The changes announced and implemented on Monday by the immigration minister, Chris Evans, constitute the most fundamental reform of Australia’s skilled migration program in more than two decades. Senator Evans has not only addressed an immediate and thorny issue – the problematic link between permanent migration and the marketing of Australian education – he has also signalled a major rethinking of how Australia selects skilled migrants for permanent residency. (Family and humanitarian migration are not affected by the changes.) There will be a great deal of pain for some organisations and for many individuals as a result, and the full consequences will take many years to be felt. Some pressing problems remain – most notably the blow-out in processing times for non-priority visa applications already in the system – but the attempt to shift policy onto a new footing is driven by a strong and defensible rationale.

Politically, the changes enable Senator Evans to portray the government as “taking back control of immigration” from whom he doesn’t say), a useful message in an election year when “population” is emerging as an issue.
But this is not poll-driven policy. The changes are the result of months-long departmental reviews that have prompted fresh thinking and provoked intense debate within the bureaucracy and within cabinet. The outcome represents a significant victory for the Department of Immigration and Citizenship over the much bigger and generally more powerful Department of Education, Employment and Workplace Relations. When the policy was contested in Canberra corridors, the heavyweight departments of Treasury, Finance and Prime Minister and Cabinet all came down on Immigration’s side.

The changes confirm and entrench a shift from a “supply-driven” to a “demand-driven” migration program. In other words, rather than migrants volunteering themselves to be future residents of Australia, Senator Evans is building a system in which employers, including state and territory governments, select and sponsor the migrants that they think they will need. This is a significant refinement of the bias towards skilled migration that has characterised Australian policy since the late 1980s. It is probably the most far-reaching change since the Hawke government implemented major recommendations of the 1988 FitzGerald report on immigration policy, led by former diplomat Stephen FitzGerald.

For anyone unfamiliar with the complexities of the migration program and its array of visa subclasses, the changes are difficult to understand. Many of the “plain language” explanatory documents posted on the department’s website are almost incomprehensible for the uninitiated.

Stripped of the department’s convoluted language, Senator Evans’s most dramatic act has been to scrap the Migration Occupation in Demand List. Created in 1999, MODL was a list of occupations deemed to be in short supply in Australia by the Department of Education, Employment and Workplace Relations. Aspiring migrants with qualifications and experience in the occupations on the list would score extra points in the migration points test, and this could swing the balance their way in determining whether or not they qualified for permanent residency.

The minister was convinced that the MODL had been compromised. He and his department saw it less as an evidence-based evaluation of skills shortages in the economy than as an expression of successful lobbying efforts by businesses to advance their own interests. Evidence for this view can be seen in the way the MODL has expanded from fewer than thirty occupations in 2004 to more than a hundred in 2009.

Crucially, the interaction of the MODL with other policy measures distorted Australia’s education-for-export industry. In 2001 the Howard government allowed international students graduating from Australian colleges and universities to apply for permanent migration onshore (that is, without first returning to their home country). This was done partly to address skills shortages and partly to give Australian colleges and universities an edge over their rivals in the competitive international education market. Visa applicants also received additional migration test points for having studied in Australia. In 2005, amid continuing business complaints about skills shortages, the Howard government added seventeen new occupations to the MODL, which were mainly in trades and engineering.

The combination of these measures produced an unanticipated boom in vocational courses, especially in cookery, hairdressing and accountancy. The best colleges offered high-quality training; the worst were nothing more than visa factories. The number of foreign students undertaking these vocational courses sky-rocketed. As they completed their studies and applied for permanent residency they contributed to the creation of a huge bulge in the migration program and a serious backlog in visa processing. Last year, for example, 170,000 people applied for permanent migration to Australia but the current annual intake has only 108,000 places. The backlog of applications awaiting processing has grown to 145,000, including 12,000 applications from cooks. (To put this figure in perspective, there are only around 36,000 cooks currently employed in the Australian economy.) An even larger number of accountants is waiting in the pipeline, and hairdressers also feature prominently.

