



**National
Liaison
Committee**

For International Students
In Australia Inc.

<http://www.nlclink.org>

**Submission
To the Employment, Workplace
Relations, Small Business and
Education Legislation Committee
On the
Education Services for Overseas
Students Bill 2000**

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Executive Summary

The National Liaison Committee for International Students in Australia (NLC) is recognised to be the peak representative organisation for all international students in Australia. It is committed to the promotion and enhancement of quality education, equitable welfare and multicultural understanding. It was formed and has represented students since 1986. Independantly and acting in its capacity as the International Students Department of the National Union of Students; it currently represents over 150,000 international students nationally, drawing its membership from every state and territory in Australia.

Whilst NLC commends the Australian Government for taking measures to prevent fly-by-night operators of educational institutions who prey on the students in the international education industry, it is our observation that the international students are neglected in government's enthusiasm to empower its agencies.

In this document, we have raised issues of concern, and where possible, provided recommendations on how the Act(s) can be amended to create a less hostile environment for the genuine international student.



1. ESOS 2000

NLC commends the Australian Government in taking steps to tighten the ESOS Bill. However, this exercise in strengthening the powers of the various government agencies have left little avenue for genuine students with problems to indemnify themselves against sanctions taken against them.

It is with regret that some students have observed this move as an aggressive move to keep them out of Australia. It is our believe that students should be encouraged and made to feel welcomed while studying in Australia, instead of having to fear hostile bureaucratic regulations which may threaten the length of our stay here.

Below are recommendations from issues of concern brought up by student representatives of various member organisations of the NLC.

2. Recommendations to amend the Education Services for Overseas Students Bill 2000

Clause 76(1)

Subsections (a), (b) and (c) does not seem to provide clearly that students have to be consulted for the choice of the alternative course.

Recommendation

Amend subsection (c) to “the student is not able to be placed promptly an alternative course which is suitable and agreeable by the student under...”

Rationale

When the provider is unable to satisfy its obligations to the students, students should be consulted for the choice of the alternative course. In the event that students are not satisfied with any alternative courses, option should be given to claim a refund rather than being placed in an alternative course because the course may not satisfy all needs of the students. The alternative course may seem similar in nature to the initial course but there are other factors that are difficult to match and compare, which influence students’ choice such as recognition.

Clause 77(1)

Subsection (a) is unclear on whether overseas students have to voluntarily accept the offer of being accepted in the alternative course. The subsection also seems to allow the Fund Manager to decide on the suitable alternative course for students.

Recommendation

Amend subsection (a) to “in consultation and with the agreement of the overseas student or intending overseas student place him or her in a course in Australia that is regarded as a suitable alternative course: or”.



Rationale

The amendment is to provide more clearly to allow students to have a say in the alternative courses and to provide an option to students to claim refunds in the event that they are not satisfied with any alternative courses for the reasons given above.

It is also to avoid having the Fund Manager to make the decisions on the suitable alternative course as the Fund Manager's knowledge and specialties are usually in managing and administering trust funds rather than educational matters.

Clause 79

There is no provision on what would happen in the event when the investment incurs losses and the Fund has insufficient money to meet its obligation under the Act.

Recommendation

Unfortunately, we are not in the position to suggest a recommendation for this purpose.

Rationale

It is highly unlikely that it will happen but all effort to safeguard to beneficiaries of the Fund is essential.

Insert Clause 178 under Part 8 – Miscellaneous

Recommendation

Insert "This Act will be reviewed by an independent party appointed in consultation with stakeholders of the international education industry within 3 years from the commencement date of this Act."

Rationale

As the international education industry is highly important in Australia, it is absolutely vital that this Act should be reviewed within a reasonable time period to ensure effective regulation of the services in order to promote and enhance international education in Australia globally.

3. Recommendations to amend the Migration Legislation Amendment (Overseas Students) Bill 2000

Section 137J

The 28 days period given is insufficient warning for innocent international students to respond as required under certain likely circumstances.

Recommendation

Amend subsection (2) to

“The non-citizens visa is cancelled by force of this section after:

- (i) the 28th day after the day that the notice specifies as the date of the notice; and
- (ii) the 28th day after the day that a warning notice specifies as the date of the warning notice; and
- (iii) the 14th day after the day that the final warning notice specifies as the date of the final warning notice;

unless, before the end of the period provided above;

- (a) the non-citizen complies with the notice; or...

Rationale

International students may be back in their home countries when the notices are served, particularly during the summer holidays when students' academic performance results are computed. It is very inequitable to deem notice understanding the situation that majority of students do return home for the holidays to be reunited with families. Results are usually produced around December and students usually return to Australia end of February the next year. Therefore, the recommended period should provide equitable consideration for such genuine circumstances.

Students may not be living in their residence to accept the notice due to genuine exceptional cases like being admitted to hospital. In such cases, the question of whether the student is able to attend in person, as required by the legislation, to provide explanation.

It is highly likely that the above situations may occur. In such situations, it is virtually genuinely impossible for the international student to be aware of any notices. Therefore, it is only equitable if sufficient notices are given.

Furthermore, to impose such serious penalty on the student by serving only one notice may be too harsh. Cancellation of visa has serious and possibly long term implications on international students. More notice should be provided to be in proportionate with the seriousness of the penalty. In any case, consideration should also be given in occasions where mail may be lost.

Section 137L

Subsection (1) did not take into consideration circumstance where it is virtually impossible for the visa-holder to have received the notices.

Recommendation

Insert subsection (d) to subsection (1) the following:
“(d) that the application was not residing at the term address”.

Rationale

Given the extra notice periods above, it is still possible to have international students, who have been served notice earlier during the summer holidays and return to Australia later, to cause the period longer than the above periods. Similarly, such students genuinely have no possible access to the notices and thus cancellation should be revoked. The other alternative solution may be to extend the notice period but circumstances stipulated here is highly possible though relatively rare.

4. Conclusion

The legislation package on the whole is commendable. It will really add value to the international education industry in Australia. However a small part of it seems like an overreaction towards a minority of students which portrays hostility towards potential genuine international students. Therefore the recommendations are essential to create a more equitable and effective regulatory tool.

NLC also understands and sympathises the providers for the added burden placed upon them. However, it is encouraging that the industry is making a positive move towards building Australia as a better place for international students.