Maritime Union of Australia

Submission to

The Senate

Legal and Constitutional Affairs Legislation Committee

Inquiry into the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014

28 April, 2014

1. Executive Summary

1.1 The *Migration Amendment (Offshore Resources Activity) Act 2013* is a necessary piece of legislation to protect Australian jobs from exploitation from offshore resources companies and to ensure overseas workers receive Australian wages and employment conditions.

1.2 For this reason, the MUA welcomes the decision by the Senate Legal and Constitutional Affairs Legislation Committee to inquire into the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014*. Furthermore, the MUA welcomes the opportunity to make a submission to the Inquiry.

1.3 In essence the MUA is totally opposed to the introduction, by the Abbott Government, of the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014*.

1.4 The MUA firmly maintains that the prosperity of the Australian offshore oil and gas industry should be shared firstly by Australian workers.

1.5 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 to 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.

2. The Maritime Union of Australia

2.1 The Maritime Union of Australia (MUA) has a strong history stretching back to the 1870s and is very well-placed to represent workers in the port and marine industries, including, the tug boat industry, stevedoring/terminals, pilotage, ferry services, charter and tourist vessels, international trade, coastal trade, offshore oil and gas industry and floating production vessels. MUA members also work on vessels engaged in international Liquefied Natural Gas transportation.

2.2 In the offshore oil and gas industry, MUA members work in a variety of occupations. This includes on vessels supporting offshore oil and gas exploration, such as drill rigs and seismic vessels. In offshore oil and gas construction projects this includes pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels and support vessels. In, and during, offshore oil and gas production this consists of floating production storage and offloading vessels, floating storage and offloading vessels and other support vessels.

2.3 The MUA is registered by the Australian Industrial Relations Commission and consists of some 16,000 members, with a significant proportion working in the offshore oil and gas industry. The MUA is also an affiliate member of the International Transport Workers' Federation.

3. The Context: The *Allseas* Federal Court Ruling

3.1 In May 2012, in the *Allseas* case, the Federal Court ruled that two vessels, and non-citizens working on these vessels, were not within the migration zone, and not required to hold visas for the work they were doing. This was due to the fact that both vessels fell within an exemption to the definition of a resource installation contained in the *Migration Act 1958* and were therefore not part of the migration zone.

3.2 The *Allseas* decision was the culmination of the greed of many offshore oil and gas operators, who deny Australians training and employment opportunities and exploit overseas workers.

3.3 The *Allseas* ruling understandably was anathema to the MUA, and other offshore unions, because not being required to hold work visas; offshore operators would be able to dodge the requirement to pay overseas workers Australian rates, which is a requirement under the 457 visa.

4. Migration Amendment (Offshore Resources Activity) Act 2013

4.1 The *Allseas* decision revealed a real gap - that clearly needed to be closed - in the regulation of overseas employment in the offshore oil and gas sector.

4.2 Without amending legislation enacted by the Parliament there was a real risk overseas workers in the exploration and exploitation of Australia's natural resources, who therefore form part of the Australian employment sector, would be working under conditions and receiving wages below Australian standards.

4.3 Also without amending legislation enacted by the Parliament, the regulation of offshore employment would be at odds with the regulation of all other employment sectors.

4.4 On 15 October 2012, the former Labor Minister for Immigration and Citizenship announced that the government would enact enabling legislation to clarify the situation regarding workers in Australia's offshore maritime zones to address the *Allseas* decision.

4.5 Following this announcement, the then Department of Immigration and Citizenship commenced a review and the *Migration Maritime Taskforce* was developed to conduct the review and explore options to determine the most appropriate way to ensure the regulation of overseas workers in Australia's offshore resources industry.

4.6 The important objectives of the *Migration Maritime Task Force* were to:

- Ensure that the right to work in the offshore resources industry by persons who are not Australian citizens is, to the maximum extent permitted by Australia’s international obligations, regulated consistently in all areas over which the Australia has jurisdiction
- Create legislative certainty in order to promote continuing investment in offshore industry
- Promote opportunities for Australians to work on Australian resources

- Protect the rights of workers in the offshore resources industry
- Maintain the integrity in existing, interrelated, border legislation.

4.7 In response to the Allseas ruling and the recommendations of the *Migration Maritime Taskforce* the former Labor Government introduced, and the Parliament enacted, the *Migration Amendment (Offshore Resources Activity) Act 2013* (*ORA Act*).

4.8 The *ORA Act* supplements the existing provisions in section 5 of the Migration Act determining the migration zone by providing that a person will be taken to be in the migration zone while he or she is in an area to work in the offshore resources industry. The *ORA Act* also provides that the person must hold either a permanent visa, or a visa prescribed by the regulations.

