Law Institute Victoria

Inquiry into the Welfare of International Students

Submission to the Senate Education, Employment and Workplace Relations Committee

21 August 2009

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1. Introduction

The Law Institute of Victoria (LIV) is pleased to contribute to the Senate Education, Employment and Workplace Relations Committee's (Senate Committee) Inquiry into the Welfare of International Students. The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 15,000 members. The LIV's Administrative Law and Human Rights Section Migration Law Committee is made up of legal practitioners experienced in immigration law. Many Committee members are accredited specialists in immigration law and many have experience representing international students on visas allowing them to study in Australia. The LIV has expressed its concerns about the welfare of international students in Australia[1] and seeks policy and legislative reforms to better protect the interests of international students.

Over the past ten years, the international education industry has grown in Australia to become a $15 billion industry and one of Australia's largest export earners.[2] This growth has been attributed to the strength of Australia's education system, the standard of living and quality of life available in Australia, Australia's multicultural population and acceptance of multiculturalism, labour force rate decline in Australia and an increase of the number of Australian student visas granted.[3] The introduction of the Skilled – Graduate (Temporary) visa (subclass 485) might also have led to an increase in overseas students wishing to study in Australia with a view to obtaining permanent residency.[4]

The LIV recognises the importance of international education to Australia's economy. International students in Australia bring benefits in terms of generating employment on a short-term basis, promoting increased spending, filling labour shortages and helping to combat our ageing population. The importance to our economy must however be balanced with ensuring that students who choose to come to Australia to study have a positive experience and the level of education they receive remains high. Recently, this has come under scrutiny with the media reporting on problems with the current system ranging from the quality of education providers, the welfare and safety of students residing here in Australia, as well as visa related issues.[5]

The LIV notes that the terms of reference for the Senate Committee's Inquiry are broad, requiring it to report on:

> *(a) the roles and responsibilities of education providers, migration and education agents, state and federal governments, and relevant departments and embassies, in ensuring the quality and adequacy in information, advice, service delivery and support, with particular reference to:*
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> > *(i) student safety,*
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> > *(ii) adequate and affordable accommodation,*
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> > *(iii) social inclusion,*
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> > *(iv) student visa requirements,*
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> > *(v) adequate international student supports and advocacy,*
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> > *(vi) employment rights and protections from exploitation, and*
> >
> > *(vii) appropriate pathways to permanency;*

[1] LIV Media Release, *Vulnerable foreign students should seek legal advice on visas*, 27 July 2009 available at http://www.liv.asn.au/media/releases/20090727_foreign.html.
[2] Australian Education International, Research Snapshot, *Export income from education services by the top 50 nationalities in 2008*, see http://aei.gov.au/AEI/PublicationsAndResearch/Snapshots/20090620_pdf.pdf
[3] The total number of student visas granted in 2007-08 increased by 21.69% from the previous financial year. See Department of Immigration and Citizenship Annual Report 2007-08, Outcome 1.1.5 Students.
[4] See http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3416.0Main+Features32009
[5] See e.g. Liberal to lead review of education industry Heath Gilmore and Nick O'Malley *August 8, 2009* http://www.smh.com.au/national/liberal-to-lead-review-of-education-industry-20090807-ecyz.html

(b) the identification of quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution; and

(c) any other related matters.

In this submission, the LIV addresses the federal government's responsibilities in:

- addressing possible causes of the proliferation of student visas;
- amending student visa requirements with respect to
    - employment rights and
    - student exclusion procedures; and
- amending the requirements of the General Skilled Migration program.

These matters relate primarily to section (a)(iv) of the Senate Committee's terms of reference, with relevance also to section (a)(vi) and (vii).

The submission also addresses issues relevant to:

- adequate international student supports and advocacy (section (a)(v) of the terms of reference) and
- the regulation of education agents and providers (section (a) of the terms of reference).

Recommendations are made with respect to each of these matters.

2. Summary of Recommendations

Recommendation 1

The LIV recommends that the figure of $12,000 for living expenses under Schedule 5A of the *Migration Regulations* be re-evaluated by the Department of Immigration and Citizenship (DIAC) to more accurately reflect the true cost of living in Australia. The figure should also be indexed annually to reflect increases in the cost of living.

Recommendation 2

The LIV recommends that all students, not just students who fall within Assessment Levels 3 and 4 under Schedule 5A of the *Migration Regulations*, be required to provide documentary evidence that they have the requisite funds to live and study in Australia.

The LIV considers that any student that comes to Australia without having to verify his or her financial capacity is at risk of being forced to work more than the permitted hours.

Recommendation 3

The LIV recommends that tuition fees to education providers be required to be paid in advance by term or semester, and the practice of payment plans such as monthly instalments be stopped. Regulation of payment of tuition fees should be considered under the *Education Services for Overseas Students Act 2000.*

Recommendation 4

The LIV recommends that more information should be made available to prospective international students about the cost of living in Australia – as well as information about their employment rights and entitlements, safety in Australia and access to financial resources to assist international students during their stay in Australia. This should be available prior to students arriving in Australia through reading material. Consideration should be given to providing compulsory workshops on an ongoing basis upon and after the arrival of international

students, offered by education providers under the guidance of the federal government as to information and workshop structure.

Recommendation 5

The LIV recommends that consideration be given to offering international students concession rates for public transport.

Recommendation 6

The LIV recommends that greater focus be placed on the assessment of whether a person is a 'genuine student' under the *Migration Regulations*. For example, a prospective student's educational and employment background should be a relevant consideration for decision-makers.

Recommendation 7

The LIV recommends that the *Migration Act* and *Regulations* be amended to allow for discretion in considering whether to cancel a visa as a result of a breach of either Condition 8104 or 8105.

