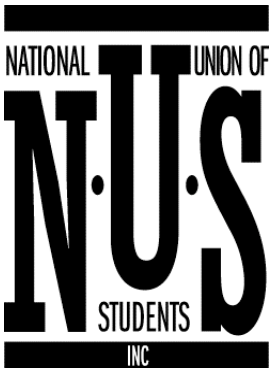

Research

NUS Submission To The References Senate Standing Committee on Education, Employment and Workplace Relations

Inquiry into the Welfare of International Students

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August 2009

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INTRODUCTION

Throughout the world the international education industry has prospered as the source regions such as south east Asia and Asia have developed their ability to educate a substantial number of their nationals offshore. In this context, Australia has been the most aggressive marketer of education in the past 10 years.

The National Union of Students is the peak representative organisation for undergraduate university students in Australia. International students comprise approximately 25% of the students on most NUS member campuses. The National Union of Students welcomes this Senate inquiry at a time when the most scathing media attention in Australia to date has revealed the many aspects of the welfare of international students. This is an area of growing concern among students and stakeholders in the international education community.

This senate inquiry provides the government with an opportunity to thoroughly investigate the circumstances under which this lucrative export market has been allowed to grow at an unprecedented rate under both the current and previous governments. There is little doubt that the ability of the Australian community as a whole has struggled to understand and address the impact of this growth in all areas of society outside of the education campus. This will be highlighted through the many submissions received by the inquiry committee, including this one,

This submission will address the broad range of benefits and impacts this growth has had on the Australian community. In particular, we will be highlighting the plight of international students thrust into the 'foreign student' role in a society that is often ill-equipped to provide the services, support and basic care that many of the students require in which to successfully complete their study in Australia. Recommendations based on community attitudes, perceptions and support structures and services will be made throughout.

This submission will also discuss the international students expectations of their experiences; how differing information vastly impacts on the students preparedness for safely and successfully studying and living in Australia. Lastly this submission will discuss the responsibility and roles of the parties involved in creating and sustaining this export market; the level of support that is provided to students throughout their time in Australia versus the large profits and economic returns gained by education providers and in fact government.

It has become more and more apparent over the past 2 years that the focus and perspective that drives policy in this area needs to change in order for the sector to survive unscathed, such that all graduates from Australian education institutions receive a qualification that is recognised internationally. This need for change is most apparent particularly given the large growth of the VET sector in particular. Since the implementation of the revised National Code of Practice in July 2007 that have done little to protect the reputation of the Australian education sector, the rights of the students or enhance their experience in any positive and concrete way.

RECOMMENDATIONS

Safety recommendations

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

Accommodation Recommendations

6. **That all states amend the tenancy legislation to provide a section that deals exclusively with student accommodation, regardless of affiliation to an education institution, that has a national set of requirements with specific regard for the housing and financial needs and circumstances of students.**
7. **That all states conduct an audit of student accommodation providers ensuring that the current tenancy law is adequately being adhered to at all times, with adequate penalties that will prevent student accommodation providers from disregarding their obligations under the relevant Acts.**
8. **Every education provider is required under state and/or Commonwealth government legislation to make available affordable accommodation to all new international students for the first 12 months of their education in Australia.**
9. **Education providers should be required under the *ESOS Act* to provide assistance to international students to find adequate and affordable accommodation, which would go above and beyond provision of real estate agent listings but rather assist students with rental applications and other assistance as required**

10. **Government provide increased funding to service providers for accommodation and housing to ensure students have adequate information on housing rights, responsibilities and recourse.**
11. **International student groups and government tenancy departments should work together to investigate ways to help international students gain housing without having to resort to illegal measures involving falsified documents or lease arrangements.**
12. **Landlords, estate agents and students could be involved in a program to highlight the extra needs of international students, such as flexible lease arrangements, provision of furniture or household goods in rental properties and also include cross cultural understanding for both students and landlords, providing students with clear understanding of expectations of landlords in property maintenance.**
13. **International students and landlords should be made aware of the ability of students to provide required documentation for leasing agreements, and provision should be made to take into consideration the applicability of these documents with regard to international students income situations, due to the fact that some don't work but are completely reliant on family for income and therefore are not able to show proof of income. International documents should be acceptable as documentation such as proof of identification and income.**

<u>Social Isolation Recommendations</u>

14. **The state and local governments need to put funding and resources into a student centre, that may be accessed by all students but primarily provide international and new to the city students information, advocacy and social support.**
15. **All main cities and regional suburbs or centres establish a 'student centre'. funded through the CRICOS fees.**
16. **Commonwealth and state governments embark on a public awareness campaign that highlights that the contribution the international student community makes to the education experiences of students in Australia and to the community of Australia as a whole. (not just the economic contribution but the social and cultural contribution.) (State and Commonwealth governments)**

<u>Student Visa Requirements Recommendations:</u>

17. **NUS suggests that the Senate investigate the true intent of the financial capacity of the student in order to make recommendations to change the amount of money students are required to demonstrate to be granted a student visa.**
18. **In addition, NUS recommends that the financial capacity of students regarding amount students must show, and evidentiary requirements is removed from the AL system and be standardised for all countries, and based on visa subclass only**

19. **NUS recommends that prior to reconsidering what amount of money a student must show as living costs for one year, the Senate seek advice from bodies such as the Australian Scholarships Group to accurately determine estimated living costs for students.**
20. **NUS recommends that changes to the income and cost of living requirements are made with due consideration to the current evidence regarding the number of hours per week students spend in paid employment.**
21. **All student visa application requirements for english language proficiency are based on the students' English language history, country of origin languages and languages of instruction.**
22. **English language requirements should be the same for all assessment levels, but varied for each visa subclass as applicable to and in consultation with the education sector.**
23. **English language competency needs to be removed from the AL system and placed in the visa subclasses general requirements**
24. **DIAC should consult with education providers to determine the most appropriate measures for each visa subclass and english language assessment.**

<u>Adequate Student Supports and Advocacy Recommendations</u>

25. **NUS recommends that the responsibilities currently undertaken by the large and varied number of government departments involved in the international education sector be relinquished and transferred to one Federal government department or authority;**
26. **Each state establish a Student Centre in its main capital city and subsequent Student Centres in all regions where there are a large number of international students studying or residing (as per Social Inclusion Recommendation 2.);**
27. **NUS recommends a transparent and independent body funded by the federal government with offices in each state that would fill the role of a Tertiary Ombudsman. The ability of international students to address consumer complaints while in Australia is extremely limited. Many factors prevent students from seeking advice and help in such areas, the most prevalent being fear of visa cancellation. With such fears there are many incidences that go unchecked and unreported leaving the student with a low quality educational experience and often an incomplete unsuccessful journey.** ***(adapted from Smith and Wong, 2004)***

<u>Employment recommendations:</u>

28. **All education providers and education agents are closely monitored to ensure that any information they provide to international students regarding their ability to gain employment in Australia adequately and accurately reflects the actual employment situation of many international students**
29. **State governments need to provide more funding for employment rights services that may be made available to international student as a compulsory**

session in orientation for all students. (this would include information is provided on wages, gaining employment, taxes and superannuation rights, and dismissal and discrimination rights.)

30. **The number of hours that international students with work rights are allowed to work while their course is in session should be extended to 24 hours per week**
31. **NUS would like DIAC to ammend the *Migration Act* to ensure that all student visa holders are treated fairly and equitably entitling them to demonstrate that there were special circumstances that may have led to a breach of this condition.**
32. **The factors for consideration in determining if a student has breached condition 8105 should include:**
    - **the students academic and attendance records**
    - **the students average hours of work**
    - **the employment conditions (such as workload, staff illness)**
    - **previous breaches of this condition**
    - **the stage of the course the student is at, ie whether it is the first or last year of a degree**
    - **the financial circumstances of the student**
    - **the housing/accommodation circumstances of the student**
33. **DIAC amend the migration act to allow international students discretion with regard to working 20 hours per week and that the calculation of this restriction is flexible depending on work and study load.**

<u>Education Agents and Recruitment of International Students Recommendations:</u>

34. **NUS recommends that the Federal government establish formal requirements for an individual or company to practice as an education agent either on or offshore.**
35. **NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider.**
36. **NUS recommends that a restriction on the commission paid by an education provider to an education agent is introduced to effectively cap the commissions paid. Additionally, these payments should be closely monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents**
37. **There needs to be a complete development by government of Education Agent and Provider Protocols, that are made clear and transparent and easily accessible to all international students and the industry.**
38. **The protocols could include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.**
39. **NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have**

breached the *ESOS Act* and recommends much closer monitoring of all education provider and agent activities in the future.

