Senate Education, Employment & Workplace Relations Committee

INQUIRY INTO
THE WELFARE OF INTERNATIONAL STUDENTS 2009

DETENTION
OF INTERNATIONAL STUDENTS

10.65 "In particular, the committee is concerned by the levels of student visa cancellations, and the fact that a number of students are finding themselves in immigration detention. The committee considers that this has had negative consequences both in terms of the personal impacts on overseas students, as well as negative impacts on the wider 'education export industry'."

10.69 "... the committee agrees with the evidence that the mandatory [student visa] cancellation provisions for an alleged breach of such work limits are draconian and heavy-handed."

10.72 "The committee recommends that the Migration Act and Regulations be amended to allow for greater flexibility and discretion in dealing with breaches of the conditions of student visas."

5.63 "... Professor Kneebone [Monash Law Faculty] agreed that the 'citizen – alien dichotomy' has led to a belief that different standards can be applied to someone who cannot establish that they are a citizen. Consequently, the Migration Act is framed entirely in terms of the control of aliens and reflects an ingrained sense of a lack of State responsibility for the treatment of 'non-citizens'."

5.74 "... Professor Kneebone said: "As numerous reports and decisions of international committees have now pointed out the effect of section 189 and 196 read together is to create a mandatory, non-reviewable system of detention which arguably breaches the right to freedom from arbitrary detention. (International Covenant on Civil and Political Rights, ICCPR, Article 9)."

[Senate Legal and Constitutional Committee's Final Report (March 2006) 'Inquiry Into the Administration and Operation of the Migration Act 1958'.]

"Over the last decade, we have witnessed the construction of a legal architecture in the Immigration area which 'excised' decision-making and other government conduct from the ordinary, mainstream Australian legal system.... this has involved legislative developments, which represent a radical departure from the well-established foundations of our legal system. Such principles include the application of the rule of law, access to legal advice, access to the Courts, habeas corpus, and anti-discrimination. There have been strenuous attempts by the Executive to expunge these principles from migration law."

[David Mann, Human Rights Law Resource Centre, Melbourne]

Submission by Michaela Rost

Independent writer, researcher and pro bono advocate for detained international students

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SUMMARY

The intention of this submission is to present a detailed analysis of student visa requirements and the draconian phenomenon of international student detention in Australia; why, from a human rights perspective, this discriminatory, unjust practice must be abolished; that the migration laws and regulations for students, and their administration, need urgent, equitable and compassionate reform.

International students, who comprise a unique category of visa holders, should not be detained at all for any length of time in immigration detention centres.

Immigration detention, for visa breaches that do not actually constitute offences or crimes, is a callous and excessive potential punishment for over 500,000 vulnerable young international visitors who come here at great personal and familial expense. Instead, the Government should address serious systemic injustices, including amendment of student visa conditions.

Therefore, after allegedly breaching a student visa, and while contesting visa cancellation or preparing to return home, students should be accommodated in alternative safe and supervised community housing, providing food, access to medical care and legal assistance**.**

International students sustain Australia's third largest multibillion-dollar export industry. Numerous interrelated, complex socio-economic and educational problems face them here - including unregulated activities and exploitation by some education providers and education agents - all of which can contribute to mandatory student visa cancellation.

Not only have many students been denied fair exchange of services for their high financial education investment, but also Natural Justice, because the laws and appeals processes for contesting mandatory student visa cancellation for visa breaches are flawed, and appear to violate some fundamental principles of law and human rights.

Therefore the Federal Government must regulate the consumerized and very profitable overseas education industry, implement the Senate Legal and Constitutional Committee's 2006 recommendations to amend student visa legislation, and ensure adequate protection, safety and human rights for international students.

Most essentially it should establish a completely independent and impartial review system for international students in which they can transparently contest alleged visa breaches to ensure Natural Justice, prevent immigration detention and wrongful deportation.

Through inappropriately and inflexibly administered harsh legislation, without discretion, immigration detention resulting from rightful or wrongful mandatory visa cancellation has wreaked havoc in of the lives thousands of detained and deported students.

Abolition of 'user pay' detention debts will ameliorate the difficult economic burden imposed on students and their families. It will not compensate the trauma of detention, or the incompletion of expensive studies funded by their parents' major financial sacrifices in developing countries.

"The 93,000 Indian students in Australia are welcome guests."

The Hon. Stephen Smith MP, Minister for Foreign Affairs
June 2009

THE DETENTION OF INTERNATIONAL STUDENTS

INTRODUCTION

"Detention generally refers to a state or government holding a person in a particular area (generally called a detention centre), either for interrogation, as punishment for a wrong, or as a precautionary measure while that person is suspected of posing a potential threat… the term is associated with persons who are being held without warrant or charge ... This is unorthodox, as regular criminal law requires law enforcement to have reasonable suspicion when detaining someone." *[Wikipedia]*

Mandatory visa cancellation can lead to detention of international students
Recent increasing, vicious attacks on international students have drawn worldwide and national attention to Australia's education industry - its quality, the protection of students and challenges they confront.

Little attention had been directed to student visa conditions within the complex context of Australia's immigration laws. A conflict clearly exists between the policies of DEST - to 'promote education industry, skills and migration', and of DIAC - 'deport to protect borders'.

Amidst demands by refugee supporters, lawyers, some Members of Parliament, Senators and the public for greater compassion, tolerance, release of asylum seekers and immigration reform, leading to this wider inquiry into detention, very few people realize that, under Australia's draconian legislation, some international students have also been detained in Immigration Detention Centres for visa breaches, thereby suffering similar human rights infringements.

International students have been detained neither 'for interrogation', nor accused of, or shown to be a 'potential threat'. Nor have they appeared before a court which proved 'reasonable suspicion'. Thus student detention cannot be understood or explained 'as a precautionary measure while that person is suspected of posing a potential threat', since no supporting evidence has ever been found to prove that any students have presented a danger to Australia. Yet they are 'held without warrant or charge'. Therefore, are international students detained 'as punishment for a wrong' and if so, what is that 'wrong', and is the 'punishment' unacceptably excessive and disproportionate to the 'wrong'?

The Migration Act 1958, S189, states that any foreign national whose visa is cancelled or expired or who has overstayed the visa, automatically becomes an *'unlawful non-citizen'*, and must be removed 'as soon as practicable' (unless granted permission to stay for a certain period via a bridging visa). Unlawful non-citizens may be detained prior to removal or deportation, and during appeals to tribunals and courts. The Act gives power for immigration officials to detain a person merely on suspicion of being an 'unlawful non-citizen'.

'During 2004-05 7,522 'unlawful non-citizens' were admitted to immigration detention centres, and 7,721 were released or removed. The maximum in detention at any one day was 1,154.' [*Detaining unlawful non-citizens, Ch10, DIAC website*]. Numbers were considerably reduced at 7.11.2008, with 189 detained in IDCs (out of a total

IDC capacity of 1004), and 90 including 22 children community detention or in Immigration Residential Housing - secured facilities, under the umbrella of immigration detention, in a highly controlled environment under supervision of immigration officers or contractors, wherein people cannot come and go at will.

The number of people detained on 1 May 2009 had risen to 681. Over 50,000 people were detained between 1999 and 2005. In 2007-08, 4518 people were detained, 42% or 1865 breached or overstayed their visa. The most represented nations were Indonesia and Malaysia (probably fishermen), China and India (probably students).

In ten years to 2008, 19 people died in detention. Over 4,000 children have been detained. No detainee has ever been shown to be a terrorist.

Legislation for international students is tightly enmeshed within the 'citizen – alien dichotomy' described by Professor Kneebone [p1], and the confined 'border protection' parameters defining the Migration Act. The mandatory detention proviso for 'unlawful non-citizens' under S.189 of the Act includes some students subject to mandatory visa cancellation.

Thus bona fide international students have suffered detention in high security prisons like Maribyrnong Immigration Detention Centre (surrounded by razor wire until 2006), together with asylum seekers, refugees, tourist and business visa over-stayers, children, babies and even Australian residents - none of whom has been charged, tried nor convicted of any crime, yet all deprived of their liberty.

Visa breaches not offences or crimes

Detention, because of 'unlawful non-citizen' status, can be the result of mandatory student visa cancellation merely for the alleged student visa breaches of inadequate academic results and attendance, or for working more that 20 hours per week, or for overstaying as a result of these breaches.

Though legally defined as administrative breaches, not offences or crimes, their possible repercussions, including detention, suggest that student visa breaches are punished like quasi-criminal offences – students are prohibited from returning to Australia for three years and, in addition, the 'deported' stamp in their passports prevents travel elsewhere.

However, *"The term 'unlawful' does not mean the person has broken the law, just that they do not have a visa. It is not a criminal offence to not have a visa",* Mr. Kerry Murphy [acknowledged as one of Australia's top immigration lawyers] wrote in the 'A Just Australia' May 2009 e-newsletter.

Education providers must report students

The Act requires Education providers to report fortnightly to DIAC/DIMIA about the adequacy of overseas students' progress. "…*Between 1 January 2003 and 3 October 2005 there were 55 education providers who created 18,371 reports relating to academic performance and attendance,"* DIMIA replied to Questions on Notice [Oct.2005] from Senator Ludwig of the Senate Legal Committee, with data provided by the Department of Education Science and Training.

In the five years 2000-2005, over 40,000 students were subject to mandatory visa cancellation. According to the Education Standards for Overseas Students Act Evaluation Report 2006 (8.1.1), one third of all types of visa cancellations were student visa cancellations - 8,243 in 2003-04. Although students represent only about 8 % of all visa grants, their visas constituted a huge disproportion - 33 % of the total visa cancellations. In 2005 this had risen to 35%.

However, mandatory visa cancellation laws for students are enforced not by the court system, but by the Minister's representative, possibly a junior DIAC officer. The officer is obliged to let the student respond to show that the alleged breach did not occur, although in DIAC practice this has not necessarily happened. In cases where the student's academic results are deemed unsatisfactory, the officer's decision is now based entirely on a 'certificate' provided by the student's education provider, which has the unreasonably inappropriate power, invested by Parliament, of determining whether the student's visa is cancelled.

Students can be detained for just a few days in transit before deportation, or for weeks, months, or even more than a year while contesting visa cancellation.

However, unlike asylum seekers, detained students who challenge their visa loss for genuine reasons can return home to their country whenever they decide. But that would mean forfeiting their appeal process and any hope for natural justice - a non-choice for those desperately trying to redeem their parents' huge financial sacrifices, finish their costly studies and avoid returning home deported, disgraced, and feeling a shame to their families and community.

Nevertheless, it is incredible and unconscionable that the Australian government, a western democracy, continues to incarcerate any international student (or any foreign national) in high security detention centres, as a direct result of mandatory visa cancellation and mandatory detention laws and policies - whether for only one day or more than two years.

The well documented distressing, punitive experiences of detainees – students, refugees, and others – make a mockery of the Government's stated claim that:

"Immigration detention is not used to punish people. It is an administrative function whereby people who do not have a valid visa are detained while their claims to stay are considered or their removal is facilitated." [DIAC website]

Unfortunately the reality described by David Mann (Human Rights Law Resource Centre, Melbourne) is more accurate. He writes that Australia's "*legislative developments represent a radical departure from the well-established foundations of our legal system. Such principles include the application of the rule of law, access to legal advice, access to the Courts, habeas corpus, and anti-discrimination. There have been strenuous attempts by the Executive to expunge these principles from migration law."*

These legislative developments have impacted on international students.

Number of detained students

Varying and conflicting statistics about numbers of detained students have been provided by DIMIA/DIAC, indicating how difficult it has been to obtain accurate information about the real extent of student detention. There is a clear discrepancy between data obtained by Senate Estimates, and by Freedom Of Information.

a) DIMIA replied to May 2005 Senate Estimates Questions On Notice QON28 by Senator Kim Carr [Question 7]:

- *"2,310 former student visa holders have been detained from 1 January 2001 to 22 July 2005*
- *440 females, 1870 males*
- *Most were housed in immigration detention centres; although some were accommodated in alternative arrangements including correctional facilities, police watch houses and hospitals.*
- *Reasons for detention included: non-attendance, unsatisfactory performance, failure to commence course, overstaying a visa, withdrawal form study and work breaches.*
- *83 nationalities are represented - the top 10 are China, India, Vietnam, Indonesia, Thailand, Korea, Bangladesh, Malaysia, Sri Lanka, Kenya.*

There are a wide range of outcomes in these cases including bridging visa grants, cancellation overturned, criminal justice visa grant, departure from Australia, temporary or permanent substantive visa grant." These figures indicate that during this 4.5 year period, an average of 42 students per month were detained.

Yet despite this student detention data given by DIMIA, it replied obliquely a few months later to Senator Ludwig's QON 19, October 2005, which asked:

"Where are student visa holders who have breached their visas detained? Are they detained in immigration detention centres with other unlawful non-citizens?

DIAC replied, neither confirming nor denying student detention: *"Most people who are located by a compliance action are granted a bridging visa which allows the holder to remain in the community pending their departure from Australia, consideration of a substantive visa application, or the completion of a merits or judicial review."*

It is extraordinary that an unelected departmental officer, paid by taxpayers' money, could have the power to withhold a direct, accurate answer and information to a lawful question on notice asked by a Senator, an elected representative of the Australian people.

b) Yet DIMIA also gave information to the Senate Legal and Constitutional References Committee's Inquiry into the Administration and Operation of the Migration Act 1958 in October 2005 about the periods of detention for 1,375 former student visa holders detained between September 2002 and October 2005 (an average of 37 students per month):
"34 were detained for less than a day; 596 for 1-7 days; 515 for 1-4 weeks; 168 for 1-3 months; 32 for 3-6 months; 24 for 6-12 months; and 7 for 1 year or more." (*CH 10. Inquiry into the Administration and Operation of the Migration Act 1958*)

Although reasons for detention were not specified, it can be reasonably assumed from these figures that during this period:

(i) 630 students remained in short-term detention (7 days or less) waiting either to be deported or for the granting of a bridging visa;

(ii) 683 students held between 1 week and 3 months were either waiting for a bridging visa and/or a Migration Review Tribunal hearing to contest visa cancellation and deportation;

(iii) Only a minority of students (63) remained in longer-term detention (more than 3 months) – that is, some of those still appealing for visa re-instatement, or requesting the Minister's intervention.

c) However, a much smaller number of detained university, TAFE and even secondary students was reported by The Australian, which cited DIAC statistics - that took six months to obtain - in the story, *"Overseas students held like terrorists" [28.8.2008]* http://www.theaustralian.news.com.au/story/0,25197,24253189-5013404,00.html:

"Documents obtained by The Australian under Freedom of Information laws reveal that in the three years to the end of March, 299 overseas students were put into the Villawood detention centre in Sydney or the Maribyrnong centre in Melbourne."

Yet these statistics are incomplete because data from only two IDCs was quoted. DIAC's lower statistics also suggest either a sudden dramatic change in attitudes and practices by DIAC, and/or inaccurate numbers. These figures suggest only about one student was detained every 4 days over the 3 years.

The statistical period cited in (b), with an average of 37 students detained per month, overlaps from March 2005 to October 2005 with the period and numbers quoted by The Australian. Thus during these six months, approximately 222 students must have been detained. Yet it seems most unlikely that, despite some new policy changes, only another 77 students (3 per month) were detained in the entire subsequent 28 months from November 2005 to March 2008.

d) According to a former asylum seeker, about 10-25 students were continually detained during his long detention in Maribyrnong IDC from 2002-04. (See p.52)

e) The Australian [15,7.2009] reported that, *"36 overseas students, some as young as 18, are being held in immigration detention for breaching study visa conditions… 19 of those detained are aged between 18 and 21. The average period of detention is 81 days.'* http://www.theaustralian.news.com.au/story/0,25197,25784268-601,00.html

These figures clearly show that DIAC's student detention statistics again are not consistent. If 36 students are in detention on a single day, then only 77 detained over three months is improbable. The true figures are much higher.

High Bridging Visa bond costs

Some students have remained in detention for lengthy periods if, instead of deportation, they chose to contest their visa cancellation but could afford the high costs of a bond or surety to be released into the community on a 'no work, or study or Medicare' Bridging Visa E. Bridging Visa bond charges for students

have ranged from $3,000 (Mr. A's first BVE p. 92), to an extraordinary $25,000 (Mr. D's BVA, p. 80).

It cannot be morally justifiable or equitable with international human rights to detain any overseas students in a high security lockup, or even in Immigration Residential Housing, merely because of their financial inability to pay a surety for the entitlement to reside in the community pending their appeal.

The possibility of having to budget for such unforeseen costs certainly was never stipulated in students' original offshore visa requirement to have *'adequate funds to continue studying.'* This submission will also show how, since arrival in Australia, many other unexpected expenses could already have been easily consumed students' additional funds.

Other detained students may have been able to scrape up funds for the BVE bond through borrowing from friends. However after months of waiting for the MRT and possibly living on borrowed money or others' charity, sleeping in friends' lounge rooms, and creditor friends demanding repayment, some students have felt impelled through dire necessity to break no-work condition of the BVE to survive. When caught by DIAC, and returned to detention, they must continue any appeal while detained, but their immigration record becomes indelibly stained, thus limiting their already low chance of success.

Migration Review Tribunal cannot make independent discretionary decisions

If the student contests the DIAC decision to cancel the visa, it can be reviewed in the Migration Review Tribunal, but without any discretion, by a single Tribunal Member, who is not required to be a lawyer, is appointed by the Minister and legally beholden to the Minister's directions.

The Tribunal is required to prove whether the student breached the visa or not using information provided by the minister's representative - the DIAC official who made the decision to cancel the visa. Students may have to wait a few months before their hearing because of the huge backlog of MRT cases.

The Migration Review Tribunal website indicated in 2005 that about 1,000 applications for reinstatements of mandatory cancelled student visas are lodged annually. That is, about 12% of all students with visa cancellations appealed in the Migration Review Tribunal, mostly without success.

No real independent merits review system for international students

A student's education provider can arrange an external review prior to issuing a certificate for DIAC to cancel the visa, (as required, but not enforced by the ESOS Act 2007). The provider chooses the review panel members, which poses a potential conflict of interest regarding impartiality.

Thus there exists no truly independent merits review system for alleged student visa breaches, or readily accessible independent disputes resolution scheme, in which student complaints about education providers can be heard and mediated.

In stark contrast, New Zealand's International Education Appeals Authority, IEAA, independently assesses student complaints concerning breaches of New Zealand's comprehensive pastoral code for international students. The absence in Australia of such an independent agency in Australia is of grave concern since students are afforded insufficient protection and safety.

In addition, the absence in Australia of a judicial review for students (and other 'unlawful non-citizens'), prior to detention and removal, is a cause for injustice and seems to violate international law.

Thus detention of students becomes an administrative sentence, by-passing the judiciary system, resulting from the lack of human rights and legal procedural rights for 'unlawful non-citizens'. To rectify this in accordance with international covenants, the Government must put in place procedures for 'aliens' to ensure their right to fair trial before expulsion.

S.209: Detainees including students liable for costs of incarceration

Fortunately Australia has passed *'The Migration Legislation (Abolishing Detention Debt) Bill 2009'*, despite opposition and irrational arguments that detention debt is a 'deterrent'. The Bill is essential for relieving unnecessary financial suffering to former students and other detainees, as well as for restoring Australia's integrity.

Not only does Australia appear to be the only country in the world to detain international students in high security facilities while appealing visa cancellation, or in transit to deportation, but under S.209 of the Migration Act 1958, it was also the only country to make all detainees liable for the costs of their own incarceration – a law introduced by the Keating Government in 1992.

Detention cost at Maribyrnong IDC is $125 per day (reduced from $225 in 2005); Villawood IDC, $220 - one former student visa holder who spent 835 days there was charged $180,000. A former asylum seeker has a debt of $300,000.

Thus, all detained students have been issued bills - for being incarcerated without charge or conviction. This shocking reality does not represent the 'fair go' value system that Australia extols and prides itself upon.

Furthermore, a detained student who could afford the bond for a Bridging Visa or has not been granted a Bridging Visa, may have waited up to five months for his MRT appeal, yet would still have been charged $18,750 for five months' detention fees simply for the delay in the Tribunal hearing.

The massive burden of detention debt caused additional hardship, anxiety and stress to those already traumatised by the experience and deleterious effects of detention. That the Federal Government tried to profit financially from the misfortune and suffering of 'illegal non-citizens' - students, asylum seekers, and others, was disturbing. Fortunately this shameful era is over.

Immigration Detention Centres

Australian IDCs are in reality privatised prisons managed by private companies such as GSL who, like all businesses, want to make financial profits. However IDCs do not have the same safeguards and regulations afforded to normal government managed jails. Profit has meant reduction in quality of services, food, staff training and numbers, facilities, equipment in IDCs. There is abundant evidence that many detainees suffered unimaginably in cruel, inhumane conditions. Furthermore, some staff, visitors including advocates, lawyers, medical people and others have also suffered emotionally at witnessing the traumas visibly induced by harsh government policy administered both by DIAC and through private business. Although significant improvements have been made to MIDC it is still a prison.

'7 Immigration Detention Values'

Any former and current detainee, student or other, would be devastated by the new Federal Government's statement of *'Seven Immigration Detention Values'* which restates that mandatory detention is essential, implying that a detainees' immigration nightmare was justifiable. However, this is mitigated by values 4 & 5:

> *4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention ... will be subject to regular review.*
>
> *5. Detention in IDCs (Immigration Detention Centres) is only to be used as a last resort and for the shortest practicable time,*

Thus there could be cause to hope that the traumatizing, discriminatory practices and laws authorizing the detention of international students in IDCs may soon be abolished, since no students have been proved to be any threat to the community whatsoever to justify incarceration *"as a last resort"* in these high security prisons, or the morally abhorrent notion of 'preventative detention'.

Encouragingly, on 29 July 2008 Senator Chris Evans, Minister for Immigration and Citizenship, said in his speech ***'New Directions in Detention, Restoring Integrity to Australia's Immigration System'*** at the Centre for International and Public Law, Australian National University:

"Under Labor's reforms, persons will be detained only if the need is established. The presumption will be that persons will remain in the community while their immigration status is resolved. If a person is complying with immigration processes and is not a risk to the community then detention in a detention centre cannot be justified."

However, this hinges entirely on the definitions of '*a risk to the community'* and '*complying with immigration processes'* and on how and by whom these terms will be assessed. Without clear, discretionary guidelines, as well as further change in DIAC 'culture', international students will still be at risk of being detained – unless student immigration detention is abolished per se. For example, is a student a risk to the community if he/she has not complied with a process because it has not been properly explained?

Response to Committee's first and second reports to this Inquiry

Unfortunately, in its first report to this Inquiry, the Parliamentary Joint Standing Committee on Migration has recommended continuation of mandatory detention for one year, reviewable after three months. This similar policy could merely continue to reinforce the current injustice and violations of human rights through arbitrary arrest and detention without charge of international students, and without access to a fair and public hearing by an independent and impartial tribunal.

Imposing a three month waiting period prior to review occurring does not take into account the immediate early deleterious effects of detention on students.

"University of Sydney senior psychology lecturer Christopher Lennings said overseas students could be easily overwhelmed by conditions in Australia, leaving them vulnerable to breaches of migration law. "The trauma period is within a few to 10 days, especially if they don't know how long they would be incarcerated for." [Overseas students held like terrorists", The Australian 28.8.2008]

The Committee should seriously reconsider, review and amend this recommendation such that mandatory detention for any international students in immigration detention centres is abolished. Community-based alternatives to detention are the only humane and justifiable options for students. Even detention in community, residential and transit accommodation, freedom of movement is too restrictive.

In the second report there is also no mention of judicial review for detainees. Mr Petro Georgiou MP has outlined the human rights concerns in his dissenting report.

Current law allows Australia to be accused of violating human rights and exploiting the very people (and their families), who were solicited to travel here for study by Australia's education industry. Students' parents fund at great personal sacrifice their child's educational expenses, and thereby support Australia's third largest export $15 billion industry, as well as compensate the annually increasing reduction in Federal funding for tertiary education.

Student visa management in USA

Australia has been detaining students long before the USA, which in the aftermath of 11 September 2001 introduced the criticized, complex and problematic SEVIS student visa monitoring system. It is managed by the Department of Homeland Security and funded by international students, who must pay a fee as a condition of being granted a visa. Isolated cases of students being imprisoned by overzealous enforcement officers *'for a crime like dropping a course without permission'* have occurred, provoking critical US academic response: *"We need to get to the point where detention is not an option for administrative, technical or inadvertent violations." [St. John's Journal of Legal Commentary. Vol. 19.1 (USA)]*

BACKGROUND TO THIS SUBMISSION

Meeting detained students

As an independent writer and pro bona advocate for detained international students, I have written letters, submissions and articles about the detention of international students since 2003 when, knowing little about DIMIA, Australian immigration law or the international student program, I met three frightened former full fee paying genuine Indian overseas students at Maribyrnong Immigration Detention Centre. They had all been detained at that time for 6 months, and had studied at Melbourne tertiary institutions - a university and private colleges. Two of these students remained in detention for one year before giving up on their appeals and returning to India. The other was detained for two years during further appeals.

Other refugee supporters and I could not understand why they there, applying for refugee status, filled with shame, too scared to return home without finishing their studies, why they had lost their student visas in the first place, and how their detention could be legal. However, on hearing their stories, we could understand why they felt terrorized by their incarceration and experiences with DIMIA.

These quietly spoken, intelligent and polite young men, felt anxious, angry, fearful, depressed, persecuted and suicidal. Coming from close-knit families, with great hopes and aspirations to improve their lives by studying in a prestigious western democracy such as Australia, they found themselves instead imprisoned and treated like criminals in the then very distressful environment of Maribyrnong IDC. They had received no legal advice from DIMIA and had no understanding of how the law was working against them. Neither did we.

Pro bono lawyers were advising them to continue appeals by applying for refugee status – it seemed to be the only option for the students to be able to complete their studies, repay their parents' huge financial sacrifices for their education, and thereby avoid certain social ruin in India. They said their families' reputations would be destroyed if word spread that they had been in jail. Therefore they were absolutely adamant that their names should not become public. Their fears were later validated and confirmed to me by members of the Indian community.

These three Indian students, who all were detained for at least 12 months in MIDC, were also adamant that they had never been told either in India or Australia, of the visa cancellation appeal processes, or that they could possibly be incarcerated, let alone be charged the then fee of $225 per day for their detention.

Thus their offshore decision to study here was not based on the legal concept of *'informed consent'*, since they were not given sufficient information to fully assess all the risks involved. Neither did any education provider here inform them that mandatory cancellation of student visas could mean for some students 'mandatory detention'. Though gently mannered, they perceived their treatment, and that of other detainees, as racist and believed that, *'Australians treat their dogs better.'*

From these questions, and concern for their suffering, there ensued an unexpected, and lengthy, investigation about the treatment of some overseas students, which seemed to this writer and other supporters to be a cruel transgression of fundamental human rights values by Australian legislation, DIMIA and some Australian education providers.

Student incarcerated for 2 years

One student wrote down the history of his experiences studying here and his immigration detention. This formed the basis of subsequent detailed documentation on his behalf about his case and the serious issues facing detained students to the Minister, DIMIA, the Minister for Education, the attorney General, and others. (See example of Mr. A, p.76)

In February 2005, after being incarcerated for 2 years in Australian immigration detention facilities – first in Maribyrnong and then in Baxter – this student gave up his prolonged 3 year battle for justice to get his wrongfully cancelled student visa reinstated, and finally allowed himself to be deported. He was one of the longest detained overseas students. [Another was detained in Villawood for 3 years.]

But before departing for India, the Australian Government presented him with a bill of $97,000 for his imprisonment, effectively ensuring that he would never return here. His treatment, and that of other students, by the Australian Executive appears to ignore fundamental democratic values and processes such as fairness, dignity, honesty, rationality, equality, transparency and accountability.

While in Baxter he was traumatized in an environment of detainee distress, suicide attempts, hunger strikes about poor conditions, and events like the horrific situation facing a woman, Cornelia Rau, held in isolation building Red 1.

This independent submission is based on:

1. Research and consultations with detained students, educators, migration agents, lawyers, Indian community members, social workers and researchers, politicians, asylum seeker supporters, Sister of Mercy, RoseMary Baker – all of whom I wish to acknowledge for their assistance, including former Senators Allison, Bartlett and KIrk, and Senators Carr and Ludwig.

2. Many letters written regarding detained students and related issues to Ministers for Immigration, Education and the former Attorney General, DIMA officials, Senators, MP's, DEST, HREOC, the Victorian Premier, former Prime Minister.

3. An interview in July 2005 by the *'People's Inquiry into Detention'*, initiated by Dr. Linda Briskman, former Associate Professor of Social Work, School of Social Science & Planning, RMIT University, now Professor of Dr Haruhisa Handa Chair of Human Rights Education at Curtin University. The Inquiry was initially convened on behalf of Australia's leading academic social work body, the Australian Council of Heads of Schools of Social Work, which believed there was a need for an open, independent, transparent and ethical inquiry into detention.

Its final report *"Human Rights Overboard: Seeking asylum in Australia"* was released in September 2008, documenting the disgraceful, inhumane horrors of immigration detention that cruelly degraded and abused human rights and dignity.

4. Numerous national and international news reports about the problems facing overseas students in Australia, and refugee issues, as well as information from various human rights newsletters, including 'A Just Australia' and 'Asylum Seeker Resource Centre'.

5. Articles I have written about international student issues and detention:

- Sep 2009: '*Immigration debts for detainees, students waived'*, South Asia Times, Melbourne [SAT] http://119.82.71.95/southasiatimes/epapermain.aspx
- July 2009: '*ISKCON teams up with Port Phillip Council to help students and community',* http://119.82.71.95/southasiatimes/details.aspx?queryed=9&boxid=113343796&id=867&eddate=07/12/09
- June 2009: *'Australia to abolish unjust immigration detention fees' SAT*
- June 2009 *'A volcano brewing – attacks on students built up for years'* SAT
- June 2009: *'Greens call for probe into education industry'* SAT
- March 2009: *'Be quiet and be safe'* SAT
- Jul 2008: *'Krishna temple a home away from home',* SAT
- May 2008: '*Cabbies upsurge floods Melbourne*' SAT http://www.southasiatimes.com.au/news/?p=559
- May 2008: '*Student taxi drivers, visas and immigration'* SAT http://www.southasiatimes.com.au/news/?p=560
- Oct 2005: *'Small changes to automatic student visa cancellation'* SAT http://southasiatimes.com.au/newsarticle435.aspx
- Feb 2005: *'Indian Student Billed $97,000 For Detention In Baxter'* South Asia Times (SAT) http://www.southasiatimes.com.au/newsarticle339.aspx
- Oct 2004:'*"Indian students and asylum seekers on bridging visas and in detention',* Indian Voice
- Mar 2004: *'Indian students in detention centres',* Indian Voice

6. My submissions to the Senate Legal and Constitutional References Committee's 2005 ***'Inquiry into the Administration and Operation of the Migration Act 1958'*** about the *'Detention of International Students'.*

220 Ms Michaela Rost (PDF 147KB) 220A (PDF 46KB)
www.aph.gov.au/senate/committee/legcon_ctte/Migration/submissions/sublist.htm

The Committee invited me to speak at its Melbourne Hearing, with Senators Bartlett, Crossin, Ludwig, Nettle, Kirk, and Parry present, who subsequently asked me to answer further questions on notice. My answers to Senator Ludwig's question on notice were published on the committee's website at: http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/index.htm.

7. The findings of that Inquiry released in March 2006 Its final report included a chapter on Student Visas:

Chapter 10 - Student visas	***(PDF 236KB)***
Relevant legislation ***Importance of overseas students to Australia*** ***Student awareness of migration law and policy*** ***Student visa cancellations*** ***Administration and enforcement issues – recent cases*** ***Detention of students*** ***Committee view***	

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE'S FINDINGS REGARDING STUDENT VISAS:

"Student visa cancellations

10.23 A key concern raised during the committee's inquiry was the problem of the cancellation of student visas, and in particular, the inflexible provisions of the migration regulations in this area.

