To the Senate Legal and Constitutional Committee, from Michaela Rost: Submission for the 'INQUIRY INTO THE ADMINISTRATION AND OPERATION OF THE MIGRATION ACT 1958'

THE DETENTION OF INTERNATIONAL STUDENTS

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'THE DETENTION OF INTERNATIONAL STUDENTS'

INTRODUCTION

The Palmer Report's revelations about the wrongful detention of mentally ill Australian residents, Cornelia Rau, and the wrongful deportation of Vivian Solon, have highlighted the suffering of 'unlawful non-citizen' detainees in Baxter and other immigration detention facilities; the major flaws and limitations of the Migration Act 1958; and lack of accountability and humanity with which it is administered by DIMIA.

The Asylum Seekers Resource Centre's Media Release on 7 July 2005, stated: "The Palmer Draft Report finds a system flawed at every level, with serious defects in communication, monitoring, management, documentation, understanding of roles and responsibilities, decision – making processes and failures to adhere duties under to it's own contracts and instructions.
… The core findings of Palmer in the draft report on its section regarding BWCC and DIMIA are as follows: A 'massive failure' by DIMIA to follow it's own instructions. "

After Rau was released into a psychiatric hospital, the detainees of Baxter issued a statement calling for an expanded Rau inquiry, "to look at the big picture of the humanitarian catastrophe of all those still suffering in … Australian immigration detention."

Amidst subsequent demands by the public, refugee supporters, Mr. Petro Georgiou, other MP's and Senators, for greater compassion, tolerance, reform, release of asylum seekers and a much wider inquiry or royal commission into detention, very few Australians however, are aware that some International students have also been be detained, for up to even two years behind razor in high security prisons.

If their Student Visa has, rightly or wrongly, been subject to mandatory cancellation, and they decide to contest the alternative of deportation, but cannot afford a bond for the granting a bridging visa, some overseas students have also been detained without charge, together with asylum seekers, refugees, visa over-stayers, children, babies and even Australian residents.

They, too, have thereby suffered similar serious human rights infringements, as legislation for students is tightly enmeshed within the confined 'border protection' parameters defining the Migration Act 1958. However, despite students' significant payment for education services and their economic contribution to Australia's sixth largest export industry, as trading partners, they seem to receive little understanding, assistance or compassion in exchange, and have instead been subject to harsh, uncompromising and unjust treatment.

The Human Rights and Equal Opportunity Commission has advised this writer to 'continue lobbying Federal MP's, appropriate government Ministers and organizations about this matter for change'.

BACKGROUND TO THIS SUBMISSION

This independent submission is based on a recent presentation in July 2005 to the *'RMIT People's Inquiry into Detention'*, a nationwide review already under way, initiated by Dr. Linda Briskman, Associate Professor of Social Work, School of Social Science & Planning, RMIT University, and convened on behalf of Australia's leading academic social work body, the Australian Council of Heads of Schools of Social Work. This body believes there is a need for an open, independent, transparent and ethical enquiry into detention.

In mid 2003, knowing little about DIMIA, Australian immigration law or the international student program, this writer met three depressed and frightened Indian overseas students at Maribyrnong Detention Centre. They had all been detained at that time for 6 months, and had studied at Melbourne tertiary institutions - a university and private colleges.

Other refugee supporters and I could not understand why they there, applying for refugee status, filled with shame, too scared to return home without finishing their studies, why they had lost their student visas in the first place, and how their detention could be legal. However, on hearing their stories, we could understand why they felt terrorized by their incarceration and experiences with DIMIA.

These quietly spoken, intelligent and polite young men, felt anxious, angry, fearful, depressed, persecuted and suicidal. Coming from close-knit families, with great hopes aspirations to improve their lives by studying in a prestigious western democracy such as Australia, they found themselves instead imprisoned and treated like criminals in the very distressful environment Maribyrnong. They had received no legal advice from DIMIA and had no understanding of how the law was working against them. Neither did we.

Pro bono lawyers were assisting them to continue applying for refugee status – it seemed to be the only option for the students to be able to complete their studies, repay their parents' huge financial sacrifices for their education, and thereby avoid certain social ruin in India. They said their families' reputations would be destroyed if word spread that they had been in jail. Their fears were later confirmed by members of the Indian community.

From these questions, and concern for their suffering, there ensued an unexpected and lengthy investigation about the treatment of some overseas students, which seemed to this writer to be a cruel transgression of fundamental human rights values by DIMIA and some Australian education providers. One student took up the suggestion to write down the history of his experiences studying here and his incarceration. This formed the basis of subsequent documentation sent to the Minister and DIMIA.

Many people have been consulted, including international students, migration agents, lawyers, educators, Indian community members, student support groups, refugees, refugee supporters, and some Federal politicians.

INTERNATIONAL LEGAL CONTEXT
VS. AUSTRALIAN DETENTION POLICY AND ADMINISTRATION

The current practice of detention violates Human Rights acknowledged in the 1948 United Nations "Universal Declaration of Human Rights", one of several international covenants to which Australia is signatory.

For example, Articles 9 and 10 state respectively*:*
"No one shall be subjected to arbitrary arrest, detention or exile" and
"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Yet detainees here, including students, have neither been criminally charged, nor initially been given an opportunity for an impartial hearing. After travelling to Baxter In August 2004 with a small delegation, the former Mayor of Darebin, Rae Perry, described the 'terrible' conditions there. "Normally a person is charged with a crime at a police station, is put on bail and continues to work and lead their life while the court case is pending. But in this society, people who are not charged with anything are taken away, locked up, denied the right to bail and their freedom. This damages them further. The worst thing about it is that is done in the name of all Australian citizens." *('Indian students and asylum seekers on bridigng visas and in detention'*, Indian Voice, Oct. 04)

Dr Jane McAdam, law lecturer at the University of Sydney wrote in the Sydney Morning Herald's report *'No visa for Australia despite proposed changes to asylum seeker rules'*, May 31, 2005,
"Australia's laws regulating the reception and processing of asylum seekers are uniquely draconian: Australia is the only Western country with a mandatory detention regime for those who arrive without a valid visa. The detention cannot be reviewed by the courts, and there are no limits on its duration …. Australia's system of mandatory detention violates key obligations under international human rights and refugee law. International law prohibits detention as a blanket response to illegal entry or presence, and requires that all detention be reviewable by the courts. "

In the September 2004 'Law Institute of Victoria Journal', lawyers Sally Nicholes and Lara Rudd wrote in their article *'Fortress Australia'*:
"Australia's statutory policy of mandatory detention appears to be at odds with its obligations under international human rights conventions." They concluded, "While the Human Rights and Equal Opportunity Commission and the UN Committees have held Australia is in breach of its…. International Covenant of Civil and Political Rights, in relation to the mandatory detention of unlawful non-citizens, the government has refused to acknowledge its breaches or demonstrate a willingness to alter the domestic law."

In fact, Dr. Eva Sallis, current President and co-founder of the human rights organization Australians Against Racism Inc believes that, "The Migration Act is now a stronger instrument at law in Australia than any international covenant, or any human rights protection under domestic law. The problem is bigger - we have no bill of rights."

Writing in the ‘Green Left Weekly’, May 2005, Sarah Stephen commented:

‘When Labor introduced mandatory detention in 1992, it did so in order to have complete administrative control over who it kept in detention, denying the courts any power to order a detainee’s release. A central plank of mandatory detention is the removal of any accountability mechanism — any requirement to have a decision tested in a court of law — before deciding to detain or to deport someone.

‘Project SafeCom’s Jack Smit pointed out on May 1 that DIMIA’s powers far exceed those of ASIO and the police. “If you’re a murder suspect, even a serial killer suspect, the police can only hold you for 24 hours, and ASIO can hold suspected terrorists for seven days. Yet only on the suspicion of ‘illegality’ by someone who may well be a junior bureaucrat and new to the job, you can be grabbed, locked away in immigration detention, and as we now find out, deported, even if you are an Australian citizen or resident, and at no time in this chain of horror events DIMIA needs to be held accountable before a judge or a magistrate.” ‘

Earlier this year, the British House of Lords deemed government legislation permitting detention of people without charge for indefinite periods as illegal, and in breach of Human Rights. It has subsequently repealed these laws.

The three above-mentioned Indian students, who all were detained for at least 12 months in MIDC, were also adamant that they had never been told either in India or Australia, that they could possibly be incarcerated, let alone be charged $225 per for their detention. They perceived their treatment, and that of other detainees, as racist and believed that ‘Australians treat their dogs better.’ Mandatory cancellation of student visas has meant for some students ‘mandatory detention’.

Since the introduction in 1993 of mandatory detention for asylum seekers and Aborigines in the Northern Territory, an increasing level of underlying racism has entered the public debate.

Commenting about residual effects of the White Australia Policy, which was the very first law enacted in the fledgling Australian Parliament of 1901, former Labor immgration minister Senator Nick Bolkus referred to DIMIA in the Sydney Morning Herald, "We've got to remember that this is a department that applied the White Australia test, it's a department that even after that test was abolished by the Whitlam government, found ways of enforcing discrimination in our migration program," (13.5.05)

OVERVIEW OF MANDATORY STUDENT VISA CANCELLATION AND STUDENT DETENTION

In the context of DIMIA’s current punitive hardline immigration policies and practices, and because Australia has no constitutional Bill of Rights against which policies can be ethically measured, it appears that the legitimate educational purposes and interests of some international have students have not been able to be protected.

While the current legislation was designed to guard against a minority of non-genuine students from abusing Australia's immigration laws, it appears that a monstrous, inequitable and insufficiently monitored system has been created for the majority of bona fide overseas students and their families.

Students subject to mandatory visa cancellation are required to leave the country. Most go home reluctantly, or are deported from an Immigration Detention Centre. Thus denied the right to complete their education here, return/deportation can have massive negative ramifications for both the students and their extended family - a completely wasted economic and intellectual investment, huge debt, humiliation, a ruined reputation, family and social stigmatisation, and therefore tremendous mental and emotional distress.

For those students with visa cancellations who are determined to find a way to finish their studies, challenging deportation/mandatory departure becomes a total nightmare.

It is extremely difficult to get a student visa back once cancelled. Only about 5-10% of students succeed in getting a cancelled visa reinstated in the Migration Review Tribunal. An experienced migration agent has described this as "disgraceful', and onshore counselling, which the ESOS ACT obliges universities to provide, as a "joke". Student support services for overseas students appear to be minimal or non- existent. If the Voluntary Student Union fees are abolished, the implications are that these services cannot be provided

Neither the conditions of the Migration Act pertaining to students, nor their only avenue of administrative review, the Migration Review Tribunal, are applied with any discretion and therefore do not take into consideration any mitigating circumstances on compassionate grounds. This implies that overseas students are not treated equally before the law, as they do not have the same rights as Australian student residents and citizens.

In February, after being incarcerated for 2 years in Australian immigration detention facilities – first in Maribyrnong and then in Baxter - a former full fee paying Indian student gave up his prolonged 3 year battle for justice to get his wrongly cancelled student visa reinstated, and finally allowed himself to be deported. It appears he was the longest detained overseas student.

