



Submission to the Review of the Education Services for Overseas Students Act 2000

*Submission by the Sydney University Postgraduate Representative Association
(SUPRA)*

Submitted by _____,

Summary of Recommendations

1. That the *ESOS Act* be amended to mandate the development of marketing campaigns providing realistic information about living in Australia, including 'advisories' and 'alerts'. Development of such marketing campaigns must include consultation with representatives of students from all levels and sectors of the Australian education community, parent groups, community-based welfare organisations, trade unions and other relevant organisations. Auditing the content of marketing should form part of the accreditation process.
2. Education providers should be held responsible for the promotional material distributed by education agents, and should be required to approve and certify such material.
3. That agents be required to demonstrate completion of mandatory training offered by an appropriate training body, and membership of a professional association which requires minimum ethical standards of its members, prior to representing any higher education provider.
4. Where a provider course fails to achieve criteria, such as professional accreditation status, and that course was promoted as fulfilling that criteria, the *ESOS Act* should be amended to require providers to give students the option of receiving a full refund and/or fee waiver, and either further study at the provider or at an alternative provider.
5. Where a student decides to graduate without completing further study to meet criteria such as accreditation standards, the student should receive a partial refund of the full fees paid, if the course was promoted as meeting those accreditation standards.
6. That responsibility to place students, enforcement and implementation of ESOS requirements and regulations remains with DEEWR in the event of provider closure.

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

- 7. That timelines for placements, resolution of transfer of funds, and administrative matters be clearly established and standardised across States and Territories, and that students be informed of these timelines in the event of provider closure.**
- 8. That academic records of students are retained externally to the education provider, and retrievable by DEEWR in the event of provider closure.**
- 9. That students incur no financial penalty, and minimal academic penalty, due to delays in processing of visa changes or course placements.**
- 10. That DEEWR liaise with DIAC to offer visa extensions to students affected by the closure of a provider.**
- 11. International students need to be able to access a dedicated, external complaint handling body as their first port of call. SUPRA would argue that such an organisation must:**
 - be nationally accessible;**
 - have the ability to investigate complaints made by international students against any education provider active in providing education to international students;**
 - have the ability to use a variety of alternative dispute resolution techniques;**
 - have explicit powers to make a wide range of determinations, using the United Kingdom's Office of the Independent Adjudicator for Higher Education as a potential model;**
 - have the ability to make binding recommendations to education providers;**
 - have the ability to follow-up on the implementation of recommendations;**
 - have the ability to report persistent failure to implement recommendations (with such report, potentially, forming the basis of advice to the Minister to take action against the provider);**
 - have the ability to refer matters, immediately to the Minister or other appropriate enforcement organisation, where there is evidence of serious breaches of legislation or regulation;**
 - produce a publicly available, annual report on all matters investigated and resolved and all matters under investigation;**
 - be adequately resourced, preferably by the Australian Government rather than by education providers.**
- 12. Education providers should be obliged by the ESOS Act to refer students to any independent complaint handling organisation established.**
- 13. Any new quality assurance audit program for higher education institutions must include mandated content derived from the requirements of the ESOS Act.**
- 14. Education providers must be audited against the requirements of the ESOS Act.**
- 15. Requirements that education providers ensure international students' prior qualifications and experience are appropriate for the course in which they are enrolling should be monitored and enforced.**

16. An independent complaint handling organisation with the jurisdiction to investigate complaints against education providers and make binding recommendations should be established to improve compliance and enforcement.

17. ESOS should include clear statements that, notwithstanding visa and fee-paying status, international students are entitled to be treated equitably by comparison with local students.

18. ESOS should contain a clear statement that international students are covered by the same legislative protections as local students, such as anti-discrimination law.

SUPRA's position within the higher education sector

Sydney University Postgraduate Representative Association (SUPRA) was established in 1974. The SUPRA Council is elected annually by postgraduate students at Sydney University, and represents some 15,000 postgraduate students undertaking a research or coursework higher degree.