The government cannot simply turn these migrants away. Almost all of them have passed the points test, amassing the magical 120 points necessary to qualify for permanent migration. But because there are too few places on offer in the migration program, the government has categorised certain classes of application as low-priority, essentially putting them on indefinite hold as they wait in a queue that does not move. This week’s changes will not get the queue moving again, though they may have stopped it from growing even longer.
Senator Evans could have tried to address the distortions in the education-for-export industry by tinkering once again with MODL – by dropping certain occupations from the list, for example. Or he could have tinkered with the migration test by reducing the number of points awarded for MODL occupations and boosting points for qualities like workplace experience.

Instead, he has gone much further. By scrapping the MODL, he has weakened but not entirely severed the link between education exports and migration outcomes. Vocational colleges that depended heavily on the dangled carrot of permanent residency to lure overseas students into their courses will now go bust. Other colleges will be forced to downsize dramatically and rely more heavily on domestic students. But universities offering longer degree courses that lead to professional qualifications could still find that the prospect (though not the guarantee) of permanent migration makes their offerings attractive to overseas students.

Those with the most to lose from the changes are the students themselves. Many have invested tens of thousands of dollars in an Australian education in the hope of securing a permanent visa. To ease their plight the minister has put in place transitional arrangements, in force until the end of 2012, which mean that many of those already in the system will be processed under the old MODL and points test rules. On completing their course, students can also apply for a temporary skilled-graduate visa (subclass 485) which enables them to live and work in Australia for a further eighteen months. In theory this should enable students to gain the practical work experience they need to boost their application for permanent residency. In practice, though, it may not work out that way.

There are three reasons for this. First, there is already a huge backlog in immigration processing – the queue already mentioned – and the government has given no indication that it has any way of working through the applications on hand. The priority processing arrangements already put in place will be adjusted, but not in a way that changes the outlook for applicants currently stuck in the pipeline. Onshore migrants have been told to expect a wait of at least two years before a decision is made in their case, unless they can find an employer who will sponsor them. Students who apply for permanent residency without a sponsor will go to the back of the queue.

Secondly, while they wait, there could be further changes that will knock applicants out of the queue altogether. As part of the most recent reforms the minister has moved to render void some 20,000 visa applications made before 1 September 2007, using a process known as “capping and ceasing.” (The minister has the power to “cap” the number of visas that can be issued in a particular category in a particular year and, once that number is reached, any pending visa applications are deemed to “cease,” as if they had never been made.) Applicants who are capped and ceased will have their visa application charge of between $1500 and $2000 refunded by the government, although they will still be massively out of pocket for the associated costs of things like medical tests and migration advice. It is not clear whether the minister could easily apply the same “cap and cease” measures to knock more recent applications out of the queue, but his actions do send a message that the government can find ways to shift goalposts retrospectively when it really needs or wants to.

The third reason that foreign graduates will find it hard to use the extra eighteen months to gain permanent residency is that it will be much more difficult for them to have their Australian qualifications recognised. On 1 January the federal government introduced the Job Ready Program, which requires foreign graduates of Australian vocational colleges to complete a four-stage assessment of their workplace skills, including racking up twelve months’ full-time employment on award wages, in their nominated trade, with an Australian employer. The employer must be willing to provide details of their progress towards “job readiness” by completing monthly log book entries online. The process, overseen by Trades Recognition Australia, will cost the applicant around $4500 in fees. This is on top of the $2525 visa application charge paid to Immigration and is a dramatic increase from the previous cost of about $300 for skills assessment.

There is a great irony here. Australia has marketed itself to the world as a purveyor of high-quality education and training, yet it now has so little faith in the quality of the vocational sector of this industry that international graduates must go through a rigorous and expensive new assessment system – one that does not apply to domestic graduates of the very same courses.
It is likely that a significant number of foreign graduates will fail to jump through all the Job Ready hoops within the eighteen-month window offered by a 485 temporary visa, which is not renewable or extendable. Many may not even try. Instead they will continue to work in undesirable jobs in the service economy – driving taxis, staffing checkouts or doing the late-night shift in convenience stores. When their visas expire they will be expected to leave Australia, but they may not be happy to do so. Expect a surge in appeals to the Migration Review Tribunal in about a year and a half.

