

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

*Portfolio: Immigration and Border Protection*

*Introduced: House of Representatives, 27 March 2014*

### **Purpose**

1.102 The Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (the bill) seeks to repeal the *Migration Amendment (Offshore Resources Activity) Act 2013* (ORA Act).

1.103 The purpose of the ORA Act, which would take effect from 30 June 2014,<sup>1</sup> is to provide that foreign workers must hold a relevant visa when they participate in, or support, offshore resource activities taken to be in the migration zone.

1.104 The proposed repeal of the ORA Act will therefore have the effect of maintaining existing arrangements in relation to visa requirements for offshore resource activities.<sup>2</sup>

### **Committee view on compatibility**

#### ***Right to work and rights at work***

1.105 The right to work and rights at work is contained in articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.106 The UN Committee on Economic Social and Cultural Rights has stated that the right to work affirms the obligation of States parties to the covenant to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. Under article 2(1) of ICESCR, State parties are obliged to take steps, to the maximum of available resources, to progressively achieve the full realisation of this right.

1.107 This right may be subject only to such limitations as are determined by law and compatible with the nature of the right, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available.

#### ***Effect of repealing measures***

1.108 The statement of compatibility for the bill states that it is compatible with human rights as it seeks to continue existing arrangements and, as such, does not raise any human rights implications'.<sup>3</sup>

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1 *Migration Amendment (Offshore Resources Activity) Act 2013*, s 2(1).

2 Explanatory memorandum (EM), pp 1-2.

1.109 However, the committee notes that, while the specific measures of the ORA Act are yet to commence, the Act itself is an operative Commonwealth law. In the committee's view, the effect of the bill is therefore properly characterised as being to remove measures that would otherwise enter into force. This view would appear to be supported by the stated intention of the bill, which is to '[remove] unnecessary and disproportionate regulation impacting on industry'.<sup>4</sup>

1.110 Where a bill seeks to repeal existing arrangements, the committee's usual expectation is that the statement of compatibility provide an assessment of whether the repeal of those arrangements may reduce or remove human rights protections, and whether remaining or proposed arrangements in place of the repealed measures may offer equivalent or greater protection of human rights.<sup>5</sup>

1.111 The committee notes that the statement of compatibility for the ORA Act identified the right to work and rights to work as being significantly engaged by the then proposed imposition of visa requirements on foreign workers involved in offshore resource activities in the migration zone.<sup>6</sup> That assessment concluded that the measure was 'directly supportive of the right to work of Australian citizens and permanent residents, and...[was therefore] a permissible limitation on the rights of non-citizens.'<sup>7</sup>

**1.112 The committee therefore requests the advice of the Minister for Immigration and Border Protection as to the compatibility of the bill with the right to work and rights at work.**

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3 EM, pp 1-2.

4 EM, Regulation Impact Statement (OBPR ID: 2014/16740), p. 5.

5 See, for example, Parliamentary Joint Committee on Human Rights, *Fifth Report of the 44<sup>th</sup> Parliament*, 25 March 2014, Omnibus Repeal Day (Autumn 2014) Bill 2014, p. 9.

6 Migration Amendment (Offshore Resources Activity) Bill 2013, statement of compatibility, pp 3-4.

7 Migration Amendment (Offshore Resources Activity) Bill 2013, statement of compatibility, p. 4.