Before departing for India, the Australian Government presented him with a bill of $97,000 for his imprisonment, effectively ensuring that he would never return here. (See Example 1, p.27)

This writer spent 18 months collating with him, and sending detailed documentation on his behalf about his case, and the serious issues facing detained students, to the Minister, DIMIA, the Minister for Education and others. His treatment by the Australian Executive appears to ignore fundamental democratic values and processes such as fairness, dignity, honesty, rationality, equality, transparency and accountability.

Tragically, at least three non-detained students have suicided in Melbourne because of trauma, extreme despair and hopelessness concerning their cancelled visa. Furthermore, at least one student took his life after returning to India. What of the lives of thousands of other students from second world countries, who were forced to return home in the last few years because DIMIA officers cancelled their visa wrongly, or without taking into account any mitigating circumstances?

An Orwellian cocktail mix of the Migration Act's unforgiving laws for students, DIMIA's now well-established wrong practices and rigid interpretation of the Act, plus IDP's failure to ensure that tertiary institutions fulfilled certain legal obligations in providing adequate support services for international students, has left many shattered, wishing they had never come here, and feeling that the Australian Government has abrogated a fundamental duty of care.

Lacking compassion, fairness and flexibility, these harsh immigration laws and their application to bona fide overseas students are also highly inequitable from the 'user-pays', business perspective. Students and their parents have made huge financial sacrifices, undertaking substantial education loans, using superannuation funds and/or mortgaging family homes to facilitate expensive studies in this country, and pay fees which cost at least twice the amount paid by Australians. It is not surprising some of them feel like 'cash cows'.

The suffering of the relatively few long-term detained students who fight for their right to complete their course is an extreme punishment for failing, perhaps, one subject too many, or working just one hour more than the permitted twenty hours. A speeding driver gets a fine, yet he could have killed someone. However, an overseas student is punished and humiliated through imprisonment for a minor offence, even though his parents have made great sacrifices and contributed high fees to the Australian tertiary education system. These parents had entrusted their children into the care of the Australian Government

Students with cancelled visas ending up in detention feel they have been severely punished for relatively very minor offences, for which they are held strictly accountable without discretion, yet education providers and DIMIA have contravened fundamental legal requirements, but have not been subject to any similar full legislated accountability towards students.

Detained students have been denied natural justice. They ethically deserve a superior, equitable and integrated policy in exchange for their significant financial contribution to Australia's multi-billion dollar export industry and subsidy of universities.

The integrity and reputation of Universities' IDP program can only be detrimentally affected by these policies. As more deported students return home to countries such as India, Pakistan and Egypt, word of hostile Australian practices spreads, making Australia a less desirable destination for study.

A reported decline in standards and poor course quality in some institutions, inadequate educational and technological resources, some unscrupulous

education providers, insufficient information about life in Australia, plus increased competition from other countries for the global share of the international student market, are all challenging factors for Australia's universities - they now depend on foreign student fee income to augment annually reduced funding. Considering the intimidating immigration policies and practices for students, it would hardly be surprising if some prospective students chose to study elsewhere to fulfil their educational aspirations.

It is the intention of this submission to show that there is no benefit or humane justification in maintaining this irrational policy, to either Australia, its international standing, its people, or to the hundreds of thousands of international students who study here, including their parents.

PREPARING FOR STUDY IN AUSTRALIA

International students arrive in Australia with a valid visa after fulfilling all entrance requirements, and at considerable expense – fees for recruitment agent, visa, bank sureties, travel, airfares, education fees in advance, accommodation fees, etc. One Melbourne migration agency claims that $65,000 is a realistic estimate of the first year costs.

The number of overseas students regularly recruited by Australian education tertiary institutions to study has been high for many years, especially from India, where recently seventeen thousand new visas were issued.

However, in the huge marketing campaigns and expos by universities prior to arriving here, prospective students are never told by education recruitment agents that students may be 'detained' on cancellation of visa, and what 'detained' really means - that detention behind six metre fences topped with razor wire can be the cruel consequence of breaching their visas, for what are relatively minor non-criminal offences. It is unlikely that they even know about detention. Such information would not enhance a university's marketing strategy.

This means that agents may not be adequately and correctly informing prospective students about the complexities and implications of Australian immigration laws pertaining to visas and extensions. Students may also be lured to study in Australia under misleading information about education providers. These agents, well paid by Australian universities (up to $900 per student they enrol), are not accountable to any Australian regulatory body.

The Australian Government would seem to have a responsible duty of care to ensure that prior to arrival, overseas students are thoroughly informed about all details of immigration and visa laws through its embassies, as well as by its universities and education providers.

Many students' families from 'second world' countries like India have had to take out large loans to study in Australia, making completion of their course imperative in order to find higher paying employment. After graduation, they can obtain Permanent Residency status and may work several jobs just to repay the loans and their families' other debts incurred for study.

RESPONSIBILITIES OF EDUCATION PROVIDERS – ESOS ACT 2000 & ESOS EVALUAITION REPORT 2005

However, the onus is on universities to scrutinize its overseas education agents. The ESOS Act requires that,
"The provider must ensure that marketing of its education and training services is carried out with integrity and accuracy. It must uphold the reputation of Australian international education and training." In addition, "The registered provider must not accept or continue to accept overseas students recruited by an agent, if they know, or reasonably suspect the agent to be engaged in false or misleading advertising and recruitment practices."

The National Code under the federal *Education Services for Overseas Students (ESOS) Act 2000* was effective and legally enforceable from 4 June 2001. However universities and other education providers are not necessarily providing any, or adequate, overseas student counselling and support services, and Independent grievance handling procedures despite requirements of the ESOS Act.

Some of the ESOS requirements for education providers are that they must:

Marketing and student information

" Ensure that marketing of its education and training services is carried out with integrity and accuracy; must not accept an overseas student for enrolment in a course before giving to the student: information about the course regarding teaching methods used (including any field trip or work experience requirements); and the assessment methods used.

Records of academic performance and attendance

"Have "Procedures in place for contacting and counselling students and recording this on the student's file, if a student has been absent for more than five consecutive days without approval, or a student is not consistently attending their course".

Student support services

"Have in place appropriate support services. These must include appropriate arrangements for independent grievance handling/dispute resolution, which are inexpensive and include a nominee of the student if the student so chooses. The procedures must allow for prompt resolution (10) having regard to the duration of the overseas student's stay in Australia on a student visa.

"Appoint a suitably qualified person as student contact officer. The officer will be responsible for provision of support services to overseas students, including counselling, which will:

"Promote the successful adjustment by overseas students to life and study at an Australian institution", and " Assist students to resolve problems which could impede successful completion of their study programs."

Educational resources and facilities

"Have teaching staff who… have the qualifications, experience, induction and professional development appropriate for the delivery and assessment of CRICOS-registered courses, for the number of students under instruction.

" Maintain teaching resources that are appropriate for the delivery of CRICOS-registered courses and are adequate for the number of students under instruction. This includes technological resources.

Unfortunately universities and other tertiary education providers have not properly delivered ESOS requirements, nor has their adherence to these legally binding obligations been monitored by DEST or DIMIA. As a result, some international students have experienced considerable educational, economic, and emotional irreversible hardships.

In such situations, some overseas students have no choice but to remain in a substandard institution for an entire year, while still paying full fees in advance, simply because their student visa is granted under this condition. It cannot be overestimated that such students experience tremendous stress about the waste of their parents' borrowed money, the pressures for loan repayments on existing loans, and the need to take out further loans.

Yet most students are not informed that, in 'exceptional circumstances', and with difficulty, Australian law does permit them to change their education provider in the first year of study in Australia. In Britain, students may transfer to another institution after payment of a fee.

Fortunately, in August 2004, the Australian Institute of Education (AEI) and DEST authorized a full independent review into the effectiveness and efficiency of the ESOS Act 2000. This thorough and comprehensive investigation was completed in February and published in May 2005 as the '**ESOS Act Evaluation Report**'.
http://www.dest.gov.au/NR/rdonlyres/BCE952F7-57F0-4D3C-ADE4-5795781B5C96/6117/ESOS_Evaluation_Report_web_postproof_v2.pdf
It has made numerous conclusions: Conclusions made by the Report and excellent recommendations: Recommendations made by the Report , eg. 'To protect the interests of international students', and recognition that overseas students cannot pursue consumer protection claims in Australian courts.

However, the Report does not address the issue of student detention.

In part 8.1.1, it does acknowledge that:
- Student visa cancellations account for a third of all visa cancellations.
- This high number is due to the "all or nothing" approach in the ESOS requirements to report students for not complying with visa conditions.
- There is no leeway to consider students' grounds for alleged non-compliance
- There has been a growth in the number of student visa appeals to the MRT

This submission to the Senate Inquiry reveals the serious problem of student detention. It has been written prior to viewing the ESOS Evaluation.

STATISTICS RE. STUDENTS, VISA CANCELLATIONS - HOW MANY DETAINED?

Australia's unique mandatory detention policy makes this the only country in the world to incarcerate some of its full fee paying international students. Yet they not only constitute the sixth largest, $7.5 billion dollar export industry, but Australian universities now also now depend on their fees for survival. The government allocates more money to private schools than universities.

Of 322,776 international students enrolled during 2004, 151,798 were higher education students; 6877% were from Asia; 857 came from PRC and 20,749 from India, an increase of 44.6% over 2003. (AEI Industry Seminars, p177).

Between 1 July 20004 and 30 April 2005, 145,235 study visas were granted, both off and onshore combined.
(http://www.immi.gov.au/study/statistics/April_2005_combined_onshore_&_offshore_grants.pdf)

"In the period 1 July 2003 - 30 June 2004 a total of 3 944 443 temporary visa holders entered Australia." (DIMIA Fact Sheet 86) Approximately 75% of all detainees (including students) have arrived in Australia with valid visas, which were subsequently cancelled. According to the ESOS Act Evaluation Report, one third of all types of visa cancellations were **student visa cancellations - 8,243** in 2003-04. (8.1.1)

Therefore, although students represent only about 8 % of all visa grants, their visas constitute a huge proportion – 33 % - of the total visa cancellations.

However, it has been difficult to establish how many of these were detained. DIMIA has not responded to requests for further information requests. Senator Andrew Bartlett has submitted a question to the Minister during Senate Estimates regarding the number of students detained and deported since July 2000, and is still waiting the reply. Senator Kim Carr has asked many questions, also including one seeking details about how many students have been in detention since mid 2003, and for what period.

According to a former asylum seeker, about 10-25 students were continually detained during his long detention in Maribyrnong Immigration Detention Centre. Most of these remained short-term detention for about one or two weeks while waiting either to be deported, or for the granting of a bridging visa. Only a minority of students have remained in longer-term detention – that is, some of those who decide to contest visa cancellation and deportation.

The Migration Review Tribunal website indicates that about **1000 applications for reinstatements of cancelled student visas** are lodged annually. This indicates that about 12% of all students with visa cancellations appeal in the MRT.

Between January and March 2005, 117 cancelled student visa applications were lodged in the Melbourne MRT.

