

ACTU

Senate Education, Employment and
Workplace Relations Committee

Inquiry into the Welfare of International Students

**Submission by the Australian Council of
Trade Unions (ACTU)**

D No. 13/2009

14 August 2009

1. The Australian Council of Trade Unions (ACTU) welcomes this opportunity to make a submission to the Senate Education, Employment and Workplace Relations Committee's Inquiry into the Welfare of International Students.
2. The ACTU believes that the significant increase in the number of international students in Australia over the past several years has not been met by commensurate public policy initiatives at the federal and state/ territory levels directed at ensuring the education and employment experiences of these students while in Australia are of a consistently high quality.¹
3. We recognise that, over the past few months, there has been considerable activity at all levels of government directed at reassuring stakeholders that Australia is committed to acting on the problems facing international students. These initiatives include, but are not limited to, a COAG International Student Strategy, fast tracking of the review into the *Education Services for Overseas Students Act 2000* (the ESOS Act), the announcement of an International Student Roundtable to be held in Canberra in September 2009 and the establishment of dedicated taskforces in several Australian states. The ACTU welcomes these initiatives but submits that more systemic reform is needed.
4. This submission is limited to the specific terms of reference to which the ACTU has a specific interest. These are:
 - (i) employment rights and protections from exploitation;
 - (ii) appropriate pathways to permanent residency;
 - (iii) the identification of quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution; and
 - (iv) the role of agents.

¹ In this submission, the term 'international student' is used to refer to persons who are residing in Australia on a student visa.

An overview of the international education sector in Australia

5. As of 1 June 2009, there were more than 420 000 international students in Australia, enrolled at 1300 Australian institutions.² The number of student visas granted by the Department of Immigration and Citizenship (DIAC) has increased dramatically over the past several years: from 175 000 in 2004-05 to a projected 315 000 in 2008-09.³ In 2008, there was a record increase in the number of enrolments by international students in Australian institutions of over 20 percent.⁴
6. It is widely recognised that international education is one of Australia's largest sources of overseas earnings. In 2008 alone, the industry generated an estimated \$15.5 billion.⁵ As well as providing significant economic benefit to Australia, international students make a substantial and valuable contribution to all other facets of Australian life.
7. In 2008, 35.1% of international students were enrolled in higher education, 30.1% in vocational education and training (VET), 22.9% in English Language Intensive Courses for Overseas Students (ELICOS), 5.7% in schools and 6.2% in 'other' sectors (e.g. study abroad, foundation and other non-award courses).⁶

Employment rights and protections from exploitation

8. The ACTU has serious concerns that international students are being exploited in the workplace. This exploitation may arise through general employment in the labour market or through work experience. These two situations are dealt with separately below.

² DIAC statistics, unpublished.

³ DIAC statistics, unpublished.

⁴ <http://aei.gov.au/AEI/MIP/Statistics/StudentEnrolmentAndVisaStatistics/2009/Default.htm#Pivot>

⁵ AEI, *Export Income to Australia from Education Services in 2008*, Research Snapshot, June 2009.

⁶ AEI, *International Student Numbers 2008*, Research Snapshot, March 2009.

General employment

9. International students in Australia have limited work rights. Under student visa rules, they are permitted to work up to 20 hours per week while their course is in session and unlimited hours during course breaks. The ACTU understands that the rationale of this 20 hour work rule is to ensure that persons who enter Australia on a student visa do so for the primary purpose of study. The rule also recognises, however, that engaging in paid work can be of considerable benefit to students through assisting in meeting with living expenses, helping develop vocational and language skills and contributing to social inclusion.

10. Available evidence suggests that many international students engage in paid employment while in Australia. According to a survey conducted by Australian Education International (AEI) in 2006, 68% of international VET students and 56% of international higher education students had a paid job (in both semester and holidays). Twenty-nine percent of international school students and 17% of ELICOS students also engaged in paid employment.⁷ Interviews conducted with 200 international higher education students in 2005 by academics from Monash and Melbourne University found that around 70% of interviewees had worked in paid employment at some stage while studying in Australia. Fifty seven percent of students interviewed noted that they were employed at the time of the interview and one third of the interviewees identified paid employment as their main source of income.⁸

11. While engaging in paid employment, international students are entitled to the same rights and protections in the workplace as permanent residents. However, there are a number of factors which render this group of workers particularly vulnerable to exploitation. Many international students are young (the majority are under the age of

⁷ Zakir Rahmani, *International Students – Expectations and Realities beyond Graduation*, AEI, available at <http://www.aair.org.au/2008Papers/5-2-Rahmani.pdf>

⁸ Chris Nyland, Helen Forbes-Mewett, Simon Marginson, Gaby Ramia, Erlenawati Sawir and Sharan Smith, *International Student Workers in Australia: A New Vulnerable Workforce*, February 2008.

