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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Migration Legislation Amendment (Student Visas) Bill 2012

FRIDAY, 11 MAY 2012

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Friday, 11 May 2012

Members in attendance: Senators Crossin and Humphries

Terms of reference for the inquiry:

To inquire into and report on:

Migration Legislation Amendment (Student Visas) Bill 201

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HARTMAN-WARREN, Ms Kylee Micajah, International Officer and National Operations Committee Representative, Council of Australian Postgraduate Associations

Evidence was taken via teleconference—

Committee met at 13:14

CHAIR (Senator Crossin): I formally open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee in our inquiry into the Migration Legislation Amendment (Student Visas) Bill 2012. The bill was referred by the Senate to the committee on 22 March 2012 for inquiry and report by 18 June 2012. This bill amends the Migration Act 1958 and the Education Services for Overseas Students Act 2000 to abolish the automatic cancellation of student visas and create a new system in which information conveyed by student course variations more strategically analyses and targets noncompliance. We have received 18 submissions to this inquiry. All of those submissions have been published and are available on the committee's website.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and such action may be treated by the Senate as a contempt. It is also contempt to give false or misleading evidence to the committee. We do prefer all evidence to be given in public but there are provisions for evidence to be given in camera if that is requested or necessary. I remind you that this public hearing is being televised within the Australian Parliament House and also broadcast live via the web.

I now welcome our representative from the Council of Australian Postgraduates Association or CAPA as we know it fondly. Do you have any comment to make on the capacity in which you appear?

Ms Hartman-Warren: My capacity at CAPA is National Operations Committee Representative, and that is an executive role, as well as International Student Officer, and I share that position with two other students. I am also the Postgraduate Vice President of Community at the Sydney University Postgraduate Representative Association.

CHAIR: Thank you. We have your submission, which is numbered 17 on our website. I am going to ask you to provide us with some opening comments; then Senator Humphries and I have some questions for you.

Ms Hartman-Warren: The Knight review as a whole is something CAPA and its affiliates have celebrated, as is this amendment, especially in relation to the abolishment of the automatic cancellation of visas. We think this is beneficial. We think that the automatic cancellation of visas for international students who have unintentionally erred or who have failed to perform at a passing level in their academic studies is grossly disadvantageous to those students, their careers and their finances. We also think it is unfair to punish these students, especially if there are mitigating circumstances, and it could be deemed an unethical process as well for these reasons.

Most fee-paying international students, especially those who have been assessed as genuine temporary entrants, are here to study and wish to do well and do not wish to do so poorly as to have their visas cancelled. They face stresses many local students do not face, and some of them have the added challenge of maintaining marks when English is their second language. If a student is not performing at a passing level, chances are the student is struggling with a certain stress or misadventure that the student needs time to address. I think postgraduates are particularly at risk here, because postgraduates have the added stress of being in circumstances where they might have families or must maintain a part-time job while they try to do well in their studies. I think this new amendment will definitely benefit those students. Maintaining a student's visa when that student is not performing well gives that student the opportunity to address the strains or misadventures that might have been causing them to do poorly in the first place. Abolition of the automatic cancellation once a student performs poorly or graduates gives the student an opportunity to reconsider his or her studies or opportunities in Australia. It is not ethical to assume these students should be forced out of the country simply because they are struggling or doing poorly.

After discussing this amendment with the Council of International Students Australia, or CISA, CAPA shares concerns regarding the implementation of this amendment. We support it, but it seems the new amendment might divert student funding from student services to compliance, as universities must now take on the duty of assessing risk factors of students or maintaining student contact information. Secondly, CAPA shares the concern about the administrative strains these universities might face as they adopt these responsibilities. Many universities have strain on their administrative resources as it is, and CAPA worries that a further strain might begin to affect the quality of student services available.

I genuinely believe that the benefits of these amendments outweigh these risk factors, and it is CAPA's belief that the amendment relating to this bill involving automatic visa cancellations is the more ethical process. However, it is important to execute these mechanisms in the most ethical fashion possible and in ways that will

maintain the high quality of education and student services these international students have travelled so far to experience.

The international students we have spoken with feel they have contributed and spent a great deal of time and resources to be in Australia. They welcome the Knight review changes, and this amendment would be a great relief to them, as they need the time and resources to address problems they might have in their studies. They endure a great amount of stress, as they have no access to social security and they must pay for extra transportation, health care and education to study here. For this reason, CAPA feels strongly that all international students currently studying in Australia should benefit from this new amendment and other benefits the Knight review has brought in, such as post-study work allowance.

While the Knight review as a whole has brought forth many benefits for international students, there is a lot of work that still needs to be done so international students can enjoy the security, affordability—in the case of concessions in Victoria and New South Wales—and opportunity their fellow local and international students have. Likewise, universities need support through this transition, and CAPA is willing to work with universities and the government to develop the best possible results for postgraduate and international students alike.

Finally we have a few solutions, or possible solutions, to address the possible strain on universities. We feel strongly that compliance rests on the students. The students need to own the responsibility for changing their addresses and ensuring that everybody has the proper connection and way to contact them should they need to do so. That is probably the best solution, although we did express support for Universities Australia's solution, which involves the university contacting the department of immigration when an international student has been thought to breach their visa. While we think this might be a valid option, we feel this should be executed with fairness in the case of misadventure, accidents or error and other mitigating factors so that the students are treated as fairly as possible. That is my opening statement.

CHAIR: This act also amends the ESOS Act and it requires a registered provider to provide particular details of the change within 14 days. I have two questions. Firstly, given your comment 'responsibility rests with the students', do you think an onus on the students is lacking in this legislation? Secondly, do you think 14 days is too short a period of time in which the provider needs to respond?

Ms Hartman-Warren: I definitely could address the second question, but I did not actually hear the first question as you cut out briefly.

CHAIR: My first question was: what you think is the onus on the student to ensure that there is timely notification of any change of details?

Ms Hartman-Warren: I see what you are saying. I think the onus is on the student. I personally think that when we choose to move or relocate we take it upon ourselves to make sure that all of our billing providers and all of our employers know where we are living. I do not know why that would need to change for international students, except that maybe they might need some coaching in that process at the beginning of their education so that they know it is their responsibility to do that. My personal visa says that I have seven days to inform any provider of a change in address. It is good that I have to do that; however, that time frame might be a little steep given the situation where international students have to, say, stay in a halfway place while they are in the middle of a move. So, yes, I do think that responsibility does rest on the student, but I would question the time window for allowing that student to respond. That draws me into your second question: is 14 days enough? I do not think so; I think 28 days would be a more realistic time frame. I would not hesitate to go beyond that. Timely access to information is important, but 14 days seems to be cutting it a little bit fine—especially when you have four of those days being weekends and the fact that we have holidays and other factors going into that, and busy times of the year at universities. Does that answer your question?

CHAIR: Yes. Thank you.

Senator HUMPHRIES: I just have a couple of questions. I think it is pretty much axiomatic that, if you abolish the system of automatic visa cancellations where there are a variety of reasons for a student's failure to comply with the conditions of their visa, that is an inherently better system. What concerns me though is the downstream effect of creating the additional flexibility here, particularly on the department. I assume there are still many cases where the department might choose, perhaps in the absence of satisfactory contact with a student, to cancel a visa or to have to engage with a student to deal with issues arising out of the grounds for cancellation. Do you think processing these issues would impose a serious additional burden on the department of immigration? These issues have previously been dealt with, in large part, by way of automatic cancellation.

