

*Discussion paper on the Temporary Skilled
Migration Income Threshold (TSMIT):
AMMA Submission*

March 2016



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 97 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest, do business, employ people and contribute to our national wellbeing and living standards.

The resource industry is and will remain a major pillar of the national economy and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15, the value of Australian resource exports was \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves.

AMMA members across the resource industry are responsible for significant levels of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for four per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, is employed as a result of the resource industry.

First published in 2016 by

AMMA, Australian Mines and Metals Association

Email: policy@amma.org.au

Phone: (03) 9614 4777

Website: www.amma.org.au

ABN: 32 004 078 237

© AMMA 2016

This publication is copyright. Apart from any use permitted under the Copyright Act 1968 (Cth), no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the Chief Executive, AMMA, GPO Box 2933, BRISBANE QLD 4001

EXECUTIVE SUMMARY AND RECOMMENDATIONS

1. In response to the discussion paper released by the review into the Temporary Skilled Migration Income Threshold (TSMIT), AMMA welcomes the opportunity to make this submission on behalf of its members.
2. As the 457 integrity review report¹ pointed out, the TSMIT has two roles:
 - a. As a threshold that assesses eligibility of a nomination (ie controlling which occupations can be sponsored under a 457 visa); and
 - b. As an income floor for visa holders.
3. The Temporary Work (Skilled) Visa (Subclass 457) scheme, within which the TSMIT currently plays that dual role, is an important scheme for supplementing the Australian workforce with temporary skilled labour from overseas when critical skills gaps emerge. Skills gaps in the resource industry remain serious and in need of urgent remediation, notwithstanding that at the macro level demand for employment may have cooled, and demand for migrant employees has fallen markedly.
4. It is important that the 457 scheme not be made more difficult, costly and cumbersome to access for the businesses that rely on it to meet operational needs. A sensible and fair approach to policy-making in this area will enable timely access to skilled overseas labour along with appropriate measures to ensure the integrity of the scheme and protections against exploitative workplace practices.
5. A fair and reasonable skilled migration scheme will ensure that employers continue to have access to the labour they need and that 457 visa holders have a reasonable means of support whilst living and working in Australia.
6. From the outset it is important to note that not every 457 visa granted equates to an Australian job; far from it. The temporary nature of many skills gaps, particularly in the resource industry, which are almost entirely dependent on new onshore and offshore resource construction projects coming online, means that in most cases long-term employment of an Australian would not necessarily follow. Often, the skills brought in under 457 visas are so highly specialised and of such a global nature that it is neither feasible nor desirable to train Australians in those roles.

¹ *Robust new foundations: A streamlined, transparent and responsive system for the 457 programme, 2014*

7. AMMA believes the current TSMIT functions reasonably well in balancing the dual objectives of access to labour along with maintaining the perceived integrity of the scheme. AMMA would hasten to add, however, that just because the mining industry as a high-paying industry has not been detrimentally affected by the TSMIT in terms of recruitment decisions, that does not mean the TSMIT is perfect. There is definitely room for improvement in the ways that AMMA proposes in this submission.
8. It should also be recognised that it is impossible to meet or alleviate all the professed concerns with the entry of migrant employees into Australia. A proportion of the current opposition to skilled migration is visceral or calculated and not amenable to being changed by either improved information or bolstering the system. For some, the existence of the 457 visa scheme and the entry of migrant employees into Australia is problematic and must be opposed at all turns.
9. As the 457 integrity review report² pointed out, there are a number of aspects to the TSMIT that are “complex and opaque”.
10. AMMA acknowledges the TSMIT and its interactions are complex and not well-understood. However, given that it is not currently causing major problems for AMMA members, AMMA believes it is appropriate to maintain the TSMIT in relation to both its purposes, but calculated and indexed in a different way. Changes as recommended in this submission can maintain the viability and effectiveness of the TSMIT into the future.

