



Submission to the
Productivity Commission

Mineral and Energy Resource Exploration

By the Australian Mines & Metals
Association (AMMA)

July 2013

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economy activity in Australia^[1] (double its share of a decade ago). The industry is forecast to contribute a record \$205 billion of export earnings to our national income in 2013-14^[2].

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^[1] Reserve Bank of Australia research discussion paper, *Industry dimensions of the resources boom*, February 2013

^[2] Bureau of Resources and Energy Economics, *Resources and Energy Quarterly—March quarter 2013*

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INTRODUCTION

1. This submission follows:
 - a. An initial AMMA submission to the Productivity Commission inquiry, *Mineral and Energy Resource Exploration*, dated 11 April 2013 (AMMA's initial submission).
 - b. Evidence given by AMMA to the Commission at a public hearing held in Brisbane on 3 July 2013.
2. The submission provides comment on Productivity Commission Draft Report, *Mineral and Energy Resource Exploration*, (May 2013 (the Draft Report)).
3. AMMA urges that the Productivity Commission make recommendations regarding:
 - a. The consistent application by Australian governments of principles of best practice regulation.
 - b. Workplace relations reform to boost the productivity and competitiveness of the resource industry, including mineral and energy resource exploration.

THE NATURE OF RESOURCE EXPLORATION AND THE ROLE OF GOVERNMENT

Performance of resource explorers

4. AMMA's initial submission provided a copy of the then draft AMMA *Resource Industry Productivity Analysis and Policy Options: Discussion Paper*.
5. A final version of the AMMA Discussion Paper is available at:
<http://www.amma.org.au/library/publications/3288-discussion-paper-resource-industry-productivity-analysis-and-policy-options>
6. Relevant to chapter 2 of the Draft Report, the Discussion Paper provides evidence regarding:
 - a. Mineral and energy exploration becoming increasingly costly in terms of both labour and capital inputs (see section 3.3).
 - b. Increasing international competition for exploration expenditure and activity (see section 3.2).

Government involvement in the exploration sector

Policy levers available to governments

7. The AMMA Discussion Paper, to which the link is provided above, demonstrates that a multi-faceted approach must be adopted by industry and government to ensure the Australian resource industry can continue to deliver on its promise; that is, to ensure that:
 - a. Australia's market share in global exploration expenditure does not decline further (see Draft Report, figure 5).
 - b. Further cost rises are not attributable to an increased regulatory burden (see Draft Report, figure 3).
 - c. Increases in exploration expenditure have a direct correlation to the discovery of significant new resources (see Draft Report, figure 4).
8. At the public hearing in Brisbane, AMMA raised three case studies exemplifying the ways in which policy levers available to Government, if not used in an evidence-based and consultative manner, can significantly impede the "reward to risk ratio" for exploration activities.
9. In relation to the Draft Report, each case study has a direct and negative relationship with a specific lever identified on page 59; namely, skilled labour.
10. First, the *Migration Act (Offshore Resources Activities) Act 2013* (Cth) is directed explicitly at offshore exploration.

