



National Liaison Committee
For International Students in Australia Inc.

Submission for the
ESOS ACT Evaluation

Presented by
Aditya Tater
National Convenor 2004/05

Prepared by
Adrian Wong
NLC National Convenor 2003/04
Sharon Smith
International Research Officer
Email: isd@nus.asn.au

Table of Contents

Terms of Reference	3
NLC Introduction	4
NLC Key Recommendations	5
A. The effectiveness of the ESOS Act in providing nationally consistent registration of education and training providers for overseas students studying in Australia	6
1. Education Agents	6
2. Student Services: Policy Vs Rhetoric	8
B. The effectiveness of the ESOS Act in minimising the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions	11
1. Records of Academic Performance and Attendance	11
2. Academic Progress and Exclusion from University	12
3. Program Sharing: Can Quality Be Monitored or Guaranteed?	21
4. Marketing for Permanent Residency	22
5. Consumer Protection	25

Terms of Reference

- a. Assess the effectiveness of the ESOS Act in achieving its objectives to:
 - Provide nationally consistent registration of education and training providers for overseas students studying in Australia
 - Minimise the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions.
 - Ensure students receive either alternative tuition or a refund if they are unable to receive the tuition for which they have paid
 - Support immigration policy
- b. Assess the extent to which the ESOS Act 2000 achieves its goals in an efficient manner.
This will include consideration of:
 - The costs imposed by it on governments and providers
 - Its implementation and administration
 - Monitoring and reporting regarding its operation

NLC Introduction

The National Liaison Committee For International Students In Australia welcomes the opportunity to contribute to the 2004 review of the Education Services for Overseas Students Act 2000.

The main points the NLC has made through out this submission are concerning the overall effectiveness of the ESOS Act in protecting the basic rights of the students as human beings, consumers, visitors to Australia and students at Australian education institutions.

The key recommendations NLC has put forward are all concerning such rights. While it is always to be noted that the ESOS Act is an Act protecting the citizens of Australia, there seems to be an undercurrent through the Act that assumes that the student is not genuine or the provider is not genuine. It is understandable that measures need to be in place to identify such students or providers, however, there is very little that is given to consideration of the real needs of international students in Australia. There are very few sections of the Act that address pastoral care needs of the students, save and except the students under 18 years of age. There is also very little consideration given to the legislating of such requirements in universities.

Overseas students are facing a long and arduous task of leaving a home and family, and starting alone in a new country at a new education provider, with no networking system, that they would have had at home. In this situation, and with the exorbitant fees international students pay to study and live in Australia, it is the very least the Australian government can do to ensure through the ESOS Act that international students are protected from failure due to inadequate support measures and procedures within the university system.

Should a student believe at the end of their stay in Australia that the education they received was not of the standard they expected the NLC believes there should be adequate avenues in place for such complaints to be heard. It is in the interest of international students both current and prospective for such an avenue to be available, to ensure that the quality of education system in Australia is always seeking ways to improve.

NLC Key Recommendations

1. Providers should be responsible for the actions of all education agents for any student that is recruited to the institution, regardless of whether the education agent recruits students regularly or from time to time for the institution.
2. DIMIA and DEST should have a reciprocating understanding with education providers, such that institutions are informed about rogue education agents who have been found to breach the National Code or the ESOS Act.
3. NLC believes that there should be regular benchmarking studies that measure and determine standards by which information and services are delivered by institutions. Audits of universities should also be conducted against the outcomes of the benchmarking results and compel institutions to meet or improve on the industry standards.
4. NLC proposes that students should not be assessed for genuineness on academic record alone as this is not an adequate measure.
5. The ESOS Act should contain a nationally consistent policy with regard to students academic progress procedures. The policy should contain guidelines on early identification of students not achieving satisfactory academic results and management of such students with the intention of avoiding exclusion and cancellation of student visas.
6. The ESOS Act should contain nationally consistent policy with regard to exclusion procedures following academic progress and attendance breaches. The policy should contain guidelines on appeal procedures and timelines that take into consideration international student movement on university breaks to home countries.
7. Institutions that run programs/courses under an arrangement with a registered provider should be a registered for a CRICOS code in that institutions name, therefore ensuring practices by the institution are in line with requirements of the Act.
8. The NLC recommends that the ESOS Act take into consideration changes by the Department of Immigration and Multicultural and Indigenous Affairs with regard to permanent residency requirements and the effect these may have on marketing and quality of provider programs.
9. The NLC recommends a transparent and independent body funded by the federal government with offices in each state that would fill the role of a Universities Ombudsman. The ability of international students to address consumer complaints while in Australia is extremely limited. Many factors prevent students from seeking advice and help in such areas, the most prevalent being fear of visa cancellation. With such fears there are many incidences that go unchecked and unreported leaving the student with a low quality educational experience and often an incomplete unsuccessful journey.

A. The effectiveness of the ESOS Act in providing nationally consistent registration of education and training providers for overseas students studying in Australia.

