects are being constructed side-by-side in remote areas in Australia. But as we have seen recently, many of these major projects are not guaranteed to come to market in Australia. At least 277 projects worth a combined value of $383bn are under consideration but not fully confirmed. Bringing projects to fruition, and to the stage of creating actual jobs in this country, relies on access to skills, and some of these skills can only be sourced from outside this country.

7. The resource industry is a global industry, with many multinational companies having workforces in several countries; hence, industry skills are internationally transferable.

8. Meeting the skills shortage is arguably the most pressing issue facing many of major resource projects. They require persons with diverse and highly specialised skills to relocate to remote areas, and in vast numbers. The sheer volume of projects underway in Australia, their remoteness and close proximity to each other – amidst a persistent skills shortage – presents a 'perfect storm' of recruitment challenges for the resource industry.

9. The reluctance of local workers to relocate to these remote regions makes it no surprise that more than two-thirds of AMMA members have struggled to recruit their entire workforce locally in Australia. There have been incentive programs run by government offering to pay for relocation for the long term unemployed to the resource rich areas, but these schemes have struggled for want of applicants. Money alone cannot lure essential skills to remote areas if the skills are not extant in this country, or the people with those skills will not relocate to where the skills are in demand from the resource industry.

10. It has always been AMMA's position that the training of our local workforce should be our first priority. The mining industry alone committed over $1.1 billion to training in 2011-12 and various resource industry initiatives are also on foot including AMMA's Skills Connect, the Australian Women in Resources Alliance (AWRA) and AMMA's miningoilandjobs.com portal. These programs are all about giving more Australian residents opportunities to work in the resources industry.

11. It is therefore no surprise that 457 visa workers account for only 2.3% of the mining industry workforce, and consistently account for less than 1% of the construction workforce. As AMMA has consistently emphasised, 457 visa holders play a statistically small but absolutely essential niche role in our industry, but are essential to the employment of many thousands of Australian workers.

12. The current debate over the 457 visa program has unfairly focused on the relatively few employers who do not meet their obligations, and indeed there has been substantial conjecture and exaggeration of the extent of any rorts and non-compliance.

13. In our view, any employer who breaches the rules should face the sanctions that are already available and that are more than adequate to ensure the legitimacy and integrity of the system.

14. The Department of Immigration and Citizenship (DIAC) already has the legislative and regulatory tools to appropriately administer this area. A raft of sponsorship obligations now apply following the commencement of the Worker Protection Act in 2009. It is therefore the task of the Federal Government to ensure that it is able to carry out its role in this respect, rather than imposing new measures at the expense of the vast majority of employers who adhere to their sponsor obligations in good faith.

15. This is a very important point. Were the errors and problems in enforcement the Minister purports to actually exist, they favour getting the enforcement of the existing obligations and controls right, not adding to the obligations.

16. No evidence has been presented that points to widespread or systemic abuse. When challenged for this evidence the Minister has comprehensively failed to produce it, and has retreated most recently into conjecture and exaggeration, claiming more than 10,000 rorts of breaches of the system.

17. The resource industry strongly objects to the tone of the public debate which has had the effect of vilifying both employers and those who hold 457 visas. This ill-reflects on how Australia sees itself as a global and regional citizen, and it fails to honour our proud post WWII record of successfully welcoming new employees, from an increasing range of countries, into our workplaces and community.

18. It is also ironic that some of the biggest users of the 457 visa program have been state governments accessing employees for their healthcare departments. It is also notable that both union officials and the Prime Minister – who purportedly oppose the program or seek to severely restrict it – have used it to fill positions within their own officers in areas in which there are substantial numbers of qualified Australians (for example media and PR professionals).

19. This points to opposition to these schemes being driven by perceived short term political opportunism not evidence, and the parliament should not allow itself to be led down this path.

20. The function of skilled migration channels into Australia should not be allowed to become a hyper-political issue at the expense of the regulatory stability and certainty that employers require to deliver major projects into our economy.

21. The most recent changes announced to the 457 visa program appear to be part of an effort by the Federal Government to appear that they are being 'tough' on foreign workers, rather than being driven by any actual evidence of a need to further regulate the system. There has been a lack of adequate detail on these policy changes, and a lack of evidence for them.

22. The announced changes are unnecessary and will only increase the already high regulatory burden on employers, create greater uncertainty for all users of the system, and harm the positive multicultural reputation generations have strived to build both across the community and internationally.

