Migration Amendment (Offshore Work and Other Measures) Bill 2013

Regulation Impact Statement

March 2013

people our business

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The problem

The problem that this regulatory proposal seeks to address is the incomplete visa coverage of non-citizen workers in the offshore resources industry within Australian waters.

The reason for this lack of coverage is that the migration zone, the area in which non-citizens are required to hold a valid visa, is defined by the *Migration Act 1958* (the Migration Act) in such a way that it only applies to non-citizens working on fixed platforms like oil rigs and a limited class of vessels, but only when those platforms or vessels are attached to the seabed. Non-citizen workers on these vessels and platforms are therefore required to hold visas.

However non-citizens working on other vessels or floating facilities, which are not attached to the seabed, but undertaking similar work, are not within the migration zone and do not require a visa. While the problem is not new, arising from provisions inserted in the Migration Act in 1982, the problem was recently highlighted by the 2012 decision of the Federal Court in *Allseas Construction SA v Minister for Immigration and Citizenship* [2012] FCA 529 (*Allseas*). The Court held that while the pipes being laid were attached to the seabed, the pipe-laying vessels themselves fell within an exception, and were therefore not within the migration zone and non-citizens working on those vessels did not require visas. The decision effectively further reduced the number of non-citizen workers who were required to hold valid visas in the offshore resource industry. The decision led to a review of the Migration Act and the current proposal by the Migration Maritime Taskforce (the Taskforce).

The Australian Government's position is that all Australian jobs should be regulated by Australian law, including the Migration Act where appropriate. There is no doubt that these jobs are Australian jobs – they take place in Australia's exclusive economic zone (EEZ) and on natural resources to which Australia has sovereign rights under international law. Work rights in the offshore resources industry for people who are not Australian citizens should be regulated consistently in all areas over which Australia has jurisdiction to the maximum extent permitted by Australia's international obligations.

The visa system is the primary way the Australian Government regulates which non-citizens can work in Australia, the work that can be performed by non-citizens and the terms and conditions under which they work. The visa system also enables conditions to be imposed on employers to ensure that non-citizens are not being employed ahead of Australian workers with the same skills and to contribute to training for Australians to develop those skills.

Minimum salary levels and other conditions of work are regulated using work conditions imposed on visas and conditions imposed on the companies who sponsor the non-citizens to come to Australia. This prevents exploitation of non-citizen workers, protects applicable income and entitlement levels for all workers and prevents employers gaining a competitive advantage by paying their workers less.

The visa system is also the way the Australian Government checks for any security risks non-citizens might pose to the Australian community. Incomplete security checking in particular is inappropriate given the economically significant and strategic nature of the offshore resources industry, and the obvious vulnerability to attack of any plant dealing with large quantities of pressurised flammable gas or the potential for deliberate sabotage of an offshore oil installation to create an environmental disaster. When non-citizens do not require visas, the Australian Government has no opportunity to undertake security checks.

The visa system also enables the Australian Government to have a comprehensive picture of who is physically present in the ocean around Australia's resource industry.

It is symptomatic of the problem that the Australian Government does not currently know how many non-citizens are working within the offshore resources sector because there is no visa requirement for all non-citizens working in the industry. Even in the migration zone as it currently applies to the offshore resources sector, it is not known how many non-citizens currently hold visas as the Department does not distinguish between whether a visa is issued for activities being conducted onshore or offshore. Industry figures have not been made available – it is possible that industry is unable to provide this information easily as many non-citizens working in the offshore sector do not currently require visas and are engaged by global companies operating at a number of sites around the world at the same time. However, one example was given during industry consultations of a large company seeking 500 temporary work skilled visas (457 visas) for non-citizen workers involved in the construction of a 900km pipeline in the near future.

According to Western Australian Government figures, somewhere between 6000 and 8000 workers are currently employed in the offshore resources sector, but it is unclear how many of these workers are non-citizens.

All activities relating to the exploration and exploitation of Australia's offshore natural resources are conducted pursuant to licences issued under the *Offshore Petroluem and Greenhouse Storage Act 2006* (the OPGSSA), the *Offshore Minerals Act 1994* (the OMA), or State and Territory legislation if those activities are conducted in the coastal sea. Over the past five years under the Commonwealth scheme, 314 permits were issued to 180 companies in various consortiums to undertake exploration, production, build infrastructure, lay pipelines, etc.

