



**NUS Submission to the Review of the ESOS Act – Department  
of Education, Employment and Workplace Relations**

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**October 2009**

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## INTRODUCTION

The majority of this paper was taken from the recent NUS submission to the Senate Inquiry into the Welfare of International Students.<sup>1</sup>

NUS congratulates the authors of The Review of the Education Services for Overseas Students (ESOS) Act 2000 – Issues Paper for acknowledging that the *ESOS Act* does not currently offer international students any mechanism or body to address complaints, and for encouraging new discussion on the benefit in establishing a different and additional complaint mechanism. NUS will be recommending through this review that a complaints mechanism should comprise a tertiary ombuds or conciliator office that will be able to support all tertiary students, both international and domestic. This office would also serve as a reliable source of information and statistics outlining the received complaints which will assist legislators and policy makers ensure a much more resilient international education sector may grow and prosper in Australia.

The Issues Paper encourages discussion about the pros and cons of restricting education providers from enrolling international students with respect to the culturally diverse education experience. While NUS recognises that there may be some benefit in encouraging a more diverse range of students in each course. However when applying a restriction, legislators would need to make exemptions for English language and foundation courses that are designed and packaged to assist many students in meeting entrance levels in many courses, and therefore do not usually source students from the domestic market.

NUS is concerned that introducing a restriction may be a Band-Aid attempt to address concerns about ‘dodgy providers’ not providing a high quality education who only recruit students from a limited number of locations offshore and through a limited number of education agents. These issues need to be addressed through enforcing and monitoring current legislation or revising regulation to allow closer and more appropriate monitoring.

NUS proposes that to address the issues of social inclusion colleges offering inadequate pastoral care and cultural interaction need to be identified and required to meet minimum standards. In addition, student centres should be established in all areas of high student population at which both local and international students are able to access services, workshops and socialize informally in the facilities and through organized events. The centres could be run and managed through community organisations, which would encourage students to become voluntary or paid staff members of the centres. Funding of these services would need to be strategically sourced from education providers and government funding.

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<sup>1</sup> Some of this submission is taken directly from the Smith, 2009 and referenced accordingly; other sections have been rewritten and reflect the views of NUS in Smith, 2009. Many recommendations are identical to those in Smith, 2009 and are not referenced.

The Issues Paper asks stakeholders how ESOS can better support the student visa program. NUS proposes that it would be more appropriate if the student visa program is redesigned to support the education sector and the *ESOS Act* and reviewed in consultation with all stakeholders. NUS has proposed in its recommendations two main areas of the student visa program to be investigated and reformed to ensure that it is able to support the *ESOS Act* and restore resilient and high quality Australian education and contribute to the positive education outcomes for international students.

## RECOMMENDATIONS

1. NUS recommends that Education Agent and Provider Protocols are established, that are clear and transparent and easily accessible to all agents, education providers and international students.
2. NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider should a representative agent breach the protocols, therefore resulting in a provider breach of the *ESOS Act*.
3. NUS recommends that a cap is introduced on the commission paid by an education provider to an education agent. These payments should be closely monitored by the regulatory body with appropriate attention paid to the relationship between education providers and their education agents
4. NUS recommends that the protocols include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.
5. NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the *ESOS Act* and recommends close monitoring of all education provider and agent activities in the future.
6. NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This provision would be enforceable under both the *ESOS Act* and the *Migration Act*.
7. NUS recommends that the *ESOS Act* and *National Code of Practice* include policies and procedures to ensure students affected by closure of education providers are given support to access their updated academic transcripts and ensure that completed courses (or parts thereof) obtained with previous provider is acknowledged as Recognition of Prior Learning by new education providers
8. In the event that a student must apply for a new Student Visa due to closure of previous provider and inability to complete the new course within the timeframe of their existing Student Visa, NUS recommends that the ESOS Assurance fund scheme include provision for students to access funds for additional costs incurred.
9. NUS recommends that factors 1-7 in *Section 1.2* are implemented as grounds students may use when accepting or refusing a particular course.
10. NUS recommends that the Department of Education, Employment and Workplace Relations be responsible for placement of students in the event that an institution closes such that the students are able to refuse an 'alternative course' on the grounds above and students are made aware throughout their education of their rights in this process.
11. NUS recommends that the *ESOS Act* and TAS be amended to include the detailed definition of a 'Suitable alternative course' as included in *Section 1.2*.
12. NUS recommends that complete review of the TAS system is conducted, and that all providers should be under one scheme, allowing students to access

the most suitable alternative and not be disadvantaged in anyway because of the education provider's TAS scheme. This scheme should be overseen by DEEWR and the placement of students conducted by DEEWR.

13. NUS recommends that timeframes for placement of students in alternative courses, resolution of transfer of funds or refunds, and administrative matters, be clearly established and standardised across states and territories, and that students be informed of these timelines.
14. NUS recommends that the review provide transparent and public reporting to the education industry of the outcomes and measures put in place to ensure that any students affected by provider closures are compensated for under a fair, moral and transparent system.
15. NUS recommends a transparent and independent body funded by the Federal government with offices in each state that would fill the role of a Tertiary Ombudsman. The role of this office would be to provide appropriate assistance with the complaints and appeals mechanisms for all students, with particular attention paid to the needs of international students.
16. NUS recommends that the *ESOS Act* recognise a tertiary conciliator or ombuds office and require education providers to implement changes recommended by this office.
17. NUS recommends that Standard 8 of the *National Code of Practice* identifies student association advocacy services as a legitimate source of assistance and advice for students accessing complaints and appeals mechanisms.
18. NUS recommends that Standard 8 of the *National Code of Practice* prevent education providers from prescribing or limiting the origins of the support person engaged by a student to assist or advise students when accessing the complaints and appeals mechanisms if the persons origin is identified as a student representative organisation either at national or campus level.
19. NUS recommends that Standard 7 of the National Code is amended to include factors that may be used to identify 'reasonable grounds for refusal' of a 'release letter', and a definition of 'detriment to the student'.
20. In the event that a student is enrolled in a new institution without providing a letter of release from the original education provider, NUS recommends that DEEWR and DIAC establish policy and procedures to ensure that the initial education provider may only trigger cancellation of the student visa for legitimate reasons such as if the student has changed education sector and is in Australia on an incorrect student visa.
21. NUS recommends that a tertiary student ombuds or conciliator office is established to provide a fair and reasonable complaints procedure for students and education providers in the event that a provider refuses to release a student or a provider believes a student is in danger of being exploited by an education agent or institution.
22. All students are made aware of the correct procedure for changing providers both prior to the completion of the first six months of their course of study. This should include information detailing the complaints and appeals options and student visa implications.

23. NUS does not support any change to the six month restriction placed on students changing education provider.
24. NUS recommends that the restriction of the 'principle' course is changed to a restriction on the first six months of 'any' or 'each' course of study.
25. NUS recommends that the *National Code of Practice* is amended to include standards that clearly prescribe the responsibilities of state government regulators and federal government regulators with regard to registration on CRICOS, enforcement of the *ESOS Act* and monitoring compliance with the *National Code* and the *ESOS Act*. These responsibilities should be set as standards in the National Code or the Act, in the same way that the standards are set for the Education Providers.
26. NUS recommends that the Federal government establish a National Authority that is responsible for overseeing the International Education industry. This Authority would oversee the student visa program, the Overseas student health cover system, the *ESOS Act* and areas of student accommodation that are not currently covered in the Residential Tenancies acts in any state legislation.
27. NUS recommends that the CRICOS registration process include a full investigation of all owners and operators of private colleges. Information should be disclosed regarding the owners' financial history with regard to business and bankruptcy, their interest in other ventures such as other failed education institutions, education agents or migration agents and their level of qualification and experience in education and the laws governing the sector.
28. NUS recommends that all financial investors (including Directors) in education institutions should be disclosed as part of the CRICOS registration procedure or in the case of existing institutions, the disclosure of this information at re-registration to ensure there is a minimum level of conflict of interest or corruption.
29. NUS recommends that the CRICOS registration procedures include assessment of the Critical Incident Policy. This policy should be lodged with the regulatory body and assessed against the explanatory guide and monitored by DEEWR in the event of a critical incidence.
30. NUS recommends that the police and other emergency services in each state should be made aware of the existence of the 'critical incident policy' to ensure that the procedures in this policy are activated immediately by the education provider
31. NUS recommends that the police in each state need to be provided with professional development that includes cultural awareness and awareness of the particular issues (such as visa concerns) faced by international students which would impact on non-reporting or not trusting government or the police.
32. NUS proposes that the community and government need to be more informed about the working hours, and lifestyles of international students in their communities, in order to introduce changes including safer public transport late at night, both in inner suburbs and in outer suburban areas as

well as safer areas surrounding train stations and bus and tram stops. (This may include adopting measures such as in Sydney or reinstating staff on train stations after hours and on weekends)

33. NUS recommends that the Commonwealth government implement changes to legislation to ensure that safety information & police familiarization sessions are compulsory items in orientation sessions and that attendance at these sessions is compulsory for all international students.
34. NUS recommends that state and local governments contribute funding and resources to establish student centres that may be accessed by all students but primarily provide international and 'new to the city' students information, advocacy and social support.
35. NUS recommends that all major cities and regional suburbs or centres establish a 'student centre' that is partially funded by CRICOS registration revenue.
36. That Commonwealth and state governments embark on a public awareness campaign to highlight the social, cultural and economic contribution the international student community makes to the education experiences of students in Australia and to the community of Australia as a whole.
37. That all states amend the tenancy legislation to provide a section that deals exclusively with student accommodation, regardless of affiliation to an education institution, that has a national set of requirements with specific regard for the housing and financial needs and circumstances of students.
38. That all states conduct an audit of student accommodation providers ensuring that the current tenancy law is adequately being adhered to at all times, with adequate penalties that will prevent student accommodation providers from disregarding their obligations under the relevant Acts.
39. That every education provider is required under state and/or Commonwealth government legislation to make available affordable accommodation to all new international students for the first 12 months of their education in Australia.
40. That education providers are required under the *ESOS Act* to provide assistance to international students to find adequate and affordable accommodation, which would go above and beyond provision of real estate agent listings but rather assist students with rental applications and other assistance as required
41. That Federal and State governments provide increased funding to service providers for accommodation and housing to ensure students have adequate information on housing rights, responsibilities and recourse.
42. That international student groups and government tenancy departments collaborate to identify the most effective methods of assisting international students gain housing without having to resort to illegal measures involving falsified documents or lease arrangements.
43. That landlords, estate agents and students develop programs to highlight the extra needs of international students, such as flexible lease arrangements,

provision of furniture or household goods in rental properties and also include cross cultural understanding for both students and landlords, providing students with clear understanding of expectations of landlords in property maintenance.

44. That international students and landlords are informed about the barriers international students face when obtaining the correct documents required to apply for leasing agreements. Provisions should be made to take into consideration the availability of the standard documents with regard to international students income situations, due to the fact that some don't work but are completely reliant on family for income and therefore are not able to show proof of income. International documents should be acceptable as documentation such as proof of identification and income.
45. NUS recommends that the ESOS review make recommendations to change the amount of money students are required to demonstrate to be granted a student visa with due consideration paid to the current evidence regarding the number of hours per week students spend in paid employment.
46. NUS recommends that the financial capacity of students regarding amount students must show, and evidentiary requirements is removed from the AL system and be standardised for all countries, and based on visa subclass and course length, rather than country of origin.
47. NUS recommends that advice is sought from bodies such as the Australian Scholarships Group to determine accurately estimated living costs for students and the amount students are required to demonstrate be appropriately indicate that the amount signifies a partial living cost, or will meet living costs for the academic term only.
48. NUS recommends that English language requirements should be the same for all assessment levels, but varied for each visa subclass as applicable to and in consultation with the education sector.
49. NUS recommends that DIAC consult with education providers to determine the most appropriate levels of English language proficiency for each visa subclass.
50. NUS recommends that all education providers and education agents are closely monitored to ensure that any information they provide international students regarding their ability to gain employment in Australia adequately and accurately reflects the actual employment opportunities for international students in Australia.
51. NUS recommends that State governments provide funding for employment rights services that may be made available to international students and highlighted in compulsory orientation sessions for all students. (this would include information is provided on wages, gaining employment, taxes and superannuation rights, and dismissal and discrimination rights.)

52. NUS recommends that the number of hours that international students with work rights are allowed to work while their course is in session should be extended to 24 hours per week
53. NUS recommends that Immigration policy and the *Migration Act* are amended to help ensure that all student visa holders are treated fairly and equitably entitling them to demonstrate that there were special circumstances that may have led to a breach of this condition.
54. NUS recommends that the factors for consideration in determining if a student has breached condition 8105 should include:
  - the students academic and attendance records
  - the students average hours of work
  - the employment conditions (such as workload, staff illness)
  - previous breaches of this condition
  - the stage of the course the student is at, ie whether it is the first or last year of a degree
  - the financial circumstances of the student
  - the housing/accommodation circumstances of the student
55. NUS recommends that DIAC amend the *Migration Act* to allow Immigration department decision makers' discretion with regard to the restriction on students working over 20 hours per week and that the calculation of this restriction is flexible depending on work and study load.
56. NUS recommends that education providers are responsible for inspecting the work placement positions that international students are assigned to.
57. NUS recommends that the appropriate regulatory body is able to inspect work placement premises should they receive complaints or as part of audit on education providers.