1. Education Agents

As is not specified by the National Code or the ESOS Act, there is a loophole with in the system with regard to the registration of education agents. Currently education agents used often by educational institutions are registered with the institution. As such, under the National Code: Sections C.19 – 30, the educational institution is responsible for the actions of the agent with regard to marketing and information provided to the student, as well as student recruitment and placement.

*'The cricos registered provider is responsible for the following activities, whether conducted by 1. the provider, 2. their agents, 3. those involved in the provision of a course under an arrangement with the registered provider.'*¹

However, there are education agents that are not registered with institutions that may from time to time recruit students for a particular institution. Under the current ESOS Act provisions, the educational institution who accepts the student takes no responsibility for the actions of that agent with regard to the marketing or information provided to the student or the recruitment and placement of the student, in particular offshore education agents. The student may have been recruited under false or misleading information and the educational institution is not deemed responsible to the student or the Department of Education, Science and Training. Changing the wording of the above section of the National Code from '**2. their agents**'² to '**2. any education agents recruiting students for the provider**' would ensure this responsibility is understood.

In the National Code, Section 49³, it currently states that the educational institution must not use the agent or authorise the agent to use PRISMS on their behalf if they suspect the agent is not acting under the provisions of the National Code and the ESOS Act.

¹ National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students. (the National Code), Department of Education, Training and Youth Affairs, Commonwealth of Australia, 2001. page 7.

² Ibid, page 7

³ Ibid, page 13

There is no provision to make sure that the provider checks that all information given by the agent was correct and not false or misleading. The National Code, Section C.49 could include this provision thereby ensuring that they are responsible for the actions of all agents from whom they accept students.

In addition, currently the Department of Immigration and Indigenous and Multicultural Affairs and the Department of Education Science and Training, do not have to inform the providers of education agents that they know or suspect are not acting under the provisions of the National Code or ESOS Act. Information in this instance should be reciprocated between the institutions and the government departments.

Recommendation 1:

Providers should be responsible for the actions of all education agents for any student that is recruited to the institution, regardless of whether the education agent recruits students regularly or from time to time for the institution.

Recommendation 2:

Department of Immigration & Multicultural & Indigenous Affairs and Department of Education, Science & Training should have a reciprocating understanding with education providers, such that institutions are informed about rogue education agents who are under suspicion or have been found to breach the National Code or the ESOS Act.

2. Student Services : Policy Vs. Rhetoric

Universities around Australia are obsessed with international education as an industry since the introduction of the full-fee overseas program in 1986. The Federal Government's policy of reducing Higher Education Funding in the last eight years is a motivation for such behaviour.

In the Federal Government's schools policy, they reduce funding to public schools, arguing that parents of children who attend private schools also contribute to the tax system, and such, their children should enjoy public funding to their institutions. In these private schools, private funding, through independent fees and private sponsorships supplement academic programs, logistics and buildings that would not normally be enjoyed by students attending the public school system.

In the Federal Government's Higher Education policy, we find that they have continuously reduced access to Higher Education finding, and Universities have to turn to other sources of income through commercialisation and internationalisation programs to supplement the gap in funding that has been taken away. While it is easy for the number crunchers to analyse that international students contribute \$2billion in fees annually, we need to put this into perspective with the amount of funding that has been cut over the years.

The National Code of Practise, enshrined in the ESOS Act, is a commendable document. In Section C, many paragraphs stipulate ideals that NLC has been campaigning for – ethical marketing, and equitable welfare. However, while it lists these ideal practices, there is no measure by which this these requirements have been set.

As such, the ESOS Act has flaws.

In the National Code, it is a requirement for institutions to provide appropriate support services⁴. However, there are no standards by which “adequate” is measured against. Especially in areas like language support, universities are compelled to provide the service, and they do exist on campus. However, language support departments are usually under-staffed and not adequately resourced to cope with demand from students (especially international students) who access the

⁴DETYA, The National Code, Section C.45 pp.12

service.

The code does not give enough detail with regard to extremely important learning support services that are needed by international students to ensure success in the education outcomes. Resourcing of such services is not covered by the code nor is continuation of learning support access or staff ratio per student. Such things are increasingly becoming problematic for students, therefore, to ensure these do not increase further the National Code should be adjusted to include them.

The National Code compels the institutions to deliver accurate information, and orientation programs. However, for most international students, orientation programs are tedious day long programs where important and complicated information (such as work rights, tenancy rights and banking practices) is force-fed to students to a point where they suffer information overload. Following this tedious day, in many cases there is virtually no follow up with such information.

The statistics in university education show that student staff ratio steadily increased from 15 to 21 students per lecturer/instructor between 1996 and 2003.⁵ This is an increase of 35% in the last 7 years. International students paying fees that increase on average 10 per cent a year are losing out with student staff ratios increasing and the value for money decreasing. The National Code and the ESOS Act has a responsibility to international students to protect them from declining value for money and exploitation. Already in the last 12 months the figures of international students have slowed down in enrolments with from a 35% increase in 2002 to a 10 percent increase in 2003 and a smaller increase again in 2004, according to newspaper reports on IDP and individual universities. The quality of education and the experiences of the previous students play a large part in the country prospective students choose to study.