The Migration Act's application in the offshore resources industry is inconsistent, incomplete, and difficult to understand, from both a legal and policy perspective. This has led to uncertainty and dispute over the last decade about whether certain vessels are inside the migration zone or not, resulting in the Federal Court case of *Allseas* in 2012 where industry successfully challenged the Government's application of the Migration Act to non-citizens on pipe-laying vessels.

The relevant provisions of the Migration Act are now outdated in terms of modern international law and have not kept pace with advances in technology which mean that attachment to the seabed is far less significant a factor in the offshore resources industry. The current reliance on attachment to the seabed appears to come from a time before the EEZ when offshore jurisdiction was based solely on attachment to the seabed – a concept coming from the Continental Shelf Convention which was concluded in 1958 and came into effect in 1964.

The Migration Act's application in the offshore resources industry is also inconsistent with the application of other Commonwealth legislation which regulates this industry, for example, the OPGGSA and the OMA. These Acts regulate all activities being conducted in the industry however the Migration Act only regulates the immigration status of those non-citizen workers in the industry who are working on installations or vessels which are attached to the seabed.

In summary, the identified problems are as follows:

1. Non-citizens who could be brought within the universal visa system are not currently covered by it;
2. A large category of Australian jobs are not covered by the primary legal mechanism which governs which non-citizens can work in Australia;
3. Working conditions are not regulated, potentially leading to undercutting of Australian conditions;
4. There is an artificial inconsistency amongst different categories of offshore resource industry workers, based on the nature of the facility they are working on;

5. Health and security checking is not carried out where visa coverage is not required;
6. The Australian Government does not have a clear picture of the number of non-citizens working amidst vital national infrastructure; and
7. The current provisions are outdated – they do not reflect advances in either international law or maritime resource recovery technology.

Background

The migration zone and the Allseas case

Since 1982 the migration zone, and therefore the requirement for non-citizens to hold a visa, has applied to non-citizens working on resources installations attached to Australia's continental shelf. The Migration Act also provides that resource industry mobile units (including vessels) are resource installations to the extent that they are attached to the continental shelf, or attached to a resource installation which is itself attached to the continental shelf. None of this was controversial until relatively recently.

The Federal Court's decision in *Allseas* held that non-citizen workers on a pipe-laying vessel engaged in laying a gas pipeline on the seabed were not within the migration zone. The court held that pipe-laying vessels were not attached to the seabed and fell within an exemption in subsection 5(13) of the Migration Act. Subsection 5(13) excludes ships manoeuvring resources installations into place from the definition of resource industry mobile units, within which definition they would otherwise fall.

On legal advice, the then Minister did not appeal the *Allseas* decision, but it was clear that there was a need for the Migration Act's offshore provisions to be amended if non-citizens on pipe-laying vessels were to be included in the migration zone.

The Migration Maritime Taskforce

Following the *Allseas* decision, the former Minister for Immigration and Citizenship, the Hon. Chris Bowen, announced on 15 October 2013 that amendments were required to the Migration Act to ensure that the Australian Government was able to regulate the pay and conditions and any health and security risks in Australia's offshore resources industry. To explore how best to apply the Migration Act to resource industry workers in Australian waters, the former Minister announced a review of the Application of the Migration Act to Offshore Resource Workers and established the Taskforce for this purpose. The Taskforce was comprised of subject matter experts from within the Department of Immigration and Citizenship with legal, policy and operational backgrounds. More information on the consultative process undertaken by the Taskforce can be found in the consultation statement below.

The key objectives of the Taskforce were to:

1. Ensure that the right to work in the offshore resources industry by people who are not Australian citizens, is, to the maximum extent permitted by Australia's international obligations, regulated consistently in all areas over which Australia has jurisdiction;
2. Create legislative certainty in order to promote continuing investment in the offshore resources industry;

3. Promote opportunities for Australians to work on Australian resources;
4. Protect the rights of workers in the offshore resources industry; and
5. Maintain the integrity in existing, interrelated border legislation.

