Dear Sir or Madam:

I am strongly against this bill based on the following reasons:

Firstly, The Bill is fundamentally unfair because the Minister will be able to change the goal posts after someone has applied for their visa. Sure, migration rules change regularly, but once you apply you are generally protected from future changes to the rules.
Given that the capping might occur well after the application has been lodged, the Bill violates the principle of the Rule of Law which requires that laws be transparent and not be changed after the event.

Secondly, the situation is particularly harsh for people who have settled in Australia and who have jobs, partners, children and even property in Australia. After possibly waiting 2 years or more for their applications to be processed, they may be asked to leave Australia within 28 days of being capped.
Many people spend a lot of money getting to a stage where they can apply for a skilled visa
- for instance:
  * Course fees
  * Skills Assessment
  * Health checks
  * Migration agent fees

Refunding the Department of Immigration fees is not an adequate compensation given the real costs of the application process.

Thirdly, Integrity Issues
The issue is not so much whether the Minister currently intends to cap certain applications or not. The issue is that the Bill gives the Minister a huge amount of power to decide not to grant visa applications based on criteria of his choosing. This causes serious integrity issues within Australia's migration program, as well as a huge amount of uncertainty for visa applicants.

There are no limitations in the Bill about the criteria which can be used to select applicants. There is nothing in the Bill even saying that applications can be capped based on a person's nationality. The Minister may have advice that this would be a breach of the Racial Discrimination Act, but previous court cases have left this issue open. The Minister has himself recently decided to suspend processing of refugee visa applications from Sri Lankan and Afghani nationals.

The Bill also subverts the current process of creating immigration law. Currently, for the Minister to change the criteria for a visa subclass, he must obtain Royal Assent, and the regulations are open to being disallowed by Parliament. Under the proposed legislation, the Minister could set criteria for applications to be capped, with none of the usual checks and balances.

The applicants cannot even appeal a decision to terminate their applications, as the applications are taken never to have been made.
Not the Only Solution
The Minister has many other options for managing the GSM backlog open to him. For instance, he could devote a certain percentage of the program to "non-priority" applications, and give people some level of certainty over how long their application is going to take. This is similar to the system already in place for parent visas.

There are a number of levers which can be used to limit the inflow of applications for GSM, and the Minister has only used a few of these. These can also be changed by issuing a legislative instrument and examples include:

* Increasing the pass mark: not done
* Changing the Skilled Occupations List: to happen in July 2010
* Changing the Migration Occupations in Demand List: essentially abolished in Feb 2010

These levers have, until now, served us well. There seems to be no reason to pursue such a radical solution as the Visa Capping Bill.

Please don’t burn our dreams!

Regards,
Nigel