SUPRA

**SYDNEY UNIVERSITY POSTGRADUATE REPRESENTATIVE ASSOCIATION**

# SUPRA Submission to the Migration Amendment (Visa Capping) Bill 2010 Inquiry conducted by the Federal Senate Legal and Constitutional Affairs Committee

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## Background

Sydney University Postgraduate Representative Association (SUPRA) is the representative organisation for postgraduate students of the University of Sydney.  It is one of 34 student organisations in Australia dedicated to promoting the interests of postgraduate students.  The University of Sydney's postgraduate population represents over 16 per cent of all postgraduate enrolments in Australia.

Established in 1974, SUPRA's constituency has grown to a point where today, over 16,000 students undertaking research and coursework degrees at a postgraduate level are able to access SUPRA's services. Over 30 per cent of these postgraduate students are also international students[1].

SUPRA provides free advice, casework and legal services to its subscribers.  Since July 2007, over 40 per cent of the total case files opened by SUPRA's casework team between July 2007 and August 2009 were for international students.

## Comments on the Migration Amendment (Visa Capping) Bill 2010 (the Bill)

SUPRA has severe reservations about all provisions within the Bill.

However, the major concern we have is with section 91AC, which would allow the Minister to terminate an application for permanent residency under the General Skilled Migration (GSM) programme to the effect that the application had never been made. Section 91AC "the person's

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[1] Strategic Planning Office, the University of Sydney, Statistics 2009, November 2009.  Available at: http://sydney.edu.au/strategic_planning/statistics/publications/Statistics2009.pdf.  Last accessed 14 April 2010.

application for a visa is taken not to have been made because they had applied for a visa of a class that has been capped"[2].

From SUPRA's understanding, this would then deny the applicant any opportunity for appeal. SUPRA believes this would deny applicants natural justice.

Section 91AC affords a great deal of uncertainty to applicants regarding the future of their application. A period of notice of 28 days, by which all visas held by an applicant would be suspended, is too brief a period within which an applicant could ensure that their affairs were in order to a sufficient extent to leave the country. Provisions for compliance with termination of other forms of contract afford a greater length of time for individuals to comply, for instance provisions under tenancy legislation in NSW afford a tenant 60 days within which to vacate the premises once a notice of eviction is served. As such, SUPRA feels that this provision is excessive.

For an applicant to be required to leave the country within 28 days of their application and visa being terminated is not only unnecessarily punitive, but also grossly unfair, given that applicants may have been waiting for a decision for many years.  Many applicants would have built lives in Australia and outlaid significant funds during that time. Termination of an application with less than one month's notice would, in effect, render a number of students and graduates temporary skilled migrants rather than applicants for permanent skilled migration due to the large contribution made by these students and graduates to the Australian economy. SUPRA feels that measures in section 91AC render the bill disingenuous with respect to applicants for skilled migration. SUPRA recommends that the Government revise these measures to align more closely with the intent of the Bill – to enhance the General Skilled Migration programme.

The degree of uncertainty created by timelines within the Bill will likely deter many of the most highly skilled applicants, undermining the major aims of the GSM programme. This measure thus appears to be a short-sighted response to current global economic trends rather than a truly long-term plan for a quality skilled migration programme in Australia.

Regarding section 91AA, the process of capping is afforded very little transparency, giving applicants little information regarding the prospects for their application to be processed, held over to the following year, or terminated. With such a lack of information, it is unnecessarily punitive for provisions within section 91AC, allowing the Minister to terminate an application and any current visas, to be applied.

The process of capping and planning regarding skilled migration places needs to be evidence-based. At the present time, there is little evidence that the current GSM programme actually is "supply-driven"[3] or that these changes will ensure that it becomes "demand-driven". For instance, a great deal of anecdotal evidence from both students intending to apply for GSM, and employers, is that Skills Australia estimates are inaccurate, and there is a great deal of demand for occupations

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[2] Page 5, Explanatory Memorandum for the Bill
[3] Page 1, Explanatory Memorandum for the Bill

now excised from the Skilled Occupation List[4].

Moreover, SUPRA concurs with concerns articulated by the ABC's Peter Mares that there is nothing in the Bill to prevent a situation where visas can be "capped and terminated on the basis of nationality"[5]. SUPRA also echoes Mr Mares' comments that the Bill "could cause considerable anguish and have unforeseen consequences"[6]. SUPRA recommends that measures be added to the Bill to prevent discriminatory usage of Ministerial powers to cap and restrict the number of visas granted of particular classes.

SUPRA recommends that a consultation process be put into place which includes employers, applicants, students and student advocacy groups, education providers, Skills Australia, and the Department of Immigration and Citizenship, in order to determine appropriate levels of capping, and interim measures for applicants and potential applicants negatively affected by the placement of a cap.

This is particularly important, as alternative pathways for General Skilled Migration have also become a great deal more restricted. The withdrawal of the Migration Occupations in Demand List (MODL) and the restricted SOL now require applicants to go through a very limited series of pathways for Skilled Migration. The lack of consultation regarding these arrangements has meant that a large number of current international students who have, at great expense to themselves, obtained skills they believed were in demand, have in effect been misled.

## Summary of Recommendations

SUPRA recommends that:

1. Section 91AC be excised from the Bill entirely.

2. Measures be added to the Bill to prevent discriminatory usage of Ministerial powers to cap and restrict the number of visas granted of particular classes.

3. A consultation process be put into place which includes employers, applicants, students and student advocacy groups, education providers, Skills Australia, and the Department of Immigration and Citizenship, in order to determine appropriate levels of capping, and interim measures for applicants and potential applicants negatively affected by the placement of a cap.

4. Furthermore, SUPRA recommends that compensation of tuition fees and living expenses be paid to those potential applicants whose options have been restricted by changes to the GSM and the Migration Act.

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[4] Bachelard, Michael (2010) 'Fall in international students hits economy' in *Brisbane Times*, 6 June, 2010, available at http://www.brisbanetimes.com.au/national/fall-in-international-students-hits-economy-20100606-xm6y.html. Last accessed 18 June 2010.
[5] Mares, P (2010) Capping and culling the migration queue in Inside Story, 3 June 2010. Available at: http://inside.org.au/capping-and-culling-the-migration-queue/. Last accessed 16 June 2010
[6] Ibid