40. **NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This provision would be enforceable under both the *ESOS Act* and the *Migration Act.***

Education Provider Ownership Recommendations:

41. **NUS recommends that when registering an insitution on CRICOS, a full investigation of all owners and operators of private colleges is conducted. Information should be disclosed regarding the owners' financial history with regard to business and bankrupcy, their interest in other ventures such as other failed education institutions, education agents or migration agents and their level of understanding of the education sector and the laws governing the sector.**

42. **NUS recommends that all financial investors (including their directors) in education institutions should be disclosed prior to registration on CRICOS or in the case of existing institutions, the disclosure of this information at re-registration to ensure there is a minimum level of conflict of interest or corruption.**

Tuition Assurance Scheme Recommendations:

43. **That the ESOS Act and National Code of Practice include policies and procedures to ensure students affected by the closure of education providers are given support to access their updated academic transcripts and ensure that Recognition of Prior Learning obtained with previous provider will continue to be recognised by new education providers**

44. **That access to the TAS funds, in addition to transfering students to a new provider as well as refunds for students, include ability for students to access funds for additional costs incured associated with requirement to apply for a new Student Visa due to closure of previous provider and inability to complete course requirements within limits of existing Student Visa.**

45. **NUS recommends that the Senate committee seek out the report or findings of the internal review and investigate if there may have been any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the fund, the students and education providers**

46. **NUS recommends that when offered an alternative course the factors 1-7 in a. in this section are implemented as grounds for acceptance or refusal of a particular course.**

47. **NUS recommends that the Department of Education and Workplace Relations monitor any negotiations between the provider and the TAS and students in the event that an insitution closes such that the students are able to refuse on the grounds above an 'alternative course' and students are made aware throughout their educatoin of the existance of the TAS and their rights in this process.**

48. **NUS recommends that the ESOS Act and TAS be amended to include the detailed definition of a 'Suitable alternative course' as included in this section.**

Travel Concession Recommendation:

49. **Introduce travel concessions for all international students in line with local students**

Overseas Student Health Cover Recommendations:

50. **That the *ESOS Act* and *National Code of Practice* require that all students provide evidence of current OSHC upon enrolment or reenrolment in any course of study to ensure that students have current cover at the beginning of each year of study and when students change education providers.**

51. **That upon enrolment all education providers provide details of all four OSHC providers and acknowledge the right of the student to choose their preferred provider rather than that of the education provider.**

Student Representation for Private College sector students

52. **NUS recommends that the Federal Government develop a set of representation protocols for private colleges similar in form but different in content to that outlined in the National Advocacy and Representation Protocols currently before the Senate**

A. THE ROLES AND RESPONSIBILITIES OF EDUCATION PROVIDERS, MIGRATION AND EDUCATION AGENTS, STATE AND FEDERAL GOVERNMENTS, AND RELEVANT DEPARTMENTS AND EMBASSIES, IN ENSURING THE QUALITY AND ADEQUACY OF INFORMATION AND ADVICE SERVICE DELIVERY AND SUPPORT ON THE FOLLOWING:

(i) SAFETY IN AUSTRALIA

In the past three years the safety of international students in all states and territories has come under some level of scrutiny. The highly publicised death of an international student in 2005 in the ACT and the tragic shootings at Monash University in 2002, brought the safety of international students to the attention of student organisations, education providers and government. In addition, international student safety and the duty of care of education providers and the Australian government quickly became a topic that gained media attention.

However, industry and government attention in response to the tragic events was aimed at reducing any negative impact on the fast growing export market. The main focus of most government and education providers throughout these incidents was that most international students are safe, secure and have a satisfying and successful educational journey in Australia. Such thought was backed up by research into the wellbeing of international students.

Prior to and following the ACT death, other incidents have attracted some media attention, and although they may have been addressed locally or within an institution or region, not enough government and institution attention has been given for problems to be adequately addressed throughout Australia.

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

Throughout the past 5 years, the main message of international student representatives and student associations has been that government and education providers are not doing enough to provide a safe and secure environment for all international students to enable them to succeed in their educational journey in Australia.

There are some education providers, namely University of Queensland and Victoria University that have been extremely pro-active in addressing the safety needs of international students. The June 2009 Universities Australia publication, *'Enhancing the Student Experience and Student Safety – A Position Paper*' provided a number of examples of other safety initiatives and programs.

However, by its own admission there are still many universities and VET education providers that do not provide adequate information to students about life and safety in Australia. Therefore, there is a clear lack of broad level best practice in this area throughout Australian education institutions. The Federal Government has also recently provided funding for projects such as the ISANA Rainbow Guide template, and government legislation, such as the National Code of Practice, however, little is done to

ensure such initiatives are utilized or the code is adhered to. An example of this is the recent attacks on Indian students in both Sydney and Melbourne. According to the National Code of Practice, all education providers must have

> *'a documented critical incident policy together with procedures that cover the action to be taken in the event of a critical incident, required follow-up to the incident, and records of the incident and action taken'. (Standard 6, National Code of Practice, 2007)*

With such a requirement under the National Code, there should be concern among all international students that it has taken the Indian community, Indian international student associations and other community members to deal with the issues that the victims of these violent attacks had to endure following the attack. There has been little or no investigation by governments responsible for monitoring ESOS compliance into what, if any action was taken by the relevant education provider primarily responsible for ensuring the students medical, education and visa related concerns are looked after in the event of a critical incident.

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

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

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

at http://www.privacy.gov.au/publications/index.html#G
(National Code Explanatory Guide, DEEWR – AEI website: www.aei.gov.au)

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

It is also apparent that marketing agents and most promotional websites and publications do not provide large amounts of detailed information about how unsafe particular activities or practices in Australia are, as this may deter the students from choosing Australia, a particular city or state or a particular education institution.

However, the practice of continuing to deny students adequate information increased the number of international students who expose themselves unknowingly to risks and unsafe situations is now placing the Australian education market at risk as we may be experiencing a reduction in student enrolments in the near future. Legislation such as the *National Code of Practice* needs to be amended to include more requirements for provision of safety information and duty of care of students, as well as a more transparent and well resourced monitoring and enforcement regime of this code.

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

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

Safety recommendations

1. **Critical incident policy needs to be investigated across CRICOS providers, and such policy should be lodged with the regulatory body and assessed against the explanatory guide**
2. **Police and other emergency services in each state should be made aware of the existence of the 'critical incident policy' to ensure that the procedures in this policy are activated immediately by the education provider**
3. **The police in each state need to be provided with professional development that includes cultural awareness and awareness of the particular issues (such as visa**

concerns) faced by different cultures and international students which would impact on non-reporting, not trusting government or the police.

4. **The community and government need to be more informed about the working hours, and lifestyles of international students in their communities, in order to address the needs for safer public transport late at night, both in inner suburbs and in outer suburban areas as well as safer areas surrounding train stations and bus and tram stops. (This may include adopting measures such as in Sydney or reinstating staff on train stations after hours and on weekends**
5. **The Commonwealth government needs to make changes to legislation to ensure that safety information & police familiarisation sessions are compulsory items in orientation sessions and that attendance at these sessions is compulsory for all international students.**

(ii) ACCOMMODATION

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

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

In addition, stories depicting students' experiences with housing shortages, overcrowding and exploitation have attracted attention in media, in government, changes and improvements are being addressed very slowly or inadequately.

In 2007-2008, the Victorian government held a housing forum, the Department of Consumer Affairs Victoria conducted an inquiry into residential rental accommodation and accommodation was a term of reference addressed by the International Student Experience Taskforce. Following all three, some improvement is evident.

An official government report was not produced from the internal CAV inquiry despite the large number of submissions to the inquiry, although a DVD for students on rental accommodation was produced and is available 'upon request' from Consumer Affairs Victoria. The inquiry highlighted to Consumer Affairs Victoria the large number of problems faced by students because of the lack of knowledge of the law by landlords, who are often students, and therefore this has been a targeted area in the community education section of Consumer Affairs Victoria. The forum, attended by the Minister for Consumer Affairs, Tony Robinson MP and hosted by RMIT University in 2008, discussed many accommodation issues that international students face, and again highlighted inadequacies in legislation and affordability and accessibility problems, however, no report or outcomes were produced.

The Victorian Government International Student Experience Taskforce in late 2008 focused on housing affordability and access, and went as far as developing recommendations to address the many issues. However nothing substantial has been implemented at this stage.

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

support services to assist and also to encourage students to come forward to seek assistance when they are experiencing housing problems.

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

If the legal status of the accommodation provider is the definition to describe the most common accommodation arrangements that international students are housed in, they are usually living in either student accommodation, boarding or rooming house situations or in homestay, particularly in their first year of study.

According to the Tenants Union of Victoria, many international students don't live in the traditional share-house style student accommodation but rather more like rooming house accommodation where each room is separately let out by the landlord. Therefore, the majority of students are unaware that the house they live in is in fact defined under tenancy law as a rooming house and not a normal rental property.

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

a. Exemptions for student accommodation providers

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

As a consequence, international students are often exploited by accommodation providers while the Act does not clearly state what defines the 'affiliation' and nor is this adequately enforced. Therefore many student accommodation providers merely indicate they are connected to an education provider when in fact there is no formal affiliation to but are more often a rooming house in the local surrounding area. Importantly in this situation, international students are not aware of these finer distinctions. The various state government tenancy or common law requirements are well beyond the knowledge of international students who come to spend three years studying in Australia. They have a right to assume a basic trust that the laws regarding housing and tenancy are being enforced and they are protected from serious exploitation.