GROUNDS FOR STUDENT VISA CANCELLATION IN THE MIGRATION ACT 1958

Most university staff members probably do not understand these students' real fears regarding potential visa loss, or the frightening consequence of possible detention. Certainly, few people in educational bureaucracies realize that students can be incarcerated after cancellation, and there seems to be insufficient linking between the Federal Education and Immigration Ministries.

However, for the seemingly minor offences that constitute a breach of the student visa, a draconian punishment is meted out - the visa is cancelled, the student is immediately relegated to "unlawful non-citizen" status must leave the country within 28 days - unless he/she appeals against the decision, a process taking up to 6 months and prohibits study.

Furthermore, because they now do not have a student visa, they are no longer considered to be a student, despite having paid fees in advance, having study materials in their possession, and their parents owing vast sums of money for their Australian education.

1. Students arrive here without permission to work, and must apply for permission to work on arrival here. Under the **Migration Act 1958**, students' study visas are subject to mandatory cancellation if students allegedly breach one of two main conditions. However, the premises behind each of these conditions not necessarily inappropriate to the realities of student life here and need to be re-evaluated:

(I) ***Condition 8105*** *- **for' working more than 20 hour a week** during any week when the [relevant institution] ... is in session'*

- Students lose their visa for working just 21 or 22 hours. The number of hours worked cannot be averaged over 2 weeks. One student had his visa cancelled for working 15 hours one week, and 25 hours the next.
- During summer vacation students may work unrestricted until their course commences again.
- Any ***volunteer or unpaid work*** counts towards the limit of 20 hours per week.

However, it appears that most overseas students from India need to work
Their parents from second world countries, after paying for initial education, agent, surety, travel, health insurance and visa fees, are not wealthy enough to also pay for all subsequent education and living expenses which, after arrival in Australia, turn out to be much more expensive than expected. Twenty hours work may not provide sufficient income, to cover all costs, especially if the hourly rate of pay is very low, eg. $ 8.

Overseas students are not permitted resit failed exams, unlike local students. Instead, they must pay full semester fees for that subject again (up to $5,000 or more), and possibly as well as for a migration agent to extend their visa, so a need to work extra hours may inevitably arise as expenses escalate.

Domestic students have no restriction on work hours, yet may live at home, have lower living expenses, are entitled to public transport concessions, and pay lower education fees. Therefore under condition 8105 is discriminatory towards international students. Although they may need some restriction on work hours to focus on study demands in a foreign country, and to ensure bona fide intentions, nevertheless 8105 can be considered to be in need compassionate and realistic overhaul.

(II) ***Condition 8202* - for alleged inadequate 'course requirements'**
- Academic results or attendance (Schedule 8 of Migration Regulations)

International students must comply with 80% attendance. Via **PRISMS**, *Provider Registration International Student Management System*, education providers are required to report fortnightly to DIMIA on their students' (i) performance, (ii) non-attendance, and (iii) any change to a student's enrolment, including duration.

The current version of ***Condition 8202*** states:

(1) The holder (other than the holder of a Subclass 560 (Student) visa who is an AusAID student or the holder of a Subclass 576 (AusAID or Defence Sector) visa) must meet the requirements of subclauses (2) and (3).

(2) A holder meets the requirements of this subclause if:
(a) the holder is enrolled in a registered course; or
(b) in the case of the holder of a Subclass 560 or 571 (Schools Sector) visa who is a secondary exchange student - the holder is enrolled in a full-time course of study or training.

(3) A holder meets the requirements of this subclause if:
(a) in the case of a holder whose education provider keeps attendance records - the Minister is satisfied that the holder attends for at least 80% of the contact hours scheduled:
(i) for a course that runs for less than a semester - for the course; or
(ii) for a course that runs for at least a semester - for each term and semester of the course; and
(b) in any case - the holder achieves an academic result that is certified by the education provider to be at least satisfactory:
(i) for a course that runs for less than a semester - for the course; or
(ii) for a course that runs for at least a semester - for each term or semester (whichever is shorter) of the course
(4) In the case of the holder of a Subclass 560 visa who is an AusAID student or the holder of a Subclass 576 (AusAID or Defence Sector) visa - the holder is enrolled in a full-time course of study or training.

2. If a student fails to satisfy course requirements relating to attendance or academic performance, automatic student visa cancellation can occur without the knowledge of the student if he/she has forgotten to keep their residential address up to date. Such cancellations may not be revoked.

3. ***Section 116 (1)(fa)(ii)*** of the Act permits cancellation of the student visa in the situation where a student has not actually breached a visa condition, but there is evidence which suggests that he/she is likely to do so. For example, if DIMIA found letters from the student applying for full-time jobs.

4. ***Condition 8303*** – some students are subject to prohibition from participating in any political activities.

5. In practice, visas have also been cancelled after an education provider has reported a student to DIMIA simply because the student is late in paying fees, and as a result is apprehended, detained and then deported - at least one Victorian university has done this.

The stringent visa conditions for students are discriminatory in comparison to the rights accorded to local students, who can negotiate with education providers on compassionate grounds about study, performance and other personal problems, and who know where to go for help.

Confusion by education providers, DIMIA and the MRT regarding the interpretation of these conditions, together with the relevant sections of the Act itself, have led to incorrect student visa cancellation, causing a roller-coaster of disastrous outcomes for thousands of students and their families.

DIMIA FACT SHEET 86.
Overstayers and People in Breach of Visa Conditions

From the information below on the DIMIA website, it appears that students with visa cancellation also become known as 'visa overstayers'. Students are meticulously monitored under a range of surveillance tactics within a hostile set of guidelines, as described in DIMIA's 'Fact sheeet 86'.

"The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) conducts widespread field operations to locate foreign nationals who have breached their visa conditions, or overstayed their visas and are unlawfully in Australia.This reflects the Australian Government's commitment to protecting the integrity of Australia's borders."

"People who become overstayers arrived in Australia with valid temporary visas, mainly as tourists, but also as working holiday makers, students and temporary residents.

"The department uses several sources to locate overstayers and people breaching visa conditions including referrals from employers, educational institutions, departmental investigations, community information, and other government agencies.

"Foreign nationals who are working illegally are taking jobs away from unemployed Australian citizens and residents.

"On 30 November 2000, the first phase of a government initiative to stop illegal workers from gaining access to the Australian labour market was launched. Measures in this phase include a telephone information line, a fax back work rights checking facility for employers and labour suppliers and a new information kit, Don't Give A Job To An Illegal Worker*.*

"The law requires that people who have overstayed their visa or had their visa cancelled because they have breached their visa conditions must be detained and removed as soon as practicable.

"Overstayers can be given temporary lawful status through the grant of a bridging visa.This allows them to make arrangements for their departure from Australia, or to seek a further visa, if eligible.

"During the year to 30 June 2004, 12 689 people who were either unlawful non-citizens or had breached their visa conditions were removed.

"Persons who overstay their visa by more than 28 days become subject to an exclusion period that prevents them from being granted a temporary visa to travel to Australia for three years. This exclusion period applies whether they leave voluntarily or not.

"Even after the exclusion period has finished, they cannot be granted a visa unless they repay any debt they owe to the Commonwealth, including for costs of removal and detention, or they make satisfactory arrangements to repay their debt". The exclusion period does not prevent a person from applying for another visa."

"In the period 1 July 2003 - 30 June 2004 a total of 3 944 443 temporary visa holders entered Australia.The estimated 50 900 overstayers in the community at 30 June 2004 comprised some 43 620 visitors, 3100 students, 2470 temporary residents and 1760 in other categories".

It is very difficult to understand how students with visa cancellations could pose a threat to 'the integrity Australia's borders'.

The extraordinary assertion that students could be taking away the jobs of Australian nationals (by working 22 hour instead of 20) is patently ludicrous. This attitude is reminiscent of old White Australia Policy beliefs that foreigners/migrants steal the jobs of Australians, whereas in relality the 50% of the population who were either born here or are children of migrants, are active contributors to Australia's prosperity and success.

MIGRATION ACT 1958 LAW RE. STUDENT VISA CANCELLATION

An extremely complex set of laws, Procedures and Regulations in the *Migration Act 1958*, plus Departmental policies - including 'Migration Series Instructions' and 'Procedure Advice Manuals' - underpin student visa legislation. *"The Act sets out the procedure for cancelling visas. Notice of the grounds on which cancellation is being considered must be given and the visa holder invited to show either that the grounds do not exist or that there are reasons why the visa should not be cancelled (section 119). The holder must be given an opportunity to respond. A visa may not be cancelled before the holder has been given a notice of cancellation that includes information relevant to the cancellation."*

Other Legislation also permitting Student Visa Cancellation includes:

sections 109 Cancellation of visa if information incorrect
116 Power to cancel 119 Notice of proposed cancellation

120 Certain information must be given to visa holder

121 Invitation to give comments etc.

124 When decision about visa cancellation may be made

140 Cancellation of visa results in other cancellation

Subdivision GB—Automatic cancellation of student visas
137J. Non-complying students may have their visas automatically cancelled
137K. Applying for revocation of cancellation
137L. Dealing with the application
137M. Notification of decision
137N. Minister may revoke cancellation on his or her own initiative
137P. Effect of revocation

*"Paragraph **116(1)(b**) of the Act allows the Minister to cancel a visa where a condition of that visa is not complied with. Subsection 116(3) of the Act and subregulation 2.43(2) of the Regulations operate to exclude any discretion in a decision to cancel a visa where the visa may be cancelled under subsection 116(1) of the Act because the visa holder has not complied with condition 8202 of the visa. If the Tribunal finds that a review applicant did not comply with condition 8202 the visa must be cancelled. "*

Therefore S.116 clearly indicates that DIMIA is permitted no discretion in student visa cancellation decisions.

SECTION 137J ' Non-complying students may have their visas automatically cancelled'

(1) This section applies if a notice is sent to a non-citizen under section 20 of the Education Services for Overseas Students Act 2000 in relation to a visa held by the non-citizen (even if the non-citizen never receives the notice).
Note: Under that section, a registered education provider must send a notice to a non-citizen who breaches a condition of the non-citizen's visa relating to attendance or satisfactory academic performance. The notice must give particulars of the breach and must require the non-citizen to attend before an officer for the purpose of explaining the breach.

(2) The non-citizen's visa is cancelled by force of this section at the end of the 28th day after the day that the notice specifies as the date of the notice unless, before the end of that 28th day:

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

b. (b) the non-citizen, while attending in person at an office of Immigration (within the meaning of the regulations) that is either:
(i) in Australia; or
(ii) approved for the purposes of this paragraph by the Minister by notice in the Gazette;
makes himself or herself available to an officer for the stated purpose of explaining the breach alleged in the notice.

In other words, S 137J states that in situations where the education provider has sent a notice to the student about an alleged breach, the visa 'may', not 'must', be cancelled, and that students have a right of reply to allegations against them.

However DIMIA's practices do not necessarily follow the requirements of the Act.

DIMIA'S METHODS OF APPREHENDING AND DETAINING STUDENTS WORKING MORE THAN 20 HOURS

1. DIMIA raids on student workplaces DIMIA apparently conducts regular raids at certain times throughout the year on workplaces such as call centres and restaurants, where overseas students work, demanding employers to show timesheets, then rounding up any students who have worked more than 20 hours for subsequent detention and deportation.

