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Universities Australia Submission to the Senate
Legal and Constitutional Affairs Committee
Inquiry into the Migration Amendment (Visa
Capping) Bill 2010

June 2010

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Executive Summary

Universities Australia is the peak body representing Australia's universities in the public interest, both nationally and internationally. This submission is providing comment to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Visa Capping) Bill 2010. This is a Bill which seeks to amend the Migration Act 1958 to enable the Minister for Immigration and Citizenship to cap visa grants and terminate visa applications based on the class or classes of applicant applying for the visa.

Universities Australia acknowledges there is a need for government to manage the number and variety of visa applications currently waiting processing for the purposes of general skilled migration. However we consider that this proposed amendment requires further deliberation. The amendment grants excessive powers to an individual (in his/her capacity as Minister), removes applicants' right of review, damages universities ability to enrol and educate the best international students and potentially creates great detriment for what have become quite vulnerable and marginalised groups in our community.

Recommendations

1. That all student visas be excluded from the remit of this amendment.
2. That all 385 graduate visas be excluded from the remit of this amendment.
3. That full grandfathering is built into the process to ensure that the pathway to general skilled migration available to students on enrolment remains accessible upon graduation.
4. That caution is afforded to capping and ceasing visas where one nationality of applicants dominates the cohort.
5. That appropriate checks and balances are introduced to ensure Ministerial discretion and transparency in any decisions to cap and cease visas applications.

Introduction

Universities Australia is the peak body representing Australia's universities in the public interest, both nationally and internationally. We are pleased to have the opportunity to comment on the Migration Amendment (Visa Capping) Bill 2010 which seeks to amend the Migration Act 1958 to enable the Minister for Immigration and Citizenship to cap visa grants and terminate visa applications based on the class or classes of applicant applying for the visa.

Universities Australia has considered the Bill and its content and notes the referral of this Bill was due to a Senate resolution on 13 May 2010 which enabled inquiry by the Legal and Constitutional Affairs Committee to report by 11 August 2010. We are pleased to offer the following comment and if appropriate discuss at the convenience of the Committee.

Impact on international student enrolments

The possibility of permanent residence on graduation is a motivating factor for a considerable number of international students in Australia. This has been encouraged by government in the past for quality students. It is also policy in like countries such as Canada, UK, USA and New Zealand.

In a recent JWT Education survey of international students in a number of Australian universities, just under a quarter (24%) of students said that one of the reasons that they wanted to study overseas was to obtain permanent residency. For many international students, having this option is very important to them when choosing a country in which to complete their education, even though they may not seek permanent residency on graduation.

This is a substantial proportion of the student population and can be seen across the undergraduate, postgraduate coursework and higher degree research student cohorts. These students represent excellent candidates for migration to Australia, based on the quality of their education and its direct relevance to the Australian labour market, and the time they have spent in Australia working and studying amongst the Australian community. It is vitally important for Australian universities' international education aspirations that these students are not persuaded to study or migrate elsewhere because they are perceived to be inferior to other potential migrants, are considered to be unwanted even if inadvertently or face excessive uncertainty about their prospects for permanent residence in Australia on graduation.

Years of restricted public funding to Australia's universities has ensured the revenue from international students is now essential to the ability for universities to meet their core responsibilities. International student fees subsidise the education of domestic students to such an extent that they are essential for Australian universities to contribute to the overall increase in productivity and human capital development needed by Australia. Without international students, Australian universities would be less able to meet the needs of the Australian economy, community and future skills demand.

Australia's permanent migrant intake is strongly focussed on skilled migration with a considerable portion of those skilled migrants having formerly been international students in Australia's universities, and more recently from TAFEs and vocational colleges. This process is based upon a desired and desirable education-migration nexus whereby acquisition of advanced skills and qualifications to assure success in the labour market also allows consideration for permanent residency.

The ability to compete for the highest quality undergraduate and postgraduate students and staff is essential for Australian universities' internationalisation agenda. Changes to the Migration legislation need to be introduced in such a way as to support universities in pursuing this strategy rather than damaging our ability to attract the world's best and brightest to our shores.

It is important that in any amendments to migration legislation that the role of international students, and their importance to universities specifically and Australia more broadly is not lost in the short term interests of the labour market, or a purely political need to be seen to be tightening border control. This amendment that seeks to enable the Minister to cap the number of international student visas granted (or sub classes of student visas or student visa applicants with particular characteristics) is therefore of extreme concern.

