

**National Tertiary Education Union**

Po Box 1323, South Melbourne  
Victoria, Australia 3205  
Tel 03 9254 1910  
Fax 03 9254 1915

# **NTEU Submission**

**to the**

## ***Senate Education, Employment and Workplace Relations Committee Inquiry into Welfare of International Students***

**Organisation:** National Tertiary Education Industry Union

**Contacts:** Dr Carolyn Allport, National President NTEU

---

Paul Kniest, Policy and Research Co-ordinator

---

**Details:** 120 Clarendon St  
South Melbourne Victoria 3205  
03 92541910

**Date:** 14<sup>th</sup> August 2009

## **SUMMARY OF NTEU RECOMMENDATIONS**

**NTEU recommends that:**

- 1. The relevant Commonwealth department responsible for education (currently DEEWR) or a national regulatory body should be made responsible and appropriately resourced to monitor the National Code, and investigate and enforce any breaches of the Code. The Commonwealth could use its power to issue (or not issue) student visas for participation in courses offered by providers as the ultimate sanction.**
- 2. As a condition of being listed upon the CRICOS register, and thus educating students on student visas, individual providers should be required to be a direct signatory to Part D of the National Code.**
- 3. A provider's compliance with the National Code should be assessed not only at the point of registration but over the duration of the period of registration. NTEU recommends that at least once during this period providers be subject to a comprehensive audit regarding compliance with the National Code of Conduct, including a full inspection of premises.**
- 4. Where applicable, it should be made clear to students that an originating program provider is different from the provider responsible for delivering a particular course, or where the location of the course being delivered differs. For example where a private provider is delivering a university program, it should be made clear that it is the private provider delivering the course, that the location is not the university campus and that students only have access to the private provider's support services.**
- 5. Relevant information about and related to the education programs and training should be provided before final enrolment. At a minimum this should include information about:**
  - the education provider**
  - the ESOS system**
  - relevant regulatory bodies**
  - student grievance measures**
  - student representative bodies**
  - conditions of enrolment**
  - conditions of visa entry**
  - costs including all course-related penalties and hidden costs**
  - procedures for withdrawal**
  - circumstances of termination.**
- 6. Breaches of the National Code should include the imposition of a financial penalty.**
- 7. Providers must be made legally responsible for education agents used to recruit students and process student applications. This would apply to all education agents to whom any commission or other payment for service is made.**
- 8. The capacity for education agents to also act as immigration agents should be re-examined.**

9. All registered providers should be required to provide “*services designed to assist students in meeting course requirements*” (Standard 6.2) and “*welfare related services*” (Standard 6.3).
10. In consultation with international students and other interested parties, the list of student welfare services, and the minimum level of provision that is listed under Standard 6, should be specified in greater detail.
11. In relation to Standard 8:
  - i. Student access to grievance procedures (both internal and external to the provider) should be at no cost to students,
  - ii. Students should be guaranteed independent advocacy and advice,
  - iii. All providers should submit an annual report to the relevant regulatory body summarising the number of student complaints and outcomes.
12. In relation to students who are required to undertake work experience as part of their course:
  - i. Clearer guidelines for the employment of international students (including within the context of work experience) should be included within the National Code and in student visa regulations,
  - ii. All students required to undertake work experience should be guaranteed minimum industrial rights including minimum rates of pay,
  - iii. All providers should be required to provide students with sufficient information about their employment rights including the right to join a relevant union, which is underpinned by the right to freedom of association.

## **Introduction**

The National Tertiary Education Union (NTEU) represents approximately 26,000 staff employed in Australia's higher education industry. The Union welcomes the opportunity to make a submission to the Senate Education, Employment and Workplace Relations Committee *Inquiry into Welfare of International Students*.

NTEU acknowledges the terms of reference for the Inquiry and the pressing need to address issues around the security and welfare of international students in this country. NTEU views the right to work, study and live in a safe environment as well as the right to have access to appropriate welfare services and frameworks as fundamental human rights. However, unlike students who are Australian citizens, international students do not enjoy complete social and economic security in this country. In addition, by being away from their country of residence, their security is not fully catered for by the nations in which they are citizens. In essence, international students can be viewed as a complex, globally mobile population, existing between their nation of origin and the nation of their education.

It is important to note that there is no bilateral or multilateral framework whereby international students' rights to social and economic security are fully catered for, nor do the international agencies and bodies take up questions of student security. For example, while the International Labour Agency (ILO) has a longstanding concern about the rights of migrants it specifically excludes students from its definition of 'migrants'. As such, NTEU strongly argues for the re-examination of current legislative frameworks, practices and support systems that cater to international students, with a view to guaranteeing their social and economic rights.

NTEU's comments focus primarily on issues relating to the regulatory framework controlling the service, advice and support provided to international students studying in Australia. We identify the regulatory areas that we believe could be both strengthened and streamlined, and address issues around the role of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code), focusing upon information supplied to prospective international students, the role of education agents, student welfare and grievance procedures, amongst others. The submission also focuses attention upon regulatory issues around student 'security' in terms of employment conditions and rights.

NTEU's submission also highlights the importance of international students to Australia's tertiary education sector, and in so doing emphasises the need to ensure that at all times the conduct of all education providers and agents servicing international students is fair, transparent and in accordance with the relevant codes and regulations. Furthermore, NTEU maintains that the integrity of the education programs and training provided to international students must be reviewed regularly so as to ensure maintenance of high quality education or training programs.