Ms Hartman-Warren: I think that it might, but I do not think that outweighs the questions around the special circumstances that students might need when they are in a situation where their visa might be automatically

cancelled, especially around academic performance. If we want to bring international students into the country, we need to do right by them and make sure they have all the support mechanisms to turn their academics around before they are kicked out. I do worry that the alternative—that is, the automatic cancellation—is a little bit too stringent. Unfortunately, beyond that, I guess the department of immigration wants to investigate why a student is doing poorly. I do not know what mechanisms are going to be in place to help them with that process, but I think that student representation would definitely be a helping factor in that area if they want to reach out and connect with student representatives, who usually have advocacy officers helping the student when the student is doing poorly through the logistical process of visa cancellation or preventing being barred or suspended from the university.

Senator HUMPHRIES: As the international students officer of CAPA, I assume you would be dealing with lots of students who have different reasons for having disruptions to their studies. Could you outline for us what you think the three most common reasons would be for a student to come to a situation where their visa conditions might be at risk?

Ms Hartman-Warren: I could outline a few, but I do not know whether they would be the top three. Some of the more extreme cases would have to do with social security, with the student losing his or her opportunity to acquire funding or work. Obviously illness is a huge factor for international students: if they get a severe cold or a sickness while they are here they tend not to do as well in their studies. The lack of security with their housing is a big one. When students are asked to move automatically by a landlord that may or may not be housing them illegally, they get really stressed and they have to find a new place to live and stay on top of their studies. Those are probably the three most common reasons. The more extreme ones would involve threats to their security, as in violence or maybe bullying from academic staff.

Senator HUMPHRIES: Are you saying that is a common occurrence?

Ms Hartman-Warren: No, those are uncommon but probably the more emotionally traumatic ones. With international students, if they bring families over they do have some extra obligations they must meet while they are trying to study as well.

Senator HUMPHRIES: But you would not like to speculate on what you consider to be the more common reasons?

Ms Hartman-Warren: Sorry, I thought I did that. The most common ones would be finance, illness and lack of housing security.

Senator HUMPHRIES: Right, I see. What about students simply coming to the conclusion that the course was not for them or deciding that they found it too hard or something of that sort and deciding to go and do something else, either by leaving the country or attempting to look for a job or something of that sort; is that very common?

Ms Hartman-Warren: At the University of Sydney and with many of the established universities we see less of that. However, sometimes we get students who might, for example, be studying jurisprudence and maybe they decide they want to do another area of law because there are certain courses that they just do not have talents for. They tend to stay in the same area but they might switch programs because there is a course that, for whatever reason, they cannot seem to pass.

CHAIR: Thank you for your submission to our inquiry and for making yourself available this afternoon. We have come to the end of the questions we have for you, so thank you very much.

Ms Hartman-Warren: I appreciate having had this opportunity on behalf of CAPA. It is really awesome that you are willing to listen to students on these important issues.

BLUNDELL, Ms Sue, Executive Director, English Australia

MOORE, Ms Ainslie, Assistant Director, International Relations, Universities Australia

O'HALLORAN, Mr Paul, Chair, International Education Subcommittee, Council of Private Higher Education

[13:35]

Evidence was taken via videoconference—

CHAIR: Welcome. Which city are you in?

Ms Blundell: We are in the Innovation offices in Sydney, which they have kindly made available to us.

CHAIR: The Universities Australia submission we have numbered 11 on the website, English Australia submission 3 and the Council of Private Higher Education submission 6. Have each of you got a few comments about the bill, or is someone going to talk on behalf of all of you? Then Senator Humphries and I have got some questions for you.

Ms Blundell: We each have individual comments.

CHAIR: Who is going to go first? Ms Moore.

Ms Moore: Universities Australia welcomes the opportunity to address the committee by video link today. I am going to be more impressed if we can get through this whole session and still see you at the end! We recognise the value of the intent of these bills and we applaud the government for the initiative it is displaying in the reforms under the TPS. We consider that they provide an enduring and excellent architecture for building an enduring international education brand around high-quality innovation which will improve our competitive advantage. We consider the amendments are well-intentioned. I think there are some areas of improvement that are possible in the implementation of it such that the administrative burden placed upon universities and other providers could be lessened. I am happy to go into some options that might make that possible but they have been included in our submission.

Ms Blundell: Thank you for the opportunity. English Australia is the peak body for the English language sector of international education. First, we would like to point out that the last two years we believe have been a period of intensive regulatory reform for the international education industry. Whilst acknowledging the need for reform and welcoming many of the individual reform initiatives, we note that this reform has imposed a range of additional costs on education providers' operations that have seriously challenged Australia's international competitiveness. At every stage of the reform process we have sought to ensure that these additional costs are justified and proportionate in terms of the intended outcomes and not just more red tape for the sake of red tape. Talking to English Australia colleges that have operations across a range of countries, including the UK, the US and Canada—key competitors of ours—we are the most expensive country to do business in. Staff costs and compliance costs are high, and with margins low these costs need to be passed on to students in their fees, thus adding to the strong Australian dollar in making us less competitive in price for students considering their options for destinations.

We are here today to discuss the Migration Legislation Amendment (Student Visas) Bill 2012. We welcome the focus of the bill on achieving a more targeted and strategic use of DIAC resources in dealing with noncompliance issues, but we would like to note our concern about the potential for additional costly administrative burdens to be placed on providers who are already struggling to deal with the reforms coming out of other recommendations of the Baird and Knight reviews.

So, in our submission, we have called upon the innovation and immigration departments to look at how the administrative burden can be reduced on providers trying to meet the intent of this bill, which is all about being strategic in our use of resources. We hope that our concerns will be acknowledged and we can work together to develop some mechanisms that will minimise the burden and keep us competitive. Thank you.

Mr O'Halloran: The Council of Private Higher Education participated in the Baird and Knight reviews and broadly support the recommendations coming out of those. Without wanting to reiterate what my colleagues have already said, we support the intent of this bill, including the removal of the mandatory visa cancellation through the issue of the section 20 notice. We recognise the need for DIAC to be able to enforce the integrity of the visa system, but I would like to note that we also appreciate the detail and immediacy of the market data available through PRISMS. That has been there for the last decade. I do not think any other country has such good quality data available so quickly.

But I would like to focus on one sense in which we would regard PRISMS as clumsy: the fact that it requires manual data entry rather than uploading information from provider databases, which higher education providers already have for the HELP loans and other reporting data to the department. The data entry is not a problem where there are a small number of students, for example changing courses or where they are being reported at the moment for noncompliance, but our members see it as a major administrative load when they are required to enter and then update details of all students, most of whom we expect that DIAC will have no need to actually contact.

The decline in international numbers, which is well documented, is cutting into the administrative and support staff that colleges are able to employ. Our concern is that yet another greater administrative load will further reduce student services, and our industry is surely about the students. Our main point is, while we support the intent of the bill, I think there really has to be—and our advice is that this is quite achievable—an enhancement of PRISMS, which already exists in other databases, to be able to upload that information. The providers keep, of course, the student details in those records in their own databases. It is a matter of getting one system talking to the other rather than having it all re-entered manually. Thank you. That is our main point.

CHAIR: I have some questions, and perhaps you can work out between yourselves who is going to answer them. At the moment, when a student changes their contact details, is that simply entered on your own database and not transferred to the immigration department?

Mr O'Halloran: That is right. In some of our colleges with large numbers, the students will perhaps do it online and update it themselves, and that will be captured in the college database. Some smaller institutions have different mechanisms but every higher education provider already has a database that talks to some of the government systems.

CHAIR: So one issue is the fact that your individual databases do not link in with the immigration department. Is the other issue compliance within the 14 days?

