

The Senate

Education, Employment
and Workplace Relations
References Committee

Welfare of International Students

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Senate Standing Committee on Education, Employment & Workplace Relations

References Committee

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Summary of Recommendations

Recommendation 1

The committee recommends that international students be provided with personal safety information including reporting requirements, prior to coming to Australia. This should be reinforced at the orientation session provided by the relevant provider.

Recommendation 2

The committee supports public transport concessions for international students. It recommends that the Commonwealth again recommend to the states of Victoria and New South Wales that they introduce such travel concessions for international students.

Recommendation 3

The committee also recommends that all states undertake an audit of the travel concessions given to international students with the aim of standardising them.

Recommendation 4

The committee recommends that education and training providers should be required to provide up to date information on their website regarding accommodation in Australia, including information regarding tenancy rights and responsibilities. This may be via a link to the *Study in Australia* website, however, it may also include more localised information.

Recommendation 5

The committee recommends that DIAC undertake a review of the appropriateness of the 20-hour limit on working hours for international students.

Recommendation 6

The committee recommends that the issue of voluntary work not counting towards employment hours be clarified in material provided by DEEWR.

Recommendation 7

The committee recommends that DIAC undertake a review of the ability to use discretion or a compassionate exemption for students with work rights who breach their visa conditions in relation to work.

Recommendation 8

The committee recommends that:

- **students receive information packs, based upon resources such as the *Study in Australia* website and the Rainbow Guide, in hard copy and preferably in the language of the country of departure at the time their visas are granted. The information packs should include comprehensive information regarding tuition and extra fees; living costs including all relevant expenses such as accommodation and health; employment opportunities; rights conferred by law (including tenancy rights and employment rights); dispute resolution procedures and relevant contact organisations; and support services and amenities.**
- **both the online manual and hard copies should include state-specific information, detailing the various rules, laws and rights applicable in each state and territory.**

Recommendation 9

The committee recommends the jurisdiction of the Commonwealth Ombudsman be extended to cover the international education sector.

Recommendation 10

The committee recommends that TEQSA (Tertiary Education Quality and Standards Agency) and the national body to be developed for the VET sector adapt the registration process to develop a comparative information tool on education providers. This information tool should differentiate between the capacity of providers by comparing such things as the level and quality of support services available to students. The information tool would be made available on a relevant website.

Recommendation 11

The committee recommends that, to improve enforcement, the National Code be reviewed by the new national regulatory authorities for higher education and the VET sector, in consultation with stakeholders, to provide clarity and specify details of minimum standards upon which registration would be dependent.

Recommendation 12

The committee recommends that clear and timely mechanisms must be developed by the regulatory authorities and peak bodies to ensure that, if a provider closes, students are informed of their rights and of either getting their money back or transferring to a new course. Students also need to be made aware of the avenues they can use to ask questions or lodge complaints.

Recommendation 13

The committee recommends that in engaging agents overseas, DEEWR ensures that agents and sub-agents are able to access authoritative information regarding studying in Australia.

Recommendation 14

The committee recommends DIAC continue to expand the eVisa system, as an effective tool to encourage professional conduct of overseas agents.

Recommendation 15

The committee recommends that providers deal exclusively with education agents who have successfully completed an appropriate course such as the EATC and that this requirement be phased in over the next three years.

Recommendation 16

The committee recommends that as a matter of urgency the issue of medical internships receive priority in workforce planning and that this be the subject of a special study by Health Workforce Australia.

Chapter 1

Introduction and Background

Terms of reference

1.1 On 17 June 2009, the Senate referred the following matters to the Senate Standing Education, Employment and Workplace Relations (EEWR) References Committee for inquiry and report by 16 November 2009 (this was subsequently extended to 25 November 2009):

(a) the roles and responsibilities of education providers, migration and education agents, state and federal governments, and relevant departments and embassies, in ensuring the quality and adequacy in information, advice, service delivery and support, with particular reference to:

- (i) student safety,
- (ii) adequate and affordable accommodation,
- (iii) social inclusion,
- (iv) student visa requirements,
- (v) adequate international student supports and advocacy,
- (vi) employment rights and protections from exploitation, and
- (vii) appropriate pathways to permanency;

(b) the identification of quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution; and

(c) any other related matters.

Conduct of the inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper, calling for submissions by 14 August 2009. The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. 124 submissions were received as listed in Appendix 1.

1.3 The committee conducted public hearings in Melbourne on 1 September, Sydney on 2 September and Canberra on 18 September 2009. Witnesses who appeared before the committee are listed at Appendix 2.

1.4 Copies of the Hansard transcript from the hearings are tabled for the information of the Senate. They can be accessed on the internet at

<http://aph.gov.au/hansard>. References in this report to the committee Hansard are to the proof Hansard; page numbers may vary between the proof and the official Hansard transcript.

1.5 The committee thanks all those who contributed to the inquiry, particularly the students who took the time to inform the committee's considerations with their own experiences.

Background to the inquiry

1.6 This inquiry was initiated following a series of attacks upon Indian students in Melbourne and Sydney (the incidents).

1.7 These incidents damaged Australia's reputation as a safe destination for overseas students. The reporting of the incidents made headlines in the Indian press and were met with a rapid response by relevant authorities in Australia.

1.8 Following these incidents, delegations from Australia went to India to assure prospective students and their families of the measures in place in Australia to ensure the safety of international students.

1.9 As the incidents were investigated, the focus broadened to consider the quality of education being marketed to foreign students. What emerged were frustrations experienced by foreign students in their dealings with the educational institutions in which they were enrolled.

Complementary inquiries

Education Services for Overseas Students Amendment (Re-registration of Providers and other Measures) Bill 2009

1.10 This inquiry into the welfare of international students overlapped in time and subject matter with the EEWR Legislation Committee's inquiry into the Education Services for Overseas Students Amendment (Re-registration of Providers and other Measures) Bill 2009 (the ESOS Bill).

1.11 On 20 August 2009, the Senate referred the ESOS Bill 2009 for inquiry and report. The ESOS Bill amends the *Education Services for Overseas Students Act 2000* to improve processes ensuring the accountability of international education and training services providers. This includes the re-registration of all institutions currently on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) by 31 December 2010. It also introduces provisions for two new registration criteria and requires the publication by providers of the names of

education agents who represent them and promote their education services. The committee reported on 16 October 2009.¹

The Baird review

1.12 The Hon Bruce Baird is conducting a review into international education in Australia. Mr Baird will review the *Education Services for Overseas Students (ESOS) Act* and report back to the government with changes designed to ensure Australia continues to offer world-class quality international education in this challenging and changing environment.

1.13 The Review will consider the need for enhancements to the ESOS legal framework in four key areas: supporting the interests of students; delivering quality as the cornerstone of Australian education; effective regulation; and sustainability of the international education sector. An interim report from the Review will be presented for consideration by the Council of Australian Governments (COAG) in November 2009, with a final report expected in early 2010.²

Complementary measures

1.14 The amendments to the ESOS Act and the review are but two of a series of measures to ensure that Australia continues to offer world-class quality international education. Complementary initiatives to enhance Australia's ability to deliver quality education services to overseas students include the following:

- the establishment of the International Student Taskforce in the Department of Education, Employment and Workplace Relations (DEEWR) to develop strategies to support the wellbeing of students and provide secretariat services for the review of the ESOS Act;
- from 2010 the Tertiary Education Quality and Standards Agency (TEQSA) will be established which will oversee the new framework for quality assurance and regulation for universities and private providers of higher education;³
- COAG has agreed to develop further reforms to the VET sector including models for a national regulatory body for VET and a model could be TEQSA;
- the *Study in Australia 2010* initiatives to promote Australia's international education, such as on-line training of education agents overseas;

1 Senate Education, Employment and Workplace Relations Legislation Committee, *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*, October 2009.

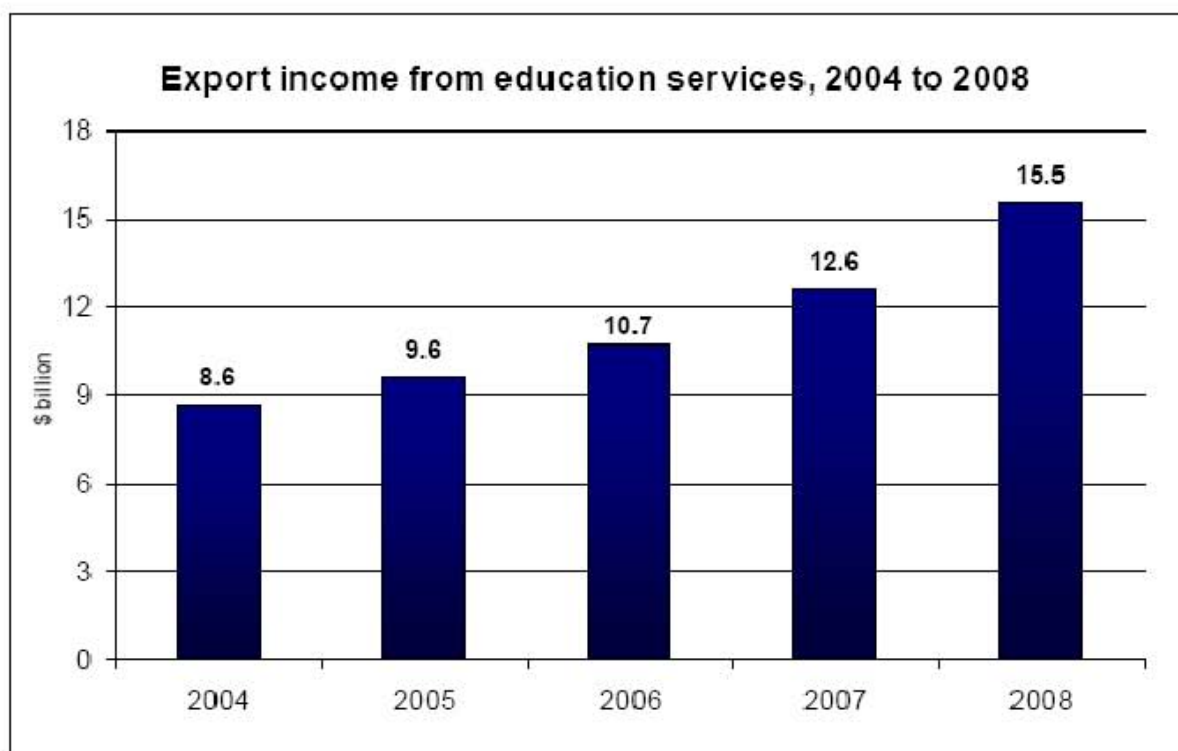
2 The Hon Julia Gillard MP, Minister for Education, 'Bruce Baird to head up international students review', *media release*, 8 August 2009.

3 The government has announced that it will establish a single agency to accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify regulatory arrangements and provide greater national consistency.

- establishment of a telephone hotline in DEEWR for students to raise their concerns anonymously;
- an international student roundtable was held in Canberra on 14-15 September 2009; and
- the development of the National International Student Strategy under COAG to improve the quality of education and student well-being for the 2010 academic year.⁴

The education sector and the economy

1.15 The number of foreign students studying in Australia has risen since the government deregulated the tertiary education sector in 1986.⁵ In 2008, the international education sector was worth \$15.5 billion, up 23.4 per cent from 2007. It remains the third largest export behind coal (\$46.4 billion) and iron ore (\$30.2 billion) and the largest services export industry as shown in the chart below.



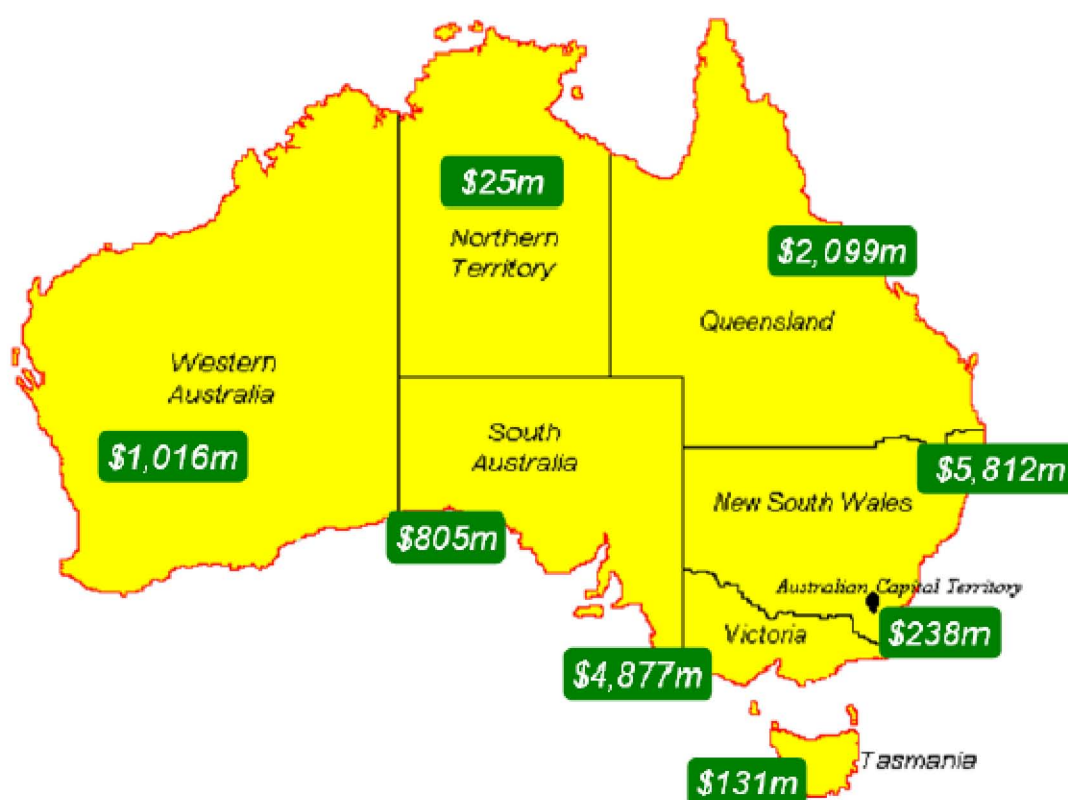
Source: Australian Education International, Research Snapshot, *Export Income to Australia from Education Services in 2008*, June 2009.

1.16 While all states have benefited from this growth, the income received is particularly significant for Victoria and New South Wales as shown in the map below.

4 DEEWR *Submission 13* (ESOS bill), pp 3-4.

5 Australian Bureau of Statistics, 'International Students in Australia', *4102.0- Australian Social Trends 2007*, p. 1; and The Group of Eight, *Group of Eight Backgrounder*, no. 1, 2007.

Export income by state and territory, 2008



Source: Australian Education International, Research Snapshot, *Export Income to Australia from Education Services in 2008*, June 2009.

Composition of the international education sector

1.17 The international education sector is comprised of:

- universities and private higher education providers;
- vocational education and training (VET) providers;
- English language intensive courses for overseas students (ELICOS); and
- secondary school programs.

1.18 Private providers offering VET courses include employer training organisations or industry associations as well as registered training organisations such as business colleges.

1.19 Public VET providers include government-funded technical and further education (TAFE) colleges, agricultural colleges and some higher education institutions.

Enrolments

1.20 There were more than 500 000 enrolments of international students in 2008-09.⁶ However, there have been significant changes in the characteristics of enrolments over the past few years.

Higher education

1.21 International students in higher education have grown from 21, 000 in 1989 to over 250 000 in 2007. Australia has one-tenth of the world market for higher education, and is the third most popular English-speaking destination behind the United States and the UK.⁷ Victoria and New South Wales have the highest numbers of international students in higher education as can be seen in the table below.

International and Domestic Higher Education Students by State and Course Level
(Number and Proportion)

capa	PG	Domestic		Intl		All	Domestic		Intl	
	#	#	%	#	%	#	#	%	#	%
Victoria	76,071	48,685	64%	27,386	36%	266,842	179,946	67%	86,896	33%
Western Australia	22,930	15,734	69%	7,196	31%	106,167	74,465	70%	31,702	30%
South Australia	19,463	11,201	58%	8,262	42%	72,949	52,302	72%	20,647	28%
Queensland	48,460	27,521	57%	20,939	43%	192,262	144,134	75%	48,128	25%
Aust Capital Territory	9,160	6,273	68%	2,887	32%	26,138	20,442	78%	5,696	22%
Tasmania	3,447	2,566	74%	881	26%	19,531	15,087	77%	4,444	23%
New South Wales	92,428	64,047	69%	28,381	31%	321,574	249,556	78%	72,018	22%
Multi-State Providers	5,153	4,522	88%	631	12%	17,784	14,550	82%	3,234	18%
Northern Territory	1,145	1,012	88%	133	12%	6,599	6,265	95%	334	5%
Totals:	278,257	181,561	65%	96,696	35%	1,029,846	756,747	73%	273,099	27%

Compiled by the Council of Australian Postgraduate Associations (CAPA)
From *Students 2007: Selected Higher Education Statistics*. DEEWR (www.deewr.gov.au)

Source: CAPA, *Submission 53*, p. 10.

1.22 Research has shown that the demand for international higher education will continue,⁸ although it is unclear to what extent the global financial crisis may affect such demand. The committee notes the availability of higher education in Asia is growing rapidly. This is a competitive alternative to studying in Australia because students are able to learn English while gaining a qualification for far less cost.⁹

1.23 While the figures reflect Australia's success in attracting international students, international student fees now comprise a significant proportion of overall

6 DEEWR, *Submission 112*, p. 8.

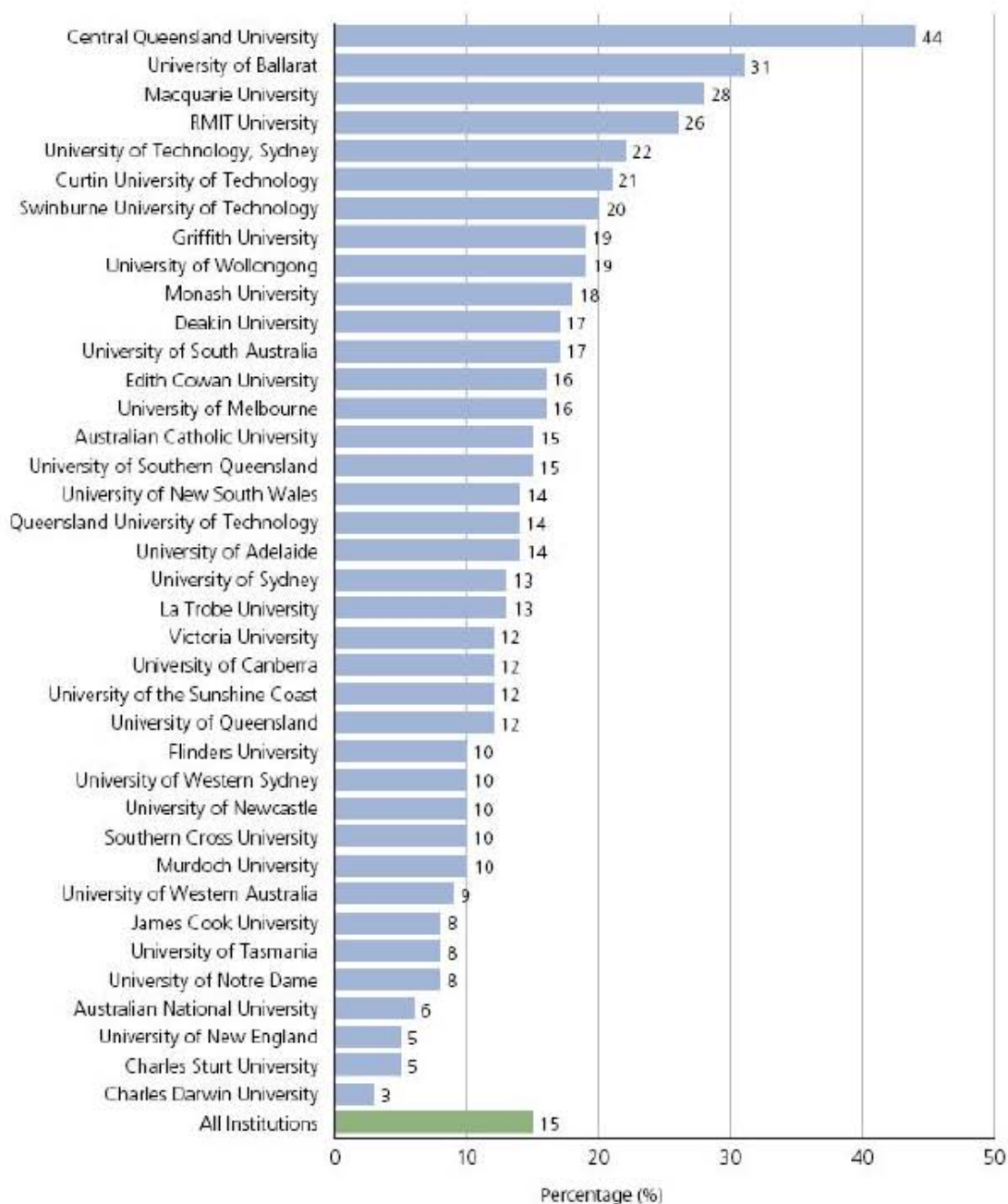
7 Bradley, D, Noonan, P, Nugent, H and Scales, B, *Review of Australian Higher Education: Final Report*, DEEWR, 2008, p. 89.

8 Melissa Banks, Olsen, A and Pearce, D, *'Global Student Mobility: An Australian Perspective Five Years on'*, IDP Education, 2007, p. 3.

9 Liz Gooch, 'Asian students look closer to home', *Australian Financial Review*, 12 October 2009, p. 28.

university income. Statistics show that the average proportion of total revenue in higher education derived from overseas student fees is 15 per cent. See table below.

Overseas student fee revenue of universities as a proportion of total revenues



DEEWR (Finance 2007 - Financial Reports of Higher Education Providers)
in Review of Australian Higher Education: Final Report¹³

Source: CAPA, *Submission 53*, p. 15.

1.24 Dr Withers explained funding changes for universities and the growth in numbers of international students:

...We have a regime that is not fully rational in that we do not fund domestic undergraduate full-fee students the full cost of their education through Commonwealth payment. It is about 80 per cent of the full cost of

delivering services to domestic undergraduates through the Commonwealth payments. In one sense I can make that as a bipartisan statement because it was Paul Keating who began that problem and it continued under the coalition, mainly through inadequate indexation of Commonwealth payments for domestic undergraduates. The natural incentive for universities to do the right thing by their undergraduates is to find other sources of money when the Commonwealth is not adequately providing for them. So what we saw over the past 15 years was a massive growth of postgraduate coursework masters of both domestic and international students and international undergraduate students and, for a short period, domestic full-fee students. The universities play a funny pea-and-thimble trick with that and their research, because, as is also evidently clear, research costs of Commonwealth funded grants are not full cost. That is, if you receive an ARC or an NHMRC grant, it covers the costs of some associated costs, but the principal investigators cost, the laboratory costs and so on are covered in other ways. So universities go around trying to find areas where they can generate surpluses that will cross-subsidise the areas that are not fully funded. The growth of international students has to be seen as partly driven by that. That is by the university managers...at the university strategic level, yes, there is some revenue motivation—not profit motivation, since universities are not-for-profit institutions—to deal with inadequacies in some of the funding settings that universities have imposed upon them.¹⁰

1.25 Dr Withers also described the effect of voluntary student unionism:

We feel it has cost the student experience substantially. The proposals for a student amenities fee, we feel, would help the student experience substantially, particularly in the core areas of health, sports, employment advice and accommodation advice. We know that those services are particularly used by students more away from existing living networks. Ones who are away from those networks draw on them more.¹¹

Student cohort

1.26 Over 80 per cent of international students in higher education in 2007 were from Asia including 21 per cent from China. In this same year, over half of all international students studied in the management and commerce disciplines, with 67 per cent of the Chinese cohort of 58 588 students undertaking degrees in these subject areas. Additionally, 59 per cent of all international students were undergraduate students and a further 28 per cent were studying coursework masters degrees. Only 3.6 per cent were undertaking research higher degrees.¹²

10 Dr Glenn Withers, *Committee Hansard*, 18 September 2009, pp 25–26.

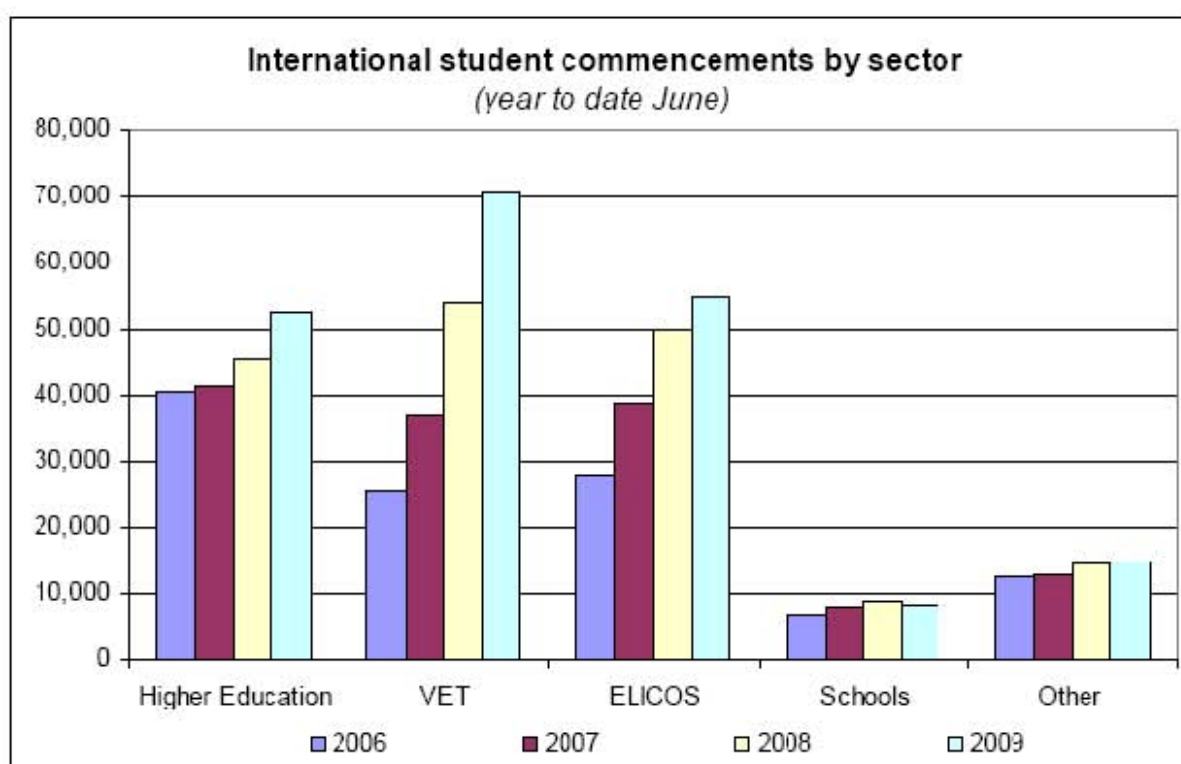
11 Dr Glenn Withers, *Committee Hansard*, 18 September 2009, p. 28.

12 Bradley, D, Noonan, P, Nugent, H and Scales, B, *Review of Australian Higher Education: Final report*, DEEWR, 2008, pp 92–93.

Vocational education and training sector

1.27 The committee heard evidence that the higher education sector led the VET sector in 2008, with more than eight billion dollars in export earnings compared to less than 3.5 billion dollars.¹³ However, growth patterns and enrolment figures present a changing picture.

1.28 Most of the growth in international education has come from the VET sector. The number of VET enrolments has more than tripled since 2002. It now accounts for the largest proportion of total enrolments (37 per cent for the six-month period to June 2009 compared to 36 per cent for the higher education sector).¹⁴ See table below.



Source: DEEWR, Monthly Summary of International Student Enrolment data – Australia – YTD June 2009.

1.29 International student enrolments in private VET colleges increased 60 per cent, from 5 911 in 2005 to 26 667 in 2008.¹⁵

1.30 The Australian Federation of International Students in its evidence to the committee indicated more substantial growth of almost 227 per cent between 2002 and 2008.¹⁶

13 Australian Education Union, *Submission 92*, p. 2.

14 DEEWR, *Submission 112*, p. 8. See also DEEWR, 'Monthly Summary of International Student Enrolment data – Australia – YTD June 2009', *Monthly Summaries of International Student Enrolment Data*, Australian Education International, June 2009. Available at <http://www.aei.gov.au/AEI/MIP/Statistics/StudentEnrolmentAndVisaStatistics/Default.htm>.

15 TAFE Directors Australia, *Submission 71*, p. 3.

1.31 While growth in the number of international students entering the VET sector has been seen in all states, Victoria, New South Wales and Queensland have shown the highest rates of growth. However, at 92 per cent, New South Wales has the highest rate of enrolments by international students with private VET providers.¹⁷

1.32 The growth in enrolments has been accompanied by an increase in the number of private VET providers from 363 in 2004 to 464 in 2008.¹⁸ DEEWR in its evidence said that:

[o]verall, the number of providers changed only slightly from 1070 in 2004 to 1135 in 2008. Larger providers (those with more than 100 enrolments) increased in number from 260 in 2004 to 392 in 2008 while small providers (those with 99 or fewer enrolments) fell from 810 to 743 during this period. The number of private VET providers with fewer than 100 enrolments remained almost constant during this period, increasing from 283 to 287 while the number with 100 or more enrolments grew from 80 to 177.¹⁹

1.33 The most popular field of study in VET courses was management and commerce, followed by 'food, hospitality and personal services'. The Australian Education Union gave evidence to the committee that the three most popular fields of study represented 4 out of 5, or 80 per cent, of all international VET enrolments.²⁰

1.34 Similar to the higher education sector, there is a concentration of students in particular course types within the VET sector. Such enrolment patterns may contribute to the isolation of international students, adversely affecting their educational, cultural and general experiences. Such isolation reduces the opportunities available to Australian students and communities for cross-cultural exchanges.

1.35 TAFE Directors Australia, in its evidence to the committee, said that this swell in numbers over the past five to ten years has largely resulted from linking permanent residency and study.²¹

1.36 When asked about the causes of the growth in the numbers of RTOs, DEEWR's evidence was:

There are obviously a range of opinions on this subject. The immediate cause of having courses available and places for people to fill is that the states have registered more training organisations. Those training

16 Australian Federation of International Students, *Submission 24*, p. 3.

17 Australian Education Union, *Submission 92*, p. 2.

18 DEEWR, *Submission 112*, p. 8.

19 DEEWR, *Submission 112*, p. 8.

20 Australian Education Union, *Submission 92*, p. 2.

21 TAFE Directors Australia, *Submission 71*, p. 3.

organisations have filled more places and there have been students available to fill those places.²²

Committee view

1.37 The committee notes the reluctance of DEEWR to comment on the performance of state agencies in their administration of registration functions. This is understandable in view of their need to work harmoniously with state agencies. The committee recognises that a key focus of this report is the allegations of exploitation of students in the VET sector.²³ This is discussed in more detail in later chapters.