## **Background – The Growth of International Education in Australia**

International Education in Australia has changed dramatically in the past 20 years. Until 1986, most overseas students came to Australia to study under various foreign aid programs and were partly or fully subsidised. Best known of these programs was the Colombo Plan (1951 – 1982), a federally funded scholarship program that enabled students from the Asia Pacific with limited tertiary facilities to study at Australian universities. The Colombo Plan is not only credited with educating many of the future leaders of these countries, but also in broadening Australia's understanding and role within the region.

In the early 1980s a change of Government policy saw the Colombo Plan wound down and a system of student visas introduced, moving international education to a fee based structure and making it illegal for universities to subsidise foreign students from Government funds (unless through an existing targeted scholarship program). Student visas were approximately \$A6,000/year and students were treated as though they were locals for places in institutions.

At the same time, Federal policy set a base fee for courses that providers could not go below (although it did not set a maximum fee or legislate the ways in which the fees were to be used). There was also a requirement that a minimum of 10% of income was to be set aside for capital expenditure within the institution.

In 1989 the student visa system was replaced by a system of "full fees" for non-local students (with the exception of a small number of scholarship programs), and no effective limits were placed on student numbers. This policy move effectively created a market led approach, in which universities could set their own fee levels and make their own decisions on how they invested in marketing and recruiting, infrastructure, student support and teaching.

Also of note was the introduction of government policy in 1995 which saw a substantial increase in the numbers of private education providers. Later immigration policy (2005) provided a pathway for permanent residency through skilled training in areas of need. The international student market is now the third largest export market in Australia (\$15.5 billion), behind coal and iron ore (\$46 billion and \$30.2 billion respectively) and the largest services export industry ahead of personal travel services (\$11.7 billion) (ABS figures 2007).

## **The Benefits of International Education**

The benefits of educating international students are now well recognised in Australia. Increased international student participation has broadly benefited the country through economic growth and increased labour market demands and skills. The Deputy Prime Minister and Minister for Education, Employment and Workplace Relations recently noted the multi-faceted impact of the growth of international education in Australia, stating that;

*International education's significance is much broader than economics. It reaches into every sphere of our lives. And it reflects the intrinsic values of education itself – the spread of knowledge, skills, understanding and cross-cultural dialogue. It's a central part of our international diplomatic efforts and contributes to the development of good relations with our neighbouring countries.*

*In the widest sense, it produces global citizens who form networks and collaborations to foster wider international business engagement, achieve diplomatic solutions to world pressure points, develop innovations in science and technology to improve quality of life and environmental sustainability, tackle global challenges like climate change and embrace cultural differences that enrich our social experiences.<sup>1</sup>*

International education provides exposure to cultural diversity and best practices from other countries. This enriches Australian education perspectives and practices, which in turn contributes to the country's international competitiveness. In addition, it provides

---

<sup>1</sup> J. Gillard, (2008) *Speech to AEI Industry Forum 2008*, Melbourne Convention Centre, 8 April 2008, [http://www.deewr.gov.au/Ministers/Gillard/Media/Speeches/Pages/Article\\_081022\\_153431.aspx](http://www.deewr.gov.au/Ministers/Gillard/Media/Speeches/Pages/Article_081022_153431.aspx)

opportunities to broaden Australian understanding of our region and increase mutual cultural understanding. Universities and VET institutions are increasingly involved in the provision of professional and skills training to overseas industries alongside Australia's development assistance program of capacity building in the Asia Pacific region. Furthermore, universities and VET institutions are increasingly active in sending Australian students abroad for part of their studies.

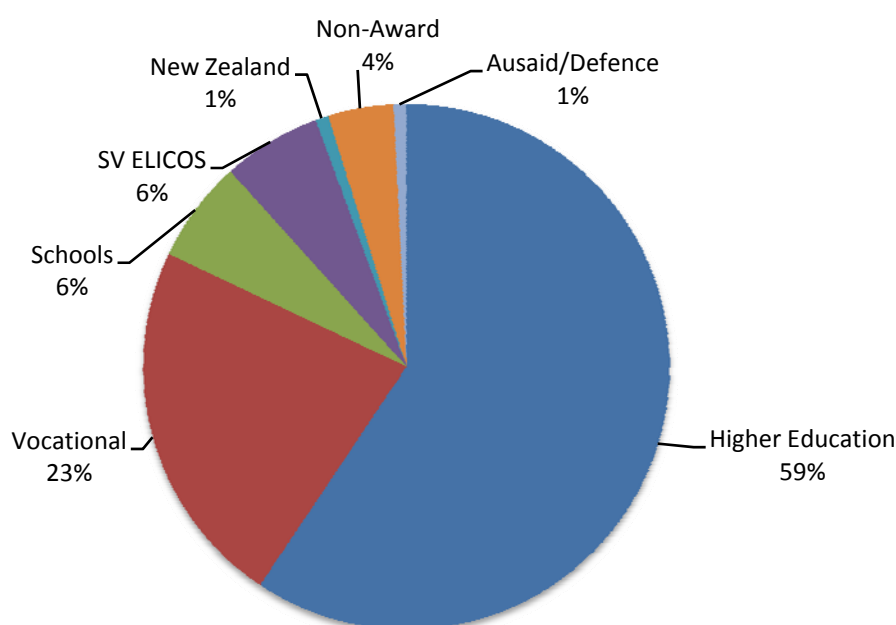
Finally, academic studies have found that the growth in international student numbers has resulted in a greater internationalisation of Australia's tertiary education curriculum in all Australian universities and across all fields of study, and has already improved the quality of Australia's higher education more broadly.<sup>2</sup> Universities are also internationalising their research and research collaborations with overseas universities and overseas industries.