# 1. SUPPORTING THE INTERESTS OF STUDENTS

## 1.1 Information Provision and Education Agents

**“How can the quality and accessibility of reliable information be improved? What role can ESOS have in ensuring providers and their agents are held to account for supplying prospective and current international students with accurate and timely information?”**

### 1.11 Information Provision

*Other than the student visa requirements, alternative sources of information that students may access before coming to Australia are the institution website, study in Australia website and other government websites. However, information provided by education agents remains a key source of information that most students rely upon over and above most other information sources. Incomplete information on institution and government websites impacts on the decisions prospective students make about their ability to fund their living expenses and undertake part-time work in Australia. Misleading information on websites may include for example, housing information costs provided for the on-campus residences and perhaps one or two large student accommodation providers, but very little on private rental, or other options, and nothing on costs of utilities, internet, and setting up a residence. Alternatively, websites may provide detailed information on day-to-day living expenses but provide little information on housing options beyond a real estate web address.*

*Finally, international students ought to be provided information on how difficult it may be to obtain paid employment. Students often arrive with the understanding that they could bring the small-required amount of money, and subsidise living costs with part time employment. However, such plans lead to students living in dire poverty after such time as their initial funds run out, they are still unable to find work, have only got work that is low paid or underpaid and they are working many hours more than they expected in order to meet basic living costs. <sup>2</sup>*

The information provided to international students must be reflective of current costs of living, current work availability and potential earnings from paid employment. Current housing availability information is also essential. The National Code requires that some of this information is provided to students during the recruitment and enrollment process. However, the format in which this information may be provided is vague. Standard 2 requires only that the student is informed of a large amount of information through referral to a website. NUS believes that in isolation a website referral is an unsatisfactory method of information provision. Providing extremely important information through website referrals in combination with emailed or hard copy pre-

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<sup>2</sup> Smith, 2009. NUS submission to the References Senate Standing Committee on Education, Employment and Workplace Relations – Inquiry into the Welfare of International Students, 2009, pp. 40

departure or enrolment packs would ensure more effective delivery and receipt of information.

During the 2006 National Code draft Consultation with stakeholders, peak industry bodies expressed concern about their bottom line costs of implementing a more prescriptive *National Code of Practice* in a short timeframe.<sup>3</sup> The AVCC engaged a consultancy firm to research the estimated costs of implementing this code on their member institutions. Certainly the cost of producing information documents with all current and indicative costs of living and housing information rather than simply loading it onto a website would be a higher financial burden on education institutions. However, information provided directly to students would be more likely to be read and acknowledged by students when preparing themselves for studying in Australia. NUS proposes that this information include indicative potential income from employment, which would provide students clearer information about minimum wages, and casual or part-time employment.

NUS is concerned that many students are ill-informed by the agents who represent education providers offshore and that education providers are not held accountable for the actions of their agents. Part of this problem is due to students' inability to understand their rights and responsibilities with regard to information provision. Furthermore, students are not currently able to access a dedicated service that receives students' complaints about inaccurate information provision by education providers or their agents when marketing the Australian education on or offshore. Education providers may be aware that their representative agents are not providing accurate information to students, however the relationship between an education provider and the agent may not be affected because education agents are not currently required to follow any formal protocols, be registered with any formal body or agent and are only answerable to the education provider. The requirements under the National Code and changes that are currently before the Senate will require providers to publish lists of education agents. Beyond this however, education agents are free agents and answerable only to the education providers who pay their commissions.

*'The main requirement for education providers when accepting students from an education agent is the ability of the agent to provide students who are willing to pay full fees for their education. In return, education agents receive either a commission or set fee from the education provider. The commissions usually range from 5% to 45% depending on the education provider and the education agent.'*<sup>4</sup>

In some situations providers have arrangements where they will only pay a commission to an agent if they recruit a certain number of students, and pay an agreed sum for meeting this number. Under these circumstances, it is not surprising that NUS hears many reports by students that education agents have misled them about the information they needed prior to arrival. Such practices

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<sup>3</sup> AVCC, ACPET, TDA, EA, 2006. Joint Peak Body Response to the Industry Consultation Draft National Code, May 2006

<sup>4</sup> Smith 2009, pp. 47

by education providers encourage agents with a limited pool of clients to persuade to enroll in courses they may not be particularly interested in and use tactics such as highlighting possible migration outcomes as more than likely simply in order to fill their 'quota' and make their income.

*According to the National Code of Practice<sup>5</sup>, education providers are obliged to have a formal agreement with education agents and to discontinue any association with an agent should the agent be discovered breaching any part of the National Code of Practice with regard to providing false or misleading information. Standard 1 of the code states the following:*

- 2 (b)The registered provider must not give false or misleading information or advice in relation to:*
- i. claims of association between providers*
  - ii. the employment outcomes associated with a course*
  - iii. automatic acceptance into another course*
  - iv. possible migration outcomes, or*
  - v. any other claims relating to the registered provider, its course or outcomes associated with the course.*<sup>6</sup>

*NUS is concerned that such engagement practices and agreements are not monitored by the Regulators and that unrestricted commission systems exacerbate the problems. The legislation should restrict education agents from providing any information on migration outcomes. Such information should be available only from registered migration agents. NUS opposes any link between migration and education agents.*

### **1.1.2 Monitoring of the requirement under the National Code regarding unethical agents**

*In Standard 4, there are fairly descriptive instructions for education providers in engaging education agents and their responsibilities regarding agents who are 'negligent, careless, or incompetent or being engaged in false, misleading or unethical advertising and recruitment practices'<sup>7</sup>. In short, The National Code requires education providers to cease to associate with unethical agents who breach the National Code.*

*The difficulty with this aspect of the National Code of Practice and the legal requirements under the ESOS Act is the premise behind the institutions' engagement of education agents in the first instance. Throughout this record making export industry, many education institutions are reliant on the work of the education agent for their share of this extremely lucrative market and as such, the most successful education agents are increasingly of the most value to the providers and the unethical agent is more likely to be the successful agent.*

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<sup>5</sup> DEEWR, 2007. *National Code of Practice 2007*, pp.11

<sup>6</sup> *Ibid*, pp.11 )

<sup>7</sup> *Ibid*, pp.13

*This was demonstrated in a recent program of Insight where an offshore education agent spoke about what students want to hear and believe and the choices they make following education agent advice.*

*'GAIL BAKER, SOUTHERN CROSS STUDENT SERVICES: I'm actually an education agent based in India, in Chandigarh, and I'd have to say probably 50% of students who come into my office don't want to hear the real story and they walk out. I start saying, "It could take three months, six months, to find a job. This is where you'll be living, this is the college," you know, giving them the real picture and they walk out of my office and go to another agent who says, "You'll get PR. You'll get a job in a week. Someone will wait at the airport with a limousine to take you to your house."' <sup>8</sup>*

*Therefore, it is unlikely that an unethical agent will be disengaged by an education provider unless they are concerned about the consequences of engaging with this agent, such that the law is being monitored and enforced with penalties that will impact detrimentally on the trade of the provider.....The introduction of a restriction on the commission paid by an education provider to an education agent would effectively reduce this problem. The percentage should be capped, and monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents. Anecdotal evidence discussed by the media outlets recently has revealed that institutions were offering students money to entice friends to change colleges, demonstrating a breach in Standard 1 and 4 with respect to the formal agreements and information provision prior to a students enrolment. The suggestion above would create an environment where such poaching practices would become much harder for institutions to get away with.<sup>9</sup>*

### **1.1.3 Establishing Education Agent and Provider Protocols**

NUS suggests that a practical move forward in formalising education agents practices is to establish Education Agent and Provider Protocols that would be included in Standard 4 of the National Code. The introduction of a cap on commissions paid to education agents would be included in these protocols. Other requirements that could be covered by the protocols would include areas conflict of interest by owners of education providers and their education agents and restrictions on the recruitment arrangements such as the one above outlining the commission paid only when a certain number of students is recruited by one single agent. It is important to recognize that there are certainly situations where the education agent is persuaded to behave in a particular way because they are contracted by a provider to do so.

*"There may be merit in producing a legislative instrument, such as a Code of Practice or Regulation that would detail the protocols pertaining to associations between education agents and penalties that could be applied in investigating breaches.*

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<sup>8</sup> SBS, *Insight*, July, 2009

<sup>9</sup> Smith, 2009. pp. 49-50

*NUS believes that there is little use now in being concerned with saving the market by not closing down providers or harshly limiting providers ability to 'trade'. This has been the practice until now and the international education sector is currently at crisis point, with many students lured to Australia on false pretenses. A large number of students will leave the country with a substandard qualification, if they are lucky, and little or no ability and often little or no desire to work in the field they have allegedly been trained.*

*The closure of dodgy colleges and the clamping down on the ability of colleges to pay tens of thousands of dollars in commissions to dodgy education agents is one path to ensuring that international students and domestic students alike gain a high standard qualification in an occupation in which they will find adequate and appropriate employment. NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the ESOS Act. However, NUS would be unsupportive of any action that did not provide full protection and cover for all students affected by the closure of education institutions.<sup>10</sup>*

#### **1.1.4 Education Agents practicing as Migration Agents**

*There is a clear conflict of interest that is apparent to NUS when an education agent also practices as a migration agent. International students may approach or be approached by an education or migration agent on or offshore and be charged a fee for migration services such as student visa lodgment or change. At the same time, the agent will refer students to a particular institution from which they will also be paid a large commission.*

*NUS is extremely concerned that this practice is responsible for a large portion of the poaching onshore of international students. However, it is also a practice offshore and was considered by the Department of Immigration in a discussion paper in 2004. The paper discussed the monitoring of education agents performing immigration related activities.<sup>11</sup>*

*At that time, the Department stipulated the immigration related activities that an education agent could perform in the act of assisting an person in applying for a student visa were limited to basic information provision and assistance with lodgment but did not include advising the client nor taking any funds from the client. DIMIA raised the suggestion that education agents register as a migration agent to allow them the ability to also 'legally' provide immigration advice.<sup>12</sup>*

*Of the 3,300 registered migration agents in 2004, 25% were also practicing as education agents.<sup>13</sup> NUS is not troubled by the notion that education agents may assist clients in gaining the visa they require to attend an Australian education*

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<sup>10</sup> *ibid*, pp. 51-52

<sup>11</sup> DIMIA, 2004 Discussion Paper- Options For Regulating Migration Agents Overseas And The Immigration Related Activities Of Education Agents  
*DIMIA, 2004*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

*institution. However, that an education agent may register and perform the duties of a migration agent, and charge two clients for essentially the same service, clearly indicates a conflict of interest, and one that undoubtedly is not in 'best interests of the client', if we assume the client is an international student.*

*Since this review was conducted in 2004, the impact of the 2001 changes to the skilled migration visa program has changed dramatically. In 2004, there were early signs of the impact of the 2001 changes. The impact has been far larger than anticipated. In the 2004 review the suggestion that education agents register as migration agents appeared a measure that would resolve inadequate or incorrect migration advice being provided by education agents. Today, this combination of professions has led to a large and extremely complex growth of the 'permanent resident visa factory' industry. It has also led to the production of many international students with a substandard qualification, slim chances of being awarded permanent residency who were misled into believing the college they were going to was a legitimate education provider that they would graduate from and proudly return home or stay in Australia with a well recognised qualification.*

*NUS believes that in order to reduce the problems of poaching and fraudulent migration or education agent activity, the best course of action is to deny migration agents the ability to obtain any commission or funds from an education provider for recruiting a student. This regulation could be part of both the Migration Act regarding the migration agent activities and also the ESOS Act, whereby education providers would be unable to pay commissions to registered migration agents.*

*Anecdotally, many migration agents are recommended to students because they will be able to get the student a visa and into a college that the course won't be too difficult and after two years they will help the student gain permanent residency. In dollar figures, the migration agent probably gains \$20,000 for the services provided to the student and the education provider and the education provider gains approximately \$30,000 in fees from the student. All in all, a very tidy onshore business, and according to the international students around the streets of Melbourne and Sydney, this happens everywhere.<sup>14</sup>*

Any requirements governing education agent practices such as a protocols for education agents and providers need to be recognised by the *ESOS Act* and the National Code. Furthermore, it is crucial that all methods of monitoring education agents and education provider recruitment activities included in the *ESOS Act* and the National Code are adequately enforced in order to ensure compliance. Education providers should remain responsible for the engagement of education agents and the activities of the agents under the *ESOS Act*. The capping of commissions should also be determined and monitored by the *ESOS Act*. Further on in this document, recommendations will be made regarding additional methods of complaint mechanisms for students through which regulators will be alerted of breaches.

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<sup>14</sup> Smith, 2009. pp. 52-53

**Recommendations:**

- NUS recommends that Education Agent and Provider Protocols are established, that are clear and transparent and easily accessible to all agents, education providers and international students.
- NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider should a representative agent breach the protocols, therefore resulting in a provider breach of the *ESOS Act*.
- NUS recommends that a cap is introduced on the commission paid by an education provider to an education agent. These payments should be closely monitored by the regulatory body with appropriate attention paid to the relationship between education providers and their education agents
- NUS recommends that the protocols include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.
- NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the *ESOS Act* and recommends close monitoring of all education provider and agent activities in the future.
- NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This provision would be enforceable under both the *ESOS Act* and the *Migration Act*.

## 1.2 Education Provider Closures

### **“How should the Australian government and the international education sector protect international students if a provider closes? How should this be resourced?”**

As the department would be aware the current dual system of protecting students in the situation of a closure of an education provider or cancellation of a course, is not satisfactory. There are many areas that could be improved and it has recently been the intention of the DEEWR to attempt to make changes to this effect.

