

CHAPTER 1

INTRODUCTION

1.1 On 30 May 2013, the Minister for Immigration and Citizenship, the Hon Brendan O'Connor MP (Minister), introduced the Migration Amendment (Offshore Resources Activity) Bill 2013 (Bill) into the House of Representatives.¹ On 18 June 2013, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 20 August 2013.² In order to assist the parliament's timely consideration of the Bill, the committee decided to present its report for the inquiry on 25 June 2013.

Background to the Bill

1.2 In October 2012, the Australian Government announced that it would amend the *Migration Act 1958* (Migration Act), to clarify the circumstances of persons working in offshore maritime zones.³ The announcement responded to the decision of the Federal Court of Australia in the case of *Allseas Construction SA v Minister for Immigration and Citizenship (Allseas)*.⁴

1.3 Following this announcement, the Department of Immigration and Citizenship (DIAC) reviewed how best to apply the Migration Act to workers in offshore maritime zones. The Migration Maritime Taskforce (Taskforce) was established to conduct the review and explore options for legislative amendment. In his second reading speech, the Minister confirmed the government's decision to implement the key recommendations of the Taskforce,⁵ the primary effect of which was summarised in the Explanatory Memorandum (EM):

[T]he existing legislative framework that essentially provides that persons are in the migration zone based on where they are physically located [will] be supplemented with a new legislative concept. This new concept would provide that all offshore resource workers, including support staff, are taken to be in the migration zone when they are engaged to conduct or support

1 House of Representatives, *Votes and Proceedings*, No. 167—30 May 2013, pp 2317-2318.

2 *Journals of the Senate*, No. 148—18 June 2013, p. 4048.

3 The Hon Chris Bowen MP, Minister for Immigration and Citizenship, 'Government to legislate on visa status of offshore resource workers', Media Release, 15 October 2012.

4 [2012] FCA 529. The Federal Court of Australia held that, by operation of subsection 5(13) of the *Migration Act 1958* (Migration Act), two pipe-laying vessels were not Australian resource installations and, as a result, the non-citizens working on those vessels were not within, or working within, the migration zone and in need of a visa: see Explanatory Memorandum (EM), p. 1.

5 The Hon Brendan O'Connor MP, Minister for Immigration and Citizenship, Second Reading Speech, *House of Representatives Hansard*, 30 May 2013, p. 9.

activities regulated by Commonwealth, State and Territory legislation relating to the exploration and exploitation of Australia's natural resources.⁶

Purpose of the Bill

1.4 The Bill seeks to amend the Migration Act, to ensure that persons who participate in, or support, an 'offshore resources activity' are 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.⁷

1.5 The Minister explained that the proposed amendments address the 'gaps' highlighted by the *Allseas* decision, which 'undermine the integrity of Australia's migration program and the visa regime regulating work entitlements':

Without regulation there is a risk that foreign workers involved in the exploration and exploitation of Australia's natural resources and who therefore form part of the Australian employment sector are working under conditions and receiving wages that are below Australian standards. This reduces work opportunities for Australian citizens and permanent residents, as well as non-citizens who hold relevant visas permitting work.

It also puts businesses that only engage workers who hold valid visas to work at a competitive disadvantage.⁸

1.6 According to the EM, the proposed amendments will supplement the current legislative framework, which defines Australian resources installations and Australian sea installations as part of the 'migration zone'. Collectively, these provisions will ensure that workers in Australia's offshore resources industry are regulated and are required to hold the appropriate visas.⁹

Conduct of the inquiry

1.7 The committee wrote to 50 organisations, inviting submissions by 20 June 2013. Details of the inquiry, including the Bill and associated documents, were made available on the committee's website at www.aph.gov.au/senate_legalcon.

1.8 The committee received seven submissions, which are listed at Appendix 1. A public hearing was held in Canberra on 21 June 2013, and a list of witnesses who appeared before the committee at the hearing is at Appendix 2. The committee thanks those organisations and individuals who made submissions and gave evidence at its public hearing.

6 EM, p.1.

7 EM, pp 1, 10. The term 'migration zone' is defined in subsection 5(1) of the Migration Act.

8 The Hon Brendan O'Connor MP, Minister for Immigration and Citizenship, Second Reading Speech, *House of Representatives Hansard*, 30 May 2013, p. 8.

9 EM, p. 2.

Note on references

1.9 References to the committee *Hansard* and House of Representatives *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.