



Australian Government
**Department of Immigration
and Border Protection**

Inquiry into the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016

**Senate Legal and Constitutional Affairs Legislation
Committee**

Table of Contents

Introduction.....	3
Measures in the Bill.....	3
Reason for Referral / Principal Issues for Concern	3
Portfolio Submission.....	3
Schedule 1 to the Bill	3
Schedule 2 to the Bill	4
Schedule 3 to the Bill	4

Introduction

The Department of Immigration and Border Protection (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 (the Bill), following the introduction of the Bill into the House of Representatives on 19 October 2016.

This submission provides a response to the reasons for referral and principal issues for concern which were raised by the Selection of Bills Committee and will also briefly explain the measures included in the Schedules to the Bill.

Measures in the Bill

The Bill amends the *Migration Act 1958* (Migration Act) to support important Government initiatives which seek to promote Australia as an attractive destination. It will also facilitate the use of enhanced technology to improve the traveller experience at the Australian border.

The measures in the Bill are intended to:

- establish a visa revalidation requirement;
- give effect to the intended policy setting for when a visa is to cease to be in effect; and
- allow a person to be immigration cleared without the presentation of a travel document.

Reason for Referral / Principal Issues for Concern

The Bill was referred to the Legal and Constitutional Affairs Legislation Committee by the Selection of Bills Committee on 10 November 2016. The reason for the referral / principal issue for consideration by the Committee was identified in the Selection of Bills Committee Report No. 8 of 2016 to be:

- to further investigate the potential impacts of the bill and seek views from affected stakeholders.

Portfolio Submission

Schedule 1 to the Bill

Australia's increasing appeal as a global destination of choice for tourism and business will see more people travelling, more often. In a highly competitive and digitally driven global market, travellers are expecting easier to use, simplified travel services including government services.

International arrivals¹ to Australia are forecast to increase from 7.8 million in 2015-16 to 12.3 million by 2024-25, with China expected to contribute up to 43 per cent of total growth. This creates a positive outlook for Australia's tourism industry – leading to increased employment and GDP growth.

The *White Paper on Developing Northern Australia* announced a trial of a 10-year visitor visa for Chinese nationals, providing for multiple entries with up to a three month stay on each entry during the visa period. This product will allow Australia to compete with those countries that offer visa products with long validity periods, making Australia an even more attractive destination for international travellers.

This framework simplifies visa processes for frequent travellers whilst managing specific, serious, or time critical risks to the Australian community and individual circumstances which may change through the visa validity period. The new framework will support the proposed trial of the new 10 year validity visitor visa to ensure that, among other things, only genuine visitors retain the right to travel to and enter Australia.

¹ Tourism Research Australia 'Tourism Forecasts' July 2016

Schedule 1 to the Bill introduces a new visa revalidation framework within the Migration Act, including:

- a general power for the Minister for Immigration and Border Protection (the Minister) to require, from time to time, a person who holds a visa of a prescribed kind to complete a revalidation check; and
- a personal non-compellable power for the Minister to determine by legislative instrument, if he or she thinks it is in the public interest, that a specified class of persons holding a visa of a prescribed kind must complete a revalidation check for the visa.

In this digital age, international travellers increasingly expect up to date information on situations as they arise. At the same time, there is a growing trend for governments to deliver seamless services to clients anywhere, anytime and on any device. Delivering services that meet the needs of clients is at the core of the digital transformation agenda. Equally, there is an expectation that with the provision of generous longer validity Visitor visas, the government must ensure that visa holders continue to meet the health, character, security and other requirements for entry to Australia.

Schedule 2 to the Bill

The amendments in Schedule 2 of the Bill clarify the circumstances in which a visa can cease to be in effect under the Migration Act.

While most visas come into effect immediately upon the grant of the visa, there are a small number of visas that are granted but do not come into effect immediately, or may go out of effect during the life of the visa (dormant visas). The amendment addresses a finding of the Administrative Appeals Tribunal (*Todd and Minister for Immigration* [2011] AATA 851) that created ambiguity around when a ceasing event would cause a dormant visa to end. A ceasing event is the occurrence of something that would normally cause the visa period to end and result in the person no longer holding the visa, for example, cancellation of the visa.

The amendments will ensure that a dormant visa will generally cease if a relevant ceasing event applies. This gives effect to the long standing policy position on the cessation of dormant visas, and provides certainty as to when a person no longer holds a visa. It will ensure that, subject to the limited exception below, a person will no longer hold a visa if a relevant ceasing event applies, regardless of whether the visa is dormant at the time.

There is a limited exception for visas that only allow a holder to remain in Australia and not to travel to and re-enter Australia (primarily bridging visas). There is a ceasing event that provides that these visas will end if the person departs Australia. However, if a person holds such a visa that is dormant when they depart Australia (because, for example, they depart and return as the holder of a substantive visa), the exception will mean that their departure will not cause their dormant bridging visa to end. This is to the advantage of the visa holder, as it means they do not need to reapply for a further bridging visa when they return to Australia, and will not unknowingly become an unlawful non-citizen simply because they previously departed Australia while holding a dormant bridging visa. The exception will also reduce the administrative burden for the department as it will mean that applications for further bridging visas for these people will need to be processed.

Schedule 3 to the Bill

The amendments made by Schedule 3 to the Bill provide that a traveller can be immigration cleared without presentation of a passport or other travel document provided that a traveller's identity is verified using the traveller's unique biometric identifier, such as a facial image.

In order to evolve with the ever-changing border environment, it is necessary to pursue innovative and technological solutions for border processes that effectively counter border threats, encourage compliance and ensure the safety and security of the community. Non-intrusive technologies and intervention processes lie at the foundation of our ability to intercept people identified as risks while minimising the impact on legitimate travel.

These immigration clearance measures amend the Migration Act to enable the use of 'contactless' technology to clear travellers through the automated immigration clearance system,

SmartGate, which is an authorised clearance authority under the Migration Act. Contactless technology is an enhancement to SmartGates at both departure and arrival, and uses leading edge technology to confirm a traveller's identity, removing the SmartGate's reliance on document based checks to confirm identity.

Contactless Automated Immigration Clearance does not impose additional requirements on the traveller. Instead, it removes the requirement for travellers to present a travel document, such as a passport, for identity purposes, unless requested to do so by a clearance officer or an authorised system. The identity of the traveller will be confirmed on the basis of a unique biometric identifier, such as their facial image. The live facial image of the traveller at the SmartGate will be matched against an image previously verified as the unique identifier associated with that identity.

The use of Contactless Automated Immigration Clearance will remain voluntary, as travellers can also choose to be processed manually by a clearance officer.

The introduction of contactless technology will upgrade both arrivals and departures SmartGates. An added benefit of this technology is that as contactless SmartGates will not be reliant on the presentation of a passport, arrivals SmartGates will have the ability to process travellers who do not hold an ePassport. This extends the arrivals self-processing option to a greater number of travellers.

With increased automation, Australian Border Force resources can be diverted from manual processing tasks to focus on managing border threats and minimising vulnerabilities. This enhancement provides stronger security measures and contributes to the economic development of Australia through faster and more efficient traveller facilitation.