

2010 - 2011 - 2012 - 2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION AMENDMENT (OFFSHORE RESOURCES ACTIVITY) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Citizenship,
the Hon. Brendan O'Connor MP)

Migration Amendment (Offshore Resources Activity) Bill 2013

OUTLINE

The Migration Amendment (Offshore Resources Activity) Bill 2013 (the Bill) amends the *Migration Act 1958* (the Act) to provide that persons who participate in, or support, an offshore resources activity are taken to be in the migration zone based on the recommendations of the Migration Maritime Taskforce (the Taskforce).

In May 2012, the Federal Court of Australia handed down its decision of *Allseas Construction SA v Minister for Immigration and Citizenship* [2012] FCA 529 (*Allseas*). The Court found that by operation of subsection 5(13) of the Act, two pipe-laying vessels, the *Lorelay* and *Solitaire* were not Australian resources installations within the meaning of the Act while they were wholly or principally engaged in operations relating to the installation of offshore pipelines. As such, the Court found that the *Lorelay* and *Solitaire* and the non-citizens working on these vessels were not within or working within the migration zone as defined by subsection 5(1) of the Act. This means that the workers on board those vessels did not require a visa.

On 15 October 2012, the former Minister for Immigration and Citizenship, the Hon Chris Bowen MP, announced that the government would legislate to amend the Act and clarify the situation around foreign workers in Australia's offshore maritime zones to address the decision of *Allseas*. Following this announcement, the Department of Immigration and Citizenship (the Department) commenced a review on how best to apply the Act to workers in offshore maritime zones.

The Taskforce was developed to conduct this review and explore options to determine the most appropriate way to ensure foreign workers in Australia's offshore maritime zones come within the ambit of the Act. The Taskforce found that any question as to whether a person was in the migration zone or not should not be solely dependent on where that person was physically located (for example, whether that person was physically on an Australian resources installation) but also dependent on the sorts of activities that person was conducting.

The Taskforce recommended that the existing legislative framework that essentially provides that persons are in the migration zone based on where they are physically located 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 activities regulated by Commonwealth, State and Territory legislation relating to the exploration and exploitation of Australia's natural resources.

In the context of international law, Australia has jurisdiction under the United Nations Convention on the Law of the Sea (UNCLOS) to apply its immigration laws to foreign nationals on foreign-flagged and Australian-flagged vessels which are engaged in the exploration and exploitation of natural resources and which are located in Australia's territorial sea, contiguous zone, exclusive economic zone (EEZ) or in the waters above its extended continental shelf. In relation to the waters above Australia's extended continental shelf (and beyond the limits of Australia's EEZ), Australia has jurisdiction for the purpose of exploring and exploiting its natural resources.

The Government is committed to maintaining the security of Australia's borders. Under the current legislative framework, the Government has an incomplete picture of the number of foreign workers in the offshore maritime zone. This is in part due to the absence of a regulated visa regime to capture those engaged in Australia's offshore maritime zones and the corresponding migration information. There are security ramifications as a result of the inability to regulate foreign workers engaged in offshore resources activities in an immigration context. The June 2012 Report of the Offshore Oil and Gas Resources Sector Security Inquiry recognised that visa security checks are one of the only ways Australia is able to examine non-citizen workers in this security-sensitive industry.

The exploration and exploitation of the natural resources in Australia's offshore maritime zones contributes significantly to the Australian economy and employs thousands of Australian workers. The inability for the Government to regulate foreign workers in Australia's offshore resources industry undermines the integrity of Australia's migration program and visa regime regulating work entitlements. As a result, there is a risk that foreign workers undertaking activities involved in the exploration and exploitation of Australia's natural resources and who therefore form part of the Australian employment sector may be working under conditions and receiving wages that do not adhere to Australian standards. This reduces work opportunities for Australian citizens and non-citizens who hold relevant visas permitting work and also puts businesses that only engage workers who hold valid visas to work at a competitive disadvantage.

The amendments in this Bill will regulate foreign workers participating in offshore resources activities by bringing these persons into the migration zone and thereby requiring them to hold a visa under the Act. In terms of selecting offshore resources activities, the Taskforce recommended referencing a legislative solution that comprehensively administer the activities of the offshore resources industry comprising the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Offshore Petroleum Act) and the *Offshore Minerals Act 1994* (the Offshore Minerals Act). In addition to these two Acts, the Bill will create a power for the Minister to make a determination in writing for the purposes of defining offshore resources activity. This will provide the Minister with flexibility to declare certain activities administered by other regulatory schemes as offshore resource activities for the purposes of the new deemed migration zone. This would include projects that take place in areas that are within the coastal waters of the States and the Northern Territory which are regulated under State and Territory laws rather than their Commonwealth equivalents.

The legislative measures will supplement the current framework under the Act which defines, as part of the migration zone, Australian resources installations and Australian sea installations. Together with the existing provisions in the Act, this new comprehensive framework will ensure that workers in Australia's offshore resources industry are regulated under the Act and required to hold specific visas. Individuals who engage in offshore resources activities in Australia's offshore maritime zones will be subject to existing compliance measures in the Act which address breaches of work and visa conditions.

A specifically tailored visa pathway for offshore resource workers will be developed in conjunction with stakeholders to meet the needs of industry groups. It is proposed to prescribe this visa in the *Migration Regulations 1994* (the Regulations).

