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AUSTRALIAN MINES AND METALS ASSOCIATION

SUBMISSION TO JOINT STANDING COMMITTEE ON MIGRATION

INQUIRY INTO TEMPORARY BUSINESS VISAS

JANUARY 2007

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1. AMMA PROFILE

AMMA is the national employer association for the mining, hydrocarbons and associated processing and service industries. It is the sole national employer association representing the employee relations and human resource management interests of Australia's onshore and offshore resources sector and associated industries.

AMMA member companies operate in the following industry categories:

- Exploration for minerals and hydrocarbons
- Metalliferous mining, refining and smelting
- Non-metallic mining and processing
- Coal mining
- Hydrocarbons production (liquid and gaseous)
- Associated services such as:
 - Construction and maintenance
 - Diving
 - Transport
 - Support and seismic vessels
 - General aviation (helicopters)
 - Catering
 - Bulk handling of shipping cargo

AMMA represents all major minerals and hydrocarbons producers as well as significant numbers of coal, construction and maintenance employers in the resources sector. AMMA is uniquely able to articulate the workplace relations needs of the resources sector.

The Australian resources sector makes a significant contribution to Australia's wealth and prosperity, underpinning critical supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport sectors.

The resources sector will contribute minerals and energy exports in the order of \$110 billion in 2006-2007. This represents approximately two thirds of Australia's total commodity export earnings.

The mining industry directly employs 134,500 employees.¹ Many more employees are indirectly employed as a result of activity in the mining sector. Whilst the majority of the resource sectors labour requirements are sourced from within Australia, it is vital that where skill shortages exist at the macro or micro level alternative sources of labour are readily accessible in order to ensure the continued contribution of the resource sector to the Australian economy.

2. TERMS OF REFERENCE

The Joint Committee's Terms of Reference are to:

- Inquire into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 visas and Labour Agreements; and;
- Identify areas where procedures can be improved.

3. SUMMARY

This submission addresses the Committee's terms of reference with an emphasis on the skills shortage in the Australian resources sector and the need for the 457 temporary skilled visa to continue without unnecessary restriction or alteration.

AMMA endorses the Committee Chairman's comments that *"Australia's temporary skilled migration 457 visas are playing an important role in attracting people with the skills Australia needs"*.

AMMA submits that the resources sector's track record demonstrates compliance with the spirit and intent of the s.457 visa requirements and that the regulatory burden on resources sector should be reduced in recognition of past performance.

AMMA contends that access to skilled overseas labour under the s.457 visa should not be impeded by the introduction of additional regulations and/or limitations. AMMA contends that the needs of the resources sector would be assisted by the streamlining of the s.457 visa process to allow for faster processing, especially where the business seeking to access skilled overseas labour on a temporary basis has an established record of compliance.

In particular AMMA commends the following position to the Committee;

¹ ABS, Australian Labour Market Statistics, Detailed - Electronic Delivery, (Cat. no. 6105.0).

- I. *In order to expedite the 457 visa process; standard business sponsors in the resources sector who have a demonstrable record of compliance with the spirit and intent of the 457 visa process should be provided with dispensation in respect of some of the requirements..*
- II. *The s457 Visa process should recognize that the resources sector has complied with the spirit and intention of the legislation and should not be restricted by measures designed to counter concerns in other sectors.*
- III. *AMMA contends that there is no demonstrated need to introduce labour market testing in the resources sector and that such a process would result in further unnecessary delays to the 457 visa process.*
- IV. *AMMA supports the need for s.457 visa applicants to have an adequate comprehension of the English language, but contends that this competency should be able to be attained upon arrival in Australia.*
- V. *AMMA contends that the minimum annual salary threshold should recognize remuneration received other than in the form of base salary, i.e. international assignment remuneration.*
- VI. *AMMA contends that the 457 temporary long-stay business visa is not the appropriate vehicle to cater for skilled employees required to work in Australia on a short-term basis.*

4. THE RESOURCES SECTOR - SKILLS SHORTAGE

The Australian resources sector and allied industries (i.e. maintenance and services) is experiencing difficulties in securing sufficient skilled labour and professionals. While shortages have traditionally existed for professional personnel, demand for tradespersons and semi-skilled workers now also exceed supply. This fact has been demonstrated by a number of studies.