10.28 The LIV (Law Institute of Victoria) recognized that visa conditions, such as the work limits and academic requirements, are based on genuine concerns that the student visas should not be misused for other purposes, such as obtaining work in Australia. At the same time, the LIV expressed concern about DIMIA's enforcement of those conditions.

10.33 The ESOS Evaluation Report also expressed concern about the lack of flexibility in relation to non-compliance with student visas:
" The 'all or nothing' nature of present requirements for providers to report students for breach of their visa conditions has brought the full weight of DIMIA's compliance processes into play too early and the provider has insufficient flexibility to make educational judgements."

10.34 The ESOS Evaluation Report concluded that this inflexibility was part of the reason for the high number of student visa cancellations. DIMIA indicated that for the last three years around 8000 student visas have been cancelled each year…. The ESOS Evaluation Report considered the overall level of student visa cancellation 'too high'.

Appeals of student visa cancellations

99.1 The committee heard that a related problem is the high, and growing levels of appeals of student visas. For example, Ms. Rost estimated that 12% of all students with visas cancellations appeal in the MRT. The ESOS Evaluation Report noted that there had been a growth in the number of appeals to the MRT in relation to cancellations of student visas. The ESOS Evaluation Report commented on the high proportion of visa cancellations set aside by the MRT - 'averaging 39% over the last three years'. The committee notes that this effectively means that over one in three cancellation decisions by DIMIA, which are appealed in the MRT are overturned. The committee considers this rate as unacceptably high, particularly given the consequences suffered by students whose visas are wrongly cancelled. These consequences include personal and financial hardship, both for students and their family, not to mention the possibility of ending up in immigration detention.

10.37 These problems are exacerbated by the delays in finalizing appeals in relation to those cancellations. For example, The ESOS Evaluation Report found that:
"The high rate [of visa cancellations being set aside] is compounded by the lengthy time taken to finalize appeals, which in 2003—04 averaged five and a half months."
10.40 Nevertheless, The ESOS Evaluation Report found that the rates and timeliness of appeals:
"… imposes financial and emotional burdens on students, costs on DIMIA and providers dealing with student visa cancellation issues, and unnecessary administrative complexities for those managing international student programs."

Administration and enforcement issues – recent cases

10.42 The committee was also told of two recent Federal Court cases which have highlighted concerns about DIMIA'S approach to administration and enforcement of student visas.

10.43 The first case, Uddin v Minister for Immigration and Multicultural Affairs related to notices given to student visa holders.

10.44 DIMIA explained… that the case affected all cancellations of student visas under S137J of the Migration Act between May 2001 and 16 August 2005.

10.45 DIIMIA continued: "Some 8,450 section 137J cancellations were reversed ……"

10.46 DIMIA told the committee that DIMIA would be seeking a single blanket debt waiver for students found to be affected by the Uddin case.

10.48 More troubling to the committee was the recent case of Minister for Immigration and Multicultural Affairs v Alam … For example, the LIV suggested that the case: "… defined alarming concerns about DIMIA'S 'manner of its enforcement of student visa conditions". which go beyond the terms of the regulation'."

10.52 Finally, Justice Wilcox observed:
"Visa control should be firm, but it should be exercised in a fair and courteous manner. Inappropriate regulatory provisions and heavy-handed enforcement are likely adversely to affect our international reputation and ultimately to undermine the overseas student program itself."

10.53 DIMIA acknowledged that the Full Federal Court in this case was 'highly critical of alleged conduct by DIMIA officers, and told the committee that the allegations 'are taken seriously by the department'

Detention of Students

10.55 Another concern raised with the committee was that some students, whose visas are cancelled end up in immigration detention.

10.56 … Ms. Rost claimed that 'Australia's unique mandatory detention policy makes Australia the only country in the world to detain some of its full fee paying international students', and that
" Students detained for both short and long terms have been severely punished for the relatively minor offences constituting a breach, and are held strictly accountable."

10.62 As both Ms.Rost and DIMIA pointed out, there have been a wide range of outcomes in the cases of former student visa holders.… For example, according to DIMIA, during 2004-05:

- *155 former student visas holders who had been detained subsequently departed at their own expense*
- *244 former student visas holders were recorded as having been removed*
- *153 former student visas holders were released from detention on a Bridging Visa E*

10.64 Furthermore, the committee also heard that many students who have been held in immigration detention have accrued detention debts. For example, Ms. Rost gave the example of a former student visa holder who was detained for two years, and who accrued a debt of $97,000.

Committee view

10.65 The committee acknowledges concerns raised in evidence in relation to the treatment of overseas students under the Migration Act and Regulations.

10.65 In particular, the committee is concerned by the levels of student visa cancellations, and the fact that a number of students are finding themselves in immigration detention. The committee considers that this has had negative consequences both in terms of the personal impacts on overseas students, as well as negative impacts on the wider 'education export industry'.

10.66 The committee recognizes the importance of compliance with student visa conditions. … However, the committee believes that there are considerable problems with the restrictive and inflexible nature of the legislative provisions relating to student visas. In particular, the committee is concerned that the mandatory visa cancellation provisions under the Migration Regulations allow for no discretion and little consideration of the circumstances surrounding an alleged breach of a student visa.

10.69 … However the committee agrees with the evidence that the mandatory cancellation provisions for an alleged breach of such work limits are draconian and heavy-handed.

Recommendations

10.70 The committee considers that a ***more flexible and compassionate approach should be taken in relation to student visa cancellations****. … In particular, the committee* ***recommends that the Migration Act and regulations be amended to allow for greater flexibility and discretion in dealing with breaches of conditions of student visas.***

10.71 Specifically, ***the committee recommends that consideration be given to replacing the current provisions requiring mandatory cancellation, with a rebuttable presumption in favour of cancellation****. This would satisfy the legitimate policy objectives of creating an incentive for compliance and thereby help to prevent abuse of the student visa system. It would, however, introduce an element of flexibility in cases where a student can show, in all the circumstances, that the visa should not be cancelled."*

PALMER REPORT

The Palmer Report's revelations about the wrongful detention of mentally ill Australian resident, Cornelia Rau, and the wrongful deportation of Vivian Solon, highlighted the suffering of 'unlawful non-citizen' detainees Australian immigration detention facilities; the major flaws and limitations of the Migration Act 1958; and lack of accountability and humanity with which it was administered by DIMIA.

The Asylum Seekers Resource Centre's Media Release on 7 July 2005, stated: *"The Palmer Draft Report finds a system flawed at every level, with serious defects in communication, monitoring, management, documentation, understanding of roles and responsibilities, decision – making processes and failures to adhere duties under to its own contracts and instructions."*

As a result of the Palmer, Comrie and other Reports, their media attention, and the Senate Inquiry into Migration Act, the razor wire has now been removed and Baxter is closed. Improvements have been made to facilities, increased amenities and services, better DIAC services, retraining of IDC staff, and a friendlier, more relaxed attitude in Maribyrnong IDC. And fortunately, Cornelia Rau has finally been compensated for her disgraceful treatment.

But laws, ***"****which 'excised' decision-making and other government conduct from the ordinary, mainstream Australian legal system",* permitting the nightmare of detention without trial still remain.

Palmer Report Findings – serious problems within DIMIA (DIAC)

Detained students also have been subject to the serious flaws with DIMIA, identified and condemned by Mr. Palmer, which included inadequate training of compliance officers, inflexible handling of detention cases, exercise of exceptional powers.

8. There is a serious cultural problem within DIMIA's immigration compliance and detention areas: urgent reform is necessary.

9. DIMIA officers are authorized to exercise exceptional, even extraordinary powers. That they should be permitted to do so without adequate training, without proper management and oversight, with poor information systems, and with no genuine assurance and constraints of these powers is of concern. The fact that this situation has been allowed to continue for so long and unreviewed for several years is difficult to understand.

14. …many of DIMIA'S compliance officers have received little or no relevant formal training and seem to have a poor understanding of the legislation they are responsible for enforcing, and the implications of the exercise of these powers... the induction training package for compliance officers is inadequate.

17. There are serious problems with the handling of immigration detention cases. They stem from deep-seated and attitudinal problems within DIMIA and a failure of executive leadership in the immigration compliance and detention area.

The Senate Legal Committee's 2006 Report also included a report from DIMIA Secretary, Andrew Metcalfe, about Mr. Palmer's findings regarding the negative culture within DIMIA:

"2. Activating cultural change in DIMIA: values standards, stronger accountability and governance
This process must shift DIMIA from an organization described by Mr. Palmer as 'process rich and outcome poor', overly defensive', assumption driven' and unwilling to engage in genuine self criticism or analysis', to one which is client focussed and effective in its decision making and operational roles.

3.2 Case Management
Mr. Palmer criticized DIMIA for its lack of holistic case management and a sufficiently flexible and responsive approach that allows for effective management of the more complex cases."

AUSTRALIAN MANDATORY DETENTION POLICY AND ADMINISTRATION VIOLATES INTERNATIONAL HUMAN RIGHTS COVENANTS

Human rights are generally considered to be universally applicable to all people without distinction. The United Nations Human Rights Council describes human rights as,

"Universal and inalienable, independent and indivisible, equal and non-discriminatory… Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights." [http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx]]

Since Australia has ratified several international human rights conventions, Australia has rights and responsibilities as a UN member state. It is reasonable to expect that Australia has a moral obligation to ensure its laws are consistent with these conventions, and that all persons within Australian territory are entitled to have their human rights respected and protected.

However, the current practice of immigration detention for international students violates human rights acknowledged in the 1948 United Nations "Universal Declaration of Human Rights", one of several international covenants to which Australia is signatory.

For example:

Article 9: *"No one shall be subjected to arbitrary arrest, detention or exile."*
Article 10: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

Yet detainees held in the high security prisons - Australian Immigration Detention Centres - have neither been criminally charged, nor initially been given any opportunity for an impartial hearing prior to incarceration. Although debate surrounding detention focuses entirely on refugees, approximately 75% of detainees - including students – have actually arrived here with valid visas which were subsequently cancelled. However, all detainees have been denied their liberty, and all feel degraded and humiliated.

The International Covenant on Civil and Political Rights also proscribes arbitrary detention:

> *ICCPR, Article 9 (1): 1. Everyone has the right to liberty and security of person. 2. No one shall be subjected to arbitrary arrest or detention. 3. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

Even though detention of students is authorized by Australian law, their detention can be considered arbitrary, since *'The term "arbitrary" includes not only actions which are unlawful per se, but also those which are unjust or unreasonable.' … 'Arbitrary detention is incompatible with the principles of justice and with the dignity of the human person.' [HREOC website]*

> *ICCPR Article 9 (2): 1.Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release… 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

International students who are detained because they cannot afford the bond for a bridging visa, or those who cannot be granted one because they breached the conditions of their first BV - because of the no work condition of that visa - certainly are not allowed to challenge the lawfulness of their detention in a court.

Pertaining specifically to asylum seekers, Article 31 of the 1951 Refugee Convention relating to the Status of Refugees provides as follows: http://www.humanrights.gov.au/human_rights/immigration/migration_bills.html:

> "*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."*

Clearly, Australian immigration detention must be considered as a penalty imposed by the Executive, and not by the Judiciary, thereby contravening fundamental rights Australia agreed to theoretically when it signed UN covenants.

International condemnation of Australia's mandatory detention system
In *'World ire at 'toxic' detention'* (The Age 8.6.2002), Russell Skelton reported UN Justice Louis Joinet's visit to the [now closed] Woomera detention centre and his subsequent public condemnation of Australia's mandatory detention system. As chairman of the UN working group on arbitrary detention,

"In his visits of over 90 prisons around the world, he had never witnessed so many detainees in such a depressed state. …He said chronic levels of depression among detainees faced with months, even years of detention were leading to acts of self-harm, attempted suicide and actual suicide. He blamed the closed nature of the system for detainees' mental condition, which he labelled as chronic depression syndrome, adding that they were worse off than common criminals who at least knew how long their imprisonment was and were not billed for the time they were in detention".

'Australia's aggressive handling of foreigners'
The American Christian Science Monitor reported the detention of American teacher in *'Arrest of American reopens criticism of Australian detentions' [14.9.2005]* http://www.csmonitor.com/2005/0914/p07s02-woap.html?s=t5**:**

"A Texan teacher and activist had his visa revoked and is in detention in Melbourne. He faces deportation. Australia's aggressive handling of foreigners has once again erupted into controversy, this time over the case of an American history teacher from Texas who was suddenly arrested halfway through a six-month vacation here.
"Six police and security officers arrested Scott Parkin over the weekend as he left a Melbourne cafe on his way to deliver a workshop on non-violent protesting. Still in detention, with his visa revoked, Mr. Parkin has yet to be formally charged. The attorney general's office indicated that authorities believed the community college teacher posed a threat to national security."

Australian commentators' condemnation of mandatory detention
Many Australian commentators have condemned detention as a serious aberration from fundamental principles of justice, echoing the concerns of Professor Susan Kneebone [Monash Law] quoted on page 1.. For instance, after travelling with a small delegation to the now closed Baxter IDC in August 2004, the former Mayor of Darebin, Ms. Rae Perry, described the 'terrible' conditions there:

"Normally a person is charged with a crime at a police station, is put on bail and continues to work and lead their life while the court case is pending. But in this society, people who are not charged with anything are taken away, locked up, denied the right to bail and their freedom. This damages them further. The worst thing about it is that is done in the name of all Australian citizens." ['Indian students and asylum seekers on bridging visas and in detention', Indian Voice, Oct. 2004.]

Writing in the 'Green Left Weekly', May 2005, Sarah Stephen commented:

'When Labour introduced mandatory detention in 1992, it did so in order to have complete administrative control over who it kept in detention, denying the courts any power to order a detainee's release. A central plank of mandatory detention is the removal of any accountability mechanism — any requirement to have a decision tested in a court of law — before deciding to detain or to deport someone.

'Project SafeCom's Jack Smit pointed out on May 1 that DIMIA's powers far exceed those of ASIO and the police.

"If you're a murder suspect, even a serial killer suspect, the police can only hold you for 24 hours, and ASIO can hold suspected terrorists for seven days. Yet only on the suspicion of 'illegality' by someone who may well be a junior bureaucrat and new to the job, you can be grabbed, locked away in immigration detention, and as we now find out, deported, even if you are an Australian citizen or resident, and at no time in this chain of horror events DIMIA needs to be held accountable before a judge or a magistrate." '

Dr Jane McAdam, law lecturer at the University of Sydney wrote in the Sydney Morning Herald's report *'No visa for Australia despite proposed changes to asylum seeker rules' [May 31, 2005],*

"Australia's laws regulating the reception and processing of asylum seekers are uniquely draconian: Australia is the only Western country with a mandatory detention regime for those who arrive without a valid visa. The detention cannot be reviewed by the courts, and there are no limits on its duration …. Australia's system of mandatory detention violates key obligations under international human rights and refugee law. International law prohibits detention as a blanket response to illegal entry or presence, and requires that all detention be reviewable by the courts. "

In their article *'Fortress Australia*' for the September 2004, 'Law Institute of Victoria Journal', lawyers Sally Nicholes and Lara Rudd observed:

"Australia's statutory policy of mandatory detention appears to be at odds with its obligations under international human rights conventions." They concluded, *"While the Human Rights and Equal Opportunity Commission and the UN Committees have held Australia is in breach of its…. International Covenant of Civil and Political Rights, in relation to the mandatory detention of unlawful non-citizens, the government has refused to acknowledge its breaches or demonstrate a willingness to alter the domestic law."*

No Australian Bill Of Rights

In fact, Dr. Eva Hornung, current President and co-founder of the human rights organization Australians Against Racism Inc. has observed that,
"The Migration Act is now a stronger instrument at law in Australia than any international covenant, or any human rights protection under domestic law. The problem is bigger - we have no bill of rights."

Australian-born prominent international human rights lawyer and human rights campaigner, Geoffrey Robertson QC, who played a major part in the enactment of the 1998 British Bill of Rights, has also surmised bluntly, *"Australia is bereft of any sort of Bill of Rights or Human Rights Act." [ABC Lateline 17.11.2008].* Shamefully, Australia is the only western democracy not to have a bill of rights enshrined by law.

In *'Our freedoms are eroded: QC' [SMH August 29, 2007]* Mr. Robertson was reported as saying that this had serious implications for media freedom and the courts.

'THE reputation of Australian courts has slipped and its position as a bastion of free speech and human rights has eroded in recent times… Australia's failure to embrace a

bill of rights - one of few democracies not to have such a protection for its citizens - left its media vulnerable to an astonishing number of restrictions.

'"These include a multitude of suppression orders, the threat of prosecution of journalists for refusing to disclose sources and the indiscriminate use of exemption certificates that allows governments to thwart freedom of information requests," he said.'

However, the present High Court had become "less relevant" in international jurisprudence, not because of any lack of calibre in lawyers or judges, but because they did not have the tools for the job.

"Without a bill of rights to serve as a principle basis for decision making, the judgments of Australian courts are now of less consequence in the world - they are less relevant to the development of international jurisprudence on issues affecting human rights."

In his book *'Statute of Liberty'* Mr. Robertson points out that the British House of Lords, in 2005 decided 8-1 with a the help of the Bill of Rights that government legislation permitting detention of people without charge for indefinite periods as illegal, and in breach of Human Rights in its decision. It has subsequently repealed these laws. In stark contrast, the Australian High Court without a bill of rights ruled 4-3 to endorse indefinite detention [p 104].

Section 120 of the Australian Constitution pertains to *'Custody of offenders against laws of the Commonwealth' – "Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effects to this provision."*

However, there is no mention of detention for people not convicted of any crime. There are no provisions to prevent government from making hasty, ill-conceived, reactionary or politically motivated laws. According to Dr. James Renwick at the Judicial Conference of Australia, Sep. 05,

"Thus there is no equivalent in the Australian Constitution of the US 5th and 14th Amendments, which relevantly provide for the right not to be deprived of life, liberty or property by either State or Federal laws, without due process of law."

If Australia did have a constitutionally protected Bill of Rights, this would have wide ranging implications on assuring natural justice in the formation of new legislation. Any detained appellant, including students, before the judiciary [including students] would be able to contest a previous decision with reference to enshrined human rights, as well as the international covenants to which Australia is signatory. The higher courts would be able to challenge legislation in violation of fundamental rights.

Habeas Corpus in Australia

What are the implications of Australia's mandatory detention laws on the principle of English law developed in 1304, Habeas Corpus, which *"permits legal action, or writ, through which a person can seek relief from unlawful detention of himself or another person"? …"The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state*

action." [Wikipedia]. A Habeas corpus writ commands prison officials holding a prisoner to bring them to court and is regarded as the highest form of protection for an individual's freedom against actions by a government. It also allows a court to determine whether a prisoner has been imprisoned lawfully or not.

Was Habeas Corpus legislatively weakened by the Australian Parliament when it passed laws permitting detention of foreign nationals, including students, without charge, trial or conviction, and then exempted most decisions made under the Migration Act exempt from judicial review? Or is Habeas Corpus virtually invalid because there is no Australian Bill of Rights which enshrines it? And if so, do the Review Tribunals provide an adequate impartial review for detainees?

Student visa cancellation appellants must first appear in the Migration Review Tribunal, where the decision maker/arbiter makes both inquiries and decisions, in an inquisitorial capacity and forum based on statute law, whereas the purpose of Habeas Corpus is to operate in an adversarial system wherein the arbitrator/judge, and perhaps also jury, listens as an adjudicator before deciding, without being involved in the inquiry itself, while the two counsels elicit facts and debate how they apply to common law.

In the Tribunals, it would seem the decision maker/member/arbiter's role is simultaneously that of 'judge, jury and executioner' who functions both adversarially and inquisitorially, yet within an inquisitorial legal context. Can this ambiguous concentration of power in a single government appointed person really be conducive to facilitating natural justice and upholding long established principles of our law?

Although student (and all) appellants can proceed to higher courts, should they be fortunate to have sufficient financial and legal resources, a negative Tribunal decision could easily discourage further appeals, and can influence future court outcomes.

Bizarrely, Habeas Corpus was applied to some asylum seekers after their detention was deemed illegal only because they had agreed to be deported. After release, they were *"utterly dependent on charity, having no visa and no right to any entitlements whatsoever". [Human Rights Overboard, p.315].* They were not allowed to work and had to report daily to police despite having no money for transport. However*, "On 6 August 2004 the High Court ruled in two cases released from detention under habeas corpus could be kept in detention indefinitely and some were subsequently re-detained*."

In contrast, the right to Habeas Corpus is strong in the US, where it is written into the constitution. According to lawyer and Professor of Philosophy at Washington University, Larry May,

"In Australia the right at the turn of the last century was relatively important. But due to various acts of parliament it has been reduced in importance so that it's hardly ever used in Australia any more. Whereas in the US all of the important decisions made concerning prisoners have been done under that label." [Public Ethics Radio, ANU, 27.10.2008]

In the US, the landmark decision of "*Boumediene v. Bush, June 2008, was a writ of habeas corpus submission made in a civilian court of the United States on behalf of a prisoner held in military detention by the United States at the Guantanamo Bay detention camps.*

"The majority of judges found that the constitutionally guaranteed right of habeas corpus review applies to persons held in Guantanamo and to persons designated as enemy combatants on that territory"

"The Court also concluded that the detainees are not required to exhaust review procedures in the court of appeals before pursuing habeas corpus actions in the district court. In the majority ruling Justice Kennedy called the Combatant Status Review Tribunals "inadequate". He explained, "To hold that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this court, 'say what the law is'." [Wikipedia]

Regrettably, Australia does not meet these high standards of guaranteeing rights of review - mandatory detention is still legislated as unreviewable.

In his book "The Statue of Liberty", human rights QC Geoffrey Robertson also outlined 'A Charter for Australian Liberty' containing 28 Articles to redress the lack of human rights legislation. His Article 5 refers specifically to Habeas Corpus, which he says *"is such an important and historic right that it deserves to be explained and highlighted".*

"RIGHT TO BE SET AT LIBERTY
No one shall be detained or imprisoned other than in compliance with the law and every detained person shall have the right to bring an action for habeas corpus, namely to be produced speedily before a court and to be set free unless the detaining authority can prove its actions are lawful'"

Mandatory non-discretionary laws 'instruments for injustice'
Mandatory non-discretionary laws applying to foreigners and students here also exist within a parallel broader legal framework of sentencing for Australian citizens, as well as non-citizens, limiting even the judiciary, and also contributing to injustice.

In his article, *'Our mandatory law shame' [The Age, 2.12.2005]* http://www.theage.com.au/articles/2005/12/05/1133631200208.html, the chairman of the Judicial Conference of Australia, Justice Ronald Sackville, wrote about 'the sheer arbitrariness of mandatory penalties', and clearly indicated:

"Australian law retains mandatory minimum penalties for certain offences. As recently as 2001, the Commonwealth Parliament enacted legislation providing for mandatory minimum sentences for those convicted of so-called people-smuggling offences. The laws of some states and territories force courts to impose minimum sentences for certain kinds of offences or offenders.

"The effect of mandatory minimum sentencing laws is to deny judges or magistrates any discretion to take account of the particular circumstances of the offender, or the nature of

the particular offence, when determining the minimum sentence that should be imposed. Such laws are instruments of injustice…"

Mandatory non-discretionary laws of any sort, whether for citizens, permanent residents or unlawful non-citizens can deny full justice and may lead to arbitrary detention. This could be seen as a disturbing reflection of the Executive attempting to override the judiciary's long established principle of fairness before the law. This is not expected in democracies.

Discrimination in DIAC decisions

In the 2008 example of a German doctor, practising community medicine in rural Victoria, whose application for permanent residency was denied on the basis that his Downs Syndrome teenage son may be a burden on Australia's education, health and welfare systems, we can see the double standards dichotomy of legalized discrimination between citizens/permanent residents and visa holders, applied in all its illogical discriminatory force.

The Australian's article "*Democracy is disabled when Down and out is the law*" [4.11.2008] sums up non-discretionary decision making and Australia's two-tier legislation enshrining differing rights for different people.

"He [the doctor] has good English but can't understand the Government's reliance on the cost of Lukas's Down syndrome as the determining factor in his permanent residency application, saying he is quite prepared to take on that responsibility himself. … And when it comes to individual cases, the department isn't permitted to weigh the two sides. We can't put the benefit Moeller brings to his community against the possible costs Lukas may impose….. Doesn't Australia's Disability Discrimination Act, designed to ensure disabled people enjoy the same rights and opportunities as everyone else, stop this sort of decision? Well, no, because immigration is specifically precluded from the law." http://www.theaustralian.news.com.au/story/0,25197,24596076-23375,00.html

It is extraordinary that the Migration Act is exempt from the Disability Discrimination Act, that Parliament has endorsed double standards and differing rights for residents and citizens as opposed to non-residents by applying anti discrimination legislation in a discriminatory way.

The fact that on 26.11.2008 the Minister overturned the MRT's decision to uphold DIAC's decision to refuse the application, and granted the doctor and his family permanent residency, demonstrates how basically flawed and fundamentally inadequate the laws, visa review laws and processes are – and that without community lobbying and massive media attention the Minister would not have exercised his power.

Thousands of other visa refusal review applicants, including international students, have been denied a similar fair (DIAC and MRT) and reasonable (ministerial) outcome, simply due to their lack of prominence. The desperate attempt [3.12.2008] to gain government attention by a permanent resident from Azerbaijan, who tried to self immolate because his parents have waited 11 years on a 'no Medicare' BV for permanent residency, is a shocking example.

'Racist' policies

Commenting about residual effects of the White Australia Policy, which was the very first law enacted in the fledgling Australian Parliament of 1901, former Labor immigration minister Senator Nick Bolkus referred to DIAC (then DIMIA) in the Sydney Morning Herald (13.5.05),

"We've got to remember that this is a department that applied the White Australia test, it's a department that even after that test was abolished by the Whitlam government, found ways of enforcing discrimination in our migration program."

Indigenous Australian citizens also became specifically precluded from the law when the Federal Government suspended the Racial Discrimination Act in 2007 to push through government policy - the Northern Territory Intervention. The suspension of that Act is an implicit admission that the intervention - policy and practice – is racist. Certainly, ACT Chief Minister Jon Stanhope condemned it as such *[Canberra Times, 29.8.2007].*

Since the introduction of mandatory detention in 1992 for asylum seekers, and mandatory sentencing for Aborigines in the Northern Territory, an increasing level of underlying racism entered the public debate with the One Nation Party racist, anti-migrant/foreigner agenda, the Howard government's attempt to dilute the findings of the Wik case High Court ruling, and the NT intervention.

It is difficult not to assume that racism, fear, and the irrational belief that some human beings are entitled to greater human, civil and legal rights, respect, dignity and compassion than other human beings, could still exist in Australian policy formation and administration – including that of permitting immigration detention for international students.

GROUNDS FOR STUDENT VISA CANCELLATION - MIGRATION ACT 1958

Student Visa Conditions

Visa conditions are categorized as mandatory and discretionary. Under the Migration Act 1958, students' study visas are subject to mandatory cancellation if students allegedly breach mandatory conditions, especially the two main ones 8105 and 8202. However, the premises behind each of these conditions are not necessarily appropriate to the realities of student life here and need to be re-evaluated.

Student visas can be cancelled for a number of reasons, including failure to be enrolled in a course, working more than the permitted number of hours per week (which means Monday to Sunday according to the Full Federal Court in *Islam v Minister for Immigration* [2007] FCAFC 66), and the two circumstances commonly referred to as "condition 8202(3) grounds": failure to achieve satisfactory academic results and failure to attend 80% of scheduled contact hours

a) Mandatory conditions:
Condition 8105 – Students cannot work *'for more than 20 hour a week during any week when the [relevant institution] ... is in session'.* A week is now defined as starting on Monday and ending on Sunday.

- Students can lose their visa for working just 21 or 22 hours. The number of hours worked cannot be averaged over 2 weeks. One student had his visa cancelled for working 15 hours one week, and 25 hours the next.
- During summer vacation students may work unrestricted hours until their course commences again.
- Any *volunteer or unpaid work* counts towards the limit of 20 hours per week.

However, it appears that most overseas students from the Indian subcontinent need to work Their parents from second world countries, after paying for initial education, agent, surety, travel, health insurance and visa fees, are not wealthy enough to also pay for all subsequent education and living expenses which, after arrival in Australia, turn out to be much more expensive than expected. Twenty hours work may not provide sufficient income, to cover all costs, especially if the hourly rate of pay is very low, eg. $ 8 or less.

Domestic students have no restriction on work hours, yet may live at home, have lower living expenses, are entitled to public transport concessions, and pay lower education fees. Therefore under condition 8105 is discriminatory towards international students. Although they may need some restriction on work hours to focus on study demands in a foreign country, and to ensure bona fide intentions, nevertheless 8105 is in need compassionate and realistic overhaul.

8202 - Academic results and attendance (i) Before July 2007:
'Students must maintain satisfactory course requirements and attendance for each study period as required by their education provider.' (Schedule 8 of Migration Regulations.) Since June 2001 students were subject to mandatory visa cancellation for alleged inadequate 'course requirements' after the provider issues a Section 20 non-compliance notice.

International students must now comply with 60% attendance. (This was lowered from 80% in 2005). Via PRISMS, Provider Registration International Student Management System, education providers are required to report fortnightly to DIMIA on their students': (i) performance, (ii) non-attendance, and (iii) any change to a student's enrolment, including duration.

This version of ***Condition 8202*** stated:

(1) The holder (other than the holder of a Subclass 560 (Student) visa who is an AusAID student or the holder of a Subclass 576 (AusAID or Defence Sector) visa) must meet the requirements of subclauses (2) and (3).

(2) A holder meets the requirements of this subclause if:
(a) the holder is enrolled in a registered course; or
(b) in the case of the holder of a Subclass 560 or 571 (Schools Sector) visa who is a secondary

exchange student - the holder is enrolled in a full-time course of study or training.

(3) A holder meets the requirements of this subclause if:
(a) in the case of a holder whose education provider keeps attendance records - the Minister is satisfied that the holder attends for at least 80% of the contact hours scheduled:
(i) for a course that runs for less than a semester - for the course; or
(ii) for a course that runs for at least a semester - for each term and semester of the course; and
(b) in any case - the holder achieves an academic result that is certified by the education provider to be at least satisfactory:
(i) for a course that runs for less than a semester - for the course; or
(ii) for a course that runs for at least a semester - for each term or semester (whichever is shorter) of the course
(4) In the case of the holder of a Subclass 560 visa who is an AusAID student or the holder of a Subclass 576 (AusAID or Defence Sector) visa - the holder is enrolled in a full-time course of study or training.

If a student fails to satisfy course requirements relating to attendance or academic performance, automatic student visa cancellation can occur without the knowledge of the student if he/she has forgotten to keep their residential address up to date, or is homeless. Such cancellations may not be revoked.

(ii) Changes to 8202 (3) Since July 2007:

'STUDENT VISA CANCELLATIONS - LAWFUL OR UNLAWFUL?

'Changes to the law dealing with cancellation of student visas which came into effect on 1 July 2007 have created a great deal of confusion and anxiety amongst the overseas student population in Australia. Meanwhile, the Federal Court has declared many, if not all, cancellations under the previous law to be invalid.' [Migration agent and lawyer Mr. Rory Hudson]

'On 20 December 2007, the Full Federal Court delivered judgment in the case of Dai v Minister for Immigration [2007] FCAFC 199. The case involved a cancellation on the "failure to achieve satisfactory academic results" ground. The result of this case is that any cancellation based on this ground before 1 July 2007 is invalid. Although the Court did not look at the 80% attendance requirement, similar reasoning could be applied. That would mean that hundreds if not thousands of visas were wrongly cancelled for breach of 8202(3).

'Condition 8202(3) was completely rewritten in July. A student is now in breach of the condition if either of the following applies:

(a) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course progress for:
  (i) section 19 of the Education Services for Overseas Students Act 2000; and
  (ii) standard 10 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007;

Or

(b) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course attendance for:
   (i) section 19 of the Education Services for Overseas Students Act 2000; and
   (ii) standard 11 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.

