



Australian Government
Department of Immigration
and Citizenship

Enterprise Migration Agreements Submission Guidelines



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Enterprise Migration Agreements Submission Guidelines

About the guide

The guide provides all the information that you need to make a complete submission for access to an Enterprise Migration Agreement (EMA). The guide is aimed at project owners or prime contractors who are seeking access to an EMA.

If you are seeking access to a template labour agreement under an EMA that has been approved for a project— you **do not** need to read this guide. You will need to complete the EMA template labour agreement submission form that can be found on the department's website.

See: www.immi.gov.au/skilled/enterprise-migration-agreements.htm

The guide is divided into two parts.

- Part 1: EMA background information
- Part 2: A guide to preparing an EMA submission

We recommend that you read Part 1 before Part 2 for a complete picture of the parameters of the EMA program.

If you have any questions about the EMA submission process, please contact the department. We are happy to provide one-on-one assistance with project owners or prime contractors in preparing their submissions.

Contact information

You can contact the EMA team by email or phone.

Email: ema@immi.gov.au

Telephone: (02) 6264 2468

Glossary of terms

Approved sponsor: A person who has been approved by the minister as a Standard Business Sponsor or who is a party to a labour agreement to sponsor overseas workers on a 457 visa.

Project owner: An Australian registered entity who initiates, finances and tenders for a major resource project.

EMA: Enterprise Migration Agreement. A tailored umbrella arrangement between a project owner and the Australian Government which set the terms by which overseas workers will be engaged on a project, as well as outlining training commitments that must be adhered to.

Prime contractor: A prime contractor (also known as an EPCM) is responsible for the day-to-day oversight of the project, and management of vendors and trades. In addition, the prime contractor will keep communication between the project owner and all involved parties open and clear throughout the course of project.

Contractor: A contractor is engaged for the purpose of providing a service as part of the project. The individual or business will be required to meet the terms and conditions of the template labour agreement as prescribed under the EMA and the *Migration Act 1958*.

Capital expenditure: Funds used by a project owner to acquire or upgrade physical assets such as property, infrastructure or equipment.

Departmental brief: Detailed information collated and provided to the Minister of Immigration and Citizenship for his information and/or decision regarding an EMA proposal.

Peak workforce: The maximum number of onshore employees required for a major project at one point in time. It is not the cumulative total number of workers on the project.

EMA submission: A formal request made to the Australian Government seeking access to an EMA. An EMA submission is not considered complete until all requisite information has been provided to the department.

Labour agreement: A labour agreement is a formal arrangement negotiated between an employer in Australia and the Australian Government as represented by the Department of Immigration and Citizenship. Parties to a Labour Agreement are approved sponsors for the purposes of the *Migration Act 1958*.

Deed of agreement: A deed of agreement is the legal instrument that an EMA will use.

Training benchmark: The minimum set of requirements that a contractor must meet to be approved for a template labour agreement under an EMA. The benchmark is equivalent to those applicable to the standard 457 program.

457 visa: A temporary work visa allowing overseas workers to engage in employment in Australia as prescribed under the *Migration Act 1958*.

Sponsorship obligations: A set of mandatory obligations which must be adhered to by the approved sponsor of 457 visa holders as per the *Migration Act 1958*.

Part 1: EMA background information

Background

On 10 May 2011, the government announced the implementation of EMAs—a new temporary migration initiative to help address the skill needs of the resources sector.

EMAs are a custom-designed, project-wide migration arrangement for large scale resource projects. EMAs will help ensure peak workforce needs are met, easing capacity constraints and ensuring economic and employment benefits are realised.

Why is the government introducing EMAs for the resources sector?

The National Resources Sector Employment Taskforce recommended the introduction of EMAs in July 2010. The taskforce, chaired by the Hon Gary Gray MP, then Parliamentary Secretary for Western and Northern Australia, was convened in late 2009 to help address the need for more than 70 000 additional skilled workers on major resources projects over the next five years.

The taskforce provided its final report in July 2010. The report canvassed a range of recommendations across workforce planning and workforce participation, education and training, and community infrastructure. The government agreed to all 31 recommendations of the report on 15 March 2011.

The taskforce noted that migration is one tool for meeting Australia's future skills needs and recommended the introduction of EMAs.

What is an EMA and how does it work?

An EMA will be negotiated with either the project owner or prime contractor of a resources project. The EMA will act as an umbrella migration arrangement for the project. Technically, the EMA will be a deed of agreement—a contract between the resources project and the government.

The EMA 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. Any concessions to the standard program must be negotiated at the EMA stage.

Contracting employers, with the endorsement of the EMA holder, will sign template labour agreements that sit under the EMA. This ensures that the direct employer of the workers will be responsible for the sponsorship obligations in relation to overseas workers.

The template labour agreements will act as sponsorship approval for the contractor as per the standard business program.

The following diagrams demonstrates the structure of the EMA program.