The Minister for Immigration and Citizenship has issued a release stating, "The Rudd government has no intention of putting a limit on the number of student visas issued each year". While this statement goes a long way to reassuring universities and their students of the government's intentions, the fact is that this legislation, if passed, provides universities with no assurance of the intentions of future governments. It is necessary that student visas be excluded from this amendment in the same manner as applies to protection visas to ensure no future government seeks to cap student numbers through this legislation.

The ongoing piecemeal review of General Skilled Migration in addition to this legislative amendment is creating uncertainty among students. The period of frequent changes in migration regulations over the last four years has created a situation in which there is little confidence among students and prospective students that the policies that apply now will apply in the future. The current draft legislation raises further uncertainties for students such as who will be affected and how will the legislation be implemented. These uncertainties will act as a deterrent for students considering study in Australia. This furthers an unfortunate though now prevalent impression that Australia does not want international students as future migrants.

It is vitally important that international students be assured that the pathway to general skilled migration available to them on enrolment is still in existence on graduation. This certainty is vital or students will choose to study in other countries where their future is less clouded and liable to change. This also applies to the availability of graduate visas (Subclass 385).

Providing certainty to students is particularly important now as international education in Australia faces a significant downturn in student enrolments. Full grandfathering must be built into the application process to ensure that students seeking migration on graduation are able to apply for general skilled migration under the rules that applied when they began their study in Australia. This certainty is necessary for the ongoing viability of international education in Australia.

Economic modelling conducted by Access Economics for the Australian Council of Private Education and Training (ACPET) shows that every 5 per cent reduction in tertiary international students represents 6,219 lost jobs in the wider economy.

A likely 15 per cent decline in international student enrolments over the next year equates to 20,000 jobs at risk. These are not just jobs in the education industry, though the industry would definitely be affected, and indeed substantial job losses are occurring even now. Jobs will be lost in all sectors of the economy in which international students move; this includes tourism, hospitality, retail and accommodation related jobs. Redundancies are already being declared in some universities where international enrolments have dropped.

A decline of 15 per cent in students is a significant fall in total revenue. IDP analysis suggests that a 15 per cent fall in enrolments is equal to \$2.5B in revenue in 2011. Given education is the number one export industry in Victoria and number 2 in New South Wales, this represents a significant impact on these economies.

The introduction of this legislation has already created considerable concerns within the student body and these have been communicated to potential students considering study in Australia. International students make significant contributions to Australian universities and communities as well as to the

economies where they live. The uncertainty this legislation creates introduces further pressure at a time when industry is least able to withstand the consequences.

Visa capping by subclass or characteristic

Universities Australia advises caution on the implications of capping and ceasing certain visa subclasses. While it is highly unlikely the government would seek to cap visa applications by nationality, the act of capping certain visa types effectively might do this due to the dominance of certain nationalities among the visa applicants. For example, capping the number of independent skilled migration applicants who have listed accountancy as their profession is in effect a cap on Chinese applicants.

There are doubtless other examples where one or two nationalities dominate a particular cohort of visa applicants or where the applicants from one nation only apply for a limited number of visa types whereby capping and ceasing visa applications would be effectively capping and ceasing applicants from that nation.

Ramifications

Universities Australia has great concerns about the likely outcome whereby visa applicants currently on bridging visas (many of whom have been in Australia for many years) would have only 28 days to pack up their lives and leave Australia should their visa applications be included in a cap and cease measure. If this amendment becomes law it will be necessary for more generous transition arrangements to be available to enable people time to close their lives in Australia and arrange for their futures elsewhere.

Ministerial discretion

Universities Australia calls for a system of checks and balances to ensure Ministerial discretion and transparency in any decisions on capping and ceasing visa applications. This amendment grants considerable new powers to the office of the Immigration Minister and these new powers need to be appropriately balanced by checks on their use.

This is especially important given the legislation proposes that any applications affected by this new measure will be considered not to have been made. This means that the Minister's decision takes away visa applicants right to appeal, and as such makes it doubly important that no decision is made lightly.

Conclusion

Universities Australia does not support this amendment and proposes further consultation occur. Along with the sequence of changes in immigration already undertaken and with many others in train, too much uncertainty over abrupt and arbitrary changes does threaten a major Australian achievement. More considered deliberation is needed.

Universities Australia would welcome the opportunity to contribute to further discussions should this be desired. If you have any questions or comments on the above material, please feel free to contact Chief Executive Dr Glenn Withers, AO on (02) 6285 8104.