Migration Amendment (Offshore Resources Activity) Regulation 2014

Select Legislative Instrument No. 64, 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 29 May 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Minister for Immigration and Border Protection

OPC60512 - A

Contents

1 Name of regulation

This regulation is the *Migration Amendment (Offshore Resources Activity) Regulation 2014*.

2 Commencement

This regulation commences on the commencement of Schedule 1 to the *Migration Amendment (Offshore Resources Activity) Act 2013*.

3 Authority

This regulation is made under the *Migration Act 1958*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Regulation 1.03 (sub-subparagraph (b)(ii)(B) of the definition of *non-military ship*)

Repeal the sub-subparagraph, substitute:

(B) is not registered in the Australian International Shipping Register;

unless a person on board the ship is participating in, or supporting, an offshore resources activity in relation to the area in which the ship is located.

2 Regulation 1.03

Insert:

offshore resources activity has the meaning given by section 9A of the Act.

3 After subregulation 2.05(3)

Insert:

(3A) For paragraph 41(2B)(b) of the Act, the following visas are prescribed:

(a) a Subclass 988 (Maritime Crew) visa;

(b) a Subclass 400 (Temporary Work (Short Stay Activity)) visa;

(c) a Subclass 457 (Temporary Work (Skilled)) visa.

4 After regulation 2.06AAA

Insert:

2.06AAB Entry to Australia—persons entering to participate in, or support, offshore resource activities

For paragraphs 43(1)(c) and (1A)(b) of the Act, the following reason is prescribed:

(a) the visa held by the visa holder is:

(i) a permanent visa; or

(ii) a Subclass 988 (Maritime Crew) visa; or

(iii) a Subclass 400 (Temporary Work (Short Stay Activity)) visa; or

(iv) a Subclass 457 (Temporary Work (Skilled)) visa; and

(b) the holder is taken to travel to and enter Australia because of subsection 9A(3) of the Act.

Note 1: Paragraph 43(1)(c) of the Act provides that if the holder of a visa that is in effect travels to Australia on a vessel, and a prescribed reason makes it necessary to enter Australia in a way other than at a port, or on a pre-cleared flight, the visa is permission for the holder to enter Australia in that other way.

Note 2: Paragraph 43(1A)(b) of the Act provides that if the holder of a maritime crew visa that is in effect travels to Australia on a vessel, and a prescribed reason makes it necessary to enter Australia in a way other than at a prescribed port, the visa is permission for the holder to enter Australia in that other way.

5 At the end of subregulation 3.03AA(1)

Add:

Note: For holders of Subclass 988 (Maritime Crew) visas who are in an area to participate in, or to support, an offshore resource activity, see item 11 of Part 2 of Schedule 9.

6 Clause 988.512 of Schedule 2 (cell at table item 2, column headed "Circumstances")

Repeal the cell, substitute:

Each of the following applies:

(a) the holder has entered Australia;

(b) the holder is not in an area to participate in, or to support, an offshore resources activity in relation to the area;

(c) the non-military ship in relation to which the holder is:

(i) a member of the crew; or

(ii) the spouse, de facto partner or a dependent child of a member of the crew;

has been imported under section 49A of the *Customs Act 1901* or entered for home consumption under section 71A of that Act but is not registered in the Australian International Shipping Register;

(d) the holder has not signed on to another non-military ship as a member of the crew, or as the spouse, de facto partner or a dependent child of a member of the crew before the latest of the following:

(i) 5 days after the day on which the non-military ship was imported or entered for home consumption;

(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship was imported or entered for home consumption or the person was taken to leave Australia—the end of that longer period;

(iii) if the person was taken to be in the migration zone because of subsection 9A(1) of the Act—5 days after the day on which the holder was taken to leave Australia because of paragraph 9A(3)(d) of the Act;

(e) the person has not departed Australia before the latest of the following:

(i) 5 days after the day on which the non-military ship was imported or entered for home consumption;

(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship was imported or entered for home consumption or the person was taken to leave Australia—the end of that longer period;