Diagram A: Project owner holding an EMA

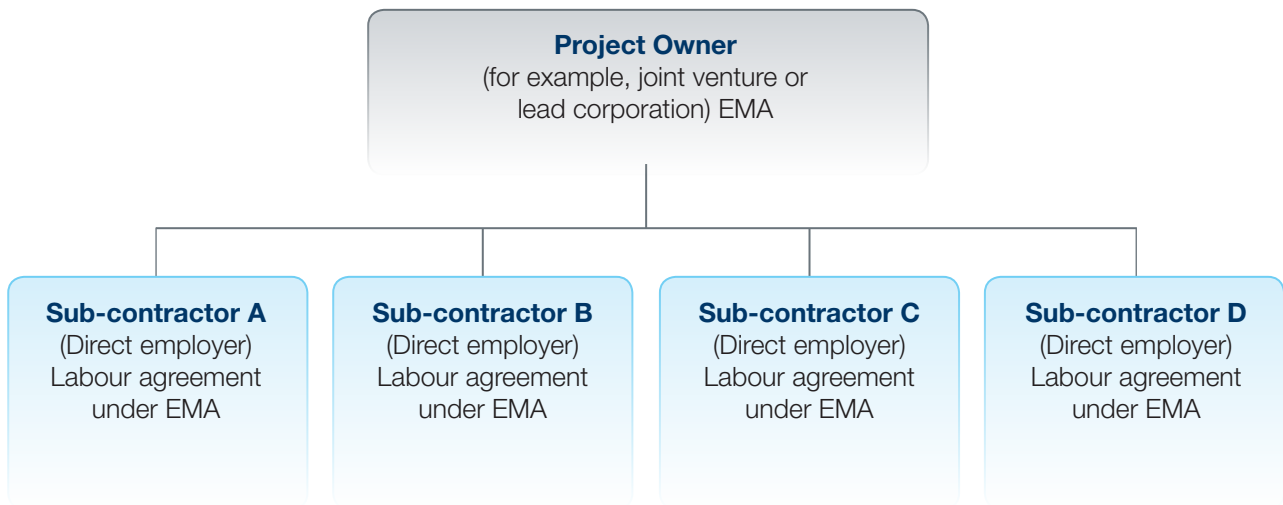
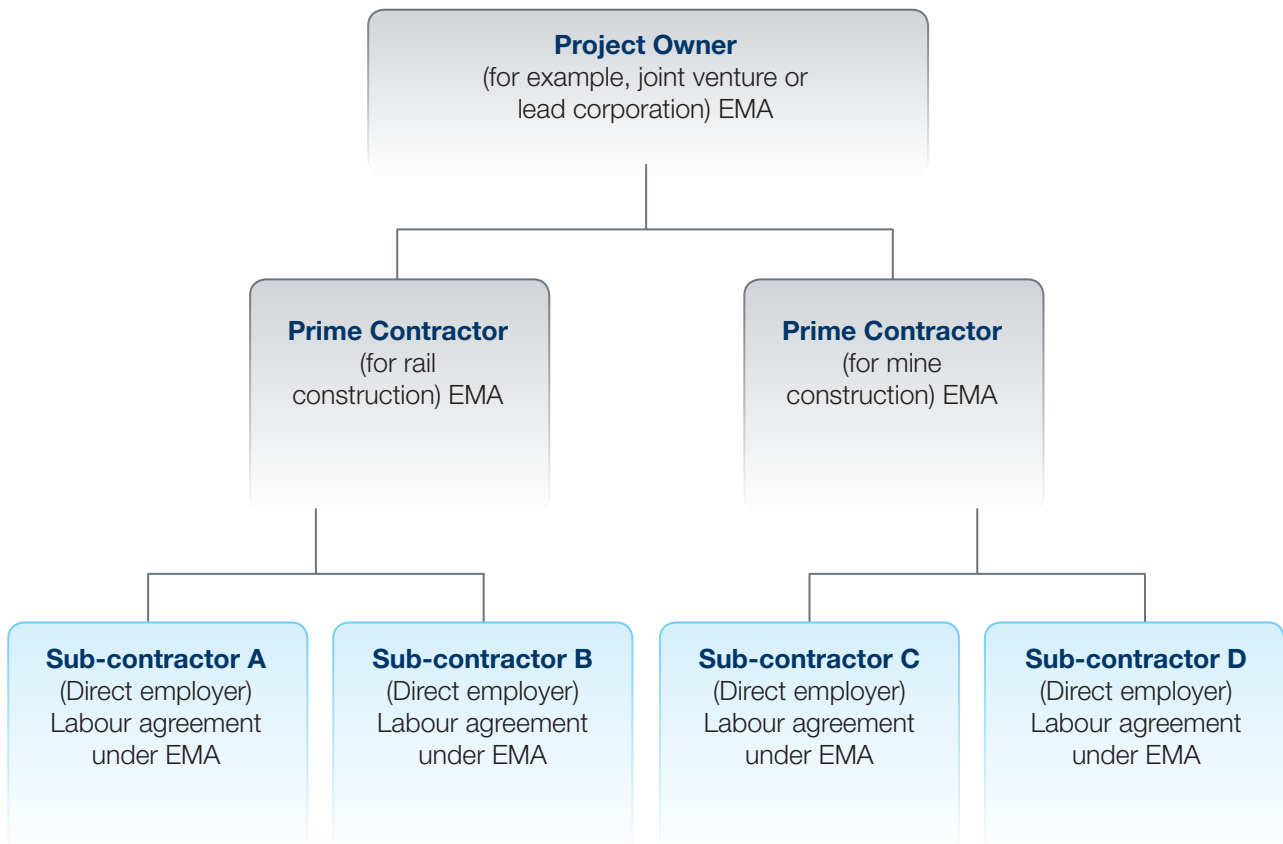


Diagram B: Prime Contractors holding EMAs



What is the benefit of an EMA?

