

Submission to the Senate Education and
Employment Committees

*Inquiry into the impact of Australia's
temporary work visa programs on the
Australian labour market and on the
temporary work visa holders*

May 2015





AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 97 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economic activity in Australia¹ (double its share of a decade ago). Australia's earnings from resources and energy commodities is projected to increase at an average rate of 7% a year from 2013-14 to total \$274 billion in 2018-19².

First published in 2015 by

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¹ Reserve Bank of Australia research discussion paper, *Industry dimensions of the resources boom*, February 2013

² Bureau of Resources and Energy Economics, *Resources and Energy Quarterly—September quarter 2014*

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Executive summary

1. Recent isolated incidents of alleged exploitation of workers from overseas, including under the 417 working holiday visa program, must be investigated and dealt with using the full force of existing laws where merited.
2. However, the vast majority of employers using temporary skilled migration do so with integrity and respect for the law, particularly employer sponsors in Australia's resource industry.
3. AMMA is particularly concerned at the artificially politically charged context of current public debate on skilled migration for various reasons including:
 - a. Claims that Australians are being systematically discriminated against and that jobs are going to underpaid foreign workers in preference to Australians are base, concocted and hark back to some of the ugliest periods of Australia's industrial and migration policy past.
 - b. Skilled migration policy and regulation must be elevated beyond the level of opportunistic and borderline xenophobic populism.
 - c. We have verged dangerously close to this territory in recent years through very unfortunate and regrettable comments, approaches and signals from various quarters. Australia must carefully guard its reputation as a multicultural and welcoming society, in all parts of the migration system, including skilled migration.
 - d. In no sense are skilled migrants able to cheaply displace the employment prospects of Australian workers:
 - i. As demonstrated in AMMA-commissioned research in 2012³, it in fact may cost up to \$60,000 more to employ a foreign national rather than an Australian to work in the resource industry when relocation, recruitment and compliance costs are taken into account.
 - ii. "The terms and conditions of employment for the person ... sponsored must be no less favourable than those [the employers] provide, or would provide to an Australian performing equivalent work in the same location."⁴

³ *457 visa workers in the Western Australian resources industry – the benefits and costs for business, migrant families, and the community*, published by [Edith Cowan University](#), Susanne Bahn, Ghialy Yap, Llandis Barratt-Pugh

⁴ <http://www.immi.gov.au/visas/pages/457.aspx>

6. However, it has been acknowledged that companies in the resource industry exceed those requirements, in fact contributing up to 5% of payroll to training as an industry.
7. It is also important to note that the total number of 457 visa holders currently working in the mining industry is 4,220⁹ of a total workforce of 218,000¹⁰, representing just 1.9% of the total mining workforce.
8. As AMMA continues to emphasise, 457 visa holders play a statistically small but absolutely essential niche role in our industry and in fact are functionally essential to the employment of many thousands of Australians.
9. The current debate has, unfairly in AMMA's view, focused on the very few employers who fail to meet their obligations in industries other than the resource industry. Genuine breaches have been vastly exaggerated and there has been substantial conjecture and exaggeration of the extent of rorts of and non-compliance with the temporary visa system.
10. No evidence has been presented of widespread or systemic abuse. When challenged for evidence of this, former Minister for Immigration & Citizenship, the Hon Brendan O'Connor MP, conceded his figure of 10,000 rorts was subject to conjecture and exaggeration. Indeed, the recent integrity review found no evidence to substantiate those claims as discussed later in this submission.
11. The resource industry strongly objects to the tone of the public debate that tends towards vilifying both employers and those who hold 457 visas. This is not how Australia should represent or see itself as a global and regional citizen. This level of debate also fails to honour our proud past of successfully welcoming new employees from a wide range of countries into our workplaces and communities.
12. The opposition to skilled migration also ignores the reality that skilled migration is a pathway to permanent residence and Australian citizenship for some visa holders. Australia has for some years conducted a passionate national conversation regarding the extent to which particular groups of migrants are welcomed or not welcomed into our community, yet some participants in these discussions tacitly or unwittingly create hostility to future residents and citizens entering Australia via the avenue of skilled migration.

⁹ Subclass 457 quarterly report for the quarter ending at 31 December 2014 published by the Department of Immigration & Border Protection

¹⁰ Labour Force, Detailed Quarterly, February 2015, published by the Australian Bureau of Statistics, Cat no 6291.0.55.003

