

SUBMISSION TO THE SENATE EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS COMMITTEE

INQUIRY INTO THE WELFARE OF
INTERNATIONAL STUDENTS

August 2009

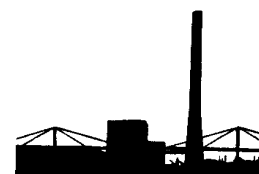
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The International Student Legal Advice Clinic is
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international
Student Legal
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(ISLAC)



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About the Western Suburbs Legal Service Inc

The Western Suburbs Legal Service Inc (WSLS) was established in 1978 and as such, is the oldest community legal centre in Melbourne's west.

Community legal centres are independent community organisations which provide free legal services to the public. WSLS is a generalist community legal centre that provides legal advice, information and representation to the local community in a range of legal areas. As the first community legal centre in the western suburbs, WSLS has a history of assisting people from across Melbourne's west. We continue to see clients from outside our immediate catchment area of the City of Hobson's Bay.

WSLS receives funds and resources from a variety of sources including State, Federal and Local government, philanthropic foundations, pro bono contributions and donations. WSLS also relies on the generous contributions of a large group of volunteer lawyers, paralegals and other community members.

WSLS works to provide effective and creative solutions to our clients' legal problems based on our community experience. Our strong relationship with our local community sets us apart from other providers of legal services and enables us to respond to community needs as they arise.

Like other community legal centres, WSLS combines assistance for individual clients with community legal education work, community development and law reform projects that are based on community need and are preventative in outcome. WSLS has worked on law reform and community development projects related to police issues, anti-terrorism laws, industrial relations issues and more recently, racism and discrimination.

In the context of our work on racism and discrimination, WSLS recently established the International Student Legal Advice Clinic (ISLAC) in conjunction with partners in Melbourne's Indian community.

About the International Student Legal Advice Clinic

In recognition of the significant and frequently unmet legal needs of international students, WSLS began working with community partners in May 2009 to establish a specialist legal advice clinic for Melbourne's international student community. In particular, this work was triggered by reports of racism, racist violence and discrimination experienced by Melbourne's Indian student community.

As a result of these collaborations, the International Student Legal Advice Clinic (ISLAC) commenced operation at the beginning of July 2009. ISLAC is a free drop-in service for international students that provides advice and on-going legal assistance and representation with the following types of legal matters:

- Criminal matters
- Discrimination
- Employment matters
- Fines
- Police issues and complaints
- Student rights
- Tenancy matters
- Traffic offences
- Victims of crime compensation

ISLAC is staffed by volunteer lawyers and paralegals with a background in international student issues. Some volunteers have language skills in Hindi, Urdu, Punjabi, Tamil and Bahasa Melayu. Telephone interpreter services are available for other languages. ISLAC also has a highly experienced Student Rights Officer present at every advice clinic, who conducts on-going advocacy on behalf of ISLAC clients in order to obtain swift and amicable resolution of client problems and to avoid the escalation of disputes or complaints into legal matters.

As will be discussed later in this submission, international students are often afraid to seek assistance or speak up about legal problems for fear of having their visa revoked, being subject to retaliation by their education provider, landlord or employer, or for fear that their chances of obtaining permanent residency will be jeopardised. International students have also been offered a variety of inadequate services in recent times and many have become skeptical about the efficacy of new initiatives. We are therefore working very hard to build a relationship of trust with the international student community. Despite these issues, in the short time ISLAC has operated we have advised a number of international students on legal matters predominantly relating to racism, tenancy, employment, victims of crime, police issues and traffic offences. There have also been a number of students attending with complaints or concerns about VET and higher education providers

In establishing and developing ISLAC we have read widely on the issues facing international students. We have also held discussions on the issues facing international students with a range of service providers including lawyers and psychologists working with international students who are victims of crime, international student groups, local council, university student support services, other community organisations (including other community legal centres) and statutory bodies. In promoting ISLAC we have been in contact with a large number of education providers who enrol international students. We have personally visited over 25 Vocational Education and Training ('VET') providers in Melbourne's CBD (see Appendix A). We are also liaising with education providers to arrange for information about ISLAC services to be included in orientation materials provided to international students.

Since the establishment of ISLAC the response from the international student community, other community agencies and even many training providers has been one of overwhelming support. We have consistently received feedback that this is an initiative that was long overdue and that will be of great assistance to international students.

We have written this submission based on all of our aforementioned work on ISLAC, including our experiences conducting the advice clinic itself and incidental interviews we have conducted with international students. Our submission is focused on the experiences of international students in Victoria, although we do make reference to events in other states at times. Where case studies are referred to we have obtained the permission of the students involved. All case studies have been de-identified to protect the confidentiality of the parties involved.

Introduction: The International Education Industry and its Social Consequences

International education in Australia is now big business. The Federal government's Australian Education International (AEI) reports that in 2008 some 435 263 international students studied in Australia, with a total enrolments of 543 989 (because some students studied more than one course in the year).¹ The revenue derived from this sector is substantial. According to the Australian Trade Commission, in 2007-2008 international education contributed \$14.2 billion in export income to the Australian economy, of which \$13.7 billion was money spent by international students in Australia on fees and goods and services.² Reportedly, international education is now Australia's third largest export.³

In the mid-1990's international students had come to be regarded by tertiary institutions as something of a 'cash cow'. As public funding for domestic students diminished, universities and TAFE's became increasingly reliant on income derived from high international student fees. In his University of Melbourne Dean's Lecture on 'The global positioning of Australian higher education: Where to from here?', Simon Marginson noted that "from 1996 international fees became an unambiguous substitute for public funding" and "each year the gap between costs and public funding increased, driving international enrolments higher and fully entrenching dependence on this revenue source".⁴

More recently, however, by far the biggest increases in the provision of education to overseas students have been in the VET sector. In April 2009, the AEI reported that in 2008 international student enrolments in this sector grew 46% nationwide, as compared to a 5% increase in international student enrolments in higher education.⁵ Commensurate with this, there has been a significant rise in the number of commercial VET providers. In Victoria alone 52 new commercial training providers were registered in the 2007-2008 financial year.⁶ The AEI reports that currently the majority of all VET enrolments are with the country's 437 non-government providers, who hold approximately 84% of VET international student enrolments.

The AEI has also reported that this rapid influx of enrolments in the VET sector has been largely due to substantial growth in enrolments of students from three countries: India, China and Nepal. The growth in

¹ Australian Education International (AEI), Australian Government, *Research Snapshot: International Student Numbers: 2008*, March 2009, available at

<http://aei.dest.gov.au/AEI/PublicationsAndResearch/Snapshots/Default.htm>

² See the Australian Trade Commission, Australian Government website at

<http://www.austrade.gov.au/Buy/Australian-Industry-Capability/Education-and-Training/default.aspx>

³ ABC Radio National 730AM, 'Interview with the Deputy Prime Minister and Minister for Education' *Julia Gillard*, 29 July 2009, available at

http://www.deewr.gov.au/Ministers/Gillard/Media/Transcripts/Pages/Article_090729_092324.aspx

⁴ Marginson, Simon, 'The global positioning of Australian higher education: Where to from here?', Dean's Lecture Series, University of Melbourne Faculty of Education, 16 October 2007, available at:

http://www.cshe.unimelb.edu.au/people/staff_pages/Marginson/MarginsonDeansLecture161007.pdf

⁵ AEI, *Research Snapshot: International Student Enrolments in Vocational Education and Training in 2008*, April 2009 and *Research Snapshot: International Student Enrolments in Higher Education in 2008*, April 2009, both available at <http://aei.dest.gov.au/AEI/PublicationsAndResearch/Snapshots/Default.htm>

⁶ Victorian Registration and Qualifications Authority (VRQA), *Annual Report 2007-2008*, available at <http://www.eduweb.vic.gov.au/edulibrary/public/govrel/reports/2007vrqaannualreport-rpt.pdf>, 23

enrolments of Indian students in 2008 was 94% as compared to 2007. For Nepalese students it was a dramatic 139%. The growth in the number of Chinese enrolments was 38%. Even in the higher education sector, Indian and Chinese students held more than 43% of all international student enrolments in 2008.

In our view, these patterns have been largely due to changes in Australia's skilled migration policy as it pertains to international students who have completed post-school study in Australia. This will be discussed in more detail below.

The bulk of inquiries ISLAC has received to date have been from students who study in the VET sector and most of our clients have come to Australia from the Indian sub-continent. We are particularly concerned about the ways in which the operation of the VET sector disadvantages and marginalises this group of international students. Our submission will therefore focus on the experience of international students in the VET sector and the regulation of that sector. Some of our arguments will, however, also relate to international students in higher education or other educational arenas, in particular our discussion of the experience of racism and discrimination by international students. Some of our case studies may also pertain to students studying outside of the VET sector.

Despite highly positive comments made about the VET sector by the Minister for Education, Julia Gillard, we believe that large numbers of VET students receive poor quality education and are exploited by their VET providers, their employers and their landlords. We believe that many students experience racism and discrimination, and in some cases violence, during their stay in Australia. We also believe that the government and the international education industry have largely shown disregard for the welfare of international students to date. Of the 65 'Students' Success Stories' published on the government's 'Study in Australia' website, not one is from a student who is studying, or has studied, in the VET sector.⁷ The stories told by that group of 65 students, who were largely drawn from public universities and TAFE's, do not accord with the stories we are hearing time and again from international students in the VET sector. Furthermore, as noted above, the precarious migration status of international students in the VET sector means that much of their negative feedback will not be voluntarily provided to government or regulatory bodies.

Most recently, two broad problems faced by international students have received significant media attention: racism, including violence motivated by racism, and the inadequacy of the services provided by private colleges. There are, however, a number of other issues facing international students that require prompt attention.

We submit that international students in the VET sector (like their counterparts in higher education) continue to be regarded as 'cash cows'. The boom in the VET sector has taken place without any regard

⁷ See <http://www.studyinaustralia.gov.au/Sia/en/WhyAustralia/studentstories>

for the lack of support services and protections available to the international students it is profiting from. There has also been a failure to realistically and respectfully consider the impact that changes to Australia's migration policies have on this particular group. Furthermore, no attention has been paid to how pre-existing communities, which have historically demonstrated discernible patterns of racism and prejudice, would react to this influx of international students. There has been no concerted effort by government to dispel the widespread belief that international students displace domestic students in both education and employment. Consequently, international students in this sector are experiencing an array of intersecting legal and social issues arising from their interactions with VET providers, employers, landlords and the broader community.

This submission will firstly consider the operation of commercial VET providers in the context of the Education Services for Overseas Students (ESOS) regulatory framework, including the operation of the ESOS Act 2000 ('the ESOS Act'), the ESOS Regulations 2001 ('the ESOS Regulations'), the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 ('the National Code') and various regulatory bodies empowered by that framework. We will examine the issues experienced by international students in and before they enter the VET sector and will comment on the current regulatory regime.

We will then look at several key systemic issues facing international students which largely contribute to the legal problems they present with when they attend ISLAC. In particular these relate to poverty, employment, housing, road rules and a lack of information and support services.

Our submission will go on to consider the racism and discrimination experienced by international students in their interactions with the broader community. We will examine the problem of racist violence against international students and the responses of authorities and government to this issue.

Finally our submission will address the issue of Australia's changing migration policies and the impact this has had and is continuing to have on international students.

VET Providers and the ESOS Framework

In their journey to and through VET education in Australia, international students may be subject to exploitation and abuse at various junctures. We will examine some of the problems experienced by international students who choose to undertake VET studies in Australia, as well as the functioning of the current ESOS regulatory regime.

Education Agents and Migration Agents

Many students who elect to study at Australian commercial VET colleges do so after consulting an education agent (recruiter) in their country of origin. International students often have minimal knowledge of Australia, let alone Australian tertiary education. They, therefore, generally rely heavily on the advice of education agents when deciding whether to study in Australia and where to study.

For Australian VET providers, education agents are an integral mechanism for recruiting students, thereby increasing enrolments and profits. Agents are often based in the students' country of origin and are paid a commission for each student successfully recruited.

The conduct of education agents gives rise to a number of issues. There appears to be a widespread problem of unscrupulous education agents misleading the students they are trying to recruit. Some agents are also giving poor migration advice. The ESOS framework fails to adequately regulate education agents and additional regulatory protections for international students are urgently required.

In a recent episode of SBS television's *Insight* program, there was some discussion about the issue of education agents from the perspective of international students:

Jenny Brockie: *But [the agents] told you jobs were easy to get?*

Mahalaxmi Dhakal: *Yeah and they told me... They also choose course for me also. And they, they told me –*

Jenny Brockie: *So they chose your course.*

Mahalaxmi Dhakal: *They told me, if you are doing this course, in future you will improve your life there and they also make us me - you can do anything that you like.*

Jenny Brockie: *And the reality? What's it been like?*

Mahalaxmi Dhakal: *The reality is just opposite. Everything is just opposite. I couldn't imagine past when I landed here.*

Jenny Brockie: *Samu, what about you? You have a similar story. What did your agent in Nepal tell you before you came here?*

Samjhana Uprety: *Actually, I'm not so - I don't know anything about the community welfare work and he told me that when you there - enter into airport and you will get so many people come to offer you, like, a job –*

Jenny Brockie: *At the airport?*

Samjhana Uprety: *Yeah, and you can choose whichever job you like and you and your husband both, and it is really very easy to get money and to pay for college.*⁸

Section 15 of the ESOS Act provides that VET providers must not engage in misleading or deceptive conduct in connection with the recruitment of overseas students. There is, however, no equivalent provision relating to education agents. The National Code provides that registered providers must ensure that their marketing is undertaken in a professional manner that maintains the integrity and reputation of the industry (Standard 1.1), but again the Standard prohibiting the provision of false or misleading information (Standard 1.2b) is directed solely at the education providers themselves, not their agents.

Even Standard 4 of the National Code, which specifically relates to the conduct of education agents, is targeted at the course providers rather than the agents themselves. Standard 4.1 requires that a course provider enter into written agreements with any education agents it “engages to formally represent it”. However, the National Code’s Explanatory Guide makes it clear that “informal” arrangements are legally possible and require no contract.⁹ Standard 4 further provides that a course provider must not accept students from an education agent or enter into an agreement with an education agent if it “knows or reasonably suspects” that the agent is engaged in dishonest practices or is providing unauthorised migration advice. Standard 4.5 specifically requires that a course provider “take immediate corrective and preventative action” upon becoming aware that an agent is being negligent, careless or incompetent or engaging in false, misleading or unethical advertising and recruitment practices.

As there is nothing in the ESOS Act or the National Code that is directed at education agents themselves, they remain largely unregulated. Furthermore, as the livelihood/profits of education agents are contingent on the number of students they recruit, agents have little incentive to engage in scrupulous recruitment and more incentive to engage in whatever practices are likely to recruit the largest number of students. As one education agent noted on SBS’s *Insight* program:

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

Gail Baker, Southern Cross Student Services.

⁸ SBS Television, ‘At Risk’, *Insight*, 21 July 2009, transcript available at <http://news.sbs.com.au/insight/episode/index/id/87#transcript>

⁹ *Explanatory Guide to the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (‘*Explanatory Guide to the National Code*’), Part D, Standard 4, available at <http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/default.htm>

While Standard 4 of the National Code is clearly an attempt to indirectly regulate the conduct of education agents, in our view it fails to do this. VET providers are dependent on agents for recruitment and it is not in their interests to proactively scrutinise their conduct. Furthermore, the ESOS framework does not place any onus on VET providers to do this apart from suggesting the providers' agreements with agents may include mechanisms for evaluating the activities of the education agent.¹⁰ In this regard, this part of the ESOS framework is more likely to encourage wilful blindness on the part of VET providers rather than active scrutiny. Providing a VET provider remains 'unaware' of the unscrupulous conduct of its agents, it does not fall foul of any aspect of the ESOS regulatory regime. Furthermore, as noted above, there is nothing preventing education providers from having informal, ad hoc arrangements with agents. Providing the relationship is not an on-going one where the agent formally represents the organisation, no written agreement is required. The Explanatory Guide to the National Code also makes it clear that the authorities are leaving the regulation of agents entirely up to the education providers, stating that "it is the responsibility of a provider to undertake monitoring activities to ensure their agents are acting in accordance with the responsibilities and expectations outlined in the agreement and the National Code 2007".¹¹

The following is a case study from ISLAC that is illustrative of the problems unscrupulous education agents can create. In this instance, the case study pertains to a major university.

Case Study 1

Student A from India arranged to study at University Z through an Indian education agent. She received an offer of enrolment from the university and when she paid her fees for her initial semester, they were accepted. Student A arrived in Australia to begin her course on the date specified in the offer of enrolment and went to University Z to enrol. At that point she was told by the university that the date specified in the offer of enrolment was incorrect and that there were no courses starting at that time. The university also suggested to her that it was probably a 'fake' offer of enrolment.

University Z has allowed Student A to enrol in some subjects but they are not the subjects she wanted to do. Furthermore, she was not able to enrol in as many subjects as she needed in order to complete the course within the period of her student visa. She will therefore have to apply for a new student visa at a cost of \$540. Also, as a result of this deception, Student A's relationship with university administration is now extremely hostile to the point that she feels she has been harassed by them.

Education agents who provide migration advice also create problems. There is a fine line between 'advice' and 'information' and it is clear that many education agents cross that line at times. There is no requirement that people providing immigration advice or assistance outside of Australia be registered in the same way that migration agents based in Australia must be. This means that overseas education

¹⁰ *Explanatory Guide to the National Code*, ibid

¹¹ *Explanatory Guide to the National Code*, ibid

agents can freely provide migration advice and assistance with no constraints. Furthermore, migration advice provided overseas, whether provided by a registered migration agent or not, is unregulated.

It would seem that the Australian government has done nothing to deter education agents from giving migration advice or to monitor the advice given. For example, the Australian High Commission in India states that it “works closely” with an organisation called the Association of Australian Education Representatives in India (AAERI).¹² AAERI is the peak body for education agents recruiting students on behalf of Australian education providers. It was developed with support from the New Delhi office of the Australian Department of Immigration and Citizenship (DIAC).¹³ AAERI has its own Code of Ethics, however, there is nothing in that Code of Ethics to deter education agents from giving migration advice. Furthermore, the AAERI website clearly contemplates that AAERI agents would be giving migration assistance, if not advice. Their suggested fee schedule includes a fee for “assisting with visa application[s]”. Their website also contains a link titled “Information for Education Agents” which links to DIAC’s ‘Agents Gateway’ webpage containing information for migration agents regarding visa applications, migration legislation and so on.¹⁴

The potential for misleading and deceptive conduct on the part of migration agents operating overseas is deeply concerning. The following ISLAC case study is an illustration of this.

Case Study 2

Student X from India is enrolled in a Certificate III in Hairdressing with a private VET provider in Melbourne. Prior to enrolment, the migration agent representing the institution in which Student X enrolled told Student X that she would receive 900 hours work experience as part of her course. After commencing her course, Student X was told by the VET provider that students only receive approximately 384 hours of work experience as part of their training program. Student X claims that signs posted at the college read “we provide 900 hours work experience incorporated”. Student X assumed that ‘incorporated’ meant incorporated into the Certificate III course, which confirmed what she had been told by the VET provider’s migration agent. Her failure to achieve 900 hours of work experience by the end of her course will impede Student X’s application for permanent residency.

The fact that education and migration agents are giving poor advice has created significant problems for international students. While the landscape of Australia’s skilled migration policy has changed in the last few years, it would seem by the continued increase in enrolments in the VET sector that this information is not being conveyed to prospective students. Even though VET study is no longer the direct path to permanent residency that it used to be, students from the Indian sub-continent and China are continuing

¹² See website of the Australian High Commissioner to India, available at <http://www.ausgovindia.com/ndli/study.html>

¹³ See website of Association of Australian Education Representatives in India (AAERI), available at <http://www.aaeri.org>

¹⁴ See AAERI website, *ibid*

to enrol in VET courses with the expectation that they will be able to get permanent residency.¹⁵ Recent changes to the critical skills list are such that many students will not qualify for immediate permanent residency and many not at all (see discussion below). Nonetheless, education agents are still advertising courses as “PR courses” and using slogans like “[g]et your PR quicker and easier” in order to market Australian courses overseas.¹⁶ This has dire consequences for international students who invest large amounts of money in VET courses, often by taking out loans, on the basis that it will lead to permanent residency. As many VET courses do little to create job opportunities for students in their countries of origin, these investments may be a complete waste if permanent residency is not achieved. Students may well end up in debt and worse off than they were before they decided on an Australian VET education.