24)⁹ and evidence overwhelmingly shows that young people are at particular risk of exploitation in the workplace due to a lack of awareness of their legal rights and the confidence to challenge their employer.¹⁰ International students are even less likely to be aware of their rights and entitlements or to be familiar with Australian legal processes. They are also less likely to know where to go for advice and assistance about work-related matters. In addition, international students may not be confident in their English language competency, which may impede their capacity to enforce their rights. Pressure to find and retain paid employment so as to better be able to meet living expenses in Australia may make students unwilling to report instances of abuse for fear of losing their jobs. The Workplace Ombudsman has observed in relation to international students that ‘... our experience suggests that where students do suspect their employer of unacceptable workplace practices, they are reluctant to come forward for fear they may lose their job.’¹¹ Finally, the 20 hour work rule may increase the potential for exploitation as international students who work beyond this limit will tend to do so ‘off the books’ and so beyond the scope of employment regulation.

12. The ACTU notes that while there is a paucity of research on the working experiences of international students in Australia, media reports and anecdotal evidence suggests there is reason to be concerned that international students are often the subject of exploitation in the workplace.¹² Examples include:

- A chemical engineering student from China received around \$5 an hour to work at a Chinese restaurant in Melbourne.¹³

⁹ According to AEI research, of the international students in 2008, 275,398 students were below the ages of 24, and 159,865 were 25 years and above. The average age of international students was 23.8: AEI, *International Student Numbers 2008*, Research Snapshot, March 2009.

¹⁰ See, eg, E Smith and L Wilson, ‘The New Child Labour? The Part-Time Student Workforce in Australia’ (2002) 28 *Australian Bulletin of Labour* 120; Australian Centre for Industrial Relations Research and Training, *Young People at Work Survey*, University of Sydney, 2005; and SA Unions, *Dirt Cheap and Disposable: A Report about the Exploitation of Young Workers in South Australia*, 2005.

¹¹ Workplace Ombudsman, *Know Your Workplace Rights, Overseas Students Urged*, Media Release, 11 September 2008.

¹² See, eg, the Report of the Overseas Student Education Experience Taskforce (Victoria), 22 December 2008.

¹³ Nick Parkin, ‘Foreign Student Workers Exploited and “Grossly Underpaid”’: Fresh Allegations of Foreign Worker Exploitation’, *Australian Broadcasting Corporation Transcripts*, 13 June 2008.

- An Indian aerospace engineering student who worked constructing a house for a month never received any payment.¹⁴
- Former Victorian Workplace Rights Advocate Tony Lawrence reported in June 2008 that a number of complaints about exploitation had been made to his office by international students.¹⁵
- Interviews conducted with 200 international higher education students in 2005 by academics from Monash and Melbourne University found that ‘many interviewees’ earned below the legal minimum wage.¹⁶

13. There is also evidence to suggest that many international students work beyond their 20 hour limit during semesters.¹⁷ Indeed, the Monash and Melbourne university research referred to above found that at least one third of students worked more than 20 hours a week.¹⁸

14. The ACTU recommends that the Fair Work Ombudsman continue to conduct targeted audits of industry sectors and geographical locations which are recognised to be high risk in terms of potential abuse of international students (e.g. the hospitality sector). In this respect, we note the successful campaigns undertaken by the Workplace Ombudsman in 2008-2009 with respect to inner city convenience stores in Melbourne and Sydney.¹⁹

¹⁴ Nick Parkin, ‘Foreign Student Workers Exploited and “Grossly Underpaid”’: Fresh Allegations of Foreign Worker Exploitation’, *Australian Broadcasting Corporation Transcripts*, 13 June 2008.

¹⁵ Tom Arup, ‘Foreign Students Being Exploited’, *The Age*, 12 June 2008, 12.

¹⁶ Chris Nyland, Helen Forbes-Mewett, Simon Marginson, Gaby Ramia, Erlenawati Sawir and Sharan Smith, *International Student Workers in Australia: A New Vulnerable Workforce*, February 2008, 9.

¹⁷ The Victorian Taskforce concluded from media reports and the anecdotal evidence provided to the Taskforce, including through the student roundtables, that there is a significant ‘significant number’ of international students were working more than 20 hours a week: Report of the Overseas Student Education Experience Taskforce (Victoria), 22 December 2008, 12.

¹⁸ Chris Nyland, Helen Forbes-Mewett, Simon Marginson, Gaby Ramia, Erlenawati Sawir and Sharan Smith, *International Student Workers in Australia: A New Vulnerable Workforce*, February 2008.

¹⁹ See, eg, Workplace Ombudsman, *Report – Sydney Inner City Convenience Store Campaign*, available at <http://www.fwo.gov.au/Audits-and-campaigns/Documents/Sydney%20Inner-City-Convenience-Store-Campaign-Report.pdf>, in which it is reported that the Sydney campaign resulted in \$58,976 was recovered on behalf of 80 employees.

