



**CEPU Submission to the
Senate Education, Employment and
Workplace Relations Committee**

**Inquiry into the Protecting Local Jobs
(Regulating Enterprise Migration Agreements)
Bill 2012 [Provisions]**

September 2012



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CEPU comments on Inquiry

The CEPU endorses the ACTU submission to this Inquiry. That Submission has been developed in conjunction with a number of unions, including the CEPU, with a collective concern about enterprise migration agreements (EMAs). While the CEPU has had substantial input into the ACTU Submission, there are several areas we wish to emphasise as being of specific concern to our union.

The CEPU believes that all Australians deserve to benefit from the resources boom. Where there are well paid jobs in the resources sector, Australia's workers should be the first choice for employers in the resources sector. Given the slowdown in the resources sector and large scale redundancies in companies based in the Eastern seaboard States, it's time to re-assess the extent of our skills needs sourced from overseas labour. Now more than ever, employers must be able to demonstrate that they have advertised nationally to fill vacancies before being even considered as an applicant to bring in labour from overseas. This would include proof they have used the Federal Government's "Jobs Board."

We have repeatedly expressed our concerns with EMAs and have identified specific protections and conditions the Government should implement to make EMAs, if they must be used at all, acceptable and workable. The CEPU reinforces the importance of the following factors raised in the ACTU Submission concerning the implementation of a system which allows the use of EMAs and we reinforce and add to those comments. If EMAs are to be used at all, there should be:

- effective labour market testing;
- preference for local workers over 457 visa holders;
- a public online Jobs Board for the resources sector;
- robust and enforceable training obligations;
- independent skills assessment for all temporary overseas workers;

- stronger information and evidentiary requirements for EMA applicants;
- stronger compliance monitoring;
- a tripartite oversight mechanism; and
- public transparency of EMAs

Effective Labour Market Testing

1. EMAs must be underpinned by a genuine labour market testing regime. All employers seeking to use EMAs and 457 visa labour and other forms of temporary migration should *first* have to demonstrate they have made *every possible effort to employ locally* to fill vacancies.
2. This should include measures such as advertising vacancies locally and nationally at *genuine market rates*, including mandatory use of the resources sector Jobs Board. Under the current EMA guidelines, there is no requirement for such labour market testing to occur, bar a general requirement for project owners to demonstrate their commitment to ongoing local recruitment efforts. This is not enough. There must be clear evidence that proper labour market testing has been undertaken.
3. It seems growth in the resources sector is slowing and companies, particularly in the Eastern seaboard States, have been going under. Given the slowdown in the resources sector and large scale redundancies, it's time to re-assess the extent of our skills needs sourced from overseas labour. This makes it all the more important that where employers seek to use 457 visa labour, they should be required to demonstrate why local recruitment efforts have not been successful in meeting their skill needs.
4. In the case of skilled occupations available under the standard 457 visa program there is no requirement for any form of labour market testing or analysis. This exempts from proper scrutiny a wide range of professional and trade occupations that are required on major resource projects. Accountability should be built into access to EMAs for *all* employers including subcontractors and for all EMAs entered into subsequent to the first EMA.
5. The priority should be to ensure that available work goes *first* to Australian workers. For this to happen, it is vital that all individual labour agreements be *genuinely* labour market tested to ensure that skill shortages exist at the time that positions are actually being filled, and not just when the first EMA is made at the start of a project. The ACTU Submission includes detail on what we mean by genuine labour market testing.

6. Given that EMAs can run for up to five years, this should be a requirement. Labour market conditions could change during the duration of a project and this should be taken into account. During the term of an EMA, there would also be the time and opportunity for training to take place to allow positions to be filled locally and for apprentices to be taken on. In fact, apprentices could have started and finished their time through the duration of an EMA. This should be a consideration in assessing the need for 457 visa labour. This suggests a mid-term review process could be warranted rather than carte blanche approval being given for the duration of the EMA.

Robust and enforceable training obligations including a requirement to take on apprentices

7. The Joint Union/ACT Submission gives significant detail about the training obligations that should be part of the process to gain access to an EMA. We do not repeat those details here except to reinforce the point that the definition of “the project workforce” should not be limited to only ‘direct employees’ of the sponsor and should include independent contractors engaged on a project. Accordingly, the payroll base for 457 training benchmark purposes for EMAs and construction sponsors in the 457 program generally should be changed to the total labour costs on the project.
8. The CEPU is deeply concerned about the decreased training of apprentices and the propensity of employers to poach, rather than train their own. Sponsoring temporary migrants is a form of international poaching which should not be allowed while there are trained Australian workers to take on these jobs.
9. Our nation and our workforce deserves a “skill dividend” from the resources boom. The future of our country’s pool of skilled labour depends upon this.
10. A condition of being able to access an EMA should be a mandatory commitment to apprentice training and to mandatory numerical targets of apprentices proportional to the number of skilled trades employed.
11. The CEPU believes a condition on all employers on all big projects in the resource sector should be an obligation to train local young Australians in electrical and associated apprenticeships. There should be a minimum ratio of one apprentice for every three tradespeople on these big jobs. Priority should be given to local indigenous young people.
12. Employers in the resources sector and more generally need to stop walking away from their training responsibilities. Over the last few decades the employer lobby has pushed both state and federal governments to pick up the costs of training. Business in Australia needs to get back into the development of a skilled labour force in this country.