Foreign students in schools

1.38 The enrolment of foreign students in schools presents no problems of the kind reported in the private VET sector. Schools are strictly regulated and offer only a limited number of places to foreign students.

1.39 The Independent Schools Council of Australia (ISCA) gave evidence to the committee that currently there are over 23 000 overseas students in Australian schools and, of these, around 60 percent are enrolled in non-government schools. The numbers have remained relatively steady for some years. There are overseas students enrolled at nearly 400 independent schools, representing less than half the total number of schools in the sector. Numbers vary from one to over 400 with a median number of 11 students. ISCA noted the duty of care towards students as they deal almost exclusively with children under the age of 18 and this includes approving the accommodation and welfare arrangements and the provision of support services.²⁴

22 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 75.

23 Australian Education Union, *Submission 92*, p. 1.

24 ISCA, *Submission 72*, pp 3–4.

Chapter 2

The international education sector and immigration policy

2.1 Through its administration of the *Migration Act 1958* (the Act), the Department of Immigration and Citizenship (DIAC) is responsible for the entry of students to Australia. This is managed through the assessment of student visa applications. DIAC is also responsible for the compliance of student visa holders with their visa conditions.¹

Appropriate pathways to permanency

2.2 Witnesses told the committee that the linking of immigration and education policies had contributed to the growth in international students with agents and RTOs ready to exploit them with the lure of permanent residency.

2.3 The student visa allows a temporary stay for the purposes of study. Under current arrangements, student visa holders may be eligible to apply for a range of further visas, depending on their personal circumstances and the eligibility criteria of the visas that they seek.²

2.4 Since 2001, overseas students have been permitted to apply for permanent residency while onshore, within six months of completion of their course. To do so, they are required to satisfy broad threshold eligibility criteria including meeting:

- the Australian study requirement (successful completion of a course or courses in Australia registered on the Commonwealth Register of Institutions and Courses for Overseas Students for a minimum of 92 weeks and which result in the award of a Degree (or higher), Diploma or Trade qualification); and
- the prescribed English language standard.³

2.5 The measure was intended, at least partially, to address skills shortages in the domestic workforce. Witnesses who appeared before the committee, including DIAC, gave evidence that over time a perception has developed that a student visa can provide an automatic pathway to permanent residency.

2.6 DIAC gave evidence that departmental information, including on the student visa application form, makes it clear that separate and distinct processes are involved

1 DIAC, *Submission 111*, p. 6.

2 DIAC, *Submission 111*, p. 25.

3 DIAC, *Submission 111*, p. 26.

and that the requirements for permanent residency visas change from time to time in response to the requirements of the labour market.⁴

2.7 In addition, DIAC set out the following information from their website:

Students **should not** make educational choices solely on the basis of hoping to achieve a particular migration outcome, as the GSM program will continue to change and adapt to Australia's economic needs.⁵

2.8 DFAT gave evidence to the committee that the recent visits by ministers from Australia to India have made the point very clearly that there is no connection between getting a visa to reside in Australia and study.⁶

2.9 DIAC emphasised the effort taken to provide correct information:

There is a range of information that is available to students. We cannot guarantee that they access that information and we cannot interpret or cannot guarantee what it is they take from that information. But there is no shortage of information available...Before they apply there is access to information about what is in store for them et cetera. The department's website is a vast source of information. We have a thing called the Visa Wizard which helps prospective visa applicants across a range of these classes to determine the most appropriate visa for them if they put in certain details or a scenario that they may wish to pursue. Visa application forms contain a lot of information and DIAC posted officers around the world have a function to provide information as well. So there is a lot of information available from our portfolio about study in Australia...⁷

Effect of the perception of automatic pathway to permanent residency

2.10 Some witnesses gave evidence to the committee that the perception that a student visa can provide an automatic pathway to permanent residency had contributed to the growth in international students with some agents and RTOs delivering training, not for the purpose of skill development but for the purpose of a migration outcome.

2.11 Ms Michelle Bissett, Senior Industrial Officer, Australian Council of Trade Unions (ACTU), explained the distortion in the system that has resulted from linking immigration and education policies:

Our concerns generally and quite specifically go to changes that occurred in the migration program from 2001 onwards that have left the door open, we believe, to unscrupulous practices by migration agents, by some registered training providers and by some employers. These practices have resulted in

4 Mr Peter Vardos, *Committee Hansard*, 18 September 2009, p. 85.

5 Mr Peter Vardos *Committee Hansard*, 18 September 2009, p. 85.

6 Ms Deborah Stokes, *Committee Hansard*, 18 September 2009, p. 84.

7 Mr Peter Vardos *Committee Hansard*, 18 September 2009, p. 83.

exploitation of international students tarnishing our education reputation. Even though they might be migration issues that have come into play, it is having a negative effect, we believe, on our education reputation. The migration pathway that has been opened up for international students has led to a growth in training organisations delivering training, not for the purpose of skill development but for the purposes of migration and that is a matter of concern.⁸

2.12 To address this distortion, Ms Bissett advocated the removal of the link between education and independent skilled migration:

The reason that we would seek the removal of the strong link that exists at the moment is that the migration purpose is distorting the study purpose. What we believe is happening in the market at the moment is that students are coming to Australia, not for the purposes of gaining skills or for education, but for the purposes of finding a pathway to migration. And because of the changes that were made for international students to be able to seek permanent migration on shore once they had finished their study, once that change was made we saw a distortion of the training that was being undertaken by international students, so there was an explosion in hairdressing and cookery. What we are seeing is those students not working as a hairdressers and cooks—mind you, we see the same things in domestic students. The purpose of the study is to gain a migration pathway, not to utilise the skills that they are gaining in their studies in Australia. So there is a bit of distortion happening in both the training sector and in the migration sector and they are affecting each other...⁹

2.13 Ms Virginia Simmons, Board Member, TAFE Directors Australia, gave evidence of the effect of the Migration Occupations in Demand List (MODL):

It is often in direct response to the MODL, the Migration Occupations in Demand List. Providers set up to respond directly to that and they recruit students on that basis, often with nobody in their administration that has any education background at all. A recent example is one that was owned by a cleaner. This is not uncommon.¹⁰

2.14 These views were supported by Mr Christopher Evason, Managing Director International Education Services:

...the unintended change in the international education environment caused by adding low-level qualifications for hospitality and hairdressing to the MODL in 2005 has led to the current difficulties. The current issues flow from a flawed policy that has enabled the entry of a different kind of player into the industry, one that did not exist previously, blurring the distinction between education and migration outcomes. Nevertheless, problems arising have exposed the need to professionalise the industry so that quality

8 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 1.

9 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 3.

10 Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 17.

education providers, both public and private, and their agents, who are doing great work, are able to maintain Australia's place as a world leader in international education.¹¹

2.15 Ms Bissett explained to the committee that, rather than a shortage of people skilled as hairdressers and cooks, there is a shortage of people prepared to work in these jobs for the wages and conditions offered. She stressed that this is a labour market problem and not a skills problem.¹²

2.16 Mr Andrew Bartlett, Research Fellow, Australian National University, told the committee it must be made clear to international students that permanent residency is not automatic. He also argued that whatever measures are taken to remove the distortion in the education market, they should not disadvantage those students already in the system.¹³

2.17 The Department of Education Services, Western Australia, noted that 'the current nexus between education and skilled migration is problematic and has given rise to many of the current difficulties facing the international education sector'. However, it noted the importance of factoring international students into the mix of sources for skills:

While international education is not the sole, nor necessarily the predominant, external source of skills it should have a significant place in the mix of courses that Australia maintains. With most advanced economies facing the same demographic imperative as Australia it is likely that the international competition to attract younger skilled people will intensify. In this context completely shutting down or neglecting the importance of intentional education as a source of skills is likely to be counter productive over the longer term.¹⁴

Regulating information provided offshore

2.18 Witnesses gave evidence to the committee that some education agents provide students with false or misleading evidence in relation to potential migration outcomes. In this regard, DEEWR stated:

Under the [National] code, No. 1 is about marketing the information and practices, and that requires that providers ensure their agents do not give false or misleading information or advice in relation to possible migration outcomes. Obviously there is whole issue around agents and how and whether they should be regulated and it is part of the Baird review, and that will be tackled. But I think, as you have rightly pointed out, this is an issue

11 Mr Christopher Evason, *Committee Hansard*, 18 September 2009, p. 43.

12 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 3.

13 Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, p. 18.

14 Department of Education Services Western Australia, *Submission 120*, p. 2.

which applies all round the world in many different places and regulating exactly what people say about us is extremely hard to do directly.

In fact I brought along for the committee—and I do not know whether you would like to see this—an extract from the *Times of India* which has got some pages of adverts by agents, and you might just like to see how this comes across. I hasten to add, most of them are for the UK and New Zealand and other countries and not particularly for Australia. But you can see exactly how this plays out overseas. The challenge is to take the intent of what is in the code and make it stick.

Just looking at India, which is just one country—although a big one and an important one here—when we visited India recently the department there expressed its intention to regulate agents and their behaviour. In fact we are hoping to go back in two weeks time for the first of a series of working groups to work out with the Indians how best that legislation could operate. So we are taking this forward vigorously.¹⁵

2.19 The committee notes the Education Services for Overseas Students Amendment (Re-registration of Provider and Other Measures) Bill 2009 reported on by the Legislation Committee in October 2009 will require providers to list the agents used to increase transparency. The committee also notes that ACPET will have a register of their recommended agents.

2.20 The committee notes the steps taken by the government in this area to sever the perception of the link between permanent residency and education. The committee also notes the changes announced by the Minister for Immigration and Citizenship in December 2008 which focus on skilled recruitment around employer and state government sponsorships.¹⁶

2.21 In July 2009, the Office of the Migration Agents Registration Authority (MARA) was established to regulate the activities of the migration advice profession to provide consumers with appropriate protection and assurance.¹⁷ In August 2009, the Minister announced that his department would be strengthening checks on student visa applications to address fraud and ensure students have the financial capacity to live and study in Australia.¹⁸ The Deputy Prime Minister as well as the Minister for Immigration both reaffirmed that:

...coming to Australia to study is about being a student in Australia while applying for permanent residence is about Australia's migration system and

15 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 84.

16 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Migration program gives priority to those with skills most needed', *media release*, 19 December 2008. See also DIAC, *Submission 111*, p. 30.

17 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'New migration agent authority commences', *media release*, 1 July 2009. See also DIAC, *Submission 111*, p. 32.

18 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Student visa checks strengthened', *media release*, 20 August 2009.

the two should be seen as separate systems with no automatic link between studying in Australia and access to permanent residence.¹⁹

2.22 Dr Withers supported the actions taken by the government:

...The other one is the migration distortions, of which we cop the unintended consequences in various ways. But at present DIAC seems to be reviewing that in a highly constructive way. We think the blow-out of the MODL—the occupation listings that in turn carry benefits for migration for permanent residency—has in the last four or five years created crucial distortions that helped encourage migration-driven education decisions rather than properly educationally founded entry into Australian education. We would hope that that can be cleaned up as well—along with many other activities, but we think those two, in the quality assurance area and the migration area, were quite important in the sudden breaking out of problems we had.²⁰

2.23 Mr Warwick Freeland, IDP Education also acknowledged the work being undertaken by government:

I think a lot of this is happening now, looking at the processes that are being put in place. For example, the department put in place increased scrutiny for high-risk countries to check on the financial creditworthiness of applicants for visas. We have seen in the last week the direct effect in certain countries of that, where an increased number of visas are being rejected at this point in time because of that increased scrutiny. So things are already happening. There have been continuous changes to the rules through these programs. Every six months or so there is another set. But there is a need to better focus on the skills that are required. We do not have a specific recommendation but we know that we need to reduce the opportunity for some of these people who are coming at effectively the low end, with lower skills and with a particular focus on permanent residency.²¹

Committee view

2.24 The committee accepts the evidence that over time a perception has developed that a student visa may provide an automatic pathway to permanent residency, despite this not being the case. This perception has in turn been exploited by some education agents and providers who have used the perception of permanent residency to recruit students and then provide them with inadequate education or training.

2.25 The committee endorses steps that have been taken to ensure that international students coming to Australia to study are fully cognisant of the rules that apply to them and make it clear that separate and distinct processes are involved and that the

19 DEEWR *Submission 112*, p. 5.

20 Dr Glenn Withers, *Committee Hansard*, 18 September 2009, p. 32.

21 Mr Warwick Freeland, *Committee Hansard*, 1 September 2009, p. 14.

requirements for permanent residency visas change from time to time in response to the requirements of the labour market.

2.26 In most cases, exploitation starts overseas with expectations fuelled by unscrupulous education agents advertising courses solely as a means to permanent residency. Regulation of providers and quality are discussed in chapter four and agents are discussed in more detail in chapter five.

Chapter 3

Support services and the well-being of international students

3.1 The committee recognises the particular difficulties encountered by overseas students as they prepare to live in another country, by themselves, where the culture as well as the language may be very different. On arrival in this country, students face the tasks of securing suitable accommodation and finding employment. They are in need of help and advice, even in doing simple, daily chores. The committee is concerned to ensure that credible information and appropriate support services are available to assist students in their studies and in everyday life in a foreign culture.

Student safety - background

3.2 This inquiry was initiated following a series of attacks upon Indian students in Melbourne and Sydney (the incidents). These incidents damaged Australia's reputation as a safe destination for overseas students. The reporting of the incidents made headlines in the Indian press and were met with a rapid response by relevant authorities in Australia.

3.3 In response to the attacks on students, delegations have travelled to India to meet Indian government ministers, officials, prospective students and their families to hear concerns and offer reassurance that Australia is a safe destination for Indian students. These delegations have included the Minister for Education, Hon Julia Gillard MP; representatives from the Commonwealth, New South Wales and Victorian governments; Victorian Police and representatives of the vocational and higher education sectors.¹

3.4 The committee believes that it is important to protect and strengthen our reputation as a safe destination for international students. Despite the recent attacks and adverse media attention, Australia is still viewed by most overseas students as a safe and most rewarding place to study.²

Lack of personal safety awareness

3.5 The majority of the evidence given to the committee indicated that the incidents were more likely to be opportunistic robberies, with the attackers targeting

1 DEEWR, *Submission 112*, p. 27.

2 IDP, 'The Buyer Behaviour of International Students – How they decide,' Preview Results presented at *Transitions and Transformations*, the Australian International Education Conference, Sydney, 14–15 October 2009.

owners of laptop computers who did not have an appropriate level of personal safety awareness, as opposed to attacks based on race.

3.6 Dr Felicity Fallon, President, ISANA, gave evidence regarding the lack of awareness regarding personal safety:

Safety is about more than being attacked on the train or at the railway station. I do have to say that I had a student who was attacked on a railway station a couple of years ago. I think he was from Hong Kong; he certainly was not Indian but he did what the Indian students did. He stayed late at a friend's place, he came home, he was carrying his laptop obviously and he was jumped at the local railway station on his way to his home stay. But I do not think it was because he was an international student. I think he was there at a bad time; he did not understand local conditions...As one of our ISANA members who work at Victoria University said to me, 'Would you travel on a train to Sunshine at one o'clock in the morning?' I said, 'No, I wouldn't.' But these students are doing it and they are doing it alone because they have been working in the convenience store or something until that hour of night and then there is the whole time difference. Asian young people do not go to bed before midnight and they do not think it is time to go home until somewhere around there whereas most Australians are home, and their kids would be home and in bed or at least up in their room studying by then. That is not there. There are cultural issues about that sort of thing.³

3.7 Chee Lai, President, Curtin University Student Guild and the International Students Committee, gave evidence that attacks on students were not racially motivated but based on opportunism:

Curtin University has experienced violence against international students in and around its Bentley campus. The Guild does not believe that these attacks are racially motivated, but are based on opportunism that has largely arisen due to a lack of awareness about security issues from relatively new arrivals to Australia.⁴

3.8 International Students Online also noted the lack of personal safety awareness:

Personal safety of International students is of great concern, I believe from first hand experience that any international students are not educated sufficiently on arrival to Australia by their education provider. This leads to students carrying laptops, ipods, valuables on public transport and travelling alone late at night...It is certainly apparent that international students do not know how to perform basic tasks and undertake safety measures in our society.⁵

3 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, pp 59–60.

4 Curtin University Student Guild, *Submission 27*, p. 2.

5 International Students Online, *Submission 12*, pp 4-5.

Lack of adequate personal safety information

3.9 Evidence was given by the National Union of Students (NUS) concerning a lack of the provision of adequate safety information to international students:

However by its own admission there are still many universities and VET education providers that do not provide adequate information to students about life and safety in Australia. Therefore, there is a clear lack of broad level best practice in this area throughout Australian education institutions.⁶

3.10 Ms Christine Bundesen, English Australia, also noted the lack of adequate information on safety:

...There needs to be a more cohesive, nationally coordinated approach to provision of that information, and about their safety as well. Australia is a relatively safe country, but over the past few decades, Australia has, like a number of other countries, changed slightly, and it is very important that we ensure that students have the appropriate type of information about the way in which they should live, the way in which they should behave to protect their own safety in Australia, the same way that domestic students would have that innate knowledge as to how they should be protecting themselves. There is a variety of information services, and instead of being piecemeal—through an agent, through state network offices, through national network offices, and then the providers themselves—a more holistic and nationally strategic approach to information would be suitable.⁷

3.11 Dr Felicity Fallon noted the difficulties in this area due to the vagueness of the standard in the National Code:

It should not be left to the education provider to decide what is 'sufficient'—and that is the word in standard 6.6, 'sufficient'—support for international students. We want some benchmarks about safety issues at pre-departure and at orientation. It says that information needs to be provided, but safety issues are not in there.⁸

Failure to report incidents to police

3.12 Evidence was given to the Committee that many international students are reluctant to report safety incidents to the police, partly because of false perceptions about police in Australia⁹ and fear that it could lead to the cancellation of students' visas.

3.13 DIAC in its submission to the Committee stated that it 'encourages international students to report criminal activity to the police' and that 'reporting a

6 NUS, *Submission 29*, p. 11.

7 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 4.

8 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 54.

9 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 14.

crime to the police has no adverse impact on an existing visa or on future visa applications.¹⁰

Committee comment

3.14 The committee acknowledges that with a lack of understanding regarding personal safety, the circumstances in which international students often find themselves may give rise to fears of racism and they may interpret a negative experience as motivated by racism even though no such motive exists.

3.15 The committee believes that it is important for Australia to protect and strengthen its reputation as a safe destination for international students. It should be noted that evidence was given to the committee that more than 80 per cent¹¹ of international students return home satisfied with their experience of living and studying in Australia and are happy to recommend studying here to others.¹²

3.16 The committee is concerned at the evidence surrounding the lack of personal safety awareness by some international students and the reluctance to report safety incidents to the police.

Recommendation 1

3.17 The committee recommends that international students be provided with personal safety information including reporting requirements, prior to coming to Australia. This should be reinforced at the orientation session provided by the relevant provider.

3.18 The committee notes that safety is a broad issue and incorporates factors such as fire¹³ and beach safety.¹⁴ The committee was told that there are initiatives and partnerships underway to provide this information to international students¹⁵ and these areas are included in the discussion of the provision of information below.

Travel concessions

3.19 Travel concessions are available to international students in all state and territories in Australia except for New South Wales and Victoria.

10 DIAC, *Submission 111*, p. 9.

11 DEEWR, *Submission 112*, p. 5.

12 Australia Education International, *2007 Follow-up International Student Survey*, May 2008, p. 4.

13 See Metropolitan Fire and Emergency Services Board, *Submission 123*.

14 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, pp 59-60.

15 Metropolitan Fire and Emergency Services Board, *Submission 123*, pp 4-6.

3.20 Evidence was given to the committee that one of the factors affecting the safety of international students is the cost of public transport and the unavailability, in some states, of fare concessions.

3.21 Lack of transport options can lead to students being in potentially unsafe locations late at night when they are returning home from night or shift work. Ms Hardeep Kaur, Federation of Indian Students of Australia, gave evidence concerning public transport and the associated safety issues:

If the students have to pay a large amount of money then they would not prefer to go by the public transport. They would be ready to walk along the way in Harris Park, Parramatta or the city. We know that the city is safer than other places like Parramatta or Harris Park and people cannot go alone. When they go alone then the government or the police say they are soft targets. Why are they soft targets? Because they have to walk because there are no public transport concessions for international students.¹⁶

3.22 The committee also heard evidence that overseas students felt that the issue of concession fares was an important one in its own right. The lack of travel concessions in Victoria and New South Wales was raised by many witnesses and described by some as discrimination.¹⁷

3.23 Ms Wesa Chau, Australian Federation of International Students, in her evidence said:

The other thing I also want to mention is transportation for international students. In Victoria and New South Wales there are no concession cards for transport concessions. This means that a lot of international students feel there is systemic discrimination by the government against them, because they feel that they are not getting the same rights as other students in Australia. I know that is not the jurisdiction of the federal government, but I think it needs to be looked at by the federal government.¹⁸

3.24 Inequity was also highlighted by Mr David Barrow, NUS:

If you are on the ground as a student, it is a daily reminder that you are not treated the same as local students, and when these other issues are put in place in compounds the problem. It means that students are trying to get off-peak fares. They are travelling at odd times. The actual cost of the travel is very expensive in Sydney and Melbourne. The situation does not reflect the fact that, while international students may have a lot of money upfront for their tuition costs, the ongoing money is the issue for them, and that compounds the other issues.¹⁹

16 Ms Hardeep Kaur, *Committee Hansard*, 2 September 2009, p. 30.

17 North American Medical Students' Association, University of Sydney, *Submission 22*, p. 3; Cabramatta Community Centre, *Submission 41*, p 3.

18 Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 48.

19 Mr David Barrow, *Committee Hansard*, 1 September 2009, p. 38.

3.25 Ms Anna Cody, Kingsford Legal Centre, gave evidence that the disparity between domestic and international students caused confusion:

International students pay a lot of money to come to Australia. As the previous speaker mentioned, it is a huge export earner for Australia. It seems to me a very small measure that could be granted, because they are paying large amounts of money in fees, to recognise that they also need a concession card. They are certainly going to be on a budget. It just seems to create another area where they are going to come across offences and be in need of legal advice. We do see a large number of students who are charged with not travelling with a proper concession card, either through lack of understanding, because they assume that they are able to travel in the same way other students are, or because they want to pay less money on their public transport. For those reasons I think there should be a lifting of that ban on concession cards for international students.²⁰

3.26 In addition to the issue of concessions in New South Wales and Victoria, the committee was told that overseas students in the same state may not necessarily have the same access to fare concessions. For example, in some states, students attending TAFE and higher education courses are eligible for concessions while those attending VET courses offered by private colleges are not eligible.²¹

3.27 Ms Christine Bundesen, English Australia, suggested that travel concessions would help integration and community engagement as students could travel to and participate in more community activities.²² This view was supported by Monash City Council which indicated to the committee that the lack of public transport fare concessions could be a contributing factor in the isolation of overseas students. Reducing the cost of public transport through fare concessions would allow students to take part in activities outside university hours and more easily socialise in the broader community.²³

3.28 Witnesses did not accept the arguments put forward to date that providing travel concessions would be too costly for the relevant state governments. Mr Sumit Purdani argued:

The hardest thing to justify till now is that if they have started giving a concession to international students they are going to run losses. But the situation will be completely different because a lot more people would take up public transport. Buses are running empty. A lot more people would take up public transport rather than walking alone. If a bus pass would be like

20 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 15.

21 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 12.

22 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 12.

23 Monash City Council, *Submission 59*, p. 2.

\$20 a week, I would be happy to pay for it. Otherwise I can probably walk or cycle to university.²⁴

3.29 Dr Glenn Withers, Universities Australia, provided detail on the arguments put forward by the states and work that has been done to show that introducing concessions would be budget-neutral:

...We understood the state arguments, and, indeed, were frequently provided with their evidence as to what it would cost state taxpayers. That is a reasonable point. What they often tended to forget, though, was that the students themselves are taxpayers—that is, those students are paying GST; their families are paying GST when they visit; when they work they pay income tax, just as domestic students are. So in a sense there is a simple equity. And they are not staying on to take pensions. If they do, they become citizens and they do so as an entitlement. They are paying a lot of money in taxes, so in that sense they are no different from domestic students.

But we also pointed out, as we spoke to our own experts inside the universities, our transport economists, that we thought the state governments actually were not doing their homework properly—that is, their transport advisers were not as proficient as they could and should be, because in economic terms this is probably a budget-neutral concession. If you afford travel concessions to allow a price reduction of 30 per cent, you are likely to get of that same order in increased traffic off-peak. Students would do much more travel to libraries at different times or go and visit friends at times that are not the peak travel times. They already have to travel at peak time and they are doing that anyway. But they would simply add more travel if they had lower prices to pay. So, in fact, the budgets of the transport agencies would not be reduced substantially. We were challenging them to go and have their own transport analysts look at this behavioural analysis—not just a spreadsheet which says, ‘If we gave concessions it would be this amount,’ and we got different amounts and they vary over time. Do the subsequent knock-on analysis as to what the subsequent behaviour of international students would be. Our advice from our professors of transport economics was that it would not be a significant net budget cost to state treasuries. So for the symbolism issue, this was a false economy.²⁵

3.30 The NUS in its submission said:

The financial cost to the community is minimal in comparison to the economic contribution made by international students and it is the least the state governments of these states can do to demonstrate they value international students contribution to the economy but more importantly,

24 Mr Sumit Purdani, *Committee Hansard*, 2 September, 2009, p. 30.

25 Dr Glenn Withers, *Committee Hansard*, 18 September 2009, pp 24–25.

contribute to the social and cultural fabric of the communities and education institutions.²⁶

Committee comment

3.31 The committee acknowledges that this was one of the most common issues raised by witnesses in submissions and at the hearings.

3.32 The committee agrees with the arguments put forward to introduce travel concessions in NSW and Victoria as it believes that this would improve levels of personal safety. The committee notes the work undertaken which shows this reform would be cost-neutral because international students would be encouraged to use public transport more.

3.33 The committee acknowledges that travel concession for international students is a state issue. However, based on the export revenue received by the states, it would be in the state's interest to review their positions with the intent of introducing travel concessions for international students.

Recommendation 2

3.34 The committee supports public transport concessions for international students. It recommends that the Commonwealth again recommend to the states of Victoria and New South Wales that they introduce such travel concessions for international students.

Recommendation 3

3.35 The committee also recommends that all states undertake an audit of the travel concessions given to international students with the aim of standardising them.

Adequate and affordable accommodation

3.36 Evidence was given to the committee that a lack of adequate and affordable accommodation is a major concern of international students. Issues raised included difficulties with the availability, accessibility, cost and location of suitable accommodation as well as with tenancy disputes.

3.37 NUS in its submission referred to the recent housing shortage and the issues this had raised:

The housing shortage experienced in 2008 and the large increase in property prices and therefore rental accommodation availability and access has led to logistical problems for all institutions in meeting housing needs in the residential areas surrounding many education providers. This is most

26 NUS, *Submission 29*, p. 61.

apparent in the larger inner city campuses in Melbourne and Sydney, although smaller cities, Adelaide, Perth and Brisbane have also been affected and have been active in developing initiatives to try to meet housing needs.²⁷

3.38 Evidence was also given that a lack of detailed information regarding the different prices and accommodation options has led to many students experiencing difficulty in securing affordable and appropriate housing.²⁸

3.39 The committee heard that many students were living away from home for the first time and therefore faced the challenges that come with developing independence. Mr Warwick Freeland, IDP Education Pty Ltd, gave evidence to the committee that in one survey they conducted, 76 per cent of Indian students had never lived away from home.²⁹

3.40 Students who are in Australia with their families also find it hard to find suitable accommodation. This is in part due to their specific requirements which reduces the pool of available rental accommodation.³⁰

3.41 The lack of suitable accommodation affects student safety. International students may find it difficult to secure accommodation close to their education institutions, particularly in cases where they are studying in inner city areas. As a result, they may find themselves travelling long distances at irregular hours.

Accessibility and availability

3.42 International students live in various types of accommodation including:

- accommodation affiliated with education providers;
- homestays;
- private rental housing; and
- 'rooming' houses where individual rooms of a house are rented out to students.

3.43 Witnesses gave evidence to the committee that while availability of suitable accommodation in some major cities such as Melbourne or Sydney is a general problem, there are added complexities for overseas students.³¹

27 NUS, *Submission 29*, p. 15.

28 Mrs Sharon Smith, *Committee Hansard*, 1 September 2009, pp 34–35.

29 Mr Warwick Freeland, *Committee Hansard*, 1 September 2009, p. 13.

30 Mr Anwar Shah, *Committee Hansard*, 1 September 2009, p. 5.

31 Mr Warwick Freeland, *Committee Hansard*, 1 September 2009, pp 12–13.

3.44 International students face extra challenges when trying to secure suitable housing because of language problems as well as lack of awareness or understanding of tenancy rights and obligations. Sydney University Postgraduate Representative Association (SUPRA) claimed that international students are disproportionately represented in their case work on accommodation issues. Of SUPRA's total case files relating to accommodation since July 2007, more than 70 per cent were for international students.³²

3.45 Suitable accommodation is essential for the well-being of international students, and dramatically affects their overall study experience. Southern Cross University elaborated upon the difficulties international students faced in relation to accommodation:

The world of real estate agents, lease agreements, house sharing, and securing housing in close proximity to the student's campus create an enormous level of stress to a newly arrived student if not effectively guided.³³

3.46 The NUS gave evidence that under the current system there is no requirement for institutions to ensure that adequate accommodation is available for those they enrol.³⁴ International students who cannot access the mainstream private rental market are turning to accommodation in overcrowded and unsafe houses.

3.47 The President of the Federation of Indian Students of Australia told the committee of instances where single rooms in poor condition were occupied by seven or eight students.³⁵

3.48 The Tenants' Union of Victoria (TUV) reported receiving a growing number of complaints from international students regarding severe overcrowding in rental properties. In one complaint received by the TUV, 48 Nepalese students were living in a six bedroom property; and in another, 12 international students were living in a single room.³⁶

3.49 The submission from the Curtin University Student Guild and the International Students Committee (ISC) said that 'it is not uncommon of [sic] for students to be living in overpriced and overcrowded conditions provided by unscrupulous landlords. The ISC believes that this occurs because the accommodation promised to students before their arrival in Australia is not monitored closely enough'.³⁷

32 Sydney University Postgraduate Representatives Association, *Submission 93*, p. 5.

33 Southern Cross University, *Submission 17*, p. 3.

34 Mrs Sharon Smith, *Committee Hansard*, 1 September 2009, p. 31.

35 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, p. 25.