*In 2008, DEEWR-AEI conducted an internal review of the Tuition Assurance Scheme. The findings of this review are not publically available. However, the key stakeholders were invited to comment on the following key questions in order for the industry to be satisfied that the consumer protection mechanisms in the ESOS Act will meet the future requirements of the industry:*

1. *What is an appropriate level of consumer protection for overseas students when a provider ceases to provide a course and is unable to refund a student?*
2. *Does the current TAS mechanism in the ESOS Act provide for this level of consumer protection?*
3. *What are the current issues involved in the using the TAS mechanism? How can these issues be addressed*
4. *What are the potential areas of stress that TASs and the ESOS Fund will face in providing an appropriate level of consumer protection in the future?*
5. *What are the risks to the industry if the TAS mechanism fails to provide appropriate consumer protection to overseas students?*
6. *What are the risks to the industry if the ESOS Fund is unable to meet its obligations under the ESOS Act?*
7. *In circumstances where a provider has been unable to secure TAS coverage for its courses and subsequently defaults under the ESOS Act, will industry be willing to make larger contributions to the ESOS Fund?*
8. *On what basis should TAS operators be able to refuse membership of their scheme?*
9. *Is there a more effective way of providing consumer protection to students?<sup>15</sup>*

NUS is unaware of a report on the outcome of the review. However a report, submissions and details of any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the government, the students and education providers, would be invaluable in this review given the current urgency to make changes to ensure the Act can be fully operational if and when there are larger numbers of deregistered education providers.

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<sup>15</sup> *ibid*, pp. 56

In its submission to the Senate Inquiry into Amendments to the *ESOS Act, 2009*<sup>16</sup>, NUS recommended that the *ESOS Act* place further requirements on the TAS system such that students are provided opportunity to refuse alternative courses should they disadvantage the student in any way. Additionally these suggestions were included in the NUS submission to the 2009 Senate Inquiry into the Welfare of International Students<sup>17</sup>. These are below.

*a. 'Suitable alternative course'*

*The first main area for concern in this paper is the lack of definition for 'suitable alternative course'. A 'suitable alternative course' should*

- *In no way academically disadvantage a student*
- *In no way financially disadvantage a student*
- *Provide an equal or higher academic qualification*
- *Provide qualification to equivalent occupation or vocational outcomes as the discontinued course*
- *Allow a student to be able to remain in housing and employment contracts*
- *Be within a suitable proximity to the student residential address.*

*NUS suggests that when offered an alternative course the following factors are implemented as grounds for acceptance or refusal of a particular course:*

1. *The student's previous course qualification and the difference in the final qualification outcome, including, the overseas recognition of the qualification and the length and cost of the course.*
2. *The student's overall academic record not just the academic record from the discontinued course, previous academic records that qualify entry to alternative course, in order to allow the new provider to ascertain additional or existing Recognition of Prior Learning*
3. *The ability of the student to remain residing in the same place and the proximity of the alternative institution to the student. This should include:*
  - *the length of time a student has resided in Australia on a student visa,*
  - *the connection the student has to the community in which the student is living (ie employment, sports, family, children's education, religion)*
  - *the mode of transport available to the student*
  - *the financial impact on the student*
  - *the time and impact on the student's ability to study that relocating place of residence may take.*

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<sup>16</sup> Smith, 2009(2) NUS Submission To The Senate Education, Employment and the Workplace Relations Legislation Committee - Inquiry into the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009

<sup>17</sup> Smith, 2009. NUS submission to the References Senate Standing Committee on Education, Employment and Workplace Relations – Inquiry into the Welfare of International Students, 2009

4. *The capacity of alternative course providers to accept students in the study period. Should there not be a place in the current study period in a course that the student is willing to accept placement into, the remaining time may be short enough to allow the student to recommence in the following study period with no impact on the student visa.*
5. *Impact of delays in placement on the students visa including the need to extend or reissue the students visa to accommodate extra time the student will need to complete the qualification and the financial cost of this process and the students financial ability to bear this cost.*
6. *Impact of delays in placement on the students financial capacity to remain in Australia for an extended period*
7. *Impact of delays in placement and therefore need to remain in Australia for extended period on the students occupation, family commitments or health.*

*NUS recommends that the appropriate level of consumer protection to ensure that the two main objects of the ESOS Act are upheld, in Section 4A when a provider ceases to provide a course and is unable to refund course moneys, are:*

1. *A student is provided with options to attend alternative courses and the student is able to reject or accept these courses based upon the considerations outlined above, following which a refund through the ESOS Fund is provided to the students should the students rejection be considered valid according to the grounds applicable.*
2. *Consumer protection would be further ensured when the parties to this process are informed and understand their obligations and entitlements. Providers of the TAS scheme should be able to demonstrate that students are informed of these obligations and entitlements. The Education provider should ensure that such information is made available to the student prior to enrolment and at all times during their enrolment at the institution. Students should be provided such information by the TAS scheme provider once the mechanism has begun to seek alternative measures for provision of alternative courses.*

*Another area of concern to NUS is that there is no provision under the current ESOS Act or Regulations to ensure that the education provider or TAS provider are obliged to inform students of their obligations and entitlements under the TAS mechanism.<sup>18</sup>*

NUS proposes that the dual system is merged to enable the process described above to be more easily understood, administered and navigated by education providers, government and international students. Further to this, NUS has had the opportunity to review the experiences of many students from Sterling College in Sydney, where there were many students placed with alternative education providers, and some who were not placed and therefore accessed refunds through the ESOS Assurance Fund system.

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<sup>18</sup> *ibid*, pp. 57-59

There were two lessons to be learned from this situation in particular and in order for the Federal and State governments to avoid such problems occurring again, this review could make appropriate changes to the system. Firstly, many of the students who were victims of the closure, contacted the NSW state government department representatives to request places in the public state TAFE courses equivalent to their current courses. Unfortunately, the TAS system does not allow for students to access courses from providers other than those belonging to the same TAS to which their closing provider was a member. This led to many students being left without access to a suitable alternative course, and subsequently received a refund and the ability to enroll in the public TAFE institution. NUS's main concern in this situation is why there should be a distinction between Tuition Assurance Schemes. All providers should be under one scheme, as suggested above, allowing students to access the most suitable alternative and not be disadvantaged in anyway because of the scheme their failing education provider was a member. Given the level of concern to ensure all providers are of high quality and standard, there should not be any distinction in where students are able to access an alternative education. Ultimately the responsibility of the placement of students into new courses should be the responsibility of the government agency, DEEWR and in addition to this, to avoid any unnecessary anxiety for students, there should be a reasonable timeframe in which students should be placed or offered a place.

Another area of concern is the inevitable problems and financial disadvantages caused due to a college closure such as:

- *The inability of course instructors to update grades of students due to obstruction by administrators*
- *Students awaiting final grades have no avenue to obtain academic records and are unable to graduate.*
- *Students who are forced to extend length of course due to lag between switching of providers are required to extend their visas, incurring additional costs to complete their course through no fault of their own.<sup>19</sup>*

While students may be placed in alternative courses, these problems may still be outstanding and currently there is little recourse for students to ensure they are rectified, particularly the immigration/student visa extensions and financial disadvantages these extensions in period of stay may cause. The ESOS assurance fund monies should be available to all affected students able to demonstrate financial disadvantage, those who are placed in alternative courses AND those who were provided refunds and chose to stay and study in a course unavailable to them under their provider's Tuition Assurance Scheme.

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<sup>19</sup> *ibid*, pp. 59

## Recommendations:

- NUS recommends that the *ESOS Act* and *National Code of Practice* include policies and procedures to ensure students affected by closure of education providers are given support to access their updated academic transcripts and ensure that completed courses (or parts thereof) obtained with previous provider is acknowledged as Recognition of Prior Learning by new education providers
- In the event that a student must apply for a new Student Visa due to closure of previous provider and inability to complete the new course within the timeframe of their existing Student Visa, NUS recommends that the ESOS Assurance fund scheme include provision for students to access funds for additional costs incurred.
- NUS recommends that factors 1-7 in *Section 1.2* are implemented as grounds students may use when accepting or refusing a particular course.
- NUS recommends that the Department of Education, Employment and Workplace Relations be responsible for placement of students in the event that an institution closes such that the students are able to refuse an 'alternative course' on the grounds above and students are made aware throughout their education of their rights in this process.
- NUS recommends that the *ESOS Act* and TAS be amended to include the detailed definition of a 'Suitable alternative course' as included in *Section 1.2*.
- NUS recommends that complete review of the TAS system is conducted, and that all providers should be under one scheme, allowing students to access the most suitable alternative and not be disadvantaged in anyway because of the education provider's TAS scheme. This scheme should be overseen by DEEWR and the placement of students conducted by DEEWR.
- NUS recommends that timeframes for placement of students in alternative courses, resolution of transfer of funds or refunds, and administrative matters, be clearly established and standardised across states and territories, and that students be informed of these timelines.<sup>20</sup>
- NUS recommends that the review provide transparent and public reporting to the education industry of the outcomes and measures put in place to ensure that any students affected by provider closures are compensated for under a fair, moral and transparent system.

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<sup>20</sup> SUPRA submission to the ESOS Act review, 2009

## 1.3 Complaints Mechanisms

### **“Are different mechanisms needed to support international students to resolve complaints effectively? Are additional complaint mechanisms needed?”**

#### **1.3.1 Tertiary Student Ombudsman - Advocate - Conciliator**

*In 2008 and 2009 many issues have arisen in the public arena that have drawn attention to the fact that international students are inadequately supported in finding appropriate assistance and recourse when they lodge complaints about education providers, issues with workplace, housing, safety, immigration, or any other area of their lives that impact greatly on their welfare. A submission made by the NUS International Students Department, (when it was administered by the NLC) in 2004 to the Evaluation of the ESOS Act recommended the creation of a universities ombudsman office located in all states and territories.<sup>21</sup> (Smith and Wong, 2004)*

*Today, such a service would need to be extended to encompass all tertiary students, particularly given the large increase in the VET sector student population. This office would need to have some ability to hold the education provider or other party to account, not just look at administrative processes, but advise students on steps to take, actions required and assist in appeals, as well as requiring an institution to make changes where fit. Imperative in this debate is the need for a dedicated and well resourced unit in these ombudsman offices that would exclusively service international students.*

*Many onlookers as well as experts in the international education industry have realised that it has become quite apparent that this is now a necessary move for government to make in order to ensure the highest standard of education and experience for international students and to maintain the share of the market. The New Zealand Ministry of Education introduced a similar body in the earlier part of this decade, the International Education Appeals Authority. This body primarily exists to ensure that all providers comply with their pastoral care code, and are able to make recommendations to the education provider that must be adhered to. This body was also created in response to a crisis in the New Zealand education market.<sup>22</sup>*

*NUS supports the establishment of an ombudsman office for the tertiary sector that would fulfil the aims of the ESOS Act in the introduction preamble and that would also protect consumers/students and staff at offshore institutions, which lie outside the ESOS Act authority, but remain of concern to NUS. NUS would propose that rather than limit this body to servicing the university sector, the ombudsman role be extended to cover the entire tertiary sector to fall into line with the establishment of the new government body, TESQA that will monitor the entire tertiary sector. In addition, the NUS proposes that the ombudsman office be given*

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<sup>21</sup> Smith, S & Wong, A, 2004. NLC Submission for the ESOS Act Evaluation

<sup>22</sup> Smith, 2009. pp. 37

*authority to assist students with Student Visa Cancellation cases that are currently heard at DIAC and the Migration Review Tribunal with regard to breaches of academic progress and attendance (condition 8202), change of provider (condition 8206), satisfy visa requirements (condition 8516), notification of residential address (condition 8533), and the work limitation conditions of the student visa (condition 8501). As most student visa cancellation cases are for breach of condition 8202, this office would play an important role in ensuring all cases are appropriately dealt with. This office could assist with the investigation of cases regarding education provider practices.*

*Such an office would also be able to monitor the procedures for identification of students at risk of not achieving satisfactory academic progress or attendance and provide relevant evidence to the MRT or DIAC that may have been overlooked or intentionally avoided by the education providers in their appeals and complaints procedures. Generally, the office would play a large role in assessing and handling complaints by students about the practices of education providers, and be able to assist the student with taking their complaints to the relevant government department.*

*With regard to the work limitation breaches, the office could assist students with cancellations that were due to workplace exploitation, and where the employer has in fact breached the Migration Act through employing a student visa holder and forcing or allowing them to breach their visa conditions. In assisting with such cases, the Workplace Ombudsman would be able to assist, advise or may take on the case themselves, but for international students the ability to approach the Tertiary Ombudsman would also provide assistance with the other aspects of concern while cases are being dealt with.*

*The appointment of a Tertiary Ombudsman for all education providers would not replace any already existing body or authority within the education providers' or government ombuds current structures, but rather provide an extra measure of consumer protection and assistance for the student. Additionally, this centralised system would provide a means for all education providers to assess the effectiveness of current grievance procedures and policies in particular in institutions where there is no ombudsman office or similar.*

*The Tertiary Ombudsman would be able to provide a means for international students who are not within Australia to address problems that arose while they were studying here, as well as prevent international students from being forced to leave because institutions have not followed correct procedure. In both circumstances, there is currently very little recourse for the student once they have left Australia. The office may be afforded ability to negotiate for the extension of student or bridging visas to allow for cases being investigated and resolved by the ombudsman.*

*The ombudsman office could also make recommendations on necessary improvements to policies and procedures that institutions would be obliged to implement, or be sufficiently powered to make recommendation to the government authority that does have such power over changes to institutions arrangements.*

*The ombudsman office would be a way of recording the number and type of complaints and problems that students and academics encounter within all systems and therefore are able to be addressed on a national scale in addition to sector, state or institution level.*<sup>23</sup>

The *ESOS Act* would be one legislation that would recognize the outcomes, recommendations or findings of this ombuds/conciliation body. Under the *ESOS Act*, students would be able to appeal to this body for any complaint, grievance and advisory service regarding their education provider, and ESOS would require that the education provider recognize this body in all procedures both internally and externally. ESOS may require that the Education provider implement any procedural or policy changes recommended following investigation into cases by this office. Penalties would be enforceable under the Act, should this not occur.