EMAs will take a project-wide approach to meeting skill needs. Rather than each sub-contractor having to negotiate their own labour agreement where semi-skilled labour is required, the bulk of negotiation will occur with the project owners.

This means that project owners can plan their workforce needs from the start and there will be a straightforward process for sub-contractors to sign up to an individual labour agreement.

The department will aim to negotiate the agreements within three months from the time a project owner submits a complete request for an EMA. Labour agreements and visa applications associated with an EMA will also be subject to expedited processing.

Under an EMA, occupations that are not eligible for the standard 457 program can be sponsored provided the project can justify a genuine need that cannot be met from the Australian labour market. This will be critical for many resources projects, particularly during the construction phase.

Is the EMA a new visa? What visas do workers come to Australia on under an EMA?

The EMA is not a new visa, it is a deed of agreement between the resource project and the Australian Government.

All overseas workers sponsored under an EMA will work in Australia on a 457 visa. Therefore, all sponsors and visa holders will be required to adhere to the requirements of the 457 visa program, including the payment of equivalent terms and conditions.

Following the approval of a template labour agreement, the approved sponsor will be required to nominate the overseas worker for a 457 visa. The worker will then apply for a 457 visa, and as part of the process, all applicable requirements must be met.

More information on the 457 visa program

There is a comprehensive 457 visa information booklet and information about the 457 visa program available on the department's website.

See: www.immi.gov.au/allforms/booklets/books9.pdf

See: www.immi.gov.au/skilled/skilled-workers/sbs/

Eligibility requirements

EMA eligibility

EMAs are available to resource projects with capital expenditure of more than two billion and with a peak workforce of more than 1500 workers.

The government will assess each project's eligibility on a case-by-case basis. A project will not be eligible if it is simply an amalgam of smaller projects that do not meet the threshold criteria.

Due to variation in contracting arrangements between different projects, an EMA may be negotiated by the project owner (including where this is a joint venture) or a prime contractor if appropriate. Initial discussions will be held with the project owner to determine whether a project meets the eligibility requirements to access an EMA.

To be eligible for an EMA, a company must be an Australian legal entity.

Definition of a resource project

For the purposes of assessing eligibility for an EMA, a resources project is any individual energy, mining or metals project (extraction or processing) that is represented by a single Australian legal entity.

The project may include any associated infrastructure that is required to bring the resources to market such as rail, road or port infrastructure.

Can a resource project have multiple EMAs?

Yes. The eligibility criteria apply at the project level and if a project has multiple prime contractors for specific, significant, distinct elements of the work then they may access an EMA in their own right. For example, one prime contractor may be responsible for the construction of the port, another for the mine.

The department will assess the need for multiple EMAs on a case-by-case basis. The project owner and prime contractor should discuss their individual needs with the department before writing a submission for an EMA.

Can a project owner access a template labour agreement under its own EMA?

Yes. Should a project owner wish to directly employ overseas workers under an EMA, they will be able to access a template labour agreement in their own right. Additional information may be required at this stage to meet the requirements of the template labour agreement.

What requirements will a project owner need to meet to be approved for an EMA?

To be approved for an EMA, a project owner or prime contractor will need to demonstrate:

- why sufficient Australian workers cannot be found to fill anticipated vacancies in semi-skilled occupations, including labour market analysis
- consultation with relevant stakeholders on about labour market needs and the training of Australians
- commitments to ongoing local recruitment efforts
- commitments to training and social inclusion targets for the project.

What requirements will a project contractor need to meet to be approved for a template labour agreement under an EMA?

Following the approval of an EMA, a template labour agreement will be in place for the project. With the endorsement of the project owner, sub-contractors can sign up to the labour agreement, provided they can demonstrate:

- a good record of compliance with migration and workplace laws
- training of Australian workers in-line with the project training plan and the training benchmarks commensurate with the standard 457 program.

Once the labour agreement is approved, the contractor can begin sponsoring workers on 457 visas.

Why do contractors need to sign a template labour agreement if an EMA is already in approved?

As mentioned above all overseas workers employed under an EMA will be on 457 visas. One important requirement of the 457 visa is that the visa holder works directly for the sponsor. This means that the worker's direct employer must be the holder of the labour agreement for immigration law purposes. This ensures that all sponsorship obligations rest with the direct employer of the visa holders so the direct employer can be held accountable for these obligations.

How long will an EMA last?

