
Migration Amendment (Offshore Resources Activity) Repeal Bill 2014

Portfolio: Immigration and Border Protection

Introduced: House of Representatives, 27 March 2014

Purpose

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

2.35 The purpose of the ORA Act, which would take effect from 30 June 2014,¹ 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.

2.36 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.²

Background

2.37 The committee reported on the bill in its *Sixth Report of the 44th Parliament*.

Committee view on compatibility

Right to work and rights at work

Effect of repealing measures

2.38 The committee requested 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.

Minister's response

The right to work

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (the Bill) does not operate to deprive people of the right to work. In particular, it does not seek to preclude non-citizens from working in

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

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

Australia's offshore resources industry, or to limit the conditions under which they may work in the industry by way of a prescribed visa.

For their part, Australian citizens already have the right to work in the offshore resources industry, and the Bill does not limit their capacity to do so.

Rights at work

Article 7 of ICESCR provides for recognition of the "right of everyone to the enjoyment of just and favourable conditions of work". Such conditions include fair wages and equal remuneration, safe and healthy working conditions, equal opportunity in respect of promotion and rest and leisure.

The Bill does not operate as an impediment to the recognition of the right to just and favourable conditions of work. The *Migration Amendment (Offshore Resources Activity) Act 2013* (the ORA Act) establishes a legislative framework for a visa to be prescribed for noncitizens who are participating in, or supporting, an offshore resources activity.

The ORA Act itself is silent on what visa (other than a permanent visa) a non-citizen must hold to participate in, or to support, an offshore resources activity as this was to be determined at a later date following a period of consultation with the industry.

The appropriate visa, including relevant visa conditions, is to be prescribed in the *Migration Regulations 1994*. In any event, though visas may prescribe (by way of sponsorship obligations) certain terms and conditions that must be provided to the sponsored person, conditions of employment more broadly are regulated under Australian workplace laws and agreements, and not under migration laws. Neither the ORA Act nor the Bill affects the geographical application of Australia's workplace laws.

The ORA Act did not address the conditions of work that would apply to a non-citizen holding a prescribed visa for the purposes of working in Australia's offshore resources industry. As the Bill seeks to repeal the provisions introduced by the ORA Act, it also does not engage conditions of work for the purposes of article 7 of the ICESCR.³

Committee response

2.39 The committee thanks the Minister for Immigration and Border Protection for his response and has concluded its examination of this bill.

3 See Appendix 2, Letter from The Hon Scott Morrison, Minister for Immigration and Border Protection, to Senator Dean Smith, 16 June 2014, pp 2-3.