The Taskforce's report to the Minister for Immigration & Citizenship set out legislative options for reform of the migration zone as it applies to the offshore resources sector. Its main recommendations were:

1. The Migration Act does not currently cover all resource industry non-citizen workers in Australian waters.
2. The Allseas decision narrowed this coverage even further by making clear that non-citizen workers on pipe-laying vessels were not within the migration zone.
3. The current migration zone definition is confusing.
4. UNCLOS provides Australia with a broader jurisdiction than is currently exercised.
5. There are numerous public policy reasons to ensure visa coverage of non-citizen offshore resource industry workers, including protection of employment for Australian workers.
6. The simplest and most comprehensive way to ensure visa coverage is to link it to licencing under the existing offshore resource regulatory schemes.

The Taskforce reported directly to the Minister but has not published its findings or recommendations at the time of writing.

The desired objectives

The primary objective of this proposal is to ensure that Australian jobs are regulated by the Migration Act in an appropriate way. This is a stated Government policy commitment. To attain this objective, and taking into account the priorities the Government set the following objectives for the Taskforce:

1. The universal visa system should cover all non-citizens;
2. The legislative system which governs who can work in Australian jobs should cover the whole offshore resources industry;
3. Working conditions in the offshore resources industry should be held to Australian standards;
4. Consistency in the application of the visa system should be re-established in the offshore resources industry, regardless of the nature of the facility;
5. Security checking should be undertaken to an appropriate standard;
6. A mechanism should be established to provide the Australian Government with more information on the presence of non-citizens in the offshore resources industry; and
7. The law should be updated to reflect modern international law and technology, and in such a way that future advances will automatically be covered.

Consultation statement

The primary reason for the establishment of the Taskforce to review the application of the Migration Act to offshore resource workers was to consult with stakeholders in the Commonwealth government, State and Territory governments, industry and unions and to prepare options for the Minister's consideration.

Commonwealth agencies consulted include the Department of Resources Energy and Tourism, the Australian Maritime Safety Authority, the Attorney-General's Department, the Department of Infrastructure and Transport, the Department of the Prime Minister and Cabinet, Fair Work Australia and the Department of Education, Employment and Workplace Relations.

The Secretary of the Department of Immigration and Citizenship wrote to each State and Territory government and received responses from Western Australia (WA), Tasmania, South Australia, Victoria and Queensland.

Members of the Taskforce met with the WA Department of State Development and the WA Department of Training and Workforce Development.

Meetings were held with the Maritime Union of Australia in both Sydney and Perth, the Australian Workers' Union, the Australian Maritime Officers' Union, the Australian Institute of Marine and Power Engineers and the Australian Manufacturing Workers' Union.

The Taskforce met with representatives of industry including the Australian Mines and Minerals Association (AMMA) and several of their members in Brisbane, the Australian Petroleum Production and Exploration Association (APPEA) and WA Chamber of Mines and Petroleum in Perth.

Finally, written submissions were made by the Australian Mines and Metals Association (AMMA), the Australian Maritime Officers' Unions (AMOU), Ernst & Young, the Construction, Forestry, Mining and Energy Union (CFMEU), the Maritime Union of Australia (MUA) and the Australian Petroleum Production and Exploration Association (APPEA). A small number of submissions were received which were provided in confidence. The contents of these submissions was not divergent from the input from other stakeholders and is reflected below.

The options outlined above had not been developed with a sufficient degree of clarity during the consultation period to form the basis for discussion – rather, they were a response to the options and opinions presented to the taskforce during the consultation process. While this means that stakeholders have not had the opportunity to comment on the specific mechanisms by which it is proposed to extend the migration zone in the broader option, the substantive issues at stake were discussed.

As there were a variety of stakeholders expressing similar opinions, and several stakeholders whose preference was to maintain confidentiality, the following summary is necessarily generalised.

Through these discussions it became apparent that there were several competing interests at stake:

1. Unions' desire for Australian workers to share in the benefits of the boom in the offshore resources industry;
2. Industry's desire for flexibility in an industry where delay can cost millions of dollars;
3. The maritime union's concern about the reduced size of the Australian maritime industry;
4. The Australian community's expectation that non-citizens should be required to hold visas when they are working in Australia.
5. Industry's point that many of the ships involved are highly specialised vessels with highly skilled crew who work as a unit throughout the world;
6. The well-recognised position that skilled non-citizen workers will be required for the foreseeable future and that industry needs to be able to compete for these workers in a global industry; and
7. All stakeholders recognising the confusing nature of regulation in the offshore resources sector, with overlapping jurisdictions and different zones of influence in different regulatory spheres.