EMAs will have a term of five years. The need for overseas workers beyond the term of an EMA will be considered on a case-by-case basis, with a subsequent EMA able to be negotiated where this is a demonstrable need.

The duration of labour agreements approved under the terms of an EMA will be determined based on need and tied to the term of the EMA. That is, where an EMA has three years to run and the sub-contractor's involvement in the project will cover at least those three years, a three year labour agreement may be available.

Worker protection measures

What requirements apply to terms and conditions of employment?

Sponsors must engage overseas workers on terms and conditions of employment that are no less favourable than what the sponsor provides, or would provide, to an Australian to perform equivalent work in the person's workplace at the same location. This requirement is known as the market salary rate requirement.

Under an EMA, employers must also ensure that living conditions for overseas workers are commensurate with those provided to Australian workers.

What protections are in place to ensure workers are not exploited?

Overseas workers sponsored under an EMA will hold 457 visas and will be subject to the *Worker Protection Act 2008*. Direct employers (i.e. sub-contractors,) will need to comply with sponsorship obligations, including paying market salary rates. This means overseas workers cannot be used to undercut Australian working conditions.

More information about the sponsorship obligations are available on the department's website.

See: www.immi.gov.au/skilled/skilled-workers/_pdf/fs-457-sponsor-obligations.pdf

Employers who do not comply with sponsorship obligations will be subject to sanctions such as suspension or termination of the labour agreement.

Direct employers will be required to undertake mandatory Visa Entitlement Verification Online (VEVO) checks on the work rights of overseas workers. Further information on VEVO checks can be found on the department's website.

See: www.immi.gov.au/e Visa/vevo.htm

Sub-contractor responsibility for worker protection under an EMA

Sub-contractors' party to a template labour agreement will be the direct employers of visa holders sponsored under the EMA. As such they will need to comply with all of the sponsorship obligations for those visa holders.

More information on the sponsorship obligations for 457 visa holders can be found in the 457 information booklet, Booklet 9. This booklet can be downloaded from the department's website.

See: www.immi.gov.au/allforms/booklets/books9.pdf

EMA holder responsibility for worker protection under an EMA

The project owner will be required to:

- make best endeavours to ensure sub-contractors engaged on the project comply with migration requirements
- inform the department as soon as the project owner becomes aware of any possible breaches of migration requirements
- take steps to ensure any exploitation issues that do arise are remedied.

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 labour agreements).

Occupations and number of workers

Will the number of overseas workers on a project be capped?

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.

For those occupations eligible for the standard 457 program, no cap will apply to the number of people that can be sponsored through the EMA (as no cap applies under the standard program).

There will be a cap on the number of people in semi-skilled or sub-trade occupations. Project owners need to provide evidence as to why Australian workers are not available to fill these vacancies. EMA holders will allocate numbers within this cap to sub-contractors involved in the project, which will then be set in the sub-contractor's labour agreement.

What occupations are eligible for EMAs?

Skilled occupations that are already eligible for the standard 457 program, such as engineers and managers, will be 'pre-qualified' for EMAs, meaning they will automatically be available for all EMAs.

The inclusion of occupations that are classified as 'semi-skilled' or 'sub-trade' in an EMA will be subject to negotiation for each EMA, dependent on the EMA applicant satisfying government that skill shortages exist in these occupations.

Can I request concessions to the requirements of the standard 457 program under an EMA?

If the project owner seeks any concessions to the standard program for skilled workers, this will be subject to the same requirements as access to semi-skilled workers. That is, any request for a concession of this nature must include robust evidence as to why that concession is necessary and what steps will be taken to address any resulting impacts, for example, occupational health and safety.

All requests for concessions will be decided at the absolute discretion of the Minister for Immigration and Citizenship.

Defining semi-skilled occupations for the EMA program

In Australian and New Zealand Standard Classification of Occupations (ANZSCO), occupations are classified according to skill level. Skill level is measured by:

- the level or amount of formal education and training
- the amount of previous experience in a related occupation
- the amount of on-the-job training required to competently perform the set of tasks required for that occupation.

Skilled occupations

For the purposes of the EMA program, skilled occupations are considered those that are eligible for sponsorship under the standard 457 visa program. Consistent with common definitions of skilled labour, these occupations require post-secondary education, vocational and technical qualifications (usually Certificate III and above) and more than three years professional experience.

Semi-skilled occupations

The department's definition of semi-skilled occupations is occupations that have Skill Level 3 or 4 (where the occupation requires at least a skill level commensurate with an Australian Qualification Framework (AQF) Certificate II or higher or at least one year's relevant experience).

The EMA program will allow for the sponsorship of semi-skilled occupations, but will target those that are considered to be more specialised that require a higher degree of experience.

Specialised semi-skilled occupations

According to the ANZSCO dictionary, the entry skill level for semi-skilled occupations is generally an AQF Certificate II and one year experience. For some semi-skilled positions, however, employers require a worker with a higher level of training and/or experience, for example, an AQF Certificate III or three to five years' experience.

The EMA program will primarily target occupations that are more specialised. That is, requiring greater experience and skills. Project owners will need to justify the need for overseas workers in these occupations on a case-by-case basis. We expect that for those occupations requiring limited training and experience, employers will seek workers from the Australian labour market.