Main responsibility for student visa cancellation for breach of academic and attendance conditions now lies with education providers

'The purpose of the change was to transfer responsibility for assessing a student's compliance from the Department of Immigration to the education provider. The Minister, through a delegated Departmental officer, still formally cancels the visa, but the Minister's power to do so is entirely dependent on the existence of a certificate duly issued by the education provider. If such a certificate is in existence, then the Minister or delegate can only decide not to cancel if there exist "exceptional circumstances beyond the visa holder's control".

'Conversely, if there is no certificate, or no valid certificate, the Minister has no power to cancel the visa. Before an education provider can issue a certificate a very precise set of procedures must be followed. Failure to follow those procedures almost certainly means any certificate issued by the education provider is invalid. [Mr. X's visa cancellation was thus also invalid – Appendix]

'The procedures are in a document called the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (also known as the National Code 2007). As mentioned in condition 8202(3), standard 10 deals with course progress and standard 11 deals with attendance. The important point is that, before any certificate can be issued the education provider must notify the student, in writing, of its intention to report him or her.

'The written notice must also inform the student that he or she is able to access a complaints and appeals process, and that he or she has 20 working days in which to do so. A working day is any day which is not a Saturday, Sunday or public holiday, so 20 working days is a minimum of four weeks.

'The basic requirements of this complaints and appeals process are set out in standard 8 of the National Code. There must be arrangements in place for both an internal and an external review. There must be a written record kept of the complaint and a written statement of the outcome and details of the reasons for the outcome.

'Once a certificate is issued, the provider must send the student a written notice as required by section 20 of the Education Services for Overseas Students Act 2000 . The student then has 28 days from the date of the notice to go in person to the Department of Immigration, failing which the visa is automatically cancelled. Once again, however, the validity of the "section 20 notice" will

depend on whether or not the student has breached the relevant condition, which in turn depends on whether the education provider has followed the correct procedures before issuing the certificate.'[Mr. Rory Hudson]

According to immigration lawyer in Sydney, Mr. Nigel Dobbie [see Uddin case, p.86] the total power providers now have to determine the fate of students is disgraceful, because there is an obvious conflict of interest that is not allowed in any other industry. In claims of maladministration by students, providers would have a vested interest to narrow the parameters of any internal or external review process.

Most university staff members also probably do not understand the complex problems facing students, nor the real implications of visa breaches leading to cancellation for students, nor students' real fears regarding potential visa loss. Certainly, few people in educational bureaucracies realize that students can be incarcerated after cancellation, and there seems to be insufficient linking between the Federal Education and Immigration Ministries.

Other mandatory student visa conditions

8501 – students must maintain adequate health insurance cover with Overseas Student Health Cover (OSHC).

8156 – Students must continue to satisfy the requirements for grant of their student visa. ie. the main course of study must continue to be a course in the education sector that matches their student visa, and students must continue to have sufficient financial capacity to support their and stay in Australia

8533 – Students ***must*** notify their education provider of: a) their residential address in Australia within 7 days of arriving in Australia; b) any change in residential address within 7 days of the change. c) a change of education provider within 7 days of receiving the electronic Confirmation of Enrolment certificate or evidence of enrolment.

b) Discretionary Conditions - These are conditions relating to each subclass that may be attached to a Student visa.

8101: Until April 2008, when the Minister for Immigration Senator Evans announced the scrapping of 8101 **-** students arrived here without permission to work, and had to apply for permission to work on arrival, which created red tape, extra costs and delays for students as they were not able to apply for part-time work until after their courses started. All detained students referred to in this submission were subject to 8101.

8203: Students must not change course, or thesis or research topic, unless the department has granted approval. (for visa subclasses 573 574 576) – this meant students had to remain in sub-standard courses for one year before being allowed to change course. The current period is 6 months.

8204: Students must not undertake or change a course, or a thesis or research topic for a: graduate certificate graduate diploma masters degree doctorate or a bridging course required as a prerequisite to a course of study or research for a master degree or a doctorate unless the department has granted approval (for visa subclasses 570 571 572 575)

8303: Students must not become involved in any activities that are disruptive to, or in violence threaten harm to, the Australian community or a group within the Australian community, ie. They are subject to prohibition from participating in political activities such as strikes **[**http://www.immi.gov.au/students/visa-conditions-students.htm]

Section 116 (1)(fa)(ii) of the Act permits cancellation of the student visa in the situation where a student has not actually breached a visa condition, but there is evidence which suggests that he/she is likely to do so. For example, if DIMIA found letters from the student applying for full-time jobs**.**
In **116**(1)(b) and section 116(3) and Regulation 2.43(2)(b), the student visa may be cancelled as "being student breach condition 8104, 8105 or 820**2"**.

Late tuition fee payments - although not a condition, in practice, visas have also been cancelled after an education provider has reported a student to DIMIA simply because the student is late in paying fees, and as a result is apprehended, detained and then deported - at least one Victorian university has done this.

Resitting exams – It appears overseas students cannot resit failed exams unless they pay for the subject again, at considerable expense. At a prominent university with a largely overseas student enrolment, this decision contributed to the tragic suicide of an Indian girl. [See p 74]

Stringent student visa conditions discriminatory
The stringent visa conditions for students are discriminatory in comparison to the rights accorded to local students, who can negotiate with education providers on compassionate grounds about study, performance and other personal problems, and who know where to go for help.

However, for the seemingly minor actions that constitute a breach of the student visa, a draconian punishment is meted out - the visa is cancelled, the student is immediately relegated to “unlawful non-citizen” status, must obtain a bridging visa and leave the country within 28 days - unless he/she appeals against the decision, a process taking up to 6 months and prohibits study or work.

Furthermore, because they now do not have a student visa, they are no longer considered to be a student, despite having paid fees in advance, having study materials and equipment in their possession, and their parents owing vast sums of money for their Australian education.

VISA OVERSTAYERS

Students can unintentionally, or feel forced to, become visa overstayers
Students with visa cancellation who do not leave the country whose temporary when their BVE has expired, or who do not report to DIAC, and become known as 'visa overstayers'. However they may unknowingly become enter this category for various reasons including ignorance, non-receipt of cancellation notice, wrong or inadequate legal advice..

Others may intentionally choose not to return home after visa cancellation Inadequate or unaffordable legal advice, intimidating treatment by immigration may lead to panic because they intensely fear the serious repercussions for their family so – huge debt, shame, distress. Therefore they feel desperate and believe there is no choice but to remain here, find work and hide from immigration. (See example of Mr. X, p 113)

Letter (unsolicited) from unknown Student Visa Overstayer

"Hi, Thanks for writing and focusing on Southeast Asian students being demolished and deprived by blood sucker Australian overseas student policy and system. (http://www.aph.gov.au/senate/committee/legcon_ctte/Migration/submissions/sub220.pdf)
The whole system needs to be reorganized according to human rights. I am a victim of the selfish and unhumane Aus education system. I never had a clue what is OVERSTAYER or what are the consequences of being OVERSTAYER.
Before my VISA expired I went to a migration lawyer to discuss about my situation paying 200A$ consultation fee. They didn't show me the right path or a good solution so I don't need to be unlawful. It's been 4 years passed away from my life without valid visa. This whole faulty system (Immigration and education) destroyed my career and life.

Everyday I am passing is a horrible nightmare for me. I can't take it anymore. I am not a terrorist, nor a criminal. Just my student visa has been expired because of inappropriate conduct done by UWS [university of Western Sydney] *on me.*

I personally feel human rights are absolutely neglected by Aus government compared to animal rights in Australia. No one talks about mentally, socially depressed unlawful and refugee people. They will work hard paying tax to raise Aus economy more strong. They spent lot of money, which made Aus economy a lot stronger than 4 years before. I had enough punishment in Australia without being given valid work permit and social access.

This Aus Immigration makes rules so horrible that these innocent OVER STAYER students will die in suffocation in Aus. One year passed I had relationship and got married to an Aus citizen (overseas origin) of hoping get back to normal life. She is the one feeding me and looking after me, willing to spend money to fix up my papers. But this immigration they make rules so tough that my hope of getting normal life become an illusion.
In this situation I urge u please raise your voice and sharpen your pen on be half of us. You will be blessed for your whole life and after life. Save us from this uncertain destiny.

Produced by [Name Withheld] Cursed by Aus immigration and education system"

This angry former student exemplifies the despair caused by international students' lack of knowledge, understanding and pervading ignorance of the

complexity of Australian laws and migration regulations. He obviously believed that his former education provider had not fulfilled its obligations; that the visa rules are extreme; that his migration agent gave him wrong advice to prevent becoming unlawful; thus forcing him into becoming a visa overstayer, though "… *not a terrorist, nor a criminal.*" In fact no international student has ever been proven to be a threat or a terrorist.

Monitoring of "Overstayers And People In Breach Of Visa Conditions"
From the information below described in **DIMIA FACT SHEET 86** on the DIMIA website, it appears that students are meticulously monitored under a range of surveillance tactics within a hostile set of guidelines.

"The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) conducts widespread field operations to locate foreign nationals who have breached their visa conditions, or overstayed their visas and are unlawfully in Australia. This reflects the Australian Government's commitment to protecting the integrity of Australia's borders."

"People who become overstayers arrived in Australia with valid temporary visas, mainly as tourists, but also as working holiday makers, students and temporary residents.

"The department uses several sources to locate overstayers and people breaching visa conditions including referrals from employers, educational institutions, departmental investigations, community information, and other government agencies.

"Foreign nationals who are working illegally are taking jobs away from unemployed Australian citizens and residents.

"On 30 November 2000, the first phase of a government initiative to stop illegal workers from gaining access to the Australian labour market was launched. Measures in this phase include a telephone information line, a fax back work rights checking facility for employers and labour suppliers and a new information kit, Don't Give A Job To An Illegal Worker.

"The law requires that people who have overstayed their visa or had their visa cancelled because they have breached their visa conditions must be detained and removed as soon as practicable.

"Overstayers can be given temporary lawful status through the grant of a bridging visa. This allows them to make arrangements for their departure from Australia, or to seek a further visa, if eligible.

"During the year to 30 June 2004, 12 689 people who were either unlawful non-citizens or had breached their visa conditions were removed.

"Persons who overstay their visa by more than 28 days become subject to an exclusion period that prevents them from being granted a temporary visa to travel to Australia for three years. This exclusion period applies whether they leave voluntarily or not.

"Even after the exclusion period has finished, they cannot be granted a visa unless they repay any debt they owe to the Commonwealth, including for costs of removal and detention, or they make satisfactory arrangements to repay their debt". The exclusion period does not prevent a person from applying for another visa."

"In the period 1 July 2003 - 30 June 2004 a total of 3 944 443 temporary visa holders entered Australia. The estimated 50 900 overstayers in the community at 30 June 2004 comprised some 43 620 visitors, 3100 students, 2470 temporary residents and 1760 in other categories".

Thus visa overstayers comprised only 1.29% of temporary visa holders in 2003-04, and only 6% of these comprised students. Therefore student visa overstayers comprised a miniscule 0.078% of all temporary visa holders for that year, yet massive government resources are deployed in search of them.

It is therefore hard to comprehend the notion that students with visa cancellations could pose a threat to 'the integrity Australia's borders', which is simply not borne by facts. The extraordinary assertion that student visa overstayers could be taking away the jobs of Australian nationals is ludicrous. This attitude is reminiscent of old White Australia Policy racist beliefs that non-British foreigners / migrants steal the jobs of Australians, whereas in reality the 50% of the population were either born here or are children of migrants, and are active contributors to Australia's prosperity and success.

The truth is that international students are major active contributors to Australia's prosperity and gigantic education industry.

OVERVIEW OF MANDATORY STUDENT VISA CANCELLATION AND STUDENT DETENTION

In the context of punitive hardline immigration policies and practices, and because Australia has no constitutional Bill of Rights against which policies can be ethically measured, it appears that the legitimate educational purposes and interests of some international have students have not been able to be protected.

While the current legislation was designed to guard against a minority of non-genuine students from abusing Australia's immigration laws, it appears that a monstrous, inequitable and insufficiently monitored system has been created for many bona fide overseas students and their families.

A host of educational, financial and social problems facing students here after arrival can easily lead to mandatory visa cancellation. Students are required to leave the country within 28 days. Most go home reluctantly, or are deported from an Immigration Detention Centre. Thus denied the right to complete their education here, return/deportation can have massive negative ramifications for both the students and their extended family - a completely wasted economic and intellectual investment, huge debt, humiliation, a ruined reputation, family and social stigmatisation, and therefore tremendous mental and emotional distress.

Difficult to get student visa cancellation revoked
For those students who believe their visas were unjustly subject to mandatory cancellation, and who are determined to find a way to finish their studies, challenging deportation/mandatory departure becomes a total nightmare.

It is extremely difficult to get a student visa back once cancelled. Only about 5-10% of students seem to succeed in getting a cancelled visa reinstated in the Migration Review Tribunal, after waiting up to 4 months or more for a hearing. An experienced migration agent has described this as "disgraceful'.

Because neither the conditions of the Migration Act pertaining to students, nor their only avenue of administrative review, the Migration Review Tribunal, are applied without consideration of any mitigating circumstances on compassionate grounds, this implies that overseas students are not treated equally before the law, as they do not have the same rights as Australian student residents and citizens.

Lacking compassion, fairness and flexibility, these harsh immigration laws and their application to bona fide overseas students are also highly inequitable from the ‘user-pays’, business perspective, given their contribution to creating and sustaining Australia’s huge education export industry. It is not surprising some of them feel exploited.

Devastating repercussions
An Orwellian cocktail mix of the Migration Act’s unforgiving laws for students, DIMIA’s well-established wrong practices and rigid interpretation of the Act, an unregulated industry, plus AEI Australian Education International’s failure to ensure that tertiary institutions fulfilled certain obligations in providing adequate support services for international students, have left many shattered, wishing they had never come here, and feeling that the Australian Government has abrogated a fundamental duty of care.

Tragically, too many non-detained students have suicided in Melbourne – thirteen in less than one year because of trauma, extreme despair and hopelessness concerning their situation here or cancelled visa. [See p.49] Furthermore, at least one student took his life after returning to India.

No follow up studies on effects of mandatory visa cancellation
What has happened to the lives of tens of thousands of other students from second world countries, who were forced to return home in the last few years, because DIMIA officers cancelled their visa wrongly, or without taking into account any mitigating circumstances?

How have the lives of approximately 3,000 detained students been damaged after deportation back to their countries? Are there any Government studies that have determined and examined the consequences of deportation for foreign students who, unlike other visa holders, were specifically lured here by attractive education marketing strategies and campaigns, endorsed by the Executive?

Severe punishment

The suffering of the relatively few long-term detained students who fight for their right to complete their course was an extreme punishment for failing, perhaps, one subject too many, or working just one hour more than the permitted twenty hours. A speeding driver gets a fine, yet he could have killed someone. However, an overseas student is punished and humiliated through imprisonment for a seemingly minor non-offence, even though his parents have made great sacrifices and contributed high fees to the Australian tertiary education system. These parents had entrusted their children into the care of the Australian Government, yet its cruel policy allows even Secondary international students to be detained.

Thus students with cancelled visas ending up in detention feel they have been severely punished, for which they are held strictly accountable without discretion, yet education providers and DIAC/DIMIA have contravened fundamental legal requirements, but have not been subject to any similar fully legislated accountability and repercussions. Neither has the Australian legislation or government. These students felt very frustrated, angry and cheated.

Immigration detention for breach of student visa would seem to contravene an entrenched principle of the Australian judicial system - that of proportionality between sentence and offence. *(Veen v The Queen (No.2) (1988) 164 CLR 465, Mason CJ, Brennan, Dawson and Toohey JJ, 472) [HREOC website].* Yet the law permits students to be detained without either charge, trial or sentence, and without judicial discretion to determine that the penalty of detention is unquestionably and excessively disproportionate to the administrative breach of breaking a visa condition.

No justification in maintaining student detention policy

Detained students have been denied natural justice. They ethically deserve a superior, equitable and integrated policy in exchange for their significant financial contribution to Australia's multi-billion dollar export industry and subsidy of universities.

The only moral option to cease this nexus of iniquity is for the Australian government to abolish the detention international students in IDCs or in IRHs. It is the intention of this submission to show that there is no benefit or humane justification in maintaining this irrational policy, to either Australia, its international standing, its people, or to the hundreds of thousands of international students who study here, including their financial backers – their parents.

AUSTRALIA'S EDUCATION INDUSTRY

Multi billion dollar export industry

The majority of international students coming to Australia apparently have positive and worthwhile experiences while studying and living here. However, a significantly large number may undergo many hardships and 'fall through the cracks', especially those students from south east Asia. This industry, worth $15 billion dollars annually, is a complex continuously expanding juggernaut in which education and business are intricately interwoven.

The very fact that education, Australia's third largest export after iron ore and coal, education, is a massive service industry meant that from its inception and throughout its development, more attention should have been given to the human realities, factors and costs. These include Australia's obligations under various international human rights covenants to which it is signatory.

AEI - Australian Education International

Australian Education International is *'the international arm of the Australian Government's Department of Education, Employment and Workplace Relations (DEEWR), and works with sector representatives, other government agencies, and states and territories in pursuit of a joint approach to international education.'*

Through AEI, *'The Australian Government is committed to growing a sustainable future for Australia's international education and training industry.The internationalisation of Australia's education and training system will help place Australia firmly in the emerging global skills and knowledge economy – a development essential for the continuing well-being and prosperity of all Australians.' [AEI website]*

Furthermore, although AEI is responsible for promoting education exports, in 2008 it informed Professor Chris Nyland, International Business at Monash University that AEI *'will not finance research on the welfare of international students'* [Indus Age, June 2008]. Professor Nyland co-authored a study, *'International Student-Workers: A new Vulnerable Workforce'*, showing that students form a significant part of the workforce who face complex issues, *'but ignored by trade unions and politicians.'*

Although in 2005 I wrote twice to the Australian Vice Chancellors Committee Board, AVCC, and to all 38 Vice Chancellors about the detention of students, just one of the only three replies I received came directly from a Vice Chancellor.

IDP

IDP Education Australia Pty Ltd is a 'non-profit' private consortium of 38 Australian universities the TAFE system. Half is owned by SEEK Ltd, 'Australia's leading online employment and training company.'

'It is a global company offering student placement and English language testing services….Using its network of over 75 student offices in 29 countries, IDP places more international students into Australian educational institutions than any other organization. It places students into all sectors of the Australian

education system, including higher education, vocational education and training (VET), English language intensive courses for overseas students (ELICOS) and schools.

'Through its subsidiary IELTS Australia Pty Ltd, IDP is a partner in IELTS, one of the world's leading English language proficiency tests, which is delivered at over 450 test locations in 121 countries. IDP's fellow IELTS partners are the British Council and Cambridge University.' [IDP website]

IDP and AEI are under financial pressure to recruit overseas students because of reduced tertiary education funding.

The Senate's Inquiry into the Migration Act reported in CH.10.7 that:

"Some submissions pointed out the importance of overseas students and the 'education export industry' to Australia.[1034] Similarly, the ESOS Evaluation Report … pointed to recent studies which:

> *…estimate that incoming international students spent $5.2 billion in 2002 on tuition fees, goods and services, and that the economic activity this generated had an employment impact of about 42,650 jobs.[1035]"*

In this consumerization of Australian education, in which consumer protection is very limited, the view that Australian education 'is just a business' is prevalent among many students.

A student appearing on SBS TV's "Insight" [21.7.2009] commented:
"I think my perspective is that when you are in the contemporary Australian context, when you have, in a way we have in Australia, co-modified education for something to sell in the export market, it's driven then by a business regime. You know, it's - education has become lucrative business. How the business is promoting, you know, their product that they are selling is the question. Now, obviously, it is being promoted as a pathway to permanent residency and for that we need a very strong regulatory regime. I think that's one of the things that is important to think about."

Since students have been encouraged to study in Australia by extensive and concentrated government sponsored marketing, Australia has a moral obligation to protect their interests and regularly review the entire industry. Therefore the Australian government has a responsibility to ensure that appropriate legislation is enacted and legally enforced. Students must be thoroughly informed of all contingencies awaiting them before committing to spend tens of thousands of dollars on their Australian education.

Student 'consumers' should no longer be tempted to feel they are treated like commodities or 'cash cows' in an expanding mega- income generating business. Quality assurance legislation must be enacted and implemented.

Australian Universities dependent on foreign student income

Australian universities now also now depend on foreign student fee income for survival to augment by 20% annually reduced tertiary funding. Since the Howard government's slashing of funding to universities in 1997, more money is apparently allocated federally to private schools than to universities. This underfunding has driven the massive industry growth.

Professor Simon Marginson at the Centre for the Study of Higher Education at the University of Melbourne encapsulated the resulting dilemmas in his article, *'The clever country slips away' [The Age, 4.5.2009]:*

"…The real story is the education export industry and what drives it. This is a key weakness in policy that began in the Hawke and Keating years, worsened under Howard and has now trapped the Rudd Government.

"Since the late 1980s, when there were 25,000 international students, Australian education exports have grown by leaps and bounds. Last year there were 543,898 international students, half in higher education. They generated $15.5 billion in export earnings through tuition fees, accommodation, food, living expenses and entertainment.

"Education earns more than wheat, beef, wool, gold, tourism and other staples. Therein lies the problem.

"What has driven the remarkable growth of education exports is not the fabulous quality of Australian education but its under-funding, the very under-funding that Kevin Rudd has promised to correct.

"Australia was the only OECD country to reduce total public spending on higher education in 1995-2005, while student numbers grew by 30 per cent. Rudd used these facts repeatedly in the 2007 election campaign.

In universities, only about 70 per cent of the real costs of government-supported research projects are funded. Teaching is also funded below real cost levels. And the Government's subsidies for teaching are not fully indexed for cost increases.

…. universities lose money on every local student and on most of their research,. each year the gap between funding and costs gets wider, … each year the universities need more non-government revenues to fill the gap.

The quickest solution is to increase the number of international students. Applications for student visas each year always exceed the places available. The constraint on numbers is not demand but the willingness of institutions to supply places and the number of visas issued by government.

Under-funding and good business plans have created a huge export industry. The price is the decline in the average student-staff ratio, from 15 to 20, and middling research capacity… Australia has no universities in the world's top 100. This is a serious problem.

But we are the only nation that uses leading research universities to each enrol more than 10,000 fee-paying international students, as happens at Melbourne, Monash and Sydney, to shore up the balance of payments.

And while we are good at the standardised mass training of international business studies students, we are less good at attracting the best and brightest international doctoral researchers, who are after scholarships, not fee-based places.

… The Bradley and Cutler reviews proposed full research funding, a 10 per cent rise in the funding of student places, near full indexation and international student scholarships. But if the Government raises funding to internationally competitive levels, changing the "incentive structure", will that cut education exports?

Treasury is less interested in the education revolution than in growing exports. The problem will get worse. And without a public re-investment in education, export quality and reputation (which depends partly on research performance) will eventually erode.

But the solution requires smart policy and a concentrated political will. One thing is certain. Unless the problem is tackled, there can be no education revolution." http://www.theage.com.au/opinion/the-clever-country-slips-away-20090503-are5.html

The unregulated and out of control international education industry has deprived Australian students of sufficient and affordable places in tertiary institutions. Inadequate funding for tertiary education by the Federal Government, and high fees for Australian students, are set to continue. The Australian reported *'Richard Larkins' parting shot as Monash University vice-chancellor'*, before stepping down as VC in a farewell media interview *[01 July 2009]*

' … he believes that if the government won't pay for quality then the next best option is for students to pay while equity is protected by fee remissions for the disadvantaged.

"'I think by international standards the private contribution by Australian students is already high and that is why I say that given our current environment it would be better for the public funding to increase ... but it just seems unlikely, even in the out years, that the government will be able to do that or wish to do that." Larkins says.

"…But he warns that even after the government's staged funding boost for universities, the sector will continue to be reliant on cross-subsidies from international student fees.

"What the Deputy Prime Minister in the budget outlines is the arrest of a progressive decline in funding, which has occurred over the last dozen years or so, rather than a substantial increase," he says. "The universities are still prevented from changing the fees they charge to Australian undergraduate students, so the only possibility of really increasing income per student is through the international students providing some cross-subsidies or through increased philanthropy." That means the sector will continue to be vulnerable to any big swings in international student demand, whether caused by currency gyrations, global health scares or, more recently, bad publicity over attacks on Indian students. "I think it is very hard to manage a risk when the whole system is dependent on income from that source and there are factors outside our control."
'Larkins warns that in the long term Australia's economic prosperity will be put at risk if we don't begin to match the investment in education and research happening to the north of us in Asia. But he says it's a message that is still hard to get through in Australia, which he says has yet to fully shake the complacency nurtured by mineral wealth and the tariff barriers of the past.
http://www.theaustralian.news.com.au/story/0,25197,25714090-12149,00.html

Increasing numbers of overseas students

Australia has the highest proportion of overseas students of any country in the OECD. The number of overseas students regularly recruited by Australian education tertiary institutions to study here has been increasing for many years.

Of 322,776 international students enrolled during 2004, 151,798 were higher education students; 77% were from Asia; 68,857 came from Peoples' Republic of China; and 20,749 from India, an increase of 44.6% over 2003. (AEI Industry Seminars, p177). Between 1 July 2004 and 30 April 2005, 145,235 study visas were granted, both off and onshore combined.
(http://www.immi.gov.au/study/statistics/April_2005_combined_onshore_&_offshore_grants.pdf

A record number of more than 278,000 student visas were granted in the 2007-08 program year. This represents more than 21 per cent growth in the student visa program in one year. The number from India has more than doubled in 4 years. *"As many as 47,639 student visas were granted to Indian nationals during 2007-08". [Bharat Times, Sep. 2008]*
Now in 2009, over 500,000 international students study here, 93,000 from India, over half of whom live in Melbourne.

Former Prime Minister Howard was quoted during his visit to India in 2007:
"The deep association between (India and Australia), the growing commercial links, the greatly enhanced political dialogue, the extraordinary growth of the Indian economy - all of these thing bode well for an increase in the flow of students." www.news.com.au

Given this anticipated further increased numbers of Indian students, the Australian government nevertheless allowed an unregulated industry to continue without sufficient protection for those students. As well Australia further risked its global reputation with an unethical intimidating visa policy that permits detaining students and violates basic international human rights. This punitive policy, totally disproportionate to any act of visa infringement, could be construed as either a terrible mistake of ignorance or, more unfortunately, as an exploitation of, and callous disregard for, the rights of student foreign nationals.

Critique of Australia's international education industry

Ms. Veronica Meneses, International Student Officer at Newcastle University, and advocate for detained students, wrote in The Australian's Higher Education blog: *'Foreign students bring in bacon' - Are international students "cash cows" for universities? [September 27, 2007]*
http://www.theaustralian.news.com.au/story/0,25197,22302168-12149,00.html

'International students are not only a source of revenue for Australian universities but they are also are a source of revenue for real estate agencies and private landlords. They are cheaper in the labour force, targets of robbery and racial discrimination.

'Unfortunately, the Australian international education industry has moved forward a long way beginning from the Colombo Plan of the 1950s. The so called internationalization of the Australian education system goes hand in hand with an agenda of commercialization by both government and institutions, which has made Australia one of the most preferred options of thousands of international students today.

'As stated by Morton and McKenzie, "overseas student numbers have grown by more than 40 per cent this decade to more than 350,000" and there has also been an enormous increase in the number of private colleges teaching business and English language courses.

'Shamefully the internationalization of the Australian education has been carrying on the base of revenue and profit rather than being an exchange of knowledge and international support and cooperation. Because the internationalization of the Australian education has been driven by commercial imperatives, it has often neglected the larger consideration of equity and equality as well as ignoring international and moral obligations and international best practices standard. Consequently the commercialization of the Australian education has allowed practices within the international education industry that violate and contradict fundamental universal human rights.

'The exaggerated increases on international tuition fees, the raids on international students' homes without a search warrant (Michaela Rost, 'Senate Inquiry into the Migration Act 1958: The Detention of International Students' 15.8.2005) the rate of international students in Australian detention centres, 2,310 former student visa holders have been detained from 1 January 2001 to 22 July 2005, (Michaela Rost, 2005) and racial attacks are some of the examples that reflect upon discriminatory and exploitative practices that are completely detached from existing international legally binding agreements, conventions, codes and declaratory statements as reflected in the Universal Declaration of Human Rights, the United Nations International Covenant on Economic, Social and Cultural Rights, and in declarations, recommendations, conventions, and codes of best practices from UNESCO and the International Labour Organization.

'The 350,000 international students who pursue studies in Australia and who contribute 10 billion dollars every year to the Australian economy have not received the expected educational service for the amount that they are charged. Certainly, we urgently need a complete review of the international education industry and hopefully a completely new direction be given to the international education system, a direction that reflects on international and moral obligations and international best practices standards.'

PREPARING FOR STUDY IN AUSTRALIA

Huge financial and educational commitment

Undertaking overseas study in Australia requires a huge commitment on many levels – educational, financial and social – the significance of which cannot be over-estimated. International students, especially from south east Asia, leave behind them close family and community networks to embark on a courageous journey into an unknown foreign culture and landscape. Some are already qualified professionals in their home countries seeking to expand their qualifications and horizons.

Considerable expenses are incurred initially, specifically for – fees for recruitment agent; visa costs; bank surety of $10,000; travel and airfares; education fees at least one semester in advance; education loan repayments; education equipment and books; accommodation fees; food; transport; other living costs; etc. Australian visa application documents suggest $12,000 is sufficient for living expenses in Australia. However, a prominent Melbourne migration and education

advises prospective students' parents in India claims that $65,000 is a realistic estimate of the first year costs.

In order to finance expensive study in Australia, parents and students with medium to lower economic status in 'second world' countries such as the Indian subcontinent make huge financial sacrifices. They may take high interest loans, mortgaging the family home or any other property, or using superannuation funds or the daughter's dowry and place great expectations on all levels on their child. If the student is the eldest male, extra pressure will be put on him to perform.

A 2 year Vocational Education Training Course in a TAFE or private college can cost $18,000. One student from Bangladesh studied 3 years for a B. Science in WA, and his father paid a total of more than $100,000 dollars for his education. In one Melbourne TAFE overseas students' fees are eight times those of local students. Furthermore, the exchange rate in those developing countries is about 35-50 to one Australian dollar, making the parents' sacrifices even more poignant

CRICOS
All courses and education providers must be registered with the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

MODL – Migration Occupation Demand Level
Students may choose vocational training (VET) courses on the basis of the current MODL list, or those occupations with the greatest demand for skilled labour employment opportunities. The government gives preference to students applying for these courses, which also contribute to more points required to gain permanent residency, PR. Once students have completed a Certificate III in occupations like cookery, hairdressing or welfare they acquire 60 points. After skills assessment and work experience, if they acquire sufficient, or 120 points, they can apply for permanent residence.

Thus education, migration and the education industry are interlinked - the Australian government promotes migration through skills education for overseas students, thereby maintaining the profitable education export industry.

Recruitment marketing campaigns
IDP and AEI conduct regular massive international marketing advertising and recruitment campaigns, overseas held in Europe and throughout Southeast Asian countries and China to promote Australian education at large impressive education Expos. In addition private colleges also promote their education services. All recruit through the medium of education agents.

Some education expos in Asia are two week long travelling events. For example, in February, the IDP officially named *"India Roadshow",* the *Australian Education Interview Program,* journeyed through eight major large Indian cities, all current sources of students.

Students insufficiently informed about repercussions of breaching visa
However, in these huge offshore marketing campaigns, prospective students are never told by education recruitment agents that students may be 'detained' on

cancellation of visa, and what 'detained' really means - that detention behind six metre fences has been the cruel consequence of breaching their visas, for what are relatively minor non-criminal, non-offences.

Students given false impression of employment availabilities in Australia
Education agents may paint a glorious picture of job opportunities in Australia. This is attractive for those students who already have degrees and professional training, as well as for the majority of Southeast Asian students who have to work here to manage all living as well as educational expenses. However, in reality most students find it difficult to find employment in their careers and must make do with low paid manual or service jobs. Students are also given false information that it is easy to find work while studying.

Unregulated education agents
"There is certainly a big problem here and there is certainly an urgent need to regulate the activities of these education agents." [Mr Rory Hudson, migration agent and lawyer.]