It is clearly the preference of these industry groups that the application of the migration zone not be expanded. They employ thousands of Australians, but face genuine skills shortages. Their peak bodies feel that the *Allseas* decision has provided the clarity needed and that the current coverage is appropriate. However, it was also clear from consultations that, were regulation to be expanded, industry's primary need would be for flexibility.

Unions would naturally prefer fewer non-citizen workers and more development opportunities for Australian workers. They recognise that in cases of genuine skills shortages there is a need to bring in specialised workers, but question whether many of the current cohort of non-citizen workers are a response to genuine local skills shortages. Even where non-citizen workers are required, their conditions should not be allowed to undercut equivalent Australian conditions.

Considered options

Non-regulatory measures

Non-regulatory measures were not considered as a feasible solution as the Federal Court had found that the law did not apply in the circumstances under discussion and the migration zone cannot be changed without a legislative amendment.

The status quo

The Taskforce considered whether simply continuing current post-*Allseas* arrangements was feasible. This would not meet any of the desired objectives; it would simply preserve the problems identified above.

Further, the status quo runs directly counter to a stated Government policy objective. The former Minister for Immigration and Citizenship decided that legislative change was required to address the decision in *Allseas* and asked the Taskforce to advise on the most appropriate legislative change to do so.

Two broad options have been considered within these constraints.

The simple option – directly address the *Allseas* case

The *Allseas* case was the catalyst for the former Minister's announcement that the Migration Act would be amended. In most circumstances a resource industry vessel which is attached to a resource installation would be part of the migration zone. The basis for the *Allseas* decision was that the exception in subsection 5(13) of the Migration Act applies to pipe-laying vessels, around which type of vessels the case centred. The exception is that a vessel that is manoeuvring a resources installation into place is not considered to be in the migration zone, despite the fact that it might be attached to the seabed (in this case, by the pipeline it is lowering onto the seabed).

This leads to a relatively simple option – simply amend subsection 5(13) of the Migration Act and a small number of related provisions, leaving the visa system and the broader offshore regulatory scheme untouched. This option addresses the desired objectives in the following way:

1. The universal visa system should cover all non-citizens;
2. The legislative system which governs who can work in Australian jobs should cover the whole offshore resources industry;

The simple option would not cover all non-citizens working in the industry but would extend the application of the universal visa system to a broader range of non-citizens in the offshore resources industry, covering workers on pipe-laying vessels and other ships manoeuvring resource installations into place while attached to the seabed. It would, however, leave non-citizens engaged in resource industry work on free-floating vessels without coverage by the visa system. The simple option would be an improvement, but would be less comprehensive than the idea of a universal visa system.

3. Working conditions in the offshore resources industry should be held to Australian standards;

Extending the visa system to cover pipe-laying vessels would mean that more non-citizens were covered by the visa system, and thus work and sponsorship conditions which impose minimum salaries and conditions. This would be an improvement over the current system, but as there would still be non-citizen workers left without the coverage of the visa system, these protections would not apply to all offshore resource industry workers.

4. Consistency in the application of the visa system should be re-established in the offshore resources industry, regardless of the nature of the facility;

Clearly there would still be inconsistency. Workers on facilities which were not attached to the seabed would not be covered. There is no rationale for this distinction given the modern state of international law, and no rationale in policy. Two nearby facilities might be staffed by non-citizens doing precisely the same work; one attached to the seabed and therefore within the migration zone, the other free-floating and not covered by the visa system.

5. Security checking should be undertaken to an appropriate standard;

The simple option would not result in truly universal coverage by the visa system, and would therefore not extend security requirements to all non-citizens working in the industry. Some non-citizens would be able to work on vital national infrastructure with no examination of whether they pose a threat to the health or safety of other workers, a threat to the infrastructure itself and without even providing their identity to the Australian Government. This distinction would be based solely on whether a vessel was attached to the seabed.

6. A mechanism should be established to provide the Australian Government with more information on the presence of non-citizens in the offshore resources industry.

The Australian Government's data on non-citizens in the offshore resource industry would be better, but still not comprehensive, under the simple option. It would grow less comprehensive if the industry moved away from platforms to more free-floating facilities.

