

13 September 2012

Committee Secretary
Senate Education, Employment
& Workplace Relations Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

ABN 12 594 631 668 • Level 4, 445 Hay St PERTH
PO Box Z5380, St Georges Tce, PERTH WA 6831
Tel: +61 8 9328 7877 • Fax: +61 8 9328 8132
unionsyes@unionswa.com.au • www.unionswa.com.au

Dear Madam/Sir

**RE: Inquiry into Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012
and additional proposed amendments**

UnionsWA is Western Australia's peak union body, representing over 30 affiliated unions and 150,000 union members. UnionsWA has consulted with our affiliated unions over a long period of time about issues regarding EMAs, and the opportunities for employment in the resource sector for local workers. UnionsWA supports the ACTU submission.

Broadly speaking, UnionsWA affiliates believe that any legislation aimed at 'protecting local jobs' at the same time as allowing overseas labour sourcing by resources companies must include the following conditions for companies:

- **Credible Training Commitments:** Resource companies must demonstrate that they have invested in measures that ensure access by local apprentices and trainees to their projects. They must also demonstrate that they have invested in building the skills base of WA workers.
- **Local content opportunities on big resource projects:** The Barnett State Government has allowed projects like Gorgon and Wheatstone to source up to 90% of their manufacturing work from offshore while local steel fabrication businesses are struggling. WA workers want to see active measures and clear outcomes that increase local content levels in the resources sector.
- **Meaningful opportunities for local workers to gain employment:** Resources companies must demonstrate that their labour market testing actively promotes meaningful opportunities for both skilled and semi-skilled workers to gain employment on their projects. They should also actively seek participation in the workforce from groups currently disengaged from the labour market, including Aboriginal and Torres Strait Islander peoples, older workers, workers with disabilities, unemployed job-seekers, and women returning to the workforce
- **Independent monitoring of the Australian Jobs Board:** there should be an independent body overseeing the operation of the jobs board ensuring that it is transparent, accountable and is delivering on jobs and training opportunities for Australian workers.
- **Maximum transparency for EMAs and similar agreements:** Companies benefitting from EMAs should be subject to stringent public reporting on and accountability for, local training and employment commitments.

Below are our responses to the proposed provisions of the *Protecting Local Jobs Bill*.

A requirement for employers to advertise jobs in the local labour market before obtaining an EMA

Where genuine labour shortages exist then some use of temporary overseas labour is justified as a last resort. However rigorous processes for labour market testing are needed to ensure that employment opportunities are available in a meaningful way to those already in the Australian labour market.

A key concern for affiliates is the lack of opportunities for local workers to gain employment on big resource projects. There are simply too many examples of experienced local workers being unable to find (or keep) employment on big resource projects for these cases to be dismissed as isolated, disgruntled individuals. Local workers are not getting opportunities to work on these projects, and are often being refused employment on unfair and spurious grounds.

Affiliates have pointed out that the *Australian Jobs Board*, while a welcome initiative, does not well serve workers in the 'semi-skilled' category. Specifically there is a lack of clear career pathways and industry competency standards for people who choose a career in mining. In practice this means that local workers miss out on resource sector employment because they do not have the precise skill set being requested by companies on the various electronic 'jobs boards'. It is simple for a company which does not want to employ a local, semi-skilled worker to develop to set criteria that no local worker can meet. A company can then claim there is a 'skills shortage' as an excuse to lobby for measures such as EMAs.

One specific example known to UnionsWA is the case of a Heavy Duty Mechanic who gained his qualification through the local Westrac training scheme (his name and address are withheld but he can be contacted through our office). After being out of the workforce for several years to look after his children, he attempted to find employment in the resources sector through various jobs board arrangements. After twenty one separate applications he is still to receive an offer (or a response). Even after he indicated a willingness to work in a semi-skilled job, he was still unable to find employment because, according to feedback from one company, he had no recent work experience on a mine site. The worker has also attempted to update his skills, but is unable to access the Westrac scheme for a second time.

These situations illustrate that, while resource sector representatives are quick to claim skill or labour shortages as reasons why they need access to temporary foreign labour schemes, in practice there is no similar sense of urgency when it comes to employing or training local workers. Indeed it is possible that online jobs boards, with their requirement for certain levels of IT skills, exclude older, local, semi-skilled employees who may not have the computer savviness required to navigate them. Companies and government need to do more than passively 'put it on a website'.

The proposed Bill and Amendments must ensure that resources companies are actually providing the opportunities for local employment that match their claims. It is not enough for employers to simply make declarations that they advertised but couldn't find the right people locally. They must demonstrate that they are actively promoting meaningful opportunities for both skilled and semi-skilled workers to gain employment in their industry.

