MIA Submission

The Migration Institute of Australia (MIA) supports the changes proposed to the *Education Services for Overseas students Act* 2000 (the ESOS Act) and the *Migration Act 1958* (the Act), by the *Migration Legislation Amendment (Student Visas) Bill* 2012 (the Bill). The proposed changes in the Bill relating to abolition of the automatic cancellation of student visa were recommended by the independent Strategic Review of the Student Visa Program, conducted by the Hon. Michael Knight AO (the "Knight Review")[1] and the Australian National Audit Office report, *Management of Student Visas*. It is essential that Australia continue to review what is onerous, cumbersome and discouraging about the current student visa system as compared to traditional higher education competitor countries such as the UK, the US, Canada and New Zealand. It must also be mindful of non-traditional countries that have for the first time entered this highly competitive market, amongst them Turkey, Malaysia and Germany, the latter of which the MIA understands has lately made significant inroads within the Bangladeshi international student market. International education is a hugely important export industry that is intrinsically tied to foreign relations and diplomacy, multiculturalism and transcultural exchange, and population growth and workforce skills and labour needs. International education is Australia's third biggest export industry, generating income of $18.3 billion in 2010.[2] For NSW, International education is a $6 billion industry, and the second largest in terms of exports.[3] Accordingly, a Bill which could improve the functioning of, and the impression given to international students about the Australian student visa system is imperative.

The amendments to be made by the Bill will stop registered providers from sending a notice under section 20 of the ESOS Act (the s20 notice) to a student visa holder who breaches a prescribed condition of their student visa, thereby, effectively ceasing the automatic cancellation of student visas under the Act.[4] The MIA supports the removal of the automatic cancellation regime proposed by the Bill as anecdotal evidence from MIA Members and caselaw highlight problems with the regime, including:

- Education providers issuing incorrect s20 notices (e.g. to the wrong student or to the wrong address) and / or defective s20 notices (e.g. non-compliance with s20(4) of the ESOS Act) and / or education providers not following correct procedures in relation to notification and appeal processes. This has caused stress and trauma to student visa holders and unnecessary time and expense where the student chose to appeal the matter. In other circumstances where the student had no knowledge of the cancellation (for example, because of poor administration such as the education provider sending the s20 notice to the incorrect address), the opportunity to apply for revocation may be lost. In one

[1] Recommendation 24, Strategic Review of the Student Visa Program, conducted by the Hon. Michael Knight AO (the "Knight Review").
[2] Strategic Review of the Student Visa Program 2011, Regulatory Impact Statement at 1.
[3] The Hon Barry O'Farrell, Premier of NSW, Minister for Western Sydney, Media Release 24 April 2012.
[4] Explanatory Memorandum to the *Migration Legislation Amendment (Student Visas) Bill 2012* at 1 (the EM).

example cited by an agent, the student lost the opportunity for revocation in circumstances where the education provider later confirmed that an error in their attendance reporting systems had in fact occurred and the student had in fact maintained 97% attendance i.e. a revocation application would have been successful if lodged in time. The student departed the country with a 3 year bar. These errors are unforgivable and left the student and her parents a negative impression of the student visa system and administration in Australia. She did not seek to re-enter Australia.

- The Federal Court has also been highly critical of the automatic cancellation scheme, and the majority of automatic cancellations made between May 2001 and December 2009 (about 19,000 cases) were overturned.[5] For example, following the judgment of the Federal Magistrates Court in *Uddin v Minister for Immigration,*[6] approximately 8000 automatic student visa cancellations were administratively overturned.

- Difficulties with verifying whether the education provider actually sent the s20 notice as there is no requirement of registered post.

The effect of the Bill is the automatic cancellation scheme will be abolished, and a student who breaches condition 8202 of their student visa will be considered under the existing discretionary framework in the Act and each case will be considered on its merits.[7] The Bill will also reduce the administrative burden associated with students who attend an office of the Department of Immigration and Citizenship (DIAC) to stop the automatic cancellation process or apply for revocation of a cancellation and will allow for resources to be more strategically targeted towards risk.[8] The Institute is of the view that this is a better use of DIAC's resources and that a discretionary framework is better way to address and / or alleviate the problems identified above.

The MIA also supports the changes proposed by the Bill that education providers must provide the Secretary of the Department with the most up-to-date contact details for a student, and provide the Secretary with details of any changes within 14 days of being notified.[9] Such changes may also help alleviate the problem identified above that in some instances, students had no knowledge of the s20 notice sent to them in relation to non-compliance with condition 8202.

On the whole, the MIA supports the Bill because the changes proposed by it will address problems with the current automatic cancellation regime. Such problems have had adverse effects on students such as causing

[5] House of Representatives, Second Reading Speech of the *Migration Legislation Amendment (Student Visas) Bill 2012,* 22 March 2012 at 3953.
[6] [2005] FMCA 841 (7 June 2005).
[7] Second Reading Speech at 3953 and Explanatory Memorandum at 2.
[8] Explanatory Memorandum at 2.
[9] *Migration Legislation Amendment (Student Visas) Bill 2012*, Item 1-3.

un-necessary stress and trauma, and wasted time and money. This in turn has, and can, lead to students and their families being left with a negative impression of the student visa system in Australia and puts Australia in a bad light when compared with other more reasonable countries providing for international students. The MIA submits that the Bill is an appropriate way to address these issues.