11. Under new section 9A of the *Migration Act 1958* (Cth), when proclaimed, a person will be deemed to be in the migration zone if:
 - a. He or she is in an area to participate in, or to support, an “offshore resources activity”.
 - b. “Offshore resources activity” includes an activity performed under –
 - i. Licence, including an exploration licence.
 - ii. Special purpose consent (see s. 315 of the *Offshore Minerals Act 1994* as to exploration).
12. The likely detrimental effects of the *Migration Act (Offshore Resources Activities) Act* on the “reward to risk ratio” were clearly identified in:
 - a. The second reading speech of the Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F5b6d8876-4831-481f-8b5b-85bb0fbe651f%2F0167;query=id%3A%22chamber%2Fhansard%2F5b6d8876-4831-481f-8b5b-85bb0fbe651f%2F0178%22>
 - b. An AMMA submission to the Senate Legal and Constitutional Affairs Legislation Committee:
<http://www.amma.org.au/library/submissions-2/3235-submission-to-the-senate-standing-committee-on-legal-and-constitutional-affairs>
 - c. Transcript of AMMA evidence to Senate Legal and Constitutional Affairs Legislation Committee:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/offshore_resources_activity/hearings/index.htm
 - d. The Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Offshore Resources Activity) Bill 2013 [Provisions], Dissenting Report by Coalition Senators*:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/offshore_resources_activity/report/index.htm
13. Second, the *Migration Amendment (Temporary Sponsored Visas) Act 2013* undermines the capacity of employers to fill identified skills gaps in a timely and operationally essential manner through skilled migration, ironically the very policy rationale of the 457 visa scheme.
14. The Act reintroduces the labour market testing (LMT) requirement to 457 visa applications. This measure was dropped in 2001 following a departmental review and report (*In Australia's Interests: A Review of the Temporary Residence Program*) that found LMT to be costly and ineffective. Evidence was provided

in subchapter 5.26 of that report that LMT could lead to delays of up to 6 weeks for some visa applications (p.122):

http://www.immi.gov.au/media/publications/pdf/chapter_5.pdf

15. This is **6 times longer** than the best practice of 5 processing days for temporary sponsored visas recommended by the National Resource Sector Employment Taskforce (NRSET) Final Report (Recommendation 4.1):

<http://www.innovation.gov.au/Skills/National/Documents/FinalReport.pdf>

16. The resource industry is a small user of skilled migrants but when engaged they are often vital to safety, maintenance and project delivery. Timeliness and responsiveness is pivotal for industry – in both exploration and non-exploration contexts – and is directly threatened by the legislative change.
17. The 457 visa program is of particular importance to the exploration sector because critical occupations such as geologists and geophysicists are found on the Consolidated Sponsored Occupations List (CSOL) but not the Skilled Occupational List (SOL).
18. This means that these occupations – which remain in persistent shortage and are critical to exploration – can only enter Australia via the employer-sponsored 457 visa scheme but not independently under the 'Skill Stream' of Australia's *Migration Program*. Hamstringing the 457 visa program, as per this legislative change, will therefore have a particularly negative impact on the exploration industry which relies upon it.
19. Again, evidence regarding the financial and non-financial barriers to mineral and energy exploration resulting from this legislation was set out in an AMMA submission to the Senate Legal and Constitutional Affairs Legislation Committee:

<http://www.amma.org.au/library/submissions-2/3229-submission-on-the-migration-amendment-temporary-sponsored-visas-bill-2013>

(At page 6 see, for example, a reference to an admission by Minister O'Connor made in his second reading speech to the bill that labour market testing will lead to delays for employers seeking to fill skilled vacancies, but that such delays could be avoided in the event of emergencies.)

20. Third, the *Fair Work Amendment Act 2013* failed also to address core productivity and competitiveness enhancing strategies. The arbitrary use in the Act of policy levers contrary to the recommendations of the Fair Work Act review panel is having, and will continue to have, a significant detrimental effect upon resource industry employers seeking to grow their businesses. In short, it will affect the Australian economy and Australian jobs.
21. As stated in a joint letter (from the Australian Chamber of Commerce and Industry (ACCI), Australian Industry Group, AMMA and the Business Council of Australia), many elements of the Fair Work Amendment Act fail the test of good policy design and good regulation:

[http://www.amma.org.au/assets/media/2013MediaReleases/Mar/20130319Joint letter re Fair Work Act amendments.pdf](http://www.amma.org.au/assets/media/2013MediaReleases/Mar/20130319Joint%20letter%20re%20Fair%20Work%20Act%20amendments.pdf)

22. It is noted that not all provisions of the Fair Work Amendment Act, as introduced into the Federal Parliament, were enacted. However, as argued by the Chief Executive of the ACCI in the following article, this does not appear to be a function of appropriate legislative scrutiny:

