

Ref: Migration Legislation Amendment Bill 2008

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The Parliament of the  
Commonwealth of Australia  
THE SENATE

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### Migration Legislation Amendment (Worker Protection) Bill 2008

The Chamber of Minerals and Energy of Western Australia (CMEWA) and the Australian Petroleum Production & Exploration Association (APPEA) appreciate the opportunity to review and provide comments in response to the *Migration Legislation Amendment (Worker Protection) Bill 2008*.

The Australian Petroleum Production and Exploration Association is the peak national body representing Australia's oil and gas exploration and production industry. The Chamber of Minerals and Energy of WA (CME) is the peak resources sector representative body in Western Australia with its members covering approximately 85% of all mineral and energy employees in Western Australia.

In a report completed in 2008<sup>1</sup>, labour shortages were identified as a major constraint on the growth of the energy and resources sector over the next decade. This study revealed that an additional 86,000 site-based workers will be required across Australia by 2020 to meet project requirements, an increase of 68% from 2008. It is estimated over \$90 billion<sup>2</sup> worth of projects either planned or already underway. The Australian energy and resources sector is robust despite the current global market volatility.

To ensure sustainability, the sector has adopted a proactive three pillar strategy to address and respond to the skilled labour shortage which includes:

- Increasing participation of underrepresented groups such as Indigenous people, women and young people entering the workforce;

<sup>1</sup> Minerals Council of Australia and National Institute of Labour Studies, *The Labour Force Outlook in the Australian Minerals Sector: 2008 to 2020*, June 2008.

<sup>2</sup> 2006/2007 Department of Industry and Resource statistics.

<sup>3</sup> Australian Government Department of Immigration and Citizenship Subclass 457 Business (Long Stay) State / Territory Summary Report 2008-09.

- Increasing the numbers of students choosing careers in the resources sector and ensuring training and education is responsive to this;
- An efficient and effective skilled migration programme.

We support protecting the employment and training of opportunities for Australians. However, a significant imbalance currently exists in Australia's energy and resources sector between the skilled and professional labour required and the capacity of both the labour market and education system to deliver the required skills in the timeframes anticipated. In addition, the critical operational positions that are available require specialist skills. As a consequence and out of necessity, the Western Australia energy and resources industry has increased its use of Subclass 457 Visa Grants by 46.1%<sup>2</sup> since 2007. The increase in use of temporary work visas has been necessary to meet the skilled labour shortfall to ensure Australia remains competitive in an increasingly global market.

The Bill implies that all migrants working in Australia are vulnerable and are experiencing diminished standards compared to their Australian co-workers. This is not the case with the energy and resources sector where companies have, in the main, been responsible users of skilled migration, paying well above the minimum salary levels and ensuring high standards of occupational safety and health for all their employees.

Legislative reform must ensure the skilled migration system does not adopt a blanket approach but rather adopts a risk based approach to monitoring and compliance. The aim of this system should be to identify the employer and skilled migrant groups with a likelihood of non-compliance based on certain risk factors. This enables the government resources to be better utilised by targeting areas where there are issues of concern.

Migration legislation should provide the framework by which to enable skilled labour to enter the country. Once in Australia, it is essential to ensure that existing legislation is complied with by both employers and skilled migrants, such as occupational safety and health legislation.

CME and APPEA consider it imperative that there is neither ambiguity nor overlap in the legislation with existing provisions in other legislation, such as occupational safety and health and workplace relations. This also extends to ensuring there is clarity in regulatory responsibility. DIAC inspectors should maintain responsibility for monitoring and compliance of Visa issues but be able to contract necessary expertise as and when specialist knowledge is required. Delegating responsibility to multiple regulatory agencies for the same matter is an inefficient use of resources and results in confusion.

While CME and APPEA consider it important to ensure the legislative model demonstrates integrity, we do not support some aspects of the proposed *Migration Legislation Amendment (Worker Protection) Bill 2008*. Specifically these matters are:

- In the Bill there is ambiguity and lack of clarity of the definition of "document" and "thing", in the Section Powers of the Inspector. Further clarification of these definitions would assist in understanding the implications for employers.
- Penalties should be in proportion to the infringement rather than 6 months imprisonment as currently proposed. This recommendation may be unreasonable depending on the circumstances.

- Under the new subsection 140H(5) an approved sponsor or former approved sponsor must keep records electronically or they are non-compliant. This should be amended to enable records for compliance purposes to be produced electronically or in hardcopy.
- Employers employ skilled workers in good faith and part of their obligation is to provide return tickets for the skilled migrant and their family. Therefore we do not support the proposal that an employer is responsible for additional Commonwealth costs of locating and detaining "flight risk" migrants. Any costs associated with this should be borne more appropriately by the responsibility of the skilled migrant.
- CMEWA and APPEA recommend if the proposed *Migration Legislation Amendment (Worker Protection)* Bill becomes legislation that the Bill is reviewed within a two year time frame and the government provides the opportunity for industry to give feedback.

As a general comment, it is imperative that the proposed regulation does not increase the already onerous regulatory burden on employers. To that end the sector would greatly appreciate thought and effort being given to the most simple and streamlined regulatory approach possible while preserving the integrity of the system.

In conclusion the energy and resources sector advocates changes that effectively address the misuse of visas, but at the same time do not place extra burden on those users who are proven and responsible. The 457 visa as it stands provides flexibility, is straightforward and has a reasonable processing time. It is important that these strengths are not lost in the pursuit of controls to manage the few who do not comply with the legislative provisions.

The industry supports the Government's initiatives provided they add value, rather than compromise industry operations and/or the operation of the skilled labour market.

However in the absence of the proposed regulation, it is difficult to consider the *Migration Legislation Amendment (Worker Protection)* Bill in its entirety.

If further information is needed on the issues raised in this submission please contact Amanda Gradisen, Executive Officer Workforce Participation (08) 9220 8538 or at [a.gradisen@cmewa.com](mailto:a.gradisen@cmewa.com).

Yours sincerely,



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