In our view, the Australian government has been highly remiss in its failure to regulate this part of the international education industry and urgent reforms are required. The need for reform in this area was also recognised by the Victorian Department of Innovation, Industry and Regional Development’s ‘Overseas Student Education Experience Taskforce’ (‘the Victorian Taskforce’), which reported on the experiences of overseas students in Victoria in December 2008.¹⁷ A number of submissions to the Victorian Taskforce raised the issue of ‘dodgy’ education agents, including the submission of the National Liaison Committee for International Students (a peak body for overseas students in Australia).¹⁸ This issue was also raised by the National Union of Students in its 2009 report on ‘International Students’ Security and Safety Needs in Australia’.¹⁹ The Victorian Taskforce noted evidence provided by international students and their families which indicated that education agents were not providing complete information and were at times providing misleading information, resulting in students having unrealistic expectations. The Victorian Taskforce recommended the establishment of a national registration framework for education agents.²⁰ This issue was also raised in the Centre for Multicultural Youth’s statewide network meeting on ‘International Students in Our Community’, with a similar recommendation being made.²¹

¹⁵ Bob Birrell and Bronwen Perry, ‘Immigration Policy Change and the International Student Industry’, *People and Place*, Vol 17, No 2, 2009, page 71

¹⁶ SBS Television, *Insight*, *ibid*

¹⁷ Overseas Student Education Experience Taskforce (Victoria) (‘Victorian Taskforce’), ‘Report’, 22 December 2008, available at

<http://www.isana.org.au/files/Overseas%20Student%20Experience%20Taskforce%20Report%202008.pdf>

¹⁸ National Liaison Committee for International Students (NLC), *Submission for the Overseas Students Experience Task Force Department of Innovation, Industry and Regional Development (Victoria)*, October 2008, available at

http://www.nlc.edu.au/Submission_Doc/Victoria_Taskforce_Submission_2008.pdf; National Union of Students,

¹⁹ National Union of Students, ‘International Students’ Security and Safety Needs in Australia: Report’, 2009, available at

<http://unistudent.com.au/home/images/national%20union%20of%20students%20report%20on%20international%20students%20security%20and%20safety%20needs%20in%20australia-1.pdf>

²⁰ Victorian Taskforce, *ibid*, 17

²¹ Centre for Multicultural Youth, ‘International Students in our Community’, Report from the Centre for Multicultural Youth’s Statewide Multicultural Youth Issues Network Meeting, 26 June 2008, available at

<http://www.cmy.net.au/Assets/476/1/InternationalStudentsSMYINreport26June2008.pdf>

We therefore urge this Committee to similarly recommend significant and urgent improvements in the regulation of education and migration agents operating in the international education arena. In particular, we make the following recommendations:

- 1. We recommend that the government swiftly introduce a regulatory regime that will apply to education agents, including effective enforcement mechanisms.**
- 2. We recommend that the National Code be amended to require education providers to proactively monitor the conduct of all education agents with whom they work, both formally and informally.**
- 3. We recommend that the government take steps to regulate the conduct of agents providing migration advice outside of Australia in connection with Australian education providers.**

VET Providers Misleading Students

Section 15 of the ESOS Act prohibits misleading or deceptive conduct by VET providers. Furthermore, Standard 1.2 of the National Code provides that VET providers must not give false or misleading information or advice regarding themselves or their courses. Standard 2.1 requires that VET providers provide students with current and accurate information regarding their facilities before enrolment. Despite these requirements, we believe that the advertising materials and websites of most VET providers are significantly misleading. We have formed this view based on our visits to over 25 Victorian VET providers' premises and our examination of the websites of approximately the same number of Victorian VET providers by random selection (see Appendix B).

Firstly, the names of many commercial VET providers suggest that they are national or statewide institutions that are in some way connected with the State or Federal government. To use Victorian examples, the names of commercial VET providers include: Victorian International College, Melbourne Institute of Technology, Institute of Tertiary and Higher Education Australia, the Australian College of Hair Design and Beauty, Australian Institute of Technical Training, Australian National Institute of Business and Technology, Australian Institute of Technology and Education and Victorian Institute of Technology. Some of these providers even have names that are inconsistent with the VET courses they offer; for example, the Institute of Tertiary and Higher Education Australia offers no 'higher education'. This is clearly misleading.

Overwhelmingly, the websites of VET providers tend to refer to their premises as 'campuses', which we believe denotes a traditional university campus with a number of buildings, student facilities and outdoor areas. Even the ESOS framework relies on the term 'campus' when referring to the premises where classes are conducted.

Furthermore, an examination of a random selection of VET providers' websites reveals that the majority use imagery in their sites and prospectuses that is commonly associated with conventional public universities. For example, many depict students sitting on a lawn studying with old buildings in the

background or students wearing academic gowns such as are associated with graduation from a university.

In combination, all of these things convey an impression to international students (who are generally unfamiliar with Australian tertiary education) that they are enrolling in institutions of a calibre and with facilities that are quite different from the reality. Furthermore, the levels of course fees charged by private VET providers may also suggest to international students that they are enrolling in an institution that is vastly superior to the VET college they ultimately find themselves in.

In reality, many of these private providers are very small and operate out of office premises in the CBD which are no more than a few rooms in total or a single floor. Many of them have only been in operation for a few years and it is unlikely that they offer the facilities and quality of education expected from a public university.

Unless education agents clearly prepare students for the reality of a private VET education in Australia, which they are unlikely to do, many international students will be misled by the advertising and promotion strategies of private VET providers.

As one international student recently commented on SBS television's *Insight* program when asked about his private college experience:

Harry Singh: I was thinking colleges would be big like India colleges. But it's small, like a cabinet colleges. It's very small, like it's a house or it's offices, yeah. It's not like the colleges as compared to India.

Jenny Brockie: OK, so you didn't know very much at all so you relied heavily on an agent in India?

Harry Singh: Yeah, in the prospectus, in the booklet, it showed Harbour Bridge, Opera House, instead of a college building, yeah and some of the college prospectus shows, like, the gate of the fort and, like a Sydney college gate and all that. They show like this.

Jenny Brockie: They show pictures of grand things?

Harry Singh: Yeah, yeah.²²

International students are a particularly vulnerable group when it comes to the marketing of international education, as they are unlikely to have any local knowledge about private or public education in Australia. The regulation of VET providers needs to reflect this vulnerability so that international students do not continue to be misled about the educational experience they will have when they come to Australia. We therefore make the following recommendations:

- 4. We recommend that there is greater regulation and monitoring of the advertising and labelling of VET providers' services.**

²² SBS Television, *Insight*, ibid

- 5. We recommend that the government conduct an audit of the advertising and promotion materials currently used by VET providers, including the appropriateness of terminology used by providers and in the ESOS framework.**

VET Providers Failing to Provide Prospective Students with Adequate Information

Standard 2.1h of the National Code requires that VET providers provide students with print or electronic information about living in Australia, including indicative costs of living, accommodation options, and schooling options and fees for school-aged dependents. Notwithstanding this Standard, our examination of the websites, prospectuses and handbooks of over 25 VET providers in Victoria has revealed that many of them do not provide information about the cost of living in Australia and many fail to provide information regarding accommodation options. We also noted a great deal of variance in the information provided. Some VET providers give students information about accommodation options but not the cost of living. Others do the opposite. Others still provide information regarding the cost of living that is outdated and unrealistic given current prices. Figures provided by VET providers for a year's living expenses range from \$8 500 to \$24 000. Many VET providers' websites suggest that \$12 000 is the likely cost of living per year. DIAC also requires that students have \$12 000 in order to obtain a student visa and some VET providers seem to base their assessment of the cost of living on that amount. However, given escalating rent, transportation costs and general inflation, this figure is insufficient for a student living independently.

As will be further discussed below, the failure of VET providers to provide students with adequate and accurate information before they arrive in Australia is substantially contributing to student poverty when they are here. Students are unprepared for the cost of living in Australia and in particular, the high cost of rental accommodation. They are also often unaware of the implications of the different accommodation options available to them.

This is an issue of monitoring and ensuring compliance with the National Code, rather than an issue with the contents of the Code. Although the Code creates a standard that VET providers must meet, many are failing to meet that standard and international students are bearing the brunt of this. We therefore recommend the following:

- 6. We recommend that there be greater monitoring and enforcement of Standard 2.1 of the National Code.**

Refunds and Transfers

We are concerned that most VET providers have harsh and inflexible policies around the refunding of course fees and course transfers.

Refunds

Division 2 of the ESOS Act relates to refunds of course fees to international students. It requires that education providers provide students with refunds in certain situations, these being:

1. Where the provider defaults on the agreement with the student in that:
 - a. The course does not start on the agreed starting day;
 - b. The course ceases to be provided after commencement but before completion;
 - c. The course is not provided in full to the student because a sanction has been imposed on the provider under the ESOS Act's enforcement provisions.
2. Where the student defaults on the agreement but the provider never entered into a written agreement regarding refunds with the student.
3. Where the student defaults on the agreement because they are not granted a student visa.

Section 28 of the ESOS Act also requires that education providers enter into written agreements with students regarding refunds where there is a student default. This requirement is reiterated in Standard 3.2 of the National Code. However, the ESOS Act and the National Code do not require that education providers make any specified amount or percentage of refund in the event of student default. Consequently, where a student defaults on their agreement with an education provider, the ESOS framework does not provide that student with any entitlement to a pro rata refund. There is also no obligation on education providers to consider student circumstances or to provide compassionate consideration when determining student applications for refunds.

Given this lack of direction, VET providers are treating international students as ordinary consumers entering into a business contract. Of the student handbooks and prospectuses that we examined, almost all provide that no refund will be available to students after course commencement in the event of student default. Only a very small minority make reference to the possibility that they will consider the student's circumstances when determining a refund application.

The types of issues created by the refund policies adopted by most VET providers are illustrated by the following case study.

Case Study 3

Student B is a student from Nepal. He arrived in Melbourne in early 2009 and is on a student visa. He has been studying at a VET college in Melbourne.

After commencing his studies, Student B was repeatedly sexually assaulted. He has suffered trauma as a result of the sexual assaults and he reported the matter to the police. He wants to stay in Australia to complete his studies but he no longer feels safe staying in Melbourne. He does not want to return to Nepal without finishing his course. He says that he would feel a great shame if he returned mid-way through his studies as his parents saved a lot of money for him to undertake his studies in Australia.

In order to finish his studies outside of Melbourne, Student B wants to move to Brisbane to stay with a friend. He received an offer to study with a Brisbane VET provider and decided to leave his Melbourne VET provider.

Student B attempted to get a refund from the Melbourne VET provider for a module he had paid for but not received. The Melbourne VET provider refused to provide a refund as their policy states that no refunds will be provided after commencement. Student B appealed that decision internally but received no response to his appeal.

Due to these circumstances, Student B has also had to enter into discussions with DIAC who, because of the exceptional circumstances of his case, agreed to give him time to enrol in the new course. Without the refund, however, Student B does not have sufficient money to enrol in the Brisbane course and there is a concern that he will not be able to enrol in time to avoid cancellation of his student visa.

In our view, VET providers should be required to enter into much more flexible refund agreements with international students. Given the large amounts of course fees paid by students and the fact that many students are recruited through agents outside of Australia with no opportunity to view the VET providers' facilities, students should be provided with a reasonable 'cooling-off period' after the commencement of courses. This would also recognise that students have little bargaining power when entering into agreements with VET providers because they are unable to compare the courses and facilities of various providers and they lack knowledge of the Australian education system. They are also vulnerable once they commence a course because their visas are dependent upon the study they are undertaking. They are therefore less likely to assert themselves in the face of harsh or unjust refund policies.

VET providers should also be required to consider student circumstances when determining refunds and agreements should provide for refunds on compassionate grounds. International students are not in the same position as domestic students. Failure to obtain a refund can lead to financial hardship and subsequent loss of accommodation, without the alternative of just going home to one's family that domestic students have. International students may also have family emergencies that prevent them from continuing with their course because they have to return to their home country, whereas a domestic student is at least geographically able to manage both. Furthermore, when international students experience violence or some other trauma, they have far fewer supports available to them in Australia and may therefore need to return to their home country to access the supports that they need. This type of situation arose in the case of Suketu Modi, an 18 year old from India who returned home to India in early 2009 after an incident of violence. *The Age* reported:

*Ecstatic at his father agreeing to let him pursue his 'Australian dream', Modi left his family's flourishing hotel business last year to study at the Holmesglen Institute in Melbourne, but was bashed on a train as he travelled home. Modi lost the fees he had paid, but decided that it was too dangerous to stay on.*²³

²³ Amrit Dhillon, 'Fear wins out as Indian student heads for home', *The Age*, 2 June 2009, available at <http://www.theage.com.au/national/fear-wins-out-as-indian-student-heads-for-home-20090601-bt09.html>

We believe that our concerns regarding refunds relate to both commercial and non-commercial VET providers. An examination of the current refund policy of Holmesglen TAFE in its 'International Student Prospectus 2009' reveals that it is the same as those of most other VET providers we have examined. That is, refunds are not available after course commencement and there is no provision for consideration of a student's individual circumstances, even where they may be exceptional.²⁴ We therefore recommend:

- 7. We recommend that the refund agreements entered into by VET providers be required to include a reasonable 'cooling-off period' that lasts beyond course commencement.**
- 8. We recommend that VET providers be required to consider individual student circumstances when determining refund applications upon student default and that refund agreements between providers and students be formulated accordingly.**

Transfers

Under Standard 7 of the National Code, education providers are prohibited from enrolling a student who is transferring from another provider unless they have completed at least 6 months of study with their current provider. One exception to this is where the student has a letter of offer/enrolment from a new provider and on that basis, has been provided with a letter of release from the old provider and has terminated their enrolment. Other exceptions occur where the provider ceases to be registered, stops offering the course or has sanctions imposed on it that prevent it from offering the course.

At a recent information session for international students hosted by DIAC, a representative of the Department of Education, Employment and Workplace Relations (DEEWR) expressly stated that Standard 7 "clearly contemplates that the student should be released".²⁵ This is confirmed by the Explanatory Guide to the National Code which indicates that providers should have a policy around transfers that identifies reasonable grounds for refusing a student's request.²⁶ The Explanatory Guide also confirms that the intent of Standard 7 is to recognise students as consumers and support them to exercise choice, while simultaneously acknowledging that they are a group requiring support.²⁷ This may be the aim of Standard 7, but the reality for international students is quite different. VET providers operate profit-making enterprises. They are therefore reluctant to release students and lose the significant revenue acquired with each enrolment. When students commence study with a VET provider they have usually not seen the provider's facilities or premises and have not had an opportunity to compare VET providers. As noted above, due to their lack of knowledge of the Australian education system, many students effectively have their VET providers chosen for them by education agents. It is therefore understandable that a significant number of students may wish to transfer to another institution shortly after commencing study with one VET provider, indeed in the first 6 months of study.

²⁴ Holmesglen TAFE, 'International Student Prospectus 2009', page 101, available at http://www.holmesglen.edu.au/_data/assets/pdf_file/0016/23137/2009Prospectus.pdf

²⁵ DIAC, Student Information Seminar, Melbourne, 15 July 2009

²⁶ *Explanatory Guide to the National Code*, ibid, Standard 7

²⁷ *Explanatory Guide to the National Code*, ibid, Standard 7

The transfer policies of VET providers that we have examined are generally restrictive and paternalistic and do not accord with the supposed intent of Standard 7. For example, the transfer policy of one VET provider, Academia International, provides that in order to get a release, students must prove (amongst other things) that “the new course better meets their long-term goals” plus “any other exceptional circumstances Academia International sees fit”. Furthermore, the policy states that the release can be refused where Academia International “determines that the transfer would be detrimental to the Student’s study or career goals” or where “the documents provided by the Student do not, in Academia International’s reasonable view, provide adequate justification for the transfer”. These kinds of policies give VET providers broad discretion to refuse transfers and are also highly paternalistic. They are not consistent with DEEWR’s reading of Standard 7, nor with the Explanatory Guide. Nonetheless, transfer policies like these are not rare and there does not appear to be any provision in the ESOS regulatory framework to monitor and control them.

The vulnerability of international students also means that they are unlikely to report harsh transfer policies that violate the National Code. The issue of VET providers obstructing student transfers and students’ reluctance to report the problem was also raised on SBS’s *Insight* program:

Navjot Singh: *Why they come, because the information given in India or any other country is so fanciful. They come here and find total opposite and when they try to make a change, they want to move to another college, which one is better, there is a catch with private colleges. They don't issue you a release letter. When a student asks for a release letter, sometimes the students are asked to pay up to \$5,000 to get a release letter.*

Jenny Brockie: *A release letter from a course? Do you have evidence of that? Can you point - has that happened to you?*

Harry Singh: *I do have but, like, refused to give that because they don't want to show themselves in front of media. They feel scared of their colleges because they exploit them. They say, like, if you do this, we will do this and we will tell immigration to cancel your visa, sort of thing, yeah.²⁸*

In relation to course transfers, we make the following recommendations:

- 9. We recommend that a framework be established for the independent assessment of all transfer applications.**
- 10. We recommend that where this is not possible, there be greater monitoring of the transfer policies of VET providers and that they be required to conform their policies to the intent of the National Code.**

²⁸ SBS Television, *At Risk-Insight*, ibid

VET Providers Providing Sub-Standard Education and Facilities

Jenny Brockie: [G]iven that many of you are paying, what, \$10,000 a year, for the courses, what do you think of the courses? How do you think they stack up?

Navjot Singh: Worthless.

Jenny Brockie: Worthless, who said that? Navjot?

Navjot Singh: Yeah, they are worthless. They don't teach you anything. The private colleges, as far as cookery classes goes, they got classes for theory, but practical, they do not have any kitchen. Sometimes the college is in the city and the kitchen class will be in Liverpool, which has not taken place yet. So as far as practical training, they do not give you anything back.

SBS, 'At Risk', *Insight*.²⁹

I would take opportunity to share my experience with readers about one institute. I came Melbourne in 2003 July at get admitted to Melbourne institute of Technology under university of Ballarat. My intended course was Master of IT. After few weeks of study in the campus which was like a Vodafone retail shop, I changed my course to MBA in management after first semester due to extremely poor quality teaching staff and facility. During my 1st semester in MBA immigration changed the point rules and increased MIS to a 60-point course. As a result most of the students jumped on admin to change the course from IT to MIS. I was the only person who wanted to change to MBA—a lower point course..as I did not have too much intention to stay in AUSTRALIA at that time. The admin looked at me with a strange look, said—"why are you choosing MBA instead of 60-point MIS".. However I continued in MBA and met my wife at class when I was in 2nd semester. She had a course in MBA "knowledge information management". She attended the class only 02 days, and did so because of the poor skill of teacher. She never submitted any assignment at all. At the end of the semester she passed the course with Credit score!!!!!!!. I failed in Principle of accounting and when I asked why...they just told me I did copy of the assignment...which I really did not. I studied the subject to learn...not for PR. they never gave me a chance of review and refused me with ugly behavior. The third sem I had Strategic management, the campus did not publish our result ; reason..we failed(group) to pass due to plagiarism. We contacted the teacher and he said..I have not finished examining the works..and will handover the results next week!!! then finally I changed the university from where I graduated with pride. If a genuine investigation is made against this business.. I'm sure you will get a lot. there are many TAFE institutes in Melbourne alone who give false certificate of experience with exchange of money to those who seek PR in that way. But if you don't have the skill and become PR..rest of your life you will suffer..this simple message should be conveyed to all prospective students [sic].³⁰

Posted by Syed Uddin of Brisbane in response to an article in *The Australian* titled 'Education's dodgy operators must be shown door' on 30 July 2009.

²⁹ SBS Television, 'At Risk', *Insight*, ibid

³⁰ Posting in response to Tony Pollock, 'Education's dodgy operators must be shown the door', *The Australian*, 30 July 2009, available at <http://www.theaustralian.news.com.au/story/0,,25854309-24636,00.html>

In light of the above comments, anecdotal evidence from international students, news reports and our own visits to VET providers, we are concerned that the courses and facilities provided by VET providers do not meet the appropriate standards, let alone the standards international students are led to expect when they are recruited. Our concerns pertain to both the quality of facilities and resources offered to students, as well as the standard of education provided through VET courses.

In a recent article on 'Immigration Policy Change and the International Student Industry', Bob Birrell and Bronwyn Perry make the following comments:

...[F]or some time there has been concern within DIAC about the skill levels of overseas students trained in Australia. This came to a head in the course of an Evaluation of the General Skilled Migration Categories conducted through 2005 and published in March 2006 ... The Evaluation concluded that the available evidence on job outcomes for former overseas students trained in Australia showed that these outcomes are poor.³¹

In the same article, Birrell and Perry also point out that in respect of the 'migration on demand list', applicants with VET qualifications have been given visas but there has been no apparent impact on job shortages in the 'on-demand' occupations.³² The suggestion here is that, despite these qualifications, the education that these students have received is insufficient to translate to a job outcome. In respect of the cooking industry, for example, the authors point out the following:

According to informants in the cooking training field, the cooking skills of a student completing a one year full-time course in these fields are roughly equivalent to those achieved by a second-year domestic apprentice in cooking, or around the level of a semi-skilled kitchen hand. This is well short of the trade standard expected for domestic apprentices on completion of their apprenticeship. The value added to a student's earning potential on returning to India with a VET cooking credential is minimal.³³

This is particularly concerning given the substantial amount of money international students pay for VET courses, which on average cost approximately \$10 000 per year.