23. In any scheme, there will always be a small minority that don't play by the rules. The Government, with the full support of employers out there doing the right thing, should target any rule breakers through rigorous enforcement of the existing obligations rather than reducing access by artificially and cynically raising the regulatory bar with no policy basis to do so.

TOR (a) – EFFECTIVENESS AND IMPACT ON TRAINING

their effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements;

The 457 visa program responds well to economic needs

24. As a demand-driven, non-capped, program the 457 visa program responds well to persistent skills shortages faced by employers and the changing needs of the Australian economy. The program provides a 'circuit breaker' when appropriate labour cannot be sourced locally, allowing important job creating projects and investments to proceed that would be unviable or significantly delayed without access to such labour (or in the case of the major users of the system, allowing minimum levels of patient care expected by the community).

25. The National Resources Sector Employment Taskforce (NRSET) demonstrated that as job vacancies rise, so do 457 visa applications. Conversely, as unemployment rises, the use of the 457 visa program falls. The demand-driven nature of the program is therefore an in-built mechanism that renders it responsive to prevailing economic and labour market conditions.

26. Despite some claims that the 457 program is 'out of step' with the labour market, a recent release from the Department of Immigration & Citizenship (DIAC) showed that employer demand eased in the six months to February 2013, a trend which had been developing since June 2012. The release went on to state that:

> *Reinforcing this trend has been a drop in actual 457 visa grants since August. This movement demonstrates the 457 visa program's responsiveness to the changing needs of the Australian economy. From July to November 2012, the number of applications fell by 7 per cent, while the number of visas approved also fell by 15 per cent, over the same period*[1].

27. The responsiveness of the program is further evidenced by a reduction in 457 visa applications in construction and mining in late 2012. DIAC stated in February 2013 that "new take-up of the program is declining, particularly in the construction and mining industries that have driven much of the recent growth in the program".

28. In the 2012-13 program year to November, 3900 applications were lodged in construction, representing a fall of 3% from the same period last year. A similar trend was evident in mining where 2400 applications were lodged, representing an 11 % fall.

29. Western Australia is now the second largest user of the 457 program after New South Wales, reflecting Western Australia's strong labour market. It was stated by DIAC that "this again shows the 457 program's responsiveness to the needs of the economy".

---

[1] *Department of Immigration and Citizenship, Media release: 457 visa program responds well to economic needs, February 2013*

30. It is very difficult to reconcile DIAC's independent and sensible commentary, based on its administrative tracking of the actual usage of 457 visas, and the position the government has attempted to pursue in recent months.

31. DIAC's observations simply not provide an evidentiary foundation for the short sighted, deliberately politicised actions the government is seeking to take.

A positive, not negative, impact on training

32. In 2010, the NRSET report found no evidence that the operation of subclass 457 visa program reduced skills development of Australian workers. On the contrary, the training requirements placed on sponsors of temporary migrants helps ensure that employers continue to invest in staff development.

33. Before qualifying to access the 457 visa scheme employers must demonstrate that they:

    a. meet prescribed training benchmarks;

    b. have a strong record of, or demonstrated commitment to employing local labour and non-discriminatory employment practices; and

    c. have an auditable plan to meet training benchmarks.

34. Training benchmarks must be met in one of two ways: expenditure of at least 2% of payroll to an industry training fund, committed during the term of sponsorship; or expenditure of at least 1% of payroll in training to its employees together with a commitment to maintain such expenditure. These same training requirements apply to employers seeking access to 457 visa holders under an Enterprise Migration Agreement (EMA).

35. Recent work by the National Centre for Vocational Education & Research (NCVER) for the Minerals Council of Australia shows that the minerals sector spends around 5.5% of payroll on training, which is well above these government benchmarks. Apprentices and trainees were found to make up around 5% of the workforce of total mining which is in fact more than the share of 457 visa holders (2.3%).

36. The Roy Hill EMA was set to provide 2000 training places to Australian workers, including 200 apprenticeships and traineeships. With a limit of 1715 foreign workers over 3 years, this means the EMA would have provided more training places than positions for 457 visa holders.

TOR (b) – ACCESSIBILITY AND TESTING

their accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process;

37. The 457 visa program is only accessible to those employers with a strong record of, or a demonstrated commitment to, employing local labour and that also demonstrate financial commitment to training Australians.

38. Before a position in a business can be filled with an overseas worker, the sponsor must certify that it is suitably skilled and that the qualifications and experience of the visa holder are equivalent to what would be required of an Australian employed in that occupation. Market rates and conditions that would be paid to an Australian in the same job in the same workplace must also be provided.