36 Tenants' Union of Victoria, *Submission 104*, p. 4.

37 Curtin University Student Guild, *Submission 27*, p. 2.

Tenancy rights and disputes

3.50 Mr Nigel Palmer, President, Council of Australian Postgraduate Associations (CAPA), gave evidence to the committee that international students are not necessarily afforded the same tenancy rights as others in the community. Those students who live in accommodation supplied by the education provider, typically on-campus accommodation, were bound by a set of tenancy rights separate from the usual legislation. These students do not have access to the same complaints authority and procedures which apply in the general rental market.³⁸

3.51 The NUS argued that there should be standard legislation that applies to all landlords, including student accommodation providers.³⁹ Mrs Sharon Smith, NUS, gave evidence to the committee that housing providers are protected by out-of-date legislation and that 'students are extremely vulnerable because they do not understand the legislation within the residential tenancy acts in every state'.⁴⁰ According to NUS, in most state government tenancy laws, student accommodation which is affiliated with an education provider is exempt from the Residential Tenancies Act (RTA). NUS argued that as a consequence international students are often exploited by accommodation providers, and are not aware of the finer distinctions that exist in tenancy law.

3.52 According to the Tenants' Union of NSW, 'the current exemption is not well-defined and is open to an interpretation that is too wide'.⁴¹ In their submission, the Tenants' Union of Victoria (TUV) elaborated on the problems posed by this exemption, and commented on the minimal influence education providers have on student accommodation:

The RTA specifically excludes accommodation affiliated with educational institutions. This is despite many universities having little direct role in the management of affiliated housing and the persistence of conditions which would be considered unlawful under the RTA. Further, universities do not guarantee the appropriateness of accommodation nor do they have adequate dispute resolution processes in place to deal with problems when they arise.⁴²

3.53 Differing rental practices mean that international students do not have sufficient knowledge regarding the correct rental application procedures or their basic tenancy rights.⁴³ The TUV indicated the existence of a number of online rental scams.

38 Mr Nigel Palmer, *Committee Hansard*, 1 September 2009, pp 5–6.

39 Mrs Sharon Smith, *Committee Hansard*, 1 September 2009, p. 31.

40 Mrs Sharon Smith, *Committee Hansard*, 1 September 2009, p. 30.

41 Tenants' Union of NSW, *Submission In Response to the NSW Office of Fair Trading, Residential Tenancy Law Reform Report: A New Direction*, September 2007, p. 50.

42 Tenants' Union of Victoria, *Submission 104*, p. 2.

43 Mr Anwar Shah, *Committee Hansard*, 1 September 2009, p. 5.

International students, lured by the promise of cheap inner-city rent, deposit the first month's rent and bond into an international bank account of the owner in order to view the property. A lack of understanding of the rental system, and keenness to secure accommodation has seen some students exploited.⁴⁴

3.54 Another issue for international students is that they have no relevant rental histories. Landlords may be reluctant to enter into rental agreements with such prospective tenants, even when references can be provided.⁴⁵ It is now common for landlords to require references covering the previous two or three months.⁴⁶ There is also a perception that landlords prefer not to rent properties to overseas students.⁴⁷

3.55 It was put to the committee that students can be greatly assisted in their endeavours to find accommodation by their education provider. TAFE Directors Australia told the committee that most TAFE institutions either provide accommodation for their students, or they arrange a homestay. Mr Bruce Mackenzie explained that TAFE organisations place an emphasis on accommodation services for their students, as it is an 'essential part of providing a quality learning environment for students'.⁴⁸ Mr Mackenzie also called for resources from the Education Investment Fund to be made available for student housing, for both local and international students.⁴⁹

Accommodation assistance and support

3.56 The committee heard that some education providers provide inadequate support to students to assist them in finding suitable accommodation.⁵⁰

3.57 Mr Anwar Shah, CAPA, noted that university administrations have no authority to advocate with landlords on behalf of international students. Even in situations where providers can assist, they often fail to provide such support. Mr Shah also gave the example of a university refusing to provide written documentation stating that a particular international student was a scholarship recipient studying at that university, although such documentation may have assisted the student to secure accommodation. Mr Shah pointed out that international students are left to fend for themselves in the accommodation market, despite the extra difficulties that they face:

44 Tenant's Union of Victoria, *Submission 104*, p. 5.

45 Mr Anwar Shah, *Committee Hansard*, 1 September 2009, p. 5.

46 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, p. 28.

47 Mr Robby Singh, *Committee Hansard*, 1 September 2009, p. 52.

48 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 18.

49 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 18.

50 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, p. 24; Ms Wesa Chau and Mr Douglas Tsoi, *Committee Hansard*, 1 September 2009, p. 49.

At the same time the service is like, as soon as an international student arrives here, he is left under free market forces. 'It's your job to find the house, it's your job to do whatever you want, to find a place'.⁵¹

3.58 As an example of the demand for assistance with accommodation, the University of New South Wales (UNSW) has received requests for a temporary accommodation service for newly arrived international students. Before 2008, the university ran an airport pick-up and temporary accommodation service for students at a standard fee of \$50.00, but the service was 'phased out due to fewer students utilising it'.⁵² Requests for this service have been driven by the 'current shortage of readily available, reasonably priced accommodation in Sydney'.⁵³ Reintroduction of the service is currently being considered by the university.

3.59 SUPRA argued that temporary accommodation should be available for all newly arrived international students and called on state and territory governments to implement practices which assist in securing initial temporary accommodation for international students. SUPRA suggested booking blocks of rooms at hostels for three to four weeks. It also suggested that governments could make funds available to education providers so that they could establish a temporary accommodation scheme:

The Federal Government, through both the requirements that apply to CRICOS providers and COAG, could take a more pro-active role in encouraging all State/Territory Governments to implement policies and practices which assist in managing student access to initial temporary accommodation upon arrival.⁵⁴

Committee View

3.60 The committee believes that international students should be provided with more detailed information regarding their accommodation options prior to arriving in Australia. Without adequate knowledge of the rental market and housing options available, international students are likely to continue to experience difficulties.

3.61 Although international students face particular difficulties in finding accommodation, the committee notes the issue of housing shortages is a problem that affects domestic students as well.

3.62 The committee understands that accommodation information is available on the *Study in Australia* website, but believes that information relating to tenancy rights and links to state and territory tenancy unions, should be provided as well so that students are aware of where to turn for advice and with complaints.

51 Mr Anwar Shah, CAPA, *Committee Hansard*, 1 September 2009, p. 5.

52 University of New South Wales, *Submission 30*, p. 10.

53 University of New South Wales, *Submission 30*, p. 10.

54 SUPRA, *Submission 93*, p. 5.

3.63 Regarding providers, the committee understands the varying capacity of providers to offer accommodation for students. Smaller providers may be unable to appoint a housing officer. As a minimum standard, the committee believes that every provider should provide a link on their webpage to information on housing options, tenancy rights and obligations and where to go for assistance from a reputable website such as the *Study in Australia* website. This could be supplemented by more local information as resources permit. Minimum standards for providers are discussed in chapter three.

Recommendation 4

3.64 The committee recommends that education and training providers should be required to provide up to date information on their website regarding accommodation in Australia, including information regarding tenancy rights and responsibilities. This may be via a link to the *Study in Australia* website, however, it may also include more localised information.

Homestays

3.65 The committee heard that homestays are a popular form of accommodation for international students. Many international students have never lived away from home before, making homestays a convenient accommodation option for students which avoids the challenges of navigating the private rental market.

3.66 The committee received evidence from a number of organisations that use or promote homestay networks to their international students. TAFE Directors Australia informed the committee that where TAFE Institutions were unable to house international students, they use a network of local homestays. Ms Virginia Simmons told the committee that TAFE institutions are in regular contact with students and assist them to change homestays if they are not happy.⁵⁵ Ms Christine Bundesen, English Australia told the committee that around 40 or 50 per cent of ELICOS students live in homestay accommodation, as 'part of the learning experience for language is actually using language in a living experience'.⁵⁶

3.67 However, concerns were expressed regarding a lack of regulation of the homestay industry. Dr Felicity Fallon, ISANA, told the committee that there needs to be more regulation of the industry:

We believe there needs to be some sort of regulation of the homestay industry...Those who work on the ground and actually deal with what goes on know that, even with homestays, you spend a lot of time sorting out problems to do with those homestays.⁵⁷

55 Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 18.

56 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 7.

57 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 55.

3.68 The Australian Homestay Network (AHN) is the only national network of homestay supervisors, and is responsible for the largest trained homestay host pool and homestay placements in Australia. The AHN recognised the need for minimum standards to be met by the sector, and suggested a number of measures to guarantee positive outcomes for students. AHN remarked that many homestay hosts are being recruited and provided with students, with no guidelines, supervision, training or support. In such instances, AHN argued that this creates:

...a higher risk of an incident which damages the reputation of Australian education. Cultural exchange is a high priority for students and hosts and direction and support are essential.⁵⁸

3.69 AHN identified two homestay websites that fail to ensure satisfactory quality control. This presents opportunities for unscrupulous hosts to participate and take advantage of the vulnerabilities of international students.⁵⁹ AHN argued that successful homestay programs cannot be conducted through an unsupervised program, and that house inspections and minimum standards are essential. As such, AHN recommended that government introduce legislation to ensure that all homestay managers meet minimum standards in their training, support and operating procedures for hosts and international students.⁶⁰ In order to encourage potential homestay hosts, AHN argued for increased promotion of the tax-free status that is attributed to homestay revenue.⁶¹

3.70 International Education Services commended the work of the AHN, and argued that increased homestay accommodation would be useful to address the general housing shortages being experienced. Mr Christopher Evason told the committee:

IES maintain that further promotion of quality homestay is the only viable solution. Homestay aids social inclusion and the interaction of international students with mainstream Australian society. The industry itself is making valuable improvements in the management of homestay services. IES use an innovative system offered by the Australian Homestay Network...The Darebin Council have also recognised the substantial quality assurance measures provided by the AHN.⁶²

Committee View

3.71 The committee accepts the evidence that homestay accommodation is beneficial to international students, the host family as well as the community at large. The committee supports calls for more homestay arrangements for international

58 Australian Homestay Network, *Submission 32*, p. 5.

59 Australian Homestay Network, *Submission 32*, p. 5.

60 Australian Homestay Network, *Submission 32*, p. 4.

61 Australian Homestay Network, *Submission 32*, pp 7–8.

62 Mr Chris Evason, *Committee Hansard*, 18 September 2009, p. 43.

students as part of the solution to accommodation shortages, although the committee recognises the need to ensure minimum standards are met. The committee commends the Australian Homestay Network for ensuring that it meets the appropriate standards. The introduction of mandated industry standards should involve appropriate industry consultation and a careful assessment of the costs and benefits.⁶³

Employment rights and employee protections

Understanding employment rights and obligations

3.72 International students are able to work while they are studying in Australia. Under the *Migration Regulations 1994*, work is defined as ‘an activity that, in Australia, normally attracts remuneration.’ Student visas include a visa condition (condition 8105) that allows visa holders to work for up to 20 hours per week while their course is in session and for unlimited hours during course breaks.⁶⁴

3.73 All student visa work conditions require that work rights only apply after the commencement of the course of study for which the primary visa holder was granted a visa. The work limitation does not include work that is a registered component of the student's course of study or training for the award to be obtained.⁶⁵

3.74 Under policy, the work limitation does not include volunteer work. Work is considered to be volunteer work if:

- the main purpose is to study in Australia and any voluntary work remains incidental to this;
- the work involved would not otherwise be undertaken by an Australian resident; and
- the work is genuinely voluntary for a non-profit organisation and that no remuneration is received in return for the activities.⁶⁶

3.75 The limitation imposed by the visa conditions relating to work reflect the fact that the purpose of a student visa is to allow entry to Australia in order to study, not to work.⁶⁷

3.76 Evidence was given to the committee that international students generally have a low understanding of the legal basis for employment rights, industrial awards and mechanisms for review.

63 Auzzie Family Homestay Care, *Submission 142*, p. 2.

64 DIAC, *Submission 111*, p. 23.

65 DIAC, *Submission 111*, p. 23.

66 DIAC, *Submission 111*, p. 23.

67 DIAC, *Submission 111*, p.24.

3.77 There was a view expressed that there is a need to build awareness of employment rights and obligations and that this could potentially be a role for education agents and the government could reiterate this advice once the student had arrived.⁶⁸

3.78 Evidence provided to the committee suggested that this lack of knowledge results in students being vulnerable to exploitation by employers. An example given to the committee outlined the case of an international student, paid \$1.26 per hour by a security firm during the Australian Open in 2008, who was awarded nearly \$120 000 in penalties and back pay.⁶⁹

3.79 Following the discovery of underpayments, on 30 July 2009, the Fair Work Ombudsman announced that security companies would be randomly audited to ensure workers were being paid properly. This action follows three other campaigns which also identified underpayments in the following areas:

- \$634 135 for 1707 young people aged between 15 and 24 from the National Young Workers' Campaign completed in January 2009;
- \$1.102 million for over 3863 hospitality staff from the National Hospitality Campaign completed in March 2009; and
- \$786 742 for 1075 workers from a National Food Services Campaign completed in July 2009.⁷⁰

3.80 Mr Amit Menghani, President, Federation of Indian Students of Australia, gave examples to the committee of students being taken advantage of:

The 20-hour work restrictions needs to be looked at again. That rule was made in 1991, if I am correct. Since then, there has been nothing done to evaluate that whole system again. Right now, the problem is that most of the employers are taking advantage of this particular fact and forcing students to work in unhealthy conditions, which means that those students are going through a lot of problems right now. They get traumatised. If they get injured while working, they do not have any insurance, because the employers are forcing them to work beyond 20 hours and after 20 hours they do not have any liability for the students...⁷¹

3.81 Ms Anna Cody, Director, Kingsford Legal Centre, told the committee of her experiences in this area

...One of the key issues with this one is the lack of knowledge, again, about people's rights to be paid a regular wage and to be told how much you

68 Tasmanian Government, *Submission 105*, p. 7.

69 Ben Schneiders, 'Justice secured for underpaid guard', *The Age*, 14 August 2009, p. 3.

70 Fair Work Ombudsman, 'Security industry in spotlight as watchdog launches national campaign', *media release*, 30 July 2009.

71 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, p. 25.

should be paid. There is the system of awards, which students do not have an understanding of...One of the case studies which we referred to in our submission which was of particular concern to us was where a student was required to work as a part of his course in the food industry and was then injured quite substantially by a fairly malicious act by one of his co-workers. Again, there was no understanding of what his rights were in relation to that...⁷²

3.82 The committee acknowledges the evidence given to it that there has been an incorrect perception amongst international students that making a complaint about an employer could adversely affect current and future visa arrangements.

3.83 Dr Felicity Fallon, President ISANA, told the committee of the need to provide students with more information:

In the area of employment we realise that there is material up on a website that students could be directed to, but it is not necessarily in the language that the students would understand and it is not necessarily in the form which would grab their attention. Last year we developed...some animations to sit on our website about the rights and responsibilities of students under the ESOS Act. We would like to see something similar to that developed about employment issues, something that will grab people's attention in a short thing and tell them some of the problems that exist around employment, because they come from very different cultures where they do it differently and so they do not understand our laws well at all.⁷³

3.84 The need to make students more aware of their employment rights was reinforced by Ms Michelle Bissett, ACTU, who told the committee:

We believe that international students need to be provided with more information about their rights as workers so that they are not exploited in the work that they are undertaking, that they are not being exploited by employers, that they be given information about their right to complain about back [bad] work practices and unscrupulous employers and that they be given confidence that, in complaining, they are not going to lose their education student visa. That often is the concern...The reinforcement of their rights and knowledge of their rights are critical in that respect.⁷⁴

Committee view

3.85 The committee notes work underway by the Fair Work Ombudsman to address awareness⁷⁵ and undertake targeted audits in particular areas of concern. An example is the education and compliance campaign started in August 2009 for

72 Ms Anna Cody, *Committee Hansard*, 2 September 2009, pp 13–14.

73 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 55.

74 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 4.

75 See <http://www.fwo.gov.au/Workplace-rights-and-rules/Pages/default.aspx> accessed 4 November 2009.

international students in the NSW Hunter Region. This has included an information session at the University of Newcastle. It aims to educate both employers and employees on their rights and obligations and will include random audits of employers.⁷⁶

3.86 There seems merit in building awareness of employment rights and obligations among the international student community, with this information being provided by education agents prior to departure and reinforced once students arrive.

Working limits

3.87 Student visas include a condition that allows visa holders to work up to 20 hours per week while their courses are in session and for unlimited hours during course breaks. Dependents of student visa holders may also work 20 hours per week and dependents of postgraduate students have no limitation on their work rights.⁷⁷ These facts do not appear to be well understood.

3.88 A number of witnesses raised the issue of the 20-hour limit on students working and opinions varied considerably. Some witnesses argued for a slight increase to extend the hours to 24 to cater for three eight-hour shifts. Mr David Barrow, President, NUS, told the committee:

...The rationale behind 24 was put together by the Australian international students association who basically said that students are here to study and not to work. Full-time study is considered to be four days a week, so you should be able to work the other three. It is difficult finding jobs that fit in with the 20-hour frame, so 24 hours means that you can work three 8-hour shifts, for example. That would mean that a lot of those students would not be in the situation where they have their visas cancelled. I believe that 15 per cent of the cases brought before the Migration Review Tribunal, the MRT, are student cases. There are an awful lot of students in this position. The other thing that you can look at is making it more flexible in terms of when those 20 hours are per week.⁷⁸

3.89 Some witnesses countered that the eight-hour working day is outdated.⁷⁹ Witnesses had trouble nominating an alternative limit. Mr Angelo Gavrielatos of the Australian Education Union (AEU) told the committee that it is not about whether it is 20 hours or 28 hours; it is about what an employee's take-home pay is.⁸⁰ Mr Gavrielatos also told the committee about high school studies which show a tipping

76 See <http://www.fwo.gov.au/Audits-and-campaigns/Pages/Current-and-upcoming-campaigns.aspx> accessed 4 November 2009.

77 DIAC, *Submission 111*, p. 23.

78 Mr David Barrow, *Committee Hansard*, 1 September 2009, p. 33.

79 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 68.

80 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 69.

point where work affects their education and well-being. He added that it is not simply about the number of hours worked; it is also about when those hours are worked:

If you are working between midnight and 8 am, it has a different impact on your quality of life. So it is not as simple as whether it is 20 hours or 28 hours. There is a whole range of factors at play.⁸¹

3.90 Some witnesses argued that the limit should be lifted completely and that academic progress of the student should be the guide to whether the number of hours being worked is excessive. Ms Ekaterina Pechenkina, CAPA, told the committee:

According to our statistics, a lot of students work over the limits. It is unfortunate that they do that, but how do we monitor that and who has the responsibility to monitor it? Our perspective is that as long as the international students who come to this country study, fulfil all their student requirements, perform well academically, and do not fail their courses that is all that should concern us. If they choose to work and they work an extra 20 hours but they still perform as a student, I do not see the problem there. By imposing limits on work hours we only create extra tension and give employers unnecessary power over students.

What we propose is to lift limitations, not to have any limitations on work hours. If a student is a responsible adult who comes here to study, they have to study. If they do not, if they choose to work and they abandon their studies, it is the responsibility of an education provided to monitor their academic performance and, if the student does not fulfil those requirements, they lose their student visa and should be reported by the provider. What CAPA proposes is not to have the limitation on work hours, to allow students to work as much as they want to, knowing that they will be reported if they do not fulfil their academic duties.⁸²

3.91 Ms Anna Cody, Director, Kingsford Legal Centre, agreed with lifting the restrictions and leaving academic progress as the monitoring mechanism:

I do not see any benefit in lifting it to 24 hours. That assumes that people are working a regular eight-hour shift, and I do not think that is the case. Certainly they would be working longer shifts. Flexible work hours are what we all hear about, and that is what is expected of the students as much as anyone else. So I do not see how that would in any way benefit the students, and also it would just mean that employers would be conscious of the 24-hour limit rather than the 20-hour limit. I think it is more that the environment that is created by having any limitation means that the employers can then use that to threaten the student's ability to maintain their visa and comply with its conditions, so it becomes a bargaining power tool that they can use against a student. I think having that limit and removing it—I am not sure that it would necessarily be taken up by a huge

81 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 69.

82 Ms Ekaterina Pechenkina, *Committee Hansard*, 1 September 2009, p. 4.

number of students, but I think it would ease some of the grounds for abuse that exist currently in the system.⁸³

3.92 However, Mrs Sharon Smith, NUS, noted the possible effect on academic progress and the difficulty of monitoring this:

It is really about the debate on what the impact of working a lot of hours will have on a student's ability to achieve academically. I am not absolutely certain but I think that there was a limit put on the amount in the first place because of that, so it is really based on education outcomes. However, if you left it up to the education provider to monitor the academic progress and a student could work as many hours as they liked, I think that you would need to be very clear that the education provider was actually monitoring the academic progress. From what I know of how much education providers are being monitored on what they actually do, that may be a little problematic.⁸⁴

3.93 Mrs Smith also noted the need for flexibility with working hours:

We also need to take into consideration what students actually need to live on. Flexibility is the key point to it. If it was 20 hours, 30 hours or unlimited hours, there needs to be flexibility in how a student can work, realising that there are times in the academic year that are very quiet and students could work 35 hours and only attend three lectures whereas at other times of the year they just cannot because they have to be at university, TAFE or college the whole time. The VET and secondary sector students have set attendance requirements so you would not even need to put a limit on it because they just could not work those hours anyway. I have not really thought about taking the limitation way. I know that other organisations have.⁸⁵

3.94 On this issue, the committee notes the ability for students to work unlimited hours during course breaks.

3.95 Ms Bissett, ACTU, told the committee of her concerns in lifting the 20-hour limit:

...it is not an easy problem to solve because primarily the students are here to study and we need to be careful that we do not inadvertently open up another work migration program, a temporary migration program that is associated with work. Our concern would be that if you limited [lifted] the 20-hour limit and did not have a limit on the number of hours that could be worked, what we will find is another pathway for temporary migration where those people are actually working and not doing what it is they are here for, which is studying. Having worked to try to overcome the problems of exploitation in the 457 visa system, we would be very nervous about

83 Ms Anna Cody, *Committee Hansard*, 2 September 2009, pp 14–15.

84 Mrs Sharon Smith, *Committee Hansard*, 18 September 2009, p. 33.

85 Mrs Sharon Smith, *Committee Hansard*, 18 September 2009, p. 33.

opening up another pathway that would enable exploitation. There is a question about whether you lift the hours that an international student can work from 20 to 24 hours, for example. I think that was proposed by the National Union of Students. Twenty or 24 hours, I do not know where you draw the line, except that the line has to be drawn somewhere.⁸⁶

3.96 Ms Bissett further stated:

We would not support no cap on the hours. As I said before, whether it is 20, 24 or 25 hours, it is an argument over a couple of hours. The issue is balancing their study with work. We recognise that many students need to work to support themselves. The issue with work always is ensuring that they are completing the study requirements for the training. We note it is an obligation of the training providers to monitor students to ensure that they can complete. I do not know that there is any argument for lifting it to 24 hours. But are we going to quibble over whether it is 20 or 22 hours? No. What we do say is you have to balance the study requirements and you have to recognise that the purpose of being here is study and not to work. We also need to be careful that they are not seen as fodder for bad jobs.⁸⁷

3.97 Mr Paul Kniest, NTEU, also expressed concerns about lifting the number of hours able to be worked:

We need to be conscious of the fact that the students are here on a student visa and not a working visa, therefore it may in fact be appropriate that some limit on the number of hours that students are allowed to work is imposed upon them. In a sense that does apply to domestic students anyway, particularly those domestic students who might be in receipt of some form of student income support, as there is a limit to how much they can earn. I do not think we have given a great deal of thought about whether it should be 20 hour[s] or 24 hours...⁸⁸

3.98 DIAC told the committee that the primary purpose for international students is study and that the working hours are already among the most generous when compared to other countries and are very flexible:

The department's position on this matter is that the primary purpose of an international student in Australia is to study, not to work. As such, a visa condition which provides limited work rights to student visa holders is appropriate. In terms of where that limit should be set and whether that limit has any impact on welfare issues, I would note that at 20 hours per week—and longer during vacation periods—Australia is already among the most generous of the major destination countries for international students...⁸⁹

86 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 4.

87 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 7.

88 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 7.

89 Mr Peter Vardos, *Committee Hansard*, 18 September 2009, 18, p. 70.

3.99 DIAC emphasised that an increase in the work component allowed on a student visa would make it more likely that an individual whose main intention is to work will apply for a student visa, and in doing so, circumvent the assessment for an appropriate work visa.⁹⁰

Committee view

3.100 The committee accepts the evidence presented by DIAC that the primary purpose of students is for them to study and that extending the number of hours would negate this purpose and may inadvertently open up another work migration program. However, it notes the arguments for a slight increase to assist with shift work. The committee notes that the \$12 000 amount recommended for living expenses has recently been reviewed and will be raised to \$18 000 (discussed below) and the committee believes a review of the 20-hour limit is also appropriate.

Recommendation 5

3.101 The committee recommends that DIAC undertake a review of the appropriateness of the 20-hour limit on working hours for international students.

Voluntary work

3.102 Witnesses appeared confused over whether voluntary work is included in the 20-hour total. Mr Neraj Shokeen, Federation of Indian Students of Australia, told the committee that voluntary work should not be part of the 20 hours' work.⁹¹

3.103 At the hearing, DIAC provided clear advice that voluntary work was not counted⁹² (with certain exceptions) and this advice is available on their website.⁹³ However, the committee notes that a booklet produced by DEEWR, being handed out as recently as October 2009, says that voluntary work is counted. The committee notes that this booklet may be the primary source of information for many providers and that it must be clarified as soon as possible.

Recommendation 6

3.104 The committee recommends that the issue of voluntary work not counting towards employment hours be clarified in material provided by DEEWR.

90 DIAC, *Submission 111*, p. 25.

91 Mr Neraj Shokeen, *Committee Hansard*, 2 September 2009, p. 31.

92 Ms Christine McPaul, *Committee Hansard*, 18 September 2009, pp 87–88. See p. 16 of this chapter.

93 DIAC, *Submission 111*, p. 23.

Penalties

3.105 DIAC advised that, under the *Migration Act 1958*, it is a general principle that if a person fails to comply with a condition of their visa, it is liable for cancellation. The student visa program contains provisions that allow for both automatic and mandatory cancellations. The mandatory and automatic cancellation powers apply to breaches of the condition that relates to study. Mandatory cancellation also applies to breaches of work conditions. For these breaches, delegates have no discretion to take exceptional, compassionate or compelling circumstances into account. However, DIAC noted that in all cases the student is entitled to seek MRT review of that decision and judicial review of the MRT decision may also be open to the student.⁹⁴

3.106 Witnesses raised what they saw as the extreme penalty of visa cancellation if students breached employment conditions by working more than 20 hours, describing this as highly inflexible and inappropriate. There is no discretion to take action other than cancelling the visa. This was compared with students who hold visas that do not allow work rights. When students breach these visas by working, discretion may be exercised and students given the opportunity to explain any exceptional circumstances. Mr Andrew Bartlett explained to the committee:

One of the real problems with the immigration side of how student visas are administered is that there is not a lot of flexibility when people start going down the wrong path. If they have worked too many hours, there is almost no discretion—that is automatic cancellation. If they are having trouble with their course, they have a little more flexibility for raising special considerations, but it is still pretty hard, and most students that end up running into visa trouble do not get out of it. When you look at the extent of the penalty they wear, if you have a visa cancelled, it is not just like getting a parking ticket: you are tens of thousands of dollars down the drain and often in a lot of trouble when you get back home as well. To some extent it goes to that, I guess: people having access to support straight away that can assist them through that. What form it takes, I do not especially have a strong opinion. The main thing is the principle. I have noticed in a number of the different submissions that I have scanned through people have raised things like a student ombudsman or things like that. Something along those lines: someone who is independent that people can go to for support, assistance and basic information to help deal with issues that might arise.⁹⁵

3.107 Mr Paul Kniest, NTEU, also supported increased flexibility in this area.

We need to be conscious of the fact that the students are here on a student visa and not a working visa, therefore it may in fact be appropriate that some limit on the number of hours that students are allowed to work is imposed upon them...[but]...[i]t is apparent from discussions earlier today that we would support any idea that a simple breach of the working hours

94 DIAC, *Submission 111*, pp 19–20.

95 Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, p. 12.

leading to a cancellation of a visa almost automatically is highly problematic, which needs some flexibility, and students need to be given some too...[being deported for a breach of one hour] is highly inflexible and inappropriate, and students should be given a chance. I suspect some students have had this explained to them, but probably would not fully understand the implications of working that extra hour when the boss has said that they really need them to do a bit extra.⁹⁶

3.108 Mr Bartlett made the following suggestion regarding more discretion in dealing with breaches of employment conditions.

The other thing is for there to be a little bit more discretion or maybe even a two-warning type system or something so that the consequence—if you do breach that visa condition, the punishment is really quite extreme. If you look at the overall consequences across the board—they lose all the money they have put in their education to date, they have a black mark on their visa for being cancelled, they have all of the problems that might apply with having borrowed money back home et cetera—to some extent that is their obligation and responsibility, but it is still far too large a consequence or cost to them if that breach has no discretion at all, and that is even without issues like people ending up in detention. That does not happen as much as it did, but it still does, and obviously that also has longer and broader problems.⁹⁷

Committee view

3.109 The committee notes that departmental delegates have no discretion to take into consideration exceptional, compassionate or compelling circumstances for international students who breach, sometimes inadvertently, the work rights of their visas. The committee further notes that departmental officials can exercise discretion for students with no work rights attached to their visas.

3.110 Although the committee acknowledges that it did not receive a great deal of evidence on this issue, in order to assess any unintended consequences of changing the current arrangements, the committee believes that DIAC should undertake a review of this difference to see if it is appropriate for the discretion to be available for those who breach their employment conditions.

Recommendation 7

3.111 The committee recommends that DIAC undertake a review of the ability to use discretion or a compassionate exemption for students with work rights who breach their visa conditions in relation to work.

96 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, pp 35–36.

97 Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, p. 16.

Living expenses

3.112 Witnesses raised the issue of the \$12 000 figure for living expenses which was described as outdated and not reflective of the real costs associated with living and studying.⁹⁸ DIAC gave evidence that work is currently underway on this issue:

I think it would be fair to say that the amount of \$12,000, which is the current figure, has not been reviewed for some time. Some work is being done on that. I would like to point out that the figure of \$12,000 is not a stand-alone figure. That is the minimum amount. There are add-ons beyond that which students have to satisfy they have covered—tuition fees et cetera. I can confirm your understanding: the last review of the figure of \$12,000 was in 2001.⁹⁹

3.113 The committee notes the government's announcement on 9 November 2009 of a \$6000 increase in the minimum funds required by international students to cover their living costs. Commencing 1 January 2010, international students must provide proof of access to \$18 000 per year.¹⁰⁰

Social inclusion

3.114 Most international students wish to study in an English-speaking country, not only to gain a quality education but to learn the language, which is the lingua franca of the business world. The cultural and social opportunities offered by an education in English are extremely valuable. There are many benefits to be gained from international education for the students themselves as well as society in general. The Minister has acknowledged:

International students enrich our society. They help to provide a diverse and rich education experience for Australians...People coming to Australia to study...promote cross-cultural experiences that benefit us both now and in the future, building understanding that underpins tolerance and stability here and abroad.¹⁰¹

3.115 The committee heard evidence regarding the varying degrees of opportunity experienced by foreign students in integrating themselves into the community. Mr

98 Ms Sharon Smith, NUS, *Committee Hansard*, 1 September 2009, p. 31; Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 48; Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 55; Professor Paul Rodan, *Submission 14*, p. 2; Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, p. 11; Dr Glenn Withers, *Committee Hansard*, 18 September 2009, p. 30.