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

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

In addition, the Tenants Union Victoria clearly opposed any exemption under the Victorian Residential Tenancy Act, stating that universities usually have very little to do with the student accommodation providers, and expressed concerns about the various types of exploitation and mistreatment by these providers who could demonstrate little proof of their affiliation and yet claimed exemption from complying with the Act. The TUV noted that students have little recourse for complaints handling if they object to being evicted. In most instances, the university systems are inadequate to deal with such complaints, as they are not involved in the operation of the accommodation provider in any way. Similarly the TUV recommended that the Residential Tenancies Act be amended to include organisations that are not education institution hall of residence or on-campus dormitories or part of an education institution, and are operating commercially.

In 2008, the Victorian government did amend the Residential Tenancies Act to require a formal affiliation, consisting of a written agreement between the owner or operator of the accommodation company or premises and the institution, to provide accommodation to current staff or students of the institution. (Section 12, Residential Tenancies Act Victoria, 1997). Other States have not fallen into line with such requirements and therefore such protections are not afforded equally throughout Australia.

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

All state governments could adopt a national approach, such that the on-campus dormitory style accommodation remain exempt, and all other student accommodation is covered under a new section of the respective state tenancy laws. Essentially for international and local students, such a change would provide legal protection for all students living in student accommodation facilities. The students would be able to appeal against breaches to the new section through the same mechanisms currently available for appeals under the respective tenancy legislation in each state and territory, rather than is currently the case, where students either have to appeal under fair trading

and common law or through an education institutions appeal process that has little or no control of the housing provider's operations.

b. Hostels, Boarding and Rooming Houses

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

There is very little data detailing where international students reside. The main research predominantly investigates the living arrangements in student accommodation facilities; however, the media over the past 3 -4 years has depicted international students housing in a very different light. The images and descriptions most commonly seen in Brisbane, Sydney and Melbourne of extreme overcrowding in small privately rented houses, with students 'hot-bedding', inadequate cooking and bathroom facilities and poor heating, lighting and hygiene are now the norm for many international students.

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

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

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

Unlike Victoria, students in NSW are less fortunate again. Despite repeated requests to the NSW state government by the organisations such as Tenants Union of NSW, the university student associations and housing officers, there is no provision under the Residential Tenancy Act 1987 in NSW that addresses boarding, lodging or rooming house arrangements. Tenancy arrangements that fall under this definition, then become exempt under the Act and fall under the jurisdiction of common law, and fair trading Acts, which at best is extremely inadequate to protect international students from exploitative landlords. We recommend that Senators refer directly to the Submission by the Tenants Union of NSW to the NSW Ministerial Taskforce on International Education for guidance and examples on how this may best be improved. This submission puts forward many examples of abuse and exploitation by landlords because the housing circumstances can be defined as boarding and lodging and therefore are exempt under the RTA 1987. As a result international students are left vulnerable, homeless, and with little or no means of recourse or redress.

c. Other issues

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

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

In order to obtain a rental property, tenants must provide adequate identification and sufficient documentation. McRae (2007) found that most students were unable to provide the necessary documentation such as references from previous accommodation, sufficient identification and proof of income or such documents. McRae expressed concern with these problems because of the further social implications caused by these difficulties such as the development of 'deceptive behaviour' involving students using false or other persons documents or payslips to gain rental properties.

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

Discrimination, not only racial but against a group such as international students as a whole, leads to students resorting to other measures to secure housing. Students and indeed international students may not seem to landlords to be the most attractive tenants usually due to negative experiences with other students previously. Facing group discrimination, international students often rely on help from friends with permanent

resident status, who are working full time, to sign lease agreements, and provide their own documentation to landlords or estate agents to secure the housing.

In many instances, this has led to the types of living arrangements that are then documented in the media, with many students sharing bedrooms and often taking shifts in sleeping, endangering their lives with unsafe cooking facilities and as was found in the house fires in Footscray in early 2008, the use of laptops in the bedrooms causing a fire with no smoke alarms to warn the residents and provide them time to escape.

Accommodation Recommendations

1. **That all states amend the tenancy legislation to provide a section that deals exclusively with student accommodation, regardless of affiliation to an education institution, that has a national set of requirements with specific regard for the housing and financial needs and circumstances of students.**
2. **That all states conduct an audit of student accommodation providers ensuring that the current tenancy law is adequately being adhered to at all times, with adequate penalties that will prevent student accommodation providers from disregarding their obligations under the relevant Acts.**
3. **Every education provider is required under state and/or Commonwealth government legislation to make available affordable accommodation to all new international students for the first 12 months of their education in Australia.**
4. **Education providers should be required under the *ESOS Act* to provide assistance to international students to find adequate and affordable accommodation, which would go above and beyond provision of real estate agent listings but rather assist students with rental applications and other assistance as required**
5. **Government provide increased funding to service providers for accommodation and housing to ensure students have adequate information on housing rights, responsibilities and recourse.**
6. **International student groups and government tenancy departments should work together to investigate ways to help international students gain housing without having to resort to illegal measures involving falsified documents or lease arrangements.**
7. **Landlords, estate agents and students could be involved in a program to highlight the extra needs of international students, such as flexible lease arrangements, provision of furniture or household goods in rental properties and also include cross cultural understanding for both students and landlords, providing students with clear understanding of expectations of landlords in property maintenance.**
8. **International students and landlords should be made aware of the ability of students to provide required documentation for leasing agreements, and provision should be made to take into consideration the applicability of these**

documents with regard to international students income situations, due to the fact that some don't work but are completely reliant on family for income and therefore are not able to show proof of income. International documents should be acceptable as documentation such as proof of identification and income.

(iii) SOCIAL INCLUSION

a. Community Engagement – Student Centres

The main desire expressed in research by many international students as found in Fincher et al (2009) and in the *AEI Student Survey* in 2007 is that there is very little opportunity to make for students to make friends across cultures and engage with Australian students both inside and outside the classroom. The students then are deprived of an opportunity to engage with and feel part of the community and as such, without this connection the chance of students returning in the future for either business or pleasure is greatly diminished.

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

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

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

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

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

shops or restaurants. In addition, these facilities could provide opportunities for students to meet, and form friendships through common interests.

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

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

International student centres or hubs have been called for in reports by both the City of Sydney, the Brisbane City Council and the Victorian State government, in the three main destination cities for international students, however, recently published research has demonstrated that providing such a centre, labelled as international would foster the divide and not assist and encourage international or domestic students to interact outside the classroom. *(Fincher et al, 2009)* Additionally, separate services would further isolate the students who are enrolled in institutions without local students, who also live, work and study with students from their home country and often their own region.

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

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

b. Community awareness

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

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

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

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

Social Isolation Recommendations

1. **The state and local governments need to put funding and resources into a student centre, that may be accessed by all students but primarily provide international and new to the city students information, advocacy and social support.**
2. **All main cities and regional suburbs or centres establish a 'student centre'. funded through the CRICOS fees.**
3. **Commonwealth and state governments embark on a public awareness campaign that highlights that the contribution the international student community makes to the education experiences of students in Australia and to the community of Australia as a whole. (not just the economic contribution but the social and cultural contribution.) (State and Commonwealth governments)**

(iv) STUDENT VISA REQUIREMENTS

a. income requirements

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

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

> *Q.41. Do you have access to sufficient funds to support you and your family unit members for the TOTAL period of your stay in Australia (including proposed course fees for you and any school-age family members, living costs and travel costs, regardless of whether your dependants intend to accompany you to Australia)?*
> *Yes – complete declaration below*
> *No - go to the next question*
>
> *Declaration:*
>
> *I declare that I have access to sufficient funds to support myself and my family unit members (regardless of whether they are accompanying me to Australia) for the total period of my stay in Australia.'*

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

Changes in 2007 to the National Code of Practice have included new requirements that all education providers ensure that students are provided before enrolment 'indicative' costs of living in Australia, costs of different housing options, indicative course related fees, advice on the potential for fees to change, and costs for schooling dependants of applicants. This information is now required to be provided to students. However, there is often a difference between what students should be told by education providers, what they are told and the accuracy of some of the information. In addition, this information is very different to what student visa applicants are required to provide the Department of Immigration and Citizenship when making their application both in the declaration

and when meeting evidentiary requirements. Student visas are issued in 5 different categories.

The applicants must provide evidence that they have money for living costs. This starts at a basic annual rate per year for a single person, plus extra percentages for a spouse or partner and each dependant child. The type of visa and the Assessment Level(AL) of the applicant's country of origin, determines whether the applicant has to show the dependant and spouse amounts as well as the basic rate when the dependants are applying as a family applicant in order to travel to Australia or they are remaining in their home country. Applicants must also show that they have funds to cover (dependant) school and course expenses and funds that cover travel costs for themselves and any dependants to travel to and from Australia at the start and end of their stay.

Course expenses are provided by the education institution and are not determined by the Migration Regulations. The living expenses and school costs determined by the DIAC are below:

> ***Living costs:***
> *(a) $12 000 per year (the basic rate); and*
> *(b) if the applicant has a spouse — 35% of the basic rate; and*
> *(c) if the applicant has a dependent child — 20% of the basic rate; and*
> *(d) if the applicant has any further dependent children — 15% of the basic rate for each such child*
> *School costs for each school aged dependant child*
> *$8 000 per year*
>
> *(Migration Act, Regulations)*

The basic rate offered by DIAC for living and school expenses has remained the same since prior to 2000. This amount has not been indexed with CPI in over ten years, nor has it risen to reflect the minimum wage or the Henderson Poverty line figures. It has not been measured against calculations of student living costs such as that provided by the Australian Scholarships Group, that provides estimates of living costs for all students in each capital city in Australia.