The intention of this office would not be to impose more legislation or regulation on the current system but rather provide an independent mechanism for students to ensure that they have a recognised and effective system for complaint resolution and review.

### **1.3.2 Student Representation and Advocacy**

In addition to establishing a Tertiary student ombuds/conciliator office, NUS is aware that student representation in tertiary education providers other than universities is virtually non-existent. Some public TAFES have student representative bodies however this is very rare within the private sector. NUS is concerned that students who study in the private VET sector are unable to seek student representative assistance and guidance from sector or institution wide recognized student representative bodies. NUS is currently working with other national peak student representative bodies to create a national international student representative council, and will be working in the near future with VET sector students to establish student representation channels in this sector. NUS urges the Federal government to support this initiative, and would like to see the *ESOS Act* and National Code include recognition of student representation bodies as an important part of the complaints and appeals mechanisms. Currently Standard 8 allows a student to be assisted and accompanied by a support person at any relevant meetings<sup>24</sup>. NUS would like to see this amended to include a student advocate officer or student rights officer, or representative person from a student association. In addition, this should not be limited to a student rights officer from that provider's student association, as there have been cases whereby students have been refused a support person because they were not one from the institutions student organization, but rather from NUS or another institutions student advocacy service. Education providers should not be able to prescribe or limit the origin of the support person.

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<sup>23</sup> *ibid*, pp.38-39

<sup>24</sup> DEEWR, 2007 pp.18

**Recommendations:**

- NUS recommends a transparent and independent body funded by the Federal government with offices in each state that would fill the role of a Tertiary Ombudsman. The role of this office would be to provide appropriate assistance with the complaints and appeals mechanisms for all students, with particular attention paid to the needs of international students.
- NUS recommends that the *ESOS Act* recognise a tertiary conciliator or ombuds office and require education providers to implement changes recommended by this office.
- NUS recommends that Standard 8 of the *National Code of Practice* identifies student association advocacy services as a legitimate source of assistance and advice for students accessing complaints and appeals mechanisms.
- NUS recommends that Standard 8 of the *National Code of Practice* prevent education providers from prescribing or limiting the origins of the support person engaged by a student to assist or advise students when accessing the complaints and appeals mechanisms if the persons origin is identified as a student representative organisation either at national or campus level.

## 1.4 Change of Education Provider

### **“Should an international students ability to change their education provider be limited, if so in what way?”**

The requirements pertaining to education agent practices listed in the National Code fall short of addressing the increasing problems associated with onshore poaching of international students, and the payment of large commissions to education agents in order to increase market share. In 2007 the changes to the National Code permitted students to change provider after completing the first six months of their principle course. Reverting to the previous restriction of 12 months will not alleviate the problem of onshore poaching, but rather, shift the time-line. It is the lack of enforcement and perhaps lack of concern by governments about misleading advertising and poaching practices combined with the lack of regulation enforcement of poor quality education providers that has allowed problems to escalate.

*The rights of the student to choose to change providers must remain in policy and legislators minds, given that prior to changing this restriction from one year to 6 months, it was the student through visa restrictions that was penalised, whereas now the restriction does not penalise the student but rather the education provider enrolling the student.*

*The reduction of the restriction to 6 months allowed students who were not coping or dissatisfied with their course to change provider or course after 6 months. This change was made paying due consideration to the money and time that students would waste if they were in the wrong course, and the right of any 'consumer' to choose a different product.<sup>25</sup>*

The current legislation effectively restricts students from changing education provider before they have completed the first 6 months of their principle course. The restrictions are not in fact placed on the student, but rather the education provider receiving the international student. The student wishing to change education provider must provide documentation of release from their provider, and then the new education provider may enroll the international student. In order to be provided a letter of release, the student must provide a letter of offer from the new institution to their education provider. This procedure, outlined in Standard 7 of the National Code, clearly states that ‘it is expected that the students request will be granted where the transfer will not be to the detriment of the student’.<sup>26</sup>

A number of problems exist within the current system. Firstly, there needs to be a clear definition of ‘detriment to the student’ and a definition of what ‘reasonable grounds for refusal’ of a request for transfer may include. This will allow education providers and international students to be aware of what is expected of them. NUS would expect that the student requesting a letter of

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<sup>25</sup>Smith 2009, pp. 50-51

<sup>26</sup> DEEWR, 2007, pp.17

release would not be required to provide anything other than a valid offer of enrolment from another provider. If the education provider believed the student was in danger of being swindled in some way by the new education provider they should be required to provide evidence of this, and as such alert the regulators of this practice. Refund and tuition fee payment policies may require the student to have paid for the full 12 months fees, and as such restrict a student from being eligible for a refund. This aspect of changing provider needs to be addressed in such circumstances with regard also to trade practices legislation.

The principle course restriction rather than the time the student has spent in Australia is a problem. In a situation whereby a student has entered Australia on a higher education visa and is required to complete a six month English language course or foundation course before commencing the principle course, the student is restricted from changing to another education provider should the English language or foundation course not meet the students expectations. Students are often unaware that they are able to change provider in this situation by following the procedure set out in Standard 7 because there may be an added complication with their student visa. There needs to be an adequate and simple system under which a student may change provider in these circumstances without risking student visa cancellation. NUS would be supportive of a change to remove 'principle' from the restriction and maintain a six month restriction on any or each course of study.

The procedure that a student is entitled to follow in order to change provider prior to completing their first six months is based upon an assumption that the education provider has a proper appeals system, that is considerate of the timely nature of the students needs to enroll in a new course. As this review may have discovered, there are many education providers that do not inform or afford international students with the ability to access a proper complaints and appeals process. Again, this highlights the apparent need for the Federal government to establish a tertiary ombuds or conciliation office through which students may have problems resolved regarding changing education providers. An office such as this would also provide education providers with a process to alert the regulators of poaching and dodgy provider activity.

It is unclear of the implications on the students visa should a student change education provider without a release letter. The initial education provider may have the ability to report the student to DIAC and potentially activate the cancellation of the student visa even if the student were found to be enrolled in another course and meeting all course requirements, therefore complying with visa conditions. This area is in fact quite complex as the student visa system is still quite intrinsically involved and even if it actually isn't a visa issue, some international students remain concerned that they are unable to change provider as it will cause them to be reported to Immigration.

NUS would not support an increase in the time that a student should be enrolled in any course prior to being able to change provider and furthermore suggests that without the introduction of a student ombuds or conciliation office, the

restriction placed on providers from enrolling a student prior to the first six months should be removed from standard 7 completely.

**Recommendations:**

- NUS recommends that Standard 7 of the National Code is amended to include factors that may be used to identify 'reasonable grounds for refusal' of a 'release letter', and a definition of 'detriment to the student'.
- In the event that a student is enrolled in a new institution without providing a letter of release from the original education provider, NUS recommends that DEEWR and DIAC establish policy and procedures to ensure that the initial education provider may only trigger cancellation of the student visa for legitimate reasons such as if the student has changed education sector and is in Australia on an incorrect student visa.
- NUS recommends that a tertiary student ombuds or conciliator office is established to provide a fair and reasonable complaints procedure for students and education providers in the event that a provider refuses to release a student or a provider believes a student is in danger of being exploited by an education agent or institution.
- All students are made aware of the correct procedure for changing providers both prior to the completion of the first six months of their course of study. This should include information detailing the complaints and appeals options and student visa implications.
- NUS does not support any change to the six month restriction placed on students changing education provider.
- NUS recommends that the restriction of the 'principle' course is changed to a restriction on the first six months of 'any' or 'each' course of study.

## 2. DELIVERING QUALITY AS THE CORNERSTONE OF AUSTRALIAN EDUCATION

### 2.1 Quality Assurance, ESOS & The National Code of Practice

**“How can the intersection between ESOS and the underpinning education quality assurance frameworks be improved?”**

#### 2.1.1 Responsibility for monitoring and enforcement of the appropriate legislation

At the centre of the debate on international education is the confusion that remains throughout the sector regarding who is responsible for monitoring the relevant Acts or legislation that over sees the international education industry.

Below is the list of just a few areas of concern and relevant government, department or organisation:

Area of Concern	Responsible Body
Education quality -	DEEWR, and 7 state governments
ESOS- <i>National Code of Practice</i> -	DEEWR and 7 state governments
Immigration	DIAC, but sometimes DEEWR if the National Code or workplace relations are involved, MARA, MRT, RRT
Workplace -	DEEWR, State bodies regarding workplace rights, DIAC, Workplace ombudsman
Housing -	DEEWR and 7 state education or ESOS regulators (with regard to info provision) and the 7 state government consumer and trading departments with regard to housing legislation
Health -	7 state health departments and Dept Health and Aging, DEEWR and 7 state government education or ESOS regulators - regarding critical incidents.
Transport -	state government transport departments

The list above outlines why many international students or in fact any student or student advocate may experience confusion or frustration when confronted with problems in any one of these areas. In most instances it would be tempting for those in positions of responsibility to pass any complaint, query or problem on to another department, level of government or authority. Even in the most relevant document that pertains to international education sector, the *National Code of Practice*, the various responsibilities of the federal government and the state governments are unclear. See below, two excerpts below from the *National Code*

of Practice that discuss the regulatory responsibility shared by the Federal and state/territory governments.

*'The Australian Government, state and territory governments and providers share responsibility for maintaining and enhancing Australia's international reputation as a destination for high quality education and training for overseas students. Enhancement of quality, consumer protection and integrity of the student visa programme are achieved through collaboration between all government agencies and the international education and training industry and through inter-sectoral collaboration.'*<sup>27</sup>

#### *'B. Government roles and responsibilities*

##### *Australian Government*

*3. The Department of Education, Science and Training (DEST) is responsible for administering the ESOS Act and its associated instruments. This includes managing CRICOS and supporting national consistency and policy development to assist the consistent interpretation and application of the ESOS framework, and the National Code in particular.*

*4. DEST also monitors compliance with the ESOS Act and the standards in the National Code, particularly focusing on student visa integrity and consumer protection. DEST is responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code. DEST will publish information about its compliance and enforcement activities on a regular basis.*

*5. The ESOS framework recognises the role registered providers have in ensuring the integrity of Australia's student visa programme through their ongoing contact with students during their stay in Australia. The Department of Immigration and Citizenship (DIAC) is responsible for regulating students by administering the student visa programme.*

*6. Each state and territory government regulates the delivery of education services to domestic students. The ESOS framework recognises this pivotal role of state and territory governments and minimises the regulatory burden on registered providers by applying existing registration, accreditation and compliance systems to underpin regulation of the education and training for overseas students studying in Australia.*

*7. Under the ESOS framework, the designated authority in each state and territory assesses the registration and re-registration of courses on CRICOS and monitors compliance with the National Code. Some state and territory governments also have legislation that specifically relates to providing education services to overseas students.*

*8. While DEST is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National*

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<sup>27</sup> DEEWR, 2007. pp.3

*Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.*<sup>28</sup>

NUS's predominant concern is with respect to the *ad hoc* process student complaints are dealt with, and who is responsible for such a process. For example, when a student contacts a particular department, and is then referred to another and then perhaps another, how likely would it be that they continue to pursue any course of action or complaint or that the complaint is addressed adequately and in a timely manner that is appropriate to the needs of the student?

Rather than continue with this fragmented system, there needs to be changes that treat the sector as a whole by establishing a National Department or Authority that would be responsible for overseeing the student visa section of the Migration Act, the Overseas Student Health Cover system, the *ESOS Act*, relevant areas of HES Act, relevant areas of State government education acts, and a student accommodation framework that is currently not in any Residential Tenancy Act in any state.

*With such an authority, the international education sector would be less fragmented, more able to make changes, reviews and reassessment of the sector more quickly, utilising relevant data and experience in the whole sector. It would however be unwise for such an entity to be responsible for, as with the current system, the marketing and promotion of the international education sector, at either State or Federal level if it assumed responsibility for upholding standards and compliance within the sector. It is apparent to many that there may a level of conflict of interest in such a system. To ensure the highest level of integrity in the Australian international education sector, these areas of government need to be clearly separated.*<sup>29</sup>

NUS shares opinions with other peak bodies that the legislation does indeed cover most of the consumer protection bases it was designed to do, however, the main problem now is the lack of enforcement. Whether this is because of the lack of resources or just a confusion about who is actually responsible for the enforcement and monitoring is a problem that needs to be sorted out within the government departments and a review such as this can only resolve if it were to develop standards that the regulators must adhere to within the *National Code of Practice*. In this way, the regulators roles and responsibilities would be spelt out, just as the education providers' roles and responsibilities are. Furthermore, the regulators would be accountable and obliged to produce reports regarding their adherence to the standards, such as registering, auditing and monitoring activities. This would provide the industry, both students and education providers with clear distinctions between state and federal responsibilities.

