



**NUS Submission To The Senate Education, Employment and the  
Workplace Relations Legislation Committee**

**Inquiry into the Education Services for Overseas  
Students Amendment (Re-registration of  
Providers and Other Measures) Bill 2009**

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## **Introduction**

The National Union of Students is the peak representative organisation for undergraduate university students in Australia. International students comprise approximately 25% of the students on most NUS member campuses. NUS would like to thank the Senate for conducting an inquiry into the amendments proposed in the *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*.

This bill addresses concerns of NUS members and international students across Australia regarding the quality of education being provided to international students in many education institutions, particularly in the more recently registered colleges in Victoria and New South Wales. Despite the fact that the students enrolled in these colleges are not NUS members, NUS recognises that there are few avenues for these students to voice their concerns. As the peak representative organisation for university students, NUS is best placed to present these concerns to the Senate inquiry. Particularly given that the amendments in this Bill may to some degree affect all international students.

This submission will address the three main areas of the Bill:

1. The re-registration of all providers currently registered on CRICOS;
2. The requirements under the regulations regarding education providers and their obligations regarding education agents.
3. The definition of 'suitable alternative course'

Finally NUS will submit recommendations in these three areas regarding the amendments in this Bill and suggestions regarding the changes to the corresponding regulation. Some areas of this submission will reiterate and directly transpose sections from the NUS submission to the Senate Inquiry into the Welfare of International Students, August, 2009. This document will be referred to as NUS 08/09 throughout this submission.

## **Recommendations:**

- 1. NUS recommends that the Federal government establish formal requirements for an individual or company to practice as an education agent either on or offshore.**
- 2. NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider.**
- 3. NUS recommends that a restriction on the commission paid by an education provider to an education agent is introduced to effectively cap the commissions paid. Additionally, these payments should be closely monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents and be stated in the *ESOS* regulations.**
- 4. There needs to be a complete development by government of Education Agent and Provider Protocols, that are made clear and transparent and easily accessible to all international students and the industry. These would be contained in the regulations.**
- 5. The protocols could include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.**
- 6. NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the *ESOS Act* and recommends much closer monitoring of all education provider and agent activities in the future.**
- 7. NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This provision would be enforceable under both the *ESOS Act* in the regulations and the *Migration Act*.**
- 8. That the *ESOS Act* and National Code of Practice include policies and procedures to ensure students affected by closure of education providers are given support to access their updated academic transcripts and ensure that Recognition of Prior Learning obtained with previous provider will continue to be recognised by new education providers**
- 9. That access to the TAS funds, in addition to transferring students to a new provider as well as refunds for students, include the ability for students to access funds for additional costs incurred associated with the requirement to apply for a new Student Visa due to the closure of the previous provider and inability to complete course requirements within limits of existing Student Visa.**
- 10. NUS recommends that the Senate committee seek out the report or findings of the internal review and investigate if there may have been any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the fund, the students and education providers**

- 11. NUS recommends that when offered an alternative course the factors 1-7 in the section above (see page 14) are implemented as grounds for acceptance or refusal of a particular course.**
- 12. NUS recommends that the Department of Education and Workplace Relations monitor any negotiations between the provider and the TAS and students in the event that an institution closes such that the students are able to refuse on the grounds above an 'alternative course' and students are made aware throughout their education of the existence of the TAS and their rights in this process.**
- 13. NUS recommends that the ESOS Act and TAS be amended to include the detailed definition of a 'Suitable alternative course' as included in this section.**

## **1. The re-registration of all providers currently registered on CRICOS**

NUS supports the amendments that pertain to the re-registration of all CRICOS registered providers. Throughout the media over recent months there have been many scathing articles detailing colleges that are meant to be providing cookery courses that have ill-equipped or inadequately equipped kitchens, unqualified staff or no kitchen at all. The VRQA, in Victoria is responsible for ensuring the standard and quality of teaching and education in the VET sector. Clearly, in many of the cases outlined in the media, this was not monitored closely enough in the initial registration.

NUS has become increasingly more concerned about the registration procedures undertaken by the state authorities that should have involved on-site examinations of the campus, teaching spaces and equipment. It has been apparent in many of the media articles that these initial examinations were not undertaken or were not legitimately undertaken, given the teaching spaces and equipment would not have been able to meet the required standards

Due to this, NUS overwhelmingly supports the amendment to process the re-registration of all providers on CRICOS, through which their suitability for registration would be re-examined. In this regard however, NUS hopes that there will be adequate qualified staff through which to conduct the large number of audits required for this process. Given that in 2008 in Victoria there were 21 contract auditors (according to the VRQA Taskforce background information) as well as qualified staff auditors, there may need to be an increase in resources in order to ensure the system does not end up in the same position it began, due to under resourced auditing and monitoring.

In Schedule 1 - Item 5 of the Bill, the amended paragraph states that the provider must be able to demonstrate that their principle purpose is providing education, and have clearly demonstrated capacity to provide education of a satisfactory standard.

NUS is concerned that in the legislation there is no further detail on how these two areas will be assessed. This will need to be further detailed in the ESOS regulations and state legislation regarding course accreditation and standards of education. NUS would like to be involved in any discussions regarding the drafting of this regulation.

## **2. The requirements under the regulations regarding education providers and their obligations regarding education agents**

Schedule 2 – Item 4 proposes a new section 21A. This section refers to the obligations relating to education agents. Section 21A (1) requires that all education providers publish a full list of the education providers that are engaged by the education provider.

NUS supports this amendment. However, we are concerned about the use of this list in ensuring that education agents and providers are meeting their obligations under the Act. Section 21A(1)(c) and 21A(2) state that the regulations prescribe requirements and that education must comply with these requirements in relation to their agents. Currently there is no provision for this in the Regulations, however, NUS assumes that these requirements are yet to be tabled. NUS would like to make recommendations for these requirements based on the following discussions and evidence below.