(iii) if the person was taken to be in the migration zone because of subsection 9A(1) of the Act—5 days after the day on which the holder is taken to leave Australia because of paragraph 9A(3)(d) of the Act;

(iv) if the holder holds another visa that is in effect—the day on which that other visa ceases

7 Clause 988.512 of Schedule 2 (cell at table item 2A, column headed "Circumstances")

Repeal the cell, substitute:

Each of the following applies:

(a) the holder has entered Australia;

(b) the holder is not in an area to participate in, or to support, an offshore resources activity in relation to the area;

(c) the non-military ship in relation to which the holder is:

(i) a member of the crew; or
(ii) the spouse, de facto partner or a dependent child of a member of the crew;

has been imported under section 49A of the *Customs Act 1901* or entered for home consumption under section 71A of that Act;

(d) the non-military ship was registered in the Australian International Shipping Register when the ship was imported or entered for home consumption;

(e) the non-military ship ceases to be registered in that Register;

(f) the holder has not signed on to another non-military ship as a member of the crew, or as the spouse, de facto partner or a dependent child of a member of the crew, before the latest of the following:
(i) 5 days after the day on which the non-military ship ceases to be registered in the Australian International Shipping Register;
(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship was imported or entered for home consumption or the person was taken to leave Australia—the end of that longer period;
(iii) if the person was taken to be in the migration zone because of subsection 9A(1) of the Act—5 days after the day on which the holder is taken to leave Australia because of paragraph 9A(3)(d) of the Act;

(g) the person has not departed Australia before the latest of the following:
(i) 5 days after the day on which the non-military ship ceases to be registered in the Australian International Shipping Register;
(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship ceases to be registered in that Register or the person was taken to leave Australia—the end of that longer period;
(iii) if the person was taken to be in the migration zone because of subsection 9A(1) of the Act—5 days after the day on which the holder is taken to leave Australia because of paragraph 9A(3)(d) of the Act;

(iv) if the holder holds another visa that is in effect—the day on which that other visa ceases

8 At the end of Part 2 of Schedule 9 (after the note)

Add:

11 A person:

(a) who is an Australian citizen, or holds one of the following types of visa that is in effect:

(i) a permanent visa;

(ii) a Subclass 988 (Maritime Crew) visa;

(iii) a Subclass 400 (Temporary Work (Short Stay Activity)) visa;

(iv) a Subclass 457 (Temporary Work (Skilled)) visa; and

(b) who is taken to enter Australia because of paragraph 9A(3)(c) of the Act; and

(c) whose entry has been reported in writing to Immigration

EXPLANATORY STATEMENT

Select Legislative Instrument No. 64, 2014

Subject - *Migration Act 1958*

Migration Amendment (Offshore Resources Activity) Regulation 2014

Subsection 504(1) of the *Migration Act 1958* (the Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the provisions of the Act listed in Attachment A.

The purpose of the *Migration Amendment (Offshore Resources Activity) Regulation 2014* (the Regulation) is to amend the *Migration Regulations 1994* (the Principal Regulations) to support the commencement of the *Migration Amendment (Offshore Resources Activity) Act 2013* (ORA Act).

The ORA Act amends the Act to provide that persons who participate in, or support, an offshore resources activity are taken to be in the migration zone. The amendments in the ORA Act 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.

An 'offshore resources activity' (as defined in subsection 9A of the Act) may include activities such as the exploration or exploitation of minerals, greenhouse gas and petroleum resources within Australia's Exclusive Economic Zone and the waters above the Continental Shelf.

Persons participating in, or supporting, an offshore resources activity may include:

- sea crew on pipe laying vessels, supply vessels, tugs and heavy lift ships, seismic vessels and other specialist vessels involved in the exploration or exploitation of mineral, greenhouse gas and petroleum resources within Australia's Exclusive Economic Zone and the waters above the Continental Shelf; and
- specialists such as: marine engineers, oceanographers, seismologists, specialist divers, hydraulic mechanics, drillers and crane operators working on vessels involved in the exploration or exploitation of mineral, greenhouse gas and petroleum resources within Australia's Exclusive Economic Zone and the waters above the Continental Shelf.

