

Senate Legal and Constitutional Affairs Legislation Committee

**Inquiry into the
Migration Amendment (Offshore Resources Activity) Bill 2013**

June 2013



Submission

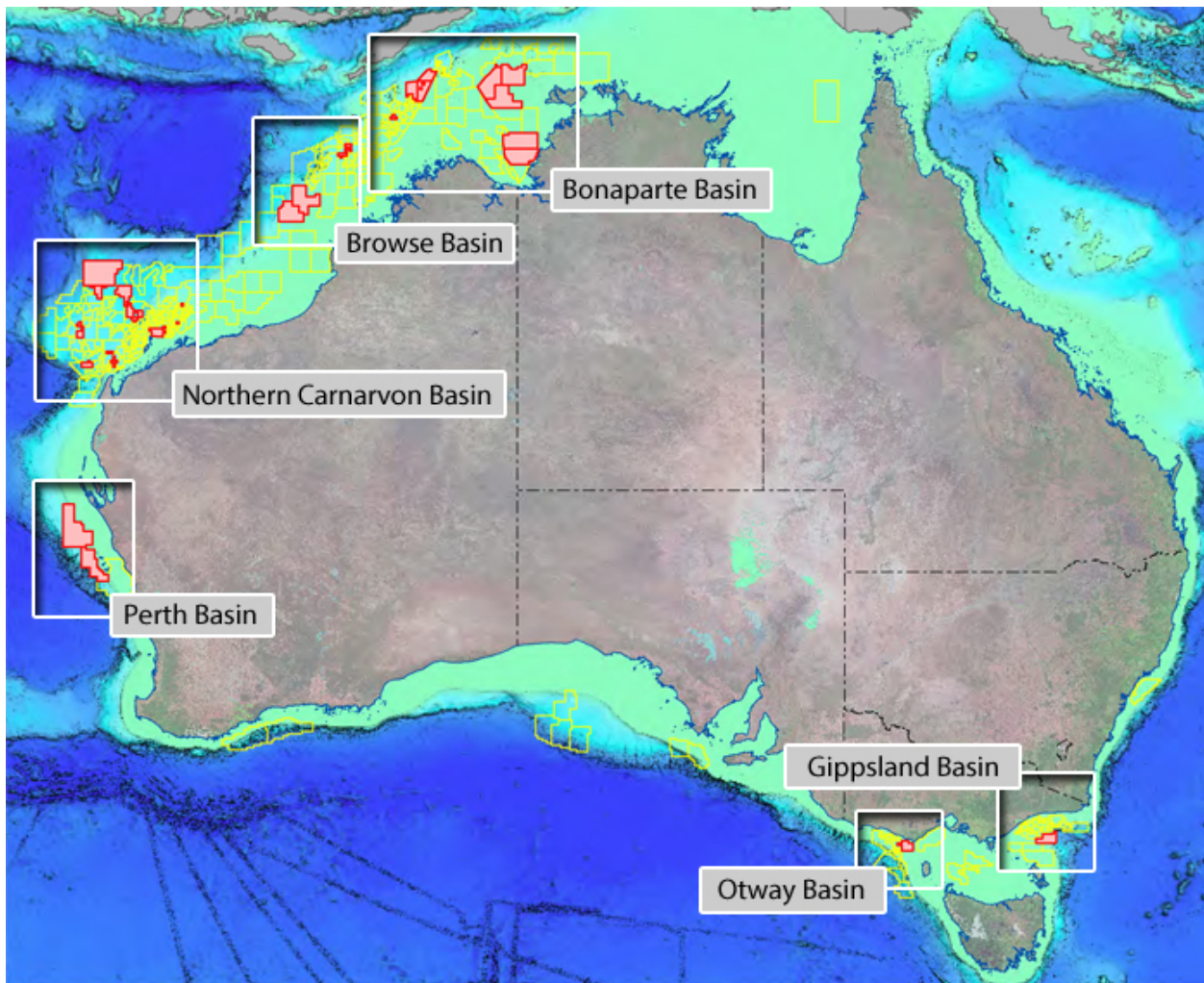
Of the

Australian institute of Marine and Power Engineers

Migration Amendment (Offshore Resources Activity) Bill 2013

The Australian Institute of Marine and Power Engineers was involved in the consultation process established by the Minister for Immigration in 2012 – following the decision in the Allseas case. AIMPE believes that the non-application of Australia’s migration laws to persons working on vessels in Australia’s Exclusive Economic Zone is a significant flaw in the scheme of those laws. The Migration Amendment (Offshore Resources Activity) Bill 2013 attempts to correct that flaw however AIMPE believes that the Bill is itself flawed and should be improved to ensure that Australia’s migration laws are effective in their application to persons working on offshore resources vessels throughout Australia’s EEZ.

The key problem centres on the use of the concept of “in an area” in the Bill is that there are large periods of time when a vessel which is engaged in offshore resources activity, or in supporting offshore resources activity, will be outside of the area. The concept of area refers back to the areas allocated for exploration and exploitation by the Department of Resources and Energy. These are known as blocks and are defined portions of the waters off Australia’s coast (with our Exclusive Economic Zone or occasionally beyond the EEZ but in Australia’s continental shelf).