15. We further believe that the risk of potential exploitation of international students may be reduced by ensuring that prospective and existing international students are well informed as to their rights and entitlements under Australian law.
16. We note that, in the past, the Workplace Ombudsman has produced material specifically designed to educate international students on their workplace rights.²⁰ We are also pleased to see that the Fair Work Ombudsman has been active in educating international students on their rights at work.²¹ In our view, however, these measures are not sufficient to ensure international students are adequately informed of their rights.
17. DIAC should provide international students with comprehensive information on workers' rights and entitlements under Australian law (including the right to join and participate in a trade union) when they are provided with material on their student visas. This material should be prepared in consultation with the ACTU and the Fair Work Ombudsman.
18. Material on workplace rights, including information on where to go for advice and assistance, should be made available to international students through their education provider, including during orientation periods.
19. Finally, the Australian Government should collect data on the labour market experiences of international students so as to be capable of assessing the effectiveness of existing initiatives and protections.

The 900 hours work experience requirement

20. International students may enter the labour market so as to increase their chances of accessing permanent residency. In order to make an application for permanent residency under the General Skilled Migration (GSM) programme, a person must undertake a Migration Skills Assessment. This assessment is intended to determine

²⁰ Workplace Ombudsman, *Working in Australia: What are my Workplace Rights?*

²¹ Fair Work Ombudsman, *Watchdog Helps to Educate International Students on Workplace Rights*, Media Release, 27 July 2009.

whether the person's skills and experience are at the relevant level and suitable for the nominated occupation in Australia. To obtain a successful assessment as an Australian tradesperson by Trades Recognition Australia (TRA, the assessing authority for many occupations in Australia) an international student who has completed a certificate III course in a trade within Australia must demonstrate that they have 'relevant and directly related employment equaling not less than 900 hours.'²² This 900 hours employment can be gained before, during or after the acceptable formal training. According to TRA, the employment '...must meet Australian Government workplace relations laws.'²³ There is also a requirement that the work experience not be at any retail outlet or host workplace operated by the Registered Training Organisation (RTO) that provided the formal training.²⁴ The student must provide appropriate documentary evidence to demonstrate that at least 900 hours of work experience has been completed.

21. The ACTU notes that there have been numerous media reports of unscrupulous employers and migration agents providing certificates verifying employment in return for cash payments of up to tens of thousands of dollars.²⁵ According to one migration agent quoted in *The Age* in July 2009, the 900 hour work experience requirement "has opened up the door for some colleges, migration agents and also restaurants to take \$5000 from students to give them the reference saying they've done the 900 hours."²⁶ This practice appears to be particularly prevalent in the hospitality and hairdressing industries.
22. For those who do actually undertake the 900 hours work experience, the need to obtain the relevant verification of employment by the employer may render them willing to accept little or no pay or sub-standard conditions of work in order to gain

²² Trades Recognition Australia, *Migration Skills Assessment Application Guidelines*, August 2009, [6.5].

²³ *Ibid* [7.2].

²⁴ *Ibid* [7.3].

²⁵ See, eg, Chris Johnston, 'Cash-for-Certificate Companies Raided', *The Sydney Morning Herald*, 29 December 2008; Nick O'Malley, Health Gilmore and Erik Jensen, 'Foreign Students "Slave Trade"', *The Age*, 15 July 2009; Sushi Das, 'Foreign Students Could be Forced to Leave', *The Age*, 10 June 2009; Elisabeth Wynhausen, 'We'll Say You Did the Hours', *The Australian*, 26 July 2008; Nick O'Malley, 'Visa Racket Leaves Foreign Students Exposed', *The Sydney Morning Herald*, 16 July 2009; Wendy Carlisle, *Holy Cash Cows*, Four Corners, 27 July 2009.

²⁶ Elisabeth Wynhausen, 'We'll Say You Did the Hours', *The Australian*, 26 July 2008.

the requisite hours. There have also been reports of employers requiring workers to pay them for the opportunity to work or for the documentation proving their employment.²⁷ We note that the risk of exploitation only increases where, due to the significant increases in the number of international students undertaking certain courses, demand for relevant work experience in some industries far exceeds supply.

23. The ACTU notes that the issues surrounding the 900 hours work experience requirement can be best addressed by weakening the link between student visas and permanent migration. This is dealt with further below. In the event that this link continues, however, the 900 hours work experience requirement must be documented to TRA through the provision of pay slips or group certificates. This documentation must be verified by the skills assessment authority. It is not sufficient for the skills assessment authority simply to presume that the paperwork provided by the applicant evidencing 900 hours employment is genuine.
24. It is also important that it be verified that the 900 hours work performed was paid work at the level of the qualification held by the former student and that the work met all applicable workplace laws and standards.