39. Sponsors incur additional costs for employing workers on 457 visas such as paying for health insurance, flights to and from Australia, and agent fees for finding the worker. These additional costs of sponsorship can amount to $60,000 per person.

40. 457 visas are not a low cost option to avoid the costs of employing Australian residents. We urge the committee in the strongest possible terms to be vigilant against being led into error in this regard. It would be unsound to proceed on any other basis than that employers hire foreign workers only as a last resort.

41. This in-built mechanism makes it unnecessary to incorporate further labour market testing into the visa application process.

42. Furthermore, labour market testing – insisting that employers show evidence of having recruited locally (for example, allowing a certain period of time to elapse to allow applicants to apply, conducting extensive interviews, producing notes on why certain local interviewees were unsuitable for the particular role, etc) – would be debilitating for employers urgently seeking to fill a position, and who are familiar with the challenges of the local employment market. Employers seek foreign workers when they urgently need skills that are not otherwise accessible to them.

43. Labour market testing would also be fraught with bureaucratic and administrative problems, as DIAC case officers would also have to assess the additional information provided, thereby increasing DIAC workload and inflating processing times for 457 visas. To take this a step further and be absolutely clear, deliberately inflating process times as a disincentive to using 457 visas would be: very poor governance indeed, a rank waste of public resources; and would ill serve the interests of the Australian economy and job opportunities.

44. With respect to EMAs, these have not been accessible to employers in any practical or timely manner despite being recommended by the Government's very own NREST report in July 2010 (Recommendation 4.2). We are yet to see the signing of a single EMA as Government policy in this area. It is increasingly difficult to escape the conclusions that government policy is being held hostage to union agitation against this important mechanism to guarantee job creating investments in this country.

TOR (c) – OCCUPATIONAL LISTING AND OVERSIGHT

the process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors;

45. AMMA is satisfied with the process of listing and monitoring occupations on the Consolidated Sponsored Occupations List (CSOL) and the supporting departmental oversight. The CSOL is helpful in determining which occupations can be sponsored on 457 and permanent residency visas, and for advisory and planning purposes.

46. DIAC is generally responsive to the needs of the Australian economy and varies the list as required by interested stakeholders. The process of listing occupations on the CSOL should continue on this consultative basis.

TOR (d) – GRANTING VISAS AND MONITORING

the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes;

47. Recommendation 4.1 of the NRSET Report was that DIAC "should seek to finalise applications within five working days of a complete application being lodged with the department".

48. This was welcomed by AMMA because major resource projects operate under strict timeframes, and employers need access to critical skills as soon as they can be brought to bear on site.

49. As part of Budget 2011–12, the Government announced additional funding of $10 million for the 457 program, which aimed to halve processing times for 457 visas from its then median of 22 calendar days. Based on this additional funding, AMMA members have experienced processing times of two weeks from date of lodgement which is a significant improvement on past results.

50. In addition to ongoing funding, AMMA recommends that DIAC case officers be provided with technical training to better understand practical aspects of the resource industry. This includes the nature of rostered-on, rostered-off work schedules (regarding duration of stay concerns); and the levels of seniority a given occupation (e.g. 'driller' occupation has levels of tourpusher, driller, assistant driller, rig manager). These distinctions are often misunderstood and are important in determining relevant skill levels within and across occupations. AMMA would be pleased to work with the department to facilitate this training / familiarisation for DIAC case officers.

51. In the interests of efficiency, AMMA would also like to see better (and quicker) access to the case officer's manager when there are points of disagreement and the ability to re-allocate a visa application to the manager or a more experienced colleague if the case officer is away sick or on lengthy annual leave. This would minimise delays in processing and ensure that important applications are not held up by the vagaries of file allocation within the administering bureacracy.

TOR (e) – TESTING AND EMPLOYMENT IMPACTS

the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;

52. There are strict tests that apply to the 457 program and business sponsors already face a high level of regulatory burden that ensures local employment opportunities, pay, conditions and standards of work are not jeopardised.

53. Employers already operate subject to substantial controls and obligations in this area, and the bar does not need to be raised any higher.

