

CHAPTER 4

ENTERPRISE MIGRATION AGREEMENTS AND REGIONAL MIGRATION AGREEMENTS

Introduction

4.1 This chapter addresses the inquiry's terms of reference as they apply to Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs).

Enterprise Migration Agreements

4.2 EMAs are project-wide temporary overseas migration arrangements for large-scale resource projects that are intended to address the skilled labour needs of the resource sector.¹ EMAs are designed to supplement a local labour force to meet a temporary spike in demand associated with major projects and ensure that skill shortages do not act as a constraint.²

4.3 To be eligible to request an EMA, resource projects must have a capital expenditure of more than two billion dollars and a peak workforce of more than 1500 workers.³

4.4 The implementation of EMAs was announced in the 2011-12 Budget in response to recommendations from the National Resources Sector Employment Taskforce (NRSET), which had been tasked with the development of a workforce development plan for major resource, energy and related infrastructure projects in Australia, as well as a plan to address labour and skill shortage issues in the resources sector.⁴ The final report of the NRSET recommended the introduction of EMAs as a new temporary migration initiative to help address the skill needs of the resources sector.

1 Department of Immigration and Citizenship website, 'Fact Sheet 48a – Enterprise Migration Agreements', <http://www.immi.gov.au/media/fact-sheets/48a-enterprise.htm> (accessed 16 May 2013).

2 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 4.

3 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 4.

4 Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education website, 'National Resources Sector Employment Taskforce' (Terms of Reference), <http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/NationalResourcesSectorWorkforceStrategy/NationalResourcesSectorEmploymentTaskforce/Pages/default.aspx> (accessed 16 May 2013).

4.5 The inquiry heard that there are currently no EMAs in place; however, there is in-principle approval for an EMA with Roy Hill Holdings (Roy Hill) for the Roy Hill Iron Ore Project, subject to negotiation of a deed of agreement, with three further applications for an EMA currently subject to internal government processes.⁵ The submission of the Department of Immigration and Citizenship (the department); the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism (the departments' submission) advised that the terms of the prospective Roy Hill EMA are still being negotiated.⁶

4.6 At a Senate estimates hearing in May 2013, an officer of the department advised that Roy Hill has announced that, while the project may no longer need overseas workers due to labour market changes, the company intended to continue to negotiate the deed of agreement as a safety net should the need for overseas labour arise.⁷ Regarding the nature of the negotiations over the deed of agreement, the officer advised:

Essentially, the finalisation of the negotiation will be dependent upon both sides reaching a mutually satisfactory position on the draft deed of agreement and all the clauses and provisions in the draft deed of agreement. ...[The] department [has] made significant progress in resolving a number of issues that were initially raised by Roy Hill. There are still a few outstanding issues that...essentially involve consideration by the government, and the government is now looking into this.⁸

Process of negotiating EMAs

4.7 A number of submitters and witnesses expressed concern at the apparent difficulties attendant to the successful negotiation of EMAs. The Migration Institute of Australia (MIA) submitted that the absence of guidelines for the making of EMA applications was a factor in this:

It should be noted that there are presently no EMA Submission Guidelines in place on DIAC's website as they are understood to be currently being rewritten...

It is understood that there are three other EMAs [in addition to Roy Hill] that were lodged by Bechtel and there may be others. However, it is well known in the migration industry that companies are holding off lodging

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- 5 Mr Kruno Kukoc, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Committee, 11 February 2013, pp 36-37; and *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 65.
- 6 Department of Immigration and Citizenship, *Submission 24*, p. 4.
- 7 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 65.
- 8 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 66.

...[EMAs] and Labour Agreements until after September because of the uncertainty of the outcome...⁹

4.8 The Minerals Council of Australia submitted:

Enterprise Migration Agreements have not been allowed to work effectively since their introduction. Already somewhat unattractive to many employers because of their heavy union consultation requirements, they have faced a hysterical campaign from fringe elements and sections of the labour movement, despite strong safeguards including the need for employers to provide a training plan, labour market analysis and workforce plan. EMAs would have been market responsive like 457s, but on a mass scale for large scale projects, acting as a safety net in the event of local skills shortages. It is our view, however, that the campaign for further tightening of the EMA guidelines is aimed at rendering them unworkable, thus adding an extra element of risk to large construction projects in the mining sector.¹⁰

Regional Migration Agreements

4.9 RMAs are agreements between the Australian Government and a state or territory government or local council that are intended to address labour shortages in regional Australia, particularly remote regions and regions impacted by resource projects.¹¹ Information on the department's website indicates that RMAs will establish the overarching arrangements for the sponsorship of overseas workers in a particular location, including eligible occupations, the number of workers and training, under which employers will sign individual labour agreements.¹²

4.10 The implementation of RMAs was announced as a new temporary skilled migration initiative in the 2011-12 Budget, to help regions that are isolated from large population centres or experiencing workforce needs, including as a result of the resources boom.