In particular, the Regulation amends the Principal Regulations to:

- prescribe the maritime crew visa, the Subclass 400 (Temporary Work (Short Stay Activity)) visa and the Subclass 457 (Temporary Work (Skilled)) visa as visas which allow the holder to participate in, or support, an offshore resources activity as defined in subsection 9A of the Act;
- prescribe the permanent visas, the maritime crew visa, the Subclass 400 (Temporary Work (Short Stay Activity)) visa and the Subclass 457 (Temporary Work (Skilled)) visa where the holder is taken to travel to and enter Australia under subsection 9A(3) of the Act as visas that authorise the holder to enter Australia through a method other than at a port or on a pre-cleared flight; and
- provide that, rather than the visa ceasing after a certain period outlined in the Principal Regulations, a maritime crew visa will not cease where the vessel that the maritime crew visa holder is on has been imported under the *Customs Act 1901* but not entered on the Australian International Shipping Register, if the maritime crew visa holder is participating in, or supporting, an offshore resources activity in relation to an area.

Details of the Regulation are set out in Attachment C.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments made by the Regulation. OBPR advises that as this is an implementation matter from the ORA Act a separate Regulation Impact Statement (RIS) is not required. The OBPR consultation references are 16740 and 14618.

The Statement of Compatibility with Human Rights, has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (see Attachment B).

Prior to the passage of the ORA Act, consultation was undertaken during 2012-13 by the Migration Maritime Taskforce (the Taskforce), established by the then Department of Immigration and Citizenship, with offshore resource industry groups, maritime unions, the migration advice profession, Commonwealth government agencies, and the Western Australian State government. The purpose of the Taskforce's consultation was to assess the implications of the decision by the Federal Court of Australia in *Allseas Construction S.A. v Minister for Immigration and Citizenship* [2012] FCA 529 (*Allseas*), and to make recommendations to the government on how it should respond. The consultation and subsequent recommendations led to the development of the ORA Act.

In November and December of 2013 further consultations took place on the potential implementation of a visa pathway for those persons affected by the commencement of the ORA Act. Issues canvassed during consultations included whether the proposed visa should have a sponsorship framework; what criteria and conditions should apply to the visa; and how many overseas workers would need to apply for the visa. The stakeholders' views were considered in the development of the *Migration Amendment (Offshore Resources Activity) Regulation 2014*.

The following organisations were consulted and/or provided submissions:

- Australian Shipowners' Association
- Australian Petroleum Production and Exploration Association
- Australian Mines and Metals Association;
- Maritime Union of Australia;
- Australian Maritime Officers' Union;
- Australian Institute of Marine and Power Engineers;
- Migration Institute of Australia;
- Law Council of Australia;
- Ernst & Young;
- Department of the Prime Minister and Cabinet;
- Australian Customs and Border Protection Service; and
- Department of Industry.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences immediately after the commencement of Schedule 1 to the ORA Act. The ORA Act commences on a single day to be fixed by Proclamation. However, if Schedule 1 does not commence within the period of 12 months beginning on the day the ORA Act receives the Royal Assent, it commences on the day after the end of that period. The ORA Act received the Royal Assent on 29 June 2013.

Authority: Subsection 504(1) of the *Migration Act 1958*

ATTACHMENT A

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- subsection 31(1), which provides that there are to be prescribed classes of visas;

- subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;

- subsection 31(5), which provides that a visa is a visa of a particular class if the Act or the *Migration Regulations 1994* (Principal Regulations) specify that it is a visa of that class;

- paragraph 41(2B)(b), which 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 visa prescribed by the regulations for the purposes of subsection 41(2B);

- subsection 41(3), which 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 Principal Regulations for the purposes of this subsection;