99 Mr Peter Vardos, *Committee Hansard*, 18 September 2009, p. 74.

100 Senator Chris Evans, 'New Visa Measures to Assist International Students', *Media Release*, 9 November 2009.

101 Hon Julia Gillard, Minister for Education, 'International Education', *House of Representatives Hansard*, Ministerial Statements, 26 May 2009.

Peter Vardos, DIAC, told the committee that '[s]ome providers do it brilliantly and some providers do not do it at all, and there is a range in between.'¹⁰²

3.116 The committee heard evidence that some private institutions fail to facilitate integration and this can contribute to misunderstandings and lack of knowledge about Australian society.¹⁰³ There are anecdotal reports of students' English language skills declining as a result of their learning immersion in a totally non-English-speaking background (NESB) environment. This occurs when all or nearly all students in a cohort are international students.

3.117 The committee also heard evidence of the care taken by institutions to integrate students into the local community. Ms Dianne Murray, Institute Director, TAFE NSW Illawarra Institute, told the committee:

The other thing that is a focus for us when we are working with our international students is that, as a regional institute, we think it is an opportunity for them to participate in and get a much broader experience of Australian life. We have a fairly significant investment in working in our community to welcome students into the community. The Wollongong area, in conjunction with its local council, has a welcome-to-Wollongong function each year, where both TAFE and the university participate to welcome students into the community, link them up with organisations and link them up with support services in the community so that their experience of education in Australia is more than just their on-campus experience. We think that this is good for students, including our domestic students because of their engagement in supporting the general lifestyle of our international students. It ensures students' diversity of experience, so that when they return to their country of origin and utilise their qualification they have a positive view of living in Australia as well as studying in Australia.¹⁰⁴

3.118 The committee heard evidence that most universities have a comprehensive orientation program. Included in the evidence was information about a number of initiatives to integrate students into the local communities. The City of Darebin, Victoria has the 'Fair Go for International Students' program underway. It was developed in consultation with international students and has as one of its aims to ensure students are included as part of the wider community.¹⁰⁵

3.119 The committee notes other initiatives underway such as the 'Guide to Melbourne' for international students, developed by the City of Melbourne.¹⁰⁶ A

102 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 59.

103 Mr Neeraj Shokeen, *Committee Hansard*, 2 September 2009, p. 33.

104 Ms Dianne Murraray, *Committee Hansard*, 18 September 2009, p. 56.

105 City of Darebin and Darebin Overseas Student Advisory Council, *Submission 66*, pp 4–5. See also Councillor Tim Laurence, *Submission 48*, p. 2.

106 <http://www.melbourne.vic.gov.au/info.cfm?pg=2293&top=43> accessed 4 November 2009.

program in this area won an excellence award. A four-year project by the Melbourne School of Land and Environment with the City of Melbourne looked at the feelings of isolation reported by students living in central Melbourne. The project examined issues such as housing, the provision of public spaces and how the policies and practices in the administration of students at universities affect their sense of well-being and participation in society.¹⁰⁷ The committee also notes the 2009 International Education Awards for Excellence, won by the City of Melbourne for its welcome to international students, and that this is complemented by the orientation activities run by other institutions.¹⁰⁸

Provision of information

...[T]he information available to international students to make informed choices is a key aspect of setting up a positive experience that meets both students' and families' expectations.¹⁰⁹

3.120 The committee notes that ensuring that international students have access to comprehensive and reliable information allows students to form realistic expectations of their learning experiences and life in Australia. It also assists families to appropriately budget for the cost of sending students overseas.

3.121 Provision of information at all stages of the study experience is therefore one method of addressing any existing lack of information in the system. A representative of the Australian Council for Private Education and Training (ACPET), Mr Andrew Smith, recommended working towards more informed potential consumers who are able to make informed choices regarding study options as well as life experiences while in Australia.¹¹⁰

3.122 Mr Smith stressed to the committee that many international students have very positive experiences while studying in Australia but that instances of poor practice needed to be addressed.¹¹¹

3.123 There was also evidence presented to the committee which indicated that some students will continue to hold somewhat misguided perceptions, despite many attempts to provide accurate information and assistance. Ms Desma Smith, ISANA International Education Association, stated in her evidence:

[t]here is also sometimes a desire on the part of the students to accept what looks like a rosier picture rather than the reality. As an international student

107 <http://newsroom.melbourne.edu/news/n-144> accessed 4 November 2009.

108 http://www.ieaa.org.au/Downloads/B3929A2E-3CBB-4850-B078-F0D296681030-Winners_Awards_Best_Practice.pdf accessed 4 November 2009.

109 Hon Bruce Baird, *Review of the Education Services for Overseas Students (ESOS) Act 2000 – Issues paper*, DEEWR, September 2009, p. 8.

110 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 39.

111 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 39.

adviser I would send students an electronic booklet that had accommodation in Melbourne and it would go from hostels through to top of the range accommodation with estimated prices. It was like a spreadsheet. It had whether food was provided, whether you pay your own utilities and all of those sorts of things. The students would still write back and say: 'Thank you, madam. Can you please find me somewhere for \$70 a week? That is the belief they come with. I dealt with a student just this morning who has failed units and has been excluded from his course. As he told me—and we spoke for a long time—this was because he came here last year with enough money for his first semester and thought he would get a job so that he would not have an ongoing problem. He got a job in January and lost it after a month. His friends were paying his bills for him, he was not concentrating on his studies and he failed all his units. He now has a job and wants to continue in the course, but he has already gone through all of these internal processes where they have said, 'I am sorry; you have not given us anything to show us that you have something in place to move on'. But he had literally come knowing that he could support himself for his first semester and thinking he would then get a job and be able to support himself for the rest of the three-year course.¹¹²

Availability and accuracy of information

3.124 The committee heard evidence regarding the need for accuracy in the information available to students. A Research Fellow with the Migration Law Program at the Australian National University stated that access to 'independent information' is essential to avoid situations where providers simply 'emphasise the positives and not necessarily emphasise some of the difficulties'.¹¹³ Similarly, the committee heard from a representative of the ACTU that, although there should be some responsibility upon education providers and agents to provide information, the government must also play a role to ensure that students receive this information and to ensure its reliability.¹¹⁴

3.125 Witnesses in Melbourne gave evidence to the committee that it is important to provide information not only to students but also to their families because, in many cases, decisions regarding study in foreign countries are made or supported by the parents of the student.¹¹⁵ Similarly, representatives of the New South Wales Department of Education and Training pointed to the need for relevant information to be available in other languages.¹¹⁶

112 Ms Desma Smith, *Committee Hansard*, 1 September 2009, p. 60.

113 Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, pp 10–11.

114 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 5.

115 Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 50.

116 Mr David Riordan, *Committee Hansard*, 18 September 2009, p. 64.

3.126 The committee heard evidence that some of the information being provided to international students is misleading or inaccurate. The committee heard from the International Student Legal Advice Clinic that even the names of many of the private VET colleges were potentially misleading because they suggested that such colleges were national institutions 'in some way connected with the State or Federal government'.¹¹⁷ Misleading information may come from the providers themselves or the agents. The NUS stated that students often felt lied to by education and migration agents. The President of NUS stated that:

[a]s an on-the-ground observation about students, they often say things like, 'Everything you hear in India is a complete lie.' They say, 'It is all lies; when we got here, it was completely different to what we were told. We had the wool pulled over our eyes.' That has come up again and again.¹¹⁸

3.127 Representatives of the Australian Federation of Indian Students spoke about an example of misleading information supplied by an agent. Before arriving in Australia, one student expected to be able to rent on his own or with one friend based upon information provided by the education agent. However, once in the country, the student was forced to share with about five other people. The Honorary President of the Federation noted that 'information provision before students come' is of prime importance and that much of the information that is provided 'is misleading and is not representative of actual living in Australia'.¹¹⁹

3.128 The NUS gave evidence of 'glossy brochure syndrome' noting that some international students, prior to arriving in Australia, received pamphlets that inaccurately represented campus facilities as well as the typical experiences that students are likely to have. A representative stated that:

[m]any students have received a glossy brochure, when they have been overseas, and they have seen a lovely campus and thought that that was what they were coming to. Then they have arrived and apparently there was not a fountain in the middle of the yard...students have been advised to do particular courses or they want to do particular courses and then the education provider has said, 'No, you are now going to do this course.' So they are in a course totally irrelevant to their previous training...students are often not told how easy it will be for them to gain employment. I ran a booth, in my other role of employment, out at Melbourne airport in February and again in July this year greeting international students. I was amazed at how many students came up to me and asked me to help them find a job. They had just arrived. It was pretty astounding. So I guess that type of thing is also of concern—what they hear overseas or what they are told.¹²⁰

117 International Student Legal Advice Clinic, *Submission 76*, p. 13.

118 Mr David Barrow, *Committee Hansard*, 1 September 2009, p. 34.

119 Ms Wesa Chau and Mr Douglas Tsoi, *Committee Hansard*, 1 September 2009, p. 52.

120 Ms Sharon Smith, *Committee Hansard*, 1 September 2009, p. 33.

Wide range of information needs

3.129 The NUS noted in evidence to the committee that, while most universities provide some type of accommodation information service, many offer only a limited range of information, often listing only on-campus housing and a small number of other providers.¹²¹

3.130 Evidence given to the committee by the Director of a legal centre suggested that international students also require comprehensive information to overcome misunderstandings or miscommunications. The committee was informed that many overseas students are caught travelling on public transport without full-fare tickets or concession cards. This is often a misunderstanding by the students who assume that they are eligible to travel under the same conditions as other students.¹²² In the Director's opinion, the availability of comprehensive and accurate information as well as adequate support services would help to alleviate such misunderstandings.

3.131 Evidence to the committee regarding information required by international students comprised a wide range of topics. These include course-related and academic information (e.g. extra fees and costs, study loads, assessment practices); campus facilities and services and details about the education provider; cultural information; accommodation and tenancy rights; living expenses (accommodation, food, clothing, health, entertainment and transport); transport (availability, timetabling, concessions available); personal safety (at night, while on campus or travelling on public transport and in other locations such as particular suburbs) and general safety issues (such as fire safety and beach safety); and employment rights and availability of employment.¹²³ A representative of English Australia gave evidence that:

[s]tudents coming through that network of non-receipt of adequate information are the students who experience significant difficulties. Information is power, and power is important to the students. Before they come here they need information about their education institution, about their course and their program, but they also need information about the cost of living in Australia. What will be their financial requirements in Australia? Not just for their study and their tuition, but also for their living costs. There needs to be a more cohesive, nationally co-ordinated approach to provision of that information, and about their safety as well. Australia is a relatively safe country, but over the past few decades, Australia has, like a number of other countries, changed slightly, and it is very important that we ensure that students have the appropriate type of information about the way in which they should live, the way in which they should behave to protect

121 Mrs Sharon Smith, *Committee Hansard*, 1 September, p. 35.

122 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 15.

123 See, for instance, IEAA, *Submission 18*, p. 6; Group of Eight, *Submission 38*, pp 6–9; Chinese Community Council of Australia, *Submission 34*, p. 4; CAPA, *Submission 53*, pp 25–26; Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 60; Mr Douglas Tsoi, *Committee Hansard*, 1 September 2009, p. 51.

their own safety in Australia, the same way that domestic students would have that innate knowledge as to how they should be protecting themselves. There is a variety of information services, and instead of being piecemeal – through an agent, through state network offices, through national network offices, and then the providers themselves – a more holistic and nationally strategic approach to information would be suitable.¹²⁴

3.132 The NUS submitted that the main topic upon which international students required information following their arrival was accommodation. Yet, the Union confirmed that some providers, typically VET providers not universities, offered little information and support to students in securing accommodation. Further, NUS pointed out that many international students were unaware of their tenancy rights and were therefore 'extremely vulnerable'.¹²⁵

3.133 Redrafting tenancy rights in plain English was suggested as one method of supporting international students. Ms Christine Bundesen of English Australia submitted in evidence to the committee:

I remember that the Queensland rental tenancy authority took the rental tenancy documentation in the act and we worked with them to make it into plain English so that the international students could understand it. That is a small initiative in Queensland; I do not know about the other states. That is what I am saying about national strategies. Students have rights and they also have responsibilities when they are renting, and I think all of those things, collectively, need to be looked at in a national strategy.¹²⁶

3.134 Ms Anna Cody, Director of Kingsford Legal Centre, gave evidence about key information regarding accommodation and tenancy rights required by international students. She stated that:

...some of the key issues that we are dealing with through our advice sessions with international students are housing; the poor quality of housing; the lack of knowledge of international students of their rights in relation to housing; abuse by landlords in relation to their status, where they are treated as boarders and lodgers rather than being treated as tenants; rent increases; overcrowding in housing; repairs not being done; and no general provision of information around people's rights.¹²⁷

3.135 This evidence appears to indicate that students also need information regarding dispute resolution processes and need to be informed of appropriate organisations which can offer assistance. Witnesses suggested to the committee that students should be informed of their (state-specific) rights, through 'neutral sources and material'; students should also be aware of organisations such as legal aid

124 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 4.

125 Mrs Sharon Smith, *Committee Hansard*, 1 September 2009, pp 31, 35.

126 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 8.

127 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 13.

commissions which are available in each state to offer assistance when difficulties arise.¹²⁸

In what form should information be provided?

3.136 Following on this theme of evidence, the representative of the legal centre acknowledged that such information, regarding rights conferred by law and support organisations such as legal aid commissions, should be delivered in hard copy, in addition to being available electronically.¹²⁹ The Federation of Indian Students of Australia submitted that not all aspiring students have adequate access to computers and the internet to gather all the necessary information from websites. This organisation concluded that:

[a] single document (in electronic and hard copy format), with relevant links and standardized information should be provided by the Australian government...¹³⁰

3.137 Further evidence was presented by a representative of the Federation of Indian Students of Australia that international students, when making enquiries, are usually directed to websites. Although the websites may contain the required information, this can be difficult to locate or understand, especially for students new to the language. Furthermore, the representative pointed out that, while websites and databases are not the only available options, students are not usually directed to manned support services, even when those services are available.¹³¹

3.138 Mr Warwick Freeland, IDP Education, gave evidence that his organisation preferred to deal 'one-on-one' with students because it was a more effective way of communicating and ensured that the information delivered was individually suited:

...our primary focus is actually to get the students to come and talk to us, because there is only so much you can get from websites.¹³²

When should information be provided?

3.139 The committee also heard evidence that information can be most effectively provided at particular stages of the education experience. Representatives of Kingsford Legal Centre recommended in their evidence that the point at which the government delivers visas to students is a valuable opportunity to distribute reliable and standardised information but information from providers should be available prior to this point.¹³³ CAPA concurred, with its evidence stating:

128 Ms Anna Cody, *Committee Hansard*, 2 September 2009, pp 15–16.

129 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 16.

130 Federation of Indian Students of Australia, *Submission 69, Attachment 1*, p. 9.

131 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, pp 24–25.

132 Mr Warwick Freeland, *Committee Hansard*, 1 September 2009, p. 14.

133 Ms Anna Cody and Ms Nadia Miranti, *Committee Hansard*, 2 September 2009, p. 16, 20.

[t]he international student experience with a higher education provider does not begin on arrival at an onshore university campus. It begins with the information available to the student 'pre-departure' while still in the home country.¹³⁴

3.140 Witnesses also gave evidence of different orientation programs offered by providers and the different opportunities that these presented to provide relevant information. The President of the La Trobe University Postgraduate Association noted in her evidence that its orientation program for international students comprised a pre-departure information package and orientation week on campus. Pre-departure information included tips on how to pack and the things to which students should pay attention. During orientation week, students can gain information on issues such as safety and public transport.¹³⁵

3.141 The Australian Federation of International Students submitted that pre-departure information should include general information about life in Australia and will often be of more interest to parents than students. Information requirements following arrival in Australia are broken into two stages – early and late. Early arrival information concerned enrolment, environment familiarisation and securing accommodation. Late arrival information applied to the period after students have settled in and related to issues such as finding employment and engaging with the community.¹³⁶

Committee view

3.142 The committee notes the calls for more reliable and standardised information being provided to international students and their families at all stages of the education process. Further, the committee notes the improvements in the information regarding 'education and living conditions in this country' being provided to students offshore by education agents.¹³⁷

3.143 The committee is also aware of the recent announcement that the government, along with state and territory governments, will develop 'an up-to-date online manual', providing international students with accurate and comprehensive information on studying and living in Australia. This is in addition to information already provided through other sources such as the *Study in Australia* website.¹³⁸ However, the evidence given to the committee over the course of the inquiry suggested that the same

134 CAPA, *Submission 53*, p. 26.

135 Ms Dongping Huang, *Committee Hansard*, 1 September 2009, pp 6-7.

136 Australian Federation of International Students, *Submission 24*, pp 3-11.

137 Hon Julia Gillard MP, Transcript of ABC Radio National *730am* interview with Fran Kelly, 29 July 2009.

138 Hon Julia Gillard MP, Minister for Education, 'Address to the International Education Conference', 15 October 2009.

information should be provided both in hard copy as well as in several major foreign languages as soon as possible.

3.144 The committee also heard evidence regarding an information resource which was developed by ISANA International Education Association Inc., under a project funded by DEEWR. An ISANA representative described the Rainbow Guide as 'a template for pre-departure orientation' for international students.¹³⁹ It is available for use by education providers as 'a suggested best-practice template'.¹⁴⁰

Recommendation 8

3.145 The committee recommends that:

- **students receive information packs, based upon resources such as the *Study in Australia* website and the Rainbow Guide, in hard copy and preferably in the language of the country of departure at the time their visas are granted. The information packs should include comprehensive information regarding tuition and extra fees; living costs including all relevant expenses such as accommodation and health; employment opportunities; rights conferred by law (including tenancy rights and employment rights); dispute resolution procedures and relevant contact organisations; and support services and amenities.**
- **both the online manual and hard copies should include state-specific information, detailing the various rules, laws and rights applicable in each state and territory.**

Dealing with complaints

3.146 The committee welcomes the international student hotline established in September 2009¹⁴¹ to help students with problems, and to record trends in the nature of complaints. However, the committee has received no evidence as to how long this initiative will last and notes that, without proper and sustained resourcing, students may be left without this potentially important service.

139 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 54. See also ISANA International Education Association Inc., *Orientation and Pre-Arrival Handbook - The rainbow guide*, available at http://www.isana.org.au/index.php?option=com_content&task=view&id=246.

140 ISANA International Education Association Inc., *International Student Handbook – Template*, p. 3. Available at http://www.isana.org.au/files/cppfiles2/Full_template_document%20FINAL.pdf.

141 <http://studyinaustralia.gov.au/Sia/en/pastoralcare/StudentHotline.htm> accessed 6 November 2009. See also Hon. Julia Gillard, Minister for Education, Opening of International Student Roundtable at the Senate Alcove, Parliament House, 14 September 2009.

3.147 The Australian Immigration Law Services submitted that 'students had no where [sic] to go for anyone to listen to their concerns'.¹⁴² Ms Sharon Smith from NUS described an incident where the students approached NUS for assistance with their complaints as a last resort:

...going back to that case quite a number of years ago, the students were reported because they wanted to change education providers. They had done their first 12 months, so legally, according to their student visas, they were allowed to change courses and change institutions. The education provider did not want them to and wanted to charge them money to give them their academic transcripts and told them they had to pay another semester's fees because it was too late for them to withdraw. It was really ridiculous. Under normal circumstances they should have just been given their academic records and been able to change providers, but they were not. That is when they came to NUS, because before they even got their academic transcripts this education provider gave them their section 20, which is notice to say, 'You are going to be deported in 28 days if you do not go to Immigration.' They reported them to Immigration before they gave them their academic transcripts. So the students came to me and it turned out that the education provider had falsified their attendance records and academic transcripts and given that false documentation to the immigration department. I went to the immigration department with them and we managed to get their student visas back. That was horrendous. And the education provider was not penalised.¹⁴³

3.148 Witnesses spoke at the public hearings about the need for a 'one stop shop' for students. This suggestion was supported by the Federation of Indian Students of Australia¹⁴⁴, the Australian Federation of International Students¹⁴⁵ and the NTEU.¹⁴⁶ Mr Amit Menghani, President, Federation of Indian Students of Australia, spoke about the need for such a contact point for students:

I am talking about Indian students out here. Most of the Indian students think that the system that is in place is not able to help them out in certain matters. It might be because of the social or cultural boundaries. What we need to do in terms of helping them out would be to come up with a one-stop shop, somewhere that they can go to knowing that once they enter that shop their questions will be answered. We need to make sure that the system that is in place, the environment, is culturally friendly so that they can go there, approach people and come away with their questions having been answered. ...It can be a one-stop shop for all the international students out here, so that at least they know that once they enter the shop their questions will be answered or the shop can at least advice them of the right

142 The Australian Immigration Law Services, *Submission 9*, p. 1.

143 Ms Sharon Smith, *Committee Hansard*, 1 September 2009, pp 36–37.

144 Mr Sumit Purdani, *Committee Hansard*, 2 September 2009, p. 32.

145 Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 53.

146 Mr Paul Kneist, *Committee Hansard*, 18 September 2009, p. 35.

people to go to. That would eliminate all the boundaries between networks that are there.¹⁴⁷

The need for independent review

3.149 Evidence given by a representative of Service Skills Australia told the committee that students (or their parents) often received no adequate response when concerns about regulatory bodies were reported to state training authorities.¹⁴⁸ This evidence was supported by the Australian Immigration Law Services who indicated that international students want their concerns investigated by an authority which is independent of 'government and private sector influence'.¹⁴⁹

3.150 Dr Felicity Fallon, President, ISANA International Education Association, also gave evidence to the committee about the need for independent review:

I would like to say that the international student adviser is always the first line of call for a student with a problem. I know Dr Michael Wesley said in his Lowy Institute report recently that international student advisers are intimidated within their institutions and will not advocate for students. I think a lot of ISANA members would take issue with that. We are very prepared to advocate for our students. But there are some situations that we cannot deal with and there are some providers who do not adequately staff for people to do the advocacy, and therefore there needs to be something from outside.¹⁵⁰

3.151 Mr Nigel Palmer from CAPA outlined in his evidence the benefits such an independent office could provide:

From our perspective, particularly with regard to international students, where they may not feel that the complaints resolution process of the education provider has been satisfactory, they are aware that there may be somewhere else to go, but it is very difficult for them to determine where or what that is ... There are so many overlapping obligations when it comes to state accreditation bodies and the Commonwealth department. I think different people will give you different answers about what the next step is. So, at the very least, having a national commission or a national ombudsman's office would be useful to give students a clear avenue for redress.¹⁵¹

3.152 An independent body could also discern systemic problems, as suggested by Mr David Barrow, President, NUS:

147 Mr Amit Menghani, *Committee Hansard*, 1 September 2009, p. 24.

148 Ms Catherine McMahon, *Committee Hansard*, 2 September 2009, p. 43.

149 The Australian Immigration Law Services, *Submission 9*, p. 2.

150 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 55.

151 Mr Nigel Palmer, *Committee Hansard*, 1 September 2009, p. 8.

That also leads into the issue of student representation at private colleges. Our view has been that in private colleges student representation could act as the canary in the goldmine in a sense that, if there had been proper representative structures within private colleges, the Sterling College collapse may not have happened because, if the college had been doing what was in the best interest of the individuals, then they would not have been acting in the way they were. You could have caught out that college earlier before it got to the point where it was ready to collapse. We, as the office bearers in NUS, get three or four calls a week from students who are completely lost out in the ether of the private colleges without anywhere to go and that is why we see that an ombudsman's office or a complaints' office at the federal level would assist that.¹⁵²

3.153 The advantages of having such a body were also explained in evidence by Ms Anna Cody, Director, Kingsford Legal Centre:

The advantage would be that there would be just the one place to go so that the students would know that that is the place to go with all their problems. The disadvantage is that it absolves all the other agencies from the responsibility of having to deal effectively with international students' issues. It is also about the level of funding that that sort of body is likely to attract. If you entrench it as core activities for each of the state or federal bodies that would otherwise be responsible, like the Fair Work Ombudsman, the Residential Tenancies Tribunal or the Consumer, Trader and Tenancy Tribunal, then to some degree you are spreading it out and therefore potentially making it more difficult for students, but it also means that perhaps it is more likely to be done more effectively because it will be funded as part of their core activities. My concern about that is that it makes it vulnerable to lack of funding.¹⁵³

3.154 The Commonwealth Ombudsman noted in its submission the need for an external, as well as an internal, avenue for complaints to be made if internal mechanisms prove unsatisfactory. The most common model of this is the office of ombudsman which operates in banking, postal services, telecommunications, private health insurance and energy supply. The Commonwealth Ombudsman expressed the opinion that it would be appropriate that such an option exist in relation to the tertiary education sector by either creating a specialist education ombudsman or conferring jurisdiction upon an existing office such as the Commonwealth Ombudsman. It could also be combined with the Immigration Ombudsman and compliance auditing roles to 'address a range of systemic failures across the international student sector'.¹⁵⁴ Dependent on the development of relevant legislation and funding, the following services were envisaged:

152 Mr David Barrow, *Committee Hansard*, 1 September 2009, p. 31.

153 Ms Anna Cody, *Committee Hansard*, 2 September 2009, p. 19.

154 Commonwealth Ombudsman, *Submission 106*, pp 2-4.

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- receipt and investigation of complaints about government and non-government service providers;
 - receipt and investigation of complaints about government service delivery and regulatory agencies;
 - compliance audits of the exercise of regulatory and investigation functions by government agencies;
 - education advice and training to service providers and regulatory agencies on best practice complaints handling; and
 - agency specific and cross-agency own motion investigations into areas of complaint or where systemic problems begin to arise.¹⁵⁵

Committee view

3.155 The committee notes the responsibility institutions have, in the first instance, to address complaints from their students and provide accurate and timely information.

3.156 The development of minimum standards for the National Code recommended in chapter three of this report, and better provision of information recommended above, are likely to improve access to information for international students if implemented as recommended by the government.

3.157 Notwithstanding these recommendations, the committee acknowledges that there are times when international students may need access to an independent complaints mechanism as per the evidence given.

3.158 Students could contact an independent body such as an ombudsman on issues such as study, safety, accommodation or employment after exhausting other complaint and assistance mechanisms available to them. This body would also be able to investigate complaints in relation to providers and regulatory bodies.

3.159 An independent body operating across jurisdictions and sectors would be able to discern any concerning trends or systemic problems and initiate action or bring the issue to the attention of the state regulatory authorities, DEEWR and/or the Minister.

3.160 Further to the submission from the Commonwealth Ombudsman's office, the committee accepts that the current infrastructure of that body would be an appropriate avenue to develop a new, independent, national complaint mechanism dependent on the development of relevant legislation and appropriate resources.¹⁵⁶

155 Commonwealth Ombudsman, *Submission 106*, p. 5.

156 Commonwealth Ombudsman, *Submission 106*, p. 4.

Recommendation 9

3.161 The committee recommends the jurisdiction of the Commonwealth Ombudsman be extended to cover the international education sector.

Chapter 4

Legislation and regulatory framework for providers

4.1 This chapter will describe the legislative, regulatory and quality framework for the provision of education and training to overseas students. The key issues raised with the committee centred on how the regulation works in practice due to the shared responsibilities of the Commonwealth and the states in regulating the VET sector. In theory, the demarcation of responsibilities is clear, and legislation at both Commonwealth and state level is probably as sound as it should be, although the committee awaits the results of the Baird inquiry with interest. As the evidence suggests, it is not so much a matter of legislating as of a lack of commitment at all levels to enforce provisions intended to ensure quality of educational delivery.

Work underway in this area

4.2 The committee notes the work underway in this area. The Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 amends the ESOS Act to improve processes ensuring the accountability of international education and training services providers. The key amendments strengthen the registration process which will reduce the number of high-risk providers currently in or seeking entry into the sector. The Legislation Committee reported on this bill on 16 October 2009.¹

4.3 The bill is an interim measure to address the regulatory issues in the industry pending a review of the ESOS Act being undertaken by former Federal MP, the Hon. Bruce Baird. The committee acknowledges the work under way by Mr Baird and looks forward to the outcomes of his review.

Legislative framework

4.4 The provision of education and training to overseas students is a responsibility shared by the Commonwealth and the state and territory governments. The regulatory framework therefore involves Commonwealth and state and territory legislation and the administrative effort of the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), the Commonwealth Department of Immigration and Citizenship (DIAC), the Department of Foreign Affairs and Trade (DFAT) and state and territory education and training authorities.²

1 Senate Education, Employment and Workplace Relations Committee, *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*, October 2009.

2 Coral Dow and Angus Martyn, *Bills Digest*, no 126, 2006-07, 28 March 2007, Education Services for Overseas Students Legislation Amendment Bill 2007, p. 2.

4.5 The ESOS legislative framework comprises:

- *Education Services for Overseas Students Act 2000* (ESOS Act);
- Education Services for Overseas Students Regulations 2001 (ESOS Regulations); and
- The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code).

4.6 These are supplemented by the following legislation which prescribe charges and contributions:

- *Education Services for Overseas Students (Registration Charges) Act 1997* (amended in 2007); and
- *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*.³

4.7 It should be noted that ESOS legislation interacts with the *Migration Act 1958* and its regulations which impose visa-related reporting requirements on students and providers.⁴

Responsibilities

4.8 The Commonwealth has responsibility for administering the ESOS Act and the National Code. The ESOS Act and the regulations set out the Commonwealth legislative requirements for the registration of providers, obligations of registered providers, the operation of the ESOS Assurance Fund, enforcement of the ESOS legislative framework and the establishment of the National Code.⁵

4.9 The focus of the ESOS Act is the regulation of providers to protect the interests of students as consumers and Australia's reputation as an exporter of education services. It requires approved institutions for each state to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)⁶ which is a database of Australian education institutions. To be registered on CRICOS, providers must meet the quality requirements for the delivery of education services which are generally set out in state and territory legislation.⁷ Registration requires a provider to meet the standards set out in the National Code

3 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

4 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009–10, Parliamentary Library, Canberra, p. 8.

5 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

6 CRICOS is a database of around 1 300 Australian education institutions. Any education institution that recruits, enrolls or teaches overseas students must be registered on CRICOS.

7 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

which addresses areas such as marketing, recruitment and enrolment, student support, monitoring and reporting educational progress and migration requirements.⁸

Registration and quality control

4.10 Under the Shared Responsibilities Framework, agreed in 2007, the states and territories have primary responsibility for the quality control of education providers and their courses.⁹ This is captured below:

DEEWR is responsible for registration, monitoring, compliance and enforcement activities under the ESOS Act and supporting the provision of consumer protection mechanisms. Under ESOS, state and territory registration bodies are responsible for assessing applications for registering and re-registering providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). States and territories may also undertake monitoring, compliance and enforcement activities under their own state legislation relating to education services to international students (where applicable). Educating providers about their ESOS obligations is undertaken by both DEEWR and state and territory agencies.¹⁰

4.11 States and territories achieve this through approving, registering and monitoring providers and their courses. There must be a recommendation from the relevant state or territory authority confirming that the provider meets the quality standards for their education sector.