54. Employer sponsors already must meet a number of stringent requirements under their sponsorship obligations, including:

    a. Ensuring overseas workers receive terms and conditions of employment no less favourable than those for an Australian citizen or permanent resident carrying out the same position in the employer's workplace at the same location. This is a continuing obligation on employers;

    b. Ensuring that sponsored workers only work in approved occupations – that is, at the time that the 457 visa is granted, the occupation in which the visa holder must work is specified and this role must be occupied for the term of the visa, unless an application is made to DIAC to change this;

    c. Obligations to keep records of compliance with employers' sponsorship obligations, that generally go well beyond the records that must be kept under general employment laws;

    d. An obligation to provide information to DIAC on certain events occurring. This essentially applies to any change in the initial information provided to DIAC, including change of name of company name, change of the company or business address and the appointment of new directors;

    e. An obligation to cooperate with DIAC inspectors, which commences at the time the business sponsorship is approved and ceases five years after the sponsorship ceases; and

    f. Training benchmarks (as discussed above).

TOR (f) – ECONOMIC BENEFITS

the economic benefits of such agreements and the economic and social impact of such agreements;

55. Research commissioned by AMMA and undertaken by Edith Cowan University revealed the benefits of the 457 visa program to not only the employer, but also the wider economy, society, government, the visa holders themselves and their families.

56. As already identified, temporary access to skilled workers through skilled migration allows employers to complete the intensive construction phase of

resource projects on time and on budget. Skilled migrant workers have been found by employers to have a strong work ethic and applicable skills and experience. Overall, business representatives report a positive experience of employing workers on 457 visas and valued this much needed source of labour.

57. With regard to the general economy, 457 visas workers were found to transfer their knowledge, skills, cultural richness and contribute directly to the economy through spending money on living expenses and by paying taxes. They often posses world-class project management experience that rubs off on the local enterprise and advances the skills and employability of Australian employees. Skilled migrants in the resource industry are subject to a high rate of taxation, without the offsets afforded to domestic taxpayers. On average, 457 visa holders were found to pay a tax rate of about 8.5% more than Australian citizens and residents, which represents valuable tax receipts to the Government and a legacy for our community of their period working in this country.

58. Amidst all the hysteria surrounding the 457 visa 'debate', one voice has been forgotten in particular: the 457 visa holders themselves. The Edith Cowan research indicated several benefits for visa holders working even for a short time in Australia including: improved choice, career prospects, equality in that they are valued for their skills, financial reward, a safe working environment, the weather and a pleasant lifestyle. Workers from the Philippines, for example, found the higher financial rewards available highly beneficial to improving the lives of their children back home (this is simply Australia becoming part of the massive Philippine Diaspora around the world seeking to bring remittances back into that country).

59. Lastly, the 457 program is an important contributor to Australia's migration program more generally, with almost 40% of 457 visa holders going on to become permanent residents. Demand-driven skilled migration via a two-step process – first temporary and then permanent residence – allows for a "try before you buy" or "suck it and see" process. It provides a more flexible and immediate response to the changing needs of employers. Foreign workers are recruited directly into jobs that match their skills and experience, avoiding the situation in which they come to Australia independently, fail to find work in their profession, and end up in a lower-skilled job.

60. Two-step migration also acts as an additional test of the quality of migrants' skills. If the performance of 457 visa holders fails to match their qualifications and experience then their presence in the workplace – and in Australia – really is likely to be temporary.

61. Finally, the two-step system gives migrants an opportunity to assess life and work in Australia before they confront the monumental decision of whether to move permanently to a new country. Someone pursuing a 457 led path to migration gains an opportunity to be an informed migrant to this country, rapidly able to work and make a social and economic contribution.

TOR (g) – WORKFORCE FORECASTING

whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas;

62. Since the NRSET report was released in 2010, employment growth and skills shortages in the resource industry have exceeded the report's predictions. The report predicted employment numbers in the industry would grow from around 185 000 in mid-2010 to 250 000 by 2015. The prediction of 250 000 was reached in early 2012, three years ahead of schedule.

63. While this research is welcome – and industry has a role in its development – it is no 'silver bullet' for employers to forecast their own precise workforce needs. Again, this is why the demand-driven nature of the 457 visa is fundamental to its operation – and is fundamental to being able to access critical skills where and when they are required.

64. Further, AMMA in no way accepts any inherent assumption that Australia should seek to close out the visa program or close off our economy. This is the flawed thinking of the past, time and time again throughout the world proven to be a path to social and economic contraction and stagnation. We should aspire to a big and open Australia, as a mature and engaged global and regional citizen.