In fact, in researching migration legislation, as far back as 1999, these amounts have not changed and the origin of this amount is unclear. Of concern to the NUS is that some education providers use the basic rate as a guide when determining living costs for their own information provision to students.

The other important piece of information in this section is that the sources of income and evidentiary reqirements become much stricter and prescribed by DIAC as the Assessment Levels increase. This is because the Assessment Levels are classifications that each country is divdied into. The level of assessment is based on the risk that the studnet may not comply with their student visa, and include factors such as the number

of cancellations of student visas from that country, the number of fraudulent applications, the number of non-skilled category visa applications they receive from student visa holders, the number of protection visa applications they receive from student visa holders from that country. From this the DIAC calculate the risk to the visa and immigration integrity and assign a level to the country.

Below is a table that further outlines the evidentiary requirements for students in the Higher and Postgraduate Education Sectors in each Assessment Level. It is clear that AL1 students

Current Income Requirements For Student Visa Applications					
Assessment Level	Amount of living course and school expenses from acceptable source	Travel expenses	Length of time funds need to be held by individual	Evidence of income to accumulate funds	Declaration of access to funds for remainder of course
AL5 no country	Full length of visa	Evidence of funds	5 years	Y	n/a
AL4	First 36 months (post grad show 12 months or length of course if less than 12 months)	Evidence of funds	6 months - individual defined	Y	Y
AL3	First 24 months Post grad show for 12 first 12 months or length of course if less than 12 months	Evidence of funds	3 months, individual not defined No requirement for postgrads	Y	Y
AL2	12 months acceptable source cant include value of item of property	Evidence of funds	0 months	N	Y
AL1	Full visa length but access only, funds don't have to be held and evidence of source is not required	Declaration only	0 months	N	Y

The declaration on the student visa form is misleading to both students and the broader international education industry because it indicates that students should be entering Australia with access to enough money to live in Australia, or that they have adequate savings put aside for their living expenses for the duration of their study. The main two source countries for international students in 2009 in Australia are India and China making up 43% of the total enrolments, according to AEI student data in June 2009. Most of the students from India are enrolled in the VET sector, while students from China are more often enrolled in the Higher Education sector. There are approximately 111,000 students from China, and 89,000 students from Indian, both Assessment Level 4

countries. As the table above demonstrates, AL4 applicants are required to show evidence of $36,000 in accessible funds (such as a parents bank account or provided by a sponsor) to cover them for living expenses and three years tuition fees. The students were also required to sign a declaration that they could access funds to cover living and tuition costs for the remainder of their stay after the first 36 months.

This $36,000 for living expenses would equate to about $3000 per month, or $700 per week if used over one year leaving students with no savings to live on for the next two years, if used over two years, this would halve, and become $350 per week, over three years, $230 per week. Put more simply, when one considers how much a migrating student would need to set up a residence, pay rent, buy books, clothes, food and pay utilities and other bills, and transport costs, this amount is not an accurate figure to be providing students for the provision of evidence of sufficient funds to meet living costs. More alarming is that students from AL3 countries, are only required to provide evidence of 2 years living expenses. Many arrive with funds of $24,000, which if they used it all in one year would give them $460 per week to live on, and over two years, only $230 per week. Prior to this year, India was an AL3 country, and therefore, most of the students from India currently studying in Australia would have been assessed at this level.

Of concern even more so, is the fact that AL2 and AL1 students are not required to demonstrate any savings or capacity to fund either tuition or living costs. There is less scrutiny over who and how they have obtained their funds it is unclear for the most part if they are even aware of what the cost of living is in Australia.

It is reasonable then to ask where this amount of $12000 came from, why it is not indexed in line with CPI or measured against standard income amounts such as the Henderson poverty line or expenditure estimates such as the Australian Scholarships Group calculator?

Is there an assumption by the governments, both past and present, or indeed policy makers in government departments, that students are indeed indicating when they are signing the declaration on their visa application form that they are aware that living costs in Australia are well above the required evidential amount?

Who is responsible for ensuring students are aware that $12,000 is not an indicative amount of the cost of living?

What means is there to ensure that students are told a sufficient amount for living expenses for the duration of their study in Australia?

NUS suggests that the Senate investigate the true intent of the financial capacity requirement of the student in order to make recommendations to change the amount of money students are required to demonstrate to be granted a student visa.

In additon, NUS recommends that the finacial capacity of students requirement is removed from the AL system and be standardised for all countries, regarding amount students must show, and evidentiary requirements.

NUS recommends that prior to reconsidering what the amount of money a student must show as living costs for one year, the Senate seek advice from bodies such as the Australian Scholarships Group to determine what the actual living costs are for international students as well as the income sources. When making recommendations to suggest changes to the income and cost of living requirement the Senate must also pay due consideration to the current evidence in many research articles that suggest that approximately 70% of full time undergraduate students gain paid employment and work an average of 14.8 hours per week and one in 6 working over 20 hours per week (AVCC, 2007) and therefore take a realistic approach to what is actually happening rather than support a system that is clearly outdated and causing financial problems and insecurity for students.

The previous government recognised that most international students want or need to work part time and demonstrated this by removing the requirement for students to apply for permission to work but rather from April 2008 all new students visas are granted with automatic work rights.

b. English language requirements

In addition to the criteria for financial capacity, the Student Visa Assessment Levels include as part of their criteria, the level of English language proficiency that is required for the student to obtain a student visa. At this point there must be some clarification between the students ability to gain entry to a course and the grant of a student visa. These are different mainly because education providers do not distinguish between country of origin when assessing English language proficiency levels. The Immigration-visa system currently does.

The concern NUS has with the Immigration –visa system is with respect to the classification of each country and how English language competency is clearly unrelated to this classification system. Rather than determining which countries have English as a native or first language, or even as a language of instruction in secondary or tertiary institutions and then assessing the student visa applicants applicably in this context, DIAC determines the English language requirements for each country based on the measures for which the Assessment Levels are determined. These measures include statistics about the country such as the number of visa breaches and subsequent cancellations, applications for permanent residency, applications for visas other than skilled migration, applications for protection visas and fraudulent applications.

In order to relate these statistics to the English language competency, DIAC concludes that English language is related to academic success and therefore visa compliance. This is the only visa application system that is determined in this way. All other permanent residency and other temporary visa application English language requirements are

standardised for the entire visa subclass. Please note also that each education sector is a different visa subclass, and so, this system would also be entirely appropriate for the student visa subclasses.

Research investigating academic performance and its relationship with English language proficiency is divided. There are many different studies that have investigated this area and some conclude that students with low English language proficiency have low academic performance, while other research has findings that suggest quite the opposite. Therefore there is conflicting research upon which DIAC may base its claims when relating English language proficiency to a *'students' genuineness'* or the risk of a student breaching visa conditions.

In addition, there is no consideration paid to applications where the applicant is not originally from the country they claim as their country of origin. For example, there are some who have migrated to either UK or USA from an NESB country, lived there for a number of years, long enough to gain a passport from that country, and then applied to come to Australia to study. The current system provides no avenue for those students to demonstrate English language competency, but rather, it assumes that as they are a level 1 country, they have adequate English language competency.

There are many different methods that DIAC uses to assess English language competency and of concern to NUS is that the higher the countries Assessment Level the less choice there is to demonstrate English Language and the more difficult it is to gain a student visa. This is really the crux of the Assessment Level process and yet it is clear there should be no reason that English language is assessed in this AL system. There is one example where because the IELTS levels are higher for each Assessment level to such an extent there is really no point in applying to do the course. For example, countries that may be level 5 (of which we have none at this point) a student visa applicant for an english language course visa must gain an IELTS score of 7. For those unfamiliar with the IELTS levels, this is the level you require to gain permanent residency, to gain entry to some university courses and is above most tertiary course IELTS admission requirements. Therefore, why would a person be applying to do an english language course if they already had that level of English proficiency?

Clearly in this case, it is obvious the intent of the AL system is to restrict applicants based on inappropriate requirements in the name of visa and immigration integrity.

Based on this NUS suggests that English language competency needs to be removed from the AL system and placed in the visa subclasses general requirements. DIAC should consult with education providers to determine the most appropriate measures for each visa subclass and english language assessment. Doing this will achieve what this requirement should be focussed on achieving – the ability to determine if a student will be capable of meeting the English language level required to successfully complete their course.