4.12 DEEWR explained the division of responsibility:

State and territory governments have primary responsibility for regulating education and training in their jurisdictions. The state and territory authorities register all higher education providers other than the Australian National University, most vocational education and training (VET) institutions, schools and English Language Intensive Courses for Overseas Students (ELICOS) institutions. The National Audit and Registration Agency (NARA), which was officially launched by the Deputy Prime Minister on 10 September 2008, registers multi-jurisdictional VET providers in Queensland, Victoria, South Australia, Tasmania and the Australian Capital Territory. States and territories also have responsibility for accrediting the courses of all non-self accrediting higher education providers (universities and self accrediting higher education institutions

8 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 6.

9 Mr Bill Burmester, *Committee Hansard*, 18 September 2009, pp 68–69.

10 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 6. See also http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartB/Shared_Responsibility_Network_pdf.pdf accessed 23 September 2009. See also DEEWR *Submission 112*, pp 16–18.

accredit their own courses), all VET providers (except those that have applied to be registered by NARA) and all ELICOS providers.¹¹

4.13 In some jurisdictions, additional local legislative requirements on providers apply and must be met before an authority will grant registration. For example, a provider in Victoria must meet the relevant requirements of the *Education and Training Reform Act 2006* (VIC) before a recommendation can be made to DEEWR that a provider be registered on CRICOS.¹²

4.14 When state and territory registration and accreditation authorities recommend to DEEWR that a provider be registered on CRICOS, DEEWR checks to ensure that the providers have tuition assurance cover before registration is confirmed. If a state or territory advises DEEWR that a provider may not be 'fit and proper', DEEWR launches its own investigation to decide whether or not the provider should be registered. Once registered, providers must continue to comply with the requirements of the relevant quality assurance framework, administered at the state and territory level, to remain on CRICOS.¹³

4.15 TAFE Directors Australia told the committee of the failure of the regulation and registration system, particularly for the VET sector. Mr Bruce McKenzie told the committee:

...Our biggest concern is the failure of the regulation and registration regime in VET. As the Senate would be aware, the registration process is a state government responsibility. We believe that that has been inadequately understood and that the auditing and resources that have been applied to creating a registration regulation system between the states have been appalling.¹⁴

4.16 Mr Mackenzie suggested that providers offering programs only to international students should not be registered, because:

...it is not an international experience for a student who comes into an institution that only has people from their own country or other international students; they do not mix with Australian students. The starting point would be to separate them out, as they have done in other countries.¹⁵

11 DEEWR, *Submission 112*, p. 3.

12 DEEWR, *Submission 112*, p. 18.

13 DEEWR, *Submission 112*, p. 18.

14 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 16.

15 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 17. See also Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 19 and comments by Ms Sharon Smith on the benefits of international students mixing with domestic students, *Committee Hansard*, 1 September 2009, p. 35.

4.17 This view was supported by Mr Angelo Gavrielatos, Federal President of the Australian Education Union (AEU):

...We have to end the situation where colleges are able to deliver training only to international students. A requirement of registration must be that an organisation has a track record in delivering programs both to local students and to international students. After all, this is an Australian qualification that we are talking about, and one sure measure of testing the veracity and rigour of any Australian qualification is having it apply and operate within an Australian context. This ensures a much greater knowledge and understanding of the Australian vocational education sector and a genuinely culturally rich and diverse experience for international and local students. It also minimises against the 'ghettoisation' of education that has become apparent in some of these private, shonky providers by way of targeting international students and international students only. We say that the days of students arriving in Australia to find the college campus they were promised is no more than a two-room operation in the city must come to an end. One sure way of doing so is ensuring that the provision is available to local students and international students.¹⁶

4.18 Mr Gavrielatos argued that if colleges are allowed to cater for international students only then this '...is where these shonky providers appear in the form of two rooms in the CBD without any infrastructure ...'. He argued that this situation will not result in the broad investment in infrastructure that is needed.¹⁷

4.19 Additional information from the Queensland regulatory authority noted:

The legislation allows for any provider that can demonstrate compliance with legislative requirements to be registered on CRICOS, irrespective of their intended student cohort. There are many examples of training organisations delivering exclusively to the international student sector with a demonstrated track record of high quality educational outcomes for these students.¹⁸

4.20 ACPET argued that there are providers dealing exclusively with international students with a long history of providing quality services. It suggested authorities address this issue by taking a risk-management approach and consider such criteria as recent entry into the market and the composition of a student cohort, among others.¹⁹

4.21 The importance of the composition and transparency of the student body was mentioned by the Group of Eight:

...In choosing Australia as a study destination, it is safe to assume that international students want to study with Australian students. While some

16 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 60.

17 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 66–67.

18 Additional information, QLD Regulatory Authority, 9 October 2009.

19 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, pp 45–46.

universities and VET providers rely heavily or exclusively on international student enrolments and income, enrolment of international students at Go8 universities ranges from a low of 13.8% of the student body to a high of 23.7%, ensuring that international students will experience a learning environment that is culturally varied but dominantly Australian. The level of institutional diversity needs to be transparent to potential students to assist them in making important choices about their study destination.²⁰

Committee comment

4.22 The committee makes it clear that it strongly supports private initiatives in VET. It recognises that the sector is being damaged by the loose regulation which has allowed the approval of many unsatisfactory RTOs. The committee believes that providers offering programs only to international students are at the high-risk end of the spectrum where unscrupulous operators are able to take advantage of students who may have been promised that their courses will lead to permanent residency. In addition, the committee agrees that such programs may not provide the full benefits either to the student or the community of living and studying in another country. However, the committee also heard that there are institutions which have successfully provided education and training exclusively to international students for many years. The committee believes that regulators should devise ways of eliminating providers who are not serious about their education mission. Prospective students must have information to enable them to distinguish between providers.

Increasing transparency

4.23 TAFE Directors Australia drew the committee's attention to a lack of transparency in the VET market, recognised in the OECD VET Benchmark Report on Australia.²¹ Mr Bruce Mackenzie explained that the current registration process does not distinguish between a government-owned institution such as TAFE and a private provider:

We believe that it is a ridiculous situation that occurs in Australia when a private provider for 100 students is regarded as the same risk level as a TAFE institution with 50,000 students which is backed by the state government, has resources of over \$200 million. They are regarded, as far as presentation to the consumer is concerned, as of the same level, and it is that single issue—the failure of the regulation and registration system to discriminate between providers for consumers—that we think has caused the current situation that has arisen.²²

4.24 Mr Mackenzie argued that there is clear transparency in the tertiary sector regarding what is and is not a university but providers in the VET sector are seen as

20 Group of Eight, *Submission 38*, p. 3.

21 K. Hoeckel, S. Field, T. R. Justesen and M. Kim., OECD, *Learning for Jobs: OECD Reviews of Vocational Education and Training*, November 2008.

22 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 16.

one. He advocated providing consumers with more information on the institutions and programs on offer to assist them to choose an institution which will provide a quality service.²³

4.25 This view was supported by the Group of Eight (Go8) which suggested that the government should emphasise that all education providers are bound by law to meet a minimum standard as required under the Australian Qualifications Framework (see below). Other objective data such as student support services, learning and teaching awards and competitive research income should also be provided. The Go8 argued that such a system would lead to better informed students and less reliance on unscrupulous agents.²⁴

4.26 Mr Paul Kniest, National Policy and Research Coordinator, National Tertiary Education Union (NTEU), also advocated that more information about a provider be made available including: status, number of students, background history, courses and grievance procedures.²⁵

4.27 Mr Gavrielatos, AEU, expressed the view that in order to increase transparency in the sector, there should be a tiered registration system which recognises the services provided to students. He described this system:

Another platform or plank in any auditing process must be to look at the issue of student services. We believe that all registered organisations should be required to provide students with support services commensurate with the scale of their operation. This includes welfare and also educational support—language and literacy support, career guidance and access to libraries, study areas and appropriate technologies. They must be genuine operations offering genuine services. Consistent with our views about a real and rigorous assessment and auditing process, we believe that there should be a tiered system of registration which recognises quality outcomes and achievements and which would recognise the quality outcomes and achievements and the superior services provided by our TAFE colleges. We are comfortable and confident that our TAFE colleges nationwide can stand the scrutiny of public examination of the quality of provision of service.²⁶

4.28 ACPET also supported differentiation between providers who meet the standards and those who exceed the standards.²⁷

23 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 17.

24 Group of Eight, *Submission 38*, pp 3–4 and 9.

25 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 35.

26 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 60–61.

27 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 41.

Committee comment

4.29 The committee notes that providers already need to be assessed against the standards set out in the National Code during the registration process. The committee believes that providing more transparency and more detailed information regarding the level and quality of education and services available from institutions would help the public better differentiate between providers. This should include assurances about the employment of properly qualified staff and provisions of appropriate facilities for learning. It should also include information about the student cohort, so that an institution which caters only to international students is identified as such, as well as the level of student services available. The committee believes that such a process would provide an incentive for providers to lift their standards. The committee has more to say on the National Code below.

Recommendation 10

4.30 The committee recommends that TEQSA (Tertiary Education Quality and Standards Agency) and the national body to be developed for the VET sector adapt the registration process to develop a comparative information tool on education providers. This information tool should differentiate between the capacity of providers by comparing such things as the level and quality of support services available to students. The information tool would be made available on a relevant website.

The National Code

4.31 The National Code was established under the ESOS Act. To become CRICOS-registered, a provider must demonstrate that it complies with the requirements of the National Code. The National Code is a legislative instrument. It is legally enforceable and breaches of the National Code by providers can result in enforcement action under the ESOS Act. This action can include the imposition of conditions on registration and suspension or cancellation of registration.²⁸

4.32 The National Code was described by some witnesses as an 'aspirational document'.²⁹ The reason given was that the code was not clear and left much to the interpretation of the providers. Ms Wesa Chau told the committee of a particular example:

...One example would be the 'culturally appropriate orientation'. What does that mean? 'Culturally appropriate orientation' can mean anything to anyone.³⁰

28 See <http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm> accessed 25 October 2009.

29 Mr Nigel Palmer, *Committee Hansard* 1 September 2009, p. 7.

30 Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 53.

4.33 The adequacy and clarity of the National Code is vital for proper enforcement to take place. Dr Felicity Fallon, President, ISANA International Education Association, also called attention to the lack of specificity in the National Code:

We would like to call for a number of benchmarks to be developed. The national code for education providers—that is in association with the ESOS Act—has some standards to be met. But, as was said previously, they are a bit vague; they are very much left to the education provider to interpret. Firstly—and I am putting this first because to us it is the major thing—we feel that some minimum level of staffing to provide support for international students should be defined in some way. It may need to be different for the different sectors, because it is very complicated. For instance, in schools, the teachers who are already teaching take it on. But some sort of level should be put in place. It should not be left to the education provider to decide what is ‘sufficient’—and that is the word in standard 6.6, ‘sufficient’—support for international students. We want some benchmarks about safety issues at pre-departure and at orientation. It says that information needs to be provided, but safety issues are not in there.³¹

Committee view

4.34 The committee believes that, for the National Code to contribute to more effective enforcement, it should be reviewed to provide more clarity and minimum standards. Providers who do not meet the minimum standards should not be registered. Providers which meet and those which exceed the minimum standards should be put in different categories to encourage better support services.

Recommendation 11

4.35 The committee recommends that, to improve enforcement, the National Code be reviewed by the new national regulatory authorities for higher education and the VET sector, in consultation with stakeholders, to provide clarity and specify details of minimum standards upon which registration would be dependent.

Quality assurance framework

4.36 The National Code is complemented by national quality assurance frameworks in education and training including the Australian Quality Training Framework (for registered vocational education and training providers offering these courses) and the National Protocols for Higher Education Approval Processes (for institutions offering higher education qualifications).³² The quality assurance

31 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 54. See also Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 36.

32 See <http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm> accessed 25 October 2009.

framework builds on the registration, accreditation and quality audit processes of each state and territory for each sector. DEEWR explained that ensuring providers meet the guidelines is the responsibility of the states:

There is the Australian Quality Training Framework. That sets down the guidelines for registering new training organisations. The guidelines are available on the web and you can have a look at what they are. Those have been agreed intergovernmentally. The responsibility for registering providers, as I said, lies with the states and, within the guidelines that are there, the states take their decisions on whether training providers meet the guidelines and are therefore suitable to be included on the register. The Commonwealth's role has been involvement in discussions with the states and territories on the revision of the training framework, which was last revised and completed in 2007.³³

Higher education

4.37 The Australian Universities Quality Agency (AUQA) is an independent, not-for-profit national agency that conducts quality audits and reports on quality assurance in higher education³⁴ for all higher education institutions in receipt of Australian government funding. Other higher education institutions can choose to be audited by AUQA or an approved state auditor.³⁵

VET

4.38 State and territory accreditation authorities perform quality assurance functions in relation to the activities of VET institutions (other than those quality assured by NARA), ELICOS providers and schools.³⁶

4.39 The National Training Framework is an industry-led system that sets out the requirements for quality and national consistency in terms of qualifications and the delivery of training. It comprises:

- the Australian Quality Training Framework (AQTF) 2007 which is the national set of standards for training and assessment services delivered by registered training organisations; and
- training packages which are sets of nationally endorsed standards and qualifications for recognising and assessing people's skills³⁷ (see below).

33 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 75.

34 Information available from: <http://www.auqa.edu.au/aboutauqa/mission/> accessed 13 October 2009.

35 DEEWR, *Submission 112*, p. 17.

36 DEEWR, *Submission 112*, p. 3.

37 See http://www.transnational.deewr.gov.au/quality_assurance.htm accessed 19 October 2009.

4.40 The Australian Qualifications Framework (AQF) cuts across the higher education, VET and schools sectors and provides a national framework for qualifications in these sectors. The AQF Council is currently looking into ways to strengthen this framework.³⁸ The government is also working with states and territories to improve the quality of non-award ELICOS and Foundation Programs delivered to international students.³⁹

4.41 In addition to legislation changes to deal with the crisis of confidence over VET quality assurance, the government has announced recently that it will establish a single Tertiary Education Quality and Standards Agency (TEQSA) from 2010. TEQSA will accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify current regulatory arrangements and provide greater national consistency. The Council of Australian Governments (COAG) will consider the future of VET regulation, including a national regulator for the VET system, later in 2009. Other measures to further strengthen the quality of VET have also been taken. These include the National Quality Council's development of a strengthened approach to risk management and auditing together with the development of a set of quality indicators for registering bodies.⁴⁰

4.42 The Group of Eight supported the creation of TEQSA and noted the current unsatisfactory arrangements:

State governments have demonstrated different interpretations of legal requirements under ESOS and an overall lack of interest in enforcing the Code. Their resources should be transferred to TEQSA so a consistent regulatory approach can be applied nationally.⁴¹

4.43 The Group of Eight noted TEQSA will have a key role in ensuring minimum standards are met by institutions. It recommended that it be given a key role in ridding the system of unsatisfactory providers through tighter accreditation and closer monitoring arrangements including responsibility for a national system for management of the ESOS Act, CRICOS regime and the National Code.⁴²

Committee comment

4.44 The committee supports the establishment of TEQSA and urges the development of a national regulator for the VET system as soon as possible. The

38 See <http://www.aqf.edu.au/Projects/tabid/186/Default.aspx#strengthening> accessed 19 October 2009.

39 DEEWR, *Submission 112*, p. 17.

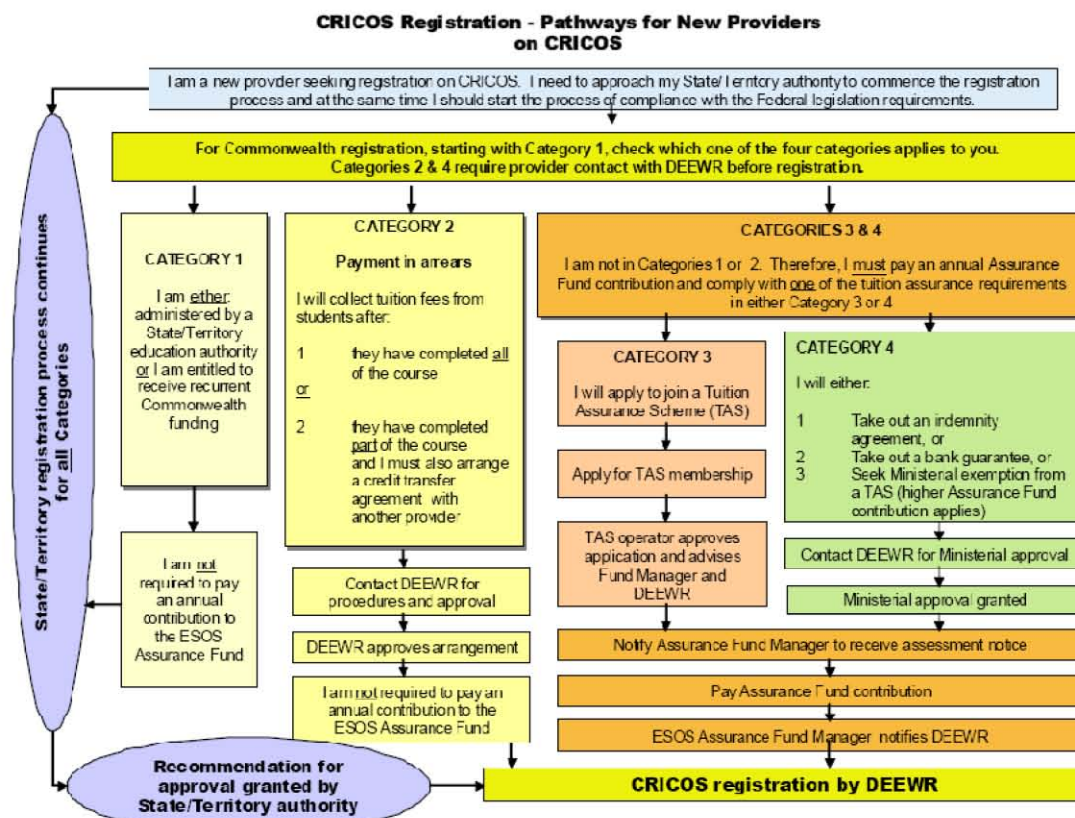
40 DEEWR, *Submission 112*, p. 3.

41 Group of Eight, *Submission 38*, p. 8. See also Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 23.

42 Group of Eight, *Submission 38*, p. 8.

committee urges a commitment by all governments to ensure consistent enforcement of standards across all jurisdictions.

4.45 The complexity of the regulatory system and processes is already evident in the areas of registration, quality control and assurance. It is illustrated by the following diagram covering registration and will be further discussed below.



Source: DEEWR *Submission 112*, p. 18.

Ensuring quality of training in the VET sector

4.46 It is understood that the problem area in delivering proper qualifications to students lies in the quality of training provided by RTOs. Service Skills Australia told the committee that one of their main roles is to develop training packages which set out the standards and requirements that need to be delivered to students. The quality of this training is the responsibility of state training authorities which police standards. The level of auditing of RTOs has been questioned. Mr Ian Blandthorn, Chairman, Service Skills Australia, told the committee his views on the quality of auditing:

...Of course, at the other end we have a huge problem in that a number of state training authorities do not, I think, properly police the delivery. It is a state responsibility by and large, but I think at least some states have abrogated their responsibilities partially or wholly in this area...⁴³

43 Mr Ian Blandthorn, *Committee Hansard*, 2 September 2009, p. 38.

We find a wide variance. I am not sure that they are understaffed or under resourced. I think it is more to do with their commitment or willingness to audit rigorously. Too often we are concerned that the audit is something that you just do and move on from without a whole lot of rigour to it. That is the perception that we often have.⁴⁴

4.47 Ms Catherine McMahon, General Manager and Acting Chief Executive Officer, Service Skills Australia, admitted that the situation is so serious that industry and the skills councils are becoming more involved in auditing and assisting to deliver quality outcomes.⁴⁵ Ms McMahon emphasised that the key concern for industry is that industry requirements for workers appear to be one of the last considerations after all other requirements have been fulfilled.⁴⁶ The result is qualifications that are not valued either by students or by the industry they may wish to enter. This is contrary to the intention of reformers in the 1980s and 1990s who tried to ensure that industry standards would set the quality benchmarks for training. This has failed because RTOs have been permitted to break free from the role of serving industry requirements.

4.48 Concerns about training lacking a workplace focus and resulting in employers lacking confidence in the quality of outcomes of that training were supported by Ms Michelle Bissett, Senior Industrial Officer, ACTU, who told the committee:

Many of the courses that are now being delivered are on a fully institutionalised basis, so vocational education and training, particularly being delivered to international students, is losing the critical link that it has always had to the workplace. By fully delivering training on an institutional basis there is no workplace relationship for those people undertaking the training. The ACTU has long held concerns about institutionalised delivery of vocational training both for domestic students and now for international students.⁴⁷

4.49 A key component of training delivery is the quality of the staff. Mr Angelo Gavrielatos, AEU, raised questions over the staffing of RTOs:

We believe that lifting educational quality means imposing tougher standards. Those standards must be seen in the area, first and foremost, of the staffing of these institutions. We believe that teachers who work in the vocational education sector, both domestic and international, should have teaching qualifications. They must be properly trained. It is unacceptable that a vocational education system which delivers qualifications and establishes standards across the country and internationally sets such low standards of its own workforce. Additionally, consistent with that rationale of teachers being qualified—as novel as that may sound!—managers of training colleges should also be required to hold appropriate educational

44 Mr Ian Blandthorn, *Committee Hansard*, 2 September 2009, p. 44.

45 Ms Catherine McMahon, *Committee Hansard*, 2 September 2009, p. 42.

46 Ms Catherine McMahon, *Committee Hansard*, 2 September 2009, p. 44.

47 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 2.

qualifications to be able to exhibit necessary educational leadership in the delivery of programs.⁴⁸

4.50 Concerns regarding the job readiness of students were supported by Mr William Healey, Chief Executive officer, Australian Hotels Association. He described the background to the current situation:

...A training organisation should be licensed to give out that industry's credential, and it should be up to the industry to determine whether that training organisation satisfies the requirements to endorse that that individual has the competence linked to that credential.

We were told around 2000 that that was not appropriate, that the states would come up with their own RTO regulatory processes and that they would bring in quality control arrangements. This has been a constant bugbear for me. I left and went and did a few other things, but it has been evident that the quality control both in tourism and hospitality and in retail has not been sufficient. The growth of private provider markets and paid funding has undermined the integrity of the credential systems we have built, to the point where funding has been withdrawn for our lower-level certificates in some states. And as I say in my paper, you have the emergence of a whole host of players out there who are certified training, but no-one is looking over their shoulders.

We are trying to shut the gate after the horse has bolted with things like assessors, auditing processes and things like that. But it is the industry that has to maintain the integrity of its training system, not TAFE and not a state jurisdiction. I am particularly annoyed about this. The problems we were having were pointed out to a senior DEEWR official 18 months ago, and I was told that there was no evidence of that. But we had a whole host of RTOs bringing in students who were not, in our view, getting the necessary education that (1) justified their expenditure and (2) met our standards.⁴⁹

4.51 Mr Healey argued for industry to retain ownership of nominating which institutions can give out their credentials because under the current system students receive qualifications which have little relevance to industry as they are not judged by the people who know the industry.⁵⁰ He stated:

...If it is a VET program, my personal view is that a training package is an industry credential, where the industry has said, 'These are the skills and competencies that you require to be competent.' Notwithstanding that the courses are developed with funding from government, the industry should license an RTO to have the right to deliver those sorts of courses...⁵¹

48 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 60. See also Mr Christopher Evason, *Committee Hansard*, 18 September 2009, p. 42.

49 Mr William Healey, *Committee Hansard*, 2 September 2009, pp 47–48.

50 Mr William Healey, *Committee Hansard*, 2 September 2009, p. 51.

51 Mr William Healey, *Committee Hansard*, 2 September 2009, p. 55.

4.52 Witnesses also raised the issue of vocational students being required to undertake 900 hours of work experience. The committee heard that some students have been exploited by having to pay to do 900 hours' work experience but were paid only \$5 per day.⁵² Ms Bissett explained that the cause is the institutionalised training and suggested restructuring the training so that work experience is built into the training at an appropriate salary level such as the national training wage award.⁵³

Committee comment

4.53 The committee understands the frustration of industries seeking graduates ready to work with qualifications that reflect the acquisition of skills and knowledge. It notes the introduction of a Job Ready test by the government from 1 January 2010 which will go some way to addressing this issue. The test is currently being developed in consultation with industry and unions and will initially be applied to trade occupations. The test will ensure a consistent standard of skills and competencies across trade occupations.⁵⁴ The committee is pleased that these issues are being reviewed by Mr Baird, but laments the fact that it is necessary to catch up on policies and processes that were once agreed but which have been allowed to lapse.

Enforcement

4.54 The responsibilities of the states and territories include the exercising of enforcement powers which extend to the suspension and deregistration of providers. The Bills Digest for the ESOS bill pointed out that both the Commonwealth and the states and territories have responsibility for enforcement. Part B of the National Code states that:

...while DEST [DEEWR] is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.⁵⁵

52 See also Nick O'Malley, Heath Gilmore and Erik Jensen, 'Foreign students 'slave trade'', *The Age*, 15 July 2009, p. 6.

53 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, pp 6–7.

54 See <http://www.immi.gov.au/skilled/general-skilled-migration/gsm-reforms.htm> accessed 26 October 2009.

55 Carol Kempner, Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009, *Bills Digest*, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 9. See also The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007, p. 4.

Adequacy of the legislation and regulatory framework

4.55 There is general agreement that the current legislative and regulatory structures are adequate. However, there is clear evidence of regulatory failure, particularly in the VET sector where a small number of unscrupulous agents and providers have been allowed to operate. This has been compounded by an apparent lack of monitoring and effective enforcement at the state level. The failure of regulatory processes was also raised by the Federation of Indian Students of Australia (FISA):

We think that the failure was with the auditing process of DEEWR. It is unlikely that DIAC and DEEWR knew nothing about what is happening. Institutions which were authorised to carry only a few hundred students were carrying about a thousand or more than a thousand students, so how is it possible that those were issued visas and DEEWR did not check it out with the institution? There is a legislative framework but it has not been acted upon. There has to be a cost associated if some private institution is doing it just for the sake of money or providing migration outcomes. There have to be increased the costs associated with it, because failure to address the issues will impact broader society. International students are going to live in Australia for two years and if they have really bad experiences they are not going to share good experiences back home.⁵⁶

4.56 Ms Christine Bundesen of English Australia indicated that:

[g]enerally, whether in relation to agents or other aspects of regulations, English Australia's message is that this issue is mainly one of enforcement and better coordination of existing regulation rather than the imposition of new regulation. I am sure that the committee will hear plenty of evidence about lack of enforcement and the problems of responsibility being split between different levels of government. The government started to address this by accepting the Bradley review recommendation to create a tertiary education quality and standards agency, TEQSA, for national quality assurance and regulation. English Australia's reservations about TEQSA are to ensure that it adequately covers those sectors of international education which are outside higher education... We already have detailed standards in our legislation through the national code for most aspects of the student experience. But what we have a need for is greater attention and more timely monitoring and effective enforcement of those regulations and the clauses under the national code... It seems to be an issue of the power to enforce the regulation... If there is an issue with a particular provider institution, it needs to be dealt with very effectively, very efficiently and very quickly to protect the students in the first place, to protect their education experience and then to protect Australia as an international education-provider nation.⁵⁷

56 Mr Neeraj Shokeen, *Committee Hansard*, 2 September 2009, pp. 28-29.

57 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, pp 2-3.

4.57 Mr Sumit Purdani from FISA added:

You have got laws for even lifts working, even fans over here, so there would be rules and regulations about how an institution or a college has to work. Why is it not acted upon? You have got kitchens for five people and 1,200 people are engaged in a particular course. Obviously it is a failure of the regulation body.⁵⁸

4.58 The Independent Schools Council of Australia also noted the lapse in enforcement:

...The growth in numbers of non-genuine students and unethical providers created by the existence of what was seen as an 'easy' pathway to permanent residency would not have been possible had the legislation been vigorously enforced.⁵⁹

4.59 Mr Gavrielatos, AEU, called attention to the regulatory failure and the lack of accountability:

That the existing so-called regulatory regime framework has failed is self-evident. Of greatest concern is that the fact that neither the states and territories nor the federal government appear willing to accept responsibility for the failure or to take the sort of action required to rid the industry of the shonky operators who continue to plague it.⁶⁰

4.60 The pace of enforcement was also raised by Ms Bundesen, English Australia:

Some of it is taking place but it is taking place at a very, very slow pace. When perceived breaches or concerns are reported, the timeline can sometimes be in excess of a year for a response by the compliance branches, particularly of DEEWR and also at the state level, because we have this dichotomy of regulatory responsibility where we have a national framework of regulation and then we have a state and territory framework of regulation and that is often through legislation both at the national and state levels. The fit between the state and territory legislation and the national legislation is not always a good one. There are, in fact, at times conflicts between the state and territory legislation and the national legislation. It seems to be an issue of the power to enforce the regulation, which seems to be the principal factor which creates these lags in time. If there is an issue with a particular provider institution, it needs to be dealt with very effectively, very efficiently and very quickly to protect the students in the first place, to protect their education experience and then to protect Australia as an international education-provider nation.⁶¹

58 Mr Sumit Purdani, *Committee Hansard*, 2 September 2009, p. 29.

59 ISCA, *Submission 72*, p. 8.

60 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 59–60.

61 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 3.

4.61 A number of reasons have been offered regarding the cause of this regulatory failure. These issues were raised briefly in the Senate Education, Employment and Workplace Relations Legislation Committee's report on the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 and will be repeated here.

