Department of Industry

Submission to the Senate Inquiry into the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014*

Background to Submission

The following submission is made by the Department of Industry in response to the inquiry into the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014.*

The Department advises Government on policy options for Australia's resources sector and works closely with industry stakeholders and state and territory governments.

Australia's oil and gas sector contributes significantly to the Australian economy and economic growth. In 2012-13, Australia exported 23.9 million tonnes (mt) of LNG, valued at around A$14 billion, an increase in value of 17 per cent from the previous year. The Australian Bureau of Resources and Energy Economics (BREE) forecasts that the value of LNG exports for 2013-14 will increase to A$16 billion. Australia is currently the fourth largest LNG exporter behind Qatar, Indonesia and Malaysia. Australia's LNG export capacity now stands at around 24 mt per annum (mtpa) and should exceed 80 mtpa by 2018 as the eight projects currently under construction come online.

Impact of the repeal on the Offshore Petroleum Industry

The Department supports the repeal of the *Offshore Resources Activity Act* (ORA Act).

Increasing Australia's investment appeal will ensure the energy resources sector is positioned to supply future demand. Australia will need to be more commercially attractive than other suppliers to secure this investment. Removing unnecessary barriers to productive investment by reducing the regulatory burden on industry and streamlining approval processes is a key element. The Government is actively removing unnecessary regulatory duplication and inconsistency. On 28 February 2014, the Government implemented streamlined arrangements for environmental approvals, which makes the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) the sole designated assessor of offshore environmental approvals for offshore petroleum activities in Commonwealth waters. This has accelerated the approvals process while maintaining high levels of environmental protection. The reform will save $120 million annually for industry.

In the same vein, the Department notes the importance of ensuring Australia's migration and visa regime provides certainty and clarity for the offshore petroleum sector. The sector has a strong international focus, and relies on a highly mobile and often specialised workforce. Specialised technical skills and industry experience will be in greater demand as the sector moves from construction to an operational phase. In order to not exacerbate skills shortages and to maintain project efficiencies and global competitiveness of the sector, the Department supports flexibility and timeliness in terms of visa processing and pre approval.

The offshore resources sector does not differentiate between Australian and foreign workers, and recruitment is currently on the basis of project and skills requirements with remuneration according to international maritime industrial laws and standards. The Department notes that terms and conditions of employment continue to be protected and enforced under domestic laws, and under international convention through the International Labour Organisation's Maritime Labour Convention.

The ORA Act determines that a person is in the migration zone while he or she is in an area to participate in, or support, an offshore resources activity in relation to that area. An offshore resources activity is defined as a regulated operation within the meaning of section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, or an activity performed under a licence or a special purpose consent within the meaning of section 4 of the *Offshore Minerals Act 1994*).

The Department notes that the linking of the ORA Act to the Commonwealth offshore licencing regime has broader implications. Under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Commonwealth offshore petroleum legislation is limited to the area that is outside the coastal waters of the States and the Northern Territory. For this purpose, coastal waters are measured as three nautical miles from the baseline of the territorial sea. Consequently, projects that take place within coastal waters fall outside the ORA Act arrangements. Amendments that take effect in Commonwealth waters but are not applied in coastal waters may have implications for resources projects that cut across those boundaries.

In addition, the ORA Act enables particular activities to be included or excluded from the application of the migration zone as it applies to the offshore resources sector, as determined by the Minister for Immigration. This exacerbates uncertainty for industry. Activities that support an offshore resources activity may or may not be a regulated operation under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* or the *Offshore Minerals Act 1994*. As such, exclusion of the support vessel through a determination may require exclusion of the broader activity supported by the vessel.

In considering the repeal of the *Offshore Resources Activity Act*, the Department notes that a key aspect of the decision to introduce the amendments was that a dedicated visa pathway would be developed for the offshore resources sector. This option retains an unnecessary regulatory burden for industry, noting that a cost-benefit analysis of visa options was not undertaken prior to the passage of the ORA Act. The Department reemphasises the importance of appropriate consultation with industry on legislative changes that will have implications for them.

The Department notes that the original requirement for a dedicated visa pathway was to regulate the employment of overseas workers in the offshore resources sector, and to impose Australian terms and conditions of employment (or rates of pay) to all non-citizens working in the industry. The Department notes again that the offshore petroleum sector has a strong international focus, and relies on a highly mobile and often specialised workforce. Conditions of employment continue to be protected and enforced under domestic laws, and under international convention through the International Labour Organisation's Maritime Labour Convention.

The ORA Act has created an unnecessary regulatory burden for the offshore resources sector that is significantly disproportionate to the original policy intent. Its application is unclear and confusing for industry. Repeal of the ORA Act would support Australia's international competitiveness and encourage investment to maintain the economic benefits of a strong offshore resources sector.