### Contribution of International Students to Australia's Economy

ABS data shows that of the total export income generated by education programs in 2008, \$15.5 billion comprised expenditure on fees and on goods and services by international students studying and living in Australia. A further \$505 million was earned through the provision of offshore education.

The ABS has also published, for the first time, data showing the breakdown of international student expenditure by educational sector as shown in Chart 1.

**Chart 1 Total Amount of All International Student Expenditure 2008**



**Source: Data drawn from ABS publication *International Trade in Services, by Country, by State and by Detailed Services Category, Calendar Year, 2008 (Table 12.1)***

<sup>2</sup> D. Blight (1995) *International Education: Australia's Potential - Demand & Supply*, IDP, Canberra; K. Back, D. Davis & A. Olsen (1996) *Internationalisation and Higher Education: Goals and Strategies*, AGPS, Canberra.

The data shows that in 2008 almost 60% of the total expenditure is attributed to the higher education sector, with a further 23% allocated to VET. ELICOS and schools contribute 6% each. In terms of the direct economic impact, it is clear that the higher education sector is by far the most important and data on student enrolments indicates that in 2007 approximately 89% of all international students studying in Australia were attending a university. In other words, it could be concluded that universities are responsible for over 50% of the direct economic benefits Australia gains from participating in higher education.

## International Student Numbers

Table 1 shows the number of student visas issued for the period 2004 to 2008, and the share of total for each sector. The data indicates a number of important trends in enrolments over the last 5 years. Firstly, the total number of visas issued has increased significantly by some 220,000 over the period – an increase of 68%. Growth was fastest in the VET sector which rose by more than 200% and especially strong in the private VET sector which grew by almost 250% compared to about 90% for public VET providers. By contrast student visas to study in higher education only increased by 20% over the same period. As a consequence higher education's share of total visas issued fell from 46.4% in 2004 to 33.6% in 2008. While higher education only accounted for a third of all enrolments, the data presented in Chart 1 showed they accounted for 60% of all expenditure which meant that higher education students, on average, spent considerably more in terms of fees and on goods and services than other students.

**Table 1**

### Overseas visa students studying onshore in VET, and other education sectors, 2004–08

Education or training sector	2004	2005	2006	2007	2008
	('000)	('000)	('000)	('000)	('000)
<b>Higher education</b>	<b>150.7</b>	<b>162.7</b>	<b>169.7</b>	<b>174.6</b>	<b>182.8</b>
<i>Share of total</i>	46.5%	47.3%	44.7%	38.7%	33.6%
<b>Vocational education and</b>					
<b>Public sector</b>	<b>16.8</b>	<b>17.2</b>	<b>20.5</b>	<b>27.8</b>	<b>31.8</b>
<i>Share of total</i>	5.2%	5.0%	5.4%	6.2%	5.8%
<b>Private sector</b>	<b>41.5</b>	<b>48.4</b>	<b>62</b>	<b>92.1</b>	<b>143.6</b>
<i>Share of total</i>	12.8%	14.1%	16.3%	20.4%	26.4%
<b>VET sub-total</b>	<b>58.2</b>	<b>65.6</b>	<b>82.5</b>	<b>119.8</b>	<b>175.5</b>
<i>Share of total</i>	18.0%	19.1%	21.7%	26.6%	32.3%
<b>School education</b>	<b>27.3</b>	<b>25.1</b>	<b>24.5</b>	<b>26.9</b>	<b>28.8</b>
<i>Share of total</i>	8.4%	7.3%	6.4%	6.0%	5.3%
<b>English language intensive courses for overseas students</b>	<b>61.7</b>	<b>64.5</b>	<b>76.8</b>	<b>101.9</b>	<b>125.7</b>
<i>Share of total</i>	19.0%	18.7%	20.2%	22.6%	23.1%
<b>Other</b>	<b>25.9</b>	<b>26.3</b>	<b>26.4</b>	<b>27.4</b>	<b>31.1</b>
<i>Share of total</i>	8.0%	7.6%	6.9%	6.1%	5.7%
<b>Total</b>	<b>323.9</b>	<b>344.2</b>	<b>380</b>	<b>450.6</b>	<b>543.9</b>

Source: NCVER Student Statistics 2008 (Table 17)

## **Importance of International Education to Universities**

The latest student enrolment data shows that in 2007 there were a total of 976,768 students enrolled at Australia's public universities of which 254,414 or 26% were overseas students.<sup>3</sup> This elevates Australia to the highest ranking for the proportion of international students studying in OECD countries, far above the average of 7%.<sup>4</sup> OECD data also shows that 19% of all students in advanced research programs at Australian universities in 2006 were international students, significantly higher than the OECD average of 16%. Furthermore, the OECD reports that international students made up 85% of all growth in research students in Australia from 2004 to 2007, during a time of skills shortages in Australia and when numbers of Australian postgraduate research students remained flat.