<http://www.theaustralian.com.au/opinion/minority-parliament-of-deals-scores-a-fail/story-e6frg6zo-1226674517250>

23. Finally, the practical effects upon the resource industry of the misuse of policy levers available to governments are reported regularly by the media. See, for example:

- a. "MUA wants gas plant cooks paid \$230,00 annually", *Perth Now*, 14 May 2013

<http://www.perthnow.com.au/news/western-australia/gas-plant-cooks-want-230000/story-fnhocxo3-1226642040247>

- b. "High costs put \$150b LNG projects at risk", *The West Australian*, 27 May 2013

<http://www.australianherald.com/index.php/sid/214782833/scat/12878be9fc2ca79c>

- c. "Trouble on the High Seas", *Australian Financial Review*, 15 June 2013

http://www.afr.com/p/business/companies/make_way_for_the_new_ourge_shareholder_9Fc5iWwFdmAl3T2HYqMJ7O

Explorers views of regulation

24. The Draft Report (at pages 59-61) refers to evidence from the Fraser Institute and industry concerns suggesting that regulatory change and governance in Australia are impinging on the attractiveness of many Australian jurisdictions as destinations for exploration.
25. The concerns of AMMA members and the resource industry more widely corroborate the Fraser Institute survey.
26. There is scope for regulation to evolve. A more stable, contemporary framework would have far greater consistency with COAG Principles of Best Practice Regulation (set out on page 85 of the Draft Report).
27. As noted by AusIMM, businesses operating within the Australian resource industry have highly-developed performance and capabilities. They compete within a global industry in which industry standards, corporate and community expectations and world's best practice are often well ahead of Australian regulatory obligations.
28. A significant concern of resource industry employers is that, too often, government regulation of the resource industry does not meet a Government's

own standards of regulatory best practice. Too much legislation and other regulatory measures is made in Australian jurisdictions without following the COAG Principles. In relation to each of the three case studies, for example, the materials to which links are given provide strong evidence that the regulatory processes undertaken were inconsistent with all eight Principles of Best Practice Regulation.

29. As a result, the multiple burdens of regulation (as represented by Figure 1.2 in the Draft Report) create multi-fold impediments to resource industry businesses. An example is provided by the likely operation of the *Migration Amendment (Offshore Resources Activity) Act 2013*. Problems arise from the regulations themselves (the Amendment Act and the anticipated amendments to the Migration Regulations 1994 (Cth)), regulatory duplication and likely problems caused by regulator behaviour:
 - a. *Problems with the regulations themselves* -
 - i. Unclear or questionable objectives – see dissenting report, Senate committee, pages 11-12 and 17-20.
 - ii. Conflicting objectives – see dissenting report, Senate committee, pages 11-12 and 17-20.
 - iii. Overly complex regulation or prescriptive requirements – see dissenting report, Senate committee, pages 13-14.
 - iv. Poor risk management through regulatory creep – see dissenting report, Senate committee, pages 13-14 and 19 (paragraph (f)).
 - b. *Duplication of regulations* –
 - i. Overlap and inconsistency of regulations – see dissenting report, Senate committee, pages 15-7.
 - ii. Variation in reporting requirements – see dissenting report, Senate committee, page 14.
 - c. *Regulator behaviour* –
 - i. Excessive reporting or recording requirements – see AMMA submission to Senate committee, pages 23-24.
 - ii. Overzealous regulation – see dissenting report, Senate committee, pages 11-2.
30. The Regulation Impact Statement to the Migration Amendment (Offshore Resources Activities) Bill 2013 failed to identify and/or consider the factors identified above.
31. An additional element to the burdens of regulation, as demonstrated by the Migration Amendment (Offshore Resources Activities) Act, is the uncertainty that such peremptory regulatory change brings to individual resource industry businesses and activities and to the resource industry as an aggregate, and to allied sectors, across the relevant jurisdiction.