In July 2006, Argus Research Pty Ltd delivered a commissioned report titled *Australian Development Projects* which made findings in respect of labour shortages and the increase in resources sector construction projects:

The report found that the "... the rapid increase to the value of construction projects in QLD and WA is faster than the small population, limited infrastructure and smaller supplier base in these states can accommodate. This rapid increase will only exacerbate existing shortages of skilled workers, supplier capacity constraints and transport bottlenecks.

It is likely these difficulties will lead to cost increases, project delays and potential deferment of marginally viable projects".

The report found that the skills shortages and retention issues in the resources sector are exacerbated by:

- a concurrent boom in the construction, mineral and energy sectors resulting in direct competition for skilled labour;
- low unemployment rates;
- aging demographics;
- an earlier than average retirement age in the resources and construction sectors;
- operations in remote localities;
- a trend away from direct employment by major resources companies resulting in a reliance on contractors to source labour on a project basis; and
- a declining ratio of experienced to inexperienced employees.

The Australian Bureau of Agriculture and Resource Economics Australian Commodities survey in 2006² found that the skills shortage is a major obstacle to industry growth, which has a detrimental impact on both industry profitability and future growth prospects. ABARE found that skill and labour shortages are occurring at all levels of the industry with specific shortfalls in:

- mining engineers
- metallurgists;
- geologists
- the mechanical and electrical trades;
- construction workers; and
- semi skilled operators.

The findings of the ABARE survey has been confirmed by AMMA members who also report shortages in mineral exploration drillers.

ABARE notes *"... as competition for skilled labour and materials and the attendant cost pressures continue it is likely that the feasibility of any less advanced projects may be re-examined. Some project developments may be deferred beyond their optimal start up dates"*.

In August 2006 a report by the federal Department of Education, Science and Training titled *Staffing the Supercycle: Labour Force Outlook in the Minerals Sector, 2005 to 2015*, made the following key findings:

² ABARE *Australian Commodities Vol 13 No2 June Quarter 2006*

- The minerals sector will need to employ 70,000 additional employees to achieve currently predicted increases in output.
- The largest shortages are projected to be in the non-professional occupational classifications with the greatest absolute increases being in tradespersons (26,983 additional employees required) and semi-skilled employees (22,059 additional employees required).
- Of the 70,000 additional employees required, almost 42,000 will be required in Western Australia, 15,000 in Queensland, and approximately 5,000 in both New South Wales and South Australia.
- The output projections indicate the fastest growth will occur between 2006 and 2010. There is the potential for a rapid onset of significant labour shortages.
- These shortages will worsen as the growth rate of projected labour demand remains above the capacity of the labour market to respond.

The projected employment growth to 2015 of 70,000 additional employees is broken down in the Report into the following categories:

Professional employees	7,660
Managers and administrators	2,930
Labourer and related workers	6,378
Semi-skilled workers	22,059
Tradespersons	26,983
Technical employees	4,153
Total	70,163

The Report findings indicate that the three occupational categories that will experience the greatest labour supply shortage are labourers and related workers, semi-skilled workers, and tradespersons.

The DEST report³ further indicates that:

- Labour shortages are likely to be a major constraint on the growth of the Australian minerals sector over the next decade.
- The projected gaps are largest in occupational classifications with low skill levels.
- The labour shortage problem identified is not one that training policy can necessarily address but is more a matter of attracting people to the industry.

