

Education, Employment and Workplace Relations Legislation Committee

Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012

Public Hearing, Melbourne, Thursday, 25 October 2012

Questions on Notice

Number	Senator	Question	Witness
1	Senator Marshall (Chair)	What will the monitoring of EMAs entail?	Question directed to Mr Kukoc (DIAC)
2	Senator Back	Could the Department to go through the individual clauses of the proposed legislation and advise whether these are covered by the EMA Guidelines?	Question directed to Mr Kukoc (DIAC)
3	Senator Marshall (Chair)	How will the government ensure that companies with an EMA recruit and train Australian workers?	Question directed to Mr Kukoc (DIAC)
4	Senator Marshall (Chair)	What are the consequences of a contractor [with a work agreement under an EMA] who does not comply with their responsibilities [in relation to the work agreement and sponsorship obligations]?	Question directed to Mr Kukoc (DIAC)

Question 1: Monitoring and Reporting on Enterprise Migration Agreements (EMAs)

Once an EMA is approved, sub-contracting employers, with the endorsement of the project owner, will sign onto work agreements under the terms of the EMA, ensuring that responsibility for sponsorship obligations rests with the direct employer of the overseas worker. The EMA holder will be required under the terms of the EMA to consult with their contractors and implement arrangements for ongoing reporting and compliance through the life of the agreement.

An EMA will be subject to quarterly (three monthly) reporting requirements, which will commence three months from the date when negotiations are finalised and the Deed of Agreement is executed. The EMA holder will be required to coordinate the collation of information from across all work agreements and provide the Department with a quarterly report containing statistics on issues such as, but not limited to:

- the number of overseas workers on-site, by occupation and the type of temporary visa held;
- the ratio of overseas workers as a proportion of the total workforce on-site;
- salaries paid to overseas workers compared to Australian workers in the same occupation;
- the recruitment and training of Australians, including apprentices, trainees, and graduates ;
and
- use of the Resources Sector Jobs Board.

In addition to reporting provided by the EMA holder, the Department will also conduct its own monitoring and reporting activities, including:

- undertaking a search of its computer and information systems to locate any information held by the Department relevant to the project owner and/or approved sponsors; and
- seeking information from Commonwealth and State and Territory Government agencies relevant to the project owner and/or approved sponsors on various issues, including:
 - use of the Resources Sector Jobs Board;
 - compliance with workplace relations legislation; and
 - compliance with work, health and safety legislation

Where an EMA holder becomes aware that an approved sponsor may be breaching their sponsorship obligations, they are required to immediately inform the Department of the possible breaches.

An EMA holder will be required to provide site access to allow the Department to undertake monitoring activities and to use 'reasonable endeavours' to ensure that approved sponsors comply with their obligations under the work agreement, including reporting and compliance commitments.

Monitoring of the work agreements under an EMA will be conducted by a specialised team of 17 departmental inspectors who have received specific training. Inspectors have certain investigative powers available to them under the *Migration Act 1958*.

Monitoring of work agreements may involve any, or all, of the following:

- visits to the site, either with or without notice in order to interview visa holders, other employees and representatives of the sponsor;
- requesting records and information from the sponsor in order to determine their compliance with the sponsorship obligations; and
- exchanging information with other Commonwealth, State and Territory agencies, in particular the Fair Work Ombudsman.

Establishing a regular reporting arrangement with an EMA holder will also allow the Department to undertake regular reviews of the operation of the EMA and related work agreements by seeking feedback from the project owner and subcontractors on any issues they may have with the progression of the agreement. In conducting these reviews, the Department will seek input from other agencies including: Fair Work Australia; the workplace safety authority in the relevant State/Territory; and other Commonwealth agencies (such as DEEWR).

Question 2: Clauses of the proposed legislation and whether they are covered by the EMA Guidelines.