Resource industry use of 457 visas

11. The resource industry operates uniquely in terms of its cyclical demand for employment, with demand for labour being highly-dependent on the investment cycle. There will always be peaks and troughs in industry demand due to fluctuations in the commodity cycle together with other market factors.
12. The latest figures³ for the number of 457 visa applications lodged and granted in the mining industry reveal a marked decline. This is to be expected given the markedly reduced demand for employees on projects across the industry which has seen numerous redundancies and downsizings. It also reflects the move from a labour-intensive construction phase of many projects in recent years, where supplementary labour was needed to complete projects on time, to a less labour-intensive operational phase.
13. Total employment in the mining industry has declined from a high of 277,900 in May 2012 to 226,000 in November 2015. In the 12 months between November 2014

² *Robust new foundations: A streamlined, transparent and responsive system for the 457 programme*, 2014

³ *Subclass 457 quarterly report, quarter ending December 2015*, published by the Department of Immigration & Border Protection

and November 2015 alone, industry employment shrank by 5,600 people, from 231,600 to 226,000. This has and should have a flow-on effect to the demand for skilled labour from overseas on resource projects.

14. According to the latest 457 quarterly report⁴:
 - a. Across all industries there was a 1.2% decline in the number of 457 visa applications lodged in the six months to 31 December 2014 compared with the six months to 31 December 2015;
 - b. In mining, this decline was much more significant, with a 39.7% reduction in visa applications during that period, from 1,020 applications down to 620;
 - c. Visa applications in the mining industry during that period represented just 2.3% of all applications;
 - d. In the mining industry, 457 visa holders currently working in Australia account for just 1.2% of the mining labour force (2,740 out of a total mining workforce of 226,400 as of November 2015); and
 - e. Across all industries, 457 visa holders account for just two-thirds of 1% of the total labour force (85,900 visa holders out of a total Australian workforce of 11.9 million).
15. In AMMA's view, these figures show the system is working effectively as a supplement to Australian labour; fluctuating with the overall labour market and not displacing the employment of Australian residents.

Snapshot of AMMA's recommendations

16. AMMA's key observations and recommendations to the review are as follows:
 - a. The 457 visa scheme is being used appropriately and is responsive to changes in labour market demand and domestic unemployment;
 - b. The mining industry has seen a nearly 40% reduction in 457 visa applications in the past 12 months, appropriately reflecting the downturn in the industry;
 - c. The TSMIT is currently operating fairly and appropriately for the purposes of AMMA members in the high-paying mining industry;
 - d. Regional concessions to the TSMIT should remain available under labour agreements such as Designated Area Migration Agreements (DAMAs). Consideration should also be given to allowing the same (up to 10%) salary

⁴ *Subclass 457 quarterly report, quarter ending December 2015*, published by the Department of Immigration & Border Protection

concessions for regional employers that are not able to operate under labour agreements or DAMAs, but this should be subject to specific departmental approval on a case by case basis;

- e. The current TSMIT level of \$53,900 should be indexed annually to the ABS Wage Price Index (WPI) series⁵ as outlined below;
- f. The TSMIT should be based on total remuneration as a more appropriate measure of remuneration (this would include normal penalties and overtime in a typical working week, ie the annualised salary package); and
- g. Policy-makers should work to better highlight the protections that are in place for Australian and sponsored employees' wages under the 457 visa scheme, including the TSMIT and the market salary rates requirements and the various protective functions they play.

⁵ Catalogue number 6345.0, *Wage Price Index, Australia*, last published by ABS for December 2015 on 24 February 2016

KEY ISSUES RAISED IN THE DISCUSSION PAPER

About the TSMIT

17. The TSMIT currently has a dual function under the 457 visa scheme. One of those functions is to set a minimum salary threshold for 457 visa holders so they have sufficient income to support themselves. Some would say it also has a role in ensuring that Australian wages are not undercut by 457 visa holders so as not to detrimentally impact the employment of Australians.
18. The TSMIT's second function is as an eligibility threshold for occupations that can be brought in under the 457 scheme. In this regard, if the market rate for the nominated occupation is below the TSMIT (currently set at \$53,900 a year) then that position could not be sponsored under a 457 visa, even if the employer was willing to pay more than the TSMIT to that visa holder.
19. Some would argue the TSMIT also plays a protective role in relation to Australian jobs in that it does not allow lower-skilled roles to be filled by skilled migrants where Australians might easily fill the role.
20. It is important to note, however, that there is no hard and fast correlation between the skill level and the availability of Australian employees. Skills shortages at the lower end of the skills scale (ie Skill Level 5 – noting that AMMA members rarely go lower than Skill Level 4) are just as detrimental to projects as at the highest skill level (ie Skill Level 1). Skills shortages can and do emerge at all skill levels, something the TSMIT cannot fix.