Ms Moore: Yes. The 14 days is an additional overhead cost, but the real concern is the manual entry and the amount of time that will take.

Ms Blundell: Yes, I do not think the time frame is the issue here. I think it is the manual nature of the data entry. And it is not about necessarily the systems being able to automatically talk to each other but they would be able to upload bulk data through a transfer of data through a system that will actually make it easy to do. Rather than doing it student-by-student, manually, where someone has to sit at a computer who is trained in PRISMS to do it, you can do all of your students once every fortnight and you have got an update system that is in place. It is a simple mechanism to implement, I believe.

CHAIR: Sure. That is to upload and transfer data to DIAC. Is that right?

Ms Blundell: To PRISMS, which is the database that is operated by the innovation department but that DIAC can access.

CHAIR: I see. Is there any discussion about making this an easier process for you?

Ms Moore: I have seen the innovation submission to this inquiry, and they state at the end of their submission that they are looking into options to enable greater communication between provider systems and PRISMS, but at the moment nothing exists.

Mr O'Halloran: And given the amount of change in the workload, our concern is that if the bill is enacted, even if the systems are changed down the track, that will provide an immediate, further and substantial workload when a lot of colleges are already under stress.

CHAIR: Answer this question for me then: is it possible to ensure that the requirements about breaching visa conditions could be met under this legislation but the second requirement of notifying everybody's change within 14 days could be delayed until there is a system in place? Or can you not have one without the other?

Ms Blundell: The point we are trying to make is that colleges are maintaining the up-to-date student contact details in their own databases. So if a student is reported and DIAC needs to get those student contact details, those contact details are entered into PRISMS when the student is reported. So I do not think that this legislation would be delayed if that requirement was actually separated from it, because DIAC still has access to the contact details for students who are in breach. It is the bulk of the other students who are not reported to DIAC whose contact details are currently not updated in PRISMS. But that does not impact on DIAC's ability to do their work in terms of following up breaches.

Mr O'Halloran: There are other scenarios that I know DIAC could raise, for example, where they might have other information and wish to contact a student. Another model, which I think was in the Universities Australia

submission, was that they could then contact the provider. We are talking about only a very small proportion of students that DIAC has reason to want to contact.

CHAIR: I guess what I am hearing you say is: if a student is actually continuing in their course, with no possibility of breaching their visa conditions, the fact that they might change address every six months is irrelevant to DIAC but relevant for you.

Ms Blundell: Yes.

Ms Moore: Yes.

CHAIR: So DIAC really only needs to know about their change of circumstances if there is a potential breach of their visa.

Ms Blundell: Yes.

CHAIR: I see.

Ms Blundell: And therefore DIAC needs to contact them for that reason.

CHAIR: All right. Senator Humphries, do you have any questions?

Senator HUMPHRIES: I think the chair's questions have covered my concerns. You were saying, Ms Moore, that you saw that the innovation department's submission made reference to sorting out some of these issues as the system was rolled out, or it would be in the next stage of their work. I assume—without having seen them yet—that they would say the concerns raised by the provider organisations like yourselves can be addressed at that stage, and that is the appropriate implementation point at which to make these things happen. Is there a customary mechanisms for dealing with such issues through some kind of forum or roundtable where you would regularly talk to departments like that about implementation issues around the student visa regime?

Ms Moore: There is currently a forum—the Education Visa Consultative Committee—that talks about matters surrounding student visas, and this would be an appropriate place to have that discussion. For a number of years we have been positing the idea that a data working group that discusses the ways that providers interact with various departments—be that DIAC, Innovation or others—on student information would be a useful service for both government and providers and it would help us to address these kinds of issues.

Senator HUMPHRIES: Were you consulted by Mr Knight in the Knight review?

Ms Moore: We certainly were. I think the Knight review was an excellent system for engaging with industry for the purposes of looking at improving the system. However, Knight did not go into these kinds of specifics and small details. So, while we agree with the intent, it is the detail of the implementation where things can get complicated.

Senator HUMPHRIES: Fair enough. Thank you very much.

CHAIR: Ms Moore, in your submission from Universities Australia you have a suggestion that the bill should be amended—this is on the second page—and that only a registered provider should give the particulars of any change of circumstance of a student 'after the provider becomes aware the student has breached their visa conditions'. How do you become aware of that being the case?

Ms Moore: In the circumstances where the student is not making academic progress. You are the organisation that identifies the visa breach and reports it to Immigration. At that point you would say, 'The student has breached this visa condition and these are their contact details.'

Ms Blundell: There is also the attendance requirement. There are two key obligations for education providers under the ESOS Act that relate to academic progress and attendance. That is when a provider is obligated to report a student for breach of those conditions.

CHAIR: Are you required to report for any other possible breaches or are they the two predominant conditions under which a student gets a visa to study here?

Ms Moore: Those are the two predominant reasons that have to do with academic progress.

Ms Blundell: And the provider obligations. Other breaches might relate to the student's work rights, for example, where they are allowed to work 40 hours per fortnight, but providers would not know if students were breaching those.

CHAIR: Have you ever been given an indication from DIAC where they suspect a student has breached their work rights and your up-to-date contact details for the student would assist them in tracking that down and investigating that?

Ms Blundell: It has not been raised in the past, but obviously those contact details would be available to DIAC if they contacted the provider, because they are maintained in the provider database.

CHAIR: Again, you are saying, 'We don't need to automatically provide them every fortnight, but, if a red light goes off and DIAC are worried about the breach of work rights, they could contact us'?

Ms Blundell: Yes.

CHAIR: Are you able to provide DIAC with details of a student's contact details in a suspected breach other than for academic reasons? Is there anything preventing you from giving those details to DIAC if it is a work rights breach rather than an academic progress breach?

Ms Moore: There is nothing to prevent us updating a student's contact details on PRISMS for any reason.

CHAIR: All right. I do not have any other questions. Is there anything you want to add?

Ms Moore: Could I address a point made in the Immigration submission?

CHAIR: Yes, most definitely.

Ms Moore: Thank you. There is a note that says:

The Department is aware of some concern among education providers about the potential increase in administration associated with the proposal to require details of changes in contact details to be given within 14 days after the provider becomes aware of the change. The Department notes that this potential increase would be offset to a certain extent by the removal of the requirement for providers to download, complete and send a notice to a student under section 20 of the ESOS Act where they have failed to maintain satisfactory academic progress or attendance.

That is at the top of page 11 of their submission. I do not think this argument holds water.

CHAIR: Tell us why.

Ms Moore: Providers are still required to notify a student of their intent to report them for failure to make satisfactory academic progress, so they still have an obligation to communicate with the student on this matter and that communication will ensure that they will be aware of the need to maintain up-to-date records of the student's contact details in PRISMS, because that is a trigger for reporting.

CHAIR: So you are saying that it does not combat the arguments you have put to us?

Ms Moore: No—for that reason and others. But the number of times a student has moved or gets a new mobile number will surely be vastly more than the number of times we have to report students.

CHAIR: Just give me an indication of how many times in a 12-month period—

Ms Moore: A student might change their contact details?

CHAIR: No, that they might be in potential breach of a visa.

Mr O'Halloran: Talking about my own college, we would typically have 1,000 students. We would notify the intent to report perhaps eight or 10 in a year. The biggest sector is ELICOS where there is an attendance requirement. The great bulk of those breaches are in fact of attendance requirements. It is about one per cent or two per cent. The issue is recording manually the data for 1,000 students versus the dozen or so that we are reporting for noncompliance.

Senator HUMPHRIES: That is the workload issue?