Apprehended students who do not immediately contact a migration agent for assistance are then likely, as 'unlawful non-citizens', to be immediately detained in an Immigration Detention Facility.

However if students immediately contact their migration agent to negotiate with DIMIA, it appears they may get their case dropped on payment of a **bond** of up to $15,000.

2. Informants These raids can also occur after DIMIA receives details from Iinformants, who are encouraged to 'dob-in' students by DIMIA. On each page of the DIMIA website there is a link the its **'Immigration Dob-In Line'**, which states:

"Information from the public provides important support to the department in its efforts to maintain the integrity of Australia's borders and immigration programs. If you have information about people working or living illegally in Australia, you can contact the Immigration Dob-In Line by phone or FAX."

3. Raids on Homes. If DIMIA officers have evidence that students have worked for more than 20 hours, or suspect this, they may visit these 'dobbed-in' students in the very early hours of the morning with or without a search warrant, arresting and forcing them to leave immediately in the DIMIA van for a detention centre. It appears that they cannot pack clothes or take any other possessions.

According to a Melbourne migration agent, "Anecdotal evidence is that DIMIA officers frequently raid students' premises for flimsy reasons without a search warrant."

The illegality of raids without warrants on student homes and DIMIA's intimidating methods, have been revealed in a judgement by the Full Bench of the Federal Court in Sydney on 22.7.2005, who found:

"…that immigration officers subjected a foreign student to search without warrant, arrest, interrogation and incarceration - despite the student having a valid visa."

This student was subsequently detained in Villawood for three weeks.
One of the learned Judges, Mr. Justice James Allsop, was later interviewed by "PM" on ABC Radio National http://www.abc.net.au/pm/content/2005/s1423848.htm:

Judges slam Immigration Department over student's treatment

ABC RADIO NATIONAL : PM - Wednesday, 27 July , 2005 18:37:00

MARK COLVIN: There's been more damning criticism of Department of Immigration officers, this time from three senior judges. A full bench of the Federal Court has found that immigration officers subjected a foreign student to search without warrant, arrest, interrogation and incarceration - despite the student having a valid visa. And as Jo Jarvis reports, the judges say the case raises "disturbing questions".

Reporter: JO JARVIS: Imagine being at home one night when immigration officers come knocking at your door looking for your housemate. Imagine how you'd feel if the officers, after finishing with your friend, then turn to you, conducting a search, without a warrant, of your bedroom and belongings. This is what happened to Bangladeshi student Muhabab Alam in December 2002. But the 21-year-old student's problems didn't end there.

When immigration officers found a pay slip showing the student had worked 22 hours, two hours over the allowable maximum under his visa, he was taken into custody and told he would be imprisoned in Villawood Detention Centre unless he could raise $10,000. Mr Alam couldn't produce the funds and was subsequently detained for three weeks.

According to the Federal Court full bench judgement, the case raises some disturbing questions. These are the words of Justice James Allsop, from the court transcript:

**JAMES ALLSOP (voiceover): I wish to express my concern as to the methods apparently used by officers of the Department in dealing with this man. As a non-citizen holding a valid visa, as with any person present in this country, he was entitled to be treated according to law.
There was no entitlement in officers of the Department to subject him to search without warrant, to arrest, to interrogation and to incarceration otherwise than proceeding according to law.
The facts which were exposed before the learned Federal Magistrate, unexplained and unjustified as they appear to have been, gave the respondent real cause for complaint as to his treatment by the executive of this country.**

**JO JARVIS: Justice Allsop explaining Friday's Federal Court dismissal of the Immigration Department's appeal against a Magistrate's Court decision that officials wrongly cancelled Mr Alam's student visa.
Mr Alam's appeal was originally heard in early May. At that time the judges were no less scathing in their assessment of the immigration officers treatment of the student.**

JAMES ALLSOP (voiceover): My reaction to it, and I will only speak for myself about this, frankly, is outrage. The idea that Immigration Department officers could come to private premises without a search warrant and without even any reason to suspect that this respondent lived there or had done anything wrong, and ransack his belongings; and on the strength of that, take him away involuntarily, I ask myself if that is something that is tolerated?

Why do we bother to have legal provisions dealing with search warrants and where somebody has to before a magistrate to make out a case? Are officers of the Department to be treated as above the law?

JO JARVIS: Justice Allsop.

Muhabab Alam's crime had been to work two hours more than the 20 in one week allowable under his visa provisions. According to the court transcript he worked the extra hours upon his employer's request. As one of the judges pointed out, he was trying to do the "right thing", but the Department didn't see it that way. The case then centred around what actually constitutes a week, and the Department's appeal was dismissed.

Today Mr Alam's lawyer was travelling overseas and couldn't be contacted by *PM*, so we were unable to ask him or his client whether they were going to take any action against Mr Alam's wrongful detention.

The full judgement of this case can be read at:
http://www.austlii.edu.au/au/cases/cth/FCAFC/2005/132.html

Through their detailed analysis, the Judges' elucidation of the meaning of 'a week' in condition 8202, and subsequent dismissal of DIMIA's flawed application, suggests that probably many students have had visas falsely cancelled because of mistaken or scurrilous interpretation by some of DIMIA's officers, which may have led to "trespass and false imprisonment." of students.

The Judges also commented in their decision about:

"Cause for this student to take action against his wrongful detention".

"Inappropriate regulatory provisions and heavy-handed enforcement are likely adversely to affect our international reputation and ultimately to undermine the overseas student program itself."

"…and the 'potentially draconian consequences' of a breach of the condition."

4. Students In Detention

Those students thus detained after a raid, or after an interview with a DIMIA officer, (numbers unknown), must wait for several days either:

1. to be deported, the option most students appear to choose, OR
2. to make an application to the Migration Review Tribunal to try to get their student visa reinstated, costing $1400. [Detailed Information, including an application for fee-waiver, is available electronically at http://www.mrt.gov.au/detainees.html, but detainees cannot have internet access while in detention.]
3. In this case, the student must also raise money for a 'bond' – anything from $3,500 - $10,000 or more - before being released in the community on
4. a 'Bridging Visa E' which prohibits work, study or Medicare.

5. Bonds
Only on payment of a substantial amount for a 'bond' can a student be released from detention. The bond is a "security", referred to in ***Migration Regulations, Schedule 2 at 050.224*,** and this is the legislative authority for imposing it. However, there does not appear to be anywhere that specifies how much bond may be required. Case law says that it should be sufficient to be effective, but not so much that the student could not possibly pay it.

In practice, the amount of the bond can be set and changed randomly by DIMIA, MRT and RRT, without any consideration of the student's ability to pay. If the bond is increased unexpectedly, a detained student must remain imprisoned longer until when or if his supporters can raise the funds.

It appears there is some correlation between the type of Bridging Visa (A B C D or E) granted and the amount paid for the bond. The higher the cost, the more favourable the conditions of the visa seem to be.

Example**:** Mr. D was another second former international student also detained at Baxter and Maribyrnong for a total of 7 months. When his supporters appealed to the RRT to have his bond lowered, it was raised from $5,000 to $15,000. When they applied to pay for the bond and release, it was increased to $20,000. This meant he was kept in detention for months longer, while the money was eventually raised from private citizens' donations. Released on a different Bridging Visa, he was then permitted to resume his studies, but pending further refugee appeals.

6. Bridging Visa E.
The granting of a Bridging visa E allows MRT and other applicants to remain lawfully in Australia until 28 days after the review is completed. On a Bridging Visa E, they are not permitted to study, work, or get Medicare.
This means students may have to live on borrowed money for months while they wait for their appeal. They may be spending their reserve money on legal costs, and so eventually be tempted to break the visa's condition by working illegally to pay back their debts to friends for basic living expenses. If someone 'dobs them in', for working, they get caught and are forced back into detention.

These same Bridging Visa E conditions also apply to over 5000 asylum seekers in the community who are waiting to be granted a Temporary Protection Visa. Asylum seekers have claimed that psychological, health and social problems, including depression and suicidal feelings are just some consequences of being denied the dignity of work, and having to rely on charity handouts for themselves and their families to survive – accommodation, food, clothing, medical, transport and legal costs.

7. If they can't afford the high cost of a Bond to be released on Bridging Visa E, they therefore must remain in detention while they wait for their MRT appeal. This may take 3-4 months.
Throughout their detention, students receive no advice from their DIMIA case officers, as it appears to their policy not to directly liaise with their client detainees

NO ALTERNATIVE REVIEW PROCESSES FOR STUDENTS THAN MRT

The absence of any independent educational review tribunal in which overseas students whose visas are cancelled for alleged breaches can appeal or contest, or the existence of any system of fines instead of visa loss, requirement to leave the country, and/or possible detention, means that students get lumped into the 'unlawful citizen' / migration category for assessment to have their lost visas reinstated, leaving the Migration Review Tribunal as their only initial option. This is irrespective of whether they are in or out of detention on a bridging visa.

CONTESTING STUDENT VISA CANCELLATION AND DEPORTATION:

1. Migration Review Tribunal

The MRT website has recently been updated to provide a detailed overview - http://www.mrt.gov.au/factsheets.htm *"The MRT is a statutory body which provides a final merits review of visa and visa related decisions made by the Minister, or officers of DIMIA acting as the Ministers delegates."*
"The Tribunal was established under the Migration Act 1958 and came into existence on June 1, 1999. The Tribunal does not have any more discretion than the primary decision maker and must make its decisions within the same legislative and policy framework as the primary decision maker. The Tribunal must have regard to Government policy and is bound by any direction made by the Minister under Section S499 ". Minister may give directions

As already stated, it is difficult for students to get their visas reinstated through the Migration Review Tribunal. Although the ESOS Evaluation reported that 39% of student visa cancellations are revoked by the MRT, experienced migration agents question this figure:

"Students apply to extend their visa and are refused and they appeal and the success rate is high, I would think 40% would be OK. Students whose visas are cancelled are a different story, and I would think my figure is right of 5-10%."
"However, I would be extremely surprised if that figure of 40% were correct. I would like to know how they arrived at it. My strong impression is that the figure is much lower… although I cannot give you any hard figures."

Students follow the MRT option because it is their only one. They are desperate to find a way to avoid wasting their parents' financial sacrifices. They must finish their studies and obtain employment to repay the huge education debts incurred.

In fact, a vast range of socio-cultural-economic factors affecting students cannot be taken into account by the education provider, the Minister's delegate, or the MRT. Students feel they are subject to discrimination in comparison to Australian students who, by contrast, have a right to appeal on compassionate grounds in similar circumstances of personal hardship.

The Tribunal's Presiding Member is not necessarily a lawyer, and is not allowed to make discretionary decisions for compassionate reasons such as study, health or family problems. As sole decision maker the Member has an enormous responsibility to interpret complex factors within a set framework. DIMIA can and has challenged some decisions to reinstate student visas.