It is unlikely that education recruitment agents even know about detention. Such information would not enhance a university's marketing strategy. This means that agents are unlikely to be adequately and correctly informing prospective students about the complexities and implications of Australian immigration laws pertaining to visas and extensions, or to appeals processes. In fact it is unlikely that even the staff and management of most education providers, academics or education bureaucrats know what visa cancellation appeals processes and costs entail.

For example, at the Harmony Walk in July, initiated by the Victorian Government to celebrate multiculturalism and condemn racism, I met 2 Indian students who had finished their degrees. Neither in India before they came to Australia, nor in the 3 years they studied here had they ever been told by any education agents, immigration officials or their education provider:
1. What procedures to follow if their visa was cancelled, other than to go to immigration, or
2. What the consequences of visa cancellation are, or
3. How to appeal, or.
4. About potential immigration detention for students.
They were only told to contact their immigration agent. This is typical of the information students provide.

On 13.8.2003, I wrote to the Australian High Commission in Dehli regarding the detention of Mr. B (p 115) and expressed concerns about education agents:

"According to Mr. W, many Indian agents involved in the lucrative business of recruiting students to study in Australian universities are not endorsed by any Australian regulatory body, and thus not accountable. This means that they may not be adequately and correctly informing prospective students about the complexities and implications of Australian immigration laws pertaining to visas, extensions, etc. Students may consequently be lured to Australia under misleading information.

Do the immigration papers signed by Indian students clearly state all the laws regarding detention and deportation for working after a visa has expired, and payment of about $200 per day of detention? The Australian Government would seem to have a duty of care to ensure that overseas students are thoroughly informed about all details of immigration/visa laws, especially since the Australian university system is financially supported by overseas students from developing countries who are charged about 4 times the fees paid by Australian students.

What can the high Commission in Dehli do to ensure that all prospective students know precisely what they sign their contract for, in order to avoid further agony and tragedy, eg. public information campaigns; further liaison with universities?

Are Australian university administrators aware of this conundrum?

How can the Aust. High Commission work together with universities, both Australian and Indian, to ensure maximum cooperation and integrity in this matter?

Can the AHC work in any way with the Indian Government to hold agents for university recruitment accountable?"

The AHC replied on 8.9.2003:
"I agree with you that we must work with agents to ensure the message is clear. That's exactly what the staff here in the High Commission are currently working towards. We are looking at innovative ways of ensuring that agents provide students with the information and service they require."
However six years later, the Federal Government had not regulated the industry.

Inadequate 'Informed consent'
The Australian Government would seem to have a responsibility to ensure that prior to arrival, overseas students are thoroughly informed, through its embassies, as well as by its universities and education providers, about all details of immigration and visa laws, including visa cancellation appeals processes, bond and detention. Because all these important details have not previously been provided to them, the decisions by hundreds of thousands of international students to study in Australia have not truly based on 'informed consent'.

According to Professor Chris Nyland,*' …when we encourage students to study in Australia, I believe we take on a moral responsibility to ensure that they receive the 'safe and welcoming' reception that our marketers and education suppliers claim we will provide'.*

Requirements for entry

Student Visa: Students arrive in Australia with a valid student visa one of many subclasses, such as 560. This is after successfully fulfilling all entrance requirements. However, they are not individually interviewed by the Australian High Commission and Consulates overseas.
'*Harmeet Pental, South Asia director of the Australian university-owned IDP Education agency, believes the problem lies with Australia's immigration processes.*
"The US interviews every single student going there -- whether it's for two or five minutes -- and then makes a call on their fitness," he said. "For Australia, agents have a list of

skill sets given by the high commission and of the documentation required. That's it. The process is driving the behaviour." '
Indian student industry a study in shams and scams. [The Australian 15.7.2009]]
http://www.theaustralian.news.com.au/story/0,25197,25778649-12332,00.html

Travel documents including passport

Health requirements: It is a mandatory visa condition to maintain up to date health insurance while studying in Australia.

Character Requirement: All non-citizens seeking to enter or stay in Australia must be assessed against the character and penal clearance test requirements Section 501 of the Act to ensure that visa applicants and visa holders are of acceptable character. The test puts the onus on visa applicants, and visa holders, to show that they are of good character. http://www.immi.gov.au/media/fact-sheets/79character.htm

Australian Values Statement: Student applicants must declare that they will respect Australian values and obey the law. These values are very noble, but unless also practiced in the context of student visa cancellation and appeals, Australia is in danger of being seen as hypocritical.
"Australian values include respect for the freedom and dignity of the individual, commitment to the rule of law, parliamentary democracy, equality of men and women, and a spirit of egalitarianism that embraces mutual respect, tolerance, compassion and fair play for those in need and pursuit of public good.
"Australian society also values equality of opportunity for people regardless of their race, religion or ethnic background."

IELTS – International English Language Testing System

All visa applicants must sit this test for language proficiency. Each organization using IELTS globally sets its own pass or fail mark. Universities here let candidates average out their results in the four areas tested – reading, writing, speaking and listening – with a minimum passing score of 6 out of 9. However the immigration department refuses to allow applicants to do so, meaning more need to resit costing $310 each time (almost a months' salary for a bureaucrat parent in India). More than 100,000 applicants for Australian visas sit for this test each year.

According to migration agent, Mr. Mark Glazbrook, IELTS is a profit making organization reportedly worth $250 million worldwide, owned by the British Council, Cambridge University and IELTS Australia, which is owned by IDP – jointly owned by 38 Universities - and Seek, an online employment service in which Mr. James Packer has an interest.

Most applicants, even postgraduates including ones who lecture here, find it difficult to pass first time because not enough time is allocated to read the test. For offshore student visa applicants, failing adds to their already high initial financial outlay.

Two Indian students I spoke to in July 2009 were adamant IELTS was a 'money-making business'. Their friend, who already completed a master's degree in

accounting here, had sat for the IELTS test 11 times, failing each time, with a result of 6.5 points instead of the required 7 necessary for his permanent residency application. For every test he had to pay $310.

Even though these students had sat for, and passed, the test in India, they had to re-sit and repay on arrival here. Absence of regulation of IELTS offshore forces genuine students to pay for more tests.

Immigration 'risk assessment' Students also arrive here with a DIAC pre-determined 'risk' assessment. - Normally the word 'risk' is associated with harm or threat, but for DIAC it refers to the compliance with strictly enforced visa conditions of people from a particular country, and to *'other indicators of their immigration risk'* – for example making higher court appeals.

> **"How are Assessment Levels determined?**
>
> Each country, across each education sector, is assigned an Assessment Level which is based on the calculated immigration risk posed by students from that country studying in that education sector. To determine the Assessment Level of a particular country and education sector, the department examines that group's compliance with their visa conditions and other indicators of their immigration risk in the previous year.
>
> Where these statistical indicators show that a group has a higher level of immigration risk over a sustained period, the department responds to this trend by raising the Assessment Level of that group. In effect, this requires applicants to submit a higher level of evidence to support their claims that they wish to study in Australia.
>
> Where a group's indicators demonstrate that they tend to abide by their visa conditions, these lower immigration risk groups have their Assessment Level lowered. This streamlines the visa process by reducing the level of evidence that these applicants need to submit to support their claims for a student visa.
>
> The department regularly undertakes a comprehensive risk assessment of the entire student visa caseload and reviews the Assessment Levels to ensure that they align to the immigration risk of groups." [http://www.immi.gov.au/students/student-visa-assessment levels.htm]]

Thus students arrive in Australia with DIAC's already demographically predetermined assumptions based on the 'risk assessment' about how they will supposedly behave with respect to their visa compliance. This suggests that it may be difficult for DIAC to remain impartial in assessing individual visa cancellation matters.

New risk categories: Recently on 3.9.2008.The Australian reported in its story, *"Tougher immigration rules for Indian students"*, **"***AN immigration crackdown will*

make it harder to recruit students from India, the fast-growing big market in Australia's $12.5 billion education export industry.

"University of NSW's pro vice-chancellor (international) Jennie Lang told the HES all universities were likely to have urged students to get their visa applications lodged and processed before the September1 change in immigration risk levels, which affects a host of overseas markets.

"According to the latest official data, there were 65,000 Indian students in Australia in the year to June, mostly in vocational education. Although they make up a smaller market than the Chinese, the Indian growth rate is much higher: student numbers from India grew by 55 per cent, compared with 19 per cent from China…the latest revision of immigration risk, …is based on factors such as rates of document fraud, visa overstay and asylum claims, as well as applications for non-skilled residency for a spouse, for example."

Indians are now elevated to risk 4. This is disturbing. Once again, DIAC seems to be exerting disproportionate power. It would seem highly unreasonable to punish as a whole the very nation which, after China has contributed most to Australia's massive $15 billion dollar export industry. The majority of Indian students are bona fide, polite, diligent and hard working, trying to balance study, work and other demands. One Indian educator, commentator and resident believes this upgrade is meant to deter more Indian permanent residents.

Given that, a) 0.078% of all students became visa overstayers in 2005, b) an even smaller proportion could have applied for asylum, for reasons outlined in this submission, and c) some document fraud could be largely explained by mitigating circumstances within an unregulated industry, the Indian 'risk increase suggests DIAC's lack of integrated understanding of issues facing students.

The real 'risk' can be for many South East Asian students in actually coming here. After taking out huge high interest study loans, and being informed in the offshore visa application process that $12,000 per annum is sufficient to live on, they arrive here from a second world country to face many financial and other difficulties.

RESPONSIBILITIES OF EDUCATION PROVIDERS

However, the onus is on universities to scrutinize its overseas education agents through self-regulation. Yet although both versions of the Education Services for Overseas Students Act (ESOS) contained many requirements to safeguard students' best interests and academic needs, none of them were enforceable. As a result, unprofessional and even fraudulent services for students on all levels have been allowed to flourish.

Student consumer protection is not included in the ESOS Act.

(a) ESOS ACT 2000

The original National Code under the federal *Education Services for Overseas Students (ESOS) Act 2000* was effective and legally enforceable from 4 June

2001. However universities and other education providers are not necessarily providing any, or adequate, overseas student counselling and support services, and Independent grievance handling procedures despite requirements of the ESOS Act.

The ESOS Act 2000 required that,

"The provider must ensure that marketing of its education and training services is carried out with integrity and accuracy. It must uphold the reputation of Australian international education and training." In addition, "The registered provider must not accept or continue to accept overseas students recruited by an agent, if they know, or reasonably suspect the agent to be engaged in false or misleading advertising and recruitment practices."

Marketing and student information " Ensure that marketing of its education and training services is carried out with integrity and accuracy; must not accept an overseas student for enrolment in a course before giving to the student: information about the course regarding teaching methods used (including any field trip or work experience requirements); and the assessment methods used.

Records of academic performance and attendance "Have Procedures in place for contacting and counselling students and recording this on the student's file, if a student has been absent for more than five consecutive days without approval, or a student is not consistently attending their course".

Student support services "Have in place appropriate support services. These must include appropriate arrangements for independent grievance handling/dispute resolution, which are inexpensive and include a nominee of the student if the student so chooses. The procedures must allow for prompt resolution (10) having regard to the duration of the overseas student's stay in Australia on a student visa.

"Appoint a suitably qualified person as student contact officer. The officer will be responsible for provision of support services to overseas students, including counselling, which will:

"Promote the successful adjustment by overseas students to life and study at an Australian institution", and " Assist students to resolve problems which could impede successful completion of their study programs."

Educational resources and facilities "Have teaching staff who... have the qualifications, experience, induction and professional development appropriate for the delivery and assessment of CRICOS-registered courses, for the number of students under instruction.

" Maintain teaching resources that are appropriate for the delivery of CRICOS-registered courses and are adequate for the number of students under instruction. This includes technological resources.

Unfortunately universities and other tertiary education providers did not properly deliver ESOS requirements, nor was their obligation to adherence to these requirements sufficiently monitored by DEST or DIMIA. Counselling and pastoral

services were most inadequate. As a result, some international students experienced considerable educational, economic, and emotional irreversible hardships.

In such situations, some overseas students had no legal choice but to remain in a substandard institution for one year after commencement, while still paying full fees in advance, because the conditions of their student visa did not permit them to change course for that period. In Britain, students may transfer to another institution after payment of a fee. [See Example of Mr. A, p 103]

It cannot be overestimated that such students experienced tremendous stress about the waste of their parents' borrowed money, the pressures for loan repayments on existing loans, and the need to take out further loans.
Yet most students were not informed that, in 'exceptional circumstances', and with difficulty, Australian law did permit them to change their education provider during the first year of study in Australia.

(b) ESOS EVALUATION REPORT 2005
Fortunately, in August 2004, the Australian Institute of Education (AEI) and DEST authorized a full independent review into the effectiveness and efficiency of the ESOS Act 2000. This thorough and comprehensive investigation was completed in February and published in May 2005 as the '**ESOS Act Evaluation Report'**.
http://www.dest.gov.au/NR/rdonlyres/BCE952F7-57F0-4D3C-ADE4-5795781B5C96/6117/ESOS_Evaluation_Report_web_postproof_v2.pdf

It has made numerous conclusions: Conclusions made by the Report and excellent recommendations: Recommendations made by the Report such as: *'To protect the interests of international students'*. It also recognized that overseas students cannot pursue consumer protection claims in Australian courts.

Regarding student visas, the Report acknowledged in part 8.1.1 that:
- Student visa cancellations account for a third of all visa cancellations.
- This high number is due to the "all or nothing" approach in the ESOS requirements to report students for not complying with visa conditions.
- There is no leeway to consider students' grounds for alleged non-compliance
- There has been a growth in the number of student visa appeals to the MRT

However, the Report did not address the issue of student detention.

The Senate Legal Committee's 2006 Report into the Act referred to concerns expressed by the *ESOS EVALUATION REPORT p xxiv* about interpretation of migration regulations and the conflict if focus between education and immigration.

"1. … There is considerable confusion among the government and providers about the rules and their interpretation, especially in relation to 'full-time study', '80% attendance', 'contact hours' and 'academic progress'.

2. A gulf exists between the education system, which views student participation and progress as primarily matters of educational judgement, and DIMIA which views them as facets of visa control. Given their different goals and cultures, a tension is

inevitable, but it has been unnecessarily exacerbated by lack of specificity in the Code."

(c) ESOS ACT 2007

The New ESOS Act 2007 resulting from ESOS review appears to have made significant positive changes in practices by education providers, who are now required to have procedures in place to identify students at risk of failing, and follow these procedures as well as give the students access to appeals processes prior to reporting them to DIAC.

Had these measures been in place before 2007, thousands of students would have been able to continue with their studies, and completed them successfully, Instead of being deported, or feeling compelled to become visa overstayers or detained. Thus the Commonwealth contributed students incurring an unintentional detention debt through flawed laws which have since been changed, such that if they were in the same situation today, their education providers would given them the right to appeal, the DIAC officer would have been able to take any special circumstances into account.

According to Ms. Sharon Smith, Research Officer at Monash University's Department of Management in the Faculty of Business and Economics,

"The Esos review has changed in the way you suggest, but many other changes have also been very apparent. The main ones are the amount of understanding that most staff in universities have heard of the act and the code. This is amazing -before the review, many staff just thought that it wasn't their area, now all are aware. Services and documents are much more useful, providers are actually making sure their housing and income information is better and more realistic, despite the message given by the visa application process that 12k is enough to live on."

Ms. Smith had also prepared submissions for the National Union of Students to the 2005 ESOS Act Review. With her extensive research into international student matters, she maintains that, *"students should be able to live in our society while they are appealing [visa cancellation], and not be deported or detained".*

However, some academics and even students believe that students should be deported instead of detained. But this opinion merely reveals the prevailing ignorance about the implications of mandatory student visa cancellations, detention laws, difficult lengthy appeal processes, huge high interest loans to repay, natural justice and human rights.

PROBLEMS CONFRONTING OVERSEAS STUDENTS

In addition to the shocking increase in violence and brutal racist attacks on Indian students – with local and international media coverage - International students have a litany of legitimate complaints about the difficulties they face in Australia. It took the suffering of unfortunate victims and intervention by the Indian Government before the federal government really started to address the issue.

However, hundreds of news stories, blogs and information about overseas students had already surfaced in the last few years - …fraudulent 'shop front' education providers, education scams, corrupt education agents, unexpected hikes in tuition fees, low exploitative wages in many employment sectors, working late hours after study, fear of breaching 20 hour work visa condition, no transport concessions, high living and housing costs, overcrowded accommodation, homelessness, depression.

There are also immigration blunders, DIAC compliance operations, no truly independent reviews of visa cancellations, and inadequate information regarding possible draconian consequences of visa breaches including immigration detention, detention fees and deportation.

In combination with inadequate review processes, these circumstances have not only forced thousands of students back to their countries with uncompleted education, but have also have forced a many students to either become visa over-stayers, or to appeal visa cancellation from detention, or to apply for asylum, merely because they are too terrified to return home, in shame without a degree, and unable to pay their parents' big education loan repayments.

These following documented complex, interlinked difficulties can contribute, individually or in combination, to visa cancellation, deportation and/or detention.

1. 'Cash cows'

A reported decline in standards and poor course quality in some institutions, inadequate educational and technological resources, scams by some unscrupulous education providers, insufficient information about life in Australia, plus increased competition from other countries for the global share of the international student market, are all challenging factors for Australia's universities.

Having no real understanding of the socio-economic position of most international students, nor how Australia's stringent immigration laws affect students, some colleges continue to exploit the very people on whose existence they depend. Not only are students feeling treated like, and referring themselves as, 'Cash cows' in the multi-billion dollar industry, but also so are some journalists, researchers and educators.

For example, PH.D researcher Michiel Baas from the University of Amsterdam has published several papers, including *"Cash Cows - milking Indian students in Australia"* – which referred to claims by angry students that Central Queensland

University's Melbourne campus provided inadequate facilities and only wanted their money. *[IIAS Newsletter #42, Autumn 2006].* Fears of visa cancellation forced the CQU students to call off a planned hunger strike in March 2006.

2. Unscrupulous education and migration agents

Students may also be lured to study in Australia under misleading information about education providers provided by education agents. These agents, well paid by Australian universities ($1,200 - $5,000per student they enrol), are not accountable to any Australian or Indian regulatory body.

(i) *'Overseas students victims of 'new slave trade' [23.8. 2008] "YOUNG Mauritians hit by the latest scam targeting international students are the victims of "the new slave traders", according to the Mauritian media.*

"Australia and Ireland are the most popular destinations for students from the island nation in the Indian Ocean, many of whom come to study "skills shortage" courses to speed up their quest for residence.

"But a series of articles in the country's Le Mauricien newspaper have prompted a crackdown on unscrupulous or unregistered education and migration agents after students claimed they were deceived into paying thousands of dollars to middlemen in Melbourne.

"[One] genuine student, interested in the vocation rather than eventual residency, paid a Mauritian education agent from a company called GRS, $9000 for a one-way air ticket, three months of schooling at Cambridge International College's Little Collins Street "shopfront" campus and two weeks' accommodation. This turned out to be a single-room "studio" in Sydney Road, Brunswick, above a shop. Four other Mauritian students were already there."

(ii) *'Agents prey on foreign students' [The Australian, 14.7.2009]*
http://www.theaustralian.news.com.au/story/0,25197,25778887-12332,00.html
'LURED by the high commissions offered by private colleges in Australia, unscrupulous education agents in India are using false promises of work and residency to funnel students into courses that in some cases they don't want to do.

In extreme cases, international students arrive thinking they will be studying in beautiful buildings such as Melbourne's historic town hall, only to discover on arrival that their college is a "dog box", according to student advocate Robert Palmer.

Mr Palmer, a veteran of the education industry, said students were turning up at his Overseas Student Support Network in Melbourne complaining of being duped by their agents. He said colleges and regulators were also to blame for not doing enough to prevent students from falling prey to lying agents. "People in Australia conveniently say they can't control overseas agents, but if they are your agent then you are legally responsible for their actions," Mr Palmer said.

He said that under the Education Services for Overseas Students Act, providers -- universities, TAFEs or private colleges -- must ensure students are fully informed before they enrol and that wasn't happening.

"If the act was policed properly, you would go a long way towards solving the problem," he said.'

Australia's commercially focused education industry is an attractive trade for offshore education agents. Universities and TAFEs are prized clients because they have large and regular volumes. But the competition can weigh on commissions. According to Mr Palmer, a university would commonly pay a 25 per cent commission on first semester fees, equivalent to about $1200-$1500 a student.

Private colleges, especially new ones in need of students, are happy to pay much higher commissions to ensure supply. Mr Palmer said they commonly paid 30 per cent of the fee for a whole course. For a two-year course, which is the minimum required for a student to apply for skilled migration, fees would commonly amount to $16,000, translating into a commission of almost $5000 a student.

At the Australian end of the trade, students can find themselves left struggling to get refunds from colleges that enforce sometimes tight deadlines on notices of cancellations.

"Once they get their hands on the student, they will do everything in their power to keep the student in their college," Mr Palmer said. Mr Palmer estimated that since February, when OSSN opened its office in Melbourne, he had handled 1000 legitimate complaints. Of those, at least 80per cent were about students being misled by education agents in their home country.

Michael Bull, of Immigration Consulting Group Australia, said students were made easy prey for unscrupulous agents by the pressure put on them by their families, who often took out hefty loans in the hope the student would be able to secure work and eventually residency.

Mr Bull said the industry needed to do more to ensure agents were giving out the right information. He said some colleges were ramping up their efforts, noting that last year he was twice commissioned by a college to travel to India to check up on agents.

The Australian Council for Private Education and Training is investigating the possibility of establishing a register of approved agents for the industry. Its chief executive, Andrew Smith, said: "The regulations are clear that the colleges are responsible but the difficulty is in how you address the acts of people halfway around the world."

(iii) *'Migration fraud 'rife' in overseas student scam' [The Age, 5.1.2009]*
http://www.theage.com.au/national/migration-fraud-rife-in-overseas-student-scam-20090104-79v0.html?page=-1

'UNREGISTERED migration agents selling black-market paperwork to international students are "con men and con women" operating undetected in Melbourne, according to the Migration Institute of Australia. The institute has reported 60 cases of rogue agents. Nine Melbourne businesses were raided last month. Several people are likely to be charged over the raids.

Chief executive Maurene Horder said the shadowy "agents" offered fake documents for thousands of dollars to naive young Chinese and Indian students." It is rife," Ms Horder said. "These people are, in effect, trying to sell visas. Some of what goes on is pretty sinister."

The institute reported 60 rogue agents — from Melbourne, Sydney and Brisbane, detected from February 2007 — to Immigration Minister Chris Evans in May, she said. The institute controls registered agents; those unregistered or deregistered come under Immigration Department jurisdiction.

"The Howard government gave this a very low priority," Ms Horder said. "We are trying to get the new Government to act on it but so far we know of very little action." A spokesman for Mr. Evans said the 60 cases were being investigated.'

3. Education scams - Unregulated education provider activity

(i) In *'Beware of education scams!'* migration agent and lawyer Mr. Rory Hudson wrote in his monthly column in Indian Voice [Sep. 2008]:

'It is clearly time for the government to regulate activities of education providers and education agents. Such regulation happened for migration agents years ago, although it has not the activities of unregistered people who pretend to give immigration advice. It amazes me how dozens of education agents and colleges are able to operate frauds quite openly and then disappear with thousands of dollars of students' money. Don't be a victim 'The victims are overseas students who are duped into paying huge sums for shabby courses and false certificates with little or no pay.'

He described various 'rip-offs': *'The first comes at the hands of education agents who recommend courses based only on the commission the agent receives from the university or college. The agent knows nothing about immigration law and has no concern for what is really in the best interests of the students.'*

The second rip-off Mr. Hudson cited is, *"Students may also be cheated by the education provider, whose courses may be quite worthless and will not be recognized for the purposes of later obtaining permanent residence. It has been shown that huge fees have been taken for courses that do not exist, and the education provider may even close down and disappear without providing any educational services."*
Thirdly*, "Some education providers, migration agents, education agents and employers may offer false certificates of education and employment in return for substantial sums of money, often exceeding $5,000."*

Agents are clearly not trained and informed sufficiently by Australian education providers who employ them. This completely irresponsible business practice has spun a web of lies to vulnerable foreign students, but has been indirectly endorsed by the government through its lack of regulation.

(ii) *Indian student industry a study in shams and scams'* describes corruption rife among Indian education agents.
http://www.theaustralian.news.com.au/story/0,25197,25778649-12332,00.html

'*AUSTRALIA'S lust for high-dollar Indian students has led to a thriving black market in sham marriages, forged English language exams and bogus courses, and turned a once-respected international education sector into a recognised immigration racket.*

While the federal government and industry work to repair the damage caused by a recent spate of attacks on Indian students in Australia, education agents say the violence has shone a light on a $14 billion industry riven with corruption.

An investigation into the overseas student industry has found thousands of Indians each year are being enrolled in dodgy courses at inflated prices and sold unrealistic dreams of cheap living and plentiful jobs.

The Australian has found operators across the Punjab, the main feeder community for Indian students in Australia, openly advertising "contract marriages" for aspiring immigrants to partners who have passed the mandatory English test for a student visa.

For an additional fee, agents will arrange bank documents and loans to satisfy Australian immigration law that demands students have the means to support themselves for the duration of their course.

Industry insiders say a flourishing market has also developed around the International English Language Test System, with students paying anything up to $20,000 for a good result.

Sonya Singh, a respected Indian education agent, says "Australia a supermarket where people are buying stuff off the shelf".

"In Melbourne, we get lots of requests to arrange IELTS scores and work-experience permits (to satisfy new requirements that a student must have completed 900 hours of work before being granted permanent residency)."

Robert Palmer, who runs the Overseas Students Support Network in Melbourne, says supplying students to Australia has become a gold mine for education agents.

While universities and TAFEs pay about 25 per cent commission on first semester fees, equivalent to about $1200-$1500 per student, private institutes will pay up to 30 per cent of the entire course fee, providing a clear financial incentive for agents to channel students their way, and even into courses in which they have no interest.

Ms Singh says the Australian government policy of giving priority visa consideration to students who train in fields listed on the Critical Skills Shortage register has turned "genuine" students away." Every time a new (critical skills) list comes out, education providers start introducing those courses."

Danger of education scams – further detail There are more than 1100 private colleges or registered training organizations in Melbourne Colleges tend to offer courses aligned to skilled migration - the Federal Government's Migration Occupations in Demand. Students studying at private trades colleges can pay up to $20,000 in tuition fees.

(iii) However, a shadow world of scams is revealed in the following news reports. *'The twisted road to learning' [The Age, 11.8.2008]* http://www.theage.com.au/national/the-twisted-road-to-learning-20080810-3t15.html?page=-1

"Melbourne has an undeniable international reputation for teaching overseas tertiary students. But the city's education services also feature a dark and unsavoury reality.

"The darkest recesses of Melbourne's international student netherworld is a dark place. Today an Age *investigation has revealed evidence of exploitation and scams by unscrupulous operators involved in "shopfront" trade colleges and shadowy migration agencies. Most are clustered in upper floors of office buildings in the precinct around Lonsdale, La Trobe, Bourke and Swanston streets.*

"…Yet a source at one of the government departments investigating student allegations told The Age *the worst offenders had set up elaborate organized crime networks, owning multiple properties, using an array of assumed names, laundering cash and utilizing*

complicated networks of spouses and relatives so they could shift business interests to avoid detection. "The level of criminal fraud is massive," the source said.

"Melbourne's…reputation as a multicultural education hub was being damaged by rogue operators acting as migration agents, consultants and private college owners. 'I know Indian students whose parents have sold their home or their family jewellery to send their children here to study and possibly then migrate and these kids can be preyed on,' Srinivasan says.

"..The most common fraud in Melbourne's lowest-rung of private colleges … a private college owner or a migration agent (either registered, suspended or unregistered) acting on behalf of a college owner takes money - always cash - from a student for fake certificates showing the student attended classes and passed courses, when the student rarely if ever turned up.

"A parallel rort is the migration agent taking money to supply bogus work experience documents via suburban employers who get a cut. This practice is about be curtailed, according to Trades Recognition Australia, the body that assesses trade qualifications and work experience. From September 1, regulations surrounding the 900 hours a student must clock up in work experience in order to apply for permanent residence will be tightened.

(iv) Finally, a thorough investigation of a private college education scam has been conducted in Victoria. *'College in gross breach of standards', [The Age, 23.7.2009]:*

'A CONFIDENTIAL report on a Melbourne private college has uncovered big education breaches, painting a picture of shambolic practices that failed to meet the most basic educational standards.

'The Victorian Institute of Training and Learning (VITAL) in Clayton, catering to 330 international students mainly from India, was providing the equivalent of a three-year apprenticeship in commercial cookery in just 40 weeks, an audit by the state education regulator revealed.'

5. Difficulty proving education provider scams in Court

The following example indicates how hard it is for a group of international students, to succeed in proving their education provider was negligent, unsatisfactory or duplicitous in the Australian Courts. It seems these students could not afford an experienced barrister to represent them in the Supreme Court...

If students not in detention fail in litigation and have to pay court costs, it must be much more difficult for an individual student, to take action, and almost impossible for a detained student.

The Australian reported in *'No take off for flying school case' [9.7 2009*] http://www.theaustralian.news.com.au/story/0,25197,25754266-12332,00.html :

'*A GROUP of Indian students has failed in its first attempt to recover money from a Sydney flying school they claim failed to provide them with resources necessary to complete their flight training on time.*

The nine trainee pilots have alleged Aerospace Aviation at Bankstown in Sydney did not have enough teachers or aircraft to complete their training on time, and have sought more than $150,000 in refunds on prepaid course fees.

The students, four of whom are back in India because they cannot afford to pay for training at alternative flying schools in Australia, are yet to decide whether to take further legal action.

The Vocational Education and Training Accreditation Board is considering whether to take action against Aerospace Aviation.'

6. Changes in MODL – Migration Occupation Demand Level

Since 1996 the Government's cutting of the Education and Training budget has driven all Australian Institutions to find another income source – the overseas student market. In 2004, the Government tried to get overseas skilled trade migrants to supply shortage in the market.

Students may choose vocational training (VET) courses on the basis of the current MODL list, or those occupations with the greatest demand for skilled labour employment opportunities. The government gives preference to students applying for these courses, which also contribute to more points required to gain permanent residency, PR. Once students have completed a Certificate III in occupations like cookery, hairdressing or welfare they acquire 60 points. After skills assessment and work experience, if they acquire sufficient, or 120 points, they can apply for permanent residence.

The number of trade occupations in the MODL has risen from 2 to 14 and then 26. Currently, there are 49 trade occupations are in the MODL. Australia has invited skills training in exchange permanent residency.

Gaining PR is absolutely essential for many students, just to earn sufficient money to repay their parents' high interest loans. Thus they may go through the entire process of coming and studying here based on the information that their course will lead to employment and PR, only to later have this valid expectation suddenly vanish like an illusion, simply because the requirements for permanent residency have changed since they undertook the commitment to study here..

In *"Change in the MODL may adversely affect overseas students" [Indus Age, May 2006]* registered migration agent Mr. Singh Brar explained this dilemma*:*
"One can see a high number of overseas students doing courses leading to occupation on the current MODL. … the demand and supply of skilled manpower determines the need of inclusion or exclusion of an occupation in the MODL, which is reviewed at least twice a year. The change in MODL may occur anytime if there has been significant change in the labour market trends.
"The sudden change in the MODL may be a disastrous for the students if they wish to apply for PR after the completion of the course since there has never been a transitional period for its implementation.. It will therefore be of interest for students to remain prepared to meet such eventualities at a short notice….
"In case of change in the MODL they will be able to claim only 60 points for their nominated occupation, 30 points for English proficiency and 5 points for Australian education. Thus they will only be able to claim 110 points…. they will be unable to meet the threshold of 120 points required for permanent residency."

Professor Chris Nyland commented on SBS TV's "Insight":
"I mean that's a problem that we're facing now, that that list has changed and we have a large number of students who came here thinking they were going to be able to get PR who are not going to get PR because they came and did courses, started courses on the understanding that these were going to be high-priority, high-priority occupations and the list has changed and they're not going to get PR."

