



26 April 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Submitted via email: legcon.sen@aph.gov.au

Dear Sir/Madam,

Re: Inquiry into framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements

The Minerals Council of Australia (MCA) is pleased to respond to the Senate Legal and Constitutional Affairs Committee inquiry into the framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

The Minerals Council of Australia (MCA) represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally and socially responsible, attuned to community needs and expectations.

BACKGROUND

The Australian minerals industry is an employer of Australians first and foremost. The Australian minerals industry employs only 2.6 per cent of its workforce through temporary skilled migration. The Australian minerals industry spends more on training per employee than most industry sectors, and at levels that are multiples of Government benchmarks.

1. Minerals Industry Workforce

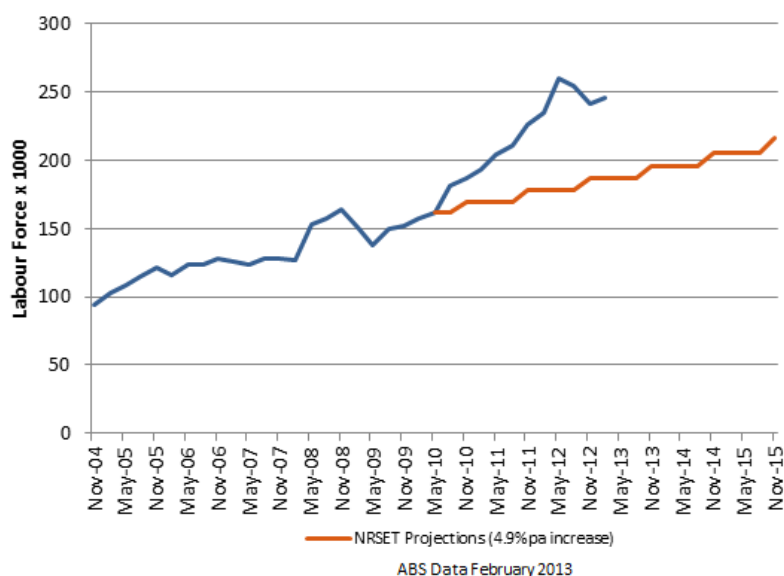
Employment in mining continues to exceed official forecasts. Based on Australian Bureau of Statistics (ABS) figures, employment in the minerals sector rose from 242,010 persons in November 2012 to 246,054 persons in February 2013.

This represents an employment increase of 55 per cent over the past three years (Feb 2010 – Feb 2013). Total employment in Australia grew by 5 per cent over the same period.

Total employment, all industries	11,588,810
Minerals (ex-oil and gas)	246,054 or 2.1 per cent of the national workforce

In 2010, the Federal Government's National Resources Sector Employment Taskforce *Resourcing the Future Report*¹ predicted that employment in the sector would increase by an average rate of 4.9 per cent per annum and reach 216,000 persons by the end of 2014-15. The industry exceeded that forecast in November 2011.