65. AMMA believes Australia should aspire to a labour market in which:

    a. Australia reaches near full employment and a skilled and productive labour force pursues careers in jobs made secure by their competitiveness on global markets.

    b. Australians are able to travel overseas and work, enriching our country and the wider global community based on the world class skills and experience they gain in Australia.

    c. Australia is enriched by short term and permanent skilled participation from overseas, as part of a very strong labour market, which is operating at or near full employment.

66. Long-term forecasting can be useful in gaining a clearer picture of contrasting skill needs and dynamics across various industries. Some industries and skill areas will be more dependent on migration than others, but in key niche areas and globalised labour markets this is both natural and desirable – as are Australian mining engineers working in Africa or oil experts in North America.

67. We invite the committee to consider the logical consequences of the thinking of the opponents of 457 visas. Australia would be considerably impoverished and harmed if other countries went down the same path and made it harder for our nationals to work in their economies.

68. Less Australians having an opportunity to gain experience in the the financial markets of the US, in the kitchens of Paris, the banks of London or the resource industries of Canada or South Africa can only make us a smaller, less dynamic, and less successful country.

TOR (h) – ENFORCEMENT OF RIGHTS

the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights;

69. 457 visa workers operate under existing laws which are designed to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights. There have been insufficient grounds raised to support claims by the Federal Government and some union groups that there has been abuse by business in this respect.

70. If abuses have occurred, there are appropriate measures available to DIAC under the current regulatory scheme, including revocation of sponsor status. There are also measures available to a range of other authorities responsible for the workplace rights of employees, including state Workplace Health and Safety regulators and the Fair Work Commission. There is already a considerable focus in the enforcement and compliance activities of government on workers working under 457 visas, and this should be more than adequate to protect their workplace rights which equal or exceed those of Australian resident employees.

71. Those businesses that do breach their current obligations as sponsors should be penalised; however, AMMA reiterates that we do not believe that there is a strong case for making the entire 457 program more harsh (to the detriment of the majority of employer sponsors doing the right thing by their employees on 457 visas), especially when there is no evidence to support doing so. To be clear – we know of no systematic of widespread problems with the provision of workplace rights to these employees. In fact given this is a highly regulated area of work in which permission is needed to access employment, we suggest workplace rights are particularly well observed for this carefully controlled employee cohort.

72. It should also be noted that the 457 visa program is not a system that indentures a visa holder to one employer. Visa holders are free to move to another employer experiencing skills shortages in their occupational area, provided that the employer and visa holder meet the sponsorship requirements. This is a highly controlled system, but ensures the visa holders are not a burden on the labour market.

TOR (i) – EMPLOYMENT AGENCIES

the role of employment agencies involved in on-hiring subclass 457 visa holders and their contractual obligations;

73. On-hire firms play a unique and vital role in facilitating 457 visas for contractors and second, third and fourth tier suppliers of services. This is often the case in the resources and construction sectors.

74. This unique and facilitative role must be preserved to ensure that the 457 visa scheme remains available to all employers, not just those employers that have the expertise and infrastructure to sustain such sponsorships. Furthermore, many

candidates choose to be sponsored through an on-hire firm rather than direct engagement.

75. The important role of labour hire firms should be recognised and no policy should seek to restrict or discourage their legitimate use.

TOR (j) – IMPACT OF RECENTLY PROPOSED CHANGES

the impact of the recent changes announced by the Government on the above points

76. The Federal Government has to date failed to provide sufficient detail regarding pending changes to the system that would allow full consideration of their impact.

77. However, AMMA's initial response to these proposed changes – as has already been flagged through this submission – is in summary:

    a. ***Employers would need to demonstrate a genuine shortage for a nominated position***.

    The current arrangements make it more costly for employers to hire a foreign worker, meaning there is an inbuilt mechanism whereby employers only employ 457 visa workers as a last resort.

    The Government should rule out labour market testing as part of the visa application process because this will be unnecessary, unworkable, impractical and fraught with administrative and bureaucratic problems for DIAC.

    The Department should be in a position to judge whether or not an application is genuine under the current system, and no change is warranted.

    b. ***Stricter English language requirements "for certain positions"***.

    The vast majority of 457 visa applicants already belong to highly skilled ANZSCO1000-3000 series occupations. Managers and professionals, who together accounted for 66% of the total number of visas approved in this program year at February 2013, had combined average total remuneration of over $100,000.