4.9 Quite rightly the rationale of the *ORA Act* is to regulate the employment of overseas workers in the offshore resources industry and to make mandatory Australian employment conditions to all non-citizens working in the industry. It does this by extending the migration zone and therefore the requirement to hold and comply with a valid visa for all offshore resources work.

4.10 The MUA, and the other offshore unions, welcomed the ORA Act, and the requirement for a visa under the new Act, to ensure:

- Australians are in the first instance given training and employment opportunities on vessels operating within the Australian offshore resource sector
- Overseas labour will only be engaged if the employer can prove to the satisfaction of the Department of Immigration and Border Protection the unavailability of Australian employees
- Where overseas workers are employed they are engaged under fair Australian rates of pay and conditions.

4.11 The regulatory framework embodied in the *ORA Act* is particularly important for the MUA, given that overseas workers are increasing being brought in to work in the offshore resources industry. It is critical that all work in the offshore resources industry is in the first instance offered to Australian workers. And a strict visa regulatory system must be in place to ensure that overseas workers are only brought in under very strict safeguards.

4.12 Priority for Australians to be employed in the offshore resources industry and the need for a strict visa regulatory system for overseas workers is also fundamental for the MUA given the future use of huge offshore Floating Liquefied Natural Gas operations (FLNG) in the Australia. FLNG technology offloads LNG to large LNG ship and removes the need for long pipelines to land-based LNG processing plants.

4.13 Shell is currently building the world's first FLNG platform to be deployed in the Browse Basin off the north-western coast of Western Australia. At 488 metres by 74 metres, the Prelude $12 billion FLNG project will be the largest ship ever built and will weigh five times the weight of the largest aircraft carrier. The Prelude FLNG project is expected to start drilling in 2017.

4.14 Employment on FLNG operations, such as Prelude, must in the first instance go to Australian workers and a strict visa regulatory system must be in place to ensure that overseas workers are only brought in under very strict safeguards.

5. The Proposed Offshore Resources Worker Visa

5.1 The *ORA Act* becomes effective on 30 June 2014, including the implementation of an 'Offshore Resources Worker Visa' under the *ORA Act*.

5.2 This dedicated 'Offshore Resources Worker Visa' is to be developed to ensure overseas workers working in the offshore industry, within the migration zone, when the *ORA Act* commences, would be able to apply for and hold an appropriate visa. The visa would provide a number of safeguards including labour market testing and salary criteria.

5.3 In this regard the MUA was invited to meet with representatives of the Department of Immigration and Border Protection (the Department) on 6 December 2013. At this meeting the union had a constructive dialogue with the Department and put forward what we believed should be the key provisions of the proposed new 'Offshore Resources Worker Visa' (as outlined in 4.10 above).

5.4 The MUA followed up the 6 December 2013 meeting with a formal submission to the Department on 14 January, 2014.

5.5 The MUA has demonstrated good faith in consulting with the Department on the new 'Offshore Resources Worker Visa', but now finds that the Abbott Government, in introducing the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014*, is acting in bad faith to negate the whole process.

6. Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (Including the Regulation Impact Statement)

6.1 As stated above, the MUA is totally opposed to the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014* (*Repeal Bill*).

6.2 If this pernicious piece of legislation is introduced into the Senate the MUA strongly urges the Senators to reject the *Repeal Bill*.

6.3 When Minister Morrison introduced this *Repeal Bill* into the House of Representatives, 27/03/2014, he indicated it was necessary to remove the requirement for overseas workers to hold a visa when working in the offshore resources industry within the migration zone.

6.4 Minister Morrison, in his Second reading speech and his Explanatory memorandum, advanced three spurious reasons why the *ORA Act* should be repealed:

- It is unnecessary 'red tape'
- It will increase the regulatory burden on offshore operators
- It will have significant impacts for businesses and investors.

6.5 To state a case is not to prove it and the Minister has failed to advance any substantive evidence behind his outlandish three reasons stated above in 6.4.

6.6 The best the Minister could do in his Second reading speech and his Department's Regulation Impact Statement (RIS) is make reference to baseless allegations by industry associations, including the Australian Mines and Metals Association, that among other things the implementation of the *ORA Act* will lead to onerous cost burdens and may jeopardize projects worth billions of dollars from proceeding as planned.

6.7 To say the very least, this is absolute nonsense.

6.8 The MUA relies on evidence-based policy and has been involved in a constructive consultative process with the Australian Government following the *Allseas* ruling, including the Migration Maritime Taskforce, the development of the *ORA Act* and the development of a dedicated 'Offshore Resources Worker Visa'.

6.9 According to the respected independent study by BIS Shrapnel, commissioned by the MUA, in the offshore resources industry, over the period 2005 to 2013, revenue grew by 200% and over the five years to 2012 profit increased by 13.2%. In anyone's world these are impressive figures.