Any scams to obtain PR through falsified documents can be in part directly related to the government's continual changing MODL requirements – students must earn enough money here to repay loans. In India employment for them may be difficult to get – there are garbage collectors with college degrees.

7. Unexpected increases/inflated education fees
Education providers seem to often introduce unexpected fee increases, with little warning notice, on top of what may already be inflated course fees, as well as what was budgeted for. The following report indicates just the surface of a huge financial problem for students that can compromise their visa compliance.

Students at Newcastle attracted media attention because had the rare benefit of an integrated, dynamic overseas student support service and advocacy through Ms. Veronica Mendes.

'Bungle forces refund: Student fee too high', [The Herald, 29.3.2006]
"THE University of Newcastle has been forced to refund thousands of dollars in fees to international students who were overcharged during an 18-month period. The university's student association's international office uncovered the bungle late last year after complaints from a large number of students about fee increases.

Several feared their student visas would be breached because of their inability to pay the inflated fees. Fifty audited cases were presented to university management in September that showed students were owed amounts up to $1900."

8. Education providers reluctant to refund unused paid tuition fees
Education providers have often not refunded unused tuition fees paid in advance after students were reported and deported.
(i) For example, Indian student Mr. S initially refused fee refund by his Melbourne college. He had been suffering depression adjusting to life in Australia, and was not able to study to the best of his ability. Believing he would continue studying at his college, he paid the next semester fees of $4,000 just prior to the commencement of the semester. However, without warning, the day before classes started he received a s20 notice from the college asking him to report to DIMIA because of unsatisfactory results. His visa was cancelled. While preparing to return to India, he twice asked the international office at his college for a fee refund, as he had not received even one class of tuition and the college had accepted his payment while knowing that it had reported him to immigration. Mr. S was refused the $4,000 refund.

At this point Mr. John Russell, of the Indian Welfare Resource Centre, referred him to me. I called the college and was told the same thing by the office, the assistant director and the director. The director was not at all interested and very defensive. Only when I mentioned having written a senate submission about

student issues and detention, and that I would reveal the name of his college at the Senate Legal committee's hearing, did he refer me to another colleague about refund forms. I made the written application with Mr. S, who soon after had to leave Australia. Several months later Mr. S contacted from India me to say the refund had arrived and to express his and his parents' gratitude. Without the assistance of advocates, he would have remained cheated by a 'reputable' Melbourne TAFE, which charged international students eight times the fees of local students and had been handsomely refurbished.

(ii) The experiences of students at the former Hawthorn-Melbourne College (a subsidiary of Melbourne University) described in *"Foreign students cry foul on college switch" [The Age, 19/8]* was yet another example of how the profits-over-people multibillion-dollar international student industry in Australia has exploited students' financial vulnerability creating havoc in many lives. [http://www.theage.com.au/national/foreign-students-cry-foul-on-college-switch-20080818-3xni.html?page=-1]

"THE lives of many international students have been thrown into chaos, with some saying they are thousands of dollars out of pocket due to a change in ownership of a college linked to Melbourne University.

"The students claim a breach of contract by the new owner of Hawthorn-Melbourne, the English language college they attend, has robbed them of a refund of tuition fees and left them angry and frustrated with the way Australia treats overseas students.

"The college's new owner, Hawthorn Learning Pty Ltd, denies any wrongdoing. It is not clear how many students are seeking refunds, but they say they are owed about $10,000 each and have sought legal advice. An investigation is being conducted by the Victorian Registration and Qualifications Authority, the body responsible for regulating education and training providers in Victoria.

"The students' complaints were sparked after Hawthorn-Melbourne, a college owned by UMEE Ltd, which is in turn owned by Melbourne University, was sold in January. It was bought for about $5 million by Hawthorn Learning, a company owned by global education provider Navitas Ltd."

Students claimed they were pressured into deciding whether to re-enrol elsewhere or leave the country within 28 days. After making necessary arrangements, such as purchasing air fares, two weeks later they were told they could continue studying under the new owners, but could no longer obtain the refunds.

The opinion of a Saudi Arabian student quoted, that *"no, it is not education. It's just business"* will grow unless the Federal Government ensures genuine equity for international students. In addition to all the other problems they face in Australia, it would hardly be surprising if more prospective students chose to study elsewhere.

9. Federal Government errors

This documented example of a major, far reaching Federal government error was revealed only through litigation by a Bangladesh student in the Federal Court.

[See page 52]. *"Fed Govt mistakenly cancels 8,000 student visas" [16.9.2005]*
http://www.abc.net.au/worldtoday/content/2005/s1461973.htm

"ELEANOR HALL: Turning to the other side of politics now, and yet another immigration controversy. This time, the federal department has been forced to contact 8,000 foreign students, that it was mistaken when it cancelled their visas. The Government could now face hefty compensation claims, after a court ruling found flawed paper work cost the thousands of foreign students the right to continue studying in Australia.

The ruling was made by the Federal Magistrates Court, in a case mounted by a Bangladeshi trainee chef, and it's forced the Immigration Department to contact students around the world to tell them that their visas have now been restored.

JULIA LIMB: Mohammad Uddin never received the notice from his cookery college telling him that he had 28 days to get to and Immigration Department office to explain his poor attendance.

In fact his lawyer, Nick McNally, says the first his client heard of the notice, was when he applied for permanent residency in Australia after successfully completing his degree.

Mr McNally says that under the system operating between 2001 and 2005, the fate of foreign students was in the hands of their education provider if they failed to meet attendance and performance standards.
NICK MCNALLY: What it effectively is, is a regime whereby a visa can be automatically cancelled by operation of the Act, without any immigration officer or anybody… any delegate of the Minister actually looking at the case and making any decision.

The university or the college issues a notice using a form provided by the Department of Immigration, and the mere existence of that notice by the university sent to the student has the automatic consequence of cancelling the visa.

JULIA LIMB: And according to Mr McNally's colleague Nigel Dobbie, who is an immigration law specialist, it's a system that's unfair.
NIGEL DOBBIE: When that notice is issued and it's sent, there's this 28-day clock that starts to tick and if the student doesn't contact the officer… an officer, then the visa is automatically cancelled and they then become unlawful and subject to detention and removal from Australia.

JULIA LIMB: Nigel Dobbie says the system hands too much power to the education providers, which are also collecting fees.

NIGEL DOBBIE: These powers, where someone can be deemed unlawful in Australia after a certain period of time elapses and then subject to detention and removal, they should remain with Commonwealth offices. Anything relating to that should not be assigned out by way of an act of Parliament or by delegation to educational institutions, for example.

I think the public would expect that where a person can be detained as a result of something happening, that those powers remain in the hands of the Commonwealth and the Commonwealth's offices.

JULIA LIMB: He says the human cost can be enormous…."

10. State Governmental discrimination

(i) No transport concessions: Students are being discriminated against by state governments in Victoria and NSW, where they are not eligible public transport concessions, adding significant costs to their weekly expenses. In Victoria this discrimination is illegal, whereas in NSW it is legalized – even after the legislation was successfully challenged on the basis of equal opportunity, the NSW government created a law to permit and continue this discrimination denying international students transport concessions.

Veronica Menses (p.36) also wrote: *"The most evident and blatant discrimination against international, recently legalized in NSW, is the denial of the travel concession passes. The Victorian government, following the example of the NSW government, is introducing legislation to quash a racial discrimination case in which overseas students have taken the state to the Victorian Equal Opportunity and Human Rights Commission, arguing that laws denying them public transport concessions are discriminatory.* "

Thus despite Victoria's new Charter for Human Rights and Responsibilities in existence since January 2008, the Victorian Government has deliberately attempted and succeeded in not upholding its own legislation.

This makes students even more vulnerable to breaching the 20 hour work visa condition 8105 because at low wages of $8 per hour or less, students have to work 3 extra hours just to pay for the discrepancy between full and concession fares [which of course local students are entitled to].

(ii) Low wages: The Victorian Government endorses below award wages in its Victorian Taxi Directorate website www.vtd.vic.gov,au which openly states that taxi drivers (50% of whom are students) earn $7.50 - $8 per hour.

'"Student drivers are not informed of their rights and open to exploitation. "It took me six years to find out my rights," said Govind. "Why does the VTD issue licences to students if they can only work 20 hours and it is not safe?" he asked.' [South Asia Times, May 2008]

(iii) VSU fees: Federal legislation abolishing Voluntary Student Union fees for local students, but keeping them compulsory for international students, not only reduced support services for all students, is clearly discriminatory.

(iv) Victorian Government taskforce

The Age reported in *'International students miss out on taskforce spot' [6.10.2008]* that*, "International students are furious that they have been excluded from a State Government taskforce set up to examine the problems they face. The National Liaison Committee for International Students (NLC), widely accepted as the main representative body for overseas students, was not invited to join the taskforce … [It] will report to the Minister for Skills and Workplace Participation, Jacinta Allen within two months – after just eight hours of formal and confidential deliberation…. 'There is no opportunity for any public input into this at all and I think it makes the whole process a real sham,' said opposition spokesperson on education, Peter Hall."*

11. Exploitation: 'Slave wages', work scams

International students now constitute a convenient source of cheap labour for Australia, with little or no work rights particularly since wage deregulation in the 1990's. Not only do they receive low wages, but they can also be grossly underpaid and exploited, as demonstrated in the following reports:

Some examples of injustice come from a Melbourne welfare worker who knows of injustices such as working 2 weeks' night shift on trial, unpaid; working a 12 hour night shift, de-boning chickens for $50 and being filmed in the change room. Ms. Veronics Meneses, UNSW student welfare officer, says about 10 Nepalese students claim they were promised work for a fee of $1,000 and $300 for uniforms. The work never eventuated. They are currently taking court action through Sydney University Post Graduate Association

(i) *'Pak student sues for 'slavery': $200 for 158 hours security work: The Age'*

'AN INTERNATIONAL student who was paid just $1.26 an hour for more than 150 hours work as a security guard at the Australian Open tennis is suing several companies for being treated like a "slave".' South Asia Times, July 2008

(ii) *'Indian students exploited',* Bharat Times, [*Feb 2008]* front page story

(iii) *Rogue colleges in cash-for-certificates scam* [The Age, August 11, 2008]
'The Age has also found that a college owner had some of his Indian students allegedly working for nothing as "basic training" in a 7-Eleven store he also owns. A former student of Della International College said he worked for 17 days in the Sunshine 7-Eleven last year for no pay. The student, from northern India, asked that his name not be used. After enrolling at Della, [the] owner offered him "training" for one month.
"I got not one single penny for 17 days. Then he said there was no job and to get out, to go from the store," the student said.'

(iv) *'Foreign students being exploited' [The Age, June 12, 2008]*
http://www.theage.com.au/national/foreign-students-being-exploited-20080611-2p5c.html

"NEARLY 60% of international students in Victoria could be receiving below minimum wage rates, a study by Monash and Melbourne university academics has revealed.

"Interviews with 200 international students drawn from nine universities across Victoria revealed that up to 58.1% of students surveyed were paid below $15 an hour, with 33.9% receiving less than $10 an hour.

"The results from a $3 million Australian Research Council-funded study come just a month after hundreds of taxi drivers, many of whom were students from India, protested against conditions in their industry outside Flinders Street station.

"The study also found:

■ *International students are often pressured to take jobs not wanted by domestic workers.*

■ *At least a third work more than the 20 hours allowed under study visas, forcing them to take jobs "off the books" with no industrial relations protection.*

■ *The influx of international students working outside industrial relations controls adversely affects overall conditions in the workforce.*

■ *The problems started in 1991 when international students rights in the workplace were narrowly defined as the "right to work" by the federal government.*

"One of the academics involved in the study, Professor Chris Nyland, yesterday told The Age he was happy there were signs the Victorian Government was developing policy options. But he hit out at the Federal Government for its "protracted" reply…' there is lots of references to international education, lots of references to international student fees, nothing in there about international student welfare.'"

12. General hardship and struggle, stress over 20 hour work limit

The Consul General of India, Mr. Amit Dasgupta, commented on SBS TV's 'Insight' program [21.7.2009]*:* http://news.sbs.com.au/insight/episode/index/id/87#transcript

"I think the core issue on the Harris Park demonstrations needs to be explored a bit. The students were not just demonstrating against attacks. They were demonstrating, actually, about a cluster of issues, which included their entire living over here, the fact that the private colleges that they were studying were not entirely kosher, the difficulties they had with regard to being cheated. I think it's a whole series of things put together which actually gave vent to considerable angst and frustration. And I think that needs to be looked at."

In the article *'Hare Krishna temple: home away from home' [South Asia Times, July 2008]* I investigated how a voluntary community service and free food program provided by the Hare Krishna Temple supported increasing numbers of students. Many students were in need, struggling to succeed in a foreign country with little to no support, and coping with the stress of huge study debts, as well as high living costs, many just scraping their lives together.

They are exhausted from work, study, exams, assignments, and financial, physical and emotional stress. Isolation and disorientation is common, and some go back home. For some women, their lives can dangerous. One eighteen year IT old student was holding down 3 jobs in between her studies. She was so thin that her doctor diagnosed her as undernourished. Her life revolved around her studies and getting to her odd jobs at irregular hours on public transport.

When former lecturer in communications and community welfare studies, Ms. Jane Dunstan, taught at several Melbourne CBD private colleges, she sometimes met Indian students so poor that they did not have enough food to eat at home. "One student collapsed several times, and an ambulance was called to pick him up - it was said that he didn't eat."

She found students were very stressed about the 20 hour per week work limit condition of their visa. According to some recent research, and in her experience, about one third worked more, and some for only $6 per hour. She said that no-one could survive on $120 per week, which does not even cover rent. It is very hard for them.

13. Accommodation problems and overcrowding

International students sometimes live cramped with 8 – 10 others, or more, in 3 or 4 bedrooms houses. Shortage of affordable rental accommodation is endemic in Australian Capital cities. Families, local students, single people are all finding it difficult to find rental homes.

(i) *The Age* [2 July 2008] reported a crisis in student homelessness at Australia's most distinguished university, Melbourne University.

"Vice-chancellor, Professor Glyn Davis, said 440 students were in effect homeless…because they could not afford their own residences… the majority of students are studying part-time, with many working more than 20 hours to cope with rising living costs." The Age quoted the Australian Scholarship Group' assessment, *"that an average teaching student in a share house will face costs of almost $100,000 over 4 years."*

International students, many of who arrive here without pre-arranged accommodation, and who do not have local housing references find it even more difficult to find housing. Local students need to, and are permitted to, work more than 20 hours per week. However international students, who also need to work more for the same reasons, have their visas cancelled without right of reply, are shipped back to their country and are forced to forfeit their entire financial education investment.

An extreme example of common overseas student housing overcrowding shows the precariousness and complexities of students' problems. What appears to be a scenario of exploitation is also an example of compassion, wherein the landlord prevented the deportation of many students for having no home or address:

(ii) *'Landlord crams 48 students into one house' [Herald Sun, May 17, 2008]*
http://www.news.com.au/story/0,23599,23712361-2,00.html

A blog accompanying the story [Posted by: Neema of Melbourne, May 18, 2008] suggests that the responsibility for students accommodation should rest with the institutions who accept international students.

'Those of you who are shocked at the situation that you are reading about, must have no idea about the problems some of these international students face once they arrive in Australia. Imagine arriving in a new country with many hopes and dreams and finding that you not only have no family or friends to support you, but having to find accommodation and a job to be able to afford some of the outrageous international course fees. I know Mr. Hem Tamang very well and he is a generous and kind person who is only trying to give these Nepalese students some much needed support. He is not exploiting them. The accommodation he provides is merely a temporary place to stay while they find their feet. I am sure it was not his intention to have so many students in the one residence but due to the increasing numbers of students and decreasing number of available properties, it was unavoidable. It should be the responsibility of the institutions which accept so many international students to provide suitable and affordable accommodation. The environment which these students have to live in may not be desirable but it is much better than the other option which are the streets.

14. Homelessness

There have been many instances of international student homelessness, which is increasing. Ms. Jane Dunstan also observed that,

"Many students had problems but they did not speak about their issues readily because they felt it was so shameful. The worst cases of homelessness she knew about were one student who slept fifteen nights in a bus shelter, in mid winter, after being evicted from his accommodation by a corrupt agent. Another student slept on Glenferrie Station."

Former international student, Mr. X (see appendix), also suffered homelessness at one stage prior to detention, after he had experienced great difficulty finding employment to pay his rent and transport costs to his college. His ordeal is similarly reflected in another student's story, reported in The Age by Sushi Das, 15.11.2008: "*Quest for knowledge results in life's harshest lessons",* http://www.theage.com.au/national/quest-for-knowledge-results-in-lifes-harshest-lessons-20081114-67bs.html

This article described how 'Jimmy' was lured here through *'a wildly unrealistic picture of life in Melbourne for international students'* provided by a migration agent in Mauritius, who persuaded his parents to undertake huge a education loan to do a graphic design course costing $10,000 per year at Cambridge International. Because Jimmy was often not paid for part-time jobs, and Cambridge charged extra fees like $50 for late assignments, this led to eviction from his $130 per week accommodation. He slept under a bridge, had to sell his mobile, and was attacked and bashed at a railway station leaving his only pair of glasses broken. Naturally he found it hard to concentrate on his studies. The college cancelled his enrolment because of lack of attendance.

'Then one day in October, after about eight months of sleeping rough, a Salvation Army van pulled up near the pedestrian bridge and offered him coffee. It was the first chink of light. Since then, the Salvos and the Australian Federation of International Students have helped to provide him with food, emergency shelter, a mobile phone and new glasses.

Jimmy's student visa is still valid and he is in talks with the Department of Immigration and Citizenship to resolve his visa issues.

The Salvation Army's Brendan Nottle is finding increasing numbers of international students who are homeless, living in unsuitable accommodation or simply struggling to feed themselves. "I'm really concerned about Melbourne's reputation," he says. "Students come here in good faith thinking they will be accommodated properly and get a reasonable education. And in some cases they end up in horrendous situations."'

The Salvation Army has now established 'The Lounge', a drop in support centre for overseas students

Jimmy's courage in 'coming out' with a photo of himself in The Age brings much needed attention to the plight of student homelessness. However, his parents will now inevitably find out about his humiliating predicament, so he will unavoidably fail in his dearest wish – that of protecting their reputation.

Without the compassionate assistance of the Salvation Army, FISA and the publicity generated by The Age article, Jimmy would undoubtedly - through circumstances beyond his control - be a candidate for detention and deportation, rather than a candidate for his next exam. Yet despite still having a valid visa, he could nevertheless be deported for not being enrolled in a course - a visa breach and cause of visa cancellation for many students. Hopefully DIAC will show flexibility in dealing with his current status.

Jimmy's story also exemplifies the dangers of unscrupulous migration agents and education scams, luring students here on exaggerated promises that do not reflect-- reality, and often placing students in considerable peril. Yet ultimate responsibility rests with the Australian government, which has apparently failed to sufficiently regulate this high profit industry.

15. Racism & Violent attacks on South East Asian students

Shockingly, there has been an unprecedented wave of many unprovoked violent attacks on Indian students, and citizens of Indian origin, in Melbourne as well as other cities. Students bashed in streets, around railway stations, in taxis, indicate that they are very vulnerable and cannot be certain of their personal safety here.

Victoria Police statistics indicate that 1500 people of Indian origin were attacked in the last year.

Anger and frustration exploded In Melbourne on 31 May when an estimated 5,000 students and supporters rallied against the wave of violence. With most Australians appalled and shocked by the random, escalating violence against Indians in Melbourne and Sydney, the country's reputation as a safe and tolerant place to study has come under extraordinary international scrutiny.

Intervention by the Prime Minister of India, Mr. Manmohan Singh, has sent unequivocal messages to Australia that the violence was totally unacceptable and must be stopped. As a result, what began with inexcusable suffering inflicted on innocent, non-aggressive, 'soft target' Indian students has transformed into a wider scale deep national soul searching, producing an unprecedented rush of constructive initiatives not only to resolve the crisis, but also to improve conditions for international students.

For example, Victoria's Police commissioner Simon Overland announced a 'Safe Street Offensive' with a strong enforcement approach of 'swift effective action' in the north, northwest and south of Melbourne. Uniformed police on horseback, the dog squad, the airwing, transit police and undercover police will target train 12 stations around Sunshine, St Albans, Thomastown, Clayton and Dandenong.

Without doubt, many of the attacks are racially motivated, but they have been happening for some time

(I) The stabbing of Melbourne student taxi driver in 2008 was widely reported in local and community media, and in south east Asia, Including The Times of India's article on 30.4.2008, *'Indian taxi driver stabbed in Oz, left to die on streets'*.

http://timesofindia.indiatimes.com/Indians_Abroad/Indian_taxi_driver_stabbed_in_Oz_left_to_die_on_streets/articleshow/2996531.cms,

"Anger boiled over the streets of Melbourne on Tuesday after an Indian student who works as a part-time taxi driver was stabbed and left in the cold for over two hours.

"The 23-year-old was found lying in a pool of blood outside a hotel in Melbourne. Over 1000 cabbies marched the streets of the city, blocking trams, jeering the police and raising slogans against the state government for not addressing their safety concerns…."

Since the outcry about this viciousness, students have overcome their fear of negative visa repercussions and have developed more courage to speak out.

(ii) In *'Indian student attacked and robbed'*, *[Bharat Times Dec.2007]* quoted hospitality student, Manoj Kumar, *"'I can definitely say that overseas students aren't safe here'. Kumar, who is handicapped, was punched repeatedly as he tried to escape the wrath of two thieves. Kumar was taken to the Dandenong hospital with a broken nose, badly bruised and very shaken… police were appalled by the incident…'it was disgusting that someone had attacked an unprovoked disabled person.' Kumar can walk but cannot run due to a polio attack during his childhood."*

(iii) In my South Asia Times article, "*Cabbies upsurge floods Melbourne*" [May 2008] Mr. Hari Yellina, Vice President of the Federation for Indian Students in Australia, FISA, gave alarming statistics about violence against Indians in Melbourne - 693 cases were reported in one year. But according to police, non-reported cases are ten times more because of cultural reluctance, and even fear of repercussions, to personally report the injuries inflicted by the assaults on individuals. Because Mr. Yellina had been attacked three times for no reason, and no result from police, he decided to act to help prevent this from happening to others.

Even before the surge of violence against Indians occurred in 2009, attacked students were seeking professional help.

"In a report by The Age (1.5.2008.) Melbourne trauma psychologist, Michael O'Neill, sees "on average two Indian taxi drivers per week suffering post traumatic stress after being attacked, usually at night, while at work… Many of his clients are students.

"O'Neill wonders why many more nasty assaults are happening and why there has been an increasingly bitter racial element to them… [He] has seen taxi drivers who have been punched, stabbed, kicked, and hit with weapons including metal bars, clubs, bats and rocks." http://www.southasiatimes.com.au/news/?p=559

In September 2007 he and FISA organized a forum with police, the Indian Consul Ms. Anita Nayyar, and Ms. Marsha Thompson, state Member of Parliament for Footscray, where many attacks occur. This dialogue and collaboration is ushered in the beginning of transformed and new supportive police attitudes.

Mr. Yellina believes that since overseas students have no voting rights, they have been ignored. They have no choice about jobs because it is hard to find work other than taxis and cleaning, all low paid.

(vi) South Asia Times reported another Times of India story [March 2008] in *'Australia unsafe? Attacks on Indian students rise'* wherein FISA secretary explained he had notified the Overseas Indian Affairs Minister about the increased violence and problems facing students.

"We have approached the Victorian and Australian federal governments for assistance…Most (Indian) students are doing well and feel secure. But a significant number are on the receiving end. This is leading to huge problems including some students being forced to the edge of society. We have seen … an increase in suicides, depression, other health problems and students failing due extraneous factors, 'he said.

"Some of these crimes bear the 'us-versus-others racial overtone while most, according to Victoria Police, come as 'Assaults and robberies, and many other cases go unreported.
"'We consider all offences of this nature extremely serious and all victims are dealt with in a professional and sensitive way. Victoria Police's crime prevention unit had generated articles in student publications and Indian newspapers in Melbourne and speaks to international students arriving for the first time. Victoria Police and Victoria University have also developed a DVD for international students,' said Victoria Police crime protection Officer Craig MacDonald."

(v). *"Indian international student's Fatal Help' [Bharat Times, August 2006]*

(vi) Indians told to keep low profile, [The Age 19.2.2009]
http://www.theage.com.au/national/indians-told-to-keep-low-profile-20090218-8bjz.html?page=-1

'Robberies in Melbourne's western suburbs jumped by 27per cent last financial year. Police estimated almost a third of victims were of Indian appearance.

A special police group has been formed to combat the robberies amid fears that some are racially motivated and that Indian international students are soft targets because they carry iPods and laptops on trains late at night.

The Federation of Indian Students of Australia says Melbourne, which has about 33,000 Indian international students, may no longer be seen as a safe destination.

Inspector Scott Mahony, of Brimbank police, said it was crucial to stop Indian students becoming victims and address their mistrust of police.

"They need to make sure they walk through a well-lit route, even if it might be longer, and they are not openly displaying signs of wealth with iPods and phones, and not talking loudly in their native language," Inspector Mahony said.

" We do believe there are some where the victim is targeted because of Indian appearance."

Dayajot Singh, who helped organise a protest last year over attacks on Indians, said Indian students should be taught crime prevention as part of their university induction course. "They should be taught that if you go on public transport in this country, people don't talk loudly, they talk in a low voice. If you talk loudly it could be taken as violent behaviour. It's different cultural behaviour — speaking loudly to each other is not taken offence to in India." He said an important message was not to carry valuables on trains at night.

Federation of Indian Students of Australia president Raman Vaid said most students carried valuables. "It's not being told to other communities or other students, 'Don't speak loudly in your native tongue, don't carry laptops." Mr Vaid said racist attacks gave Indian students a bad impression and could encourage them to study in other states or countries.'

(vii) In the report *'The lowest of low blows' [The Age 21.2.2009]*, several people of Indian origin give differing views about the request for Indians to present a low public profile, and high rate of violence, which increased by 30% last year.

'Victoria has proportionally fewer operational police than any other state, according to a 2009 Productivity Commission report.'

'Many Indian crime victims are international students. A significant number suffer homesickness, loneliness and depression. Those who are attacked often spare their families the gruesome details.

'Unlike these students, Dr Mukesh Haikerwal, a former head of the Australian Medical Association, had the full support of family when he was attacked with a baseball bat in Williamstown last year by a group of people.

'He warns that the Indian community needs to remain vigilant because a violent assault is a life-changing event that often comes with long-term psychological repercussions.

The attack on him very nearly killed him… He needed emergency surgery to remove blots clots on his brain… He feels reborn. "Every day is of value and a wonderful experience to live…'

http://www.theage.com.au/national/the-lowest-of-low-blows-20090220-8dqu.html

(viii). *'He's scarred, scared and wants to go home, after 'Indian hunt' bashing in Melbourne's west' [The Age 16 May 2009]*
The shocking report tells the story of 21 year old international student from North India, Sourabh Sharma, who while on his way home in a train after a work shift, and carrying $650 wages for rent and studies, was brutally bashed to unconsciousness and robbed by six men. *They "took his phone and bag, and kicked him in the head and face and ribs, laughing and racially abusing him".*
This assault is *"the latest in what a police source told The Age was an 'epidemic' around western suburbs train stations."… "it's an open secret around Werribee that attacks are usually racial by local gags of mixed ethnicity."*

"Solicitor Scott Ashbury from the Wyndham Legal Service said he heard that some assailants had called it 'Indian bashing'. He had seen police and medical files and 'it is fortunate someone has not died'".

Ashbury has provided dental, counselling and financial assistance, *"Yet Sourabh is deeply scarred. He hurts all over, but his heart is also wounded because any trust he had found has vanished …he was considering going home to his mother."*

Notably, this article makes no mention of any assistance given any government body. Where is the much needed aid and duty of care for a vulnerable young

foreign national from governments who promote and benefit from the multi billion dollar overseas student industry?

Only the police and transit safety officers have visited him. At least potential students will be warned: *"Meanwhile Victoria Police revealed they would send officers to India to brief Melbourne-bound students…"*

16. Student suicides and deaths

Tragically, too many international students have struggled and suffered in such despair, that they saw no other alternative but to take their own lives. Others have sadly died in accidents, fires, drownings, and from assault or illness. If 40 students passed away in less than one year, then possibly hundreds have passed away in the last ten years.

(i). *'40 foreign students die after struggling with Australian life', [Herald Sun, 10.5.2008]* http://www.news.com.au/heraldsun/story/0,21985,23673285-2862,00.html

"At least 40 foreign students have died in Australia since last June [2007], when the Department of Education, Employment and Workplace Relations began collating figures. The Federation of Indian Students of Australia says 13 took their own lives after struggling with the cultural and financial pressures.
"Other deaths have included at least five from car crashes, three drownings, two from cancer, and several fires.

"The National Liaison Committee for International Students in Australia has called on educational institutions to strengthen safety measures and support networks. Their Safety First On Campus and Beyond campaign was launched last month."

(ii) One tragic suicide occurred in 2006, after a female student at Central Queensland University, Melbourne, had barely failed her last master's subject, but apparently did not have the funds to repeat the subject and pay for visa extension and related legal costs. In desperation she jumped in front of a train, and tragically became one of several students who have suicided while in Australia. *Bharat Times* reported her sad story in May 2006, *"Aanchal Sharma did not deserve to die - Indian Student's suicide rocks the community"*

"… Aanchal Sharma, the girl who flung herself in front of the train and chose to put an end to her life. Whatever the reasons and her personal circumstances, the loss is colossal, and raises a number of questions. And the most important of all is - Could this loss of precious life be avoided? The answer is yes. How? - Well that requires the system in place to work properly and sadly, it has not worked for Aanchal as it failed so many other students from India in the past, who were left out in the cold…

"BT has only in the last few days, after the tragic death of Aanchal Sharma, heard stories from many students who feel many universities and institutions simply fail students - to make them do the subjects again in order to make more money.

"Apparently students are caught between the rock and a hard place - visa conditions of not being able to work more than 20 hours a week and raise additional funds to satisfy these "greedy" education providers. Many of them lose their visa under those circumstances. Many others cannot get additional money from India - because their

parents "have sold" everything they had - to get their children here in the first place", said a student from India, who wants to remain anonymous."

(iii) '*The lowest of low blows' [The Age 21.2.2009]*
'Dr Rae Subramaniam, an education consultant who established the Indian International Student Advisory Centre this year, says…. "The suicide rate for Indian students is increasing because they are not able to adjust to the new culture and that sort of thing." She says there is a lack of awareness on all sides.'

(iv) *'Indian student industry a study in shams and scams', [Australian, 14.7.2009]*
'However, Ms Singh says the root cause of student tension is not the attacks but a deep disconnect between the life they were told would be theirs and the debt, loneliness and disenchantment they find is the reality. Fifty-one foreign students committed suicide in Australia last year, a fair proportion of them Indians whose families had sold land and taken on huge loans in the hope their child's success would.'

(v) *'Parents of 'suicide' victims want justice' [Australian 15.7.2009]]*
http://www.theaustralian.news.com.au/story/0,25197,25784264-5013404,00.html

'THE last time Balwant Singh saw his eldest son, Maninder, 21, was at New Delhi airport on January 15, 2007, when he touched the feet of both parents in a gesture of deep respect before boarding an aircraft and a new life in Australia. Less than 18 months later, on May 29 last year, Maninder Singh was killed by a train near Melbourne's Kensington station.

Under pressure over failing marks, and the knowledge his parents had gone into debt to fund his dreams, the Punjab-born hospitality student was deemed to have taken his own life and the case was closed.

It was not until almost four months later, on September 18, that the Singhs were told of their son's death via a police letter sent to their local police. "My mobile number was there; my landline number was there; my office number was there," Mr Singh said.

The Singhs sent samples of blood, hair and saliva to Melbourne police in the hope a DNA test would be done to identify their son. None was.'

