



Submission to the Senate Committee
Education, Employment and
Workplace Relations Legislation

*Protecting Local Jobs (Regulating
Enterprise Migration Agreements) Bill
2012*

September 2012

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Committee Secretary
Senate Education, Employment and Workplace Relations Committees
PO Box 6100
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Australia

Dear Committee Secretary

Submission on the Protecting Local Jobs Bill (Regulating Enterprise Migration Agreements) Bill 2012

On 18 June 2012, Greens MP Adam Bandt introduced to Parliament the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012. The Bill proposes to create a legislative framework for Enterprise Migration Agreements (EMAs). It seeks to amend the Fair Work Act 2009 and the Migration Act 1958 to restrict the use of EMAs.

As the national resource industry employer group, the Australian Mines and Metals Association (AMMA) welcomes the opportunity to make a submission regarding the Bill. Labour supply constraint, exacerbated by labour mobility and worker relocation challenges, now ranks as a top strategic issue facing the resource industry. Skilled migration forms a small but important part of the solution to the national skills shortage.

EMAs represent an essential migration initiative and workforce planning strategy to employers. AMMA has been a vocal supporter of EMAs and has called for a timely approval process that minimises red-tape on employers. The existing parameters of the EMA program already ensure the vast majority of job opportunities go to Australians and skilled migrants are only used to get projects built on time and on budget. The introduction of legislative measures to place further regulatory burdens on resource employers is unnecessary and misses the point of the EMA program. For this reason, the proposed amendments are opposed by AMMA and the resources industry.

Should additional information be required, please contact Luke Achterstraat (Workplace Policy Officer) on (02) 9211 3566.

Yours sincerely

Minna Knight
Executive Director, Industry

Executive Summary

The changes proposed by the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 by amending the *Fair Work Act 2009* and the *Migration Act 1958* will unnecessarily increase red-tape on employers seeking to gain access to Enterprise Migration Agreements (EMAs). An overwhelming majority of respondents to a recent AMMA survey about the Bill stated that the proposed changes would negatively impact employers seeking to gain access to EMAs. A key theme from respondents was that increased bureaucracy and complexity was not required, when extensive safeguards to protect local jobs already exist.

Based on direct feedback from its member companies in the national resource industry, AMMA submits the following response to specific proposals in the Bill:

- The amendment to make usage of the local jobs board compulsory for employers is not supported by the industry. Employers must already provide evidence that the relevant skills cannot be sourced locally. Furthermore, employers across the sector have implemented significant recruitment campaigns with the objective of attracting local candidates.
- The amendment to impose a further levy on employers for each overseas worker recruited is not supported by the industry. A specific monetary contribution from employers for the training of Australians already exists under the current guidelines.
- The amendment to confer upon the Workplace Relations Minister power to prioritise and influence resource sector employment decisions is opposed by industry. This is not a role for government. Workforce planning and employment decisions are best left to individual employers and the industry.
- The requirements to table written EMAs in Federal Parliament is not supported by industry. Commercially sensitive information must be kept in confidence for project owners and contractors alike.

The proposed amendments to the *Fair Work Act* and the *Migration Act* are: strongly opposed; unnecessary; and have the potential to jeopardise future resource development projects in Australia. Instead, AMMA calls for a more timely and efficient EMA approval process. This is vital to ensure projects of national significance are delivered on time and on budget.

Introduction

Skilled migration forms a small but important part of the solution to the national skills shortage. In a recent survey undertaken by AMMA, an overwhelming 94% of participants reported that they are enduring a skills and experience shortage and have been forced to consider sourcing labour from overseas to fill a small number of key roles in the resource and construction related sectors.

The level of employment growth in mining has far outstripped predictions made by the National Resources Sector Employment Taskforce (NRSET) in June 2010. At that time, NRSET predicted employment in mining would grow from 185,000 jobs in 2010 to 250,000 in 2015 - an average of 13,000 jobs a year. Instead, that level of growth has been reached in two years instead of five, with an average annual growth of 32,500 jobs.

It follows that if employment growth has nearly tripled that predicted by NRSET, the estimation of the extent of the skills shortage could also far exceed estimates. In 2010, NRSET predicted there would be a shortfall of 1,700 mining engineers and 35,800 tradespeople by 2015. At the current rate of growth, we could experience a shortage of engineers and geoscientists of up to 5,000 and a shortage of more than 50,000 tradespeople by 2015.

A range of industry skills initiatives and policy settings are in place to fast-track the development of the Australian workforce to ensure the overwhelming majority of these new jobs will be filled by Australian workers. Currently, more than 95% of resource and related construction roles are held by Australian workers. AMMA and its members are working closely with Federal and State Government entities to deliver a number of important programs of direct relevance to the skills shortage. Current programs include AMMA's:

- Skills Connect;
- Australian Women in Resources (AWRA);
- Miningoilandgasjobs.com expos; and
- Miningoilandgasjobs.com portal.

Skills Connect facilitates connections between projected labour requirements and the upskilling of the workforce by linking employers, potential job seekers and quality

industry training providers. AWRA seeks to 'unearth' skilled labour by increasing the representation of women employed in the resources sector to 25% by 2020. AMMA members are also actively pursuing workforce development and planning programs to attract, train and retain Australian workers to the resource and construction industries.

The dedication of our resource employers to recruiting and retaining as many Australians as possibly was on full display at the inaugural AMMA miningoilandgasjobs.com Jobs Expo in Perth in May 2012. The event saw hundreds of major employers engage directly with members of the public and by day's end more than 10,000 Australian jobseekers were a step closer to gaining employment in the resources industry.