Minerals Sector (ex oil & gas) Total Labour Force

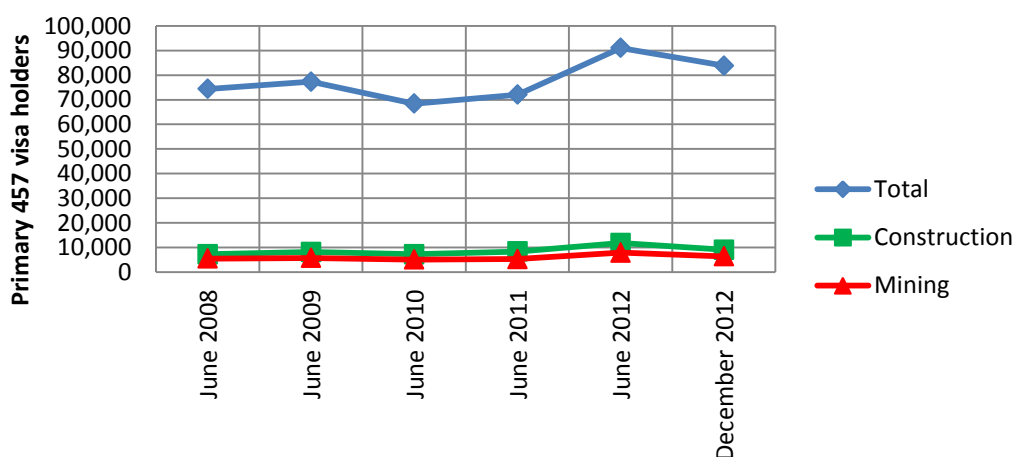


2. Minerals Industry Use of Temporary Skilled Migrants

At 31 December 2012, the Department of Immigration and Citizenship (DIAC) reported that there were 6,380 primary 457 visa holders in the mining sector (representing 2.6 per cent of the mining workforce). The long term average is 3 per cent of the mining workforce. There were 8,990 primary visa holders in the construction sector (includes all construction - residential, commercial, industrial, infrastructure, resources, etc.).

The total number of primary 457 visa holders across all industries was 83,840 (representing 0.72 per cent of the national workforce), of which the mining workforce represents 7.6 per cent.

Temporary skilled migrants



The main occupations of primary 457 visa holders at 31 December 2012 were Professionals (43,420), Technicians and Trades (20,600) and Managers (13,910). That is, these three highly skilled occupational categories of temporary skilled migrants account for 93 per cent of all primary visa holders. Machinery Operators and Drivers totalled 370 people or 0.45% of primary visa holders.

Of the 6,380 temporary skilled migrants in the mining industry, 3,670 are located in Western Australia and 1,680 are located in Queensland.

The top five countries of origin (citizenship of primary visa holder) at 31 December 2012 were: UK (26%), India (15%), Ireland (9%), Philippines (6%), and USA (6%).

In the 6 months to 31 December 2012 there were 37,720 primary visa applications lodged by sponsors; 2,740 of these were in the mining sector and 4,650 for the construction sector. The average total remuneration of the mining sector applications granted was \$137,700, which was the highest of all industry sectors. In the 6 months to 31 December 2012 there were 32,940 primary visa applications granted; of these 2,730 were in the mining sector and 4,440 were in the construction sector.

Also in the 6 months to 31 December 2012, a total of 16,920 permanent/provisional visas were granted to holders of 457 visas, with 54% of those processed under the employer nominated scheme. On an annual basis this represents more than 50% of temporary skilled migrants converting to permanent migrants.

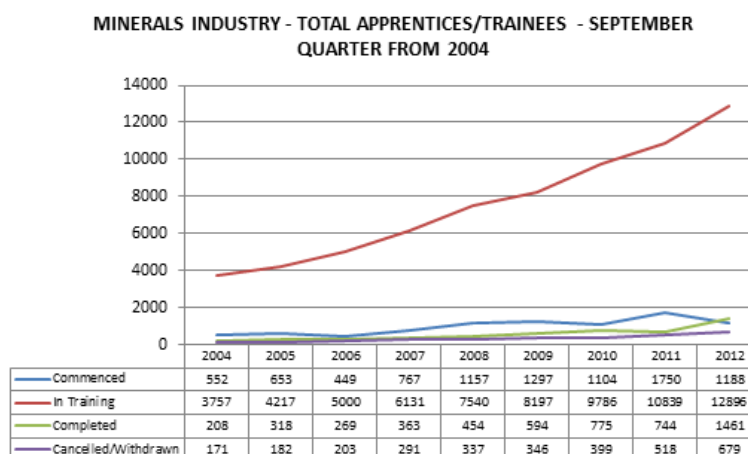
The most overwhelming observation is that during the period 2008 to 2012, when the minerals sector workforce grew from a pre-GFC peak of 163,800 to 246,050 (an increase of 51 per cent), the number of temporary skilled migrants employed in the minerals sector only grew from 5,460 to 6,380 (an increase of 17 per cent) over that similar period (June 2008 - December 2012). As a proportion of the total minerals workforce, temporary skilled migrants have decreased from 3.1 per cent to 2.6 per cent, primarily reflecting the decrease in the workforce off its May 2012 peak (of some 260,000) to the latest February 2013 figure (of 246,050).

This clearly demonstrates the minerals industry commitment to employing Australians first and foremost, while combatting skills shortages and supplementing its workforce with temporary (highly) skilled migrants; demand-driven and only to an average of some 3 per cent of mining workforce.