SUPRA has a sizeable membership base. Nationally, we have been a leader in recruiting student membership, with more than 6,000 students subscribing to the association since the introduction of voluntary student unionism. We work to maintain regular contact with subscribers, via email and print, and research and produce a range of publications and brochures on University life, coursework and research work, childcare and other student issues.

In addition, the SUPRA casework service provides assistance to postgraduate students, through individual appointments and outreach work to the campuses of the University. SUPRA caseworkers also provide policy advice, research, and support to the Council and President, and are therefore familiar with research regarding postgraduate students. SUPRA is thus able to offer a perspective on the experience of postgraduate students, informed by contacts with subscribers, casework services and research.

1. Supporting the interests of students

i. 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?

SUPRA would argue that, fundamentally, education providers wish to market their locations as desirable and this has led to a tendency to avoid providing information that addresses 'negative' events, which may act to discourage students from studying in Australia. An example of this is avoiding alerting prospective students that cheap accommodation close to the provider may be difficult to find. SUPRA would argue, however, that a strategy of avoiding alerting prospective international students to potential difficulties, because of a fear they will avoid Australian institutions, only serves to exacerbate the situation if students do experience difficulties, as students feel misled. It also denies the reality that information regarding problems already circulates via 'word-of-mouth', due to the number of international students that return to their home countries with negative stories. Reliance on such informal 'word-of-mouth' information increases the likelihood that prospective students will be given exaggerated and inaccurate information.

One way to act to give realistic information to students, and enhance the perception that the Australian Government is actively concerned about international student welfare is to mandate that content in marketing campaigns disseminate realistic and current information. This information should be developed in consultation with a community panel with relevant knowledge, and audited as part of the provider accreditation process. 'Advisories' or 'alerts' could be based on concerns identified in research into international students, such as the City of Sydney Council *Needs Assessment of International Students (2008)*, which identified the following as of concern to international students:

- Accommodation
- Financial hardship and employment
- Public transport

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

- Visa issues
- Safety
- Settlement issues and ‘culture shock’
- Social isolation
- Mental health issues

SUPRA would also argue that, under the *Education Services for Overseas Students Act 2000* (Cth) (*ESOS Act*), education providers should be held responsible for the promotional material that agents provide to prospective students. As such, education providers should be required to approve and certify agent material, and ensure that the promotional material is current, accurate and complete. We have been aware of instances where agents have used out-of-date promotional material, with the result that students were misinformed about the requirements for enrolment, or the potential to enrol in follow-on courses, for instance. In these instances, the education provider admitted the students were misinformed but held the agents responsible for this misinformation. However, SUPRA believes it is the provider’s responsibility to ensure that prospective students have current information regarding enrolment and further enrolment possibilities.

In tandem with strengthening provider responsibilities in relation to promotional materials distributed by agents, SUPRA believes it is appropriate to promote the highest standards of training and accreditation requirements in respect of agents. One possible model would be to mandate that all agents working with higher education providers should be required to undertake recognised training and be members of relevant professional bodies. SUPRA is not in a position to endorse any particular training and/or accreditation body or bodies. We note, however, that various stakeholders have promoted training for agents run by Professional International Education Resources (PIER), and the accreditation requirements of the Association of Australian Education Representatives in India (AAERI), as potential models. Without going so far as to specifically endorse either agency we would strongly support investigating their services.

Recommendation 1

That the *ESOS Act* be amended to mandate the development of marketing campaigns providing realistic information about living in Australia, including ‘advisories’ and ‘alerts’. Development of such marketing campaigns must include consultation with representatives of students from all levels and sectors of the Australian education community, parent groups, community-based welfare organisations, trade unions and other relevant organisations. Auditing the content of marketing should form part of the accreditation process.

Recommendation 2

Education providers should be held responsible for the promotional material distributed by education agents, and should be required to approve and certify such material.

Recommendation 3

That agents be required to demonstrate completion of mandatory training offered by an appropriate training body, and membership of a professional association which requires minimum ethical standards of its members, prior to representing any higher education provider.