In particular, the Bill amends the Act to:

- insert a deeming provision which provides that a person is taken to be in the migration zone while he or she is in an area to participate in, or to support, an offshore resources activity in relation to that area;
- put beyond doubt that a person may be taken to be in the migration zone because of the new deeming provision whether or not the person's participation or support of the offshore resources activity, or whether or not the offshore resources activity itself, has started, is continuing or has concluded;
- provide that a person may undertake an offshore resources activity whether the person:
 - is on an Australian resource installation in the area; or
 - is otherwise in the area to participate in, or support the activity;
- provide that a person is taken to be in Australia while he or she is taken to be in the migration zone because of the new deeming provision;
- provide that a person is taken to travel to Australia if the person travels to an area in which the person is taken to be in the migration zone because of the new deeming provision;
- provide that a person is taken to enter Australia when the person enters an area in which the person is taken to be in the migration zone because of the new deeming provision;
- provide that, subject to section 80 of the Act, a person is taken to leave Australia when the person leaves an area in which the person is taken to be in the migration zone because of the new deeming provision;
- define offshore resources activity, in relation to an area, as:
 - a regulated operation (within the meaning of section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) that is being carried out, or is to be carried out, within the area, except an operation determined by the Minister in writing;
 - an activity performed under a licence or a special purpose consent (both within the meaning of section 4 of the *Offshore Minerals Act 1994*), that is being carried out, or is to be carried out, within the area, except an activity determined by the Minister in writing;
 - an activity, operation or undertaking (however described) that is being carried out, or is to be carried out:
 - under a law of the Commonwealth, a State or a Territory determined by the Minister in writing;
 - and within an area, as determined by the Minister in writing;
- create a legislative instrument making power for the Minister to make a determination with respect to the definition of an offshore resources activity;

- provide that a condition of a visa that allows the holder of the visa to work is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to any area unless the visa is:
 - a permanent visa; or
 - a visa prescribed by the regulations for the purpose of allowing the holder of that visa to participate in, or support, an offshore resources activity.
- provide that a person may undertake an offshore resources activity (and therefore be required to hold the above visas) whether the person:
 - is on an Australian resource installation in the area; or
 - is otherwise in the area to participate in, or support the activity under the new framework;
- provide that unless a provision of this Act, or another Act, expressly provides otherwise, the new deeming provisions do not have the effect of extending, for the purposes of another Act, the circumstances in which a person:
 - is in the migration zone or is taken to be in the migration zone; or
 - is in Australia or is taken to be in Australia; or
 - travels to Australia or is taken to travel to Australia; or
 - enters Australia or is taken to enter Australia; or
 - leaves Australia or is taken to leave Australia;
- provide for application provisions that apply on or after the commencement of this Schedule; and
- make necessary consequential amendments.

CONSULTATION

External consultations in relation to the Bill have taken place with various Commonwealth and State agencies. This includes the Attorney-General's Department, the Office of International Law, the Treasury, the Department of Resources, Energy and Tourism, the Department of Infrastructure and Transport, the Department of Finance and Deregulation, the Office of Best Practice Regulation, the Department of Foreign Affairs and Trade, the Department of Education, Employment and Workplace Relations, the Department of Agriculture, Fisheries and Forestry, the Department of Customs and Border Protection, the Department of Fair Work Ombudsman and the Department of the Prime Minister and Cabinet. In addition, the Secretary of the Department wrote to each State and Territory government and received responses from Western Australia, Tasmania, South Australia, Victoria and Queensland. Members of the Taskforce met with the Western Australian Department of State Development and the Western Australian Department of Training and Workforce Development.

There has been extensive stakeholder consultation with unions and industry groups since October 2012. Meetings were held with the Construction, Forestry, Mining and Energy Union (CFMEU), Maritime Unions of Australia (MUA), the Australian Worker's Union, the

Australian Maritime Officers' Union (AMOU), the Australian Institute of Marine and Power Engineers and the Australian Manufacturing Workers' Union. The Taskforce further met with representatives of industry including the Australian Mines and Minerals Association (AMMA), the Australian Petroleum Production and Exploration Association (APPEA) and the Western Australian Chamber of Mines and Petroleum in Perth.

FINANCIAL IMPACT STATEMENT

The financial impact of these amendments is low. The current estimated costs associated with the implementation of the proposed amendments will be met from within the Department's existing funding by the reprioritising of resources. There will be no systems costs from the amendments to the Act. Systems and administrative costs will ensue from the proposed amendments to the Regulations for the development of the new visa pathway.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has assessed the Regulation Impact Statement (RIS) prepared by the Department as being adequate (No.14618). A copy of the RIS is at Attachment A.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at Attachment B.

MIGRATION AMENDMENT (OFFSHORE RESOURCES ACTIVITY) BILL 2013

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

1. Clause 1 provides that the short title by which this Act may be cited is the *Migration Amendment (Offshore Resources Activity) Act 2013*.

Clause 2 Commencement

2. Subclause 2(1) provides that each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
3. Table item 1 provides that sections 1 to 3 of this Act and anything in this Act not elsewhere covered by the table will commence on the day on which this Act receives the Royal Assent.
4. Table item 2 provides that Schedule 1 will commence on a single day to be fixed by Proclamation. It also provides that if any provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
5. The note in subclause 2(1) makes it clear that the table relates only to the provisions of this Act as originally enacted. The table will not be amended to deal with any later amendments of this Act.
6. Subclause 2(2) provides that any information in column 3 of the table is not part of this Act. It provides that information may be inserted in column 3, or information in it may be edited, in any published version of this Act.
7. The commencement provisions will allow adequate time for the Department to develop a specifically tailored visa pathway for offshore resource workers in consultation with key stakeholders which would commence on the same day as the operative provisions of this Bill. The provisions will also provide the Department with ample opportunity to thoroughly consult with States and Territories in order to draft legislative instruments for the purposes of defining offshore resources activities and exempting certain activities.

Clause 3 Schedule(s)

8. This clause provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1 – Amendments

Part 1 – Amendments

Migration Act 1958

Item 1 Subsection 5(1) (at the end of the definition of *enter Australia*)

9. This item adds a new note at the end of the definition of *enter Australia* in subsection 5(1) of the Act.
10. The new note refers readers to section 9A of the Act, which concerns offshore resources activities.
11. Current subsection 5(1) provides that *enter Australia* in relation to a person means enter the migration zone.
12. The new note advises readers that the definition *enter Australia* should be read with new section 9A with respect to when a person participating in, or supporting, an offshore resources activity is taken to enter Australia.
13. The new note is to be read with new subsection 9A(1) and new paragraph 9A(3)(c) which are inserted by item 6 below.
14. The purpose of this amendment is to ensure that, in the context of the offshore resources industry, the definition of *enter Australia* in current subsection 5(1) is not considered in isolation but with reference to the framework in new section 9A – inserted by item 6 below.