A local jobs board to list available jobs in the resources sector

UnionsWA supports the ACTU Executive's resolution on EMAs passed in July 2012. The resolution calls for the Federal government to mandate that migration agreements (both EMAs and Regional Migration Agreements [RMAs]) require all jobs to have been advertised on the Jobs Board before any 457 visa workers can be engaged. The resolution goes on to state that:

The Executive notes that the operation of the Jobs Board needs to be monitored to ensure it operates in accordance with the government's stated objectives. Accordingly the executive calls for the establishment of an independent body to oversee the operation of the jobs board, including an opportunity for individual complaints, to ensure that it is transparent, accountable and is delivering on jobs and training opportunities for Australian workers.

In WA there are non-government organisations and community legal centres that have the capacity to deliver such an independent monitoring, advocacy and complaints service. Specifically they are:

- The Employment Law Centre of WA (ELC)
- The Welfare Rights and Advocacy Service (WRAS)

UnionsWA is represented on the boards of both ELC and WRAS.

Tasks of the monitor might include:

- Examining the recruitment practices of companies
- Providing avenues for complaints from and advocacy for applicants
- Supporting visa holders who lose their work
- Investigating allegations that union and OH & S reps are discriminated against in recruitment

If companies were found wanting in their practices this should be taken into consideration when the Government considers further applications for temporary foreign labour schemes.

A requirement for employers who use EMAs to train and prioritise employment for locals, recently retrenched workers and other groups with high unemployment rates

One of the important findings of the National Resources Sector Employment Taskforce *Resourcing the Future* Report was that the resources sector:

employs considerably fewer apprentices than would be expected from its share of trade employment. In fact the sector would have to double its number of apprentices to be on par with other industries.¹

Data from the National Centre for Vocational Education and Research (NCVER) also shows that, compared with when the Barnett Government came to office in 2008, we now have 2,100 fewer people in training for automotive, engineering and construction jobs in WA.

NCVER data also show that the 'training rates' (proportions of the workforce currently undertaking an apprenticeship or a traineeship) for automotive, engineering and construction jobs have also declined. In the case of automotive and engineering, the training rate went from 19.2% in Feb-March 2008 to 13% in March 2012. For construction trades workers the training rate went from 21.7% in Feb March 2008 to 16.8% in March 2012. It should be noted that this decline has occurred during a period of time in which the overall numbers of employees in these occupational groups has been increasing.²

¹ NRST, *Resourcing the Future Report*, p.4

<http://www.deewr.gov.au/Skills/Programs/WorkDevelop/ResourcesWorkforce/Pages/NRSET.aspx>

² NCVER, Australian vocational education and training statistics: apprentices and trainees 2012 - March quarter, State and territory data tables, <http://www.ncver.edu.au/publications/2543.html>; ABS 6291.0.55.003 - *Labour Force, Australia, Detailed, Quarterly, May 2012* Table E08, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003May%202012?OpenDocument>

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UnionsWA has received first-hand information from a tradesman employed by a local construction contractor in the resources sector about the apprenticeship situation (his name and address are withheld but he can be contacted through our office).

My frustration [is] that it not only takes so long to find employment but the ratio of apprentices to trades[people] would be honestly 75:1. This has been the case on both jobs I have worked on. After speaking with superiors it seems to be normal across the mining sector. The excuse is always the same - that the project won't last the term of an apprenticeship. My response is always have you looked at group training. It is easy for large companies to announce large numbers of apprenticeship intakes but put next to the number of tradesmen employed the number then looks small. [My company] puts on one tradesman to one trade assistant. Why that trade assistant can't be an apprentice I can't understand.

Given that the resources sector is competing for these occupational groups with other industry sectors (and is able to out-bid them) the sector should contribute to training up the next generation of skilled workers if it wants to benefits from arrangements such EMAs. However we also make the point that investment in skills is not simply a question of putting money in a fund. Resources companies must demonstrate their commitment to having apprentices and trainees physically present on resources projects. This will involve significant living allowance payments and/or wage increases to address the very high cost of living in many resource sector regions, as well as fly-in and fly-out arrangements.

The placement of conditions on an EMA participant employer by the Minister to contribute to training for Australian residents other than those employed under the EMA

When resources companies wish to participate in schemes to access overseas workers, they should be required to demonstrate not merely that they have looked for local workers ('tested the labour market'), and not merely that they have put some funding into a training scheme. Resource companies should also demonstrate that they have invested in measures that ensure access by local apprentices and trainees to their projects. Resource companies should be accountable for training and employment outcomes for local workers in their sector. They should also be demonstrating that they have invested in building the skills base for other sectors of the economy.