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<sup>28</sup> *ibid*, pp. 4

<sup>29</sup> Smith, 2009. pp. 34

## 2.1.2 Education Provider Ownership

*The ownership of colleges has increasingly become a concern due to the number of private education institutions that have been investigated and may be closed down for reasons such as bankruptcy or practicing in breach of the ESOS Act. Hence these institutions are deregistered by the registering body within the State government.*

*Increasingly there is evidence to suggest that there is a need to investigate owners and operators of private colleges prior to allowing them to register an institution or course on CRICOS. Information regarding owners' financial history with regard to business and bankruptcy, their interest in other ventures such as education agents or migration agents and their level of understanding of the education sector and the laws governing this sector, both federal and state should be addressed when registering an institution.*

*In addition, the financial investors in education institutions and directors of all companies should be disclosed. The reason for such disclosure, prior to the registration or in the case of existing institutions, the disclosure of this information at re-registration is essential to ensure there is a minimum level of conflict of interest or corruption.*

*The disclosure complexity extends in this industry to the ownership of the private colleges as onshore there are many education agents who are also related to, or financially connected to education providers. The most public of these connections is the part ownership of Seek.com by the Packer giant, CMH, whereby Seek.com is a 50% owner of IDP Education. Seek is also an investor in Think, a private education company with campuses around Australia. IDP runs and operates the IELTS testing in Australia, and therefore is extremely influential in the permanent residency applications for all skilled migrants.<sup>30</sup> While this connection is large and run by the most influential members of Australia's business community, similar connections are being revealed in news reports daily in 2009 connecting community leaders and past members of parliament to education agents and private colleges in both Melbourne and Sydney.<sup>31 32</sup>*

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<sup>30</sup> Steffens, 2009 'Seek taps market for cash' Sydney Morning Herald, April 23, 2009

<sup>31</sup> Das, S, 2009 *Training College Turmoil Looms*, The Age, 28 July, 2009

<sup>32</sup> Smith, 2009. pp. 55

**Recommendations:**

- NUS recommends that the *National Code of Practice* is amended to include standards that clearly prescribe the responsibilities of state government regulators and federal government regulators with regard to registration on CRICOS, enforcement of the *ESOS Act* and monitoring compliance with the *National Code* and the *ESOS Act*. These responsibilities should be set as standards in the National Code or the Act, in the same way that the standards are set for the Education Providers.
- NUS recommends that the Federal government establish a National Authority that is responsible for overseeing the International Education industry. This Authority would oversee the student visa program, the Overseas student health cover system, the *ESOS Act* and areas of student accommodation that are not currently covered in the Residential Tenancies acts in any state legislation.
- NUS recommends that the CRICOS registration process include a full investigation of all owners and operators of private colleges. Information should be disclosed regarding the owners' financial history with regard to business and bankruptcy, their interest in other ventures such as other failed education institutions, education agents or migration agents and their level of qualification and experience in education and the laws governing the sector.
- NUS recommends that all financial investors (including Directors) in education institutions should be disclosed as part of the CRICOS registration procedure or in the case of existing institutions, the disclosure of this information at re-registration to ensure there is a minimum level of conflict of interest or corruption.

## 2.2 Meeting the Additional Needs of International Students

### **“Where do international students needs differ to other students, such that additional or different regulation is required?”**

#### 2.2.1 Student Safety and Critical Incidents

In the past three years the safety of international students in Australia has come under scrutiny. The death of an international student in 2005 in the ACT and the tragic shootings in Melbourne in 2002 brought the safety of international students and the duty of care of education providers to the attention of student organisations, education providers, government and the media.

However, industry and government attention in response to the tragic events was aimed at reducing any negative impact on the fast growing export market. The main focus throughout these incidents was to reassure the public that Australia is a safe and secure study destination. This was supported by research into the wellbeing of international students.

Other incidents<sup>33</sup> have attracted some media attention, and although they may have been addressed, there was not enough government and institution action for problems to be adequately addressed throughout Australia.

Throughout the last 5 years, the main message of student representatives has been that government and education providers are not doing enough to provide a safe and secure environment to all international students in Australia.

Some education providers<sup>34</sup> have been extremely pro-active in addressing the safety needs of international students. However, there are still many universities and VET education providers that do not provide adequate information to students about life and safety in Australia. There is a clear lack of broad level best practice throughout Australian education institutions in this area. The Federal Government has recently provided funding for projects such as the ISANA Rainbow Guide template, and government legislation, such as the *National Code of Practice*, however, little is done to ensure such initiatives are utilized or the code is adhered to. An example of this is the recent attacks on Indian students in both Sydney and Melbourne.

According to the *National Code of Practice*, all education providers must have

*‘a documented critical incident policy together with procedures that cover the action to be taken in the event of a critical incident, required follow-up to the incident, and records of the incident and action taken’.*<sup>35</sup>

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<sup>33</sup> These incidents included: racial violence against international students in South Australia in 2006, organized racial targeting in Newcastle in 2004, a large string of violent attacks in Melbourne in 2007, the exposure of many deaths of international students in Sydney in 2008 and the drowning and house fire deaths of students in Victoria in 2008

<sup>34</sup> namely University of Queensland and Victoria University; the June 2009 Universities Australia publication, *Enhancing the Student Experience and Student Safety – A Position Paper* provided a number of examples of other safety initiatives and programs.

<sup>35</sup> DEEWR, 2007. Pp. 16

There should be concern among all international students that it has taken the Indian community, Indian international student associations and other community members to deal with the issues that the victims of these violent attacks had to endure following the attack, when the regulations state that education providers should have had some level of duty of care in these processes. There has been little or no investigation by governments responsible for monitoring ESOS compliance into what, if any action was taken by the relevant education providers primarily responsible for ensuring the students medical, education and visa related concerns are looked after in the event of a critical incident.

Closer monitoring and a more prescribed definition of the duty of care of the education provider may need to be implemented. Further to that, international students need to be provided information that should any critical incident occur while they are in Australia, whether it involve a violent attack or the loss of a relative overseas, the education provider is legally responsible for activating their critical incident policy.

The guidelines for education providers in constructing their critical incident policy state the following:

- *A written critical incident policy must be created to include procedures to be followed if action is required.*
- *The National Code defines critical incident as ‘a traumatic event, or the threat of such (within or outside Australia), which causes extreme stress, fear or injury’.*
- *The critical incident policy should include contact information for the police and any other organisations that may be able to assist in such a situation, for example community/multi-cultural organisations or phone-counselling services.*
- *Critical incidents are not limited to, but could include:*
  - o missing students;*
  - o severe verbal or psychological aggression;*
  - o death, serious injury or any threat of these;*
  - o natural disaster; and*
  - o issues such as domestic violence, sexual assault, drug or alcohol abuse.*
- *Non-life threatening events could still qualify as critical incidents.*

*Any action taken in regard to a critical incident may be recorded to include outcomes or evidence if the incident is referred to another person or agency. When writing the critical incident policy and procedures, providers should consider information privacy principles at <http://www.privacy.gov.au/publications/index.html#G><sup>36</sup>*

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<sup>36</sup> DEEWR 2007 (2), National Code Explanatory Guide, DEEWR – AEI website: [www.aei.gov.au](http://www.aei.gov.au)

NUS would like to see a full investigation across the CRICOS providers to determine how many providers have such a policy and procedure and if it fulfills the criteria outlined in the explanatory guide.

It is also apparent that marketing agents material generally does not provide a large amount of information on safety in Australia, as this may deter the students from choosing Australia, a particular city or state or a particular education institution.

Legislation such as the *National Code of Practice* needs to be amended to include more requirements for provision of safety information and duty of care of students, as well as a more transparent and well resourced monitoring and enforcement regime of this code.

In addition to the international students themselves, the Australian community, Australian governments and Australian education providers are all responsible for the safety of international students. The community, including the emergency services, police, non-government organisations and community groups are regularly faced with the negative experiences of international students and in many ways are not equipped to adequately respond to their needs. This is mainly due to the level of cultural awareness training many of these professionals receive that would assist them in responding to critical incidents, or emergency situations.

Substantial effort has been made by education providers and police in some regions to try to educate international students about the role of police and other emergency service workers in Australia. However, little has been done to adequately provide professional development training to these workers from which they could gain a much broader understanding of the cultures of the main bulk of international students and, importantly, an understanding of international students' lifestyles or issues faced by them as temporary residents in Australia.

### **2.2.2 Social inclusion**

#### *a. Community Engagement – Student Centres*

*Recent research has found that many international students express disappointment that there is very little opportunity to make for students to make friends across cultures and engage with Australian students both inside and outside the classroom.<sup>37</sup> The students then are deprived of an opportunity to engage with and feel part of the community and as such, without this connection the chance of students returning in the future for either business or pleasure is greatly diminished.*

*In most universities, opportunities for interaction with local students are afforded in the classroom environment. A growing number of academics are undertaking research and professional development to increase the level of domestic – international student engagement in the classroom and enhance the education experience of all students. In some disciplines there is more opportunity than in others as determined by the proportion of local and international students.*

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<sup>37</sup> Fincher et al, 2009 and in the AEI Student Satisfaction Survey in 2006

*Universities need to make a substantial effort in future enrolment, to diversify the student intake across disciplines as it has become most apparent that in most institutions, there are some disciplines in which local students are in the minority, reducing the level of benefit the cultural diversity in the classroom would be able to provide for both local and international students. Outside the classroom also, there are many opportunities for engagement between domestic and international students, where all students meet on levels of interest, such as politics, religion, sport or the arts.*

*In both environs there is room for improvement on all university campuses, but none demonstrate the dire circumstances as revealed in the private education sector. In many of the private VET colleges, all students are international, and from the outset, this educational experience denies these students the first and foremost opportunity to engage with the Australian community.*

*Even more problematic is the situations of most students whereby there are very few students from other countries of origin other than their own, and in some cases all students are from the same region or town. While this may ensure that students are comfortable in their own cultural and language groups, it also creates a barrier for students from meeting or mixing with anyone from outside of their own home town. The experiences of these students are markedly different to that of university students, despite the isolation many university students also face because they are unable to connect with people in their own interest groups due to language or cultural barriers.*

*NUS suggests that governments utilise funds gleaned from overseas students fees by the education institutions CRICOS levy to provide Student Centres in all capital cities and in some regional and suburban centres where there is an educational hub or large numbers of students reside; both international and domestic. Student centres would be accessible to all students regardless of nationality, visa status or education sector. The centres would function as both a drop in/social centre to provide students living in small student accommodation facilities with a place to socialise outside of shopping malls and coffee shops or restaurants. In addition, these facilities could provide opportunities for students to meet, and form friendships through common interests.*

*The students centres would operate as a hub for any groups to gather, such as clubs, or societies, and could also be a place for workshops and information provision on issues for all students, particularly given that most problems encountered by international students are inherent in all student experiences, but international students are less able to resolve their issues due to their lack of local knowledge, or fear of repercussions such as visa cancellation. For example housing and tenancy, or workplace rights and tax obligations.*

*While these are usually areas that international students find difficulties and are exploited, local students are often exploited or ill-informed about their rights and responsibilities, because many do not have access to workshops or information sessions. Through operation a centre that provides information as well as interest based workshops for all students, rather than 'international student only' the ability for domestic and international engagement and social inclusion may be enhanced, particularly given these would be voluntary interest areas. Additionally, workshops that are primarily for international students, such as permanent*

*residency or student visa sessions, may attract local students who are often intrigued but unable to gain any understanding of international students.*

*International student centres or hubs have been called for in reports by both the City of Sydney, the Brisbane City Council and the Victorian State government<sup>38</sup>, in the three main destination cities for international students, however, recently published research has demonstrated that providing such a centre, labeled as international would foster the divide and not assist and encourage international or domestic students to interact outside the classroom.<sup>39</sup> Additionally, separate services would further isolate the students who are enrolled in institutions without local students, who also live, work and study with students from their home country and often their own region.*

*The student centres would provide referral and advocacy services, and information provision of accommodation, work and safety materials, community groups, and local events and festivals. Each centre would be promoted through state and federal government Study in Australia websites and staffed by student volunteers as well as paid staff, providing a further opportunity for community engagement to students.*

*A further benefit of such a service that is central to all international and local students is the ability for these students to register, and become 'members' of email or newsletter information that can be then dispersed throughout the student communities creating more awareness of the service and resource available to all students.<sup>40</sup>*

#### *b. Community Awareness*

International students are consistently being referred to in media and government documents as a revenue source. From the initial introduction of full fee paying international students into the higher education system and then subsequently into the other education sectors, the money raised by the income derived from full fee paying students has served negatively in the promotion of international students to the broader community and population of Australia.

Incredibly, there remains a significant portion of the general population who still believe that international students take domestic students places and their presence reduces the quality of education provided at universities. These beliefs continue because governments and education providers have done little to dispel these as untruths and myths and to put forward accurate information regarding the factors that impact on education quality and the accessibility of university places for Australian students and the relationship between these places, government funding and overseas student full fee places.

Additionally, the limited public campaigning for the plight of international students embarked on by government is based on the economic contribution these students make, usually loosely detailed, providing little evidence on how many Australians are fortunate enough to be employed because of this industry. No public awareness campaign has ever been initiated by any party promoting

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<sup>38</sup> Brisbane City Council, 2007, DIIRD, 2008, and Turcic, S. 2008

<sup>39</sup> Fincher et al, 2009.

<sup>40</sup> Smith, 2009, pp. 22-23.

the cultural and social contribution of the international student community in Australia.