Other forms of salary protection

21. While this review is about the TSMIT and the appropriateness of current settings, it is important to note that while the TSMIT functions as a salary “floor” below which no 457 visa holder can fall, there is alongside that a requirement to pay “market salary rates”. Thus, TSMIT is not the only or sole salary floor mechanism in the 457 visa system.
22. Employer sponsors of 457 visa holders are required to pay equivalent salaries to foreign nationals as are paid to Australian employees in the same occupation. This is important because it demonstrates that the TSMIT is not the only protection in place in relation to visa holder salaries. This is something policy-makers could better emphasise in response to the often negative public commentary surrounding the use of 457 visa holders and their purported “undercutting” of Australian wages and conditions. Regardless of the level of the TSMIT, the market salary rates requirement would still exist for those earning up to \$250,000 a year.

Reasonable means of support

23. The discussion paper states that the TSMIT aims to ensure 457 visa holders are paid sufficient funds to provide a reasonable standard of living whilst in Australia. It notes that 457 visa holders may be subject to higher living costs than Australian employees (ie the requirement to pay school fees for children to attend public schools in some states) and may have less access to social services.
24. Mining industry wages paid to 457 visa holders have little to do with the TSMIT as a salary floor but are worth highlighting because they show that 457 visa holders in the industry are very well-paid, commensurate with the seniority and specialisation of their roles.
25. According to the latest 457 quarterly report⁶:
 - a. Average nominated base salaries for 457 visa holders in the mining industry were \$169,200 a year as at 31 December 2015, making it by far the highest-paying industry for 457 visa holders;
 - b. Average weekly earnings in the mining industry for Australians are \$131,196⁷, which reflects the comparative seniority of positions coming in under 457 visas. In other words, not only does the mining sector pay the highest average wages, but sponsored employees under 457 visas exceed the average salary in this peak-paying industry by over \$36,000 – i.e. by more than the Australian minimum wage;
 - c. Average nominated total remuneration for mining industry 457 visa holders was \$217,500, far outstripping other industries;
 - d. Average total earnings in the mining industry for Australians is \$135,704, again reflecting the comparative seniority of positions coming in under 457 visas;
 - e. Of all 457 applications granted in the six months from 1 July 2015 to 31 December 2015, the vast majority of applications across all industries (64.5%) were for Skill Level 1 positions (ie the most highly-skilled roles), representing 14,740 visas granted in total across all industries, such as chief executive or senior operational director;
 - f. By far the most common nominated occupation under 457 visas in the six months to 31 December 2015 across all industries, including mining, was professionals, at 50.7% of applications;

⁶ *Subclass 457 quarterly report, quarter ending December 2015*, published by the Department of Immigration & Border Protection

⁷ 6302.0, *Average Weekly Earnings, Australia, November 2015*, published by the ABS on 25 February 2016

- g. Skill Level 5 positions (ie the lower end of the skills list available under the 457 visa scheme) accounted for just 0.1% of applications granted during that period (or 20 visa grants in total). This is critical in considering the TSMIT. Clearly it is (along with other mechanisms) already successfully confining the 457 visa system to higher paid, higher skill activities; and
 - h. It is worth noting that the lowest skill level that AMMA members will generally access through the 457 visa scheme is Skill Level 4, which includes drillers (ANZSCO 712211).
26. The above figures show that:
- a. 457 visas across all industries are not being used to "cut wages" as the base and total remuneration paid to 457 visa holders reflects the seniority of most positions brought in under 457 visas; and
 - b. The mining industry is less concerned with the TSMIT's role as a salary floor, given average total earnings of 457 visa holders in the industry is more than four times the TSMIT level (\$217,500 compared with \$53,900). For this reason, the current level is causing no problems for AMMA members and also ensures those operating at the lower end of the TSMIT wage scale in regional mining towns are not precluded from using the scheme.
27. Taking the above statistics into account, AMMA believes the TSMIT is currently functioning appropriately in relation to its two functions. Having said that, this is an area that should be subject to some refinements as outlined in this submission.