Recommendation 8

The LIV recommends that the Conditions 8104 and 8105 in the *Migration Regulations* be amended to enable the 20 hours work a week requirement to be calculated as an average over one calendar month or four weeks.

Recommendation 9

The LIV recommends that a simplified and codified procedure be introduced to enable students to obtain a copy of their documents from their education providers when issued with a s20 Notice under the ESOS Act and National Code of Practice 2007. Importantly, strict time limits within which documents are to be provided to students must be established in light of the limited time available for students to respond to cancellation issues under the *Migration Regulations*.

Recommendation 10

The LIV recommends that the review of the ESOS Act and Regulations being undertaken by the DEEWR[6] should consider whether the referral of matters to DEEWR by DIAC is working and whether this would be better handled by DIAC in determining whether the ESOS Act and Regulations and the National Code has been complied with.

Recommendation 11

The LIV recommends that those who have completed a higher degree outside of Australia, such as a PhD, be awarded additional points under Schedule 6B of the *Migration Regulations* in recognition of their high level of skill.

Recommendation 12

The LIV recommends that DIAC consider amendments to the points system under Schedule 6B of the *Migration Regulations* and allocation of points under the Skilled Occupation List

[6] Media Release of the Hon Julia Gillard MP, *Bruce Baird to head up international students review,* 8 August 2009.

which is defined in Instrument *IMMI 09/031* dated 15 May 2009 to encourage skilled migrants who have completed degree level or higher qualifications. This may involve increasing points for some occupations and reducing points for others. This could be done concurrently with the proposed transition in early 2010 from the ASCO to the ANZCO classification of occupations and the Review of the Migration Occupations Demand List announced by DIAC and DEEWR in August 2009.

Recommendation 13

The LIV recommends that the GSM program be amended to recognise an average band score as evidence of English proficiency under Schedule 6B of the Migration Regulations. To ensure that the standard and integrity of the system is not diminished, the average could be set higher than the individual test score. Alternatively, the Migration Regulations could be amended to accept an applicant who achieves the requisite score over different tests.

Recommendation 14

The LIV recommends that other English testing schemes in addition to IELTS be recognised under the Migration Regulations, thereby creating competition with a view to decreasing delays and costs for students for testing and allowing for a fairer and transparent scheme.

Recommendation 15

The LIV recommends that a review be undertaken to determine whether the TRA '900 Hours' requirement should be retained and whether it should be replaced by the 'job ready test' to be introduced by the government on 1 January 2010.

Recommendation 16

The LIV recommends that the details of the proposed 'job ready test' be finalised and released as soon as practicable to enable international students to prepare accordingly.

Recommendation 17

The LIV recommends that the federal government undertake a program to better inform Australian employers on the work rights associated with the Skilled – Graduate (Temporary) visa (subclass 485).

Recommendation 18

The LIV recommends that DIAC consider extending the Skilled – Graduate (Temporary) visa (subclass 485) to a 2-year visa, or provide for the extension of the visa for an additional 6 months should the applicant be currently employed in a skilled occupation or completing a professional year.

Recommendation 19

The LIV recommends that the Skilled – Graduate (Temporary) visa (subclass 485) be available only to applicants who have completed a degree or higher qualification in Australia To the extent that the Skilled – Graduate (Temporary) visa (subclass 485) is available to applicants with trade level qualifications, professional years should be considered for trade qualifications and a higher focus should be placed on obtaining skilled paid employment on the Skilled – Graduate (Temporary) visa (subclass 485).

Recommendation 20

The LIV recommends that a survey be undertaken of international student graduates who apply for and are granted a Skilled – Graduate (Temporary) visa (subclass 485) to assess whether it is serving its purposes, for example, whether applicants are obtaining skilled employment or successfully upgrading their English language skills.

Recommendation 21

The LIV recommends that, in the short-term, DIAC should consider further classes of applicants to be given priority processing under Ministerial Direction No. 40 . Such classes could include applicants who are: sponsored by a relative (as such applicants have greater ability to settle and integrate into Australian society); applicants who have gained 12 months skilled employment in Australia; and applicants who have successfully obtained proficient English language skills in any occupation.

DIAC should also be given the ability to consider compassionate cases outside the requirements of Ministerial Direction No. 40, such as cases where a family unit is separated. Alternatively, DIAC could introduce amendments to allow dependant family members to be granted Skilled – Graduate (Temporary) visa (subclass 485) as secondary applicants whilst the main applicant is awaiting the grant of a permanent visa under the GSM program.

Recommendation 22

The LIV recommends that, in the long-term, a review of the current processing guidelines for the GSM program be undertaken to avoid an administrative and unworkable backlog in applications.

Recommendation 23

The LIV recommends that an 'International Student Ombudsman' be established to deal with all international student complaints, whether at the federal, state or territory levels. An International Student Ombudsman could handle the serious concerns of international students from wrongful exclusion from courses to employer exploitation. Alternatively, the consumer affairs authority or an equivalent body in each state or territory should be empowered to deal with international student issues on a centralised basis.

Recommendation 24

The LIV recommends that education providers be required to provide the relevant support services, such as career services, needed for overseas students. A proportion of the income received from international students should be required to be set aside for international student support services. An alternative means of funding could be imposing an additional fee or levy when an educational provider seeks to register a course for International Students of each education provider with the relevant Commonwealth Authority.

Recommendation 25

The LIV recommends that the federal government investigate the operation of education agents with a view to ensuring consumer protection for students.

Recommendation 26

The LIV recommends that education agents located overseas should be prohibited from providing migration advice relating to visa applications and acting on any visa matter.

International students should be encouraged by the government to use independent registered migration agents for their visa applications. In our view, international students should be encouraged to seek advice from registered migration agents with legal qualifications.