It is NLC's belief that lack of government funding for public places should not effect the quality of services that international students receive as they fully fund their own places at university. Therefore increases in international student numbers should be met by increases in staff, and in particular increases in areas such as learning support services and student welfare. Funding provided by international students fees has instead been used to prop up universities as

⁵ AVCC website. www.avcc.edu.au

government funding has been taken away.

Consumer protection is at question. Academic and student services in universities have not increased as a percentage of university expenditure since 1995 despite the increase in student population and in particular international student population.⁶

More funding needs to be channelled into the academic and student support services to ensure the best educational outcomes of the universities.

Recommendation 3:

NLC believes that there should be regular benchmarking studies that measure and determine standards by which information and services are delivered by institutions. Audits of universities should also be conducted against the outcomes of the benchmarking results and compel institutions to meet or improve on the industry standards.

⁶ DEST Statistics financial tables. www.dest.gov.au

B. The effectiveness of the ESOS Act in minimising the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions

1. Records of Academic Performance and Attendance

NLC believes that academic progress alone is not an adequate measure of attendance for institutions where attendance is not required for immigration purposes for the reason that a student could still fail even if they attended 100% of classes. In the case, where the student attends a provider with no requirement to record attendance were to not meet satisfactory academic performance criteria, they could face visa cancellation regardless of attendance as it is not recorded. There is no means of assessing the genuineness of the student. Therefore NLC proposes that students should not, be assessed for genuineness on academic record alone as this is not an adequate measure. The ESOS Act should enshrine safety nets for students to ensure they are provided with adequate measures of support by institutions before they are excluded and face visa cancellation such as in Section C, 39.3 of the National Code, in which it is legislated that,

“Procedures are in place for contacting and counselling students and recording this on the students file, if a student has been absent for more than five consecutive days without approval, or a student is not consistently attending their course.”⁷

It is debateable upon reading many Migration Review Tribunal cases whether many institutions adhere to this condition.

Recommendation 4:

NLC proposes that students should not, be assessed for genuineness on academic record alone as this is not an adequate measure.

⁷ ibib. Page 11

2. Academic Progress and Exclusion from University

The NLC is increasingly becoming concerned about the growth in students who have visas cancelled for breaches of Student visa Condition 8202 and Section 19 of the ESOS Act 2000. The statistics on the Migration Review Tribunal (MRT) website demonstrate that the process for appeal of visa cancellation is a long, timely and often unsuccessful process. In 2003/04, the average time it took to have a case heard through the MRT appeal process was 165 days, about six months. Of the 1092 student visa cancellation cases put before the MRT in the year 2003/04, 40% resulted in the Department of Immigration & Multicultural and Indigenous Affairs' (DIMIA) decision being overturned by the MRT.⁸

NLC believes the reason for such statistics can be partially attributed to the different experiences of the students relating to the support networks that they have surrounding them and available to them. NLC is concerned that in many instances, international students are not aware of support services available, or that the procedures in place for such services are not available as easily as they should be due to university funding constraints.

Problems within the ESOS Act that involve effective reporting procedures to the DIMIA, in fact lie deeper within the ESOS Act itself. The PRISMS System and the method of reporting to DIMIA have problems that require discussion but it is NLC's view that most problems lie with the policies implemented by providers with regard to procedures for international students.

To address such problems, the ESOS Act and the National Code need a nationally consistent policy guideline to protect students who are not coping and need support, providing pastoral care in the form of early recognition of problems and a proper procedure to follow before reporting is necessary to DIMIA under Section 20 of the ESOS Act. According to the Migration Review Tribunal cases, the most common reason for student visa cancellation by DIMIA is unsatisfactory academic progress and/or attendance⁹. It is NLC's view that facilitation of student breaches includes institutions not addressing problems that arise for students, which ultimately lead to breaching visa conditions.

⁸ <http://www.mrt.gov.au/statistics/mrt200304stats.pdf>, Migration Tribunal Website, Statistics. 2004.

⁹ Migration Review Tribunal Website – cases descriptions on student visa cancellations. www.mrt.gov.au

NLC believes that the ESOS Act should outline in much more detail the type of policy the universities should implement, including strict guidelines for the procedures of exclusion for international students. The policies in best practice would allow a process to take place prior to students being reported to DIMIA by the university, that may prevent this happening at all. The reporting would be prevented because the problems would be identified in the early stages, addressed by the student and the institution and therefore resolved without the student going through a long, tedious and heartbreaking experience of failure and visa cancellation.

Universities are increasingly becoming funded by students as “customers”, in which case, exclusion procedures need to be transparent, fair and available to all parties, and must consider consumer protection rights. In most universities, exclusion is a temporary status, for 1 to 3 years. This may be suitable for domestic students, but in the context of the international student, a 1 year exclusion is at least a three year exclusion as the student is not eligible to apply for a student visa for another 3 years and may not be granted one again. For international students, exclusion is far more serious and permanent than it is for domestic students.

The effect on the international market is unknown as it is also unknown what the student or the person whose money was wasted in the time the student spent away only to return home with nothing to show for it says about the education system in Australia. This must have some effect on the market and as international student numbers did not increase at the rate they were expected to in the 2003-2004 program year, as demonstrated in the table below, one could speculate this may have something to do with it.