Not only is the MRT limited by its legislative requirement to make non-discretionary decisions, together with education providers and DIMIA, it has made errors in correctly interpreting the conditions for visa cancellations. This has caused untold confusion and suffering to many students and their families. These errors pertain to such details as the meaning of '20 hours' (see court example above); record keeping of student attendance by providers; the meaning of 'contact hours' (see ESOS Evaluation 8.6.1); the methods of evaluating adequate student performance.

Example of MRT decision where DIMIA's visa cancellation is set aside

In the following case, [2001] MRTA 724 the MRT set aside/revoked a student's visa cancellation. This MRT decision was based on the example of a Federal Court order to revoke a previous MRT decision to affirm Dimia's cancellation of another student's visa, who had appealed against the MRT's refusal to reinstate his cancelled visa. The problem related to how 80% attendance was determined:

"when he began at Cambridge College, his selected course was a new course. He states that he was only one of three students doing the course. At times during the year, he attended classes to find that he was the only student present. He claimed that on occasions, the lecturer dismissed him saying it was not worth conducting the lesson...his attendance percentage must be open to doubt as 8202 states he must maintain an 80% attendance for the classes scheduled for the course. The inference being that the 80% should calculated over the whole course, not just part of it.

"27. However, the Tribunal has regard to a MRT decision recently set aside on 6 November 2000 by the Federal Court in Nong v Minister for Immigration and Multicultural Affairs (2000) FCA 1575 (Katz J) where Katz J held that the MRT had applied an incorrect construction of the requirements of condition 8202. The case focussed on the requirement set out in par (2) of 8202 that the visa holder `attend at least 80 % of the classes and tutorials scheduled for the course'. The court held that to give effect to the ordinary meaning of the words of par (b) of 8202 requires a construction of par (b) which contemplates an examination of the student's attendance in the registered course in which he or she is enrolled only when that course has concluded."

Examples of MRT decisions affirming DIMIA's student visa cancellation

1. In [2003] MRTA 5366 the initial problem related to inadequate attendance because of insufficient classes and facilities:

" 15. The visa applicant said he came to Australia in February 2000, and first studied at AIT Careers Institute in Sydney, owned by Mr __. However the course and possible job as a laboratory assistant was not what he had been told, and was quite unsatisfactory. The classes only had one room, there was no library, no Internet access, and there were only classes 2 days a week. The company had not provided the facilities and services they had promised. He felt very let down. There was a major scandal about the place, which was in the Sydney papers including a photograph of

himself. He was advised to then go Wollongong University, which he found difficult living in Sydney."

2. [2002] MRTA 5898

" He was late for class at times and would then be marked absent for the entire day.*

** He was unable to attend class for approximately one week because he suffered from sinus problems.*

** He could not provide any evidence of his illness because he did not always attend a doctor when he knew what was wrong with himself and did not want to pay the doctor's fee."*

3. "*The following case is the modification of an original letter, with identifying data removed, written in March 2005 following a 1st interview, by a professional worker at students request. The referral was made by a migration agent who was assisting him in his appeal to the MRT. He had been "hanging around" waiting for the hearing for over 6 months since his student visa was cancelled and was not allowed to work during this period. He subsequently lost his appeal and returned to India.*

"I have interviewed Mr. K, age 21, regarding his current circumstances:
His family (father & sisters – mother deceased) has a farm in India. He approached an agent in who was recruiting for "L" TAFE College) and was advised to enroll in a B Info Tech course, as that had the best prospects for his future. His father arranged for accommodation through a contact in Melb and Mr. K arrived in Jan 2004. This was a shared household and he had problems adjusting to his new environment, as he had never had to do anything for himself (eg. cooking, cleaning etc). Major tensions built up in the first 3 months and when the father's contact moved out, the other 3 residents (in the 2 bedroom house) asked him to leave in the middle of the night, after a major dispute.

"At the same time as he was experiencing these major problems where he was living, he was struggling with some of the course subjects, as he had no background in IT. These combined pressures, combined with lack of friends and any other kind of support or knowledge of where to go to ask for help, resulted in serious depression and lack of motivation. He was absent from many classes but did not see a Dr or seek to obtain any medical certificates, as he did not realize the need to do so. He also did not feel able to confide in his family about his problems, (up until then, his family were the only people in whom he confided). He did come to realize that it was not the course for him and after 3 months requested a change to Hospitality (which was granted prior to end of 1st semester).

"He was able to find compatible accommodation and develop meaningful friendships and his attendance at and interest in, the new course was much better. Early in the 2nd semester, he was asked to contact the International office at the College re his poor attendance record in the 1st semester (less than 80%). He told the officer of the problems he had been experiencing, but was told that the college would notify DIMIA of his attendance record. He was not referred to any student support services (eg. counselling). He was

subsequently called to an interview by DIMIA and told that his student visa would be cancelled and he could no longer continue the course (despite having paid his fees (of approx $4,200). This, and requesting a further $1,400 from his father to appeal the decision, caused further stress and depression.

"COMMENT: While the standard argument that he has to take full responsibility for the decisions he makes and the documentation that he signs may have validity, it can also be argued that the recruiting agent and the host college also have a "duty of care" to consider the best interests of the student, even without taking into account the comparatively high fees that are required up-front. Despite saying to the agent in India that he had no IT background, he was still pushed to enroll, was not in the student's best interest. It would also seem reasonable for the College to advise him at, or prior to, the end of the 1st semester, that it was likely that his visa would be cancelled. It then would have been possible for him to decide to cut his fathers losses and return home. A cynical view would be that the College could be seen as primarily concerned with making money and not with the welfare of the student. This is of particular concern when the student can be seen to be young, naive and without any friends or supports in a strange and apparently hostile environment.
It is therefore requested that he be given an opportunity to prove his commitment to the Hospitality course and to demonstrate his ability to complete it, by allowing him to complete the Semester, which he has paid for!"

2. Refugee Review Tribunal appeal after failure in MRT

If the student's MRT appeal is one of 90-95%, which fails, *their migration agents may advise that applying for a protection visa - refugee status - is the only way to ever be able to complete their expensive studies.*
Despite the almost impossibility of succeeding in this, with no further options available, some students have then lodged applications to appeal in the Refugee Review Tribunal, RRT, and must wait for several more months…in detention if they cannot afford the much higher bond for a bridging visa.

3. Further Court Appeals: Federal Magistrates, Federal and Full Federal

If they continue to appeal to higher courts for refugee status, they must stay longer in detention- unless they can afford an expensive bond. But in each hearing they inevitably fail because they are not really refugees ... they are simply desperate to try to find a way to get a visa to complete their studies and not waste their parents' money. Their appeals can unfortunately contribute to delays for genuine asylum seekers in the higher courts

4. The Minister's special review powers in the Act: S417 and S351

Students who cannot afford a bond must also remain in detention if they have written to the Minister for Immigration under **S417** (Minister may substitute more favourable decision) requesting her to exercise her special powers to review their case and 'substitute a more favourable decision' of their RRT hearing, or **S351** (Minister may substitute more favourable decision) for review of their MRT and to grant a protection visa.

But students / detainees can only take this option if no court hearing is pending. And without a hearing pending, or letter sent to the Minister requesting her review, they are liable for deportation. (See Example 1, p27)

The Minister's special powers under S351 and S417 of the Act are described in the Refugee Council of Australia's submission to this Inquiry.
"These powers are non-reviewable and non-compellable. The applicant has to have gone through the administrative determinative process and be rejected for the Minister to review. There may be long delays, with further effects of detention on the detainee. The process of review lacks transparency and accountability and no reason is given for the decision. No legally binding criteria are employed and no avenue of review exists. This leaves the Minister open to claims of abuse of power."

It is not known whether the Minister has ever granted such a request to a student. It appears highly unlikely. If 5-10 % of students succeed at MRT, then only a tiny proportion of those can succeed in contesting visa cancellation through any other appeals.

LIABILITY OF STUDENT DETAINEES FOR DETENTION COSTS

"If DIMIA finds non-citizens working in breach of their student visa, it may cancel their visa and require them to leave Australia. They are expected to repay publicly funded detention and removal costs and will not be permitted to return until they have done so, or made arrangements to repay."
From DIMIA 'Overseas Information Campaign' - Part B 'Issues and Findings', 3.5.3, DIMIA employers/review 2.

Detainees are charged between $225 and $300 per day. They cannot return to Australia after deportation for three years, and without making prior arrangements with DIMIA to repay the fee.

This applies to students in short term detention, who were apprehended after a DIMIA workplace raid, as well as long-term detainees. The student who was charged $97,000 for his imprisonment, 'fortunately' received his bill while still in Baxter. Other detained students have had their detention bill sent straight to their home address, which is usually that of their parents in South Asia. It would be shocking for any parent to find such a bill from the Government of a foreign country.

Prominent QC and human rights advocate, Julian Burnside, has commented on Australia's unique detention billing system:

"***Section 209 of the Migration Act*** holds that a person held in immigration detention is liable for the costs of their detention. It is a remarkable thing that an innocent person, who is incarcerated, is made liable for the financial cost of his own incarceration. No other country on earth makes innocent people liable for their own detention. In Australia, the cost of GST is also added."

Mr. Burnside is currently involved with other high-profile lawyers in 'The Justice Project'', which has been formed by the Law Council of Australia to campaign for refugee policy reform, and for the restoration of Human Rights in

Australia. Members include former PM Macolm Fraser and Associate Professor Robert Manne from LaTrobe University.

One Senator has said, “It beggars belief that the government continues to give people huge bills for their imprisonment, particularly students.“
Not even convicted criminals have to pay for their prison term. In stark ironic contrast, prisoners in some second world countries such as India can actually study for a degree as part of their rehabilitation.

COMMENTS FROM EXPERIENCED MELBOURNE MIGRATION AGENTS

(1) *Mr. Rory Hudson, Migration agent and lawyer:*

“Thank you for sending me these letters. I have long been concerned at the mistreatment of international students by the immigration system.

“I am in broad agreement with the content of your letters. ...There is mandatory visa cancellation in certain circumstances, but that does not automatically lead to detention, in fact most students whose visas are cancelled are given bridging visas E without any problem. They are required to leave Australia, but not normally deported. Their situation is still devastating, of course, because of the disgrace they feel and the waste of thousands of dollars of their families' money and years of their own lives. .

“The issue as I see it is simply one of fairness and the real problem is the "cowboy" attitude of many DIMIA officers who have a "deport, deport" mentality rather than trying to understand the student's point of view. It is exacerbated by the mandatory cancellation provisions and by the lack of proper accountability of DIMIA. The solution as I see it would simply be to have a provision that DIMIA *may (*rather than *must)* cancel a student's visa if such and such happens, and then to have this properly reviewable at the MRT. And then of course a change in DIMIA culture.”

(2) *Mr. Harold Jones, Migration agent and accountant:*

“Thanks for your email, there are a few queries. I would refer to homesickness. Many arrive from year 12 and enter an adult word, especially after living in the bosom of an extended family. Then a nightclub, and some never recover from being picked up for a one-night stand. Also, for many there are the dangers of the Casino.

“So we are naïve as a country to expect these new students to be able to meet the conditions which expect standards of performance at least 50% above that of locals? Is this realistic when they often have no family or friends and no support from their education provider?