Recommendation 27

The LIV recommends that migration agents and any related parties (such as the business where the migration agent is employed or operates) should be precluded from receiving any commission from education providers.

This could be achieved by either introducing a prohibition in the Migration Agents' Code of Conduct or by amending the ESOS Act to prohibit education providers from paying commissions to education agents who are also migration agents.

Recommendation 28

The LIV recommends that the ESOS Act be amended to impose a maximum commission rate that can be paid by education providers to anyone referring a student to an education provider.

3. Proliferation of Student Visas

The 2007-2008 financial year saw an unprecedented growth in the number of student visas granted, with an overall increase of 21.69% in the total number of student visas granted from 2006-07 to 2007-08.[7] There are seven student visa subclasses, outlined in Schedule 2 of the *Migratation Regulations 1994 (Migration Regulations)*. The subclasses with the Student (Temporary) (Class TU) are:

- Subclass 570 - Independent ELICOS (English Language Intensive Course for Overseas Students): for overseas students undertaking an ELICOS stand-alone course;
- Subclass 571 – Schools: for overseas students undertaking primary or secondary school education in Australia;
- Subclass 572 – Vocational Education and Training: for students undertaking a vocational qualification including Certificates I, II, III and IV (other than ELICOS), Diploma, Associate Diploma, Advanced Diploma or Advanced Certificate;
- Subclass 573 – Higher Education: for overseas students undertaking a Bachelor Degree, Graduate Certificate, Graduate Diploma, Associate Degree or Masters by coursework;
- Subclass 574 – Postgraduate Research: for overseas students undertaking postgraduate research including Masters Degree by research or Doctorate;
- Subclass 575 – Non-Award: for overseas students undertaking a foundation, bridging or other course (other than ELICOS) that does not lead to the award of a formal qualification;
- Subclass 576 – AusAID/Defence: for overseas students undertaking any course that is sponsored by the Australian Government Agencies Department of Defence and AusAID;

During 2007-2008, 278,184 student visas were granted.[8] This figure represented a 70% increase from the 2002-2003 financial year, in which only 162,575 visas were granted.[9] Most of this growth has been in the Vocational Education Training (VET) sector, with the number of student visas granted in this subclass increasing by 57.55% from 2006-07 to 2007-08.[10]

This increase has led to two major concerns:

[7] Outcome 1.1.5 Students, Department of Immigration and Citizenship Annual Report 2007-08.
[8] Cite Outcome 1.1.5 Students, Department of Immigration and Citizenship Annual Report 2007-08.
[9] 1.1.5 Student, Department of Immigration and Multicultural and Indigenous Affairs Annual Report 2002-03.
[10] The evidence required to be shown in Schedule 5A is required for visa all Student (Temporary) (Class TU) visas as outlined above.

- Whether all students granted visas have the financial capacity to study in Australia; and
- The substantial increase in the grant of Subclass 572 – VET visas of 57.55% compared to an increase of only 17.42% in the Higher Education sector (Subclass 573) suggests that many students are enrolling in courses that are beneficial to permanent residency options.

3.1 Financial Capacity

Schedule 5A of the *Migration Regulations* specifies the test to determine whether an applicant for any of the seven student visa subclasses has financial capacity to live and study in Australia. Student visa applicants are categorised into Assessment Levels (from 1 – 5) according to their country of origin, which purportedly reflects the perceived 'risk level' of that country. Currently, only Assessment Levels 3 and 4 (there are currently no Assessment Level 5 countries) are required to provide documentary proof of sufficient funds that will be used to cover course fees, living expenses and airfares to and from Australia.

Central to the purpose of this requirement is that while students are granted work rights in Australia, income generated from such work is intended only to supplement finances while studying in Australia, and not to be the main source of income.

There are various components to the calculation of financial capacity under Schedule 5A. In particular, the amount required to cover living expenses in Australia is $12,000 per annum. This figure has not been indexed, changed or updated since the introduction of Schedule 5A on 1 July 2001.[11]

The LIV submits that $12,000 per annum is an inadequate indication of the cost of living in Australia. The income level above which a person would be considered to be living in poverty was assessed by the Melbourne Institute in March 2009 to be a weekly income of $391.85 a week or $20,376.2 a year.[12] Based on this figure, $12,000 appears to be a poor indication of the yearly cost of living for an overseas student in Australia.

The danger of having an unrealistic figure for living expenses is evident. After arriving in Australia, students might discover that they do not have sufficient funds to support themselves and, as a result, breach their 20 hour a week restriction (see below section 4.2), possibly working in the 'black market' cash economy for substandard pay and poor working conditions.

The permissible sources of income allowed by the *Migration Regulations* to prove financial capacity should also be reviewed. For instance, applicants for a student visa can demonstrate that a loan has been taken out to fund their educational expenses but there is no requirement that these loan funds actually be remitted to Australia to pay for tuition fees or living costs. The concern is that students who find themselves unable to access such loan funds are forced to work while studying in Australia to pay for their tuition fees.

There is currently no regulation of how an education provider can require payment of tuition fees. The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code of Practice 2007) requires education providers to provide only an itemised list of course money payable by the student and to provide information in relation to refunds of course money.[13] The fact that education providers can allow fees to be paid by way of monthly payment plans allows students to travel to Australia without sufficient funds and might encourage work in excess of visa conditions while in Australia in order to meet payments. If loan arrangements are to be allowed to support studies in Australia, evidence that funds have been transferred should also be considered.