4.11 There are currently no RMAs in place; however, the Government is currently considering a submission for an RMA from the Northern Territory Government (NTG), which was lodged in 'late 2012'.¹³

9 Migration Institute of Australia, *Submission 7*, p. 9.

10 Minerals Council of Australia, *Submission 8*, p. 4.

11 Department of Immigration and Citizenship website, 'Fact Sheet 48c – Regional Migration Agreement', <http://www.immi.gov.au/media/fact-sheets/48c-rma.htm> (accessed 16 May 2013).

12 Department of Immigration and Citizenship website, 'Fact Sheet 48c – Regional Migration Agreement', <http://www.immi.gov.au/media/fact-sheets/48c-rma.htm> (accessed 16 May 2013).

13 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 4; and Northern Territory Government, *Submission 25*, p. 15; and Northern Territory Government, *Submission 25*, p. 15.

Demand for RMAs

4.12 The evidence of a number of submitters and witnesses highlighted the need for the regionally-based RMAs as an element of the 457 visa program. In general terms, it was argued that the current requirements of the mainstream 457 visa program prevent many regional employers from accessing the program, despite the workforce pressures that arise from geographical factors and the impacts of large-scale resource projects. On this issue, The MIA submission observed:

Rural industries and trades are desperately in need of support in regional and remote areas and find it very difficult to fit within the very narrow Subclass 457 criteria at present.¹⁴

4.13 The MIA noted that the Temporary Skilled Migration Income Threshold (TSMIT), for example, was 'out of kilter' with salaries paid to workers in rural and regional Australia, making it difficult for employers to sponsor overseas workers under the scheme.¹⁵

4.14 Similarly, the submission of the NTG noted that the current (mainstream) 457 visa program 'does not effectively respond to skills shortages in the private sector in the Northern Territory', due to such factors as low unemployment, high growth and high demand generated by major resource projects.¹⁶ The impact of an LNG Plant between 2006 and 2008, for example, had resulted in skill shortages impacting on the Northern Territory's small and medium enterprises (SMEs), many of which utilised overseas workers to meet their workforce needs. However, the current sponsorship requirements and program settings, including the English language requirements and TSMIT, were not well suited to the particular characteristics of the Northern Territory employer profile and labour market.¹⁷ In the context of these considerations, the NTG submission noted:

...predicted workforce demands of major resource projects in northern Australia, including the Darwin based Ichthys LNG project, and the impact it is believed they will have on Northern Territory SMEs' workforces were the catalysts for the Northern Territory seeking RMAs for the Territory. Experience suggests that SMEs in regions proximate to where these projects are located will struggle to retain their workforces as they are not able to match the salaries being offered by the resources sector.¹⁸

Process of negotiating RMAs

4.15 In light of the apparent need for RMAs, submitters and witnesses expressed concern at the uncertainty in the process for negotiating such agreements to date. In respect of the agreement currently under negotiation, the NTG submission stated:

14 Migration Institute of Australia, *Submission 7*, p. 12.

15 Migration Institute of Australia, *Submission 7*, p. 12.

16 Northern Territory Government, *Submission 25*, pp 2 and 8.

17 Northern Territory Government, *Submission 25*, pp 9-13.

18 Northern Territory Government, *Submission 25*, p. 15.

It is understood that the Australian Government is yet to endorse the guidelines for RMAs. Further DIAC cannot finalise its consideration of the Northern Territory's RMA submission until the government's policy is in place. The Australian Government's policy and the DIAC processes are not yet known. Consequently the final composition and elements of RMAs for the Northern Territory are also yet to be determined. Therefore it is not possible to provide informed comments or assessments of the impact and benefits of the RMAs or on how responsive they will be to labour market demands.¹⁹

4.16 The Western Australian Government submission stated that it was 'frustrated with the continual delays in the release of the guidelines for [the RMA program]', noting that the RMAs were considered to be 'an effective mechanism' for addressing skill shortages experienced in the regional areas of that state.²⁰

4.17 The submission of the Chamber of Commerce and Industry Queensland, noting that an RMA had yet to be approved, stated that the apparent 'difficulties involved with their establishment makes their role in the overall skilled migration framework questionable'.²¹ It noted:

The NT's experience with putting an RMA in place has implications for Queensland. While the announcement of major development projects in central and northern Queensland (such as those recently announced on Great Keppel Island) are welcomed, those regions have been identified as having pronounced skills shortages and labour mobility issues, which could put such developments (or future developments) at risk due to difficulties in securing an adequate skilled workforce. The time that is apparently involved with putting an RMA in place does not make them a viable means of alleviating this issue, as doing so would delay projects significantly.²²