SUMMARY - ISSUES FACING INTERNATIONAL STUDENTS IN AUSTRALIA THAT CAN CONTRIBUTE TO VISA BREACHES & CANCELLATION

A. Difficulties experienced by international students in relation to universities, other education providers and Immigration

- Insufficient accurate offshore information about their courses and Australian migration laws from educational recruitment agents, who are employed by Australian tertiary institutions but who are not accountable to any Australian or Indian regulatory bodies. These agents are paid handsomely by Australian universities - (up to $1500 - $5000) for each student enrolled.

- Students are never told by agents prior to coming here that they could possibly face incarceration.

- Offshore mega AEI sponsored education fairs involving Australian universities also do not reveal full implications of student visa breaches than can lead to detention.

- Complete lack of knowledge and information about procedures involved regarding breach of visa, its implications of deportation and possible detention by DIAC in IDC's, or appeals processes, and legal guidelines.

- Misinformation from Australian government, eg. during visa application process, advice that $12,000 per annum is sufficient to live on. Also in some college handbooks. Clearly this is irresponsible advice.

- Other inaccurate, expensive advice from some migration agents regarding accommodation availability, living costs.

- Education provider scams and corruption

- Misleading, false or inaccurate impressions about small private education providers may be created offshore through glossy brochures.

- Offshore enrolment in courses, which are subsequently cancelled.

- Disagreements with the education provider administration can occur, especially if the student was given misleading and inaccurate offshore information in about the course prospectus.

- Possible language difficulties, including understanding staff with Australian accent.

- Low standard course quality in some private colleges.

- Staff not all adequately qualified; big staff turn-over.

- Punitive measures by staff such as mark deductions of 5-20 % for late assignments, resulting in failure of subject, course and visa cancellation.

- Inadequate technical and educational resources; oversized classes.

- Dissatisfaction and frustration with course quality – over 50% of Indian students have complaints – many have arrived here already with a degree.

- Students may fear lodging complaints and thereby drawing attention to themselves on record, fearing that could prejudice their results, or chances for eventually obtaining Permanent Residency.

- Cultural disinclination of talking about problems with 'strangers' such as counsellors, thus students may hide escalating problems leading to possible visa breaches.

- General lack of full implementation of ESOS Act National Code of Practice by education providers in relation to student support services, counselling and inexpensive, independent grievance and complaint handling mechanisms

- Students are obligated for 6 months to remain with their offshore enrolment with education provider – if the provider or course is inadequate or substandard, their parents' valuable resources consequently non-refundable and wasted, adding financial burden of extra tuition visa extension and legal fees.

- Small unscrupulous private colleges discourage students to change provider, and use threatening tactics, which cause a fear of reprisal in students if they do so.

- Education provider is required to regularly notify DIMIA of students' records via PRISMS. Unscrupulous providers have been known to use this to punish students who want to transfer to another provider.

- International students, most coming from countries with a lower currency, pay higher fees – twice, and up to eight times the regular Australian fees – but receive an inversely disproportionate lesser provision of support systems and assistance.

- Unexpected fee increases

- Students overcharged inflated fees

- Visa can be cancelled for late payment of fees by some providers.

- Students must pay fees in advance, yet unis can dis-enrol students, but have kept pre-paid fees, particularly if student is detained and deported.

- Fee refunds difficult to obtain; unclear fee refund policies.

- Inadvertently allowing visa to run out.

- Forgetting to notify education provider of address change.

- Overseas students are not permitted to resit failed exam/subjects – the entire subject has to be paid for again.

- Costs associated with subject repeat – tuition fees, migration agent and visa extension costs, living expenses may force student to work more than 20 hours and become subject to mandatory visa cancellation.

- Consequent increased financial stress because of need to pay for visa extension and migration agent to do so.

- Attendance of all students may not be recorded systematically, or accurately, leading to false visa cancellation.

- Education provider may not warn or notify student of possible inadequate results and 80% attendance, or offer counselling to assist student to prevent impending breach of 'course requirements'.

- Providers may not follow correct procedures, such as issuing warning notices, viz notification of intent to cancel visa, or may not inform students of their 28 day right to appeal after visa cancellation.

- Letting mandatory medical insurance run out because of costs, and thus not visiting doctors to verify medical conditions, such as depression, affecting study.

B. 8 problems in "for profit" colleges identified by *Indian Welfare Resource Centre* Social Worker, Mr. John Russell

These problems about "shopfronts" were identified through his experience in assisting Indian overseas students over four years at the Indian Welfare Resource Centre run by *FIAV,* Federation of Indian Associations of Victoria. In *'Cash Cows: Plight of overseas students' [Indian Link, May 06],* he found:

1. *Lack of a basic level of student support services, (including counselling).*

2. *Lower academic standards and quality of teaching, eg; recruitment of relatively inexperienced staff on a casual basis, inadequate working conditions and staff support, (resulting in high staff turnover).*

3. *Refusal to discuss problems of students with me, (even though the student was with me and willing to sign & fax a written authority to do so).*

4. *Poor record keeping and delays in notifying students of results, (on one occasion resulting in a student being forced to re-enrol in a subject they had passed. When the mistake was corrected, the student was penalised for missing classes in the new subject they should have enrolled in).*

5. *Re-enrolling students with very poor academic record for several years, when there is a clear indication that they would be incapable of graduating, (ie; treating them as "cash cows").*

6. *Linked to this previous problem, is the clear failure of the colleges "duty of care" to counsel students experiencing difficulties to determine the cause(s) of their difficulties and to identify possible solutions.*

7. *Requiring students to pay enrolment fees for the next semester, with the full knowledge that the college has already (or will soon do so) notified DIMIA of the students failure to meet DIMIA requirements and that at the*

subsequent DIMIA interview, the students visa will be cancelled (and the student will be unable to continue the course - another "cash-cow" example).

8. *Linked to the previous problem, is the extreme difficulty of students obtaining a refund of fees paid and then being unable to attend because their visa has been cancelled, or for some other reason beyond their control. Under principles of social justice and "duty of care" the student should be notified of their eligibility for a refund immediately, however this does not occur. In fact the opposite prevails and various barriers are placed in their way, (another "cash-cow" example).*

C. Social, cultural, economic and health difficulties faced by overseas students which can affect study - summary

- High migration agent fees; exploitation and wrong advice by some agents.
- Many Indian parents have had to mortgage their houses to finance, or sell any extra property to finance education loans for their child's overseas education. Incomes of lower middle class families are low - $350 per month (39 Indian rupees = 1AUD)
- Huge pressure and obligation on students to complete course, obtain Permanent Residency, and find employment in order to repay large offshore education related loans for which their families went into debt.
- Finding suitable housing on arrival – most arrive here alone and must link up with other students to share housing. Indian students are under tremendous financial pressure.
- High demand for rental accommodation plus a crisis in availability of affordable housing in Melbourne, means it can be extra difficult to find without references.
- Skyrocketing rents. Exploitation by landlords.
- Overcrowding - too many students may be lodged in one building
- Homesickness, loneliness, and the absence of family support where in most cases the students have never previously left home and lived away from close knit families before.
- 77% of students are Asian, and must orient themselves to a totally new culture and environment.
- Like local higher education students, overseas students need to work to help pay for ongoing education expenses, and living costs, which turn out to be much higher than expected.

- Difficulty finding employment in own areas of skill and qualification – find only limited range of jobs in hospitality, service, and taxi driver industries.

- Low wages - The 20 hours students are permitted to work weekly may not provide sufficient income to cover all expenses, especially when the hourly rate of pay is often low, eg. $8 or less. Students may be tempted to take what appears to be a necessary risk of working more hours, which causes stress, risking breach of visa condition 8202.
- No entitlement for student concession on public transport. The higher travel costs legislated by this government-endorsed discrimination, alone, could result in students earning low wages breaching visa condition 8202.

- Financial hardship. Poverty.

- Homelessness – sleeping in parks, railway stations, friends' lounge rooms.

- Racist attacks, unprovoked brutal violence on international students escalating in 2009. In Melbourne 2007, 693 unprovoked attacks on Indians, mainly students. Student taxi drivers have been subject to attacks by passengers – one, Mr. Rajneesh Joga, was killed in 2006.

- Other stresses include personal or family illness; high parental expectations; language difficulties; failing subjects; the pressure of both work and study requirements; plus the time involved in work and travel on public transport; constant business with no time for leisure.

- Students must pay for medical insurance to have a valid visa. The Australian reported on 28.6.05*: "TENS of thousands of foreign students are studying in Australia on invalid visas after refusing to keep up their health insurance. International students must take out medical insurance before they qualify to study in Australia, but many are opting for the minimum one-year payment the visa requires and then failing to renew their policies."*

- Because of medical costs, if students do not have insurance they may forgo doctor visits, thereby having no evidence of illness to show DIMA and college should issues arise regarding visa regulation compliance.

- Possible development of new bad habits - unfortunate experiences gambling in a casino, drinking, or one-night-stands - affect study.

- A few female South Asian students in great financial difficulty turned to prostitution as their only way to met the economic pressures.

- Psychological depression. In some tragic cases, suicide.

D. Examples of students experiencing severe depression

Mr. John Russell supplied these examples:
"Example 1: The following is a modification of an original letter, written with identifying data removed, at students request, following a 1st interview (together with his housemate) in June 05, a few days before he was to be interviewed by the College administration. He was referred for ongoing psychiatric help and subsequently put on medication.

"Mr. Q, age 19, arrived in Australia in July 04 from India and enrolled at a TAFE College to do a 2 year Hospitality Degree, specializing in Management. He is the older of two children from a rural family. His parents are not highly educated and being the eldest son, his parents have struggled to educate him and expect a lot from him. (His father suffered a heart attack in 2004 and he worries about his father's health and the negative impact if he goes back home without a Degree).

"He arrived here with no prior relatives or friends in Australia and shared a house in an outer suburb with several fellow country-men students, who became good friends. He also used to attend a Temple regularly. He did well in his first semester exams but found the travel from home to be a problem, so he and one of his housemates moved to a much closer suburb in September 04 and shared a room together. Prior to the end of 1st semester he received approval to change from Management to the Catering stream, within the Hospitality degree.

"In moving accommodation and changing courses, he lost contact with all his friends, except his roommate and felt isolated and lonely. He stopped going to the Temple and had trouble with motivation, eg, getting out of bed in the morning. He also had trouble sleeping eg, frequently not sleeping until 4 am in the morning. He became morose and depressed, with morbid ideation. His roommate expressed increasing concern about his condition and asked him to seek professional help. His roommate made an appointment for him to see a Migration Agent, approximately six weeks ago. He kept the appointment and continued seeing the agent on a weekly basis. This he found helpful but it did not solve his depression. It enabled him to see his problems more clearly and to seek further help, (was subsequently referred to the writer). From presentation at interview, he appeared to be suffering serious depression and was referred to a psychiatrist. The possible positive impact that anti-depressive medication might achieve was discussed at interview.

COMMENT: It would appear that there were very real problems affecting his ability to attend classes. Despite this he believes he has only failed two subjects this semester, with his depression adversely affecting his class attendance. The College administration failed to call him up for interview previously re. his poor attendance. Also apparently none of his lecturers noticed or acted upon, what appear to be obvious signs of depression. As he is now taking action to treat and overcome his depression, I believe it would be appropriate for him to continue his studies."

Example 2

The following is a modification of an original letter, with identifying data removed, written at the student's request, following a first interview in July 05 with him and his friend. He was referred for Psychiatric help.

"Mr. Y arrived in Australia (from India) with an overseas student visa, in Jan 2000. He successfully completed a 2-year Diploma in Info Technology at TAFE level. In 2002 he successfully completed a Certificate in Multi-Media. He then enrolled in a Degree Course at "Z" Private College (with University affiliation), at the commencement of 2003. He was not given any professional advice or guidance prior to enrolment and relied on friend's advice. In the first two semesters he passed only 2 subjects out of 8. At no stage did he receive any advice or counselling, other then being advised to try harder.
"He did not tell anybody that he found the University environment very difficult to understand and to cope with, compared to his TAFE experience. The workload was greater, subjects were harder and lecturers were less accessible, (appointments had to be made to speak to them). As a result his stress level increased and his sleep became disrupted, (he averaged 3-4 hours sleep a night). He found it difficult to concentrate and manifested other signs of clinical depression. His friends also noticed a significant change in his behaviour but he did not share his troubles and poor results with them. This made his depression worse and it was therefore very difficult for him to realistically assess his educational situation and life management.

"At the commencement of 2004 he went to re-enrol and was accepted without question. It would appear at this stage (if not earlier) that would have been appropriate for Z administration to refer him for detailed discussion on what action he should take in his best interests, (i.e. for Z to have "duty of care"). In 2004 he passed 4 subjects out of 8, including 1 supplementary exam. To the best of his knowledge at no time during 2004 did Z initiate discussion with him in relation to his academic progress and related issues. In this regard it would again appear that Z did not exercise appropriate "duty of care".

"Once again at the commencement of 2005 he applied for re-enrolment (after his results were known for 2004) and this was accepted (once again) without any discussion or consultation regarding what would be in his best interests. At the end of this semester he failed all 4 subjects. Before the results were known he advised Z that he is visiting India for a few weeks.

"After he returned in July he accessed his results and went to enrol on 21st. He was referred to administration, which told him that as he failed all 4 subjects, he could not be enrolled. When asked why this had happened, he replied that he was told in May that his mother was sick and had an operation. Because of this he was worried and not concentrating on his studies. He also said that he was depressed and homesick as he had not been to India for 3 years.

"COMMENT: Given the above circumstances it would appear that his situation should have been properly assessed much earlier e.g. 1 or 2 years ago and that the whole College and educational environment has been defective in this regard. Therefore it is recommended that further consideration be given to him

having appropriate treatment by a Psychiatrist and suitable guidance to find an appropriate level course to meet his educational needs."

PROCEDURES FOR CANCELLING STUDENT VISAS - MIGRATION ACT 1958

Mandatory visa cancellation authorized by Minster's delegate

Education providers are required by law to report alleged visa breaches to DIAC. After the education provider has issued the student with a S20 notice and certificate indicating the specific breach of visa conditions, and requiring to attend an immigration interview, the extraordinary power to cancel a student's visa lies with first the provider and then the Minister's delegate, a DIAC/DIMIA official.

Anecdotal evidence from detained students, refugee advocates, as well as findings of the Senate's Inquiry in the Migration Act, the Palmer report and others, all suggested that some delegates with insufficient training appear to have acted with bias, dismissiveness, lack of flexibility or holistic case management, subjectivity, and even hostility towards students and asylum seekers. [See Palmer Report findings, p.13]

Students caught working more than 20 hours must immediately make arrangements to leave the country. After cancelling the visa the delegate issues a short bridging visa to remain legally until departure.

Difficulty of proving that DIAC decisions were made in bad faith

However, any student with sufficient financial resources who attempted to contest a delegate's non bona fide decision-making in the High Court would find it extremely difficult to succeed *"in a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth under S.75 (v)." [Australian Constitution]*

In *SBBS v Minister for Immigration and Multicultural and Indigenous Affairs*[21], the Full Court of the Federal Court summarised the principles applicable to a determination as the whether a decision under review constituted a bona fide attempt to exercise the power of review. The main principles are that:
"An allegation of bad faith is a serious matter involving personal fault on the part of the decision make; it is not to be lightly made and must be clearly alleged and proved; the circumstances in which a court will find an administrative decision maker has not acted in good faith are rare and extreme."

Complex set of laws determine mandatory student visa cancellation

An extremely complex and strict set of laws, procedures and regulations in the *Migration Act 1958*, plus Departmental policies - including 'Migration Series Instructions' and 'Procedure Advice Manuals' - underpin student visa legislation, about which international students are entirely ignorant.

"The Act sets out the Notice of the grounds on which cancellation is being considered must be given and the visa holder invited to show either that the grounds do not exist or that there are reasons why the visa should not be cancelled (section 119). The holder must be given an opportunity to respond. A visa may not be cancelled before the holder

has been given a notice of cancellation that includes information relevant to the cancellation."

"The Migration Act 1958 gives you the opportunity to comment on the intention to cancel your visa and to give reasons why your visa should not be cancelled. Your comments could include:

** why grounds for cancellation do not exist; or*

** why your visa should not be cancelled.*

Factors the delegate may take into consideration in making their decision whether to cancel your visa include (but are not limited to) the following:

** the purpose of your travel to and stay in Australia;*

** extent of non-compliance with the conditions on your visa;*

** the degree of hardship which may be caused to you or your family (**Note:** as per the Convention on the Rights of the Child, the best interests of any child in Australia under 18 years of age will be considered);*

** your behaviour in relation to the department, now and on previous occasions.*

You are invited to provide your comments at interview."

Other Legislation also permitting Student Visa Cancellation includes:

sections 109 Cancellation of visa if information incorrect
116 Power to cancel 119 Notice of proposed cancellation

120 Certain information must be given to visa holder

121 Invitation to give comments etc.

124 When decision about visa cancellation may be made

140 Cancellation of visa results in other cancellation

Subdivision GB—Automatic cancellation of student visas
137J. Non-complying students may have their visas automatically cancelled
137K. Applying for revocation of cancellation
137L. Dealing with the application
137M. Notification of decision
137N. Minister may revoke cancellation on his or her own initiative
137P. Effect of revocation

*"Paragraph **116(1)(b)** of the Act allows the Minister to cancel a visa where a condition of that visa is not complied with. Subsection 116(3) of the Act and subregulation 2.43(2) of the Regulations operate to exclude any discretion in a decision to cancel a visa where the visa may be cancelled under subsection 116(1) of the Act because the visa holder has not complied with condition 8202 of the visa. If the Tribunal finds that a review applicant did not comply with condition 8202 the visa must be cancelled. "*

Therefore S.116 clearly indicates that DIMIA is permitted no discretion in student visa cancellation decisions pertaining to a student's academic performance and attendance.

SECTION 137J ' Non-complying students may have their visas automatically cancelled'

(1) This section applies if a notice is sent to a non-citizen under section 20 of the Education Services for Overseas Students Act 2000 in relation to a visa held by the non-citizen (even if the non-citizen never receives the notice).
Note: Under that section, a registered education provider must send a notice to a non-citizen who breaches a condition of the non-citizen's visa relating to attendance or satisfactory academic performance. The notice must give particulars of the breach and must require the non-citizen to attend before an officer for the purpose of explaining the breach.

(2) The non-citizen's visa is cancelled by force of this section at the end of the 28th day after the day that the notice specifies as the date of the notice unless, before the end of that 28th day:

a. the non-citizen complies with the notice; or

b. (b) the non-citizen, while attending in person at an office of Immigration (within the meaning of the regulations) that is either:
(i) in Australia; or
(ii) approved for the purposes of this paragraph by the Minister by notice in the Gazette; makes himself or herself available to an officer for the stated purpose of explaining the breach alleged in the notice.

In other words, S 137J states that in situations where the education provider has sent a notice to the student about an alleged breach, the visa 'may', not 'must', be cancelled, and that students have a right of reply to allegations against them.

However DIMIA/DIAC's practices do not necessarily follow the requirements of the Act. Confusion by education providers, DIMIA and the MRT regarding the interpretation of these conditions, together with the relevant sections of the Act itself, have led to incorrect student visa cancellation, causing a roller-coaster of disastrous outcomes for thousands of students and their families.

EXAMPLE OF DIMIA ERRORS: *UDDIN VS MINISTER FOR IMMIGRATION* ~ WRONGFUL CANCELLATION OF 8,450 STUDENT VISAS

To continue the example of DIMIA errors referred to on page 36, the visas of 8,450 international students were wrongfully cancelled under S.137J over a period of over four years. The *Uddin vs. Minister For Immigration* case, FMCA 841 [7 June 2005], deemed all these cancellations invalid, because of an error in the S137J notice sent to the students that failed to comply with mandatory legislative requirements. The notice was sent to students as a result of alleged breaches of visa conditions reported to the Department of Immigration and Multicultural Affairs (DIMA) by education providers. These 8,450 automatic visa cancellations, which occurred between 1 May 2001 and 16 August 2005, have now been reversed.

Mr. Uddin had to go through the lengthy and costly legal processes of MRT and Federal Magistrates' before he could get his student visa reinstated.

'Categories of Affected Students' due to Uddin decision

[fromhttp://www.immi.gov.au/business-services/education-providers/advice_providers.htm]

- Over 5200 of those affected are outside Australia and no longer hold a valid student visa because their reinstated visa's expiry date has already passed.
- Around 700 are still in Australia or overseas who now hold another substantive or bridging visa - ie they are no longer students but have applied for another visa.
- Around 650 are in Australia and who, as a result of the cancellation reversal, now hold a valid student visa again.

Some of these may still have current enrolments, and they will be entitled to continue studying unless they are reported again by their current provider.

Others will not be enrolled, and therefore will be in breach of their student visa conditions. This is the group we are most eager to contact, to advise them of their current status. All situations will be considered on a case-by-case basis - genuine students may be given the opportunity to seek a CoE before DIMA takes any further action.

- Around 450 are in Australia and who do not hold a current visa, because although the cancellation has been reversed, their original student visa has expired and they have not applied for or been granted any other visa. This group would be subject to the normal compliance action for all unlawful non-citizens.

- Around 1360 are overseas and who, as a result of the cancellation reversal, now hold a valid student visa again. They would need to have a CoE in order to return to Australia to study.'

Comments by Mr. Uddin's lawyers
Mr. Nicholas McNally, the lawyer representing Mr. Uddin, clearly called for compensation for these students' *'loss of opportunities and actual costs'*. In a media release by Parrish Patience Immigration Lawyers, 15.9.2005, he said:

'"Merely getting back their visa won't necessarily redress their suffering. In many cases they will struggle to obtain re-enrolment to the university or college they attended, and many others won't be able to rewind their lives to pick up the life that had been taken away from them unlawfully. I have no doubt that the interruption to these students' lives has been catastrophic in some cases. Compensation must flow for their loss of opportunities and actual costs.

'"Although education providers are large universities, many are small independent colleges that in the back streets of our cities. The education providers effectively determine whether a student has breached certain visa conditions. The provider issues a notice, and 28 days later, their visa having been automatically cancelled, the student may end up in immigration detention in the deportation queue. I wouldn't want my liberty in the hands of these colleges.

'Mr. McNally concluded, *"Education providers are not delegates of the minister and they should not be given powers to cancel visas, or to set in train an automatic or mandatory visa cancellation procedure by writing a letter. If Australia wants to portray itself as an attractive destination for foreign student, and if we want to address the skills shortage in this country, a complete overhaul of the student visa is needed."*

'Mr. McNally's colleague, Nigel Dobbie said, *"A lot of students leave their home country to study in Australia as the pride and joy of their family and local communities, only to be sent back in shame because they were thrown out of the country by an invalid exercise of power."'*

INJUSTICE TO INTERNATIONAL STUDENTS
~ CONCERNS EXPRESSED BY EXPERIENCED MIGRATION AGENTS

(1) Mr. Rory Hudson, Migration agent, lawyer, former Tribunal Member*:*

"Thank you for sending me these letters. I have long been concerned at the mistreatment of international students by the immigration system.

"I am in broad agreement with the content of your letters. ...There is mandatory visa cancellation in certain circumstances, but that does not automatically lead to detention, in fact most students whose visas are cancelled are given bridging visas E without any problem. They are required to leave Australia, but not normally deported. Their situation is still devastating, of course, because of the

disgrace they feel and the waste of thousands of dollars of their families' money and years of their own lives. .

"The issue as I see it is simply one of fairness and the real problem is the "cowboy" attitude of many DIMIA officers who have a "deport, deport" mentality rather than trying to understand the student's point of view. It is exacerbated by the mandatory cancellation provisions and by the lack of proper accountability of DIMIA. The solution as I see it would simply be to have a provision that DIMIA may (*rather than* must) *cancel a student's visa if such and such happens, and then to have this properly reviewable at the MRT. And then of course a change in DIMIA culture. I don't have any specific proof or figures to show that fewer students are being reported now, but I do get that general impression.*

"The whole business of using and abusing international students in Australia is a disgrace, a multifaceted scam involving large numbers of shonky colleges, education agents, migration agents and others whose only interest is making a quick buck. Nigel Dobbie is right, too. Education itself has gone down the tube, as they say. I will support anything that can be done to expose what is going on."

(2) *Mr. Harold Jones, Migration agent and accountant, Melbourne:*

"Thanks for your email, there are a few queries. I would refer to homesickness. Many arrive from year 12 and enter an adult word, especially after living in the bosom of an extended family. Then a nightclub, and some never recover from being picked up for a one-night stand. Also, for many there are the dangers of the Casino.

"So we are naïve as a country to expect these new students to be able to meet the conditions which expect standards of performance at least 50% above that of locals? Is this realistic when they often have no family or friends and no support from their education provider?

"Some students would be considered as economic refugees, sent out by their families as prospects are poor in their home country. So if we accept them, we must recognise that they have several agendas.

"Your article also refers to the fact that many parents mortgage/sell land - is the quality we offer to consumer standards? My feeling is that this is an industry, which could easily desert us. Our success is because we are cheaper than the UK and USA and Canada, but with currency movements this can change radically.

"As to the RRT process, this is not a good option as DIMIA tend now to set high bond following the MRT/Letter re cancellation, then a fresh BVE is needed for the new application. Really only applies in those cases where student visa has expired and the protection visa application can be lodged and a bridging visa C issued. Thus avoiding the need to visit compliance.

"Obviously I cannot comment on your anecdotal stories. However in the news in the Age about 2 weeks ago when a lot of attention to DIMIA was mentioned of a

suicidal Bangladeshi ex-student in I think Baxter, the report implied he was to be reprieved, then denied by Minister, may give you a broader profile of stories. Also, in a simpler vein I have a Sri Lankan student who let his visa run out through oversight, a daydreamer. He has to return to Sri Lanka and start all over again, again no forgiveness or flexibility

"There should be a 6 month foundation course for all overseas students to give them an introduction to study here before committing to a particular course. "

(3) Mr. Boniface Town, President of MARA, Melbourne
"Michaela,
The plight of international students is very much a concern to me and my other executives. I have seen cases of student clients who have been done much injustice by the system. I have recently talked to John Williams and he is quite sympathetic about the situation of IS. He told me he has given instruction to Compliance to be more compassionate. For example in terms of the Condition of 20 hrs of work per week, he has told them not to carry out so vigilantly. And in times of interview be more counseling rather than handing out cancellation decision.
Regards,
Boniface Town" (June 2006)

(4) A Migration agent who does not wish to be named:
"The whole student visa system is dreadful. It should be abolished, and replaced with the Canadian model."

DIMIA/DIAC'S METHODS OF APPREHENDING AND DETAINING STUDENTS WORKING MORE THAN 20 HOURS

1. DIAC Compliance Field Operations: raids on student workplaces, homes

DIAC/DIMIA apparently conducts regular raids at certain times throughout the year on specifically targeted workplaces such call centres and restaurants, where overseas students work, demanding employers to show timesheets, then rounding up any students who have worked more than 20 hours for subsequent detention and deportation.

Raids on student workplaces are known as 'compliance field operations'. In 2004-05, 5110 national compliance field operations were conducted specifically to locate student visa breaches and over-stayers - a national average of 14 raids per day and 28% of all immigration raids.

Apprehended students who do not immediately contact a migration agent for assistance are then likely, as 'unlawful non-citizens', to be immediately detained in an Immigration Detention Facility.

However, anecdotal evidence indicates that if students immediately contact their migration agent to negotiate with DIMIA, it appears they may get their case dropped on payment of a bond of up to $15,000.

2. Raids on student taxi drivers

DIMIA, in conjunction with the ATO and Sheriff's Office, also conducts regular raids on taxi drivers in Melbourne, 50% of whom are international students working to pay for education and living costs.

Students found working two 12 hour minimum taxi shifts automatically have their visas revoked under mandatory visa cancellation law, and must leave Australia as soon as possible. Yet they may not actually work the long 12 hours straight, but sometimes study or sleep few hours in their cab. Nevertheless, because of slave labour wages, their only option is take two shifts totaling 24 hours - despite the risk of losing their visa - since rising living and education costs, in addition to many other unforeseen expenses, are very hard to meet.

For example, just to pay for daily travel to university, earning $8 per hour a student cabby has to work for 4 of the permitted 20 hours, simply because the Victorian and NSW state governments do not grant transport concessions to international students.

Other expenses may include high migration fees for advice or visa extension. And if their employers insist that they either work hours which flout regulations or forego the job, the students are then left without a choice.

As the *Times of India* reported on 30 April 2008,
"…the majority of the drivers are students from India who work in the nights to repay their loans or pay their hefty fees. All this is apart from the rising rent and petrol prices. 'If I do not drive taxi after classes, I will not be able to afford my fees. Life is tough in Australia for international students. I wish the Indian government steps in to support us,' Dinesh Singh said. "

3. Informants

These raids can also occur after DIMIA receives details from informants – members of the public - who are encouraged by DIMIA to 'dob-in' students. On each page of the DIMIA website there is a link the its **'Immigration Dob-In Line'**, which states:

"Information from the public provides important support to the department in its efforts to maintain the integrity of Australia's borders and immigration programs. If you have information about people working or living illegally in Australia, you can contact the Immigration Dob-In Line by phone or FAX."

People offering information to DIMIA ('voluntary approaches') contributed to 3092, or 60%, of these operations in 2004-05**.**

Furthermore, although contentious, it appears that informants can be remunerated for providing accurate information to DIMIA/DIAC about students working more than 20 hours per week, or whose visas have expired. DIAC maintains this is not policy. However several students I questioned confidentially have confirmed this, including a student detained for 18 months who said a former acquaintance received $3,000 for reporting him.

Since different sections of DIMIA/DIAC appear to have provided different answers to certain questions, I have no doubt that Ms. Lidija Hary, A/g Assistant Director Values and Conduct Section, People Services Branch Department of Immigration & Multicultural Affairs, wrote sincerely to me on 17.7.2006,
"I would also like to take this opportunity to advise that DIMA does not pay money to the public in order to obtain information. The Department does not have a legislative basis to undertake such practice."

4. Raids on Homes.
If DIAC officers have evidence that students have worked for more than 20 hours, or suspect this, they may visit these 'dobbed-in' students in the very early hours of the morning with or without a search warrant, arresting and forcing them to leave immediately in the DIAC van for a detention centre. It appears that they cannot pack clothes or take any other possessions.

According to a Melbourne migration agent, *"Anecdotal evidence is that DIMIA officers frequently raid students' premises for flimsy reasons without a search warrant."*

Example of illegal / unauthorized compliance operation: *MIMIA vs. ALAM*
The illegality of raids without warrants on student homes and DIMIA's intimidating methods, plus the definition of working more than 20 hours, have been revealed in a judgement by the Full Bench of the Federal Court in Sydney on 22.7.2005, who found in the case of *Minister for Immigration and Multicultural and Indigenous Affairs v Alam [2005] FCAFC 132;* (2005) 145:

"…that immigration officers subjected a foreign student to search without warrant, arrest, interrogation and incarceration - despite the student having a valid visa."

Mr. Alam was subsequently detained in Villawood for three weeks. He had to go through the lengthy process of MRT, Federal Magistrates' Court then to the Federal Court before he could get his visa justly reinstated.

One of the learned Judges, Mr. Justice James Allsop, was later interviewed by "PM" on ABC Radio National http://www.abc.net.au/pm/content/2005/s1423848.htm:

'Judges slam Immigration Department over student's treatment'

ABC RADIO NATIONAL : PM - Wednesday, 27 July , 2005 18:37:00

"MARK COLVIN: There's been more damning criticism of Department of Immigration officers, this time from three senior judges. A full bench of the Federal Court has found that immigration officers subjected a foreign student to search without warrant, arrest, interrogation and incarceration - despite the student having a valid visa. And as Jo Jarvis reports, the judges say the case raises "disturbing questions".

Reporter: JO JARVIS: Imagine being at home one night when immigration officers come knocking at your door looking for your housemate. Imagine how you'd feel if the officers, after finishing with your friend, then turn to you, conducting a search, without a warrant, of your bedroom and belongings.

This is what happened to Bangladeshi student Muhabab Alam in December 2002. But the 21-year-old student's problems didn't end there.