³ *Staffing the Supercycle: Labour Force Outlook in the Minerals Sector, 2005 to 2015*

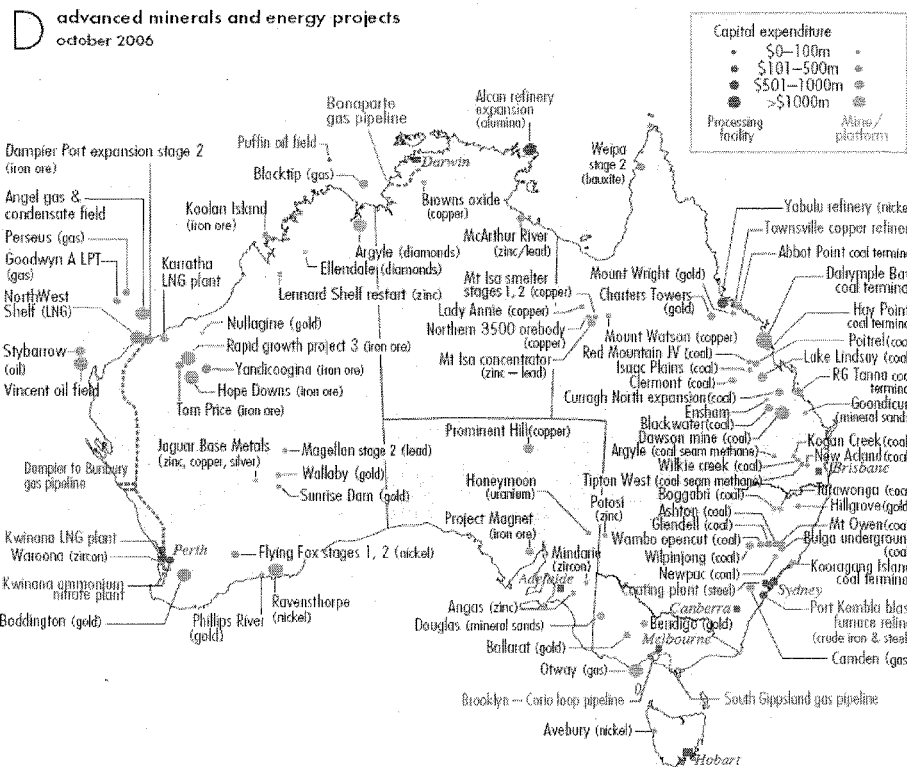
- The sector is facing a people shortage, not necessarily a skills shortage per se.
- The shortfall of employees is so large that all alternative labour reservoirs need to be identified and targeted.

As the resources sector continues to strive for efficiencies with continuous improvement taking advantage of what technology can offer, the demands for highly skilled employees will continue.

Down stream mineral and petroleum processing is becoming more complex resulting in more highly skilled design, construction and maintenance employees being required. New industries such as chemical manufacture and advanced technologies like sub-sea engineering require knowledge and experience which is rare in Australia.

In October 2006 the ABARE's *Minerals and Energy Major Development Projects October 2006* listing, reported record numbers of minerals and energy projects which are currently committed or under construction. In order to meet the demands of these projects the skill shortages must be met.

This is demonstrated graphically below⁴;



⁴ Australian Commodities Vol.13 No. 4 December quarter 2006

AMMA contends that the existence of a skill shortage in the Australian resources sector and the potential adverse impact on productivity is now beyond doubt.

On this basis there is no justification to require labour market testing for the temporary 457 visa. The labour market testing process will only delay further, a process that is already lengthy.

The skill shortage is as a result of rapid acceleration of demand and the resulting exponential growth of Australia's resources sector to meet the increased global demand.

The pace and scale of this growth is unprecedented in the mining, oil and gas sectors. The inability or restrictions on the ability to source skilled labour from overseas can provide a ceiling on future growth or lead to projects being relocated outside Australia.

Resources sector employers have reacted to the skill shortage by employing additional graduates, apprentices and trainees. The federal and state governments have assisted by introducing fiscal measures to ease the financial burden of employing semi skilled and unskilled labour.