The government will eventually replace the MODL with a refined Skilled Occupation List, or SOL, drawn up by the independent agency Skills Australia. The list will be announced in April and will take effect from 2010. In consultation with the Commonwealth, the states and territories will be able to draw up their own migration plans and augment the national SOL with occupations that may be specifically relevant to their own local economy (foresters in Tasmania, perhaps, or welders in Western Australia). Migrants who have employer sponsorship or state or territory sponsorship under a migration plan will receive top priority in visa processing.

But a listing on the SOL will not confer extra points towards the migration test, which is itself now under review. Nor will it act as a magnet for international students to undertake particular courses in Australia or for education providers to offer such courses. Rather the government is aiming to identify a range of occupations and professions that are of critical importance to the nation’s development. In the minister’s words, these will be occupations that “we can’t afford to risk... being in short supply” and which demand skills that “take considerable time and diligence to acquire.” Senator Evans says that the MODL was “delivering self-nominated migrants from a narrow range of occupations with poor to moderate English language skills who struggle to find employment in their nominated occupation” (think taxi drivers with a diploma in accountancy). He expects that the new SOL and a revised points test will result in “a wider mix of professions and trades” coming through the migration program “to supplement the national skills base.”

The minister has also flagged the creation of a pool of potential immigrants who will submit their qualifications and experience for consideration without making a formal visa application or paying the associated high fees. Employers and states and territories will be able to trawl through this pool to find people with occupations and skills to meet their workforce needs. They can then sponsor them through the visa process.

Over time, the proportion of sponsored skilled migrants will rise, and those coming to Australia independently will fall. Urgent short-term vacancies will be filled through the existing temporary migration categories, such as the 457 skilled worker visa, which have expanded dramatically over the past decade. Temporary migration is now a permanent feature of the migration mix, and it is expected to rise and fall with the economic cycle, helping smooth out the lags that emerge between the demand for skills in a growing economy and the ability of the education system to deliver appropriately trained workers.

THESE ARE the essential elements of the “demand”-driven model that Senator Evans is promoting, and he has found a powerful metaphor to describe it. The old MODL system was “like pulling a ticket number from the dispenser at the supermarket deli counter,” with everyone served in turn. In theory, anyone who amassed 120 points in the migration test would eventually get “served” with a visa. A better model for selecting skilled migrants, he says, is the university entrance process. Places are limited, so they are given first to those most suitable and best qualified rather than those who have waited the longest.

From the standpoint of Australia’s national interest this is a sound argument, but there are still significant problems to be resolved before we can move away from the supermarket deli counter to fish selectively in the pool of migrant talent. For a start, the changes do not resolve the matter of the 12,000 cooks and all the other visa applicants who have passed the points test and who are stuck in the processing pipeline. They pulled a ticket from the dispenser and most of them were given the impression that their cases would be finalised in less than twelve months. They are not making progress because the government has given priority to other categories of migrants, especially those directly sponsored by an employer. The applicants stuck in the queue – both onshore and offshore – have shelled out thousands of dollars in fees and charges yet they must live in a state of anxious uncertainty.

Senator Evans makes no apologies for this. “A number of commentators have criticised me for leaving people in
limbo under the priority processing arrangements,” he says. “I say to them it is my duty in the national interest to give priority to those applicants who offer Australia the most.”

The latest changes also appear likely to have some unintended consequences. Experienced migration agents are already pointing out that the new rules could prevent nurses on temporary 457 visas from becoming permanent residents. Until now, a foreign nurse under forty-five years of age with competent English could easily mount a strong independent application for permanent migration, especially after gaining some work experience in Australia. With the abolition of the MODL that nurse has lost twenty points towards the migration points test and will probably fail to cross the 120-point threshold. This does not appear to be the outcome the minister is seeking – he has repeatedly nominated nurses among the categories of migrant that the government is most keen to attract – but such are the complexities of making changes to the migration program. The pending review of the migration points test will no doubt attempt to address such anomalies and will be a sensitive exercise in itself.

For the managers of vocational training colleges that cater to international students, for students themselves, for anyone with a skilled visa application already in the system and for migration agents who offer professional advice on moving to Australia, the minister’s announcement will feel like yet another sharp, sudden and arbitrary tilting of the playing field in the government’s favour. But in the longer term Senator Evans’s reforms hold out the prospect of a more stable, predictable and rational system. In the meantime, expect many more difficulties ahead as the ripples of the announcement wash through people’s lives. •