In terms of international student fee income the data shows Australia's public universities received \$2.6 billion in international student fee income which accounts for approximately 15% of total income (See Appendix 1). The data included in Appendix 1 shows the value of international fee income for each of Australia's public universities and its share of total income for 2000 and 2007. In addition to international fees increasing in importance from 10.2% of total income in 2000 to 15.3% in 2007, the data also shows that international fee income accounts for more 20% of total income for seven universities in 2007.

It is clear from the analysis presented above that universities remain the most important players in Australia's international education endeavours and that international students are important for the financial, educational and cultural variability of our universities. The data also indicates private VET providers have been the most important source of growth for international students in recent years. It is critical that measures are taken to ensure that the reputation of Australia's international education sector remains secure, and that the appropriate measures (such as strengthening the Education Services for Overseas Students (ESOS) Act and the National Code) are in place to ensure that the integrity of Australia's international education efforts are protected.

## **Education Services for Overseas Students (ESOS) Framework**

The ESOS framework defines the process and standards under which international students are attracted to Australia. The standards expected of providers include a regulatory framework which aims to protect the quality of education for overseas students, provides legal recourse for overseas students who have not been appropriately protected, and contains enforcement mechanisms against education providers for breaches of the legislation. These purposes are established primarily across two pieces of legislation and one legislative instrument: the ESOS Act 2000 (Cwth), the ESOS Regulations 2001 (Cwth) and the National Code 2007 (Cwth).

If a person or provider intends to offer education or training programs to students studying in Australia on student visas, they are required both to seek approval from the relevant State/Territory authority and to comply with the Federal legislative requirements for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Effectively, the CRICOS register lists all 'registered providers' that offer education or training programs to students studying in Australia on student visas. However, within the CRICOS register a diversity of institutional types exists. This diversity of providers is supported not only by different kinds of legislation (such as universities which are enacted through

---

<sup>3</sup> DEEWR Selected Higher Education Statistics, Table (2007) (i)

<sup>4</sup> International Education Association of Australia (IEAA) (2009) 'The Australian international education industry: 'A background paper prepared for The Services Summit 2009.' IEAA occasional paper no.1, IEAA, Hawthorn.



individual state statutes) but different regulatory frameworks each monitoring the provision of post-secondary education. For instance, under the Higher Education Support Act (HESA) 2003 (Cwth) adequate accreditation standards are set by the National Protocols for Higher Education Approval Processes 2007 (Cwth) for higher education providers and by the Australian Quality Training Framework (AQTF) 2007 (Cwth) for VET providers accessing FEE-HELP. In most instances these standards apply to both the domestic and overseas student market.

Universities as self-accrediting higher education providers are particularly conscious of the importance of meeting their obligations under the ESOS Act 2000 and have been externally audited by the Australian University Quality Agency (AUQA) over two five yearly rounds. In contrast, private providers have no systematic auditing process in place after the point of registration and there is seemingly little redress for students in terms of rights of appeal for grades or review of assessment. A lack of transparency in review processes is also common.

In fact, the national framework supporting the CRICOS register is supported by an interlocking regulatory framework between state and Federal levels of government. In Victoria the regulatory framework combines a regime established under the ESOS Act 2000 (Cwth) with state standards and a state regulatory body enacted through the Victorian Qualifications Authority Act (VQAA) 2000 (Vic). In NSW the regulatory framework combines the ESOS regime with state standards enacted through the Higher Education Act 2001 (NSW) and the Vocational Education and Training Act 2005 (NSW).

Compliance with ESOS standards and the provision of quality in education is demonstrable for higher education and VET providers overall. Non-self accrediting providers, education providers which are otherwise commonly referred to as 'private providers', should overwhelmingly be the focus regarding the roles and responsibilities between education providers and state and Federal governments. In terms of the industry of private providers it has been claimed that;

*Neither education providers (n)or their student customers care about the quality of training, as long as the documentation is in order for the residency application and the cursory inspections are passed.<sup>5</sup>*

Addressing issues around the regulation of the quality of educational and vocational outcomes through the ESOS framework may also transform the detrimental social conditions experienced by overseas students as identified recently by the media.

## **Regulatory Environment**

This section summarises a number of important systemic issues within the current legislative environment that place the overseas student market at risk.

The most explicit description of the division of responsibilities between State and Federal authorities is provided in Part B of the National Code (Cwth). This suggests that DEST (now DEEWR) is primarily responsible for ESOS compliance issues relating to student visa integrity, consumer protection, investigating and instigating enforcement actions for breaches of the Act and Code, whereas state designated authorities are primarily responsible for the regulation of the delivery of education programs and training, and registration under CRICOS. The section also states that in certain cases enforcement actions are more appropriately applied through state mechanisms.

---

<sup>5</sup> Hamis McDonald (2009) 'The racket no one dares name,' *Sydney Morning Herald*, 4 July 2009, pg9

The State-Federal division of responsibility for maintaining ESOS standards diminishes system accountability overall. This is significant with regards to the delivery of education programs and training by non self-accrediting private providers who are neither subject to periodic audits by bodies such as the Australian University Quality Agency (AUQA) nor VET providers whose teaching and learning performance is benchmarked according to standards set by the Australian Qualification Framework (AQF).