Appropriate pathways to permanent residency

25. It is now widely recognised that the international education and training industry in Australia has become inextricably linked to Australia's permanent skilled migration program. The origins of the link is generally traced to the former Coalition Government's decision in 2001 to permit former international students who had completed post-school qualifications in Australia to apply for permanent residency through the onshore skill stream.
26. Today, international students in Australia can apply for permanent residency through a range of visa categories. However, the principal pathway continues to be the onshore GSM programme. Under the GSM, young migrants with skills and an occupation listed on the Skilled Occupation List (SOL) may apply for permanent

²⁷ Tom Arup, 'Foreign Students Being Exploited', *The Age*, 12 June 2008, 12.

residency. There are a range of eligibility requirements, including a requirement that the person have completed 2 years study in Australia; meet health and character criteria and meet an English language standard. In addition, most applications under the GSM are scored according to a points test. Applications that receive a score below a certain threshold will not be eligible for permanent residency.

27. The role of the Migration Occupations in Demand List (MODL) is central to understanding the current links between student visas and the skilled migration programme. MODL is a list of occupations that have been identified by the Department of Employment, Education and Workplace Relations (DEEWR) as being in national demand. If a person who is applying for permanent residency through the onshore GSM nominates an occupation that is listed on the MODL and has recent work experience related to that occupation, the person will receive additional points towards their permanent residency application.
28. Former international students constitute a significant proportion of the permanent residency visas granted through Australia's onshore GSM. The number of former international students who have transferred to permanent skilled visas has increased considerably over the past few years: from 11 460 in 2003-04 to 22 480 in 2007/08.²⁸ In 2007/08, former international students constituted nearly half of the total number of visas issued under the GSM programme.²⁹
29. The ACTU believes it is perfectly legitimate for former international students to apply for permanent residency in Australia. What is concerning, however, is the fact that many young people from overseas are viewing education and training in Australia not as a means of developing skills and expertise in a chosen occupation but purely as a pathway to permanent residency.
30. There is now considerable evidence to suggest that many international students are selecting courses on the basis that studying a course relating to an occupation listed

²⁸ DIAC data, unpublished.

²⁹ Bob Birrell and Bronwen Perry, 'Immigration Policy Change and the International Student Industry' (2009) 17(2) *People and Place* 64, 66.

on MODL will assist in achieving permanent residency in Australia. A survey of international students undertaking second-year accounting at a Melbourne-based university, for example, found that 84% of students intended to apply for permanent residency and viewed the study of accounting as a means of assisting in this objective.³⁰ A 2006 international student survey commissioned by Australian Education International (AEI) noted nearly 80% of students enrolled in VET courses intended to apply for permanent residency.³¹

31. In a series of articles published in *People and Place*, Professor Bob Birrell and colleagues have demonstrated how the placement of cooks and hairdressers on MODL in 2004/2005 has led to exponential growth in the number of international students enrolling in these courses and seeking permanent residency. For example, cooks were placed on the MODL in May 2005. Between 2004 and 2008, the number of international students enrolled in cookery increased from 1,019 to 8,242.³²
32. The strong link between student visas and permanent residency has a number of negative ramifications. First, it undermines Australia's general skilled migration program, which is intended to help deliver the skills Australia needs. This is because many former international students are studying courses related to, and applying for permanent residency on the basis of, occupations that are most likely to help them gain permanent residency, not occupations that they have any intention of using once permanent residency is granted.³³
33. Second, it has fuelled a proliferation in training providers concerned not with delivering quality education and training but with delivering a migration outcome. These providers establish training colleges that offer relatively cheap vocational

³⁰ Beverly Jackling, 'The Lure of Permanent Residency and the Aspirations and Expectations of International Students Studying Accounting in Australia' (2007) 15 *People and Place* 31.

³¹ AEI, *International Student Survey*, 2006.

³² Bob Birrell, Ernest Healy and Bob Kinnaird, 'Cooks Galore and Hairdressers Aplenty' (2007) 15(1) *People and Place* 30 and Bob Birrell, Ernest Healy and Bob Kinnaird, 'The Cooking-Immigration Nexus' (2009) 17(1) *People and Place* 63, 64.

³³ Bob Birrell, Ernest Healy and Bob Kinnaird, 'Cooks Galore and Hairdressers Aplenty' (2007) 15(1) *People and Place* 30. See also Ministerial Statement by Senator Chris Evans, Minister for Immigration and Citizenship, *Changes to the 2008-09 Skilled Migration Program*.

courses that provide the quickest route to permanent residency through an occupation listed on MODL.

34. Finally, unscrupulous migration and education agents are marketing education and training in Australia overseas as a means of accessing permanent residency. This creates an expectation among international students that, provided they complete the requisite training and work experience relevant to an occupation listed on MODL, they will be successful in gaining permanent residency in Australia. It has also led to an unsustainable increase in the number of international students enrolled in the VET system.
35. The ACTU notes that the current problems associated with the nexus between student visas and permanent residency has now been recognised by the Australian Government. In a Ministerial Statement issued in December 2008, the Minister for Immigration and Citizenship, Senator Chris Evans, explained:

Over previous years the [Skilled Migration] program had been delivering a less than optimal outcome in terms of the mix of skills and occupations. In the last three years just five occupations, out of the hundreds available, accounted for almost half the visas granted to primary applicants...