Table 1. Total number of Student Visas Granted*

(onshore and offshore, excluding change of provider and work rights visas.)

Program Year	# of Student Visas Granted	% increased/decreased
2000-01	146,565	N/a
2001-02	151,894	3.63%
2002-03	162,575	7.03%
2003-04	171 616	5.56%

*Data supplied by the Department of Immigration and Multicultural and Indigenous Affairs.¹⁰

¹⁰ Department of Immigration and Multicultural and Indigenous Affairs, Combined offshore and onshore Grants 2000 - 2004, www.immi.gov.au/study/overview/index.htm#statistics, 2004

After viewing 10 providers' policies on the exclusion processes or academic progress board processes (See the tables below), it is apparent there is not currently a common standardised procedure that providers must follow to help detect problems early and enable intervention. Rather than a reactive process, institutions should be expected to initiate a proactive process. NLC would like to see this legislated in the ESOS Act in two parts.

Part one:

Students at risk detection

In most instances at education institutions, students who are not achieving satisfactory results are able to continue this way with no detection or intervention for more than one semester. The NLC believes that it should be legislated that students who achieve less than 50% of the enrolled unit average should be detected in the first semester, contacted and offered support.

Early intervention

The contact by the provider should be in writing, offering support and if no response is received within 28 days of this offer, then a second letter should be sent or a telephone call made to the student. This would allow sufficient time for students that may be out of the country or in between addresses. Support services should be suggested in both letters. These would include academic support, career support and personal counselling services. In this way, the student may address the three most common potential problem areas. It should be taken into consideration by all university departments and governments that many overseas students may not be familiar with university life and the availability of such services. It may be university policy that it is the responsibility of students to seek such services, but without reminder at times of great stress that such services are available, students are unlikely to know what to look for and where to turn for assistance. The notice should include contact details of support services and information on what problems each service can help address.

Should a student not follow the university advice and seek support services, a third letter should be sent upon commencement of the following term, reminding the student of services available in case problem situations arise in the coming semester.

This would then leave the responsibility to the student to seek help if he/she requires it.

All letters sent and phone calls made should be recorded on university records.

If a student were to achieve unsatisfactory results in a consecutive semester, the university should follow the same procedure of letters as the first, but also put the student on probation. This would alert the student to the situation that may occur if no help is sought or improvement is made.

There would also be an interview process at this stage to advise the student of the situation and to assess the students understanding of the procedure and available support services. The support services should be strongly advised in this interview. The university may warn of possible exclusion if unsatisfactory results are achieved in a third consecutive semester. Following a third semester of unsatisfactory results, the university may, at its discretion exclude the student, following an appeals process, as outlined below.

Table 2. Early intervention procedures currently in providers' policies

Education provider	Early identification	Notification to student	Advice letter	Interview outcome	Student support services offered	Follow up in next semester	Notification to student of course of action	Further appeal if student is to be excluded
1. RMIT	At end first semester, by student progress committee	Notified in writing that at risk and asked to come for interview	Sent out before July 31 st or Dec 24 th , by registered/certified mail or in person	Advised in writing including warning of exclusion if no improvement is shown	In letter with outcome of interview showing all assistance available.	Academic transcripts distributed, student progress committee identifies continuing problem	To follow process as earlier with interview and support services offered Student required to repeat subjects Notification that the student shall be recommended for exclusion at the end of the following year if continued academic performance	If student disagrees with this decision, they may appeal to faculty appeals committee
2. Monash College	None	Students receive in writing a letter of exclusion if they have failed more than half of their course after second trimester DIMIA is informed at this time.	Before third trimester begins	No interview process	No student support offered prior to exclusion	No follow up as no at risk detection	Information is given on how to appeal decision and to enrol in third trimester and attend all classes through appeal process	May lodge an appeal through Monash college
3. Monash University	No early identification apparent. After two semesters of achieving unsatisfactory progress, notice of referral is given	Notice of referral must be sent out requesting the student show cause giving students 4 weeks to respond	Notices must be sent out within 14 days of results release	Notice of hearing date given within 14 days	In referral letter, information is provided on where to obtain help with academic progress procedures	Only if hearing has determined student is allowed to continue with conditions	Results of hearing sent out within 2 weeks of hearing	Appeal against hearing decision must be lodged within 14 days of notice of decision
4. UniSA	Academic review process, through student records system and School Committee	Automatically generated letter advising student they are at risk, and advice on seeking support and assistance	No time line specified		In automatically generated letter	If second semester no improvement shown then student would be interviewed by program director and put on notice again	Student would be informed that after the third term of unsatisfactory progress, the academic review committee established by the university shall consider preclusion	The student may then appeal to the division appeals committee by a specified date.