In the wake of the investigation of various Melbourne VET providers, Victorian newspapers have reported on the questionable standards of courses and facilities at VET colleges. On 10 May 2008 in an article titled 'A high price to study' the *Herald Sun* reported on student claims that several colleges have woeful computer or book stocks and that at some institutions, 40% of student fees are spent on student-recruitment promotions. The article went on to quote Gautum Gupta, Secretary of the Federation of Indian Students of Australia, as saying that "Sometimes there are no teachers, sometimes there have

³¹ Birrell and Perry, *ibid*, 68-9

³² Birrell and Perry, *ibid*, 69

³³ Birrell and Perry, *ibid*, 67

been only three computers for a class of 50".³⁴ In a 23 July 2009 article on the closure of the Melbourne-based Victorian Institute of Training and Learning, *The Age* reported that a 2008 audit of the college found that it had failed 54 of the 85 audit criteria. Amongst other things, the audit reportedly found that course units were being taught back to front, student records were not properly kept and teachers' qualifications had no certification verifying their authenticity.³⁵

Before a state regulatory authority such as the Victorian Registration and Qualifications Authority (VRQA) in Victoria registers an education or training provider, it must be satisfied that the provider meets the requirements for registration according to the Australian Quality Training Framework (AQTF), *Essential Standards for Registration*. The first of these Standards includes a requirement that "staff, facilities, equipment and training and assessment materials used by the [Registered Training Organisation] are consistent with the requirements of the Training Package or accredited course and the RTO's own training and assessment strategies".³⁶

Notwithstanding these requirements, clearly there are VET providers who provide sub-standard courses and facilities. The issue is therefore one of monitoring and enforcement. That is, the extent to which this aspect of the ESOS framework is monitored and enforced is unclear and the criteria for assessment remain mysterious. Under Part C of the National Code, Item 11, state registration authorities are required to conduct inspections of the premises of education providers seeking registration to ensure that they meet the standards required by Standard 14 relating to staff capability, education resources and premises. Item 11 also requires the state registration authority to conduct further inspections "as appropriate".³⁷ In Victoria, the VRQA reports that it conducts audits of new providers at the end of their first 12 months of registration and then re-registration audits every five years after that.³⁸

We are concerned, however, that in practice the monitoring of VET providers' services has been extremely limited. As a result, many have been able to get away with providing sub-standard education and facilities without consequence.

Furthermore, Standard 14.2 requires that registered providers "must have adequate education resources". But the standard provides little guidance as to what is "adequate" and is therefore open to interpretation. As profit-making enterprises, VET providers' incentive is to keep costs down by spending the minimum required on facilities and resources that will be sufficient to maintain enrolments and avoid complaints. Given that many international students are unlikely to complain about their providers

³⁴ Mark Dunn and Nick Higginbottom, 'A high price to study', *Herald Sun*, 10 May 2008, on-line version available at <http://www.news.com.au/heraldsun/story/0,21985,23673379-2862,00.html>

³⁵ Sushi Das, 'College in gross breach of standards', *The Age*, 23 July 2009, on-line version available at <http://www.theage.com.au/national/education/college-in-gross-breach-of-standards-20090722-dtl2.html>

³⁶ ATQF 2007, *Essential Standards for Registration*, Department of Education, Science and Training, available at http://www.training.com.au/documents/aqtf2k7_ess-std-reg_final2.pdf

³⁷ Department of Education, Science and Training, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* ('National Code'), 1 July 2007 available at <http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm>

³⁸ VRQA, *ibid*, 23

because of their visa status and concerns about obtaining permanent residence, students are clearly open to exploitation on this front. Without stringent regulation via the ESOS regime, VET providers can continue to provide sub-standard courses and facilities with impunity.

As discussed above, in its report the Victorian Taskforce recognised the need for effective quality control processes and recommended a rapid audit of Victorian education providers. We support the Victorian Taskforce's recommendation and therefore make the following recommendations:

- 11. We recommend that the government introduce effective quality control processes in respect of VET providers.**
- 12. We recommend that a widespread audit of all Australian VET providers that enrol international students be undertaken.**
- 13. We recommend that heightened quality control mechanisms be incorporated into the ESOS framework with the aim of achieving a substantial improvement in the standard of education provided by the VET sector.**

Inadequate Support Services Provided by VET Providers

We are concerned that the support services provided by VET providers are not monitored for quality and may therefore be inadequate. The ESOS framework requires VET providers to have support services for students and the National Code requires that VET providers “must provide the opportunity for students to access welfare-related support services”. In our view, however, the ESOS framework does not sufficiently specify the types and level of support services that VET providers must provide. Standard 6.6 is open to interpretation and, as profit-making enterprises, it is likely that VET providers will implement the most cost-effective rather than the most welfare-effective system of support services. This means that the welfare-related needs of international students will not always be met. Based on our observations it seems that VET providers tend to have one Student Support Worker who may be called upon by any and all students, regardless of the total number of students. Depending on the size of the college, this may or may not be sufficient. This issue was highlighted by the National Liaison Committee for International Students in their submission to the Victorian Taskforce.³⁹ As the ESOS framework does not provide a high degree of regulation in respect of support services, technical compliance with the National Code by VET providers will not necessarily lead to a quality outcome for international students.

Furthermore, because VET providers are businesses, it is not possible to rely on them to fulfill all of the welfare-related support needs of international students, who themselves are a particularly vulnerable group. It is therefore imperative that the ESOS framework incorporate funding arrangements for support services that are additional to those provided by VET providers themselves. This will ensure that a comprehensive range of support services are available to international students and that they are not disadvantaged where a VET provider fails in their duty to provide support services (in breach of the National Code or where, for example, a provider ceases operation).

³⁹ NLC, *ibid*, 9

In light of these concerns, we make the following recommendations:

- 14. We recommend that the ESOS framework be amended to increase the obligations of education providers to supply effective and adequate support services that are proportionate to the size of their total student body.**
- 15. We recommend that the government allocate funding to establish on-going support services for international students that supplement those provided by education providers.**

Poor Treatment of Students by VET Providers

We are concerned that many VET providers employ policies and practices that lead to VET students being treated poorly. One example of this is the excessive monitoring by providers that many VET students experience. While some of this monitoring may be the result of the requirement imposed on VET providers by Standard 11 of the National Code, which requires that they monitor student attendance and report non-attendance above 30% to DIAC, the excessive monitoring that some VET providers engage in undoubtedly creates an oppressive learning environment for VET students, who are almost always adults.

The following observations made by a former VET teacher on SBS's *Insight* program reflect the kind of problem that may exist for many international students:

Jenny Brockie: *Robyn, you were a teacher at a college in Sydney. What was it like?*

Robyn Minici: *I could liken it to a detention centre or even a prison. It was quite dehumanising. I mean, I teach community welfare, which is based on social justice principles and they certainly weren't being applied within the college. Within my classroom, yes, I had control to an extent over that, but within the rest of the college it was really –*

Jenny Brockie: *Now, that's a really serious charge that you're making to liken it to a detention centre or a prison. Specifics - what do you mean?*

Robyn Minici: *And that's not only from me. That's also anecdotally from students. You know - a lot of complaints. I mean the physical environment itself, broken furniture, holes in walls, um, you know, I mean we had to sign students in the exact time they came in. If they arrived at 8:03, it had to be registered 8:03. If they went to the toilet, I had to mark that down and, you know, be quite aware of if they were returning. If not, I, you know, had to answer as to why they weren't in the classroom, if management was to come around.*

It's all about, in my opinion, this particular college, is cashing in on vulnerability of the international students. It's about compliance, that's all. As long as we're working in accordance with the immigration, the education policies, then we can continue to operate and generate the income that we require.

Jenny Brockie: *And how long ago was it that was [sic] teaching there?*

International students are subject to even further strictures as a result of the monitoring required by the National Code and their visa conditions. Under Standard 11 of the National Code, even absences supported by a medical certificate count towards non-attendance. Schools are also required to have 'intervention strategies' in place with respect to students' progress and attendance. Many VET providers' handbooks warn students that they are liable to be reported to DIAC for non-attendance or a failure to make adequate progress. Due to visa condition 8202, students are also only able to suspend their studies where there are "compelling and compassionate" reasons. There is also a discretionary condition 8303 which provides that student visa holders must not become involved in any activities that are disruptive to or threaten harm to the Australian community or a group within the Australian community.

Visa conditions such as those mentioned above do not just restrict international students in and of themselves. They are also relied upon by VET providers to ensure that international students are compliant. The following comments are an example of this:

Jenny Brockie: Karl, you investigate complaints from students from private colleges. What are you hearing?

*Karl Konrad: Complaints of abuse against students, threatening with deportation, cancelling their visas, if they don't toe the line. Not giving them their results. Giving them fraudulent education certificates and in fact there's a whole network, a mini organised crime network of education agents, some vocational colleges and migration agents to get around the system.*⁴¹

These kinds of threats have also been confirmed by international students themselves (see above).

We therefore recommend the following:

16. We recommend that the government investigate all allegations of threatening behaviour made by international students against VET providers.

17. We recommend that the government enhance the ESOS framework to proscribe threatening conduct by VET providers.

Barriers to Student Complaints

We have already noted above that international students are often reluctant to complain about their VET providers due to fear that providers will cause problems with their student visas or a concern that this will adversely affect their chances of obtaining permanent residency. This means that many international students do not make complaints about VET providers or appeal the decisions of VET providers even where they have strong grounds for doing so.

In addition to international students' own fears, there are two other barriers to student complaints.

⁴⁰ SBS Television, 'At Risk', *Insight*, ibid

⁴¹ SBS Television, 'At Risk', *Insight*, ibid

ESOS operates under a 'Shared Responsibility Framework', which means that responsibility for administering the ESOS regime lies with multiple agencies and departments.⁴² These include DEEWR, DIAC and the various state-based registration authorities. Pursuant to Items 4.9 and 4.10 of the Shared Responsibility Framework, student complaints are divided between the state authority and DEEWR, dependent upon the type of complaint that is being made. For example, a student wanting to complain about the written agreement they signed at enrolment should make the complaint to their state authority, whereas a student complaining about refunds, fees or charges should contact DEEWR. This is an unusual and confusing complaints regime, especially for international students who will not always be familiar with the distinctions between state and federal authorities and departments. The complaints regime under ESOS needs to be streamlined so that students are directed to one body with their complaints or have the option of approaching either DEEWR or their state authority with any sort of complaint.

With respect to complaints and appeals, Standard 8.1 of the National Code requires that education providers have appropriate internal complaints handling processes that meet a series of specified requirements. In addition, Standard 8.2 requires that education providers make arrangements with an external body or person that can hear complaints at little or no cost to the student. The Australian Council for Private Education and Training (ACPET) is the national industry association for commercial, post-school education providers, which includes private VET providers. VET providers may become members of ACPET and the students of those who do are able to access the ACPET External Student Appeals process.⁴³ It is a process which ACPET indicates is to be instigated by the student lodging their appeal, resulting in the student incurring the lodgement fee.⁴⁴ The cost of accessing this process is \$200, which may be prohibitive given the limited financial means of most international students. In our view, given the vulnerability of international students, all external appeals should be free of charge for the student and the National Code should be amended to specify this. We therefore recommend:

18. We recommend that the complaints process under the ESOS framework be streamlined.

19. We recommend that Standard 8 of the National Code be amended to provide that all external appeals must be of no cost to the student.

College Closures

I come from a very poor family and I have taken loan from the bank and now I feel completely lost ... I don't know what to do. I feel completely disgraced...

Naresh Koneru, Student, upon the closure of Melbourne International College.⁴⁵

⁴² *Shared Responsibility Framework*, available at

http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartB/Shared_Responsibility_Network_pdf.pdf

⁴³ See Australian Council for Private Education and Training (ACPET) website at <http://www.acpet.edu.au>

⁴⁴ ACPET, ibid at http://www.acpet.edu.au/index.php?option=com_content&task=view&id=4947&Itemid=348

⁴⁵ Samantha Donovan, "Desperate" students demand education changes', *ABC News*, 29 July 2009, available at www.abc.net.au/news/stories/2009/07/29/2639291.htm

In July 2009, two major VET providers – Melbourne International College and Sterling College in Sydney – closed, affecting approximately 800 students. In the same month in Victoria, the VRQA's urgent audit of 17 VET providers concluded, raising concerns that there will be more college closures as result. On 6 August 2009, Sterling College in Brisbane closed down.

In these circumstances, the mechanisms for protecting and compensating international students in the event of closures are extremely important. We have identified several problems with the current ESOS framework in relation to closures.

Student Will Incur Added Expenses

The ESOS framework attempts to protect international students who are affected by closures of their education provider through the ESOS Assurance Fund, which is provided for in Part 5 of the ESOS Act. This is effectively a fund of money, derived from the initial and annual contributions of education providers, special levies, penalties imposed against education providers and so on. It may be used to assist students where an education provider defaults (including through closure) and that provider is unable to provide the student with a refund and the student has not been placed in a suitable alternative course. In addition to the ESOS Assurance Fund, there are also a number of Tuition Assurance Schemes (TAS). All registered providers are required to be a member of a TAS pursuant to Section 22 of the ESOS Act unless they have been granted an exemption. TAS's have the same purpose as the ESOS Assurance Fund, in that they are aimed at compensating students who cannot be placed with a suitable alternative education provider. Both Sterling College and Melbourne International College were members of the TAS administered by ACPET.

We are concerned that the current ESOS framework does not ensure that students are not out-of-pocket as a result of college closures. Regulation 3.08(2) provides that students who are placed with new course providers must not be required to pay any additional course fees for the part of their replacement course that they had already paid for with their original course provider. Under ACPET's TAS, however, students will have to pay for any new materials required plus "relocation" expenses.⁴⁶ Furthermore, if, as a result of the closure, a student's study period is extended beyond the expiration of their student visa, that student will also have to pay the \$540 application fee for a new student visa.

Students will also have to pay the new provider's course fees beyond the study period they have already paid for, even if the new provider's courses are more expensive than the student's old provider. Once a student is enrolled with a new provider, there is nothing requiring that the new provider recognise the prior learning of that student. If students' prior learning is not recognised, this may lead to them having to repeat course units at additional expense. It will also extend the duration of the students' studies and potentially create the need for a further visa application.

⁴⁶ See ACPET website at http://www.acpet.edu.au/index.php?option=com_content&task=view&id=158&Itemid=102

All of these things mean that displaced students may still be financially disadvantaged by the closure of a VET provider, notwithstanding the TAS and ESOS Assurance Fund. Regulation of these funds should therefore be amended to ensure that students can access the funds for reimbursement of all costs associated with transferring to a new provider, not just the course fees they have already paid.

TAS placement committees should also be required to find placements that will recognise students' prior learning. Placements where a student's prior learning will not be recognised should be deemed unsuitable. We therefore recommend:

20. We recommend that TAS schemes be required to reimburse students for all costs associated with transferring to a new education provider.

21. We recommend that TAS schemes be required to place students with new education providers that will recognise their prior learning.

Lack of Regulation of TAS's

Division 3.2 of the ESOS Regulations deals with TAS's. It provides little guidance, however, as to how a TAS should operate and what rights students should have in relation to the TAS relevant to them. It is therefore open to TAS operators to create their own rules and these may not always be in the best interests of international students. For example, we are concerned that under ACPET's By-Laws, students will only receive one offer of placement with an alternative education provider. If they refuse this offer, ACPET's Placement Committee will not make a further offer to the student unless they consider there to be "special circumstances".⁴⁷ It is unclear whether a student's refusal of a new placement because it is too expensive, poorly located, or because they are not happy with the course content, will constitute special circumstances. We therefore recommend:

22. We recommend that the government introduce a system of regulation in respect of TAS's that is designed to protect the rights and interests of international students.

Displaced Students Receive No Visa Guarantees

After an education providers' accreditation to deliver a course is removed, students have 3 months to demonstrate to DIAC that they have secured enrolment in another course by providing a letter of offer or a certificate of enrolment. If students have not done this within 3 months they are advised to contact DIAC. They are offered no guarantees that their visa will not be cancelled or that they will be offered a bridging visa to cover them in the interim period.⁴⁸ In our view, the ESOS framework should be amended to afford displaced students visa protection in the event that there are delays in finding a suitable new course provider that are beyond the student's control. We therefore recommend:

⁴⁷ ACPET, By-Laws, July 2008, available at http://www.acpet.edu.au/dmdocuments/ACPET_Corporate/ACPET_By-laws_endorsed_and_approved_by_the_Board_of_Directors_18_July_2008__V14.pdf, Item 9.16

⁴⁸ See website of the Department of Immigration and Citizenship at <http://www.immi.gov.au/students/education-providers-approval.htm>

23. We recommend that the ESOS framework and migration laws be amended so that students displaced by the closure of a provider are offered visa guarantees in respect of suspensions of their study as a result of the need to find a new course provider.

Students are not Protected Where a Provider's Closure is Imminent

Where a VET provider has closed in one state, students of the same provider in another state are not covered by the TAS if the provider continues to operate in that other state. For example, at the time that Sterling College in Sydney closed, students of Sterling College in Brisbane were not covered by the TAS and would not have been covered for a refund or replacement if they took action to terminate their enrolment. If they were concerned about Sterling College, Brisbane as a result of the closure of its Sydney counterpart and they terminated their enrolment, they would simply have been in default of their agreement. As discussed at length above, most VET providers do not provide refunds upon student default and they would have lost any course fees already paid. This was confirmed to students in a memorandum produced by AEI and made available on the AEI website (Appendix C).⁴⁹ The memorandum told students that Sterling College, Brisbane was continuing to provide courses and that they did not need to take any action. They were advised to continue attending classes. Sterling College, Brisbane closed shortly after on 6 August 2009. We therefore recommend:

24. We recommend that students who default on their agreements with providers due to imminent closure be covered by the relevant TAS.

Lack of Information for Students

The case of Sterling College, Brisbane illustrates the inadequacy of information provided to students in the period immediately prior to closure of a VET provider. When Sterling College in Sydney closed students gathered at the college's main building, concerned that they had received no information about the closure. One student said, "We are panicking, there is no information from the college regarding what is going to happen".⁵⁰

In the case of Sterling College, Brisbane, the government failed to warn students of the closure. In fact, it did the opposite by trying to reassure students that it was 'business as usual' at Sterling College, Brisbane. In our view, this is completely unacceptable and represents a failure by government in its duty to international students.

Regulation of VET Providers

Given all of the above, there is a real concern that the ESOS framework is not functioning effectively to protect international students and to regulate the conduct of VET providers. In our view, there are several key problems with the existing regulatory framework which limit its efficacy. Some of these problems have been touched on in the preceding discussion. In summary, they are:

⁴⁹ AEI, *Sterling College Pty Ltd (Brisbane) Information for current or intending students*, undated (between 29 July 2009 and 4 August 2009), available at <http://www.aei.gov.au/AEI/ESOS/default.htm>

⁵⁰ ABC, 'College closure hits Indian students', *ABC News*, 28 July 2009, available at www.abc.net.au/news/stories/2009/07/28/2638356.htm

1. There is a lack of emphasis on student welfare in the ESOS framework.
2. In general, the ESOS framework fails to sufficiently regulate private education providers.
3. There is a lack of monitoring and enforcement of the regulatory instruments.
4. There is a lack of publicly available information regarding the enforcement of the ESOS framework.

As others have pointed out, including the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and a number of academics, the ESOS framework positions international students first and foremost as consumers.⁵¹ The degree of protection and types of safeguards the ESOS framework offers international students is impacted by this formulation. A consumer paradigm is inadequate because it fails to recognise the particular vulnerability of international students or their welfare needs. There is, therefore, a need to expand the ESOS framework to recognise international students as a group of people requiring broader protection of their welfare and rights.

In our view the ESOS framework provides insufficient regulation of private education providers. This is due, in part, to the consumer paradigm that is prevalent throughout the framework. Given the predominance of business interests and profit motives in the international education industry (as in any industry) and the special vulnerability of international students, much greater regulation is required to truly protect the interests of international students. The Centre for Multicultural Youth's network meeting on 'International Students in our Community' recommended that the National Code be expanded to include welfare-related minimum standards of service delivery.⁵² We support this recommendation. We also urge the Committee to consider the various recommendations we have made above as a springboard for a more stringent, welfare-oriented regulatory regime.

In our view, the above discussion clearly demonstrates that there is a problem with monitoring and enforcement of the ESOS framework. The ESOS framework provides education providers with many desirable standards to aspire to, however, actual enforcement of these standards seems to have been negligible to date. For example, while Section 86 of the ESOS Act provides for various conditions that may be imposed on education providers who breach the ESOS Act or the National Code, it is unclear how compliance with those conditions is ensured. Over and above an examination of the contents of the ESOS regulatory regime, there must be a significant examination of the mechanisms through which VET providers are monitored and the ESOS framework's standards enforced.