Item 2 Subsection 5(1) (at the end of the definition of *leave Australia*)

15. This item adds a new note at the end of the definition of *leave Australia* in subsection 5(1) of the Act.
16. The new note refers readers to section 9A of the Act, which concerns offshore resources activities.
17. The new note advises readers that the definition *leave Australia* should be read with section 9A with respect to when a person participating in or supporting an offshore resources activity is taken to leave Australia.
18. Current subsection 5(1) provides that *leave Australia* in relation to a person means, subject to section 80 (leaving without going to other country), leave the migration zone.
19. Section 80 of the Act provides that a person is taken not to leave Australia if the person goes outside the migration zone on a vessel and:
 - does not go (other than for transit purposes) to a foreign country; and
 - remains a passenger, or a member of the crew, of that vessel while outside the migration zone; and

- is outside the migration zone for no longer than the prescribed period.
20. The period referred to in paragraph 80(c) is prescribed in regulation 3.07 of the Regulations and is 30 days.
 21. The new note is to be read with new subsection 9A(1) and new paragraph 9A(3)(d), which are inserted by item 6 below.
 22. The purpose of this amendment is to ensure that, in the context of the offshore resources industry, the definition of *leave Australia* in current subsection 5(1) is not considered in isolation but with reference to the framework in new section 9A – inserted by item 6 below.

Item 3 Subsection 5(1) (at the end of the definition of migration zone)

23. This item adds a new note after the definition of *migration zone* in subsection 5(1) of the Act.
24. The new note refers readers to section 9A of the Act, which concerns offshore resources activities.
25. Current subsection 5(1) provides that the *migration zone* means the area consisting of the States, the Territories, Australian resources installations and Australian sea installations and, to avoid doubt, includes:
 - land that is part of a State or a Territory at mean low water; and
 - sea within the limits of both a State or a Territory and a port, and
 - piers, or similar structures, any part of which is connected to such land or to ground under such sea;

but does not include sea within the limits of a State or a Territory but not in a port.

26. The new note advises readers that the definition of *migration zone* should be read with section 9A with respect to when a person participating in or supporting an offshore resources activity is taken to be in the migration zone.
27. The new note is to be read with new subsections 9A(1) and 9A(3), which are inserted by item 6 below.
28. The purpose of this amendment is to ensure that, in the context of the offshore resources industry, without modifying the current definition of the *migration zone* in subsection 5(1), this definition not be considered in isolation but alongside the deemed extension of the migration zone under new subsection 9A(1).

Item 4 Subsection 5(1)

29. This item inserts a new defined term *offshore resources activity* in subsection 5(1) of the Act.

30. The new defined term provides that *offshore resources activity* in subsection 5(1) has the meaning given by new subsection 9A(5) which is inserted by item 6 below.
31. This amendment inserts a reference to the definition of *offshore resources activity* in the definitions section to ensure it is easily located in the Act. The definition is located in new section 9A as it is central to the new framework and so that section 9A is a self-contained section.

Item 5 At the end of section 6

32. This item adds a new note after section 6 of the Act.
33. The new note refers readers to new subsection 9A(3), which deals with when a person is taken to be in Australia, to travel to Australia, to enter Australia or to leave Australia. It also provides that section 9A concerns offshore resources activities.
34. The new note advises readers that section 6 should be read with the new subsection 9A(3) which is inserted by item 6 below.
35. Current section 6 provides that to avoid doubt, although subsection 5(1) limits, for the purposes of this Act, the meanings of *enter Australia*, *leave Australia* and *remain in Australia* and also because of section 18A of the *Acts Interpretation Act 1901*, the meaning of parts of speech and grammatical forms of those phrases, this does not mean:
- that, for those purposes, the meaning of *in Australia*, *to Australia* or any other phrase is limited; or
 - that this Act does not extend to parts of Australia outside the *migration zone*; or
 - that this Act does not apply to persons in those parts.
36. The purpose of this amendment is to refer readers to the new subsection 9A(3) inserted by item 6 below.

Item 6 After section 9

37. This item inserts new section 9A of the Act. The heading of this new section is “*Migration zone etc. – offshore resource activities*”.
38. New section 9A creates a new framework that provides that persons in an area participating in, or supporting, an offshore resources activity are taken to be in the migration zone (the deeming provision). New section 9A further clarifies how this new framework operates by deeming when persons are taken to be in Australia, taken to travel to Australia, taken to enter Australia and or taken to leave Australia. It further defines offshore resources activity for the purposes of the Act. The purpose of this amendment is to bring persons participating in, or supporting, an offshore resources activity in the relevant area within the ambit of the Act, thereby requiring these persons to hold visas.

39. By requiring these persons to hold visas, new section 9A enlivens the power in current section 41 of the Act to impose visa conditions related to work in Australia. In this regard, new subsections 41(2B) and 41(2C) are inserted by item 8 below to ensure that all non-citizens engaged in an offshore resources activity hold a specific visa or a permanent visa to participate in, or support, the relevant activity.
40. New section 9A operates in concert with new subsections 41(2B) and 41(2C) to enable the Department to regulate foreign workers engaged in offshore resources activities.
41. New section 9A is based on the recommendations of the Taskforce. The Taskforce recommended that the existing legislative framework that essentially provides that persons are in the migration zone based on where they are physically located be supplemented with a new legislative concept. The policy intention is to provide that all offshore resource workers, including support staff, are taken to be in the migration zone when they are engaged to conduct activities regulated by Commonwealth, State and Territory legislation relating to the exploration and exploitation of Australia's natural resources.
42. Subsection 5(1) of the Act provides that the *migration zone* means the area consisting of the States, the Territories, *Australian resources installations* and *Australian sea installations* and, to avoid doubt, includes:
- land that is part of a State or Territory at mean low water; and
 - sea within the limits of both a State or Territory and a port; and
 - piers, or similar structures, any part of which is connected to such land or to ground under such sea;
- but does not include sea within the limits of a State or Territory but not in a *port*.
43. Subsection 5(1) of the Act defines a *non-citizen* to mean a person who is not an Australian citizen. Section 13 of the Act provides that a *non-citizen* in the *migration zone* who holds a visa that is in effect is a *lawful non-citizen*.
44. Section 14 of the Act provides that a *non-citizen* in the *migration zone* who is not a *lawful non-citizen* is an *unlawful non-citizen*. To avoid doubt, a *non-citizen* in the *migration zone* who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an *unlawful non-citizen*.
45. In addition, section 42 of the Act provides that a *non-citizen* must not travel to Australia without a visa that is in effect. This is subject to certain exceptions that are not relevant to offshore resource workers.
46. The effect of these provisions is to provide that a non-citizen must not be in the migration zone without holding a valid visa. Otherwise, that non-citizen will be an unlawful non-citizen.

