



Australian Government

Department of Immigration and Citizenship

Department of Immigration and Citizenship Submission Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012

Background to the program

The policy framework for the Enterprise Migration Agreement (EMA) originated from a recommendation of the National Resources Sector Employment Taskforce (NRSET). NRSET, chaired by the Hon Gary Gray MP, was established to help secure the skilled workforce required to build and operate major resources sector projects over the coming years. A list of members of the Taskforce and supporting Industry Reference Group and Skills Reference Group is at [Attachment A](#). The NRSET report of July 2010 specifically addressed anticipated skills shortages resulting from the mining boom. From this report, EMAs were recommended to facilitate streamlined access to overseas workers for eligible 'mega' resources projects.

In a joint media release of 15 March 2011, Ministers Evans and Ferguson announced that the Government would accept all of the 31 recommendations detailed in the *Resourcing the Future* report.¹ EMAs were announced at the 2011 Federal Budget by the Treasurer, the Hon Wayne Swan MP. The EMA program officially commenced on 2 September 2011, when the Government released the EMA Submission Guidelines.

The guidelines were developed following extensive consultation with unions, industry and government agencies to determine the policy parameters of the program. Following further consultation, the project eligibility thresholds were defined a peak workforce greater than 1500 workers (typically occurring during the construction phase) and capital expenditure exceeding \$2 billion. This ensured that the projects with the most pressing need for a workforce supplemented by temporary overseas skilled workers were accommodated.

How the program works

The EMA program allows the Government and project owners or prime contractors to negotiate a Deed of Agreement that covers an entire project. Rather than negotiate separate labour agreements with individual sub-contractors, this facilitated approach allows for a more customised, project-wide approach. Importantly, it allows project owners and prime contractors to plan their workforce from the start and gives investors surety of labour supply.

An EMA will be negotiated with either the project owner or prime contractor of a resource project and will set out the number of overseas workers who can be engaged on the project, why they are required, and the training commitments that must be met by the project owner.

If an EMA is approved, it allows the project owner to bring an agreed number of overseas workers with specified skills, experience and qualifications to Australia for a defined period of time to perform specific jobs. All overseas workers sponsored under an EMA will live and work in Australia on a temporary 457 visa. Therefore both the employer and the visa holders will be required to adhere to the requirements of the 457 visa program, including the payment of equivalent terms and conditions.

<http://minister.ret.gov.au/MediaCentre/MediaReleases/Pages/Delivering skilled workers to the resources sector.aspx>

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Consultation with Stakeholders

The unions were a key stakeholder involved in the development of the NRSET report. Following the release of the NRSET report (July 2010), the Department commenced consultations with union and industry stakeholders on the development of the prospective EMA program. Initial consultations were held at a roundtable in Canberra (November 2010). The Australian Manufacturing Workers Union (AMWU), the Australian Workers' Union (AWU) and the Construction, Forestry, Mining and Energy Union (CFMEU) attended the roundtable. The Australian Council of Trade Unions (ACTU) was invited.

The Department also consulted with a range of industry groups including the Minerals Council of Australia, the Australian Mines and Minerals Association, the Australian Petroleum Production and Exploration Association, the Australian Constructors' Association, the Australian Chamber of Commerce and Industry and the Queensland and Western Australian Chamber of Commerce and Industry in the development of the EMA Submission Guidelines.

The EMA Submission Guidelines, launched in September 2011, prescribe clear instructions for consulting with relevant unions on an EMA submission. The guidelines for consultation were developed with substantial input from unions. The initial responsibility for consultation rests with the project owner.

The Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012

The Department notes the intention of the Protecting Local Jobs Bill to table approved EMAs in Parliament. An EMA is a contract between the Government and the project owner or prime contractor. The EMA Submission Guidelines require that extensive consultation occur with all key stakeholders before an EMA can be agreed. Due to commercially-sensitive information, the entirety of these contracts cannot be publicly disclosed currently.

Roy Hill Holdings Pty Ltd

The Australian Government has given in-principle approval to enter into an EMA with Roy Hill Holdings. Roy Hill Holdings Pty Ltd consulted with the WA Government, Chamber of Commerce and Industry WA and trade unions, lead by the CFMEU in making their EMA submission. The Department then conducted further consultations with relevant federal agencies, including the Department of Education, Employment and Workplace Relations, the Treasury, the Department of Infrastructure and Transport, the Department of Resources Energy and Tourism, the Australian Workforce and Productivity Agency (formerly Skills Australia) and the Western Australian Department of Training and Workforce Development. All stakeholder feedback was considered as part of the Minister's agreement to enter into an EMA with Roy Hill Holdings.

The Department and Roy Hill Holdings are currently negotiating the terms of the EMA. Any agreement between the parties needs to accurately reflect relevant Australian laws. The Deed of Agreement has not yet been executed, no contractors have been able to access overseas workers through the EMA, and no visa applications have been lodged or decided in relation to the EMA.

National Resources Sector Employment Taskforce

Membership

Chair: The Hon Gary Gray MP

Department of Education, Employment and Workplace Relations
Department of Resources, Energy and Tourism
Department of Immigration and Citizenship
Department of Infrastructure and Transport
Skills Queensland
Department of Training and Workforce Development (WA)
Australian Workforce Productivity Agency (formerly Skills Australia)
MacMahon Holdings Ltd

Industry reference group members

Australian Petroleum Production and Exploration Association
Minerals Council of Australia
Australian Constructors' Association
Construction, Forestry, Mining and Energy Union
Australian Council of Trade Unions
Australian Workers' Union
Australian Manufacturing Workers' Union
Australian Mining and Metals Association

Skills reference group members

Universities Australia
TAFE Directors Australia
Group Training Australia
National Industry Skills Council (Skills DMC)
Doorn-Djil Yoording Minng and Construction
Council for Private Education and Training