UnionsWA therefore supports the resolution passed at the 2012 ACTU Congress which insists that:

Before engaging workers from overseas, employers should actively seek participation in the workforce from groups currently disengaged from the labour market, including Aboriginal and Torres Strait Islander peoples, older workers, workers with disabilities, unemployed job-seekers, and women returning to the workforce.³

As outlined previously in this submission, companies should also be maximising the employment opportunities for workers classified as semi-skilled as well as skilled. The WA Branch of the CFMEU mining division has proposed that the mining industry should pay a compulsory levy for the training of all Australians in the semi-skilled area. Prospective employees should be able to access that training with minimal cost. At present, someone wishing to learn to drive a Haul Truck needs to pay \$3500-\$5000 to enrol with a Registered Training Authority despite having no guarantee of a mining industry job at the end.

³ 'Skilled Migration', clause 9, ACTU Congress 2012, <http://www.actucongress.org.au/site/policies>
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The tabling of an EMA in Parliament as soon as practicable after it is made

UnionsWA, together with the local AMWU, have been campaigning for greater local content in resource sector contracts. In the course of this campaign it has been clear that resources companies are not held accountable for the commitments they make on paper to allow local businesses a fair go at working on big projects. Given this track record, UnionsWA is concerned that companies with EMAs will continue to find ways around their on paper commitments to provide opportunities for local workers.

The lack of local content accountability has had serious consequences. The inability of local steel fabrication manufacturers in the Kwinana to win contracts during the boom has contributed to the South West Area of WA having the worst youth full-time unemployment outcomes in the state (23% in June 2012). In some cases competition was simply unfair; as overseas companies would award contracts to manufacturers from their own country by offering generous terms of financing that were not available to domestic manufacturers. Because of the advocacy and lobbying by unions this situation has improved, although manufacturers downstream still struggle with a consistent flow of work.

Unions and the WA Labor State opposition have developed the *Skilled Jobs (Benefits from the Boom) Bill 2012* to go before the WA state parliament. That Bill seeks to impose on resource companies requirements to more transparently account for local content. It does not mandate levels of local content, but does seek to ensure that resource companies should provide evidence of their commitment to local content to government, and the WA public.

UnionsWA calls for similar, stringent transparency requirements to be placed on companies who are set to benefit from EMAs. Tabling EMAs in parliament would only be a first step. Regular public reporting on and accountability for, local training and employment commitments are a must for project using an EMA.

Amendments have also been proposed which seek to broaden the scope of the bill to regulate all types of work agreements, including Enterprise Migration Agreements and Regional Migration Agreements.

UnionsWA supports the 2012 ACTU Congress resolution which states that:

The presence of temporary overseas workers in Australian workplaces should be properly viewed as a labour and employment issue, not simply as an immigration issue. Government agencies with specific industrial relations responsibilities should be fully engaged with, and assume a role in, the monitoring and compliance arrangements for temporary overseas workers. Such agencies should be adequately funded to perform these functions effectively. An immigration inspectorate should be introduced into the Office of the Fair Work Ombudsman along with other whistle-blower protections.⁴

In 2011 the Federal government decided to designate Perth a 'regional city' so that it could be included in the Regional Sponsored Migration Scheme (RSMS).⁵ UnionsWA asks that the Committee recommend that the Bill and Amendments ensure that all workers, both overseas and local, have their rights at work protected. Their rights should not only be protected by government agencies, but also by their relevant unions being able to access and inspect sites where there are temporary overseas workers being employed.

⁴ 'Skilled Migration', clause 53.

⁵ 'New migration measures crucial to mining boom success', <http://www.minister.immi.gov.au/media/cb/2011/cb168299.htm>
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Conclusion

UnionsWA believes that the following are needed from companies and projects which are set to benefit from EMAs:

- **Credible training commitments**
- **Local content opportunities on big resource projects**
- **Meaningful opportunities for local workers to gain employment**
- **Independent monitoring of the Australian Jobs Board**
- **Maximum transparency for EMAs and similar agreements**

We thank the Committee for this opportunity to represent the views and concerns of WA union members. We ask the Committee to strengthen protections for local jobs and local workers as it considers the Amendment Bill.

Please contact me on 08 9328 7877 or MHammat@unionswa.com.au if you wish to discuss this submission any further.

Yours sincerely

Meredith Hammat
President