

Submission :

Australian Council of Private Education and Training

**to the Australian Senate's Legal and Constitutional
Affairs Committee upon the**

Migration Amendment Bill 2010

June 2010

Context

The Migration Amendment (Visa Capping) Bill 2010 (the Bill) seeks to amend the Migration Act 1958 to enable the Minister for Immigration and Citizenship (the Minister) to cap visa grants and terminate visa applications based on the class or classes of applicant applying for the visa. In particular, the Bill will enable the Minister to make a legislative instrument to determine the maximum number of visas of a specified class or classes that may be granted in a financial year to visa applicants with specified characteristics, and treat outstanding applications for the capped visa as never having been made. The proposed amendments are intended to address issues relating to the General Skilled Migration (GSM) visa program.

On 26 May 2010 the Senate referred the Migration Amendment (Visa Capping) Bill 2010 to the Legal and Constitutional Affairs Committee for inquiry and report.

The Legal and Constitutional Affairs Committee sought from the Senate on 15 June 2010 an extension of time to report with the new reporting date now 11 August 2010. Accordingly this submission by ACPET is in accordance with the new due date of 18 June 2010.

ACPET's Position

ACPET welcomes this opportunity to respond to the Australian Senate's Legal and Constitutional Affairs Committee and applauds the Committee's commitment to meaningful consultation with stakeholders, industry and with the Australian people.

ACPET will be pleased to provide further information to assist the Committee's considerations and would welcome the opportunity to make a presentation to the Committee.

Our submission emphasizes principles of natural justice, transparent governance, and consequences of the legislation upon skills for Australian industry. We are deeply concerned at the potential politicisation of the branding of people through visa processing in an environment determined by a Minister without a clear process of review being evident.

The proposed Bill provides the Australian Government, through the Ministerial determination to limit without recourse, sanction or review the quantum of temporary visas granted in any given year, including to international students. On the one hand the streamlining of visa arrangements can be a positive benefit, however what is of concern is the lack of process and / or recourse evident within the Bill or its regulations. The private education sector with capital at risk in needing to mobilise around government policy shift is particularly disadvantaged by such legislation. Of great concern to our sector is the potential politicisation of migration and visa arrangements fostered by the Bill in providing Ministerial determination to cap and terminate visa applications for political reasons.

The proposed Bill comes immediately following dramatic changes arising from the 8 February 2010 changes and the announcement of the introduction of the new Skilled Occupation List to take effect on 1st July education. Poor change management on the part of the Australian government has given Australian training providers no effective lead time to adjust programs to assist existing students nor to communicate effectively with potential students, agents and intermediaries to cope with the changes that have occurred. This has imperilled one of Australia's most significant export industries which has served to develop Australian productivity through skill development.

ACPET has therefore identified seven factors for the consideration of the Australian Senate in considering the development of immigration policy and managing its impact upon international education:

- i. **Maturing international education markets** demand a stable policy environment in an increasingly competitive global market
- ii. **Private enterprise** investment, mobility and agility are essential to meeting public policy objectives in economic productivity, immigration, education, training and skills, and international trade.
- iii. **Artificial barriers and regulatory impact** upon private provision in broader markets need to be addressed by government if public policy objectives, including population and migration are to be achieved.

- iv. **Comprehensive, cohesive and strategic industry led change management frameworks** for immigration will encourage confidence and investment by the private sector in international skill development markets.
- v. **Cohesion between quality and regulation improvement initiatives** must be implemented in a planned and consistent and transparent manner and allowed to take their effect
- vi. **Close employer and training industry links** require more business friendly options for linking education and training to employment and migration outcomes
- vii. **Assessment and qualification outcomes** need to reflect the full competency and skill requirements including language, OHS and Australian workplace culture and to be effective in Australian workplaces

ACPET's position on changes to Australian immigration policy can therefore be summarized as follows:

- ACPET supports measures that genuinely raise the standards of education and training and migration outcomes and seeks to engage with Government on ways this can be achieved that are both cost and outcome effective
- ACPET supports the linking of training with employment and migration outcomes
- ACPET contends that changes to migration policy setting and practices by Government must be managed through effective transitioning arrangements developed in partnership with private international education to allow the international education industry to make adjustments
- ACPET contends that existing students, including those signed but not yet commenced should be able to apply for Permanent Residency under the arrangements by which they contracted their training as a matter of natural justice
- ACPET contends that the international education industry's consumer protection arrangements have been designed to manage the continuity of service provision to students by the mutual agreement of providers but not to withstand significant shifts in Government policy and that Government should therefore introduce mechanisms to underwrite the industry's consumer protection arrangements. ACPET has modelled an arrangement with the Allen's Consulting Group

ACPET would therefore support a strategic approach by the Senate to this Bill through

- a test of natural justice for those impacted by changes in migration legislation, regulations and practice

- an outline of provisions within the Bill to ensure visa arrangements are protected from politicization
- a review of the impact of migration changes upon the international education sector to assure the sustainability of the international education and training industry and the individual enterprises, which comprise a significant Australian export industry,
- an agreed Government industry planning framework which while meeting broader government policy objectives in education and training, population and migration, trade and foreign affairs, and skills and labour market, also ensures the viability of international education.