13. Sustained opposition to temporary skilled migration is unfortunately often driven by perceived short-term political opportunism, not by the evidence, and our policy makers, including this committee, will best proceed by focusing on the evidence, not the rhetoric.
14. While unions representing trades such as construction and electricians are often the most vocal opponents of skilled migration programs, it was well documented in the recent 457 integrity review that none of those traditional trade occupations are anywhere near the Top 30 occupations brought into Australia under the 457 visa scheme. It is difficult to escape the view that skilled migration has become something of a straw man concocted to tar employers.
15. In short, some of the major voices against 457 visas and skilled migration who come out so strongly claiming it is taking Australian jobs actually have very few jobs being filled by skilled migrants. For example, the number of electricians being brought in under the 457 visa program is in the hundreds among the entire Australian electrician workforce.
16. Skilled migration channels into Australia should not be allowed to become a hyper-politicised issue at the expense of the regulatory stability and certainty that employers require to deliver major projects into our economy.
17. In any scheme or area of regulation, there will always be a small minority that do not respect or comply with the rules. The Government, with the full support of the overwhelming majority of employers that are doing the right thing, should target any rule breakers through rigorous enforcement of the existing obligations rather than reducing access or seeking to apply more punitive measures to those who continue to do the right thing.
18. However, isolated and statistically rare instances of non-compliance cannot be illustrative of a fundamental fault or lack of legitimacy in the system itself. Most if not all government processes can be rorted, hence government has compliance mechanisms, fines, enforcement, inspections, etc. There is absolutely no basis to conclude that the level of rorting or misuse in skilled migration is disproportionate, undue or in any way justifies substantial or punitive further regulation of skilled migration.

Introduction

19. The resource industry through AMMA welcomes the opportunity to provide input to this review into the impacts of Australia's temporary work visa programs, notwithstanding that:
 - a. AMMA does not agree with the premise that seems to have framed the inquiry's terms of reference; and
 - b. AMMA is concerned at a potential over-proliferation and repetition of inquiries in this area in recent years.
20. AMMA's focus and interest in this inquiry is squarely on the operation and accessibility of Australia's skilled migration system. We make no submission on other visa series such as those for working holiday makers, temporary entry for entertainment, trade shows, etc.
21. From the outset, this inquiry, as with other recent inquiries into Australia's skilled migration framework, should recognise the role that skilled migration, particularly the 457 temporary skilled migration program on which this submission focuses, plays not only in contributing to the diverse fabric of our multicultural society but in maintaining our competitiveness and productivity in an increasingly globalised and globally competitive world.
22. Australia's reputation as a desirable place to live and work provides us with an unrivalled ability to attract the world's best and brightest talent to our shores. Unfortunately, recent attempts to demonise the use of 457 visas risks damaging Australia's high international standing and our competitiveness and capacity to do business in a globalised world.
23. Whilst there may be concerns with some visa series, misleading depictions about the treatment of temporary migrants using 457 visas threaten to tarnish Australia's reputation as an openly-engaged economy ready to do business with the world. If Australia aspires to offer global and regional leadership in the area of skills and technological innovation we simply cannot indulge in such base politics at home, nor approaches which risk resuscitating dormant perceptions of Australia as pursuing xenophobic or exclusionary approaches, particularly of those from our region.
24. Australia does not exist in a vacuum but competes in global markets to secure capital, technology, skills and expertise. We also compete in a global and regional market for skilled permanent migrants, which the 457 visa program is an important avenue to securing. Some skills are globalized or globally specialised, and employers compete for them on global markets.

25. The resource industry itself is very much a global industry, with many multinational companies having workforces in several countries, making industry skills internationally transferable. Tens of thousands of Australians are benefitting from these opportunities in the global resource industry in dozens of countries, enriching both Australia and host countries.
26. Resource projects need Australians with diverse and highly-specialised skills to relocate to remote areas and often in large numbers. The number of projects under way in Australia, their remoteness and close proximity to each other – amidst often persistent shortages of particular skill sets – presents recruitment challenges for the industry which skilled migration is one component of addressing.
27. Skilled migration is a complement or supplement to the efforts and expenditures of the industry to train and skill Australians. However, this is not a simple equation of training Australians to fill 100% of skills needs. The industry has global peaks and troughs of demand for highly-specialised skills, and employees with these skills are often mobile. The industry also needs to be nimble to be globally competitive.
28. The reluctance of local workers to relocate to remote regions was identified in AMMA-commissioned research into the use of 457 visas in Western Australia¹¹. This means that AMMA member companies have struggled to recruit their entire workforce locally or domestically. There have been incentive programs run by government offering to pay for relocation for the long-term unemployed to resource-rich areas but these schemes have largely failed, even during times of peak resource activity and even in the face of the mining industry's high remuneration levels.
29. Money alone cannot lure essential skills to remote areas if the skills do not exist in this country, or the people with those skills are not willing to relocate. This is something this committee should keep in mind when making its deliberations.

Guiding principles and priorities for employers

30. AMMA and its members believe Australia should aspire to a labour market in which:
 - a. Australia reaches near full employment and a skilled and productive labour force pursues careers in jobs made secure by their competitiveness in global markets.

¹¹ *457 visa workers in the Western Australian resources industry – the benefits and costs for business, migrant families, and the community*, published by [Edith Cowan University](#), Susanne Bahn, Ghialy Yap, Llandis Barratt-Pugh

- b. Australians are able to travel overseas and work, enriching our country and the wider global community based on the world-class skills and experience they gain in Australia.
- c. Australia is enriched by short-term and permanent skilled participation from overseas as part of a very strong domestic labour market, which is operating at or near full employment.

Where to from here?