⁵¹ Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Submission to the Victorian Overseas Student Taskforce*, 24 October 2008, available at <http://www.humanrightscommission.vic.gov.au/publications/legal%20submissions/internationalstudentssubmission.asp>, 3; Ana Deumert, Simon Marginson, Chris Nyland, Gaby Ramia and Erlenawati Sawir, *The Social and Economic Security of International Students in Australia: Study of 200 Student Cases – Summary Report*, Monash Institute for the Study of Global Movements, available at <http://www.education.monash.edu/centres/mcrie/docs/researchreports/202-interviews-updated060605.doc>; Marginson, *ibid.*

⁵² Centre for Multicultural Youth, *ibid.*, 8

There is also a discernible lack of public information regarding the enforcement of the ESOS framework. The reports of the audits of VET providers are not made public, nor are substantiated complaints about providers. The AQTF 2007 *National Guidelines for Responding to Complaints about VET Quality* does not include any requirement that adverse findings about VET providers be published.⁵³ Prospective students would find it very difficult to obtain information in order to identify unscrupulous providers. Even where colleges are forced to cease operation, there is a lack of public information about such closures (see above). This is highly detrimental to international students. International students are in many ways a fractured group who are generally unlikely to complain about education provider misconduct, whether that be because they do not understand the mechanisms for complaint and the avenues for redress or because they are too fearful to complain. The lack of publicly available information about the enforcement of the ESOS framework means that international students are liable to feel isolated in their experience and, as such, are even less likely to come forward. They are likely to lack local knowledge about complaints mechanisms and the failure to publicise enforcement of the ESOS framework does nothing to remedy this. A more transparent system would augment the confidence international students feel in the system and provide them with reassurance that they are not alone in their experience. It would thereby increase the efficacy of the framework itself, which will always be partially reliant on individual complaints.

In our view, information regarding substantiated complaints against VET providers, including information about rectification measures required or sanctions imposed, should be publicly available and easily accessible. Where VET providers are suspended or closed, this information should be made available via the state regulatory body's website and on government websites such as www.studyinaustralia.gov.au, the DEEWR website, the National Training Information Service website, and the websites of state regulation authorities. We recommend:

- 25. We recommend that the ESOS framework, in particular the National Code, be amended to include greater protections for the welfare and rights of international students.**
- 26. We recommend that the mechanisms for monitoring and enforcement of the ESOS framework be substantially improved with a view to securing greater compliance by VET providers.**
- 27. We recommend that substantiated complaints against VET providers be publicised including the substance of the complaint, the outcome and any rectification required by or sanctions imposed upon the provider.**

⁵³ AQTF, *National Guidelines for Responding to Complaints about VET Quality*, 2007, available at http://www.training.com.au/documents/AQTF_National%20Guideline%20for%20Responding%20to%20Complaints.pdf

Systemic Issues Facing International Students

The National Code of Practice is strong when enforcing immigration regulations, weak as regards welfare – in areas like housing, health cover and language assistance rights are not guaranteed – and does little for students off campus where most of their security problems are found. The ESOS Act does nothing for international students exploited in the workplace or subject to housing discrimination or racist targeting in the community, outside the consumer/provider jurisdiction.

Simon Marginson, October 2007.⁵⁴

While international students have been a tremendous source of revenue for Australia, the government has done little to safeguard their welfare while they are here. International students face a number of systemic issues and often these issues give rise to legal problems. International students often experience a lack of social and financial protections and are particularly vulnerable to exploitation. These issues are frequently apparent when international students attend ISLAC for legal advice.

Poverty

Sourabh Sharma: *The first fees I paid from home, I take out a loan at a bank and after that it's instalments when I finish my studies.*

Jenny Brockie: *And you're only allowed to work for 20 hours. While you're studying, otherwise you're in breach of your student visa, is that right?*

Sourabh Sharma: *Yeah.*

Jenny Brockie: *So it's a juggling act with money.*

Sourabh Sharma: *Yeah, we have to save the money, like even a single dollar. Like, we can ask the money from home as well but we have to think of, like, work and same time, like, do the study as well. So like, just to save the money and just pay the fees myself.*

...

Jenny Brockie: *And how much is your 2-year course in community welfare?*

Mahalaxmi Dhakal: *\$18,000.*

Jenny Brockie: *\$18,000? So how did you find the money for that course?*

Mahalaxmi Dhakal: *For first six months, I already paid from my home country. After that, I will work here and I will pay.*

SBS, 'At Risk', *Insight*.⁵⁵

As addressed above in our examination of the ESOS framework, international students are frequently misled by VET providers about the cost of living in Australia. As a result, they often lack the resources they need to support themselves throughout their period of study. Even if they do have some financial support, their financial stability can be easily undone if an emergency or financial set-back occurs.

⁵⁴ Marginson, *ibid*, 9

⁵⁵ SBS Television, 'At Risk', *Insight*, *ibid*

It must also be recognised that the large influx of students from India and China, as a group, do not have financial resources comparable to international students from other, more affluent countries. While students are required to demonstrate that they have access to \$12 000 in order to obtain a student visa, anecdotal evidence suggests that it is not uncommon for students to borrow this amount for the sole purpose of obtaining the visa and then immediately pay it back. Many Indian students also report that they or their parents borrowed the money to cover the expensive course fees for the first year or semester and that they planned to cover their living expenses plus remaining course costs by working.

Given the increasing cost of living in Australia, and in particular increases in average rents in the last few years, international students who are in this situation will struggle to make ends meet. At the Centre for Multicultural Youth's 'International Students in our Community' network meeting, Adrian Burrage, Manager of Student Housing at Melbourne University commented that many students will spend 40-50% of their budget on rent and as a result will be forced to live beyond their means.

This issue is exacerbated by the fact that international students are only permitted to work a maximum of 20 hours a week pursuant to visa condition 8105. As will be discussed below, this is not in and of itself a living wage, even at award wages. Worse yet, international students often take employment in which they are paid below-award rates. This will either increase their financial struggle or compel them to work long hours (even where that breaches their visa conditions) in order to support themselves. At times, international students also struggle to obtain employment due to a variety of factors, including discrimination. This may mean that they deplete their \$12 000 quite quickly while waiting to find a job and then struggle to manage financially thereafter.⁵⁶

Many have commented on the failure of state governments to provide international students with student concessions on public transport and the impact this has on student welfare.⁵⁷ This requires immediate reform and we recommend:

28. We recommend that public transport concessions for international students be introduced immediately.

We also make a number of recommendations below that aim to address some of the issues which lead to international students' experience of poverty, in particular issues related to employment and accommodation. We urge the Committee to consider these recommendations urgently and thoroughly.

Employment

A large proportion of international students work while they are studying in Australia. A study conducted by the Monash Institute for the Study of Global Movements ('the Monash Institute') found that of a group of 202 international students, 70% had been in paid employment at some time during their studies, with

⁵⁶ National Union of Students, *ibid*, 7

⁵⁷ Centre for Multicultural Youth, *ibid*, 6; NLC, *ibid*, 6; National Union of Students, *ibid*, 11

57% employed at the time of the study.⁵⁸ This study focused on international students in the higher education sector. Given the socio-economic background of international students in the VET sector, we would expect that an even greater percentage of these students undertake paid employment at some time during the period of their studies.

Legal Matters Arising Out of Employment

ISLAC (and WSLC before it) has assisted a number of international students with employment-related issues. Based on these encounters, we are concerned that international students are entering into informal employment arrangements, at times for cash-in-hand payments, and that these arrangements leave them open to exploitation. The students we have assisted have generally been unaware of industrial relations protections for workers and unaware of the relevant award wage. The types of issues students have approached us about include:

- Employer's failure to pay wages.
- Employer selling the student a car that was not rightfully owned by the employer.
- Employer forcing the student to swap an item of personal property and then on-selling the student's property.
- Employer unlawfully/unfairly terminating the student's employment.

The following case study is an example of the last of the above issues:

Case Study 4

Student C from India began studying in Australia 2006. While his course was not in session he began working full time. He was employed by a small consultancy office which almost exclusively employs other Indian nationals and which as operated by an Indian national. Student C believed that he was going to be paid for this work. After working for some months, Student C still had not been paid for his work and no superannuation payments had been made on his behalf. The employer had also promised Student C a pay increase which he did not provide. Student C believes that the employer also failed to withhold income tax. Nonetheless, at this point Student C still believed that he would be paid. Suddenly, however, Student C was dismissed without notice. Initially Student C was fearful to complain about these events because he was worried that he had breached his visa conditions (although in fact he had not). The employer now alleges that Student C was not employed during the period that he went without pay at all, but rather, he was being 'trained' by the employer. The employer claims that he was actually doing Student C a favour by training him without charge.

Based on our interactions with international students and our research, we are concerned that international students are seeking out and remaining in exploitative work environments. We believe that this occurs for several reasons and that the government should take steps to eliminate these causes of exploitation.

⁵⁸ Chris Nyland, Helen Forbes-Mewett, Simon Marginson, Gaby Ramia, Erlenawati Sawir, Sharon Smith, *International Students – A Segregated and Vulnerable Workforce*, ISANA, 2007, available at <http://www.isana.org.au/files/isana07final00028.pdf>

Firstly, we believe that the current visa restriction relating to employment forces international students into exploitative workplaces and keeps them there. Currently, visa condition 8105 limits student visa holders to 20 hours work per week while their course is in session and unlimited work hours on term holidays. The 20 hours per week is inclusive of volunteer work but does not include compulsory work experience that is part of a student's course.

Given the cost of living (as discussed above), many students find it impossible to cover their weekly living expenses on 20 hours work. This is especially the case because international students tend to receive lower remuneration than their domestic counterparts (see below). As reported in the Monash Institute study, many of the students working within the 20 hour limit are earning less than is required for financial security. Furthermore, the dependents of international students in the VET sector are also limited to 20 hours work per week.

As a 20 hour work week does not supply a living wage, many international students are forced to work more than the 20 hour limit. This makes them vulnerable to exploitation. They are much more likely to take cash-in-hand work and they are unlikely to report employer misconduct for fear that their own breach of their visa conditions will be reported. Such students are much more likely to tolerate exploitative workplaces and remain in them, rather than raise their complaints and risk exposure or reporting to DIAC.

Secondly, we believe that discrimination in the broader community makes it very difficult for international students to get jobs. This means that they are much more likely to take jobs that involve poor wages and conditions and stay in them. The type of problem facing many international students is expressed in this quote from a Sikh student who participated in the Monash Institute study referred to above:

I have no job now. I did work part-time before, but that was because my friend had already created the job... otherwise, you know, people are not very willing to give me a job because of my appearance. I can't do most of the jobs, I can't be an accountant, they don't want me there, they don't want me to be anywhere where I'm visible. And as for some other jobs, I'm not too comfortable doing them.

Male, 30, Masters Student, Sydney, from India.⁵⁹

This in turn creates a second tier of discrimination. Employers may then take advantage of international students and offer them lesser wages and conditions than they would a domestic student. An example of this was provided in the Victorian Taskforce's report. At the student roundtables that were held during the Victorian Taskforce's inquiry, two students who were doing exactly the same work at the same workplace reported that one, the domestic student, was receiving \$14 per hour, whereas the other, an international student, was receiving only \$9 an hour.⁶⁰

⁵⁹ As quoted in Deumert et al, *ibid*, 5

⁶⁰ Victorian Taskforce, *ibid*, 12

The Monash Institute study also revealed that many of the students' reports of discrimination related to an inability to find work in a 'higher' field. That is, international students end up seeking lower paying, more 'lowly stratified' jobs. We are concerned that many students who graduate from the VET sector do not obtain employment in their fields of study. Anecdotal evidence suggests that many take jobs driving taxis, working in customer service and in hospitality as they are unable to find jobs in their chosen field. This is a grave concern, not only in terms of racial and religious discrimination, but also in that it suggests that VET courses do not translate into appropriate employment outcomes for international students (as discussed above).

Finally, we are concerned that the permanent residency points system does, and will increasingly, lead to the exploitation of international students. Already, many VET providers generate profits by exploiting international students. In some courses students are required to complete a certain amount of work experience during the course. For cooks and hairdressers this is 900 hours. Some VET providers charge international students additional fees for this work experience. For example, one hairdressing student referred to in a recent article in *The Age* reportedly did her 900 hours in a salon closely linked to the college. Students were required to pay a \$1000 non-refundable bond to use the equipment in the salon. The same article also reported that other colleges charge their students thousands of dollars in placement fees, while at the same time advertising that they can supply free labour to local businesses.⁶¹ In addition to being exploited in this way, such students are also potentially working without the protections afforded to conventional employees such as Workcover and insurance. There are also no assurances that they will receive the basic entitlements of conventional employees such as break-times, reasonable hours of work and so on.

Now that the migration landscape has changed and most international students will not be eligible for permanent residency immediately on completion of their studies, there is further scope for their exploitation. Many will take the option of obtaining a bridging visa (after making a General Skilled Migration visa application) or making a 485 visa application, both of which will give them time to accrue their 120 points including by completing work experience in their field. Such students will be especially vulnerable to exploitation because their ability to ultimately secure permanent residency will be entirely dependent on their employment. The 457 visa class also makes international students vulnerable to exploitation. Their hopes for permanent residency are entirely dependent on the completion of two years of employment, one of which must be completed with the sponsoring employer. As such, their 457 visa status is dependent upon their continued employment and sponsorship by the employer. As pointed out by Birrell and Perry in their discussion of 'Immigration Policy Change and the International Student Industry', this skews the balance of power substantially in favour of the sponsor/employer and employers will have access to workers who are prepared to work under conditions and for wages that local employees would not accept.⁶²

⁶¹ Nick O'Malley, Heath Gilmore and Erik Jensen, 'Foreign students "slave trade"', *The Age*, 15 July 2009, available at <http://www.theage.com.au/national/foreign-students-slave-trade-20090714-dk6d.html>

⁶² Birrell and Perry, *ibid*, 75

The above three factors which lead to exploitation of international students have been recognised by various organisations including the VEOHRC and the National Union of Students. They are also supported by academic research.⁶³ In light of these issues and the recommendations made by the Victorian Taskforce regarding employment and international students,⁶⁴ we make the following recommendations:

- 29. We recommend that the employment condition on student visas be changed to allow students unlimited work hours and if this is not possible, that it be changed to exclude voluntary work from the calculation of work hours thereby increasing the number of work hours available to international students.**
- 30. We recommend that the Federal government embark on a campaign to educate employers and international students about workplace rights and entitlements. This should include the production of multi-lingual information on the rights of international students in the workplace.**
- 31. We recommend that students who report employer misconduct be immune from visa sanctions by DIAC in respect of their employment activity up until that point.**
- 32. We recommend that education regarding employee rights (including remedies against discrimination) be a compulsory part of orientation for international students.**
- 33. We recommend that employees who are on employer-sponsored visa types be afforded visa protection in the event that their employment is terminated because of a complaint of employer misconduct.**
- 34. We recommend that the Federal government develop a regime to protect students who are doing 900 hours of work experience pursuant to course requirements, including Workcover and insurance protections.**
- 35. We recommend that there be greater funding for legal and other services related to employee rights for international students.**

Housing

In June 2008 the Real Estate Institute of Victoria reported that Melbourne's total rental vacancy rate was just 1%.⁶⁵ At the same time as Victoria has been experiencing a rental crisis, we have also seen a boom in the number of international students and education providers, particularly in the VET sector (see discussion above). Many international students are studying at VET providers located in Melbourne's CBD or inner-suburbs. The combination of these things, as well as gentrification of inner-city suburbs, has created a dearth of appropriately located, affordable accommodation for students.

While the rental crisis may be affecting all students, international students are impacted more severely because they do not have the social and family supports that domestic students have. Adrian Burrage, Manager of Student Housing at the University of Melbourne has reported that the university's housing

⁶³ VEOHRC, *ibid*, 5; National Union of Students, *ibid*, 6-8; Birrell and Perry, *ibid*; Deumert et al, *ibid*; Nyland et al, *ibid*

⁶⁴ Victorian Taskforce, *ibid*, 12

⁶⁵ Victorian Taskforce, *ibid*, 10

office assists twice as many international students as local students and that they are affected more by housing availability and affordability issues than local students.⁶⁶ An international student who fails to find accommodation does not have the option of moving back home with their family. They are also often unaware of the various ways of finding accommodation and the different support services they can access. As discussed above, they also often experience financial difficulties which make affordable accommodation a big issue for them.

Furthermore, international students are experiencing discrimination in the rental market. This was highlighted in the Victorian Taskforce's report, as well as in the VEOHRC and the Tenants Union of Victoria submissions to that inquiry.⁶⁷ It was also a finding in the research of the Monash Institute.⁶⁸

This difficulty in securing appropriate accommodation because of availability, affordability and discrimination, means that many international students are living at some distance from their education provider and are often accepting poor quality housing. We believe that this particularly applies to VET students. ISLAC clients are predominantly VET students and almost all live in the outer-suburbs, while a large percentage of them study in the CBD. In our work, we have also received reports of students staying in over-crowded and unsatisfactory accommodation. Similar reports have reached the media.

Harry's Story

Reporter: *When Harry and his friends moved into this house, this mess was left behind.*

Harry Singh: *When we moved here, it was hell and we asked so many times to remove these things, but, like, still it's two months and he didn't take any action, yeah. So it's all junk yard, yeah.*

Reporter: *12 Indian students live in this 4-bedroom house, which has no lock on the back door and no stove. The bathroom isn't up to scratch either.*

Harry Singh: *If you move here, like this toilet doesn't have a shower head and it's totally, again, rubbish.*

Reporter: *With 12 people and just six beds, Harry and his friends sleep by roster.*

Harry Singh: *Some people are working in the nightshift, so they can probably come in the morning time. So some go to the uni early in the morning, so we organise like that. If it's Sunday, like, all people are home, we have to adjust, because we don't have choice, yeah.*

We pay here \$500 a week and what we pay fortnightly, around \$1,000, and this house isn't worth \$1,000.

SBS, 'At Risk', *Insight*.⁶⁹

⁶⁶ Centre for Multicultural Youth, *ibid*, 4

⁶⁷ Victorian Taskforce, *ibid*, 10; VEOHRC, *ibid*, 4; Tenants Union of Victoria (TUV), *Submission to the Overseas Student Experience Taskforce*, 23 October 2008, 2

⁶⁸ Deumert et al, *ibid*, 5

⁶⁹ SBS Television, 'At Risk', *Insight*, *ibid*

The kind of overcrowding and sub-standard conditions described in the above report have also been reported by the Tenants Union of Victoria, in particular in their submission to the Victorian Taskforce.⁷⁰

We are concerned that international students tend to accept and remain in unsatisfactory accommodation such as is described above and are being exploited by unscrupulous landlords. As noted by the Monash Institute study, the temporary accommodation arranged for students by many VET providers is exorbitantly priced and students need to find more affordable accommodation as soon as possible.⁷¹ In the context of the rental crisis and discrimination in the rental market, this may lead them to accept substandard permanent accommodation. It has been variously reported that international students particularly experience housing issues in their first year in Australia.⁷²

Once they are in this accommodation, many international students are afraid to complain about poor conditions or even to request repairs. They are fearful that making trouble will cause issues with their visa or ruin their chances of permanent residency, or that it will cause their landlord to retaliate against them and make problems for them with DIAC. We have heard these fears expressed by a number of ISLAC clients in respect of tenancy and other legal matters.

Students Unaware of Legal Rights and Obligations

International students also tend to stay in sub-standard accommodation because often they are unaware of their legal rights and the support services and legal processes that can assist them. As noted above, the information provided to international students by VET providers is generally poor. There is a tendency to provide international students with basic information about their accommodation options but no information about the norms, rules, rights and obligations that characterise landlord-tenant relationships in Australia. As a result, international students may be exploited by landlords and agents who take advantage of their lack of knowledge.

Case Study 5

Student M from India married an Australian citizen and they entered into rental accommodation. Subsequently, Student M's husband became violent towards her, including subjecting her to sexually degrading acts in front of his friends. Student M eventually left the husband. She is now being pursued by the real estate agent for rental arrears on the property that she and the husband lived in, for a period after she had vacated the house. The husband was the only person named on the lease and the bond was paid by him. The real estate agent told Student M that she was obliged to pay the rental arrears.

In addition to being unaware of their legal rights, the fact that international students are also ill-informed about their legal obligations can create legal problems for students or, as the case study above

⁷⁰ TUV, *ibid*

⁷¹ Sharon Smith, Helen Forbes-Mewett, Simon Marginson, Chris Nyland, Gaby Ramia, Erlenawati Sawir, 'The Right to Adequate Housing in the Context of International Education', Australian International Education Conference Paper, October 2007, 2

⁷² NLC, *ibid*, 3; Smith et al, *ibid*, 2; Victorian Taskforce, *ibid*, 11

illustrates, they may be taken advantage of by unscrupulous landlords and agents. It may also create financial problems if they are unable to get return of their bond or have to pay for repairs or cleaning.