ACPET's analysis of the Bill

The Bill provides Ministerial authority to cap visa grants in a financial year, and to terminate applications based on the class or subclass, or characteristics within a visa subclass.

The effect of proposed Bill is that once the cap is reached for the financial year then all remaining Applications not yet reached will be taken to not have been made (terminated) and therefore deemed invalid. There is no merits review, however a refund of the Application fee will be provided.

The Minister will determine that the cap can apply to applicants with certain characteristics or applications that have certain characteristics which include occupation and date of application. There is also the option for other characteristics to be included such as age, English language ability, qualifications, nationality, risk country (that is countries that have a high number of illegal immigrants residing in Australia), race or religion or any other characteristic that the Department or the Minister deem appropriate. It is intended that the Minister may use a combination of characteristics when setting the cap.

The cap and termination clauses are not specific to General Skilled Migration applications and may include any other class of visa except Protection visas.

The capping and termination affects all pending applications and new applications in that once the cap is reached all pending applications will be terminated. Applicants will have their Application fees refunded and will have to wait until the next financial year, provided they still satisfy the criteria for the visa. The current law allows outstanding applications to be placed in a queue until a place becomes available.

Importantly, this Bill will terminate outstanding applications.

Under this new law applicants currently holding a bridging visa because they have previously applied for a visa and that visa has been capped will have their visa terminated. This means that their bridging visa will be terminated and that they must leave Australia within 28 days of being notified that their visa had been terminated. This applies to all pending applications made for the capped visa.

Implications for Private Education Providers and Students

ACPET submits for the consideration of the Senate Committee that Government reform which impacts upon international private education and students should be underpinned by five principles to ensure that reform is delivered through effective change management to avoid destabilising confidence in the policy environment:

- Efficiency – there is a clear priority by government to support businesses to be nimble in responding to individuals, students and employers through minimising red tape, complexity and compliance
- Equity and fairness– government intervention, regulation and policy value diversity and do not marginalise on the basis of abstract criteria, arbitrary executive decisions or selective service provision who or which institution provides them
- Transparency – the mechanism for government policy determination is transparent and open to scrutiny
- Choice – an individual or employer’s choice is the fundamental principle of market and is the best means by which their education and training needs will be met and will ensure diversity and responsiveness in achieving government policy requirements

- Simplicity – the model should meet its objectives without unnecessary administrative or compliance costs being imposed on government or providers.

It is our contention that these principles have not been evident in this Bill nor indeed with the migration and visa reforms from mid 2009, and which, despite ACPET's presentation of an alternative approach, have had a devastating consequence upon international education exports. ACPET has analysed the consequences of these reforms for the Australian economy; this analysis is provided as an Attachment to this submission.

Migration reforms from 8 Feb 2010 have reduced the effectiveness of many education providers to provide international educational services because the changes have created uncertainty in the market place. The introduction of this Bill will construct additional uncertainty because it provides many more variants to the dismissal and cancellation of applications for visas. ACPET is deeply concerned at the potential for this to politicize the branding of individuals by migration officials and / or the Minister

Current students recognising that their Training College or Higher Education provider cannot provide them with a course leading to outcomes undertaken on the basis of previous policy settings, will try to switch courses and / or Colleges, demand a refund of fees, or enter a class action that may not have any prospect of success but nevertheless it will aim their frustration at the changes on to the Providers and their Agents. This will result in considerable loss to Australia in terms of export economy, international reputation and cultural exchange as demonstrated in the Attachment.

Students will seek other countries to start or complete their studies and are already finding that countries such as Canada, USA, NZ and EU countries welcome them. Other countries have recognised that Australia has generated economic benefits of over \$17billionn annually from its international education exports and they will seek to capitalise from policies such as this Bill as proposed especially GFC affected Europe and north America.