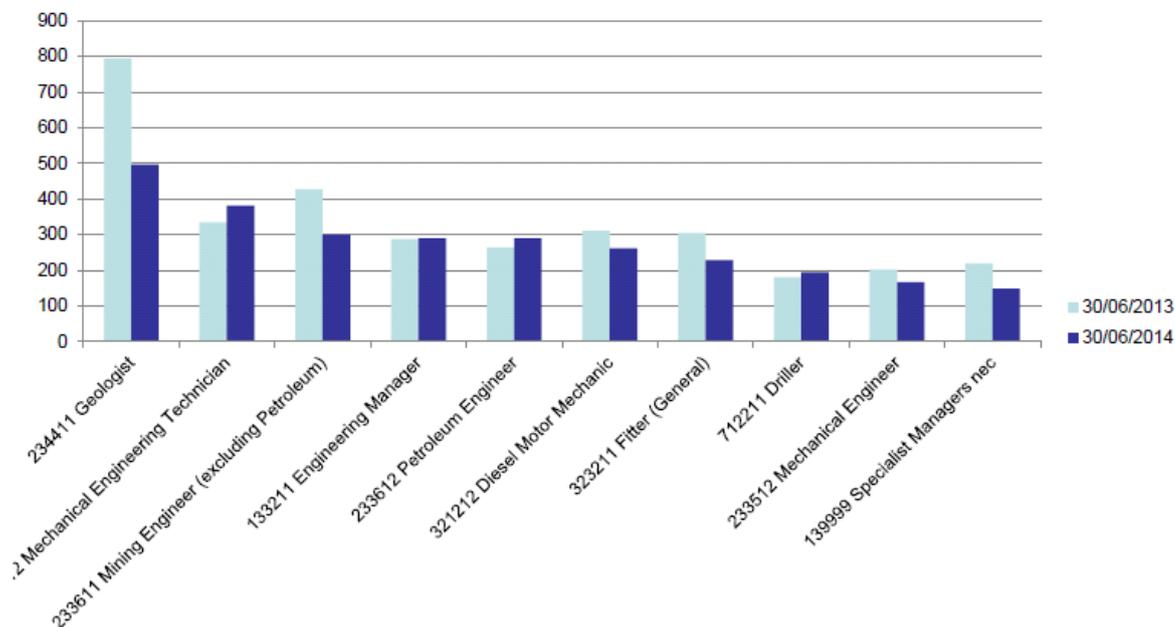
- 31. AMMA shares the concerns expressed in the ACCI submission to this inquiry that caution must be exercised in relation to increasing the regulatory burden given the completion of the recent thorough inquiry into the 457 visa framework. Some of the recommendations from that review, which have the support of the Federal Government, are yet to be implemented but when they are will bolster existing strong compliance, monitoring and enforcement measures.
- 32. In the two years prior to this submission, AMMA has made four other submissions on the skilled migration framework generally and temporary skilled visas in particular:
 - a. Submission to the Department of Immigration & Border Protection's proposal paper for the simplification of the skilled migration and temporary activity visa programmes (February 2015);
 - b. Submission to the discussion paper on reviewing the skilled migration and 400 series visa programs (October 2014);
 - c. Submission to the integrity review of the Temporary Work (Skilled) Visa (Subclass 457) program (May 2014); and
 - d. Submission to the inquiry into the framework and operation of subclass 457 visas, enterprise migration agreements (EMAs) and regional migration agreements (RMAs) (May 2013).
- 33. The above list does not include further submissions AMMA has made in relation to offshore migration as well as on the EMA and labour agreements framework during that same two-year period.
- 34. AMMA of course welcomes the opportunity to make submissions and be consulted over important proposed changes to Australia's migration framework, but we see no need to duplicate the work of other recent inquiries. We are concerned that the repetition of regulatory inquiries in this area may create uncertainty and discourage the use of skilled migration where it is economically, operationally, productively and competitively required.

35. For that reason, AMMA believes that this committee should as its starting point:
- a. Acknowledge the significant work undertaken in recent years to review and further regulate temporary skilled migration programs;
 - b. Allow recommendations from the earlier reviews to filter through before recommending further regulatory measures;
 - c. Pay due heed to the overall burden and accessibility of skilled migration options, and not add piecemeal new regulation, issue by issue;
 - d. Pay due regard to existing levels of regulatory impost and control in this area, and the existing controls on routing or the substitution of international labour for Australian employment; and
 - e. Refrain from recommending further regulation of red tape in this area unless absolutely merited and essential to address genuinely proven rather than speculative, presumed or merely asserted concerns.

Resource industry use of temporary skilled visas

36. Economic conditions have changed, particularly in the resource industry with the move from the construction phase of projects to the less labour-intensive production phase.
37. The below graph shows the key mining industry occupations brought in under the 457 visa program between 30 June 2013 and 30 June 2014. It is worth noting that geologists are the only occupation on the graph below that came anywhere near 5% of the workforce being comprised of 457 visa holders. All other occupations represent extremely small percentages of that sector of the workforce across Australia.