Course promotion and course accreditation

SUPRA would also like to address another problem associated with inaccurate information provision by education providers, that is, when a provider course no longer meets criteria according to which the course was originally promoted to students. SUPRA is aware of two cases, at University level, where degree courses were promoted as leading to accreditation with professional bodies. However, these courses were subsequently assessed by those professional organisations and found not to satisfy their accreditation standards. As a result, students enrolled in those courses were informed that they would have to complete further study to fulfil accreditation requirements (further study over 12 months, in one instance). SUPRA would argue that, where students in this situation agree to do further study, they should receive a refund for the course units already completed, and/or a fee waiver for the subjects yet to be completed. Expecting students to cover the unexpected extra costs of extra study, visa extension, accommodation and living expenses in such circumstances is unsatisfactory.

SUPRA would also argue that, in circumstances where courses offered do not meet accreditation requirements, education providers should be required to negotiate an agreement with alternative education providers offering accredited courses, such that students have the option of transferring to the alternative education provider without being obliged to, for instance, repeat units in order to satisfy the alternative provider's completion requirements.

Finally, where students decide to graduate from the course without completing the extra study required to gain professional accreditation, they should receive a partial refund of the total course fees paid over the duration of the course.

Recommendation 4

Where a provider course fails to achieve criteria, such as professional accreditation status, and that course was promoted as fulfilling that criteria, the *ESOS Act* should be amended to require providers to give students the option of receiving a full refund and/or fee waiver, and either further study at the provider or at an alternative provider.

Recommendation 5

Where a student in this situation decides to graduate without completing further study to meet criteria such as accreditation standards, the student should receive a partial refund of the full fees paid.

ii. How should the Australian Government and the international education sector protect international students if a provider closes? How should this be resourced?

Provider closure has mainly affected private providers in the Vocational Education and Training (VET) sector. SUPRA's primary aim is to represent students at the University of Sydney. Nevertheless, SUPRA has experience of provider closure through working with the students of Sterling College NSW, which closed down in July 2009. Given that there is an expectation of more closures arising from the re-registration process mandated in the legislative changes passed on 19 October 2009, and a reduction in student numbers due to more stringent application of visa criteria to new visa applicants, SUPRA would like to table some recommendations arising from its work with the Sterling students. SUPRA also supports the detailed recommendations contained in the submission of the National Union of Students to the Inquiry into the *Education Services for*

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

Overseas Students Amendment (Reregistration of Providers and Other Measures) Bill 2009¹ (ESOS Amendment Bill). In general, it is our experience that students of private education providers are placed rather differently to those of public universities, and are at greater risk of experiencing legal, immigration and administrative problems without adequate supports.

From SUPRA's work with the Sterling students, it is apparent that closure of an education provider has a markedly negative impact on the welfare of the students enrolled with that provider. Students faced considerable uncertainty as they worked to find placement in suitable alternative courses, transfer fee monies paid and extend visas. Many students reported experiencing significant anxiety as a result of this uncertainty. It should be the aim of any new legislative environment to eliminate such uncertainty as far as possible.

SUPRA is concerned that the negative experiences of the Sterling students and those in a similar position will reduce the likelihood that they will go on to undertake higher study, including postgraduate study. We imagine they will also go on to report their experiences to friends and colleagues and so discourage others from choosing Australia as an education destination.

Tuition Assurance Scheme and ESOS Regulations

A lack of clarity about delegation of authority over the Tuition Assurance Scheme (TAS), due to overlapping jurisdictions for the administration of TAS and VET regulation, led to students having to negotiate multiple sets of bureaucracy, and a lack of prompt resolution of problems. Where students were assured of being placed in alternative courses within 28 days, some were not yet placed 3 months after the closure of Sterling College. These issues are addressed further in the report of the Senate Standing Committee accompanying the *ESOS Amendment Bill*².

SUPRA recommends that the Commonwealth Government hold responsibility for implementation and enforcement of TAS and ESOS measures, and that clear timelines be established for resolving the eventualities in the case of the closure of an education provider. This will eliminate many of the disruptions students experienced due to a lack of co-ordination between VET regulatory authorities and public regulatory authorities in placement into alternative courses.