4.62 Some have attributed the regulatory failure to a lack of clarity about responsibilities and a lack of resources:

...it is not through lack of regulation but due to a lack of enforcement, as a result of under-resourcing of agencies by state and federal governments, and a lack of jurisdictional clarity about enforcing compliance.⁶²

4.63 The NTEU agreed that there is a lack of clarity and division of responsibility 'regarding the relevant government agency responsible for monitoring and enforcing compliance of education providers listed on CRICOS'.⁶³ It detailed how this lack of clarity affects accountability:

The State-Federal division of responsibility for maintaining ESOS standards diminishes system accountability overall. This is significant with regards to the delivery of education programs and training by non-self accrediting private providers who are neither subject to periodic audits by bodies such as the Australian University Quality Agency (AQUA) nor VET providers whose teaching and learning performance is benchmarked according to standards set by the Australian Qualification Framework (AQF).⁶⁴

4.64 Navitas explained the complexity they have to deal with:

In addition, regulatory and quality assurance frameworks urgently need streamlining, simplifying and coordinating. The framework in which educational institutions operate is complex and spans both Commonwealth and State-based legislation. While the aims of the framework are laudable and desirable, the reality for a large number of institutions is that the current regulatory structure creates duplication, inconsistency and inefficiency and does not achieve optimal outcomes for students, providers or governments.⁶⁵

4.65 A lack of clarity and level of complexity was a finding in the position paper of Skills Australia. This was informed by stakeholder feedback:

...on the desirability of simplifying, providing clearer accountability and rationalising the multiplicity of authorities involved in industry advice on regulation and quality matters at both state and national levels. There is

62 Professor Ian Young, 'Time to act is now', *Campus Review*, 18 August 2009, p. 8.

63 NTEU, *Submission 12 (ESOS bill)*, p. 2.

64 NTEU, *Submission 56*, p. 10.

65 Navitas, *Submission 39*, p. 7.

considerable complexity in the current governance of regulatory and quality apparatus with auditing arrangements in place for the AQTF [Australian Quality Training Framework], international students and for user choice purchasing arrangements. This is further complicated for providers operating in both the VET and higher education sectors.⁶⁶

4.66 Mr Kniest, NTEU, also pointed to a lack of clarity in terms of responsibilities:

...our submissions highlight the lack of clarity of the responsibility between the Commonwealth and the states in terms of regulation and who is responsible for monitoring and enforcing breaches of regulations within the ESOS code and the national code of practice associated with the ESOS code.⁶⁷

4.67 Mr Baird has also pointed to the complexity in his issues paper:

...the intersection of ESOS with these underpinning quality assurance frameworks can be complex, cause confusion about roles and responsibilities and raise concerns about consistency and duplication. For example, a VET provider may be audited twice in close succession: by DEEWR for its ESOS Act obligations and certain standards of the National Code. Then by the state regulator for the AQTF, state legislation and the National Code as well. The provider can also be audited by the Australian Government Department of Immigration and Citizenship and other agencies.⁶⁸

4.68 The Commonwealth Ombudsman also noted the difficulty for international students resulting from the lack of clarity regarding the regulatory environment:

The confusion and uncertainty that can bedevil international students has drawn attention to a lack of clarity about who is responsible for the regulatory environment relating to international students.⁶⁹

4.69 On this issue of complexity and divided responsibilities, the committee notes the evidence provided by DEEWR to this inquiry when asked about how responsibilities are agreed and dealt with between the Commonwealth and the states and territories:

Firstly, it is a very complex area—there is no question about that—and lots of witnesses have told you that and we do not disagree. Frequently if you get complaints or issues arising they do cross the state responsibilities under the Shared Responsibility Framework and those powers. Most of the issues tend to revolve around quality and that is a state responsibility so they tend

66 Skills Australia Position paper, *Foundations for the Future: Draft Proposals for Future Governance, Architecture and Market Design for the National Training System*, April 2009, p. 32.

67 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 34, 40.

68 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 11.

69 Commonwealth Ombudsman, *Submission 106*, p. 1.

to have the lead role in many cases. But that does not mean that we cannot stimulate activity if the complaint or the issue arises on our side.

In many cases if they involve issues which are our responsibility under the Shared Responsibility Framework then we will get involved and we will send a team. For example, under the Victorian rapid audit process, which I think you have heard about, that has been conducted by Victorian officers but our officers have also spent a lot of time with them so that issues arising under our part of the Shared Responsibility Framework can be dealt with at the same time.

Similarly, DIAC have contributed officers and time to that exercise, and the same applies in New South Wales. How is it dealt with? I think it is dealt with on a common-sense basis where we try and sit down and deal with the cases as they arise and come along. So it is a complex area of regulation. We try to deal with it on a common-sense basis. We have that the Shared Responsibility Framework to refer to and that says what we do and what the states do. We try to interpret that on a common-sense basis and take it forward as you would expect us to do in the best interests of the public.⁷⁰

4.70 Others submit that the regulatory failure is due to a lack of resolve or commitment of the regulatory authorities to engage in effective enforcement because they fear destabilising providers and the subsequent effect on their students.⁷¹ David Phillips, an adviser to the Bradley review, told the HES [Higher Education Supplement]:

...the states already possessed a “big stick”. Their powers included deregistration of providers. “It may be worth examining whether a lower level of sanctions could be introduced to avoid the problem of states being reluctant to intervene because of the impact of deregistration on students”.⁷²

Resources

4.71 The committee heard from witnesses about the lack of resources by the states to undertake the auditing regime. For example, the committee heard from Ms Patricia Forward, Federal TAFE Secretary, AEU:

Our anecdotal information around that is that the state authorities are incredibly under-resourced. For example, you may be aware that in Victoria, one of the first actions as a result of this current crisis, if you like, has been a push to do a rapid audit on 17 colleges immediately. I think the Victorian department is trying to get 17 additional rapid audits by the end

70 Colin Walters, DEEWR, *Committee Hansard*, 18 September 2009, p. 79.

71 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009, Bills Digest*, 9 September 2009, No. 28, 2009–10, Parliamentary Library, Canberra, p. 13.

72 Guy Healy and Andrew Trounson, 'Crackdown on student recruitment', *The Australian*, 12 August 2009, <http://www.theaustralian.news.com.au/story/0,25197,25916022-12149,00.html> accessed 16 September 2009.

of the year. That has required the department to increase its staffing immediately to try to get through that by the end of the year. It is a serious crisis in the states around the resourcing of the auditing process.⁷³

4.72 The committee received no clear information about whether the resources dedicated to monitoring and enforcement have been adequate from either the Commonwealth⁷⁴ or the states. However, DEEWR told the committee that the growth in student numbers has been extraordinary and difficult to predict:

...I do not think anyone predicting 10 or perhaps even five years ago would have thought that we would have the number of half a million students in the country that we have now. It is a difficult game.⁷⁵

4.73 The committee wrote to state regulatory agencies to find out the level of resources they were committing to accreditation and auditing of RTOs, but such information is of little use without the opportunity to question officials. State regulatory agencies made no submissions to this inquiry.

Committee comment

4.74 The committee was told that Australia has a world-class legislative framework. However, a world-class legislative framework is of no use if it is not enforced. There needs to be a more serious commitment made to timely monitoring and effective enforcement of regulations. The relevant questions here relate to whether there is too much complexity, sufficient commitment and appropriate resources to carry out these tasks.

4.75 The committee understands the increase in the numbers of international students in the VET sector may have hindered the effective regulation by states and territories. The committee understands that the CRICOS fee or annual registration fee goes towards regulation.⁷⁶ With the influx of international students, the collection of that fee would have increased and yet there have been regulatory failures. The Legislation committee raised concerns about the level of resourcing to carry out regulatory activities in its report on the ESOS bill. The committee notes that adequate resourcing will be addressed in the review of the ESOS Act being undertaken by Mr Baird. The committee notes the importance of adequate and targeted resourcing and commitment from all stakeholders. To this end, the committee is pleased to note the commitment in the Joint Communiqué of the Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational &

73 Mr Patricia Forward, *Committee Hansard*, 2 September 2009, p. 63.

74 Mr Colin Walters, *Committee Hansard*, 18 September 2009, pp 81-82.

75 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 86.

76 See *Committee Hansard*, 18 September 2009, pp 75–76.

Technical Education to enhancing the quality of the education and training system and the targeted audits of providers underway in states and territories.⁷⁷

4.76 The committee agrees that the divided control of regulation in the system covering the areas of registration, quality assurance and enforcement has been well demonstrated and acknowledged during the inquiry. The committee is concerned about blurred lines of accountability and the potential for issues to fall between these blurred lines. The committee believes there is scope for further clarification of responsibilities and accountability and encourages simplification. The committee notes that clarification of responsibilities will be addressed in the review of the ESOS Act being undertaken by Mr Baird and looks forward to reviewing his findings and recommendations.

4.77 The committee also notes the position of the Commonwealth Ombudsman that the creation of a national regulatory framework for both tertiary education and the training and vocational education sectors will:

...reduce the level of systemic complexity and provide an opportunity to markedly improve the handling of complaints in these sectors.⁷⁸

The option of self-regulatory accreditation

4.78 English Australia told the committee about their national accreditation scheme called the National ELT Accreditation Scheme established in 1990 after this sector experienced difficulty in the late 1980s with an explosion of Chinese student numbers. Similar schemes are now used in the UK, Canada and Ireland. Ms Christine Bundesen, English Australia, told the committee of how this has improved the sector:

It was an industry based self-regulatory accreditation scheme, but the majority of state and territory governments then authorised that scheme to carry out accreditation of public and private colleges delivering English-language training in Australia. Part of that scheme requirement is for an annual audit. Every college goes through an annual audit, and any changes to information from the previous year are incorporated into that audit. That audit can be a desk audit, it can be an on-site visit audit, and there can also be on-the-spot visits at any time during the year. So our accreditation basically runs for one year and then it is renewed through an audit process. Any changes are then notified to the registration authorities in the state, who then notify any changes to CRICOS registration. For example, a registered training organisation in the VET sector, the accreditation there is a five-year cycle and so it is basically five years until a re-accreditation.⁷⁹

77 See <http://www.premier.vic.gov.au/minister-for-skills-workforce-participation/government-blitz-on-international-education-providers.html> accessed 15 September 2009; See also *Joint Communiqué - Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational & Technical Education*, 12 June 2009.

78 Commonwealth Ombudsman, *Submission 106*, p. 1.

79 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 5.

4.79 However, Ms Bundesen also clarified that they have been waiting four years on the outcomes of a review of standards in the sector. This means that the new standards have not been implemented.⁸⁰ English Australia also mentioned that, in addition to the accreditation scheme, there are best practice standards, but they are not enforced.⁸¹

4.80 In the view of Mr Angelo Gavrielatos, AEU, the time for self regulation has passed as...'[t]he notion of light-touch auditing and self-regulation in this sector has demonstrably failed'.⁸² This view was supported by Ms Patricia Forward, Federal TAFE Secretary, AEU, who stated:

The whole notion of light-touch regulation, of self-regulation, in an area which has the potential to give private providers such great profits, I think has left the sector open to unscrupulous behaviour, and this is what has happened.⁸³

4.81 When asked directly about the regulatory failures, DEEWR told the committee that work has been underway:

The Commonwealth recognised that there had been huge growth in international education a couple of years ago and proposed the setting up of the committee with the states. That was working through issues last year, the point at which the Victorian government decided to set up a review of the student experience and that, in turn, led to the rapid audit process which has been taking place there and which is still unfolding. New South Wales decided to come in behind that—and if you look at the student numbers it is very much a New South Wales and Victoria issue, by and large. Earlier in the year the Deputy Prime Minister said she supported the other states doing that. So there has been a stream of activity around that and looking at issues such as student safety which goes back for quite some time.

Secondly, the ESOS Act and that framework was reviewed in 2005—I do not know if the senators have had a chance to look at that—and the national code was reviewed after that. My understanding is that, in the knowledge that that had been looked at fairly recently, the Bradley committee recommended that the ESOS legislation did not need to be reviewed before 2011-12. The Deputy Prime Minister came in earlier this year in response to Bradley and said it should be done sooner. So there has been quite a stream of activity. Obviously, with hindsight, it is up to people to judge whether that was enough.⁸⁴

80 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 6.

81 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 9.

82 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 63.

83 Ms Patricia Forward, *Committee Hansard*, 2 September 2009, p. 65.

84 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 80.

Committee view

4.82 The committee believes that the time for further self regulation has passed. The potential for profits has left the sector open to unscrupulous behaviour. As covered in chapter three, there was general support for an independent body to review not only student complaints but also to monitor the regulatory environment.

Other issues

Protection for students in the event of an RTO collapse

4.83 A Tuition Assurance Scheme (TAS) ensures that overseas students receive the course they have paid for. If a provider is unable to meet its teaching obligations to a student, one of the other providers in the scheme will take over teaching the student. With some exceptions, all providers are required to be in a TAS.⁸⁵

4.84 The ESOS Assurance Fund was established in 2001 under section 46 of the ESOS Act to protect the interests of current and intending overseas students of registered providers. It does this by ensuring that a student is provided with a suitable alternative course, or has course monies refunded, if the provider cannot provide the course that the student has paid for.⁸⁶ New providers are not registered on CRICOS until their first contributions have been paid.

4.85 For private providers, ACPET offers the Overseas Student Tuition Assurance Scheme (OSTAS).⁸⁷ The scheme complies with the requirements of the ESOS Act. Mr Andrew Smith, Chief Executive Officer, ACPET, told the committee that ACPET underwrites the student experience for approximately 170 000 students through ACPET's tuition assurance scheme which it operates on behalf of private providers and their international students.⁸⁸ Mr Smith explained how the schemes interact:

The way it works is that the Tuition Assurance Scheme is a requirement for private providers. Public providers are not required by the ESOS Act to be part of the consumer protection arrangements that are required of private providers. Private providers have a choice as to whether they use a tuition assurance scheme as their primary mechanism—there are other options under the legislation—but those who use a tuition assurance scheme as their primary mechanism choose which scheme they join. Ours is the largest, so most providers are part of ours.⁸⁹

85 Providers are required to be in a TAS unless they are exempt from the requirement to pay annual fund contributions, have an approved indemnity agreement, have an approved bank guarantee, or have obtained a ministerial exemption.

86 See <http://esosassurancefund.com.au/> accessed 19 October 2009.

87 See http://www.acpet.edu.au/index.php?option=com_content&task=view&id=158&Itemid=70 accessed 19 October 2009.

88 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 39.

89 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

The Tuition Assurance Scheme is the second level of consumer protection for international students. The first level under the ESOS Act is that an individual institution has a responsibility to provide an alternative place or a refund to a student if they are unable to continue to offer the course. Failing that, our Tuition Assurance Scheme kicks in, and our guarantee is that we will find a student an alternative place in order that they can continue their education with one of our ASTAS [Australian Student Tuition Assurance Scheme] or overseas Tuition Assurance Scheme members. Should we not be able to meet that obligation, a student is entitled to a refund or placement by the ESOS Assurance Fund, which forms the third level.⁹⁰

...Under the Tuition Assurance Scheme, you take on a responsibility if students are displaced. Provided it is within the regulated numbers and other things that you are required to do under the regulations, you are required to take those students, to honour the tuition they have paid for but not received and to deliver the course that they were studying. So the students are able to complete the course they came to study and to do so at no financial disadvantage. For example, if a student had paid for a full semester and only received half of the semester, the receiving college would need to honour the half a semester that was paid for but not received, without charging fees. Then, once that was done, they would charge fees, as the student would have had to pay at their original provider.⁹¹

4.86 Mr Smith explained how the fund affects student choice:

...You asked about the students and what sort of choice they get. The choice is limited because, for starters, it is only private institutions who have the obligation to take students, and only those who are members of our tuition assurance scheme. From time to time students will ask us if they can attend a particular institution. Sometimes they will ask us if they can change courses. Where possible we accommodate that. We are not required to accommodate that, but wherever possible we do. Our obligation is to ensure the student is able to complete the course they came to study, with minimal disruption and no financial disadvantage.⁹²

4.87 Mr Smith explained that, when a provider closes, they have a requirement to find students a suitable alternative course within 28 days but occasionally they require a little extra time due to particular student circumstances.⁹³ Mr Smith further explained that TAFE colleges are not required to be part of the consumer protection arrangements, so they are not obliged to take the students.⁹⁴

90 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 40.

91 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

92 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

93 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, pp 43–44.

94 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 44.

4.88 The committee heard evidence of confusion for students when providers have closed. The types of issues were described by Mr Menghani from the Federation of Indian Students of Australia in the following exchange:

Mr Menghani—The students are basically going through a lot of problems. For example, one of the students at the college shut down in Melbourne was guaranteed a place in the next 28 days in one of the other universities which has a similar course. He also got the course in the other university but the system of education quality was not there. He had to repay to do the same course again in the other—

Senator HANSON-YOUNG—He had to repay?

Mr Menghani—Yes, he had to repay the same course whereas APTEC told us very clearly that if students will be granted a place in 28 days, they will not have to pay for the duration. For example, if they have paid fees in advance, they will not have to pay additional on top. But right now that student is forced to pay that amount again.

Senator HANSON-YOUNG—Who does that student go to to complain that that was not what was meant to happen?

Mr Menghani—Right now, he is going back to APTEC and talking about his problem saying, ‘This is the problem I am going through. Please help me out.’ At the end of the day, they guaranteed him a place. They did not even guarantee the quality of course that he will be enrolled into. For example, if a person is doing a cookery course in one college which shuts down and he goes to another college which provides cookery, they may not have resources. You are talking about a huge number of students are not here.

Senator HANSON-YOUNG—There have been concerns raised from students who attended the Sterling College in Sydney that they could not access their academic records, those who were almost upon completion of their courses, as well as other information held by the colleges as part of the visa requirements. Are these the types of things that have happened here in Melbourne as well?

Mr Menghani—Yes, they have. They have been happening for such a long time and I think it is a big issue. One of the students does not even know that the university has a kitchen when he can go for hands-on practice for his cookery course. After six months he gets to know that there is a place where he can go for hands-on experience but there are no resources, there are no tools sitting in the university itself. They do not have libraries, they do not have computers where students can go to practice, they do not have anything but they are running a college which meets the certain criteria of the ESOS Act at the end of the day.⁹⁵

4.89 Mr Paul Kniest, NTEU, said that trying to understand how TAS and the ESOS Fund work together was challenging. He noted that this would be even more difficult

for an international student with English as a second language.⁹⁶ The committee notes the following explanation from Mr David Roirdan, Chief Executive Officer, Department of Education and Training International and TAFE NSW National Business, Department of Education and Training, regarding the closure of Sterling College:

What I can do is confirm a few things about the closure of Sterling College. I have seen the transcripts from previous meetings, and the committee would be aware that TAFE New South Wales is not required to be a part of the ACPET TAS scheme. The ACPET TAS scheme requires that if a college, for whatever reason, is unable to continue with a particular program or course then students can be transferred to another college within that scheme that runs the same program in a similar geographical area. If there are no colleges available or no places available, the student then has access to the ESOS assurance scheme that is managed by PricewaterhouseCoopers. They can get a refund of the tuition they have paid for up until that date or they can be transferred to another college that has that program. That is exactly what is happening with Sterling College at the moment. We have just made about 80 students an offer to TAFE New South Wales and, all going well, they will be transferred to TAFE New South Wales programs. The student will get a refund for the tuition they have already paid for and then, yes, they will pay the fees for the TAFE New South Wales program because they are an international student. We have at very short notice done an analysis of our capacity and capability across the state in community welfare. We found that we had vacancies and that is where it is at at the moment. I might point out that there was another private provider that came on at the last moment, and they have picked up the bulk of those students.⁹⁷

Committee comment

4.90 For an international student, the closure of their provider would be a distressing and stressful situation compounded by a lack of certainty and knowledge of relevant processes. The committee notes that the Minister for Immigration and Citizenship announced that, from 1 January 2010, overseas students who require a new visa to complete their studies at another school or college will be exempt from paying the \$540 student visa application charge.⁹⁸ Students should be quickly reassured and briefed about the mechanisms in place to protect their interests and the interaction between the TAS and ESOS Assurance funds. They should be provided with contacts for further questions and for any complaints which may arise.

96 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 39.

97 Mr David Riordan, *Committee Hansard*, 18 September 2009, pp 59–60.

98 Senator the Hon Chris Evens, Minister for Immigration and Citizenship, *media release*, 'new visa measures to assist international students', 9 November 2009.

Recommendation 12

4.91 The committee recommends that clear and timely mechanisms must be developed by the regulatory authorities and peak bodies to ensure that, if a provider closes, students are informed of their rights and of either getting their money back or transferring to a new course. Students also need to be made aware of the avenues they can use to ask questions or lodge complaints.

Adequacy of the funds

4.92 Concerns have been raised about the ability of the ESOS Assurance Fund to meet increased demand. DEEWR advised that while it is not possible at this stage to predict the need for the ESOS Assurance Fund, these arrangements will be considered by the review underway by Mr Baird.⁹⁹ The committee notes an amendment to the ESOS Act has been proposed to increase transparency for the fund. It requires the fund manager to provide a report to the Minister within 60 days which details information about the default¹⁰⁰ and that this amendment has been accepted by the government.¹⁰¹ It also notes the work underway by ACPET on assessing the financial obligations of the TAS.¹⁰² Given recent media reporting of further college closures,¹⁰³ the committee notes reports that the manager of the ESOS Assurance fund will raise the general levy for providers next year 'to support the solvency of the fund over the next six months'.¹⁰⁴

Conclusion

4.93 The quality of the education and training provided to international students is just as important as their welfare. There is no doubt that the small number of unscrupulous agents and providers which have been allowed to operate in the system have damaged Australia's reputation as a provider of high quality education and training. The committee acknowledges that work is underway to address the deficiencies identified in the regulatory system by the ESOS bill and the review of the ESOS Act being undertaken by Mr Baird. However, it is clear more must be done to restore confidence.

4.94 The source of the regulatory problems is clear. They are concentrated in the private VET providers and result from inadequate monitoring and enforcement

99 DEEWR, *Submission 13* (ESOS bill), p. 6.

100 Dr Andrew Southcott MP, *House of Representatives Hansard*, 19 October 2009, p. 3, pp 60-61.

101 Hon Julia Gillard, *House of Representatives Hansard*, 19 October 2009, p. 61.

102 ACPET, *Submission 9* (ESOS bill), p. 6, 10.

103 Andrew Trounson, 'Foreign students in limbo after college owner folds', *The Australian*, 6 November 2009, p. 2.

104 Andrew Trounson and Guy Healy, 'Levies rise to cover college collapses', *The Australian*, 4 November 2009, p. 5.

activities by the states and territories. They have been remiss in allowing opportunistic institutions to commence and to continue. While the committee does not wish to tar all providers with the same brush, it is clear that this is where remediation efforts must be targeted. Those long established and well run providers in that sector should have nothing to fear from the processes underway to rid the sector of the unscrupulous operators.

4.95 The key change which needs to occur is adequate enforcement of the existing regulations. The committee acknowledges steps taken in this area with the audits of high risk providers underway in states and territories. It is disappointed though that this emergency action is necessary. As the committee received little useful information from the states and territories regarding reasons for the regulatory failures, it is imperative that all the factors which contributed to the regulatory failures are understood and addressed. The committee notes the importance of adequate and targeted resourcing and commitment from all stakeholders.

4.96 The committee received evidence that the regulatory problems which have emerged were not new and various groups had been calling attention to them for some time. DEEWR attempted to reassure the committee about the cooperative relationship it has with the states and territories and that decisions cutting across responsibilities are made based on common sense. The committee believes that this has proved inadequate to ensure action on complaints, and on emerging and systemic issues regarding the regulatory environment and hence the recommendation put forward by the committee in chapter three of an independent body able to appropriately refer issues for quick action.

4.97 The committee believes that a number of other factors and work underway will also assist to clean up this sector. It is pleased to note the statements regarding the decoupling of permanent residency from study. This will be a big step in cleaning out those agents and providers which take advantage of people with the lure of permanent residency.

Chapter 5

Education and Migration Agents

5.1 The role of education and migration agents, both in Australia and abroad, was included in the terms of reference for the inquiry. The committee heard evidence about the recruitment practices of some migration and education agents in attracting international students.

5.2 In particular, significant evidence was given indicating that tighter regulation and monitoring of the industry, to address some agents providing false and misleading information regarding education institutions and avenues for permanent residency, would be of benefit to the international education sector.

5.3 The committee notes that although some agents operate as both education and migration agents, there is a difference in the regulatory framework that applies to these functions. The committee also wishes to place on the record the important contribution many dedicated and professional education and migration agents make to the international education sector.

Migration agents

5.4 Regulation of the migration advice industry has been slow to evolve and has been the subject of four reviews since 1997. Prior to the 1990s, migration advice was unregulated, and following a brief period of government regulation, the profession commenced a period of statutory self-regulation with the Migration Institute of Australia (MIA) acting as regulator of the industry under a Deed of Arrangement with the Commonwealth. The *2007–08 Review of Statutory Self-Regulation of the Migration Advice Profession* found overwhelming opposition to the profession moving to self-regulation, and due to the appointment of MIA as regulator, a perceived conflict of interest had arisen. The review recommended that the government consider establishing a regulatory body separate from MIA, and as a result, the migration regulatory functions were returned to the Minister for Immigration and Citizenship under the Office of the Migration Agents Registration Authority (MARA).¹

5.5 The committee notes that under the *Migration Act 1958*, only migration agents registered with the Office of MARA can provide immigration assistance for a fee. Since its establishment on 1 July 2009, the office has increased the number of professional standards officers who investigate complaints about, and conduct audits on, registered migration agents. Unregistered persons offering migration advice can be penalised by up to 10 years' imprisonment. While the Department of Immigration and

1 Department of Immigration and Citizenship, *2007–2008 Review of Statutory Self-Regulation of the Migration Advice Profession*, p. 8.

Citizenship (DIAC) investigates breaches of the Migration Act, immigration advice provided by agents outside Australia is not subject to the provisions of the Migration Act.²

5.6 Allegations of malpractice by migration agents are complicated by the confusion surrounding references to 'agents'. Mr Andrew Bartlett, Research Fellow, Australian National University, elaborated on this issue:

...it is often difficult to tell whether references to 'agents' relate to Registered Migration Agents (whose activities are overseen by the MARA), education agents (who can work for education institutions and do not need to be RMAs), lawyers (who can give immigration legal assistance without being registered agents), people falsely portraying themselves as RMAs (who fall outside the jurisdiction of the MARA), or overseas based agents (who do not need to be registered in Australia).³

5.7 MIA argued for clarification on the distinction between the provision of immigration information, immigration assistance, immigration advice and immigration legal assistance. Its submission argued that DIAC should accept immigration applications from registered migration agents, or from individuals who declare that they did not pay for immigration advice in connection with the application process.⁴ The initiatives proposed by MIA were supported by the Australian Technology Network of Universities and this included that current registered migration agents be required to requalify to a higher standard of English and professional competence.⁵

5.8 Concern was expressed about the coupling of immigration and education policy functions that has resulted in some education agents also acting in the capacity of a migration agent. The National Union of Students (NUS) commented on the apparent conflict of interest that is created when migration agents also refer students to education providers. Mrs Sharon Smith argued:

...there is a conflict of interest, a very definite conflict of interest, if you have got a person who is working as a migration agent and getting money from a student and then also getting money from an education provider for referring the student to that provider...⁶

5.9 This perceived conflict of interest was also noted by the Law Institute of Victoria which criticised the ability of education agents to provide migration advice:

There is an inherent conflict of interest between the student's interest, the interest of the education provider and the agent's own pecuniary interest. On

2 DIAC, *Submission 111*, pp 32-33.

3 Mr Andrew Bartlett, *Submission 61*, p. 2.

4 The Migration Institute of Australia, *Submission 102*, p. 5.

5 Australian Technology Network of Universities, *Submission 11*, p. 7.

6 Mrs Sharon Smith, *Committee Hansard*, 2 September 2009, p. 34.

the one hand, the agent will receive a commission from an education provider, and on the other hand, the agent will receive professional fees for any immigration work done for the student.⁷

5.10 The National Tertiary Education Union (NTEU) recommended that the practice of education agents also acting as migration agents be reviewed.⁸ Mr Paul Kniest, National Policy and Research Coordinator, argued:

I think there is potential for conflict of interest...We think that the whole relationship needs to be examined in terms of whether there is a conflict of interest and whether those two roles need to be kept distinct and separate.⁹

5.11 When asked about the use of migration agents by universities, Ms Ainslie Moore, Assistant Director- Policy, Universities Australia, told the committee they use only education agents:

It is important to note the difference between an education agent and a migration agent. An education agent only sells education, and that is the relationship the universities have. A number of our members refuse to deal with education agents if they have a migration function as well.¹⁰

5.12 The need for education providers to engage with migration agents was also questioned by Mr Chris Evason, Director, International Education Services, who commented:

We do not use migration agents. I do not think that education providers have any particular purpose in using migration agents per se.¹¹

5.13 The committee notes that the issue of education agents acting as migration agents was addressed in a 2004 discussion paper by the then Department of Immigration, Multicultural and Indigenous Affairs. The discussion paper identified the increasing practice of education agents in Australia offering migration advice. This was the result of the change to migration laws in 2001 which allowed graduating international students to apply for permanent residency without returning to their country of origin. The department recommended education agents register as migration agents in order to legally provide immigration services to students.¹²

5.14 The NUS argued that the growth in education agents providing migration advice and vice versa has resulted in the creation of a 'permanent resident visa

7 The Law Institute of Victoria, *Submission 97*, p. 20.

8 NTEU, *Submission 56*, p. 2.

9 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p 37.

10 Ms Ainslie Moore, *Committee Hansard*, 18 September 2009, p. 29.

11 Mr Chris Evason, *Committee Hansard*, 18 September 2009, p. 49.

12 Department of Immigration, Multicultural and Indigenous Affairs, *Discussion Paper- Options for Regulating Migration Agents Overseas and the Immigration Related Activities of Education Agents*, May 2004, p. 18.

factory'. The NUS believed it inappropriate for migration agents who refer students to particular education providers to receive a commission. This has resulted in poaching and fraudulent migration or education activity. Accordingly, NUS proposed that migration agents be denied the ability to obtain commissions or funds from education providers for recruiting students, and suggested this be incorporated in both the *Migration Act* and the *ESOS Act*.¹³

5.15 The committee notes that there is already action being taken to break the link between permanent residency and education. The committee notes the changes announced by the Minister for Immigration and Citizenship in December 2008 which focus on skilled recruitment around employer and state government sponsorships.¹⁴ In July 2009, the Office of the Migration Agents Registration Authority (MARA) was established to regulate the activities of the migration advice profession to provide consumers with appropriate protection and assurance.¹⁵ The Deputy Prime Minister as well as the Minister for Immigration reaffirmed that:

...coming to Australia to study is about being a student in Australia while applying for permanent residence is about Australia's migration system and the two should be seen as separate systems with no automatic link between studying in Australia and access to permanent residence.¹⁶

Committee view

5.16 The committee notes the efforts to decouple migration and education policies¹⁷ and expects the number of migration agents acting as education agents will begin to decline. DEEWR highlighted this process in their submission:

The Australian Government is responding with measures to improve the integrity of student visa arrangements and to clarify the distinction between international education and migration. Recent statements by both the Deputy Prime Minister and the Minister for Immigration have reaffirmed the Government's view that coming to Australia to study is about being a student in Australia while applying for permanent residence is about Australia's migration system and the two should be seen as separate systems with no automatic link between studying in Australia and access to permanent residence.¹⁸

13 NUS, *Submission 29*, pp 52-54.

14 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Migration program gives priority to those with skills most needed', *media release*, 19 December 2008.

15 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'New migration agent authority commences', *media release*, 1 July 2009.