3. Minerals Industry Investment in Apprentices and Trainees

The minerals sector spends more on training per employee than most industry sectors and significantly more than the national average, with the overwhelming majority of training being privately funded. In reality, around five per cent of the minerals industry workforce is either a trainee or an apprentice, with many more undertaking training that is not part of a formal qualification.

Recent work by NCVET² for the Minerals Council of Australia shows that the minerals sector spends around 5.5 per cent of payroll on training, well above government benchmarks such as the 1 per cent training benchmark required to hire 457 visa workers. On a year-on-year basis, the minerals industry continues to increase the numbers of apprentices and trainees it employs. The figure below shows the total apprentices and trainees (that is, traditional trades apprenticeships plus traineeships) in the minerals industry for the September quarter 2004-2012, with total apprentices and trainees in training rising from 10,839 in the September quarter 2011 to 12,896 in the September quarter 2012.



DISCUSSION

Discussion on the current framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements, including

- (a) their effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements;

The MCA believes that 457 visas are effective in filling areas of identified skill shortages in the minerals industry, especially in the professional cohort.

As former unionist and Chairman of the Ministerial Council on Skilled Migration Michael Easson has observed, the skilled migration program has been "one of the quiet achievements of Australian public policy... (and) one of the great success stories of the past decade".

Easson observes that "The much maligned temporary 457 sponsored skilled worker program responds to the economic cycle... employer-sponsored migration is a demand-driven model that places skilled migrants directly in the jobs they need and where locals cannot be found".

Easson argues that there is already a "price signal in the 457 program that ensured local employees were a more attractive proposition than foreign workers", largely as a result of the benchmark criterion for 457 applicants being market rates of pay rather than the award minimum.

The cost of employing and sponsoring 457 visa holders (\$60,000 per person according to the Australian Mines and Metals Association³) means they will only be used on a needs basis. This has been evidenced by the minerals industry's substantial investment in training at a level of some 5.5 per cent of payroll (including apprenticeships and traineeships), far in excess of the 1% training benchmark that needs to be met to hire a 457 visa worker or undertake an Enterprise Migration Agreement.

Enterprise Migration Agreements have not been allowed to work effectively since their introduction. Already somewhat unattractive to many employers because of their heavy union consultation requirements, they have faced a hysterical campaign from fringe elements and sections of the labour movement, despite strong safeguards including the need for employers to provide a training plan, labour market analysis and workforce plan. EMAs would have been market responsive like 457s, but on a mass scale for large scale projects, acting as a safety net in the event of local skills shortages. It is our view, however, that the campaign for further tightening of the EMA guidelines is aimed at rendering them unworkable, thus adding an extra element of risk to large construction projects in the mining sector.

- (b) their accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process

Skilled migration (visa subclass 457) is a vital component of realising the skills required by the Australian minerals sector. The number of temporary skilled migrants recruited by the minerals sector is a significant component of the national intake, and they are all critical to enabling the Australian minerals sector meet the challenges of the global demand for minerals commodities. Hence the minerals sector is strongly of the view that Australia needs an effective temporary skilled migration program that has the capacity to respond to economic demand within a framework that ensures integrity and efficiency.

- (c) the process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors

The MCA annually contributes to the Australian Workforce and Productivity Agency (AWPA) consultation on the Skilled Occupation List (Schedule 1 of the Consolidated Sponsored Occupations List). The MCA supports this consultative mechanism to identify medium and long-term skilled occupations likely to be in demand considering national and regional supply and demand imbalances, reflects the need of industry and considers formal licencing and registration requirements.

The MCA recommends that the process of listing occupations on the Consolidated Sponsored Occupations List continue on this consultative basis and form the platform of any departmental oversight and enforcement of agreements and undertakings entered into by sponsors. In any respect, any such oversight should be on a performance basis, not a prescriptive basis. In response to employer and market demand, the MCA was able to successfully call for a number of skill-shortage occupations to be added to the list in recent years (e.g. Project Managers), thus assisting the smoother construction and operation of several major projects.

- (d) the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes

The MCA believes that the process for granting and monitoring of such visas is transparent and rigorous in its current form (through the SkillSelect program effective 1 July 2012). The obligations to sponsor a temporary skilled migrant (457 visa) are already comprehensive and onerous for the sponsor; and include clear sanctions should their obligations not be met.