Visa grants per occupation in mining



38. More recently, the number of primary 457 visa applications **lodged** by the mining industry in the 2014-15 program year to 31 December 2014 was 1,010 - 24.9% less than in the same period in the previous year¹².
39. The number of primary 457 visa applications **granted** in the mining industry declined by 27.3% in 2014-15 to date compared with the same period 12 months earlier, from 1,450 to 1,060 applications granted.
40. The **total number** of primary 457 visa holders working in the Australian mining industry as at 31 December 2014 was 4,220 out of 90,040 primary visa holders across all industries (representing less than 5% of 457 visa holders in Australia and less than 1.9% of the total mining workforce).
41. The mining industry continues to pay both the highest base salary and the highest total remuneration to 457 visa holders. In the 2014-15 year to 31 December 2014, the average base salary for a 457 visa holder in the mining industry was \$145,500, while the average total annual remuneration for 457 visa holders was \$184,900¹³.

¹² Subclass 457 quarterly report for the quarter ending at 31 December 2014 published by the Department of Immigration & Border Protection

¹³ Subclass 457 quarterly report for the quarter ending at 31 December 2014 published by the Department of Immigration & Border Protection

42. Total weekly earnings for Australians in the mining industry is \$2,518.10 a week (or \$130,941 a year)¹⁴ demonstrating that, **on average**, 457 visa holders in the resource industry earn more than Australians do on average, which makes sense given their senior skill levels.
43. While it is often argued the 457 program is used to exploit lower-skilled workers, the latest Department of Immigration & Border Protection figures¹⁵ show that 63.9% of primary applications granted across all industries in 2014-15 to date were for ANZSCO Skill Level 1 occupations, while 17.9% were for ANZSCO Skill Level 2 and 16.3% were for ANZSCO Skill Level 3. Just 1.8% of all applications granted were for ANZSCO Skill Level 4 or 5.

Economic benefits of skilled migration

44. Research undertaken by Edith Cowan University in 2012¹⁶, commissioned by AMMA, revealed the benefits of the 457 visa program not only to resource industry businesses but to the wider economy, society, government, the visa holders and their families.
45. Resource industry employers reported skilled migrants having a strong work ethic and highly-applicable skills and experience, citing a positive experience from employing workers on 457 visas and valuing them highly as a much-needed source of labour to complement overwhelmingly Australian resident and citizen employment.
46. While the Edith Cowan University research project concentrated on 457 visa arrangements in the WA resource industry, its findings are easily extrapolated to other states and territories around Australia.
47. The research was informed by in-depth one-one-one interviews with business leaders and the 457 visa holders themselves, and has important findings of relevance to this committee as outlined below:
 - a. **The benefits to business** of skilled migration include:
 - i. Immediate skills for business growth;
 - ii. Contributions to the future skills pool;
 - iii. Increased labour market flexibility; and

¹⁴ 6302.0 *Average Weekly Earnings, Australia, November 2014*, published by Australian Bureau of Statistics on 26 February 2015

¹⁵ Subclass 457 quarterly report for the quarter ending at 31 December 2014 published by the Department of Immigration & Border Protection

¹⁶ *457 visa workers in the Western Australian resources industry – the benefits and costs for business, migrant families, and the community*, published by [Edith Cowan University](#), Susanne Bahn, Ghialy Yap, Llandis Barratt-Pugh

- iv. Enabling the construction phase of projects to be completed on time and on budget.
- b. **The benefits to the Australian economy** include:
 - i. 457 visa workers paying the highest rate of tax;
 - ii. Workers spending money while in Australia;
 - iii. Knowledge transfer from those at the forefront of innovation and technology around the world; and
 - iv. Access to global project construction and management capabilities.
- c. **The benefits to the 457 visa workers** include:
 - i. Being treated with equality and respect in Australia;
 - ii. The opportunity for career advancement;
 - iii. Enhanced quality of life; and
 - iv. Opportunities for permanent residency.

Impact of temporary work visas on training and skills development in Australia

- 48. In 2010, the National Resource Sector Employment Taskforce (NRSET) final report on projected future skills needs for the resource industry found no evidence that the operation of the 457 visa program reduced skills development for Australian workers. On the contrary, the training requirements placed on sponsors of temporary migrants helped ensure that employers continued to invest in staff development, it found.
- 49. It is important to note that before qualifying for access to the 457 visa scheme, employers must demonstrate they:
 - a. meet prescribed training benchmarks; or
 - b. have an auditable plan to meet training benchmarks (if operating for less than 12 months); and
 - c. have a strong record of, or demonstrated commitment to, employing local labour and non-discriminatory employment practices.