13. Access to EMAs can be used as leverage to ensure employers meet their training commitments.

Resources Sector Jobs Board

14. The CEPU supports the development of the public online Jobs Board that now advertises resources sector jobs around Australia and enables workers interested in working in the resources sector to lodge their relevant details. A Jobs Board can be the first step of an effective labour market testing regime to ensure that Australian workers are being given first opportunity to fill Australian jobs.
15. It must be a mandatory, contractual requirement of any EMA that all jobs are advertised on the Jobs Board before the engagement of any 457 visa workers can be considered. Further, it should be mandatory to *first* advertise available jobs on the Jobs Board before any EMA is entered into. Companies must provide evidence they have used the Jobs Board before any EMA is approved.
16. This requirement to use the Jobs Board should be explicitly included in the EMA guidelines at the very least, or legislated for, as proposed in the Bill before the Committee.
17. Use of the Jobs Board should be in addition to industry or occupational-specific recruitment practices.
18. The operation of the Jobs Board needs to be monitored to ensure it operates as intended. The CEPU supports the call for an independent body to be established to oversee the operation and accountability of the Jobs Board.

Independent skills assessments

19. The CEPU is particularly concerned that the skills and qualifications of 457 visa holders and other temporary visa holders are not formally assessed by an independent body against the AQF occupational requirements and other relevant Australian endorsed standards (except in the case of 457 visa applicants from 'at risk' countries'). Currently, 457 visa holders need only satisfy their sponsor that they have the skills required. And there is no real monitoring to ensure that the 457 visa holder is in fact working in the occupation for which they were sponsored.
20. In our submission, the mandatory skills assessment that applies to all permanent GSM applicants should be the standard applied consistently to all visa types. An independent

and transparent process will ensure that qualifications gained overseas and held by temporary overseas workers meet the requirements of Australian qualifications and licensing arrangements.

Preference for local workers in redundancy situations

21. Our position is that in redundancy situations there should be an express preference for Australian workers to retain their jobs over temporary 457 visa workers.
22. The 457 visa program is designed to provide temporary overseas workers to fill skill shortages when the employer cannot find sufficient workers from the domestic labour market; if workers are having to be made redundant the employer is clearly no longer finding it difficult to find enough workers to perform the work and therefore the 457 visa workers are no longer required and they should be the first to go.

More robust information and evidentiary requirements on EMA proponents

23. We reinforce the submission in the Joint Union/ACTU Submission that the information and evidentiary requirements on applicants for EMAs must be strengthened. Monitoring of compliance must be written into the contract.
24. A problem under the current guidelines is that too much is left to the sponsoring employer to determine without transparent accountability.
25. The Department of Immigration and Citizenship states that: “The EMA guidelines require that extensive consultation must occur with all key stakeholders before an EMA can be agreed.”¹ However, despite being a key stakeholder, skilled workers under EMAs are excluded from any proper assessment and scrutiny by unions that cover these occupations. For example, there is no requirement in the EMA consultative process to provide unions with any information on the number and occupations of skilled workers being sought, or their wages and conditions. There is no requirement to demonstrate there are in fact shortages in those skilled occupations and what recruitment efforts have been made to fill them.

Stronger compliance monitoring

26. We have serious concerns about the lack of effective monitoring and compliance of the 457 visa program overall. Additional resources need to be allocated for more

¹ <http://migrationblog.immi.gov.au/category/457-visa/>

effectively monitoring of compliance. The Joint Unions/ACTU Submission gives specific figures on the number of inspectors and site visits versus the number of employer sponsors accessing 457 visa workers. The message is that it is woefully inadequate. With the increasing use of 457 visa workers and the increased access of EMAs, effective monitoring and compliance is even more vital.

27. The employment situation of 457 visa workers should be monitored to ensure that the visa holder is actually working in the occupation for which the 457 visa was granted.
28. We emphasise the point made by the Joint Unions/ACTU submission that:
 - There should be a new sponsor obligation to inform every 457 visa-holder in writing of the rates of pay and terms and conditions of employment under which they are engaged; and
 - All 457 visa workers should be provided with a hard copy version of their worker rights under Australian workplace and immigration laws, outlining particularly the role of the DIAC, FWO and unions in pursuing underpayment claims.

Tripartite oversight mechanism

29. The CEPU reinforces the call for a tripartite consultative body to approve and monitor each individual EMA. This would help provide much-needed transparency, accountability, and confidence in the EMA process.
30. We also support the establishment of an independent body to oversee the operation of the Jobs Board, including a mechanism to handle individual complaints.

Regional Migration Agreements

31. Our submission notes that amendments have been proposed to broaden the scope of the bill to regulate all types of work agreements, including Regional Migration Agreements (RMAs).
32. We agree with the Joint Unions/ACTU submission that the same conditions and scrutiny applied to EMAs should apply equally to RMAs.

Conclusion

The CEPU supports and endorses the points raised in greater detail in the Joint Unions/ACTU Submission. The purpose of our additional submission is to raise our specific concerns with 457 visa workers and EMAs to ensure employers do not:

- employ overseas labour where there are Australian workers able and willing to take those jobs;
- avoid training obligations, especially regarding the training of apprentices.

The CEPU supports the call for:

- an independent body to be established to approve and monitor each individual EMA and to oversee the operation and accountability of the Jobs Board;
- the skills and qualifications of 457 visa holders and other temporary visa holders to be formally assessed by an independent body against the AQF occupational requirements and other relevant Australian endorsed standards including licensing requirements;
- a condition of being granted an EMA, should be a mandatory commitment to apprentice training and to mandatory numerical targets of apprentices proportional to the number of skilled trades employed.
- In addition, we call for additional resources to be allocated to more effectively monitor compliance. There are currently too few inspectors while the number of employer sponsors accessing 457 visa workers and seeking to use EMAs is growing rapidly.