When immigration officers found a pay slip showing the student had worked 22 hours, two hours over the allowable maximum under his visa, he was taken into custody and told he would be imprisoned in Villawood Detention Centre unless he could raise $10,000. Mr Alam couldn't produce the funds and was subsequently detained for three weeks.

According to the Federal Court full bench judgement, the case raises some disturbing questions. These are the words of Justice James Allsop, from the court transcript:

JAMES ALLSOP (voiceover): I wish to express my concern as to the methods apparently used by officers of the Department in dealing with this man. As a non-citizen holding a valid visa, as with any person present in this country, he was entitled to be treated according to law.
There was no entitlement in officers of the Department to subject him to search without warrant, to arrest, to interrogation and to incarceration otherwise than proceeding according to law.
The facts which were exposed before the learned Federal Magistrate, unexplained and unjustified as they appear to have been, gave the respondent real cause for complaint as to his treatment by the executive of this country.

JO JARVIS: Justice Allsop explaining Friday's Federal Court dismissal of the Immigration Department's appeal against a Magistrate's Court decision that officials wrongly cancelled Mr Alam's student visa.
Mr Alam's appeal was originally heard in early May. At that time the judges were no less scathing in their assessment of the immigration officers treatment of the student.

JAMES ALLSOP (voiceover): My reaction to it, and I will only speak for myself about this, frankly, is outrage. The idea that Immigration Department officers could come to private premises without a search warrant and without even any reason to suspect that this respondent lived there or had done anything wrong, and ransack his belongings; and on the strength of that, take him away involuntarily, I ask myself if that is something that is tolerated?
Why do we bother to have legal provisions dealing with search warrants and where somebody has to before a magistrate to make out a case? Are officers of the Department to be treated as above the law?

JO JARVIS: Justice Allsop.

Muhabab Alam's crime had been to work two hours more than the 20 in one week allowable under his visa provisions. According to the court transcript he worked the extra hours upon his employer's request. As one of the judges pointed out, he was trying to do the "right thing", but the Department didn't see it that way. The case then centred around what actually constitutes a week, and the Department's appeal was dismissed.

Today Mr Alam's lawyer was travelling overseas and couldn't be contacted by *PM*, so we were unable to ask him or his client whether they were going to take any action against

Mr Alam's wrongful detention".

The full judgement of this case can be read at:
http://www.austlii.edu.au/au/cases/cth/FCAFC/2005/132.html

Through their detailed analysis, the Judges' elucidation of the meaning of 'a week' in condition 8202, and subsequent dismissal of DIMIA's flawed application, suggests that probably many students have had visas falsely cancelled because of mistaken or scurrilous interpretation by some of DIMIA's officers, which may have led to "trespass and false imprisonment" of students.

The Judges also commented in their decision about:

- *"Cause for this student to take action against his wrongful detention"*.
- *"Inappropriate regulatory provisions and heavy-handed enforcement are likely adversely to affect our international reputation and ultimately to undermine the overseas student program itself."*
- "…and the 'potentially draconian consequences' of a breach of the condition."

ARRIVAL IN DETENTION

Initial Options

Those students thus detained due to visa cancellation after a raid, or after an interview with a DIMIA officer, must wait for several days either:

1. to be deported, the option most students appear to choose, OR
2. to make an application to the Migration Review Tribunal to try to get their student visa reinstated, costing $1400. [Detailed Information, including an application for fee-waiver, is available electronically at http://www.mrt.gov.au/detainees.html, but detainees were not allowed internet access while in detention until 2007.]
3. In this case, the student must also raise money for a 'bond' – anything from $3,500 - $10,000 or more - before being released in the community
4. on a 'Bridging Visa E' which prohibits work, study or Medicare.

No legal advice for detained students

Other than the above basic information regarding their options on arrival in detention, international students receive no legal advice from DIAC. Furthermore, legislation has actually prevented HREOC, the Human Rights and Equal Opportunity Commission and legal organizations from providing legal advice to people in immigration detention unless those detainees specifically ask for it, although it now appears that asylum seekers are now allocated or guided to a pro bona lawyer.

Detained students tend to find out about legal options and further processes from other detainees, so it is very confusing for them. Whether students follow legal action in higher courts depends on whatever advice they get and their finances, which usually have been depleted. Some have borrowed money from friends, while others tried to represent themselves, despite knowing little of the intricacies of Australian law. Apparently there have been many cases of unrepresented

applicants in the Federal Court attempting the impossible task of representing themselves, because it is 'easier for a criminal to get legal aid than for an asylum seeker or student'.

Bridging Visa E

The granting of a Bridging visa E allows MRT and other appellants to remain lawfully in Australia until 28 days after the review is completed. On a Bridging Visa E, they are not permitted to study, work, social security, or get Medicare.

'The conditions and restrictions placed on bridging visa holders can impact significantly on their ability to exercise basic human rights. These rights include the right to work, the right to social security, the right to an adequate standard of living and the right to the highest attainable standard of health. The restrictions on volunteer work and study also mean that many people are unable to engage in any constructive or meaningful activity.' [HREOC]

Asylum seekers living in the community under Bridging Visa E conditions have claimed that psychological, health and social problems, including poverty, homelessness, depression and suicidal feelings are just some consequences of being denied the dignity of work, and having to rely entirely on charity handouts for themselves and their families to survive – accommodation, food, clothing, medical, transport and legal costs.

Thus students on a BVE suffer similarly, and may have to live for months on borrowed money in the community while they wait for their appeal. They may spend any reserve money on legal and basic living expenses, and so eventually be tempted and forced to break the visa's condition by working illegally in order to pay back their debts to friends.

If someone 'dobs them in' for breaching the visa by working, DIAC will apprehend them and force them back into detention where, they must remain during any further appeal. This is because the consequence of breaking the BV conditions is that another bridging visa will not be granted. [See example of Mr. B, p.59.]

Bonds

Only on payment of a substantial amount for a 'bond' of between $3,000 - $25,000 can a student be released from detention. If they can't afford the high cost of a Bond to be released on Bridging Visa E, they therefore must remain in detention while they wait for their MRT appeal. This may take 3-4 months.

"The bond is a "security", referred to in ***Migration Regulations, Schedule 2 at 050.224,*** *and this is the legislative authority for imposing it. However, there does not appear to be anywhere that specifies how much bond may be required. Case law apparently says that a bond should be sufficient to be effective, but not so much that the student could not possibly pay it."* [Mr. Rory Hudson]

In practice, the amount of the bond has been set and changed randomly by DIMIA, MRT and RRT, without any consideration of the student's ability to pay. If the bond is increased unexpectedly, a detained student must remain imprisoned longer until when or if his supporters can raise the funds.

It appears there is some correlation between the type of Bridging Visa (A B C D or E) granted and the amount paid for the bond. The higher the cost, the more favourable the conditions of the visa seem to be.

Example: Mr. D was another second former international student also detained at Baxter and Maribyrnong for a total of 7 months. When his supporters appealed to the RRT to have his bond lowered, it was raised from $5,000 to $15,000. When they applied to pay for the bond, it was increased to $25,000. This meant he was kept in detention for months longer while the money was eventually raised from private citizens' donations. Released on a different Bridging Visa, he was then permitted to resume his studies, but pending further refugee appeals.

Throughout their detention, students receive no advice from their DIMIA case officers, as it appears to be policy not to directly liaise with their client detainees.

DIAC's misinformation re. bonds to Senator Ludwig's QON Oct.2005
During the Senate Legal Committee's Inquiry into the Administration and Operation of the Migration Act, Senator Ludwig asked DIAMIA about student visas:

9. *Can you provide information about the payments of bonds? Are bonds gradated depending on the nature of the visa sought or contested?*

A: There are no bonds for student visa applicants.

10. *What happens to the bond if the student visa applicant is successful or unsuccessful?*

A: This does not apply to student visa applicants, as there are no bonds for them.

The DIAC official who wrote these responses was astoundingly incorrect, perhaps having misread or misunderstood the questions, despite the clear reference to 'contesting' visa decisions. Obviously there are no bonds in initial offshore student visa applications. But the fact that wrong answers were provided were to a Senate inquiry is most disturbing, and suggest different sections within DIAC have different understanding of the realities and laws of visa cancellation processes and detention, or that there has been a deliberate obfuscation of the facts.

REVIEW PROCESSES:
CONTESTING STUDENT VISA CANCELLATION AND DEPORTATION
The sequence of appeals processes moves from DIAC/DIMIA to MRT/RRT to the Courts and finally to the Minister, but appears flawed at every level, affording genuine student appellants little chance of success of overturning visa cancellation.

1. Migration Review Tribunal - no alternative initial processes for students
The absence of any independent educational review tribunal or merits review in which overseas students can appeal or contest visas cancellation for alleged breaches, or the existence of any system of fines - instead of visa loss, mandatory requirement to leave the country, and/or possible detention - means that students enter the 'unlawful non-citizen' / migration category for assessment

to have their visas reinstated in the Migration Review Tribunal, irrespective of whether they are detained, or out of detention on a bridging visa.

Yet students follow the MRT option because it is their only one. They are desperate to find a way to avoid wasting their parents' financial sacrifices. They must finish their studies and obtain employment to repay the huge education debts incurred. Between January and March 2005, 117 cancelled student visa applications were lodged in the Melbourne MRT, about one per day, even though many may not have resources for legal representation.

Students in detention cannot apply to the MRT if their visa was automatically cancelled under 8105, ie. if they worked more than 20 hours. These students are deported from detention.

The role and powers of the MRT are described on the MRT website:
http://www.mrt.gov.au/factsheets.htm
"The MRT is a statutory body which provides a final merits review of visa and visa related decisions made by the Minister, or officers of DIMIA acting as the Ministers delegates.
"The Tribunal was established under the Migration Act 1958 and came into existence on June 1, 1999. The Tribunal does not have any more discretion than the primary decision maker and must make its decisions within the same legislative and policy framework as the primary decision maker. The Tribunal must have regard to Government policy and comply with Principle Member directions and is bound by any direction made by the Minister under Section S499 ". Minister may give directions

"The Tribunal does not have any discretion to set aside a visa cancellation where there has been a substantiated breach of condition 8202. Once non-compliance with the condition is established the Tribunal is bound, by the operation of s116(3), to affirm the visa cancellation."

The Tribunal is required to prove whether the student breached the visa using information provided by the minister's representative, DIAC official, who cancelled the visa. If it cannot, then discretionary evidence may later be heard. Only exceptional circumstances beyond control may be considered.

The Tribunal's Presiding Member is not necessarily a lawyer, and is not allowed to make discretionary decisions for compassionate reasons such as study, health or family problems. As sole decision maker the Member has an enormous responsibility to make relevant inquiries, ask the appellant questions, interpret complex factors within a limited set framework, and review the original DIAC cancellation decision. Under added pressure to comply with government requirements, the Members' decisions have sometimes been seen as subjective and/or affected by government influence. DIAC can, and has, challenged some MRT decisions to reinstate student visas.

In fact, the vast range of socio-cultural-economic factors affecting students cannot be taken into account either by the education provider, the Minister's delegate, or the MRT. Not only is the MRT limited by its legislative requirement to make non-discretionary decisions, together with education providers and DIMIA,

but also has made errors in correctly interpreting the conditions for visa cancellations.

These procedural problems have caused untold confusion, frustration and suffering to many students and their families. These errors pertain to such details as the meaning of '20 hours' (see Alam case above); record keeping of student attendance by providers; the meaning of 'contact hours'; the methods of evaluating adequate student performance. (See ESOS Evaluation 8.6.1)

As already stated, it is difficult for students to get their visas reinstated through the Migration Review Tribunal. Although the ESOS Evaluation reported that 39% of student visa cancellations are revoked by the MRT, two experienced Melbourne migration agents questioned this figure:

"Students apply to extend their visa and are refused and they appeal and the success rate is high, I would think 40% would be OK. Students whose visas are cancelled are a different story, and I would think my figure is right of 5-10%." (Mr. Rory Hudson)
"However, I would be extremely surprised if that figure of 40% were correct. I would like to know how they arrived at it. My strong impression is that the figure is much lower… although I cannot give you any hard figures." (Mr. Harold Jones)

Senate Legal Committee View on problems with Secondary Assessment of Visa Applications through Tribunals

In Chapter 3 of its Report on the Administration and Operation of the Migration Act 1958, the Senate Legal Committee referred to the many inadequacies with Secondary Assessment of visa applications through the Tribunals, the conduct and attitude of Tribunal Members and the Tribunals' incapacity to '*adequately apply natural justice procedures, and therefore not able to consistently deliver just outcomes.'*

"Tribunals

3.112 The difficulties faced by unrepresented applicants were a particular concern.

Conduct and Attitude of Tribunal Members
3.115 It was claimed that a lack of procedural protection for applicants coupled with a confrontational attitude by some members, particularly on issues of credibility, had undermined tribunal decision making.

3.118 *…"(H)earings before the Tribunal are virtually unique in Australian procedures and in the common law system generally…..The Tribunal is both the judge and the interrogator, is at liberty to conduct the interview in any way it wishes, without order, predictability, or consistency of subject matter, and may use any outside material it wishes without giving the person being interrogated the opportunity of reading and understanding the material before being questioned about it…..These methods contravene every basic safeguard established by our inherited system of law for 400 years."*

3.138 The joint submission from the Human Rights Council of Australia and A Just Australia, suggested that the Minister:

……"exerts an unhealthy influence over what was meant to be an independent review mechanism…In addition, the failure of key selection criteria for members to include legal or human rights expertise raises doubts about the emphasis these issues are given…"

3.139 These concerns were shared by the International Commission of Jurists, ICJ:
" A number of tribunal Members are employed on maximum term contracts, but are eligible for re-appointment at the Minister's discretion. It is not satisfactory in terms of the independence of the review tribunals that the Minister who determines appointment and re- appointment of tribunal Members, is also responsible for administering DIMIA, whose decisions are under review by the Tribunal… the purportedly independent tribunals could be subjected to political pressure whose departmental delegates are being called into question in the review cases…"

3.179 In light of the concerns over the Tribunals' capacity to decide matters appropriately, much was made of the fact that the courts, in undertaking review of the tribunals' decisions were generally bound by the Tribunals finding of fact in the case, The ICJ, for example, expressed alarm over the fact that:
"… there is no right of appeal to a court if the review tribunal clearly make errors of fact. The tribunals are the final arbiters of fact; there is no access to merits review of a decision of the MRT or RRT. …. Except for the limited ground of 'jurisdictional error of law', decisions of the MRT and RRT are immune from judicial review or oversight under ordinary administrative law principles."

Committee view
3.188 The fact remains that DIMIA's tribunals are considered to be partisan, to not adequately apply natural justice procedures, and therefore not able to consistently deliver just outcomes.

3.19 ….. current provisions allow basic flaws in natural justice, relating to the capacity to respond to adverse evidence, to be properly represented, and to call and challenge witnesses. Leaving these matters solely to the arbitrary discretion of Members is not adequate."

Example of MRT decision where DIMIA's student visa cancellation was set aside:

0802070 [2008] MRTA 722 (8 August 2008)

In the following case, [2001] MRTA 724 the MRT set aside/revoked a student's visa cancellation. This MRT decision was based on the example of a Federal Court order to revoke a previous MRT decision to affirm Dimia's cancellation of another student's visa, who had appealed against the MRT's refusal to reinstate his cancelled visa. The problem related to how 80% attendance was determined:

"when he began at Cambridge College, his selected course was a new course. He states that he was only one of three students doing the course. At times during the year, he attended classes to find that he was the only student present. He claimed that on occasions, the lecturer dismissed him saying it was not worth conducting the lesson...his attendance percentage must be open to doubt as 8202 states he must maintain an 80% attendance for the classes scheduled for the course. The inference being that the 80% should calculated over the whole course, not just part of it.

"27. However, the Tribunal has regard to a MRT decision recently set aside on 6 November 2000 by the Federal Court in Nong v Minister for Immigration and Multicultural Affairs (2000) FCA 1575 (Katz J) where Katz J held that the MRT had applied an incorrect construction of the requirements of condition 8202. The case focussed on the requirement set out in par (2) of 8202 that the visa holder `attend at least 80 % of the classes and tutorials scheduled for the course'. The court held that to give effect to the ordinary meaning of the words of par (b) of 8202 requires a construction of par (b) which contemplates an examination of the student's attendance in the registered course in which he or she is enrolled only when that course has concluded."

Examples of MRT decisions affirming DIMIA's student visa cancellation

(a) In [2003] MRTA 5366 the initial problem related to inadequate attendance because of insufficient classes and facilities:

" 15. The visa applicant said he came to Australia in February 2000, and first studied at AIT Careers Institute in Sydney, owned by Mr __. However the course and possible job as a laboratory assistant was not what he had been told, and was quite unsatisfactory. The classes only had one room, there was no library, no Internet access, and there were only classes 2 days a week. The company had not provided the facilities and services they had promised. He felt very let down. There was a major scandal about the place, which was in the Sydney papers including a photograph of himself. He was advised to then go Wollongong University, which he found difficult living in Sydney."

(b) [2002] MRTA 5898

" He was late for class at times and would then be marked absent for the entire day.*

** He was unable to attend class for approximately one week because he suffered from sinus problems.*

** He could not provide any evidence of his illness because he did not always attend a doctor when he knew what was wrong with himself and did not want to pay the doctor's fee."*

(c) Mr. John Russell, social worker at the Federations of Indian Associations of Victoria gives this example. "The following case is the modification of an original letter, with identifying data removed, written in March 2005 following a 1st interview at student's request, by. The referral was made by a migration agent who was assisting him in his appeal to the MRT. He had been "hanging around" waiting for the hearing for over 6 months since his student visa was cancelled and was not allowed to work during this period. He subsequently lost his appeal and returned to India.

"I have interviewed Mr. K, age 21, regarding his current circumstances:
His family (father & sisters – mother deceased) has a farm in India. He approached an agent in who was recruiting for "L" TAFE College) and was advised to enroll in a B Info Tech course, as that had the best prospects for his future. His father arranged for accommodation through a contact in Melb and Mr. K arrived in Jan 2004. This was a shared household and he had problems adjusting to his new environment, as he had never had to do anything for himself

(eg. cooking, cleaning etc). Major tensions built up in the first 3 months and when the father's contact moved out, the other 3 residents (in the 2 bedroom house) asked him to leave in the middle of the night, after a major dispute.

"At the same time as he was experiencing these major problems where he was living, he was struggling with some of the course subjects, as he had no background in IT. These combined pressures, combined with lack of friends and any other kind of support or knowledge of where to go to ask for help, resulted in serious depression and lack of motivation. He was absent from many classes but did not see a Dr or seek to obtain any medical certificates, as he did not realize the need to do so. He also did not feel able to confide in his family about his problems, (up until then, his family were the only people in whom he confided). He did come to realize that it was not the course for him and after 3 months requested a change to Hospitality (which was granted prior to end of 1st semester).

"He was able to find compatible accommodation and develop meaningful friendships and his attendance at and interest in, the new course was much better. Early in the 2nd semester, he was asked to contact the International office at the College re his poor attendance record in the 1st semester (less than 80%). He told the officer of the problems he had been experiencing, but was told that the college would notify DIMIA of his attendance record. He was not referred to any student support services (eg. counselling). He was subsequently called to an interview by DIMIA and told that his student visa would be cancelled and he could no longer continue the course (despite having paid his fees (of approx $4,200). This, and requesting a further $1,400 from his father to appeal the decision, caused further stress and depression.

"COMMENT: While the standard argument that he has to take full responsibility for the decisions he makes and the documentation that he signs may have validity, it can also be argued that the recruiting agent and the host college also have a "duty of care" to consider the best interests of the student, even without taking into account the comparatively high fees that are required up-front. Despite saying to the agent in India that he had no IT background, he was still pushed to enroll, was not in the student's best interest. It would also seem reasonable for the College to advise him at, or prior to, the end of the 1st semester, that it was likely that his visa would be cancelled. It then would have been possible for him to decide to cut his fathers losses and return home. A cynical view would be that the College could be seen as primarily concerned with making money and not with the welfare of the student. This is of particular concern when the student can be seen to be young, naive and without any friends or supports in a strange and apparently hostile environment.
It is therefore requested that he be given an opportunity to prove his commitment to the Hospitality course and to demonstrate his ability to complete it, by allowing him to complete the Semester, which he has paid for!"

2. Option of Refugee Review Tribunal appeal after failure in MRT

If the students' MRT appeal against visa cancellation is one of 90-95% cases which fails, in a few instances their migration agents/lawyers have advised that applying for a protection visa - refugee status – may be the only way to ever be

able to complete their expensive studies, given the nature of current migration regulations for students. Despite the almost impossibility of succeeding in this, with no further options apparently available some students, such as the three in MIDC in 2003-04, then lodged applications to appeal in the Refugee Review Tribunal, RRT, and had to wait for several more months for this hearing…in detention, all the time being charged $225 per day for detention in 2004. (See Examples of Mr. A and Mr. B starting p. 20)

The point here is that those students felt forced into this course of action entirely because of: a) the absence of discretionary consideration prior to visa cancellation b) the absence of a genuinely independent merits review system whereby students can challenge their education provider prior to, and after, visa cancellation expulsion or detention; c) lack of legal advice offered by DIAC to people detained as a result of alleged visa breaches.

Contrary to an image that student RRT applicants are non-genuine students, the ones mentioned above were actually most sincere, but had fallen foul of the inflexible complex legislation as well as their former education provider. In addition, students from the Indian subcontinent tend to have a strong sense of justice.

3. Further Court Appeals: Federal Magistrates, Federal and Full Federal

Appeal is further limited for students affected by DIAC and Tribunal decision, since Judicial Review is restricted and appeals cannot be heard due to a denial of natural justice, or on the merits of a Tribunal decision.

1) If some students do continue to appeal to higher courts for refugee status, they must stay longer in detention - unless they can afford an expensive bond. But in each hearing most of them inevitably fail because, although they may have some legitimate claims of difficulty, they are not really refugees and cannot meet all the criteria of the UN definition of refugee. They were simply so desperate to try to find a way to get a visa to complete their studies and not waste their parents' money and return home in shame. (They may also appeal on any other grounds.)

2) However, a few students through claiming refugee status have been able to successfully challenge DIAC/MRT decisions after lengthy battles through the higher courts. The following example can be named because they cases have appeared in the public domain.

(i) Mr. Motahar Hussein

For example, Mr. Motahar Hussein former the former Charles Sturt University student from Bangladesh mentioned in the recent news report by The Age *"Foreign students held like terrorists" [28.8.2008]*, was detained for a total of three years after missing an official immigration notice because of a mix-up over access to his postbox.http://www.theaustralian.news.com.au/story/0,25197,24253189-5013404,00.html

'"I was dealt with very harshly," he told The Australian. "I am not a criminal. I am a student and want to study electrical engineering. People arrested me and put me in a cell like I am a terrorist. My hair still rises on my body thinking about Villawood." '

In detention, he became quite a maverick activist – together with some other detainees, he lodged several legal appeals in the Federal Court against DIMIA for breaches of human rights. Detainees were not allowed access to the internet or mobile phones, and they performed various jobs in detention, for which they were paid $1 per hour. All of these violated regulations various international covenants to which Australia was signatory.

By lodging the appeals Mr. Hussein not only brought these issues into a legal framework for scrutiny, but he also succeeded in getting these rights installed – because in each of these cases, the Government changed the law to prevent his cases going to court and getting media publicity and scrutiny. Thus he helped all detainees gain the rights to internet and mobile access, as well as being freed from slave labour work.

With the assistance of committed supporters, he eventually he also succeeded in gaining refugee status for reasons which will remain confidential for the purposes of this submission. Mr. Hussein's detention bill is $180,000.

The Australian interviewed Mr. Hussein recently in '*36 overseas students in detention', [15.7.2009]:*

'He is now a resident, but remains concerned that the "tools of the machine" to potentially victimize some students endure in the immigration system. Mr. Hussein said he continued to have counselling for trauma arising from his time in detention.

'As for those who remained there, he said: "They will be depressed and highly frustrated. They won't be able to comprehend that they have done anything wrong by overstaying as the concept of detention doesn't occur in many Asian societies." '

(ii) Ms. Megumi Ogawa

Ms. Ogawa's story is extremely complicated. She persevered relentlessly for justice to complete the PhD she had been invited to undertake by Melbourne University. After many years of pursuing this issue with legal action, and including time in detention, deportation threats, applications for study and protection visas, she is in a very distressed psychological state, according to a supporter, Ms. Veronica Meneses.

'Japanese academic claims legal action against university led to Villawood detention' http://www.abc.net.au/reslib/200606/r92651_277617.mp3

'Japanese student seeks asylum' [24.7.2006]
http://www.abc.net.au/reslib/200607/r96522_292353.mp3

'Learning to fight'
http://www.theage.com.au/news/in-depth/learning-to-fight/2006/07/28/1153816381159.html

'Japanese student loses visa case' [21-07-2006_ ABC News Online.htm]
"A magistrate has ruled that a Japanese law student, who has been in an immigration detention centre in Sydney for more than two months, does not have a valid visa.

Megumi Ogawa came to Australia on student visa, which was cancelled after a dispute with Melbourne University.

A government tribunal has found she did not breach the terms of the visa but it did not hand down its decision until after the visa had expired.

Today federal magistrate Stephen Scarlett found Ms Ogawa was no longer the holder of a valid visa. But Mr Scarlett said Ms Ogawa's long-running case had been complicated by two errors made by immigration authorities.

He was highly critical of the tribunal for taking too long to review the cancellation of Ms Ogawa's original student visa. Mr Scarlett said this was the second case he was aware of in which the tribunal had upheld a visa when it was too late.

He also complained that the Immigration Department had acted in an unreasonable way by wrongly cancelling a request from Ms Ogawa for Minister Amanda Vanstone to use discretionary power. Ms Ogawa has been ordered to pay $7,000 in court costs."

4. The Minister's special Review Powers in the Act: S351 and S417

The Minister's special review powers are the highest level of appeal possible. A detained student may decide on this option, following a negative MRT outcome, if he has received legal advice [which may not be accurate] that his case would not hold up in a higher court.

Students who cannot afford a bond must also remain in detention if they have written to the Minister for Immigration under S351 (Minister may substitute more favourable decision) for review of their MRT decision, requesting him/her to exercise his/her special powers to review their case and 'substitute a more favourable decision' to grant another student visa, or under S417 for review of their RRT hearing and to grant a protection visa.

But students / detainees can only take this option if no court hearing is pending. And without a hearing pending, or letter sent to the Minister requesting her review, they are liable for deportation. (See Example 1, p27) Applicants are not interviewed after making their request, nor is the Minister required to give any reasons for refusal. Nor are they shown copies of the submissions about their case which DIMA gives to the Minister. In fact the Minister may not even see the request because DIMIA determines whether or not the case fits criteria for the Minister to be shown the file to consider.

Only 6.3% of all requests for Ministerial intervention were granted in 2005. *[Table 4.1 Senate Committee's Report into the Migration act.]* It is not known whether the Minister has ever granted such a request to a student. It appears highly unlikely. This tiny percentage makes requests for Ministerial intervention seem like a carrot dangling on a string, forever unattainable, or like a mirage offering false hope for the desperate.

Minister's special powers non-reviewable and non-compellable

The Minister's special powers under S351 and S417 of the Act are described in the Refugee Council of Australia's submission to the Senate Legal Committee's Inquiry, 2006:

"These powers are non-reviewable and non-compellable. The applicant has to have gone through the administrative determinative process and be rejected for the Minister to review. There may be long delays, with further effects of detention on the detainee. The process of review lacks transparency and accountability and no reason

is given for the decision. No legally binding criteria are employed and no avenue of review exists. This leaves the Minister open to claims of abuse of power."

No further appeals possible in any court after Minister's decision

If a detained student did not receive, and/or could not afford, adequate and accurate legal advice about his case prior to appealing to the minister, and therefore did not make a court application after MRT, then it is unlikely he would be able to obtain natural justice through the Australian legal system.

In the sad case of Mr. X who felt forced to become a 'visa-overstayer' [see Appendix], although he was one of the 8,450 students whose visas were wrongfully cancelled, MRT did not re-instate his student visa and recognize that all decisions subsequent to the wrongful cancellation were void. [Decision by Justice in Uddin vs. Mimia]. Even though it now appears he could succeed in a court action, he is unable to do so because the law prevents this option after his request for Ministerial discretion.

Recommendations by Senate Select Committee on Ministerial Matters

The Senate Legal Committee's Report noted that already in March 2004 the Senate Select Committee on Ministerial Matters had made the following Recommendations regarding ministerial intervention:

Recommendation 8

That each applicant for ministerial intervention be shown a draft of any submission to be placed before the minister to enable the applicant to comment on the information contained in the submission. This consultative process should be carried out within a tight but reasonable time frame to avoid any unnecessary delay; and
That each applicant be given a copy of reasons for an unfavourable decision on a first request for ministerial intervention.

Recommendation 10

The committee recommends that all applicants for the exercise of ministerial intervention should be eligible for visas that attract work rights, up to the time of the outcome of their first application."

The Senate Legal Committee confirmed that,

4.46 … The Select Committee was in no doubt that the current Australian practice of relying solely on Ministerial discretion places it at odds with emerging international trends."

LIABILITY OF STUDENT (AND ALL) DETAINEES FOR DETENTION COSTS

Detention bills

"If DIMIA finds non-citizens working in breach of their student visa, it may cancel their visa and require them to leave Australia. They are expected to repay publicly-funded detention and removal costs and will not be permitted to return until they have done so, or made arrangements to repay." [From DIMIA 'Overseas Information Campaign' - Part B 'Issues and Findings', 3.5.3, DIMIA employers/review 2.]

This harsh policy applied to all detained unlawful non-citizens since 1992, until the successful passage of the Abolishing Detention Debt Bill 2009 on 8 September.

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Before 2005, detainees were charged between $225 and $300 per day. Since 2005, fees were reduced to $125. Under S198, they cannot return to Australia after deportation for three years, nor thereafter without making prior arrangements with DIMIA to repay the fee.

This applied to students in short term detention who were apprehended after a DIMIA workplace raid, to students without a bridging visa in transition to deportation, as well as to long-term detainees. The student who was charged $97,000 for his imprisonment, 'fortunately' received his bill while still in Baxter. Other detained students have had their detention bill sent straight to their home address, which is usually their parental home in South Asia. It would be absolutely shocking for any parent to find such an outrageous bill from the Government of a foreign country.

Former Senator Lyn Allison wrote, *"It beggars belief that the government continues to give people huge bills for their imprisonment, particularly students."*

Mr. X (see p113) was billed him $77,000 for 18 months' detention. After returning to his country, he received a notice to pay the bill within 30 days - clearly impossible. Despite applying for debt waiver on July 2007 he has received no reply as at November 2008. However he was one of 8,450 students to have their visa wrongfully cancelled as a result of the UDDIN case findings.

The Senate Legal Committee's 2005 Questions on Notice about student detention debt were answered by DIMIA:

"Students who were detained under section 189 of the Migration Act after their visas were automatically cancelled under section 137J of the Act, are liable to pay the Commonwealth the costs of their detention, even though they may be affected by the decision of the Federal Magistrates Court in the case of Uddin vs MIMIA.

At the time of detention, Compliance officers would have relied on evidence of regular and effective cancellations under s137J of the Act that was sufficient to establish a reasonable suspicion that the students were unlawful non citizens. The fact that the cancellations were subsequently reversed does not alter the lawfulness of the detention and that a debt to the commonwealth has been incurred."

"In recognition of the reversal of the cancellations, the department is approaching the Department of Finance and Administration to waive these debts under section 34 of the Financial Management and Accountability Act. The effect of a waiver would be to extinguish the financial obligation of the debtor to the Commonwealth. Pending a decision on the waiver, the department does not intend to pursue these debts.

Without making repayments, the detained student is ineligible for another student visa:

" Public Interest Criteria 4004 (PIC 4004), Part 1 of Schedule 4 of the Migration

Regulations 1994, states that to meet this criteria the Minister, or their delegate, must be satisfied that "the applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment".