... In the three years to 2007-08, the former Government's Skilled Migration Programs delivered 28 800 accountants, 6500 cooks and 2800 hairdressers.³⁴

36. In a recent speech, Senator Evans observed:

A key challenge for the Australian Government remains – to communicate clearly that there is no automatic link between study in Australia and access to permanent residency.³⁵

37. The Australian Government has now introduced a number of policy initiatives designed to respond to concerns over the student visa-permanent residency nexus. Key measures, intended to embody a shift towards a more 'demand-driven' permanent skilled migration programme, include:

³⁴ Ministerial Statement by Senator Chris Evans, Minister for Immigration and Citizenship, *Changes to the 2008-09 Skilled Migration Program*.

³⁵ Minister Evans, Observer Research Foundation – Australia and India: A People-Based Partnership, 22 July 2009.

- An increase in the number of employer-sponsored and state/territory government sponsored visas; and
- The introduction of a Critical Skills List (CSL), by which those applications in the independent skilled migration stream with occupations deemed to be in greatest demand receive priority processing.³⁶

38. The ACTU welcomes reforms directed at ensuring the integrity of Australia's skilled migration programme.

39. The ACTU believes, however, that any changes to the eligibility or priority processing criteria for permanent skilled migration should be applied prospectively. Persons who have submitted an application with a reasonable expectation that their application will be processed in a particular way are entitled to be treated fairly.

40. The ACTU has concerns over the growing importance of employer-sponsored visas in Australia's skilled migration programme. As the employer-sponsored pathway relies overwhelmingly on the employer being willing to sponsor the worker, there is potential for exploitation. In particular, workers may be willing to accept substandard wages and conditions of employment in the hope that the employer will sponsor them for permanent residency. As Birrell and Perry have recently observed, the potential for exploitation through the employer sponsorship pathway will become particularly acute for former international students in light of the large numbers of former students who may now seek permanent residency through this pathway rather than through the independent skill stream.³⁷

41. In light of these risks and of the increasing preference for permanent migration to occur through the employer sponsored visa categories, the ACTU submits that this category of visa should be amended so as to require undertakings to be given by sponsoring employers as to the appropriate wages and conditions of employment that

³⁶ Ministerial Statement by Senator Chris Evans, Minister for Immigration and Citizenship, *Changes to the 2008-09 Skilled Migration Program*.

³⁷ Bob Birrell and Bronwen Perry, 'Immigration Policy Change and the International Student Industry' (2009) 17(2) *People and Place* 64, 75.

will be afforded to sponsored workers for a certain period of time following approval of the sponsorship. DIAC should then monitor employer compliance with these undertakings, particularly with respect to applications identified as being high risk. High risk applications should include nominations in lower-skilled occupations and trades. This would enable DIAC to ensure that certain employers are not exploiting the program by sponsoring a significant number of workers that they do not intend to employ on a permanent basis.

42. The ACTU recognises that, as a result of the introduction of the CSL and changed priorities in the processing of applications, the MODL does not have the significant influence over permanent residency outcomes as it did prior to this year. However, we note that we have long had doubts over the methodology employed in constructing and reviewing the MODL. We have concerns over the process for determining how occupations are placed on or removed from the list and the incapacity of the list to take account of regional variations in skills needs. We also believe that the perceived ‘skills shortages’ in some industries and occupations is due not to a lack of suitably skilled workers in Australia but to poor wages and conditions which render working in those sectors undesirable. We have welcomed the recent announcement by the Australian Government that the MODL will be the subject of a comprehensive review and look forward to being further involved in this review process.

43. The ACTU recommends that DIAC provide clear and comprehensive information on pathways to permanent residency on its website and that this information should emphasise that studying in Australia by no means confers an right to permanent residency. Persons applying for student visas should be provided with as much official information as possible to counteract misleading information supplied by agents.

Quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution

44. The ACTU focuses in this section on the quality of VET delivered to international students. The ACTU and affiliated unions have been at the forefront of the development of Australia's national training system for over 20 years. As a key industry body, our leadership and input to policy development in the VET area is significant.
45. VET is the fastest growing sector for international students studying in Australia. As of December 2008, there were 175,461 international students enrolled in VET.³⁸ Between 2002 and 2008, the number of international student enrolments increased from 29,408 to 105,752, an increase of over 180%.³⁹ Around 84% of international students enrolled in VET are enrolled in one of 437 registered non-government providers.⁴⁰
46. The dramatic growth in the numbers of international students studying VET qualifications in Australia has placed increased pressure on VET registration and quality assurance systems. Corresponding with the increase in the number of international students enrolled in VET has been the increase in the number of reports in the media highlighting instances of providers delivering what are clearly substandard courses. In just one example, a college in Clayton in Melbourne at which 330 international students were enrolled was found to be providing the equivalent of a three-year apprenticeship in commercial cookery in only 40 weeks, with course units being taught out of order, student records not adequately maintained and teachers without verified qualifications.⁴¹ In another example, a Sydney school which charged

³⁸ AEI, *Statistics on International Students*, 2009.

