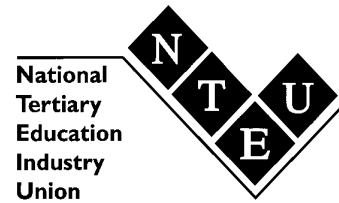




Submission No 15

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: National Tertiary Education Union



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NTEU Submission

to the

Joint Standing Committee on Foreign Affairs, Defence and Trade *Inquiry into Slavery, Slavery-like conditions and People Trafficking*

Organisation: National Tertiary Education Industry Union

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The National Tertiary Education Union (NTEU) welcomes the opportunity to make a submission to the House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slave-like conditions and People Trafficking.

NTEU represents over 25,000 staff employed in tertiary education in Australia. Tertiary education covers a wide range of institutions that deliver post-secondary education, including universities, TAFEs and other education providers. The Union's coverage also includes research centres and institutes as well as student organisations and associations.

As a progressive trade union with a focus on social justice, NTEU has strong views on the protection of human rights and civil liberties. In 2009, the Union held a conference examining the effects of human trafficking and slavery from a gender perspective, the outcomes from this conference later published in the Union's women's publication *Frontline*. More recently, NTEU has been involved with both domestic and international organisations in campaigns focussing on human trafficking and labour exploitation, and is a member of the *Stop the Traffik* coalition.

We note that, given the broad terms of reference for this Inquiry, it is likely that the Committee will receive a wide range of submissions from a variety of organisations and groups. We also note that there is already in existence a great deal of national and international research papers and commentary around human trafficking and slavery; in particular, the research conducted by Fiona David (*Labour trafficking*, 2010), Nylan's research *International Student-Workers in Australia: A New Vulnerable Workforce* (2008) as well as the Victorian Government's Drugs and Crime Prevention Committee *Inquiry into People Trafficking for Sex Work* 2010 report and the Australian Government's *Trafficking in Persons Report* (2010 – 2011) examine human trafficking and slavery in considerable detail.

As such, NTEU's submission will focus on human trafficking and slavery as it pertains within the higher education sector, and more specifically, in relation to international students, the various visa frameworks that relate to these students, and the exploitation of international student workers.

Following are NTEU's Recommendations in relation to this Inquiry. An over-view of the relevant information and research that supports these Recommendations is provided as part of this submission.

NTEU Recommendations:

- 1. The human rights of International students must be guaranteed whilst they are studying in Australia. The legal gaps in the status and rights of international students living and working for extensive periods in Australia must be closed. In particular, basic human rights such as access to appropriate services (such as health, housing, employment, mobility) and other student welfare issues must be assured.**

To this end, NTEU recommendations that:

- An International Charter of Student Rights based upon International Labour Protocols and the Migrant Workers convention,**
 - Introduction of the National Human Rights Framework as a matter of urgency, including passage of the relevant legislative bills,**
 - Engagement by public figures and political leaders on international students from a human rights perspective rather than an economic one,**
 - A public programme by universities and colleges on international student issues,**
 - Better resourcing of community legal centres, specifically to redress gender-related threats to safety.**
- 2. International students have been used (and continue to be used) as source of exploitable labour. Most are unaware of their workplace rights and obligations. NTEU therefore recommends that:**
 - All education providers be required to provide relevant workplace health and safety and rights information as a component of student orientation.**
 - A network involving Federal and State departments, education suppliers, unions and employers should generate relevant information and data to enable workplace agencies to investigate injuries and injustices suffered by international student-workers, the number employed, where they work, and their conditions of employment**
 - Investigation of the feasibility of government formulating and publicising a set of criteria employers would need to meet in order to have their enterprises approved as venues to which state funded employment and education agencies can direct international students seeking employment.**
 - Improved enforcement by regulatory agencies in enforcing current workplace legislation, and repeat offenders publically exposed.**
 - Improved provisions for international students to report on workplace abuse without fear of recrimination or visa cancellation**
 - Improved inter-agency networks and communication between workplace inspectors and prosecutors,**
 - Both government agencies and education suppliers should employ staff with a sophisticated understanding of the international education sector and charge these individuals with ensuring that the safe environment education institutions claim Australia provides exists in the nation's workplaces.**