Migration zone etc.

Subsection 9A(1)

47. New subsection 9A(1) provides that, for the purposes of this Act, a person is taken to be in the migration zone while he or she is in an area to participate in, or to support, an offshore resources activity in relation to that area.
48. New subsection 9A(1) operates as the new deeming provision and supplements the current definition of the **migration zone** in subsection 5(1) for the purposes of offshore resources activities. However, it does not modify the existing definition of the **migration zone** in subsection 5(1).
49. The purpose of this amendment is to require persons participating in, or supporting, an offshore resources activity in a relevant area to hold visas to work. Current subsection 5(23) provides that to avoid doubt, in this Act **is taken**, when followed by the infinitive form of a verb, has the same force and effect as **is deemed** when followed by the infinitive form of that verb. New subsection 9A(1) therefore operates as a deeming provision.
50. New subsection 9A(1) does not define what “an area” is and has been left deliberately broad. Instead, it is intended for the relevant area to be read in conjunction with the definition of offshore resources activity in new subsection 9A(5). New subsection 9A(5) refers to certain operations or activities under the Offshore Petroleum Act, Offshore Minerals Act or a law of the Commonwealth, a State or a Territory determined by the Minister. Those Acts themselves will define the area (for example, a licence under the Offshore Minerals Act will define a particular area in which the regulated operation may take place).
51. Example 1 below new subsection 9A(1) provides that a person is taken to be in the migration zone under this section if the person is on a vessel in an area to participate in an offshore resources activity under *the Offshore Petroleum and Greenhouse Gas Storage Act 2006* in that area by exploring for, or recovering, petroleum.
52. This example illustrates a situation where a person would be participating in an offshore resources activity in a more direct manner. However, a person is not required to be directly employed by the licence, title or permit holder to be considered as a person who is participating in the relevant offshore resources activity and therefore taken to be in the migration zone. It is intended for new subsection 9A(1) to capture, within the migration zone, contractors, sub-contractors and other types of non-conventional employment type relationships which the licence or permit holder may enter into.
53. Example 2 below new subsection 9A(1) provides that a person who is a member of the crew of the vessel is also taken to be in the migration zone under this section if the person is supporting the offshore resources activity.
54. This example illustrates a situation where a person would be supporting an offshore resources activity in a less direct manner. A support person would be

taken to be in the migration zone even if the person was not directly participating in an offshore resources activity. This could include person who:

- is a member of the crew of the vessel;
- cooks for that person conducting a relevant activity (for example, the chef of a vessel); and/or
- performs cleaning or maintenance activities for a ship carrying persons conducting relevant activities (for example, a cleaner on a ship or a mechanic).

55. Examples 1 and 2 are non-exhaustive examples of the main types of people and activities which will trigger new subsection 9A(1) – namely a person who participates in an offshore resources activity and a person who supports an offshore resources activity.

56. Example 3 below new subsection 9A(1) provides that neither a stowaway on a vessel, nor a person on the vessel because the person was rescued at sea, is taken to be in the migration zone, because neither is participating in, or supporting, the offshore resources activity.

57. This example provides a non-exhaustive list of situations where persons would not be participating in or supporting an offshore resource activity and therefore would not be taken to be in the migration zone. These examples illustrate the types of people that this provision and the framework created by section 9A is not intended to capture.

Subsection 9A(2)

58. New subsection 9A(2) provides that to avoid doubt, a person may be taken to be in the migration zone under subsection 9A(1):

- whether or not the person’s participation in, or support of, an offshore resources activity in the area concerned has started, is continuing or has concluded; and
- whether or not the offshore resources activity concerned has started, is continuing or has concluded.

59. The purpose of new paragraph 9A(2)(a) is to clarify that a person would still be subject to the deeming provision in new subsection 9A(1) despite the fact that they may not have actually started participating in, or supporting, an offshore resources activity. The policy intention is to ensure that persons are still taken to be in the migration zone if they are in an area to participate in, or support, an offshore resources activity in relation to the area even if they never actually participate in, or support, the relevant activity. This may arise in situations where persons may, for example, fall unexpectedly ill and are unable to participate or support the relevant activity.

60. Secondly, new paragraph 9A(2)(a) clarifies the policy intention that even if a person takes a break from participating in or supporting an offshore resources activity, that person is still taken to be in the migration zone because of new

subsection 9A(1). This may arise in situations where persons may, for example, go to sleep and not continue to participate in, or support, the relevant activity.

