

Address to AMMA Members Forum, 15 Oct 2013, Melbourne

Immigration & 457s: Separating Fact and fiction

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Introduction

Slide 1: Introduction

Good morning.

For those of you I have not had the pleasure of meeting, I am AMMA's chief executive, Steve Knott.

Earlier this year the Reserve Bank of Australia (RBA) stated the 'resource economy' accounts for 1.1 million jobs.

Our members comprise the majority of Australian employers across mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA's vision is to grow Australia's economic prosperity by ensuring our resource industry is an attractive place for investment and employment.

It is hard to understate what has been achieved over the past ten years.

Direct employment in the mining sector has tripled from 90,000 to 270,000, while the value of advanced project investment has increased ten-fold. Export earnings have tripled and are expected to bring \$209bn of income into Australia this financial year.

As the Bureau of Resources & Energy Economics (BREE) recently stated, these results allowed us to weather the global financial crisis better than almost any other developed economy.

These achievements have only been possible, and Australians have only been able to share in the benefits of the resources boom, with the very small but very important contribution of skilled migrants to our industry and our nation.

Globally significant projects are being constructed side-by-side in remote areas in Australia. They require employees with diverse and highly specialised skills to relocate to remote areas, and in vast numbers.

Our message has always been that 457 visa workers play an essential niche role in meeting the skills shortage facing many of these projects, and as a supplement to, not substitute for, the local workforce.

The resource industry is truly an industry where skills are internationally in demand. Individuals are no longer bound to their country of origin. Australia is therefore not alone in pursuit of the limited pool of specialised skills that exist around the globe.

In fact, some skills are so highly specialised that they must simply be accessed from abroad. Some firms need helicopter maintenance workers who require up to 6 tickets of competency only taught in the UK and France.

Our industry is a small user of skilled migrants, but when we do need them, they are often vital to safety, maintenance and project delivery.

Without ready and steady access to skilled migrants, major projects in the national interest creating tens of thousands of local jobs and attracting billions of dollars of investment into this country, face the risk of not being secured and completed.

Treating skilled migration as a political football therefore jeopardises our prosperity as a nation and undermines our reputation as an attractive place to do business, to invest and to employ.

Slide 2: AMMA's relevance to 457 visa 'debate'

AMMA as an organisation has three particular intersections with the recent 457 visa 'debate'.

Firstly, AMMA has been active on the policy and advocacy front, lodging submissions to parliamentary inquiries, appearing before Senate hearings and reaffirming key facts and messages through our public affairs activities.

Secondly, AMMA provides a best-in-class migration service to its members, led by a registered migration agent with over 15 years professional experience. This ensures our members have ongoing access to specialist advice and the assistance required to meet their sponsorship obligations.

Thirdly, AMMA runs annual migration forums bringing together practitioners, politicians, cross-cultural advisers and departmental representatives. The emphasis is on exploring ways to effectively integrate skilled migrants into Australia, as well maximising their contribution and knowledge transfer to local employees.

With these three dimensions, it is little wonder that AMMA members enjoy timely visa approvals, are fully compliant with their obligations and have never been subject to sanction, infringement, prosecution or penalty by the Department of Immigration.

Slide 3: Overview of key points

Today my goal is to make a few key points.

Firstly, I'll recall the politicisation of skilled migration that occurred in the lead-up to the federal election, including the dog-whistling and borderline xenophobia.

Secondly, I'll torpedo three key myths that were – and still are, as evidenced again by the CFMEU's national conference in Cairns earlier this week – perpetuated by some aspects of the union movement despite evidence to the contrary. Such myths are peddled by those who would rather build walls around our nation than be a globally engaged 21st century economy.

Lastly, I'll return to why skilled migration matters and, moving forward, critique two of the recent changes made by the previous government that have the potential to jeopardise our 457 visa program.

Part A: Recent Politicisation of skilled migration

(Slide 4: Title Slide)

Slide 5: Union and Labor Commentary

Speaking at an AMMA conference in 2012, the then Immigration Minister Chris Bowen pledged his support for skilled migration.

Despite the relentless and misleading union campaign that by then was in full swing, Bowen said enterprise migration agreements (EMAs) and 457 visas would instil confidence in investors and secure thousands of jobs and training for Australians.

Over 12 months later we now know that our industry's first EMA approval was stalled indefinitely and the merits of this progressive policy were soon forgotten.

History repeats itself and it didn't take long earlier this year for the union movement to ramp up its rhetoric against migrant workers once more.

Prominent unionists likened the 457 program to "human trafficking" and "slavery", despite knowing full well that skilled migrants are protected by the same industrial relations, OHS and workers compensation laws as Australian employees.

