

2010 - 2011 - 2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MIGRATION (VISA EVIDENCE) CHARGE (CONSEQUENTIAL AMENDMENTS)
BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Citizenship,
the Hon. Chris Bowen MP)

Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012

OUTLINE

The Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012 (“the Bill”) amends the *Migration Act 1958* (“the Migration Act”) to complete the package of amendments needed to implement the visa evidence charge.

The visa evidence charge is imposed by the Migration (Visa Evidence) Charge Bill 2012 which enables a charge to be payable for the production of prescribed evidence of a visa.

The amendments in the Bill comprise one part of a major reform of Australia’s immigration visa system. This reform transforms the pricing framework for Australia’s visa program. The visa evidence charge is designed to encourage clients to reconsider their need to have visa evidence.

The introduction of the new visa evidence charge will also increase revenue for the government to support the immigration system more broadly by charging for ongoing visa label work during the transition to label free travel.

In particular, the Bill amends the Migration Act to:

- provide that a non-citizen who holds a visa, or certain other persons on behalf of the non-citizen who holds the visa, may request to be given a prescribed form of evidence of a visa;
- provide that a person who makes a request for visa evidence is liable to pay visa evidence charge;
- provide that the amount of visa evidence charge is to be prescribed in the *Migration Regulations 1994* (“the Regulations”) and the amount must not exceed the visa evidence charge limit;
- insert regulation making powers to allow regulations to be made to:
 - specify different amounts of visa evidence charge for different forms of visa evidence, different classes of visas, different methods of payment, where the person elects to have the request dealt with expeditiously and for requests made in different circumstances; and
 - specify circumstances where the amount of the charge is nil and a way for working out the amount of the charge; and
 - provide that the regulations may make provisions for, or in relation to, matters relating to the circumstances in which a form of evidence of visa may be requested or given; the method of payment; the persons who may be paid on behalf of the Commonwealth; the remission, refund or waiver of the charge; and exemptions of persons from the liability to pay charges; and
- provide that an officer must give evidence of a visa if a person makes a request to be given evidence of a visa and the amount of visa evidence charge for the request has been paid; and

- allow the Minister to direct that a document is not to be taken to be a passport or travel document for the purposes of the regulations.

FINANCIAL IMPACT STATEMENT

The financial impact of these amendments is high. The amendments to the Migration Act will result in revenue being raised under the visa evidence charge imposed by the Migration (Visa Evidence) Charge Bill 2012. The introduction of visa evidence charge will increase revenue for the government to support the immigration system more broadly by charging for ongoing visa label work during the transition to label free travel. This package will generate significant additional revenue for the government in the order of \$90 million over three years.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has been consulted and has advised that a regulatory impact statement is not required. The advice reference is 13083.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

**MIGRATION (VISA EVIDENCE) CHARGE (CONSEQUENTIAL AMENDMENTS) BILL
2012****NOTES ON INDIVIDUAL CLAUSES****Clause 1 Short title**

1. Clause 1 provides that the short title by which this Act may be cited is the *Migration (Visa Evidence) Charge (Consequential Amendments) Act 2012*.

Clause 2 Commencement

2. Subclause 2(1) provides that each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Further, any other statement in column 2 has effect according to its terms.
3. Table item 1 provides that sections 1 to 3 of this Act and anything in this Act not elsewhere covered by the table will commence on the day on which this Act receives the Royal Assent.
4. Table item 2 provides that Schedule 1 will commence at the same time as section 3 of the *Migration (Visa Evidence) Charge Act 2012* commences.
5. The note in subclause 2(1) makes clear that the table relates only to the provisions of this Act as originally enacted. The table will not be amended to deal with any later amendments of this Act.
6. Subclause 2(2) provides that any information in column 3 of the table is not part of this Act. It provides that information may be inserted or edited in any published version of this Act.

Clause 3 Schedule(s)

7. This clause provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1 – Amendments

Migration Act 1958

Item 1 Subsection 5(1)

1. This item inserts a new defined term of “*visa evidence charge*” in subsection 5(1) of Part 1 of the Migration Act.
2. Subsection 5(1) of the Migration Act provides for definitions in the Migration Act. This new defined term provides that *visa evidence charge* means visa evidence charge imposed by the *Migration (Visa Evidence) Charge Act 2012*.
3. The purpose of this amendment is to ensure that visa evidence charge is defined for the purposes of a request for evidence of a visa made under new section 70.

Item 2 Subsection 5(1)

4. This item inserts a new defined term of “*visa evidence charge limit*” in subsection 5(1) of Part 1 of the Migration Act.
5. Subsection 5(1) of the Migration Act provides for definitions in the Migration Act. This new defined term provides that *visa evidence charge limit* for a request made under new section 70 has the meaning given by the *Migration (Visa Evidence) Charge Act 2012*.
6. The term *visa evidence charge limit* is defined for the purposes of the Migration Act as the amount determined in subsections 7(1) and 7(2) of the *Migration (Visa Evidence) Charge Act 2012*. This amount is the ceiling for the amount of the visa evidence charge that may be prescribed under the Regulations as being payable by particular groups of visa holders.