Legislation	Relevant text of Bill	Proposed Amendments to the Bill	Relevant EMA Guidelines
<p>Fair Work Act 2009</p>	<p>536A Agreeing to enterprise migration agreement</p> <p>(1) The Minister must not agree to the making of an enterprise migration agreement unless the Minister is satisfied that the EMA participant concerned has complied, and will continue to comply, with workplace laws.</p> <p>(2) Subsection (1) does not limit the grounds on which the Minister may refuse to agree to the making of an enterprise migration agreement.</p>	<p>536A Agreeing to work agreement</p> <p>(1) A work agreement of a kind referred to in subsection 140GC(2) of the <i>Migration Act 1958</i> must not be made unless the Minister is satisfied that the participant concerned:</p> <p style="padding-left: 40px;">(a) has complied, and will continue to comply, with workplace laws; and</p> <p style="padding-left: 40px;">(b) has consulted in good faith with any registered employee association that is or will be entitled to represent the industrial interests of persons to be recruited under the agreement</p> <p>(2) Subsection (1) does not limit the grounds on which the Minister may refuse to agree to the making a work agreement.</p>	<p>The Department has established a rigorous internal governance framework for assessing EMAs, involving consultation with relevant Commonwealth agencies (including the Department of Employment, Education and Training (DEEWR), the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), the Department of Resources, Energy and Tourism (DRET) and the Department of Regional Australia, Local Government, Arts and Sport (DRALGAS) among others) and State/Territory Governments who provide information according to their expertise and policy responsibilities. This framework and the EMA Guidelines ensure that the Minister for Immigration and Citizenship will not agree to an EMA unless the Minister is satisfied the project owner has:</p> <ul style="list-style-type: none"> • consulted with relevant stakeholders, including unions and industry peak bodies; • a good record of compliance with migration and workplace laws; and • a commitment to training and recruiting Australians.

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			<p>The EMA Guidelines were released by the Department of Immigration and Citizenship on 2 September 2011. They provide background information about the EMA initiative and guide project owners and prime contractors in preparing an EMA submission.</p> <p>To assist in responding to the question on notice, relevant extracts from the EMA Guidelines have been italicised for ease of identification.</p> <p>To be approved an EMA, a project owner or prime contractor will need to demonstrate they have consulted with relevant stakeholders about labour market needs and the training of Australians.</p> <p><i>Project owners are required to provide evidence of consultation with stakeholders on their intention to access an EMA for the project. The government expects that consultations involve genuine discussion on the semi-skilled labour needs for the project and 'good faith' from all stakeholders.</i></p> <p><i>(EMA Guidelines, page 19)</i></p> <p><i>The Department also assesses the compliance record of companies involved with the project and will focus on compliance with legislation relating to:</i></p>

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			<ul style="list-style-type: none"> • <i>migration;</i> • <i>occupational health and safety; and</i> • <i>industrial relations.</i> <p><i>(EMA Guidelines, page 21)</i></p>
	<p>536B Conditions on enterprise migration agreements</p> <p>(1) The Minister may impose one or more of the following conditions on the making of an enterprise migration agreement:</p> <p>(a) that the EMA participant concerned has a local jobs plan;</p> <p>(b) that the EMA participant concerned employs specified numbers of Australian residents on the resource project concerned, including persons from one or more of the following groups:</p> <ul style="list-style-type: none"> (i) people living near the project; (ii) people who have been recently retrenched; (iii) people from culturally and linguistically diverse communities with high rates of unemployment; (iv) people from indigenous groups; (v) people from regions with high 	<p>536B Conditions on work agreements</p> <p>(1) The Minister may impose one or more of the following conditions on the making of work agreement:</p> <p>(a) that any employer participant concerned has a local jobs plan;</p> <p>(b) that any employer participant concerned employs specified numbers of local workers (within the meaning of subsection 140ZKC(3) of the <i>Migration Act 1958</i>) on the resource project concerned, including persons from one or more of the following groups:</p> <ul style="list-style-type: none"> (i) people living near the project; (ii) people who have been recently retrenched; (iii) people from culturally and linguistically diverse communities with high rates of unemployment; (iv) people from indigenous groups; (v) people from regions with high rates of unemployment; <p>(c) that any employer participant concerned provides specified training to persons employed in accordance with a condition under paragraph (b);</p> <p>(d) that any employer participant concerned provides, or</p>	<p>The EMA Guidelines provide direction for project owners regarding the training and employment of Australians on a resource project to be covered by an EMA. An approved EMA Deed of Agreement will contain clauses requiring the project owner to commit to:</p> <ul style="list-style-type: none"> • using the Resource Sector Jobs Board; and • training Australians, including meeting agreed training targets. <p><i>Following the approval of an EMA, a template labour agreement [work agreement] will be in place for the project. With the endorsement of the project owner, sub-contractors can sign up to the labour [work] agreement, provided they can demonstrate:</i></p> <ul style="list-style-type: none"> • <i>a good record of compliance with migration and workplace laws; and</i> • <i>training of Australian workers in-line with the project training plan and the training benchmarks commensurate with the standard subclass 457 program.</i>