The Western Australian Department of Education and Training has invested more than \$60 million in publicly funded training in skill areas relevant to the infrastructure/resources development sectors, representing approximately 30,000 training places.

The Federal Department of Education, Science and Training provides training and education incentives to employers and employees, including the Australian Apprenticeships Incentives Program and Group Training programmes.

Despite efforts that include training of new job entrants, promoting careers in the resources sector and interstate migration, the skill shortage remains an ongoing problem for employers in the resources sector.

Access to temporary and permanent overseas skilled labour is a small but important component of a resources sector employer's workforce. The intention of resources sector employers in the long term is to up skill and supplement the Australian workforce, not replace it.

The shortage of skilled labour has become so acute that it is forcing employers into a wages/salaries bidding war. The risk of labour shortages is now often managed by having work performed offshore.

The resource sector is further hampered by the requirement to work in remote areas. An unwillingness to live in remote locations means that even if labour is available in Australia, there may still be recruitment difficulties.

AMMA contends that there is a demonstrated need to grow the pool of skilled employees in Australia, increase skill levels of the existing Australian workforce and to import specialist expertise to raise the competence of the local workforce.

Employers in the resources sector properly use the temporary 457 visa to meet its labour needs and as a result provide a demonstrable benefit to the Australian economy.

5. TEMPORARY 457 VISAS

The 457 visa is a multipurpose temporary visa which provides for up to 4 years stay in Australia for people who migrate to fill skilled temporary positions in Australia.

Persons applying under this category need to be sponsored by an Australian business to work for that business in Australia by filling certain positions, in executive, professional, specialist or other skilled positions such as tradespersons and related workers (see the Australian Standard Classification of Occupations Groups 1-4).

Prior to nominating the expatriate employee, the sponsoring Australian business must first be approved:

- as a standard business sponsor;
- as a sponsor to a regional 457 visa; or
- as a party to an approved labour agreement.

The requirements on sponsoring employers prior to and subsequent to engaging skilled overseas labour are comprehensive.

5.1 Standard Business Sponsorship

The Standard Business sponsorship is the preferred method of recruiting temporary overseas skilled workers in the resources sector. The process involves three steps:

- i) The employer applies for approval as a business sponsor and number of positions required.
- ii). The employer nominates the occupations (and person if known) to be filled.
- iii). The prospective employee applies for a Temporary Business (long stay), visa, subclass 457.

5.2 Becoming a Sponsor

To be approved as a sponsor, the employer must agree to abide with certain undertakings and demonstrate that they:

- are a lawful and actively operating business;
- will be the direct employer;
- have a good business record;
- will bring benefit to Australia through the employment of a temporary resident; and
- will advance skills through technology or training.

5.3 Lawful Active Operating Business

A business that exists on paper only, for example a shelf company, is not considered an operating business unless there is clear evidence of an intention to establish the business. Labour hire companies in the resources sector can be accepted as active operating businesses although they face increased difficulty demonstrating a commitment to training Australian residents.

5.4 Benefits to Australia

The employment of a temporary business entrant must benefit Australia. This can be demonstrated through contribution to:

- expanding Australian trades in goods or services;
- improving Australian business links with international markets;
- creating or maintaining employment for Australians; or
- Increasing competitiveness within sections of the Australian economy.

5.5 Advancing Skills Through Technology or Training

The business sponsor must also demonstrate that their Australian business operations will introduce, use or create new or improved technology, or new business operations.

5.6 Sponsor Undertakings

- Guarantee the cost of return travel.
- Pay all medical or hospital expenses for a sponsored person arising from treatment in a public hospital other than expenses met by health insurance (temporary residents are not eligible for Medicare or social security unless reciprocal arrangements exist).
- Deduct tax instalments and make superannuation contributions, unless a specific exemption applies under the

SGC legislation (e.g. totalisation agreement or senior executive exemption).

- Notify immigration within 5 working days after a sponsored person ceases to be employed.
- Comply with workplace relations laws.