Labour market analysis

Will resource projects be required to test the market before being approved for an EMA?

There is a very strong body of evidence pointing to emerging skills shortages in the resource sector. Resource projects will need to complement this evidence with specific labour market analysis that relates to their particular project. Further information on what will be required for this labour market analysis can be found in part two of this guide.

Do individual sub-contractors need to conduct labour market testing?

Once an EMA is in place, sub-contractors will not be required to re-evidence this need. This is an important part of streamlining the application process.

Stakeholder consultation

Companies making an EMA submission will be required to consult with relevant stakeholders. More information on the stakeholder consultation process can be found in part two of this guide.

In addition an advisory body of unions, industry and government will be formed to monitor the EMA program.

Information disclosure

What information will the department disclose to the public about our EMA?

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.

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.

What information will the department disclose other government agencies about our EMA?

The department will disclose information about an EMA with relevant federal, state and territory agencies for the following reasons:

- to assess the accuracy, currency and relevance of information provided as part of the assessment process
- to assist in workforce planning, skills development and training policy development
- to ensure compliance with relevant legislation.

Further questions

I have further questions, where can I find more information?

Further information can be found on the department's website at www.immi.gov.au or by contacting the department's general enquiries line on 131 881.

Booklet 9, Temporary Business (Long Stay) (Subclass 457) visa can also be downloaded from the department's website.

See: www.immi.gov.au/allforms/booklets/books9.htm

Additionally, if you wish to discuss detailed aspects of the EMA program, please contact the department directly on (02) 6264 2468, or by email ema@immi.gov.au.

Part 2: A guide to preparing an EMA submission

Purpose

To access an EMA you will need to prepare a submission outlining why the project requires an EMA to meet its skill needs.

This submission, along with the relevant stakeholder feedback on the submission, will form the basis for negotiations with government and a departmental brief to the minister for his decision on the approval or otherwise of the EMA.

Ministerial discretion

The departmental brief will reflect the analysis of relevant government agencies on the merits of your submission for an EMA. The minister will then decide on whether the project should gain access to an EMA. The decision as to whether a project will have access to an EMA is entirely at the minister's discretion. The minister's decision is final and there is no review or appeal process.

Audience and nomenclature

The main audience for part two of the submission guidelines is the project owners or prime contractors that will make an EMA submission. For the rest of the guidelines, the terms **you** and **project owner** will be used to mean the party making a submission for an EMA.

Migration advice

You may wish to seek external advice from migration or legal experts in structuring your submission. This is not a requirement of the EMA submission. The department is happy to negotiate with the project directly, or with a contracted third party where applicable.

Structuring your submission

Your submission for access to an EMA must have the following four components:

- EMA submission information form
- the submission itself
- supporting documentation.

EMA submission information form

To ensure that the department has all of the essential information regarding your project you will be required to complete the EMA submission information form and include this with your submission. This short form will request the key information about your project, its eligibility for the EMA program and your role within the project.

The EMA submission information form can be downloaded from the department's website.

See: www.immi.gov.au/skilled/enterprise-migration-agreements.htm

The EMA submission

Your submission must address the key requirements that are presented Part 2 of the guidelines. This is to ensure that you have included all the information necessary for the minister to decide on your suitability for access to an EMA.

The key elements of an EMA submission are:

- Project details
- Compliance record
- Training of Australians
- Skills assessments
- Workforce planning
- Labour market analysis
- Stakeholder consultation
- Attestation

If you do not address each these components your submission will be incomplete. An incomplete submission will take longer to assess and can result in delays for your project in accessing overseas workers. If you are unsure whether your submission is complete, please contact the department.

Supporting documentation

You must include supporting documentation to provide evidence for any claims that you make as part of your submission. Please note this documentation in the submission and attach it to your submission email.

How much information is required?

An EMA submission does not have to be long for it to be complete and ready for assessment by the department. You should address each of the key elements in a succinct and targeted fashion.

Please do not simply use supporting documentation without explanation to address the key requirements of an EMA submission. Including unnecessary or irrelevant information as part of your submission will make it more difficult and time-consuming to assess.

Remember that the final audience for your submission is the Minister for Immigration and Citizenship and as such documentation should be targeted and summarise key information. If you have questions about the amount of information to be provided in your submission, please contact the department directly.

Electronic submission

All submissions for an EMA must be submitted electronically. This includes the EMA submission information form and any supporting documentation. This is to ensure a streamlined and efficient assessment process. Any paper submissions will be returned with a request to re-submit them electronically.

Please include the EMA submission information form, the submission itself and any supporting documentation in an email to the department:

EMA submission email address:

ema@immi.gov.au – Please include your company's name and the project name in the subject field.

Project details including eligibility

The EMA submission information form will request essential details about the project, its eligibility for the EMA program and your role on the project. The form contains instructions as to what information is required.

The most important details about your project on the EMA submission information form is the amount of capital expenditure of your project and its peak workforce size.