5. Griffith University	If a student has an average below the required standard in a semester they will be placed on probation	The student will receive a formal warning of the probation status and asked to seek assistance for improvement	No time line	No interview	Student support suggested in letter of probation,	Student may not have an average below the required standard a second time	Students would then be excluded.	For both probation and exclusion the student may lodge an appeal
6. CQU	At each term end faculties must identify students at risk, ie those not achieving satisfactory progress,				Academic counselling must be provided to all students identified as at risk	Student records identifies students who are not progressing satisfactorily a second term and consideration is given to the action needed	Either change of program, more academic counselling or possible discontinuation	Student may appeal to associate dean if discontinuation of course has been recommended
7. USQ	Student with unsatisfactory academic standing will be deemed to have a program status of conditional	In each academic year dean of each faculty will notify in writing all students who have not achieved satisfactory academic standing of conditional status	Student must have received unsatisfactory results for no less than four units to be deemed conditional.	No interview	Students will be advised to seek assistance from all services available.	Time frame for improvement is determined by the dean of the faculty, this may or may not be after a full semester.	If a student is to be excluded, they will receive a 'show cause' letter in writing from the dean	"show cause" is the appeal rights
8. USyd	No early identification.	Students deemed as having made unsatisfactory progress are asked to show good cause by dean of faculty	No time line	No set procedure of notification	Not on any occasion	Not specified	If good cause is shown student may reenrol, if not dean may have discretion to place restrictions on reenrolment, such as time frames, units of study	Appeal procedure for exclusion is available
9. SCU	No early identification	At each end of year, head of school makes decision based on results if students are able to continue	If not able to continue a letter is sent to student	Student may appeal this decision within 10 days then exec dean makes decision based on appeal letter	No support offered for improvement	Only if conditions are placed on re-enrolment	Exec dean must make decision within 10 days, then advised in writing	Appeal can be lodged to academic board within 10 days of exec deans decision
10. Murdoch	After one semester of not achieving a satisfactory result students are identified	A written letter of warning is sent to the student	No time line	No interview	No support services recommended	If a student does not achieve a satisfactory result in a consecutive semester a student shall be excluded	A notice shall be given advising of exclusion	Appeal may be lodged within 10 days of date of letter of exclusion

*all notes are taken from relevant university websites

Recommendation 5:

The ESOS Act should contain a nationally consistent policy with regard to students academic progress procedures. The policy should contain guidelines on early identification of students not achieving satisfactory academic results and management of such students with the intention of avoiding exclusion and cancellation of student visas

Part two:**Appeals processes:**

All universities should have an appeal process that international students may access should they be faced with exclusion from the university.

Notice of exclusion should be sent out as soon as a decision is made by faculty/university. This would give students time for appeal lodgement before leaving to return home for holidays, or they may defer departure until after appeal process has been exhausted.

Section 20 notice should not be sent at this stage.

There needs to be a system in place that addresses the situation whereby a student may have left to visit their home and misses the notice of exclusion, therefore does not meet appeal lodgement deadlines. To help ensure this does not occur, the following is recommended:

Letter should be sent by registered post.

In most cases the student should have informed the university that they are returning home, the university would then send the letter to the home address or the Australian address taking into consideration the length of time it will take to deliver and the students whereabouts at the delivery time. Students should be contacted by telephone to confirm the postal address if the letter is not collected within 5 days.

The letter should contain appeal process procedures and accurate timeline of events. Students should be given 28 days to lodge an appeal, allowing time for students who are away to return and prepare for such an appeal. In the event that the exclusion notice needs to be sent overseas, all timelines should be extended by one week to allow for overseas mail delivery. All correspondence should provide advice on where to ask for help, such as the international office, student representative association, university lecturers etc.

All appeals should consist of a hearing or interview with the student in attendance. Appeals should be held within 10 days of application. Student should be advised in writing of the details of the hearing by registered mail. This letter should contain information for the student on what they would be expected to provide for the hearing. Letter should also contain options if the student is not able to attend the hearing in person.

Student should be encouraged to seek help and advice from sources such as student representative associations, international student advisors and university lecturers.

Notification of hearing outcome should be sent to the student within 5 days of the hearing, in writing, by registered mail.

Students should be permitted to re-enrol throughout the appeal process and attend classes as normal. If the appeal is unsuccessful, enrolment would cease once the students appeal rights are exhausted, leaving the university no choice but to inform DIMIA of the student's enrolment status. The student should then receive the Section 20 letter, advising them to contact DIMIA. This would then allow students whose appeal is successful to enrol and be attending classes so as not to detriment the next semester's results.

Table 3. Academic progress and exclusion appeals procedures.

Education provider	Notice of exclusion	Appeal lodgement	Appeal hearing	Assistance with hearing	Hearing outcome notification	Section 20 notice	Further appeal rights
1. RMIT	Notice of exclusion from the Student Progress Committee is sent by registered post, inviting the student to show cause	Must be lodged within 10 working days of the letter	Must be held on the campus where the student is located no later than 20 working days from receipt of application	Students are advised in the letter to consult with student services or the student union	Will be sent out by the committee through the secretary within 5 working days of hearing	Notification will be sent to RMIT international, in the case of exclusion, RMIT international would then inform DIMIA, within 2 working days	May lodge appeal to University Appeals Committee.
2. Monash College	Letter of exclusion sent after student has failed more than half of units attempted in two trimesters	Special appeal form must be lodged by date specified on notice of exclusion	No hearing, form for appeal is put to college appeals committee	No hearing but counselling is offered	Within three days of appeal	Will come with appeal notification if appeal is unsuccessful	No further appeal rights avail. Through college