In addition, the LIV understands that there is significant variation between states and territories in relation to the provision of public transport concessions for international students. Victoria

[11] Schedule 5A was inserted in the *Migration Regulations* and became effective on 1 July 2001 by the *Migration Legislation Amendment (Overseas Students) Act 2000* (Cth).
[12] See http://www.melbourneinstitute.com/labour/inequality/poverty/default.html
[13] Standard 3 – Formalisation of enrolment in the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.*

and New South Wales currently exclude international students from public transport concession entitlements but all other state and territory bodies treat international students on the same basis as local students.[14] This variation makes it both confusing and difficult for international students to know when they are entitled to concessions. It also results in an unfair situation for international students studying in Victoria and New South Wales who are required to pay significantly more than both their fellow local students and their overseas counterparts in other states.

Discrimination as between international and local students with respect to public transport concessions is not justified. Encouraging public transport usage is environmentally beneficial. It also acknowledges the importance of international students to our economy.

Recommendation 1

The LIV recommends that the figure of $12,000 for living expenses under Schedule 5A of the *Migration Regulations* be re-evaluated by the Department of Immigration and Citizenship (DIAC) to more accurately reflect the true cost of living in Australia. The figure should also be indexed annually to reflect increases in the cost of living.

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Recommendation 5

The LIV recommends that consideration be given to offering international students concession rates for public transport.

[14] See, for example, http://www.southaustralia.biz/Investing-in-SA/Industry-Profiles/Education.aspx, and http://www.transperth.wa.gov.au/TicketsandFares/ConcessionPasses/tabid/112/Default.aspx.

3.2 Genuine Student

The *Migration Regulations* requires applicants for student visas to demonstrate that they are a 'genuine applicant for entry and stay as a student' (Eg Reg 572.223(1)) and that there is no evidence that they are not a 'genuine student' (Reg 572.221(2)(b)(i)(A).

In deciding whether to grant a student visa for the purposes of the above Regulations, consideration should be given by decision-makers as to whether the proposed study is in line with a prospective student's educational and employment background. Where, for example, an engineer, marketing professional, banker or physicist, applies to complete a hairdressing or cookery course, questions may arise about whether the person is applying solely with the aim of securing permanent residency. The LIV therefore considers a prospective student's educational and employment background is a relevant consideration for decision-makers in relation to whether an applicant is a 'genuine student'.

Student visa options should be focused on providing *education* to international students. The LIV accepts that an international student may have a dual and legitimate purpose of obtaining a sound education and obtaining permanent residency in Australia. There is also an important need to maintain an onshore pathway to the General Skilled Migration program for international students due to Australia's ageing population and labour market needs.

However, the apparently increasing number of incidents of students who are studying courses for the predominant purpose of obtaining their permanent residency devalues the education industry and the purpose of the General Skilled Migration program. For example, the number of overseas students commencing studies in Hospitality Management and who meet the eligibility requirements for General Skilled Migration has increased dramatically in the past 5 years, with over 10,000 students enrolled in Hospitality Management courses in 2007 who were eligible for General Skilled Migration, increasing from less than 2,000 in 2004.[15]

Recommendation 6

The LIV recommends that greater focus be placed on the assessment of whether a person is a 'genuine student' in the *Migration Regulations*. For example, a prospective student's educational and employment background should be a relevant consideration for decision-makers.

4. Employment Rights

All student visa holders are subject to condition 8105, which states:

> *8105* *(1A) The holder must not engage in any work in Australia before the holder's course of study commences.*
>
> *(1) Subject to subclause (2), the holder must not engage in work in Australia for more than 20 hours a week during any week when the holder's course of study or training is in session.*
>
> *(2) Subclause (1) does not apply to work that was specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students.*
>
> *(3) In this clause:*
>
> ***week** means the period of 7 days commencing on a Monday.*

[15] *General Skilled Migration Reforms: Impacts and Prospect,* presented at MIA Vic/TAS Conference 29 August 2008 – Hobart by Pater Speldewinde, Director, Skilled Migration DIAC.

People who obtain a visa through their relationship to people who are on student visas (known as 'secondary' student visa holders), such as dependent spouses, are also subject to condition 8104, which imposes a 20 hour work restriction throughout their stay (unless the primary student visa holder is undertaking Masters by thesis or a Doctorate in which case they the secondary student visa holder has unlimited work rights).

4.1 Mandatory Cancellation

Unlike many other visa conditions which allow for discretion to cancel where a breach occurs, cancellation for a breach under conditions 8104 and 8105 is one of a only few circumstances in which cancellation of a visa is mandatory under s.116 of the *Migration Act 1958 (the Migration Act*) read together with regulation 2.43(2) of the *Migration Regulations*. The other circumstances in which cancellation of a visa is mandatory under s.116 concern, for example, having an association with the proliferation of weapons of mass destruction or where the Australian Security Intelligence Organisation assesses the visa holder as a risk to national security.

The LIV considers that it is disproportionate that the breach of a student visa work condition attracts the same level of response as someone associated with the proliferation of weapons of mass destruction or suspected of terrorism. It is inappropriate that there is no scope to allow for mitigating circumstances to be considered by a decision-maker prior to making a decision to cancel a student's visa.

Recommendation 7

The LIV recommends that the *Migration Act* and *Regulations* be amended to allow for discretion in considering whether to cancel a visa as a result of a breach of either Condition 8104 or 8105.

4.2 20 hour requirement

A limit of 20 hours per week might be an appropriate restriction on work rights when a visa holder's course of study or training is in session. However, the inflexibility of this condition by calculating this on a 7 day week (from Monday to Sunday) is problematic.

It provides for no flexibility to enable students to work more hours at certain times of the month, allowing for other times during the month to focus on their studies, assignments and examinations. The 20 hour limitation also encourages 'cash in hand' employment in order to allow the students to work in excess of 20 hours per week without a record being kept, which is detrimental to students because no income tax is withheld and superannuation is paid by the employer and they are more likely to be subject to exploitation through low wages or poor work conditions.

Recommendation 8

The LIV recommends that the Conditions 8104 and 8105 in the *Migration Regulations* be amended to enable the 20 hours work a week requirement to be calculated as an average over one calendar month or four weeks.