Student Visa Requirements Recommendations:

1. **NUS suggests that the Senate investigate the true intent of the financial capacity of the student in order to make recommendations to change the amount of money students are required to demonstrate to be granted a student visa.**

2. **In addition, NUS recommends that the financial capacity of students regarding amount students must show, and evidentiary requirements is removed from the AL system and be standardised for all countries, and based on visa subclass only**

3. **NUS recommends that prior to reconsidering what amount of money a student must show as living costs for one year, the Senate seek advise from bodies such as the Australian Scholarships Group to determine accurately estimated living costs for students.**

4. **NUS recommends that changes to the income and cost of living requirements are made with due consideration to the current evidence regarding the number of hours per week students spend in paid employment.**

5. **All student visa application requirements for english language proficiency are based on the students English language history, country of origin languages and languages of instruction.**

6. **English language requirements should be the same for all assessment levels, but varied for each visa subclass as applicable to and in consultation with the education sector.**

7. **English language competency needs to be removed fromt the AL system and placed in the visa subclasses general requirements**

8. **DIAC should consult with education providers to determine the most appropriate measures for each visa subclass and english language assessment.**

(v) ADEQUATE INTERNATIONAL STUDENT SUPPORT AND ADVOCACY

a. Responsibility for monitoring and enforcement of the appropriate legislation

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

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

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

Undoubtably confusion is often experienced by staff working in the international education sector, however, in addition to this, this list clearly provides us with some measure of understanding of the international students experience when confronted with problems in any one of these areas. We can quickly see how easily students would become confused and frustrated and how easily in most instances it would be for those in positions of responsibility to pass any complaint, query or problem on to another department, level of government or authority. Even in the most relevant document that pertains to international education sector, The National Code of Practice, the responsibility of the federal government versus the state government is very unclear. See below, two excerpts below from the National Code of Practice that discuss the regulatory responsibility shared by the Federal and state/territory governments.

'The Australian Government, state and territory governments and providers share responsibility for maintaining and enhancing Australia's international reputation as a destination for high quality education and training for overseas students. Enhancement of quality, consumer protection and integrity of the student visa programme are achieved through collaboration between all government agencies and the international education and training industry and through inter-sectoral collaboration.' (National Code of Practice, 2007, pp.3)

'B. Government roles and responsibilities

Australian Government
3. The Department of Education, Science and Training (DEST) is responsible for administering the ESOS Act and its associated instruments. This includes managing CRICOS and supporting national consistency and policy development to assist the consistent interpretation and application of the ESOS framework, and the National Code in particular.
4. DEST also monitors compliance with the ESOS Act and the standards in the National Code, particularly focusing on student visa integrity and consumer protection. DEST is responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code. DEST will publish information about its compliance and enforcement activities on a regular basis.
5. The ESOS framework recognises the role registered providers have in ensuring the integrity of Australia's student visa programme through their ongoing contact with students during their stay in Australia. The Department of Immigration and Citizenship (DIAC) is responsible for regulating students by administering the student visa programme.
State and territory governments
6. Each state and territory government regulates the delivery of education services to domestic students. The ESOS framework recognises this pivotal role of state and territory governments and minimises the regulatory burden on registered providers by applying existing registration, accreditation and compliance systems to underpin regulation of the education and training for overseas students studying in Australia.
7. Under the ESOS framework, the designated authority in each state and territory assesses the registration and re-registration of courses on CRICOS and monitors compliance with the National Code. Some state and territory governments also have legislation that specifically relates to providing education services to overseas students.
8. While DEST is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and

the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.' (National Code of Practice, 2007, pp.4)

NUS's predominant concern is with respect to the *ad hoc* process student complaints are dealt with, and who is responsible for such a process. For example, when a student contacts a particular department, and is then referred to another and then perhaps another, how likely would it be that they continue to pursue any course of action or complaint or that the complaint is addressed adequately and in a timely manner that is appropriate to the needs of the student? The main reason students lobbied for this Inquiry is due to the fragmented system that currently exists, and the inability of this sector to have national standards, practices, and processes that effectively address students' complaints, appeals and problems with respect to their education provider, student visa, housing, health, work and financial circumstances while living in Australia.

NUS suggests that the committee utilises the opportunity provided by this Inquiry to reconsider the whole of government approach to international education. Rather than continue with the currently fragmented system, there needs to be strong recommendations to address the sector as a whole, and treat it as such. In doing this, developing a National Department or Authority that would be responsible for overseeing the student visa section of the Migration Act, the Overseas Student Health Cover system, the ESOS Act, relevant areas of HES Act, relevant areas of State government education acts, and a student accommodation framework that is currently not in any Residential Tenancy Act in any state.

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

b. Funding Revenue and Distribution from CRICOS fees

Each education provider that enrols international students in courses, must pay an annual registration fee. This fee is calculated as per the ESOS Act below:

5. Annual Registration Charge

(1) A provider who is a registered provider on 1 January of a year is liable to pay an annual registration charge for the year.
Note: This section extends to a registered provider whose registration has
been suspended.
(2)The amount of the charge for the provider for the year is the sum of:
(a) $300; and
(b) $25 multiplied by the total enrolments for the provider in the previous year.

Note 2: A dollar amount may be different if an instrument under section 5A is
in force.
(3) The total enrolments for a provider in a year is worked out by adding together the number of enrolments of overseas students for each course provided by the provider in the year.
(4) When working out the enrolments for a course for a year:
(a) for a course of at least 26 weeks duration—each student who is enrolled in the course at any time during the year counts as one enrolment; and
(b) for a course of less than 26 weeks duration—each student who is enrolled in the course at any time during the year counts as 0.5 of an enrolment.
(5) For the purposes of this section, a course that spans 2 or more years
is taken to be a separate course in each of those years.'

(ESOS (Registration Charges) Act, 1997)

Taking this legislation and calculating the amounts rather crudely, using data from the most recent international student enrolment numbers, (DEEWR 2009) and without applying the indexation to the $25 per enrolment, the NUS has calculated that currently there is approximately $12.5 million dollars in revenue being collected by the DEEWR in 2009, based on the number of student enrolments and education providers registered on CRICOS. This figure may seem insignificant when compared with the $15Billion that is deemed the total revenue, however on top of this there is approximately another $12 million that is drawn from the student visa application charge that is meant to be contributed to DEEWR to support international education. (DIAC, 2009)

The main questions that NUS has with regard to this funding source are:

1. What activities does this revenue go towards funding?
a. The aggressive marketing of an obviously extremely lucrative industry
or

b. Monitoring and enforcing compliance of the ESOS Act and providing support a reliable and consistant complaints mechanism for international students regarding their education providers.

2. How much of this revenue is contributed to state government regulatory bodies to enable adequate monitoring and investigation of education providers?

3. Given the registration and subsequent annual registration of all providers derives a fee of $300 per provider, is this nominal fee donated to state governments to fund such responsibilities?
4. Is this revenue enough to enable the 7 state and territory governments and one federal government department to adequately administer, enforce, investigate and monitor this industry?

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

1. to relinquish the responsibilities for the large and varied number of government departments involvement in the international education sector, but rather have one department or authority;

2. that each state establish a Student Centre and subsequent centres in all regions where there are a large number of international students studying or residing (as per Social Inclusion Recommendation 2.);

3. that each capital city establish an office of tertiary student ombudsman, conciliator or advocate.

The implenentation of these three changes would provide a system through which the international education sector could be administered and additionally provide students with the protections, advocacy and support they require through both independent and government controlled entities. The current revenue stream may fall short of establishing these initiatives, however, there is also the revenue stream created by international student fees contributed to education providers. CRICOS registration fees may be increased to fund such initiatives, particularly given the duty of care each provider should assume for their students. Certainly, a small increase in this charge is insignificant in relation to the fee many education agents receive for supplying the student to the education provider in the first instance.

c. Tertiary Student Ombudsman - Advocate - Conciliator

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

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

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

Unfortunately, it is proven that changes are rarely made unless there is a crisis and even then, not all recommendations are acted upon. In a 2001 Senate Committee publication, *"Universities in Crisis - Report on Higher Education"* the committee recommended the introduction of a universities ombudsman. The proposal recommended that the ombudsman address such matters that were not within the scope of the newly formed AUQA and were beyond that of the grievance procedures within the universities. The ombudsman was to address not only students' issues but also to address academics complaints about university practices.

"The committee recommends that a national Universities Ombudsman be appointed, funded by the Commonwealth, after consultation with the states and national representative bodies on higher education, including staff and students, and that such an office include the power to investigate ancillary fees and charges and to conciliate complaints. Students enrolled in Australian programs off-shore should have equal rights of access to the Ombudsman*."(Universities in Crisis, Report on Higher Education, Senate Employment, Workplace Relations,Small Business and Education References Committee, September 2001. page 137.)*

NUS supports the establishment of an ombudsman office for the tertiary sector that would fulfil the aims of the ESOS Act in the introduction preamble and that would also protect consumers/students and staff at offshore institutions, which lie outside the ESOS Act authority, but remain of concern to NUS. NUS would propose that rather than limit this body to servicing the univeristy sector, the ombudsman role be extended to cover the entire tertiary sector to fall into line with the establishment of the new government body, TESQA that will monitor the entire tertiary sector. In addition, the NUS proposes that the ombudsman office be given authority to assist students with Student Visa Cancellation cases that are currently heard at DIAC and the Migration Review Tribunal with regard to breaches of academic progress and attendance (condition 8202), change of provider (condition 8206), satisfy visa requirements (condition 8516), notification of residential address (condition 8533), and the work limitation conditions of the student visa (condition 8501). As most student visa cancellation cases are for breach of condition 8202, this office would play an important role in ensuring all cases are appropriately dealt with. This office could assist with the investigation of cases regarding education provider practices.