³⁹ AEI, Student Commencement Data, as published in Bob Birrell and Bronwen Perry, 'Immigration Policy Change and the International Student Industry' (2009) 17(2) *People and Place* 64, 65. It is important to note that these figures relate to student enrolment and commencement in courses, rather than actual student numbers.

⁴⁰ AEI, *International Student Enrolments in Vocational Education and Training in 2008*, Research Snapshot, April 2009.

⁴¹ Sushi Das, 'College in Gross Breach of Standards', *The Age*, 23 July 2009.

up to \$14,000 for cookery courses was found to be providing overcrowded classes in unsafe kitchens, with just 10 teachers to teach over 800 students.⁴²

47. The ACTU recognises that there are many providers that deliver quality VET courses to international students. However, we share the serious concerns held by many stakeholders in relation to the nature and extent of ‘dodgy providers’ operating in Australia’s international education industry.
48. In Australia, VET provision (to both domestic and international students) is governed by the Australian Quality Training Framework (AQTF). The AQTF is a national set of standards which seeks to ensure nationally consistent, high quality training and assessment services for the VET system. In addition, the international VET sector in Australia is regulated by specific Commonwealth and state/territory laws and authorities. The ACTU believes that the problems facing the provision of VET to international students can only be understood in the context of deficiencies in both sets of regulatory frameworks. Each of these is dealt with separately below.

The AQTF framework

49. The ACTU submits that a number of the issues facing international students in relation to the quality of VET provision reflect broader issues within Australia’s VET system. In particular, many of the media reports pertaining to substandard provision of training by some private VET colleges reflect ongoing issues concerning the quality of training and assessment provided by some RTOs and the capacity of industry to be confident with these assessments.
50. These problems appear to be particularly acute in relation to a number of RTOs delivering hospitality qualifications. In 2005, a national strategic audit of training in the hospitality industry found significant non-compliance issues with a number of AQTF standards, including key standards pertaining to assessment processes.⁴³ These issues affect both domestic and international students. However, they may

⁴² Harriet Alexander, ‘Cookery College Feels the Heat’, *The Sydney Morning Herald*, 11 August 2008.

⁴³ National Strategic Industry Audit of Training in the Hospitality Industry, *National Report*, 2005.

disproportionately affect international students given the high numbers of international students enrolled in hospitality-related courses and the tendency for international students to enroll in institutional-based VET courses.

51. The ACTU notes there is widespread concern over the capacity of many institutional-based VET courses in the hospitality industry to offer quality outcomes to students that are equivalent to those achieved through work-based training programs. Pathways to VET qualifications may include a range of options, including work-based training and assessment (e.g. traineeships); institution-based education, training and assessment or a combination of both. RTOs who deliver institutional-based training are required to provide a realistic simulated work environment that meets the requirements of the training package. However the 2005 strategic audit into the hospitality industry found major deficiencies in the fully institution-based cookery courses. It concluded:

It was generally accepted that for institutional based delivery and assessment to be successful industry work placements for students were necessary. The degree to which these arrangements were in place varied across the audit sample. Audit outcomes noted that it was difficult for RTOs to provide a realistic simulated workplace environment for assessment purposes. There was a range in the quality of facilities and experiences provided.

... there were many examples where programs did not have sufficient resources and did not adhere to all of the requirements of the training package.⁴⁴

52. Concerns over assessment practices and the capacity for institution-based training to provide quality outcomes are not limited to the hospitality sector. There have also been concerns voiced over the quality of courses provided by some RTOs in the hairdressing industry.⁴⁵ A report commissioned by the National Quality Council (NQC) and released in June 2008 found widespread concerns across a number of

⁴⁴ National Strategic Industry Audit of Training in the Hospitality Industry, *National Report*, 2005, 28-29.