5. Student Exclusion Procedures – s20 Notices

The *Education Services for Overseas Students Act 2000* and its *Regulations* (ESOS Act and Regulations) and the *National Code of Practice 2007* currently govern providers of education and training to overseas students in relation to the exclusion – or expulsion – of students from courses. Education and training providers may 'exclude' students due to unsatisfactory course progress or unsatisfactory course attendance in breach of Condition 8202 of the Migration Regulations.

When an education or training provider intends to 'exclude' on this basis, they must issue a s20 Notice under the ESOS Act that sets out the particular details of the breach of condition 8202. Prior to the issuing of such a notice, the ESOS Act and the *National Code of Practice 2007* set out various internal procedural standards that must be complied with.[16]

Under section 137J(2)(b) of the Migration Act the student must report to DIAC within 28 days of a s20 Notice being issued, after which the matter is passed from DIAC to the Department of Education, Employment and Workplace Relations (DEEWR) to consider whether the education provider has fairly complied with the requirements relating to the issue of the notice in accordance with Direction No 38 – Cancellation of Student Visas dated 19 September 2007 (Direction No 38).

Reforms to the ESOS Act, Regulations and the *National Code of Practice 2007* in 2007 were intended to strengthen the rights of students,[17] but in many instances, rights and avenues of appeal were removed. For example, only political upheaval or natural disaster in a particular country can be taken into account as factors affecting a student's studies. The procedure in relation to cancellation notices has become more complex and time consuming. For example, students must attempt to prove that the Educational Provider has not followed the correct procedure as outlined in the *National Code of Practice 2007* as required by Direction No 38. Many students also seek legal advice only after the visa is cancelled, not realising the complexities of the law surrounding cancellations. Further, they are not encouraged by DIAC to seek legal advice in relation to student visa cancellation issues.

The LIV considers a review of the cancellation procedure to be necessary. The procedure needs to be more equitable and accessible for international students and should allow for a warning system for first-time offenders.

In particular, the LIV considers it necessary to address the hurdles and difficulties students might face trying to obtain from their education provider all the relevant documentation pertaining to their exclusion. As no guidelines or timeframes exist for such requests, a student's ability to challenge the validity of the s20 Notice can be greatly prejudiced in circumstances where he or she is unable to access the pertinent documentation in a timely manner.

Recommendation 9

The LIV recommends that a simplified and codified procedure be introduced to enable students to obtain a copy of their documents from their education providers when issued with a s20 Notice under the ESOS Act and *National Code of Practice 2007*. Importantly, strict time limits within which documents are to be provided to students must be established in light of the limited time available for students to respond to cancellation issues under the *Migration Regulations*.

Recommendation 10

The LIV recommends that the review of the ESOS Act and Regulations being undertaken by DEEWR[18] should consider whether the referral of matters to DEEWR by DIAC is working and whether this would be better handled by DIAC in determining whether the ESOS Act and Regulations and the National Code has been complied with.

[16] Standard 10 – 13 in the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.*
[17] See Preamble of *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.*
[18] Media Release of the Hon Julia Gillard MP, *Bruce Baird to head up international students review,* 8 August 2009.

6. General Skilled Migration program

The LIV is concerned that aspects of the General Skilled Migration ('GSM') program might be detrimentally affecting Australia's education sector. Our concerns include the large increases in visas being granted to students in the VET Sector (in particular '60 Point' trades such as cookery, pastry cookery, hairdressing, motor mechanics etc). For example, for the year ending 30 June 2008, there was an increase in visas granted in the VET Sector of 57.55% from the year ending 30 June 2007. All the above courses fall within the VET Sector.[19]

In addition, despite recent media coverage that moves are being made by the various state authorities to investigate and consider de-registering some private colleges, there remain serious concerns about the quality of education provided, and the prevalence of fraud and exploitation by unscrupulous providers, in the VET Sector.

We also note that the Critical Skills List and priority processing criteria introduced earlier this year established under Direction No. 40 – Order of Consideration of Certain Applications for Sponsorship, Nomination and Visas under the Skill Stream of the Migration Program and the Temporary Residence Program (Direction No 40) has created a backlog of applications and we consider this to be a simplistic way to resolve the 'skills crisis' we face. It places difficulties on visa applicants looking for skilled work, as many employers require prospective applicants to have permanent residence in Australia, and requires repetitive processing of applications (such as repeating police clearances and medicals) which increases costs for applicants. It also prevents many suitable and highly qualified applicants in a range of occupations from being processed. In particular, it affects offshore applicants from being reunited with their families in Australia where they already have settled relatives in Australia.

We recognise that a pathway for international students to the GSM program is necessary, particularly as Australia will continue to compete with other countries that are suffering from workforce shortages for young skilled migrants. However, this needs to be balanced with greater onshore options for skilled migration without focusing simply on certain occupations. This will provide a broader range of students at different levels of the education sector.

Detail on LIV's particular concerns and recommendations are set out below.

6.1 Points allocation under GSM

Under the GSM program, a person who holds a PhD of Biotechnology from Cambridge University, or an MBA from Stanford Business School, will achieve fewer points (50 points) than a person who completes a 16 month Diploma of Hospitality Management form an Australian VET school (60 points) (in accordance with Schedule 6B of the *Migration Regulations*).

The points test outlined in Schedule 6B of the *Migration Regulations* should be reviewed to address several issues.

In particular, a broader range of occupations needs to be considered in achieving a more well-rounded pool of onshore student applicants for permanent residency. This may require broadening the scope of occupations which are awarded 60 points or encouraging degree qualifications or higher studies as a means of obtaining pathways for residency. For example, mathematicians (50 points) and building associates (40 points) are on Victoria's current Sponsorship Occupation in Demand lists and yet score fewer points than many other occupations. There is scope to broaden the range of 60 point occupations to include degree or higher level studies in a range of occupations, thereby allowing students to have more choice in their studies and allow for Australia to benefit from a broader range of skills.

