

Addressing key immigration issues and how it ties in with industrial relations

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Thank you and good morning. It is my pleasure to be here today to speak about a topic that in the last week has been widespread across the media.

The unprecedented growth occurring in Australia's resource industry has brought many issues into focus, however, none more so than the use of migrant workers on projects.

It has been a significant week in terms of migration. Earlier in the week we saw the Federal Court of Australia hand down its decision declaring that certain offshore construction work is not being performed in Australia's migration zone and, as such, non-citizens working in those areas are not obliged to obtain working visas.

Last Friday, the Minister for Immigration and Citizenship announced that the first Enterprise Migration Agreement had been reached for the Roy Hill project and we have seen the reaction of this announcement play out in the media over the last few days.

The issues I will be addressing today, I guess are quite timely given these recent developments.

AMMA was established in 1918 and is the largest and most representative lobbying group for the resource industry. Its membership includes coal mining, metalliferous, oil and gas, energy, construction and an array of service providers to the industry. AMMA is the only national employer group for the resource industry; it regularly features in the 'IR power and influences' review; and the AMMA board is comprised of representative from across the sector.

Economic environment

I understand today we have come together from a variety of different industries. I thought it would first be useful to set the scene by taking a look at the value of the resource industry to the Australian economy as well as some of the huge projects that are advanced and in the pipeline at the moment.

So at present there are 98 resource and energy projects at an advanced stage of development, either committed or already under construction, with a record capital expenditure of \$260.8 billion.

There are another 295 less advanced projects in the pipeline, many of which are awaiting a final investment decision, with a capital expenditure of \$243.3 billion.

To set the scene in terms of employment growth in the industry, the mining industry is also Australia's fastest growing industry.

You can see here from this graph that employment growth in mining is currently running at a bit less than 20 per cent a year, compared to other industries like construction and manufacturing that are seeing less than 5 per cent employment growth each year.

Skills shortages in the resource industry

Before moving on to look at some of the issues arising from the use of migrant workers and to put the rapid growth of employment in the resource industry into perspective, I wanted to show you how it's tracking against the predictions made back in 2010.

In May 2010, around the time the National Resources Sector Taskforce conducted its research into the skills needs of the resource industry and released its final report on the extent of the skills shortage, the mining industry employed 185,200 people. This was up from 107,500 in 2005.

NRSET predicted, based in the best information it had on hand at the time, including input from AMMA, that the industry would employ an extra 65,000 people over the following five years to 2015 (averaging 13,000 a year).

Instead, as you can see, that growth of 65,000 extra workers was achieved in two years, with employment growing by 32,000 people each year, which is between two and three times the rate of growth expected.

The shortage of workers such as engineers and tradespeople in the industry is likely to have been greatly underestimated and AMMA members are telling us that they are now facing chronic shortages in these areas, so the true extent of the shortage is expected to far exceed the NRSET predictions.

AMMA is currently running a project that tracks the impact of the Fair Work Act, one of the questions we asked in the last survey in October 2011 of our members was in relation to the use of skilled migration. 67 per cent indicated that they are currently recruiting skilled workers from overseas, while more than 75 per cent were either going to recruit skilled workers from overseas in the next six months or were considering it.

Use of skilled migration in the resource industry

Temporary skilled migrants play a small but important role in assisting resource companies to get large projects operating effectively which in turn allows the economic, employment and wider community benefits from these projects to be realised.

There are often many oversimplified and misleading arguments being rolled out by trade unions and other political and community groups opposed to the use of skilled migrants.

One common misconception is that the resource industry is a significant user of temporary 457 visas, when quite the reverse is true. The use of skilled labour from overseas is not seen by the industry as a way of sourcing inexpensive labour or providing an alternative to existing skilled Australian labour.

According to the latest figures released by the Department of Immigration and Citizenship from the 2011-12 to 31 March 2012 reporting period there were 4,630 temporary 457 visa applications granted. This accounted for 9.1 per cent across all industries. According to the results the mining industry is only the fifth largest user of temporary 457 visas.

As at the 31 March 2012 there were 7,290 temporary 457-visa holders working in the Australian mining industry.