3. NTEU supports the recommendations of the *Trafficking in Persons Report (2011) (Country Narrative)* calls for the Australia Government to:
- conduct a review of the Criminal Code and overall legal framework to ensure that laws enable the government to effectively prohibit and prosecute all forms of trafficking;
 - expand efforts to proactively identify, criminally prosecute, and convict offenders of labour trafficking, including those who benefit from trafficking;
 - improve efforts to coordinate and refer trafficking case information between government agencies;
 - increase efforts to train police, local councils, health inspectors, and other front-line officers to recognize and respond to both sex and labour trafficking cases;
 - increase efforts to proactively identify trafficking victims among vulnerable groups, including international students.
4. NTEU also recommends that the Australian government
- ensure that vulnerable groups, such as international students, and those who fall victim to trafficking, are informed about their legal rights under Australian immigration and labour law;
 - make efforts to improve the access of trafficking victims to opportunities to seek financial compensation and civil remedies;
 - consider ways to better streamline and expedite visa processes for trafficking victims;
 - conduct a campaign to raise public awareness in local communities of trafficking outside of the sex industry, including labour trafficking;
 - consider appointing an Ambassador dedicated to addressing human trafficking issues worldwide.

Vulnerability of International Students to Labour and Sexual Trafficking and Exploitation

In examining the issue, it is important to first understand the immensity of international student numbers in Australia. As of 31st March 2012, there were 344,400 student visa holders in Australia, with Chinese nationals (19.5 per cent) and Indian nationals (14.4 per cent) being the two largest country groups. The overwhelming majority of these students are enrolled at a tertiary level.

Given the numbers, it is concerning to note that student visas are one of the preferred mechanisms for trafficking of people intended underpaid/unpaid labour, to be brought in to Australia, and, to a lesser extent, in sexual trafficking (see the *Parliamentary Joint Committee on the Australian Crime Commission's Report (2004)*, the *Parliament of Victoria's Inquiry into People Trafficking for Sex Work (2010)* and the *Federal Government's Trafficking in Persons* reports). Larsen and Renshaw (2012) verify this, noting that student visas are preferred given their length of stay (up to 4 years) and difficulty in identifying where breaches of work hours have occurred¹:

Of those persons trafficked into Australia, most are known to enter on a valid visa, although in some cases, a false passport is used to obtain the visa. Most persons trafficked into Australia enter on visitor, student or working holiday visas.

Intelligence indicates that student visas are preferred by traffickers due to the extended time of residence (5 years) compared with the limited time available under a working holiday visa (12 months). Student visas are also preferred as it is difficult to identify breaches of the 20 hour per week work conditions (IDC 2010).

The US Department of State's Office to Monitor and Combat Trafficking in Person's latest report (*Trafficking in Persons Report 2011*) also notes the use of student visas as a mechanism for entry of trafficked people into Australia²:

During the year, there were increased reports by NGOs and other informed observers that individuals on student visas, typically from Asia, became victims of forced labor and forced prostitution in Australia. There are over 450,000 foreign students in Australia, many of whom spend up to tens of thousands of dollars in placement and academic fees, as completion of courses often leads to permanent residency in the country. Some in the housekeeping and restaurant industries are subject to a restriction of working a maximum of 20 hours per week under their visas. When asked to work for more than 20 hours, they face risk of losing their visas, making them vulnerable to exploitation by unscrupulous employers. (US Department of State, 2011)

¹ Larsen and Renshaw *People trafficking in Australia Trends & issues in crime and criminal justice no. 441* Canberra: Australian Institute of Criminology, June 2012 Accessed 06.0912
<http://aic.gov.au/publications/current%20series/tandi/441-460/tandi441.aspx>

² US Department of State, *Trafficking in Persons Report 2011 (Country Narratives – Australia)*
<http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>

NTEU notes a number of changes since the Baird Review into Student Visa conditions have eased some of the conditions on student visas (including the change in permissible work hours from 20 hours per week to 40 hours per fortnight) and that legislation is currently being drafted that removes automatic cancellation of visas should there be a suspected breach. However, there has been little, if any, recognition in the numerous reviews of International students of their vulnerability to exploitation.