Labour market testing

4.18 Some submitters and witnesses were critical that EMAs and RMAs are not subject to labour market testing (LMT). The submission of the Australian Council of Trade Unions, for example, stated:

In relation to EMAs and RMAs, no assessment can be made as no such agreements have come into operation, but the same issue identified above for the standard 457 program applies in that the EMA and RMA guidelines fail to require any proper labour market testing and therefore provide no means to verify the existence or otherwise of genuine skill shortages. We note that the in-principle EMA that was struck for the Roy Hill project is no longer required as it now appears the project will not need to use overseas workers.²³

19 Northern Territory Government, *Submission 25*, p. 15.

20 Western Australian Government, *Submission 45*, p. 6.

21 Chamber of Commerce and Industry Queensland, *Submission 13*, p. 1.

22 Chamber of Commerce and Industry Queensland, *Submission 13*, p. 6.

23 Australian Council of Trade Unions, *Submission 40*, p. 6.

4.19 With reference to the particular example of the Roy Hill RMA, Mr Peter Tighe, National Secretary, Communications Electrical Plumbing Union, noted:

With the RMA that was signed in relation to the Roy Hill project, there was a requirement to bring some 500 electrical workers into Australia. We have now been told that, quite frankly, that is probably not going to be the case, because the measurement done in relation to the RMA was based on an academic document, basically on labour market analysis, not on labour market testing. And that is the critical thing here. Labour market testing—a requirement for someone to go to a jobs board, a requirement for rigorous testing of the employer's requirement for that skilled labour that they say they cannot find in Australia—needs to be tightened up.²⁴

4.20 The submission of the Australian Industry Group, however, stated that labour market testing was already a requirement of EMAs and RMAs:

...[EMAs and RMAs] require significant demonstration that the proposed positions cannot be filled from the local labour market. As the Department of Immigration and Citizenship web site itself states...[in relation to RMAs:]

The employer must be able to demonstrate that they have made significant efforts to recruit workers from the Australian labour market before the Australian Government will consider entering into a labour agreement with them. They must provide concrete evidence that there are no appropriately qualified Australian workers readily available.

The employer must provide detailed information about all advertising and recruiting efforts over the past six months. This includes the period the job was advertised for, the number of applications received, the number of applicants who were hired, and reasons why those unsuccessful were found to be unsuitable.

This is sufficient testing given the broader scope of these Agreements over standard 457s. Also, criteria such as TSMIT and Training Commitments (and to some extent the Sponsor obligations) effectively prompt the employers to consider the local labour market first. Adding any further administrative burdens to the visa program will make the visa less accessible and less able to meet the economic need for which it was designed.

Similarly EMAs require: a) Evidence that there are genuine skills shortages in the local area, and b) Evidence of efforts to use Australian workers first.²⁵

24 Mr Peter Tighe, National Secretary, Communications Electrical Plumbing Union, *Committee Hansard*, 23 May 2013, p. 3.

25 Australian Industry Group, *Submission 16*, pp 4-5.

COMMITTEE COMMENT

4.21 The committee notes that Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs) would appear to offer significant potential to address skill shortages attendant on large-scale resource projects and labour market shortages affecting regional areas due to the impacts of such projects and geographical factors more generally, which are not currently well served by the mainstream 457 visa program.

4.22 The evidence to the inquiry registered frustration at the lack of progress on the negotiation of EMAs and RMAs to date, and the apparent absence of guidelines to assist in the negotiation of such agreements.

4.23 While the committee acknowledges that the element of negotiation required to establish EMAs and RMAs injects an unavoidable level of uncertainty into the expected timeframes and outcomes in relation to finalising such agreements, it is concerned at the absence of guidelines to assist the application process, and to allow stakeholders to frame assessments and expectations regarding the likely suitability of any such agreement to specific projects or regional circumstances. Accordingly, the committee considers that the government should prepare and release submission guidelines for the EMA and RMA application processes.

Recommendation 8

4.24 The committee recommends that the Government prepare and release submission guidelines for Enterprise Migration Agreements and Regional Migration Agreements.

4.25 Beyond these remarks, the committee considers that, in the absence of any operative EMAs or RMAs, the impact of the proposed changes to the 457 visa program on these types of agreements is unclear.

Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the provisions of the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012

4.26 The committee notes that the Senate Standing Committee on Education, Employment and Workplace Relations finalised an inquiry into the provisions of the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 (the EMA bill) in March 2013.

4.27 Given the significant intersection of the issues examined in that inquiry and the terms of reference for this inquiry, the committee draws attention to the analysis of issues contained in Senate Standing Committee on Education, Employment and Workplace Relations report on the EMA bill.