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	<p>rates of unemployment;</p> <p>(c) that the EMA participant concerned provides specified training to persons employed in accordance with a condition under paragraph (b);</p> <p>(d) that the EMA participant concerned provides, or contributes to, training for Australian residents other than those employed in accordance with a condition under paragraph (b).</p>	<p>contributes to, training for Australian residents other than those employed in accordance with a condition under paragraph (b);</p> <p>(e) that any non-employer participant concerned ensures that any employer participant concerned complies with any conditions imposed on the employer participant by the Minister in relation to the employment to which the agreement relates;</p> <p>(f) that any participant concerned report at specified times or specified intervals to the Minister in relation to:</p> <p style="padding-left: 40px;">(i) the participant's compliance with the conditions imposed by the Minister; and</p> <p style="padding-left: 40px;">(ii) consultation by the participant with interested parties about the participant's compliance with those conditions.</p> <p>(2) Subsection (1) does not limit the conditions that may be imposed on the making of a work agreement.</p>	<p><i>(EMA Guidelines, page 6)</i></p> <p><i>The first priority for resources projects must be the employment of Australian workers, with overseas labour only used where there is a genuine need. Resources projects will be required to commit to effective and ongoing local recruitment efforts as a criterion for access to an EMA.</i></p> <p><i>(EMA Guidelines, page 8)</i></p>
Migration Act 1958		<p>140GC Work agreements</p> <p>(1) An agreement that satisfies the requirements in subsection (2), (3) or (4) is a work agreement.</p> <p>(2) An agreement satisfies the requirements in this subsection if:</p> <p>(a) it is between:</p> <p style="padding-left: 40px;">(i) the Commonwealth, as represented by the Minister, or the Minister and 1 or more other Ministers; and</p> <p style="padding-left: 40px;">(ii) a person, an unincorporated association or a partnership in Australia; and</p> <p>(b) it is a labour agreement that authorises the recruitment, employment, or engagement of services of a person who is</p>	<p><i>EMAs are available to resource projects with capital expenditure of more than two billion [dollars] and with a peak workforce of more than 1 500 workers.</i></p> <p><i>(EMA Guidelines, page 5)</i></p> <p><i>The decision as to whether a project will have access to an EMA is entirely at the minister's [Minister for Immigration and Citizenship] discretion. The minister's decision is final and there is no review or appeal process.</i></p> <p><i>(EMA Guidelines, page 11)</i></p>