- paragraph 43(1)(c), which provides that, subject to subsections (1A) and (3) and the regulations, a visa to travel to and enter Australia that is in effect is permission for the holder to enter Australia other than at a port or on a pre-cleared flight if the holder travels to Australia on a vessel and the health and safety of a person or a prescribed reason makes it necessary to enter Australia in that way;

- paragraph 43(1A)(b), which provides that, subject to the Principal Regulations, a maritime crew visa that is in effect is permission for the holder to enter Australia, other than at a proclaimed port if the health or safety of a person, or a prescribed reason, make it necessary to enter Australia in another way;

- paragraph 82(2AA)(b), which provides that, despite subsection 82(2), a substantive visa held by a non-citizen that is of a class specified by the Minister, by legislative instrument, for the purposes of this subsection does not cease to be in effect if a maritime crew visa for the non-citizen comes into effect; and

- subsection 168(3), which provides that a person in a prescribed class is not required to comply with section 166.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Migration Amendment (Offshore Resources Activity) Regulation 2014

This Amendment is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amendment

The purpose of the Amendment is to enable non-citizens to comply with the *Migration Amendment (Offshore Resources Activity) Act 2013* (the ORA Act) by prescribing the visas that a person must hold, and amending the ceasing provisions of the Maritime Crew Visa (MCV) and the immigration clearance provisions of the *Migration Act 1958* (the Migration Act), to enable a person to participate in, or support, an offshore resources activity.

The ORA Act was an initiative of the previous Government. Its purpose was to amend the Migration Act to expand the application of the migration zone to all offshore resources activity within Australia's Exclusive Economic Zone and the waters above the Continental Shelf with the specific aim of regulating the employment of foreign workers in the industry by way of a visa.

The ORA Act provides that a person who participates in, or supports, an offshore resources activity is taken to be in the migration zone for the purposes of the Migration Act, and that a person who is in the migration zone for this purpose must hold either:

- a permanent visa; or
- a visa prescribed by the regulations.

Consistent with its agenda to minimise the regulatory burden on business, the Government is seeking to repeal the ORA Act before it commences, and on 27 March 2014 introduced the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 into Parliament.

However, in the event that the ORA Act is not repealed before it is due to commence, the Amendment will regularise the immigration status of those non-citizens who are deemed to be in the migration zone from 29 June 2014 by virtue of the fact that they are participating in, or supporting, an offshore resources activity.

A non-citizen who is in the migration zone, but does not hold a valid visa, is deemed to be an unlawful non-citizen and is liable to mandatory immigration detention. Businesses found to have employed an unlawful non-citizen can be sanctioned.

The Amendment will ensure that foreign workers employed in the offshore resources industry, including those already deemed to be in the migration zone on 29 June 2014, are able to comply with the ORA Act by holding a visa with an appropriate work condition and are not deemed to be unlawful non-citizens, or working illegally in Australia, in the event that the ORA Act is not repealed.

The Amendment also exempts those non-citizens who are participating in, or supporting, an offshore resources activity from the Migration Act's immigration clearance provisions if their entry has been reported in writing to the Department of Immigration and Border Protection (DIBP), and amends the ceasing provisions of the Maritime Crew Visa to prevent the visa from ceasing when a person participating in, or supporting, an offshore resources activity enters Australia, or when the vessel is imported or entered for home consumption under the *Customs Act 1901*.

Human rights implications

The Amendment has been assessed against the seven core international human rights treaties.

Non-discrimination

The Amendment engages Article 2.1 of the ICCPR and Article 2.2 of the ICESCR which guarantee the rights enshrined in the Covenants to all people without discrimination.

Article 2.1 of the ICCPR and Article 2.2 of the ICESCR provide:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2.2 of the ICESCR provides:

> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment on Article 2 (E/C.12/GC/20), UNCESCR has stated (at 13) that:

> Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.

The object of the Migration Act is to 'regulate, in the national interest, the coming into, and presence in, Australia of non-citizens'. In that sense the purpose of the Act is to differentiate on the basis of nationality between non-citizens and citizens. The Amendment will differentiate between Australian citizens and non-citizens on the basis of their nationality.