Rather than sticking to facts, the 'next' Immigration Minister Brendan O'Connor 'guesstimated' that the 457 visa program was plagued by 'about 10,000 rorts'. This was an outrageous claim given that there are 22,500 employers using the 457 program: an implication that 1 in 2 employers were somehow rorting it.

When pushed by the media for his evidence for that number, the Minister admitted he simply made it up.

For the first time since the introduction of the 457 visa program in 1996, bipartisan support for the program broke down.

Slide 6: Electorally driven

Given the lack of any supporting evidence, and the calculated and politicised fashion in which messages were communicated, it is hard to escape that the previous government's actions were electorally driven.

Earlier this year in a speech to launch her western Sydney campaign, the then PM Gillard told voters their job security was her top priority and that "foreigners" should go to the back of the queue.

The PM's use of language such as "foreigners", "queues" and "Aussie jobs" was criticised by many, even within her own party and own faction.

Slide 7: Global reputation at risk

Throughout the whole scare campaign, AMMA warned that the global business community was watching and Australia's reputation as a positive and stable place for investment could be undermined.

Unfortunately, we were right.

Reports of an “immigration crackdown” occurring in Australia lead to headlines such as “*Canberra closing door to migrants ahead of election*” in prominent media sources in Singapore, where comparisons with the divisive politics of Pauline Hanson were made.

Not only was the tone of Gillard's ‘locals vs. foreigners’ rhetoric enough to earn comparisons to One Nation, but Pauline Hanson herself said that “she totally agreed” with Gillard's comments at the start of the western Sydney blitz.

Part B: Myth-busting

(Slide 8: Title Slide)

Having explored the rhetoric, I'd now like to debunk 3 myths peddled by some in the union and labor movement which are based on no legislative reality, no evidence and are contradicted by findings from the Immigration Department itself and other independent bodies.

Slide 9: Myth 1 – Pay and conditions

Firstly, the depiction that skilled migrants compromise the wages of domestic workers is simply incorrect.

The claim 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, as set out in the Worker Protection Act 2008.

Employers must demonstrate the relevant skills and qualifications of the sponsored employee, demonstrate that market rates are being paid and keep all pay records, which can be subject to unannounced inspection by the Department.

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. The 457 visa program is not a low paid option for employers.

Slide 10: Myth 2 – Locals vs. foreigners

Secondly, the myth that Aussie workers are missing out because of the 457 visa program, and the depiction of skilled migrants as foreigners that need to be ‘put at the back of the queue’ is base rhetoric that borders dog-whistling and invites allegations of industrial xenophobia.

These emotive claims ignore the reality that current rules require labour to first be sourced from the local workforce. In no sense are skilled migrants able to displace the employment prospects of Australian workers.

Employers can only recruit for approved occupations verified to be in shortage. This is a rigorous process undertaken in conjunction with the Australian Workforce & Productivity Agency (AWPA) and DEEWR.

Employers incur all sponsorship costs themselves including application fees, insurance, medical, return travel and training obligations, which can add up to make skilled migrants \$60,000 more expensive than hiring a local.

This significant price signal makes 457 visas an "expensive last resort".

Sponsorship obligations include a substantial local training obligation, with employers required to commit 2% of their payroll on training expenditure of its workforce or to a relevant industry training fund.

Indeed, the mining industry alone committed over \$1 billion to training in 2011-12 and various resource industry initiatives are on foot including AMMA's Skills Connect, the Australian Women in Resources Alliance (AWRA) and AMMA's miningoilandjobs.com portal.

It is therefore no surprise that 457 visa workers account for only 2-3% of the resource industry workforce.

Slide 11: Myth 3 – Widespread rorting

Lastly, the myth that there was and is widespread rorting by employers of the 457 visa program flies in the face of the evidence.

As referenced, when challenged for evidence of systemic rorting, the previous Immigration Minister comprehensively failed to produce it, retreating into conjecture and exaggeration.

The facts are less than 1% of the 22,500 employers using the 457 program were subject to an infringement, sanction or penalty last financial year.

Often unreported and contrary to rorting myths, a recent survey by the independent Migration Council of Australia found that 88% of 457 employees were happy or very happy with their employer, and that any problems with the program existed at the margins of what is acceptable in a major program.

In AMMA's 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.

As former unionist and Chairman of the Ministerial Advisory Council of Skilled Migration Michael Easson has stated, policy efforts should be focussed on *"nailing down any loose planks, not ripping up the floorboards"*.

AMMA's message to the previous Government on this front was: *"If people are abusing the system, go and find them and prosecute them. Don't undermine confidence in the entire system by demonising migrants and trash-talking employers."*

Part C: Why skilled migration matters

(Slide 12: Title slide)

Slide 13: Skills shortages have been persistent

I've already briefly touched on the importance of skilled migration to the resource industry and the economy as a whole.

