

Chapter 1

Introduction and background

1.1 On 10 November 2016, the Senate referred an inquiry into the provisions of the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 (the bill) to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 28 November 2016.¹

1.2 The Senate Selection of Bills Committee recommended that the bill be referred to the committee for inquiry to further investigate the potential impacts of the bill and seek views from affected stakeholders.²

Background and purpose of the bill

1.3 The Minister for Immigration and Border Protection, the Hon Peter Dutton MP (the Minister) introduced the bill into the House of Representatives on 19 October 2016. In his second reading speech, he stated that the bill's provisions would support two key government initiatives in his portfolio, namely:

...initiatives which seek to promote Australia as an attractive destination...[and measures that] facilitate the use of enhanced technology to improve the traveller experience at the Australian border.³

1.4 The Minister stated that the bill contributes to the government's commitment to boosting the Australian tourism sector, noting that the sector provides employment for around 600,000 people and contributes more than \$120 billion to the domestic economy.⁴ Moreover, he also noted the new class of visa would encourage repeat visits by Chinese business travellers, which would also benefit the wider Australian economy.⁵

The trial of 10-year visas

1.5 One government measure aimed at increasing the number of tourists visiting Australia is the introduction of a 10-year visa for holidaymakers and businesspeople.

1 *Journals of the Senate*, No. 15, 10 November 2016, p. 448.

2 Senate Selection of Bills Committee, *Report No. 8 of 2016*, 10 November 2016, Appendix 5.

3 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2433.

4 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2433.

5 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2433.

In his second reading speech, the Minister noted the positive effects for the tourism industry and the Australian economy more generally that would stem from this initiative:

The introduction of a 10-year visitor visa will encourage repeat visits by genuine tourists and businesspeople choosing Australia as their preferred destination.⁶

1.6 This new class of visa will be trialled in a pilot program for Chinese nationals commencing in December 2017.⁷ This measure was initially proposed by the government's 2015 *White Paper on Developing Northern Australia*, alongside other measures to encourage Chinese tourists and business travellers, which included the ability to lodge visa applications online, as well as the provision of a fast-track visa approval service with a 48-hour turnaround.⁸

The use of 'SmartGates' to enhance immigration processing

1.7 Some Australian airports currently allow some passengers arriving from overseas to self-process through immigration clearance, by presenting an ePassport to a 'SmartGate kiosk'. This kiosk captures biometric information, such as the underlying bone structure of the face, distances between facial features such as eyes, nose, mouth and ears, which is then checked against a person's ePassport to identify the traveller.⁹

1.8 In his second reading speech, the Minister commented that in 2014-15 around six million people self-processed using SmartGates, of a total of more than 19 million arrivals into Australian airports. Additionally, he observed that improvements to the current system made by the provisions of the bill would help meet any future increase of the number of visitors to Australia, which is forecasted to rise by almost 25 per cent in the next four years.¹⁰

6 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2433.

7 This initiative was announced on 17 June 2015 by the Hon Peter Dutton MP, Minister for Immigration and Border Protection, the Hon Andrew Robb MP, Minister for Trade and Investment, and Senator the Hon Michaela Cash, Assistant Minister for Immigration and Border Protection. See the *Joint Media Release – New Pilot Visa to Boost Australian Tourism*, 17 June 2015.

8 Commonwealth of Australia, *Our North, Our Future: White Paper on Developing Northern Australia* (2015), p.11.

9 Department of Immigration and Border Protection, 'Arrivals SmartGate: frequently asked questions' available at www.border.gov.au/Trav/Ente/GoIn/Arrival/Smartgateor-ePassport (accessed 23 November 2016).

10 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2434.

1.9 This future need, the Minister suggested, had informed the government's plans to increase the use of the SmartGate technology in the future to enhance the experience of travellers, whilst also delivering efficiencies to Commonwealth:

As part of the 2015-16 budget, the government committed \$93.7 million to the Seamless Traveller initiative, which included the expansion of SmartGates, and when fully implemented, we expect 90 per cent of travellers will self-process through these gates.¹¹

Overview of the provisions of the bill

1.10 The bill consists of three schedules amending the *Migration Act 1958* (the Migration Act) that would:

- introduce a new revalidation check framework for visas, initially pertaining to a pilot of the proposed 10-year visa for visitors from China (Schedule 1);
- clarify when a visa 'ceases to be in effect' under the Act (Schedule 2); and
- enable the use of contactless technology to clear travellers coming through the immigration clearance system (SmartGate) (Schedule 3).¹²

Revalidation check for visas (Schedule 1)

1.11 Given the long timeframe of the new 10-year visa, the Minister noted that it was likely the personal circumstances of some visa holders would change over the period their visa was valid. To manage potential risks this may pose he stated that Schedule 1 of the bill:

...introduces a mechanism that will allow for the department to seek revalidation of certain information from visa holders over the life of the visa, either through a 'routine' revalidation or a 'public interest' revalidation.

This 'revalidation' will be used to ensure that visa holders continue to meet genuine temporary entrant, identity, health, character, passport, national security and other criteria over the 10-year period.¹³

1.12 Moreover, the Minister also noted that a further potential risk was that 'a serious incident overseas' could necessitate a reassessment of a number of individuals holding certain visas. Given this, he provided more detail on the 'public interest revalidation check', which would be used:

11 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2434.