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		<p>intended to be employed or engaged as a holder of a Subclass 457 (Business (Long Stay)) visa (within the meaning of the <i>Migration Regulations 1994</i>); and</p> <p>(c) it is in effect; and</p> <p>(d) it is not an IASS agreement.</p> <p>(3) An agreement satisfies the requirements in this subsection if:</p> <p>(a) it is between:</p> <p style="padding-left: 40px;">(i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and</p> <p style="padding-left: 40px;">(ii) a sporting organisation; and</p> <p>(b) it authorises the recruitment of a person who it is proposed will take part in the sporting activities of the sporting organisation as a holder of a Subclass 421 (Sport) visa (within the meaning of the <i>Migration Regulations 1994</i>), whether as an employee or otherwise; and</p> <p>(c) it is in effect; and</p> <p>(d) it is not an IASS agreement.</p> <p>(4) An agreement satisfies the requirements in this subsection if:</p> <p>(a) it is between:</p> <p style="padding-left: 40px;">(i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and</p> <p style="padding-left: 40px;">(ii) a religious institution in Australia; and</p> <p>(b) it authorises the recruitment of a person who it is proposed will take part in the religious activities of the religious institution as</p>	<p>The Department notes that the amendments to the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 broaden the proposed legislation to cover work agreements, including those relating to labour agreements, religious workers and sportspersons, which extends the legislation beyond EMAs.</p>

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		<p>a holder of a Subclass 428 (Religious Worker) visa (within the meaning of the <i>Migration Regulations 1994</i>), whether as an employee or otherwise; and</p> <p>(c) it is in effect.</p> <p>(5) In this section:</p> <p>IASS agreement means an agreement referred to in regulation 1.16B of the <i>Migration Regulations 1994</i>.</p> <p>labour agreement means a formal agreement entered into between:</p> <p>(a) the Minister, or the Minister responsible for administering section 1 of the <i>Fair Work Act 2009</i>; and</p> <p>(b) a person or organisation in Australia;</p> <p>under the terms of which an employer is to recruit persons to be employed by that employer in Australia.</p> <p>sporting organisation has the same meaning as in the <i>Migration Regulations 1994</i>.</p> <p>religious institution has the same meaning as in the <i>Migration Regulations 1994</i>.</p>	
	<p>140ZKA Object of Division</p> <p>This Division is enacted to regulate the use of enterprise migration agreements to ensure such agreements are used only where genuinely necessary and do not adversely affect local job opportunities.</p>	<p>140ZKA Object of Division</p> <p>This Division is enacted to regulate the use of work agreements to ensure such agreements are used only where genuinely necessary and do not adversely affect local job opportunities.</p>	<p><i>To be approved for an EMA, a project owner or prime contractor will need to demonstrate:</i></p> <ul style="list-style-type: none"> • <i>why sufficient Australian workers cannot be found to fill anticipated vacancies in semi-skilled occupations, including labour market analysis;</i> • <i>consultation with relevant stakeholders on</i>

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			<p><i>labour market needs and the training of Australians;</i></p> <ul style="list-style-type: none"> • <i>commitment to ongoing local recruitment efforts; and</i> • <i>commitment to training and social inclusion targets for the project.</i> <p><i>(EMA Guidelines, page 6)</i></p>
	<p>140ZKB Meaning of <i>enterprise migration agreement</i></p> <p>(1) The Minister may make a work agreement (the <i>enterprise migration agreement</i>) with an EMA participant to grant temporary visas for work on a resources project.</p> <p>(2) The <i>EMA participant</i> is:</p> <ul style="list-style-type: none"> (a) the project owner of the resources project; or (b) the prime contractor for the resources project. 	<p>140ZKB Power to make work agreements</p> <p>(1) The Minister may, on behalf of the Commonwealth, make a work agreement in accordance with this Division.</p> <p>(2) Each of the following is a <i>participant</i> in relation to a work agreement:</p> <ul style="list-style-type: none"> (a) an employer (an <i>employer participant</i>) who, under the terms of the agreement, is to recruit other persons to be employed by the employer in Australia; (b) any other person (other than a Minister) (a <i>non-employer participant</i>) who is a party to the agreement. 	<p>The EMA Guidelines defines an EMA as:</p> <p><i>A tailored umbrella arrangement between a project owner and the Australian Government that set the terms by which overseas workers will be engaged on a project, as well as outlining training commitments that must be adhered to.</i></p> <p><i>(EMA Guidelines, page 2)</i></p> <p>An EMA can only be negotiated with either the project owner or prime contractor of a resources project.</p>
	<p>140ZKC Conditions for making enterprise migration agreements</p> <p>(1) The Minister must not make the enterprise migration agreement unless the Minister is satisfied that:</p> <ul style="list-style-type: none"> (a) the EMA participant has made all practicable attempts to employ local 	<p>140ZKC Conditions for making work agreements</p> <p>(1A) A work agreement of a kind referred to in subsection 140GC(2) must not be made in relation to jobs that are not yet available unless:</p> <ul style="list-style-type: none"> (a) the Minister is satisfied that there is credible evidence that, for those kinds of jobs: <ul style="list-style-type: none"> (i) there is an existing labour shortage; and 	<p>Labour Market Analysis</p> <p>The labour market analysis provided as part of an EMA requires a breakdown of the numbers of overseas workers and the occupations that are required for the project.</p> <p>No project will be approved for an EMA unless it can present a body of evidence demonstrating</p>

