

**NUS RESEARCH**

**Submission to**

House Standing Committee on Education and Employment

Inquiry into  
Education Services for Overseas  
Students Legislation Amendment  
(Tuition Protection Service and Other  
Measures) Bill 2011; Education Services  
for Overseas Students (TPS Levies)  
Bill 2011; and Education Services  
for Overseas Students (Registration  
Charges) Amendment (Tuition Protection  
Service) Bill 2011

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**Jesse Marshall**  
National President

Submitted by  
**Indrajeet Chauhan**  
International  
Students' Officer

Prepared by  
Adrian Wong  
Social Policy Research  
& Projects Officer

The National Union of Students supports in principle the proposed legislative amendments to the Education Services for Overseas Students Act.

However, we have a number of concerns we wish to raise :

## **Schedule 1 - Tuition Protection Service**

In the proposed legislative amendments :

### ***Subdivision B — Student defaults***

#### ***47A When a student defaults***

*(1) An overseas student or intending overseas student **defaults** , in relation to a course at a location, if:*

*(c) the registered provider of the course refuses to provide, or continue providing, the course to the student at the location because of one or more of the following events:*

*(iii) **misbehaviour** by the student.*

NUS is concerned that the legislation is proposing that a student would be defined as having defaulted on the grounds of **misbehaviour**.

The legislation does not provide a definition of **misbehaviour**, neither does it provide for a course of action for when a student disputes an allegation of **misbehaviour** by the provider.

In September 2011, the University of Newcastle relied on information provided by a software identifying acts of plagiarism and accused 35 international students of “collusion”. The allegations were later withdrawn when further investigation revealed some students had not submitted plagiarised assignments, while others are still under investigation.<sup>1</sup>

NUS is concerned that in the above scenario, under the framework of the proposed legislative amendments, the students accused of having allegedly submitted plagiarised assignments would be defined as being in default, as academic misconduct may be interpreted as ***misbehaviour by the student***.

In addition, the following is proposed :

#### ***47B Requirement to make written agreement about student default***

*A registered provider must enter into a written agreement with each*

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<sup>1</sup>ABC News Newcastle. "University Apologises over Use of Term Collusion - ABC Newcastle NSW - Australian Broadcasting Corporation." *ABC.net.au*. ABC, 29 Sept. 2011. Web. 04 Oct. 2011. <<http://www.abc.net.au/news/2011-09-29/university-apologises-over-use-of-term-collusion/3034986/?site=newcastle>>

*overseas student or intending overseas student that:*

- (a) sets out the refund requirements that apply if the student defaults in relation to a course at a location; and*
- (b) meets the requirements (if any) set out in the national code.*

In our submission to the ESOS ACT review in January 2011, we raised the following :

*Refund policies differ greatly between education providers. They range from some providers writing into their agreement that students are not entitled to any refunds to a varied matrix of refund conditions.*

*The Grievance Officer at Newcastle University Student Association had previously made representations on behalf of a student who tried to make a refund claim and had all but \$500 refunded. A short survey of refund policies reveal that University of Canberra will refund 90% of fees<sup>2</sup> while ANU will retain \$250 as administrative cost.<sup>3</sup>*

*NUS strongly recommends that the ESOS establishes benchmarks where refunds will occur, including minimum levels and conditions which refund policies cannot undercut, but may exceed.*

<i>Recommendation 7</i>	<i>NUS recommends that ESOS establishes benchmarks and minimum standards for refund policies of Higher Education Providers.</i>
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The International Students Legal Advice Clinic in Victoria has assisted a number of clients who have enrolled with Higher Education Providers whose refund policy includes conditions and requirements that can be strict, particularly with regard to issues of deadlines.

The current proposed legislative amendments suggest the possible existence of requirements to be set out in the National Code. However, no such requirements currently exists, and NUS highly recommends that the National Code be updated to establish benchmarks for refund policies.