“Some students would be considered as economic refugees, sent out by their families as prospects are poor in their home country. So if we accept them, we must recognise that they have several agendas.

“Your article also refers to the fact that many parents mortgage/sell land - is the quality we offer to consumer standards? My feeling is that this is an industry, which could easily desert us. Our success is because we are

cheaper than the UK and USA and Canada, but with currency movements this can change radically.

"As to the RRT process, this is not a good option as DIMIA tend now to set high bond as following the MRT/Letter re cancellation, then a fresh BVE is needed for the new application. Really only applies in those cases where student visa has expired and the protection visa application can be lodged and a bridging visa C issued. Thus avoiding the need to visit compliance.

"Obviously I cannot comment on your anecdotal stories. However in the news in the Age about 2 weeks ago when a lot of attention to DIMIA was mentioned of a suicidal Bangladeshi ex-student in I think Baxter, report implied was to be reprieved, then denied by Minister, may give you a broader profile of stories. Also, in a simpler vein I have a Sri Lankan student who let his visa run out through oversight, a daydreamer. He has to return to Sri Lanka and start all over again, again no forgiveness or flexibility

"There should be a 6 month foundation course for all overseas students to give them an introduction to study here before committing to a particular course. "

(3) *A Migration agent who does not wish to be named:*
"The whole student visa system is dreadful. It should be abolished, and replaced with the Canadian model."

EXAMPLES OF DETAINED STUDENTS

Example1: The Indian student detained for 2 years.

(Based on *"Indian student billed $97,000 for detention in Baxter",* South Asia Times, February 2005 - www.southasiatimes.com.au)
(All information in his case can be substantiated with further documents.)

Mr. A was the former full fee paying Indian overseas student who, earlier this year, returned to India after 2 years of continuous incarceration in Australian immigration detention facilities detention. Over four years after arriving in Australia, three years after losing his visa, he signed deportation papers tor release from Baxter.

He was detained there since March 2004 after being unexpectedly transferred via light aeroplane, handcuffed to two immigration officials, at considerable taxpayer cost, from the Maribyrnong detention centre where he had previously been held for fifteen months.

"I am relieved to be going home," he said by phone from Baxter before his deportation. "All my appeals failed, but I hope my detention will perhaps help others. My immigration case officer did not contact me once, or give me any advice at all while I was detained The Government's policy of mandatory detention for overseas students is very harsh. I hope the law will be changed so that others don't have to go through what I did."

Although much detailed documentation about his situation was sent by the student, this writer and another advocate to the office of the Minister for Immigration, Senator Amanda Vanstone, requesting her intervention, she did not exercise her special powers under s 351 to review his case and release him.

Many letters to the Ministers for Education, Citizenship, the Attorney General, numerous Members of Parliament, Senators and DIMIA also elicited no assistance for his plight in detention.

For example, in a letter to the Minister for Education in August 2004 this writer said: “I contacted DEST in Canberra late last year. The manager I spoke to did not know that overseas full fee paying students were being detained in Australian immigration detention centres. In fact nobody in any of the 3 federal and state higher education bodies I contacted seemed to be aware that OS students can be locked up, and were shocked to find out. None of these education officials has responded to my subsequent emails.”

Also in August 2004, Senator Lyn Allison wrote on Mr. A’s behalf to the Minister, “It is difficult to understand why there was any need to incarcerate him in the first instance but having done so, to keep him in detention for this length of time is clearly harsh and unwarranted.” However DIMIA replied to the Senator that no further action would be taken in respect to her letter.

Only in January 2005, after more than eighteen months of correspondence to DIMIA and the Minister by the student and his supporters, did this writer receive more than a standard letter of reply, “the information you provided has been carefully considered“, but details could not be disclosed “for privacy reasons.” All the serious issues raised about his case and the detention of overseas students still remained unanswered. By that time he had already given up hope and decided to let himself be deported.

Before departing for India, DIMIA gave him a $97,000 detention bill.

During Mr. A’s devastating and exhausting experience in Baxter, he witnessed the inhumane detention of asylum seekers. This included hunger strikes, vigils on a roof, a refugee who dug himself a shallow grave to lie in, attempted suicides, inadequate medical treatment, and the severe depression of some long-term detainees, including children.

He also knew that a mentally ill ‘German’ woman, the mistakenly detained Rau, was without psychiatric help, locked in an isolation compound where guards knocked on the detainees’ doors at regular intervals throughout the night.

His own physical and mental health deteriorated under the prolonged uncertainty and stress of living within the psychologically damaging prison environment of detention, like a criminal, behind razor wire fencing in the desert. He was given medications like ‘Celebrax’ until it was discontinued because of publicity about its damaging side effects.

He was a bona fide overseas student, who arrived lawfully in Australia in 2000, but unfortunately became trapped in the complex, Kafkaesque realities of Australia's Migration Act 1958.

Arriving from India already with a science degree and a diploma in computers, he was greatly disappointed from the very first day of studying at his small private Melbourne education provider. His complaints were:

1. **Original misinformation from the educational recruitment agent in India who was sponsored by the College:**
   - He was led to believe that the Certificate IV course he was enrolled in to be equivalent of an Australian Higher Education qualification.
   - He believed that the impressive multi-story building depicted in the glossy promotional brochure housed entirely the college, whereas it was really a small, poorly resourced, academically inadequate business college occupying only one floor.
   - Because in India the word "college" refers to a university, he was led to believe that St. George was part of a university.
   - He was never told that any breach of the student visa in Australia could lead to mandatory detention.

2. **Educational and Academic Quality of the College:**
   - On his arrival in Melbourne, the poor quality of course evident from outset of studies – he had already learned most of the contents in India.
   - Some staff were inadequately knowledgeable and trained in the subject they were teaching.
   - At least one staff 'academic' was still studying for Bachelors degree at the Central Queensland University campus in Melbourne while teaching at the College.
   - He experienced continual personal frustration and worry about the inability to change education provider for one year, especially because of concern that his family's huge financial sacrifice in sending him to study in Australia was being wasted.
   - The College administrator verbally discouraged him from changing to another education provider although he was entitled to, as one year had passed since he commenced studies at the college.

3. **Equipment:**
   - Insufficient technological resources – there were not enough computers to meet student needs.

4. **Student Services:**
   - Inadequate student support services – the College offered him no counselling, problem and dispute resolution processes
   - Although the college gave him written permission to visit his sick father (recuperating from an operation) in India for several weeks, plus a verbal agreement to able to sit exams on return, the College refused to let him sit second semester exams.
   - After complaining, he was allowed to sit only one exam. Despite 90% result, he still was not permitted to sit remaining exams, and forced to pay fees again for second semester subjects.

5. **College Practices regarding Attendance and Academic Performance:**
   - He was given no record of attendance.

- He received neither verbal nor written "warnings" about either academic performance or attendance, or about its intention to lodge a complaint to DIMIA.
- He did not receive any consultation or counselling processes.
- The College made what he believes is a slanderous allegation to DIMIA that he was 'not a bona fide student'.

5. **Reputation of College:**
   - College had a bad reputation amongst its own, and other, Indian overseas students studying in Melbourne, as well as with some members of the Indian Community who knew about its questionable practices and management.
   - The College only reported to DIMIA those students whom it believed intended to leave for another institution, and these students all subsequently lost their visas. For these reasons, students believed the College was 'favoured by DIMIA'.

In the first year of study he could not change provider. He investigated other education providers and although he requested a transfer several times, the college actively discouraged him. He became discouraged and de-motivated. After eighteen months in January 2002, he again requested release papers about his attendance and results from the college. The director still refused, but eventually agreed to send them to Mr. A.

Instead, totally unexpectedly, Mr. A received a letter to say that the college had reported him to DIMIA, and to attend an interview. At the interview the DIMIA official denied him any permission or opportunity to respond to the allegations of inadequate attendance and results, of which he had no prior notification by the college whatsoever.

Totally shocked and distressed, he was further traumatized when the officer decided to detain him immediately in Maribyrnong Immigration Detention Centre. Released five days later, after paying $3500 for a bond, on a Bridging Visa E, which denied him both the right to study or work or Medicare, he was now forced to live off borrowed money while waiting four months for his hearing at the Migration Review Tribunal.

Desperate to complete his studies and thereby justify his lower middle class family's huge financial sacrifices for him to study here, Mr. A embarked for three years on futile appeals and attempts to get his cancelled student visa reinstated. His parents never knew.

At the MRT hearing in mid 2002, Mr. A and his migration agent maintained that:

1. the college did not give him warnings or counselling about his alleged inadequate results, or
2. it did not provide any consultation process about its intention to lodge a complaint to DIMIA
3. DIMIA gave him no opportunity to respond to the charges by the college
4. the college provided neither a record of the evidence against him in the MRT hearing, nor a record of attendance.

Despite this evidence against the college, which the Tribunal Member recognized as constituting malpractice, Mr. A's visa was not reinstated. Also, the whole appeal process had become very expensive. The MRT hearing had cost him $1,400, and $2,000 for legal expenses plus the bond for bridging visa E, made his total appeal expenses $6.900. Until receiving the MRT's decision, he also incurred living costs for 4 months while being prohibited from working.

A new migration agent then advised him that his only possible alternative chance for completing his degree was to apply for refugee status. So he appealed in the Refugee Review Tribunal, a process taking several more months, but which also inevitably failed.

During the first year of appeals, his Bridging Visa's conditions, which denied the right to work, study and Medicare, he had to start borrowing money for basic survival expenses and legal costs while he waited months in limbo between each appeal. Unfortunately, after nearly one year, extreme financial hardship eventually forced him to break the no work conditions of the Bridging Visa, and start working to repay his debts to friends

But he was 'dobbed in', and immigration officials eventually raided his residence one day before dawn, forcing him back into detention without even being allowed to pack his clothes. As he could not afford a new bond of $10,000, he was forced to remain detained

Instead of choosing deportation, he still clung desperately to the hope that, somehow, he could finish his studies and avoid humiliating his family. This was such a profound fear, that he rather endured the deprivation and despair of detention.

Therefore, like the two other Indian students then detained in Maribyrnong, he continued with more refugee appeals from detention. During this time he received no contrary advice from any lawyer, DIMIA immigration officer whatsoever. DIMIA'S policy is for its caseworkers not to contact their detainees. He was pressured to agree to deportation. At no time did he receive any communications or guidance from DEST.

In March 2004 he was transferred to Baxter with a group of asylum seekers.

In mid 2004, he participated in his Full Federal Court appeal for refugee status via video link-up from Baxter. Because his case did not meet refugee criteria, the Judge had no option but to dismiss his appeal, thereby relieving him from the onerous burden of claiming refugee status. However, the Judge kindly did not grant the DIMIA barrister's request that Mr. A also be liable for the video link costs in addition to his substantial detention costs.

New pro bona legal advice indicated that he actually could re-appeal the original MRT decision. Barrister Ms. B.A. McManus was the first advisor to shed light on his situation by explaining that at the Federal Court, individuals challenging court decisions can apply for an 'extension of time' review, as well as an for a fee exemption or waiver.

