International students and the law of unintended consequences

The federal government’s new rules designed to increase student numbers could boost the number of migrants who are permanently temporary, writes Peter Mares

Universities are jubilant about the federal government’s response to the Knight Review of the student visa program. The Group of Eight says the planned changes will enable Australian universities “to compete more effectively in the global market” by increasing “Australia’s attractiveness as a study destination.” Universities Australia headlined its press release “Knight Review a Boon to Higher Education.”

Behind the scenes, university finance officers will be breathing deep sighs of relief. Labor’s previous changes to international education had significantly reduced the income stream from international enrolments; now, the flow of dollars is expected to pick up again. (Providers of vocational education and training are far less excited because the changes do little to bolster their prospects of attracting new students. TAFE Directors Australia detected confirmation of an “inherent bias towards universities in international education.”)

These measures might well help cash-strapped universities, but they have some worrying characteristics in common with the international education policies of the Howard government. As we now know, those policies – which were designed to encourage education “exports,” help plug the growing funding gap faced by universities and reduce skills shortages in the labour market – had unforeseen consequences. They led to an explosion of private colleges offering sometimes dubious vocational courses that promised the shortest route to permanent residency. They not only devalued the reputation of Australia’s education system and distorted the migration intake, they also created a perception in the community that international students were manipulative and devious – despite the fact that the vast majority were simply playing the game by the rules drawn up by the Australian government.

The post-Knight situation will be different in important ways. There will be no direct route to permanent residency. Instead, international students will be offered a temporary work visa after successful graduation: a two-year visa work for an undergraduate degree, a three-year work visa for a masters degree and a four-year work visa for a PhD. This could still misfire, however, for reasons we’ll come back to.

The temporary work visa is only one of the planned changes. The government is also introducing “streamlined visa processing arrangements” that treat all students undertaking university study at undergraduate level or higher as being at the lowest level of risk (risk assessment level 1) regardless of their country of origin. Previously, students from certain countries – notably the major student markets, China and India – were assessed at risk level 3: that is, they were seen as more likely to make fraudulent applications, to misrepresent their true reasons for seeking to come to Australia, or to breach or overstay their visas. For these applicants, obtaining a visa was more onerous and involved a tougher savings test to prove that they had the wherewithal to finance their studies. Under the Knight changes, says immigration minister Chris Bowen, “these students will need around $36,000 less in the bank when applying for a visa.”
The government will also allow students planning to study English to apply for a visa without meeting any minimum language requirements. This is the one measure that may benefit the vocational education and training sector, including private providers, and it should increase the flow of international students into feeder courses for higher education entry. But it could conceivably see dodgy education providers setting up shop to attract students who want to come to Australia for the work rights attached to a student visa, rather than for the purpose of study. Whether or not this happens will partly depend on the new Tertiary Education Quality and Standards Agency, which will be charged with regulating the sector (as state governments have spectacularly failed to do in the past). Other changes extend the time a PhD student can stay in Australia while a thesis is marked and repeal automatic cancellation and mandatory cancellation provisions for student visas – a change that should reduce the number of students losing their visas for inadvertent errors or minor technical breaches.

BUT it is the offer of temporary work visas to international student graduates that is likely to have the most profound, long-term impact. As I’ve argued elsewhere, Australia’s migration program has changed dramatically over the past fifteen years, with a sharp increase in temporary migration, two-step migration and employer sponsorship. The majority of new permanent migrants to Australia are now former temporary migrants: in other words, in performing Australia’s migration “two step” they have already been resident here for some time, mostly as international students or as skilled workers on temporary 457 (or “business long-stay”) visas. Because federal government policy has made it progressively more difficult to apply for permanent migration independently, the path to permanent residency for these temporary migrants increasingly runs through the gateway of employer sponsorship. This is part of a deliberate shift to a “demand driven” rather than a “supply driven” migration program – or, as Senator Chris Evans put it when he was immigration minister, a move to ensure that Australia gets “the skills that are actually in demand in the economy, not just the skills that applicants present with.”

The cumulative effect of these changes is to create a large group of long-term temporary migrants with work rights. According to estimates from the Department of Immigration and Citizenship, this group makes up about 10 per cent of the entire labour force and, given their young age profile, accounts for about 20 per cent of the workforce in the twenty to twenty-four age bracket.

This doesn’t mean that Australia has become a “guest worker” society in the sense that West Germany was in the 1960s and 70s. Germany’s guest workers were generally employed in low-skilled, low-wage occupations, whereas Australia’s 457 visa-holders are generally highly skilled and earn well above the median wage. Germany’s guest workers were generally required to leave their families behind at home – as are contemporary Asian guest workers in the Middle East, for example – whereas workers on 457 visas can bring immediate family with them to Australia and their spouses are also granted work rights. It’s true that one group of temporary residents, international students, often occupy lower-skilled jobs in Australia’s contemporary service economy – driving taxis, waiting in restaurants or staffing convenience stores – but they cannot rightly be considered “guest workers” either, since their primary reason for being in Australia is study, not work.

Nevertheless, the potential long-term problem with Australia’s new rules does have a precedent in the West German experience. The longer that temporary residents stay in Australia, the more likely they are to build up a network of connections that will bind them here. These connections may be emotional, psychological, cultural or financial – or, most likely, a combination of all of these. As the bundle grows, so too grows the expectation of greater reciprocity from the Australian state.