Most nation-states differentiate on the basis of nationality in some form to regulate the right to work. The UN Human Rights Committee has recognised in the ICCPR context that 'The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory […] Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment' (CCPR General Comment 15, 11 April 1986).

Beyond this basic level of differentiation, Australia's non-discriminatory immigration policy applies equally to all non-citizens. Any person will be able to come to work in Australia's offshore resources industry should they meet the criteria for a visa, regardless of race, gender, national origin or any other prohibited grounds of discrimination.

The right to work and just and favourable conditions of work

The Amendment engages the right to work in Article 6 of the ICESCR. Article 6 provides:

> The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 7 of ICESCR provides for recognition of the 'right of everyone to the enjoyment of just and favourable conditions of work'. In particular, remuneration must provide all workers with 'fair wages and equal remuneration for work of equal value'.

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), in its General Comment on Article 6 (E/C.12/GC/19) has stated (at 4):

> The right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.

Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

> …only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.

The Amendment does not operate to deprive people of the right to work in that it does not seek to preclude non-citizens working in Australia's offshore resources industry, but rather requires them to hold an appropriate visa for the work they will be doing in Australia. The visa that the non-citizen will be required to hold will depend on the nature of the work they will be doing and their proposed length of stay in Australia.

Nor does the Amendment operate to deprive people of the right to just and favourable conditions of work as persons working in the offshore resources industry – regardless of visa criteria or sponsorship obligations – are subject to Australian workplace laws and agreements, or where appropriate, by the Maritime Labour Convention 2006.

In the case of non-citizens holding prescribed temporary work visas, these will be supplemented by visa criteria and/or sponsorship obligations prescribing terms and conditions of employment no less favourable than those provided to Australian citizens and permanent residents performing equivalent work.

The Amendment is legitimate, reasonable and proportionate within the framework established by the ICESCR to give effect to Article 6 and Article 7 in relation to non-citizens.

The right to freedom from arbitrary detention

Article 9.1 of the ICCPR provides that:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Under the Migration Act, a non-citizen who is in the migration zone, but does not hold a valid visa, is deemed to be an unlawful non-citizen and liable to mandatory immigration detention.

By deeming non-citizens who are participating in, or supporting, an offshore resources activity to be in the migration zone, the ORA Act will have the effect of rendering such non-citizens liable to mandatory immigration detention under the Migration Act.

While the Government is seeking to repeal the ORA Act, the Amendment will regularise the immigration status of those non-citizens who are deemed to be in the migration zone from 29 June 2014 by virtue of the fact that they are participating in, or supporting, an offshore resources activity.

This will ensure that foreign workers employed in the offshore resources industry, including those already deemed to be in the migration zone on 29 June 2014, hold a visa with an appropriate work condition and are not deemed to be unlawful non-citizens, or working illegally in Australia, in the event that the ORA Act is not repealed.

As it is impractical for a person participating in, or supporting, an offshore resources activity to present to a clearance authority to be immigration cleared, the Amendment also exempts such persons from the Migration Act's immigration clearance provisions if their entry has been reported in writing to DIBP.

Hence although the Amendment engages the right to freedom from arbitrary detention, it is consistent with this right as, by prescribing a visa with an appropriate work condition in the regulations, it will ensure that non-citizens who are in the migration zone by virtue of the fact that they are participating in, or supporting, an offshore resources activity, will not become unlawful and liable to mandatory immigration detention.

Conclusion

The Amendment engages the right to non-discrimination, to work and just and favourable conditions of work, and to freedom from arbitrary detention, and is compatible with human rights.

The Hon Scott Morrison MP, Minister for Immigration and Border Protection

ATTACHMENT C

Details of the *Migration Amendment (Offshore Resources Activity) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Amendment (Offshore Resources Activity) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that this regulation commences immediately after the commencement of Schedule 1 to the *Migration Amendment (Offshore Resources Activity) Act 2013*.