Regulatory and audit mechanisms around compliance to the National Code are (a) minimal, (b) assessed at the point of registration, and (c) only require follow-up investigations and inspections when deemed necessary – the ‘triggers’ for which are neither sufficiently defined nor designated in the relevant acts or instruments.

The effect of this division of State-Federal responsibility upon system accountability is reinforced by legislative mechanisms such as the ESOS Assurance Fund which imposes a substantive liability for breaches by a CRICOS provider (not upon the relevant designated regulatory body but upon CRICOS providers) by way of the Fund Manager who is able to impose ‘special levies’ on remaining providers where ‘*the Fund Manager considers that the Fund does not have enough money to meet its current or future liabilities*’.<sup>6</sup> This implies that other providers are responsible for the financial probity of all operators rather than the registration authorities. The ESOS Assurance Fund is beyond the scope of NTEU’s expertise, but it is apparent from recent press reports that its operation including its capacity to meet its financial obligations is in need of urgent review.

In addition, under the ESOS framework there have been instances of poor adherence to the National Code in the accreditation processes of designated state authorities. For instance, the legislation establishing the Victorian Authority defines the conditions for the approval of providers of courses for overseas students in general and ambiguous terms, stating that the Authority ‘*may have regard to all or any of the following matters*’ in deciding to approve that person or body.<sup>7</sup>

In reality overseas students are often not provided with appropriate or adequate information by agents about education or living conditions in Australia. This has been highlighted by Australian media sources which have suggested that certain education agents have not only chosen on behalf of students the colleges they would attend, but misrepresented information about expected student living conditions in the country.<sup>8</sup> Media reports that certain education agents have assisted overseas students in applying for permanent residency by cheating on the International English Language Testing System (IELTS) exam<sup>9</sup> also raises questions about the broader accountability of education agents under the current ESOS framework.

NTEU would point out that given the diversity of institutional types included on CRICOS, registration and accreditation provisions vary widely and in some respects may not be particularly rigorous, especially when compared to other relevant standards such as the National Protocols which govern higher education providers. This is despite the fact the National Code is supposed to provide ‘nationally consistent standards for the conduct of registered providers and the registration of their courses’.<sup>10</sup>

---

<sup>6</sup> Education Services for Overseas Students (ESOS) Act 2000 (Cwth), section 72, pg45

<sup>7</sup> Victorian Qualifications Authority Act (VQAA) 2000 (Vic), Division 5, Section 27, pg51

<sup>8</sup> ‘At Risk’ (2009) *SBS Insight program*, 21 July 2009; Heath Gilmore and Chris Johnstone with Sushi Das (2009) ‘More suicides among overseas students,’ *Sydney Morning Herald*, 2 July 2009.

<sup>9</sup> Erik Jensen (2009) ‘Cheating alleged in immigration exams,’ *Sun-Herald*, 26 July 2009; ‘Holy Cash Cows,’ (2009) ABC *Four Corners program*, 27 July 2009; Andrew Trounson (2009) ‘Crackdown on rogue education agents,’ *The Australian*, 27 July 2009.

<sup>10</sup> National Code of Practice for Registration Authorities and providers of Education and Training to Overseas Students 2007 (Cwth), Part A, Para 1.1, pg1

The National Code represents the cornerstone for ensuring that quality of education is provided to overseas students and the promotion of their welfare. It is through a re-evaluation of this legally enforceable legislative instrument that the recommendations of this submission are primarily addressed.

## **The National Code**

NTEU believes that there are several areas where the National Code could and should be strengthened. These are outlined in more detail below.

### *Part A: Framework and Part B: Government Roles and Responsibilities*

NTEU acknowledges that both the ESOS Act and the National Code attempt to provide a framework which tries to deal with interlocking areas of responsibility and regulation that cut across the State/Territory and Commonwealth jurisdictions.

NTEU contends that one of the major weaknesses of the National Code in need of urgent attention is the lack of clarity as to which level of Government is responsible for the monitoring and enforcement of the standards and procedures that it sets out. This lack of clarity is apparent in Part B, Paragraph 8, which states;

*While DEST is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.<sup>11</sup>*

Any lack of clarity about who is responsible for the monitoring and enforcement of the National Code has the risk of some providers falling through cracks in the regulatory framework.

**NTEU recommends that the relevant Commonwealth department responsible for education (currently DEEWR) or a national regulatory body be made responsible and appropriately resourced to monitor the National Code, and investigate and enforce any breaches of the Code. The Commonwealth could use its power to issue (or not to issue) student visas for participation in courses offered by providers as the ultimate sanction.**

Another related but separate issue is that individual providers are not required to be signatories to the Part D (Standards for Registered providers) of the National Code. Under the current framework compliance with the National Code is a requirement for CRICOS registration. While there may be little legal effect in requiring individual providers to be a signatory to Part D as a condition of issuing student visas, NTEU believes that being a direct signatory to the National Code imposes a strong educative role as well as a strong ethical or moral obligation upon the providers.

**The NTEU recommends that as a condition of being listed upon the CRICOS register and thus educating students on student visas, individual providers be required to be a direct signatory to Part D of the National Code.**

### *Part C: Registration on CRICOS*

---

<sup>11</sup> Ibid. Part B, Para 8, pg4

This may need to be amended to reflect the changes recommended above.