Item 3 Sections 70 and 71

7. This item repeals existing sections 70 and 71 of Subdivision AE of Part 2 of the Migration Act and substitutes new sections 70, 71, 71A and 71B.

New section 70

8. Currently, section 70 of the Migration Act provides that, subject to the regulations, if a non-citizen is granted a visa, an officer is to give the non-citizen evidence of the visa.
9. New section 70, in summary, provides:
 - that certain persons may request to be given a prescribed form of evidence of a visa at any time while the visa is in effect;
 - how the request must be made; and
 - that a person may withdraw the request before the evidence of the visa is given.
10. New subsection 70(1) provides that any of the following persons may request to be given a prescribed form of evidence of a visa at any time while the visa is in effect:
 - the non-citizen who holds the visa;
 - a parent or guardian of the non-citizen who holds the visa if the non-citizen is a minor or the non-citizen is incapable of managing his or her affairs;

- a person authorised, in writing, by the non-citizen who holds the visa to make a request under this section on the non-citizen's behalf.
11. The purpose of new subsection 70(1) is to specify those persons who are able to request evidence of a visa. New subsection 70(1) also makes clear that a person may only request a prescribed form of evidence of a visa and may only make a request at a time when the visa is in effect.
 12. New paragraph 70(1)(a) provides that a non-citizen who holds the visa may request to be given a prescribed form of evidence of a visa at any time while the visa is in effect.
 13. New paragraph 70(1)(b) provides that a parent or guardian of the non-citizen who holds the visa if the non-citizen is a minor or the non-citizen is incapable of managing his or her affairs, may request to be given a prescribed form of evidence of a visa at any time while the visa is in effect.
 14. The purpose of new paragraph 70(1)(b) is to permit a parent or guardian of a non-citizen, who is either a minor or is incapable of managing his or her affairs, to request to be given a prescribed form of evidence of a visa, on that non-citizen's behalf at any time while the visa is in effect. This paragraph does not seek to prevent a minor from requesting evidence of their own visa under new paragraph 70(1)(a). Rather, the intended effect of this provision is to extend the ability to request evidence of a visa to parents of minors.
 15. New paragraph 70(1)(c) provides that a person authorised, in writing, by the non-citizen who holds the visa to make a request under this section on the non-citizen's behalf may request to be given a prescribed form of evidence of a visa at any time while the visa is in effect.
 16. The purpose of new paragraph 70(1)(c) is to provide a non-citizen who holds the visa with the option of authorising a person, in writing, to make a request to be given a prescribed form of evidence, on the non-citizen's behalf. The intended effect of this provision is to still permit a non-citizen to request evidence of their visa, themselves, even if they have authorised a person in writing to make the request under new section 70.
 17. New subsection 70(2) provides that the request must:
 - be made in the prescribed way; and
 - be lodged at the prescribed place; and
 - be accompanied by the amount of visa evidence charge payable in relation to the request.
 18. The purpose of new subsection 70(2) is to provide that a request for a prescribed form of evidence of a visa under subsection 70(1) must be made in the prescribed way, be lodged at the prescribed place and be accompanied by the amount of visa evidence charge payable in relation to the request. The intended effect of this provision is to clarify that a request for visa evidence must fulfil the above three components in order for it to be a request for the purposes of new section 70.
 19. New subsection 70(3) provides that the person may withdraw the request at any time before the prescribed form of evidence of the visa is given.
 20. The purpose of new subsection 70(3) is to provide that a person may withdraw a request to be given a prescribed form of evidence of a visa under new section 70, before the prescribed form of evidence of the visa is given. The intended effect of this provision is to enable a

person to withdraw a request for visa evidence, as long as they withdraw the request at any time before the visa evidence is given. If a person withdraws their request before evidence is given, they will not be given the prescribed form of evidence of the visa.