Moreover, the GSM program should recognise those who hold higher tertiary qualifications from overseas and decide to continue their studies here in Australia. Currently, only students that obtain their Masters degrees or PhD from Australia are awarded additional points. Consideration could be given to encouraging well-educated students to benefit from continuing their studies in Australia based on their foreign qualifications.

[19] See http:www.immi.gov.au/about/reports/annual/2007-2008/html/outcomes/1.1

Recommendation 11

The LIV recommends that those who have completed a higher degree outside of Australia, such as a PhD, be awarded additional points under Schedule 6B of the *Migration Regulations* in recognition of their high level of skill.

Recommendation 12

The LIV recommends that DIAC consider amendments to the points system under Schedule 6B of the *Migration Regulations* and allocation of points under the Skilled Occupation List which is defined in Instrument *IMMI 09/031* dated 15 May 2009 to encourage skilled migrants who have completed degree level or higher qualifications. This may involve increasing points for some occupations and reducing points for others. This could be done concurrently with the proposed transition in early 2010 from the ASCO to the ANZCO classification of occupations and the Review of the Migration Occupations Demand List announced by DIAC and DEEWR in August 2009.[20]

6.2 English Language Testing

The need for up front International English Language Testing System (IELTS) results under the current GSM program is appropriate. There are, however, delays in sitting IELTS tests and some students have to travel interstate or abroad to sit tests within prescribed visa periods. The IELTS results requirement is for GSM and for student visa applications and renewals.

As noted above, the IELTS system is currently the only authority for English language testing in Australia. The cost of each test is significant. It costs $310.00 to sit a test in Australia[21] and because the GSM program requires a minimum score in each band of the test under Schedule 6B and time of application criteria under the various subclasses of skilled migration visa to obtain both a minimum level of English required to lodge an application, many students take the test multiple times in order to attain the requisite score.

The GSM program awards maximum points (25) for students who achieve 7 in each of the 4 bands of the IELTS test.[22] Anecdotally, international students have reported great variations in test results. The subjectivity in the assessment leads to discrepancies, with situations where students receive the requisite score during one test are not awarded the same band score in a subsequent test. For example, a student may receive 7 on each of the listening, reading and writing bands, but only a score of 6 for the speaking band. In this situation, they would not be awarded the full 25 points. In a subsequent test, that same student may receive 6 on the listening component, and 7 for the remaining 3 bands. But again, full points would not be awarded.

Recommendation 13

The LIV recommends that the GSM program be amended to recognise an average band score as evidence of English proficiency under Schedule 6B of the *Migration Regulations*. To ensure that the standard and integrity of the system is not diminished, the average could be set higher than the individual test score. Alternatively, the Migration Regulations could be amended to accept an applicant who achieves the requisite score over different tests.

[20] See 'Select Skills : principles for a new Migration Occupations in Demand List: Review of the Migration Occupations in Demand List, Issues Paper No.1 , August 2009.

[21] See http://www.ielts.org/test_takers_information/faqs.aspx#Howmuchdoesitcost.
[22] Schedule 6B, Part 3, *Migration Regulations.*

Recommendation 14

The LIV recommends that other English testing schemes in addition to IELTS be recognised under the *Migration Regulations*, thereby creating competition with a view to decreasing delays and costs for students for testing and allowing for a fairer and transparent scheme.

6.3 Assessment of Trade Courses

The LIV has concerns about the current assessment of Australian trade qualifications by Trades Recognition Australia ('TRA'). As noted above, apart from completing the relevant trade qualification, TRA requires applicants to have completed 900 hours of work experience in their related field as stated above.

Of particular concern is the fact that the 900 hours of work experience be unpaid. This could contravene Australian employment law. As noted above, the work experience requirement could lead to problems of false documents being created to evidence work experience, or the exploitation of international students being forced to complete work experience for no pay. As part of the GSM program, a positive TRA Assessment is required to be provided. After lodgement of this application, DIAC often investigate the authenticity of the work experience.

DIAC has said that it will introduce a 'job ready test' in 2010 with the intention of ensuring that people who wish to migrate are able to participate in the labour market.[23] This 'job ready test' will initially be applied to trade occupations and is currently being developed by the government with consultation with both industry and unions.[24] However there is little detail as to what this will entail and how it will address the issues surrounding the 900 hours TRA work experience requirement.

Recommendation 15

The LIV recommends that a review be undertaken to determine whether the TRA '900 Hours' requirement should be retained and whether it should be replaced by the 'job ready test' to be introduced by the government on 1 January 2010.

Recommendation 16

The LIV recommends that the details of the proposed 'job ready test' be finalised and released as soon as practicable to enable international students to prepare accordingly.

6.4 Graduate Skilled Temporary 485 Visa

The Skilled – Graduate (Temporary) visa (subclass 485) was introduced to allow international students who do not meet the criteria for a GSM visa to remain in Australia for 18 months to: gain skilled work experience; complete a professional year to improve their 'job ready' skills; improve their English language skills; holiday or work in Australia.[25]

LIV members have noted an apparent lack of understanding by employers as to the work rights in relation to this visa. The experience of many international students is that graduate employers are not willing to hire temporary residents despite the fact that this visa offers full-time work rights. In addition, the duration of 18 months does not appear to give much long term certainty for a prospective employer.

This visa could be used more effectively to encourage students on Higher Education Sector: Temporary Visas (Subclass 573) to consider residency in Australia and therefore balance the

[23] Department of Immigration and Citizenship, *2009-10 Migration Program Changes Frequently Asked Questions,* page 7.
[24] Ibid.
[25] Ibid.