12 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, pp. 2433-2434.

13 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, pp. 2433-2434.

...to manage specific, serious, or time-critical risks in relation to an identified cohort of visa holders. In such circumstances, issuing a personal ministerial revalidation requirement will immediately prevent specified visa holders from being able to travel to and enter Australia until they successfully revalidate their visa.¹⁴

Cessation of visas that are not in effect (Schedule 2)

1.13 Schedule 2 proposes amendments to the Act that would clarify the circumstances under which a visa can cease to be in effect. The Minister stated in his second reading speech that, while most visas come into effect at the time they are granted, there are a small number of visa classes that do not come into effect immediately. The Minister highlighted that the bill would clarify aspects of the current Act as:

There is currently ambiguity as to whether a 'ceasing event' under sections 82, 173 and 174 of the Migration Act can apply to a visa that has been granted, but not in effect.

The amendments contained within schedule 2 will ensure that, subject to limited exceptions, a visa will cease if a relevant ceasing provision applies to it, even if the visa is not in effect at the relevant time.¹⁵

1.14 The Minister stated that this was a key measure to support the new revalidation check framework introduced by the bill, especially as it would 'increase the number of persons who may hold a visa that is not in effect at a particular time'.¹⁶

Enhancing immigration clearance (Schedule 3)

1.15 Schedule 3 of the bill would introduce provisions to enhance the use of facial recognition technology by airport 'SmartGates'. These provisions would remove:

...the requirement for travellers to present a travel document for identity purposes, such as a passport, unless requested to do so by a clearance officer or an authorised system. The identity of a traveller will be confirmed using a unique biometric identifier, such as a facial image instead of document based checks. SmartGates embedded with contactless technology will be gradually rolled out to major airports from May 2017. The gradual roll out will minimise disruptions to Australian Border Force operations and traveller processing.¹⁷

14 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2433.

15 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2434.

16 The Hon Peter Dutton, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 19 October 2016, p. 2434.

17 Explanatory Memorandum, p. 3.

Concerns raised by the Scrutiny of Bills committee

1.16 The committee is aware that the Senate Scrutiny of Bills Committee has raised concerns about the proposed amendments made by the bill and sought further clarification from the Minister on a number of matters, namely:

- Why the revalidation check is linked to whether there is any 'adverse information' about the visa holder, rather than whether they still met the requirements for the initial grant of the visa (Item 4, proposed subsection 96a);¹⁸
- Why the legislation does not define 'adverse information', which would provide more certainty for visa holders who could be subject to revalidation checks (Item 4, proposed subsection 96a);¹⁹
- Why the proposed ministerial power to subject a person to a revalidation check is expressed to relate to a visa of a prescribed kind, without providing details of, or limits to, the types of visas that may be prescribed (Item 4, proposed subsection 96B(1));²⁰
- Why a legislative instrument setting out a specified class of persons who are to complete revalidation checks should not be subject to disallowance in the Parliament (Item 4, proposed subsection 96E(1));²¹ and
- Whether the decisions made under a proposed new subdivision BA of Division 3 of Part 2 of the Act will be reviewable, which is not explained in the Explanatory Memorandum (Item 4).²²

1.17 The committee understands that, at the time of writing, the Scrutiny of Bills Committee has not received comments from the Minister on these issues.

Financial implications

1.18 The Explanatory Memorandum includes a financial impact statement which states that the amendments made by the bill would result in increased Commonwealth

18 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2016*, 9 November 2016, p. 25.

19 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2016*, 9 November 2016, p. 25.

20 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2016*, 9 November 2016, p. 26.

21 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2016*, 9 November 2016, p. 26.

22 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2016*, 9 November 2016, pp. 27-28.

revenues. These would be delivered by amendments made by Schedules 1 and 3 of the bill, with Schedule 2 having a 'low financial impact'.²³

1.19 The Explanatory Memorandum forecasts that the Visa Application Charge (VAC) introduced under Schedule 1, would have a net impact of \$33.5 million in administered revenue over the forward estimates from 2016-17.²⁴

1.20 Regarding Schedule 3 of the bill, the Explanatory Memorandum states that improvements to contactless automated immigration clearance technology (SmartGates) are expected to save the Commonwealth \$32.9 million a year in compliance costs.²⁵

Compatibility with human rights

1.21 The Explanatory Memorandum states that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²⁶

Conduct of the inquiry

1.22 Details of the inquiry were advertised on the committee's website, including a call for submissions by 18 November 2016, as well as links to the bill and relevant documents.²⁷ The committee also wrote to some individuals and organisations directly, inviting them to make submissions.

1.23 The committee received six submissions, which are listed at appendix 1 of this report. These submissions are available on the committee's website.

Structure of this report

1.24 This report consists of two chapters:

- This chapter provides a background and overview of the bill, as well as the administrative details of the inquiry.
- Chapter 2 sets out the concerns that were raised by submitters to the inquiry, as well as the committee's views and recommendations.

23 Explanatory Memorandum, p. 3.

24 Explanatory Memorandum, p. 3.

25 Explanatory Memorandum, p. 3.

26 Explanatory Memorandum (Attachment A), p. 48.

27 The committee's website can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs

Acknowledgements

1.25 The committee thanks all submitters to this inquiry, particularly noting the short timeframe given to them for the lodgement of submissions.