EXPLORATION LICENSING AND APPROVALS

Concerns with regulator performance

Funding and staffing

32. At the public hearing in Brisbane, regulator staffing issues (discussed on pages 94-95 of the Draft Report) were raised.
33. One strategy regulatory agencies might employ to address competition from explorers and mining companies for similarly skilled staff is to utilise the mechanisms industry has developed to address shortages in skilled labour. Two examples were provided in the AMMA initial submission (page 7).
34. First, miningoilandgasjobs.com is an online jobseeker information portal. It is an AMMA initiative responding to a widespread demand for information from Australian people wishing to transit into employment in the resource industry. miningoilandgasjobs.com is Australia's largest source of information about employment, career planning, migration, training and professional development in the resource sector.
35. Use of miningoilandgasjobs.com by regulators need not be restricted to the advertising of vacant positions on the site. To provide a further example, exploration regulators could pursue engagement with their labour market targets via the inclusion of content on the Careers and Industry Guide – developed for the resource and allied industries. This guide provides highly-useful online information to encourage people to plan for long-term careers in the industry. In this way, regulatory agencies could provide information about the attractions and benefits to a resource industry career of regulatory agency experience.
36. Second, the Australian Women in Resources Alliance (AWRA) helps employers to attract, retain and reap the rewards of women in resources workplaces. AWRA is funded jointly by the Australian Government through the National Resource Sector Workforce Strategy and by AMMA, with leadership from industry bodies and employers across Australia.
37. As for miningoilandgasjobs.com, engagement by regulatory agency employers would facilitate engagement with a readily available pool of potential applicants for vacant skilled positions.
38. A further example would be for regulatory agencies to participate in AMMA's Mining, Oil and Gas Jobs Expos. Further information is available at:

<http://www.amma.org.au/events/mining-oil-gas-jobs-expo>

WORKFORCE ISSUES

Skills shortages

39. As discussed at the public hearing in Brisbane, the May 2013 AMMA-PitCrew Labour Market Index provides a measure of the relative level of labour shortage or availability for major Australian resources, energy and infrastructure projects, with the scale ranging from good availability to acute shortage.
40. The Index will be released biannually to report on labour availability in the resource industry. It uses innovative labour market modelling techniques to forecast accurately the real extent of skills and labour demand for major Australian resource and infrastructure projects.
41. The AMMA-Pitcrew Labour Market Index is available at:
<http://www.amma.org.au/library/publications/3286-amma-pitcrew-labour-market-index-may-2013>
42. The May 2013 Index provides evidence, for example, that, for the following 12 month period:
 - a. Expansion of existing projects and the commencement of new projects will create an onsite construction labour demand of 98,869 workers.
 - b. South Australia, New South Wales and Tasmania should meet demand for local labour, but with no capacity to meet increased demand.
 - c. Labour market pressure will be stronger in Western Australia, Queensland and the Northern Territory. In those States, local labour availability will be up to 20% below demand. In the Northern Territory, there will be an acute shortage, with labour availability around only 50% of demand for major resource and infrastructure projects.
 - d. Construction labour shortages are anticipated for skilled trades.
 - e. Key shortages will exist as to production managers and operators and engineering technicians.
 - f. Construction and engineering labour demand is expected to peak in 2014-15.
 - g. After the construction phase of the major projects has been completed, an operations phase will require a higher average level of skills.

Workplace relations

43. As stated at the public hearing in Brisbane, AMMA would urge the Productivity Commission to include in its Final Report recommendations regarding the non-financial barriers to mineral and energy exploration imposed by the undue burdens placed on employers by the Fair Work Act 2009 (Cth).
44. The AMMA *Resource Industry Productivity Analysis and Policy Options: Discussion Paper* identifies (at pages 27-9) six essential workplace relations reforms necessary to ensure that the Act is meeting the statutory objectives of increasing the productivity, flexibility and fairness of workplaces.
45. In addition, evidence and materials provided in this submission under "Government involvement in the exploration sector" demonstrate a need for workplace relations reform to "reboot" the productivity and competitiveness of the resource industry, including mineral and energy resource exploration.