#### *Part D: Standards for Registered Providers*

**NTEU recommends that a provider's compliance with the National Code be assessed not only at the point of registration but over the duration of the period of registration. NTEU recommends that at least once during this period providers be subject to a comprehensive audit regarding compliance with the National Code of Conduct, including a full inspection of premises.**

##### *Standard 1 – Marketing and information practices*

**While NTEU agrees with the general tenor of this standard we recommend that where applicable, it should be made clear to students that an originating program provider is different from the provider responsible for delivering a particular course, or where the location of the course is being delivered differs. For example, where a private provider is delivering a university program, it should be made clear that it is the private provider delivering the course, that the location is not the university campus and that students only have access to the private provider's support services.**

##### *Standard 2 – Student engagement before enrolment*

**Because of the conditions under which international students enrol in the Australian education system, NTEU recommends that relevant information about and related to the education programs and training be provided before final enrolment. At a minimum this should include information about:**

- the education provider
- the ESOS system
- relevant regulatory bodies
- student grievance measures
- student representative bodies
- conditions of enrolment
- conditions of visa entry
- costs including all course-related penalties and hidden costs
- procedures for withdrawal
- circumstances of termination.

NTEU believes all materials and statements made by the private provider, either through an education agent or in materials published by the provider, should be transparent and capable of investigation and thus should incur penalties for a breach.

**NTEU recommends that breaches of the National Code should include the imposition of a financial penalty.**

##### *Standard 4 – Education agents*

In the preamble to Standard 4 it is stated that '*providers take all reasonable measures to use education agents that...*' NTEU is strongly of the view that this is too low a standard because in many cases prospective students may be totally reliant on information received from agents, in not only deciding whether to study but also in being offered a place if they decided to proceed.

**NTEU recommends that providers must be legally responsible for education agents used to recruit students and process student applications. This would apply to all education agents to whom any commission or other payment for service is made.**

The other area of concern that has arisen in recent media coverage of international student issues is the potential for conflicts of interest where education agents are also immigration agents.

**NTEU recommends that the capacity for education agents to also act as immigration agents be re-examined.**

#### *Standard 6 – Student support services*

NTEU believes that the interests and welfare of international students could be considerably enhanced if certain parts of Standard 7 were substantially strengthened and the nature and standard of some of the services explicated in greater detail.

At a general level NTEU believes that Standards 6.2 and 6.3 are far too weak through simply requiring a registered provider to ‘*provide the opportunity for students to...*’

**At a very minimum NTEU recommends that all registered providers are required to provide “services designed to assist students in meeting course requirements” (Standard 6.2) and “welfare related services” (Standard 6.3).**

Both of these standards need greater explication to make clearer to providers and potential students the nature of educational assistance and welfare support that is expected to be provided to international students.

In relation to Standard 6.2 which deals with assisting students in meeting course requirements NTEU believes that the standard should be more specific to the following types of educational facilities and support services:

- The range and quality of the learning and information resources including access to libraries and computing facilities.
- Access to specialised teaching facilities for the course, such as laboratories, studios or specialised classrooms.
- Processes to identify students at risk and the services available to assist these students.

In relation to more general welfare services, NTEU refers the Senate Inquiry to the *New Zealand Code of Practice for the Pastoral Care of International Students* as a starting point to identify the types of specific services that would fall under the general rubric of student welfare. New Zealand’s mandatory *Code of Practice for the Pastoral Care of International Students* (Code) is established under the *Education Act 1989*, and provides a framework for the delivery of services by educational providers and their agents to international students.

The New Zealand Code is notable in that the issues it covers are wide-ranging. Like Australia’s National Code, it refers to ethical recruitment methods and contractual dealings, but expands the requirement for the provision of up-to-date information to broader issues, such as driving laws, welfare facilities, safe accommodation, what to do if experiencing difficulties and advocacy procedures. A more recent amendment to the code requires education providers ensure that international students have ‘appropriate’ medical and travel insurance, and although needing refinement, a comparison between Australia and New

Zealand policies relating to insurance for international students demonstrates that ‘the New Zealand student is much better protected’.<sup>12</sup>

Research on the impact of the Code has found that most New Zealand institutions tended to view becoming a signatory to the Code as positive, and that those institutions which needed to make changes did so. Peddie et al (2003) noted that ‘*the introduction of the mandatory code has had a positive effect on programmes for IS [international students] in all sectors and throughout New Zealand*’.<sup>13</sup>

Drawing from the New Zealand experience, NTEU believes that Australia’s National Code could be strengthened to require providers to deliver students appropriate assistance to the specific needs of international students, in relation to for instance:

- Accommodation including advice on whether the accommodation has been suitably assessed;
- Relevant Australian laws including driver licence requirements, road traffic safety, pedestrian and cycling safety, and laws on the sale of alcohol and tobacco;
- Measures to improve personal safety;
- Personal health services, mental health services, drug education and counselling, and problem gambling;
- Sexuality education, health promotion, and sexual and reproductive health services;
- Information and advice on addressing harassment and discrimination.<sup>14</sup>

**Without attempting to provide a comprehensive list NTEU recommends that in consultation with international students and other interested parties, the list of student welfare services, and the minimum level of provision that is listed under Standard 6, be specified in greater detail.**

#### *Standard 8 – Complaints and appeals*

While NTEU supports the principles of the complaints and appeals procedures outlined in Standard 8 we believe that they would be considerably strengthened if providers were required to meet the full costs associated with these processes and ensure students have access to genuinely independent advice and advocacy.