5.7 Nominating a Position/s

The Process

- The employer must be an approved business sponsor.
- The position must be remunerated at or above the gazetted minimum salary.
- The sponsorship is valid for 2 years or until the approved number of positions is filled, whichever is the earliest.

A minimum skill level applies to all positions to be filled by temporary overseas employees. A waiver of the minimum skill level may be available to employers operating in regional/low population growth areas for purposes of sponsoring sub-trades.

5.8 Salary Threshold

The current minimum salary is \$41,850 per annum. This salary is the gross salary, but excludes:

- accommodation/rental assistance;
- incentives/bonuses;
- vehicle/vehicle allowance;
- living away from home allowance;
- superannuation contributions; and
- other allowances or entitlements in accordance with a companies international assignment, expatriate or relocation policy.

5.9 The Nominee (Overseas Employee)

The nominee is the primary applicant and any family members accompanying them to Australia are dependants. The primary applicant and any dependants must apply for and be granted a visa.

5.10 Assessment of Nominee

- The employer must be an approved and current business sponsor.

- The nominated position must be approved.
- The position must not have been created solely in order to gain a visa for the applicant.

5.11 Skills Assessment

The applicant must have skills that match those required for the vacancy for which they have been nominated. A skills assessment of the applicant is not generally required. However, if there are doubts about the applicant's skills and/or experience to fulfill the duties of the position, a skills assessment may be required.

5.12 Health Requirements

Generally visa applicants must undergo a chest x-ray examination. Applicants who have an occupation or history that might have resulted in blood contact may also be required to undergo HIV and hepatitis testing.

5.13 Character Requirements

All applicants must be of good character. Police certificates are not normally required but may be asked for, including personal details to enable character checks to be undertaken.

5.14 Dependants

The family members (dependents) of a primary applicant must:

- be assessed as being members of the family;
- meet health and character requirements; and
- be included in the sponsorship undertakings relating to the primary applicant.

5.15 Visa Conditions

The visa holder must not:

- work in a position inconsistent with the nominated position;
- become unemployed or change employer; or
- work for another person or for themselves while working for the sponsor.

If the visa holder wishes to change employer, they must apply for and be granted a new visa before commencing in their new employment:

- The new employer must be an approved sponsor.
- The new position must be the subject of an approved nomination.

5.16 Monitoring and Compliance

Approved business sponsors are subject to monitoring to ensure compliance with sponsorship responsibilities and requirements.

Sponsors are required to complete a monitoring form within 12 months of their sponsorship. The form requires the sponsor to provide information about their temporary overseas employees, including evidence of the salaries being paid, and information to assess whether sponsorship undertakings, including training commitments are being met.

Failures in compliance are taken into account in assessing any future sponsorship applications made by the business.

6. DIFFICULTIES WITH THE 457 VISA PROCESS

AMMA members have voiced their support for the 457 visa and generally have been complimentary in respect to processes involved.

There have, however, been a number of consistently reported difficulties which fall within the ambit of the Committee's Terms of Reference, particularly in areas where the procedures can be improved.

6.1 Minimum Salary Threshold

AMMA accepts that a minimum salary threshold needs to be imposed; the current indexed rate is \$41,850. AMMA contends, however, that the rate should recognize guaranteed payments common in the resources sector. International assignment remuneration circumstances such as:

- tax equalisation on salaries,
- cost of living/assignment allowances,
- salary gross ups,
- field bonuses, and
- regular penalty payments

should be recognized as contributing toward the minimum salary calculation.

Large multinational companies provide generous remuneration packages for employees on international assignment. Base salaries may not be adjusted for an international assignment as they are set on a company-wide policy basis.

Without the ability to allow for the above circumstances these employers need to ensure base salaries alone meet the threshold when an employee's role may not have changed, only their location of employment. While the total remuneration for the employee remains the same, companies are forced to compromise internal remuneration practices with an alternative salary arrangement. This can then impact on the ability to repatriate the employee back to their country of origin.