To no surprise the majority of these visas were granted to primary applicants working in Western Australia and Queensland.

The resource industry only relies on the use of skilled migration to fill the critical temporary skills gaps that at this stage are unable to be solved by local supply. Skilled migration is just one tool for meeting Australia's future skill needs and complements the ongoing training and up-skilling of the Australian workforce.

Issues with the use of skilled migration

It is important that Australia's skilled migration program is responsive and flexible enough and that unwarranted restrictions are not placed on employers to source skilled labour from overseas which could limit future growth and lead to projects or parts of projects being relocated offshore. Therefore, I thought it would be interesting today to take a look at some of the issues arising from the use of skilled migrants in Australia.

Unions have consistently called for the curbing of skilled migration programs, arguing 'cheap labour' represents a threat to Australian jobs. With this mistruth particularly damaging the public perception of migration in the resource industry, it is often much more expensive for Australian resource employers to engage temporary skilled migrants.

There are onerous obligations on both employers and the visa holder that can cause the costs and exertion of skilled migration to skyrocket.

I spoke last week at the AMMA National Conference in relation to integrating your 457 visa holders in to the work environment, and I used this exact slide. The slide

shows just some of the considerations both employers and visa holders must consider, before embarking on a becoming a business sponsor and the ongoing requirements. The slide is by no means exhaustive but highlights to some extent the degree of factors to consider.

As employers it does not just end with complying with your sponsorship obligations. A person from any country in the world that meets the relevant criteria may be eligible for a temporary 457 visa. What does this mean? Well, people from different cultural backgrounds, different religious beliefs, and people with different ways of getting the job done. Something of concern to the resource industry, if you are an employer in regional Australia and have sponsored a worker from overseas that has lived in a metropolitan city for their life, they come to work here in outback Australia, they step off the plane and its 35 degrees, boiling hot, is this something they have considered, maybe they were thinking they were coming to work near pristine beaches with white sands. What are the perceptions they have of Australia versus the reality of the workplace and the conditions?

In addition to employer's sponsorship obligations, employers play a big part in helping workers from overseas to integrate in to the work environment and also the community.

As part of the skilled migration process, visa holders are also required to maintain private health insurance at the time of applying for the 457 visa, in many circumstances this is paid for by the employer. There also costs for the employer to lodge an application with the Department of Immigration and Citizenship to process and assess the application, regardless of the outcome.

To say that the use of the skilled labour from overseas is a cheap and easy way of sourcing workers for projects for employers is simply untrue and those employers that currently do sponsor workers from overseas or are currently applying for business sponsorship would no doubt agree that it is an expensive exercise to embark on and for many employers is only used as a last resort.

Market rates

Employers must ensure 457 visa workers are being paid the market rate and are receiving the same terms and conditions of employment as their Australian counterparts.

Wages in the resource industry are generally quite generous and as such the temporary skilled migration income threshold is not so much an issue. The threshold is currently set at \$49,330 per year and the purpose of this is to ensure that 457 visa holders have sufficient income to independently provide for themselves in Australia. It is particularly important given these workers do not have access to a range of government support available to Australian citizens and permanent residents.

However, something that AMMA has previously lobbied on in relation to market rates is where the salary proposed for the nominated worker is equal to or greater than \$180,000 (which equates to the threshold for the top personal income tax rate), the sponsor company is not required to provide evidence that this proposed salary is set according to the market salary rate for that occupation. AMMA believes that this salary is far too high and has previously raised that the amount should be reduced to align with the unfair dismissal threshold for high income earners under the Fair Work Act.

English language requirements

On the issue of workers from non-English speaking backgrounds, the introduction of increased English language requirements for skilled migrants, in AMMA's view made it more difficult for resource industry employers to recruit labour from particular countries such as China and the Philippines.

On the 14 September 2009 without notice or consultation amongst industry the mandatory test score was increased to 5 in each of the four test requirements of the IELTS test. This meant that, where previously an applicant had excelled in one component of the test and this could be offset against a poorer result in another component, this offsetting was no longer available and an increased minimum requirement had to be met in every single test component of reading, writing, listening and speaking.