    These individuals are already fluent in English and it must be left to the employer's discretion at the interview stage to determine whether they meet the English requirement. English language testing sometimes take months before the next test time is available. It should be remembered that English language testing is expensive and the company or the applicant must provide additional costs if this is implemented.

    We also invite the Committee to reflect on the initial English language skills of the vast swathes of post war migrants that enriched this country in the second half of the 20th Century. It is difficult to understand why

harsh or steep English language requirements need be put on contemporary labour migration that many of the people built the Snowy Hydro (for example), would not have been capable of passing when first migrating to Australia.

c. ***Stronger enforcement of existing training requirements for businesses using the 457 program. Employers to demonstrate they are genuinely training local workers and where they are investing in that training***.

Perceived inadequacy of the current training arrangements is concocted and erroneous. The current training requirements are more than adequate and the mining industry currently contributes more than 5% of its payroll to training initiatives. The resource industry has a strong record in this area and commitment to training locals. Any enforcement measures should therefore be educational and targeted.

d. ***An increase in the market salary exemption from $180,000 to $250,000***.

Currently for 457 visa applications, if an applicant is paid or will be paid $180, 000 per annum, the employer does not have to justify that the 457 visa applicant is paid Australian market rates. It is difficult to see why this threshold would need to increase from 2.5 times average weekly earnings to just short of 3.5 times average weekly earnings. Clearly, this threshold is already adequately set to only apply to higher income earners.

If this is threshold is increased to $250,000 then there will be very few 457 visa applicants who will be eligible for this exemption. Only 457 visa applicants who occupy a very senior executive-level position in the company will be exempt from market rates justification. This will simply increase red-tape for employers and is unnecessary. Clearly workers being paid $180,000 are not having their wages or conditions undercut by their employer.

e. ***Restriction of on-hire arrangements of 457 visa workers***.

The important and valid role of labour hire firms should be recognised before any significant policy changes are made in this area. Labour hire firms are currently operating effectively in the resource industry.

f. ***Stronger powers regarding compliance and enforcement "to stop employers who have routinely abused the 457 system". Employers may be required to provide more detailed information upon application and, as required, during the course of an application***.

If an employer routinely absuses the 457 visa system, there is substantial existing scope to act. No further mechanisms are required, nor has evidence been produced to justify such an approach.

The resource industry has an outstanding record regarding compliance as recognised by DIAC. In addition to paying market rates to 457 visa holders and the extensive training requirements to become a business sponsor, employer obligations include: keeping records of compliance obligations that generally go beyond the records that must be kept under general laws; providing relevant information to DIAC on events; and to cooperate with DIAC inspectors when required.

The Employer Sanctions legislation, which makes it easier for DIAC to fine employers who have people working for them in breach of visa conditions, has just passed through the Senate. So, there is shortly to be additional enforcement, meaning that this question is meaningless until these new rules have commenced and started to have their effect.

There may be a case for more targeted monitoring of the 457 program, but implementing more regulation across the board as the majority of employers already do the right thing is strongly opposed and unnecessary.

g. ***Consultation of stakeholders to ensure market rate provisions more effectively protect local employment***.

This would impose a debilitating time and expense burden on the employer. Employers are able to determine within their organization that they are providing equal terms and employment conditions to their visa holders compared to their Australian workforce and this is already assessed by DIAC.

The average salary paid to a 457 visa worker in the mining industry is already over $118,000 per annum and over $90,000 in construction.

Outside consultation is not required here and there is also the matter of commercial-in-confidence sensitivity of how much an organization pays for a particular position.

In particular, any proposal to consult unions about the rates being offered to 457 employees is completely unwarranted, unworkable and is strongly opposed.

This would make the 457 processing timeframe longer and subject to third-party interference. We are also very concerned that unions could be asked to assume such a role without any association or endorsement from the employees concerned. In the absence of membership and asking the unions to do something, any employee no matter their country of origin should retain rights of both association and non-association with trade unions.

Union interference into management decision making, has been an unfortunate trait of the Fair Work Act, and has stalled the EMA program.

It would be disastrous for Australia's skilled migration program and the security of major resource projects if this trend continued into the 457 visa program.

TOR (k) – RELATED MATTERS

78. If the Federal Government introduces legislation to give effect to the changes referred to in Term of Reference (j), any amending bill will need to be subject to a proper process of legislative scrutiny based on its specific terms and intended effect.

79. This Senate Committee Inquiry cannot be treated as a defacto review or step in the process for such a Bill, and any such will need to be subject to a fresh reference for a proper legislative review.