The Australian public is very much unaware of the social and cultural contribution and as a result in times of crisis, little empathy or sympathy is afforded the international student but rather uneducated and ignorant public remarks are accepted and unquestioned. In media blogs and radio talkback shows and racism is allowed to foster, while duty of care is denied.<sup>41</sup>

### **2.2.3 Housing**

*The housing situations of international students have been afforded a lot of media attention in recent times. The housing shortage experienced in 2008 and the large increase in property prices and therefore rental accommodation availability and access has led to logistical problems for all institutions in meeting housing needs in the residential areas surrounding many education providers. This is most apparent in the larger inner city campuses in Melbourne and Sydney, although smaller cities, Adelaide, Perth and Brisbane have also been affected and have been active in developing initiatives to try to meet housing needs.*

*A coordinated national approach by governments to address many of the housing issues faced by students has not occurred because housing legislative jurisdictions are state based and differ from city to city. However, there are similar problems faced by all students, and more recently, international students throughout Australia.*

*Many international students are unaware of their housing rights and obligations should they rent privately or reside in 'student housing accommodation' options. Community and university housing services are becoming more utilized by international students when seeking help with accommodation problems. However many do not follow up with complaints. The actual numbers of students who report exploitative or illegal rental practices are unknown, however as reports are increasing, the problems are understood to be widespread. This requires immediate attention to both provide more support services to assist and also to encourage students to come forward to seek assistance when they are experiencing housing problems.*

*In most states there are tenancy unions who provide advocacy services for tenants, and often advocate on behalf of international students. In particular, tenancy advice services provide information and advice to many international students who live in share house situations, boarding or rooming houses and student accommodation facilities. International students do not make up a large proportion of inquiries or complaints received by housing services at education providers or at government funded services like the Tenants unions. However, as far as casework is able to show the problems this cohort of students present to these organisations are complex and suggest that a large number are unaware of their basic rights and obligations under any tenancy or consumer legislation.*

*International students usually reside in either student accommodation, boarding or rooming house situations or in homestay, particularly in their first year of study. According to the Tenants Union of Victoria, many international students don't live*

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<sup>41</sup> Ibid, pp. 23-24

*in the traditional share-house style student accommodation but rather more like rooming house accommodation where each room is separately let out by the landlord. Therefore, the majority of students are unaware that the house they live in is in fact defined under tenancy law as a rooming house and not a normal rental property. In NSW, rooming houses are not covered under Residential tenancy law, and nor is student accommodation. This creates many complex problems for international students.*

*The next few paragraphs will provide further detail of the main housing situations and the problems international students face.*

*a. Exemptions for student accommodation providers*

*Student accommodation facilities are a large cause of concern for many international students. In most state government tenancy laws student housing facilities that are 'affiliated' with an education institution are exempt from the Residential Tenancies Act.*

*As a consequence, international students are often exploited by accommodation providers while the Act does not clearly state what defines the 'affiliation' and nor is this adequately enforced. Therefore many student accommodation providers merely indicate they are connected to an education provider when in fact there is no formal affiliation and these providers are more often a rooming house in the local area of the education provider. Importantly in this situation, international students are not aware of this distinction. They have a right to assume a basic trust that the laws regarding housing and tenancy are being enforced and they are protected from serious exploitation.*

*The Tenants Union of NSW, and the Tenants Union of Victoria (TUV) have both recently addressed this issue in submissions to their respective governments. In 2005, The Tenants Union of NSW recommended that the NSW Residential Tenancies Act only exempt a housing provider if the accommodation is wholly owned or leased by the education institution, and the tenant is or was enrolled at that education institution in the previous six months.<sup>42</sup>*

*The law at that time was not amended to include this recommendation, and in 2007, in its response submission to the NSW government report into the law reform inquiry, the Tenants Union of NSW declared the exemption for student accommodation providers 'is not well-defined and is open to an interpretation that is too wide'<sup>43</sup>. The report recommended that the 'the exemption for student accommodation be the subject of further consultation with educational institutions and student groups' however no progress nor legislative change has been made in this area since the report was released in September, 2007.*

*In addition, the Tenants Union Victoria clearly opposed any exemption under the Victorian Residential Tenancy Act, stating that universities usually have very little to do with the student accommodation providers, and expressed concerns about the various types of exploitation and mistreatment by these providers who could demonstrate little proof of their affiliation and yet claimed exemption from complying with the Act. The TUV noted that students have little recourse for*

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<sup>42</sup> Tenants Union of NSW, 2005

<sup>43</sup> Tenants Union of NSW, 2007

*complaints handling if they object to being evicted. In most instances, the university systems are inadequate to deal with such complaints, as they are not involved in the operation of the accommodation provider in any way. Similarly the TUV recommended that the Residential Tenancies Act be amended to include organisations that are not education institution hall of residence or on-campus dormitories or part of an education institution, and are operating commercially.<sup>44</sup>*

*In 2008, the Victorian government did amend the Residential Tenancies Act to require a formal affiliation, consisting of a written agreement between the owner or operator of the accommodation company or premises and the institution, to provide accommodation to current staff or students of the institution<sup>45</sup>. Other States have not fallen into line with such requirements and therefore such protections are not afforded equally throughout Australia.*

*A suggestion put to the NUS by the Tenants Union of Victoria is that the most effective way forward for student accommodation to be dealt with under all state tenancy laws may in fact be to have a whole section in the respective residential tenancy acts throughout Australia that deal specifically with student accommodation. NUS suggests therefore that should a housing provider identify as a 'student accommodation facility' it must comply with certain student housing contractual requirements and obligations, that would be appropriate to the housing and financial needs of students and student accommodation providers. As such, exploitative practices, such as demanding payment of 6 or 12 months rent in advance and denying access to a tenant who is late with rent would be unlawful because the provider would not be exempt under any states tenancy laws.*

*All state governments could adopt a national approach, such that the on-campus dormitory style accommodation remain exempt, and all other student accommodation is covered under a new section of the respective state tenancy laws. Essentially for international and local students, such a change would provide legal protection for all students living in student accommodation facilities. The students would be able to appeal against breaches to the new section through the same mechanisms currently available for appeals under the respective tenancy legislation in each state and territory, rather than is currently the case, where students either have to appeal under fair trading and common law or through an education institutions appeal process that has little or no control of the housing provider's operations.*

#### *b. Hostels, Boarding and Rooming Houses*

*In the instance where it does exist in state legislation, boarding, lodging and rooming house legislation remains confusing and inadequate to address the many rental and safety problems in this increasingly popular and affordable accommodation option. Traditionally, the most common rooming house residents were people who were elderly, homeless or mentally ill.*

*There is very little data detailing where international students reside. The main research predominantly investigates the living arrangements in student accommodation facilities; however, the media over the past 3 -4 years has depicted*

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<sup>44</sup> Harrison, 2007, Submission in Response to Residential Accommodation Issues Paper, Consumer Affairs Victoria, September, 2007 – Tenants Union of Victoria.

<sup>45</sup> Residential Tenancies Act Victoria, 1997, Section 12

*international students housing in a very different light. The images and descriptions most commonly seen in Brisbane, Sydney and Melbourne of extreme overcrowding in small privately rented houses, with students 'hot-bedding', inadequate cooking and bathroom facilities and poor heating, lighting and hygiene are now the norm for many international students.*

*In a Melbourne suburb of Brunswick in 2008, the media, local council of Moreland and the TUV were involved in uncovering a phenomenal case of extreme overcrowding when over 40 Nepalese international students were found to be living in a small house, and adjoining garage converted into bedrooms. After discussion with both the Moreland council and the TUV, it became apparent that the local councils in and around Melbourne, and probably in most states and territories, have very little means or ability to detect and then monitor how many houses would have similar living arrangements. Some have little knowledge of how many international students are residing in their municipality.*

*The TUV and Moreland Council expressed extreme concern that the students had all but disappeared following the council intervention in this case, despite the students being in no trouble themselves, and the desire of all concerned to find more suitable and affordable housing for these students. The TUV was of the understanding that the students were provided the landlords contact details by the Nepalese consulate, who was referring students to this person as he was meant to be helping them to find housing with people of their own country of origin, however this was not substantiated. According to the news articles, each student was being charged about \$70 per week for the privilege of living in these despicable conditions.*

*This was just one example and an extreme case, that has been exposed in the media and therefore brought international student housing situations to the forefront. However, other areas and local governments report similar scams and problems with houses being converted illegally into rooming houses, and in some situations the housing of students is arranged prior to the students leaving home. One council reported that owners of properties do not even live in Australia, and money does not change hands in Australian dollars but rather is arranged and paid by parents in the students home country with little or no regard for Australian tenancy, building and housing laws. Students in situations such as these are therefore tied to these housing arrangements as they are not in control of their finances, and may not even leave the premises if they discover they are being exploited or living in poor and unlawful conditions.*

*Unlike Victoria, students in NSW are less fortunate again. Despite repeated requests to the NSW state government by the organisations such as Tenants Union of NSW, the university student associations and housing officers, there is no provision under the Residential Tenancy Act 1987 in NSW that addresses boarding, lodging or rooming house arrangements. Tenancy arrangements that fall under this definition, then become exempt under the Act and fall under the jurisdiction of common law, and fair trading Acts, which at best is extremely inadequate to protect international students from exploitative landlords. We recommend that this review committee refer directly to the Submission by the Tenants Union of NSW to the NSW Ministerial Taskforce on International Education for guidance and examples on how this may best be improved. This submission puts forward*

*many examples of abuse and exploitation by landlords because the housing circumstances can be defined as boarding and lodging and therefore are exempt under the RTA 1987. As a result international students are left vulnerable, homeless, and with little or no means of recourse or redress.*

*c. Other issues*

*(This section and its respective recommendations has been borrowed and adapted from the NUS/NLC submission made to Consumer Affairs Victoria 2007 Residential Tenancies Review)*

*Research conducted with the international students in his class at Cambridge International College in 2007 by Chris McRae revealed that many international students face insurmountable problems when sourcing suitable and adequate living arrangements and these problems lead them to live in undesirable conditions or to break the law to obtain housing that is also substandard.<sup>46</sup>*

*In order to obtain a rental property, tenants must provide adequate identification and sufficient documentation. McRae found that most students were unable to provide the necessary documentation such as references from previous accommodation, sufficient identification and proof of income or such documents. McRae expressed concern with these problems because of the further social implications caused by these difficulties such as the development of 'deceptive behaviour' involving students using false or other persons documents or payslips to gain rental properties.<sup>47</sup>*

*In addition to this, staff previously employed at the housing and accommodation services in Deakin university student association provided NUS with descriptions of discrimination faced by international students in private rental accommodation. Deakin university student association (DUSA) and McRae discuss the forms of discrimination faced by international students in the private rental sector. The staff at DUSA housing service had reported both overt and covert discrimination. This involved landlords openly stating certain nationalities of people they do not want renting their properties and less obvious changes in demeanor when meeting students, inability to commit to leases at that point stating they would get back to the service after considering all options.<sup>48</sup>*

*Discrimination, not only racial but against a group such as international students as a whole, leads to students resorting to other measures to secure housing. Students and indeed international students may not seem to landlords to be the most attractive tenants usually due to negative experiences with other students previously. Facing group discrimination, international students often rely on help from friends with permanent resident status, who are working full time, to sign lease agreements, and provide their own documentation to landlords or estate agents to secure the housing.*

*In many instances, this has led to the types of living arrangements that are then documented in the media, with many students sharing bedrooms and often taking shifts in sleeping, endangering their lives with unsafe cooking facilities and as was*

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<sup>46</sup> Mc Rae, 2007 Cambridge International College

<sup>47</sup> Ibid. pp.

<sup>48</sup> DUSA, Anecdotal Housing Information - An excerpt from the DUSA Student Rights Semester 1, 2007 International Housing Report

*found in the house fires in Footscray in early 2008, the use of laptops in the bedrooms causing a fire with no smoke alarms to warn the residents and provide them time to escape.*<sup>49</sup>

#### **2.2.4 Student Visa Compliance**

International students' education experience is always a far more complex and limited experience because this cohort of students must comply with their student visa restrictions. This means for the most part that they must achieve satisfactory academic progress, and study full time. These two main requirements assist in ensuring successful academic outcomes for international students. The restriction on work rights as a visa condition however, in principle is applied with the intention of also assisting in ensuring that international students' main occupation in Australia is education, but also assists in rendering many students vulnerable and often exploited by employers. NUS would like to recommend that this review investigate the problems experienced by international students both in casual and part-time work and also in work-placement or internship opportunities, and amend the *ESOS Act* or National Code in the appropriate sections in order to provide less opportunity for students to be exploited in workplaces. Further on in this submission there is a large section regarding work exploitation and student visa compliance.

#### **Safety Recommendations:**

- NUS recommends that the CRICOS registration procedures include assessment of the Critical Incident Policy. This policy should be lodged with the regulatory body and assessed against the explanatory guide and monitored by DEEWR in the event of a critical incidence.
- NUS recommends that the police and other emergency services in each state should be made aware of the existence of the 'critical incident policy' to ensure that the procedures in this policy are activated immediately by the education provider
- NUS recommends that the police in each state need to be provided with professional development that includes cultural awareness and awareness of the particular issues (such as visa concerns) faced by international students which would impact on non-reporting or not trusting government or the police.
- NUS proposes that the community and government need to be more informed about the working hours, and lifestyles of international students in their communities, in order to introduce changes including safer public transport late at night, both in inner suburbs and in outer suburban areas as well as safer areas surrounding train stations and bus and tram stops. (This may include adopting measures such as in Sydney or reinstating staff on train stations after hours and on weekends
- NUS recommends that the Commonwealth government implement changes to legislation to ensure that safety information & police familiarisation sessions are compulsory items in orientation sessions and that attendance at these sessions is compulsory for all international students.

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<sup>49</sup> Smith, 2009. pp. 15-21

**Social Inclusion Recommendations:**

- NUS recommends that state and local governments contribute funding and resources to establish student centres that may be accessed by all students but primarily provide international and 'new to the city' students information, advocacy and social support.
- NUS recommends that all major cities and regional suburbs or centres establish a 'student centre' that is partially funded by CRICOS registration revenue.
- That Commonwealth and state governments embark on a public awareness campaign to highlight the social, cultural and economic contribution the international student community makes to the education experiences of students in Australia and to the community of Australia as a whole.