Human Rights of International Students

When examining the reasons behind the exploitation of international students, it must be first be acknowledged is that international students have few rights as citizens – according to Australian visa regulations (and law), they are officially temporary migrants and do not have access to full social and economic security. Neither are they fully supported by their home countries, as they are no longer residents. As noted by Nyland et al (2004):

As a globally mobile population they fall between the borders of the two national citizenship regimes, the nation of origin and the nation of education. There is no bilateral or multilateral framework whereby these national regimes are reconciled. Nor do the international agencies take up questions of student security. For example the ILO is concerned about migrants, but it specifically excludes students from its definition of migrants. (Nyland, 2004:01)

In Australia, international students are largely viewed as an economic asset; international education is Australia's third largest export industry, generating \$18 billion in exports in 2009. In 2009 – 2010, international education is credit with creating additional employment of 102,387 FTE positions, of which 83,050 were created outside the education sector. In short, for every two international higher education students enrolled in an Australian university, one extra job is created. However, very rarely are international students seen as citizens with legal, social, civil, political and economic rights, with rights to pastoral care, and as consumers. Even less are they viewed as workers with rights, despite the fact that through the majority of international students engage in some form of work whilst in Australia.

In 2011, Australian Human Rights Commission (AHRC), the Academy of Social Sciences (ASSA) and Universities Australia, sponsored the occasional paper, *International Student Futures in Australia* (2011)³. The paper focuses upon the connection between international student well-being and human rights. In doing so, the paper highlighted the lack of legislative reform impacting upon overall international student welfare and argued that international students must be recognised as having inherent human rights that require better acknowledgment and protection.

³ Jakubowicz A and Monani D 'International student futures in Australia: a human rights perspective on moving forward to real action' Occasional Paper 2010 No 6. Academy of the Social Sciences in Australia 2011.

The Paper called for the Commonwealth to adopt a human rights framework in relation to public policy affecting international students, stating that, '*The insecurity of the international student is thus framed by the lack of clarity in public policy and its related discourses as how to best conceptualise the human rights dimension of the international student presence*' (Jakubowicz, 2011:13).

The paper found that an affirmation of human rights of international students has been absent from Government policy, including Commonwealth Government's September 2010 *International Student Strategy* (which also omitted any strategic goals to combat racism against international students, and failed to guarantee access to affordable transport and appropriate accommodation), and called for 'leadership' on international student issues via:

- An international Charter of Student Rights based upon *International Labour Protocols* and the *Migrant Workers Convention*,
- Introduction of the National Human Rights Framework as a matter of urgency, including passage of the relevant legislative bills,
- Engagement by public figures and political leaders on cultural diversity matters,
- Creation of a stronger research base around cultural diversity and racism, including a program of ethnographic research into international student experiences,
- A public program by universities and colleges on international student issues,
- Better resourcing of community legal centres, specifically to redress gender-related threats to safety.

It is the Union's strong view that Australia has both an ethical and a legal obligation to guarantee the human rights (and as a direct flow on, the labor rights) of international students, not only because Australia is a signatory to a number of international conventions that protect civil, social, economic, political and labour rights of Australian citizens and residents (such as the *International Covenant on Economic, Social and Cultural Rights (1966)*, the *International Covenant on Civil and Political Rights (1966)* and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1956)*) but because we actively seek and encourage international students to come to Australia, and then while they are here, further our economic gain through (their often underpaid) labour. We do not agree that it is desirable or appropriate for international students to have less human rights under Australian law than other visa holders, and in numerous submissions to Government and Inquiries on international students, we have argued for the re-examination of legislative frameworks, practices and support systems that cater to international students, with a view to guaranteeing their social and economic rights. We urge the Joint Standing Committee to similarly examine human and labour rights of international students as part of this broader review.

Exploitation of International Students as workers

It has been estimated by the OECD (2008) that through the coming two decades the number of students studying outside their own country at any one time will pass twenty million. A 2008 report⁴ (Nyland *et al*) entitled *International Student-Workers in Australia: A New Vulnerable Workforce* estimated that there were some 300,000 international student workers in Australia in 2007/2008. Since then, numbers have grown.

