

# DISSENTING REPORT

## The Migration Amendment (Offshore Resources Activity) Repeal Bill 2014

### Introduction

The Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 repeals the *Migration Amendment (Offshore Resources Activity) Act 2013* ("Offshore Resources Activity Act"), which received Royal Assent on 29 June 2013. It is important to note the operative provisions have not yet commenced.

The Offshore Resources Activity Act was introduced by the Labor Government last year to clarify the status of persons working in offshore marine zones in response to the case *Allseas Construction SA v Minister for Immigration and Citizenship* [2012] FCA 259 (*Allseas*).

In *Allseas*, the Federal Court found that pipe-laying vessels and non-citizens working on those vessels were not within or working within the migration zone as defined in section 5 of the *Migration Act 1958*. This meant anyone working on board those vessels did not require a visa.

Labor's *Offshore Resources Activity Act* sought to ensure that persons who participate in or support an 'offshore resources activity' were deemed to be in the migration zone, thereby requiring all non-citizens engaged in an 'offshore resources activity' to hold either a specific or permanent visa.

The then Minister for Immigration and Citizenship, Chris Bowen, announced the Government would legislate to amend the *Migration Act 1958* and clarify the situation regarding workers in Australia's offshore maritime zones by expanding the scope of the migration zone.

The Department commenced a review and established the Migration Maritime Taskforce to inform the best way to address the situation. The Senate Legal and Constitutional Affairs Committee also examined the Bill, noting that it complied with Australia's obligations under the United Nations Convention on the Law of the Sea (UNCLOS) and recommended it be passed.

### The purpose of the Bill

This Act seeks to repeal the reforms of the Labor Government and return to a situation where people working on offshore resources projects do not require a visa.

## **Australia's offshore resources industry**

When the Bill was introduced by then Minister for Immigration and Citizenship the Hon Brendan O'Connor MP, it was acknowledged that there was a need to strike a balance between encouraging investment in our offshore environments and the need to ensure that jobs associated with Australia's offshore environment are regulated by Australian laws.

Labor remains committed to ensuring that Australia maintains a healthy investment environment in offshore projects.

According to the Bureau of Resources and Energy Economics, at the end of October 2013 there were 63 projects at the committed stage representing a combined value of \$240 billion.<sup>1</sup> Australian Bureau of Statistics Labour Force Statistics in November indicated there are 273,300 people employed in mining, oil and gas projects.<sup>2</sup>

These statistics demonstrate the importance of ensuring regulation in this industry is done with economic and safety considerations in mind. The reforms introduced by the Labor Government in the Offshore Resources Activity Act 2013 adequately balanced these competing considerations.

Labor understands that this demand-driven industry will from time to time require skills and expertise that is not available in the Australian labour market. As the MUA explains:

Where a case can be made by offshore operators that there is a skills shortage and a need to bring in overseas workers, there must be a legal instrument, in this case an Offshore Resources Worker Visa, under the Migration Amendment (Offshore Resources Activity) Act 2013, with the necessary safeguards, to protect Australian employment and training opportunities, and to ensure fair rates of pay and conditions for overseas workers.<sup>3</sup>

## **Impact of the Bill**

The Bill will reopen a significant loop hole in Australia's ability to regulate the conditions of our offshore resources industry and to regulate and protect the workers who are employed on these valuable national assets.

This may lead to situations where people working on these projects are working under conditions that do not adhere to Australian standards. This in turn reduces work

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1 Bureau of Resources and Energy Economics, Resources and Energy Major Projects October 2013.

2 Australian Bureau of Statistics, Labour Force Statistics November 2013.

3 Maritime Union of Australia, Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014.

opportunities for Australian citizens and permanent residents and puts businesses that only engage workers who hold valid visas at a competitive disadvantage.

An unintended consequence of a return to the absence of a regulated visa scheme in offshore resources projects also poses potential security risks. In the absence of visa character tests, the government has little or no information on some of the workers engaged on these offshore projects.

The effect of this repeal will result in the Government returning to a situation that undermines the integrity of Australia's migration framework.

**Senator the Hon Lisa Singh**  
**Deputy Chair**  
**Labor Senator for Tasmania**