SUPRA would also argue that, while funding for the regulatory authority administering the provisions of the *ESOS Act* and the *Regulations* may be provided by education providers, the regulatory authority must remain independent of any sector of the education system. As such, SUPRA recommends that a Commonwealth agency have oversight of all provisions of the *ESOS Act*.

Recommendation 6

That responsibility to place students, enforcement and implementation of ESOS requirements and regulations remains with DEEWR in the event of provider closure.

¹ Barrow, David and Smith, Sharon (2009) *NUS Submission To The Senate Education, Employment and the Workplace Relations Legislation Committee Inquiry into the Education Services for Overseas Students Amendment (Reregistration of Providers and Other Measures) Bill 2009*, available at:

<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=4e0c32f0-2597-4205-b1b9-c9463310a72d> last accessed: 30/10/2009, p. 14.

² Marshall, Gavin et al. (2009) *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*, available at:

http://www.aph.gov.au/SENATE/committee/eet_ctte/esos/report/index.htm last accessed: 30/10/2009, pp. 8-12.

Recommendation 7

That timelines for placements, resolution of transfer of funds, and administrative matters be clearly established and standardised across States and Territories, and that students be informed of these timelines in the event of provider closure.

Administrative and Academic Issues

Part 3 of the *ESOS Regulations 2001 (Cth) (ESOS Regulations)* requires providers to retain a number of records relating to students. However, under the *ESOS Regulations*, providers are not obliged to retain students' academic records. For the purposes of placing students in equivalent courses, current records of students' progression must be retained external to the provider, for instance with the PRISMS system. Lack of accurate records relating to a student's academic standing acted to complicate and delay placement into alternative courses.

However, in recommending that student academic records are retained externally, we are advocating that this data only be made available in specific circumstances, that of provider closure. SUPRA is aware of cases where raw data, that could be uploaded into a modified PRISMS database, may appear to indicate that a breach of academic progress requirements had occurred, when in fact there has been no such breach. SUPRA supports limitations on the use of additional PRISMS data, and advocates continuation of the status quo in respect of providers needing to determine and report whether minimum progression requirements have been breached, before that report can be acted upon by DIAC.

Recommendation 8

That academic records of students are retained externally to the education provider, and retrievable by DEEWR in the event of provider closure.

Immigration and Visas

The National Union of Students' submission raised the issue of delays in processing of course transfers. These delays meant that students had to request visa extensions or re-issues, to accommodate the extra time needed to complete their qualification. This was an unforeseen financial cost on students. SUPRA believes it is inappropriate for students to incur a financial penalty due to the closure of the provider where they are enrolled. Furthermore, students should not face other adverse circumstances, such as uncertainties due to the expiry of visas, in the event of a provider closure.

Recommendation 9

That students incur no financial penalty, and minimal academic penalty, due to delays in processing of visa changes or course placements.

Recommendation 10

That DEEWR liaise with DIAC to offer visa extensions to students affected by the closure of a provider.

iii. Are different mechanisms needed to support international students to resolve complaints effectively? Are additional complaint mechanisms needed?

SUPRA would argue that the current complaint mechanisms in place to assist international students resolve complaints are inadequate. International students often feel too uncomfortable, or afraid, to complain about their education provider, for several reasons. Many international students come from cultural backgrounds or political milieux where complaining about the decisions of those occupying senior positions is not encouraged and may, in fact, worsen the situation. International students therefore have to overcome these feelings of distrust, and are often advised by friends and family not to lodge complaints. Furthermore, SUPRA is aware that many international students express distrust in the ability of internal complaint handling mechanisms to result in full and fair investigations of their complaints. International students also express the view that an internal complaint handling process that relies on education provider staff to investigate and recommend courses of action is likely to be biased in favour of the education provider, and to result in outcomes which protect the reputation of the provider rather than protecting the student. Thus internal complaint handling mechanisms are not accessible for students, and are not perceived by many international students as guaranteeing fair outcomes for those students.