61. Finally, new paragraph 9A(2)(a) clarifies the policy intention that even if a person's participation in, or support, of an offshore resources activity has concluded, that person is still taken to be in the migration zone because of new subsection 9A(1). The policy intention is to ensure that persons are still taken to be in the migration zone if they are in an area to participate in, or support, an offshore resources activity in relation to the area even if they conclude their involvement in the activity. This may arise in situations where persons may, for example, complete their involvement in a specific activity such as laying a pipe but other persons are still participating in or supporting the relevant activity.
62. The purpose of new paragraph 9A(2)(b) is to clarify that a person would still be subject to the deeming provision in new subsection 9A(1) despite the fact that the offshore resources activity in which they are in the area to participate, or support, has not actually commenced. The policy intention is to ensure that persons are still taken to be in the migration zone if they are in an area to participate in, or support, an offshore resources activity in relation to the area even if the relevant activity never commences. This may arise in situations where, for example, the performance of an activity cannot commence due to adverse weather conditions.
63. Secondly, new paragraph 9A(2)(b) clarifies the policy intention that even if there is a break in the offshore resources activity, that person who was participating in or supporting the activity is still taken to be in the migration zone because of new subsection 9A(1). This may arise in situations where, for example, the activity has commenced but cannot continue because of adverse weather conditions.
64. Finally, new paragraph 9A(2)(b) clarifies the policy intention that even if an offshore resources activity has concluded, the persons who were participating in, or supporting, the activity are still taken to be in the migration zone because of new subsection 9A(1). This may arise in situations where the relevant activity has concluded, but the vessel(s) and persons aboard the vessel(s) or otherwise in the area in which the offshore resources activity was being conducted are still in that area in which the offshore resource activity was being conducted.
65. However, persons who were involved in the activity which has concluded would no longer be subject to the deeming provision in new subsection 9A(1), once they depart the relevant area.

Subsection 9A(3)

66. New subsection 9A(3) provides that for the purposes of the Act:
 - a person is taken to be in Australia while he or she is taken to be in the migration zone because of subsection 9A(1); and
 - a person is taken to travel to Australia if the person travels to an area in which the person is taken to be in the migration zone because of subsection 9A(1); and

- a person is taken to enter Australia when the person enters an area in which the person is taken to be in the migration zone because of subsection 9A(1); and
 - subject to section 80—a person is taken to leave Australia when the person leaves an area in which the person is taken to be in the migration zone because of subsection 9A(1).
67. The purpose of new subsection 9A(3) is to expressly provide when a person (who is deemed to be in the migration zone by subsection 9A(1)) is also taken to be in Australia, taken to travel to Australia, taken to enter Australia and taken to leave Australia.
68. New subsection 9A(3) should also be read with items 1 to 3 above which inserts new notes in relation to the definition of *enter Australia*, *leave Australia* and the *migration zone*.
69. New paragraph 9A(3)(c) provides that a person is taken to enter Australia when the person enters an area in which the person is taken to be in the migration zone because of subsection 9A(1).
70. A person is therefore taken to enter Australia when he or she enters the area in which he or she is in to participate in, or to support, an offshore resources activity in relation to that area.
71. As a result of the new note inserted by item 1 above, the definition of *enter Australia* in current subsection 5(1) will be read with new paragraph 9A(3)(c). The intention is to ensure consistency with the provisions in the Act relating to the grant of visas and to provide the Department with the ability to identify whether a visa is in effect or whether it has ceased in the context of a person subject to new subsection 9A(1).
72. New paragraph 9A(3)(d) provides that subject to section 80 of the Act, a person is taken to leave Australia when the person leaves an area in which the person is taken to be in the migration zone because of subsection 9A(1).
73. For example, a person who has concluded their involvement in an offshore resources activity and who leaves the area in which he or she was deemed to be in the migration zone because of new subsection 9A(1) would be taken to leave Australia for the purposes of new paragraph 9A(3)(d). This is provided that the person did not leave under the circumstances described in section 80.
74. Section 80 of the Act provides that a person is taken not to leave Australia if the person goes outside the migration zone on a vessel and:
- does not go (other than for transit purposes) to a foreign country; and
 - remains a passenger, or a member of the crew, of that vessel while outside the migration zone; and
 - is outside the migration zone for no longer than the prescribed period.
75. The period referred to in paragraph 80(c) is prescribed in regulation 3.07 of the Regulations is 30 days.

76. Accordingly, if a person is taken to be in the migration zone by operation of new subsection 9A(1) and, for the purposes of the offshore resources activity, the person leaves the area in which they were participating in, or supporting, that activity for less than 30 days, the person would be taken not to leave Australia for the purposes of new paragraph 9A(3)(d). This is provided that during that period, the person did not travel to a foreign country, other than for transit purposes.
77. Alternatively, a person who suspends their involvement in offshore resources activities and travels to a foreign country for a holiday is taken to leave Australia for the purposes of the new paragraph 9A(3)(d). In this example, the person would be taken to have left Australia even if the person intended to return to Australia to resume involvement in an offshore resources activity.
78. As a result of the new note inserted by item 2 above, the definition of *leave Australia* in current subsection 5(1) will be read with new paragraph 9A(3)(d). The intention is to ensure consistency with the provisions in the Act relating to the cessation of visas and to provide the Department with the ability to identify whether a visa held by an offshore resources worker is in effect or whether it has ceased in the context of a person subject to new section 9A.
79. The policy intention of new subsection 9A(3) is to facilitate the Department's ability to govern a person's entry into Australia when they are taken to be in the migration zone by operation of new subsection 9A(1). By taking a person who is captured by new subsection 9A(1) to be in Australia, new subsection 9A(3) triggers the object of the Act in section 4 – which is predicated on the presence of non-citizens in Australia.
80. Relevantly, subsections 4(1) and 4(2) of the Act respectively state that:
- the object of this Act is to regulate, in the national interest, the coming into and presence in, Australia of non-citizens.
 - to advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain.
81. As a result, non-citizens who are taken to be in Australia under new subsections 9A(1) and 9A(3) will come within the ambit of the Act in accordance with the objectives provided for in subsection 4(1).
82. This amendment further supports the objectives set out in subsection 4(2) of the Act to encompass persons participating in, or supporting, an offshore resources activity in the relevant area.
83. As visas and visa conditions are concerned with when the visa holder enters, travels to and leaves Australia, subsection 9A(3) will facilitate the development of a tailored visa pathway in relation to offshore resources work in the Regulations to cover persons engaged in an offshore resources activity.