50. Training benchmarks must currently be met in either of two ways:
 - a. Expenditure of at least 2% of payroll into an industry training fund provided per year, committed during the term of sponsorship where foreign nationals are sponsored on 457 visas; or
 - b. Expenditure of at least 1% of payroll on training to their Australian citizen or permanent resident employees together with a requirement to maintain such expenditure during the term of sponsorship and whilst sponsoring foreign nationals on 457 visas.
51. These same training requirements apply to employers seeking access to 457 visa holders under labour agreements.
52. A recent report by the National Centre for Vocational Education & Research (NCVER) for the Minerals Council of Australia showed the minerals sector in fact spent around 5.5% of payroll on training in 2012¹⁷, well above the required government benchmarks. Apprentices and trainees were found to make up around 5% of the total mining workforce which was more than the share of 457 visa holders (2.3%).
53. As an example of how skilled migration can lead to jobs and training opportunities for Australians, the Roy Hill Iron Ore Operations EMA was set to provide 2,000 training places to Australian workers, including 200 apprenticeships and traineeships. With an upper limit of 1,715 foreign workers over three years, had that EMA ever been allowed to come into operation, it would have provided more training places for Australians than positions for 457 visa holders.

Impact on employment opportunities for Australians

54. There are strict tests already applied to the 457 program, with business sponsors already facing a high regulatory burden aimed at ensuring local employment opportunities, pay, conditions and standards are not undermined by employment arrangements using overseas workers.
55. Employer sponsors already operate subject to substantial controls and obligations and AMMA knows of no properly evidenced justification for the bar to be set any higher. Anecdotal, presumed or hearsay assertions that have more to do with unwitting prejudice or rank political opportunism do not provide any reliable justification for further regulation.

¹⁷ *Training and education activity in the minerals sector*, National Centre for Vocational Education Research (NCVER) [published](#) in March 2013

56. Employer sponsors are already required to meet a number of stringent requirements as part of their 457 visa sponsorship obligations, including:
- a. Ensuring overseas workers receive terms and conditions of employment no less favourable than those received by Australian citizens or permanent resident carrying out the same position in the employer's workplace at the same location. This is a continuing obligation on employers for all those earning less than \$180,000 a year;
 - b. Ensuring that sponsored workers only work in approved occupations. That is, at the time the 457 visa is granted, the occupation in which the visa holder must work is specified and this role must be carried out unless a new application is made to and approved by the Department to change to the new occupation;
 - c. Obligations on employers to keep records of compliance with sponsorship obligations go well beyond the records that must be kept under general employment laws;
 - d. Employers are under an obligation to provide information to the Department on certain events occurring such as any change in the initial information provided such as a change of company name, change of business address, the appointment of new directors, any changes to the duties of the 457 visa holder, the maintenance of market salary rates, etc;
 - e. Employers have an obligation to co-operate with Departmental inspectors, commencing at the time the business sponsorship is approved and ceasing five years after the sponsorship ends; and
 - f. Meeting prescribed training benchmarks (as detailed earlier in this submission).

Wages, conditions, safety and entitlements

57. 457 visa workers operate under existing laws designed to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights. Insufficient evidence has been provided to support claims from some quarters that there has been widespread abuse by business in this respect.
58. It is also worth noting that these are substantially the laws that were in operation under the former Labor government and subject to amendments passed with the support of the Greens as recently as 2013.

59. If abuses of 457 visa workers occur, there are appropriate and serious enforcement measures available to the Department under the current regulatory scheme, including revocation of sponsor status, court action and other financial penalties. There are also measures available to a range of other authorities responsible for the workplace rights of employees, including state workplace health and safety regulators and the Fair Work Ombudsman.
60. This is not light touch regulation and there are real penalties and consequences for abusing the 457 visa system, as there should be. Employers and those who advise and assist them on migration obligations are well aware of these regulations, enforcement, inspection and sanctions. Hence, despite the rhetoric and contrivance to the contrary, there is in fact only a very small and isolated level of non-compliance and misuse in this area. We also know of no evidence to suggest that levels of misuse in this area are anything other than within scope of other comparable government programmes.
61. There is already a considerable focus in the enforcement and compliance activities of government on workers holding 457 visas and other temporary visas, and this should be more than adequate to protect visa holders' workplace rights which equal or exceed those of Australian resident employees. We know of no evidence to suggest that further regulation is required.
62. Those businesses that do breach their current obligations as sponsors should be and have been penalised and as demonstrated by recent government statements responding to allegations of 417 visa abuses. There is a blinding public spotlight on those who misuse the migration system, including "name and shame" media releases from government.
63. Those claiming widespread hidden misuse or rorts must carry the burden of proving this occurs. This cannot be presumed or taken as a given.
64. AMMA reiterates that there is no strong case for making the entire 457 program more punitive or constrained (to the detriment of the majority of employer sponsors doing the right thing by their employees).
65. We know of no systematic or widespread problems with the provision of workplace rights to sponsored employees on 457 visas in the resource industry. In fact, given this is a highly-regulated area of work in which permission is needed to access employment, we suggest workplace rights are particularly well observed for this carefully controlled employee cohort.
66. It should also be noted that the 457 visa program is not a system that permanently indentures a visa holder to one employer. Visa holders can move to another employer experiencing similar skills shortages in their occupational

area, provided the employer and visa holder meet the sponsorship requirements and make the appropriate applications to the Department of Immigration & Border Protection.