GSM program towards highly skilled migrants. Alternatively, it could be used more effectively to assist students to obtain 'job ready' skills through appropriate trade professional years.

Recommendation 17

The LIV recommends that the federal government undertake a program to better inform Australian employers on the work rights associated with the Skilled – Graduate (Temporary) visa (subclass 485).

Recommendation 18

The LIV recommends that DIAC consider extending the Skilled – Graduate (Temporary) visa (subclass 485) to a 2-year visa, or provide for the extension of the visa for an additional 6 months should the applicant be currently employed in a skilled occupation or completing a professional year.

Recommendation 19

The LIV recommends that the Skilled – Graduate (Temporary) visa (subclass 485) be available only to applicants who have completed a degree or higher qualification in Australia To the extent that the Skilled – Graduate (Temporary) visa (subclass 485) is available to applicants with trade level qualifications, professional years should be considered for trade qualifications and a higher focus should be placed on obtaining skilled paid employment on the Skilled – Graduate (Temporary) visa (subclass 485).

Recommendation 20

The LIV recommends that a survey be undertaken of international student graduates who apply for and are granted a Skilled – Graduate (Temporary) visa (subclass 485) to assess whether it is serving its purposes, for example, whether applicants are obtaining skilled employment or successfully upgrading their English language skills.

6.5 Ministerial Direction No. 40

With the onset of the so-called global financial crisis, there has been a significant reduction in the number of visas granted under the GSM program. The government has announced cuts to the permanent skilled migrant intake to 108, 100 places for the 2009–10 GSM program (an overall drop of almost 20 per cent on previous planning levels)[26]. The decrease in numbers might be attributed to the Minister for Immigration and Citizenship issuing a direction in January 2009 that prioritises the processing of cases such as applications sponsored by a state or territory government and occupations of the Critical Skills List.[27] Ministerial Direction No 40 gives no priority to students who are family sponsored who have relatives in Australia, and therefore may settle quickly in Australia.

Applicants who do not fall within priority processing under Ministerial Direction No 40, even applications that were near finalisation, are now delayed. DIAC has been unable to give LIV members any indication as to how long such applications will take. It is currently impossible to provide applicants with an approximate processing time as DIAC have not processed non-priority cases since January 2009 and prior to this there was already a significant backlog.

The lack of certainty for non-prioritised applicants to the GSM program is making it difficult for graduate students to find long term employment due to their visa uncertainty.

[26] See media release *Budget 2009–10 – Migration Program: the size of the skilled and family programs*, 12 May 2009 available at http://www.minister.immi.gov.au/media/media-releases/2009/ce02-budget-09.htm

[27] Ministerial Direction No. 40 – Order of Consideration of Certain Applications for Sponsorship, Nomination and Visas under the Skill Stream of the Migration Program and the Temporary Residence Program.

The delay in processing has many additional consequences. Some applicants had applied alone, planning to bring a spouse or children over to Australia once their visas were granted. With the long delay in processing, the family unit is now divided with no certainty as to when they could be reunited.

In addition, some applicants have reported difficulty in securing graduate employment due to their ambiguous status as a 'bridging visa' holder while they await a decision on their permanent residency application. As noted above, it appears that employers are unwilling to offer full-time employment to people who are not yet permanent residents.

The LIV submits that the level of uncertainty created by Ministerial Direction No 40 is unsatisfactory and unfair on those people, including students, who apply under the GSM program. We would not support any requirement or policy to refuse applications beyond a determined quota as a way of dealing with the backlog created by the current processing arrangements. Not only would this be extremely detrimental to the applicants who have pending applications but it could lead to losses of young members of the work force who currently working under temporary arrangements while they are on bridging visas.

Recommendation 21

The LIV recommends that, in the short-term, DIAC should consider further classes of applicants to be given priority processing under Ministerial Direction No. 40 . Such classes could include applicants who are: sponsored by a relative (as such applicants have greater ability to settle and integrate into Australian society); applicants who have gained 12 months skilled employment in Australia; and applicants who have successfully obtained proficient English language skills in any occupation.

DIAC should also be given the ability to consider compassionate cases outside the requirements of Ministerial Direction No. 40, such as cases where a family unit is separated. Alternatively, DIAC could introduce amendments to allow dependant family members to be granted Skilled – Graduate (Temporary) visa (subclass 485) as secondary applicants whilst the main applicant is awaiting the grant of a permanent visa under the GSM program.

Recommendation 22

The LIV recommends that, in the long-term, a review of the current processing guidelines for the GSM program be undertaken to avoid an administrative and unworkable backlog in applications.

7. Student Advocacy and Welfare - Complaints Body

Currently there are a myriad of state, territory and federal government bodies that have a degree of responsibility in overseeing international students and addressing any complaints. Depending on the nature of a complaint, a student may be directed to DIAC, DEEWR, a state accrediting authority or a state, territory or federal consumer affairs authority.

With the current regime, there is no clear avenue for international students to raise concerns related to the quality of their studies. Only limited student services and advocacy support – such as dedicated career advisers and student advocates – are made available to students, including international students. For example, in July 2007, DEEWR commissioned an independent review of career development services provided by Australian tertiary education providers.[28] The DEEWR review noted that career development services have experienced

[28] Department of Education, Employment and Workplace Relations, *Review of Career Development Services in Australian Tertiary Institutions*, May 2008. See http://www.dest.gov.au/sectors/career_development/programs_funding/programme_categories/key_career_priorities/career_development/tertiary_development.htm#Review_of_Career_Development_Services_in_Australian_Tertiary_Institutions_Final_Report

increasing pressure from a more diverse student profile in recent years, particularly from large numbers of international students. Recommendation 12 of the resulting report stated that:

> *Institutions should provide special funding for the provision of career development services for international students as a fixed proportion of income received from student fees.*

In response, the National Association of Graduate Careers Advisory Services proposed a figure of 0.0025 % to fund such services.[29]

Recommendation 23

The LIV recommends that an 'International Student Ombudsman' be established to deal with all international student complaints, whether at the federal, state or territory levels. An International Student Ombudsman could handle the serious concerns of international students from wrongful exclusion from courses to employer exploitation. Alternatively, the consumer affairs authority or an equivalent body in each state or territory should be empowered to deal with international student issues on a centralised basis.