This is the contradiction inherent in all temporary migration schemes, identified by Stephen Castles and Mark Miller in their book The Age of Migration. As they observe, these schemes are devised on the basis that the sojourn will be limited and that “the legal distinction between the status of citizen and of foreigner” will provide a clear criterion for conferring them with different political and social rights. But with the passage of time come “inexorable pressures for settlement and community formation.” In this way, temporary migrants who live and work in Australia for lengthy periods, who pay taxes and contribute to the economy and the society in myriad ways, will begin to demand better access to government services, greater political representation and, eventually, access to the franchise and other rights that come with citizenship.

Under the new rules, international students may arrive in Australia at age twenty, complete a three-year
undergraduate degree, and then work in Australia for two years on a temporary visa. By the time their visa expires they will be twenty-five years old and will have spent one fifth of their young life in Australia. Graduates who move from undergraduate study to complete a masters degree followed by the allowable three years of temporary work could end up with their visa expiring at age twenty-eight, having spent eight of those years living and working in Australia. At this stage, some student graduates will happily return home with their qualifications and work experience; others will desire to remain and build their future lives in Australia. They could do this by seeking employer sponsorship for permanent migration – in which case they will be competing for limited places with other student graduates and with an increasing number of 457 visa workers applying to become permanent. Or they could transition to a 457 visa, valid for up to four years. This could see their total period of “temporary” residence in Australia extend to twelve years.

The new rules will also have an impact on the family stream of Australia’s migration program. Although temporary migration and permanent migration are presented as discrete, the two inevitably become entangled. Over time, international student graduates will form attachments with Australian residents or citizens, swelling the ranks of applicants for spousal visas, which are already subject to long waiting lists and a processing time of at least twelve months.

If all the temporary migrants with aspirations to remain in Australia can be accommodated in the permanent migration program then there will be no problem. But while Australia’s permanent migration intake has an annual cap, our temporary migration intake does not. The number of 457 temporary skilled work visas granted in the twelve months to July 2011 is up 46 per cent on the same period in the previous program year and shows no sign of slowing. The government and universities clearly anticipate that the Knight changes will reinvigorate Australia’s international education sector. If they are correct, we are going to see an upsurge in student commencements, followed in a few years by large numbers of student graduates seeking work visas and swelling the numbers of long-term temporary migrants.

Before too long we could face a situation where the number of these temporary migrants seeking to become permanent residents outstrips the number of places available. If this happens we will see a blow-out in waiting lists and unconscionable delays in processing – problems similar to those created by the Howard government, which resulted in a stream of applications for permanent residency that threatened to overwhelm the independent skilled migration program. According to official figures, by 2009 the department had on hand 137,500 valid applications for independent general skilled migration, equal to more than two years’ supply of prospective migrants in that stream of the program, with 9000 new applications being lodged every month.

ONE of the ways of managing that problem is a system of priority processing. Introduced from the beginning of 2009 and amended several times since, priority processing fundamentally changed the way in which applications for permanent residency are dealt with. Instead of applications being considered in the order in which they are lodged, as in the past, they are now sorted into five categories in line with Australia’s perceived economic needs.

When he introduced priority processing, Chris Evans said that the old system was “just like pulling a ticket number from the dispenser at the supermarket deli counter” and waiting to be served. It “didn’t make any sense,” he said, that Australia was “taking hairdressers from overseas in front of doctors and nurses.” This may be true from a national interest perspective, but priority processing lacks procedural fairness and has had distressing outcomes for individual applicants. When the changes were applied to applicants already in the system, tens of thousands of aspiring migrants were suddenly in limbo. They are stuck in Category 5 – the lowest-priority group – and any higher-priority applicant entering the system is processed first.

There are 37,200 people resident in Australia who are in Category 5 – almost all of them former international students who have graduated from Australian colleges and universities. More than 10,500 have already waited more than two years for their applications for permanent residency to be considered. In the meantime, they live in Australia on bridging visas, with permission to work but without the right to travel overseas unless they have a substantial reason to do so – such as the illness or death of a close relative – or their employer requires it. (Permission to travel requires a separate visa application.) Nor can they sponsor relatives to join them in Australia. The result is that wives and husbands are forced to live apart, couples planning to marry must
postpone their weddings indefinitely and, in some cases, parents must live apart from children left behind with relatives while they completed their studies in Australia.

It is a thoroughly unsatisfactory situation and one for which no resolution is in sight. In July, the Department of Immigration and Citizenship wrote to members of this lowest-priority group saying that it “expects to commence processing of some priority group 5 applications in this program year.” But the same letter warned that “many priority group 5 applicants will still have a long wait for visa processing.”

Offering temporary work visas to international student graduates threatens to compound this problem. It could see a blow-out in waiting lists for permanent residency, under both the employer sponsored and family (spousal) migration categories. It could also see an increasing number of migrants living in Australia for long periods on a succession of temporary visas. We are at risk of creating a cohort of migrants who are permanently temporary – living and working in Australia, contributing to our economy and our society, but kept at arm’s length and unable to settle.

It’s also significant that the federal government’s response to the Knight Review follows a pattern of government decision-making. Rather than making the review’s recommendations public and assessing expert and public reactions before formulating its response, the government has released the review and its planned measures at the same time. It’s much the same as the way it dealt with the Henry review of the tax system, releasing the report and its own response – including the first iteration of its mining tax – on the same day. Remember how well that turned out? •