It appears that the principal aim of the Bill is to delete outstanding applications for the occupations of hairdressing and cookery because those occupations represent the largest number of application for General Skilled Migration. The manner in which this is proposed is clumsy to the extreme whereas the

Immigration Minister had the power to take these occupations out of the “Migration Occupations in Demand List” (MODL) at any time in the last number of years by announcing the changes by Gazette Notice or by raising the qualifying score and providing an effective lead period of notice.

The Bill creates confusion as to the effect that this provision will have on students who have lodged an Application for a GSM visa. We note that the Departmental website states

1. “Note: Under the Bill it is proposed that if a student visa holder lodges an application for a GSM visa and their GSM visa application is subsequently subject to a decision to cap and terminate, this will not affect any student visa that is still in effect:”
2. It is expected that there will be only a handful of students that will have their Applications in the pipeline and still holding a student visa. So the above statement by the Department must be treated warily.
3. There is a similar provision for the capping of or terminating of visas for temporary visas, which include current student visas, 457 visas, parent and partner visas to name a few categories of visas if the Application for a visa has been capped and terminated, then the temporary visa will cease to be in effect 28 days after notification that the cap has been reached.

Other implications

We are concerned that there appears to be a conflict between the statements of the Minister and the Second Reading speech of the Minister Assisting (Mr Ferguson) on the effect that the Capping and Terminate Bill will have on the Skilled Migration Program. The Minister has said that the powers would be used rarely, whereas Mr Ferguson believes that the Bill “represents an important step in achieving the Government’s objectives of a flexible skilled migration program”

Mr. Ferguson’s speech iterates that the Bill not only affects students. It affects other visas including parents and partners among other classes of persons. The Migration Act is not subject to Discrimination laws and this leaves it open for the Department or its Minister to discriminate on any characteristic that may wish to do.

Concluding remarks

The benefits of a broad, high quality international education program to Australia's international engagement have been well documented and published by ACPET as the leading network of international education providers across the schools, language, vocational and higher education sectors.

Our principal argument is that Government reform which impacts upon market processes should be underpinned by sound principles giving rise to effective change management. This is not evident in migration and visa reform commensurate with the impact that these reforms will have upon the Australian economy.

Private providers of international education in Australia have a demonstrated track record of making the investment needed to attain government objectives. Experienced providers lament poor standards and are perplexed at how their high professional standards are compromised by the regulators and arbiters of the training system and by government agencies in not ensuring current requirements are adhered to. ACPET's position is that a mature market can operate most effectively under arrangements where quality, policy development, implementation and review should engage the industry.

Private businesses active in the export of services recognise the value of reputation and recognition. Sudden shifts in the policies and practices of destination countries imperil sound trade relationships especially in increasingly competitive environments.

ACPET's position is that sound longer term relationships with established and developing international education markets will be essential to achieving the migration objectives of the Government

The hard reality of this Bill is that it is a blunt instrument and provides wide powers to the Immigration Minister to politicise migration and visa decision making. The arbitrary nature of the Bill as outlined in its text and as announced in two readings of the Australian parliament is a matter of deep concern to the professional educational Colleges who are members of the Australian Council of Private Education and Training. We recommend therefore that the Senate Legal and Constitutional Affairs Committee advise a strategic approach to this Bill through:

- a test of natural justice for those impacted by changes in migration legislation, regulations and practice
- an outline of provisions within the Bill to ensure visa arrangements are protected from politicization
- a review of the impact of migration changes upon the international education sector to assure the sustainability of the international education and training industry and the individual enterprises, which comprise a significant Australian export industry,
- an agreed Government industry planning framework which while meeting broader government policy objectives in education and training, population and migration, trade and foreign affairs, and skills and labour market, also ensures the viability of international education.

About ACPET

- Established in 1992, the Australian Council for Private Education and Training (ACPET) is the national industry association for private colleges delivering post-compulsory education and training including higher education, technical and vocational education and training, English language courses and senior secondary and foundation studies.
- ACPET's mission is to enhance quality and choice in education and training to help meet Australia's skills needs by supporting our member organisations and working co-operatively with Government, industry and the community. ACPET members are bound by its Code of Ethics.
- ACPET has over 1,100 members, of these 600 members provide education and training to more than 120,000 students from around the world this export activity contributes \$4.2 billion to the Australian economy annually.
- The private training sector delivers over 70% of the total of vocational education that is delivered to overseas students in Australia annually.
- ACPET members respond to industry needs, by providing training programs including apprenticeships and traineeships through to professional doctorates across disciplines as diverse as business, administration, IT, design, community services, natural medicine, the creative arts and tourism and hospitality.

Additional information

Communication with ACPET on this matter can be directed as follows

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Attachment:

Extract from the Analysis by ACPET ...

Preliminary Projections International Education in Australia

What is happening to international education in Australia?