7. The law should be updated to reflect modern international law and technology, and in such a way that future advances will automatically be covered.

The simple option would have no modernising effect on the principles underpinning the law. Inclusion within the migration zone would still be dependent on the 1950s-era requirement for attachment to the seabed – free-floating facilities using modern dynamic positioning systems would not be included, nor would any future developments in technology which allowed for greater independence from the seabed.

The broader option – reform to migration zone plus a specially-designed visa

The second option considered can be described as the broader option. This would involve a more comprehensive reform of the application of the migration zone to the offshore resources industry.

The broader option involves linking the migration zone to the existing legislative scheme which comprehensively covers the offshore resources industry – the licencing scheme under the OPGGSA and the OMA. These Acts establish a system for regulating the exploration and exploitation of resources in the Australia's offshore maritime zones, as well as the construction of related infrastructure. Obtaining the relevant authority under the OPGGSA or OMA, along with the State and Territory legislation, which mirror the OPGGSA's provisions in the first three nautical miles of ocean which are governed by the State and Territory governments, is the only way to lawfully explore for and exploit resources in Australia's offshore maritime zones.

The broader option would effectively expand the migration zone as it applies to the offshore resources industry, by providing that all non-citizens employed on an activity regulated by the OPGSSA, OMA and relevant State/Territory legislation are deemed to be within the migration zone and are therefore required to hold a valid visa.

The broader option would also enable a specific offshore resource work visa to be created and applied consistency to all non-citizens working in the offshore resources sector. It is proposed that while the new visa pathway would preserve protections for Australian workers, the new visa pathway would be designed to better suit the needs of all stakeholders, particularly by providing more flexibility to industry. For example, it became clear during the Taskforce consultations, that many of the employers operating in the offshore resources sector are operating on a global basis and need to transfer staff, employed by the same employer, between Australian worksites and other international worksites at short notice.

It is therefore proposed that a new visa pathway could be obtained for 2 years but allow multiple entries to enable industry to meet this need. Similarly, it is proposed that a new visa pathway would enable faster processing of visa applications with streamlined processes which could not be applied to current visa products. For example, there are a limited and smaller number of employers, all conducting similar activities, who would be eligible to sponsor visas for the offshore resources industry

than are eligible to sponsor subclass 457 visas to perform a huge number of roles anywhere in Australia.

The broader option addresses the desired objectives in the following way:

1. The universal visa system should cover all non-citizens;

The broader option is a more comprehensive approach than the simple option outlined above. Using the established regulatory schemes ensures that the Migration Act applies in a logical way to the entire offshore resources industry. The coverage of the OPGGSA and OMA is designed to be comprehensive – by linking to those schemes, the Migration Act's coverage would be equally comprehensive. The extension needs to be by reference to particular industries because Australia only has jurisdiction over certain activities in certain maritime zones. Equally, if Australia has jurisdiction to regulate an activity in the offshore areas, ordinarily it would be expected that the Australian Government would include the regulation of non-citizens working in that industry.

2. The legislative system which governs who can work in Australian jobs should cover the whole offshore resources industry;

It is unlawful to explore or exploit the mineral and petroleum resources of Australia's offshore maritime zones without authorisation under either the OPGGSA or the OMA. Linking the Migration Act's coverage to these schemes ensures that all non-citizens working on activities which are required to be authorised under those Acts would automatically be required to hold a valid visa. Given that it is unlawful to operate the covered industries without this authorisation, this extends comprehensive coverage to the whole offshore resource industry in Commonwealth-controlled waters. It is proposed to create a flexible legislative instrument-making power to incorporate, in the near future, the equivalent State and Territory laws which govern these activities in the three nautical mile coastal waters zone. This would thus complete the comprehensive regulation of the migration status of non-citizens in the offshore resources industry.

3. Working conditions in the offshore resources industry should be held to Australian standards;

The broader option would result in all non-citizens working in the offshore resources industry being required to hold a visa with an appropriate work condition. This fact, along with sponsorship requirements for employers, would ensure that non-citizens would be paid Australian wages and accorded Australian conditions, avoiding the risk of exploitation and the risk of undermining of Australian employment conditions. The precise details of the requirements would be established when the new visa pathway is developed, but it is envisaged that the majority of the protections in the current 457 visa scheme would be preserved, although in some cases the requirements are likely to be streamlined.