- (e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities

The minerals industry uses temporary skilled migration as a last resort, after exhausting workforce sources locally and nationally. The minerals industry, which trains at levels that are multiples of Government benchmarks (at 5.5 per cent of payroll) invests significantly in providing upskilling for local employment opportunities.

- (f) the economic benefits of such agreements and the economic and social impact of such agreements

Simply, without temporary skilled migration, the Australian minerals industry would not have been able to respond to the significant investment demand in mining experienced over the past decade. Regional economic and social impacts are clear with thriving mining communities across Australia – a recent MCA KPMG Report⁴ based on 2006 and 2011 ABS Census data shows that incomes and educational attainment are higher, unemployment is lower and there are more families and working aged residents in Australia's mining regions than in regional Australia more generally.

- (g) whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas

The National Resource Sector Employment Taskforce (NRSET) Resourcing the Future¹ report, released in 2011, identified the medium-term workforce demands for the minerals and resources industries. Subsequent to that report, the Australian Workforce and Productivity Agency (AWPA) has released their seminal report Future Focus – 2013 National Workforce Development Strategy⁵ (which builds on the first National Workforce Development Strategy, developed by Skills Australia in March 2010 – Australian Workforce Futures⁶) to define the future workforce

needs in Australia, and their 2012 Future focus: Australia's skills and workforce development needs - a discussion paper⁷ publication.

In terms of the resources sector, AWPA produces a comprehensive annual Resources Sector Skills Needs⁸ Report. Additionally, SkillsDMC produces an Environmental Scan⁹ every year for the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE). The Environmental Scan reflects on the substantial changes to the world economic climate and the subsequent impact on the skills pool for mining, quarrying, drilling and civil infrastructure. The MCA believes that these resources adequately inform the medium- and long-term workforce (and skills) needs for the minerals industry.

- (h) the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights

There are already legal mechanisms in place to deal with these issues. Temporary skilled migrants are trained to the same standards as Australian workers on mine-sites, especially in regard to occupational health and safety laws. MCA members, who espouse the principles of Enduring Value, treat all employees equitably under Australian law.

- (i) the role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders

The MCA has no comment on this matter.

- (j) the impact of the recent changes announced by the Government on the above points

The minerals industry welcomes an effective temporary skilled migration program that has the capacity to respond to economic demand within a framework that ensures integrity and efficiency; as yet it is too early to tell whether the Government's recent changes will have an impact on the minerals sector. The MCA, however, urges a cautious approach and would be concerned if an overall successful scheme was used as a "political football".

With hundreds of billions of dollars' worth of proposed resource projects, our industry cannot source all the skilled people it needs domestically – some of these proposed projects have not reached the final investment decision stage, and misinformed debate around skilled immigration will not be conducive to positive investment decision-making.

- (k) any related matters

As above

We thank you for the opportunity to comment on this inquiry and would be happy to discuss further, should you wish, on telephone

Yours faithfully,

Gavin Lind
 Director - Education and Training
 Executive Director - Minerals Tertiary Education Council

Endnotes

- ¹ 'Resourcing the Future', National Resources Sector Employment Taskforce Report, Commonwealth of Australia, July 2010
- ² 'Training and education activity in the minerals sector', NCVER, April 2013
- ³ 'Research report: 457 visa workers in the Western Australian resources industry: The benefits and costs for business, migrant families, and the community', Australian Mines and Metals Association (AMMA), November 2012
- ⁴ 'Analysis of the Changing Resident Demographic Profile of Australia's Mining Communities', Minerals Council of Australia/KPMG, February 2013
- ⁵ 'Future Focus – 2013 National Workforce Development Strategy', Australian Workforce and Productivity Agency (AWPA), March 2013
- ⁶ 'Australian Workforce Futures', Skills Australia, March 2010
- ⁷ 'Future focus: Australia's skills and workforce development needs - a discussion paper', Australian Workforce and Productivity Agency (AWPA), July 2012
- ⁸ 'Resource Sector Skills Need Report 2012', Australian Workforce and Productivity Agency (AWPA), October 2012
- ⁹ 'SkillsDMC – Resources and Infrastructure Industry Skills Council – 2013 Environmental Scan', SkillsDMC, April 2013