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

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

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

The Tertiary Ombudsman would be able to provide a means for international students who are not within Australia to address problems that arose while they were studying here, as well as prevent international students from being forced to leave because institutions have not followed correct procedure. In both circumstances, there is currently

very little recourse for the student once they have left Australia. The office may be afforded ability to negotiate for the extension of student or bridging visas to allow for cases being investigated and resolved by the ombudsman.

The ombudsman office could also make recommendations on necessary improvements to policies and procedures that insittutions would be obliged to implement, or be sufficiently powered to make recommendation to the government authority that does have such power over changes to institutions arrangements. The ombudsman office would be a way of recording the number and type of complaints and problems that students and academics encounter within all systems and therefore are able to be addressed on a national scale in addition to sector, state or institution level.

Adequate Student Supports and Advocacy Recommendations

1. **NUS recommends that the responsibilities currently undertaken by the large and varied number of government departments involvement in the international education sector are relinquished and transferred to one Federal government department or authority;**

2. **Each state establish a Student Centre in its main capital city and subsequent Student Centres in all regions where there are a large number of international students studying or residing (as per Social Inclusion Recommendation 2.);**

3. **NUS recommends a transparent and independent body funded by the federal government with offices in each state that would fill the role of a Tertiary Ombudsman. The ability of international students to address consumer complaints while in Australia is extremely limited. Many factors prevent students from seeking advice and help in such areas, the most prevalent being fear of visa cancellation. With such fears there are many incidences that go unchecked and unreported leaving the student with a low quality educational experience and often an incomplete unsuccessful journey. *(adapted from Smith and Wong, 2004)***

(vi) EMPLOYMENT RIGHTS AND PROTECTIONS FROM EXPLOITATION

While little empirical research has been conducted in Australia on the working experiences of international students, much more relevant are the findings of government reviews that have investigated the experiences of international students. These government reviews offer an insight into the role of employment in the lives of these students, the effect that harsh and outdated visa legislation has on these students' ability to rely on the current workplace relations protections afforded all workers in Australia.

In most cases, empirical research data finds that international students adhere to their visa conditions, and if they are engaged in paid or voluntary employment limit their work to the allowed 20 hours per week. The issues surrounding the work restrictions on international students are complex and are very closely related to the student visa application requirements for funds to meet living expenses in Australia, the information provided to students about employment opportunities and cost of living in Australia.

There are many problems faced by international students in the workplace. These are compounded and caused by the visa restriction that limits international students to working 20 hours per week during semester. Increasingly research on international students in Australia has found that more and more students are engaging in part time employment. The most recent statistics using AEI 2006 data showed that around 70% reported working part time at some time in the previous year which differs greatly from research conducted at Melbourne University in 2004, which found that under 40% of international students were in paid employment. (Rosenthal et al, 2004)

The number of hours that students work is generally asked by researchers, however the data obtained from this question is often not deemed reliable as students will rarely admit they are working over 20 hours per week or even working at all if they are working over 20 hours as their visa can be cancelled for this breach. (Rosenthal et al, 2004) This is primarily due to the students fear of being deported for working over the 20 hour limit. The next section will provide evidence that supports students fear of deportation, and the overdue need for change to migration law, practices and the rights of international students for a fair and equitable appeal.

Recently, NUS conducted an online survey of international students regarding their work and income circumstances. From the sections on employment, there is strong evidence to suggest that over half of the students surveyed were either fully or partly responsible for paying their own education tuition fees. Most, if not all of these students were working in paid employment to fund their living expenses and tuition in Australia.

a. Information Provision

Other than the student visa requirements, alternative sources of information that students may access before coming to Australia are the institution website, study in Australia website and other government websites. Information provided by education agents remains a key source of information that most students rely upon over and above most

other information sources. Incomplete information on institution and government websites impacts on the decisions prospective students make about their ability to fund their living expenses and undertake part-time work in Australia. Misleading information on websites may include for example, housing information costs provided for the on-campus residences and perhaps one or two large student accommodation providers, but very little on private rental, or other options, and nothing on costs of utilities, internet, and setting up a residence. Alternatively, websites may provide detailed information on day-to-day living expenses but provide little information on housing options beyond a real estate web address.

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

b. Exploitation in the Workplace

Problems encountered by international students in the workplace include –

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

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

International students enjoy the same rights as all other workers under the *Fair Work Act 2009*, occupational health and safety laws, and state and federal discrimination laws. If an employer breaches the law, for example, by paying below the legal minimum wage rate then international students can make a complaint to the relevant authority, which in most cases would be the Fair Work Ombudsman (an independent statutory authority), who would recover the entitlements on their behalf and prosecute the employer where applicable.

However, until recently, the Fair Work Ombudsman had received very few complaints from international students, when, assisted by Unite, the 7Eleven cases began. The low number of complaint to authorities demonstrates a real sense of fear and mistrust from international students primarily caused by the DIAC requirement of limiting hours of work to 20 hours during study time and deportation if the 20 hour limit is breached. Unscrupulous employers use threats of reporting international students to DIAC and/or threats to family/friends back at home.

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

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

Two student employment officers said international students would not admit to working over 20 hours during the semester. "There was a particularly tragic case where a student had self immolated because he was turned into DIMIA". Another student employment officer said that they often had students admitting to working more than 20 hours a week and the students were aware that this places them at risk. She also said, "Students are not aware that voluntary work will be counted in their 20 hours visa restriction. This is a real

issue as we recommend students use voluntary work (with not-for-profits) to gain local experience, especially in course related field".

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

> *"Sometimes students are completely unaware of the injustice of these work practices and usually they won't argue with an employer but would decline a job offer or leave the job if conditions became unbearable. Some will stay in the job regardless, as they are desperate-sometimes for money, but more often experience, in the case of professional work experience for graduates".*

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

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

As a consequence of changes relating to course and attendance requirements in the *ESOS Act 2000* and the *National Code of Practice in 2007*, from April 2008 international students are not required to wait for their course to commence before they apply for permission to work part time. The student visa is granted with permission to work with their initial visa application and holders are allowed to commence work straight after arrival in Australia.

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

Since March 2007, the *Migration Act* contains provision under section 245AA, for employers to be prosecuted for employing a worker in breach of their visa conditions.

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

> *'both the United Kingdom and New Zealand operate schemes whereby employers of illegal workers will commit an offence unless certain checks are undertaken at the point of recruitment. Other countries such as Switzerland and Canada apply sanctions to employers who merely act negligently or who fail to exercise due diligence in checking work rights' (DIAC, 2006)*

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

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

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

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

'Employers who continue to engage illegal workers after a first warning should be prosecuted. Not simply those who repeatedly engage illegal workers or are involved in employment scams. Illegal workers who commit offences are not given a "second chance", they are generally located, detained and deported. Why should employers who do wrong be given a first, second and maybe even subsequent chance before they are prosecuted?' (TWU 2006)

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

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

1. The default restriction, as discussed earlier – no work. This is based on condition 8101. Under this condition, a student may not work, however, if caught working, DIAC and furthermore, the appeal authority, MRT may use discretion when deciding whether to cancel the student's visa.

2. 20 hour limit on work during term time or unrestricted when the course is not in session. (Dependents of students visa holders are restricted to working 20 hours per week at all times they are in Australia) This is based on condition 8105/4. Under this condition, if a student or dependant of a student is caught working over 20 hours per week during term time, DIAC must cancel the students visa, and regardless of the circumstances of the student, the MRT must uphold the departments decision if the student has in fact breached the visa condition.

3. A student is on a bridging visa A, the visa assigned to a student who is in between visas, waiting on grant of a further student, permanent residency or other substantive visa. With this bridging visa, a student may enjoy the same work and study rights as he or she was entitled with the previous student visa. The main difference here is that if the students are found to be working over 20 hours per week, with condition 8105/4 restriction, DIAC and furthermore the appeals tribunal may exercise discretion when

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

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

> *'subsection 16(3), regulation 2.43(2)(b) and condition 8105 are designed to deny a discretion whether or not to cancel if the condition was not complied with. That is, the tribunal must affirm a decision to cancel if the condition was breached.'(MRT, 2004)*

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

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

The main body of work that investigates undergraduate student income has found that domestic undergraduates work an average of 14.8 hours per week and one in 6 work over 20 hours per week. (AVCC, 2007) Given that the majority of international students may be living in more desperate financial circumstances than local students, there is clear evidence here to suggest that internatioal students work limits should be increased to 24 hours per week to enable them to meet living expenses. Additionally, it would be remiss of any government not to recognise the origins of the students as being primarily developing countries, and as such more likely to need to earn money to support themselves and often fund or repay loans that have funded their tuition fees. It is extremely important that there is now recognition that the international education industry has changed substantially from the market that was dominant in the earlier part of this decade.