3. Monash University	Students receive written notice of exclusion, including appeals procedure	Must be lodged with Exclusion Appeals committee within 14 days of notification	Notification of date, place and time of hearing to be sent to the student by registered mail, no later than 10 days before hearing date.	Encouraged to seek advice from student rights officer and counselling help. If a student is unable to attend in person either a written submission will be used or a teleconference can be arranged.	Notified in writing by registered mail within 7 days of hearing	Sent out following notice of hearing outcome, if unsuccessful appeal	No further appeal rights available through the university
4. UniSA	Student will receive notification in writing of preclusion Notification will be by registered mail	Appeal must be in writing by specified date	No time line, student will be advised in writing of the hearing date	Student may be represented by and accompanied by a student assoc representative, student or staff member of the university	Notified in writing by registered mail		May then appeal to Student Assessment Appeals Committee within 10 working days
5. Griffith University	No advice on notification procedure available	Appeal application must be in writing	If appeal is to go ahead, the Dean will either make a decision alone, if student disagrees, then the university appeals committee can be asked to review the decision.	No hearing, student may be asked to attend a meeting of the university appeals committee, and may take a student guild representative, staff member or family member.	Outcome in the form of a report, provided to the student and the dean.		No further appeal is available
6. CQU	Not avail on website						
7. USQ	Dean's office will send out a letter asking student to 'show cause' Letter to be sent by registered post	Student must send all evidence in writing to faculty appeals committee	No hearing, appeal is based on evidence provided in writing	University Appeals Committee appeals may include student guild representation	Result of appeal posted by registered post as soon as is practicable	Sent out once all appeals are exhausted	Appeals may be made to 3 areas consecutively, faculty appeals committee, university appeals committee, and Deputy Vice Chancellor, (exclusion from all programs)
8. Usyd	Not avail on website						
9. SCU	The executive deans notifies the student in writing	The student may then appeal to the academic board within 10 days	If there are grounds for a hearing, the student will be given seven working days written notice of the date.	Student may be accompanied by and represented by a student representative.	Student will be notified in writing within seven working days of hearing outcome.		No further appeal may be made

10. Murdoch	Notice in writing sent after second semester of unsatisfactory progress	May apply to Program chair for continued enrolment, 10 days from date of exclusion letter	No hearing, application letter must state case for continued enrolment	No assistance is offered or recommended	Decision by Program chair must be in writing and state reasons for decision	Not sent at this point	Student may further appeal to student appeals committee, within 10 days of decision letter. Repeat of procedure resulting in either exclusion (section 20 notice) or continued enrolment
-------------	---	---	--	---	---	------------------------	--

*all notes are taken from relevant university websites

Recommendation 6:

The ESOS Act should contain nationally consistent policy with regard to exclusion procedures following academic progress and attendance breaches. The policy should contain guidelines on appeal procedures and timelines that take into consideration international student movement on university breaks to home countries.

3. Program Sharing: Can Quality Be Monitored or Guaranteed?

There are many problems encountered by both onshore and offshore students who are studying at institutions, which offer courses and qualifications in the name of an Australian institution but are not actually under the qualifications framework of AUQA and cannot be held accountable for quality of the education.

With regard to the ESOS Act and its ability to minimise the presence of rogue providers, the problematic area with institutions and the arrangement for use of programs is one that is quite difficult to monitor. The National Code currently states that:

“where more than one provider is involved in the provision of a CRICOS registered course, only one of them shall be registered for that course on CRICOS. The Authority shall decide which one will be registered, in light of its connection with and responsibility for the course.”¹¹

The institution running the program may not be the holder of the CRICOS code and therefore not responsible for the marketing, information given to the student, the recruitment and the placement of the student and yet may be the body that conducts some of these procedures. In best practice it would be expected that an institution whose program and CRICOS code may be used by another institution would be aware of the procedures of the institution although this is not always the case.

An example of a problem of this type is where a university in Queensland has a program being run by a private institute in NSW. The CRICOS provider code is registered to the university in Queensland but the CRICOS course registration also recognizes that the courses are being run in NSW. The provider is therefore the institute in Queensland and is responsible for the quality and standard of the course, including adherence to the ESOS Act and the National Code. The private institution in NSW has no responsibility to the ESOS Act as it is not the registered provider. The NLC believes that the institution actually running the course and recruiting, marketing and placing the students should hold the CRICOS provider code, and be responsible for the adherence to the act. Without holding the institution accountable it would have no concern for the consequences of breaching the code or the act. In this way the international students who are

¹¹ The National Code, Section 13.4. page 4, Department of Education, Training and Youth Affairs, 2001

enrolled in the course are not properly protected by the Act as the institution is not responsible for the students well being, success and satisfaction.

Recommendation 7:

Institutions that run programs/courses under an arrangement with a registered provider should be a registered for a CRICOS code in that institutions name, therefore ensuring practices by the institution are in line with requirements of the Act.