The annual skills shortage list produced by DEEWR reveals that automotive electricians have been in shortage every year for the last decade.

Motor mechanics and fitters have also been in high demand, in shortage for 9 and 8 of the past 10 years respectively. We have seen persistent shortages not only in these trades but across a raft of disciplines including electrical, mining and petroleum engineering.

Shortages have been persistent and the 457 visa program is an important safety valve for employers.

Slide 14: Our mobility challenge

AMMA has called for a genuine discussion around labour mobility and the latest map of major projects underway in Australia reveals the sheer volume and remoteness work being undertaken a far cry from Cavill Ave, Chapel St and Martin Place.

We face a significant labour mobility challenge that needs to be acknowledged in the context of skilled migration.

In 2011 the Government offered \$10,000 per head for eligible jobseekers to relocate to resource-rich areas. Less than a quarter of the grants were taken, with just 48 moving to WA.

As eminent demographer Bernard Salt has stated: *"Employers in Perth are more likely to get people to move across the Indian Ocean rather than the Nullabor. In the last 60 years, interstate mobility into WA has never exceeded 10% inflow"*.

Research indicates that locals want the comfort and security that comes with what's familiar, having family and friends close by, and the infrastructure, climate and scene they are accustomed to.

The reluctance of Australians to move into resource-rich but often remote areas underscores the importance of the 457 visa program.

Slide 15: 457s small but important

457 visa holders have comprised between 2.5% to 3.5% of the resources sector's workforce over the five years to 2013.

This consistently low and stable contribution of 457 visa holders, during a period in which the resources sector workforce grew rapidly, underscores that:

- The employment and training of Australian workers in the resources sector has kept pace with the rapidly growing workforce;
- Around 97% of the sector's workforce are locals and this has been consistent over the past five years;
- The resource industry employs skilled migrants as a supplement to, not substitute for, local employees.

It is not the resource industry but rather the healthcare and social services industries, often via state government departments, that have been some of the most significant users of the 457 visa program.

Slide 16: Multiple benefits

Access to temporary skilled migrants is imperative in providing investor certainty that the labour-intensive construction phases of projects can be delivered on time and on budget.

But there is much more to it than that.

A recent Migration Council report revealed that 4 out of 5 multinational companies are using 457 visa holders to train and develop Australian workers.

Temporary migration does not just fill skills shortages, it addresses skills deficits and plays a central part in workplace development at the enterprise level.

Highly specialised technology developed overseas – be it drilling equipment or unique vessel operations – require temporary skilled migration to transfer the human capital required to operate it in Australia.

The fact that 98% of innovation happens overseas means that temporary skilled migration is an essential 'hook' into global best practice.

By demonising skilled migrants the previous government failed to recognise the contribution they make to the government coffers. 457 visa workers receive little tax offsets and pay on average 8.5% higher tax than Australians. They spend money in regional communities that flows into the pockets of local shop-owners and service providers.

The 457 visa workers are themselves the truly forgotten voice in the skilled migration debate. Research commissioned by AMMA and conducted by Edith Cowan University found that 457 visa workers enjoyed the lifestyle, career prospects, climate and experience of living and working in Australia.

The 457 visa program enjoys high levels of approval from employees (88% approval) and employers (85% approval).

It is therefore little surprise that over 70% of 457 visa holders, who work and pay tax from 'Day 1' of their life in Australia, intend to become permanent residents in the future.

Part D: The Way Forward

(Slide 17: Title slide)

Slide 18: Recent changes

Labour Market Testing (LMT)

Of the recent changes to the 457 visa program, rammed through the Parliament in the *Migration Amendment (Temporary Sponsored Visas) Act 2013* in June, the most dangerous is the reintroduction of Labour Market Testing (LMT).

AMMA was particularly surprised to see LMT reintroduced given it was not a recommendation made by the Minister's own advisory council, and concerns were previously raised in the 2008 Deegan Review that LMT could compromise Australia's international trade obligations.

Those familiar with the 457 visa program will recall that it was abandoned following a major 2001 departmental review that found it be costly, ineffective and inferior to today's system.

Specific stakeholder consultation reported in the 2001 review included that:

...labour market testing is an expensive and time-consuming imposition on employers who know their segment of the Australian labour market and would not seek an overseas employee if a suitable Australian was available for the position – recruiting from overseas involves considerable expense, delays and involves the employer in potentially costly financial obligations in relation to the temporary resident. The requirement to undertake labour market testing can delay overseas recruitment by up to six weeks¹.

Despite what the Minister stated publically, labour market testing will mean much more than 'an in the paper' for employers.

