

CHAPTER 1

Introduction

1.1 On 27 March 2014, the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, introduced the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (the Bill) into the House of Representatives.¹ On 27 March 2014, pursuant to a Selection of Bills Committee report, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 6 June 2014.²

Background to the Bill

1.2 The Bill seeks to repeal the *Migration Amendment (Offshore Resources Activity) Act 2013* (ORA Act), which received the Royal Assent on 29 June 2013. The operative provisions of the Act, however, had not commenced at the time of writing. This Act amended the *Migration Act 1958* (Migration Act) to deem persons working in Australian offshore resource installations to be in the Australian migration zone and therefore required to hold an appropriate visa.³

1.3 The ORA Act was introduced as a response to the decision of the Federal Court of Australia in the case of *Allseas Construction SA v Minister for Immigration and Citizenship (Allseas)*.⁴ This case found that non-citizen crew on certain vessels falling within an exemption in subsection 5(13) of the Migration Act were not working within the migration zone and therefore did not require an Australia visa. At the time, the government considered that the *Allseas* decision exposed a gap in the Migration Act, which 'undermine[d] the integrity of Australia's migration program and the visa regime regulating work entitlements'.⁵

1.4 The ORA Bill was referred to this committee on 18 June 2013, and the committee presented its report for the inquiry on 25 June 2013.⁶ The majority report recommended that the ORA Bill be passed without amendment. The dissenting report from Coalition Senators, however, raised a number of concerns with the ORA Bill, including that the Bill created uncertainty for industry, that the wide and uncertain

1 House of Representatives, *Votes and Proceedings*, No. 34—27 March 2014, pp 436-437.

2 *Journals of the Senate*, No. 26—27 March 2014, p. 741.

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

4 [2012] FCA 529.

5 The Hon Brendan O'Connor MP, Minister for Immigration and Citizenship, Second Reading Speech, *House of Representatives Hansard*, 30 May 2013, p. 4526.

6 Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Offshore Resources Activity) Bill 2013 [Provisions]*, June 2013.

scope of the Bill may breach international obligations, and that the Bill would unnecessarily increase the regulatory burden on industry.⁷ The dissenting report recommended that the Bill not be passed.⁸

Purpose of the Bill

1.5 As noted, the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 seeks to repeal the *Migration Amendment (Offshore Resources Activity) Act 2013*. As the operative provisions of the ORA Act have not yet commenced, the Bill effectively seeks to maintain the existing arrangements in this area.⁹

1.6 The minister explained in his second reading speech that the government does not consider that there is a gap in the coverage of the Migration Act over workers in the offshore resources industry:

Repealing this legislation does not mean that the industry is, or will be, in any way "unregulated". For example, non-citizens working on resource installations will still be required to hold valid visas. They will also still be required to hold the appropriate visa if they wish to come to the Australian mainland.¹⁰

1.7 The minister also highlighted the value of the offshore resources industry to the Australian economy, and the importance of ensuring that the industry is able to remain internationally competitive, noting that:

The (offshore resources) industry should not be expected to operate under an increased regulatory burden, or additional cost pressures that would put the viability of current and future projects at risk.¹¹

1.8 The Explanatory Memorandum to the Bill stated that:

The Government intends to repeal the Offshore Resources Activity Act as it will increase the regulatory burden on the resources industry and will have significant impacts for businesses and investors.¹²

7 Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Offshore Resources Activity) Bill 2013 [Provisions]*, June 2013, pp 19-20.

8 Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Offshore Resources Activity) Bill 2013 [Provisions]*, June 2013, p. 20.

9 Regulation Impact Statement, Migration Amendment (Offshore Resources Activity) Repeal Bill 2014, p. 5, Attachment A to Explanatory Memorandum.

10 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, Second Reading Speech, *House of Representatives Hansard*, 27 March 2014, p. 9.

11 The Hon Scott Morrison MP, Minister for Immigration and Border Protection, Second Reading Speech, *House of Representatives Hansard*, 27 March 2014, p. 9.

12 Explanatory Memorandum, p. 2.

Conduct of the inquiry

1.9 The committee wrote to 51 organisations, inviting submissions by 28 April 2014. 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.

1.10 The committee received 8 submissions, which are listed at Appendix 1. The committee thanks those organisations and individuals who made submissions.