4. Marketing for Permanent Residency.

The ESOS Act 2000 was designed support the Migration Act 1958 as it was in 2000. With this in mind changes made to the Migration Act over the last 3 years, since 2000, are therefore not taken into consideration in the ESOS Act as it is today. There have been quite a few changes in the Migration Act that may not deal directly with student visas, but rather permanent residency requirements that affect international students who intend to apply for permanent residency following the completion of an Australian qualification.

In 2003, the skilled migration requirements changed for students who are studying postgraduate qualifications. Previously these students were eligible to apply for PR if they had spent one year studying in Australia as a postgraduate student. The requirement then changed to two years studying in Australia. The snowball effect of this change was that many international students enrolled in postgraduate qualifications were then not eligible to apply for permanent residency. This is quite detrimental as due to the fact that many international postgraduate students do intend to remain in Australia for research and work qualifications.

To alleviate the problem slightly, a sunset clause of 18 months was put in place extending the time before the changes would take place so as not to disadvantage some students already in Australia.

The other repercussions of such changes were the changes made to programs by some universities. For example, at the end of 2003, Griffith University introduced two new programs, these did not replace any programs but simply extended them. NLC suspects these were a result

of the DIMIA changes because of the changes themselves. The table below demonstrates the previous program next to the introduced program, indicating the changes made and the elements that remained the same. The changes that were made were clearly only made to extend the time the student could spend in Australia therefore allowing the student to be eligible to apply for permanent residency. The concern NLC has with these changes is that the previous and the new programs have the same abbreviated program name. In addition the student is required to complete a further 20-40 credit points for the new qualification and pay for these points, but in actual fact the graduate is not anymore qualified than if the previous qualification had been completed. Other institutions such as RMIT and Swinburne University have made changes in programs. The changes to programs at RMIT were explicitly attributed to changes in permanent residency requirements.

Table 4. Programs Currently offered at Griffith University, Old¹²

Qualification	Previous or new award	Award abbreviation	Award duration	Credit points	Fees for complete qualification if commended in 2005
Master of Information Technology	Previous	MInfTech	1 year full time	100 credit points	\$18275
Master of Information Technology (advanced)	New	MInfTech	2 years full time	140 credit points	\$25585
Master of Professional Accounting	Previous	MProfAc	1.5 years full time (3 Semesters)	120 credit points	\$21930
Master of Professional Accounting (advanced)	New	MProfAc	4 semesters full time	160 credit points	\$29240

Recently further changes were made to the permanent residency requirements for all graduate international students eliminating most international students with a degree or diploma qualification from applying for permanent residency. To achieve the required pass mark from April 2005, international students need a postgraduate qualification. NLC expects that following the new changes in April 2005, the universities will make combined qualifications such that

¹² Griffith University website, <http://www.gu.edu.au/academicprogramsandcourses/>, 2004

degrees are combined with postgraduate qualifications. NLC expects that this will occur in areas of study that international students currently have high percentages of enrolments.

Changes such as these as a directly following immigration requirement changes is of concern to the NLC for two reasons.

1. The quality of education the institution provides and the value for money the students spends are jeopardised because the course itself may not be any different to the previously offered undergraduate degree with only a change in course length or course name.

1. If changes are to occur it would become apparent that the marketing ploy used to recruit some international students to Australia is based on permanent residency chances.

Recommendation 8:

The nlc recommends that the ESOS Act take into consideration changes by the Department of Immigration, Multicultural and Indigenous Affairs with regard to permanent residency requirements and the effect that these may have on marketing and quality of provider programs.

5. Consumer Protection

“Consumer protection must cater for the fact that students who travel to Australia cannot usually see before they purchase, and if there is reason for discontent with the services they have obtained, they may not be able to remain in Australia to pursue the consumer protection remedies provided through the courts.”¹³

The ability of international students to address consumer complaints while in Australia is extremely limited. Many factors prevent students from seeking advice and help in such areas, the most prevalent being fear of visa cancellation. With such fears there are many incidences that go unchecked and unreported leaving the student with a low quality educational experience and often an incomplete unsuccessful journey. There needs to be a more open and transparent method students may pursue to ensure that their education is at all times successful and the provider is providing a high quality education as expected. The NLC recommends an independent body funded by the federal government with offices in each state that would fill the role of a Universities Ombudsman.

In a 2001 Senate Committee publication, “Universities in Crisis - Report on Higher Education” the committee recommended the introduction of a universities ombudsman. The proposal recommended that the ombudsman address such matters that were not within the scope of the newly formed AUQA and were beyond that of the grievance procedures within the universities. The ombudsman was to address not only students’ issues but also to address academics complaints about university practices.

“The committee recommends that a national Universities Ombudsman be appointed, funded by the Commonwealth, after consultation with the states and national representative bodies on higher education, including staff and students, and that such an office include the power to investigate ancillary fees and charges and to conciliate complaints. Students enrolled in Australian programs off-shore should have equal rights of access to the Ombudsman.”¹⁴

¹³ The National Code A. Introduction, Preamble, page.1, Department of Education, Training and Youth Affairs, 2001

¹⁴ Universities in Crisis, Report on Higher Education, Senate Employment, Workplace Relations, Small Business and Education References Committee, September 2001. page 137.