Subsection 9A(4)

84. New subsection 9A(4) provides that unless a provision of this Act, or another Act, expressly provides otherwise, this section does not have the effect of extending, for the purposes of another Act, the circumstances in which a person:
- is in the migration zone or is taken to be in the migration zone; or
 - is in Australia or is taken to be in Australia; or
 - travels to Australia or is taken to travel to Australia; or
 - enters Australia or is taken to enter Australia; or
 - leaves Australia or is taken to leave Australia.
85. In addition to the Act, the current definition of *migration zone* in subsection 5(1) is referred to in other Acts. The purpose of this amendment is to put beyond doubt that the deeming provisions under new subsections 9A(1) and 9A(3) apply only in relation to the Act in the context of the offshore resources industry and that they do not modify the current definition of the migration zone in subsection 5(1) as referred in other Acts.
86. New subsection 9A(4) mirrors the text in new subsections 9A(1) and 9A(3) to put beyond doubt that the deemed extension of the migration zone is not intended to modify current definitions of when a person is taken to be in the migration zone, taken to be in Australia, taken to travel to Australia, taken to enter Australia or taken to leave Australia.

Meaning of offshore resources activity

Subsection 9A(5)

87. New subsection 9A(5) provides that an *offshore resources activity*, in relation to an area, means:
- a regulated operation (within the meaning of section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) that is being carried out, or is to be carried out, within the area, except an operation determined by the Minister under subsection (6); or
 - an activity performed under a licence or a special purpose consent (both within the meaning of section 4 of the *Offshore Minerals Act 1994*), that is being carried out, or is to be carried out, within the area, except an activity determined by the Minister under subsection 9A(6); or
 - an activity, operation or undertaking (however described) that is being carried out, or is to be carried out:
 - under a law of the Commonwealth, a State or a Territory determined by the Minister under subsection 9A(6); and
 - within the area, as determined by the Minister under subsection 9A(6).

88. The purpose of this amendment is to define an offshore resources activity for the purposes of the deemed extension of the migration zone under new subsection 9A(1) – which is triggered by persons participating in or supporting an offshore resources activity.
89. Currently, offshore resources activities undertaken in Australia’s offshore maritime zones are governed by the Offshore Petroleum Act, the Offshore Minerals Act and the relevant State and Territory legislation in the three-mile coastal waters zone.
90. New subsection 9A(5) is not intended to modify the existing framework created by these Acts relating to offshore resources activities, and define new activities, but rather link to existing activities. When selecting the activities associated with the exploration and exploitation of Australia’s natural resources, the Taskforce recognised that there is already a regime which comprehensively covers the activities of the offshore resources industry. The Taskforce concluded that linking the Act to the current regulatory schemes under the Offshore Petroleum Act, the Offshore Minerals Act and related State and Territory legislation, would ensure that the Migration Act covers the same activities being conducted under existing legislation regulating the offshore resources industry.
91. The Taskforce put forward that if an activity requires a licence under the Offshore Petroleum Act, the Offshore Minerals Act and related State and Territory legislation then the person who was in an area to participate in, or support, that activity should be deemed to be in the migration zone. For that reason and to ensure consistency, new subsection 9A(5) incorporates activities under the Offshore Petroleum Act, Offshore Minerals Act and under a law of the Commonwealth, a State or a Territory determined by the Minister in writing in subsection (6).
92. New paragraphs 9A(5)(a) and 9A(5)(b) make it clear that all regulated operations under the Offshore Petroleum Act and all activities performed under a licence or a special purpose consent under the Offshore Minerals Act are captured by the definition of offshore resources activity unless the Minister has excluded the operation or activity by using his powers under subsection 9A(6). This would allow the Minister to exclude from the Act activities defined under the Offshore Petroleum Act and the Offshore Minerals Act which the Minister considers unsuitable to be captured by the definition of offshore resources activity.
93. New paragraphs 9A(5)(a) and 9A(5)(b) do not attempt to exhaustively define the areas in which Australia has the jurisdiction to govern offshore resources activity. Instead new paragraphs 9A(5)(a) and 9A(5)(b) rely on the existing processes applied in the Offshore Petroleum Act and the Offshore Minerals Act, which authorise activities to be carried out in Australia’s offshore maritime zones, to suppose that these activities are carried out within Australia’s jurisdiction. In other words, the limits of the “area” are intended to be determined with reference to a regulated operation or activity performed under a licence or a special purpose consent issued under these two Acts. These areas would include areas within Australia’s EEZ (beyond the limits of the territorial sea) and above Australia’s extended continental shelf.

94. New subparagraph 9A(5)(c)(ii) provides that an *offshore resources activity* can also include an activity, operation or undertaking (however described) that is being carried out, or is to be carried out under a law of the Commonwealth, a State or a Territory determined by the Minister under subsection 9A(6).
95. The purpose of this amendment is to enable the Minister to determine as an offshore resources activity, an activity which is not covered by the Offshore Petroleum Act or the Offshore Minerals Act under new subsection 9A(6) for the purposes the deeming provision in new subsection 9A(1). Therefore, a person who is carrying out an activity under legislation that the Minister has determined to be an offshore resources activity would be taken to be in the migration zone because they are participating in an offshore resources activity.
96. This provision recognises and accounts for changes in the offshore resources sector and possible advances in technology. It recognises that additional laws may be developed in the future to govern new offshore resource activities that may emerge.
97. This power is limited in so far as the activity must be carried out under a law of the Commonwealth or a State or Territory determined by the Minister under new subsection 9A(6). Further, the activity must be carried out in an area determined by the Minister under new subsection 9A(6). With respect to offshore resources activities carried out under paragraph 9A(5)(c), the requirement that these activities be carried out under a law of the Commonwealth or a State or Territory ensures that they are carried out within Australia's jurisdiction.
98. The area determined by the Minister will define the extent to which the migration zone is taken to be extended for a person affected by the determination.
- Subsection 9A(6)*
99. New subsection 9A(6) provides that the Minister may, in writing, make a determination for the purposes of the definition of *offshore resources activity* in subsection 9A(5).
100. More specifically, this amendment provides the Minister with the power to make determinations with respect to the definition of offshore resources activity by:
- exempting certain regulated operations under the Offshore Petroleum Act from the definition of offshore resources activity;
 - exempting certain activities performed under a licence or a special purpose consent under the Offshore Minerals Act from the definition of offshore resources activity;
 - capturing certain activities, operations or undertakings carried out, or to be carried, out under a law of the Commonwealth, a State or a Territory;
 - determining the specific law of the Commonwealth, State or a Territory in which those activities are carried out under; and/or
 - limiting the area in which those activities are carried out under.
101. The purpose of this amendment is to provide the Minister with the flexibility and ability to exempt certain activities administered by the Offshore Petroleum Act

and the Offshore Minerals Act from the definition of offshore resources activity. Further, this amendment will provide the Minister with the ability to capture certain other activities not administered by these two Acts but administered by a law of the Commonwealth, a State or a Territory.