"If an applicant applies for a student visa they will have to satisfy PIC 4004 as part of the normal visa application process. If the client has a debt to the Commonwealth and the debt has not been waived or the client has been unable to repay the debt or enter into appropriate arrangements to repay the debt by instalments the client will not satisfy PIC 4004 and consequently will be ineligible for the grant of a student visa.

If former student detainee Mr. X were employed in Bangladesh since being deported from MIDC, it would take an absurd 559 years if he repaid the Australian Government the $77,000 at 20% of an average annual income.

Condemnation of Australia's detention debt system

Prominent QC and human rights advocate, Mr. Julian Burnside, has condemned Australia's unique detention billing system:

"Section 209 of the Migration Act holds that a person held in immigration detention is liable for the costs of their detention. It is a remarkable thing that an innocent person, who is incarcerated, is made liable for the financial cost of his own incarceration. No other country on earth makes innocent people liable for their own detention. In Australia, the cost of GST is also added."

In a story by The Australian about the *Commonwealth Ombudsman's Report "Refugee's $200,000 family reunion fee" [*22.4.2008], Mr. Burnside said that,

"considering the stay in detention of many asylum seekers had been prolonged because of government inefficiency in processing claims, it was all the more absurd that they were saddled with large debts when they finally left."

The story refers to an asylum seeker formerly detained in the horrors of Curtain IDC. *"AFTER six years in a detention centre and another three years living in Melbourne as a refugee, Hossein is "dying" to be re-united with his wife and two children. The Government has approved a spouse visa to enable them to come to Australia - but only if he agrees to pay $200,000. That, the Government says, is the cost of keeping his wife, daughter and son locked up in the Curtin Detention Centre in Western Australia for three years."*

Most disturbingly, once an asylum seeker is granted refugee status their debt is not automatically waived. Not even convicted criminals have to pay for their prison term. In stark ironic contrast, prisoners in some second world countries such as India can actually study for a degree as part of their rehabilitation.

Detention debt waiver rare

The Senate Legal Committee asked DIMIA about student detention costs during it 2005 Inquiry into the Act:

"Q. 20. Can DIMIA provide a summary of the costs of detention under section 209 of the Migration Act for student visa holders who have had their visas cancelled in the last three years? How many of these costs have since been cancelled, suspended or waived? Of those who reapply for a visa, do such costs

have to be repaid or are they waived? Please provide details for the last three years."

DIMIA replied:
"The department does not have information on the costs of detention for former student visa holders readily available and to collate this would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources.

"According to departmental records, there have been no detention debts waived for people who have been detained as a result of the cancellation of their student visa in the last three financial years."

The Ombudsman reported in April 2008*:*
"Of 3,568 debts raised in the last financial year only 10 were waived… Only 10 debts totalling $616,000 were waived in 2006-07, compared with 3,568 new debts assessed totalling $29 million."

Astoundingly, a debt can be 'written off' as uneconomical to pursue, but can be re-activated at any time unless the Government agrees to a waiver.

Asylum seeker advocate, Pamela Curr, wrote in response [22.4.2008]*,*
"…. these debts are being levied on people who spent years in refugee hell. They are designed to financially cripple people for the rest of their days. One man is paying $125 per month on a $274,000 debt for his stay in the Port Hedland Hilton. At this rate he will be paying for 200 years. Another man is paying $300 per month on his debt for the next 75 years."

"The debts are arbitrary in that some people have had them waived while others are refused. People were not told that they would be charged. Those who married Australians have been especially hard hit in that their spouses have been told to sell them homes to pay their partners debt. People are being denied Permanent Visas until they pay or agree to pay on a down payment system. This means that they are unable to visit elderly or dying parents or as is happening below - denied family reunion."

Fortunately the Minister Senator Evans acknowledged,
"This Government is acutely aware of the inequities and injustices that flow from the detention debt policy. I have been actively exploring the resolution of that issue." [Refugee Council of Australia meeting, Nov 2008].

FURTHER EXAMPLES OF DETAINED STUDENTS

The following students cannot be named because they had to keep their detention experience secret from their offshore parents to spare them from the intense social shame that their son had been incarcerated.

Example1: Mr. A – Indian student detained for 2 years.
*(*All information in his case can be substantiated with further documents. See my article *"Indian student* billed $97,000 for detention in Baxter", *South Asia Times, February 2005 - www.southasiatimes.com.au)*

Mr. A was the former full fee paying Indian overseas student who returned to India after 2 years of continuous incarceration in two Australian immigration detention facilities detention. Over four years after arriving in Australia, three years after losing his visa, he signed deportation papers tor release from Baxter.

He was detained there since --- 2004 after being unexpectedly transferred via light aeroplane, handcuffed to two immigration officials, at considerable taxpayer cost, from the Maribyrnong detention centre where he had previously been held for fifteen months.

‘“I am relieved to be going home,” he said by phone from Baxter before his deportation. *“All my appeals failed, but I hope my detention will perhaps help others. My immigration case officer did not contact me once, or give me any advice at all while I was detained The Government’s policy of mandatory detention for overseas students is very harsh. I hope the law will be changed so that others don’t have to go through what I did.” ‘[South Asia Times, Feb. 2005]*

Although much detailed documentation about his situation was sent by the student, this writer and another advocate to the office of the Minister for Immigration, Senator Amanda Vanstone, requesting her intervention, she did not exercise her special powers under s 351 to review his case on compassionate grounds and release him with another student visa.

Many letters to the Ministers for Education, Citizenship, the Attorney General, numerous Members of Parliament, Senators and DIMIA also elicited no assistance for his plight in detention.

For example, in a letter to the Minister for Education in August 2004 this writer said*: “I contacted DEST in Canberra late last year. The manager I spoke to did not know that overseas full fee paying students were being detained in Australian immigration detention centres. In fact nobody in any of the 3 federal and state higher education bodies I contacted seemed to be aware that overseas students can be locked up, and were shocked to find out. None of these education officials has responded to my subsequent emails.”*

Also in August 2004, Senator Lyn Allison wrote on Mr. A’s behalf to the Minister, *“It is difficult to understand why there was any need to incarcerate him in the first instance but having done so, to keep him in detention for this length of time is clearly harsh and unwarranted.”* However DIMIA replied to the Senator that no further action would be taken in respect to her letter.

Only in January 2005, after more than eighteen months of correspondence to DIMIA and the Minister by the student and his supporters, did this writer receive more than a standard letter of reply*, “the information you provided has been carefully considered“, but details could not be disclosed “for privacy reasons.”* All the serious issues raised about his case and the detention of overseas students still remained unanswered. By that time he had already given up hope and decided to let himself be deported.

Before departing for India, DIMIA issued him a $97,000 detention bill.

During Mr. A's devastating and exhausting experience in Baxter, he witnessed the inhumane detention of asylum seekers. This included hunger strikes, vigils on a roof, a refugee who dug himself a shallow grave to lie in, attempted suicides, inadequate medical treatment, and the severe depression of some long-term detainees, including children.

He also knew that a mentally ill 'German' woman, the mistakenly detained Rau, was without psychiatric help, locked in an isolation compound where guards knocked on the detainees' doors at regular intervals throughout the night.

His own physical and mental health deteriorated under the prolonged uncertainty and stress of living within the psychologically damaging prison environment of detention, like a criminal, behind razor wire fencing in the desert. He was given medications like 'Celebrax' until it was discontinued because of publicity about its damaging side effects.

He was a bona fide overseas student, who arrived lawfully in Australia in 2000, but unfortunately became trapped in the complex, Kafkaesque realities of Australia's Migration Act 1958 and the unethical practices of his college.

Arriving from India already with a science degree and a diploma in computers, he was greatly disappointed from the very first day of studying at his small private Melbourne education provider. His complaints were:

1. **Original misinformation from the educational recruitment agent in India who was sponsored by the College:**
    - He was led to believe that the Certificate IV course he was enrolled in to be equivalent of an Australian Higher Education qualification.
    - He believed that the impressive multi-story building depicted in the glossy promotional brochure housed entirely the college, whereas it was really a small, poorly resourced, academically inadequate business college occupying only one floor.
    - Because in India the word "college" refers to a university, he was led to believe that St. George was part of a university.
    - He was never told that any breach of the student visa in Australia could lead to mandatory detention.

2. **Educational and Academic Quality of the College:**
    - On his arrival in Melbourne, the poor quality of course evident from outset of studies – he had already learned most of the contents in India.
    - Some staff were inadequately knowledgeable and trained in the subject they were teaching.
    - At least one staff 'academic' was still studying for Bachelors degree at the Central Queensland University campus in Melbourne while teaching at the College.
    - He experienced continual personal frustration and worry about the inability to change education provider for one year, especially because of concern that his family's huge financial sacrifice in sending him to study in Australia was being wasted.
    - The College administrator verbally discouraged him from changing to another education provider although he was entitled to, as one year had passed since he commenced studies at the college.

3. **Equipment:**
   - Insufficient technological resources – there were not enough computers to meet student needs.

4. **Student Services:**
   - Inadequate student support services – the College offered him no counselling, problem and dispute resolution processes
   - Although the college gave him written permission to visit his sick father (recuperating from an operation) in India for several weeks, plus a verbal agreement to able to sit exams on return, the College refused to let him sit second semester exams.
   - After complaining, he was allowed to sit only one exam. Despite 90% result, he still was not permitted to sit remaining exams, and forced to pay fees again for second semester subjects.

5. **College Practices regarding Attendance and Academic Performance:**
   - He was given no record of attendance.
   - He received neither verbal nor written "warnings" about either academic performance or attendance, or about its intention to lodge a complaint to DIMIA.
   - He did not receive any consultation or counselling processes.
   - The College made what he believes is a slanderous allegation to DIMIA that he was 'not a bona fide student'.

5. **Reputation of College:**
   - College had a bad reputation amongst its own, and other, Indian overseas students studying in Melbourne, as well as with some members of the Indian Community who knew about its questionable practices and management.
   - The College only reported to DIMIA those students whom it believed intended to leave for another institution, and these students all subsequently lost their visas. For these reasons, students believed the College was 'favoured by DIMIA'.

In the first year of study he could not change provider. He investigated other education providers and although he requested a transfer several times, the college actively discouraged him. He became discouraged and de-motivated. After eighteen months in January 2002, he again requested release papers about his attendance and results from the college. The director still refused, but eventually agreed to send them to Mr. A.

Instead, totally unexpectedly, Mr. A received a letter to say that the college had reported him to DIMIA, and to attend an interview. At the interview the DIMIA official denied him any permission or opportunity to respond to the allegations of inadequate attendance and results, of which he had no prior notification by the college whatsoever.

Totally shocked and distressed, he was further traumatized when the officer decided to detain him immediately in Maribyrnong Immigration Detention Centre. Released five days later, after paying $3500 for a bond, on a Bridging Visa E, which denied him both the right to study or work or Medicare, he was now forced

to live off borrowed money while waiting four months for his hearing at the Migration Review Tribunal.
Desperate to complete his studies and thereby justify his lower middle class family's huge financial sacrifices for him to study here, Mr. A embarked for three years on futile appeals and attempts to get his cancelled student visa reinstated. His parents never knew.

At the MRT hearing in mid 2002, Mr. A and his migration agent maintained that:

1. the college did not give him warnings or counselling about his alleged inadequate results, or
2. it did not provide any consultation process about its intention to lodge a complaint to DIMIA
3. DIMIA gave him no opportunity to respond to the charges by the college
4. the college provided neither a record of the evidence against him in the MRT hearing, nor a record of attendance.

Despite this evidence against the college, which the Tribunal Member recognized as constituting malpractice, Mr. A's visa was not reinstated. Also, the whole appeal process had become very expensive. The MRT hearing had cost him $1,400, and $2,000 for legal expenses plus the bond for bridging visa E, made his total appeal expenses $6.900. Until receiving the MRT's decision, he also incurred living costs for 4 months while being prohibited from working.

A new migration agent then advised him that his only possible alternative chance for completing his degree was to apply for refugee status. So he appealed in the Refugee Review Tribunal, a process taking several more months, but which also inevitably failed.

During the first year of appeals, his Bridging Visa's conditions, which denied the right to work, study and Medicare, he had to start borrowing money for basic survival expenses and legal costs while he waited months in limbo between each appeal. Unfortunately, after nearly one year, extreme financial hardship eventually forced him to break the no work conditions of the Bridging Visa, and start working to repay his debts to friends.

But he was 'dobbed in', and immigration officials eventually raided his residence one day before dawn, forcing him back into detention without even being allowed to pack his clothes. As he could not afford a new bond of $10,000, he was forced to remain detained

Instead of choosing deportation, he still clung desperately to the hope that, somehow, he could finish his studies and avoid humiliating his family. This was such a profound fear, that he rather endured the deprivation and despair of detention.

Therefore, like the two other Indian students then detained in Maribyrnong, he continued with more refugee appeals from detention. During this time he received no contrary advice from any lawyer, DIMIA immigration officer whatsoever. DIMIA'S policy is for its caseworkers not to contact their detainees.

He was pressured to agree to deportation. At no time did he receive any communications or guidance from DEST.

In March 2004 he was transferred to Baxter with a group of asylum seekers.

In mid 2004, he participated in his Full Federal Court appeal for refugee status via video link-up from Baxter. Because his case did not meet refugee criteria, the Judge had no option but to dismiss his appeal, thereby relieving him from the onerous burden of claiming refugee status. However, the Judge kindly did not grant the DIMIA barrister's request that Mr. A also be liable for the video link costs in addition to his substantial detention costs.

New pro bona legal advice indicated that he actually could re-appeal the original MRT decision. At the Federal Court, individuals challenging court decisions can apply for an 'extension of time' review, as well as for a fee exemption or waiver.

But to obtain this review would have entailed a long process taking many more months, during which he would have been forced to remain in the degrading and frightening environment of Baxter. He was very concerned that his father would retire soon, had suffered health problems, and as eldest son he would be required to become the family provider.

Instead, he wrote to Minister Vanstone in August 2004, requesting her under S 351 of the Act for a 'review and more favourable decision' of the original failed MRT appeal to get his cancelled student visa reinstated. In it he included an affidavit, which had been prepared Ms. McManus. This writer also submitted several detailed documents to support his case. Prior to this, he had applied under S.417 to both the former and current Ministers for review of his failed RRT application. It had taken him 2 ½ years to find out that S351 existed. No migration agent, pro bono lawyer, refugee supporter or DIMIA official had been able to inform him before.

In September he received a letter from the DIMIA ACT State Territory Secretary, stating that she would not forward his request to the Minister because he 'presented no new information' from his first S 417 appeal in mid 2002 to Mr. Phillip Ruddock, then Minister of Immigration. This writer replied on his behalf that In fact Mr. A had indeed given considerable additional evidence since then, and that it was of great concern that Minster Vanstone had not yet been forwarded his request.

He remained in Baxter for another 8 months, waiting for a response. During this time in November 2004, he received a letter from the Minister refusing his S417 request, even though he was no longer appealing to her under S417, but instead under S351.

Despite so many letters and detailed documents sent to the Minister and DIMIA regarding his case, including attempted negotiations with DIMIA by the High Commission for India in Canberra, he never received a reply to his S351 request.

Although he had allegedly breached the conditions of the student visa, he was never actually charged, tried or convicted of any crime, yet ended up in a maximum-security prison for 2 years. ".

A former lecturer, and Channel 31 TV producer, Ms. Sudha Saini said, "I can verify his particular story because I taught at the same college. I know how much some Indian students suffer here. They face many problems and difficulties."

The taste of freedom for Mr. A was both bitter and sweet. In India, where did find, employment he faced new challenges. He had to begin repaying his family for the huge financial sacrifice of sending him to study in Australia. As the eldest son, he was also expected to become the family's provider. He had to finally reveal the truth - his devastating experience incarceration, which he had not told them because the social stigma and shame could ruin their reputation.

I have not heard from him since several months after returning to India when he was still too frightened to tell his parents, fearing that the shock would have a very detrimental impact on their health as well as social standing. However, all his friends in his home city already knew about his ordeal through the student 'grapevine'.

Example 2: Mr. B - Indian student detained for 1 year

Mr. B, an Indian student who had spent $40,000 in total - on consultants, education fees, airfares, and migration agents - was just one subject off completing his Masters degree in IT, when he experienced personal difficulties and then failed this subject. Although he paid $5000 fees in advance to repeat, he still had to work extra hours to pay about $2000 for a migration agent to extend his visa. But he was caught, and so for one year tried unsuccessfully to get his visa back while held in detention. He too, had applied for refugee status after failing at MRT. His university never refunded his advance fee payment. This writer supported his case with a letter to the Minister.

He could not afford the high cost of a bridging visa demanded by DIMIA officials - $10,000 – to enable him to conduct his appeals while living in the community. He desperately wanted to find a way to finish his studies. He had to repay his parents, who lived in the ultra conservative state of Andhra Pradesh. However, they had apparently heard that he was in jail and believed he committed a crime. He feared he would not be able to convince them otherwise.

Because of this, he feared his reputation was ruined to such an extent that his large extended family would ostracise him, and he would not be able to find work. He also believed it would now be impossible for him to get married in India, as no father of a potential bride would pay the huge, customary dowry for his daughter to marry a man who has been imprisoned. As the eldest son, he was also obliged to support his entire family once his father has reached retirement age. There are no aged pensions in India. With this anxiety he was too scared to contact his parents.

On arrival in India, officials at the airport questioned him for one hour. The word 'Deported' was stamped in his visa. Only after making a payment of $100 was re

released. Three months after returning, he was still afraid to return to his parents and was living with a friend in another city. His detention bill would have been sent to his parents. Since then none of his Melbourne supporters has heard from him.

Example 3

Mr. C, an Egyptian student whose brother was detained for working more than 20 hours, claimed his father had spent $100,000 on their combined studies. “The Australian government treats overseas students very badly,” he complained to this writer.

Example 4

Mr. E, an engineer by profession in his home country, and now resident here, was an asylum seeker who met many students during his long detention from 2002-04. At one stage four very distressed students were brought into the facility, fearing that detention had caused irreparable damage to their lives. Their families had sold valuables and taken out loans on high interest rates, just to have a better life for one family member. He said they accused universities and DIMIA of being ‘criminal’. Bank guarantees for their visa applications arranged by their education agent in India had since been found to be fake, and hence their detention. These students were angry because the believed Australian officials should have validated their documents prior to arrival here, without the students spending and wasting such large sums of borrowed money to get here.

Mr. E said students equated detention with “abduction”. Detainees are not allowed to collect any possessions from their residences – they must forfeit valuables acquired while legally studying in Australia, eg: computer, furniture, car, etc, which cannot be sold to pay for the bond necessary to be released on a bridging visa. Costs of bonds had increased from only about $1,000 in 2001 to up to even $40,000 in 2004, and detainees bargain the price with DIMIA, which appears to have “no accountability or be answerable to any authority”. He claimed: “Justice and compassion have no meaning for them – their job is a cowboy whose purpose is to deport.”

Some students had told Mr. E that their education provider required students to obtain a 70% or 80 % pass mark otherwise they would be ‘reported on’ to DIMIA. One student felt very suicidal and spoke often of his intention to kill himself on return to India. ‘There were lots of cases like that”, Mr. E said.

Example 5

An overseas student, who experienced severe financial and social hardships, ended up sleeping in a park for three months until DIMIA removed him into detention and to his country.

Example 6: Mr. X – Bangladeshi student detained for 18 months

[Please see detailed case study in confidential Appendix]

.Mr. X was another long-term student detainee I supported. Like many international students from the Indian Subcontinent, he had experienced some difficulties in Australia. After successfully completing a certificate course in Melbourne, tragedy hit with his family three deaths of close relatives within a few

months. As well, his father had to undergo a major operation. These events, understandably, affected his concentration on study for a diploma.

Although his attendance in class was still very high, without warnings, Mr. X's college reported him to Immigration for failing some subjects. Worse still, he unknowingly became a victim of a protracted government blunder that wrongfully cancelled the visas of 8,450 students over a 4-year period.

Not able to get an appointment with DIMIA in Casseldon Place before the 28 days expired after receiving the S20 notice, finally on the 29th day he saw a DIMIA officer who did not believe anything he said, and told Mr. X he had no choice but to leave the country. Feeling frightened of deportation and only given a 14 day BVE to arrange his departure, intimidated by heavy-handed bureaucratic treatment, and not aware of his appeal rights, Mr. X. thought his only option was to stay here without a visa and work, naively hoping to repay his father the $60,000 spent on Mr. X's Australian education.

Eventually apprehended, he was detained and discovered that his mandatory visa cancellation had been invalid under the UDDIN ruling. But this made no difference now to his immigration status because he had been 'non-compliant' for becoming a visa overstayer. Detained while appealing in vain for 19 months, he spent ten month waiting, while being billed, for the former Minister to reply to his S351 request to be granted another student visa. After this final appeal failed, he received a bill of $77,000.

Yet within a month of being deported home to Bangladesh, a letter arrived from Immigration requiring him to arrange repayment within 30 days. This was clearly impossible. Being unemployed, having no income, owing his father $60,000 for his Australian education, and without a completed degree, any savings or assets, he was entirely dependent on his parents, who knew nothing of his detention ordeal or debt, because he feared the shocking news would devastate them and harm their ailing health.

So he applied for debt waiver, citing his predicament in a developing country with high unemployment. Seventeen months later he received DIAC finance branch's submission, which did not recommend his application, to the Department of Finance.

Mr. X's situation appeared bleak. He was desperate, suffering under immense mental and financial pressure, as well as anxiety attacks and depression from the post traumatic effects of detention. In response to the DIAC submission, I wrote a detailed reply with reference to the criteria in Finance Circular2006/05, requesting an Act of Grace leading to Waiver of the Debt. There has been no reply since January 2009.

Subsequently he was immensely relieved to know that the 'Abolishing Detention Debt Bill 2009 introduced to Parliament by the Minister for Immigration, Senator Chris Evans, was recently passed in the Senate. He felt 'ecstatically happy,' and now has cordial relations with his father, who had wanted to disown him.

DELETERIOUS IMPACT OF DETENTION ON THE WELLBEING AND MENTAL HEALTH OF STUDENT DETAINEES

Forced incarceration without trial or conviction seriously depresses detainees' mental and emotional wellbeing leading to stress related health problems, including spinal complaints and pain, digestive problems, insomnia, depression, suicidal ideation, including student detainees. When signing offshore visa applications, no student could ever have envisaged such a cruel nightmare.

Summary of deleterious experience and effects of detention on students

- Whether in short or long term detention - shock of unexpected visa cancellation, and method, eg. a raid on workplace, or home.
- Shock at method of arrival in an Immigration Detention Centre, eg. DIMIA roundup van in early hours of morning.
- Shock of being detained, and ignorance of DIMIA's detention practices for students
- Fear, stress and anger – incarceration in high security prison environment of detention with strict curtailment of personal freedom and study.
- Frustration, anger and humiliation at having to remain in immigration detention if unable to afford high cost of bridging visa bond
- Privacy violations - DIAC detainee records include fingerprints and x-rays
- Humiliation and violation of human dignity - Strip searches on return to detention after outside trips for court, medical or dental appointments in guarded vans
- Feeling, and being, wrongly treated like a criminal
- Fear and uncertainty about entire process, its length and the future
- Minimal communication from DIAC case workers
- No legal advice from DIAC for students and visa overstayers
- Confusion and lack of clarity about DIAC and legal procedures available
- Reliance on voluntary detainee supporters for support
- Continual stress about legal appeals – waiting for court hearings, decisions
- Long periods of waiting for reply from Minister for s351 or 417 request
- Anxiety about finances to pay for migration agent/legal expenses
- Anxiety and guilt about not completing studies
- Anxiety about lying to parents re. detention to protect parents from shock
- Shame and despair about wasting about parents' huge financial sacrifices
- Anxiety about effect of student's problem on parents' health
- Terror of ruining family's reputation in home country
- Traumatic effect of witnessing experiences of other detainees – such as violent conflict resulting from DIMIA/GSL's punitive behavioural management policies procedures and techniques used with detainees - isolation; hunger strikes; self-harm/mutilation and suicide attempts; severe mental distress and/or psychosis; detention distress of children. [NB conditions and staff training improved since Palmer report and other lobbying]
- Occasional conflict with stressed asylum seekers
- Exposure to illegal drugs (smuggled in to people with former criminal records detained under s501)

- Dormitories of sometimes 6 people per room create sleep problems and insomnia.
- Poor food, eg. not enough milk; stale bread, food riots.
- Prohibition from using vitamins and other complementary medicine to supplement dietary inadequacies and manage mental and physical stress.
- Until 2006, restriction on recreational activities such as some TV channels, eg. Baxter inmates were not permitted to watch the 2004 Olympic Games
- Until 2006, prohibition on access to internet information and communication via email.
- Loss of possessions following apprehension, eg. educational equipment such as computers, which are not personally retrievable after DIMIA roundup - friends can only bring clothing and personal necessities to detained students
- Loss of money through pre-paid subject fees, which education providers resist refunding
- Loss of confidence, self esteem
- Depression, hopelessness
- Anxiety about financial costs of detention – $125 per day (previously $225 - $300)
- Burden of impossibility of paying final detention bill including removal costs, issued before deportation
- After returning home to developing low per capita income nation, pressure by DIAC to repay 'debt' or make repayment arrangements to repay by instalments
- Withholding detention experience form parents and family to protect them when home, thus feeling isolated with no-one to confide in.
- Post traumatic stress disorder.

…

Medical evidence of detention effects

The damaging psychological effects of detention on detainees have been thoroughly documented by doctors and psychiatrists who made submissions to the Senate Legal and Constitutional Committee's 'Inquiry into the Administration and Operation of the Migration Act 1958' **:**

www.aph.gov.au/senate/committee/legcon_ctte/Migration/submissions/sublist.htm

108 The Royal Australia and New Zealand College of Psychiatrists (PDF 107KB)

222 Mental Health Council of Australia (PDF 220KB)

223 Australian Psychological Society (PDF 233KB)

Asylum Seeker Resource Centre findings

The ASRC submission to this inquiry is a potent testimony to the suffering and mental health deterioration and unprecedented rates of mental illness, human misery and degradation inflicted upon refugees through detention.

Findings of 'Human Rights Overboard'

'Human Rights Overboard' [see p. contains hundreds of interviews with detainees and other people who witnessed the detention process, revealing shocking horror

experiences and effect on the mental health of detainees. The authors have apparently sent copies to all Australian Federal politicians.

CONCLUSION

International students are vulnerable, but 'welcome visitors to Australia', who comprise a unique category of visa holders.

The intention of this submission to the Joint Standing Committee on Migration is to promote understanding of the many interrelated complex socio-economic-education factors and problems students experience during their studies in Australia, which contribute to visa breaches and possible student detention.

Because of excessively stringent laws that deny basic human rights, and their draconian application, overseas students mainly from Asia and South East Asia, and their parents at home, suffer major stress as a direct result of these policies.

The lives of many innocent people from second world countries have been irrevocably damaged by these punitive and cruel policies and practices, by the careless lack of application ESOS provisos to protect the students' interests; by the former government's reduction of funding to universities, creating dependence on overseas students, and the failure to regulate the education industry to prevent abuses and corruption.

The above-mentioned detained students had experienced considerable trauma and mental suffering. It was a long, drawn out, agonizing and futile process for them. They had to return to their countries without completing studies to face shame, debt, family hardship, low employment opportunities. Experiences of detention haunt them. Thousands of others returning home after mandatory visa cancellation have probably faced similar problems, but without traumatic detention memories.

Other students with cancelled visas, and accidental student visa overstayers, are sitting right now in an Australian immigration detention centre. Those on no work, study or Medicare bridging visas, are also in distress. With no consumer and education protection and safety avenues open to them, all these students have felt exploited and helpless in a complex matrix of injustice.

Immigration detention is an excessive, harsh and unfair punishment for students' visa breaches, which often are caused by a host of difficult circumstances entirely beyond their control. To detain a student who loses a visa as a result of unprofessional and fraudulent education provider activities is unconscionable. Similarly, sending a student home, without any discretion, for working 22 hours at an exploitative wage, is unethical.

Negative impact on Australia's massive international education industry

The integrity and reputation of the Universities' AEI program can only be detrimentally affected by these migration regulations and laws. As more deported students and those subject to mandatory visa cancellation return home

to countries such as India, Bangladesh, Pakistan and Egypt, word of hostile Australian practices spreads, making Australia a less desirable destination for study.

Fortunately, late last year Victoria's taskforce on international students recommended that the 20-hours a week cap on work hours for international students should be relaxed, noting that many students were already exceeding the cap and being exploited. Hopefully the Federal Government will respond.

RECOMMENDATIONS

For the benefit of both international students and Australia's eduction program, it would seem necessary to integrate an apparent conflict between the policies of DEST - to 'promote education industry, skills and migration', and of DIAC - 'deport to protect borders'.

Therefore, any reviews to make amendments to Australia's education policy should also include amending immigration policy with compassionate recommendations to revise current legislation concerning their inequitable treatment and visa conditions, and to abolish the government's hidden practice of detaining international students.

The following recommendations are suggested for DIAC, DEST and the Australian Parliament and Senate to implement as soon as possible, and thus help to prevent further negative impact on Australia's endangered massive international education industry
:

1. That the recommendations by the Senate Legal Committee (p.16) to overhaul of student visa and detention policy be implemented as soon as possible.

2. That the legislation in the Migration Act 1958 is amended to:

(i) Recognize that international students are a unique category of visa holders who ethically deserve legislation reflecting this reality;

(ii) Abolish the immigration detention of overseas students;

(iii) Embody standards of international Human Rights covenants to which Australia is signatory in the treatment of international students,

(iv) Remove discrimination and ensure overseas students have the same rights to appeal that are granted to Australian students;

(v) Further review student visa policy by DEST, DIMIA, HREOC and other relevant groups through realistic, accurate assessments of overseas student actual needs, and including a comparison of study conditions

with other western democracies such as New Zealand, Britain, France, Germany, the United States, and specifically Canada.

3. That the Government puts in place procedures for 'unlawful non-citizens' to ensure their right to fair trial before expulsion.

4. That students (and other non-citizens) who have allegedly breached their visa be provided with legal assistance.

5. That students with alleged visa breaches are only housed in non-IRH, government sponsored, safe and affordable community accommodation, offering food, medical care, legal support, work rights; regular reporting procedures

6. That any students currently in immigration detention

(i) Be released into such community accommodation;

(ii) Their student visas be reinstated with study and work rights, as compensation for unfair incarceration, so they can complete their studies.

7. That an independent and impartial International Student Appeal and Review Board be established in each state, whose function is solely for overseas students, wherein they students can present their case for matters such as:

    a. Any disagreements between the student and their education provider,

    b. Discretionary circumstances such as personal, financial and medical hardship, etc.

    c. If their visa is in danger of cancellation.

    d. Visa cancellation and appeal to re-instate it

8. All detention fees are permanently waived for past student visa holder detainees, and all for other detainees.

9. A Government funded and independently conducted follow up study about:

(i) The repercussions and implications of mandatory visa cancellation on former students after returning to their country, specifically concerning the direct outcomes of their deportation on their health, familial, social and economic status;

(ii) The reasons why students may breach their visa, and why some subsequently overstay their visa.

10. Regulation of Australian education industry – (i) of Australian education providers and (ii) overseas secondary and tertiary education recruitment agents, including improved training and full accountability.

11. Mandatory, enforceable provision of comprehensive overseas student support services and a consumer protection policy by education providers.

12. Legally enforced obligation by education providers to implement the 2007 ESOS Act Evaluation Report Recommendations to safeguard the quality of education and student wellbeing. Recommendations made by the Report

13. Comprehensive handbook given to each student prior to arrival - on Australian immigration laws, appeals processes, education requirements, student resources, support services life in Australia, student rights and protection, help-lines etc.

Such legislated changes would:

- Address systemic injustices
- Create equity for overseas students
- Provide more humane, flexible and compassionate conditions for students in line with international standards
- Prevent future suffering and devastating outcomes
- Provide greater safety and protection for students
- Be more ethically justifiable
- Be more cost effective
- Reduce exploitation and corruption in the education industry
- Ensure education quality
- Enhance the IDP program
- Redeem Australia's declining reputation in international education.

Michaela Rost

Melbourne
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