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	<p>workers for the jobs to be covered by the enterprise migration agreement, including by advertising the jobs (other than on the local jobs board); and</p> <p>(b) the jobs have been advertised on the local jobs board.</p> <p>(2) The local jobs board is to be a website:</p> <p>(a) listing jobs to be filled in the resources sector; and</p> <p>(b) maintained by the Workplace Relations Minister.</p>	<p>(ii) the labour shortage will continue for the expected duration of the work agreement (disregarding the possible effect of the work agreement); and</p> <p>(b) the Minister is satisfied that, when the jobs become available:</p> <p>(i) the participant will make all practicable attempts to employ local workers for the jobs, including by advertising the jobs (other than on the local jobs board); and</p> <p>(ii) the jobs will be advertised on the local jobs board.</p> <p>(1) A work agreement of a kind referred to in subsection 140GC(2) must not be made in relation to jobs that are currently available unless the Minister is satisfied that:</p> <p>(a) the participant has made all practicable attempts to employ local workers for the jobs, including by advertising the jobs (other than on the local jobs board); and</p> <p>(b) the jobs have been advertised on the local jobs board.</p> <p>(2) The local jobs board is to be a website:</p> <p>(a) listing jobs to be filled in the resources sector; and</p> <p>(b) maintained by the Workplace Relations Minister.</p> <p>(3) A person is a local worker for the purposes of this section if the person is:</p>	<p>that there are likely to be shortages in occupations for the associated site. This evidence may include: research, reports and data that provide an evidence base for skills shortages in the proposed occupation/s for which access to overseas workers is sought; and results of any recruitment campaigns conducted.</p> <p>On 10 June 2012 the Australian Government announced the introduction of the Resources Sector Jobs Board to assist Australian job seekers to find work in the resources sector.</p> <p><u>Resources Sector Jobs Board</u></p> <p>The Resources Sector Jobs Board displays job vacancies in the resources sector enabling Australians to apply for jobs advertised on resources projects. It helps project owners and prime contractors assess the labour market prior to requesting an EMA.</p> <p>Project owners and prime contractors who have negotiated an EMA will be required to advertise all vacancies covered by the EMA and supporting labour agreements on the Resources Sector Jobs Board prior to recruiting overseas workers.</p> <p>Compliance with this requirement will be monitored by the Department with input from the Department of Education, Employment and Workplace Relations.</p>