But despite these efforts, filling some key skilled areas continues to be a problem. Labour mobility challenges and the reluctance of workers to relocate to remote locations, presents a pressing labour sourcing challenge to resource employers. As an umbrella migration arrangement for typically large-scale projects, EMAs represent an essential migration initiative and workforce planning strategy to employers. These programs provide the flexibility to meet labour requirements should local labour be unavailable or unwilling to work on a project.

The facts clearly demonstrate that EMA frameworks such as the Roy Hill EMA create long-term sustainable employment opportunities for Australians, and promote rather than threaten the national well being. The Roy Hill project will generate up to 8000 jobs during the peak construction phase. Meanwhile, 2000 training positions have been committed for local workers and 83 per cent of the \$10 billion capital expenditure for the construction of this project will be spent in Australia to support local jobs and industry.

Without the timely approval of EMAs, significant projects of over \$2 billion capital expenditure have the potential to be jeopardised. Financiers and investors require certainty that projects will be adequately resourced and can be delivered on time and on budget. AMMA has been a vocal supporter of EMAs and has called for their approval in a timely manner and in a way that minimises the bureaucratic burden on employers.

AMMA's response to the Bill

AMMA conducted a pervasive industry survey to measure the response of resource employers to the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012. Respondents represented a cross-section of the mining, hydrocarbons, maritime, exploration and energy sectors, a number with major projects throughout Australia and its offshore areas. A significant proportion of respondents currently have committed projects that qualify for EMA eligibility (over \$2 billion capital expenditure and a peak workforce of 1500 or more).

On overwhelming majority of survey respondents stated the total effect of the proposed amendments would have a significant detriment to employers seeking to gain access to an EMA. Each amendment is addressed in more detail below.

Consulting the local jobs board should not be compulsory

The new section 140ZKC(1) to the Migration Act proposed by the Bill would render it compulsory for employers to consult the local jobs board before the Immigration Minister can grant an EMA. AMMA members expressed numerous concerns with this proposed amendment.

Survey respondents explained that if and when workers with the required skills exist locally, employers are not prepared to incur the cost and extended time period associated with hiring overseas workers.

Further, employers must already provide labour market analysis to show why sufficient Australian workers cannot be found under the current guidelines. Consulting the local jobs board, in addition to providing evidence that relevant skills cannot be sourced locally, would add an unnecessary and significant regulatory burden on employers, particularly given the extensive and often nationwide recruitment campaigns many resource employers are currently rolling out across the country.

The requirement to genuinely make attempts to first employ Australians before overseas workers is already a condition of the existing EMA approval framework. Interim findings from Dr Susanne Bahn of Edith Cowan University, commissioned by

AMMA in July 2012, revealed that certain highly specialised skills are only available from one or two institutions worldwide and must be imported.

Response: The amendment to compulsorily require employers to consult the local jobs board is not supported by industry. Employers must already provide evidence that the relevant skill cannot be sourced locally and are best placed to determine their required labour sourcing solutions.

The existing training requirements are comprehensive and adequate

The proposed section 536B to the Fair Work Act confers upon the Minister the power to impose an additional levy on corporations using EMAs to contribute to domestic skills programs.

Survey respondents stated the imposition of a levy could threaten national projects through this apparent “taxing” on overseas workers. It would provide an added and unnecessary financial cost to the already expensive process of recruiting overseas workers. The template labour agreement under the existing EMA submission guidelines already requires a specific monetary contribution from employers to the training of Australians. This includes employers:

- Contributing two per cent of payroll (of their project workforce) to a relevant industry training fund; or
- Demonstrating expenditure of one per cent of payroll (of their project workforce) on training for their Australian employees.

The existing EMA guidelines require an employer to have a commitment to training Australian residents.

The stated role of EMAs in accordance with recommendations that originated from the NRSET assist key major projects be delivered on time and on budget. An additional government levy would represent a financial regulatory cost and a potentially harmful disincentive to employers undertaking a project of strategic national importance.

Response: The amendment to impose a further levy on employers is not supported by the industry. A specific monetary contribution from employers for the training of Australians already exists under the current EMA guidelines.

Under the proposed new section 536B to the Fair Work, the Workplace Relations Minister would also be able to require employers to train and prioritise employment for specified quotas of locals, recently retrenched workers and groups with high unemployment rates.

AMMA is strongly opposed to measures that would confer the Workplace Relations Minister with the power to prioritise or influence recruitment decisions of employers. Workforce planning and employment decisions are best left to employers, particularly in an industry where safety is paramount and job fit is imperative.

AMMA and its members recognise the need to invest in training programs to ensure the sustainability of the Australian labour force. Under the current guidelines for EMAs, employers must develop a training plan that includes measurable targets for the training of Australians. The plan must commit to training in occupations with known or expected shortages, and commit to reducing reliance on overseas semi-skilled labour over time. These guidelines already represent significant and comprehensive training obligations for employers undertaking EMAs.

Response: The amendment to confer upon the Workplace Relations Minister power to prioritise and influence employment decisions is opposed. Workforce planning, labour sourcing and employment decisions are best left to individual employers and the industry to determine.

Employers require commercial confidence

The new section 140ZKE to the Migration Act proposed by the Bill would require EMAs be tabled in both the House of Representatives and the Senate as soon as is practicable after they have been made.

Under the current guidelines, the Department of Immigration & Citizenship publishes the capital expenditure and peak workforce of any project with an active EMA. However, DIAC does not disclose the number or occupations of workers that are available under a particular EMA. Nor does it disclose the particular companies that have signed labour agreements under the EMA. It is imperative that the commercially sensitive nature of these agreements be protected.

Response: The requirement to table written EMAs in Federal Parliament is not supported by industry. Commercially sensitive information must be kept in confidence for project owners and contractors alike.