67. This is a highly-controlled system but ensures the visa holder is not a burden on the labour market.

Concessions

68. The inquiry's terms of reference include whether the provisions and concessions available under designated area migration agreements (DAMAs) and other types of labour agreements affect the integrity of the 457 visa program.
69. By way of background, DAMAs started as regional migration agreements (RMAs) under the former Labor government and are basically a type of labour agreement for a geographical area rather than being limited to regional areas as RMAs previously were.
70. DAMAs are used in a "designated area" – ie. an area that has been defined by a state or territory government, regional or local-based organisation as having a skills shortage.
71. The Department, before approving a DAMA negotiated by a designated area representative such as the NT government, must be satisfied of certain things, ie that the companies seeking to bring in skilled migrants under a DAMA have tried to recruit locally in the first instance and are financially viable, etc.
72. What is available under a DAMA that is not generally available under other agreements is that the Department will consider a 10% reduction in the minimum salary rates threshold – known as the temporary skilled migration income threshold (TSMIT).
73. The ability to seek that concession from the Department has been misinterpreted in public commentary as providing employers with an ability to pay overseas workers less than Australian workers under a DAMA. Those claims are patently false.
74. Under a DAMA, TSMIT of \$53,900 can be reduced by up to 10% to a minimum of \$48,510 a year.
75. However, it must be remembered that employers are required to pay the market salary rate (ie. what they would pay an equivalent Australian employee) or the concessional income threshold, **whichever is higher**. That means if an employer pays an Australian worker less than \$48,510 they can bring in an overseas worker if they are prepared to pay that worker at least

\$48,510. However, if the market salary rate (ie the comparable Australian worker's salary) is \$60,000, the employer must pay the foreign worker \$60,000.

76. In simple terms, concessions to wages are only available under DAMAs when the equivalent Australian wage is equal to or less than the concessional income threshold of \$48,510. So there is no possibility of foreign workers undercutting Australian wages as a result of the concessions.
77. It is important to point out that the resource industry is not a user of DAMAs and would not seek a concession to wages in any case. Resource industry wages would exceed the minimum salary threshold given that average weekly earnings are currently \$2494.50 (equating to \$129,714 a year)¹⁸.
78. That is not to say DAMAs are not necessary in other industries, particularly in areas where a mining operation has attracted all the available local skills because of its high remuneration.
79. AMMA maintains that such concessions are entirely appropriate if approved by the Department on a case by case basis, especially because they do not provide an opportunity for local employers to undercut Australian wages by using workers from overseas.

Adequacy of current enforcement measures

80. If an employer breaches the 457 visa system or other temporary work visa requirements, there is substantial existing scope to act. No further mechanisms are required, nor has evidence been produced to justify further obligations, sanctions, etc.
81. The resource industry has an outstanding record of compliance as recognised by the Department.
82. As mentioned, in addition to the requirement to pay Australian market rates to 457 visa holders and the extensive training requirements in effect before becoming a business sponsor, employer obligations include keeping records of compliance obligations that generally go beyond the records that must be kept under general laws; providing relevant information to the Department on events; and cooperating with inspectors when required.
83. There may be a case for more targeted monitoring of the 457 program, as recommended by the recent 457 integrity review, but implementing more regulation across the board given the majority of employers already do the right thing is patently unnecessary and unwarranted.

¹⁸ 6302.0, *Average weekly earnings, Australia*, full-time adult ordinary time earnings, November 2014, published by the Australian Bureau of Statistics on 26 February 2015

84. The Department of Immigration and Border Protection already has the legislative and regulatory tools to appropriately and fully administer, monitor and regulate this area. A raft of sponsorship obligations now apply, including bolstered sanctions following the commencement of the Migration Amendment (Reform of Employer Sanctions) Act 2012 on 1 June 2013.
85. That Act contained a significant number of strong measures amending the Migration Act 1958 to impose significant costs on employers. It supplemented existing criminal sanctions for employers who knowingly hire illegal workers, with non-fault based civil penalties and an infringement notice scheme.
86. Penalties under the Act apply to businesses and individuals who allow or refer for work an unlawful non-citizen, whether or not that person knew the worker was not lawfully allowed to work in Australia.
87. Penalties that apply for engaging workers illegally are up to a maximum of \$76,500 for each person found working illegally. Even if a person is not a direct employee, businesses could be committing offences if they participate in any arrangement that sees a person working illegally.
88. Recruitment consultants can be held liable if a worker does not hold the correct visa. The government estimates there are 100,000 people working in Australia illegally and AMMA maintains this must be a key focus of any enforcement work of the Department. We suggest, however, that this abuse is not a function of the 457 visa system but rather those working outside the system.
89. In July 2013, Fair Work Ombudsman (FWO) inspectors were appointed as inspectors under the Migration Act 1958, giving them power to gather information on behalf of the Department.
90. Since that time, 1,815 sponsored workers have been referred by the FWO to the Department for further monitoring and investigation, again showing the system is working as it should be and that suspected breaches are being referred for further action by the Department.
91. Note, the most recent data indicates the number of primary visa holders in Australia on 31 December 2014 was 90,040. If 1,815 were being monitored and investigated (and not all of these will involve breaches), this would be a 2% level of concern. We suggest this is well within reasonable rates for a system of this complexity, especially when transgressions can range from extremely minor to more serious, and this is in no way indicative of an actionable area of concern.
92. While AMMA was not a supporter of a workplace relations agency being given power under migration legislation, it is still the case that this has widened the

net for capturing any suspected transgressions of the law that can then be dealt with by the Department as appropriate.