Regional concessions

28. As the discussion paper points out, since the TSMIT was first introduced in 2009, there have been no regional concessions, reflecting the broader aim of TSMIT to provide overseas employees with a reasonable standard of living without access to government support.
29. The discussion paper notes that the recent 457 integrity review recommended that regional concessions to the TSMIT be considered in limited circumstances where evidence clearly supports such a concession.
30. Salary concessions of up to 10% of the TSMIT can be obtained under Designated Area Migration Agreements (DAMAs). AMMA believes that in some cases regional concessions are appropriate to reflect the lower wages offset by the lower cost of living in regional areas. However, in order to ensure the integrity of the scheme, such concessions, if not negotiated under a labour agreement, should have to be specifically approved by the Department based on evidence of a distinct and demonstrated need.

31. That evidence could include pay records for local Australian employees in the same roles and / or evidence of advertising for jobs locally.
32. While not sought in the high-paying mining industry, AMMA believes that regional concessions to the TSMIT are appropriate given that in some cases skills shortages can emerge in regional areas from a range of factors including demand for labour by local mining operations. In turn, some local communities (often remote) rely on skilled labour, and the 457 system should support them in accessing the system.
33. AMMA believes that the current ability for regional employers to access up to a 10% concession on the TSMIT under labour agreements approved by the Department is appropriate and should continue. Importantly, this does not allow foreign nationals to undercut Australian wages given that those concessions can only be obtained if an equivalent Australian employee is paid less than \$53,900.
34. Currently, smaller employers, or those who do not necessarily want to enter into a labour agreement, cannot access those concessions. AMMA would support concessions being available in regional areas without a labour agreement subject to the specific approval of the Department to ensure the fairness and integrity of the scheme. This may be necessary to attract a range of skilled persons to remote regions where it is not possible to attract Australians, or where Australians are not willing to commute there to work in the resource industry.
35. AMMA notes a recent news article⁸ reports that during debate over the recent China-Australia Free Trade Agreement (CHAFTA), Labor insisted that the TSMIT as a salary floor be increased from \$53,900 to \$57,000 but later dropped that position after it was revealed this would price some rural areas out of the scheme.
36. For this reason, AMMA believes that concessions to the current level of TSMIT will in some cases be appropriate to ensure rural and regional areas can access the 457 visa scheme as needed.

One TSMIT for all?

37. Notwithstanding the above recommendation that regional concessions to the TSMIT be available on a case-by-case basis, AMMA believes it would risk introducing an extra layer of complexity, confusion and regulatory burden if there was a different TSMIT level for different industry sectors or based on some other criteria.

⁸ *Skilled migration: business groups reignite push for 457 visa reform*, The Australian, Annabel Hepworth, 14 January 2016

38. This could also enliven arguments that wages of 457 visa holders should go up and down according to wage fluctuations in an industry, which would be impractical and detract from the purposes and effectiveness of the TSMIT

TSMIT v federal minimum wage

39. The current federal minimum wage is \$656.90 a week, which is equivalent to \$34,158 a year. AMMA notes this is likely to increase on 1 July 2016 when the Fair Work Commission hands down its annual wage decision.
40. Given that the TSMIT is currently \$53,900, it seems an accurate reflection of the fact that the 457 visa system is aimed at skilled labour rather than those at the lowest end of the skill scale and its relativity to the minimum wage seems appropriate at this point in time. It should be recalled, however, that AMMA specifically recommends against any relativities being set, and noting that the minimum wage has a safety net function for the lowest paid quite distinguishable from functions of the TSMIT.