Ms Blundell: Yes, that is right—two per cent compared with 100 per cent.

CHAIR: In Universities Australia, Ms Moore, do you have any idea for some of the bigger universities how many students would be overseas students versus those who might breach their visa?

Ms Moore: When we look at cancellation numbers they are less than five per cent. So it is a similar scale.

CHAIR: Thank you very much for your submission and for highlighting that section of DIAC's submission to us as well. That was good work there. Thank you for your time this afternoon.

GRANGER, Mr Jonathan, Vice President (NSW/ACT), Migration Institute of Australia

HORDER, Ms Maurene, Chief Executive Officer, Migration Institute of Australia

Evidence was taken via teleconference—

[13:58]

CHAIR: Welcome to you both. We have had a bit of difficulty with our teleconferencing today, so hopefully this will go all right. We have your submission, which we have numbered 15 for our purposes. I am going to ask you to provide us with some comments and then we will go to questions.

Ms Horder: We appear before you this afternoon as the Migration Institute, representing migration agents, but the institute also represents education agents. A number of our members are education agents—principally those that also serve in a dual capacity as a migration agent and an education agent. I just wanted to draw that fine line. I have appeared before your committee previously representing just registered migration agents but we are wearing two hats today. We welcome this bill, as we do the implementation by the government of the Knight review and the many recommendations that have already been called forward. If we get a moment, I would like to talk a little further not specifically about this bill but about a couple of issues that bear on the bill. It seems to us that there have been many inefficiencies and an inappropriate situation with a lot of the systemic failures with the automatic cancellation system that has prevailed now for some years. So we certainly have a position of acceptance of the government's bill. I alluded a moment ago to the fact that we just wanted to raise a couple of other contingent issues on it as we go forward, but I would ask my colleague Mr Granger, who is the practitioner in this discussion—rather than me—to make a couple of comments in respect of the bill and what we see as the real value of these changes.

Mr Granger: Thank you, Maureen. Good afternoon, Senators. Thank you very much for the opportunity. As Maureen said, we very much support and agree with the general consensus on this bill insofar as it really does go a long way to provide a much fairer and more equitable treatment of international students in the way in which they are reported and monitored, without compromising the integrity of the system. I have read in detail the department's own submission on this and the way in which they intend to address the reallocation of resources, and I think it is very much about the system continuing to effectively monitor international students, being able to differentiate between the genuine and the non-genuine students without any sacrifice of the integrity there, and being able to more effectively utilise the department's resources to determine who is genuine and who is not. The system has been in place and has been well documented in all the various submissions and the Auditor-General's report. My own experience as a migration agent, having worked with international students for over 10 years—throughout this whole period—is that the reporting and the automatic cancellation system have been a complete failure. The Federal Magistrates Court overturning 8,000-plus student cancellations in one single decision in the Uddin case is a classic example of how dysfunctional it has been, which has allowed for the good and the bad to get off the cancellation and does not effectively treat them on the merits of whether or not they have been breaching their visas.

The way in which I understand the department's own frustrations at the compliance department level in dealing with students is that they are very much only having to look at the section-20-reported students. Because of the impending 28-day deadline, that has always been the priority compared to all the other ranges of noncompliance. The classic examples given were a student who never turned up to a college and could have disappeared for two years. No-one cancelled his visa because it was not an automatic cancellation when the PRISMS system reported him for not attending the first day. But, for the genuine student who has been reported for an academic progress or attendance matter but is still actively engaged with the college, his visa is going to be subject to cancellation even though the department knows exactly where he is and would consider him to be a much lower risk than the other student, who they have not been able to identify for as long as two years and who has not been dealt with as part of that 350,000 backlog of non-processed noncompliance notices. So it is very important that this bill be supported in exactly what it is. As simple as it is, it is getting the system right and getting the system fair. The main consideration for government is to ensure that the resources are adequately provided to the department so that they can then effectively monitor on the discretionary basis that they want.

CHAIR: Thank you. I might go to some questions. Generally I guess what you are saying is that the automatic cancelling of the visa through the S20 notice has been inefficient, so this bill hopefully will be much more efficient and fairer, and you support it. Is that it in essence?

Mr Granger: Yes.

CHAIR: Okay. We have mainly had evidence from providers about the automatic requirement to notify DIAC within 14 days of a student's change of address or phone number. Your submission does not really go to that.

They talk about the administrative burden of that and how only somewhere between one and five per cent of cases either are in doubt or breach their visa conditions. They see it as an unnecessary burden. Do you have any comments on or knowledge of that at all?

Mr Granger: I think, in our submission, we may have alluded to it, but probably not directly or clearly identified it. One of the last dot points in our submission relates to the difficulties with verifying whether the educational provider actually sent the section 20 notice, because there is no requirement for registered post delivery. What that really relates to, and from my own experience having dealt with such students, is the unreliability of the address: whether that letter was sent or not, when it was sent and where it was sent to? There is nothing that could ever prove that it was or was not sent to the address the student lived at, but on the 28th day, if they had not received that letter, the visa was cancelled. I think the ESOS Act amendment to require education providers to update the PRISM System so that a student's most recent, up-to-date address is adequately recorded is something that definitely should be occurring.

I understand Universities Australia's submission and its concerns about the additional resource or double-handling of student data. The department addresses that in the opposite way, saying that providers are not having to report under section 20 and that there is also a reduction of some of that administration. Beyond that, there is not much that we could really comment on, because it very much is related to education provider resources. It is imperative that, regardless of the department ensure that whatever compliance, monitoring, contact, letter or contact by phone that it wishes to use to investigate, a student is being able to access that information correctly. Student visa conditions require that a student notify their education provider of change of address. It does not require them to notify the department of immigration. The student's responsibility is to update the provider only. The provider therefore is responsible for ensuring that the records across the entire spectrum of educational providers are accurate and up to date.

CHAIR: Yes. They say they do that. Who will now issue the student with a notice that their visa has been cancelled or is about to be cancelled?

Mr Granger: Once there is a removal of the section 20 notice, my understanding is that there would still be a report to immigration under section 19, not under section 20, of the ESOS Act. They would still report under the same breach, under the same visa conditions of academic progress or attendance matters. There is no change in the actual conditions associated with the visa or whether or not compliance has or has not occurred. It is the manner in which they are reported. The student would have been notified by their educational provider that they have now been reported to immigration. The immigration department would still receive that report. The simple processed is that, on the 28th day after a report being generated, there is not an automatic cancellation. It is then, from my understanding, the department's discretion to decide how to deal with that based on their own risk management systems and their decision on how to follow up: maybe it is a phone call to find out what is going on with that student or maybe it is sending a formal letter of notice of intention to consider cancellation. They would look at that under the section 116 cancellation provisions, as opposed to automatic cancellation, which is 137J of the Act.

CHAIR: Do you think there is a need for that initial notification by the provider to be sent by registered post?

Mr Granger: In my own experience, yes, because of the unreliability of mail. As a general practice for migration agents we would only ever send important documents to the immigration department by registered post or courier, to ensure that we have some record of delivery. In a visa process we are responsible for responding to requests within specific time periods. If we cannot prove that we did respond, because something has gone missing through general Australia Post error, we have no leg to stand on. How do we know when a letter was sent? How do we know it was actually sent by a provider? At the very least, the requirement of $4 or $3, whatever the cost is, to provide a registered post letter should not be an onerous one.

Ms Horder: I wonder whether it is that the universities are feeling the general burden of some of the other administrative changes rather than that this particular one is going to add, from what my colleagues have said, to their burden. I think that they are very capable of speaking for themselves.