16 DEEWR *Submission 112*, p. 5.

17 DEEWR, *Submission 112*, p. 5.

18 DEEWR, *Submission 112*, p. 5.

Education agents

5.17 The committee notes that unlike migration agents, education agents are not subject to a regulation or registration process in Australia. Under the ESOS framework, education providers are accountable for the conduct of their education agents. The National Code is a set of nationally consistent standards that governs the protection of overseas students and delivery of courses to those students by providers on CRICOS.¹⁹ Part D of the National Code lists 15 standards which CRICOS-registered providers must comply with to ensure 'quality of education and professionalism is of a sufficiently high standard to enrol international students'.²⁰

5.18 Section 15 of the ESOS Act states that a registered provider must not engage in misleading or deceptive conduct in connection with the recruitment of overseas students or intending overseas students.²¹ Standard 4 of the National Code contains further provisions regarding the recruitment of international students that relate more closely to the actions of education agents, including the requirement for education providers to not accept students from an education agent it believes is engaged in dishonest practices. Further, standard 4.5 specifies that the provider take immediate and preventative action upon learning that an agent is being negligent, careless or incompetent, or engaging in false, misleading or unethical advertising and recruitment practices, including practices that harm the integrity of the education industry.²²

5.19 Many submissions expressed the view that the current regulation of the conduct of education agents is ineffective. Of most concern was the lack of regulation from an authority separate from the education providers. The ability of education agents, both within Australia and abroad, to engage in unprofessional conduct raises serious questions regarding the ability of some sectors of the education industry to regulate and monitor the behaviour of the agents with whom they engage. Despite the ESOS framework providing regulations that indirectly promote a professional standard of conduct among education agents, it appears that the intent has failed. The International Student Legal Advice Clinic argued in its submission:

While Standard 4 of the National Code is clearly an attempt to indirectly regulate the conduct of education agents, in our view it fails to do this. VET providers are dependent on agents for recruitment and it is not in their interests to proactively scrutinise their conduct.²³

19 The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students, available at:

www.aei.gov.au/AEI/ESOS/NationalCodeofPractice2007/default.htm

20 The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students, available at:

www.aei.gov.au/AEI/ESOS/NationalCodeofPractice2007/default.htm

21 *ESOS Act 2000*, s. 15(a).

22 *ESOS Act 2000*- National Code 2007, standard 4.5.

23 International Student Legal Advice Clinic, *Submission 76*, p. 10.

5.20 The fact that many agents are based overseas further complicates the issue of regulation. If an Australian-based regulatory body were to be established, it is questionable how such a body would effectively enforce penalties outside Australian borders. The challenges that are associated with a central entity monitoring the actions of education agents abroad further justify why the onus has been placed on education providers to monitor their respective agents.

5.21 It was argued by some that the perceived lack of enforceable penalties for education providers has resulted in apparent complacency in sectors of the industry to regulate education agents. International Education Services highlighted this issue:

...the ESOS regulations that apply to education agents are largely appropriate in holding education providers accountable, although the regulations have been poorly enforced. This has resulted in a perception by some providers that they need not be overly concerned by the risk of sanctions or the imposition of penalties for any inaccuracies in the representations made by agents on their behalf.²⁴

5.22 The lack of willingness in some sections of the education industry to monitor agents was highlighted by the Group of Eight which stated:

The Go8 recognises that one area of weakness in the current system is that management of recruitment agents is the responsibility of the institutions which engage them. Institutions which are highly reliant upon income derived from the students recruited by these agents have no incentive to monitor their behaviour or cancel a contract when unscrupulous behaviour occurs.²⁵

5.23 DIAC acknowledged the need for the system to be improved:

DIAC has strong concerns about the action of some education agents and acknowledges the need for Governments to be able to more effectively monitor and sanction education agents who do not represent the best of interests of consumers.²⁶

5.24 In order to better address the issue of agent accountability, amendments to the ESOS Act were introduced into Parliament. The Legislation committee reported on the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 in October 2009 and recommended the bill be passed by the Senate. One of the amendments requires all registered providers to maintain and publish a list of the overseas and Australian education agents they use. It also provides for regulations to be made dealing with providers' agents. DEEWR advised that the regulations to provide further protection for students will be developed in consultation with providers and may include:

24 International Education Services Ltd, *Submission 42*, p. 1.

25 Group of Eight, *Submission 38*, p. 9.

26 DIAC, *Submission 111*, p. 33.

...training requirements for providers, recognition of overseas schemes of registration for providers and the provision by providers of media through which students may record their experiences of agents.²⁷

5.25 The measure was supported by the Group of Eight:

The Go8 universities already comply with this requirement [to publish a list of agents] and will be pleased to see other universities and VET providers brought into line with this practice.²⁸

5.26 However, a number of submissions expressed apprehension at the proposed measures. English Australia commented:

English Australia believes that this is an unrealistic proposal that will not contribute to addressing the issues of current concern and may very well have implications in relation to trade practices and commercial confidentiality.²⁹

5.27 Similarly, the Independent Schools Council of Australia voiced concern over issues relating to commercial confidentiality and argued:

The sector is concerned at DEEWR's decision to introduce an amendment to the ESOS Act which will require providers to publicly list the education agents they use. This was introduced with no sectoral consultation and ISCA is concerned that it will disadvantage smaller providers in requiring them to disclose information that could be regarded as commercial-in-confidence.³⁰

5.28 In its report, the Legislation committee noted the information provided by NUS regarding a possible reason for any reluctance to publish the names of agents:

...many education institutions are reliant on the work of the education agent for their share of this extremely lucrative market and as such, the most successful education agents are increasingly of the most value to the providers and the unethical agents is more likely to be the successful agent...Therefore, it is unlikely that an education provider will disengage an unethical agent unless they are concerned about the consequences of engaging with this agent, such that the law is being monitored and enforced with penalties with will impact detrimentally on the trade of the provider...³¹

27 DEEWR, *Submission 13 (ESOS bill)*, p. 6.

28 The Group of Eight, *Submission 38*, p. 9.

29 English Australia, *Submission 10*, p. 17.

30 Independent Schools Council of Australia, *Submission 72*, p. 8.

31 NUS, *Submission 8 (ESOS bill)*, p. 7.

Committee comment

5.29 While the committee is aware of the positive contribution education agents abroad have on the international education sector, it is clear that there are a number of regulatory issues that still need to be addressed. Numerous calls were made for stricter regulation of education agents. The Legislation Committee concluded that the requirement to publicly list agents would have little effect on most providers of education and training. Universities maintain such a list and almost all of them publish the list on their websites. The committee also noted that the private college sector has announced that it will establish a public list of approved agents.³²

5.30 The References Committee agrees that the amendment will be an effective way of increasing transparency in the industry, and will assist overseas students in identifying reputable education agents. Publishing details of education agents used will serve to hold providers accountable for their use. The committee notes the advice from DEEWR that more protection for students in this area will be addressed as the regulations are developed and that the matter will also be addressed as part of the Baird review.

Agents overseas

5.31 Education agents play a vital role in shaping the expectations of students with regard to education outcomes, accommodation, employment opportunities and living costs. The committee heard evidence of education agents providing inaccurate information to potential students. Ms Nadia Martini, an international student working as a law clerk with the Kingsford Legal Centre, told the committee:

There is also some problem with agents advertising that you can get into a university or an education institution just with money, without the proper requirements, as in the English level.³³

5.32 The practice of education agents deliberately providing inaccurate information to prospective students was referred to during the public hearings as the 'glossy brochure syndrome'. The NUS explained this phenomenon to the committee:

Many students have received a glossy brochure, when they have been overseas, and they have seen a lovely campus and thought that that was what they were coming to.³⁴

5.33 The committee raised this issue with representatives from ACPET who acknowledged the problems faced by the organisation in regulating information provided to students. Mr Andrew Smith, CEO, stated:

32 Guy Healy and Andrew Trounson, 'Crackdown on student recruitment', *The Australian*, 12 August 2009, p. 29; Joanna Mather, 'Report card for education agents', *Australian Financial Review*, 14 October 2009, p. 6.

33 Ms Nadia Miranti, *Committee Hansard*, 3 September 2009, p. 20.

34 Mrs Sharon Smith, *Committee Hansard*, 2 September 2009, p. 33.

...we believe that students should be provided with more accurate information than they are in some cases. We do not actually ensure that. However, our code of ethics does have a section that talks about the manner in which courses and institutions are marketed. So, again, where we receive complains against that, we investigate, but we do not have that regulatory authority.³⁵

5.34 The committee also heard evidence from the Federation of Indian Students of Australia who commented on the conduct of some Indian-based education agents representing Australian private education institutions. Mr Neeraj Shokeen commented:

It is misleading, and practices differ from agent to agent. I think that the government needs to address the issue of private institutions employing unscrupulous agents in India who actually mislead students greatly.³⁶

5.35 The problems associated with monitoring the activities of off-shore education agents are exacerbated by the existence of sub-agents. Outlining the hurdles to effective regulation of education agents abroad, the National Education Providers Taskforce (NEPT) highlighted the use of sub-agents as further complicating the monitoring process. The NEPT explained:

...in some countries, such as India, there exists a plethora of sub-agents who do the initial recruitment of a student in the local town/village and then, have the "official paperwork" for their student undertaken by a larger agent in a big city. Keeping track of this intricate network of agents (who have signed Agency Agreements with Australian education providers) and their sub-agents elsewhere is an almost impossible task.³⁷

5.36 DIAC told the committee that a few countries have their own regulatory regimes that cover the conduct of agents.³⁸ DEEWR added that they have conducted training programs for agents in Australia and overseas.³⁹ It also told the committee of specific action being taken regarding agents in India:

Just looking at India, which is just one country—although a big one and an important one here—when we visited India recently the department there expressed its intention to regulate agents and their behaviour. In fact we are hoping to go back in two weeks time for the first of a series of working groups to work out with the Indians how best that legislation could operate. So we are taking this forward vigorously.⁴⁰

35 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 41.

36 Mr Neeraj Shokeen, *Committee Hansard*, 2 September 2009, p. 32.

37 National Education Providers Taskforce, *Submission 94*, p. 2.

38 Department of Immigration and Citizenship, *Submission 111*, pp 32–33.

39 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 76.

40 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 84.

Committee view

5.37 The committee notes the difficulty of regulating agents overseas. The committee recommends that as part of engaging agents overseas, mechanisms are put in place to ensure agents are in receipt of authoritative information regarding studying in Australia.

Recommendation 13

5.38 The committee recommends that, in engaging agents overseas, DEEWR ensures that agents and sub-agents are able to access authoritative information regarding studying in Australia.

Use of eVisa

5.39 In addition to requiring providers to list the agents they use, a complementary measure is the use of DIAC's eVisa system. Although DIAC has no direct legislative power to regulate education agents abroad, it can influence the conduct of agents through providing access to the eVisa application lodgement platform. The eVisa model that operates in India, Thailand, China and Indonesia includes the requirement that agents sign a Facilities Access Agreement to gain access to the system. The agreement requires that agents maintain a certain standard of conduct in order to retain access to the eVisa scheme, with failure to comply making them liable to denial of access.⁴¹ DIAC submitted that this mechanism can be used to promote professional standards among agents, a belief shared by the ACTU. Ms Michelle Bissett, ACTU, told the committee that the model is 'a mechanism for putting some standards around the behaviour of the agents'.⁴² The eVisa scheme, and its capacity to promote professional conduct amongst agents, is currently under review by DIAC.⁴³

Committee comment

5.40 The committee supports the use of eVisa as a means to encourage professional conduct among agents abroad.

Recommendation 14

5.41 The committee recommends DIAC continue to expand the eVisa system, as an effective tool to encourage professional conduct of overseas agents.

The need for training

5.42 The committee understands that while a student's lack of adequate or correct information may result from deliberate misinformation from an unscrupulous agent, it may also be due to a lack of training of education agents abroad. The committee

41 DIAC, *Submission 111*, p. 33.

42 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 8.

43 DIAC, *Submission 111*, p. 33.

appreciates that many education agents may not have access to adequate information regarding studying in Australia. Ms Gail Baker, an education agent based in India, acknowledged this problem in her submission:

Even the best agents generally only provide students with information regarding their course of study and if they provide a really exceptional service they will give students a little additional information about working and living in Australia. This is not because agents choose not to give this information, but in many cases the counsellors simply do not know.⁴⁴

5.43 To address the apparent lack of information from agents overseas regarding studying in Australia, Ms Baker suggested:

In order to boost the reputation of our education sector abroad, we should look at holding general seminars across India initially and other countries if required, to highlight the positives of studying and living in Australia, the high standard of education and also what to expect from institutions and of what is expected of students. This should not be in the form of an education fair where institutions speak of their courses and services, but a general 'Study in Australia' theme.⁴⁵

5.44 It is important that education institutions supply agents with correct and up-to-date information. However, findings from the Study in Australia 2010 report indicate that a number of agents are not satisfied with the level of information provided by their respective institutions. The report was developed following the AEI-funded education agent workshops held between May and June 2009. The workshops were conducted by International Education Services (IES) through its Professional International Education Resources (PIER) division, and canvassed the views of 1 140 education agents across 13 cities and six source countries in Asia. Commenting on the findings of the workshops, the Managing Director of IES, Mr Chris Evason told the committee there was a 'real will of the large majority of education agents worldwide to qualify and professionalise themselves'.⁴⁶ However, the report found that 66 per cent of all respondents needed to remind providers to supply current material regarding their programs and services.

5.45 IES elaborated on the lack of training of those working within the international education industry. Identifying this shortcoming in 2006, the PIER division of the IES developed the Education Agent Training Course (EATC) in conjunction with government. The EATC is an on-line training program that provides education agents with an accredited Australian VET qualification. Mr Chris Evason explained the elements of the training course to the committee:

There are four modules in the course. The first module looks at Australia, background to Australia and the Australian qualifications framework. The

44 Ms Gail Baker, *Submission 52*, p. 3.

45 Ms Gail Baker, *Submission 52*, p. 3.

46 Mr Chris Evason, *Committee Hansard*, 18 September 2009, p. 42.

second module looks at legislation, regulations and compliance with those. The third module looks at working effectively: how agents can best work with their providers, what happens in issues such as critical incidents with students—how they might best behave. The last module looks at professional standards and ethical behaviour. It is interesting that in that last module there is a lot of case studies were provided by DIAC. We have worked closely with DIAC and DEWR in the development of the content.⁴⁷

5.46 Once agents are qualified, they are publicly listed on the PIER website, and according to IES, 1 266 individuals from 45 countries have successfully completed the training to become qualified education agent counsellors.⁴⁸ Findings from the Study in Australia report illustrate the desire of education agents to operate within a professional industry, with 86 per cent of agents believing education agents should be qualified by undertaking the EATC. However, 61 per cent of participants in the study were not required by their providers to have the qualification.⁴⁹ In response to these findings, the report suggested:

This may indicate that providers are not yet convinced that a professional qualification makes a difference to the performance of their agents, or that agents are not yet regarded as a key link in the maintenance of Australia as a preferred study destination.⁵⁰

5.47 While completion of the EATC is not compulsory for education agents, the benefit of the course was highlighted in evidence to the committee. ACPET commented:

The best method of working with agents is through engagement and education. AEI has set up the online agents course with PIER online and is working with agents in every major market to get better results. This is an effective strategy and policy settings should work within this type of framework rather than imposing a unilateral set of criteria.⁵¹

5.48 English Australia explained the benefits of the EATC:

Australia has again led the world in developing appropriate training programs for education agents and has encouraged agents to take the training as a way of demonstrating their professionalism to potential students and differentiating themselves from untrained agents. This has been a 'carrot' approach rather than a 'stick' approach and relies on agents

47 Mr Chris Evason, *Committee Hansard*, 18 September 2009, p. 44.

48 Mr Chris Evason, *Committee Hansard*, 18 September 2009, p. 42.

49 Professional International Education Resources. *Study in Australia: AEI Education Agent Workshops May-June 2009*, Draft report prepared for Australian Education International, August 2009, p. 40.

50 Ibid.

51 Australian Council for Private Education and Training, *Submission 42*, pp 13–14.

looking for ways of differentiating their services in what is a highly competitive area.⁵²

5.49 The need for qualified education agents to represent Australian institutions was also recognised by the private education sector. ACPET will launch a register of reputable education agents who have completed the EATC, enabling students to search for qualified agents by locality. It is planned that the register will also have the capacity to rate agents' performance, and will list agent membership of respected professional bodies.⁵³ A similar register is currently available to students on the PIER website. Ms Sonia Caton, Director, International Education Services, told the committee of plans to further develop this registry, and to further enhance its regulatory function:

...in terms of consumer protection, accountability and transparency in the operation of education agents, in just a couple of months IES are going to launch a new product which is going to be free and available for the government to direct consumers to. It will enable a prospective student anywhere in the world to jump on the PIER website...and look at who is in their area...They will get every single agent—how long they have been acting as an agent, what their qualifications are et cetera, and this is going to be made available for free. If this is endorsed widely enough then it will become a self-perpetuating standard...So it is more regulation through initiative than the big stick. If everybody is participating then your non-participation is going to speak volumes about you.⁵⁴

5.50 The committee believes that such registries play a vital role in ensuring students are able to access qualified, professional education agents regardless of their location. Registries such as the one developed by IES complement other regulatory mechanisms, such as DIAC's eVisa system, and the requirement that all providers publish details of the agents they use.

Committee view

5.51 Despite criticism in the media about education agents in recent times, it is apparent that only a minority of agents are culpable. While the unscrupulous behaviour of some agents has caused problems, education agents have generally played a key role in the development of the international education industry. The International Education Services Ltd submission cites an *i-graduate* survey which indicated that 60 per cent of Australia's international student population was sourced through education agents, compared with 19 per cent in the United Kingdom and three

52 English Australia, *Submission 10*, p. 16.

53 Joanna Mather, 'Report Card for Education Agents', *Australian Financial Review*, 14 October 2009, p. 6.

54 Ms Sonia Caton, *Committee Hansard*, 18 September 2009, p. 47.

per cent in the United States.⁵⁵ Recognising the contribution education agents have made to the international education sector, Navitas commented in its submission:

Education agents are also important business partners for public and private education providers; they are able to identify market trends and opportunities and highlight risks and threats that may impact the growth of enrolments and the business of the provider.⁵⁶

5.52 While the committee acknowledges that only a minority of education agents act in an unethical manner, it believes that the entire education agent industry will benefit from requiring agents to undertake professional accreditation. This should ensure that Australian education providers engage only with reputable, professionally trained education agents. Requiring agents to complete training courses will help restore confidence in the Australian education industry.

5.53 An increasing number of agents are enrolling in the EATC, a positive sign that should be further encouraged by government and education providers. The committee encourages education providers to work with agents who have completed the EATC to ensure international students receive the most accurate and appropriate information possible.

Recommendation 15

5.54 The committee recommends that providers deal exclusively with education agents who have successfully completed an appropriate course such as the EATC and that this requirement be phased in over the next three years.

Addressing visa fraud

5.55 While applications for student visas increased by 20 percent in 2008–09, the committee notes there was also a 68 per cent increase in the number of visa refusals compared with the previous financial year. Recent reports have emerged of a student visa scam in India, where students are provided with falsified Indian bank and loan statements as evidence to support their Australian student visa applications. Unscrupulous education agents are at the centre of this scam, acting as the intermediary between students and corrupt bank officials. According to DIAC, the financial scam is particularly evident in the VET sector.⁵⁷

5.56 The committee notes that as a result, DIAC investigators have cancelled at least 500 student visa applications and withdrawn eVisa access to 150 agents.⁵⁸ DIAC has introduced a number of measures to address the potential for document fraud, including:

55 International Education Services Ltd, *Submission 45*, p. 4.

56 Navitas, *Submission 39*, p. 13.

57 Guy Healey, 'Student visa rort 'people-smuggling'', *The Australian*, 24 October 2009, p. 5.

58 Guy Healey, 'Student visa rort 'people-smuggling'', *The Australian*, 24 October 2009, p. 5.

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- upgrading the interview program to build a strong evidence base around fraud;
 - removing or restricting eVisa access for some agents where there is evidence of fraud or inactivity, and
 - restricting access to eVisa for some segments of the caseload if analysis demonstrates restricted access would allow for better control of fraud.⁵⁹

Another issue

5.57 Another issue not included in the terms of reference but mentioned in a number of submissions is discussed below.

Medical internships

5.58 Submissions pointed out that the number of internships available after graduation has not kept pace with the growth in the number of domestic medical students, let alone those from overseas. The Australian Medical Students' Association expects that no state will be able to offer internships to international students with Australian medical degrees by 2012, when domestic medical graduate numbers peak. It was argued that overseas students who had trained for up to six years in Australian universities and paid \$200 000 in tuition fees would not be the only casualties. The health system would also forgo a cohort of committed graduates trained to Australian standards at a time of chronic health workforce shortages.⁶⁰

5.59 On 29 November 2008, the Council of Australian Governments (COAG) agreed to a package of reforms to the health and hospital system.⁶¹ One component of the National Partnership Agreement on Health and Hospital involved the creation of a National Health Workforce Agency. It will manage and oversee major reforms to the Australian health workforce. The agency will subsume the current National Health Workforce Taskforce (NHWT) activities and assume responsibility for its work program encompassing workforce planning and research; education and training; and innovation and reform.

5.60 As a single body with a specific focus on implementing workforce reform, the agency will devise solutions that integrate workforce planning, policy and reform with the necessary and complementary reforms to education and training. A consortium comprising the Australian Health Workforce Institute (AHWI) and PricewaterhouseCoopers (PwC) has been selected to undertake the National Health Workforce Planning and Research Collaboration (the Collaboration). The

59 Senator the Hon. Chris Evans, Minister for Immigration, 'Student Visa Checks Strengthened', *media release* 20 August 2009.

60 Siobhan Ryan, 'Internships edge foreign doctors out', *The Australian*, 28 August 2009, p. 7.

61 COAG Communique, 29 November 2008, available from http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/ accessed 28 August 2009.

Collaboration between the NHWT and the consortium will undertake a substantial program of national health workforce planning and research projects over a three-year period.⁶²

Committee view

5.61 The Health Workforce Australia Bill 2009 established Health Workforce Australia, but it currently exists in name only. The Health Minister has reported that processes are underway to set up Health Workforce Australia and recruit a chief executive.⁶³

Recommendation 16

5.62 The committee recommends that as a matter of urgency the issue of medical internships receive priority in workforce planning and that this be the subject of a special study by Health Workforce Australia.

Senator Gary Humphries

Chair

Liberal Party

Senator Gavin Marshall

Deputy Chair

Australian Labor Party

62 Information available from: <http://www.nhwt.gov.au/index.asp> accessed 28 August 2009.

63 Siobhain Ryan, 'Kevin Rudd fails to plug medico gap', The Australian online, 26 August 2009, accessed 28 August 2009.

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Name Withheld
2	Mr Harold Jones
3	Mr Anthony Reeder
4	Confidential
5	ANU College
6	Ms Ines Prasadha
7	Mr David Yuan
8	AFIS FECCA
9	Australian Immigration Law Services
10	English Australia
11	Australian Technology Network
12	International Students Online
13	C Q University Australia
14	Professor Paul Rodan
15	Office of the Anti-Discrimination Commissioner
16	AFG Venture Group
17	Southern Cross University
18	International Education Association of Australia
19	Mr Blaise Wardle
20	Mr Zach Turner
21	ANU International Medical Students Society
22	North American Medical Students' Association - University of Sydney
23	AIEC Australian International Education Centre
24	Australian Federation of International Students
25	Mr Satoshi Okawa
26	Mrs Barbara Bradshaw
27	Curtin University Student Guild
28	National ELT Accreditation Scheme Limited
29	National Union of Students
30	The University of New South Wales
31	UWA Student Guild
32	Australian Homestay Network (AHN)
33	Construction, Forestry, Mining & Energy Union of Australia
34	Chinese Community Council of Australia

- 35 Name Withheld
- 36 OSHC Worldcare
- 37 Confidential
- 38 Group of Eight
- 39 Navitas Limited
- 40 Young Workers Legal Service
- 41 Cabramatta Community Centre
- 42 International Education Services Ltd
- 43 ACTU
- 44 University of Melbourne Graduate Student Association
- 45 Australian Council for Private Education & Training (ACPET)
- 46 Mr David Mawson
- 47 University of South Australia
- 48 Councillor Tim Laurence, City of Darebin, VIC
- 49 Service Skills Australia (SSA)
- 50 Confidential
- 51 Danny Ong
- 52 Ms Gail Baker
- 53 Council of Australian Postgraduate Associations (CAPA)
- 54 University of Technology Sydney Students Association
- 55 Our HR Company
- 56 National Tertiary Education Union (NTEU)
- 57 ISANA: International Education Assoc. Inc.
- 58 Australian Medical Students' Association
- 59 Monash City Council
- 60 National Liaison Committee for International Students (NLC)
- 61 Mr Andrew Bartlett, Australian National University
- 62 Independent Education Union of Australia (IEUA)
- 63 Victoria University
- 64 University of Ballarat
- 65 Council of Private Higher Education Inc.
- 66 City of Darebin & Darebin Overseas Student Advisory Council ([PDF 157KB](#))
- 67 Service Skills Victoria
- 68 Overseas Students' Support Network Australia (OSSNA)
- 69 Federation of Indian Students of Australia
- 70 Universities Australia
- 71 TAFE Directors Australia
- 72 Independent Schools Council of Australia
- 73 Australia India Business Council
- 74 Kingsford Legal Centre
- 75 Australian Nursing Federation

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- 76 International Student Legal Advice Clinic
 - 77 UNITE
 - 78 Restaurant & Catering Australia
 - 79 The University of Queensland
 - 80 Australia Network
 - 81 Name Withheld
 - 82 International Centre, The University of Melbourne
 - 83 Graduate Programs Australia / e2e.net
 - 84 John Nicholson
 - 85 Sydney University Medical Society
 - 86 Hairdressing and Beauty Industry Association (HBIA)
 - 87 International Student Alliance (Guardian & Welfare Services)
 - 88 Name Withheld
 - 89 RMIT University
 - 90 Anti-Slavery Project, Faculty of Law, University of Technology, Sydney
 - 91 Study Vision
 - 92 Australian Education Union
 - 93 Sydney University Postgraduate Representative Association
 - 94 National Education Providers Taskforce (NEPT)
 - 95 IDP Education Pty Ltd
 - 96 Name Withheld
 - 97 Law Institute of Victoria
 - 98 Australian Institute of Technology & Education Pty Ltd
 - 99 Deakin University
 - 100 Canberra Multicultural Community Forum (CMCF) Inc.
 - 101 Australian Hotels Association
 - 102 The Migration Institute of Australia Limited
 - 103 Dr Michael Spence , The University of Sydney
 - 104 Tenants Union of Victoria
 - 105 Tasmanian Government
 - 106 Commonwealth Ombudsman
 - 107 NSW Department of Education & Training
 - 108 Monash University
 - 109 Education Adelaide
 - 110 Mr Chris Gould , Child-Safe International Ltd, Avon and Somerset
Constabulary
 - 111 Department of Immigration and Citizenship
 - 112 Department of Education, Employment and Workplace Relations
 - 113 Imperial Education Group Pty Ltd T/A Imperial College of Trades
 - 114 Department of Foreign Affairs & Trade
 - 115 Wellington Secondary College

- 116** Mr Krishnan Raman
- 117** N. K. Aggarwal
- 118** Culinary Institute of Australia
- 119** French-Australian Preschool
- 120** Department of Education Services (WA)
- 121** Ms Michaela Rost
- 122** Queensland Government
- 123** Metropolitan Fire and Emergency Services Board (MFB)
- 124** Auzzie Families Homestay Care Pty Ltd

Additional Information Received

- Correspondence received on 14 August 2009, from International Students at Monash Clayton University;
- Received on 13 October 2009 from Department of Education, Employment and Workplace Relations (DEEWR). Answers to Questions on Notice;
- Received on 23 October 2009 Department of Immigration and Citizenship (DIAC). Answers to Questions on Notice.

APPENDIX 2

Public Hearings and Witnesses

MELBOURNE – TUESDAY, 1 SEPTEMBER 2009

- BARROW, Mr David Howard, President,
National Union of Students
- CHAU, Ms Wesa, Honorary President,
Australian Federation of International Students
- DODD, Mr Tim, Manager,
External Relations, IDP Education Pty Ltd
- FALLON, Dr Felicity, President,
ISANA International Education Association Inc.
- FREELAND, Mr Warwick, General Manager,
Strategy and Business Development, IDP Education Pty Ltd
- HUANG, Ms Dongping, International Student Officer,
Council of Australian Postgraduate Associations
- LAURENCE, Councillor Tim Singh, Councillor,
City of Darebin; and member of the Federation of Indian Students of Australia
- MACKENZIE, Mr Bruce, Chief Executive,
Holmesglen Institute of TAFE; and Member, TAFE Directors Australia
- MENGHANI, Mr Amit, President,
Federation of Indian Students of Australia
- PALMER, Mr Nigel, National President,
Council of Australian Postgraduate Associations
- PECHENKINA, Ms Ekaterina, Project Officer,
Organisational Development and Research, Council of Australian Postgraduate
Associations
- QUIRK, Mr Steve, Manager,
International Engagement, Australian Council for Private Education and
Training
- RIORDAN, Mr Martin, Chief Executive Officer,
TAFE Directors Australia
- SHAH, Mr Anwar, International Student Officer,
Council of Australian Postgraduate Associations
- SIMMONS, Ms Virginia, Director and Chief Executive Officer,
Chisholm Institute of TAFE; and Board Member, TAFE Directors Australia

- SINGH, Mr Robby, National Executive Officer,
Australian Federation of International Students
- SMITH, Mr Andrew, Chief Executive Officer,
Australian Council for Private Education and Training
- SMITH, Ms Desma Stephanie, Council Ex-Officio Member and Chair,
Study Abroad and Exchange Special Interest Group, ISANA International
Education Association Inc.
- SMITH, Mrs Sharon Margaret, Research Officer,
National Union of Students
- TSOI, Mr Douglas, National Executive Officer,
Australian Federation of International Students
- WELCH, Mr Russell, Chair,
International Education Committee, Australian Council for Private Education
and Training

SYDNEY – WEDNESDAY, 2 SEPTEMBER 2009

- BANKS, Ms Karen, Project Officer,
Service Skills Australia
- BLANDTHORN, Mr Ian, Chairman,
Service Skills Australia
- BUNDESEN, Ms Christine Mary,
Council Member, English Australia
- CODY, Ms Anna Frances, Director,
Kingsford Legal Centre, University of New South Wales
- FORWARD, Ms Patricia, Federal TAFE Secretary,
Australian Education Union
- GAVRIELATOS, Mr Angelo, Federal President,
Australian Education Union
- HEALEY, Mr William John, Chief Executive Officer,
Australian Hotels Association
- KAUR, Miss Hardeep, Sydney Representative,
Federation of Indian Students of Australia
- McMAHON, Ms Catherine, General Manager and Acting Chief Executive
Officer,
Service Skills Australia
- MIRANTI, Miss Nadia, Student Law Clerk,
Kingsford Legal Centre, University of New South Wales

- PURDAMI, Mr Sumit, Sydney Coordinator, Federation of Indian Students of Australia
- SHOKEEN, Mr Neeraj, Adelaide Chapter Coordinator, Federation of Indian Students of Australia

CANBERRA – FRIDAY, 18 SEPTEMBER 2009

- BARTLETT, Mr Andrew John, Research Fellow, Migration Law Program, Australian National University
- BISSETT, Ms Michelle, Senior Industrial Officer, Australian Council of Trade Unions
- BURMESTER, Mr Bill, Deputy Secretary, Tertiary, Youth and International Cluster, Department of Education, Employment and Workplace Relations
- CATON, Ms Sonia Luise, Director, International Education Services
- CHAUDHURY, Ms Tulip, Branch Manager, International Quality Branch, Department of Education, Employment and Workplace Relations
- EVASON, Mr Christopher Matthew, Managing Director, International Education Services
- KNIEST, Mr Paul, National Policy and Research Coordinator, National Tertiary Education Union
- LANYON, Ms Karen, Assistant Secretary, Images of Australia Branch, Department of Foreign Affairs and Trade
- McPAUL, Ms Christine, Assistant Secretary, Education and Tourism Branch, Department of Immigration and Citizenship
- MOORE, Ms Ainslie, Assistant Director, Policy, Universities Australia
- MURRAY, Ms Dianne Jean, Institute Director, TAFE New South Wales Illawarra Institute, Department of Education and Training, New South Wales
- RICHARDS, Mr Peter, Assistant Secretary, Student Visa Integrity, Department of Immigration and Citizenship
- RIORDAN, Mr David Francis, Chief Executive Officer, Department of Education and Training International and TAFE New South Wales National Business, Department of Education and Training, New South Wales

- STOKES, Ms Deborah, First Assistant Secretary, South and West Asia, Middle East and Africa Division, Department of Foreign Affairs and Trade
- VARDOS, Mr Peter, First Assistant Secretary, Department of Immigration and Citizenship
- WALTERS, Mr Colin, Group Manager, International Group, Department of Education, Employment and Workplace Relations
- WITHERS, Dr Glenn, Chief Executive Officer, Universities Australia

APPENDIX 3

Response from State Regulatory Authorities

- Received from the Department of Further Education, Employment Science and Technology, South Australia Government;
- Received from the Victorian Regulations and Qualifications Authority;
- Received from the Victorian Regulations and Qualifications Authority;
- Received from Queensland Department of Education
- Received from the Department of Education & Training, Northern Territory.