However, the external complaint handling mechanisms currently available to international students are also far from ideal. Firstly, international students are generally required to demonstrate that they have exhausted internal complaint mechanisms before proceeding to make a complaint to, for instance, a State ombudsman. This may mean that students have taken their complaint through up to three layers of internal complaint investigation and resolution, before they proceed to complain to an external body. This process is daunting, time-consuming, exhausting, and frequently has negative effects on the student's ability to study. In SUPRA's experience, many international students decide that it is not worth persisting with a complaint in these circumstances. Such processes can also make it difficult for international students to continue studying with a particular provider, however the complaint is resolved, as important relationships (such as between the student and research supervisors) are permanently affected by drawn-out, and increasingly adversarial processes.

Secondly, it is SUPRA's experience that the external complaint handling mechanisms in place for international students are, in fact, not accessible to students. Many international student complaints are not investigated by external complaint handling bodies due to a lack of resources, and the perception that the complaint is not sufficiently serious to warrant investigation. For instance, the NSW State Ombudsman states that it will generally give preference to matters identifying:

- systemic deficiencies in administration
- cases of serious abuse of power
- significant public interest issues
- issues which, if investigated, are likely to lead to recommendations resulting in significant changes or amendments to law or policies
- issues concerning the treatment of whistleblowers.

(<http://www.ombo.nsw.gov.au/publication/HTML/factsheets/fact%20sheet%20for%20agencies%20Ombudsman%20inquiries%20Oct%202008.htm>, accessed 28 October 2009).

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

It is SUPRA's experience that many international student complaints would not meet these criteria. We know from experience that, in NSW, it is very difficult to have an international student complaint accepted for further investigation by the Ombudsman's office.

Finally, while ESOS currently states that recommendations made by any external complaint handling organisation must be implemented by an education provider, it is SUPRA's experience that follow-up on implementation can be haphazard, and, in fact, some organisations (such as the NSW Ombudsman) state that they are unable to make binding recommendations as a result of investigations. SUPRA would argue that resourcing an independent agency which can investigate international student complaints and make binding recommendations to education providers would go a considerable way towards overcoming the deficiencies of the current complaint handling regime. In tandem with the introduction of such a body, providers be required to refer students to it, as an external avenue of complaint resolution, and should be required to provide for independent and accessible advocacy service such as those provided by SUPRA and similar campus-based student associations.

Recommendation 11

International students need to be able to access a dedicated, external complaint handling body as their first port of call, as is the case with the International Education Appeal Authority in New Zealand.

SUPRA would argue that such an organisation must:

- **be nationally accessible;**
- **have the ability to investigate complaints made by international students against any education provider active in providing education to international students;**
- **have the ability to use a variety of alternative dispute resolution techniques;**
- **have explicit powers to make a wide range of determinations, using the United Kingdom's Office of the Independent Adjudicator for Higher Education as a potential model;**
- **have the ability to make binding recommendations to education providers;**
- **have the ability to follow-up on the implementation of recommendations;**
- **have the ability to report persistent failure to implement recommendations (with such report, potentially, forming the basis of advice to the Minister to take action against the provider);**
- **have the ability to refer matters, immediately to the Minister or other appropriate enforcement organisation, where there is evidence of serious breaches of legislation or regulation;**
- **produce a publicly available, annual report on all matters investigated and resolved and all matters under investigation;**
- **be adequately resourced, preferably by the Australian Government rather than by education providers.**

Recommendation 12

Education providers should be obliged to refer students to any independent complaint handling organisation.

iv. Should an international student's ability to change their education provider be limited, if so in what way?

SUPRA believes that, visa and fee status aside, treating international and local students equitably is a key part of the sustainability of the sector. Thus international students should not be disadvantaged by comparison with local students. As such, SUPRA would argue that restrictions on international student transfers between education providers should be removed.

Delivering quality

v. How can the intersection between ESOS and the underpinning education quality assurance frameworks be improved?

