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Committee Secretary  
Senate Legal and Constitutional Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary

Thank you for the invitation to make a submission to the Senate Inquiry into the *Migration Amendment (Visa Capping) Bill 2010*. In this brief submission, we have some comments on particular provisions of the Bill before the Inquiry, as well as responses of a broader nature relating to the direction of the skilled migration program.

The ACTU is generally supportive of the proposed changes in the Bill, the main intended purpose of which, we understand, is to allow the Minister to cap visa numbers for certain occupations under the independent, General Skilled Migration (GSM) program. Provided this discretionary power is exercised appropriately, it provides another way in which migration can be better targeted to meet Australia's skill needs. Where the power is used, it is important that it be underpinned by a transparent decision-making process, based on objective criteria linked to national workforce planning needs and subject to consultation with industry and Skills Australia.

In the short to medium term, it appears the major potential use of this power would be to manage so-called 'pipeline' issues and address the oversupply of visa applicants in certain occupations, such as hairdressers and cooks, which has arisen as a result of previous policy settings. The ACTU is conscious of the uncertainty that faces the individuals who could be subject to these capping decisions, but recognises there are sound and defensible policy reasons for this discretionary power to be available. Over the longer-term, our view is that if the new Skilled Occupations List (SOL) works as intended, and is reviewed and updated each year, then this discretionary power should rarely be used into the future.

One potential concern which arises from the Bill as it currently stands is that a cap could be applied, seemingly, in relation to any specified characteristics of a class or classes of applicants. The ACTU recognises the rationale for being able to cap visa numbers in relation to certain occupations and the explanatory material suggests this is the main purpose of the amendments. However, we are concerned about the potential for section 91 AA (1) to be misused in future to cap visa numbers, for example, on the basis of the nationality of the applicants. We ask that the Committee examine if this provision can be tightened up to ensure it can only be used for the purpose intended.

Finally, we are pleased to see that section 91AB (5) of the Bill has taken into account the position of family members who are joining the primary visa applicant by providing that family members may be granted a visa regardless of the cap in cases where the primary applicant was granted a visa before the cap was reached.

In a broader context, the ACTU is concerned that the Australian's Government's efforts to better manage its independent, permanent skilled migration program to match Australia's skill needs - through measures such as the new SOL and now these visa capping proposals - are at odds with an increasing proportion of the skilled migration intake being sourced from the employer-driven, and uncapped, temporary 457 visa program. For example, if ongoing analysis demonstrates there is, say, an over-supply of accountants, the SOL could be adjusted to remove accountants from the list the next year or the Minister could use these powers to cap the number of accountants and reduce the numbers entering through the independent GSM stream. However, such actions will have little affect if significant numbers of accountants continue to enter the labour market through uncapped, temporary migration pathways.

The risk therefore is that the capacity of the Government to manage the independent permanent skilled migration program will be undermined by its own stated priority, expressed again in the explanatory materials to the Bill, for demand-driven, employer-sponsored migration. This situation is exacerbated by the lack of labour market testing requirements under the 457 visa program. In our view, a requirement for labour market testing is essential to verify that 457 visas are being used to fill genuine skill shortages that could not be met by the employment and training of Australian workers.

Thank you for the opportunity to comment.

Yours sincerely,



Sharan Burrow  
**ACTU President**