Link to wage price index

41. In AMMA's view, it makes most sense to index the TSMIT to a wages index. AMMA's recommendation is that it be linked to the Wage Price Index (WPI) which is published quarterly by the Australian Bureau of Statistics⁹.
42. The WPI measures changes in the price of labour in the Australian labour market. In a similar manner to the CPI, the WPI follows price changes in a fixed "basket" of jobs and is therefore not affected by changes in quality and quantity of work¹⁰.
43. The WPI is a key economic indicator used by a wide range of organisations and individuals in industrial relations forums, developing wages policy and economic analysis. It is the major measure of inflationary pressure on wages and salaries and is one of the preferred information sources when assessing monetary policy.
44. The WPI broadly measures changes in the wages paid by Australian businesses to employees and is published quarterly with a seven-week lag time.
45. The headline figure of the WPI is the index for the total hourly rates of pay excluding bonuses for Australia and is published in original, seasonally adjusted and trend terms.
46. In AMMA's view, trend WPI would be the smoothest and most appropriate measure to link to the TSMIT.

⁹ 6345.0, *Wage Price Index, Australia*,

¹⁰ 6345.0, *Wage Price Index, Australia, December 2015*, published by the ABS on 24 February 2016

47. AMMA notes that the current TSMIT of \$53,900 was set on 1 July 2013, which means as of 1 July 2016 it will not have been increased in three years.
48. That being the case, if an indexed rise occurs on 1 July this year and if the WPI is used as a measure as AMMA recommends, the 1 July increase could either be drawn from the annual WPI for the 12 months leading up to December 2015 (published on 24 February 2016) or the yet to be published March 2016 WPI (to be published on 18 May 2016).
49. AMMA would be happy to discuss this further with the panel, however, it appears that the release date for the March data is too close to a 1 July commencement date for an updated TSMIT to be practical or allow enough time to inform users.
50. AMMA notes the latest WPI for the year ending December 2015 was 2.2% across all industries (2% in the private sector and 2.6% in the public sector). This is in comparison with a CPI increase of 1.7% during that same time period.

Define total remuneration

51. AMMA agrees with ACCI's submission that the remuneration terminology should be defined for the purposes of TSMIT (and market salary rates) as the "total remuneration package" – which would include normal penalties and overtime in a typical working week, or what is typically referred to as the "annualised salary package".
52. This would ensure a standardised measure that was clear in terms of what it included and what is being compared for the purposes of the TSMIT. It would also potentially reduce the regulatory burden for employer sponsors given that the figure is already provided by them for compliance purposes to the Department.

Public communication strategies

53. The area of skilled migration is one where there is a lot of misinformation in the public domain. In fact, there are persistent and systematic campaigns to misrepresent the system and ignore the substantial protections, checks and balances and designed limitations under which the 457 visa system operates.
54. Many trade unions have a very public stance against the use of skilled migrants even under the highly-regulated 457 visa scheme. Unions are not reticent in seeking to characterise any and all parts of the 457 visa system in the worst possible light.
55. For this reason, more clarity around the salary protections afforded to overseas and Australian employees would be useful in helping to validate rather than demonise the use of skilled migration.

56. In particular, clarity would be useful around:
- a. The fact that designated area migration agreements - while allowing up to 10% concessions on the \$53,900 TSMIT - only allow this where an equivalent Australian employee is receiving less than the TSMIT. In short, it needs to be clarified, and regularly, that even with those concessions available, visa holders must be paid at least what an equivalent Australian employee is and so cannot undercut Australian wages. This point could be usefully made once again in the final report of this review.
 - b. In addition to the TSMIT acting as a salary floor, there is also a requirement for 457 visa sponsors to pay "market salary rates", ie equivalent rates for foreign nationals and Australian employees. This applies to all sponsored overseas employees earning less than \$250,000 a year and is an important protection to bring to the public's attention so as not to further undermine the perceived integrity of what is an important scheme for Australia's prosperity.
57. AMMA would be pleased to answer any questions you might have in relation to this submission and to develop / further explore any of our analysis or proposed approaches.