It is hard to comment on this in the higher education sector, given that the advent of TEQSA as the quality assurance body for higher education institutions may substantially alter existing quality assurance arrangements. SUPRA would argue, however, that any new quality assurance system must audit institutions on mandated content examining the performance of higher education providers in fulfilling the requirements of the ESOS legislation. Current higher education institution audit procedures (as developed and implemented by AUQA) use the strategic plan of the institution as the basis for the audit. It is SUPRA's contention that this is insufficient to ensure that higher education institutions are providing effective and quality education to international students, and meeting the requirements of the ESOS Act. If these goals are not explicitly listed as part of the strategic plan, then there are no safeguards in place to ensure that institutions will be reviewed against these criteria. For instance, SUPRA would suggest that the effectiveness of support to international students at risk of failing, and the provision of adequately resourced international student support services are two areas that should be audited more closely.

Recommendation 13

Any new quality assurance audit program for higher education institutions must include mandated content derived from the requirements of ESOS.

vi. Where do international students' needs differ to other students such that additional or different regulation is required?

SUPRA would argue that additional regulation is required because the ESOS Act demands that higher education institutions fulfil certain requirements, but these requirements are not effectively audited under the current quality assurance regime. While education providers are required to fulfil certain legislative requirements, the regulatory regime should include adequate auditing of those requirements.

One area where SUPRA would argue specific regulation and enforcement is required to support current legislative requirements relates to ensuring that international students' prior qualifications and experience are appropriate for the course in which enrolment is sought. SUPRA would argue that international students with English as a second language are, frequently, already at a disadvantage in their studies, but that this disadvantage is considerably increased if they do not have a background in the study area. For instance, at University level, SUPRA would question whether students who have no prior background in subjects such as accounting can be expected to be able to perform adequately in Master's level studies in these subjects, when other students enrolled in these courses have completed undergraduate degrees in the subject. It is SUPRA's experience that recruiting students into courses where they do not have sufficient prior study

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

greatly increases the chance of students failing courses and thus being excluded from University. Given the costs involved in studying overseas, and the personal costs experienced by students when they fail, students should not be accepted into courses unless there is a reasonable expectation that they will be able to complete their studies successfully, having regard to the support services (academic or otherwise) which would be available to them upon enrolment.

Recommendation 14

Education providers must be audited against the requirements of the ESOS Act.

Recommendation 15

Requirements that education providers ensure international students' prior qualifications and experience are appropriate for the course in which they are enrolling should be monitored and enforced.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

SUPRA would argue that compliance with and enforcement of the ESOS legislation needs to be improved. One way to improve compliance and enforcement would be by establishing an independent complaint handling organisation with the ability to investigate complaints and make binding recommendations to providers, as outlined in Section iii.

Recommendation 16

An independent complaint handling organisation with the jurisdiction to investigate complaints against education providers and make binding recommendations should be established to improve compliance and enforcement.

viii. Can risk be better addressed through strengthening registration requirements and/or better targeting of compliance and enforcement action? How else can risk be managed?

SUPRA has already argued that better complaint handling, and better auditing of education providers are both necessary changes to current practice. It is likely that these changes would also improve risk management in the sector. Establishing an organisation with the ability to systematically record and analyse patterns of complaints made against education providers is one means of better identifying organisations that may not be compliant. Ensuring that education providers are audited against the requirements of legislation will also enable non-compliance to be identified and resolved more easily.

Sustainability of the international education sector

xi. What role should ESOS have in supporting the ongoing sustainability of the international education sector given the challenges it faces into the future?

For the international education sector to remain sustainable in Australia, SUPRA would argue that ESOS needs to support the view that Australia is a safe and equitable place for international students. As such, ESOS should include clear statements that, notwithstanding visa and fee-paying status, international students are entitled to be treated equitably by comparison with local students.

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

and are covered by the same legislative protections as local students, such as anti-discrimination law. SUPRA believes that international students are subjected to discrimination on the basis of race, which manifests in various ways. Of these, we outline two examples below. In our view, these examples are the most glaring examples of sanctioned discrimination in the international student experience.

