



# AIMPE

Australian Institute of  
Marine and Power Engineers

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## Senate inquiry into the temporary work Visa Programs

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Submission of the

Australian Institute of Marine and Power Engineers

1 May 2015

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**AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS**

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## **ABOUT THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS**

The Australian Institute of Marine and power Engineers (“the Institute”) was formed in 1881. The Institute represents the professional and industrial interests of marine engineers, marine electricians and marine surveyors. Today, the Institute has around 3500 members who are employed on merchant ships (both coastal and international), offshore industry vessels, tugboats, dredges, transport safety authorities and many other specialised vessels.

After wide consultation with our members and some operators in the shipping industry, this further submission was prepared.

## **1. Introduction**

1. **The Australian Institute of Marine and Power Engineers (“the Institute”) welcomes the Opportunity to submit our views on the impact of Australia’s temporary visa programs on the Australian labour market and on the temporary visa holder.**
2. We draw to the attention of the Committee the sad state of the employment prospects for new watch keepers with an increasing number struggling to find employment. As shipping companies readily access the many visas available to them under the programs, training in the marine industry has suffered. Young cadets and trainee engineers are unable to find sponsors.
3. At the higher level of classification, class 2’s and class 1’s are experiencing similar problems. The current lowering of the market rates threshold from \$250,000.00 to \$180,000.00 has had an immediate impact with many chief engineers and class 2’s losing their jobs.
4. The dramatic increase in the size of the uncapped temporary visa in Australia in times of high unemployment is one major issue.
5. The other substantial issue is training of young Australians to be marine engineers and electricians. Unfortunately over many years, the skilled migration programs has been viewed as integral to the economy at the cost of training young Australians. This cannot be in the national interest which should be paramount.
6. We therefore call on the Committee to support the labour market testing requirements in a rigorous manner in these times of high unemployment and enforce the principle that Australian workers should fill vacant positions before an employer seek to employ overseas workers. It is not good enough for the Honourable Minister for Employment to state” that employers advertising for foreign workers exclusively over Australian candidates must be referred to authorities”. To date the Institute is not aware of any shipping company being prosecuted by the department for breaches of the programs.

## 2. **AIMPE’s Position on Skilled Migration**

7. The Institute has been of the view for some time that an employer ought to be in a position to be able access the Visa Programme providing that the employer has complied with Labour Market Testing(“LMT”) and was able to demonstrate that training has been carried out in the area of the skilled shortage. Our choice would be permanent migration is better than temporary migration in the long term for employer, Government and unions.
8. The ability to access the Programs should not be abused by an employer. An employer must demonstrate and provide evidence of genuine attempts to fill positions locally and that no qualified Australian worker is available to do the job. This requirement must not be wished-away by the employer. Simultaneously, unions can assist by providing a list of their members that are available for work together with their relevant qualifications. The Institute produces

a regular roster and forwarded to employers of availability of members that are currently available for work. Despite this service being offered which some employers tend to use, there have been evidence of some companies who refuse to employ our members and take the easy way out by employing temporary Visa holders. The names of these companies have been withheld and can be provided to the Committee in confidence.

9. Employers should provide evidence of genuine new entrant training in the marine engineering sector in order to access the Visa Programs. We have evidence of shipping companies not providing genuine new entrant training in the offshore and dredging sector. At present our Enterprise Bargaining Agreement (EBA) has been delayed because of reaching agreement on training. The majority of those companies in both of those sectors have failed to provide training to young Australians because it is cheaper to access the temporary work visa program rather than train young Australians. It is imperative that companies disclose the training efforts of sponsoring are made publicly available.
10. A large number of temporary work visa holders are extremely vulnerable to workplace exploitations, including discrimination, due to a limited knowledge and understanding of Australian workplace laws and the ongoing reliance on a sponsor for their visa status. Moreover, such visa holders need to be aware of existing complaints mechanisms should their rights be violated.
11. The implementation of Labour Market Testing Commenced in November 2013. It is submitted that such model need further strengthened and rigorously monitored by the Department.

3. Terms of reference (a)

The impact of Australia's temporary work visa programs on the Australian Labour market

12. The uncapped Temporary Work (Skilled) work visa programs and the ever and continuing Employer-sponsored migration, away from permanent, independent migration is a Worrying trend and not in the national interest.

13. The temporary work visa programs has been built on the premise that it does not undermine job opportunities for Australians. Unfortunately, those programs are now costing Australian workers jobs at an alarming rate. The visa programs are concerned about 'accommodating global labour mobility'. The Australian worker is lost in transition.

14. Recommendation to the committee on the employment of new watch keepers:

(a) Each shipping company that employs an engineer temporary work visa holder, shall be required to employ a watch keeper to be trained to the same level as the temporary visa holder.

4. Terms of reference (b)

The impact of Australia's temporary work visa programs on training and skills development:

15. Gradually shipping companies have begun reducing the intake of cadets and trainee engineers into the marine industry. It is much easier for them to access the current temporary work visa programs and it is cheaper than to train. Meeting the current benchmark training requirements is easy to get around. This trend has serious and long term

implications for marine engineers' employment in this country. Such benchmarks are ineffective and have not helped at all in the marine industry sector.