This information is important as your project must meet the threshold eligibility criteria of the EMA program. You will be required to attest to the accuracy of the information provided in your submission, including your claims to meeting the threshold criteria.

Capital expenditure

You will be required to indicate and attest to the accuracy of the capital expenditure costs of the project. You will also be required to supply supporting documentation to evidence this level of expenditure. This documentation should break down at a high level capital expenditure costs of the project.

The department will confirm with relevant state and federal agencies that the information supplied matches previously supplied information.

Peak workforce

You will be required to indicate and attest to the accuracy of the peak workforce size of the project. The peak workforce size is the total number of workers that will be working on the project at its highest point in time. This is not the cumulative total of workers that will be performing work on the project.

You will also be required to supply supporting documentation in the form of a workforce plan to evidence this figure. Further information on the workforce plan is included later in part two of this guide.

The department will liaise with the relevant state and federal agencies and consider stakeholder feedback to verify the accuracy of the workforce plan.

Skills assessment and licensing

Do employees require a skills assessment under an EMA?

All Subclass 457 visa holders are required to possess skills and qualifications commensurate with the minimum requirements specified under the Australian and New Zealand Standard Classification of Occupations (ANZSCO) and satisfy applicable Australian registration and/or licensing requirements.

Project owners will be required to attest that overseas workers will have a qualification of at least equivalent to an AQF Certificate III and three years' recent relevant work experience. Overseas workers are expected to be highly skilled and experienced and will need to meet all industry registration requirements to ensure they have skills to Australian standards.

Projects are expected to have an appropriate and rigorous skills assessment regime, which is enforced through its contractual arrangements. Information on this skills assessment regime should be provided as part of your submission to allow for assessment by government.

In addition, 457 visa applicants from certain countries in trade occupations are subject to a mandatory skills assessment, managed by Trades Recognition Australia. This requirement also applies to applicants under an EMA.

An independent skills assessment is usually processed by the Australian assessment authority or a qualified workplace assessor engaged by an Australian registered training organisation acceptable to the Australian Government.

Further information on the assessment of skills and qualifications can be found on the Department of Education, Employment and Workplace Relations website.

See: www.deewr.gov.au/Skills/Programs/SkillsAssess/TRA/Pages/default.aspx

What licensing and/or registration is required?

As with Australian workers, all foreign workers are required to hold the relevant licence or registration prior to commencing work.

Section 116(1)(e) of the Migration Act allows the minister to cancel a visa where the presence of its holder is a risk to the health, safety or good order of the Australian community. This section of the Act specifically envisages visa cancellation in instances where an individual fails to maintain relevant licensing and/or registration.

Further information on licensing and registration can be found on the department's website.

See: www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-employee.htm

Training of Australians

Why is there a training requirement under the EMA program?

The training requirement is an essential element of the EMA program. While it is important for resource projects to be able to access overseas workers to meet temporary skills shortages, the long-term solution is to train up the Australian workforce. Therefore, the project owner must demonstrate to the minister's satisfaction that the project will make a substantial investment in the training of Australians.

Two-tiered training program

There are two-tiers of the training requirement under an EMA:

- the training plan that is submitted as part of the EMA submission
- the training benchmark that will be assessed for the template labor agreements.

The project owner must develop an EMA training plan and include it as part of their EMA submission.

Contractors that have been approved for a template labour agreement under an EMA must meet the training benchmark.

EMA training plan

The training plan under an EMA provides the project owner with the opportunity to demonstrate that they are making a significant and commensurate contribution to the training of Australians. It is important that the government be certain that overseas workers are not being used as an alternative to training Australians.

Outcomes and principles based

As part of your training plan you must have measurable targets for the training of Australians. This may include a fixed number or proportion of the project workforce that are employed as graduates, trainees or apprentices.

The EMA training plan must be project specific. That means that other activities that the project owner may be doing at a company wide level, or in relation to other projects, will not be relevant for the EMA submission.

In writing the EMA training plan, you may draw upon:

- existing training measures that you are implementing,
- planned training measures that are relevant for the project
- new training initiatives that have been designed specifically for the EMA submission.

As part of the training plan you must:

1. Commit to training in occupations of known or anticipated shortage.

This means that the training plan must focus on relevant occupations that are either currently or already in shortage, or that will be in shortage in the short to medium-term.

These do not necessarily have to be the exact same occupations that you are requesting under the EMA, however, they must be relevant to the project. For example, you may have some training measures that relate to the operational work force of the project once the project has been commissioned that are not required for the construction phase of the project. This will still be relevant under the EMA.

2. Commit to reducing reliance on overseas labour over time, with particular focus on semi-skilled labour where this is approved for the EMA.

This requirement complements the first requirement to train in occupations that are in shortage. It is important that temporary overseas workers are not the long-term solution to skills gaps in Australia. Therefore you must be able to demonstrate what strategies the project will employ to reduce reliance on overseas labour over time.

It is important that this focuses on the semi-skilled occupations that you are sponsoring under the EMA. This will ensure that Australia's capacity to meet the construction needs of the resources sector is increased over time.