It remains unclear to AMMA members why there exists a competency requirement in English language well over that necessary to communicate and work safely in the

workplace. Temporary skilled migrants are employed for their expertise and skills in their particular trade, which rarely if ever requires advanced oral or written communication skills.

AMMA has met with the Minister for Immigration and Citizenship on this issue and has expressed its concerns that the increased English language threshold is neither warranted nor justified as it goes much further than simply ensuring adequate survival and communication skills in social and workplace contexts. AMMA has also noted that skilled and semi-skilled employees on working holiday visas can work for up to 12 months in Australia without having to demonstrate a level of English language competency.

Labour agreements

For those of you who may not be familiar with labour agreements, they are formal arrangements between an employer and the Commonwealth, which allows for the recruitment of an agreed number of overseas skilled workers. Labour Agreements appear to be largely under utilised by the resource industry, with fewer than 10 active agreements in place, with only one relating to a significant resources projects.

In AMMA's experience, the low take-up rate for labour agreements is not only a product of them taking far too long to negotiate, with one major resource project having been working to finalise a labour agreement for four years and counting. One of the advantages of labour agreements as opposed to other skilled migration options is they allow semi-skilled as well as skilled workers to be recruited from overseas.

However, acting as a deterrent to their utilisation is the fact that they place onerous and stringent obligations on employers in terms of training levies and employment quotas that make the agreements unworkable for most employers. The labour agreement stream is not user friendly and has far more onerous conditions attached than does the standard business sponsorship for skilled migrants.

Enterprise Migration Agreements

You would have no doubt heard in the media, last week that the Minister for Immigration and Citizenship approved the first Enterprise Migration Agreement (EMA) for the Roy Hill project.

By way of background EMAs were introduced by the Federal Government for mega resource projects, they are intended to act as an overarching agreement that will allow a project owner or prime contractor to establish the number of skilled overseas workers and occupations required on a project, in a not dissimilar way to how labour agreements operate. EMAs are only for projects with a capital expenditure of \$2 billion or more and a peak workforce of at least 1,500 workers.

The number of projects that will meet this threshold in Australia is only about 10 to 13 projects. AMMA has argued that the threshold should come down to \$1 billion and that would have caught 40 projects, but the government through stakeholder process said the \$2 billion cap was appropriate; as was a 1500 workforce threshold. So the onus is on us from an industry point of view to get those programs working effectively, to be successful and for the community to understand the benefits for both employment and the economic opportunities that arise from building these projects that otherwise might not go ahead.

The government and industry has however come under fire with some organisations accusing both parties of allowing large numbers of semi-skilled migrants in to the country. Then EMA concept was never about and never will be about replacing Australian jobs with migrants. The high thresholds of capital value and employee numbers demonstrate that the very nature of EMAs is to be a last resort for a handful of our biggest projects only.

Given the limited number of projects EMAs apply to, and the commercial arguments, it is highly unlikely that EMAs will ever be widely used in the resource industry.

457 visa research project

Lastly, I would like to mention an interesting research project that has kicked off. AMMA in collaboration with Edith Cowan University in Western Australia has launched a first of its kind project looking at the costs and benefits of the 457-visa program. The title of the project is called: '457 visa workers in the Western Australian

resources industry - the benefits and costs for business, migrant families and the community'.

AMMA together with ECU have formed a group of about 15 AMMA members and we met for the first time in March. The purpose of this group is to share experiences and allow an insight into the effect 457 visa workers have on businesses, families and the community. From the participants, academics from ECU have commenced interviews with 457 visa workers from the companies involved to understand the impact of moving to Australia, why they came over here to work, and look at the integration of those into the workforce.

The project will run throughout 2012 and will potentially have far-reaching national implications both economically and socially. The report is specific to Western Australia and is only for one year. A report is expected to be finalised by the end of 2012.

To conclude, I would like to emphasise that skilled migration is only a small but important part of the resource industry workforce. Employers in the industry are focused on up-skilling and supplementing their Australian workforce, rather than replacing it.

Employers are required to spend a significant amount of their payroll on training Australian workers. This is a sensible approach supported by the resource industry.

Thank you.