Ref: BR09/2561

Mr John Carter
Secretary
Standing Committee on Education, Employment and Workplace
Relations (References)
PO Box 6100
Parliament House
CANBERRA ACT 2600

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Office of the
Chief Executive
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Dear Mr Carter

Thank you for your letter dated 7 September 2009 to the Quality Directorate, Department of Further Education, Employment, Science and Technology (DFEEST), requesting information on regulatory arrangements in South Australia.

The Quality Directorate manages the registration and audit of providers under delegation from the Training and Skills Commission through the *Training and Skills Development Act SA (2008)*. These registration functions cover the higher education, vocational education and training sectors for delivery to domestic and overseas students.

As requested, information on the following is attached:

- the size of the Directorates operations
- procedures that are followed to register organisations
- quality assurance procedures that are in place for Registered Training Organisations.

Please do not hesitate to contact Ms Chris Hastwell, A/Director Quality Directorate on telephone (08) 8226 3405, should you require additional information.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R Garrard', written over a horizontal line.

Raymond Garrard
CHIEF EXECUTIVE

7 September 2009

Encl.

Size of operations

There are currently 330 providers registered under the *Training and Skills Development Act (2008)* in South Australia (the Act). 72 of these are registered to deliver to overseas students and of these, 49 operate primarily in the vocational education and training sector. The remainder operate in the higher education and or ELICOS sectors.

The key functions of audit and registration in the VET domestic and ESOS sectors (covering some 305 providers) are currently conducted by six lead auditors who are departmental employees. There is a seventh lead auditor who is primarily responsible for the handling and investigation of complaints about registered providers. DFEEST is currently recruiting two further lead auditors to bring the total to eight. The lead auditors are supported by staff in the Quality Directorate covering management, administration and record keeping functions.

In addition, there are two staff who are assisting in the management and provision of information to departmental staff and external clients on ESOS related matters. This includes coordinating inter-agency meetings, professional development activities newsletters and advisory information to providers.

Procedures to register organisations

Organisations are registered against the *South Australian Standards for Registration to Deliver Education Services to Overseas Students*, established under the Act. A copy of the standards for registration is attached for reference. You will note that these Standards require providers to meet the requirements for registration in the higher education or vocational education and training sector (except in the case of ELICOS providers) and also be assessed as compliant with the National Code 2007.

All providers must submit an application for registration and demonstrate through a National Police Certificate, Statutory Declaration and independent certification of financial viability that they are fit and proper to be registered under the Act.

All applications for initial registration are assessed at a site audit by an audit team. Each audit team comprises a lead auditor, an external auditor (who has significant experience in vocational education and training) and where relevant, an industry specific technical adviser. The lead auditor is responsible for forwarding through their manager a report of the audit findings against all relevant requirements of the AQTF and the National Code. The audit also assesses and makes recommendations on the approved student capacity of the provider. The manager forwards a recommendation to the delegate. Neither the manager nor the delegate is directly involved in the audit.

The delegate may determine to register the organisation with or without conditions attached to the registration. In some cases for initial registration it is necessary for the approval to be conditional on, for example, a further site inspection to confirm that all resources have been purchased prior to students commencing studies.

This same process is followed to assess applications to renew registration and applications for extension to scope of registration including increases in approved student capacity. In applications that are assessed to be low risk an application may be approved on the basis of an application alone or by assessment of documents submitted by the provider at the request of the lead auditor.

Quality assurance procedures for Registered Training Organisations

The Directorate works to quality assure the sector through regulatory and non-regulatory interventions.

Regulatory intervention is applied on a risk management basis. In the first instance, all providers registered for the first time are audited a second time within the first 12 months of

their registration to ensure that policies and procedures assessed at the initial audit are being successfully deployed. The focus of these and all other 'post-initial' audits is to assess evidence of quality outcomes. This is done by speaking with staff and students, examining records and looking for evidence of continuous improvement of the provider's operations.

Registered providers that are assessed to be high risk as a result of a poor compliance record or because of recent and rapid growth are more closely monitored. In particular the department regularly checks on the Provider Registration and International Student Management System (PRISMS) to identify providers that are in danger of breaching their approved capacity.

If a provider is not able to satisfactorily and quickly rectify compliance the delegate may apply a condition to the provider's registration restricting their operations. Most commonly this restricts the provider from issuing new enrolments.

The Directorate has one officer dedicated to handling complaints about registered providers. The investigation of a complaint may also lead to a Registered Training Organisation being assessed as high risk and subject to closer monitoring by the Department.

Non-regulatory interventions also play an important role in quality assurance.

Regular communication is maintained with all ESOS Providers via a quarterly update from the Directorate. The update provides them with current information related to the ESOS Framework and reminds them of their roles and responsibilities as ESOS providers, as well as their responsibility to providing quality education and training.

Professional development opportunities are provided on a regular basis on topics that identified by registered providers themselves. These topics have included:

- appropriate reporting on PRISMS
- working with and managing education agents
- addressing student welfare needs and providing appropriate student support
- ensuring student compliance with student visa requirements
- work placements for overseas students.

The Quality Directorate also works with the Office of the Training Advocate, an independent body established under the Act to offer assistance and support to students (both domestic and international); individuals and organisations with any questions or concerns about the tertiary education system. The Training Advocate has played a particularly important role in supporting and advocating for overseas students.

SOUTH AUSTRALIA

STANDARDS FOR REGISTRATION TO DELIVER EDUCATION SERVICES TO OVERSEAS STUDENTS

The Department of Further Education, Employment, Science and Technology under delegation by the Training and Skills Commission will register under section 26 (1) (c) of the *Training and Skills Development Act 2008*, the following kinds of organisations:

- (A) a university created by South Australian statute that has adopted the Training and Skills Commission Code of Practice for delivery of education and training to overseas students;
- (B) an organisation registered under section 26 (1) (a) of the *Training and Skills Development Act, 2008*, that has adopted the Training and Skills Commission Code of Practice for delivery of education and training to overseas students and

either

is administered by a State education authority;

or

is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training, other than one excluded by ESOS Act Regulations from the scope of this paragraph.

- (C) an organisation registered under Section 26 (1) (a) of the *Training and Skills Development Act 2008* (ie a Registered Training Organisation or a registered provider of higher education courses);

or

an organisation that is certified as accredited by the National ELT Accreditation Scheme (NEAS) Limited ABN 29003 980 667;

and

- (1) that has adopted the Training and Skills Commission Code of Practice for delivery of education and training to overseas students;

and

- (2) that has been assessed as being

- (a) compliant with the National Code of Practice for Providers delivering Education Services to Overseas Students.
- (b) fit and proper within the meaning of the Code, having had due regard to a Statutory Declaration made by the Organisation, a national police clearance certificate and searches under the Commonwealth Corporations Law.

and

- (3) has demonstrated on initial registration and **annually thereafter**, financial viability through a statement by an accountant who
- (a) possesses a Public Practising Certificate, maintains appropriate indemnity insurance and is a member of a recognised professional accounting association
 - (b) has no financial interests in the organisation seeking registration

The attestation shall take into consideration:

- (a) the accounts system adopted by the provider is appropriate
- (b) the organisation is in a sound financial position and has the necessary financial resources to deliver the course(s) offered for fee.

In certifying the financial viability of a provider, with no prior trading history the accountant shall take into consideration:

- (a) a forecast of the resources available for the operations of the organisation for the first six months, without the need for students' fees
- (b) a forecast of the resources available for a further two year period taking into account on-going operations including students' fees.

In attesting to the financial viability of a provider with a prior trading history, the accountant shall take into consideration:

- (a) a forecast of the resources available for the operations of the provider for a two year period including all sources of funding available to the provider
- (b) financial statements including profit and loss statements, balance sheets and explanatory notes to the accounts, and statements of the resources available for the previous three years of the business.

Registered Training Organisations operating in SA under AQTF mutual recognition arrangements must undergo a full assessment.



Victorian **Registration &
Qualifications** Authority

Level 6, 35 Spring Street
Melbourne VIC 3000

GPO Box 2317
Melbourne VIC 3001

T (03) **9637 2806**

F (03) 9651 3266

vrqa@edumail.vic.gov.au

www.vrqa.vic.gov.au

Mr John Carter
Secretary
Senate inquiry into the welfare of international students
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Carter

Thank you for your letter dated 7 September 2009 requesting information to inform the Senate inquiry. Attached to this letter is the information you have requested. Please contact me directly should you require any clarification or further information. I can be contacted on telephone 9651 3204 or via email on glover.lynn.m@edumail.vic.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynn Glover', written over a light yellow background.

Lynn Glover
Director, VRQA

29 SEP 2009

Victorian Registration & Qualifications Authority: Response to information request from the *Senate inquiry into the welfare of international students*

1. Size of the Victorian Registration and Qualifications Authority (VRQA) VET unit.

There are 53 staff who work in the VRQA. The VRQA organisation chart is provided at Attachment One.

The VRQA VET Unit manages routine registration and audit activities for Registered Training Organisations (RTOs) and for providers of courses to overseas students in the VET area; as well as the accreditation of courses delivered by RTOs. The VRQA has a panel of contracted auditors which undertake the audits and reviews of providers.

In May this year the VRQA established a dedicated unit to manage the Rapid Audit Program of high risk RTOs approved to deliver courses to overseas students. This unit is managing the auditing of 41 providers.

2. Initial VRQA registration process for Registered Training Organisations (RTOs) and providers of courses to overseas students

Steps	Process
1. Receive application for initial registration as an RTO and/or provider to overseas students	<ul style="list-style-type: none"> • Applications submitted direct to the VRQA • Application date stamped • Application checked for completeness and additional information sought where required • Application entered on CRM as inactive • Application and registration fee processed
2. Evaluate application	<ul style="list-style-type: none"> • Initial risk assessment is based on supplementary risk indicators • Adequacy of information assessed • Create a hard file for each application • Scope of audit determined • Audit arranged by appropriate officer • Determine if approval of licensing or industry bodies is required
3. Conduct an audit	<ul style="list-style-type: none"> • Auditor or audit team selected from auditor panel • Date of audit arranged by auditor in consultation with client • VRQA Audit Procedures undertaken
4. Make a recommendation on registration	<ul style="list-style-type: none"> • Recommendation based on compliance with relevant Standards, Codes, legislation and regulations • Recommendation on period of registration based on risk assessment

Steps	Process
5. Approve or refuse application	<ul style="list-style-type: none"> • Delegate approves or rejects registration application • Decision is consistent with relevant Standards, Codes, legislation and regulations • Decision recorded electronically using CRM function
6. Implement decision	<ul style="list-style-type: none"> • If unsuccessful, applicant advised and provided with reason for decision • Annual registration fee returned to unsuccessful applicant • If successful, applicant provided with letter of confirmation, Certificate of Registration, Scope of Registration Certificate and registration information • For providers of courses to overseas students, the Registration recommendation is forwarded to DEEWR which has responsibility for registering providers on CRICOS

3. The VRQA has a range of quality assurance arrangements in place to underpin the delivery of vocational education and training by RTOs including:

Governance

- ❖ Strategic governance of all VRQA business activities by the VRQA Board. The VRQA is a statutory authority, responsibilities of direct interest to the inquiry are:
 - i. monitoring of minimum standards
 - ii. initial registration and ongoing monitoring of all schools, training and higher education providers
 - iii. accreditation of courses and registration of qualifications
 - iv. authorisation of providers to conduct or award those courses and qualifications
 - v. approval of providers of courses for overseas students
 - vi. providing public information about registered courses and providers
- ❖ The VRQA Board has delegated its powers in relation to the delivery of courses to overseas students to the Director, Deputy Director and TVET Australia. The delegates are required to report formally to each VRQA Board meeting on any decisions they have taken under delegation.
- ❖ The VRQA has established a sub committee with responsibilities for monitoring and driving improvement in quality of vocational education and training in Victoria.
- ❖ All VRQA Board decisions are reported to the relevant Minister for information immediately after meetings.
- ❖ The Secretary of the Department of Industry, Innovation and Regional Development is a member of the VRQA Board.
- ❖ The VRQA Board undertakes an annual client satisfaction survey of registered education and training organisations. This survey is not restricted to VET providers but covers all education sectors. The survey results are

reported to the VRQA Board and provides critical feedback on the VRQA regulatory services and procedures. This information is used to inform the Board's annual planning activities and influences priorities for business improvement.

- ❖ The VRQA Board produces a detailed annual report which provides information on all aspects of its regulatory business. A copy of the 2007/08 report can be found on our website at:

www.vrqa.vic.gov.au

- ❖ The Minister for Skills and Workforce Participation has directed the VRQA to develop guidelines aimed at strengthening the registration and ongoing quality of services provided by vocational education and training providers approved to deliver to overseas students. These guidelines are under development and will be implemented from 1 January 2010.

Operations

- ❖ The VRQA staff conduct monthly information sessions for prospective applicants considering registration as an RTO or seeking approval to deliver courses to overseas students. These sessions cover all aspects of the National and Victorian regulatory framework, procedures for registration, likely timelines and appeal mechanisms.
- ❖ The VRQA have a dedicated website which covers all of its regulatory activities. In relation to vocational education and training it also lists providers who have had their registration suspended or cancelled.
- ❖ The VRQA undertakes regular auditor and contractor seminars and training programs. These programs provide critical information on policy and operational matters.
- ❖ The Director meets regularly with key stakeholders to brief them on emerging issues.
- ❖ Under the *Education and Training Reform Act 2006* the VRQA has appointed a number of authorised officers. These officers are able to enter premises, make enquiries and inspect and examine documents. The VRQA is increasingly using authorised officers to conduct preliminary investigations and to lead complex audits and reviews.

Consumer Protection

- ❖ The VRQA has developed and implemented a State Register. The Register provides up to date information on all registered education and training providers in Victoria. The State Register has been designed to allow the public to easily search by provider name, locality, qualification and type of registration (this includes whether they have approval to deliver to overseas students). This information ensures that students and parents whether located here in Victoria or off shore are able to access relevant information about registered providers.
- ❖ The VRQA has developed a simple post card for prospective international student which lists the key questions they should be asking of potential

providers of education and training before they make any decisions about enrolment. This postcard is available on the VRQA website. This has been distributed in India and is available in Hindi.

- ❖ The VRQA has a dedicated Complaints Unit. The Unit reports directly to the Director and assesses all complaints and conducts investigations. In addition the unit provides a telephone service to overseas students.
- ❖ The VRQA has established its own 'First Response' team. This team is activated to support the closure of any provider of courses to overseas students. The team is formed from senior officers across the VRQA. The team takes responsibility for assessing the situation, coordinating information between relevant authorities and with ACPET and arranging any student briefings. The team ensure that all necessary consumer protection arrangements are in place quickly to support students. A detailed checklist has been developed by the VRQA to assist staff in managing college closures.

Vocational education and training quality assurance arrangements

❖ Types of audits and reviews

In its regulatory role, the VRQA has a range of audit and review options to manage the quality of RTOs. These include audit programs for the following:

- New registration
- Renewal of registration
- 12-month review of registration
- Extension to scope of registration
- Increase to maximum capacity of overseas students
- Compliance with requirements of registration
- Complaints audit
- Strategic audits

❖ Quality Assurance via the audit and review program

A team of independent auditors, contracted by the VRQA to undertake site and desktop audits and reviews, they report to the VRQA on the level of compliance of RTOs with the requirements for registration under the *Australian Quality Training Framework 2007* (the AQTF 2007) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code 2007).

Audits and reviews are implemented according to the registration cycle of the RTO and its status for delivering courses to overseas students.

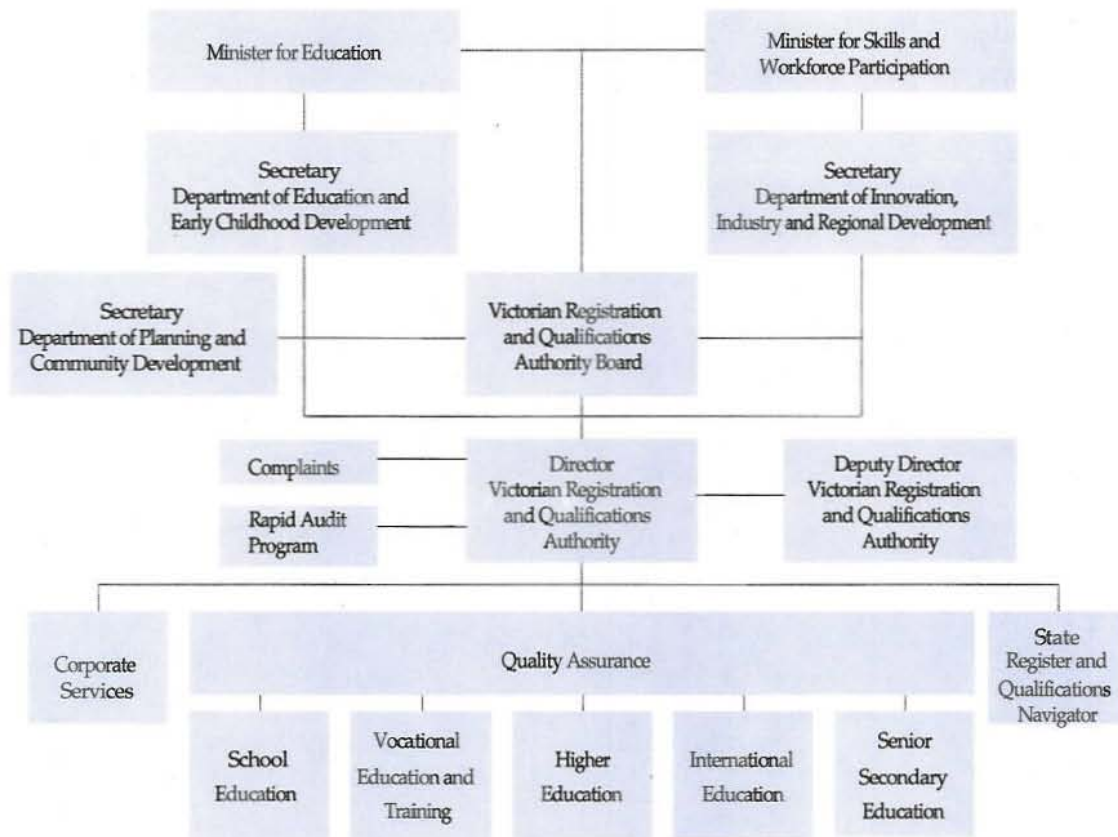
Initial registration audits for new providers, and at the end of their first 12 months of registration, ensure compliance is monitored in an RTO's early registration history.

Audits are also conducted for renewal of registration every five years; and for the assessment of proposed amendments to an RTO's registration status, e.g. addition of new courses, new training locations, increase to maximum number of overseas students. The audits enable the VRQA to meet its obligations under the *Education and Training Reform Act 2006* in relation to monitoring quality assurance for RTOs.

For RTOs which consistently demonstrate quality training outcomes and compliance with the essential standards, the audit processes undertaken are proportional to the lower level of risk involved with these providers. Equally, where there is a history of critical non-compliance by an RTO, this will impact on the scope of the VRQA's audit program in order to address the higher level of risk.

In certain circumstances the VRQA will develop and implement special audits, such as complaints audits, compliance and strategic audits. These are undertaken to monitor compliance with the National Code 2007 or the AQTF 2007 at any particular stage of the registration period of an RTO, or of a particular group of RTOs, e.g. the Rapid Audit Program is currently being undertaken by the VRQA on a group of high risk providers of courses to overseas students.

Organisation chart as at September 2009





**Victorian Registration &
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8 October 2009

**Mr John Carter
Secretary
Senate inquiry into the welfare of international students
PO Box 6100
Parliament House Canberra ACT 2600**

Sear Mr Carter

I refer to your email dated the 27 September 2009 in which you asked several questions relating to the delivery of courses to overseas students.

I have attached my response. Please note that I will provide a response to question fie in due course.

Please ring me on (03) 9651 3204 should you need to discuss any of my answers.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynn Glover', written in a cursive style with a long, sweeping tail.

**Lynn Glover
Director**

Senate inquiry into the welfare of international students

Response from the Victorian Registration and Qualifications Authority to Questions on Notice to State Training Registration and Compliance Agencies

- 1. It is claimed that many Registered Training Organisation's (RTO's) offer cooking and hairdressing courses that do not include work-based training programs. Why are these programs approved? Why are normal industry requirements ignored when the reason for providing these courses is to supply the needs of industry?**
 - All registered providers approved to deliver a particular qualification to overseas students must comply with the requirements specified in the relevant National Training Package.
 - National Training Packages allow providers flexibility in the delivery of qualifications. Qualifications may be delivered fully within the institution or as a combination of institutional and workplace based delivery. these decisions will be made on the basis of the facilities required by the provider to support the delivery of the qualification. The delivery of training through workplace based training requires the approval of the designated authority prior to offering such an option to students.
 - Industry experience is therefore made available to all students through a number of means including vocational placement or simulated work based experience.

- 2. Is it government policy to maintain equality in standards in comparable courses across the VET sector, including private RTO's? If so, how do you explain the apparently wide variations?**
 - All registered training organisations must be approved to deliver courses to overseas students by the designated authority. Providers must comply with the delivery requirements specified in the relevant National Training Package, irrespective of whether the provider is a public or private RTO.
 - National Training Packages specify the requirements for each individual qualification including the set number of core units of competency as well as a specified number of elective units, which are selected from a range of options available within the training package by the registered provider. Variations across delivery can occur as a result of the provider's choice in elective units of competency.
 - If the variation referred to above has been based on observations of variations in duration of qualifications registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), it should be noted that the overall duration registered on CRICOS is a combination of both teaching weeks and holiday weeks. To accurately evaluate the variation in course delivery across all providers nationally, holiday periods need to be excluded from the total registered duration.

- 3. Why is it possible for an ATO to be registered when its intention is to enrol only foreign students: the assumption to be drawn that they are likely to cut corners on training?**
- The Education and Training Reform Act 2006 provides the VRQA with the authority to approve providers as suitable to provide a specified course to students from overseas. In deciding whether to grant approval, the VRQA may have regard to all or any of the following matters:
 - the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students
 - the suitability of the course for overseas students
 - guidelines issued by the VRQA
 - any other matter relating to the management or operations of the provider.
- 4. Is it possible for proprietors of de-registered RTO's to obtain registration for starting new establishments?**
- Each application for registration both as an RTO and for approval on CRICOS requires the provider to demonstrate it meets the above requirements. Information about the previous conduct of a provider or managerial agent is sought and considered during the course of the assessment of a new application for registration.
 - Section 9 (6) of the ESOS Act imposes a 'fit and proper person' test which enables DEEWR to take into account, in deciding whether to grant CRICOS registration, if an applicant *"has ever had his, her or its registration cancelled or suspended for any one or more courses for any one or more States under this Act..."* or *"has ever had a condition imposed on his, her or its registration under this Act"*.
 - State & Territory legislation regarding the registration of RTOs also contain similar provisions which enable registering authorities to take account of past RTO cancellations in determining a new application for RTO registration.
- 5. Would you agree with the contention that the state-Commonwealth division of responsibility for main training ESOS standard diminishes systems accountability overall? What advantage is there in maintaining shared responsibility in the regulation of the VET system?**
- This matter is currently being considered I will provide a response in due course.

Senate inquiry into the welfare of international students

Response from Queensland to Questions on Notice to State Training Registration and Compliance Agencies

- 1. It is claimed that many Registered Training Organisation's (RTO's) offer cooking and hairdressing courses that do not include work-based training programs. Why are these programs approved? Why are normal industry requirements ignored when the reason for providing these courses is to supply the needs of industry?**
 - All registered providers must comply with the requirements specified in the relevant National Training Package.
 - Providers have a number of options in delivery mode for both Hairdressing and Commercial Cookery. Depending on the facilities available in-house at the Training Organisation, a provider can choose to deliver a qualification entirely within their organisation, utilising for example an in-house restaurant or hair salon. Should these not be available, or should the provider choose to include additional external training, a provider can choose to offer vocational placement within industry. The delivery of such vocational placement is regulated, and approval must be sought from the designated authority prior to offering such an option to students.
 - Industry experience is therefore made available to all students through a number of means including vocational placement or simulated work-placement experience.

- 2. Is it government policy to maintain equality in standards in comparable courses across the VET sector, including private RTO's? If so, how do you explain the apparently wide variations?**
 - All registered providers must comply with course delivery requirements specified in the relevant National Training Package, irrespective of whether the provider is a public or private RTO.
 - Training package qualifications specify a set number of core units of competency as well as a specified number of elective units, which are selected from a range of options available within the training package by the registered provider. Variations across delivery can occur as a result of the provider's choice in elective units of competency.
 - If the variation referred to above has been based on observations of variations in duration of qualifications registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), it should be noted that the overall duration registered on CRICOS is a combination of both teaching weeks and holiday weeks. To accurately evaluate the variation in course delivery across all providers nationally, holiday periods need to be excluded from the total registered duration. The data recorded on CRICOS does not at present allow such an evaluation. The number of teaching weeks is informed by the nominal hours for a particular qualification. Nominal hours is a value assigned to a structured program of study that nominally represents the anticipated hours of supervised learning and/or training deemed necessary to conduct training/learning and assessment activities associated with the program of study. Nominal hours do not include hours associated with work experience, industry placement, or field placement. (AVETMISS definition –

Australian Vocational Education and Training Management Information Statistical Standard).

- In recognising that there will be variations in the time taken by different individuals to achieve competency, nominal hours do not appear in training packages. They are formulated through a separate process and may be used by State/Territory Governments as a mechanism for the allocation of funds for training.
- If the variation referred to above is in relation to the cost of a qualification, the cost of each program is determined exclusively by the RTO.
- There is no requirement for systematic moderation of assessment outcomes in the VET sector across the various providers of the same qualifications. The provider must ensure consistency with requirements of the training package by addressing the specific entry requirements, the assessment guidelines and qualification packaging rules, required trainer and assessor competencies and assessment evidence requirements specified in the units of competency.

3. Why is it possible for an ATO to be registered when its intention is to enrol only foreign students: the assumption to be drawn that they are likely to cut corners on training?

- The legislation allows for any provider that can demonstrate compliance with legislative requirements to be registered on CRICOS, irrespective of their intended student cohort. There are many examples of training organisations delivering exclusively to the international student sector with a demonstrated track record of high quality educational outcomes for these students.

4. Is it possible for proprietors of de-registered RTO's to obtain registration for starting new establishments?

- Each application for registration both as an RTO and on CRICOS requires the provider to demonstrate it meets national standards, and that appropriate policies and procedures are in place to ensure that the organisation is able to comply with legislative requirements. Information about the previous conduct of a provider or managerial agent is sought and considered during the course of the assessment of a new application for registration. However, it is not without precedent for de-registered providers and/or proprietors to seek a new registration in another jurisdiction through a new corporate entity without necessarily declaring their previous history. Current limitations on the national database, where the full history of providers in one jurisdiction is not always available in another, can limit the ability of regulators to make informed decisions in these circumstances.

5. Would you agree with the contention that the state-Commonwealth division of responsibility for main training ESOS standard diminishes systems accountability overall? What advantage is there in maintaining shared responsibility in the regulation of the VET system?

- Accountability in the cooperative regulatory model is articulated in the Commonwealth Act and National Code.
- The existence of specific legislation in some States and Territories for the education of overseas students and not in others, adds to the complexity of the system. The current approach relies very heavily on the sharing of information. A national approach, with a single entity, would have the advantage of clear lines of accountability and authority to take action.

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Mr John Carter
Secretary
Standing Committee on Education,
Employment and Workplace
Relations
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

Our ref DOC2009/07336
2009/1723

o/ October 2009

Dear Mr Carter

RE: Senate Enquiry into the Welfare of International Students

Thank you for your letter of 7 September 2009 seeking information regarding the processes followed by regulatory authorities in the states and territories as they relate to international education.

There are ten institutions registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) who provide education services to international students in the Northern Territory. These are: this Department which has responsibility for all Northern Territory Government schools, Charles Darwin University which offers both higher education and vocational education and training (VET) courses, an English Language Intensive Courses for Overseas Students provider, one private VET provider and six non-government schools.

The International Services Branch (ISB) is located within the Training and Higher Education Division of this Department. There are two officers who engage in the registration and regulation of providers of education services to international students in the Northern Territory, overseen by a Director who has responsibility for international education.

All institutions interested in applying for CRICOS registration in the Northern Territory must apply through the ISB. Applications are assessed by both internal and external auditors, with assessments including interviews and site inspections. Once all requirements have been met, the Chief Executive of this Department recommends to the Australian Government Department

of Education, Employment and Workplace Relations that the provider be registered on CRICOS. Before being recommended for registration on CRICOS, the institution must be appropriately accredited as a higher education provider, a registered training organisation, or have National ELT Accreditation Scheme accreditation.

As the international education, VET and higher education regulatory areas are all located in the Training and Higher Education Division of this Department, regulatory staff work closely together to monitor quality assurance of registered training organisations. This includes the sharing of information about providers, ongoing monitoring of provider registration compliance and performance through regular contact, audits based on risk assessment and responding to complaints.

If you have any queries regarding the above or require further information, please contact Ms Wendi Masters, Director Strategic Policy, on telephone (08) 8901-1305 or via email at wendi.masters@nt.gov.au.

Yours sincerely



John Hassed
Deputy Chief Executive