



Migration Amendment (Visa Labels) Regulation 2015

Select Legislative Instrument No. 144, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 20 August 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

OPC61327 - A

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1 Name

This is the *Migration Amendment (Visa Labels) Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 September 2015.	1 September 2015

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Division 2.4 of Part 2

Repeal the Division.

2 Schedule 13

Insert in its appropriate numerical position:

Part 45—Amendments made by the Migration Amendment (Visa Labels) Regulation 2015

4501 Operation of Schedule 1

Despite the repeal of Division 2.4 of Part 2 of these Regulations by Schedule 1 to the *Migration Amendment (Visa Labels) Regulation 2015*, that Division, as in force immediately before the repeal, continues to apply on and after 1 September 2015 in relation to a request made under section 70 of the Act for evidence of a visa if:

- (a) the request was made before 1 September 2015; and
- (b) the visa evidence charge for the request had been paid before 1 September 2015.

EXPLANATORY STATEMENT

Select Legislative Instrument No. 144, 2015

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Amendment (Visa Labels) Regulation 2015

The *Migration Act 1958* (the Migration Act) is an Act to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens and other persons.

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

The purpose of the *Migration Amendment (Visa Labels) Regulation 2015* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) **to remove prescribed forms of evidence of a visa. The Regulation allows Australia to cease issuing all visa labels from 1 September 2015. This will complete Australia's visa label reduction strategy which aligns with the Government's ongoing shift towards promoting digital service delivery channels for public access to government services including visa information.** Visa grants are recorded electronically. Therefore, visa holders are able to send details of their visa status, conditions and entitlements to any third party they choose to demonstrate their authority to travel to, enter, remain, work or study, and conduct other activities in Australia.

In particular, the Regulation repeals Division 2.4 of Part 2 of the Migration Regulations which relates to prescribed evidence of visas. As a result, there are no regulations prescribed under Subdivision AE of Division 3 of Part 2 of the Migration Act.

A Statement of Compatibility with Human Rights (the Statement) has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the Regulation is compatible with human rights. A copy of the Statement is at [Attachment A](#).

Details of the Regulation are set out in [Attachment B](#).

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulation. The OBPR advises that the changes do not have a regulatory impact on business or the not-for-profit sector. The OBPR consultation reference is 18021.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. **The Regulation commences on 1 September 2015.**

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Visa Labels) Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Visa Evidence Charge (VEC) introduced on 24 November 2012 is a charge imposed on a visa holder who formally requests evidence of a visa in the form of a visa label affixed to their valid travel document. However, **the Australian Government does not require persons holding valid Australian visas to have a label in their passport in order to travel to, enter or remain in Australia.**

Departmental systems are the preferred way of verifying a visa holder's authority to travel to, enter, remain, work or study, and conduct other activities in Australia. **When a passenger checks in to fly to Australia, airline staff are required to use the passenger's passport details to electronically confirm that the passenger has the authority to travel to Australia prior to boarding the aircraft using the Advance Passenger Processing system.** Visa holders are encouraged to utilise Visa Entitlement Verification Online (VEVO) which is a secure and real-time electronic system to demonstrate and confirm their visa entitlements.

The VEC supports the department's visa label reduction strategy by discouraging requests for visa labels by visa holders. The department has achieved its visa label reduction target (95% reduction in demand when compared with 2011 data) and is **now in a position to cease all visa label issuance in 2015 pending changes to the Migration Regulations to remove Division 2.4 of Part 2** which covers the following provisions:

- regulation 2.17 specifies the type of evidence that is required;
- regulation 2.18 provides for the way of making a request for evidence of a visa;
- regulation 2.19 provides for the places for lodging a request for evidence of a visa;
- regulation 2.19A provides for the amount of the visa evidence charge;
- regulation 2.19B provides for a circumstance in which a prescribed form of evidence of a visa may be requested; and
- regulation 2.19C provides for refund of the visa evidence charge.

The department has undertaken extensive stakeholder engagement over the last three years regarding the global rollout of visa label free arrangements and the introduction of the VEC. The initiative is generally well understood and accepted by stakeholders, including foreign governments.

Regulatory savings have been forecast following cessation of issuing visa labels. Having to obtain a visa label can result in unnecessary expense, delays and inconvenience for clients and third party stakeholders. The amendments to the *Migration Regulations 1958* (the Migration Regulations) allow **Australia to cease issuing all visa labels from 1 September 2015.** Removing Division 2.4 of Part 2 of the Migration Regulations would remove the remaining requirement to provide visa labels, as there would be no prescribed form of evidence under the following provisions:

- subsection 70(1) (which allows persons to request to be given a prescribed form of evidence); and
- section 71A (which requires an officer to give a requesting person a prescribed form of evidence provided the visa evidence charge has been paid).

