Rebecca Martin

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

To whom it may concern:

I am writing to ask you not to support the Migration Amendment (Visa Capping) Bill 2010. This Bill is currently the subject of an enquiry by the senate Legal and Constitutional Committee and I would like to bring some very significant issues that I have with the Bill to the attention of the committee. The powers that the Bill gives the minister are quite simply, far too broad, and represent major breaches of human rights, constitutional law, and common decency – all pillars of Australian society.

Firstly, the Bill represents a breach of constitutional law because there are no proposed interim measures, or 'easing in' mechanisms. This means that people who had lodged prior to the Bill even being tabled for senate enquiry would be subject to its provisions. Retrospective law has long been understood to be a major breach of the constitutional principles that underpin the Australian legal system. This is surely one of the most blatant examples of retrospective law. Immigrants who had lodged under one system, had paid the exorbitant application fees, gone through the extensive training requirements and jumped through hoops to prove their character and qualifications, fully expecting to have the applications processed after the extraordinarily long processing times (two years in the case of general skilled visas) can have their applications treated as if they were never lodged, if so deemed by the minister. This is both unfair and highly illegal. I stress, retrospective law is a major breach of Australian democratic constitutional law and cannot be tolerated on any grounds.

My second issue with the Bill is that the potential for arbitrary discrimination is excessive because it give the minister far too extensive powers. It allows the minister to cap visa based on a 'class' meaning any class of visa that falls within a certain characteristic. This is far too extensive. Obviously, the clause is intended to cap visas based primarily on occupation, but potentially, it allows the minister to cap visas based on the nationality of the applicant. The minister could deem it necessary to use the legislation to deal with social problems which he believes stem from a particular nationality of immigrant. For me, the potential for the government of the day to treat this as a mechanism in a return to a 'White Australia Policy' or something similar is frightening. Clearly that is not the current intention of the Bill but the potential is so great that it really illustrates how broad the powers of the Bill are and the subsequent potential for the abuse of these powers. I would also like to remind the committee that a Bill that is not restricted to the ability to assess application based on a secular and objective characteristic like application, and in fact leaves room for an application to be capped based on any characteristic, is by its very definition discrimination.

On a more personal note, I would like to remind to committee of the human element in

this situation. Please consider carefully, the rights of those individuals who have already lodged. I ask you to carefully and sincerely consider what the impact of this would be on those individuals who have spent years in Australia, making a life for themselves, obtaining training in Australian colleges, at great expense to themselves and their families, who have tried to improve their own living standards and those of their families back home, who have gone to great expense in the process, lodging their applications, complying with working requirements, obtaining medical checks, police checks and other sundry pieces of paperwork, believing that they have proven that they meet the requirements of the current immigration program. Previously, for visas like General Skilled Migration, and Employer Nominated Migration, if you met the requirements, you got the visa. The requirements were extensive and they have spent a huge portion of their lives making sure that they met them. In the case of Employer nomination, the minimum time you have to have been working full time in Australia in the position nominated in 3 years. This doesn't even take into account the training and time on student visas that these immigrants have completed. Additionally, the application fee alone (not included the cost of obtaining all the supporting documentation) is thousands of dollars. These people did all of this expecting to have their visas granted after the extensive waiting periods that apply. Were this legislation to be approved, they could essentially have all this thrown in their face, and treated as if it were nothing, should they be so unfortunate to possess a characteristic that minister, in his wisdom, deems undesirable. In its current form, the Bill does not take into account the rights of these people. There are no interim measures for applications that have already been lodged. Clearly this is an unacceptable situation.

I ask you to please consider my submission in its entirety. These issues are very important and dear to me as people who are significant in my life will be affected by it. Additionally, the breaches to the Australian values that make this country what it is, the Rule of Law which we have all come to rely on, are beyond unacceptable, and I cannot abide them.

Sincerely,

Rebecca Martin