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Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

Re: Call for Submissions into Inquiry into the Migration Amendment (Visa Capping) Bill 2010.

I offer the following submission to the Senate Legal and Constitutional Committee.

This bill proposes to provides the Government with a tool for the post-lodgement management of the current backlog of migration applications.

Australia's world class migration system is comprised of legislated sets of rules, set out in the Migration Act 1958 and Migration Regulations 1994. These rules have developed, over the last 50 years, to reduce the discretion in the system, and enable an applicant the opportunity to assess whether they meet the criteria for migration before making the considerable investment required to lodge an application. It is a relatively predictable, understandable and fair system, with a high degree of integrity.

This amendment would change all of that.

This bill would mean that no applicant could have any certainty about meeting the published criteria, because the Minister could change the rules at any time, days or years after they have lodged their application. Rather than ending "...the uncertainty faced by General Skilled Migration applicants whose applications are unlikely to be finalised..." (as set out in the second reading speech), it would instead create significant uncertainty in the overall system.

The present Government created this uncertainty. By introducing the Critical Skills List, it effectively shelved thousands of applications. It could have changed the application criteria, and stopped people from applying. It did not. Instead it closed the wrong end of the pipeline, and created a backlog, and the subsequent uncertainty. It now proposes to deal with the problem by ignoring the applications of thousands who followed the rules as they stood, and lodged a valid application.

The amendment allows the Minister to abolish the queue these migrants are standing in. There is a lot of talk these days about queues, and queue jumpers. This amendment punishes the people who followed the rules. They have stood patiently in the queue, often for many years. They have done what many commentators urge – they joined the queue. This amendment proposes to give the Minister the power to make the queue disappear. It is unjust, and will create far more uncertainty

that it removes, because it will engender distrust in the whole system.

Many of these applicants likely to be affected by this Bill are in Australia, on bridging visas, contributing to Australian society, often working in the occupations which they have nominated in their applications. They are running the hotels you stay in, and staffing the restaurants you eat in. They are having children, buying cars and renting homes. They have invested considerable time and money in lodging an application based on published criteria.

It is important to understand that migrants do not decide to move countries on a whim. They typically invest significantly in the move, in terms of money and time. They visit, to see if they like Australia. They move their families and belongings. They study, sometimes for years. They improve their English. They pay professionals like me significant sums to get their applications right. They sometimes lodge multiple applications to get to the point where they can apply for permanent residency. And finally they apply, pay their fee, and wait. It is at this stage that the Government proposes to change the rules.

The Bill refers to 'demand driven' migration, as opposed to a 'supply driven' system. Both terms are misleading. This is not a market. It is a regulated system, where the rules are written by the government. For the system to work well, the rules should be clear, objective and predictable.

The second reading speech suggests that these applicants have skills that are not in demand. This is not always true. Often, they simply are not able to find a willing sponsor, or not able to meet the complex (and constantly changing) requirements of the Employer Nominated stream or its associated skills assessing authorities. But it is important to note that many of them are actually working in the occupation they nominated in their application, while they patiently wait for their application to be considered.

The most dangerous aspect of this Bill is that it allows the Government to manipulate the rules at the end of the process, instead of working to get the rules right upfront. In doing so, it takes advantage of the vulnerable, and those who followed the rules.

I urge the Senate committee to oppose the Bill. It is unjust, and threatens the integrity of our world class migration system.

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