The *Migration Amendment (Offshore Resources Activity) Act 2013* (the ORA Act) commences on a single day to be fixed by Proclamation. However, if Schedule 1 does not commence within the period of 12 months beginning on the day the ORA Act receives the Royal Assent, it commences on the day after the end of that period. The ORA Act received the Royal Assent on 29 June 2013.

The effect of this section is that the Regulation commences at the same time as Schedule 1 of the ORA Act. If the ORA Act does not commence, the Regulation will not commence.

The purpose of this section is to provide for when the amendments made by the Regulation commence.

Section 3 – Authority

This section provides that the Regulation is made under the *Migration Act 1958* (the Act).

The purpose of this section is to set out the Act under which the Regulation is made.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

The purpose of this section is to provide for how the amendments in the Regulation operate.

Schedule 1 – Amendments

Item 1 – Regulation 1.03 (sub-subparagraph (b)(ii)(B) of the definition of *non-military ship*)

The *non-military ship* is defined at regulation 1.03 of the *Migration Regulations 1994* (Principal Regulations). This item repeals and substitutes sub-subparagraph (B) to provide that a non-military ship does not include a ship has been imported under section 49A of *Customs Act 1901* or has been entered for home consumption under section 71A of *Customs Act 1901*, and that the ship is not registered in the Australian International Shipping Register, unless a person on board the ship is participating in, or supporting, an offshore resources activity in relation to the area in which the ship is located.

Currently, the definition of *non-military ship* in regulation 1.03 does not refer to a person on board the ship is participating in, or supporting, an offshore resources activity in relation to the area in which the ship is located.

The purpose of this amendment is to clarify that a ship is still a non-military ship, despite having been imported or entered for home consumption, if it is in an area to participate in, or support, offshore resources activities.

Item 2 – Regulation 1.03

This item inserts the definition of "offshore resources activity".

The effect of this amendment is that the meaning of this term is given by section 9A of the *Migration Amendment (Offshore Resources Activity) Act 2013*.

The purpose of this amendment is to put it beyond doubt that this term has the same meaning in the Principal Regulations as in the ORA Act.

Item 3 – After subregulation 2.05(3)

This item inserts subregulation 2.05(3A) after subregulation 2.05(3) in Division 2.1 of Part 2 to the Principal Regulations.

Currently, regulation 2.05 contains provisions which relate to conditions applicable to visas.

New subregulation 2.05(3A) provides that for paragraph 41(2B)(b) of the ORA Act, the following visas are prescribed:

- a Subclass 988 (Maritime Crew) visa;
- a Subclass 400 (Temporary Work (Short Stay Activity)) visa;
- a Subclass 457 (Temporary Work (Skilled)) visa.

Subsection 41(2B) was inserted into the Act by the ORA Act. It 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 to support, an offshore resources activity in relation to an area unless the visa is a permanent visa or a visa prescribed by the Principal Regulations for the purposes of paragraph 41(2B)(b).

The effect of this amendment is to prescribe the Subclass 988 (Maritime Crew) visa, the Subclass 400 (Temporary Work (Short Stay Activity)) visa and the Subclass 457 (Temporary Work (Skilled)) visa as a visa prescribed by the Principal Regulations for the purposes of paragraph 41(2B)(b) of the ORA Act.

The purpose of this item is to allow a non-citizen who holds a Subclass 988 (Maritime Crew) visa, Subclass 400 (Temporary Work (Short Stay Activity)) visa and the Subclass 457 (Temporary Work (Skilled)) visa to participate in, or to support, an offshore resources activity in relation to an area.

Item 4 – After regulation 2.06AAA

This item inserts regulation 2.06AAB after regulation 2.06AAA in Division 2.1 of Part 2 to the Principal Regulations.

Regulation 2.06AAB provides that for paragraphs 43(1)(c) and 43(1A)(b) of the Act, the following reason is prescribed:

- the visa held by the visa holder is:
    - a permanent visa;
    - a Subclass 988 (Maritime Crew) visa; or
    - a Subclass 400 (Temporary Work (Short Stay Activity)) visa; or
    - a Subclass 457 (Temporary Work (Skilled)) visa; and
- the holder is taken to travel to and enter Australia because of subsection 9A(3) of the Act.