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		<p>(a) an Australian citizen; or</p> <p>(b) a permanent resident as defined in subsection 204(2);</p> <p>or</p> <p>(c) a New Zealand citizen who holds a temporary visa.</p>	
	<p>140ZKD Workplace Relation Minister may impose further conditions</p> <p>(1) The Minister must not make the enterprise migration agreement unless:</p> <p style="padding-left: 40px;">(a) the Workplace Relations Minister has agreed to the making of the agreement; and</p> <p style="padding-left: 40px;">(b) the agreement is made subject to any conditions imposed by the Workplace Relations Minister.</p> <p>(2) A condition imposed by the Workplace Relations Minister:</p> <p style="padding-left: 40px;">(a) must be given to the EMA participant in writing; and</p> <p style="padding-left: 40px;">(b) is a sponsorship obligation.</p> <p>(3) This section does not limit the sponsorship obligations that may be imposed under an enterprise migration agreement.</p>	<p>140ZKD Workplace Relation Minister may impose further conditions</p> <p>(1) A work agreement must not be made unless:</p> <p style="padding-left: 40px;">(a) the Workplace Relations Minister is satisfied as required under section 536A of the <i>Fair Work Act 2009</i> in relation to the agreement; and</p> <p style="padding-left: 40px;">(b) the agreement is made subject to any conditions imposed by the Workplace Relations Minister.</p> <p>(2) A condition imposed by the Workplace Relations Minister under section 536B of the <i>Fair Work Act 2009</i>:</p> <p style="padding-left: 40px;">(a) must be given to the participant in writing; and</p> <p style="padding-left: 40px;">(b) is a sponsorship obligation.</p> <p>(3) This section does not limit the sponsorship obligations that may be imposed under a work agreement.</p>	<p>The decision on whether a project should gain access to an EMA rests with the Minister for Immigration and Citizenship.</p> <p>The Department will consult with other Commonwealth agencies, including the Department of Employment, Education and Workplace Relations when considering an EMA submission.</p>
	<p>140ZKE Enterprise migration agreements to be tabled in Parliament</p> <p>If the Minister makes the enterprise migration</p>	<p>140ZKE Work agreements to be tabled in Parliament</p> <p>If a work agreement is made, the Minister must cause a copy of the agreement to be tabled in each House of the Parliament as</p>	<p>The EMA Guidelines provides information about the disclosure of project information once an EMA is approved.</p>

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	<p>agreement, the Minister must cause a copy of the agreement to be tabled in each House of the Parliament as soon as practicable.</p>	<p>soon as practicable.</p>	<p>The EMA Guidelines state that:</p> <p><i>For public accountability reasons, the department will make public those projects that have an active EMA. The department will also include the capital expenditure size of the project, and its peak workforce.</i></p> <p><i>The department will not disclose the number, or occupations of workers that are available under a particular EMA. The department will also not disclose those companies that are signatories to subordinate labour agreements (work agreements).</i></p> <p><i>(EMA Guidelines, page 10)</i></p> <p>This is consistent with the current Commonwealth Government practice around disclosure of confidential information involving parties outside Government.</p> <p>Any disclosure by the Department of the terms and conditions, including any confidential information, will be subject to the disclosure provisions ordinarily contained within a contract and also contained within the EMA. This allows the Department to disclose contractual information, where it is compelled to do so, or as required by law, without breaching the terms on confidentiality of information.</p>

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		<p>9 Savings provision</p> <p>An agreement that, immediately before the commencement of this Act, was a <i>work agreement</i> within the meaning of the <i>Migration Act 1958</i> continues to be a work agreement within the meaning of that Act, despite the amendments made by this Act, for so long as the agreement remains in effect.</p>	
<p>Migration Regulations 1994</p>		<p>Reg 2.76 Requirements</p> <p>(1) For section 140GC of the Act, and for the definition of <i>work agreement</i> in subsection 5(1) of the Act, a work agreement must meet the requirements prescribed in subregulation (2), (3) or (4).</p> <p>(2) A work agreement:</p> <ul style="list-style-type: none"> (a) must be between: <ul style="list-style-type: none"> (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and (ii) a person, an unincorporated association or a partnership in Australia; and (b) must be a labour agreement that authorises the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 457 (Business (Long Stay)) visa; and (c) must be in effect; and (d) must not be an IASS agreement. <p>(3) A work agreement:</p> <ul style="list-style-type: none"> (a) must be between: 	