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

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

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

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

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

Lastly, NUS suggests that closer scrutiny over employers be a priority of the Federal government. In industries that employ many international students, there is a large

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

Employment recommendations:

1. **All education providers and education agents are closely monitored to ensure that any information they provide international students regarding their ability to gain employment in Australia adequately and accurately reflects the actual employment situation of many international students**

2. **State governments need to provide more funding for employment rights services that may be made available to international student as a compulsory session in orientation for all students. (this would include information is provided on wages, gaining employment, taxes and superannuation rights, and dismissal and discrimination rights.)**

3. **The number of hours that international students with work rights are allowed to work while their course is in session should be extended to 24 hours per week**

4. **NUS would like DIAC to ammend the *Migration Act* to ensure that all student visa holders are treated fairly and equitably entitling them to demonstrate that there were special circumstances that may have led to a breach of this condition.**

5. **The factors for consideration in determining if a student has breached condition 8105 should include:**
    - **the students academic and attendance records**
    - **the students average hours of work**
    - **the employment conditions (such as workload, staff illness)**
    - **previous breaches of this condition**
    - **the stage of the course the student is at, ie whether it is the first or last year of a degree**
    - **the financial circumstances of the student**
    - **the housing/accommodation circumstances of the student**

6. **DIAC amend the Migration Act to allow international students discretion with regard to working 20 hours per week and that the calculation of this restriction is flexible depending on work and study load.**

B. THE IDENTIFICATION OF QUALITY BENCHMARKS AND CONTROLS FOR SERVICE, ADVICE AND SUPPORT FOR INTERNATIONAL STUDENTS STUDYING AT AN AUSTRALIAN EDUCATION INSTITUTION

(i) EDUCATION AGENTS AND RECRUITMENT OF INTERNATIONAL STUDENTS

Currently, there are no formal requirements for an individual or company to practice as an education agent either on or offshore. The main requirement for education providers when accepting students from an education agent is the ability of the agent to provide students who are willing to pay full fees for their education. In return, education agents receive either a commission or set fee from the education provider. The commissions usually range from 5% to 45% depending on the education provider and the education agent. There are five main areas of concern that surround the education agent 'business': According to the *National Code of Practice*, education providers are obliged to have a formal agreement with education agents and to discontinue any association with an agent should the agent be discovered breaching any part of the National Code of Practice with regard to providing false or misleading information. Standard 1 of the code states the following:

> *1.2 (b)The registered provider must not give false or misleading information or advice in relation to:*
> *i. claims of association between providers*
> *ii. the employment outcomes associated with a course*
> *iii. automatic acceptance into another course*
> *iv. possible migration outcomes, or*
> *v. any other claims relating to the registered provider, its course or outcomes associated with the course.*
> *(National Code of Practice 2007, pp.11)*

(a) Monitoring of the requirement to disengagement 'dodgy' education agents

In Standard 4, there are fairly descriptive instructions for education providers in engaging education agents and their responsibilities regarding agents who are *'negligent, careless, or incompetent or being engaged in false, misleading or unethical advertising and recruitment practices' (National Code of Practice 2007, pp.13)*. In short, *The National Code* requires education providers to cease to associate with unethical agents who breach the National Code.

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

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

> *'GAIL BAKER, SOUTHERN CROSS STUDENT SERVICES: I'm actually an education agent based in India, in Chandigarh, and I'd have to say probably 50% of students who come into my office don't want to hear the real story and they walk out. I start saying, "It could take three months, six months, to find a job. This is where you'll be living, this is the college," you know, giving them the real picture and they walk out of my office and go to another agent who says, "You'll get PR. You'll get a job in a week. Someone will wait at the airport with a limousine to take you to your house."' (SBS, Inisght, July, 2009)*

Therefore, it is unlikely that an unethical agent will be disengaged by an education provider unless they are concerned about the consequences of engaging with this agent, such that the law is being monitored and enforced with penalties that will impact detrimentally on the trade of the provider. Currently, there is no evidence to suggest this is the case. In fact, evidence of dodgy providers being able to register and trade, with little or no action taken by authorities regarding complaints about unethical practices of education agents, or education providers severing ties with unethical agents is not publically available.

This inquiry might benefit from some data being provided to the commitee by DIAC pertaining to cancellation of registration of education agents on the e-visa lodgement system due to education providers reporting unethical practices to DIAC or DEEWR.

The introduction of a restriction on the commission paid by an education provider to an education agent would effectively reduce this problem. The percentage should be capped, and monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents. Anecdotal evidence discussed by the media outlets recently has revealed that institutions were offering students money to entice friends to change colleges, demonstrating a breach in Standard 1 and 4 with respect to the formal agreements and information provision prior to a students enrolment. The suggestion above would create an evironment where such poaching practices would become much harder for institutions to get away with.

(b) Changing education provider onshore

The requirements regarding education agent practices listed in the National Code fall short of addressing current problems pertaining to the onshore poaching of international students, and the offering of large commissions by education institutions in order to increase market share. The 2007 changes in the National Code allowed students to

change provider and have may have contributed to the growth in number of incidents of students who are poached by unscrupulous agents and/or education providers.

However, changing this restriction to 12 months will not alleviate the problem but rather, shift the time-line and perhaps put students in more danger of being poached. Additionally, the rights of the student to choose to change providers must remain in policy and legislators minds, given that prior to changing this restriction from one year to 6 months, it was the student through visa restrictions that was penalised, whereas now the restriction does not penalise the student but rather the education provider enrolling the student.

The reduction of the restriction to 6 months allowed students who were not coping or dissatisfied with their course to change provider or course after 6 months. This change was made paying due consideration to the money and time that students would waste if they were in the wrong course, and the right of any 'consumer' to choose a different product. In addressing the fallout of this legislative change, 2 years after implementation, there are obvious changes that need to be considered.

(c) *Establishment of Education Agent Protocols*

There is clearly a need for closer investigation and monitoring of the actions of education providers, with harsher penalties for providers who turn a blind eye and continue to engage with agents who breach the regulations by providing misleading or incorrect information. As there is little or no precedent in the procedures that government would take in monitoring education agents, there needs to be a complete development of the education agent and provider protocols, that is made clear and transparent by government. The protocols could include associations beyond the formal contract but require them to divulge mutual financial or family interests between these parties. While it is quite apparent that there is little or no ability for the government to investigate or penalise offshore education agents, the education providers are currently completely responsible for the actions of their education agents.

This could be extended, to mirror the *Migration Act*, under which there is a separate regulation to deal with migration agents. There may be merit in producing a legislative instrument, such as a Code of Practice or Regulation that would detail the protocols pertaining to associations between education agents and penalties that could be applied in investigating breaches.

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

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

(d) Education Agents acting as Migration Agents

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

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

At that time, the Department stipulated the immigration related activities that an education agent could perform in the act of assisting an person in applying for a student visa were limited to basic information provision and assistance with lodgment but did not include advising the client nor taking any funds from the client. DIMIA raised the suggestion that education agents register as a migration agent to allow them the ability to also 'legally' provide immigration advice. (DIMIA, 2004)

Of the 3,300 registered migration agents in 2004, 25% were also practicing as education agents. NUS is not troubled by the notion that education agents may assist clients in gaining the visa they require to attend an Australian education insitution. However, that an education agent may register and perform the duties of a migration agent, and charge two clients for essentially the same service, clearly indicates a conflict of interest, and one that undoubtably is not in 'best interests of the client', if we assume the client is an international student.

Since this review was conducted in 2004, the impact of the 2001 changes to the skilled migration visa program has changed dramatically. In 2004, there were early signs of the impact of the 2001 changes. The impact has been far larger than anticipated. In the 2004 review the suggestion that education agents register as migration agents appeared a measure that would resolve inadequate or incorrect migration advice being provided by education agents. Today, this combination of professions has led to a large and extremely complex growth of the 'permanent resident visa factory' industry. It has also led to the production of many international students with a substandard qualification,

slim chances of being awarded permanent residency who were misled into believing the college they were going to was a legitimate education provider that they would graduate from and proudly return home or stay in Australia with a well recognised qualification.

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

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

Education Agents and Recruitment of International Students Recommendations:

1. **NUS recommends that the Federal government establish formal requirements for an individual or company to practice as an education agent either on or offshore.**

2. **NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider.**

3. **NUS recommends that a restriction on the commission paid by an education provider to an education agent is introduced to effectively cap the commissions paid. Additionally, these payments should be closely monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents**

4. **There needs to be a complete development by government of Education Agent and Provider Protocols, that are made clear and transparent and easily accessible to all international students and the industry.**

5. **The protocols could include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.**

6. **NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the *ESOS Act* and recommends much closer monitoring of all education provider and agent activities in the future.**

7. **NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This provision would be enforceable under both the *ESOS Act* and the *Migration Act*.**

(ii) EDUCATION PROVIDER OWNERSHIP

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

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

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

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

Education Provider Ownership Recommendations:

1. **NUS recommends that when registering an insitution on CRICOS, a full investigation of all owners and operators of private colleges is conducted. Information should be disclosed regarding the owners' financial history with regard to business and bankrupcy, their interest in other ventures such as other failed education institutions, education agents or migration agents and their level of understanding of the education sector and the laws governing the sector.**

2. **NUS recommends that all financial investors (including their directors) in education institutions should be disclosed prior to registration on CRICOS or in the case of existing institutions, the disclosure of this information at re-**

registration to ensure there is a minimum level of conflict of interest or corruption.