**Accommodation Recommendations:**

- That all states amend the tenancy legislation to provide a section that deals exclusively with student accommodation, regardless of affiliation to an education institution, that has a national set of requirements with specific regard for the housing and financial needs and circumstances of students.
- That all states conduct an audit of student accommodation providers ensuring that the current tenancy law is adequately being adhered to at all times, with adequate penalties that will prevent student accommodation providers from disregarding their obligations under the relevant Acts.
- That every education provider is required under state and/or Commonwealth government legislation to make available affordable accommodation to all new international students for the first 12 months of their education in Australia.
- That education providers are required under the *ESOS Act* to provide assistance to international students to find adequate and affordable accommodation, which would go above and beyond provision of real estate agent listings but rather assist students with rental applications and other assistance as required
- That Federal and State governments provide increased funding to service providers for accommodation and housing to ensure students have adequate information on housing rights, responsibilities and recourse.
- That international student groups and government tenancy departments collaborate to identify the most effective methods of assisting international students gain housing without having to resort to illegal measures involving falsified documents or lease arrangements.
- That landlords, estate agents and students develop programs to highlight the extra needs of international students, such as flexible lease arrangements, provision of furniture or household goods in rental properties and also include cross cultural understanding for both students and landlords,

providing students with clear understanding of expectations of landlords in property maintenance.

- That international students and landlords are informed about the barriers international students face when obtaining the correct documents required to apply for leasing agreements. Provisions should be made to take into consideration the availability of the standard documents with regard to international students income situations, due to the fact that some don't work but are completely reliant on family for income and therefore are not able to show proof of income. International documents should be acceptable as documentation such as proof of identification and income.

### 3 EFFECTIVE REGULATION

#### 3.1 ESOS Compliance and Adequate Enforcement

##### “Is Esos Compliance And Enforcement Adequate?”

###### 3.1.1 Funding Revenue and Distribution from CRICOS fees

Each education provider that enrolls international students in courses, must pay an annual registration fee. This fee is calculated in the *ESOS Act* 1997.<sup>50</sup> NUS has expressed concern regarding the use of the revenue collected as ESOS registration charges, given the large amount of funding provided to the marketing arm of Australian Education International, and the poorly resourced regulators in both state and Federal governments. This funding, by rights should be used to adequately monitor and enforce compliance of the *ESOS Act* and provide a reliable and consistent complaints mechanism for international students regarding their education providers.

Currently there is little or no recourse for students who have problems, complaints or issues concerning their education provider, living circumstances and general welfare in Australia. Most students do not have enough knowledge of the Australian systems to be able to access the most appropriate help with any problems they may have, nor are they usually comfortable in approaching government departments to report problems. There needs to be funding put back into the system to ensure the welfare of international students, from the revenue that is contributed to the government and education providers by international students' fees. The main recommendations that NUS makes in this respect are:

- a. to relinquish the responsibilities for the large and varied number of government departments involvement in the international education sector, but rather have one department or authority that will adequately oversee the regulation of the sector;
- b. that each state establish a Student Centre and subsequent centres in all regions where there are a large number of international students studying or residing (as per Social Inclusion Recommendation 2.);
- c. that each capital city establish an office of tertiary student ombudsman, conciliator or advocate.

The implementation of these three changes would provide a system through which the international education sector could provide students with the protections, advocacy and support they require through both independent and government controlled entities.

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<sup>50</sup> ESOS (Registration Charges) Act, 1997

## 3.2 ESOS and the Student Visa Program

### “How Can ESOS Better Support Australia’s Student Visa Program?”

#### 3.2.1 Student Visa Requirements

*a. income requirements*

All international students studying in Australia on a student visa at the time of application for their visa, must sign a declaration that they have sufficient funds to meet all expenses of living in Australia.

#### **See below excerpt from Form 157A – Application For A Student Visa:**

*Q.41. Do you have access to sufficient funds to support you and your family unit members for the TOTAL period of your stay in Australia (including proposed course fees for you and any school-age family members, living costs and travel costs, regardless of whether your dependants intend to accompany you to Australia)?*

*Yes – complete declaration below*

*No - go to the next question*

*Declaration:*

*I declare that I have access to sufficient funds to support myself and my family unit members (regardless of whether they are accompanying me to Australia) for the total period of my stay in Australia.<sup>51</sup>*

This declaration has been cited on numerous occasions by education providers, education department spokespersons and other government representatives in response to questions about the level of income international students are living on in Australia, in relation to problems students have because of working too many hours or being exploited in the workplace, living in overcrowded and often dangerous housing situations, restricted access to student loans and no access to government income support, and international student demands for transport concession in Victoria and New South Wales. What is not determined in legislation or regulation is when students state in their declaration that ‘they have access to sufficient funds’ to support themselves and their families in Australia, how they are informed the amount that will be sufficient to live in Australia.

Changes in 2007 to the *National Code of Practice* have included new requirements that all education providers ensure that students are provided before enrolment ‘indicative’ costs of living in Australia, costs of different

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<sup>51</sup> DIAC, 2009, *Form 990i*

housing options, indicative course related fees, advice on the potential for fees to change, and costs for schooling dependants of applicants. This information is now required to be provided to students but again can be provided by referral to a website. There is often a difference between what students should be told by education providers, what they are told and the accuracy of some of the information. In addition, this information is very different to what student visa applicants are required to provide the Department of Immigration and Citizenship when making their application both in the declaration and when meeting evidentiary requirements. Student visas are issued in 5 different categories.

The amount prescribed by the regulations for 12 months living costs is set at \$12,000 – extremely low amount of money to cover 12 months living expenses. The \$12000 amount is way below the actual living cost, so in real life, it doesn't equate to 3 years of living expenses.

What would be more suitable is that the government look at 3 years worth in their current requirements, ie \$36k, according to what other calculations (such as the Australian Scholarships fund calculator) actually state should be one years living expenses and then, say it is \$24k for one year, they should change the requirements to ask students to show 1.5 years living expenses, at \$24k - rather than asking for an amount that correlates to any real cost of living and so really the amount per year would change, and increase but in lieu of that, the number of years they need to show will decrease in line with how it relates to the current requirements. This way, students are given the true picture of what it costs to live in Australia, and are not negatively impacted by the change. Once a true and reliable cost of living amount is determined with reasonable and achievable requirements for showing this amount, the amount can then be indexed and still remain a relevant and reliable amount.

Additionally, there needs to be some focus on the students that don't show any financial income, why should each country be different just because of its Assessment Level (AL)? The DIAC should make all countries show similar figures and if they choose to continue with AL's apply the same length of time for living expenses and tuition costs but differentiate in the sources of income, such as they do currently.

NUS recommends that advice is sought from bodies such as the Australian Scholarships Group to determine what the actual living costs and the income sources are for international students. When making recommendations to suggest changes to the income and cost of living requirement due consideration should be paid to the current evidence in many research articles that suggest that approximately 70% of full time undergraduate students gain paid employment and work an average of 14.8 hours per week and one in 6 working over 20 hours per week (AVCC, 2007). Regulators should take a realistic approach to what is actually happening rather than support a system that is clearly outdated and causing financial problems and insecurity for students. The previous government recognised that most international students want to work part time and demonstrated this by removing the requirement for students to

apply for permission to work but rather from April 2008 all new students visas are granted with automatic work rights.

Other interesting anomalies with the assessment levels are the financial requirements, that require students applying for English language visa from level 5 countries must show they have the funds for the full length of their course, which is limited to 40 weeks in length, but must have held the money in savings for 5 years, while students from level 4 countries must show they have enough money to live on and pay course costs for 3 years, but they are restricted to a 40 week course. Students from level 3 countries must have evidence of funds for 2 years and their course is restricted to 50 weeks while level 1 students don't have to show any evidence of funds and their courses can be any length.

There appears to be a strange mix of agendas behind these requirements, one that could easily be alleviated if all measures were standardized for all student applicants or at the very least appropriate to the length of course and length of visa. The UK system is a far more realistic approach, with no discrimination between countries of origin, tuition fee and living expenses requirements is based on course length and the region the student is intending to study, rather than country of origin. Additionally, the amount of cost of living is based on the 'typical academic year of nine months', therefore paying consideration to students' ability to work and earn money outside of the academic year.<sup>52</sup>

#### *b. English language requirements*

The assessment levels requirements such as English language proficiency should be standard across all assessment levels and appropriate to the education sector/visa subclass rather than based on risk assessment of each country. Many are not suitably matched currently with the native language of the country or the requirements of the course.

For example, AL 5 country applicants need to have level 7 Ielts to be able to apply for any course, including English language visa, which is clearly unsuitable because level 7 is the level of English required for students who are hoping to study university degrees such as medicine or law in some well regarded institutions and is higher than any English language requirement required for all skilled migration visas. In contrast, students from countries such as Indonesia, Malaysia, Korea and Japan, where many students do not speak English as a first language and have English language difficulties, are not required to meet any Ielts testing beyond that required by their education provider because they are level 2 and 1 countries.

NUS believes that education providers should set the English language requirements for all visa subclasses or based on the course of study such that these should be the same for all applicants, given that currently such

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<sup>52</sup> British Council, 2009. First steps: A Predeparture Guide for Students Coming to Study in the UK 2009-10 – Education UK

requirements are not based on the first or second language policies or status of English language in the country of origin.

Additionally, students from India are anecdotally reported to have very few English language difficulties, are expected to have IELTS 5 to gain an Elicos student visa and 5.5 to gain a student visa for a VET or Higher Ed degree while students from China are not required to meet a separate requirement for English language visa as they are Al 3, but are required to meet the same criteria as Indian applicants for Higher Ed and VET visas, despite being often reported as having many more problems with English language than other students.

**Recommendations:**

- NUS recommends that the ESOS review make recommendations to change the amount of money students are required to demonstrate to be granted a student visa with due consideration paid to the current evidence regarding the number of hours per week students spend in paid employment.
- NUS recommends that the financial capacity of students regarding amount students must show, and evidentiary requirements is removed from the AL system and be standardised for all countries, and based on visa subclass and course length, rather than country of origin.
- NUS recommends that advice is sought from bodies such as the Australian Scholarships Group to determine accurately estimated living costs for students and the amount students are required to demonstrate be appropriately indicate that the amount signifies a partial living cost, or will meet living costs for the academic term only.
- NUS recommends that English language requirements should be the same for all assessment levels, but varied for each visa subclass as applicable to and in consultation with the education sector.
- NUS recommends that DIAC consult with education providers to determine the most appropriate levels of English language proficiency for each visa subclass.

### 3.2.2 Student Visa Compliance

#### a. *Exploitation in the Workplace*

Problems encountered by international students in the workplace include –

- Underpay, low pay and cash in hand work
- Limited understanding or knowledge of workplace rights and minimum wages; partly due to cultural differences and partly information provision.
- Because of cash in hand arrangements, they are not afforded workplace safety protection, or job protection
- Because of low pay, students work many hours over the legal limit, leaving them open to further exploitation because of their fear of being reported to DIAC. Anecdotal evidence suggests that this is used to withhold money, stop students from leaving roles with poor work conditions, and under payment.
- Students miss classes so they can work these long hours and therefore their studies suffer.
- With new student visa to temporary to permanent resident visa opportunities, many are working for no pay, or even paying for the privilege of working just to gain work experience required to gain permanent residency.

The potential threat of deportation for breaching student visa conditions results in international students being reluctant to lodge complaints with the relevant authorities and is used by employers to exploit international students in the workplace, placing students in positions where they are forced to accept low level employment conditions, breach visa conditions and jeopardise their education in Australia. The extent and nature of the workplace exploitation demonstrates that the policing, enforcement and harshness of the migration law is partly responsible for placing international students in this vulnerable position.

International students enjoy the same rights as all other workers under the *Fair Work Act 2009*, occupational health and safety laws, and state and federal discrimination laws. However, until recently, the Fair Work Ombudsman had received very few complaints from international students, when, assisted by Unite, the 7Eleven cases began. The low number of complaint to authorities demonstrates a real sense of fear and mistrust from international students primarily caused by the DIAC requirement of limiting hours of work to 20 hours during study time and deportation if the 20 hour limit is breached. Unscrupulous employers use threats of reporting international students to DIAC and/or threats to family/friends back at home. In reality however, very few international students are deported for breaching the 20 hours limit, compared with the

international student population as a whole, and the total number of student visas cancelled.<sup>53</sup>

Anecdotal information from the Fair Work Ombudsman is that students who have worked over 20 hours are those who are economically forced to do so because they usually work in low paid and underpaid jobs. A student might have signed an agreement to work 20 hours at a particular wage rate but when they start the job they are being paid at a lower rate and they can't live off that amount so they have to work over the 20 hour limit. International students tend to be employed in low paid industries such as retail, hospitality and cleaning and are often exploited by employers from the same ethnic background. The main type of issue students face is underpayment and non payment of entitlements.

Student employment officers in Universities and TAFEs often assist international students with finding work. NUS contacted student employment officers across Victoria about international students and received a response from six. All six student employment officers indicated that international students come to them with issues at the workplace, however the frequency varies, one student employment officer said it was rarely while another indicated quite regularly. The issues presented by the students relate primarily to underpayment and non-payment of entitlements such as wages and superannuation. As well as not understanding the repercussions of agreeing to conditions offered like agreeing to work for less salary until they get some experience. "One student was told they would be on a trainee wage for 6 months which was less than \$10 an hour". Other problems experienced by the students were called in on short notice, being paid cash in hand, no consistency of hours, bullying and discrimination.