The current standard provides student access to grievance procedures at *minimal or no cost*. NTEU recommends that providers should be responsible for meeting all of the costs associated with student grievance procedures. There are two reasons for supporting this recommendation. Firstly, the potential cost that a provider may face in dealing with student complaints may provide a significant incentive for providers to ensure that they meet their obligations to students. Secondly, many international students may not have the capacity to meet the costs associated with a grievance procedure even if they are required to be provided at (an unspecified) minimal cost.

The grievance procedures outlined in the Standard allow a complaint or appellant to be “*accompanied and assisted by a support person*” (Standard 8.1 c.). The effect of this provision would be potentially strengthened if students were also guaranteed access to genuinely independent advocacy and advice.

---

<sup>12</sup> J. Pickering (2005) *Medical and Travel Insurance in New Zealand – a lesson for Australia?* IE Limited, New Zealand, pg8

<sup>13</sup> R. Peddie, M. Lewis and G. Barkhuizen (2003) *An Evaluation of the Implementation of the Code of Practice for the Pastoral Care of International Students*, University of Auckland, Auckland.

<sup>14</sup> New Zealand Code of Practice for the Pastoral Care of International Students (2003), Part 5 15.3

**NTEU's recommendations in relation to Standard 8 are that:**

- i. Student access to grievance procedures (both internal and external to the provider) be at no cost to the students,**
- ii. Students be guaranteed independent advocacy and advice,**
- iii. All providers submit an annual report to the relevant regulatory body summarising the number of student complaints and outcomes.**

## **Employment, Work Experience and Residency**

While the ESOS Act and the accompanying National Code of Conduct identify the need for consumer protection relating to the purchase of education in Australia by international students, they do not address a number of other important issues, including (in a general manner) international student security and their rights as employees in Australia.

Research has shown that international students experience severe financial difficulties while studying in Australia with a significant proportion having a non-wage income less than half the Henderson Poverty Line.<sup>15</sup> In addition, they may be more vulnerable given their poorer language skills and lack of understanding of industrial laws and regulations.

As such, many international students find themselves in low paid, low skilled jobs, working long hours, often in violation of their student visa requirements (which limits the maximum of number of work hours to 20 hours per week during semester). A University of Melbourne study into the working conditions of international students revealed that a significant proportion of students interviewed were being substantially underpaid, with 34% earning between \$7 and \$10 per hour, and that exploitation by employers in the workplace was common.<sup>16</sup> A recent study by McInnis and Hartley (2002) on the hours worked by international students in Australia highlighted the fear of participants in discussing work arrangements:

*Our consultations suggested that there is a strong financial imperative for some full fee-paying overseas students to work their allowed 20 hours and sometimes more. .... Given the limits placed on the number of hours these students can work we suspect that we did not reach many international students in this position or that, despite our reassurances, they did not feel free to divulge the full extent of their paid work.<sup>17</sup>*

Such employment situations leave international students highly vulnerable to exploitation and with a strong perception they have little avenue to address such abuse.

Recent media reports have highlighted the existence of legal loopholes allowing businesses to legally employ students for little or no payment – or in some cases, having students pay businesses for their labour. The provision applies to vocational sector students who are required as part of their course to complete 900 hours of work experience relevant to their studies. Importantly, there is no requirement that these students be paid, and there is no provision for work cover or basic industrial entitlements such as sick leave. Furthermore, students can actually be required to effectively pay for the privilege of working, via non refundable bonds on equipment, and/or placement fees, in addition to residency and course fees.

---

<sup>15</sup> H. Forbes-Mewett, S. Marginson, C. Nyland, G. Ramia, and E. Sawir (2007) *Australian University International Student Finances, Working Paper 23/07*, Monash University, Melbourne.

<sup>16</sup> C. Nyland, H. Forbes-Mewett, S. Marginson, G. Ramia, E. Sawir, S. Smith (2008) *International Student-Workers in Australia: A New Vulnerable Workforce*, CSHE University of Melbourne, Melbourne.

<sup>17</sup> C. McInnes and R. Hartley (2002) *Managing Study and Work*, Evaluations and Investigations Programme, Department of Education, Science and Training, Canberra, pg76.

One recent report in the Melbourne Age specifically investigated the loopholes and consequent abuse by both employers and course providers, revealing that:

*One university-educated overseas student The Age spoke to spent \$22,000 and two years doing a hairdressing course she will never use, just to secure her residency. She did her 900 hours' work experience in a salon closely linked to the college, where students are required to pay a \$1000 non-refundable bond to use the equipment.<sup>18</sup>*

Overseas students remained bound to the system as completion of such courses became a near-guaranteed pathway to permanent residency in Australia. Not unexpectedly, the introduction of the residency pathway in 2005 correlates to the increased growth in the private VET sector.

Although originally designed to assist skilled migration to Australia, there is now considerable evidence that the pathway to permanent residency has opened a doorway to what has been described as a 'black market' trade in fraudulent letters of completion and migration services. Such operations have a negative impact on the quality of education, with the primary purpose being an alternative road to residency not providing a high quality education, as is evident from the following quotes:

*Even the pretence of education has been abandoned at many colleges, say students and teachers who spoke to The Age. One cooking trainer said if he did not keep passing students, migration agents would stop sending them to the college where he worked and his job would disappear.*

*"As for this 900 hours' work experience, at least 60 per cent of my students were paying for it. It made a lot of Indian restaurant owners very rich," he said. "Two years ago a student would shudder if you asked them if they were here for PR (permanent residency). Now it's blatant."<sup>19</sup>*

NTEU stresses that the number of rogue providers are likely to only represent a very small percentage of providers. However, what is clear is that the current system of poor monitoring and enforcement of the National Code and immigration regulations is allowing rogue operators and their agents to operate. Allowing them to continue will undermine the reputation of Australia's education sector as a whole, and they must be stopped.