6.10 Even if you accept the RIS figures for the so-called annual regulatory burden of implementing the *ORA Act*, the amount is virtually nil compared to the economic performance of the offshore resources industry.

6.11 As for the phony assertion the *ORA Act* may jeopardize projects worth billions of dollars from proceeding, why is a company such as Chevron, in full knowledge that the *ORA Act* would be implemented, still proceeding with its $52 billion Gorgon project. By way of information, in 2012 Chevron reported a profit of $26.8 billion, ranking it second in the world market behind Exxon Mobil.

6.12 Minister Morrison also misses the point that the intention of the proposed new 'Offshore Resources Worker Visa' under the *ORA Act* is not only to stipulate labour market testing and salary criteria, but also to undertake character, security and health checks on visa applicants, and to provide greater clarity on the number of non-citizens actually working in Australia's offshore maritime zones.

6.13 In fact, far from being, as the RIS says *".....a red tape, bureaucratic process to confirm the status of a foreign national in the migration zone,*" the proposed visa serves an important national interest purpose.

6.14 The RIS attached to the Bill also warrants further justifiable criticisms.

6.15 The RIS falsely claims:

> *The workers on these vessels are not recruited by project and are all remunerated in common packages as per international maritime industrial law and standards.*

This is not true as evidenced by the Allseas Construction Contractors SA Gorgon Jansz Offshore Pipe Lay Project Maritime Memorandum of Understanding (MOU) between Allseas Construction Contractors SA Programmed Total Marine Services Pty Ltd and the Australian Maritime Officers' Union, the Australian Institute of Marine & Power Engineers, and the Maritime Union of Australia of December 2011. Clause 4 of this MOU says:

> *APPLICATION OF AWARD / AGREEMENTS*
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> *The terms of the Maritime Offshore Oil and Gas Award 2010 and Total Marine Services Pty Ltd Australian Maritime Officers Union Offshore Oil and Gas Enterprise Agreement 2010, Total Marine Services Pty Ltd Australian Institute of Marine and Power Engineers Enterprise Agreement 2010, Total Marine Services Pty Ltd Integrated Ratings, Cooks, Caterers and Seafarers (Offshore Oil and Gas) Enterprise Agreement 2010 (the Agreements) shall apply to the vessels and crews engaged on the project.*

6.16 The assertion in the RIS that the *terms and conditions of employment will continue to be protected and enforced under domestic laws* is not correct. Australia's obligations to enforce the International Labour Organisation's Maritime *Labour Convention* to Australian standards only apply to Australian Registered ships and the vast majority of the ships supporting offshore activities are foreign flagged.

6.17 Also, concerning the 'so-called' regulatory burden, the MUA has previously recommended that to ease the administrative requirements for sponsoring employers, the proposed new Offshore Resources Worker Visa could simply be applied for electronically from outside Australia, similar to the Maritime Crew Visa application. The employer association claims in the RIS that such processes would place *untenable cost pressures on the resource industry* are highly exaggerated and without evidentiary foundation.

6.18 At the very least, if the Minister was acting in good faith, he could propose, rather than a new 'Offshore Resources Worker Visa' under the *ORA Act*, an existing visa such as the 457 visa. This is considered in the RIS where it says that:

> *It may be possible, with some amendments, to use existing visa products that are already familiar to industry and which provide work rights for non-citizens in the migration zone without the imposition of an employer sponsorship framework and the attendant obligations which apply to an employer-sponsored work visa*.

6.19 The total 'so called' regulatory cost of the RIS 'soft' option mentioned above in 6.18 is $0.26M and is miniscule given the cost of offshore projects, such as the $52 billion for Gorgon alone. This is a small price to pay to establish a process to check the security credentials of non-citizens, who are to work on high value offshore projects, and a regulatory framework that provides decent labour standards, including safety standards, for the workforce.

6.20 Notwithstanding the 'soft option mentioned in 6.18 and 6.19 above, the simple reality is that the so-called regulatory burden of implementing the *ORA Act* is a furphy, given the economic performance of the offshore resources industry and the Senate should reject the Abbott Government's *Repeal Bill*.

7. Conclusion

7.1 The Abbott Government's *Repeal Bill* is simply part of a wider ideological agenda to allow the market to operate at the expense of Australian workers and the wider Australian community.

7.2 The *Migration Amendment (Offshore Resources Activity) Act 2013* Act is sound, evidenced-based public policy and should be fully implemented by June 30 2014, with an 'Offshore Resources Worker Visa', to protect Australian jobs and training opportunities and to ensure overseas workers are employed under Australian rates of pay and conditions.

7.3 The MUA urges the Senate to reject the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014.*