Source: <http://www.petroleum-acreage.gov.au/release.html>

As can be seen in the graphic on the previous page, there are several areas around Australia where there are major regions of offshore resources activity – these are referred to as basins. Within each basin there are many blocks or areas. However there are large distances between some of the basins and large parts of Australia’s EEZ do not have any current blocks or areas where there is any offshore resources activity.

The wording of the Bill is such that it will only effectively apply Australia’s migration laws when an offshore resources vessel (which is not attached to the seabed) is actually in the specific area for which it is contracted. It appears that whenever it is outside that specific area, the Bill would not apply the migration legislation to the vessel. That means if the offshore resources vessel was transiting through another unrelated area it would not be covered. This could happen when a vessel is voyaging from a port (say Dampier or Darwin) to an area or a block.

It also means that if the offshore resources vessel was transiting through waters outside of the various areas or blocks then it would not be covered. This can happen when a vessel is being relocated from one basin to another basin. This would be a potential enforcement nightmare.

It is submitted that the way to avoid the enforcement nightmare and ensure comprehensive application of Australia’s migration laws to personnel on vessels engaged in offshore resources activity is the delete the references to “in an area” and replace them with the concept of the Exclusive Economic Zone.

There can be no doubt about Australia’s sovereign rights to legislate in relation to offshore resources activity throughout Australia’s EEZ. Australia’s sovereignty is clearly established by the provisions of the United Nations Convention on the Law of the Sea.

Australia has exercised these rights in many legislative instruments. One example is that the Fair Work Act 2009 at section 33 extends its application to the Exclusive Economic Zone and the waters above the continental shelf. This includes any ship which supplies, services or otherwise operates in connection with a fixed platform in the EEZ or the continental shelf. However the Allseas case exposed the legal loophole that personnel on vessels in these waters are not covered by the migration legislation.

It is an aberration that Australia’s workplace laws should apply to such vessels but that Australia’s migration laws should not apply. Such glaring inconsistency cannot be the result of coherent rational policy making. The correction of this unintended error should be consistent with the Fair Work Act scope. The Migration Amendment (Offshore Resources Activity) Bill 2013 should be amended to apply to any vessels engaged in offshore resources activity anywhere in the EEZ or the continental shelf. AIMPE understands that an amendment has been drafted to ensure a comprehensive solution to the problem revealed by the Allseas case. AIMPE supports the proposed amendment to remove the references to “in an area” and to substitute references to the exclusive economic zone. See Appendix 1 for examples.

Because the legislation is limited to vessels engaging in offshore resources activity it does not impinge at all on the rights of trading ships moving in and out of Australia’s many ports. Nor should it impinge on the rights of innocent passage and transit passage for trading vessels engaged on international voyages.

APPENDIX 1

Vessels involved in Offshore Resources Activities

For the benefit of the Committee the major phases of offshore resources activity can be divided into a number of different phases. Each phase typically involves the deployment of varying types of vessels. At any single time there may be over 200 such vessels operating in different parts of the Australian EEZ undertaking offshore resources activities.

Exploration is the first phase of the offshore resources activity. Vessels commonly deployed for exploration include *seismic research vessels*. A seismic vessel will be outside of an area for the purposes of the amendment Bill when it is in an Australian port or when it is travelling from the port to the area. The voyage from the port to the block or the area will very often take the vessel outside the 12 mile limit of territorial seas. In addition a seismic vessel may be sent from one block or area (e.g. in the Perth Basin) to another block or area (e.g. in the Otway Basin). This could involve extensive voyaging outside of any area. And as new areas of exploration such as the Great Australian Bight and the Gulf of Carpentaria are opened up there may well be more need to spend more time transiting through waters which are not within any area.

Construction is the next phase of the offshore resources activity. *Drilling vessels* will be within an area when they are drilling – but again the vessel may be redeployed from one area (e.g. the Timor Sea) to another area (e.g. the Carnarvon Basin) and while travelling between the two areas would not be covered by the legislation.

Pipe laying is another part of the construction phase of offshore resources activity. As exploration blocks or areas are opened up in locations further and further away from the Australian land mass, longer and longer pipelines are being built to transport the hydrocarbons to processing and storage facilities ashore. The most dramatic example of this is the Inpex pipeline which will be over 800 kilometres long and will take gas from the Browse Basin to the Darwin LNG plant. There is significant work involved in laying these pipelines. Many different types of vessels including specialist *pipe laying vessels* can be utilized in underwater pipeline construction. A large proportion of this pipe laying work will be outside of the boundaries of the area which the pipeline is servicing.

Dredging of shipping channels and berth areas for tankers is also essential for many offshore resources activities. Again this can involve a variety of *dredging vessels* and the work performed is generally outside of the area which will be serviced by the shipping once the oil and gas production has commenced. Current dredging projects around include Gladstone Harbour Dredging Project, Darwin Inpex project and the Wheatstone Project in Western Australia.

Exploitation of the resource, or extraction of the oil and gas, is the longer term operation. There are not so many vessels involved in supporting and supplying the ongoing operations of an area. However *support and supply vessels* can be deployed on more than one area and therefore will move between areas and spend time outside of any area.