CHAIR: Yes. We have had them on. I think their problem is that one system does not automatically upload to the other system. If the two systems were talking to each other, the manual entry of the data and the time and resources that takes would not be such a problem.

Mr Granger: In the modern age of IT systems there should be some way for those systems to talk to each other, in the same way that departmental systems did not in the past but now do.

CHAIR: You are probably right there, but it is often easier to say than it is to do sometimes.

Ms Horder: Should the time period be longer? I leave that to the committee, the universities and the IT guys to decide. Do we need a longer period in which to get it done? Sometimes we put burdens on by being too precise in short periods of time.

CHAIR: We do not have any other questions for you today.

Ms Horder: Madam Chair, may I raise the other issue which is concerning us in respect of this and student visa cancellations. It is an issue that has really exercised our minds. Often if students have been issued with a notice they turn to their education agent in the expectation that they will be able to sort out their visa issue. Under the Migration Act, unless education agents are registered migration agents they are unable to give migration advice. I think there is a certain amount of misunderstanding about the roles of education agents. We have a concern that consumers end up being somewhat confused in a lot of these situations. If you can indulge us on this point, I would like to ask Jonathan to give you a typical example of where this can go haywire, because I think it is probably something that I am sure would concern the committee.

CHAIR: Go ahead.

Mr Granger: It is the severity of the section 20 notice and the absolute concern about the time frame in which a student must respond. In my experience, students who receive such notices from their providers and who dealt with an education agent for their student visa and their enrolment in the first instance will return to that same education agent, who may not be a registered migration agent, in Australia for further advice. From a consumer point of view, they have been misled into thinking that that office and that person is able to provide satisfactory advice on student visa matters, and that has led to matters relating to a visa cancellation.

The reason why a lot of international students may feel that that is the correct person to turn to is that, in the first instance, they have been able to use that agent for the full student visa process onshore. In my opinion, as a migration agent and specialist in student visas, when you deal with high-volume countries such as India and China, which are a high risk on the student visa program, there is nothing simple or clerical about the student visa application that an education agent would have. Yet the department of immigration does allow them to process student visa applications onshore. Offshore is a different matter. There is no regulation outside Australia's jurisdiction but, in Australia, it has been an ongoing issue. Within the context of the Knight review and consumer protection for international students, it is something that should be addressed further with the department of immigration. Should they be allowing, and therefore endorsing, the use of education agents onshore, who are doing more than clerical assistance and would be providing immigration advice under the definitions that the act has?

That is where we get a lot of mess in the system. Education agents may have tried to handle a section 20 notice, which is infinitely complicated, and it really ends up with that person at the MRT, spending a lot of money on legal advice when things could have been fixed a lot more easily and simply if they had had a much better awareness of the interaction of education agents versus migration agents in Australia.

CHAIR: I can see where you are both coming from. In a way it is related to the bill but not exactly to the specific text of this legislation. I can see the difficulty you have, with the knowledge of the migration agent versus the knowledge of the education provider.

Ms Horder: Yes, it is something we wanted to draw to your attention because it is actually in the issuing of these section 20 notices that it happens. I know, Madam Chair, from your past history that it is something that concerns you that there is protection for people. One of our members sent you a submission and said very well that international students in many senses are no different to other Australian students studying in Australia. They change their minds about courses, they behave like other young people and so we need to keep everything in perspective and not be too draconian in the way we apply this legislation. I guess that is just an overarching comment.

CHAIR: Yes, and probably a good point to finish on. Thank you for that reminder about those difficulties. I thank you both for your time this afternoon and for your submission to our inquiry.

CALLANAN, Mr Christopher, First Assistant Secretary, Compliance and Case Resolution, Department of Immigration and Citizenship

CLEARY, Ms Kim, Section Manager, International Quality Branch, International Education Division, Department of Innovation, Industry, Science, Research and Tertiary Education

KUKOC, Mr Kruno, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship

WALTERS, Mr Colin, Division Head, International Education Division, Department of Innovation, Industry, Science, Research and Tertiary Education

WILLIAMS, Ms Paula, Assistant Secretary, Education and Tourism Branch, Department of Immigration and Citizenship

[14:22]

CHAIR: I welcome representatives now from the Department of Immigration and Citizenship and from the Department of Innovation, Industry, Science, Research and Tertiary Education. We have submission No. 10 from the Department of Immigration and Citizenship and submission No. 18 from the Department of Innovation, Industry, Science, Research and Tertiary Education. Do you have an opening statement from either or both departments?

Mr Kukoc: Yes, we have one from the Department of Immigration and Citizenship. We are very pleased to have been invited to appear before this committee's inquiry into the Migration Legislation Amendment (Student Visas) Bill 2012. We particularly welcome the fact that submissions received by the inquiry indicate general support for the primary function of the bill: to remove the automatic cancellation of student visas. The regime was considered ineffective both by the Honourable Michael Knight in his strategic review of the student visa program 2011 and by the ANAO in its audit of the management of student visas. The department agrees with the recommendations from both reports.

The automatic cancellation regime is a blunt instrument that fails to account for the circumstances of a student being considered for a compliance action. The regime does not provide enough discretion to distinguish between genuine students who may benefit from a further opportunity to study and those that are deliberately undermining the system. The amendments in the bill will allow the regime to be replaced by discretionary cancellation. This will enable students' individual circumstances to be taken into account by delegated departmental decision makers and would also prevent the potential for exploitation by some providers who may use the regime unscrupulously as identified by the Hon. Michael Knight.

The current regime also constrains the department from targeting the broader range of risks represented by the student cohort. As noted in the ANAO audit, since 2001 the department has been in receipt of an ever increasing number of student course variations which turned into non-compliance notices in our systems that then represented decision bars that needed to be lifted by compliance officers before further visa applications can be finalised. Student course variations are issued not only for breaches of attendance or course progress but also for a broad range of matters, many of which are not of compliance concern. We can provide a list of these if useful to the committee later.

In line with the ANAO's recommendation, the department has largely cleared the non-compliance notice backlog but still has access to the information that each student course variation contained. This information is being used to inform clients for a more sophisticated compliance strategy that we use not only student course variations but also information from the community as well as targeted compliance operations. This plan will better enable the department to focus more strategically on the areas of most significant risk. It is being finalised to coincide with the implementation of the changes to cease automatic cancellation contained in the bill. My colleagues can provide further information about the plan to you today.

To ensure as smooth as possible transition from automatic to discretionary cancellation, the government has proposed a consequential amendment to require education providers to give updated contact details for students within 14 days of being notified of a change. I recognise that a number of submissions have expressed concerns that this will impose an administrative burden on education providers but I also note that this will be offset at least in part by the removal of the need to send section 20 notices to students.

As expressed in the department's submission to the inquiry, the removal of automatic cancellation will move the onus for initiating contact regarding an alleged breach from international students to the department. We therefore consider the amendment necessary to ensure we are able to contact students to convey important

information affecting their visa status. Students need to be given the opportunity to comment on any action being considered to cancel their visa. Some submissions suggest that providers only be required to update contact information when reporting a student course variation. While this will go some way to assisting the department and students, allegations of breaches may come from other sources such as immigration dob-ins. For this reason, updating contact details only when issuing a new student course variation would represent a real risk that some students will not be contactable and will not have an opportunity to present their case.

Maintaining a strong immigration integrity regime that provides procedural fairness to international students will be important for maintaining Australia's reputation as a quality provider of education and training to international students.