93. With its current and impending compliance arsenal in place, it is up to the Federal Government to ensure it is able to carry out its role under the Migration Act 1958 as it currently stands rather than seeking to impose new measures at the expense of the vast majority of employers who adhere to their sponsorship obligations in good faith.
94. It must be noted that the 457 integrity review panel in its final report in 2014¹⁹ found that 90% of all cases with monitored outcomes in 2006 and 2007 were found to fully satisfy all of the Department of Immigration & Border Protection's compliance requirements.
95. The following table provides a summary of monitoring outcomes by the then-Department of Immigration & Citizenship from 2007 to 2013. As the right-hand column in the table shows, only 1.2% of all sponsors had their sponsorship cancelled or a sanction applied in 2013.

Table 14 Summary of monitoring and serious monitoring outcomes, 2007-2013

Year	Number of final monitoring outcomes in this year	Total sponsors at 30 June in previous year	% of sponsors monitored (a) ⁴⁵	% of monitored cases with outcome of cancellation or sanction	% of all sponsors with outcome of cancellation or sanction
2007	6 421	13 433	47.8	3.0	1.4
2008	6 232	15 391	40.5	3.0	1.2
2009	3 756	18 818	20.0	5.0	1.0
2010	2 360	19 843	11.9	8.0	1.0
2011	2 025	18 631	10.9	5.0	0.5
2012	1 518	18 992	8.0	13.0	1.0
2013	2 555	22 811	11.2	11.0	1.2

96. So the incidence of "problems" is marginal, not significant and not increasing.
97. In AMMA's view, any employer who breaches the temporary visa program rules should face the sanctions that are already available which are more than adequate to ensure the legitimacy and integrity of the system. On top of that, the 2014 integrity review has made a raft of other recommendations, supported by government that will further bolster compliance and enforcement activities (discussed later in the submission).

¹⁹ *Robust new foundations – a streamlined, transparent and responsive system for the 457 programme, an independent review into integrity in the subclass 457 programme, September 2014*

Government responds quickly to allegations of worker exploitation

98. A recent media statement²⁰ by Assistant Minister for Immigration and Border Protection, Michaelia Cash, highlights that exploitation of workers is already unlawful whether they are domestic or foreign.
99. It is already a requirement that all 457 visa holders be employed in line with Australian pay, conditions and workplace entitlements under the Fair Work Act or relevant state legislation. In AMMA's view, those that fail to comply with those requirements should feel the full force of the law.
100. As the Assistant Minister's statement points out, the FWO has recovered more than \$4 million in outstanding wages and entitlements for overseas workers and commenced more than 50 legal actions in relation to visa holders.
101. AMMA maintains that enforcing compliance in the way that is being done in relation to recent allegations of illegality is critical to maintaining public confidence in the system. However, we risk distracting regulatory bodies from this task by implementing further regulatory changes. The architecture is already in place and being used. Increased funding to increase monitoring and education activities is the logical next step, especially as bolstered enforcement and compliance powers are already pending.

Bolstered enforcement powers coming soon

102. The below recommendations of the 457 visa integrity review panel, which already have government support, are expected to be implemented shortly with the aim of further strengthening the integrity of the scheme:

Recommendation 6.4 – That there be a new sponsor obligation to ensure that the cost to the sponsor of the training contribution cannot be passed onto a 457 visa holder or third party.

Recommendation 10.6 – That the department should explore options that would enable the enforcement of the attestation relating to non-discriminatory employment practices.

Recommendation 10.7 – That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework.

Recommendation 12.1 – That sponsors be required to include as part of the signed employment contract:

²⁰ Allegations of worker exploitation, media release by Assistant Minister for Immigration & Border Protection, Michaelia Cash, 5 May 2015

A summary of visa holder rights prepared by the department; and

The Fair Work Ombudsman's Fair Work Information Statement.

Recommendation 16 – That consideration be given to the allocation of more resources to programmes aimed at helping sponsors understand and comply with their obligations, whether those programmes are delivered directly to sponsors or through the migration advice profession.

Recommendation 17 – That greater priority be given to monitoring, and that the department continue to enhance its compliance model to ensure those resources are applied efficiently and effectively.

Recommendation 18.1 – That there be greater collaboration between the department and the Australian Taxation Office to uphold integrity within the 457 programme and minimise the burden on employers.

Recommendation 18.2 – That a change to 457 visa conditions be introduced to place an obligation on the visa holder to provide the department with their Australian tax file number.

Recommendation 19.1 – That the Fair Work Ombudsman's current complementary role in monitoring compliance and referral of findings to the department for action should continue.