4. Consistency in the application of the visa system should be re-established in the offshore resources industry, regardless of the nature of the facility;

The broader option would ensure that a non-citizen is subject to the Migration Act regardless of where he or she is working – on an oil rig, on a drilling ship, on a pipe-laying vessel, on a seismic exploration vessel, a submarine, diving and so on. Involvement in the industry would engage the deeming provisions, and thus the requirement to hold a valid visa. Everyone working in the offshore resources industry would be covered.

5. Security checking should be undertaken to an appropriate standard;

Comprehensive coverage provided by the broader option would provide a mechanism to require security checking. The normal risk tiering would apply – short visits would require less rigorous testing, but the fact that all offshore resource industry workers would be required to apply for visas means that their identity could be checked, the Movement Alert List would be engaged, and the Australian Government would have the opportunity to check all non-citizens working in the industry and the information needed to start this checking process if necessary.

6. A mechanism should be established to provide the Australian Government with more information on the presence of non-citizens in the offshore resources industry.

The same provision of information which allows security checking, combined with a new requirement that offshore resources industry workers would need to hold a particular visa, would ensure that the Australian Government has a comprehensive understanding of how many non-citizens are engaged in the offshore resources industry, their level of skills, their employment conditions and so on. This would enable greater planning for the future of the Australian resources industry, addressing skills shortages and setting training priorities.

7. The law should be updated to reflect modern international law and technology, and in such a way that future advances will automatically be covered.

The broader option's institution of an activity-based deeming provision combined with the removal of the attachment requirement would mean that the resources industry would be covered regardless of the techniques and technologies used. Changes in technology would not affect the operation of the new provisions. The broader option is consistent with modern international law as set out in the United Nations Convention on the Law of the Sea (UNCLOS).

Impact assessment

The status quo

The status quo option would change nothing. Non-citizens on fixed platforms and drilling ships would be required to hold visas while the facilities are attached to the seabed, but workers on free-floating ships would not.

Clearly this would have the least impact on industry in that they would be required to ensure that fewer of their workers held valid visas. However, this is not a clear benefit to industry. The inconsistencies in the existing scheme would remain.

Risks with the status quo include most notably that Australian jobs would not be subject to Australian laws, security checking would remain incomplete, and there would be inconsistent protection of Australian working conditions.

The simple option

The simple option would bring pipe-laying vessels within the reach of the Migration Act, somewhat increasing the burden on business and largely returning the situation to its "pre-*Allseas*" state.

This option would restore the scheme under which industry operated for many years prior to the *Allseas* case, and in that sense is simply a restoration of previous regulatory arrangements. However, it would be more than a year since the *Allseas* decision when new arrangements were put in place, meaning that the industry is likely to have adapted to the new flexibilities provided by the Federal Court's decision, and would thus need to change procedures again to restore compliance on pipelaying vessels.

Risks with the simple option include that not all offshore resource workers would be required to obtain visas and that the increased adoption of dynamic positioning systems and other floating facilities would continue to erode the Migration Act's coverage in the offshore resources industry. Inconsistency within the industry may lead to inadvertent non-compliance and sanctions. Community perceptions may be somewhat improved by the restoration of the "pre-*Allseas*" arrangements, but there would still be significant gaps which may lead to criticism.

The broader option

It is clear that the broader option of expanding the migration zone to all activities covered by OPGGSA and OMA licences and relevant State/Territory licensing schemes would impose a new burden on business. While the "pre-*Allseas"* understanding of the Migration Act covered certain vessels, this proposal expands this coverage significantly. This would impose an increased requirement for non-citizen offshore resource workers to obtain visas and therefore create an increased compliance burden on industry. It would also require the payment of visa fees for more non-citizen workers than is currently the case.

However, this new burden would be offset against the relative simplicity of both the application of the Migration Act and the targeted visa pathway which would simplify the process of using the visa system to address genuine skills shortages. These changes would remove substantial uncertainty and confusion and, as was seen in the *Allseas* case, prevent litigation to determine whether an offshore resources worker is in the migration zone or not.