Mr Walters: Thanks for the opportunity to present evidence. I would just add a couple of things to what Mr Kukoc said. I think you would expect us mainly to comment on the issue around the administrative burden on providers. We have read the submissions and heard some of the evidence which you took just now. I am afraid I did not manage to catch quite all of it, but I know that this issue was raised.

Mr Kukoc made the point that there is a significant offset for providers in that they will no longer be required to send the section 20 notices, and that in 2010-11, I am advised that DIAC received around 7,600 of those. I think in terms of offsets, it is also worth bearing in mind that the colleges and the universities will not have to deal with the same level of anxiety that the current system creates by creating automatic cancellation notices. I think that has imposed quite a burden of counselling from time to time, because the students do not necessarily understand how this bit of the system works and what it means for them. I think there is a bit of an offset there too.

Having said that, the issue has been raised about the whether there could not be a better computer solution to this, and I am thinking maybe our submission was a bit too opaque on the subject. We are working on this, and the department is exploring how it might be possible in terms of enabling providers to import large amounts of student contact details simultaneously into PRISMS. We think this is feasible within security considerations. We will consult the providers further on that and we should be able to have it ready by the time the bill is passed.

My understanding is that this part of the bill comes into effect on proclamation and that can take up to six months after the enactment of the bill, so there is some time to get this right. In terms of what that actually means, I talked to the head of the computer operations this morning and he believes this is perfectly feasible and can be done. It is not an immense task in comparison with the other things that are happening on PRISMS. If you can imagine this is quite a long established computer system and, despite one or two of the comments in the submissions, it is actually a system that works quite well within the operational parameters it has got. In my experience it is a fairly good interactive modern system by government standards. At any given time, there is a lot of work taking place to update that so for all sorts of reasons the systems it interacts with means, like all these big systems, it has to be modified continually. This needs to be fed into that program and to make sure that it is going to interoperate with all the other changes being made, particularly around the tuition protection service, which is the new service coming into operation on 1 July as a result of the ESOS Bill, which I think was processed by the education committee rather than this one.

It is doable. We need to consult. It cannot be totally automatic for this reason: that we have got something like 1,400 providers on the system and you cannot simply allow an uninterrupted gateway between all of these systems and this one for security reasons. By security, I mean there as much the integrity of the data as anything else. It does recall an incident a few years ago when we were modifying the system that runs apprenticeship incentives and we allowed a fair degree of access from state government systems into that with the result that, in one large state, the entire internet system got knocked out on day one. We only discovered after a bit of testing that that was because the state for some time had only been receiving 10 per cent of the internet connectivity that it thought it was paying for. All sort of things happen, so you have to tread a bit carefully from the security point of view. But, in short, we think that there is a solution and hopefully we can get there before the system gets fully underway. That is what we are working towards anyway, and we will consult Universities Australia and the other peak bodies to make sure that happens as well as, of course, our colleagues in DIAC. I think that is about all I needed to add to what has already been said, thank you very much.

CHAIR: What you are telling me is that even if the data providers enter on the PRISMS system—let's start at the beginning—they cannot upload it. That does not talk to the system in DIAC—is that right?

Mr Walters: What they are doing, and I think what the providers are arguing for, is once they have put it in on their system—and remember we are not talking about rocket science here; we are talking an address, an email and a phone contact. At the moment they are already entering addresses in when they make a change, so it is the

email and the phone number that is a new thing. The best solution from their point of view will be that this just automatically went through to our system.

CHAIR: Your system and DIAC's system.

Mr Walters: Yes, so our system is PRISMS.

CHAIR: Your system is what DIAC uses anyway.

Mr Walters: I am not sure it will be possible quite in that sense; it might have to be put by them into a separate file so that that can come through and then can be transmitted onto our system. But it is an electronic system: it does not involve somebody.

CHAIR: That is true, but at the moment those systems do not talk to each other—is that right?

Mr Walters: The systems in some respects do.

Ms Cleary: The PRISMS system and the DIAC system do communicate. There are about 10,000 communications every day between the two.

Mr Kukoc: I think the issue here is that providers are asked to update the contact details that are provided to them on their own system, and this requirement will ask them to update the details on PRISMS, to which we have access from DIAC. When we are talking about two systems, we are talking about the provider's own system and PRISMS that is effectively part of the innovations and science system.

CHAIR: It is probably the provider's own system for purposes of reporting to DEEWR and re-entering the data for purposes of Innovation and DIAC—somebody is suggesting that is probably not correct. Where I am coming from is that I do not understand the logic. The providers are telling us that they are entering the data twice. I do not understand that logic when, let us say, they have 1,000 students and, in the course of a month, 100 of them change their mobile phone number but none of them are breaching their visa requirements. I do not understand why you are requiring the providers to do all that administrative work.

Mr Walters: My understanding is that what we are heading for is that they would effectively make a list of those mobile phone numbers on a file and just press a button and then that would come through to our system. It could also come through—

CHAIR: But a separate file to their own system?

Mr Walters: It could come through to their own system too. They would be perfectly capable of modifying their own software to do that. The security issues arise from providing a direct gateway from 1,400 providers straight into the PRISM System—but that is within the limits of my own non-technical understanding of it. But we are doing our best. We are hoping to have a good solution ready later in the year. Bear in mind that this will be offset by the work that they will not have to do.

CHAIR: From my understanding of the evidence we have heard today, unless I have got it wrong, people have to enter the data twice.

Mr Walters: I think that depends on how they organise their own system.

CHAIR: What they are saying is particularly in the context of page 11 of DIAC's submission, and, Mr Walters, you have just said it again as well. Basically you are saying to us that that administrative burden should be minimal now because, even though you are updating this information twice, you are not automatically cancelling visas. As a number of people have said to us today, the amount of data you are entering versus the number of visa breaches you are dealing with is like chalk and cheese, so it is no compensation at all. You might deal with no visa breaches in one year and you might be entering 5,000 pieces of data. Where is the compensation here?

Mr Walters: There is less work going in, as I say, because they are not having to do the section 20 notices. There will be less work in the universities because they will not have to deal with students who are upset by the current arrangements and thinking that their visas are going to be cancelled. They will have to do—

CHAIR: That is probably a different person who enters the data though.

Mr Walters: They will have to contribute to the national register. Really, you are asking a technical question. Perhaps we can take it on notice and give you a note next week which answers the issue of double entry. That is the one you are asking about. I would be very happy to take that on notice.

CHAIR: Perhaps you could answer this question for me though: if in fact, at the end of the day, it is the education provider who starts to raise the red flag and says: 'We think we've got a student here who is breaching their visa,' or in fact, 'We have got a student here who is breaching their visa,' they will now contact DIAC rather than automatically cancelling it. Can't you then contact the provider and just verify their contact details rather than

having to upload that information? Why is the education provider not responsible for the current and up-to-date information? I suppose my question to you is: why do you want to duplicate it?

Mr Kukoc: Someone needs to enter the information about the course variation or about a change in the status of the student through PRISMS, which we can access. So, despite the removal of the automatic cancellation provisions, the providers will still need to enter the data regarding course variation in PRISMS, and we will receive that data. What will happen is that that data will not automatically lead to automatic cancellation provisions, but we will use it on a discretionary basis to target compliance action.

CHAIR: But you are now asking them to also enter a student's change of address, email and mobile phone number, even if they are not varying their course.

Mr Kukoc: Yes.

CHAIR: Providers are saying to us that there is no logic in that. If a student is not varying their course and they are not on track to breach their visa, why do you need to know that information unless you specifically want to request it?