102. This amendment will also provide the Minister with an additional tool to ensure that any future emergency can be effectively dealt with and to exclude any unintended consequences which may breach Australia's international obligations.

Subsection 9A(7)

103. New subsection 9A(7) provides that a determination made under subsection 9A(6) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

104. The purpose of this amendment is to clarify that while a determination made under new subsection 9A(6) is a legislative instrument, it is not subject to section 42 (disallowance) under the *Legislative Instruments Act 2013*.

105. A legislative instrument is to be utilised as the Minister would need flexibility to make determinations for the purpose of the definition of offshore resources activity and these instruments would need to be revised frequently, in consultation with stakeholders.

106. As this instrument would be made under Part 1 of the Act, it would be exempt from disallowance under item 26 of the table in subsection 44(2) of the *Legislative Instruments Act 2013*.

Subsection 9A(8)

107. New subsection 9A(8) provides that to avoid doubt, for the purposes of subsection 9A(1), a person may participate in, or support, an offshore resources activity in relation to an area whether the person:

- is on an Australian resources installation in the area; or
- is otherwise in the area to participate in, or support, the activity.

108. The purpose of this amendment is to put beyond doubt that persons engaged in any type of offshore resources activity in the relevant area will be captured under the framework in new section 9A. This will be the case regardless of whether the person is engaged in an activity on an Australian resources installation and is already in the migration zone under the Act or is participating in, or supporting, an offshore resources activity for the purposes of new section 9A and is therefore taken to be in the migration zone under new subsection 9A(1).

109. Subsection 5(1) of the Act provides that the *migration zone* means the area consisting of the States, the Territories, *Australian resources installations* and *Australian sea installations* and, to avoid doubt, includes:

- land that is part of a State or Territory at mean low water; and

- sea within the limits of both a State or Territory and a port; and
- piers, or similar structures, any part of which is connected to such land or to ground under such sea;

but does not include sea within the limits of a State or Territory but not in a *port*.

110. Subsection 5(1) of the Act provides that *installation* means a *resources installation* or a *sea installation*.

111. A *resources installation* is defined in subsection 5(1) to mean:

- a resources industry fixed structure within the meaning of subsection (10); or
- a resources industry mobile unit within the meaning of subsection (11).

112. Subsection 5(1) provides that an *Australian resources installation* means a resources installation that is deemed to be part of Australia because of the operation section 8.

113. Subsection 8(1) of the Act provides that for the purposes of this Act, a *resources installation* that:

- becomes attached to the Australian seabed after the commencement of this subsection; or
- at the commencement of this subsection, is attached to the Australian seabed;

shall, subject to subsection 8(2), be deemed to be part of Australia and shall be deemed not to be a place outside Australia.

114. The interaction between the definitions of migration zone and resources installation in subsection 5(1) and subsection 8(1) means that certain resources installations are deemed to be part of Australia (i.e. Australian resources installations). As noted above, subsection 5(1) provides that an *Australian resources installation* means a resources installation that is deemed to be part of Australia because of the operation of section 8.

115. In addition, under paragraph 5(6)(b), persons on board a resources installation are deemed to have entered Australia at the time at which the resources installation becomes attached to the Australian seabed.

116. New section 9A is intended to work in conjunction with the present definition of Australian resources installations and its interaction with the definition of the migration zone. It is intended that a person who is deemed to be in the migration zone under section 9A, could also be in the migration zone if they were physically present on an Australian resources installations (and therefore taken to be in the migration zone).

117. However, conversely, situations are envisaged where a person could be in the migration zone because they were on an Australian resources installation. That person may not necessarily be taken to be in the migration zone because of subsection 9A(1) because they may not be participating or supporting an offshore resources activity, and thereby not satisfying the requirements.
118. It is intended that all persons referred to in new subsection 9A(8) will be required to hold a prescribed visa to participate in, or support, an offshore resources activity. This requirement is created in new subsection 41(2B) and (2C) inserted by item 8 below.

Item 7 Subsection 41(1)

119. This item inserts a new heading “*General rules about conditions*” after subsection 41(1).
120. The purpose of this amendment is to clarify that new subsections 41(2) and 41(2A) relate to general rules about conditions.
121. This amendment is a consequential amendment as a result of item 8 below which inserts new subsections 41(2B) and 41(2C) following the new heading “*Conditions about offshore resources activity*”.

Item 8 After subsection 41(2A)

Conditions about offshore resources activity

122. This item inserts new subsections 41(2B) and 41(2C) under the new heading “*Conditions about offshore resources activity*.”

Subsections 41(2B) and 41(2C)

123. New subsection 41(2B) provides that in addition to any restrictions applying because of Regulations made for the purposes of paragraph 41(2)(b), a condition of a visa that allows the holder of the visa to work is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to any area unless the visa is:
- a permanent visa; or
 - a visa prescribed by the regulations for the purposes of this subsection.
124. The purpose of this amendment is to ensure that all non-citizens engaged in an offshore resources activity hold a visa or a permanent visa to participate in, or support, the relevant activity.
125. A person who is not the holder of a permanent visa or a visa prescribed by the Regulations for the purposes of new subsection 41(2B) could not lawfully participate in, or support, an offshore resources activity.
126. A note is inserted after new subsection 41(2B) which advises for *offshore resources activity* see subsection 9A(5).