Note 1 following regulation 2.06AAB provides that paragraph 43(1)(c) of the Act provides that if the holder of a visa that is in effect travels to Australia on a vessel, and a prescribed reason makes it necessary to enter Australia in a way other than at a prescribed port, or on a pre-cleared flight, the visa is permission for the holder to enter Australia in that other way.

Note 2 following regulation 2.06AAB provides that if the holder of a Subclass 988 (Maritime Crew) visa that is in effect travels to Australia on a vessel, and a prescribed reason makes it necessary to enter Australia in a way other than at a prescribed port, the visa is permission for the holder enter Australia in that other way.

The effect of this amendment is to prescribe the reason, for paragraphs 43(1)(c) and 43(1A)(b) of the Act, that the holder of a permanent visa, Subclass 988 (Maritime Crew) visa or a Subclass 400 (Temporary Work (Short Stay Activity)) visa or Subclass 457 (Temporary Work (Skilled)) visa is taken to travel to and enter Australia because of subsection 9A(3) of the Act.

The purpose of this amendment is to provide that if the holder of a permanent visa, Subclass 988 (Maritime Crew) visa, a Subclass 400 (Temporary Work (Short Stay Activity)) visa or Subclass 457 (Temporary Work (Skilled)) visa that is in effect and who is taken to travel to and enter Australia because of subsection 9A(3) of the Act, travels to Australia on a vessel, the visa is permission for the holder to enter Australia in this way, rather than at a port or on a pre-cleared flight.

In addition, the purpose of this amendment is to prescribe that the holder of a Subclass 988 (Maritime Crew) visa that is in effect who is taken to travel to and enter Australia because of subsection 9A(3), is permission for the holder to enter Australia in this way, rather than at a prescribed port.

In the majority of circumstances, persons participating in, or supporting, an offshore resources activity will not enter Australia at a port. This is because such persons will frequently travel to the area where they will be participating in or supporting the offshore resources activity (and therefore entering the migration zone) directly by boat without otherwise entering Australia.

Item 5 – At the end of subregulation 3.03AA(1)

This item inserts a new Note at the end of subregulation 3.03AA(1).

The Note provides that new Item 11 of Part 2 of Schedule 9 of the Principal Regulations applies to holders of Subclass 988 (Maritime Crew) visa who are in an area to participate in, or to support, an offshore resource activity.

The purpose of this Note is to flag that a person who holds a Subclass 988 (Maritime Crew) visa is not required to comply with section 166 of the *Migration Act 1958*.

Item 6 – Clause 988.512 of Schedule 2 (cell at table item 2, column headed "Circumstances")

This item repeals and substitutes the table item 2 cell in the column headed "Circumstances".

Clause 988.512 provides for when a Subclass 988 (Maritime Crew) visa ceases to be in effect. The relevant cell provides for different sets of circumstances and when the Subclass 988 (Maritime Crew) visa ceases to be in effect in those circumstances. Currently, the circumstances covered by this provision are where the Subclass 988 (Maritime Crew) visa holder has entered Australia as either the member of the crew of a non-military ship or the spouse, de facto partner or dependent child of a member of a non-military ship and the ship has been imported or entered for home consumption under *Customs Act 1901*, and the ship is not registered in the Australian International Shipping Register.

The effect of this amendment is to insert new paragraph (b), subparagraph (d)(iii) and subparagraph (e)(iii) into the cell, to renumber all paragraphs accordingly, and to revise the opening words of paragraphs (d) and (e).

The purpose of this amendment is to provide that a Subclass 988 (Maritime Crew) visa does not cease if the holder is in the area to support an offshore resources activity and the ship they are working on is imported or entered for home consumption. This provision covers a Subclass 988 (Maritime Crew) visa holder who flies into Australia, leaves Australia on the ship and re-enters the migration zone in an area where the person will be supporting an offshore resource activity. If, however, a Subclass 988 (Maritime Crew) visa holder signs onto another ship that is not supporting an offshore resources activity, or the ship the person is currently on stops supporting an offshore resources activity, the Subclass 988 (Maritime Crew) visa held by that person will be subject to ceasing under item 2 if the person does not, within 5 days, depart Australia or sign on to another non-military ship.