Recommendation 19.2 – That the department should provide information in real time that is both current and in a format compatible with those of the Fair Work Ombudsman.

Recommendation 20.1 – That the department monitor decisions of the Fair Work Commission, so as to determine if sponsors have breached obligations or provided false or misleading information.

Recommendation 20.2 – That the department require sponsors, when lodging a new nomination application, to certify that there has been no change to the information provided to the department in relation to whether the business or an associated entity has been subject to "adverse information" as that term is defined in the legislation.

Recommendation 21.1 – That dedicated resourcing be made available to the department to enable the investigation and prosecution of civil penalty applications and court orders.

Recommendation 21.2 – That the department disclose greater information on its sanction actions and communicate this directly to all sponsors and the migration advice profession as well as placing information on the website.

Recommendation 22 – That the department investigate the feasibility of system improvements that facilitate greater linkages with information held by other government agencies.

103. The government has indicated its support for all of the above measures, either outright, in-principle or following further consultation. The assumption is then that all of those measures will be progressively adopted.
104. Those measures must be given a chance to take effect before further regulation is stacked on top via any recommendation from this inquiry.

Value of skills forecasting

105. In terms of the broader policy debate around 457 visas, AMMA's very strong policy view is that it is misguided to attempt to hold the 457 scheme responsible for overcoming current and future skills shortages.
106. That is a much larger and longer-term challenge that cannot be addressed in the context of this review nor by any temporary migration pathway.
107. Increasing regulation and imposing punitive measures on business as part of the 457 program are not effective ways to address broader skills questions.
108. The 457 visa scheme as of 31 December 2014 accounted for less than 0.8 per cent of the Australian labour force. There were 90,040 primary 457 visa holders at that time compared with 11,679,400 people in the Australian labour force as a whole²¹.
109. The 457 visa program can therefore never be a primary or even significant vehicle for driving skills development in Australia. Broader collaboration between industry stakeholders, policy makers and the vocational education and training (VET) sectors is required.
110. That level of coordination was recommended by the recent 457 integrity review panel and must be given time to be implemented to become effective.
111. AMMA hopes that in this way, the 457 visa scheme can shine a light on the skills most consistently in long-term demand and feed that information back into the skills development and VET policy machinery.
112. This is perhaps the most useful thing the 457 visa scheme can do in terms of skills development – ensuring that occupations consistently being filled by 457 visa holders are identified, not with a view to assigning blame or punishing the users,

²¹ 6202.0. *Labour Force, December 2014, Australia*, released on 15 January 2015 by the Australian Bureau of Statistics

but to ensure to the greatest practical extent that training and upskilling in those areas receives the necessary attention and resources.

113. This feedback mechanism would centrally involve industry stakeholders to identify which skills are the most important for the future and which areas of skills development will support industry most effectively.

Unique and cyclical nature of the resource industry

114. The resource industry operates uniquely in terms of its cyclical demand for employment and is highly dependent on the investment cycle. There will always be peaks and troughs of labour demand in the industry due to fluctuations in the commodity cycle and other market factors.
115. Therefore, not every use of a 457 visa worker reveals the potential for long-term upskilling or employment opportunities for Australians.
116. Construction of resource projects is extremely labour and capital-intensive and often requires the use of 457 visa workers as a “top-up” to existing domestic skills.
117. In less capital-intensive phases, there may still be a need for specialist skills from overseas although the need will be less intensive.
118. The Australian resource industry is currently moving out of a phase of high capital investment and construction and into a phase more marked by production and export – ie. a less labour-intensive one.
119. Some of the skills required on resource projects, particularly those occurring offshore, will be company- or vessel-specific.
120. In some cases, workers from overseas will travel around the globe with one company or one vessel. This is a legitimate practice given the highly-specialised equipment and technology used on offshore vessels but is another factor to keep in mind when assessing the long-term training needs of Australians.
121. This type of work may not exist in Australia per se but on international vessels permanently crewed by a highly-skilled global workforce operating in Australia (whether or not they are deemed to be in the migration zone). The global pool for such skills may only number in the hundreds.
122. Deliberately making the 457 visa system more difficult, costly and cumbersome to access for those who have no choice but to use it in the short term fundamentally misses the point and would constitute very poor public policy and administration. Unfortunately, this appears to be the driving force behind

much of the public rhetoric exaggerating and misleadingly generalising from isolated instances of alleged exploitation.

123. Access to skilled labour from overseas must not continue to be demonised given its importance to building Australia's wealth and employment prospects for the future.
124. Hundreds of thousands of Australians of all ages are benefiting from opportunities to live and work overseas, including highly-remunerated and expert employees in the resource industry. This increases the skills base and competitiveness of Australia, enhances our reputation and links to global markets and customers and enriches our cultural and global engagement.
125. AMMA invites the committee to consider the logical consequences of the thinking and approaches of many of the opponents of 457 visas. Australia would be considerably impoverished and harmed if other countries went down the same path and made it harder for our nationals to work in their economies.