Two student employment officers said international students would not admit to working over 20 hours during the semester. "There was a particularly tragic case where a student had self immolated because he was turned into DIMIA". Another student employment officer said that they often had students admitting to working more than 20 hours a week and the students were aware that this places them at risk. She also said, "Students are not aware that voluntary work will be counted in their 20 hours visa restriction. This is a real issue as we recommend students use voluntary work (with not-for-profits) to gain local experience, especially in course related field".

The jobs where international student were experiencing exploitation ranged from sales/telemarketing/commission only jobs to IT work involving website construction to working in Asian restaurants.

*"Sometimes students are completely unaware of the injustice of these work practices and usually they won't argue with an employer but would decline a job offer or leave the job if conditions became unbearable. Some will stay in the job*

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<sup>53</sup> Anecdotal evidence provided in informal conversation with DIAC officer

*regardless, as they are desperate-sometimes for money, but more often experience, in the case of professional work experience for graduates”.*

*b. 20 hour limit on work rights and mandatory cancellation of student visas*

In Australia, as in most of the competitive countries exporting international education, international students are permitted to work up to 20 hours per week. Prior to 1999 all students were automatically able to work up to 20 hours per week. From 2000, international student visas were granted without permission to work, and visa-holders were able to apply for permission to work once the student had commenced study in Australia. The principle of this change was to ensure that students were enrolled in their course, had commenced study and were effectively known to the education institution prior to beginning any paid work. It was believed that not allowing students to commence part time work prior to commencing study would help to ensure that students are less at risk of breaching visa condition 8105 which is attached to the student visa once they are granted permission to work. This condition restricts the student to working up to 20 hours per week while their course is in session.

As a consequence of changes relating to course and attendance requirements in the *ESOS Act 2000* and the *National Code of Practice in 2007*, from April 2008 student visas are granted with permission to work with their initial visa application and holders are allowed to commence work straight after arrival in Australia.

In November 2001 the visa condition, 8501 was changed, and with that, the Migration Regulation 2.43 (2) (b) stated that students who breached condition 8105 were subject to mandatory cancellation of their visa. This means that the department **must** cancel the visa if there is proven to be a breach of the 20 hour limit. However, in contrast to this, students who have not been granted any work permissions, and therefore have condition 8101, 'no work' - on their visa, are subject to discretionary cancellation in the case of a breach of that visa condition.

Since March 2007, the *Migration Act* contains provision under section 245AA, for employers to be prosecuted for employing a worker in breach of their visa conditions. This amendment was implemented to try to stop non citizens either working illegally or in breach of visa conditions by deterring employers from engaging these workers. The Federal Parliament conducted a Senate inquiry into the implementation of this amendment to the *Migration Act* involving written submissions and Senate hearings. The main concerns addressed in most submissions centred around the enforcement and harshness of the new amendment and how or when employers would be prosecuted. The Department of Immigration defended the laws as not harsh, but quite lenient when compared with other countries.

*‘both the United Kingdom and New Zealand operate schemes whereby employers of illegal workers will commit an offence*

*unless certain checks are undertaken at the point of recruitment. Other countries such as Switzerland and Canada apply sanctions to employers who merely act negligently or who fail to exercise due diligence in checking work rights*<sup>54</sup>

Contrary to the general understanding of DIAC practices in workplace raids for illegal workers, the Department also reassured the Committee that this was clearly a new practice that the Department sought to clarify and they did not intend

*“to refer any cases to the Director of Public Prosecutions unless an employer had first been given a warning and guidance on how to check work rights. In other words, no employers would be caught off guard by these offences. There would of course be exceptions for cases involving employment rackets or aggravated offences but, as a general rule, no employer will be prosecuted unless they have first been given a warning. We would want to be fair and reasonable with employers.”*<sup>55</sup>

*‘Some of that might mean that we change a little bit the way we go about our operations. For example, if we have information that there may be illegal workers at a premises then, rather than to turn up unannounced and identify the worker and remove them from the premises, more and more our approach would be to contact the business and discuss the information with the employer and allow them to self-regularise the situation. Again, the employees may be entitled to regularise their situation.’*<sup>56</sup>(Senate, 2006)

From this comment it is unclear as to whether ‘regularise’ actually means the employer would be given the opportunity to ‘dob-in’ the worker to prevent themselves from being prosecuted. The only submission in the review that represented workers and provided a new perspective that addressed the differential treatment by the *Migration Act* of the employee and the employer if they are both found in breach was sent by the Transport Workers Union.

*‘Employers who continue to engage illegal workers after a first warning should be prosecuted. Not simply those who repeatedly engage illegal workers or are involved in employment scams. Illegal workers who commit offences are not given a “second chance”, they are generally located, detained and deported. Why should*

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<sup>54</sup> Commonwealth of Australia, 2006, *Official Committee Hansard, Senate Legal and Constitutional Legislation Committee.* – Interview with MANN, Mr Neil, First Assistant Secretary, Compliance Policy and Case Coordination Division, Department of Immigration and Multicultural Affairs. Wednesday 26 April, 2006, Sydney. Pp. 35.

<sup>55</sup> Ibid. pp. 35

<sup>56</sup> Ibid, pp.44

*employers who do wrong be given a first, second and maybe even subsequent chance before they are prosecuted?'<sup>57</sup>*

As there is little likelihood of prosecution, exploitation by employers of the illegal workers is far more likely as they are able to use the illegal status of the worker to force them to accept low and underpaid positions, with poor conditions and ill-treatment. The workers are unlikely to use any service for help when in such a situation. In addition, it seems to be quite unclear as to how the visa holder is treated under these circumstances, given that there is currently no system allowing for a first warning or second chance when a student is found to breach their visa condition for working over their 20 hour limit.

International students who have been discovered by the immigration department working outside their legal number of hours are able to appeal the department's decision in the Migration Review Tribunal. Many cases heard by the tribunal provide the context for the argument that students have a legitimate fear, not only of ill treatment by employers but also unfair treatment under the law and by DIAC personnel over the last 8 years. While too lengthy for this submission, NUS would be happy to provide references to decisions and cases heard in the MRT that will support the recommendations made in this section. There are three different situations that an international student will be in when studying in Australia, with regard to work rights and restrictions.

- The default restriction, as discussed earlier – no work. This is based on condition 8101. Under this condition, a student may not work, however, if caught working, DIAC and furthermore, the appeal authority, MRT may use discretion when deciding whether to cancel the student's visa.
- 20 hour limit on work during term time or unrestricted when the course is not in session. (Dependents of students visa holders are restricted to working 20 hours per week at all times they are in Australia) This is based on condition 8105/4. Under this condition, if a student or dependant of a student is caught working over 20 hours per week during term time, DIAC must cancel the students visa, and regardless of the circumstances of the student, the MRT must uphold the departments decision if the student has in fact breached the visa condition.
- A student is on a bridging visa A, the visa assigned to a student who is in between visas, waiting on grant of a further student, permanent residency or other substantive visa. With this bridging visa, a student may enjoy the same work and study rights as he or she was entitled with the previous student visa. The main difference here is that if the students are found to be working over 20 hours per week, with condition 8105/4 restriction, DIAC and furthermore the appeals tribunal may exercise discretion when deciding on

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<sup>57</sup> Richards, A., 2006 Transport Workers Union, Submission to the Senate Inquiry into the Migration Amendment Employer Sanctions Bill, April 2006

whether or not to cancel the student's visa or overturn or uphold the department's decision.

Through scanning many of the cases held for public viewing on the MRT website, there are examples of appeals heard that often overturn a DIAC representative's decision to cancel a student visa for breaching condition 8105 while many describe situations where the MRT is powerless to overturn the decision. This occurs despite students demonstrating that the circumstances were beyond their control and that they are a genuine student with clear intentions to study and complete their education in Australia. In many cases, such as case number N04/04494, the presiding member stated that:

*'subsection 16(3), regulation 2.43(2)(b) and condition 8105 are designed to deny a discretion whether or not to cancel if the condition was not complied with. That is, the tribunal must affirm a decision to cancel if the condition was breached.'*<sup>58</sup>

This is particularly unfair and unnecessarily harsh in cases where students are unaware they are not able to work over 20 hours, where they work an average of 20 hours, work over 20 hours per week only two or three times in 52 weeks of working with an employer, (often to help out if a person is sick or late to relieve a shift), when simultaneously students are also found to be achieving satisfactory academic progress, or meeting all course attendance requirements.

NUS would like to see a more lenient restriction on the work limitation allowed to students. By extending the number of hours to 24 hours per week international students would more opportunity to find regular part-time work in legitimate workplaces. This is because the normal working day is 8 hours, and with a 24 hour limit, students could obtain 3 full days of work per week, in addition to their full time study. This may assist students in assist them to meet increasing living and tuition costs, without unnecessary fear of deportation for breaching a 20 hour limit.

The main body of work that investigates undergraduate student income has found that domestic undergraduates work an average of 14.8 hours per week and one in 6 work over 20 hours per week.<sup>59</sup> Given that the majority of international students may be living in more desperate financial circumstances than local students, there is clear evidence here to suggest that international students work limits should be increased to 24 hours per week to enable them to meet living expenses. Additionally, it would be remiss of any government not to recognise the origins of the students as being primarily developing countries, and as such more likely to need to earn money to support themselves and often fund or repay loans that have funded their tuition fees. It is extremely important that there is now recognition that the international education industry has changed substantially from the market that was dominant in the earlier part of this decade.

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<sup>58</sup> Migration Review Tribunal, 2004. Case number N04/04494

<sup>59</sup> AVCC, 2007 *Fact Sheet - Undergraduate Student Finances in 2006*.

In order to sustain this industry, the legislation needs to be amended to ensure that students are safe and are able to work to meet their living costs without fear of exploitation. Enforcing an increased level of income evidence and stricter compliance on student visa application requirements, as addressed earlier may work for some source countries. However, as Australia has actively sought out the market that is sustaining this industry, the law needs to reflect this rather than legislate against it and in turn endanger the 'consumers'.

NUS recommends that the calculation of the number of hours a student has worked in any one week be afforded more flexibility. There are a number of ways this could be administered. An average of hours worked in a semester may be the most appropriate to international students allowing them opportunity to work a large number of hours during quieter study times and fewer hours during exam or more demanding study times. In addition, this would allow students to meet the needs of employers during busy periods or staff shortages. Allowing this flexibility also helps prevent students from gaining employment in workplaces where they are in exploitative conditions, such as cash in hand work which avoids evidence of visa condition breaches. As such, fewer students would be paid cash in hand, and more students would be paid legal hourly pay rates.

As discussed above, the *Migration Act* requires that a student visa be cancelled if a student has breached condition 8105. NUS is not adverse to this requirement. However, that there is absolutely no ability for an officer of DIAC or a member of MRT to use discretion, under the Act, is abhorrent. NUS has provided examples of genuine error by students, or breaches that would for the most part be beyond the students control and under special circumstances. Members of the MRT have expressed concern with the inconsistency of the Migration Act regarding student visa holders and also those on bridging visas with student visa conditions. NUS is also aware that DIAC staff would indeed be in breach of the Act, when affording leniency in enforcing this condition.

NUS would like DIAC to amend the *Migration Act* to ensure that all student visa holders are treated fairly and equitably entitling them to demonstrate that there were special circumstances that may have led to a breach of this condition, just as those who breach condition 8101 and bridging visa holders who breach 8105 are entitled. The factors for consideration in determining if a student has breached condition 8105 should include:

- the students academic and attendance records
- the students average hours of work
- the employment conditions (such as workload, staff illness)
- previous breaches of this condition
- the stage of the course the student is at, ie whether it is the first or last year of a degree
- the financial circumstances of the student

NUS recommends that closer scrutiny over employers be a priority of the Federal government. In industries that employ many international students, there is a large amount of exploitation. As discussed earlier, the *Migration Act* requires

that employers who knowingly hire visa holders in breach of their visa are also breaching the Act. NUS would like to see enforcement of this such that employers are penalised for these breaches following evidence provided through the DIAC officer when the student is being penalised.

Work placement programs are currently a cause of concern, particularly in the VET sector where the work experience is used to attract and poach students looking to gain permanent residency. NUS recommends that education providers are responsible for inspecting the work placement positions that international students are assigned to. Additionally, NUS would like to recommend that the appropriate regulatory body is able to inspect work placement premises should they receive complaints or be auditing education providers.

**Recommendations:**

- NUS recommends that all education providers and education agents are closely monitored to ensure that any information they provide international students regarding their ability to gain employment in Australia adequately and accurately reflects the actual employment opportunities for international students in Australia.
- NUS recommends that State governments provide funding for employment rights services that may be made available to international students and highlighted in compulsory orientation sessions for all students. (this would include information is provided on wages, gaining employment, taxes and superannuation rights, and dismissal and discrimination rights.)
- NUS recommends that the number of hours that international students with work rights are allowed to work while their course is in session should be extended to 24 hours per week
- NUS recommends that Immigration policy and the *Migration Act* are amended to help ensure that all student visa holders are treated fairly and equitably entitling them to demonstrate that there were special circumstances that may have led to a breach of this condition.
- NUS recommends that the factors for consideration in determining if a student has breached condition 8105 should include:
  - the students academic and attendance records
  - the students average hours of work
  - the employment conditions (such as workload, staff illness)
  - previous breaches of this condition
  - the stage of the course the student is at, ie whether it is the first or last year of a degree
  - the financial circumstances of the student
  - the housing/accommodation circumstances of the student
- NUS recommends that DIAC amend the *Migration Act* to allow Immigration department decision makers' discretion with regard to the restriction on students working over 20 hours per week and that the calculation of this restriction is flexible depending on work and study load.
- NUS recommends that education providers are responsible for inspecting the work placement positions that international students are assigned to.
- NUS recommends that the appropriate regulatory body is able to inspect work placement premises should they receive complaints or as part of audit on education providers.

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