Training measures that relate to higher skilled occupations, particularly the up-skilling of lower skilled workers and to occupations that may be more relevant for the operational phase of the project are also relevant.

3. Demonstrate that training strategies are commensurate with the size of the overseas workforce utilised on a project.

Training measures that relate to the project must be appropriate for the size of the project, and the number of overseas workers required for the project. This section must tie into your workforce plan and labour market analysis.

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4. Demonstrate how training targets will be enforced through its contracting model and measured and monitored over the term of the EMA.

As mentioned above the training plan must be outcomes based and must contain training targets. You must be able to demonstrate how you will achieve these targets through the contracting model of the EMA, and also how you will monitor the contractual provisions being adhered to.

The training plan is not prescriptive by design. The government acknowledges and appreciates the considerable positive contribution that the resource sector is making to the training of the Australian workforce. Any training strategies developed in conjunction with state or territory governments should be included in your EMA training plan. The EMA training plan provides the project owner with the opportunity to demonstrate that they are performing sufficient training of Australians. The training plan, stakeholder feedback and government analysis of the EMA training plan will form a key element of the department's final submission to the minister. As such it is important that the training plan is targeted, detailed, specific and has measurable outcomes.

However, this does not mean that you should simply submit documents that have been used for other purposes. The government expects that a targeted training plan contains relevant information. Submitting excessive untargeted information will slow down the assessment process of your EMA submission.

As with all elements of the EMA submission, if you have any questions about the training plan please contact the department for advice.

Template labour agreement training benchmark

The EMA training plan is an overriding strategy for the training of Australians to meet the resources sectors future skills needs. The template labour agreement requires a specific monetary contribution to the training of Australians. This requirement is equivalent to the training benchmark that exists under the standard 457 visa program. This requirement can be met either by:

- contributing two per cent of payroll (of their project workforce) to a relevant industry training fund
- demonstrating expenditure of one per cent of payroll (of their project workforce) on training for their Australian employees.

The training requirement for contractors under an EMA relates directly to the project. That is, the training contribution is derived from the payroll of that employer for employees on the project.

Training in the company's broader operations that has already been cited as evidence in an application for approval as a standard business sponsor cannot be re-submitted as evidence in a request for a labour agreement under an EMA.

Workforce plan

As you will be required to demonstrate that the project meets the eligibility criteria and provide occupation-level labour market analysis, you will also be required to submit a workforce plan for the project.

The workforce plan is essential to providing the minister with confidence that the project is making best efforts to source workers locally before any overseas workers are required on the project.

If the project owner is not aware how many workers it will need, how can it be certain that it will not be able to fill them locally?

The workforce plan will outline year-by-year the total number of workers involved in the project and then provide a breakdown at the skilled worker and semi-skilled worker level.

At the skilled level (those occupations that would normally be eligible for the 457 visa program) you will simply have to provide a total number on a year by year basis. As explained above, this number is not capped.

At the semi-skilled level (for those occupations that you will be specifically requesting under the EMA that are not eligible for the standard 457 visa program) you will be required to break this number down to an occupation by occupation basis. You will also be required to state the number that you expect to source locally and the number that you expect you will have to source from overseas.

For example, the following table will show the breakdowns required for a fictional project.

Example: Overall workforce plan for a project

	Year 1	Year 2	Year 3	Year 4
Skilled	1 000	1 000	1 000	1 000
Semi-Skilled	500	500	500	500
Total	1 500	1 500	1 500	1 500

Example: Semi-skilled workforce plan broken down to the occupation level, including break down to the number of Australian and overseas workers required

Occupation Title	ANZSCO Code	Y1 Aus	Y1 O/S	Y2 Aus	Y2 O/S	Y3 Aus	Y3 O/S	Y4 Aus	Y4 O/S
Earthmoving Plant Operator	721211	40	10	30	20	0	0	25	25
Scaffolder	821712	30	5	30	5	25	10	10	10

The department understands that the workforce plan will require a certain degree of uncertainty due to its predictive nature. EMAs will retain the flexibility to adjust over the term of the agreement if workforce needs change.

Labour market analysis

You will be required to submit an analysis of the labour market requirements for your project. This labour market analysis should examine the semi-skilled occupations that you are requesting and have described in your workforce plan.

You must submit current and reputable evidence that demonstrates semi-skill shortages will impact the project. 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
- results of any recruitment campaigns conducted.

Is this the same as labour market testing in the labour agreement program?

No it is not. EMAs will be negotiated ahead of attempts to recruit labour, and therefore labour market testing is not required. The labour market analysis is a higher level of analysis of the labour market.

The government expects you to draw upon previous research where it is available, and if necessary conduct additional investigation of the labour market conditions for your project.

This may include research conducted by federal, state or territory government agencies, or by industry peak bodies.

Do I need to submit labour market analysis for skilled (457 eligible) occupations?

No, you do not. The labour market analysis is for semi-skilled occupations requested in your submission.

Stakeholder consultation

What is the aim of stakeholder consultation?

The aim of the stakeholder consultation is to ensure that government is provided with a full and accurate picture on the use of semi-skilled workers under an EMA.