In other instances employees are guaranteed remote location allowances in some cases up to \$A250 a day which is not recognized for the salary threshold purposes.

The mineral sands industry has traditionally paid a low base rate for a standard 38 hour week with the opportunity for employees to earn up to \$A90, 000 per annum as a result of working additional hours.

In the resources sector, the issue is not one of bringing in 'cheap labour' but rather one of recognizing varying remuneration arrangements. The regular s.457 reporting requirements can easily identify whether employees are receiving a guaranteed package that equates to or exceeds the salary threshold.

6.2 Short Term Employees

The s.457 visa allows employees to work in Australia for up to 4 years with a right of renewal for a further 4 year period. The s.457 visa is designed for temporary long-term work in Australia.

Many resources sector employers have a much shorter requirement for overseas employees to work in Australia. Employees may be brought into Australia for trouble shooting for a few days where Australian expertise is not available or for the training of Australian residents for very short periods of time. In these circumstances the obligations required for a s.457 visa place an unnecessary and onerous burden upon employers. Where hands on work is performed there is no alternative visa.

To illustrate this point, professional staff working on board a marine vessel (but not as part of the ships crew) are required to be sponsored as 457 visa applicants if they work on board the vessel as it enters an Australian port for 2 days while the crew take on provisions and mobilise for work in oil and gas fields in international waters. If they do not obtain a 457 visa for the 2 day stay, the professional staff risk being

held in custody and sent back to their home country unable to return for a period of 3 years.

For some AMMA members their 457 temporary visa employees do not reside in Australia, but return home on each shift rotation or when the short tasks they are sponsored for are complete. With the 457 obligations designed for working and residing in Australia for up to 4 years, this visa is not appropriate in these circumstances. No other alternate and appropriate visa exists.

6.3 Monitoring and Compliance

The present system includes a monitoring process designed to ensure sponsors are fulfilling their obligations including:

- training commitments;
- meeting the indexed salary minimum;
- accepting responsibility for medical and hospital costs;
- complying with all industrial relations laws;
- ensuring a sponsored employee holds any mandatory licences;
- deducting appropriate taxes and paying statutory superannuation;
- notifying any change of circumstances; and
- ensuring employees perform the work stipulated in the visa application.

Such monitoring adds to the already large regulatory burden facing employers and should be reduced.

AMMA contends that where a business sponsor has demonstrated their compliance over a period of time they should have the opportunity to benefit from such continued compliance with a waiver of the obligatory monitoring obligations. Such an approach can be found in the *Equal Opportunity for Women in the Workplace Act 1999* (Cwth) (the EOC Act) where the requirement for employers to complete annual reports may be waived on the basis of having successfully demonstrated meeting the reporting requirements over a prior period (in this case 3 years).⁵

AMMA submits that the annual reporting requirements be waived where employers have a history of satisfactory compliance.

⁵ Section 13, *Equal Opportunity for Women in the Workplace Act 1999* (Cwth)

6.4 One Size Doesn't Fit All

The resources sector is not an area where employers are attempting to or desire to replace the Australian workforce or to reduce wages and conditions through the use of temporary overseas labour. Wages in the resources sector exceed the overall average by a factor of two.

The sector maintains high standards as employers of choice, through the provision of education and training, career development, equal opportunity, competitive salaries and conditions and the provision of a safe and healthy working environment.

The resources sector is a leader in human resources and people management; the nature of work demands that employees are highly trained, skilled and well paid.

A number of AMMA members have advised that delays occur in the 457 visa process where DIAC is required by Ministerial direction to implement additional or more thorough compliance checks, for example qualifications and reference checking as a result of breaches by employers outside the resources sector.

Being subject to compliance checks to resolve issues experienced in other sectors unnecessarily delays the temporary 457 visa process for resources sector employers who are in complete compliance with all the requirements. This is even more the case where overseas employees are already known by the employer through working in a related company and are simply on an international transfer or secondment.