Recommendation 24

The LIV recommends that education providers be required to provide the relevant support services, such as career services, needed for overseas students. A proportion of the income received from international students should be required to be set aside for international student support services. An alternative means of funding could be imposing an additional fee or levy when an educational provider seeks to register a course for International Students of each education provider with the relevant Commonwealth Authority.

8. Regulation of Education Agents and Education Providers

The LIV understands that there has been an increase in the number of private education providers in the VET Sector in recent years, with a corresponding increase in the number of education agents whose core business is to locate potential international students to study at an Australian education provider. We also understand that education agents are paid a commission for each student referral, which invariably is a percentage of the tuition fee paid by the international student. LIV members understand that Australian universities and TAFE colleges pay significantly lower commissions than some private VET colleges. There is, we understand, no prerequisite licensing or training required to become an education agent (except where imposed by education providers or by state government bodies).

The increase in education agents might be attributed to the availability of lucrative commissions and to the low barriers to entry.

Some countries have registers of education agents and some education providers impose their own standards. For example, the Victorian Department of Education and Early Childhood Development accredits education agents to be its representative to recruit students for Victorian Government Schools. The Victorian government requires education agents to have completed the Education Agent Training Course.[30] However, education agents are not currently regulated by the Australian Government or any other independent regulatory authority in Australia.

The LIV is concerned that, in the absence of a regulatory authority, there is little incentive for education agents to act in the best interest of the students. There is a clear conflict of interest

[29] See http://nagcas.org.au/uploads/NAGCAS%20response%20to%20Phillips%20KPA%20Review.pdf.
[30] See http://www.study.vic.gov.au/Agents/BecAgent.htm.

in advising students about available courses and at the same time receiving commissions from the education provider. The recommendation of a student to a particular educational provider could be driven more by the commission to be received than the standard of education or services available to the student at that education provider. Moreover, as there is no authority or regulating body providing oversight of education agents, an aggrieved student has no means or avenue to lodge a complaint.

The LIV recognises that the regulation of education agents is problematic. As many education agents are not located in Australia, an Australian regulatory authority would have difficulty enforcing any penalty on an offending education agent.

There are education agents who are also migration agents, who would then come under the jurisdiction of the Office of the Migration Agents Registration Authority (OMARA) and be governed by the Migration Agents' Code of Conduct. However, problems arise where an education agent also acts as an international student's migration agent. There is an inherent conflict of interest between the student's interest, the interest of the education provider and the agent's own pecuniary interest. On the one hand, the agent will receive a commission from an education provider and, on the other hand, the agent will receive professional fees for any immigration work done for the student.

Possible conflicts are exacerbated when an education provider has a financial relationship with an education agent/migration agent, whereby they receive a recurring income stream from the education provider for student placements. In contrast, they receive a single payment from the student for the visa work done and, as a result, the ability to give independent migration advice could be compromised.

In addition to issues concerning the regulation of education agents, there is a real need for an overhaul of education provider scrutiny and regulation of the industry. We support the recent announcement of the Honourable Julia Gillard MP, Minister for Education, that an International Students Review is to be undertaken, which will include a review of the *Education Services for Overseas Students (ESOS) Act* and report on changes designed to ensure Australia continues to offer world class quality international education.[31]

In particular, the LIV supports Recommendation 20 of *DEEWR's Review of Australian Higher Education of 2008*, that the Australian Government establish a national regulatory body to be responsible for accrediting and reaccrediting all providers of higher education, including providers under the ESOS Act.[32]

Recommendation 25

The LIV recommends that the federal government investigate the operation of education agents with a view to ensuring consumer protection for students.

Recommendation 26

The LIV recommends that education agents located overseas should be prohibited from providing migration advice relating to visa applications and acting on any visa matter. International students should be encouraged by the government to use independent registered migration agents for their visa applications. In our view, international students should be encouraged to seek advice from registered migration agents with legal qualifications.

Recommendation 27

The LIV recommends that migration agents and any related parties (such as the business where the migration agent is employed or operates) should be precluded from receiving any commission from education providers.

[31] Media Release ' Bruce Baird to head up international students review', 8 August 2009.
[32] Review of Australian Higher Education, Final Report, December 2008 available at http://www.deewr.gov.au/HigherEducation/Review/Documents/PDF/Higher%20Education%20Review_one%20document_02.pdf.

This could be achieved by either introducing a prohibition in the Migration Agents' Code of Conduct or by amending the ESOS Act to prohibit education providers from paying commissions to education agents who are also migration agents.

Recommendation 28

The LIV recommends that the ESOS Act be amended to impose a maximum commission rate that can be paid by education providers to anyone referring a student to an education provider.

9. Conclusion

In this submission, the LIV seeks to highlight some of the issues facing international students and possible remedies to improve student welfare and to allow Australia to retain well qualified students from abroad. The aim of polices affecting international students should be to ensure fair treatment of international students as well as appropriate pathways for skilled migration for a broad range of students. The education program offered to international students needs to have a focus on education rather than providing a means to permanent residency.

The LIV would welcome any opportunity to discuss this submission with the Senate Committee or provide any further information in relation to the points raised.