Item 7 – Clause 988.512 of Schedule 2 (table item 2A, column headed "Circumstances")

This item repeals and substitutes the table item 2A cell in the column headed "Circumstances".

Currently, the circumstances covered by this provision are where the Subclass 988 (Maritime Crew) visa holder has entered Australia as either the member of the crew of a non-military ship or the spouse, de facto partner or dependent child of a member of a non-military ship and the ship has been imported or entered for home consumption under *Customs Act 1901*, and that the non-military ship was registered in the Australian International Shipping Register when the ship was imported or entered for home consumption but ceased to be registered on that register.

The effect of this amendment is to insert paragraph (b), subparagraph (f)(iii) and subparagraph (g)(iii) into the cell, to renumber all paragraphs accordingly, and to revise the opening words of paragraphs (f) and (g).

The purpose of this amendment is to provide that a Subclass 988 (Maritime Crew) visa does not cease if the holder is in an area to support an offshore resources activity and the non-military ship they are working on is imported or entered for home consumption, even if that ship was initially registered on the Australian International Shipping Register and it ceases to be registered. The periods provided in this cell are the same as the periods set out in item 2 of the table except that, instead of the visa cessation date being calculated by reference to the day the non-military ship was imported or entered for home consumption, the visa cessation date is calculated by reference to the day on which the non-military ship ceased to be registered.

This provision covers a Subclass 988 (Maritime Crew) visa holder who flies into Australia, leaves Australia on the ship and re-enters the migration zone in an area where the person will be supporting an offshore resource activity. If, however, a Subclass 988 (Maritime Crew) visa holder signs onto another ship, that is not supporting an offshore resources activity, or the ship the person is on stops supporting an offshore resources activity, the person is to become subject to ceasing under item 2A if the person does not, within 5 days, depart Australia or sign on to another non-military ship.

Item 8 – At the end of Part 2 of Schedule 9 (after the note)

This item adds item 11 at the end of Part 2 of Schedule 9 to the Principal Regulations.

New item 11 of Part 2 of Schedule 9 provides that:

- A person:
    - who is an Australian citizen, or holds one of the following types of visa that is in effect:
        - a permanent visa; or
        - a Subclass 988 (Maritime Crew) visa; or
        - a Subclass 400 (Temporary Work (Short Stay Activity)) visa; or
        - a Subclass 457 (Temporary Work (Skilled)) visa; and
    - who is taken to enter Australia because of paragraph 9A(3)(c) of the Act; and
    - whose entry has been reported in writing to Immigration.

Part 2 of Schedule 9 to the Principal Regulations provides that certain persons are not required to comply with section 166 of the Act.

Section 166 of the Act provides that a citizen or a non-citizen, who enters Australia must, without unreasonable delay, present certain evidence to a clearance authority. Subsection 168(3) provides that a person in a prescribed class is not required to comply with section 166. Regulation 3.06 in Division 3.1 of Part 3 to the Principal Regulations provides that for the purposes of subsection 168(3) of the Act, each class of person set out in Part 2 of Schedule 9 is prescribed.

The effect of the new item 11 is that a person mentioned at that item is not be required to present certain evidence to a clearance authority when entering Australia.

The purpose for exempting this group of people from the requirement to comply with section 166 of the Act is that it is impractical for persons engaged in offshore resources activity to comply with section 166 (and provide evidence and other information to a clearance authority).

This group will only be exempt if they have been taken to enter Australia because of paragraph 9A(3)(c) of the Act and their entry to Australia has been reported to the department. The person may report to the department personally or someone else may do this on their behalf, for example, the vessel's local shipping agent. This reporting must be in writing to allow the department to keep a record of who has entered Australia, which is particularly important if the person does enter mainland Australia at some later point in time, for example, by helicopter.