New section 71

21. Currently, subsection 71(1) provides that evidence of a visa is to be given in a way prescribed for giving the evidence. Currently, subsection 71(2) creates a regulation making power that may provide that the way in which evidence of a visa or a visa of a class is to be given is to depend on the circumstances in which it is given. Currently, subsection 71(3) states that if a regulation provides that evidence of a non-citizen's visa may be given by endorsing a valid passport or other valid travel document issued to the non-citizen or another non-citizen associated with him or her, the Minister may direct that a specified document is not to be taken to be a passport or travel document for the purposes of the regulation.
22. New section 71 provides for the liability to pay visa evidence charge. This section specifies who is liable to pay the charge and enables the Regulations to prescribe the amount of visa evidence charge and other details relating to the amount of the visa evidence charge.
23. New subsection 71(1) provides that a person who makes a request under new section 70 is liable to pay visa evidence charge.
24. The purpose of new subsection 71(1) is to clarify that a person who makes a request for visa evidence under new section 70, is liable to pay visa evidence charge. This provision complements new paragraph 70(2)(c).
25. New subsection 71(2) provides that the amount of visa evidence charge is the prescribed amount which must not exceed the visa evidence charge limit for the request.
26. The purpose of new subsection 71(2) is to allow the Regulations to specify the amount of the visa evidence charge payable by a person who requests visa evidence under new section 70 and states that the amount must not exceed the visa evidence charge limit for the request. The term *visa evidence charge limit* is defined for the purposes of this new provision as the amount determined in subsections 7(1) and 7(2) of the *Migration (Visa Evidence) Charge Act 2012*.
27. New subsection 71(3) provides that without limiting subsection (2), regulations made for the purposes of that subsection may do any one or more of the following:
 - specify a different amount of visa evidence charge for different prescribed forms of evidence of a visa;
 - specify a different amount of visa evidence charge in relation to different classes of visas;
 - specify a different amount of visa evidence charge for different methods of payment of the charge;
 - specify a different amount of visa evidence charge where the person elects to have the request dealt with expeditiously;
 - specify a different amount of visa evidence charge for requests made in different circumstances;
 - specify circumstances in which the amount of the visa evidence charge is nil;
 - specify a way for working out the amount of visa evidence charge.

28. The purpose of new subsection 71(3) is to provide a power in the Migration Act for the Regulations to do any one or more of the above, without limiting new subsection 71(2). In particular, while the actual amount to be charged for various types of visa evidence would be prescribed in the Regulations, the upper charge limit specified in subsections 7(1) and 7(2) of the *Migration (Visa Evidence) Charge Act 2012* is the potential maximum amount that the Regulations could prescribe now or in the future for any variety of visa evidence, in the absence of an amendment to the *Migration (Visa Evidence) Charge Act 2012*. The intended effect of new subsection 71(3) is to create flexibility to adjust these amounts without the need to amend the Migration Act.

New subsection 71A

29. New subsection 71A(1) provides that if a person makes a request under new section 70 in relation to a visa, and the amount of visa evidence charge for the request has been paid, an officer must, within a reasonable time after the request is made, give the person a prescribed form of evidence of the visa.
30. The purpose of new subsection 71A(1) is to oblige an officer to give a person evidence of a visa within a reasonable time after they have made a request for such evidence in the specific circumstances where the request has been made in accordance with new section 70, and the amount of the visa evidence charge for the request has been paid.
31. The timeframe to give evidence will depend on the situation and circumstances in which the request for evidence of a visa is made. A timeframe is not specified as what is reasonable in some situations and circumstances will not be reasonable in others. For example, where a non-citizen makes the request in person in an office of the Department of Immigration and Citizenship in Australia the evidence of a visa can be provided in a shorter period of time compared to a non-citizen who makes the request by mailing in a form to a diplomatic office maintained by the Commonwealth outside Australia.
32. New subsection 71A(2) provides that subsection (1) does not apply if the request has been withdrawn, or the visa has ceased to be in effect.
33. The purpose of new subsection 71A(2) is to ensure that an officer is not obliged to give a person evidence of a visa in circumstances where the person no longer desires such evidence or their visa has ceased to be in effect.

New subsection 71B

34. New subsection 71B(1) provides that the regulations may make provision for, or in relation to, any of the following matters relating to the visa evidence charge:
- the circumstances in which a prescribed form of evidence of a visa may be requested or given;
 - the method of payment (including the currency in which the charge must be paid);
 - the persons who may be paid the charge on behalf of the Commonwealth;
 - the remission, refund or waiver (in whole or in part) of the charge;
 - the exemption (in whole or in part) of a person from the liability to pay the charge.
35. The purpose of new subsection 71B(1) is to allow the information referred to above to be prescribed in the Regulations. This will give flexibility to adjust these details in accordance with operational needs.

36. New subsection 71B(2) provides that if the regulations provide that a prescribed form of evidence of a visa may be given by endorsing a valid passport, or other valid travel document, that has been issued to:

- a non-citizen; or
- another non-citizen associated with that non-citizen;

the Minister may direct, in writing, that a specified document is not to be taken to be a passport or travel document for the purposes of the regulations.

37. The purpose of new subsection 71B(2) is to preserve the effect of current subsection 71(3) of the Act. Subsection 71(3) of the Act provides that if a regulation provides that evidence of a non-citizen's visa may be given by endorsing a valid passport or other valid travel document issued to the non-citizen or another non-citizen associated with him or her, the Minister may direct that a specified document is not to be taken to be a passport or travel document for the purposes of the regulation.

38. New subsection 71B(3) provides that a direction under subsection (2) is not a legislative instrument.

39. The purpose of new subsection 71B(3) is to explain to the reader that a direction under new subsection 71B(2) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003* (the Legislative Instruments Act). That is, new subsection 71B(3) merely declares that a direction under subsection 71B(2) is not a legislative instrument. A direction made under new subsection 71B(3) is not a legislative instrument as it does not determine the law by its own force.