Mr Kukoc: The simple answer to that is that a lot of compliance action originates from outside the course variation and the knowledge of providers. We have a dob-in line and we have targeted illegal-working compliance actions through which we discover more than 1,000 cases per year, which then lead to a possible compliance action. If we do not have up-to-date contact details for that student, the situation will be that either we will not be able to provide natural justice to that student or we will need to hold up our action until we find out where the student is at the moment. So we are talking about either undermining the integrity action or undermining the natural justice process for that student if you do not have the up-to-date contact details for that student.

CHAIR: I understand that. But when you get a notification that someone might be breaching their work rights, when you then look on the system why would you not, say, then ring the University of Sydney and say, 'I've got an address and a mobile phone number here. Can you verify that for me?' Sydney university would say, 'Yes, it's the same,' or they will say, 'Well, actually they changed their address three months ago. Here's the current one.' For the one thousand cases you get a year from across all of the country, isn't that a more efficient system than getting providers every week or every month to upload information that may never be used?

Mr Callanan: It would be possible. It would be preferable, I think, if we have up-to-date addresses so that we can just go out and undertake those field activities. If there was a student course variation, leaving aside illegal work and things like that, we would need that up-to-date address anyway.

CHAIR: But you are actually asking education providers to be the cop on the beat, to update your information, when it might be a breach of a visa for a matter that is other than academic.

Mr Callanan: But, as Mr Kukoc said, it is in the interests of the students as well that we have their up-to-date addresses because if we do need to notify them of a breach of the visa conditions, to give them natural justice, we will know where to locate them.

CHAIR: How do you make sure your current database is accurate? Who is doing it now?

Mr Callanan: We rely at the moment on the data that comes through on PRISMS.

Mr Kukoc: We rely on our automatic cancellation provisions, because the course variation results in automatic cancellation.

CHAIR: Yes, but in terms of work rights how do you rely on updated address and contact details for a work rights visa breach as opposed to an academic breach? Who provides you with that day-to-day update information now?

Mr Callanan: We rely on our own systems for addresses, on students notifying us directly—as other visa holders do—and on the education providers.

CHAIR: Exactly. I am still having difficulty in coming to terms with why education providers need to update that information for you. I do not see a necessity for them to do that. I am not convinced of the need for the system to be changed. If there is an academic breach, they are going to notify you anyway. If it is a work rights visa breach or some other breach, for breaking the law or criminal prosecution, if you want to verify their name and address you simply pick up a phone and ring the provider anyway.

Mr Kukoc: The reason we were moving into that space is that we would like to improve the system. As you know, yes, currently we rely on our database and the automatic cancellation provisions. But, as Michael Knight said in his report, this is not a very effective system. It results in thousands of compliance actions and mandatory

cancellations with no need, a lot of stress and a lack of natural justice to students. The requirement to provide updated contact details actually will contribute to the goal, giving more natural justice to students.

CHAIR: Exactly. But what you are actually doing is putting an additional administrative burden on providers that are not going to be compensated for the additional administrative staff or time that is going to be required to enter this data and to deal with this situation. So, in other words, providers will, by de facto, be paying for and compensating what is not an efficient system at this point in time, until your two systems work together.

Mr Kukoc: It is a small additional administrative burden and I guess the objective is to improve both integrity and natural justice for students in moving to a better system than we currently have. Another thing Mr Walters said was that there is some offset in the reduction of red tape in the other space. But I think it is a balance of things. We need to achieve a system which provides better natural justice to students, better targeting and better integrity, and updated contact details is absolutely crucial in that. Without that, in the meantime, while DEEWR is updating or considering the possibility of bulk uploads, we may be left in a gap that will result in us either holding up the integrity compliance action or initiating and finalising the action without giving natural justice to students.

Mr Walters: Could I just mention two things which might be helpful. One is that you mentioned the two systems not talking to each other. We are only talking about one system here. It is called PRISMS and it is operated by us, but DIAC have access to the terminals and so do the 1,400 providers. They can put information in. So it is a system which spans everybody. We are only talking about one system.

The other thing I would mention to you is that currently, looking at the resources which exist, PRISMS only holds address data for about 48 per cent. This is just physical addresses; we do not have emails or phone numbers at the moment. We only have address data for 48 per cent of international students out of a total of around 310,000 students, and this information is on average 18 months old.

CHAIR: That is my point exactly. If a student is not varying their course and not breaching their visa, why do you need to know their current address? Basically they are entrusted to the education provider. If there is nothing going seriously wrong with that student's education, why do you need to know that?

Mr Kukoc: Presumably we get a dob-in. My colleague Chris Callanan will expand on that. If we get dob-in information about compliance or a breach of student visa conditions, information that the conditions that led to the grant of that student visa no longer exist or information on fraud, what do we do in the absence of the updated contact details of the student?

CHAIR: Pick up the phone and ring the provider.

Mr Walters: Can I just make the point—

CHAIR: Over the phone, they are going to give you the same information they would have typed in the day before for you.

Mr Walters: One of the issues we have is with providers that close. I think we have discussed this quite a lot with the other committee. In 2010 there were 33 provider closures, which affected several thousand students. Last year there were 11, affecting fewer, and so far this year none. However, it has been a big issue which has affected the reputation of our international education industry in this country, and that brings in around $16 billion a year. Overseas provider closures have been a big issue. When they have closed, sometimes what has happened has been that the administrator has contacted us or put a notice on the door and we cannot actually get in. So there is nobody to ring. They would just disappear.

CHAIR: Where do the students go?

Mr Walters: The students turn up at the door and we call a meeting. We try and get them altogether. We do not necessarily find them all. Eventually they will turn up because DIAC will probably come across them at some stage when they try to renew a visa or something like that. But at the moment, as I say, we only have a national record with 48 per cent of the students and just a physical address. That is all we have. If a provider falls over, we are relying on the provider to keep up-to-date records, and we do have requirements through the code. But we have had instances where the administrator has refused to let us get access to the computer for several days and, in some instances, has tried to charge us for access to those records. When you ask why we do not just ring up the provider, in some instances the provider is no longer there or is not answering the phone. The phone may have been cut off and we cannot break the door down to get hold of the computer.

Senator HUMPHRIES: That is a minority of cases.

Mr Walters: Of course it is.

Senator HUMPHRIES: It is a very small number.

Mr Walters: I accept that totally, but I simply made the observation because the question was put: why not ring the provider? That is one reason. The other reason is that, out of hours, the provider might not be accessible.

Mr Kukoc: The additional argument is the issue of the effective use of resources.

CHAIR: Whose resources?

Mr Kukoc: One of the purposes of this legislation is also to target the compliance resources of DIAC better to the real compliance cases. That is one of the objectives of this reform and the recommendation from Michael Knight's review. If we are required to contact providers for thousands of students or to update their contact details whenever action is commenced, that will effectively go against this objective of better targeting the compliance resources to the real cases of a breach of compliance.

CHAIR: I want to raise one other issue—the issue of the registered post. Is there a reason why providers are not required to send the initial notification to students by registered post? It is obviously their choice, but the Migration Institute of Australia are saying to us that that has caused cracks in the system because students have been able to say, 'We haven't had our notice.'

Mr Callanan: Are you referring to the section 20 notice?

CHAIR: Yes, those; but even the initial letter to say, 'There's a problem here.' I guess what they are saying is that, even from the start of the official communication with the student that begins the process, there is no requirement that it be by registered post—which is a gap in the system.

Ms Cleary: That is under the ESOS requirements.

Mr Walters: I think we will have to take that one on notice. That is a new issue. It has not been put to me before so I will take advice, if I may.

CHAIR: The other question I want to ask you is: if the current provisions of providers having to notify you of changes of address and details stay in the bill, why 14 days, and not 28 days, in which to do that?