NTEU has previously sought to highlight the exploitation of international students in a number of Government and sector submissions and papers, and noted the link between labour trafficking and international student visas. Most recently, NTEU's submission to the Attorney-General's Departmental Review into the *Crimes Legislation Amendment Bill (Slavery, Slavery-like Conditions and People Smuggling) 2012* specifically focused on the vulnerability of international students in Australia, and their use in predatory employment arrangements (see Attachment A). In this, we highlight research by Fiona David (2010) (citing Nyland) that confirms the use of international students in exploitative labour practices, finding that:

- A large proportion of international students are under significant financial pressure because they have inadequate non-wage support;
- A significant proportion of international students are engaged in paid work with a many suggesting that paid work is their main source of income;
- International students frequently need to undertake employment in occupations concentrated at the bottom of the employment market;
- The work that international students obtain is often poorly paid, even if minimum wage standards are being observed, though many students are being paid well below the minimum wage; and that
- Ethnic networks appeared to play a significant role in the employment relationship. These networks facilitate the employment of international students but also create an environment that is 'ripe for exploitation'

While working when studying for most students is a necessity, Nyland (2008) found that international students were a highly vulnerable and exploited workforce. While research has shown student workers in general to be at risk due to their limited work skills, high unemployment and under-employment, and poor knowledge of their rights⁵ (see McDonald *et al*, 2007), and thus at risk of abuse and injury⁶ (see CHSICL, 1998) It is clear that this situation is exacerbated for international students, who have the additional burdens of having relatively poorer language skills, lack of local family support and cultural knowledge, and in many cases, inadequate non-wage income support.

⁴ Nyland, C, Forbes-Mewett, H, Marginson, S, Ramia, G, Sawir, L, Smith, S 2009, 'International Student Workers in Australia: A New Vulnerable Workforce', *Journal of Education and Work*, 22(1): 1-14.

⁵ McDonald, P., Bailey, J., Oliver, D. and Pini, B. (2007) 'Compounding Vulnerability? Young Workers' Employment Concerns and the Anticipated Impact of the WorkChoices Act', *Australian Bulletin of Labour*, 33(1): 60-89.

⁶ CHSICL, Committee on the Health and Safety Implications of Child Labor, National Research Council of Medicine (1998) 'Protecting youth at work; Health, safety and development of working children and adolescents in the United States', Washington, D. C.: National Academy Press.

Of the 200 international students interviewed for the Nyland study, it was found that in addition to these burdens, many internationals were crowded into a narrower range of jobs than is available to their domestic peers, and they commonly off-set their disadvantages by working for less than the legal minimum wage.⁷ The report also found that international students had little knowledge of or even understanding of health, safety and other rights in the labour market and workplace or the protections to which they are entitled and the agencies that could assist them in dealing with breaches of these rights. The report was scathing in its assessment of the situation faced by international student workers, noting that:

We hold that the existing lack of balance is unacceptable and given our interviews present evidence that international student-workers are highly vulnerable, we insist there is an urgent need to match the nation's effort at building the international education industry with a comparable effort designed to protect the employment rights of international students who choose to work and study in Australia.... we suggest this strategy requires the creation of a comprehensive surveillance system that can generate relevant information and that this regime should involve Federal and State departments, education suppliers, unions and employers. Information generated should at the very least be sufficient to enable these agencies to track and investigate injuries and injustices suffered by international student-workers, the number employed, where they work, and their conditions of employment.

Realisation of this goal will require that effective definitions and nomenclature be agreed upon, that the data be presented in a manner that will make it possible for researchers and policy makers to utilise the information generated, and as internationals are often employed under conditions that are illegal data collection strategies will need to include periodic studies designed to document the extent and character of this form of illegality.
(Nyland 2008:17)

This research has been supported by NTEU's own investigations into student (and international) student workers, and we are aware that other trade unions, the ACTU and the student organisations have conducted their own investigations into the exploitation of international student workers. We noted that the ACTU has recently liaised with Fair Work Australia (FWA) in the drafting of a fact sheet aimed specifically at international student workers (see Attachment B) which is welcome; however, other than brief departmental information (such as a flyer on FWA, and advise on the requirements of their student visa regarding work) international students have little employment information and support given to them, and education institutions largely avoid this area in any pastoral care they may provide.

⁷ Interestingly, the report also found that few of the international students interviewed believed that the difficulties they experience in the workplace to a product of racism. The report presumes that this perspective is at least partly explained by the fact that many employers who pay international students less than the legal rate are of the same ethnic background as those they exploit.