The NLC values this recommendation as it would fulfil the aims of the ESOS Act in the introduction preamble above, and would also protect consumers/students and staff at offshore institutions, which lie outside the ESOS Act authority, but remain of concern to the NLC.

In addition to the recommendation above, the NLC proposes that the ombudsman office be given authority to hear Student Visa Cancellation cases that are currently heard at the Migration Review Tribunal with regard to breaches of academic progress and attendance (condition 8202), change of provider (condition 8206), satisfy visa requirements (condition 8516), notification of residential address (condition 8533), and any appropriate discretionary conditions of the student visa. As most cases heard by the MRT for student visa cancellation are for breach of condition 8202, this would effectively take approximately 14% of the burden off the Migration Review Tribunal¹⁵. NLC believes the ombudsman would be more qualified to investigate such cases as there would be appropriate powers given to the office for the investigation of cases regarding university practices. Such an office would be then able to monitor the procedures for identification of students at risk of not achieving satisfactory academic progress as discussed earlier.

University ombudsmen are now at some universities around Australia, providing students with extra security in terms of the universities following the correct procedures. Most ombudsmen are not able to overturn decisions of academic progress or exclusion save and except to investigate if correct procedure had been followed. This is the case at the Central Queensland University where there is a Student Ombudsman. In this capacity many issues are dealt with that ordinarily may not be dealt with by the university as effectively or with arbitrary decision making. This office is of particular interest to the NLC because of the high percentage of international students that are enrolled at CQU. The issues that are dealt with by the ombudsman are all with regard to the implementation of university policy and procedures. The ombudsman not only investigates the issue but in his report each six months there are recommendations on improvements to the procedures and policies that could be implemented to avoid issues being repeated. In the table below there is a list of universities with an ombudsman and the responsibilities/limitations of this position.

¹⁵ <http://www.mrt.gov.au/statistics/mrt200304stats.pdf>, Migration Tribunal Website, Statistics. 2004.

Table 4. Ombudsmen and their responsibilities in Australian Universities

University	Ombudsman office	Number of ombudsmen	Responsibility of ombudsman	Limitations of the ombudsmen
CQU	Student Ombudsman	1	To investigate matters where the correct process has not been followed by the university	Can play no role in discipline matters, exclusion committee, or appeals committee
RMIT	RMIT Ombudsman	1	The RMIT Ombuds Office can assist you if you have made a complaint through existing university channels but are aggrieved with the outcome or the way your complaint has been handled.	All procedural channels must have been followed before the complaint may be taken to the ombudsman, except in special circumstances where it would be difficult to follow procedure.
UNISA	Student Ombud	1	Facilitates effective handling of complaints regarding unlawful discrimination and harassment, also reviews policy and procedures,	All avenues of complaint should be pursued prior to contacting ombud office, except in situation of discrimination or harassment.
UTAS	Complaints Commissioner	2 (One at each campus)	Help resolve complaints with powers to investigate all problems with regard to non academic issues	May not deal with academic issues

QUT	Student Ombudsman	1	Helps resolve issues that involve complaints and grievances, even at the outset of a problem, the ombudsman can advise on how to begin to resolve	You must have sought to resolve the complaint through the appropriate channels prior to being considered by the ombudsman
UNE	University Ombudsman	4	Handle complaints after all avenues have been exhausted, and look at policy and procedure of the university	Don't look at academic complaints, old complaints, trivial, frivolous or not in good faith complaints, conduct a grievance mediation system
La Trobe	University Ombudsman	1	To help resolve grievances and complaints, to advise on resolution of complaints, to act as registrar for reviews and appeals under statute 39	May not investigate decisions of the council, or proctorial board or matters involving academic assessment that are not procedural complaints

*Notes are taken from relevant university websites., 2004

As is apparent from the information in the above table, the appointment of a universities ombudsman for all universities would not replace any already existing body or authority but rather provide an extra measure of consumer protection for the student, and allow for all universities to assess the effectiveness of current grievance procedures and policies in particular in universities where there is no ombudsman office or similar. The ombudsman would be able to provide a means for international students who are not within Australia to address problems that arose while they were studying here, as well as prevent international students from being forced to leave because universities have not followed correct procedure. In both circumstances, there is currently very little recourse for the student once they have left Australia. Student or bridging

visas could be extended to allow for cases being investigated by the ombudsman. The ombudsman office could also make recommendations on necessary improvements to policies and procedures that universities would implement. The ombudsman office would be a way of keeping track of problems students and academics encounter within all systems and therefore are able to be addressed on a national scale rather than just within one university.

Recommendation 9:

The NLC recommends a transparent and independent body funded by the federal government with offices in each state that would fill the role of a Universities Ombudsman. The ability of international students to address consumer complaints while in Australia is extremely limited. Many factors prevent students from seeking advice and help in such areas, the most prevalent being fear of visa cancellation. With such fears there are many incidences that go unchecked and unreported leaving the student with a low quality educational experience and often an incomplete unsuccessful journey.