But to obtain this review would have entailed a long process taking many more months, during which he would have been forced to remain in the degrading and frightening environment of Baxter. He was very concerned that his father would retire soon, had suffered health problems, and as eldest son he would be required to become the family provider.

Instead, he wrote to Minister Vanstone in August 2004, requesting her under S 351 of the Act for a 'review and more favourable decision' of the original failed MRT appeal to get his cancelled student visa reinstated. In it he included an affidavit, which had been prepared Ms. McManus. This writer also submitted several detailed documents to support his case. Prior to this, he had applied under S.417 to both the former and current Ministers for review of his failed RRT application. It had taken him 2 ½ years to find out that S351 existed. No migration agent, pro bono lawyer, refugee supporter or DIMIA official had been able to inform him before.

In September he received a letter from the ACT State Territory Secretary, stating that she would not forward his request to the Minister because he 'presented no new information' from his first S 417 appeal in mid 2002 to Mr. Phillip Ruddock, then Minister of Immigration. This writer replied on his behalf that In fact Mr. A had indeed given considerable additional evidence since then, and that it was of great concern that Minster Vanstone had not yet been forwarded his request.

He remained in Baxter for another 8 months, waiting for a response. During this time in November 2004, he received a letter from the Minister refusing his S417 request, even though he was no longer appealing to her under S417, but instead under S351.

Despite so many letters and detailed documents sent to the Minister and DIMIA regarding his case, including attempted negotiations with DIMIA by the High Commission for India in Canberra, he never received a reply to his S351 request.

Although he had allegedly breached the conditions of the student visa, he was never actually charged, tried or convicted of any crime, yet ended up in a maximum-security prison for 2 years.

The student's friends in Melbourne privately raised a small amount of money to help him start a new life. One of them, Sister of Mercy RoseMary Baker, spent many years doing humanitarian work in Papua New Guinea. On realizing the tremendous hardship inflicted by immigration policy on overseas students like him, she admitted feeling "ashamed to be Australian".

A former lecturer, and Channel 31 TV producer, Ms. Sudha Saini said, "I can verify his particular story. I know how much some Indian students suffer here. They face many problems and difficulties."

The taste of freedom for Mr. A was both bitter and sweet. In India, where employment may be hard to find, the recently departed student faced new challenges. He had to begin repaying his family for the huge financial sacrifice of sending him to study in Australia. As the eldest son, he was also expected

to become the family's provider. He had to finally reveal the truth - his devastating experience incarceration, which he had not told them because the social stigma and shame could ruin their reputation.

Yet several months after returning to India he was still too frightened to tell his parents, fearing that the shock would have a very detrimental impact on their health as well as social standing. However, all his friends in his home city already knew about his ordeal through the student 'grapevine'.

Example 2: Indian student detained for 1 year
Mr. B, an Indian student who had spent $40,000 in total - on consultants, education fees, airfares, and migration agents - was just one subject off completing his Masters degree, when he experienced personal difficulties and then failed this subject. Although he paid $5000 fees in advance to repeat, he still had to work extra hours to pay about $2000 for a migration agent to extend his visa. But he was caught, and so for one year tried unsuccessfully to get his visa back while held in detention. He too, had applied for refugee status. His university never refunded his advance fee payment. This writer supported his case with a letter to the Minister.

He could not afford the high cost of a bridging visa demanded by DIMIA officials - $10,000 – to enable him to conduct his appeals while living in the community. He desperately wanted to find a way to finish his studies. He had to repay his parents, who lived in the ultra conservative state of Andhra Pradesh. However, they had apparently heard that he was in jail and believed he committed a crime. He feared he would not be able to convince them otherwise.

Because of this, he feared his reputation was ruined to such an extent that his large extended family would ostracise him, and he would not be able to find work. He also believed it would now be impossible for him to get married in India, as no father of a potential bride would pay the huge, customary dowry for his daughter to marry a man who has been imprisoned. As the eldest son, he was also obliged to support his entire family once his father has reached retirement age. There are no aged pensions in India. With this anxiety he was too scared to contact his parents.

On arrival in India, officials at the airport questioned him for one hour. The word 'Deported' was stamped in his visa. Only after making a payment of $100 was re released. Three months after returning, he was still afraid to return to his parents and was living with a friend in another city. His detention bill would have been sent to his parents.

Example 3
Mr. C, an Egyptian student whose brother was detained for working more than 20 hours, claimed his father had spent $100,000 on their combined studies. "The Australian government treats overseas students very badly," he complained to this writer.

Example 4
Mr. E was an asylum seeker who met many students during his long detention. At one stage four very distressed students were brought into the

facility, fearing that detention had caused irreparable damage to their lives. Their families had sold valuables and taken out loans on high interest rates, just to have a better life for one family member. He said they accused universities and DIMIA of being 'criminal'. Bank guarantees for their visa applications arranged by their education agent in India had since been found to be fake, and hence their detention. These students were angry because the believed Australian officials should have validated their documents prior to arrival here, without the students spending and wasting such large sums of borrowed money to get here.

Mr. E said students equated detention with "abduction". Detainees are not allowed to collect any possessions – they must forfeit valuables acquired while legally studying in Australia, eg: computer, furniture, car, etc which cannot be sold to pay for the bond necessary to be released on a bridging visa. Costs of bonds had increased from only about $1,000 in 2001 to up to even $40,000, and detainees bargain the price with DIMIA, which appears to have "no accountability or be answerable to any authority". He claimed: "Justice and compassion have no meaning for them – their job is a cowboy whose purpose is to deport."
Some students had told Mr. E that their education provider required students to obtain a 70% or 80 % pass mark otherwise they would be 'reported on' to DIMIA. One student felt very suicidal and spoke often of his intention to kill himself on return to India. 'There were lots of cases like that", Mr. E said.

Example 5
An overseas student, who experienced severe financial and social hardships, ended up sleeping in a park for three months until DIMIA removed him into detention.

SUMMARY OF DELETERIOUS IMPACT OF DETENTION ON THE WELLBEING AND MENTAL HEALTH OF STUDENT DETAINEES

<u>All these difficulties lead to stress related health problems, including spinal complaints and pain, digestive problems, insomnia, depression, suicidal ideation:</u>

- Whether in short or long term detention - shock of unexpected visa cancellation, and method, eg. a raid on workplace, or home.
- Shock at method of arrival in an Immigration Detention Centre, eg. DIMIA roundup van in early hours of morning.
- Shock of being detained, and ignorance of DIMIA's detention practices for students
- Fear and anger – incarceration behind razor wire fences in the prison environment of detention with strict curtailment of personal freedom and study.
- DIMIA detainee records include fingerprints and x-rays
- Strip searches on return to detention after outside trips for court, medical or dental appointments in guarded vans – humiliation and violation of human dignity
- Feeling and being treated like a criminal
- Fear and uncertainty about entire process and the future

- Lack of communication from DIMIA
- No communication from DIMIA case workers
- Confusion about DIMIA and legal procedures
- Stress about legal appeals - Long periods of waiting for reply from Minister or court hearings and decisions
- Migration agent/legal expenses
- Anxiety and guilt about not completing studies,
- Shame and despair about wasting about parents' huge financial sacrifices,
- Anxiety about effect of student's problem on parents' health
- Terror of ruining family's reputation in home country
- Effect of experiences of other detainees – witnessing violent conflict resulting from DIMIA/GSL's punitive behavioural management policies, procedures and techniques used with detainees; isolation, hunger strikes, self-harm and suicide attempts; severe mental distress and/or psychosis, detention of children.
- Dormitories of 6 people per room create sleep problems and insomnia.
- Poor food, eg. not enough milk; stale bread, food riots.
- Prohibition from using vitamins to supplement dietary inadequacies
- Restriction on recreational activities such as some TV channels, eg. Baxter inmates were not permitted to watch the 2004 Olympic Games
- Prohibition on access to internet information and communication via email.
- Loss of possessions – not personally retrievable after DIMIA roundup - friends can only bring clothing and personal necessities to detained students.
- Loss of money through pre-paid subject fees, which unis do not refund
- Financial costs of detention – daily fee of $225 - $300 per day.

…

SUMMARY OF DIFFICULTIES EXPERIENCED BY INTERNATIONAL STUDENTS IN RELATION TO UNIVERSITIES AND OTHER EDUCATION PROVIDERS

- Insufficient accurate offshore information about their courses and Australian migration laws from educational recruitment agents, who are employed by Australian tertiary institutions and who are not accountable to any Australian or Indian regulatory bodies. These agents are paid handsomely by Australian universities (up to $900) for each student enrolled, as well as by the parents.
- Misleading or false impressions may be created offshore through glossy brochures about small private education providers
- Disagreements with the education provider administration can occur, especially if the student was given misleading and inaccurate offshore information in about the course prospectus.
- Offshore enrolment in courses which are subsequently cancelled
- Dissatisfaction and frustration with course quality – over 50% of Indian students have complaints – many have arrived here already with a degree.
- Low standard course quality in some private colleges

- Staff not all adequately qualified; big staff turn-over
- General lack of implementation of ESOS Act National Code of Practice by education providers in relation to student support services, counselling and inexpensive, independent grievance and complaint handling mechanisms
- Inadequate technical and educational resources; oversized classes.
- Students may fear lodging complaints and thereby drawing attention to themselves on record, fearing that could prejudice their results or chances for eventually obtaining Permanent Residency.
- Possible language difficulties, eg. understanding staff with Australian accent
- Failing a subject, but not being permitted to resit failed exams- in contrast to domestic students.
- Students are obligated for 1 year to remain with their offshore enrolled education provider – if the provider or course is inadequate or substandard, their parents' valuable resources consequently non-refundable and wasted.
- Small unscrupulous private colleges discourage students to change provider, and use threatening tactics, which cause a fear of reprisal in students if they do so.
- Education provider is required to regularly notify DIMIA of students' records via PRISMS Unscrupulous providers have been known to use this to punish students who want to transfer to another provider.
- Overseas students are not permitted to resit failed exams – the entire subject has to be paid for again. That is, subject failure is like being fined … this could be a possible incentive for plagiarism
- Consequent increased financial stress because of need to pay for visa extension and migration agent to do so.
- International students, most coming from countries with a lower currency, pay higher fees – twice the regular Australian fees – but receive an inversely disproportionate lesser provision of support systems and assistance.
- Visa can be cancelled for late payment of fees in some unis.
- Students must pay fees in advance, but unis can dis-enrol students, but keep pre-paid fees, particularly if student is detained and deported.
- Complete lack of information about procedures involved regarding breach of visa, and its implications of deportation and possible detention by DIMIA
- Education provider may not warn or notify student of possible inadequate results and 80% attendance, or offer counselling to assist student to prevent impending breach of 'course requirements'.
- Attendance of all students may not be recorded systematically, or accurately, leading to false visa cancellation.
- Providers may not follow correct procedures, such as issuing warning notices, viz notification of intent to cancel visa, or may not inform students of 28 day appeal after visa cancellation