International Student Visa Frameworks and Potential Growth of the Problem

While student visa holders are at both primary, secondary and tertiary levels, the vast majority are enrolled at university level. The nature of university study makes tracking any abuses in terms of enforced or unpaid labour difficult; as long as students maintain a pass level, they remain below the radar. Hours worked, where, when and how, are all largely untraceable.

While not all students who end up in exploitative working relationships were originally bought to Australia under false pretences, the linkage of student visas to work rights (which NTEU is supportive of, as the majority of these students are under significant financial pressure) makes it attractive to traffickers. In particular, NTEU believes that there needs to be improved monitoring and enforcement of criminal liability for education agents that, either through deceit or misrepresentation, bring students into Australia for purposes other than genuine study. As we note in our submission on the *Crimes Legislation Amendment Bill (Slavery, Slavery-like Conditions and People Smuggling) 2012*, we query whether, in the case of international students, the definitions of a person/s who benefit in the trafficking of persons (currently an offence) should extend to either the education institutions who employ education agents, or landlords and real estate agents who may actively benefit from the exploitation of international students through tailored housing and bed sharing arrangements.

In light of this, NTEU is highly concerned that a current proposal by the Federal Government to put in place a post-study work visa, (which will replace the current Skilled Graduate visa (subclass 485)⁸ but be far less prescriptive) and would be automatically granted to any international student visa holder upon graduation from a degree level course (for up to 4 years), will make the student visa arrangements even more attractive to traffickers. This is because, unlike the present 485 subclass visa, the current proposal is to have no conditions attached to these visas; they are automatically granted and the post-study visa holder may work anywhere in Australia, in any area, and under any conditions (see Attachment C).

It was reported by the Department of Immigration and Citizenship (DIAC) at a meeting of the Education Visa Consultative Committee (EVCC) that they expect between 80 - 90 per cent of eligible student visa holders will take up post-study visa arrangements. It should be noted that in the 2011 – 2012 program year to 31st March 2012, there were 102,535 visas granted to former student visa holders. Of these, while 25.5 per cent chose to obtain another student visa, the Skilled Graduate (subclass 485) visa was the second most common visa option, with 24,359 visas granted, (23.8 percent of 102,535). Given the longer work period (of between 3 and 4 years), and the removal of skills restrictions under the proposed post student work visa, it is likely that the Department's estimate of take-up is correct, and the numbers of students on post-study visas will certainly surpass current levels of the subclass 485 visas.

⁸ The subclass 485 visa allows eligible students to stay in Australia for 18 months to work or study. To be eligible, the applicant must have completed eligible qualifications as a result of at least 2 years study in Australia, and have the skills, attributes and qualifications that meet the Australian standard for an occupation on the Skilled Occupation List (SOL). Further information on this visa is available at www.immi.gov.au/skilled/general-skilled-migration/485/

NTEU has expressed our concerns regarding the possible impact of the proposed new post-study visa in discussions on its implementation with DIAC and the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), via EVCC meetings. We are yet to be assured that there will be measures in place to track the effects of the visa, and that employers using the visa will not seek to undermine current conditions and wages. Finally, we are deeply concerned that there has been little evidence to show that Government is viewing the implementation of the visa from a human rights perspective, and while we have been assured that in drafting the visa legislation, DIAC 'consults widely', we have concerns on the indirect impacts this visa will have on efforts to curtail human trafficking, slavery and exploitation by Government and authorities.

Conclusion

As highlighted in our submission, we believe international students to be highly vulnerable workers, with few rights as citizens. They are largely viewed by the sector and government in economic terms, and with little regard to their human rights. International student workers are relied upon heavily in many industries, including hospitality, services, retail and even in transport, but there is very little research into the work conditions of these students as it is largely underground. What we do know, however, is that international students are rarely aware of their industrial rights, and very few (if any) are unionised.

In addition, research has shown that student visas are currently being used to bring human traffic into Australia for both sexual and labour exploitation. Although this issue is acknowledged by government, it is largely a hidden truth, and those that benefit from the vast numbers of international students being here, have little or no responsibility for the welfare of international students (unless they are a minor). Finally, we are deeply concerned that the proposed post study work visa will make a student visa even more vulnerable to human trafficking.

Should the Committee wish to discuss any aspect of NTEU's submission on human trafficking, slavery and slave-like conditions, please phone NTEU on 03 9254 1910 or email one of the following contacts:

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