⁴⁵ See, eg, John Mitchell, 'Quality Concerns Escalate', *Campus Review*, 13 October 2008.

industries about assessment practices in the VET sector, especially in relation to institution-based programs.⁴⁶

53. There is evidence to suggest that many RTOs, particularly those that are enrolling large numbers of international students, are simply unable to find quality work placements necessary for their students to complete their qualifications. This is a serious problem in many areas, including hospitality and hairdressing.
54. In a recent example, students enrolled at an RTO in Melbourne, who were required to complete work-experience placements as part of their 2 year community welfare course, were sent on 'work placements' at which they received religious instruction, were told to supervise each other and had not met any members of the community needing welfare services more than 4 weeks into their 9 week placement. In this case, concerns over the adequacy of the work placements were expressed not only by students but by staff of the training college.⁴⁷
55. Institution-based VET courses must provide genuine and quality work experience. This is critical if the courses are to produce graduates with skills that meet current workplace requirements. In order to be able to provide quality work placements, RTOs must have greater engagement, and develop strong relationships, with industry.
56. The ACTU notes that the Minister for Immigration and Citizenship, Senator Chris Evans, has responded to concerns over the quality of the skills held by some applicants for permanent residency by announcing the introduction of a Job Ready Test from 1 January 2010. All applicants for the GSM program in trade occupations – including those who have received VET qualifications within Australia - will be required to undertake this test. Details of the Job Ready Test are currently being developed by DEEWR in consultation with DIAC and key industry stakeholders. The ACTU looks forward to being involved in this process.

⁴⁶ National Quality Council, *Investigation into industry expectations of vocational education and training assessment*, June 2008.

⁴⁷ Sushi Das, 'College's Community Welfare Course in Disarray', *The Age*, 7 August 2009.

The ESOS framework

57. As noted above, the provision of VET to international students is further regulated by Commonwealth and state/territory authorities. Any education and training provider that wishes to provide courses to overseas students must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). CRICOS is maintained by DEEWR under the ESOS Act. To become registered on CRICOS, a provider must first be assessed and approved by the relevant state or territory authority in which it intends to deliver courses. All CRICOS-registered providers must comply with the ESOS legislation and the National Code of Practice for Registration Authorities and Providers of Education 2007.

58. It is clear that the processes that are currently in place to ensure quality VET provision to international students are inadequate. In particular, there appears to be persistent problems with the quality of training delivered by a number of relatively recently established private RTOs for whom international enrolments form most if not all of their enrolments.

59. It is clear that there needs to be much more prompt and effective enforcement of existing quality standards. There have been a number of reports in which CRICOS-registered providers, despite consistently breaching regulatory standards, appear to be able to continue to operate with relative impunity.⁴⁸

60. The ACTU notes that these problems are by no means new. An evaluation of the ESOS Act in 2005 emphasised:

The enforcement powers under the legislation are considered by many commentators to be exercised too infrequently, with the result that providers of dubious integrity continue to operate. Concerns about slowness in the removal of non-compliant providers from CRICOS where

⁴⁸ See, eg, Nick O'Malley, Health Gilmore and Erik Jensen, 'College Closes, Students in Limbo', *The Sydney Morning Herald*, 29 July 2009; Sushu Das, 'College in Gross Breach of Standards', *The Age*, 23 July 2009

enforcement action is pursued, and a lack of systematic reporting to the industry about enforcement activity are raised by commentators.⁴⁹

The report proceeded to observe:

There is little evidence that Commonwealth or State governments have the ability to close down providers that are compromising the integrity of the industry.⁵⁰

61. In many cases reported in the media, it appears that the commercial interests of the colleges are taken by the regulatory authorities to outweigh the detriment posed to current and future students if the college is permitted to continue to operate. The ACTU strongly believes that where there is evidence that an RTO has breached its obligations as a CRICOS-provider, it must be required to immediately cease enrolling new students until an adequate investigation has taken place.
62. The ACTU also believes that there needs to be much greater scrutiny of owners and managers of CRICOS-registered RTOs. It should not be possible for an owner or manager of a college that has been de-registered by the authorities to obtain registration for a new training college.
63. Current arrangements for the regulation and auditing of international students are unwieldy and complex. There must be a clear delineation between Commonwealth, state and territory monitoring, compliance and enforcement responsibilities. In this respect, the ACTU notes that the Australian Government in September 2008 announced the establishment of a National Audit and Regulation Agency (NARA). It is envisaged that this agency will enable VET providers operating across two or more Australian states or territories to deal with a single national registration body in respect of both the AQTF and the ESOS Act.
64. The ACTU supports the ongoing development of a national audit and regulatory agency with emphasis on the VET sector and promotes nationally consistent outcomes-based auditing against training package standards. The regulation and

⁴⁹ PhillipsKPA and Lifelong Learning Associates, *Evaluation of the Educational Services for Overseas Students Act 2000*, AEI, 2005, 30.

⁵⁰ Ibid 81.

quality assurance processes for RTOs that provide services to international students, including monitoring, should be subsumed within this national agency. We believe a national regulatory body for VET has significant potential to introduce a more uniform and consistent national regulatory regime for the provision of VET to both domestic and international students.⁵¹

65. The ACTU recommends that the authority responsible for registering RTOs should identify RTOs that are considered high risk.⁵² Any RTO of which over a certain percentage of enrolled students are international students should automatically fall within this category. High risk providers should be subject to regular and comprehensive monitoring and auditing.
66. The ACTU submits that there must be adequate resourcing of bodies responsible for monitoring and enforcing quality standards. This should not be difficult in light of the substantial income derived through the international education industry.
67. The ACTU further submits that, to ensure effective monitoring and enforcement of quality standards, the government body responsible for promoting Australia as an attractive destination for international students must be at arms length from the government body responsible for registration, monitoring and assessment processes.
68. The ACTU also recommends that there be an independent agency responsible for receiving complaints by international students who are unhappy with the quality of the course provided or who wish to know more about their rights while studying in Australia. Again, this body should be external from the government agency responsible for attracting international students to Australia.