16. The general training obligations should be that employers are put under an obligation to train in the same occupations the temporary visa worker that is employed will go a long way to rectifying the problem in this area.
17. Each shipping company that employs an engineer temporary visa holder shall be required to employ a new entrant trainee or cadet engineer to be trained for the position that is filled by the temporary worker.

#### 5. Terms of reference (c)

Whether temporary work visa holder receive the same wages, conditions, safety and other entitlements as their Australian counterparts or in accordance with the law:

18. In the marine industry sector, maintain Australian wages and conditions has been a difficult assignment. There have been cases where members were asked to sign agreements where the laws of other countries apply. Other issues arise from certain Ministerial determinations, declarations and regulations. For instance, recently the assistant Minister for Immigration Senator Michaelia issued a regulation lowering the market rates threshold from \$250,000.00 to \$180,000.00. As such, shipping companies now will only have to pay \$180,000.00 and comply with the NES scheme and not comply with Enterprise Bargaining Agreements and be able to employ a temporary work visa holder.
19. Another loophole is available to shipping companies is the ability to do an EBA with temporary work visa holders and set the market rates, thereby undermining current and long standing Enterprise Bargaining agreements. Such evidence is available and can be supplied to the Committee upon requests.

#### 6. The Programs and Labour Market Testing

20. The Institute acknowledges and accepts within reason that there is an important function for a certain level of temporary migration to meet serious skill shortages. But such needs must be real and genuine and not simply created because it is the easy way out.
21. The new LMT regime is very similar to the one that was in place prior to April 2, 2005. The main differences are that the new requirement is more prescriptive and are within the Migration Act as opposed to being prescribed in Migration Regulations and policy documents. The legislation provides a list of mandatory evidence/information and a list of optional evidence/information. However, if any of the optional evidence (for example details of the recruitments attempts) is not provided, The Minister (Department) cannot treat the nomination less favourably on that basis. In some cases it may be better for a sponsor not to provide such information. It would be interesting to see how Department has approached such cases where the sponsor elects not to provide such evidence or information.
22. The legislation requires employers to demonstrate there is no Australian readily available to perform work s140GB (7) and that a suitably qualified Australian citizen or permanent resident is not readily available (s140GB (3)). Therefore, the simple placement of a job advertisement cannot possibly satisfy the definition of LMT in the legislation.
23. Since the introduction of the LMT, we have noticed that the majority of our members have been able to obtain employment and that training for new entrant to marine engineering is

high on the list for our EBA negotiations with the offshore industry. Subsequently, the Assistant Minister for Immigration has brought in a Determination in the offshore resources sector together with a new visa never before applicable in this sector called "special purpose Visa" under section 33 of the Migration Act, thereby affecting our members opportunities of employment in this important sector. The impact has been immediate as a result of this change with the loss of local jobs in the marine sector and a reduced incentive to train Australians as temporary visa holders can be employed at such reduced rates.

20. The Institute submits to the Committee that the LMT ought to be enhanced so that it is effective. This may include the following and is not limited to:
- . Information and all data on the operation of the labour market testing should be made Publicly available;
  - . Labour Market Testing should not be traded away in free trade agreements;
  - . Proper job advertising.

21. The Institute is of the view that labour market testing is a fundamental proposition that should apply equally to all Australian workers irrespective of the work they perform, and irrespective of skill levels and degree of specialisation. Appropriately qualified Australians must not be rebuffed and refused an opportunity to carry out work that would be caught under temporary work visa programs.

## **7. Conclusion**

22. The Institute upholds the establishment of LMT through the Migration Amendment (Temporary Sponsored Visas) Act 2013. LMT is not new to this country. In the 1990's, LMT was compulsory as part of the temporary visa program. Such testing can ensure the integrity of the Programme if implemented and enforced in an appropriate way. The Programme must be honoured in substance rather than in form.
23. Training young Australians is crucial to the future of this country and it should be supported by all stakeholders.
24. The Institute would welcome any opportunities to discuss this further. First instance, please contact our Senior National Organiser Michael Bakhaazi at [mbakhaazi@aimpe.asn.au](mailto:mbakhaazi@aimpe.asn.au)

## **8. Recommendation**

25. Labour Market Testing should be strengthened and used as a safeguard to temporary work visa programs that are being abused by shipping companies.
26. The lowering of the threshold at which the exemption from the requirement to pay market rates applies from \$250,000.00 to \$180,000.00 per annum will cost the jobs of many

Australian chief engineers and class 2 engineers in the offshore and dredging sectors of the marine industry. The current threshold of \$250,000.00 should have been maintained.

27. Every Shipping company should either train a new entrant such as a cadet or trainee engineer to the position that the temporary work visa holder occupies. At the very least, such companies should train a watch keeper to the position that the temporary visa holder occupies.
28. Australian law should apply and not be abused. At present such visa holders are entitled to vote on enterprising bargaining agreements, thereby setting new market rates which undermines current wages and conditions set by long standing agreements.
29. Local jobs are important for a country. It is not in the National Interest when young people are denied opportunities. Sadly, this is the current situation at present in this sector.