According to the legislation, employers must not only provide details of advertising commissioned but document their participation at job fairs/expos. Employers must provide details of fees and other expenses paid in the course of recruitment and details of the results of such attempts, including positions filled and not filled.

AMMA is concerned that in providing financial, transactional and recruitment information to the government, employers may face the possibility of breaching commercial-in-confidence and even privacy obligations. It is regulatory overreach to expect employers to provide copies of their transactions and reports on the relative success of their recruitment functions to the Immigration Department for assessment.

¹ In Australia's Interests: A Review of the Temporary Residence Program, Chapter 5 - Economic Stream - Temporary Business Entry - Long Stay, p122

The Minister will be able to make exemptions from the LMT requirement for certain occupations within Skill Levels 1 and 2. However, no indication was provided by the previous Minister as to which occupations would receive the exemption and no criteria for assessment was provided. AMMA is concerned that the Minister would have the power to ultimately arbitrate on the removal of exempt occupations, regardless of skills level or experience, without the requirement for consultation with industry.

Not only employers, but the Immigration Department itself would face bureaucratic and administrative problems in dealing with the LMT requirement. Case officers would have to assess significant amounts of additional information, increasing their workload and inflating processing times. A typical visa application already requires the sourcing, lodging, assessing and approval of between 10-12 different documents totalling up to 50 pages of paperwork.

The LMT requirement has proven in the past to be unworkable, impractical and will likely lead to a blowout in processing times and costs for 457 visas.

Moving forward, AMMA will advocate for Labor's pre-election, last minute, politically driven, ill considered, unnecessary and cumbersome LMT to be removed by the new government to restore objectivity and confidence in the 457 visa program.

Dramatic increase in inspectors

The Immigration Department currently has 32 active inspectors appointed under the Migration Act to monitor compliance with sponsorship obligations. These inspectors have certain investigative powers and can conduct site visits with or without notice. Over 800 site visits were conducted last financial year.

Recent changes have provided the legal authority for inspectors of the Fair Work Ombudsman to be inspectors under the Migration Act. This expansion of powers to 300 Fair Work inspectors means a dramatic ten-fold increase in the total number of sponsor inspectors able to conduct unannounced site visits.

While AMMA is generally supportive of increased monitoring of the 457 visa program, an overnight 10-fold increase is sure to raise eyebrows, and represents a significant departure from the status quo.

Against the backdrop of unfounded claims of widespread rorting and political rhetoric, requiring Fair Work Inspectors to conduct inspections may have the outward appearance of a heavy handed approach that has the potential to cause unnecessary alarm and increased business transaction costs amongst sponsoring businesses. The taxpayer costs of unnecessary site inspections, and in our sector often in remote locations, will not be insignificant.

Another example of waste was the then government's pre-election announcement of a dedicated 457 visa 'hotline' to allow the public to 'dob in' rogue employers. This was a somewhat curious initiative in light of the fact that a general immigration dob-

in hotline – able to hear complaints on any immigration abuse (including but not limited to the 457 visa program) – was already in operation.

Moving forward, the Government needs to ensure that site visits by inspectors are conducted in a manner reasonable and acceptable to employers, and acknowledge that the overwhelming majority of employers already do the right thing.

Slide 19: Wrap-up

In conclusion, AMMA has been highly critical of the demonisation of skilled migrants which has proven to be particularly reckless amidst the previous Government's 'Asian Century' strategy.

Our reputation as a globally engaged economy and an open market ready to accept investment and skilled migrants from abroad has been tarnished.

Skilled migration should not be a 'political football' and I hope today I've revealed how baseless some of the myths and claims peddled by some in the union and labor movement have been.

Employers have always faced a high regulatory bar in accessing skilled migrants and do so as an 'expensive last resort'.

Their role is small but essential in delivering projects, productivity and ongoing jobs for Australians. But they do more than just 'plug the gaps' and play an important role as conduits into global practice, transferring knowledge and innovation from overseas into the local workforce.

Moving forward, there is still some \$300bn of resource investment under consideration, with \$150bn having been delayed or shelved in the last 12 months. These are uncertain times, and moving forward, employers cannot afford the uncertainty that they may not be able to access employees with the right skills, at the right place and at the right time.

Perhaps I'll give the final word to Joint Standing Committee on Migration, who in their March 2013 inquiry into multiculturalism and migration in Australia, concluded that:

“[The 457 program] is a practical example of our rich multicultural legacy in action and our ability to attract global skills to the domestic marketplace”

For the sake of our industry, economy but also our societal fabric, I for one want to see skilled migration valued and appreciated by policymakers and commentators for the contribution it has made, from the Snowy Hydro Scheme 60 years ago, my own personal experience when working on Hydro Electric Commission Tasmania construction sites in the 1980's, to the multi-billion dollar projects underway across Australia today.