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		<p>(i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and</p> <p>(ii) a sporting organisation; and</p> <p>(b) must authorise the recruitment of a person who it is proposed will take part in the sporting activities of the sporting organisation as a holder of a Subclass 421 (Sport) visa, whether as an employee or otherwise; and</p> <p>(c) must be in effect; and</p> <p>(d) must not be an IASS agreement.</p> <p>(4) A work agreement:</p> <p>(a) must be between the Secretary and a religious institution in Australia; and</p> <p>(b) must authorise the recruitment of a person who it is proposed will take part in the religious activities of the religious institution as a holder of a Subclass 428 (Religious Worker) visa, whether as an employee or otherwise; and</p> <p>(c) must be in effect.</p>	

Question 3: How will the government ensure that companies with an EMA recruit and train Australian workers?

An important part of an EMA will be the commitment made by the project company to ensure that approved sponsors recruit and employ Australian workers in preference to sponsored overseas workers. The Project Company and approved sponsors must also use the Resources Sector Jobs Board as a tool to demonstrate that suitably qualified Australians are given the first opportunity to apply for available jobs.

Additional obligations will be imposed within the work agreement for companies operating under an EMA. These obligations will require the company to ensure that they are only using the agreement to supplement an existing Australian workforce and they continue to demonstrate a commitment to the provision of employment, training and career progression opportunities to Australians. The business will also be required to regularly demonstrate that they have met specific benchmarks for the training of their Australian employees.

EMAs will be subject to a quarterly (three monthly) reporting requirement, which includes providing information to the Department regarding compliance against specific obligations, including the recruitment and training of Australians. Furthermore, EMAs will include the requirement that the project owner must allow Departmental officers to access the project site and ensure that approved sponsors cooperate with Departmental officers, including inspectors, monitoring compliance of sponsorship obligations under the Migration Act.

Question 4: What are the consequences of a contractor [with a work agreement under an EMA] who does not comply with their responsibilities [in relation to the work agreement and sponsorship obligations]?

Overseas workers sponsored under an EMA will hold Subclass 457 Business (Long Stay) visas and will be subject to the Migration Legislation Amendment (Worker Protection) Act 2008 (The Worker Protection Act).

The Worker Protection Act, which came into effect on 14 September 2009, amended the Migration Act 1958 (the Migration Act) to enhance the framework for the sponsorship of non-citizens seeking entry to Australia for the purpose of work.

Under the worker protection amendments to the Migration Act, sponsors are required to comply with sponsorship obligations. This includes the obligation to ensure overseas workers are provided with equivalent terms and conditions (of employment), including salary, to Australian workers performing the same job in the same workplace.

These laws introduced a new enforcement regime, including the introduction of inspector powers and penalties that were not previously available to the Department. They introduce civil penalty provisions, which provide that a court may order payment of a debt owed to a person in relation to a sponsorship obligation, in addition to ordering payment of a pecuniary civil penalty.

Where a party to a work agreement under an EMA fails to satisfy a sponsorship obligation, the following actions may be taken against the sponsor and the EMA holder:

- the work agreement may be suspended preventing a contracting business from sponsoring any more overseas workers;
- the work agreement may be terminated;
- an application may be made to a Court for a civil penalty order against the sponsor (the maximum penalty for a civil penalty order is \$33 000 per contravention); and
- the sponsor may be issued an infringement notice for each failure (for a first offence, the fine is \$3 300 – these fines double for a second offence).

The work agreement also contains clauses that provide for termination for non-compliance.

An EMA places an obligation on the project owner and contractors to preference Australian workers to overseas workers and abide by their commitments to train Australians.

Where there is evidence of widespread, ongoing and/or egregious abuse, which the Government is not satisfied the project owner has taken adequate steps to rectify, the contractual sanctions in an EMA will allow the Department to suspend, limit or cancel an EMA (and all associated work agreements).