



SUBMISSION

Migration Amendment (Visa Revalidation and Other Measures) Bill 2016



The Migration Institute of Australia (MIA) is the Australian national professional association for Registered Migration Agents (RMAs). The MIA welcomes the opportunity to provide input to the Senate Legislative and Constitutional Affairs Committee inquiry into the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 [Provisions].

The MIA supports, in principle, the introduction of revalidation of specific long term visas, the clarification of cessation of visas that are not in effect and the introduction of contactless technology to automate immigration clearance processes.

The MIA reserves its full support for the Bill due to concerns related to the Minister's powers under Section 96E.

The MIA recommends that Section 96E which provides personal non-delegable powers to the Minister be removed from the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016.

If we can be of further assistance, please feel free to contact me

Yours faithfully,

Kevin Lane
Chief Operating Officer

22 November 2016

The Migration Institute of Australia (MIA) acknowledges that the revalidation of various criteria such as health and character are reasonable for visas granted for long periods, such as the new ten year Frequent Traveller visa. Visa holders' personal circumstances can undergo any number of changes over time and the longer the visa validity, the greater the opportunity for unforeseen or undesirable changes to occur.

Revalidation at biannual intervals and through the processes specified in this Bill appear reasonable and appropriate without being overly onerous within the circumstances.

The MIA recognises that this Amendment contains a variety of checks and balances within the prescribed processes. However, Section 96E of the Amendment and the public interest test contained in this section are of some concern.

The Memorandum to the Bill states:

*The Minister may consider the public health and safety of the Australian community or particular individuals, national security, the economic wellbeing of Australia, the circumstances in a person's home country, the risk of overstaying **or other factors, or combination of factors, determined to be relevant to the particular circumstances.***

The personal powers afforded the Minister under Section 96E(1) are described in the Explanatory Memorandum to the Bill as broad and flexible. The Bill includes the requirement for any legislative instrument made under the Section 96E(1) power to be tabled in Parliament for scrutiny and determination, in recognition of the power this section provides to the Minister, and that legislative instruments made by the Minister are not disallowable.

The MIA believes that circumstances could emerge that could provide the Minister at that time with unfettered power to determine classes of person who must submit to revalidation checks. For example, if the Government of the day held a majority in both the Upper and Lower Houses of the Federal Parliament, any legislative instrument changing the classes of persons specified in such an instrument, may have an easy path to approval.

At worst, the Minister's powers could be used to significantly skew this interpretation of the 'public interest' and to significantly and retrospectively change the eligibility characteristics for passing the revalidation test. Unlikely as it may seem at this time, this could be extrapolated to discriminate against large numbers of long term visa holders lawfully living in Australia, preventing them from revalidating their visas and requiring them to leave the country.

MIA Recommendation

The MIA recommends that Section 96E which provides personal non-delegable powers to the Minister be removed from the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016.