In 2006, SUPRA and some of its members challenged the NSW Government's practice of preventing full fee paying international students accessing transport concessions in the NSW Administrative Decisions Tribunal. The ADT found, in *SUPRA & ors v Minister for Transport & ors* [2006] NSWADT 83 (**SUPRA decision**), that the denial of transport concessions to full fee paying international amounted to differential treatment based on race. The operational rationale proffered by the NSW Government in defence of the discriminatory practice did not negate the fact of the discrimination itself. The practice was ultimately held to be unlawful discrimination under the *Anti-Discrimination Act 1977* (NSW) (**NSW Act**).

Notwithstanding that decision, the practice continues due to amendments made to the *Transport Administration Act 1988* by the NSW Government. These amendments were made as a result of the SUPRA decision and effectively exempted the practice of denying international students transport concessions from the operation of the NSW Act.

SUPRA would argue that it is grossly unjust for discrimination of this nature (which has already been established as unlawful) to be permitted to continue. SUPRA has vigorously advocated that CRICOS registration be conditional upon each State/Territory Government providing access for international students to the respective State/Territory transport concessions.

A further example of systemic discrimination faced by international students is in respect of access to refunds for fees paid. Depending on whether a student is a local or an international full fee paying student, there are different outcomes in circumstances where a student enrolls in a subject but ultimately decides *prior to the census date* (that is, after teaching has commenced but before the cut-off date to alter or discontinue enrolment) to discontinue his or her enrolment.

In those circumstances, an international student enrolled at the University of Sydney would be entitled to a maximum 50% refund of the tuition fees. Even where an international student decides to discontinue enrolment in a subject prior to *the commencement of the teaching period*, that student will not receive a full refund. In such circumstances, the University of Sydney policy allows the University to withhold 10% of as an 'administrative fee'.

Contrast this with the situation of a local student who discontinues enrolment in a subject, either prior to the commencement of the teaching period or prior to the census date, and does not incur any liability and so does not need to apply for a refund.

We would argue that under these refund arrangements, international students are treated much less favourably than local students. Further, we would argue that any reasons offered for such a significant difference in students' entitlements could not, of themselves, negate the fact of discriminatory conduct.

SUPRA: STUDENTS WORKING FOR STUDENTS
BUILDING G10 RAGLAN STREET, DARLINGTON CAMPUS
UNIVERSITY OF SYDNEY NSW 2006
Phone: 9351 3715 Fax: 9351 6400
www.supra.usyd.edu.au admin@supra.usyd.edu.au

SUPRA notes that, in New Zealand, the International Education Appeal Authority (NZ IEAA) has been asked to investigate such practices as differing refund policies for local and international students, and found that these practices are discriminatory and unlawful. On that basis, the NZ IEAA has made recommendations to providers to remedy the differential treatment³. We recommend that any authority responsible for handling complaints under ESOS legislation be equipped with robust powers to make similar findings and recommendations.

Beyond any question of lawfulness of conduct, addressing issues such as those outlined above is critical if the Australian education industry is to be sustainable. As SUPRA has previously argued:

“The lack of access to transport concessions in NSW and Victoria has fuelled the perception by many families in the home countries of international students that there are institutionalised and personal discriminatory attitudes in Australia towards all international students.”⁴

The damage to the industry’s reputation which such a perception could cause and, in fact, has already caused, should not be understated. We urge the Federal Government to act swiftly in relation to both transport concessions and fee refund arrangements and to work with institutions and student organisations to identify other areas of discrimination against international students.

Recommendation 17

ESOS should include clear statements that, notwithstanding visa and fee-paying status, international students are entitled to be treated equitably by comparison with local students.

Recommendation 18

ESOS should contain a clear statement that international students are covered by the same legislative protections as local students, such as anti-discrimination law.

³ Case Note 10 as contained in the *Report of the International Education Appeal Authority 1 January 2007 to 31 December 2007*, published by the Administrator for the Code of Practice for Pastoral Care of International Students, New Zealand Ministry of Education, page 10.

⁴ SUPRA submission to Senate