Customer satisfaction is high ...

- independent international benchmarking analysis of Australian privately branded international education indicates high to very high levels of satisfaction among students in late 2009 and early 2010
- more than 8 out of every 10 students in an ACPET member College have reported sound satisfaction with their educational and living experience as an international student in Australia
- more than 3 out of four international students in ACPET member Colleges have recommended their College to potential students


... however trend data indicates a severe market relocation ...

- what may appear as a market contraction is in fact the market relocating to competitor nations: demand has not dropped, it has just gone away

	\$ loss	Jobs loss
Australia	160 million	1400

Source: AEI, Access Economics

- data available from AEI and analysed using modelling from the 2009 Report *The Australian Education Sector and the Economic Contribution of International Students* by Access Economics indicates the following current economic impacts:

All providers - National				
	Difference - April 2009 to April 2010		Economic Impact - April 2009 to April 2010	
	Commencements	%	Jobs Loss	\$\$ Loss
All Sectors	 -5,490	-3.30%	-1373	-\$158,776,290

Source: AEI, Access Economics

... but it is the lead data that presents the most disturbing potential scenario for international education in Australia.

- trend data while valuable is not adequate as a planning tool especially for the private sector which needs to make investment decisions ahead of the curve in the business cycle; this requires lead data.

- with the possible exception of the ELICOS sector, where students can access either a student or a tourist visa, the most reasonable source of lead data for inbound international education is the rate of application for student visas
- an analysis of student visa applications shows

Student Visa Applications 2009 / 2012			
		National Economic Impact	
	Difference between March 2009 & March 2012	Jobs Loss	\$\$ Loss
All Sectors	- 131,954	- 32,988	- 3,816,228,708
Source: AEI, Access Economics			

Why is this happening?

Drivers

The factors that have changed, and will continue to do so in the medium term, the behaviour of students choosing Australia as an education destination include:

- customer satisfaction data has revealed that international students, their families and their advisors expect a stable policy environment, a reliable and transparent set of rules, and a firm understanding of their rights and obligations to have confidence in the educational market options
- stark shifts in Government policies and practices around student visas have therefore effectively driven the Australian market to competitors
 - student rejection rates are high
 - assessment levels of countries have been varied
 - Australia's unique competitive advantage in packaged programs has been compromised by student visa changes
- perception that Australia changes its rules arbitrarily
- failure of natural justice towards international students in the event of policy change

Disincentives

Those factors that influence but do not ultimately change students choosing Australia as an education destination include:

- Australian exchange rate: a \$10,000 course in 2009 costs \$13,500 in 2010 (offset by lower cost of living and travel)
- security: the perception that Australian authorities and media have concerns for student safety
- the global economic crisis: the 2009 Access Economics Report identified that education is generally counter cyclical to the economic cycle with investment in education increasing in times of economic contraction.

Implications

Unless a mitigation strategy is implemented immediately the implications of the scenario presented in this paper which is based upon government data and proven projections by respected economic analysis is as follows:

- loss of capacity through providers departing the industry
- loss to competitor nations

Options

These projections present a scenario that is upon us now, is serious and within six months will be dire. The projected scenario to 2012 indicates a market dislocation from which recovery may be in jeopardy.

ACPET is not in the business of raising an alarm and walking away, rather we present practical solutions. Indeed it is our view that the direction of policy is substantially correct but that it is its execution and change management that Government has failed.

Therefore the following outline of a six week strategy is proposed as the means to avert the destructive aspects of the projections outlined in this paper

1. *Do the numbers:*
 - a. immediate risk modelling to the sector similar to the previous work by ACPET with Access Economics and the Allen Consulting Group
2. *Get the settings right:*
 - a. commission an industry driven change management task force from across industry and government with determinative executive authority and accountability to reposition policy implementation delivering generally on government policy intent while maintaining the international education market

- b. put industry quality initiatives to work
 - i. across the industry
 - ii. at the provider level
 - iii. at the level of agents and student transaction
- 3. *Put business sustainability and capability to work:*
 - a. a financial security model securing international payments and service delivery
 - b. an immediate series of business model development seminars across Australia to assist the industry reposition to a broader model of international education
 - c. an industry professional development framework.
- 4. *Go get it:*
 - a. a market development program over three years to reposition the brand value of Australian international education; with Austrade's capability the Australian Government could take a leading role in this market exercise.

Driven by industry, and with the support of the Australian Government, the above *Strategy 42* can be orchestrated over 6 weeks. ACPET is already undertaking this strategic direction, especially in the matter of industry quality initiatives and is well placed to lead these major initiatives.