

ATTACHMENT A

Response to the Law Council of Australia's submission to the Senate Legal and Constitutional Affairs Committee in relation to the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016

1. Bill appears to be neither necessary nor proportionate to its intended objective, in that it has the potential to apply to all classes of visas, not just the proposed longer validity visitor visa

Currently, only the new Frequent Traveller stream of the Subclass 600 (Visitor) visa will be prescribed for the purposes of requiring a revalidation check. This is to support the trial of a new longer validity visitor visa that will initially only be available to Chinese nationals.

The power to prescribe which visa can be subject to the revalidation check process has not been limited for several reasons.

Flexibility had been provided as other longer validity visa products may be implemented in the future. The revalidation framework may be an appropriate mechanism to manage identified risks in these products. Limiting the types of visas that can be prescribed would restrict the ability to use the revalidation framework to reduce red tape and manage risks associated with newly developed or reformed visa products.

There would be Parliamentary scrutiny over which visas, or the types of visas, that were prescribed for the revalidation check framework through the disallowance process. If the Parliament considered it was inappropriate for a visa which has been prescribed to be subject to the revalidation check process, a motion could be moved to disallow that regulation.

2. Bill grants a broad range of powers to the Minister, with limited or no explanation as to their intended purpose

The current criteria for grant of a visitor visa, including public interest criteria, may change over time in response to changing domestic and global circumstances. Therefore the Minister's power in relation to these criteria is intended to be broad.

A revalidation check would involve assessing whether a visa holder continues to meet the criteria for the visa that has been granted. But, this check is not intended to be a full reassessment of the visa holder's ability to meet the original requirements for grant of the visa. A revalidation check is intended to reduce red tape for frequent travellers by removing the requirement for the visa holder to complete multiple visa applications over a 10-year period. In completing the check, in the absence of any adverse information, or where there is adverse information, but it is reasonable to disregard that information, the visa would be revalidated. There is no disadvantage to the visa holder of this approach.

The scope of possible adverse information is necessarily broad to allow for flexibility in addressing future changes in both domestic and global circumstances. But flexibility has also been provided for the Minister to disregard adverse information when reasonable. In these cases, the visa holder would satisfy the revalidation check.

For example, this could include circumstances relevant to the assessment of the genuine temporary entrant criteria, including consideration of both the personal circumstances of the applicant in their home country and general conditions in the home country that might encourage them to remain in Australia. These conditions include:

- economic disruption, including shortages, famine, or high levels of unemployment, or natural disasters in the applicant's home country;
- civil disruption, including war, lawlessness or political upheaval in the applicant's home country; or
- emerging public health and safety risks identified in the visa holder's country of citizenship or long term residence.

Additionally, this approach provides for consideration of the visa holder's ongoing compliance with the conditions of their visa, as well as consideration of information relevant to any new grounds for visa cancellation that are introduced in the future under the *Migration Act 1958* (the Migration Act).

Where the delegate considers that it is not reasonable to disregard that information, the information would be referred to a visa cancellation delegate to consider if grounds for cancellation exist.

3. Bill provides capacity for the Executive to make legislative instruments that are not subject to disallowance by the Senate, potentially impacting upon all persons residing in Australia as temporary or permanent residents

For the purposes of the trial of a new longer validity visitor visa that will initially only be available to Chinese nationals it is proposed to make regulations under the new provisions which specify that:

- For the purposes of subsection 96B(1) of the Act, a Subclass 600 (Visitor) visa in the Frequent Traveller stream is a prescribed kind of visa.
- For the purposes of subsection 96E(1) of the Act, a Subclass 600 (Visitor) visa in the Frequent Traveller stream is a prescribed kind of visa.

It is not proposed that the amendments to the *Migration Regulations 1994* (Migration Regulations) to prescribe these visas will include a power to make a legislative instrument to specify additional visas. Further, as any amendments to the Migration Regulations would themselves be subject to disallowance, there would be parliamentary oversight of any proposal to include such an instrument making power (or to add further visas to the Revalidation scheme).

4. Presence of powers in the existing structure of the Migration Act and Regulations, which already provide adequate powers to address the concerns raised in the Explanatory Memorandum and the Minister's second reading speech

There is no existing head of power in the Migration Act that is broad enough to require a visa holder to provide updated information on their personal circumstances for the purpose of ascertaining the existence of any such adverse information. This would be required to enable the Minister to be satisfied that the visa holder continued to meet health, character, security, genuine temporary entrant and other criteria that would normally be considered at the time of visa grant over the visa period.

The cancellation powers in the Migration Act include a mechanism to provide natural justice to a visa holder in relation to adverse information, either in the form of a NOICC (Notice of Intention to Consider Cancellation) or through the request for revocation of visa cancellation process. This means that where the Department of Immigration and Border Protection (the Department) is aware of such information, adequate powers exist to take appropriate action. Separately, the visa application process provides a mechanism for the Department to request and consider such information.

5. Insufficient information on the establishment of the proposed longer validity visa

To support the implementation of the trial of a 10-year visitor visa for Chinese nationals a new Frequent Traveller stream of the Visitor (subclass 600) visa commenced on 19 November 2016. Supporting regulations to give effect to this visa were endorsed by the Federal Executive Council on 10 November 2016. See: [Migration Legislation Amendment \(2016 Measures No. 5\) Regulation 2016 \[F2016L01745\]](#).