Lack of Legal Protections for International Students

There is also a notable lack of legal protections for international students due to the fact that they often enter into housing arrangements that are not conventional rentals.

In Victoria, the *Residential Tenancies Act 1997* ('RTA') contains an exemption at Section 21. This section provides that the RTA does not apply to rental agreements that relate to premises owned or leased by an educational institution or premises "formally affiliated with" an educational institution. For the purposes of the RTA, formal affiliation is taken to exist where the educator and the landlord have an agreement that the landlord will provide accommodation primarily for students or staff of the educational institution. As a result of this provision, students who find accommodation through their VET provider may find that they are unable to access the protections afforded by the RTA. Furthermore, the Tenants Union of Victoria has reported that accommodation providers claim affiliation to avoid the obligations created by the RTA and there is no onus on them to produce the affiliation agreement.⁷³

Other students find themselves in expensive rooming house accommodation organised by their VET provider. At ISLAC we have even seen an instance of highly overpriced, crowded rooming house accommodation organised through an education agent. Such students may accept costly and inadequate accommodation without realising that they are being exploited. They may be sharing bedrooms with others and sharing facilities with a large number of people, while paying rent comparable to that in shared rental accommodation. The Tenants Union of Victoria has reported receiving complaints from 12 students sharing a single room in Melbourne's western suburbs and 48 Nepalese students sharing a 6 bedroom house.⁷⁴ It has further reported that at times international students are made to pay service charges that would not be permitted under the RTA or rents higher than allowable in the RTA.⁷⁵ They may also find themselves summarily evicted without redress or subject to other unfair conditions. In Victoria, international students in this situation will not be covered by the RTA because it does not include rooming house rentals.

Other students choose the 'Homestay' option (involving staying with a family) and are similarly unprotected. They may be exploited or mistreated by families and have no legal recourse. Students in Homestay accommodation have reported having to ask permission and being charged for the use of appliances, having unreasonable curfews imposed on them, being given inadequate or inappropriate food, and providers not respecting their privacy, amongst other things.⁷⁶

⁷³ TUV, *ibid*, 2

⁷⁴ TUV, *ibid*, 4

⁷⁵ TUV, *ibid*, 2

⁷⁶ TUV, *ibid*, 3

In light of all of the difficulties international students experience in securing affordable and appropriate accommodation and asserting their rights once they are in accommodation, we make the following recommendations:

- 36. We recommend that VET providers be required to secure affordable and appropriate accommodation for international students in their first year of study.**
- 37. We recommend that both state and Federal governments take steps to create more affordable student housing options.**
- 38. We recommend that accommodation affiliated with education providers be covered by tenancy laws in all states and territories.**
- 39. We recommend that education providers be required to provide educational material for students regarding their rights and responsibilities as tenants.**
- 40. We recommend that funding be provided to housing-related legal and support services so that they can increase the outreach and community legal education they provide to international students.**

Traffic Offences

Many international students have sought assistance from ISLAC (and WSLs before it) with legal issues relating to driving. These have included traffic offences and car accidents. In our experience, international students do not have an adequate knowledge of Australian road rules and are unprepared for dealing with an accident or a police stop.

International student visas are ‘temporary visas’. Consequently, international students are not required to obtain an Australian driver’s licence in order to be able to drive in Australia. They may rely on a valid international licence in order to lawfully drive a car on Australian roads. This in itself has created difficulties for a number of ISLAC clients, who have been charged by police with driving without a licence, even though at law their international licence is sufficient to authorise them to drive. The following ISLAC case study is an illustration of this:

Case Study 6

Student H arrived in Australia from India in 2005 and has a student visa. Before leaving India, Student H had his driver’s licence translated from Hindi to English. On 6 December 2008, Student H allegedly entered an intersection against a red traffic light. When Student H provided his translated driver’s license for the attending police officer, the police officer formed the view that the document was false. As a result, Student H has been charged with driving a motor vehicle without a valid driver’s license, entering an intersection against a red light and making a false document. The Consul-General of India, on the basis of the information available, has certified that Student H’s Indian driving license is a valid document. Student H is concerned that the English translation of his licence contains errors, but otherwise he is adamant that he has not used a false document.

Other international students have sought our assistance with legal issues arising out of car accidents. Generally, there is a lack of knowledge of what is required of a driver in the event that they have an accident. International students are sometimes unaware of their own obligations and they are also unaware of the obligations other drivers have towards them. At times, because of this lack of knowledge, international students are unnecessarily fearful that a car accident will impact on their visa status or application for permanent residency. They may therefore engage in behaviour that exacerbates the situation. The following case study is an example of the type of situation that international students have approached us about.

Case Study 7

Student G arrived in 2007 from India and is on a student visa. Earlier this year Student G was involved in a car accident that was his fault. He left the scene of the accident because he was worried that the other driver would be violent towards him. He did not know that the law requires him to stop and provide his details to the other driver. He failed to do this. Now he has been charged with careless driving and leaving the scene of the accident without exchanging details. Student G is very worried that these charges will affect his chances of getting permanent residency.

In light of cases such as these, we make the following recommendations:

- 41. We recommend that there be greater training for police around the issue of drivers' licences and international students.**
- 42. We recommend that education providers be required to furnish international students with information about driving in Australia.**
- 43. We recommend that the government invest resources in an information program that will equip international students for driving in Australia.**

Understanding Rights and Remedies

The Victorian Taskforce noted the poor quality of information provision to international students and the increasing reliance of students on information from informal 'micro-communities', usually organised around ethnic groupings.⁷⁷ Deumert et al suggest that the over-reliance on informal information networks and the failure to provide centralised information services is a direct consequence of the consumer rather than social subject model of international education.⁷⁸

In our experience, many of the legal issues that international students face are brought about as a result of students' lack of knowledge and the fact that information has not been made readily available to them. The Victorian Taskforce has pointed out the risks created because international students are unfamiliar with things that local students know, such as road rules, water safety, knowledge about the safety of

⁷⁷ Victorian Taskforce, *ibid*, 16

⁷⁸ Ana Deumert, Simon Marginson, Chris Nyland, Gaby Ramia and Erlenewati Sawir, *Global Migration and Social Protection Rights*, *Global Social Policy*, 2005, 329-350, 336

certain neighbourhoods and so on.⁷⁹ The taskforce therefore made various recommendations around the coordinated provision of safety and other information to international students.⁸⁰

Currently international students are provided with a week or so of orientation by their VET or other education providers. This may include guest speakers and the provision of an array of brochures and pamphlets. Students receive handbooks that also include some information about life in Australia, although the quality and quantity of this information varies significantly between providers. Based on our research and interactions with international students we are concerned that many VET students are not adequately informed or prepared for life in Australia. For example, students attending or making inquiries about ISLAC have not had significant awareness of victims of crime compensation schemes available in Australia as such schemes do not operate in students' home countries. This has been the case even for students who had clear cases for victims of crime compensation. We are also concerned that the information they receive comes from an array of sources and may be confusing.

Furthermore, international students are increasingly coming from countries that are vastly different to Australia including India, Nepal and China. Many of these students also face language barriers. Naturally, these students will require greater support and information than would a student from the USA, for example. It is also particularly important that VET students receive comprehensive information and resources as they are often isolated in their individual colleges where they receive little support.

In these circumstances, we are of the view that a significant improvement in the information and resources available to international students is required. This includes the development of new ways of presenting information and increasing distribution. It will also include resourcing existing organisations that can support international students to promote their services to those students. All of this should be undertaken with a cognizance of the diversity within the international student community. For example, as was pointed out by VEOHRC in their submission to the Victorian Taskforce, a gendered perspective is required in that female VET students may be more likely to experience domestic violence in the home than their male counterparts, whereas young men are more at risk of violence in public spaces.⁸¹

In its consultations the Victorian Taskforce found that international students are often reluctant to report crime to authorities.⁸² Part of this is the fear that if they do report crime it will trigger violent retaliation. International students are also often similarly fearful of enforcing their rights in employment and tenancy situations. Again, they fear retaliation by the employer or landlord, although in these cases the retaliation feared is that their visa or residency will be jeopardised. International students need to receive information from a supportive source that clearly and realistically identifies the implications of reporting crime and the implications of lodging complaints about problematic landlords and employers.

⁷⁹ Victorian Taskforce, *ibid*, 13

⁸⁰ Victorian Taskforce, *ibid*, 13 and 16

⁸¹ VEOHRC, *ibid*, 7-8

⁸² Victorian Taskforce, *ibid*, 13

International students also need to be protected by government from any visa-related implications of making such reports, so that they are not in such a vulnerable position.

To further remove the barriers to international students asserting their rights, it is imperative that agencies which come in contact with international students are educated as to the particular issues these students face. For example, the police are currently working to educate international students about safety in public spaces and reporting crime.⁸³ What is also needed, however, is education for police on the issues that international students face so that police can more effectively respond to international students and create an environment that is more conducive to them reporting crime. At present, we have received various reports suggesting that police respond to reports of crime in ways that are counterproductive and unhelpful to international students, and even in ways that deter international students from contacting the police. These include failing to respond to complaints, failing to offer students an interpreter, taking written statements and then failing to pursue the matter further, failing to explain the investigation/criminal process to the student, failing to discuss the student's ongoing safety concerns after a perpetrator is released on bail and might retaliate, and asking to inspect student visas (which feeds into students' fears that reporting crime will adversely affect their visa status). Police also need to be better informed about why international students travel at night on public transport, which is often a consequence of late-night jobs and a lack of resources.

The lifestyles of international students expose them to a high level of contact with community services and government authorities, many of which are not attuned to the demands of international student life in Australia. For example, students residing in Footscray reported to ISLAC staff that they are reluctant to contact fire authorities in relation to minor or medium level emergencies because in previous encounters they had been chastised about their living quarters and cooking styles. Cultural awareness training for all agencies interacting with international students is therefore essential.

Based on all of these concerns, we make the following recommendations:

- 44. We recommend that there be a coordinated response to the information needs of international students, both pre-departure and on arrival, including the development of consistent information packages that can be provided through education providers.**
- 45. We recommend that support services which are able to assist international students be provided with additional resources so that they can raise awareness of their services in the international student community.**
- 46. We recommend that international students be immune from any visa-related consequences that arise as a result of reporting crime, discrimination, or misconduct on the part of employers, landlords or VET providers.**

⁸³ DIAC, Student Information Seminar, *ibid*

47. We recommend that agencies which interact with international students, such as police, be required to undertake professional development and cultural awareness training relevant to their work with international students.

Racism, Discrimination and Student Safety

As should be clear from the preceding discussion, we are highly concerned that the whole international student industry is geared towards exploiting international students, in particular students from poorer countries such as India, China and Nepal who are tied to the permanent residency system in ways that students from wealthier nations are not. The legal and social framework for the international student industry does little to prevent the exploitation of international students that occurs on a variety of fronts. Furthermore, in many ways the industry and the systems that surround it themselves create conditions that are conducive to the exploitation of international students and hitherto authorities and government have acquiesced in that exploitation, if not countenanced it. This will be discussed further below in our examination of The Migration Regime and Pathways to Permanency.

In addition to systemic exploitation and mistreatment, many international students also experience individual instances of racism in the course of their time in Australia, including racist violence. This section will focus on international students' experiences of racism and discrimination, as well as various issues arising out of those experiences.

Discrimination, Racism and Violence

'There is no point being educated if you end up dead'

Shiva Senthil, concerned international student⁸⁴

Since the beginning of 2008 there have been over 15 cases of violence against Indian students which have received significant media coverage. There has also been one incident in which a university staff member was mistaken as being of Indian descent and was ultimately killed by a group of youths on a 'curry bashing' spree.⁸⁵ In addition to these specific instances, there have been numerous incidents of violence against Indian students which have been anecdotally referred to by interviewees in media reports.⁸⁶ Police report that there were 1447 Indian victims of violent crime last year and they estimate that Indian victims made up approximately one third of robbery victims in Melbourne's west, which amounts to substantial over-representation.⁸⁷ In addition to those recorded instances of crime, peak bodies representing Indian students have reported that racist attacks on Indian students are actually much more frequent than official statistics would suggest because a large proportion of Indian students do not report crime for various reasons (see discussion below). For example, Dr Yadu Singh who was

⁸⁴ Amrit Dhillon, "Lure of Australia remains high", *The Age*, 3 June 2009, available at <http://www.theage.com.au/national/lure-of-australia-remains-high-20090602-buc8.html>

⁸⁵ Sarah-Jane Collins and Reko Rennie, "Judge sentences bashing cowards", *The Age*, 23 December 2008, available at <http://www.theage.com.au/national/judge-sentences-bashing-cowards-20081222-73nq.html>

⁸⁶ See for example, Ellen Whinnett, "Big rise in attacks on Indians", *Herald Sun*, 4 January 2009, available at www.news.com.au/heraldsun/story/0,21985,24869933-2862,00.html; Georgina Robinson, Anger at assaults: Indians rally in Sydney, *The Age*, 9 June 2009, available at <http://www.theage.com.au/national/anger-at-assaults-indians-rally-in-sydney-20090609-c16d.html>

⁸⁷ Jewel Topsfield, "Indians told to keep a low profile", *The Age*, 19 February 2009, available at <http://www.theage.com.au/national/indians-told-to-keep-low-profile-20090218-8bjz.html>

appointed as head of a committee to address the issue of violence against Indian students in Sydney estimated in May 2009 that there had been at least 20 unreported bashings of Indian students in the preceding month alone and over 100 in the previous 12 months.⁸⁸ The Federation of Indian Students in Australia has also made similar estimates about violent crime against Indian students in Melbourne. We believe that these estimates are likely to be a fair indication of the levels of racist violence Indian students are experiencing. We have formed this belief based on our experience assisting Indian victims of violent crime at the WSLS in the last few years, and also through ISLAC. We are able to add a number of incidents of racist violence to the list of cases that have received media coverage. We note too that the Chinese embassy has come forth and reported that attacks on Chinese students have also taken place in recent years.⁸⁹

We are also firmly of the belief that much of the violent crime experienced by Indian students is racist in motivation or contains elements of racism. Firstly, the significant over-representation of Indian students as victims of violent crime in and of itself suggests that there is some racist dimension to this pattern of violence. Furthermore, much of the publicly available information about these crimes includes reports that victims were racially abused and vilified during the attack. As described by Sunny Bajaj who was assaulted in Boronia in June 2009, "They came up to me and asked me for money, I told them I had none and then they attacked me ... They called me a fucking Indian cunt - why would they do that? I said nothing to them".⁹⁰ Another attacked student, Ajadeep Singh, reported: "They made fun of my turban 'Take it off and give it to me!' They made fun of my religion, 'Your religion is bullshit! Why do you wear a turban? Your beard – you look like a terrorist!'"⁹¹ Similar reports in many more cases were also confirmed by psychologist and ISLAC associate Michael O'Neil, who works with many Indian victims of crime.⁹² Furthermore, the term 'curry bashing' is now both referred to by perpetrators and widely understood in the community and in the media in respect of these incidents.

In addition to racist violence, many more international students are also experiencing discrimination on the basis of race or ethnicity on a number of fronts. In particular, as discussed above, this involves discrimination in employment and accommodation but also in other areas. This issue has been highlighted by the VEOHRC in its submission to the Victorian Taskforce and in the study conducted by the Monash Institute.⁹³

⁸⁸ Arjun Ramachandran, "Indian student bashings on the rise in Sydney: community leader", *Sydney Morning Herald*, 29 May 2009, available at <http://www.smh.com.au/national/indian-student-bashings-on-the-rise-in-sydney-community-leader-20090529-bpxy.html>

⁸⁹ Heath Gilmore and Paul Millar, "China fear over safety of students", *The Age*, 4 June 2009, available at <http://www.theage.com.au/national/china-fear-over-safety-of-students-20090603-bvpe.html>

⁹⁰ Paul Millar, "Another Indian student bashed", *The Age*, 15 June 2009, available at <http://www.theage.com.au/national/another-indian-student-bashed-20090615-c7ve.html>

⁹¹ Sushu Das, "The lowest of low blows", *The Age*, 21 February 2009, available at <http://www.theage.com.au/national/the-lowest-of-low-blows-20090220-8dqu.html>

⁹² Chris Johnston, "It's very easy to criticise people who have no voice", *The Age*, 1 May 2008

⁹³ VEOHRC, *ibid*, 4; Deumert et al, *ibid*, 5 & 7

We believe an even greater percentage of international students experience racial harassment and vilification, compared to those who experience outright racist violence. There have been many media reports of students facing racist remarks relating to the colour of their skin, their country of origin and their attire and we have received much anecdotal evidence to this effect.⁹⁴ That there are entrenched racist attitudes proliferating in Australia has also been evinced in community responses to Indian students protesting the spate of racist violence and police and government inaction. For example, at the significant protest by Indian students in Melbourne on 31 May 2009 it was reported that several bystanders screamed racial slurs at protesters and one was heard to shout “fuck off home”.⁹⁵ Subsequently, a Sikh temple at Shepparton was defaced with racist graffiti. Newspaper reports of the protests also drew racist commentary from many sources. The following are a random selection of clearly racist responses to the student protests. When reading them it is important to bear in mind that overtly racist commentary is generally not published and these are but a few examples of the many racist comments that were made (although there were also many non-racist messages posted).

take a shower and go home if you dont like it here. simple.

Posted by: eric cameron of melbourne 5:47pm June 01, 2009

If the Indian students here are so unhappy with the way they are treated then as harsh as it sounds you dont have to be here. Our education system allows international students to be here and its obvious that its alot better than India. So if its that bad, Go back and now every Indian will be painted with the same brush, they went the wrong way about protesting and now they can face the backlash from the Melbourne community. Good Luck Indian students you will need it.

Posted by: Michael of Melbourne 5:31pm June 01, 2009

If they don't like it here, go home! Brumby's soft sentencing and lack of police on the beat don't help. There are too many migrants coming to settle in Melbourne and the place is turning into a melting pot. Alot of this crime is coming from other migrants they just don't fit in. We need to do something about it now!!!

Posted by: Too many migrANTS of Vic 5:24pm June 01, 2009

Could all of the protesters please shut the door behind you when you leave. No one forced you to come and no one is preventing you leaving.

Posted by: Paul from Dandy 2:24pm June 01, 2009

⁹⁴ See for example, Mark Dunn, “Learning to feel unsafe”, *Herald Sun*, 10 May 2008, available at <http://www.news.com.au/heraldsun/story/0,21985,23673284-2862,00.html>; Tanvi Salkar, “Faced remarks on skin, poverty Down Under, say ex-students”, *Indian Express*, 29 May 2009 available at <http://www.indianexpress.com/news/faced-remarks-on-skin-poverty-down-under-s/467698/>; Michael Harvey and Shannon Deery, “Expert calls for urgent efforts to halt attacks on Indian students”, *Herald Sun*, 3 June 2009, available at www.news.com.au/heraldsun/story/0,21985,25579057-2862,00.html

⁹⁵ Paul Millar and Ben Doherty, “Indian anger boils over”, *The Age*, 1 June 2009, available at <http://www.theage.com.au/national/indian-anger-boils-over-20090531-brrm.html>

I am sick to death with people that come here and try to change Australias ways.All that come here are coming from a place they have stuffed up and are trying to stuff this country.As for them telling us and the polioce what to do is not on, look what happens over there.Also who is going to pay for broken windows and clocks,is it us tax payers fixing what they have done.Check visas and get them out of the country we dont want more crimnals we have enough already.And to the cops of this country get tougher and stand up for your members,tell the bleeding hearts out there we want a safer place and it needs tougher cops and the public to stand and back up our cops.To all that come to Australia if you dont like it the way it is LEAVE-LEAVE.

Posted by: Rossana Salzano of victoria melbourne 2:24pm June 01, 2009⁹⁶

These comments are not atypical of the types of racist and highly prejudiced on-line commentary elicited by media reporting of the issues affecting international students. This is deeply concerning and perhaps a good indication of the range and depth of the problem that international students are facing.

In our view, it is clear that the experience of international students is frequently characterised by experiences of racism or discrimination and in some cases students are the victims of racist violence. As further discussed below, experiences of racism have far-reaching and lifelong impacts. We therefore urge this Committee to seriously consider international students' experiences of racism and discrimination and to make recommendations that reflect the seriousness of this problem.