Requirements applicable to skilled occupations sponsored under an EMA will be commensurate with the standard 457 program and subject to the protections of this program, including an assessment of the skills of the worker and the terms and conditions of employment.

Consistent with the standard 457 program and as outlined in the EMA consultation process, project owners will not be required to consult with stakeholders on the number and occupations of skilled overseas workers engaged on a resources project, nor on the industrial arrangements that apply to these workers.

Stakeholder consultation will include relevant unions and peak bodies.

What does the government expect from stakeholders?

Stakeholders are expected to provide their views on the need for overseas labour in semi-skilled occupations and on the EMA training plan.

This may include advising, that based on the justifications provided by the project owner, the stakeholder agrees that the number of workers sought is reasonable.

Where stakeholders consider the need for overseas workers has not been satisfactorily demonstrated by the project owner, this must be accompanied by a substantive justification.

As with all elements of the EMA submission process, government requires a strong evidence base to consider the merits of a submission. This requirement applies equally to any stakeholder feedback on the EMA submission.

What does the stakeholder consultation process involve?

Project owners are required to provide evidence of consultation with relevant unions and peak bodies 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.

Relevant stakeholders must include:

- the union or unions which best represent employees in occupations proposed under the EMA
- the peak body or bodies that best represent the project owner.

The project owner is not required to consult with local and state governments. It is assumed that this consultation will already have occurred as part of the process for obtaining approval for the project. The government will be contacting relevant state and local government agencies to establish that this is the case.

Where there are a range of occupations proposed, this may involve consulting with multiple unions.

Details on stakeholder consultation and the views of stakeholders must be provided in writing to the department and will be considered in the assessment of a request for an EMA.

Where a stakeholder raises legitimate issues which the government considers should be further considered and addressed by the project owner, the government may request follow-up consultation to occur.

Stakeholder views will not necessarily be determinative of the outcome of EMA negotiation. If a response is not received from stakeholders, the EMA negotiation process will continue.

Consultation process

To satisfy government that consultations involve genuine discussion and good faith the consultation process must occur as follows:

1. Stakeholders will be provided with a copy of the proposed EMA training plan, labour market analysis and workforce plan.
2. The project owner will have 14 days from the provision of this information to make a genuine effort to arrange a reasonable time and conduct a face-to-face meeting with the relevant stakeholders at a reasonable time and place.
3. Stakeholders will be provided with a further fourteen days from the time of this face-to-face meeting to submit any follow up questions or comments to the project owner.
4. The project owner must respond to the stakeholders' comments within this 14 day period to allow them to incorporate any responses in their final consultation comments.
5. A further seven days will be provided if, at the conclusion of abovementioned 28 day period, further information exchange on issues of substance is needed to inform stakeholders considered response to the application.
6. At the end of this consultation period stakeholders must submit their final comments on the EMA to the project owner and the Department of Immigration and Citizenship.

EMA consultation documentation

As stated above the relevant stakeholders must be provided with copies of the same documentation that will be submitted to the department including a copy of the EMA training plan, labour market analysis and workforce plan. As befits the aim of the stakeholder consultation these documents will focus on the requirement for semi-skilled labour.

In the documents provided to stakeholders as part of the consultation process, project owners will be required to outline the following information. Further information on what is required in these documents is covered in their relative sections in these guidelines.

Training plan

The project owner will be required to submit documentation demonstrating:

- a commitment to training in occupations of known or anticipated shortage
- a commitment to reducing reliance on overseas labour over time, with particular focus on semi-skilled labour where this is approved for the EMA
- that training strategies are commensurate with the size of the overseas workforce utilised on a project
- how training targets will be enforced through its contracting model and measured and monitored over the term of the EMA.

Labour market analysis

The project owner will be required to submit current and reputable evidence that demonstrates semi-skill shortages will impact the project, which may include:

- research and data that provide an evidence base for skills shortages in the proposed occupation/s for which access to overseas workers is sought
- results of recruitment campaigns and/or
- consultation on labour market conditions with stakeholders such as unions or industry peak bodies.

Workforce plan

The project owner will be required to submit a breakdown of the project workforce for each year of the project:

- A break-down of the overall numbers of workers (semi-and highly-skilled) on the project.
- A breakdown of occupations and numbers of semi-skilled positions on the project.
- The number and occupations of those semi-skilled workers that will be employed from overseas.

Attestation

A qualified and authorised officer in your company must attach a letter to your EMA submission attesting to the accuracy of information submitted, including the eligibility criteria.

Compliance record

The department will assess the compliance record of companies involved with the project. This will focus on compliance with legislation relating to:

- Migration
- Occupational health and safety
- Industrial relations

You must notify the department of any outstanding or significant issues relating to companies involved with the project's compliance with these areas. You should also notify the department of any sanctions that have been applied where relevant, and what, if any, mitigation strategies have been put in place.

Submission checklist

✓	Submission information form
✓	Training plan
✓	Skills assessments
✓	Workforce planning
✓	Labour market analysis
✓	Stakeholder consultation
✓	Compliance record
✓	Attestation