Human rights implications

The department has considered the amendments against the seven core international human rights treaties to which Australia is a party. It is considered that the Legislative Instrument engages Article 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 2 of ICCPR provides that:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (emphasis added)

Article 26 of ICCPR provides that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, *national or social origin*, property, birth or other status.” (emphasis added)

Article 2 provides that for a person to fall within the scope of the ICCPR, they must be within “Australia’s territory” or within its “jurisdiction”. Where a person is outside Australia’s territory and jurisdiction, Article 2 is not engaged for the purposes of the amendments. As all visa holders within Australia will be unable to receive a visa label but will have access to the same alternative forms of evidence (such as VEVO – see below), regardless of nationality, there is no breach of Article 2.

Article 26 contains a general prohibition on “discrimination” and further contains a “guarantee” to have equal and effective protection against discrimination on any ground including “national” origin. In relation to ceasing issuing the visa labels, the policy intent is to make the cessation consistent for nationals from all countries, therefore is non-discriminatory in application.

However, the proposal to cease issuing visa labels may impact on non-citizens from different countries in different ways and may impact on non-citizens who require visa labels for departure or transit purposes. All but a few foreign countries now formally accept label-free travel to Australia. The cohort affected by this lack of agreement is very small. Border

clearance processes are already in place to manage this cohort. This differential impact occurs as a result of the application of the migration laws of the foreign countries and not as a result of this proposed amendment. Therefore Article 26 is also not breached by this amendment.

Digital options are available for visa holders should they need to demonstrate their visa status and type to foreign governments for purposes such as: entry/transit; exit; and visa requirements. VEVO allows visa holders to check and send details about their visa status directly from the VEVO system to any email addresses. Visa holders can also retrieve their visa details from VEVO (existing web service) on a mobile electronic device and show this information to foreign officials. The department released the myVEVO mobile app in June 2015 making it even easier for visa holders to source their visa details using their smartphone.

Whilst the amendments engage Article 2 and 26 of the ICCPR, the amendments are consistent with those Articles, and therefore do not raise any human rights issues.

Conclusion

This Legislative Instrument is compatible with human rights.

Minister for Immigration and Border Protection

Details of the Migration Amendment (Visa Labels) Regulation 2015**Section 1 – Name of instrument**

This section provides that the title of the Regulation is the *Migration Amendment (Visa Labels) Regulation 2015* (the Regulation).

Section 2 – Commencement

Subsection 2(1) provides that each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table provides that the whole of the instrument commences on 1 September 2015.

The note to subsection 2(1) provides that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) also provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

The purpose of this section is to provide for when the amendments made by the Regulation commence.

Section 3 – Authority

This section provides that the Regulation is made under the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Act under which the Regulation is made.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The purpose of this section is to provide for how the amendments in the Regulation are to operate.

Schedule 1 – Amendments

Item 1 – Division 2.4 of Part 2

This item repeals Division 2.4 of Part 2 of the *Migration Regulations 1994* (the Migration Regulations).

Division 2.4 of Part 2 of the Migration Regulations (regulations 2.17 to 2.19C) relates to prescribed evidence of visas pursuant to sections 70 to 71B of the Migration Act. Division 2.4 of Part 2 of the Migration Regulations contains the following provisions:

- regulation 2.17 specifies the type of evidence that is required (pursuant to subsection 70(1) of the Migration Act);
- regulation 2.18 provides for the ways in which a request for evidence of a visa may be made (pursuant to paragraph 70(2)(a) of the Migration Act);
- regulation 2.19 sets out the places at which a person may lodge a request to be given a prescribed form of evidence of a visa (pursuant to paragraph 70(2)(b) of the Migration Act);
- regulation 2.19A sets out the amount of visa evidence charge that must accompany a request for a prescribed form of evidence of a visa (pursuant to subsection 71(2) of the Migration Act);
- regulation 2.19B provides for a circumstance in which a prescribed form of evidence of a visa may be requested (pursuant to paragraph 71B(1)(a) of the Migration Act); and
- regulation 2.19C sets out arrangements for the refund to a person of an amount of visa evidence charge (pursuant to paragraph 71B(1)(d) of the Migration Act).

The repeal of Division 2.4 of Part 2 of the Regulations will result in Subdivision AE of Division 3 of Part 2 of the Migration Act becoming, in effect, inoperative. This ceases the remaining requirement to provide a visa label as prescribed evidence of a visa. This aligns with the Government’s ongoing shift towards promoting digital service delivery channels for the public.

Item 2 – Schedule 13

This item inserts in its appropriate numerical position in Schedule 13 to the Regulations ‘Part 45 – Amendments made by the Migration Amendment (Visa Labels) Regulation 2015’.

This item inserts clause 4501 ‘Operation of Schedule 1’ which provides that despite the repeal of Division 2.4 of Part 2 of these Regulations by Schedule 1 to the Regulation, that Division, as in force immediately before the repeal, continues to apply on and after 1 September 2015 in relation to a request made under section 70 of the Migration Act for evidence of a visa if:

- the request was made before 1 September 2015; and
- the visa evidence charge for the request had been paid before 1 September 2015.

The intention behind item 2 of Schedule 1 to the Regulation is to ensure that any request made under section 70 of the Migration Act **for evidence of a visa will be a valid request if the request was made before 1 September 2015 and the visa evidence charge for the request had been paid before 1 September 2015.** A visa label must be provided in this circumstance.