

Dissenting report by the Australian Greens

1.1 The Australian Greens have serious concerns with the proposed Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 (the bill), and so consider that the bill should not be passed by the Senate.

1.2 The Explanatory Memorandum claims the bill will amend the *Migration Act 1958* (Migration Act) to support the new 10-year multiple entry Visitor visa for Chinese nationals, which is scheduled to be trialled from December 2016.¹

1.3 However, the amendments contain significant changes to the Migration Act that could affect all visas offered by the Commonwealth. Most troublingly, this could make all Australian visas—no matter whether temporary or permanent—subject to the unchecked discretionary powers of the Minister for Immigration (the Minister).

1.4 The Greens endorse the findings of the Law Council's submission, which were underpinned by the conviction that:

The 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.²

1.5 The Greens also agree with some submitters that the proposed visa has not been adequately set out by the government, even though its pilot program is imminent. This makes it difficult to assess the need for or nature of the amendments made by the bill. As the Law Council noted:

...the visa referred to in the Explanatory Memorandum does not currently exist, and there are no details as to the criteria which must be satisfied for that visa, or the conditions which may or must be imposed. The Law Council is of the view that without this information, the breadth of the power conferred by Schedule 1 of the Bill cannot be fully appreciated.³

1.6 It is clear that the bill, should it be enacted, would grant an unprecedentedly broad range of discretionary powers to the Minister, without government having sufficiently explained their intended purpose or defining key terms. The bill places no limits on or definition of what types of 'prescribed visas' the Minister can subject to a 'public interest revalidation check'.⁴ As highlighted by the main committee report, the term 'public interest' remains undefined by the bill, as well as the broader Migration

1 *Explanatory Memorandum*, p. 21.

2 *Submission 4*, pp. 8-9.

3 *Submission 4*, p. 12.

4 Law Council of Australia, *Submission 4*, p. 7; ANU College Of Migration Law, *Submission 6*, p. 2;

Act and supporting regulations. The term 'revalidation check' itself is also undefined.⁵ Lastly, the bill insufficiently defines 'adverse information', which provides too much discretionary power to the Minister to determine the type of information used to assess visa holders undergoing revalidation checks.⁶

1.7 The extent of Ministerial discretion, combined with the unsatisfactory definitions of key terms, means the Minister could potentially use the bill's amendments to unfairly discriminate against a large number of visa holders lawfully living in Australia, both on temporary and permanent visas.

1.8 The Australian Greens reject the lack of scrutiny that could be applied to decisions made under the provisions of the bill, particularly to require certain classes of persons to submit to revalidation checks. In this, the Minister could make legislative instruments that are not subject to disallowance by the Parliament, even if they have to be tabled in both houses. This could potentially mean the Senate is unable to scrutinise far-reaching decisions that could affect all persons residing in Australia as temporary or permanent residents.⁷

1.9 The Australian Greens share the Kaldor Centre's concerns that the bill has the potential to adversely affect refugees through the unchecked powers it confers on the Minister. We also find it troubling that the bill contains no assurances that a person who fails a revalidation check would have access to appropriate reviews of the determination and fairness of the assessment process.⁸

1.10 Lastly, we concur with the Law Council, which provided a comprehensive outline of the existing powers under the Migration Act that are adequate to oversee the trial of the new 10-year multiple entry visa for Chinese nationals.⁹

Conclusion

1.11 The Australian Greens find that the bill would unreasonably extend the Minister's discretionary powers, and that key terms in the legislation are not sufficiently defined.

1.12 Moreover, we note that the Explanatory Memorandum claims this legislation is being introduced to support the trial of new 10-year Visitor visas for Chinese nationals. However, this claim cannot be sustained, given the provisions of the bill

5 Migration Institute of Australia, *Submission 3*, p. 2; Law Council of Australia, *Submission 4*, p. 9.

6 Kaldor Centre, *Submission 1*, p. 2.

7 Migration Institute of Australia, *Submission 3*, p. 3; Law Council of Australia, *Submission 4*, p. 9.

8 Kaldor Centre, *Submission 1*, pp. 2-3; *Civil Liberties Australia*, pp. 1-2.

9 *Submission 4*, pp. 13-14.

could be applied, if enacted, to require the holder of *any* Australian visa to undergo a revalidation check.

1.13 Regarding this visa, the Australian Greens consider there is already sufficient provision in the Migration Act to ensure its trial, beginning in December 2016, does not compromise the Australian visa system.

Recommendation 1

1.14 The Australian Greens recommend that the bill be rejected by the Senate.

Senator Nick McKim

Australian Greens