Government Responses to Racist Violence against International Students

The response to the violent attacks on international students by government at all levels – Federal, State and Local – has been important in framing international students' perceptions of the level of support for their plight. It has also been significant in framing community reactions to this series of racist attacks and other racism experienced by international students. Generally speaking, in our view all levels of government have missed the opportunity to provide a swift and effective response this kind of racism. For example, at State level, the Victorian Taskforce charged with inquiring into the international student experience did not have racism or discrimination included in its Terms of Reference, nor did it expressly address issues of racism in its report.⁹⁷ Similarly at a Local government level, when City of Melbourne Councillor and Chair of Community Services, David Wilson, spoke at the Centre for Multicultural Youth's network meeting on 'International Students in our Community' he identified a series of 'key issues' for international students but racism was not among them.⁹⁸ Given the frequency and extent to which international students experience racism and discrimination, as discussed above, we believe that these omissions are highly unusual. They are, however, typical of the general reluctance on the part of governments to openly acknowledge that international students experience racism while in Australia. This is also reflected in the Terms of Reference of this Committee, which refer to 'student safety' and

⁹⁶ Responses to Brendan Roberts, "18 arrests amid Indian protest over Melbourne race violence", *Herald Sun*, 1 June 2009, available at <http://www.news.com.au/heraldsun/story/0,21985,25565946-661,00.html>

⁹⁷ Victorian Taskforce, *ibid*, 18

⁹⁸ CMY, *ibid*, 4

'social inclusion' rather than expressly identifying racism as a problem impacting on international students' welfare.

In this regard, the Federal government has been particularly reticent in its response to this serious pattern of racist violence. Furthermore, we believe that some aspects of the Federal government's response have actually been damaging to students. They have devalued perceptions of international students' worth as members of Australian society and understated the significance of their experiences of racism. In some ways, this has been much worse than the responses of State and Local governments.

At a State government level in Victoria there has at least been vocal and explicit bipartisan condemnation of the racist violence perpetrated against Indian students. Importantly, both the Premier and the Opposition Leader have specifically referred to issues of racism in responding to the incidents. For example, in early June Premier Brumby visited a number of sites in Melbourne's west where attacks had occurred and stated clearly, "There's no doubt that if you look at some of the video evidence of these they have been crimes which are racially based". He also stated, "there is no place in our society for any crime which is racially based. It is unacceptable and is repugnant to me and repugnant to all Victorians".⁹⁹ The State government also announced amendments to the *Sentencing Act 1991 (Vic)*, which will compel judges to take into account racist motivations as an aggravating factor when sentencing offenders, and it announced the opening of a 24 hour care service for international students that will provide assistance with accommodation, counselling, legal advice and support services. Of course, it remains to be seen whether this verbal condemnation and these future plans will translate into actual change and support for international students. At the very least, however, at the State government level international students have received a public show of support.

In contrast, at a Federal level the government has evaded the actual issue of racism and instead has focussed its commentary on the general issue of violence in our society and the economic implications of the attacks. While Deputy Prime Minister Gillard stated in Parliament that "Australia will not tolerate discrimination against or victimisation of any of our international students", the Federal Government was not actually taking any practical steps to stem the wave of violence that Indian students were experiencing, nor had anything been done to address the issue of discrimination which international students and other migrant groups have consistently experienced.¹⁰⁰ On 1 June 2009, Prime Minister Rudd condemned the attacks on international students but he failed to address the issue as specifically one of racism and spoke more about "safety for all Australians" and Australia's "diversity, harmony and tolerance".¹⁰¹ Naturally, for international students who are by definition not Australian and who have

⁹⁹ Reko Rennie, "Attacks on students 'clearly racist': Overland", *The Age*, 10 June 2009, available at <http://www.theage.com.au/national/attacks-on-students-clearly-racist-overland-20090610-c2i9.html>

¹⁰⁰ Jeff Waters and Nic MacBean, "Anger grows over Indian student bashings", *ABC News*, 29 May 2009, available at <http://www.abc.net.au/news/stories/2009/05/29/2583942.htm>

¹⁰¹ Brendan Roberts, "18 arrests amid Indian protest over Melbourne race violence", *Herald Sun*, 1 June 2009, available at www.news.com.au/heraldsun/story/0,21985,25565946-661,00.html

experiences that are completely at odds with Australia's reputation for 'harmony and tolerance' (particularly as their own 'diversity' is frequently treated with disdain rather than respect) this kind of rhetoric is far from consoling or supportive. Furthermore, much of the Federal government's response at this stage had been characterised by a focus on the importance of maintaining good diplomatic relations with India and avoiding detriment to the international student industry. This created the impression that the Federal government's response was more about assuaging the Indian government and authorities than it was about any actual concern for the welfare of international students. Even a week or so later, after more attacks, the Federal government was still reluctant to openly address the issue of racism. Instead the Prime Minister kept insisting that Australia was one of the safest places in the world for international students and that the types of violence that were occurring were just a "regrettable fact of urban life".¹⁰² Rather than focus on the issue of racism, at this point the Federal government chose to emphasise the need for Indian students to keep calm and refrain from retaliation. It even chose to examine the statistics of assaults against Australians in India (ignoring the fact that racism was probably in no way involved in those incidents).¹⁰³ It was only in early July 2009, when the Federal government decided to send a "top-level delegation" to India to meet with officials there that the delegation's leader finally stated: "We will make it clear that racism is not going to be tolerated by the Australian Government".¹⁰⁴ Of course, in light of the Federal government's response up until that point, it seems fairly obvious that the Government was more intent on making its supposed intolerance of racism clear to the Indian government, rather than to perpetrators of racism and racist violence back in Australia.

In our submission, the Federal government's response has been grossly inadequate and, at times inhumane. As discussed above, Indian students make a substantial economic contribution to Australia, in addition to their contributions as workers and as members of the community. That this pattern of racism has been met with a largely self-interested governmental response that expresses little concern for victims' welfare and their inherent value as human beings is offensive. It has also naturally created a grave sense of injustice amongst Indian students. Racism in any society has wide-reaching effects. For victims it leads to psychological scarring and may potentially result in entrenched economic and social disadvantage. We are therefore deeply concerned that the Federal government has not met these overt patterns of racism against international students with emphatic condemnation and active measures to address the problem.

While we have noted above that in Victoria the State government responses have been somewhat better than those of their Federal counterparts, there have nevertheless been some State and Local government responses which have been misguided. For example, at State and Local levels, government has also responded with harmony-building initiatives, such as the State government's 'Walk for Harmony' on 12 July 2009 and the Maribyrnong Council's 'Harmony Train'. Although these events may

¹⁰² Matthew Franklin, "PM reassures Indians that Australia is a safe place to study", *The Australian*, 10 June 2009, available at <http://www.theaustralian.news.com.au/story/0,25197,25614881-601,00.html>

¹⁰³ Matthew Franklin, *ibid*

¹⁰⁴ Matt Wade, "Foreign student treatment under scrutiny in India", *The Age*, 6 July 2009, available at <http://www.theage.com.au/national/foreign-student-treatment-under-scrutiny-in-india-20090706-da2d.html>

hold some benefit in creating a greater sense of harmony and support for multiculturalism, they also have the potential to obfuscate less palatable issues like racist violence. This was seen in the case of the Victorian 'Walk for Harmony'. This event was clearly a response to the racist violence experienced by Indian students and yet those incidents of violence were not mentioned by any speakers throughout the event, nor were any Indian students or their representatives invited to speak at the event. Understandably this was the cause of some dismay in the Indian student community. Without wanting to detract from the benefits of events like these, in our view it is imperative that all such events maintain a focus on the issues that prompt them, however unpleasant they may be. A failure to do so has the effect of alienating international students. It also means that ultimately these events cater more for other members of the community than those who are being most adversely affected by the problems that the event was originally intended to address.

Police Responses to Racist Crime against International Students

While the government and police responses to these events have not been entirely separate, in this section we will focus on the response of Victoria Police to the racist violence against international students, in particular Indian students. This response has occurred at two discernible levels. The first of these is the official level, which has involved the Chief Commissioner and other high ranking police officers responding to the violence in the media and public sphere. Secondly, there has been the response of operations police – officers on the ground – when approached by individual victims of crime.

Official Police Responses

Although it has shifted over time, the official police response to the racist violence against Indian students has sparked some controversy. In our view it has ranged from downright offensive to naïve and placatory. It has certainly not been strong and supportive in a way that might have truly benefited the international student community.

In October 2008 when taxi driver/international student Jalwinder Singh was stabbed in his cab, operations police described the assault as an “unprovoked violent attack [that] appears to be a random incident”.¹⁰⁵ When the Victorian Taskforce was empanelled in January 2009, it was reported that this was partly due to police and government concerns over the number of crimes being committed against people of Indian descent, particularly in Melbourne’s western suburbs. Commander Trevor Carter publicly stated that police had been aware of the problem for 12-18 months. He said, “There was a range of victims, but people of Indian background were over-represented in the crime statistics”.¹⁰⁶ At that time it was reported that a police crackdown in just two of Melbourne’s western municipal areas saw 50 charges laid over attacks on international students and that police had identified 150 victims.¹⁰⁷

¹⁰⁵ Paul Anderson, “Cabbie stabbed in back of head”, *Herald Sun*, 13 October 2008

¹⁰⁶ Ellen Whinnett, *ibid*

¹⁰⁷ Whinnett, *ibid*

In February 2009, however, the response from police in Melbourne's west appeared to shift to a 'blame the victim' approach that smacked of racism. Inspector Scott Mahony of Brimbank police offered the following advice to Indian students: "They need to make sure they walk through a well-lit route, even if it might be longer, and they are not openly displaying signs of wealth with iPods and phones, and not talking loudly in their native language".¹⁰⁸ Here the emphasis was on preventing crime by addressing the behaviour of the victim rather than the perpetrator and police expressed frustration that the crime prevention message did not appear to be getting through: "We need to re-examine what we are doing to find out why it's not working".¹⁰⁹ Around that time, Commander Trevor Carter (who had earlier commented that Indians were over-represented in crime statistics) said "We need to make that clear. We don't think it's about race".¹¹⁰ On 21 May 2009, when addressing the media on the bashing of Sourabh Sharma on a Werribee train, a Senior Detective pointed out that the perpetrators said something like, 'Why don't you go home?' but at the same time said that he thought the motivation for the crime "would have been robbery".¹¹¹ Then, only a week later, police announced that they were sending a community liaison police officer to India to brief prospective international students on crime prevention and staying safe in Australia. Again, there was no mention that racist crime against international students was an issue. Instead, police insisted that this was a pre-existing measure that had been planned before the attacks took place.¹¹² Furthermore, a day after that, Deputy Commissioner Kieran Walshe said the police had no data on whether recent victims of violence had also suffered racial abuse during the incidents. He said, "They (Indian students) are seen as vulnerable soft targets ... I don't deny it may have happened but my sense is that these are opportunistic crimes, not racially motivated crimes".¹¹³

Naturally, these responses attracted vehement condemnation from the Indian student community and helped to foment mistrust of the police and dissatisfaction with police efforts. It was then that Chief Commissioner Simon Overland became involved in what seemed to be an effort to address the concerns of Indian students and stem the rising wave of discontent. In an opinion piece in the *Herald Sun* he conceded that "some of these crimes are racially motivated", but he was clear to say that he maintained a belief that "many of the robberies and other crimes of violence are simply opportunistic". He also stressed that many international students were just "in the wrong place at the wrong time" due to work and study hours and their use of public transport.¹¹⁴ At the same time, he identified that 1447 people of Indian origin were victims of violent crime such as robberies and assaults in the 2007-2008 period and that robberies and assaults on Indian people in the state had increased by a third. After another Indian student suffered a knife attack in Melbourne's south-east, he later warned against a race-

¹⁰⁸ Jewel Topsfield, *ibid*

¹⁰⁹ Topsfield, *ibid*

¹¹⁰ Sushi Das, *ibid*

¹¹¹ Anthony Dowsley, "CCTV footage released of terrifying Werribee train line attack", *Herald Sun*, 21 May 2009, available at <http://www.news.com.au/heraldsun/story/0,,25517697-2862,00.html>

¹¹² Jeff Waters and Nic MacBean, *ibid*

¹¹³ Chris Johnston and Matt Wade, "Rudd steps in as tensions rise over attacks on students", *The Age*, 30 May 2009, available at <http://www.theage.com.au/national/rudd-steps-in-as-tensions-rise-over-attacks-on-students-20090529-bqb3.html>

¹¹⁴ Simon Overland, "We are fighting a rising tide of assaults on our streets", *Herald Sun*, 2 June 2009, available at <http://www.news.com.au/heraldsun/story/0,21985,25571717-5000117,00.html>

based reaction and said, “There is a hysterical edge to this, and assertions we have not done enough on this issue and not taking it seriously is just plain wrong [sic]”.¹¹⁵ A week later he then admitted that some of the attacks were racist and finally publicly condemned the racist attacks, saying “Some of the attacks were clearly racist in motivation and that violence is unacceptable and racism is unacceptable in any form”.¹¹⁶

As this potted history makes clear, the police response to racist violence against international students has been disproportionately focussed on the students themselves and has largely ignored the racist sentiments and community prejudices underpinning these attacks. The police have chosen to emphasise safety and crime prevention, responsibility for which they place squarely at the door of Indian students, rather than to proactively address the root causes of racist violence. Victoria Police eventually conceded that some of the crime was racist but only after a significant response from the Indian student community, including large protests in Melbourne and Sydney.

We submit that this type of response on the part of officials is not only deeply disappointing, it is also dangerous. The police’s stubborn refusal to acknowledge racist violence for what it is has clearly damaged the relationship between international students and the police. It has also wasted valuable time in which the police could have been working collaboratively with the international student community to address this issue, instead of being at loggerheads. While it may have been that police were trying not to enflame the situation, what they actually did was the opposite. By insisting that international students were mistaken in thinking that there was a pattern of racist attacks, in our view police actually aggravated the situation.

We are also of the view that responses to any sort of violence – whether racist or not – which position the victim as primarily responsible are entirely unacceptable. We therefore find the police emphasis on crime prevention and student safety to be inappropriate, particularly given that there does not seem to have been any equivalent attempts to reach the perpetrators of racist violence. This emphasis has not only occurred at a high-ranking level. At the DIAC seminar for international students on 15 July 2009, the Victoria Police presentation almost entirely focussed on crime prevention and safety. When the issue of racism did finally come up (because it was raised by an attendee, not the presenter), students were told that only a small proportion of crime is racially motivated and that the issue had been “blown out of proportion by the media”. Again, students were effectively told that victims had been ‘soft targets’ in that they were working late at night and in dangerous areas.¹¹⁷

In our view, the official police response, as expressed by high-ranking police officials, has also adversely affected the ability of operations police to respond appropriately when faced with individual victims of crime.

¹¹⁵ Matthew Schultz, “Simon Overland calls for calm after new Indian student attack”, *Herald Sun*, 3 June 2009

¹¹⁶ Reko Rennie, *ibid.*

¹¹⁷ DIAC Seminar, *ibid.*

Responses of Operations Police

The issue of police responses to violence against international students was placed on the public agenda most emphatically by the taxi industry protests of 2006 and 2008, both of which were primarily orchestrated by international student drivers from India and Pakistan. Both protests were coordinated in response to assaults on Indian student drivers working late night shifts in their cabs and protesters on both occasions complained of delayed police response times and indifferent police responses to incident reports by cab drivers. The 2008 protests followed from the stabbing of Jalwinder Singh, who was discovered unconscious and bleeding by pedestrians hours after the police had examined his empty taxi just 200 metres away.

More recently, media reporting on a string of assaults against primarily Indian international students in Melbourne has also brought to light student complaints regarding unhelpful, dismissive and obstructive police responses. ISLAC clients have reported incidents of police attending scenes of assault and robbery only to question the student placing the call about their movements and why they happened to be on the street at a particular time. Whether due to communication breakdown or plain-faced discrimination, these interactions have left students highly reluctant to rely on the police should such incidents recur in the future.

Case Study 8

Student R is a taxi driver with several years' experience driving in Melbourne. He is also involved with organising international student drivers and ensuring that new drivers have access to basic workplace safety information. Student R notes that it is a well known 'trick' of the taxi trade that drivers who require a rapid police response should offer an 'Anglicised' name when reporting an incident. According to new drivers in touch with Student R, major taxi operators such as 13 CABS and Silvertop include this reporting advice to drivers during their formal induction training. Student R explained that on one of the few instances he used his full Punjabi name when reporting an assault to St Kilda police, he had to wait 45 minutes for a response despite being less than one kilometre from the police station.¹¹⁸

Relations between the international student community and police, particularly in Melbourne's west, are characterised by suspicion - not least because the police tend to be perceived as an organ of the government, keeping close watch on students for visa 'slip-ups.' This impression was grimly reconfirmed for students involved in the taxi protests as the State government deployed multi-agency 'booze buses' to major taxi ranks, manned with Victorian Taxi Directorate and DIAC staff in addition to police personnel.¹¹⁹ The relationship between police and the international student community in Melbourne's west was further tarnished by many of the activities of the Police Western Reference Group, formed in 2009. The Reference Group was broadly unrepresentative in terms of student involvement and was dominated by members of the Indian business community. In promoting the suggestion that Indian

¹¹⁸ Based on an interview with student conducted by Sanmati Verma on 5 August 2009

¹¹⁹ Liberty Victoria, "Booze Bus Becomes Big Brother Bus", available at <http://www.libertyvictoria.org/node/49>

students cease speaking their native tongue in order to avoid assault, it was also perceived as 'victim blaming'.

There are several unfavourable repercussions of a strained relationship between international students and local police. Firstly, the lack of trust compounds the dislocation of international students from Australian society and will no doubt shadow their experience here as permanent residents and citizens. Secondly, under-reporting exacerbates police ignorance around international students and their safety needs. Thirdly, a lack of trust towards the police inclines the student community towards 'self-help' methods such as those deployed in St Albans in 2009 which, though initially effective in ensuring community cohesion, have the potential effect of situating international students in 'turf wars' over public space with other ethnic communities. This impact has been seen in Sydney's Harris Park. Community self-organising of the order witnessed in St Albans has the potential to eventually trigger further conflict with the police. Finally, an untrusting attitude towards policing authorities amongst the international student community means that the strategy of deploying additional police personnel in violent 'hotspots' such as Sunshine or Footscray in Melbourne's west is likely to be minimally effective in increasing perceptions of safety.

We are also concerned that when police do investigate violence against international students, they may fail to properly inform the student of the process involved. They may also adequately fail to keep victims updated on the progress of investigations. This is distressing for many international students as they generally do not understand Australian police processes or the timeframes involved. This issue has been raised by several ISLAC clients. We provide two examples here:

Case Study 9

Student P was violently assaulted by a group of four males in a racist attack. He reported the incident to the police and all of the offenders have been apprehended and charged. Police asked Student P to attend the court hearing of one of the offenders to give evidence.

Student P did not want to provide evidence in court as he feared later reprisal from the defendant. He even considered withdrawing his complaint. The police eventually served a Witness Summons on him. When Student P attended ISLAC he was unaware of how the criminal process worked and advised us that the police had not explained this to him. He had also not been told that he could give his evidence remotely via video link or that he was entitled to have an interpreter at court if needed. The police had also failed to discuss Student P's on-going safety concerns with him.

Case Study 10

Student J from Bangladesh was the victim of an incident in a shop involving severe racial harassment and ultimately a minor assault. He was extremely distressed by the incident and reported the matter to police soon after. When he made the report, he made a statement and was of the belief that the police

officer who took that statement would contact him shortly to let him know what police action had been taken. A week or so later when he still had not heard from the police officer, he contacted ISLAC. On behalf of Student J, ISLAC contacted the police officer involved to find out about the progress of the investigation. ISLAC was informed that, in fact, the investigation had not progressed at all because Student J had only made a partial statement and police were waiting for him to come in and complete it. Student J was adamant that the police had not made him aware that he was expected to return to the police station.

Whilst international students currently receive information on police powers and emergency services from a number of sources, these bodies are often minimally educated about the international student community. Judging by interactions reported by students who have attended ISLAC, police appear to lack even the most basic information about the international student experience including, for example, the reasons students utilise public spaces for socialising, why international students are frequently at public transport stops and stations at odd hours of the morning, and why students coordinate themselves to move from public transport hubs in groups late at night. As the above case studies illustrate, police also lack an understanding of how to appropriately engage with a victim who is unfamiliar with the Australian legal system. All of this must change and we refer the Committee to Recommendation 47 above regarding professional development for agencies that interact with international students.

We also recommend the following:

- 48. We recommend that state police forces at their higher levels publicly acknowledge the issue of racist violence against international students and brief operational police on the issue accordingly.**
- 49. We recommend that racism and discrimination towards international students be acknowledged as an ongoing cultural problem by state police forces at all levels and be taken seriously when complaints are received from international students.**
- 50. We recommend that state police policy be changed such that police are expressly forbidden from conducting visa checks in situations where international students make reports of crime.**
- 51. We recommend that state police forces develop policies for the provision of information to victims of crime that are specific to international students.**

Legal Mechanisms Available to Students

Where international students experience racism or discrimination there are a limited number of avenues for redress. They may go through a state-based equal opportunity commission such as the VEOHRC in Victoria. If this does not resolve the matter complainants in Victoria may take breaches of the *Equal Opportunity Act 1995 (Vic)* to the Victorian Civil and Administrative Tribunal. Breaches of the Commonwealth *Racial Discrimination Act 1975* may be addressed through the Australian Human Rights Commission and through the Federal Court of Australia.