(iii) TUITION ASSURANCE SCHEME

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

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

As there has not been any report on the outcome of the review made public, NUS would like to recommend that the Senate committee seek out the report or findings of the internal review and investigate if there may have been any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the fund, the students and education providers.

a. 'Suitable alternative course'

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

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

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

1. The students previous course qualification and the difference in the final qualification outcome, including, the overseas recognition of the qualification and the length and cost of the course.
2. The students overall academic record not just the academic record from the discontinued course, previous academic records that qualify entry to alternative course, in order to allow the new provider to ascertain additional or existing Recognition of Prior Learning
3. The ability of the student to remain residing in the same place and the proximity of the alternative institution to the student. This should include:
    - the length of time a student has resided in Australia on a student visa,
    - the connection the student has to the community in which the student is living (ie employment, sports, family, childrens education, religion)
    - the mode of transport available to the student
    - the financial impact on the student
    - the time and impact on the students ability to study that relocating place of residence may take.
4. The capacity of alternative course providers to accept students in the study period. Should there not be a place in the current study period in a course that the student is willing to accept placement into, the remaining time may be short enough to allow the student to recommence in the following study period with no impact on the student visa.
5. Impact of delays in placement on the students visa including the need to extend or reissue the students visa to accommodate extra time the student will need to complete the qualification and the financial cost of this process and the students financial ability to bear this cost.
6. Impact of delays in placement on the students financial capacity to remain in Australia for an extended period
7. Impact of delays in placement and therefore need to remain in Australia for extended period on the students occupation, family commitments or health.

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

1. A student is provided with options to attend alternative courses and the student is able to reject or accept these courses based upon the considerations outlined above, following which a refund through the ESOS Fund is provided to the students should the students rejection be considered valid according to the grounds applicable.
2. Consumer protection would be further ensured when the parties to this process are informed and understand their obligations and entitlements. Providers of the TAS scheme should be able to demonstrate that students are informed of these obligations and entitlements. The Education provider should ensure that such

information is made available to the student prior to enrolment and at all times during their enrolment at the institution. Students should be provided such information by the TAS scheme provider once the mechanism has begun to seek alternative measures for provision of alternative courses.

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

b. Support for Students on the closure of schools

With the recent closure of Sterling College in Sydney due to voluntary administration, it is evident that there is not enough support that exists for international students, even though attempts have been made to ensure that the rights of international students are protected when education providers are shut down. In the case of this institution, it was taken under voluntary administration, rather than being shut down by the registered authority.

This is a particularly pressing issue, since it has been reported that up to 17 education providers in Victoria are currently under investigation and are likely to have their registrations cancelled in the next several months (Das, 2009). As such, there needs to be clear guidelines introduced that ensure that all rights of the students are upheld.

While the ESOS Act and the National Code have instituted the Tuition Assurance Scheme, matters arising outside of the protection of fees paid by students are just as pressing, but are not addressed, leaving many students in a state of limbo.

Issues that have been raised at the Sterling College shut down include :

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

Again these are problems that in internal review in 2008 should have been able to foresee and legislate or regulare in prepartation so as to overcome these problems in the instance of a bankrupt college. NUS suggests that a complete review of the TAS system is conducted, with transparent and public reporting to the education industry of the outcomes and measures put in place to ensure that students who are currently affected by the Sterling college closure. This will also ensure that any students affected by subsequent provider closures are compensated for any loss of money and are dealt with fairly and morally in light of these circumstances.

Tuition Assurance Scheme Recommendations:

1. That the ESOS Act and National Code of Practice include policies and procedures to ensure students affected by closure of education providers are given support to access their updated academic transcripts and ensure that Recognition of Prior Learning obtained with previous provider will continue to be recognised by new education providers

2. That access to the TAS funds, in addition to transfering students to a new provider as well as refunds for students, include ability for students to access funds for additional costs incured associated with requirement to apply for a new Student Visa due to closure of previous provider and inability to complete course requirements within limits of existing Student Visa.

3. NUS recommends that the Senate committee seek out the report or findings of the internal review and investigate if there may have been any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the fund, the students and education providers

4. NUS recommends that when offered an alternative course the factors 1-7 in a. in this section are implemented as grounds for acceptance or refusal of a particular course.

5. NUS recommends that the Department of Education and Workplace Relations monitor any negotiations between the provider and the TAS and studnets in the event that an insitution closes such that the students are able to refuse on the grounds above an 'alternative course' and students are made aware throughout their educatoin of the existance of the TAS and their rights in this process.

6. NUS recommends that the ESOS Act and TAS be amended to include the detailed definition of a 'Suitable alternative course' as included in this section.

C. OTHER ISSUES

(i) TRANSPORT CONCESSION

Travel concession is available to international students in all state and territories in Australia except for New South Wales and Victoria. Over the past 8 years, international student representative organisations have embarked upon many campaigns, written submissions to government reviews and even taken and won legal appeals deeming the NSW government is discriminating against international students by denying them travel concession based on their visa status. The NSW government has responded to these campaigns and submissions with silence, and in response to a judgment in the Administrative appeals tribunal in the students favour, changed the law to make it not discriminatory to deny international student travel concessions in NSW.

In Victoria, it was openly stated that the transport concession debate would not be considered or entered into by the Victorian Governments International Student Experience Taskforce in 2008. The NSW government has recently initiated a similar taskforce and included travel concession as a term of reference, however it remains to be seen whether submissions and discussion will impact on the current NSW governments' long standing denial of transport concessions.

Certainly there is little or no understanding and certainly very little recognition to date by either the NSW or Victorian governments of the norm in most other overseas countries and in the other states and territories of Australia. All students in these places receive transport concession not because they are entitled by birth or citizenship, but rather because it is recognized that above all they are students, living on low incomes and working hard to gain an education to become a valuable contributor to the workplace and community.

The financial cost to the community is minimal in comparison to the economic contribution made by international students and it is the least the state governments of these states can do to demonstrate they value international students contribution to the economy but more importantly, contribute to the social and cultural fabric of the communities and education institutions. Governments and education providers should regard international students as equal to their domestic student counterparts. Such differentiation is seen by researchers Fincher et al, (2009) as yet another contributor to the isolation felt by many international students.

Travel Concession Recommendation:

1. Introduce travel concessions for all international students in line with local students

(ii) HEALTH & OSHC

OSHC is the prescribed health cover for all international students. This is legislated though the Department of Health and Aging. The cover is provided by 4 companies and is restricted to the Medicare entitlements. The *Migration Act* requires that all international students have OSHC cover for the duration of their stay in Australia.

OSHC providers have been extremely responsive in ensuring that they are competitive in a marketplace that is restrictive in its ability to provide any extra cover and therefore they are inventive in their service delivery. However the area that remains problematic, despite the most creative of marketing and management practices is the ability of OSHC providers to pursuade students to renew their OSHC after the first year of cover has expired.

Some education institutions require all international students to pay their OSHC for the duration of their program. This measure has not been introduced by many institutions as students often change their programs, or indeed education providers.

Additionally, education providers do not see this element of the students welfare as their concern, and therefore, assist the student in establishing their first year of cover, but leave the rest up to the student. Some institutions send reminders to students for the second or third year renewal, but many do not. Until a few years ago, the large majority of international students do not renew their OSHC once the first year has expired. In some sectors, NUS is concerned this is still the case as education providers are not required to check that students have current OSHC when they enrol or reenrol and therefore, there is no formal monitoring of this visa condition.

Changes implemented in 2005 to the *Deed of Agreement* between the Department of Heath and the OSHC provider has reduced incidence of actual visa condition breaches with a clause that allows any student who has let cover lapse to back pay to cover periods of non-cover. However, should an accident or illness occur in the period that cover was lapsed, the OSHC provider is not obliged to pay any claims for that period. This measure was introduced to reduce visa condition breaches and to encourage students to renew their cover without penalty after periods of lapsed cover, such as no waiting periods.

It is important to note here that in two of the most serious cases of violence crimes committed against intentional studnets in Victoria in recent times, both studetns were not covered by OSHC, and in both cases the hospital and in turn the government was asked to foot the bill for these extremely lengthy and costly medical treatment and recovery procedures.

In 2005, the NLC and NUS and the four OSHC providers signed a letter to the Department of Education, Science and Training that requested that the National Code of Practice include a requirement that education providers ensure all international students have current OSHC cover when upon enrolment and re-enrolment. It was agreed between these parties that this would assist in ensuring that students have current cover

at the beginning of each year of study and when students change education providers. These are the main times that students generally dont renew their cover and if they change education institution, most OSHC providers are unable to trace the student to send renewal information.** Currently there is no requirement for education providers to make this a part of their normal enrolement process and although it also currently stands outside of their legal responsibility, there is evidence to suggest that it is considered as such by the many institutions that have implemented program length cover as a requirement for enrolment.

Overseas Student Health Cover Recommendations:

1. **That the *ESOS Act* and *National Code of Practice* require that all students provide evidence of current OSHC upon enrolment or reenrolment in any course of study to ensure that students have current cover at the beginning of each year of study and when students change education providers.**

2. **That upon enrolment all education providers provide details of all four OSHC providers and acknowledge the right of the student to choose their preferred provider rather than that of the education provider.**

***While this may seem strange, the reason for this problem lies with the Privacy Act and the method of student original applciation for cover. This is done by the education provider in the first enrolment while the student is still offshore. Once the student arrives, they must provide their residential address to the education provider but under the Privacy Act, the education provider is not allowed to pass any information to the OSHC provider. Therefore all renewal information is passed through the education provider unless the student voluntarily provides this information to the OSHC provider.*

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