The Government ought not to legislate for the lowest common denominator but should recognize and reward the efforts of conscientious employers in the resources sector.

AMMA contends that this issue would be resolved by allowing DIAC officers' a level of discretion in their application of Government policy.

6.5 English Language Proficiency

The resources sector is made up of persons of mixed multicultural backgrounds working in environments that can present hazards not normally experienced in other sectors of the workforce. The safety standards are high and legislation has been enacted across Australia which recognizes the mining industry as special and places additional statutory obligations on it.

The requirement to speak and understand the English language is reflected in other legislation applicable to the resources sector. For example Regulation 4.17 of the *Mines Safety and Inspection Regulations* (WA) requires responsible persons in a mine to speak the

English language intelligibly and be able to read and write the English language competently.

An ability to converse and comprehend the English language is essential for not only a productive workforce, but a safe workforce.

The existing 457 eligibility requirements do not require temporary visa applicants (as opposed to permanent applicants) to have any English language proficiency.

AMMA supports the introduction of a requirement that temporary 457 visa applicants to be able to demonstrate a basic proficiency in the English language prior to or shortly thereafter a visa holder's arrival in Australia. The International English Language Testing System (IELTS) need not be the only form of establishing English language proficiency.

There would need to be exceptions to having to establish English language proficiency where the visa applicant's qualifications were obtained at an English language speaking institution or where the employee has worked in an English speaking working environment for a period of time.

AMMA suggests that English language training be undertaken either prior to appointment to work in Australia or immediately upon commencing work in Australia.

Some AMMA members engage English language teachers to provide free lessons to employees while others sponsor English language tuition at recognised tertiary colleges and offer language assistance to accompanying family members covered by the temporary visa.

6.6 Skill Requirements

To establish that a nominee employee is a skilled worker, the worker's classification needs to fall within the Australian Standard Classification of Occupations (ASCO) range of Groups 1 to 4 or for regional sponsorship Groups 1 to 7. Labour agreements can also provide for occupations classified below group 4.

ASCO is not a comprehensive list of skilled occupations and lags well behind the establishment of new classifications such that employers are forced to either modify the duties of a classification to match an ASCO classification or to claim exceptional circumstances and request the Department of Employment and Workplace Relations to establish the skill rating.

AMMA understands that there is a proposal to replace ASCO with a more contemporary system the Australian and New Zealand

Classification of Occupations (ANZCO). This should occur as a matter of priority.

A number of AMMA members expressed their dissatisfaction with the failure of the system to acknowledge experience over qualifications. In particular fields, overseas employees have built up an impressive wealth of specialist experience and knowledge principally in the hydrocarbons industry and minerals exploration drilling industry but lack formal qualifications necessary to recognize this expertise. The resources sector has no intention of engaging overseas employees in circumstances where the work can be adequately performed by an Australian residents or where the overseas employee does not possess the requisite skills.

In all cases prior to nominating a person for a s.457 visa, the employer has made an objective assessment of the person's skills.

AMMA contends that the s.457 requirements should be more flexible in recognizing prior learning.

AMMA also contends that a number of classifications are incorrectly categorised as labourers and related workers. Operators of equipment and machinery are not given due recognition in the system, particularly as these skills are a limited resource in Australia.

6.7 Processing Time

One of the difficulties with the 457 skilled migration stream is that the arrival of skilled migrants to meet the expected shortfall in particular types of skills lags by a period of time, the actual occurrence of the shortage.

Employers accept that if applications for sponsorship and the nomination forms lack all the required details, delays in the system are inevitable. However where all requirements are met there the period prior to final approval can range from 6 to up to 12 weeks. These delays have an adverse impact and a number of West Australian members have become accustomed to experiencing a 3 month delay in approvals.

AMMA contends that the Government should streamline the s. 457 visa requirements and processes as outlined in this submission and provide such resources to ensure nominated approval timelines are met.

Christopher Platt – General Manager Workplace Policy
Geoff Bull – Employee Relations & Legal Consultant.