In 2006 WSLS released the report of a qualitative study it had conducted on racial and religious discrimination, harassment and vilification in Melbourne's west. Amongst other things, this report examines the legal mechanisms available to victims of racism and their experiences of those systems. The report identifies that complainants to the Equal Opportunity Commission of Victoria (as the VEOHRC was then called) reported a number of areas of dissatisfaction with the process. Some of their concerns were as follows:

- The onus was on the victims to follow up the complaint and push their case.
- They felt that the VEOHRC was not unbiased in the conciliation.
- The perpetrator of the racism was not truly sorry.
- It was a difficult process to negotiate without a lawyer or some other support.
- People did not know who to complain to or felt that their complaint of racism was too minor to warrant a complaint.¹²⁰

In respect of international students, there are several particular concerns we wish to highlight.

Firstly, we are concerned that many international students are unaware of the legal mechanisms available for responding to racism. As discussed above, the information international students receive about support networks and the Australian legal system is generally inadequate. In the case of mechanisms for responding to racism, this may be exacerbated because VET providers are reluctant to suggest in any way that students might experience racism, for fear of losing business. What this means, however, is that international students are unprepared for the reality of life in Australia and when they do experience racism or discrimination (as many do), they are unaware of how they can address it.

We are also concerned that many international students do not complain about racism and discrimination when they experience it, even if they know that there are complaints mechanisms available. As noted above, the 2004 Monash Institute study involving international students in higher education found that 50% reported having experienced discrimination and racism.¹²¹ In our view, this figure would be even higher amongst VET students, more of whom live in economically disadvantaged, outer-suburban areas where racial tensions are higher, who use public transport and who are more likely to occupy public space in groups with other students of the same ethnicity. Nonetheless, students may be reluctant to complain for fear that it will affect their visa status or chances of getting permanent residency. Students may also feel embarrassed to pursue a complaint through official channels or they may feel that their complaint is too minor to pursue. Given the violence international students are experiencing, victims of racism may also be reluctant to lodge complaints for fear of revenge attacks. In its submission to the Victorian Taskforce, the VEOHRC noted some of the other barriers to individual complaints such as the 8303 visa condition, language issues, cultural barriers and uncertainty about

¹²⁰ Western Suburbs Legal Service Inc, *Racial and Religious Discrimination, Vilification and Harassment Project*, 2006, temporarily unavailable on-line. Available by contacting WSLS.

¹²¹ Deumert et al, *ibid*, 3.

Australian laws and systems.¹²² They also point out the limitations of “sole reliance on an individual complaints based system”.¹²³

A further concern is that where international students do complain, they may find current legal mechanisms inadequate in their particular circumstances. In Victoria, the conciliation process available through the VEOHRC is voluntary and any outcomes of that process are voluntary. Students may therefore be concerned that going through this process will get them nowhere if the other party is particularly stubborn or racist, or both. Furthermore, students may be reluctant to initiate proceedings in VCAT due to the cost involved and the time that it will take. They may also be frightened of becoming involved in a judicial process and how this will impact on their visa status. If they are in Australia temporarily, international students may also feel that it is futile to engage the judicial system. In summary, for international students the non-judicial processes (such as through VEOHRC) will seem toothless whereas the judicial processes will be equally unappealing because they are lengthy, complicated and costly. The following case study from ISLAC reflects the experience of international students in this regard. We note that this case study derives from the same set of circumstances as Case Study 10.

Case Study 11

Student J from Bangladesh experienced racial harassment and discrimination in a shop. Early one morning, when Student J was heading home after his night shift, he went to buy some groceries at his local green grocer. He was followed around the shop by the shopkeeper and then racially abused by him, including with remarks such as “you Indian bastard”, “you have no right to live in Australia” and “go home and look in the mirror, all you bastard Indians look alike”. When Student J asked the shopkeeper what was wrong, he replied “what’s wrong is your face, your colour and your fucking culture”. He then began screaming, “fuck Indian people, kill Indian people...no right to live in Australia”. Eventually, the shopkeeper refused to sell Student J his groceries and told him to leave the shop. As Student J was leaving the shopkeeper hit him on the back. This whole incident was a completely unprovoked attack. It left Student J feeling traumatised to the point that he is still considering leaving Australia. He remains very scared and distressed by this incident. He has decided to lodge a complaint with the relevant state-based body but he is concerned that this will have no outcome. Student J has expressed frustration that the state-based body cannot force the shopkeeper to do anything to rectify the situation. He does not believe that a shop like that should be permitted to retain its business licence.

Dealing with Legal Agencies

ISLAC clients have expressed concerns about whether they could access legal aid funding based on the experiences of other international students known to them. They reported that others have been denied funding because on paper they appeared to exceed the income threshold allowable for the receipt of legal aid. In reality, however, the ‘on-paper’ earnings of students are not a true reflection of their

¹²² VEOHRC, *ibid*, 5

¹²³ VEOHRC, *ibid*, 5

available financial resources because they do not take into account high outgoing costs including tuition fees, costs for tests such as the International English Language Testing System (IELTS) tests, visa application fees and remittances to their home countries. Consequently, even students who are absolutely unable to afford to pay their own legal fees may be deemed by the legal aid means test as ineligible to receive assistance.

Similarly, a legal associate of ISLAC who has assisted many international students with victims of crime compensation applications has noted that the Victorian Victims of Crime Assistance Tribunal (VOCAT) was initially very circumspect in awarding international students compensation in relation to ancillary financial harms suffered as a result of assaults. Although the situation has improved lately, with VOCAT willing to countenance more diverse forms of harm to international students, it is important to ensure that the equivalent bodies in all states are made aware of the specific situation of international students that render them particularly vulnerable as victims of crime. Over and above domestic victims of crime, international student victims suffer the following financial flow-on effects:

- Late fees for assignments handed in late as a result of absence from college.
- Discontinuing fees if students must drop a subject during semester.
- Course failure fees if students are unable to withdraw and must incur a fail grade for the subject that semester.
- Course relocation fees if students are unable to complete their course and must transfer to another one.
- Fees incurred if students are required to extend their visa due to an extended course of study.

If these costs are not met, or at least partially alleviated through victims of crime compensation, international students who are victims of serious crime may well be faced with having to return to their home country, abandoning an investment in education that has usually cost them and their families tens of thousands of dollars.

52. We recommend that VET providers be required to provide all international students with information about how racism and discrimination are defined in Australia, the legal mechanisms available to address racism and discrimination, and the support services that can assist students if they have such experiences.

53. We recommend that State and Federal governments develop binding complaints mechanisms relating to racism and discrimination that sit between the current voluntary processes and the court/tribunal system and which function in a manner more akin to ombudsmen's offices than the current voluntary processes.

54. We recommend that additional resources be made available to agencies which can support international students in taking action to address racism and discrimination for proactive initiatives which encourage and assist international students to address incidents of racism and discrimination.

55. We recommend that legal aid commissions in all states be made aware of the economic pressures on international students and in particular that perusal of their bank balances or work history records may make them appear more solvent than they actually are.

56. We recommend that victims of crime compensation authorities across Australia be sensitised to the situation of international students and be willing to countenance applications based on multiple heads of damage, in light of the far-reaching effect that crime has on the lives of international student victims.

Health Issues Arising Out of Racist Violence

Where international students experience racist violence, there are a number of health issues they may also experience as a consequence.

One of these issues relates to the psychological harm caused by racist violence. As by Michael O'Neil, a psychologist and ISLAC associate who treats many international students who are victims of crime (as noted above), stated in relation to student taxi drivers who have been assaulted, "the main problems after they have been assaulted are hyper-vigilance and elevated startled response... That is, they are constantly on the look-out and they are anxious and agitated and jumpy. They have a general fear of all passengers and are frightened of getting attacked again".¹²⁴ While there may be support mechanisms available to assist students who experience this kind of trauma (such as victims of crime compensation for counselling expenses), the lack of knowledge amongst international students is such that they may not know about these supports. Furthermore, those students who do not report their experience of violence will probably not become aware of the opportunities for assistance that exist. The psychological effects of racist violence are particularly concerning, especially in light of the increase in suicides amongst international students (see below).

As a consequence of both the psychological and medical problems caused by such assaults, many international students experience financial difficulties. Students may miss out on work or may lose their jobs altogether. Victims of serious assaults may lose their ability to study or work. Naturally this will significantly exacerbate the issues related to poverty we have already discussed above. It will also probably result in a loss of the money invested in VET courses, given the harsh refund policies of VET providers (as discussed above).

Another issue arising from racist violence relates to medical expenses. It is a condition of international student visas that students have Overseas Health Cover (OSHC) for the duration of their stay in Australia. Though all international colleges require the presentation of current OSHC prior to enrolment in a course, renewal of cover from one year to the next is not a requirement for re-enrolment. As discussed above, many international students experience severe financial difficulties when they are in Australia, including poverty and this experience is heightened amongst students in the VET sector.

¹²⁴ As quoted in Chris Johnston, *ibid*

Where students are struggling to manage their basic living expenses, paying for health insurance may not seem like a priority. This may evolve into a big problem for students, however, where they experience unexpected illness or require medical treatment because of an assault. A legal associate of ISLAC who has assisted many international students with victims of crime compensation applications described the following scenario to us:

Case Study 12

Student F from India was a hospitality student at a private international college in the city. He was seriously assaulted in Box Hill in April 2007 which resulted in a long period of hospitalisation and subsequent rehabilitation. His insurance cover had lapsed at the commencement of semester in February 2007 and he had not renewed it. If he had, his insurance cover would have been up to \$150,000. Ultimately his hospital bills were covered by members of his ethnic community and victims of crime compensation. Nonetheless, his rehabilitation had to be cut short once the cost of it exceeded the maximum payout that VOCAT can make.

In a similar case, when Sravan Teerthala was stabbed with a screwdriver by party gatecrashers in May 2009, he did not have current OSHC cover and his ongoing medical bills were covered partly by the Telugu community, public donations and victims of crime compensation.

In light of the significant contribution that international students make to Australia's economy and the fact that most international students work and pay taxes during their stay in Australia, we recommend the following:

- 57. We recommend that information regarding victims of crime compensation and mental health support services be compulsorily provided to all international students by education providers.**
- 58. We recommend that students who are assaulted and lose course fees as a result be covered by the TAS or ESOS Assurance Fund.**
- 59. We recommend that international students be given access to Medicare for the duration of their student visa.**

Community Attitudes and Social Inclusion

A qualitative study conducted by Sawir et al in 2005 revealed that 60% of international student respondents reported severe loneliness as part of their student life in Australia.¹²⁵ The authors suggest that "newly arrived international students find themselves in *relational deficit*, if not social isolation, at a time when they need more than usual support."¹²⁶ This social isolation has resulted in an increasing

¹²⁵ Sawir, Erlenawati et al "Loneliness and International Students: An Australian Study", 20 (10), 2007, *Journal of Studies in International Education* 1: 1

¹²⁶ Sawir et al, 1

number of suicides amongst international students - reported mostly in the local ethnic press¹²⁷ - and an increasing tendency for students to bypass mainstream community support channels and directly approach established members of their ethnic community for settlement support. Though these community relationships are often productive, students attending ISLAC have also reported being 'roped into' exploitative employment and tenancy situations by employers and landlords capitalising on common ethnic bonds.

Deumert et al argue that social isolation of international students is to some extent dictated by mainstream media reporting that casts students as a revenue source rather than as social subjects.¹²⁸ Rarely has an article on racist attacks against students in Melbourne over the past 3 months neglected to mention that the overseas education industry is worth \$15.5 billion to the Australian economy, and is the country's third largest export earner. Though these statistics may be read in a positive light, they also contribute to the popular conception of international students as flooding into Australia *en masse*, 'stealing' Australian education places and reducing the quality of education for domestic students. The fact that skilled migration has in fact been promoted by successive governments in order to plug skills shortages and funding gaps in the tertiary education sector is completely obscured in public discourse surrounding international students.¹²⁹ This was made clear by community responses to the protests mounted by Indian students in response to incidents of racist violence and police inaction. In response to an on-line article about the protests in Melbourne's *Herald Sun* newspaper, many readers expressed sentiments which clearly reflect misperceptions about the impact international students are having on the employment and education opportunities of domestic students, as well as racist attitudes. Comments included the following:

I think the Indian students are just arrogant. Assaults happen everyday. To think it is racially motivated is simply wrong. Most are coming to Australia the back door way and think we should be grateful because they pay so much for their education and to afford it they have to work the menial jobs. I think it is about time they introduce quotas on foreign students and lift the funding to Universities to compensate for the shortfall.

Posted by: gcc of Footscray 5:09pm June 01, 2009

Simple, reduce the student intake, no more student freebees and I will not allow "YOU" to force "YOUR" customs and beliefs onto "US" get it. You live "HERE" accept it or "GO".

Posted by: Jack 4:56pm June 01, 2009

¹²⁷ See Amanda Hodge, "International student industry a study in shams and scams", *The Australian*, 14 July 2009, available at <http://www.theaustralian.news.com.au/story/0,25197,25778649-601,00.html>; Neeraj Nanda, "Indian student commits suicide in Melbourne", *South Asia Times*, 16 February 2008, available at <http://www.southasiatimes.com.au/news/indian-student-commits-suicide-in-melbourne/>; Heath Gilmore and Chris Johnston, "More suicides uncovered among overseas students", *Brisbane Times*, 2 July 2009, available at <http://www.brisbanetimes.com.au/national/more-suicides-uncovered-among-overseas-students-20090702-d5g5.html>

¹²⁸ Deumert et al, *Global Social Policy*, ibid, 333

¹²⁹ Birrell and Perry, ibid

I would encourage all Indian 'students' to migrate to Canada instead of here - that would leave a few more precious resources for the people who have arrived here without having to resort to an immigration scam.

Posted by: Chrissy of St. Kilda 12:29pm June 01, 2009

....Understand you parasites that this happens to all people of all cultures and nationalities. And to then threaten the country that offers you its resources (in education) openly makes me sick. If you want go back to india , and then we can give these uni positions to australians , who'd appreciate it. Go and live with 1 billion odd people who battle for a simple life every day!

Posted by: W R proudly ozzi of Oztralia 9:26am June 01, 2009¹³⁰

We believe that in part such pejorative attitudes to international students and their economic and cultural contributions continue to circulate because it is not in the interest of governments or education providers to publicise the role of cross-border student revenue in propping up the education sector. Unfortunately, it is international students themselves who bear the brunt of the government's failure to dispel these misconceptions. This was noted by the National Liaison Committee for International Students in their submission to the Victorian Taskforce. They point out that international students in regional areas have found that the local community perceives their presence as the 'Asian invasion', resulting in a hostile environment for students in which they do not feel welcome or safe.¹³¹

Despite experiencing this type of hostility, the lifestyles of international students make them active users of public and community spaces and resources. In addition to their substantial economic contribution, international students have significantly contributed to the cultural growth of the Australian Indian community in Melbourne, for example, greatly enriching community life at temples and community meeting places, particularly in Melbourne's west.

As discussed above, international education is a growth industry that now employs many thousands of Australians, yet the general Australian public is minimally aware of the valuable economic, social and cultural contributions of international students. In times of public crisis, this translates to limited support for international student issues based on the premise that students are opportunistic 'economic migrants' with tenuous connections to Australian life. We therefore make the following recommendations:

60. We recommend that State and Federal governments sponsor a broad-ranging public awareness campaign that details the economic, social and cultural contributions made by international students to the local community and presents international students as social subjects rather than temporary residents.

61. We recommend that each local council area that is known to receive a high number of international student arrivals each year (such as Brimbank in Melbourne's west) produce

¹³⁰ Comments posted in response to: Brendan Roberts, '18 arrests amid Indian protest over Melbourne race violence', *Herald-Sun*, 1 June 2009, available at <http://www.news.com.au/heraldsun/story/0,21985,25565946-661,00.html>

¹³¹ NLC, *ibid*, 4

area-specific information for international students regarding community services and social events and make this available at community hubs such as local libraries.

62. We recommend that city council's in capital cities such as Melbourne and Sydney support a permanent welcome stall at international airports and that this service provide introductory support and shuttle services for international students alighting at the airport. This service should also be supported by staff at other local councils.

Integration Within Education Providers

Further to the issue of social inclusion, in the course of informal discussion with ISLAC's staff, international students have said that they regret their inability to 'get to know' domestic students and other Australians during their course of study in Australia. They even have difficulty meeting other international students from different countries. A 19 year old student completing an English certificate from Cambridge International College noted that introductory English courses during which students consolidate their initial relationships in Australia tend to be organised according to ethnic groupings and delivered by staff familiar with particular cultural groups.¹³² For example, this student noted that his class was comprised entirely of students from his particular region of Punjab and a Chinese student he had met whilst registering in another city college informed him that her class was entirely comprised of Chinese students. This strategy compounds segregation amongst students who are already dislocated from local students by the fact that they study in a VET institution attended entirely by international students.

Graduate courses at universities are now being organised according to the same logic, whereby students are organised into ethnic 'streams' and taught by a lecturer or tutor with particular cultural competencies in relation to that ethnic group. Although this strategy is presumably employed to minimise student complaints and enhance the quality of their study experience, the consequence is complete segregation between domestic and international students both in the classroom and on campus, as well as segregation of different ethnic groups of international students from each other.

This issue was recognised in the Centre for Multicultural Youth's Network Meeting on 'International Students in our Community', discussed in the report of the Victorian Taskforce and recognised in the National Liaison Committee for International Students' submission to the that inquiry.¹³³ This is particularly a problem for VET students, for, as recognised by the Victorian Taskforce, at smaller institutions where almost all students are international students there are few integration policies and no support for students in this regard.¹³⁴

The recently-established 'Couch' student centre in Melbourne's CBD offers an excellent example of an inclusive, non-commercial space for students to meet and socialise, attend information sessions and

¹³² Interview with student from Cambridge International College conducted by Sanmati Verma on 5 August 2009

¹³³ Centre for Multicultural Youth, *ibid*, 6; Victorian Taskforce, *ibid*, 14-15; NLC, *ibid*, 6

¹³⁴ Victorian Taskforce, *ibid*, 14

gatherings. The advertising for the space is targeted to maximise international student use, however, local students who wish to attend are not excluded. The space also offers the opportunity for community organisations to distribute information through a central locality frequented by international students. We therefore recommend the following:

- 63. We recommend that Federal and State governments allocate funds to provide student centres for the use of both domestic and international students, at locations convenient to both groups.**
- 64. We recommend that tertiary institutions redirect a portion of international student fees towards cultivating an inclusive on-campus culture for both domestic and international students. This should include promoting the use of existing services, such as student advocacy and support centres.**
- 65. We recommend that universities and other tertiary institutions follow the lead of governments (as suggested above) in circulating positive publicity regarding international students and their role in the tertiary sector, thus promoting on-campus harmony.**

The Migration Regime: Pathways to Permanency

Australia's shifting migration policy is the backdrop to much of the preceding discussion regarding the education, legal and social issues facing international students. In our view there are a number of aspects of Australia's current migration policy, as it pertains to international students, which warrant concern. In addition, the types of policy manoeuvres made by the current and previous governments in the area of migration are also deeply concerning when examined from the perspective of international students.

Birrell and Perry have comprehensively examined the relevant shifts in migration policy as it relates to international students in recent years in their article on 'Immigration Policy Change and the International Student Industry'.¹³⁵ Without reiterating the detail of their discussion, it is important to note several key changes that have significantly affected international students and their vulnerability to exploitation.

Firstly, in 2001 the government decided to make study in Australia by international students a direct pathway to permanent residency. Former international students who completed post-school study in Australia and who applied for permanent residency under the skilled migration program in certain designated occupations within 6 months of completing their studies had their applications determined on a concession basis.¹³⁶ This was, in many ways, the catalyst for the boom in Australia's international education industry. Since then, however, what was a direct pathway to permanent residency has become much more indirect.

In 2005 the government raised the number of points required to obtain permanent residency to 120. To be eligible for permanent residency immediately on completion of a course, students had to study in areas that were on the Migration on Demand List (MODL). There was, therefore, a boom in the VET sector in the areas of education and training on the MODL.¹³⁷

Then, in September 2007, things changed again. Students were required to demonstrate 1 year of work experience in their field before they could enjoy the benefit of the MODL points. Students who didn't have the 120 points they needed could get a temporary 485 visa for 18 months. This visa gave them full work rights and they could use that time to undertake the relevant work experience and accrue the 120 points.¹³⁸

Then, in January 2009, there was another change with the creation of the critical skills list. Applicants to the General Skilled Migration program with skills on that list are now given priority. It is no longer enough to be trained in a field on the MODL. Furthermore, a shift in 2005 towards more employer and state

¹³⁵ Birrell and Perry, *ibid*

¹³⁶ Birrell and Perry, *ibid*, 65

¹³⁷ Birrell and Perry, *ibid*, 68

¹³⁸ Birrell and Perry, *ibid*, 69

sponsored skilled migration also means that international students who have based their study program on the MODL are no longer assured of permanent residency, even if they use the additional 18 months on a 485 visa to get the relevant work experience.