### **Schedule 3 - Prepaid Fees**

In our previous submission to the ESOS ACT review in January 2011, we had raised the following :

*NUS is also concerned that a number of students have reported that their prepaid accommodation to defaulting providers were affected. Prepaid accommodation is currently not covered by the TAS. NUS suggests that any prepaid fees by international students be held in escrow, to prevent providers in default from absconding with the money.*

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<sup>2</sup>International Student Fee Policy, University of Canberra

<http://www.canberra.edu.au/student-services/attachments/pdf-a-z/International-Fees-Policy.pdf>

<sup>3</sup>Refund Policy for International Students (ANU) <http://www.anu.edu.au/sas/fees/Forms/isf-refund-pol.pdf>

Recommendation 3	<p>NUS recommends that a regulatory framework be introduced to regulate any monies prepaid by students to an education provider which are:</p> <p>a) not related to the cost of education</p> <p>b) intended to be paid to a third party by the HEP for a purpose not related to education (ie accommodation).</p>
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In the ESOS Act :

### **7 Meaning of course money**

(1) *In this Act:*

**course money** means money a provider receives, directly or indirectly, from:

(a) an overseas student or intending overseas student; or

(b) another person who pays the money on behalf of an overseas student or intending overseas student;

for a course that the provider is providing, or offering to provide, to the student.

(2) For the purposes of subsection (1), **money received for a course** includes:

(a) tuition fees; and

(b) any amount received by the provider that the provider is to pay, on behalf of the student, to a private health insurer (within the meaning of the Private Health Insurance Act 2007); and

(c) any other amount that the student had to pay the provider, directly or indirectly, in order to undertake the course.

While the current legislation proposes that all prepaid course fees received by private providers be put into a designated account, it does not address our concerns of non coursework related fees prepaid to Higher Education Providers that are not covered by the proposed Tuition Protection Service.

NUS highly recommends that amendments to the legislation be made to include all prepaid fees to Higher Education Providers be put into a designated account, in addition to prepaid course fees.

## **Schedule 6 - Record keeping requirements**

In April 2011, in a submission to the the Knight Review of the Student Visa program, we stated the following<sup>4</sup> :

*The rapid succession of private college closures in 2010 highlighted the need for proper record keeping. NUS had met with students who were unable to access their academic and attendance*

<sup>4</sup>Wong, Adrian. "National Union of Students Submission to the Knight Student Visa Review 2011." *Immi.gov.au. Australian Government Department of Immigration and Citizenship. Web.* <[http://www.immi.gov.au/students/student-submissions/\\_pdf/165-national-union.pdf](http://www.immi.gov.au/students/student-submissions/_pdf/165-national-union.pdf)>.

records when their college shut down. These students were put in an impossible situation where the stress about their future is further compounded by the inability to access their student records.

NUS had also encountered a number of international students who were threatened with Section 20 notices based on fraudulent attendance records kept by education providers. Students had evidence they attended classes, when provider records either show they were absent. Of greater concern was a student who was threatened with a Section 20 notice but the private education provider was unable to produce attendance records when requested to do so.

While proper maintenance of student records by education providers is not within the purview of the Department, the records kept affect the proper administration of a student's visa status and the fairness of the enforcement of visa conditions.

<i>Recommendation 14</i>	<i>NUS strongly recommends that private education providers submit a copy of student academic and attendance records on a quarterly basis to their State Registration Authority; and a copy to be sent to the student, allowing for dispute procedures to take place when a student disagrees with the records submitted.</i>
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The proposed legislative amendments have strengthened the responsibilities imposed on Higher Education Providers in maintaining proper records. However, the proposed amendments do not address the scenario when a provider does not maintain proper records, and defaults, as demonstrated in the past.

NUS recommends that further amendments be made to the legislation for records to be kept with a Registration Authority, as previously proposed in our submission to the Knight Review.

**Subsection 21(3)** proposes that student records be maintained by education providers for *at least 2 years after the person ceases to be an accepted student*. NUS believes that the proposed period of record retention by Higher Education Providers is inadequate, and academic records should be retained for a longer period of time.