(from NUS 08/09)

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

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

*National Code* requires education providers to cease to associate with unethical agents who breach the National Code.

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

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

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

Therefore, it is unlikely that an education provider will disengage an unethical agent unless they are concerned about the consequences of engaging with this agent, such that the law is being monitored and enforced with penalties that will impact detrimentally on the trade of the provider. Currently, there is no evidence to suggest this is the case. In

fact, evidence of dodgy providers being able to register and trade, with little or no action taken by authorities regarding complaints about unethical practices of education agents, or education providers severing ties with unethical agents is not publically available.

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

*(b) Establishment of Education Agent Protocols*

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



offshore education agents, the education providers are currently completely responsible for the actions of their education agents.

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

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

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

*(c) Education Agents acting as Migration Agents*

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

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

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

Of the 3,300 registered migration agents in 2004, 25% were also practicing as education agents. NUS is not troubled by the notion that education agents may assist clients in gaining the visa they require to attend an Australian education institution. However, that an education agent may register and perform the duties of a migration agent, and charge two clients for essentially the same service, clearly indicates a

conflict of interest, and one that undoubtedly is not in 'best interests of the client', if we assume the client is an international student.

Since this review was conducted in 2004, the impact of the 2001 changes to the skilled migration visa program has changed dramatically. In 2004, there were early signs of the impact of the 2001 changes. The impact has been far larger than anticipated. In the 2004 review the suggestion that education agents register as migration agents appeared a measure that would resolve inadequate or incorrect migration advice being provided by education agents. Today, this combination of professions has led to a large and extremely complex growth of the 'permanent resident visa factory' industry. It has also led to the production of many international students with a substandard qualification, slim chances of being awarded permanent residency who were misled into believing the college they were going to was a legitimate education provider that they would graduate from and proudly return home or stay in Australia with a well recognised qualification.

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

Anecdotally, many migration agents are recommended to students because they will be able to get the student a visa and into a college that the course won't be too difficult and after two years they will help the

student gain permanent residency. In dollar figures, the migration agent probably gains \$20,000 for the services provided to the student and the education provider and the education provider gains approximately \$30,000 in fees from the student. All in all, a very tidy onshore business, and according to the international students around the streets of Melbourne and Sydney, this happens everywhere.

**Recommendations:**

- 1. NUS recommends that the Federal government establish formal requirements for an individual or company to practice as an education agent either on or offshore.**
- 2. NUS recommends that the *ESOS Act* is monitored and enforced with penalties that will impact detrimentally on the trade of the provider.**
- 3. NUS recommends that a restriction on the commission paid by an education provider to an education agent is introduced to effectively cap the commissions paid. Additionally, these payments should be closely monitored by the regulatory body with close attention paid to the relationship between education providers and their education agents and be stated in the *ESOS* regulations.**
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- 5. The protocols could include associations beyond the formal contract but require them to divulge mutual financial or family interests between parties.**
- 6. NUS fully supports the Federal government acting to the full extent of the law in penalising all education providers and education agents found to have breached the *ESOS Act* and recommends much closer monitoring of all education provider and agent activities in the future.**
- 7. NUS recommends that Migration Agents are unable to charge a fee to any education provider for education agent related activities. This**

**provision would be enforceable under both the *ESOS Act* in the regulations and the *Migration Act*.**

### **3. Suitable alternative course**

The following section is taken directly from the NUS 08/09 and directly relates to Item 6 in which there is a new subsection 31(4A) that will allow for the regulations to prescribe the criteria for a suitable alternative course. In its submission to the 2009 Senate Inquiry into the Welfare of International Students NUS has proposed a definition for 'suitable alternative course' and furthermore has provided criteria that should be applied when considering if a course is a suitable alternative for a student rather than providing a refund.

(from NUS 08/09)

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

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

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

1. The students previous course qualification and the difference in the final qualification outcome, including, the overseas recognition of the qualification and the length and cost of the course.

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

NUS furthermore recommends that the appropriate level of consumer protection to ensure that the two main objects of the *ESOS Act* are

upheld, in *Section 4A* when a provider ceases to provide a course and is unable to refund course moneys, are:

1. A student is provided with options to attend alternative courses and the student is able to reject or accept these courses based upon the considerations outlined above. A refund through the ESOS Fund is provided to the students should the students' rejection of the course be considered valid according to the grounds above.
2. Consumer protection would be further ensured when the parties to this process are informed and understand their obligations and entitlements. Providers of the TAS scheme should be able to demonstrate that students are informed of these obligations and entitlements. The Education provider should ensure that such information is made available to the student prior to enrolment and at all times during their enrolment at the institution. Students should be provided such information by the TAS scheme provider once the mechanism has begun to seek alternative measures for provision of alternative courses.

**Recommendations:**

- 8. That the ESOS Act and National Code of Practice include policies and procedures to ensure students affected by closure of education providers are given support to access their updated academic transcripts and ensure that Recognition of Prior Learning obtained with previous provider will continue to be recognised by new education providers**
- 9. That access to the TAS funds, in addition to transferring students to a new provider as well as refunds for students, include the ability for students to access funds for additional costs incurred associated with the requirement to apply for a new Student Visa due to the closure of the previous provider and inability to complete course requirements within limits of existing Student Visa.**
- 10. NUS recommends that the Senate committee seek out the report or findings of the internal review and investigate if there may have**

**been any changes implemented in the last 12 months that would have left the TAS system in a better position to rectify problems being currently being faced by the fund, the students and education providers**

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