SUMMARY OF SOCIAL, CULTURAL AND ECONOMIC DIFFICULTIES FACED BY OVERSEAS STUDENTS WHICH CAN AFFECT STUDY

- Lack of knowledge about: Australia; implications of, or how to handle, visa cancellation; detention and IDC's, how to obtain permanent residency on completion of degree.
- Students are never told prior to coming here that they could possibly face incarceration.
- Many Indian parents have had to mortgage their houses to finance, or sell any extra property to finance education loans for their child's overseas education. Incomes of lower middle class families are low - $350 per month (35 Indian rupees = 1AUD)
- Finding suitable housing on arrival – most arrive here alone and must link up with other students to share housing. Indian students are under tremendous financial pressure
- Huge pressure on students to complete course, obtain Permanent Residency, and find employment to repay large offshore education related loans and repay their families' debts
- Many higher education students need to work to help pay for ongoing education expenses, and living costs, which turn out to be much higher than expected.
- The 20 hours students are permitted to work weekly may not provide sufficient income to cover all expenses, especially if the hourly rate of pay is low. They may be tempted to take the risk of working more hours. Taking what appears to be a necessary risk causes stress.
- If they fail a subject they must pay fees again, as well as for a migration agent to extend their visa, so working extra hours may be inevitable.
- Homesickness and the absence of family support where in most cases the students have never previously left home and lived away from close knit families before.
- 77% of students are Asian, and must orient themselves to a totally new culture and environment
- Other stresses include personal or family illness; high parental expectations; language difficulties; failing subjects the demands of both work and study, plus the time involved in work and travel on public transport
- Not entitled to student concession on public transport
- Overseas students are constantly very busy and under pressure with study requirements and work, and have no time for leisure
- Students must pay for medical insurance to have a valid visa. The Australian 28.6.05: "TENS of thousands of foreign students are studying in Australia on invalid visas after refusing to keep up their health insurance. International students must take out medical insurance before they qualify to study in Australia, but many are opting for the minimum one-year payment the visa requires and then failing to renew their policies."
- Possible unfortunate experiences in a casino or one-night-stand affects study.
- A female South Asian student who was in great financial difficulty turned to prostitution as her only way to met the economic pressures she faced.

EXAMPLES OF STUDENTS EXPERIENCING SEVERE DEPRESSION

<u>*Example 1*</u>

"(The following is a modification of an original letter, with identifying data removed, written by a professional worker at students request, following a 1st interview (together with his housemate) in June 05, a few days before he was to be interviewed by the College administration. He was referred for ongoing psychiatric help and subsequently put on medication).

"Mr. Q, age 19, arrived in Australia in July 04 from India and enrolled at a TAFE College to do a 2 year Hospitality Degree, specializing in Management. He is the older of two children from a rural family. His parents are not highly educated and being the eldest son, his parents have struggled to educate him and expect a lot from him. (His father suffered a heart attack in 2004 and he worries about his father's health and the negative impact if he goes back home without a Degree).

"He arrived here with no prior relatives or friends in Australia and shared a house in an outer suburb with several fellow country-men students, who became good friends. He also used to attend a Temple regularly. He did well in his first semester exams but found the travel from home to be a problem, so he and one of his housemates moved to a much closer suburb in September 04 and shared a room together. Prior to the end of 1st semester he received approval to change from Management to the Catering stream, within the Hospitality degree.

"In moving accommodation and changing courses, he lost contact with all his friends, except his roommate and felt isolated and lonely. He stopped going to the Temple and had trouble with motivation, eg, getting out of bed in the morning. He also had trouble sleeping eg, frequently not sleeping until 4 am in the morning. He became morose and depressed, with morbid ideation. His roommate expressed increasing concern about his condition and asked him to seek professional help. His roommate made an appointment for him to see a Migration Agent, approximately six weeks ago. He kept the appointment and continued seeing the agent on a weekly basis. This he found helpful but it did not solve his depression. It enabled him to see his problems more clearly and to seek further help, (was subsequently referred to the writer). From presentation at interview, he appeared to be suffering serious depression and was referred to a psychiatrist. The possible positive impact that anti-depressive medication might achieve was discussed at interview.

COMMENT: It would appear that there were very real problems affecting his ability to attend classes. Despite this he believes he has only failed two subjects this semester, with his depression adversely affecting his class attendance. The College administration failed to call him up for interview previously re. his poor attendance. Also apparently none of his lecturers noticed or acted upon, what appear to be obvious signs of depression. As he is now taking action to treat and overcome his depression, I believe it would be appropriate for him to continue his studies."

Example 2

The following is a modification of an original letter, with identifying data removed, written by a professional worker at the student's request, following a first interview in July 05 with him and his friend. He was referred for Psychiatric help.

"Mr. X arrived in Australia (from India) with an overseas student visa, in Jan 2000. He successfully completed a 2 year Diploma in Info Technology at TAFE level. In 2002 he successfully completed a Certificate in Multi-Media. He then enrolled in a Degree Course at "Z" Private College (with University affiliation), at the commencement of 2003. He was not given any professional advice or guidance prior to enrolment and relied on friend's advice. In the first two semesters he passed only 2 subjects out of 8. At no stage did he receive any advice or counselling, other then being advised to try harder.
"He did not tell anybody that he found the University environment very difficult to understand and to cope with, compared to his TAFE experience. The workload was greater, subjects were harder and lecturers were less accessible, (appointments had to be made to speak to them). As a result his stress level increased and his sleep became disrupted, (he averaged 3-4 hours sleep a night). He found it difficult to concentrate and manifested other signs of clinical depression. His friends also noticed a significant change in his behaviour but he did not share his troubles and poor results with them. This made his depression worst and it was therefore very difficult for him to realistically assess his educational situation and life management.

"At the commencement of 2004 he went to re-enrol and was accepted without question. It would appear at this stage (if not earlier) that would have been appropriate for Z administration to refer him for detailed discussion on what action he should take in his best interests, (i.e. for Z to have "duty of care"). In 2004 he passed 4 subjects out of 8, including 1 supplementary exam. To the best of his knowledge at no time during 2004 did Z initiate discussion with him in relation to his academic progress and related issues. In this regard it would again appear that Z did not exercise appropriate "duty of care".

"Once again at the commencement of 2005 he applied for re-enrolment (after his results were known for 2004) and this was accepted (once again) without any discussion or consultation regarding what would be in his best interests. At the end of this semester he failed all 4 subjects. Before the results were known he advised Z that he is visiting India for a few weeks.

"After he returned in July he accessed his results and went to enrol on 21st. He was referred to administration, which told him that as he failed all 4 subjects, he could not be enrolled. When asked why this had happened, he replied that he was told in May that his mother was sick and had an operation. Because of this he was worried and not concentrating on his studies. He also said that he was depressed and homesick as he had not been to India for 3 years.

"COMMENT: Given the above circumstances it would appear that his situation should have been properly assessed much earlier e.g. 1 or 2 years ago and that the whole College and educational environment has been defective in this regard. Therefore it is recommended that further consideration be given to

him having appropriate treatment by a Psychiatrist and suitable guidance to find an appropriate level course to meet his educational needs."

COMMUNITY SUPPORT SERVICES

Some members of the Indian community and community organizations in Melbourne have been offering assistance for Indian overseas students, including Mr. Srinivasan who has helped to coordinate voluntary support services, including counselling, for students in trouble.
The National Union of Students NUS and the National Liaison Committee NLC have provided advice and assistance to international students.

RECOMMENDATIONS

To be truly inclusive, any reviews to make compassionate amendments to Australia's immigration policy' should also include recommendations to abolish the government's hidden practice of detaining international students, and to revise legislation concerning their inequitable treatment and visa conditions.

The above-mentioned detained students had experienced considerable trauma and mental suffering. It was a long, drawn out, agonizing process for them. Other students are sitting right now in an immigration detention centre. Students with cancelled visas, and now on bridging visas, are also in distress. With no consumer protection avenues open to them, they feel financially exploited. The whole situation is unjust.

Therefore, the following recommendations are suggested for implementation by DIMIA, DEST and the Australian Parliament and Senate:

1. That the legislation in the Migration Act 1958 needs to be changed to abolish the detention of overseas students, such that (A) it embodies standards of internationally acknowledged Human Rights, and (B) overseas students have the sane rights to appeal that are granted to Australian students.

2. An appeal board / review tribunal solely for overseas students, be established in each state, consisting of university, education and immigration officials, wherein o/s students can present their case, to review any disagreements between the student and their college/university, and/or cases of personal and financial hardship, etc.

3. Student visa policy review by DEST, DIMIA, HREOC and other relevant groups that also incorporates realistic, accurate assessments of overseas student needs, including a comparison of study conditions with other western democracies such as Britain, France, Germany, the United States, and specifically Canada.

4. Improved training and increased accountability to Australian and Indian regulatory bodies for overseas tertiary education recruitment agents.

5. The provision of greatly improved overseas student support services and a consumer protection policy

6. Comprehensive handbook given to each student prior to arrival - on Australian immigration laws, education requirements, student resources, life in Australia, student rights and protection, help-lines etc

7. Rapid implementation of the 2005 ESOS Act Evaluation Report Recommendations. Recommendations made by the Report

8. That any students currently in detention be released into more suitable accommodation.

9. Their student visas are reinstated, so they can complete their studies.

10. Their detention fees waived.

Hopefully the information in this submission to the Senate Legal and Constitutional Committee promotes understanding of student detention, and the suffering overseas students can experience during their studies in Australia due to excessively stringent laws and their application. Their parents at home also suffer major stress as a direct result of these policies.

The lives of many innocent people from second world countries have been irrevocably damaged by these punitive and cruel policies and practices, by the careless lack of application ESOS provisos to protect the students' interests, and by the push for universities to be self funding.

A change in student visa and detention policy would greatly benefit and create much relief for overseas students; prevent future suffering and devastating outcomes; provide more humane and equitable conditions for students in line with international standards; be more ethically justifiable; more cost effective; enhance the IDP program; and as well as redeem Australia's reputation.

This submission to the Inquiry is detailed because student detention is a relatively unknown issue. The Senate Legal and Constitutional Committee's consideration of this matter is much appreciated.

Yours faithfully,

Michaela Rost

Melbourne, 15 August 2005

(Please see appendix below)

OTHER AUSTRALIANS CONCERNED ABOUT STUDENT DETENTION

The following people are a few of the Australian citizens who are concerned about the harsh and punitive legislation applied to overseas students, including their detention; who have provided support for students in distress; and/or who have kindly contributed in various ways to this submission.
This writer is grateful for their assistance.

Ms. RoseMary Baker, Sister of Mercy

Mr. John Britcliffe, Member of Lions

Mr. Harold Jones, Migration agent and accountant:

Mr. Rory Hudson, Migration agent and lawyer

Ms. B. A. McManus, Barrister and Solicitor

Dr. Linda Briskman, Associate Professor, Dept. of Social Work, RMIT

Ms. Pamela Curr, Asylum Seekers' Resource Centre

Ms. Jane Dunstan, South Asian Student Support Network

Mr. John Russell, Counsellor

Ms. Sharon Smith, National Union of Students

Mr. Raj Dudeja, 'Indian Voice'

'South Asia Times'

Melbourne Indian Community members who do not wish to be named

Others, who have not been named, or do not wish to be named.