**NTEU recommends that:**

- i. Clearer guidelines for the employment of international students, including within the context of work experience, be included within the National Code and in student visa regulations,**
- ii. All students required to undertake work experience be guaranteed minimum industrial rights including minimum rates of pay,**
- iii. All providers be required to provide students with sufficient information about their employment rights including their right to join a relevant union, which is underpinned by the right to freedom of association.**

---

<sup>18</sup> N. O'Malley, H. Gilmore and E. Jensen (2009) 'Foreign students 'slave trade', *The Age*, 15 July 2009.

<sup>19</sup> Ibid.



## **Other Issues**

NTEU is aware a number of other important issues impact on the experience and welfare of international students while studying in Australia. Without being in a position to make specific recommendations we urge the committee to address the following issues:

- Eligibility for travel concession passes,
- Access and cost of accessing school education for dependents of international students,
- Tenancy laws in relation to university-owned accommodation,
- Independent representation and advocacy for all international students, and
- The appointment of an independent body with capacity to review individual student grievances.

## APPENDIX 1

### Overseas Student Fee Income Australian Universities 2000 and 2007

Institution	2000		2007		% Change
	\$'000	% Income	\$'000	% Income	\$'000
Central Queensland University	\$36,682	25.2%	\$109,385	43.8%	198.2%
University of Ballarat	\$1,712	3.1%	\$65,371	41.8%	3718.4%
RMIT University	\$75,863	23.2%	\$137,705	27.9%	81.5%
Macquarie University	\$21,110	10.3%	\$117,425	27.7%	456.3%
Swinburne University of Technology	\$19,526	15.9%	\$61,893	26.4%	217.0%
University of Technology, Sydney	\$31,442	12.3%	\$94,766	22.2%	201.4%
Curtin University of Technology	\$68,848	22.8%	\$121,746	22.1%	76.8%
Griffith University	\$31,401	11.0%	\$103,168	19.4%	228.6%
University of Wollongong	\$24,818	14.7%	\$58,027	19.3%	133.8%
Monash University	\$73,774	12.1%	\$208,260	18.2%	182.3%
Deakin University	\$20,059	7.3%	\$80,522	17.4%	301.4%
University of South Australia	\$28,899	11.8%	\$69,704	16.8%	141.2%
Victoria University	\$14,049	8.9%	\$36,609	15.9%	160.6%
Edith Cowan University	\$17,158	10.8%	\$41,621	15.6%	142.6%
University of Melbourne	\$73,109	11.2%	\$221,804	15.5%	203.4%
Australian Catholic University	\$1,210	1.4%	\$24,657	15.1%	1937.8%
University of Southern Queensland	\$11,531	11.2%	\$25,887	14.6%	124.5%
University of New South Wales	\$75,508	12.5%	\$131,566	14.3%	74.2%
Queensland University of Technology	\$37,647	12.0%	\$75,616	13.7%	100.9%
University of Adelaide	\$19,795	7.2%	\$67,287	13.5%	239.9%
University of Sydney	\$48,800	7.2%	\$171,903	13.2%	252.3%
La Trobe University	\$18,135	6.8%	\$55,436	12.8%	205.7%
University of Canberra	\$9,229	9.6%	\$14,957	12.1%	62.1%
University of the Sunshine Coast	\$1,122	4.8%	\$9,370	11.9%	735.1%
University of Queensland	\$38,948	6.7%	\$124,310	11.8%	219.2%
Flinders University of Australia	\$10,052	6.6%	\$27,944	10.3%	178.0%
University of Western Sydney	\$34,821	12.5%	\$40,600	10.2%	16.6%
University of Newcastle	\$14,593	6.8%	\$37,848	9.6%	159.4%
Southern Cross University	\$5,122	6.6%	\$13,435	9.6%	162.3%
Murdoch University	\$13,147	10.6%	\$27,829	9.5%	111.7%
University of Western Australia	\$21,679	6.5%	\$50,360	8.5%	132.3%
James Cook University	\$8,593	5.8%	\$23,632	8.4%	175.0%
University of Tasmania	\$7,991	4.6%	\$28,678	8.2%	258.9%
Australian Maritime College	\$1,403	7.9%	\$2,668	7.8%	90.2%
Australian National University	\$11,393	2.7%	\$46,086	5.9%	304.5%
University of New England	\$4,494	3.5%	\$10,408	5.5%	131.6%
Charles Sturt University	\$10,161	6.1%	\$15,154	5.1%	49.1%
Charles Darwin University	\$1,449	2.6%	\$4,332	4.5%	199.0%
Batchelor Institute of Indigenous Education	\$0	0.0%	\$0	0.0%	0.0%
<b>All Institutions</b>	<b>\$945,273</b>	<b>10.2%</b>	<b>\$2,557,969</b>	<b>15.3%</b>	<b>170.6%</b>