⁵¹ We note that Skills Australia is also of the view that the move to a national regulatory body could provide a stronger mechanism to address issues pertaining to the identification of, and response to, instances of non compliance. See Skills Australia, *Foundations for the Future: Draft Proposals for Future Governance, Architecture and Market Design for the National Training System*, Position Paper, April 2009, 35-36.

⁵² We note that, under current AQTF processes, the extent to which an RTO is monitored and audited throughout its registration period should already be based on an assessment of risk against a range of risks outlined in the AQTF 2007 *National Guideline for Risk Management*.

The role of migration and education agents

69. The ACTU believes that there is insufficient regulation of education and migration agents in Australia. Many education and training providers use agents, onshore and offshore, to assist in the marketing and recruitment of students. While there is little empirical evidence on the arrangements between many education agents and providers, we understand that agents generally receive a significant commission (up to 30%) from the provider for each student they deliver. Agents may also charge the student a fee directly.⁵³
70. For many prospective international students, these agents are their initial point of contact. There is now an abundance of evidence documenting the unethical practices deployed by some education agents in relation to prospective international students. These practices include charging excessive fees; providing a lack of information or misinformation to potential students about education and employment in Australia; and marketing study in Australia as a guaranteed pathway to permanent residency.⁵⁴
71. The ACTU recognises that Standard 4 of the National Code of Practice for Registration Authorities and Providers of Education 2007 seeks to regulate the relationship between CRICOS-registered providers and education agents. It seeks to ensure that providers take all reasonable measures to use education agents that have an appropriate knowledge and understanding of the Australian international education industry and that they do not use education agents who are dishonest or lack integrity.⁵⁵ In light of the continuing problems with the unethical practices adopted by education agents, however, it is clear that these existing measures are insufficient.

⁵³ PhillipsKPA and Lifelong Learning Associates, *Evaluation of the Educational Services for Overseas Students Act 2000*, AEI, 2005, 90-92; Andrew Trounson, 'Agents Prey on Foreign Students', *The Australian*, 14 July 2009.

⁵⁴ See, eg, PhillipsKPA and Lifelong Learning Associates, *Evaluation of the Educational Services for Overseas Students Act 2000*, AEI, 2005; Andrew Trounson, 'Agents Prey on Foreign Students', *The Australian*, 14 July 2009; and Michiel Baas, 'The Language of Migration: The Education Industry Versus the Migration Industry' (2007) 15(2) *People and Place* 49.

⁵⁵ National Code of Practice for Registration Authorities and Providers of Education 2007, Standard 4.

72. The Australian Council for Private Education and Training (ACPET) has recently announced that it will establish a register of high quality overseas education agents.⁵⁶ While the ACTU welcomes this initiative, we note that the register is only intended to be an informational tool for prospective international students and that greater regulation of this industry is required.
73. The ACTU strongly believes that education agents in Australia working with prospective international students must be licensed to do so. A strict code of practice for such agents must be established and enforced. Violation of this code should constitute a valid reason for withdrawal of a license.
74. In relation to education agents offshore, we support the engagement of the Australian Government with other countries, with a view to reaching agreements with foreign Governments on the regulation of both education and migration agents within their jurisdictions
75. We also recommend that DIAC make greater use of its e-visa programme in order to regulate the behaviour of education agents offshore. At present, education agents working in the People's Republic of China, India, Indonesia and Thailand may register for access to DIAC's e-visa facility. Through this facility, they can lodge applications for student visas online. Education agents who register for access to the e-visa facility enter into an agreement with DIAC, which outlines the responsibilities of the education agents and the terms and conditions of use of the e-visa facility.⁵⁷ The ACTU believes that all agents who wish to make use of the e-visa facility should be required to comply with a professional code of conduct, which should detail professional and ethical standards for education agents. Breaches of this code should result in an agent being denied further access to the e-visa facility.
76. The ACTU is of the view that CRICOS-registered providers should be prohibited from providing payments or commissions in any form to agents for the recruitment of

⁵⁶ ACPET, *Education Agents Register to Provide Better Information to Students*, Media Release, 27 July 2009.

⁵⁷ <http://www.immi.gov.au/gateways/agents/evisa/3.0.htm>

students. In addition, providers must be required to ensure that they only have dealings with reputable and ethical migration and education agencies. These obligations must be monitored and enforced.