Mr Walters: We had quite a good debate about this in the other committee. It is because we have different requirements for notification. It was a shorter period we were talking about there under the tuition protection arrangements. What is a realistic time frame so that people see it as a reasonably urgent task—is it 14 days? Is it 28? It is really a matter of judgement but I would suggest to the parliament that you want to put something in there that is realistic. By the way, it is 14 days from when the provider becomes aware of the notification. I think there was a slight misunderstanding during some of the evidence. It is not a 14-day requirement of the student at this stage. What we are talking about in this bill is 14 days for the provider once they become aware of the notification from the student.

Senator HUMPHRIES: Why is 14 days more realistic than 28 days?

Mr Walters: I think it is a judgement call.

Mr Kukoc: It is also for legislative consistency. Section 19 of the ESOS Act already requires education providers to give a number of items of information within 14 days—

Senator HUMPHRIES: About individual students or about other things?

Mr Kukoc: so the period of 14 days is—

CHAIR: This is when they vary or change their academic course?

Mr Kukoc: Yes. The period of 14 days for the provision of information is already embedded in the ESOS Act. For the sake of legislative consistency this new requirement will also be 14 days.

Senator HUMPHRIES: I have to say I am very unconvinced by the explanation you have given for the requirements you are imposing here. This is a classic example of how a small improvement in the operation of the department, or departments, which might result in a handful of cases getting better information in a timely way—an improved outcome is achieved in a small handful of cases at the expense of very significant extra burden being placed on these 1,400 educational providers. The Council of Private Higher Education has given evidence:

The proposed change would create a major increase in administrative workload; some typical colleges with 500—1500 students estimate the additional reporting will require an extra 0.5 to 1 FTE staff to fully comply, at a time of downturn and shrinking resources.

I think that is unconscionable and you do not seem to me to have factored in that extra burden on the people that you deal with; I know from previous inquiries that they have complained in the past about compliance requirements. That is exactly what the Leader of the Opposition was talking about yesterday in his budget reply speech when he talked about red tape multiplying all the time. In my view this is a classic illustration of how it happens. Are you going to address the issue of the cost to providers of meeting this requirement?

Mr Walters: I do not know that we can assess the cost because it is going to vary according to the computer system and the working methods of the provider. There are arrangements they already have for collecting this data and how they put it down. What I did undertake to do was to take away the issue of double-entry and exactly how we see that working because I think it needs a more technical explanation that I am able to provide today.

Senator HUMPHRIES: So you do not think it is your responsibility, as the department that is imposing the regulation, to assess ways of working with organisations to soften that impact—to reduce the burden on them.

Mr Walters: Not in the slightest. I think it is our responsibility. As I said, we are looking, precisely, at ways in which to make this as easy as possible in a computerised sense—bearing in mind that this is part of other changes which are taking place. We are very happy to sit down with the providers and work out the best way of doing it. We are going to do that, anyway.

Senator HUMPHRIES: If, as the providers say, the burden is significant and if, as I have characterised it, the benefit is quite marginal to your two departments, what would be wrong with having an automatic download of information from them, say, once a quarter—that would include updated phone numbers, addresses and email addresses—with the proviso, of course that, as the chair suggested, if some case came to your attention the department could pick up a telephone and say, 'What is the current email address of student so-and-so?' What would be wrong with that arrangement?

Mr Walters: I think the main issue is the effect. The basis for doing this as a quid pro quo for the change being made for the DIAC arrangements. It is really an operational issue. I guess the answer is that the information would not be as up to date. That would be the operational consequence.

Senator HUMPHRIES: What is that consequence of that? In the vast majority of cases it would not matter, would it? For 99.9 per cent of students you would not need that information any more regularly than quarterly. This is a policy issue so take it on notice. I just think this is a good example of how red tape occurs without the consequences being thought through.

By virtue of not having an automatic cancellation system—and cases having to be considered individually, presumably by DIAC—is there an additional administrative burden that is likely to be imposed in terms of processing those students whose visas might be at risk of being breached? Do you anticipate having to put extra resources into that task?

Mr Callanan: We do not have any plans to. We are under budget constraints, as well.

Senator HUMPHRIES: That is not, with respect, my question. You certainly are under budget constraints. There was $200 million taken out of your budget on Tuesday night and you are losing 44 staff, as I understand it. That is very unfortunate, but, with respect, that is a different issue to whether you have a higher level of administrative burden associated with these reforms.

In a world in which there were no issues about staffing would you be putting on extra people to deal with the processing of visa applications by virtue of the fact that you no longer have automatic cancellations and they all have to be considered one by one by the department?

Mr Callanan: We do not intend to increase resources. We think this opens up opportunities for us to better target those resources to areas of high risk. Instead of those student course variations, particularly around the automatic cancellation—that is, non-attendance and course progress—flowing through into our system and sitting there as noncompliance notices they will sit there as student course variations and we will be able, through risk analysis, to determine where the highest levels of risk are, and action those. Of course, they are only two of over 20 student course variations. There are others—such as code 6, which is non-commencement—that do not lead to automatic cancellation, which we could give attention to. And there is cessation of courses, which is another code that does not now lead to automatic or mandatory cancellation. In other words, through better analysing where the risk is around students, providers and the sort of information we are collecting from dob-ins and allegations, we can target our resources. That is where we think we will be able to cope.

Ms Williams: We will also be able to redeploy resources in the department more broadly. At the moment the current situation results in a number of very distressed students arriving at the department—at their processing centre's offices—with section 20 notices. They are very concerned about the automatic cancellation of their visas, which takes a lot of time and resources in terms of departmental officers spending time with them to sort them out and to ensure that we take care of them as well as we possibly can. When we do not have these numbers of students arriving in our offices, we will be able to redeploy resources in a more strategic way in terms of the compliance operations.

Senator HUMPHRIES: I agree that you will have fewer distressed people coming because you will not have the administrative or automatic cancellations, but you will still have to deal with a large proportion of those

students —if not all of them—in another way. They will have to be dealt with and presumably there will have to be some sort of dialogue or correspondence with them over the taking of a step to their cancellation. In some cases where people have drifted away or whatever, presumably there is not any contact and there is automatic cancellation and that is the last you see of them, but in the case of others, you do have to engage in a dialogue about what goes on now—'Do you want to change your course,' et cetera—before you make a decision. I accept that you will have less of a certain kind of interaction with the students, but you will still have a large number of cases to deal with—arguably more—in the circumstances of having to make individual decisions on a large number of cases, and you are not proposing to put any more resources into that. In fact, you may have less resources if this area has to share the general shaving which is going on across the agency. So are you saying to me that you are going to focus on the more high-profile, high-risk issues and that others of less importance might not be dealt with or might be dealt with later?

Mr Callanan: That is right. The national student integrity area of the department is developing a strategic plan of how they will operate under the new arrangements based on a risk matrix. It will be about targeting the high risk, but I would not underestimate the relief that we will receive in 2010-11, with 7,600 students receiving section 20 notices and about half of them having to come into the counters. Those transactions are very resource intensive—they take time—whereas the onus will now be on us to follow up with them. Initially it could by a telephone call, for instance, to clarify the nature of the student course variation and then take it from there. Then, if we thought there was an actual breach, it would be a follow-up letter notifying them of intention to cancel. So in other words I think we control the mechanisms a bit better.

CHAIR: Thank you for your submissions and your attendance this afternoon. If we have any further questions that arise from reading the transcript or any other issues, we will put them on notice to you.

Committee adjourned at 15:03