Parliamentary Brief

Australian Maritime Workers in the Offshore Oil and Gas Sector

PURPOSE OF THE BRIEFING

To make Members of Parliament aware that the Abbott Government has effectively overridden the Senate's decision to disallow the *Migration Amendment (Offshore Resources Activity) Regulation* 2014, which was made on 16 July 2014, by 35 votes to 31 by issuing a Ministerial Determination "Immi 14/077" the next day on 17 July 2014. In response, all Maritime Unions – the Maritime Union of Australia (MUA), the Australian Maritime Officers Union (AMOU) and the Australian Institute of Marine and Power Engineers (AIMPE), with the support of the Australian Council of Trade Unions (ACTU) - will actively challenge the lawfulness of the Ministerial Determination through the Federal Court and via a public campaign to have the determination declared invalid or withdrawn by the Government.We will pursue this action because Unions and the majority of Senators on behalf of all Australians believe that the rights and conditions of Australian maritime workers to work in their own country should be protected.

UNIONS TO EMBARK ON LEGAL CHALLENGE

The Abbott Government on July 17 deliberately thumbed its nose at the Senate by making a Ministerial Determination that effectively makes the Principal Act null and void, contrary to the intent of the Parliament, as part of its ideological crusade to allow foreign workers to undermine Australian jobs in the offshore oil and gas sector. The Senate voted to disallow Government regulations which significantly extended the visa subclasses, and therefore the visa conditions, under which foreign workers could be employed in the offshore oil and gas sector. The main objection was the application of the Maritime Crew (subclass 988) Visa (MCV) as a visa for offshore workers. It requires no labour market testing to determine whether Australians are available to do the work and could be used by foreign corporations to hire workers on greatly reduced pay and conditions compared to their Australian counterparts.
All maritime unions – the Maritime Union of Australia (MUA), The Australian Maritime Officers Union (AMOU) and Australian Institute of Marine and Power Engineers (AIMPE) – opposed the Government's regulation. These Unions proposed a sensible solution whereby the Government reintroduce a regulation which mentioned the other two types of visa – the 457 and 400 – without the MCV. But instead of listening and working co-operatively, the Government lost the vote in the Senate and then chose to wind back the clock by announcing it would use a Legislative Instrument which eliminated the need for a visas entirely for those on board ships and other craft not tethered to the Australian seabed.
At face value, they appear to have taken us back to the time before the previous Government fixed a legislative loophole which allowed foreign workers to be employed on reduced pay and conditions. Not only does this appear to be a betrayal of the wishes of the Senate, it may also be unlawful and may not withstand scrutiny by the Federal Court.Unions have sought legal advice from two Senior Counsel separately and there is a strong basis for challenging the Government's Ministerial Determination on the grounds that it is not authorised by the *Migration Act* 1958. The appropriate course of action is to seek an urgent application against the Assistant Minister and the Commonwealth in the Federal Court of Australia for a declaration that the Determination is invalid or of no effect. Given that there is a Bill before the Senate that seeks to repeal relevant provisions of the Migration Act 1958, the parties may also seek an expedited hearing and short service in relation to these proceedings. It is worth noting that the 2013 Explanatory Memorandum for the Migration Amendment (Offshore Resources Activity) Act 2013 says: *"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."*

PUBLIC INFORMATION CAMPAIGN

The Abbott Government is treating the July 16 Senate decision with disdain by trying to ride roughshod over existing legislation which protects the rights of Australian maritime workers to work in their own country.
The ideological warriors in the Abbott Government are seeking to take out an entire Australian industry.
This is cynical government at its best. They're effectively saying: If you don't like the decision of the Australian Senate, go and find another way to rob the Parliament of its authority and the Australian people of their own jobs and resources.The Senate made the right decision in protecting Australian jobs by blocking the Abbott Government's attempts to flood the offshore oil and gas sector with cheap foreign labour. The MUA – with the help of the AMOU, ACTU and other unions - has now renewed its change.org petition, which has so far gathered more than 14,000 signatures. https://www.change.org/petitions/petition-to-secure-australian-maritime-jobs
It calls on Senators to:

(a) vote against the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014; and
(b) work to prevent the Federal Government from continuing to issue Maritime Crew (subclass 988) visas to foreign workers for the purposes of working in Australia's offshore oil and gas industry.

The Australian people know that opening the back door to cheap foreign labour isn't the answer. We need to maintain our maritime skills base and ensure the viability of Australian jobs in the offshore sector.

OPENING THE FLOODGATES

The new arrangements will open the floodgates for offshore employers to bring in overseas workers as they see fit, at the expense of Australian workers. These new offshore visa arrangements will also allow employers to bypass Australian rates of pay and conditions.

The 400 Visa and the 457 Visa, although of great concern to all offshore unions, are subject to labour market testing.

However, the Maritime Crew Visa (MCV), which was never intended to operate as an on-going work visa, but as a temporary transit visa, is of present critical concern to unions because the MCV will allow overseas workers to be employed in traditional maritime employment categories and the MCV has virtually no safeguards.

Apart from threatening maritime employment, the implementation of MCVs for on-going employment in the offshore undermines Australian visa standards because:

- Background checks are inferior to what is normally required for work visas
- There are no sponsor requirements which provides no checks and balances against abuses of visa holders
- There are no minimum labour standards requirements for such a visa, leaving overseas workers open to exploitation.