127. The purpose of this note is to refer readers to the definition of offshore resources activity in new subsection 9A(5) which is inserted by item 6 above. This is to facilitate interpretation and understanding of new subsections 41(2B) and 41(2C).
128. New subsection 41(2C) provides that to avoid doubt, for the purposes of subsection 41(2B), a person may participate in, or support, an offshore resources activity in relation to an area whether the person:
- is on an Australian resources installation in the area; or
 - is, under section 9A, otherwise in the area to participate in, or support, the activity.
129. This new subsection mirrors new subsection 9A(8) which is inserted by item 6 above. The purpose of this amendment is to put beyond doubt that persons engaged in any type of offshore resources activity in the relevant area will be required to hold a permanent visa; or a visa prescribed by the Regulations to participate or support that activity. This will be the case regardless of whether the person is engaged in an activity on an Australian resources installation and is already taken to be in the migration zone under the Act or is participating in or supporting an offshore resources activity for the purposes of new section 9A and will therefore be taken to be in the migration zone under new subsection 9A(1).
130. The policy intention behind new subsections 41(2B) and 41(2C) is to enable the Department to identify the number of non-citizens working in the offshore resources sector and information about the work they are doing. Without a specific visa for this work, this will not be possible. Identification of the number of non-citizens working in the sector enables identification of training needs for Australian workers. The Taskforce also received feedback that the current visa products available are not suitable for the needs of industry, for example, where there is a need to transfer a worker from one offshore project overseas to a project in Australian waters at short notice. The new visa product would provide flexibility for industry and would enable the Department to identify the number of non-citizens working in the sector.
131. In addition, it is intended that a person who does not comply with new subsections 41(2B) and 41(2C) may be liable for committing an offence under current section 235 of the Act.
132. Subsection 235(1) provides that if the temporary visa held by a non-citizen is subject to a prescribed condition restricting the work that the non-citizen may do in Australia, and the non-citizen contravenes that condition; the non-citizen commits an offence against this section.
133. In addition, subsection 235(2) provides that for the purposes of subsection 235(1), a condition restricts the work that a non-citizen may do if, but not only if, it prohibits the non-citizen doing:
- any work; or
 - work other than specified work; or
 - specified work.

134. It is intended that new section 41(2B) is a condition that restricts the specific work that a non-citizen may do, in the context of participating or supporting an offshore resources activity.

Additional conditions

135. Finally, item 8 inserts a new heading “*Additional conditions*” after new subsection 41(2C).
136. The purpose of this amendment is to clarify that subsection 41(3) relates to additional conditions.

Item 9 Subsection 41(3)

137. This item inserts “or in subsection (2B)” after the words “subsection (1)”.
138. Subsection 41(3) provides that in addition to any conditions specified under subsection 41(1), the Minister may specify that a visa is subject to such conditions as are permitted by the Regulations for the purposes of this subsection.
139. As item 8 inserts new subsection 41(2B) which relates to conditions about offshore resources activity, the purpose of this amendment is to provide the Minister with the power to also specify that a visa under new subsection 41(2B) is subject to additional conditions permitted by the Regulations.
140. This is intended to enable the Minister to specify conditions which he considers suitable to address any issues which may arise in the context of the offshore resources activity migration framework.

Part 2 – Application

Item 10 Application

141. Subitem 10(1) provides that the amendments of the Act made by Part 1 apply in relation to a person who, on or after the commencement of this Schedule:
- is in the migration zone, or is taken to be in the migration zone, under that Act (as amended); or
 - is in Australia, or is taken to be in Australia, under that Act (as amended); or
 - travels to Australia, or is taken to travel to Australia, under that Act (as amended); or
 - enters Australia, or is taken to enter Australia, under that Act (as amended); or
 - leaves Australia or is taken to leave Australia, under that Act (as amended).

142. The purpose of this provision is to clarify that the operative provisions of the amendments made by Part 1 would apply in relation to a person who is already in the migration zone, or taken to be in the migration zone. In addition, the amendments would apply to a person who is in Australia, or taken to be in Australia, travels to Australia, or is taken to travel to Australia, enters Australia, or is taken to enter Australia, or leaves Australia, or is taken to leave Australia.
143. More specifically, these amendments would apply to a person who participates in, or supports, an offshore resources activity in relation to an area whether the person:
- is on an Australian resources installation in the area (after commencement);
 - is, under new section 9A, otherwise in the area to participate in, or support, the activity (after commencement).
144. Subitem 10(2) provides that the amendments of section 41 of the Act made by Part 1 apply in relation to a visa granted on or after commencement of this Schedule.
145. The purpose of this provision is to clarify that new subsection 41(2B) and 41(2C) would only apply to a holder of a visa granted on or after commencement of this Schedule. New subsection 41(2B) provides that in addition to any restrictions applying because of regulations made for the purposes of paragraph 41(2)(b), a condition of a visa that allows the holder of the visa to work is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to any area unless the visa is:
- a permanent visa; or
 - a visa prescribed by the regulations for the purposes of this subsection.
146. The effect of this provision is to clarify that only persons who are granted a visa on or after commencement, and participate in, or support, an offshore resources activity in relation to any area would be subject to new subsections 41(2B) and subsection 41(2C).
147. In relation to persons who do not hold a visa on or after commencement of this schedule, the policy intention is to grant a Special Purpose Visa under section 33 of the Act to a person who is taken to be in the migration zone while he or she is in an area to participate in, or to support, an offshore resources activity in relation to that area, for a limited time.
148. Under section 33 of the Act, a non-citizen is taken to have been granted a Special Purpose Visa if the Minister declares, in writing, that persons of a class, of which the non-citizen is a member, are taken to have been granted Special Purpose Visas.
149. The persons captured by the new provisions on commencement would not be required to make applications or pay visa application charges (there are no criteria to be satisfied under either Schedule 1 or Schedule 2 of the Regulations for a

Special Purpose Visa). Persons, will, however, be required to hold a new visa after the period of the Special Purpose Visa ceases to be in effect.