Further, the proposed new visa pathway would provide a tailor-made solution for the offshore resources industry. Quick to apply for, it would provide greater flexibility for industry, while providing worker exploitation protections and maintaining Australian standards of employment. This would prevent the undercutting of the Australian workforce while providing industry with a visa pathway which is tailored to their unique requirements.

The lack of clarity as to numbers of non-citizen offshore resource workers means that it is difficult to arrive at a clear estimate of the total cost to industry of this proposal. Any cost would need to discount the existing cost of applying for visas for workers who are currently required to hold them, as well as in establishing whether a given worker falls into that category.

A per-unit cost is easier to estimate, however. While final decisions are yet to be made, it is envisaged that a multiple year, multiple entry visa would cost something in the order of $455, an amount based on the visa application charge (VAC) for the existing Subclass 457 visa.

There would also be a sponsorship fee for companies wishing to sponsor non-citizen resource industry workers to work in Australia's offshore maritime zones. It is envisaged that this fee would be similar to the equivalent fee in the 457 program, which is currently $420. Approval as a sponsor would last for several years.

It is planned that applicants for this new visa pathway would be able to apply electronically, and would be able to apply either inside or outside the migration zone.

It is important to reiterate that these numbers are not final. Should this option proceed, detailed information would be provided in a forthcoming regulatory impact statement for the new visa pathway.

Risks with the broader option most notably include that the Migration Act's coverage would be linked to other legislation which sits outside the Immigration and Citizenship portfolio. While this would mean that any changes to this legislation would need to be assessed from the point of view of the Migration Act, this is a normal part of the legislative change process. It is very unlikely that regulation of the offshore resources industry would ever be abandoned. It is proposed that the legislation would be drafted to enable particular activities to be included or excluded from the application of the migration zone as it applies to the offshore resource sector. Changes to the activities being regulated under the OPGGSA or OMA could therefore be reflected in the migration zone without the need for further amendment of the Migration Act.

There are also risks that there would be criticism from industry that the broader options impose more regulation on the industry and therefore present a barrier to investment in the industry. However, this criticism is likely to be reduced by the offsets of a more consistent approach to non-citizen workers in the industry and the new visa pathway for the offshore resources sector.

Conclusion and recommended option

The Government has made a commitment to ensure that all non-citizens engaged in Australian jobs are regulated under the Migration Act. Offshore resource jobs are legitimately within the regulatory ambit of the Australian Government. The expectation amongst the public is likely to be that non-citizens should hold visas while working on Australia's resources, in some cases, very close to the Australian coastline.

The Minister has made it clear that he would like the Migration Act to be amended to address the *Allseas* decision.

The status quo would not update the law to account for changes in international law, would lead to progressively lessening coverage of these jobs by Australian laws, would leave complex and inconsistent legislation in place, and would do nothing to ensure that Australia's visa coverage was applied to a large – and growing – number of Australian jobs.

The simple option addresses the *Allseas* issue in a simplistic way. It would lead to little real improvement in the law other than ensuring non-citizen workers on pipe-laying vessels were within the migration zone. The confusion, inconsistency and illogicality would remain. In the view of the Taskforce this would be a missed opportunity.

In contrast, the broader option can provide benefits for all stakeholders. It ensures comprehensive, logical and easy to understand coverage of the resources industry. It provides business with flexibility and unions with confidence that the conditions of their members are not undercut with cheap foreign labour. It would account for changes in technology in the future. It ensures that Australia properly

asserts its sovereign rights in a way appropriate under international law and brings all of these Australian jobs within the coverage of Australian law.

It is therefore concluded that the most appropriate reform is the broader option, linking the Migration Act's coverage of the offshore resources industry to the existing regulatory regimes.

Implementation strategy

It is proposed that amendments will be introduced into Parliament early in the 2013 Winter Parliamentary Sittings. The Bill was allocated Category T status for the 2013 Winter Parliamentary Legislation Program by the Parliamentary Business Committee at their meeting of 18 March 2013. Should Parliament pass the proposed amendments, the Department would move to draft regulations for the Governor-General's consideration. The proposed amendments to the Migration Act and the proposed regulations would commence on the same day, to allow the proposed targeted visa pathway to operate simultaneously with the amendments to the Migration Act. While the timeframe would need to be confirmed, it is anticipated that the new framework would be implemented at the beginning of 2014. This will enable adequate time for the industry to become familiar with the changes and to prepare for the new scheme.