Also there are no regulatory safeguards for a MCV, as would have been in place for the proposed 'Offshore Resources Workers Visa'. These safeguards include:

- Australians in the first instance to be given training and employment opportunities on vessels operating within the Australian offshore resource sector
- Overseas labour will only be engaged if the employer could prove the unavailability of Australian employees – known as 'Labour Market Testing'
- Where overseas workers are employed they are only to be engaged under fair Australian rates of pay and conditions.

BACKGROUND

2012: The Federal Court's Allseas Decision

In 2012, Swiss company *Allseas*, who lay pipes for Chevron's massive Gorgon gas project, successfully argued before the Federal Court that its staff did not need work visas because they were employed at sea outside the migration zone. The Federal Court ruling in favour of *Allseas* effectively meant that overseas workers in the offshore resources industry:

- Were outside a valid work visa regulatory framework
- Did not have to pay tax
- Did not have to be properly trained
- Were not subject to Australian wages and conditions

2013: Labor Government introduces Migration Amendment (Offshore Resources Activity) Act 2013 (ORA Act) to rectify the situation

Recognising that the Allseas case highlighted a significant weakness in the coverage of Australia's visa regime and regulation of employment in the offshore oil and gas industry, the Gillard Labor Government enacted the *Migration Amendment (Offshore Resources Activity) Act 2013 (ORA Act)* in 2013 to regulate the employment of overseas workers in the offshore resources industry and to bring those workers within the scope of Australian migration laws.

March 2014: Abbott Government tries to repeal the ORA Act

In March 2014 the Abbott Government introduced the *Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (Repeal Bill)* into the House of Representatives. Despite opposition from the Labor Party the Government used its numbers to carry the Repeal Bill on 26 May 2014. The Senate, however, has not passed the *Repeal Bill*, but instead has referred it to the Senate Legal and Constitutional Affairs Committee. The MUA has made a submission to this Committee.

May 29, 2014: Abbott Government makes the Migration Amendment (Offshore Resources Activity) Regulation 2014

Under the newly made regulation, workers subject to the *ORA Act* will now only need to hold either a permanent visa, or one of the following:

- A Maritime Crew Visa (Subclass 988) for articled crew members of vessels who are participating in, or supporting, an offshore resources activity
- A Temporary Work (Short Stay Activity) (Subclass 400) visa for people undertaking short-term, highly specialised, non-ongoing work
- A Temporary Work (Skilled) (Subclass 457) visa for people being sponsored by an approved business for up to four years.

July 16, 2014: Senate passes Disallowance of the Migration Amendment (Offshore Resources Activity) Regulation 2014
July 17, 2014: The Abbott Government announces it has issued a 'legislative Instrument' to effectively restore the situation that existed prior to 29 June, 2014

The effect of the Legislative Instrument is as follows:

- For offshore resources activities involving an Australian resources installation, fixed to the Australian sea bed – such as a traditional oil rig – a non-citizen will be required to hold an appropriate work visa, such a subclass 457 visa. A Maritime Crew Visa is only valid for work as the crew of a ship
- For other offshore resources activity, it would not come within the migration zone and as such there will be no visa requirement.

ACTU Response

The ACTU Executive passed this resolution on July 22, 2014:

ACTU Executive expresses its deep concern at the actions of the Abbott Government that are designed to undermine the rights and opportunities of Australians to access employment in the Australian offshore oil and gas industry.

The Abbott Government has taken three significant steps that undermine Australian participation in offshore oil and gas projects. It has:

- Introduced a Bill to repeal the *Migration Amendment (Offshore Resources Activity) Act 2013* which was passed by the Parliament in 2013 to address a flaw in Australia's migration law following a Federal Court judgement in the Allseas case that found that certain groups of workers were not within the migration zone and did not require visas to work in Australia;
- Introduced a Regulation under that Act that specified an inappropriate visa class as a work visa to conform with the Act (the Maritime Crew Visa, which is a transit visa for visiting international seafarers, not a work visa); and
- When the Senate rightly disallowed the regulation specifying that visa, introduced a Determination that effectively makes the Act null and void in complete disregard to the wishes of the Parliament.

The ACTU condemns the Abbott Government for its underhand methods of circumventing the will of the Parliament. By specifying an inappropriate visa class which contains only minimal background checking, which places no obligations of the sponsor to meet minimum Australian labour, safety and compensation standards, and which includes no labour market testing requirement, the Government's intentions are clear for all to see.

The Government has used a back door method to create an loophole which will enable employers to sponsor vast numbers of overseas temporary workers with no obligation on sponsors or employers to comply with Australian workplace relations laws, including Awards and enterprise agreements. Second, to ride roughshod over the wishes of the Senate by using a Determination making power in the Act to completely deny the full intent of the Act.

These actions of the Government are contrary to Australia's national interest, are a slap in the face for Australian offshore oil and gas workers and for the many Australians who want to work in the sector and demonstrates the Government is prepared to disregard Australian security interests when big business interests are involved.

The ACTU acknowledges the important role which the Greens, PUP, DLP, AMEP and Labor Senators played in disallowing the regulations. This was the right decision by the Senators and any unintended consequences fall squarely on the Government and the Assistant Minister for Immigration.

The ACTU will continue to support its affiliates in the offshore oil and gas industry in their actions to have the decision of the Government overturned to enable the Migration Amendment (Offshore Resources Activity) Act 2013 to operate as it was intended – to support Australia's national security, to provide protections that encourage and facilitate Australian participation and employment in the offshore oil and gas industry and to ensure Australian laws apply to these offshore projects.

This disgraceful move by the Government to replace Australian jobs with positions available only to overseas workers with visa conditions that don't give them the protections Australian workers are entitled to is unacceptable to the ACTU, and has put the interests of big business ahead of Australian workers yet again.