Now, in addition to using a 485 visa, international students have to access other pathways to permanent residency. One other option is to apply under the General Skilled Migration program even though they do not have the relevant points. Their application will not be assessed for some time and in the meantime they will be granted a bridging visa with full work rights. When their application is processed the rules at the time of the decision will apply. This option is costly, however, as it requires a \$2105 application fee.¹³⁹ Another option still is to obtain a temporary 457 visa through employer sponsorship. After 2 years of work experience in their field, including one year with the sponsoring employer, the student will be eligible for permanent residency.¹⁴⁰

In our view, all of these 'pathways' to permanent residency, both less direct and more direct, create the conditions for workplace exploitation of international students and systemic disadvantage. Under the direct pathway introduced in 2001, international students were undertaking VET courses in order to obtain permanent residency. The quality of these courses was, and still is, highly questionable (see discussion above).¹⁴¹ Many international students were able to use these courses as a direct pathway to permanent residency, but they did not provide a direct pathway into the workplace. Rather, because of the sub-standard quality of VET courses and other barriers to employment (such as English language skills, discrimination, etc) former international students have frequently ended up working in low paid jobs as taxi drivers, in customer service and in hospitality. This has been a financial trap for students, particularly those from the Indian sub-continent, many of whom, as discussed above, borrow the money to pay for their very expensive VET courses and then struggle to repay loans when they cannot find a job in their field.

By offering a direct pathway to permanent residency the government effectively created the booming VET industry. It did nothing, however, to ensure the quality of the courses offered by that industry or the job prospects of graduates. This has led to the positioning of former international students as a de facto economic underclass.

The current pathways to permanent residency also create conditions in which international students are prone to exploitation. All pathways to permanent residency are now through study-plus-employment and, in the case of some courses of study, substantial periods of unpaid work experience. As addressed in our discussion of employment issues above, this means that students are more vulnerable in the workplace. They are much more likely to be exploited by unscrupulous employers because they are unable to leave the workplace without jeopardising their chances of obtaining permanent residency.

¹³⁹ Birrell and Perry, *ibid*, 72

¹⁴⁰ Birrell and Perry, *ibid*, 74-5

¹⁴¹ Birrell and Perry, *ibid*, 68-9

With all of the aforementioned shifts in migration policy, there is also the question of what happens to those students who enrolled in their studies when there was one policy and now find themselves waiting for determination of their permanent residency application under another. As we have discussed above, given the poor quality of many VET courses and the resulting fact that the skills learned do not create job opportunities for students in their country of origin, it is clear that for many students the high price they pay for a VET education in Australia is really an investment in future permanent residency.¹⁴² According to a 2007 survey of 1155 international students in Melbourne, 95% of the students surveyed reported that they intended to apply for permanent residency.¹⁴³ Even DIAC employees at a recent information session for new international students openly spoke about students' study as a "pathway to migration".¹⁴⁴ In our view, given the high price paid for a VET education and the booming Australian industry that has openly developed around creating opportunities for international students to get permanent residency, it is unconscionable for the government to change the requirements for permanent residency after students have commenced their courses. Students who have invested in permanent residency by spending large amounts of money on sub-standard courses on the basis of an existing migration policy should not lose the benefit of that investment because that migration policy changes.

Furthermore, where there are changes in policy, the government needs to ensure that information about those changes is being conveyed to prospective international students. It is clear that overseas education agents cannot be relied upon to do this (as discussed early in this submission).¹⁴⁵ It is therefore important that the government takes steps to ensure that applicants for student visas are aware of changes to the skilled migration program that may affect them in the future, in particular in respect of future applications for permanent residency.

We recognise that the Australian government will make decisions regarding migration policy based on what it determines is necessary and in the best interests of Australia. What we suggest, however, is that this should not occur at all costs and certainly not at the expense of international students from some of the world's poorer nations. Instead, global forces must be factored in and Australia's migration policy shifts should be made ethically. If a particular form of study is promoted as a direct 'pathway to migration', including by the government, it should remain a direct pathway to migration for all those students who undertake that study based on those representations. The same should also apply to the critical skills list.

We therefore recommend the following:

66. We recommend that the government examine whether current pathways to permanent residency can be adapted to reduce international students' vulnerability to exploitation.

¹⁴² Birrell and Perry, *ibid*, 67

¹⁴³ Centre for Multicultural Youth, *ibid*, 3

¹⁴⁴ DIAC, Student Information Seminar, *ibid*

¹⁴⁵ SBS Television, *ibid*; Birrell and Perry, *ibid*, 71

- 67. We recommend that there should be special workplace protections for former international students who are engaged in work experience or paid employment as a pathway to permanent residency.**
- 68. We recommend that where students have undertaken a particular course of studies in order to obtain permanent residency based on particular migration policies, those policies should be applied to that student when their application for permanent residency is assessed.**
- 69. We recommend that the government take steps to ensure that prospective international students are aware of changes in migration policy that might impact them before they commence their studies.**

Conclusion: Summary of Recommendations

There is no doubt that international students are regarded as an important source of revenue for Australia. As a result, government responses to the issues facing international students have tended to be overly focused on the economic contribution made by international students. The government has tended to emphasise the impact of these concerning issues on the international student industry, rather than on international students themselves. Through this Inquiry, we urge the government to start the long-overdue project of improving the welfare of international students by introducing a wide range of policy reforms that will swiftly and directly benefit international students. We also urge the government to consider models adopted in other countries in order to develop a best practice framework. For example, in New Zealand there is the 'New Zealand code of practice for the pastoral care of cross-border students' which addresses a wide array of student interests and concerns, including welfare and academic needs.¹⁴⁶

While it may be somewhat outside the scope of this Inquiry, we also urge the government to reconsider the levels of funding received by public institutions, insofar as reductions in that funding have directly led to the high fees paid by international students.

We would be pleased to provide this Committee with further information if required.

In summary, our recommendations are as follows:

- 1. We recommend that the government swiftly introduce a regulatory regime that will apply to education agents, including effective enforcement mechanisms.**
- 2. We recommend that the National Code be amended to require education providers to proactively monitor the conduct of all education agents with whom they work, both formally and informally.**
- 3. We recommend that the government take steps to regulate the conduct of agents providing migration advice outside of Australia in connection with Australian education providers.**
- 4. We recommend that there is greater regulation and monitoring of the advertising and labelling of VET providers' services.**
- 5. We recommend that the government conduct an audit of the advertising and promotion materials currently used by VET providers, including the appropriateness of terminology used by providers and in the ESOS framework.**
- 6. We recommend that there be greater monitoring and enforcement of Standard 2.1 of the National Code.**
- 7. We recommend that the refund agreements entered into by VET providers be required to include a reasonable 'cooling-off period' that lasts beyond course commencement.**

¹⁴⁶ See Deumert et al, Global Migration and Social Protection Rights, *ibid*, 344

8. We recommend that VET providers be required to consider individual student circumstances when determining refund applications upon student default and that refund agreements between providers and students be formulated accordingly.
9. We recommend that a framework be established for the independent assessment of all transfer applications.
10. We recommend that where this is not possible, there be greater monitoring of the transfer policies of VET providers and that they be required to conform their policies to the intent of the National Code.
11. We recommend that the government introduce effective quality control processes in respect of VET providers.
12. We recommend that a widespread audit of all Australian VET providers that enrol international students be undertaken.
13. We recommend that heightened quality control mechanisms be incorporated into the ESOS framework with the aim of achieving a substantial improvement in the standard of education provided by the VET sector.
14. We recommend that the ESOS framework be amended to increase the obligations of education providers to supply effective and adequate support services that are proportionate to the size of their total student body.
15. We recommend that the government allocate funding to establish on-going support services for international students that supplement those provided by education providers.
16. We recommend that the government investigate all allegations of threatening behaviour made by international students against VET providers.
17. We recommend that the government enhance the ESOS framework to proscribe threatening conduct by VET providers.
18. We recommend that the complaints process under the ESOS framework be streamlined.
19. We recommend that Standard 8 of the National Code be amended to provide that all external appeals must be of no cost to the student.
20. We recommend that TAS schemes be required to reimburse students for all costs associated with transferring to a new education provider.
21. We recommend that TAS schemes be required to place students with new education providers that will recognise their prior learning.
22. We recommend that the ESOS framework and migration laws be amended so that students displaced by the closure of a provider are offered visa guarantees in respect of suspensions of their study as a result of the need to find a new course provider.
23. We recommend that the ESOS framework and migration laws be amended so that students displaced by the closure of a provider are offered visa guarantees in respect of suspensions of their study as a result of the need to find a new course provider.
24. We recommend that students who default on their agreements with providers due to imminent closure be covered by the relevant TAS.

25. We recommend that the ESOS framework, in particular the National Code, be amended to include greater protections for the welfare and rights of international students.
26. We recommend that the mechanisms for monitoring and enforcement of the ESOS framework be substantially improved with a view to securing greater compliance by VET providers.
27. We recommend that substantiated complaints against VET providers be publicised including the substance of the complaint, the outcome and any rectification required by or sanctions imposed upon the provider.
28. We recommend that public transport concessions for international students be introduced immediately.
29. We recommend that the employment condition on student visas be changed to allow students unlimited work hours and if this is not possible, that it be changed to exclude voluntary work from the calculation of work hours thereby increasing the number of work hours available to international students.
30. We recommend that the Federal government embark on a campaign to educate employers and international students about workplace rights and entitlements. This should include the production of multi-lingual information on the rights of international students in the workplace.
31. We recommend that students who report employer misconduct be immune from visa sanctions by DIAC in respect of their employment activity up until that point.
32. We recommend that education regarding employee rights (including remedies against discrimination) be a compulsory part of orientation for international students.
33. We recommend that employees who are on employer-sponsored visa types be afforded visa protection in the event that their employment is terminated because of a complaint of employer misconduct.
34. We recommend that the Federal government develop a regime to protect students who are doing 900 hours of work experience pursuant to course requirements, including Workcover and insurance protections.
35. We recommend that there be greater funding for legal and other services related to employee rights for international students.
36. We recommend that VET providers be required to secure affordable and appropriate accommodation for international students in their first year of study.
37. We recommend that both State and Federal governments take steps to create more affordable student housing options.
38. We recommend that accommodation affiliated with education providers be covered by tenancy laws in all states and territories.
39. We recommend that education providers be required to provide educational material for students regarding their rights and responsibilities as tenants.

40. We recommend that funding be provided to legal and support services so that they can increase the outreach and community legal education they provide to international students.
41. We recommend that there be greater training for police around the issue of drivers' licences and international students.
42. We recommend that education providers be required to furnish international students with information about driving in Australia.
43. We recommend that the government invest resources in an information program that will equip international students for driving in Australia.
44. We recommend that there be a coordinated response to the information needs of international students, both pre-departure and on arrival, including the development of consistent information packages that can be provided through education providers.
45. We recommend that support services which are able to assist international students be provided with additional resources so that they can raise awareness of their services in the international student community.
46. We recommend that international students be immune from any visa-related consequences that arise as a result of students reporting crime, discrimination, or misconduct on the part of employers, landlords or VET providers.
47. We recommend that agencies which interact with international students, such as police, be required to undertake professional development and cultural awareness training relevant to their work with international students.
48. We recommend that state police forces at their higher levels publicly acknowledge the issue of racist violence against international students and brief operational police on the issue accordingly.
49. We recommend that racism and discrimination towards international students be acknowledged as an ongoing cultural problem by state police forces at all levels and be taken seriously when complaints are received from international students.
50. We recommend that state police policy be changed such that police are expressly forbidden from conducting visa checks in situations where international students make reports of crime.
51. We recommend that state police forces develop policies for the provision of information to victims of crime that are specific to international students.
52. We recommend that VET providers be required to provide all international students with information about how racism and discrimination are defined in Australia, the legal mechanisms available to address racism and discrimination, and the support services that can assist students if they have such experiences.
53. We recommend that state and federal governments develop binding complaints mechanisms relating to racism and discrimination that sit between the current voluntary processes and the court/tribunal system and which function in a manner more akin to ombudsmen's offices than the current voluntary processes.

54. We recommend that additional resources be made available to agencies which can support international students in taking action to address racism and discrimination for proactive initiatives which encourage and assist international students to address incidents of racism and discrimination.
55. We recommend that legal aid commissions in all States be made aware of the economic pressures on international students and in particular that perusal of their bank balances or work history records may make them appear more solvent than they actually are.
56. We recommend that victims of crime compensation authorities across the country be sensitised to the situation of international students and be willing to countenance applications based on multiple heads of damage, in light of the far-reaching effect that crime has on the lives of international student victims.
57. We recommend that information regarding victims of crime compensation and mental health support services be compulsorily provided to all international students by education providers.
58. We recommend that students who are assaulted and lose course fees as a result be covered by the TAS or ESOS Assurance Fund.
59. We recommend that international students be given access to Medicare for the duration of their student visa.
60. We recommend that State and Federal governments sponsor a broad-ranging public awareness campaign that details the economic, social and cultural contributions made by international students to the local community and presents international students as social subjects rather than temporary residents.
61. We recommend that each local council area that is known to receive a high number of international student arrivals each year (such as Brimbank in Melbourne's west) produce area-specific information for international students regarding community services and social events and make this available at community hubs such as local libraries.
62. We recommend that city council's in capital cities such as Melbourne and Sydney support a permanent welcome stall at international airports and that this service provide introductory support and shuttle services for international students alighting at the airport. This service should also be supported by staff at other local councils.
63. We recommend that the Government allocate funds to provide student centres for the use of both domestic and international students, at locations convenient to both groups.
64. We recommend that tertiary institutions redirect a portion of international student fees towards cultivating an inclusive on-campus culture for both domestic and international students. This should include promoting the use of existing services, such as student advocacy and support centres.
65. We recommend that universities and other tertiary institutions follow the lead of governments (as suggested above) in circulating positive publicity regarding international students and their role in the tertiary sector, thus promoting on-campus harmony.

- 66. We recommend that the government examine whether current pathways to permanent residency can be adapted to reduce international students' vulnerability to exploitation.**
- 67. We recommend that there should be special workplace protections for former international students who are engaged in work experience or paid employment as a pathway to permanent residency.**
- 68. We recommend that where students have undertaken a particular course of studies in order to obtain permanent residency based on particular migration policies, those policies should be applied to that student when their application for permanent residency is assessed.**
- 69. We recommend that the government take steps to ensure that prospective international students are aware of changes in migration policy that might impact them before they commence their studies.**

Appendix A: List of VET Providers ISLAC Has Visited

- Australian College of Hair Design and Beauty Pty Ltd
- Australian Institute of Career Education Pty Ltd
- Australian Institute of Technology and Education
- Australian Institute of Tourism and Commerce
- Australian International College of Commerce
- Australian Learning Training and Education Centre
- Australian Technical and Management College
- City College of Melbourne Pty Ltd
- Ghurkas Institute of Hospitality and Management
- Institute of Australia
- Institute of Innovation and Management Australia
- Institute of Tertiary and Higher Education Australia
- International Design School
- Layas Institute Melbourne
- Matrix English
- Melbourne College of Hair and Beauty
- Melbourne Institute of Technology
- Menzies Institute of Technology
- Meridian International Hotel School
- Nova Institute of Technology
- Ozford College of Business
- Pub School and Ascension Training
- Rhodes College
- Sheila Baxter Training Centre
- Southern Cross Education Institute
- TK Melbourne
- Victoria Institute of Technology
- Victorian Institute of Training and Learning

Appendix B: List of VET Providers' Websites ISLAC Has Examined

- Academia International – www.academia21.com
- AIC Australian International College – www.aic.vic.edu.au
- AMI Education – www.ami.vic.edu.au
- Angad Australian Institute of Technology Pty Ltd – www.angad.vic.edu.au
- Ashmark Institute of Australia – www.ashmark.edu.au
- Australian Institute of Career Education Pty Ltd – www.ausice.com.au
- Australian Institute of Professional Training Pty Ltd – www.aipt.vic.edu.au
- Australian Institute of Technical Training – www.aitt.vic.edu.au
- Australian Institute of Technology and Education – www.aite.vic.edu.au
- Australian Institute of Tourism and Commerce – www.aitc.vic.edu.au
- Australian Learning Training and Education Centre – www.altec.vic.edu.au
- Australian National Institute of Business and Technology – www.anbit.vic.edu.au
- Australian Technical and Management College Pty Ltd – www.atmc.vic.edu.au
- Cambridge International College (VIC) Pty Ltd – www.cambridgecollege.com.au
- City College of Melbourne Pty Ltd – www.ccom.vic.edu.au
- Institute of Tertiary and Higher Education Australia – www.ithea.vic.edu.au
- Melbourne College of Hair and Beauty – www.mcohb.com.au
- Melbourne Institute of Technology – www.mit.edu.au
- Ozford College of Business – www.ozford.edu.au
- Pivot Point International Academy – www.pivot-point.com.au
- Sheila Baxter Training Centre Pty Ltd – www.sheilabaxter.com.au
- South Pacific Institute – www.sp.vic.edu.au
- Southern Cross Education Institute – www.scei.com.au
- TK Melbourne – www.tkmelb.vic.edu.au
- Victorian Institute of Technology – www.viit.com.au

STERLING COLLEGE PTY LTD (Brisbane)

Information for current or intending students

Sterling College Pty Ltd (Brisbane) is continuing to provide courses to overseas students. At this time, it is only Sterling College Pty Ltd (Sydney) that has ceased operating.

If, for any reason, Sterling College Pty Ltd (Brisbane) ceases to provide courses to overseas students, the Australian Government has comprehensive arrangements in place to ensure that your interests are safeguarded. Key elements include the tuition assurance scheme and the Education Services for Overseas Students (ESOS) Assurance Fund.

- Sterling College Pty Ltd is a member of the tuition assurance scheme managed by the Australian Council for Private Education and Training (ACPET). Under the ESOS Act, ACPET is required to offer you a suitable alternative course. Under this arrangement you will not be required to pay extra money if you have already paid money in advance to Sterling College Pty Ltd.
- The Australian Government Department of Education, Employment and Workplace Relations will be overseeing this process.
- If ACPET is unable to place you in a suitable alternative course then the ESOS Assurance Fund may offer you a place in a suitable alternative course. If the Assurance Fund is unable to place you in a suitable alternative course you may be eligible for a refund.

You do not need to enrol yourself in another course at this time.

You should keep all records concerning your enrolment at Sterling College Pty Ltd including receipts and academic records.

For further information please check the website www.aei.gov.au/ESOS for updates or call the ESOS Helpline on 1300 363 079.

FREQUENTLY ASKED QUESTIONS

Students enrolled at Sterling College (Brisbane)

Q. Is Sterling College in Brisbane closing?

A. We understand that Sterling College in Brisbane is continuing to provide courses.

Q. What happens next?

A. At this time, you do not need to take any action. Continue to attend your classes at Sterling College in Brisbane.

Q. I am not able to go to the student meeting on 4 August 2009. What should I do?

A. Keep all records regarding your enrolment at Sterling College Pty Ltd. Check the website for information updates www.aei.gov.au/ESOS or call the ESOS Helpline on 1300 363 079.

Q. When did Sterling College Pty Ltd (NSW) close?

A. Sterling College Pty Ltd in NSW ceased operating on Tuesday 28 July 2009.

Q. I am enrolled at Sterling College in Brisbane but I want to enrol in a course at another college. What will this mean?

A. Sterling College in Brisbane is continuing to provide courses. **If you decide to enrol in a course at another college, it will be a case of “student default”.** This means you are **only entitled to the amount of refund stated in the written agreement you signed with the college.** You will need to check the provisions of your written agreement. If you have not completed 6 months of your principal course with Sterling College, you will need to seek a letter of release to enrol with a new provider.

If you do approach another new school or college, remember that you will be entering into a new written agreement. Carefully read and understand what you are agreeing to if you enrol with a new college as the conditions of this written agreement will almost certainly be different to the one you signed with Sterling College Pty Ltd.

You must keep all official records of your academic progress and official receipts for all fees you have paid to Sterling College Pty Ltd. These might be useful later to establish your entitlements.

Q. What will happen with my visa?

A. There are no changes to your status at present. In the event that the college ceases to provide education services, the Department of Immigration and Citizenship (DIAC) appreciates that students are not responsible for the college closing and further visa information for students is available on the DIAC website at: www.immi.gov.au/students/education-providers-approval.htm

If you have questions about your visa, please contact DIAC as soon as possible. If students are in Australia they can contact DIAC on 131 881. If students are outside Australia, a list of immigration offices is available at: www.immi.gov.au/contacts/overseas/index.htm

IMPORTANT CONTACTS

- For information regarding your consumer protection entitlements, visit Australian Education International: www.aei.gov.au/ESOS or phone the ESOS Helpline on 1300 363 079
- For visa information, visit www.immi.gov.au/students/education-providers-approval.htm or phone 131 881 in Australia; or

For students located outside Australia, contact details are available on the Department of Immigration and Citizenship's website at www.immi.gov.au/contacts/overseas/index.htm