Submission for the ESOS Act Evaluation

Presented and prepared by

The National Conference of Research Education Staff of Student Organisations (RESSOs)

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c/- Charlotte Long, Education Research Officer
Students' Representative Council
The University of Sydney

Tel: 02 9660 5222

Introduction

The primary purpose of the ESOS Act should be to uphold and protect international students' rights, including, but not limited to, their right to receive a quality education. International students' rights are too regularly contravened and current legislation does not protect these rights.

Student rights and academic well-being must be the primary focus of the ESOS Act, not visa compliance and income-driven relationships. Student support and rights must not be simply marketing tools of education providers, their agents and the government, but must be guaranteed at every level.

1. The ESOS Act and the Migration Act

1.1 Through our interactions with students and understanding of student experiences, we firmly believe that it is impossible to review the ESOS Act without also discussing the Migration Act.

1.2 The National RESSO's Conference 2004 recommends that it be officially recognised that legislation and experiences pertaining to international students are always connected to the Migration Act.

1.3 There is inconsistent advice sometimes given by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) personnel and students effectively have no means of redress. Students' rights and quality of education become meaningless when they are given incorrect advice by the Department which may mean they cannot obtain a student visa.

Example: *(USYD) 'Fatimah' completed a one year Foundation programme and applied for entrance into a University course. Fatimah was accepted and returned home during the break. While Fatimah was at home she contacted DIMIA to ask if she should apply for her new student visa in her home country or in Australia. Fatimah gave her details and was told that she could apply in Australia and that this would be easier. Fatimah checked with DIMIA on another separate occasion that this information was correct. When Fatimah arrived in Australia and had paid for her course fees, accommodation costs and so on, she was told that she could not apply for her visa in Australia and that she would have to return home and therefore postpone her studies. Fatimah was told that she could apply for a waiver but that there was virtually no chance that this would be successful.*

1.4 We recommend that the National Code include provisions for a means of redress for international students if their student visa is adversely affected by misinformation by DIMIA.

1.5 We notice that education providers change their courses after there are alterations to permanent residency requirements.

Example: *programs at RMIT and Swinburne were extended to 2 years following changes to permanent residency qualifications. These changes were*

explicitly made so that courses could be marketed not on their educational merit but rather on their use as a tool for permanent residency applications.

1.6 **We recommend that the ESOS Act take into consideration changes made by DIMIA with regard to permanent residency requirements and the effect that these may have on marketing and quality of provider programmes.**

2 Institutions and education agents

2.1 From our experience with students we know that students experience disadvantage, often extreme, as a direct result of misinformation given by education agents, both on shore and off shore.

Examples:
(USYD) It was discovered that documentation submitted as part of some students' applications were fraudulent. It has not been proven that students are responsible for submitting fraudulent documentation. It appears that the education agent may have been responsible in at least some cases. Students have been made culpable however and their admission criteria were reviewed after studying and completing units of study.

(RMIT) An education agent told 'Nong' that she would be able to commence her studies in Semester 2 and would be able to study sequentially, making normal progression through her degree course. After being enrolled Nong was told that this was not possible and she is not able to study her subjects sequentially. Nong has been forced into a situation where her subjects do not follow normal academic progression.

2.2 We recommend that education providers should be responsible for actions of *all* education agents that recruit students for entry into their institution, regardless of whether the agent and institution have an ongoing relationship or not. Education providers must ensure that students' rights and their academic well-being are prioritised and upheld at all times.

3 Institutions responsibilities to students

3.1 Institutions have a responsibility to ensure academic and associated well-being.

3.2 We are concerned that as international education has grown there has not been a commensurate increase in student support and teaching facilities, and that often the only increase that is visible is in marketing and recruitment.

3.3 Our experiences as student advocates indicate that student support services are inadequate in many areas and directly affect students' academic well-being and their ability to fulfill the conditions of their visas.

Example: *(UWA) 'Ramon' did very well in his first year at university. In his second year Ramon suffered from clinical depression. As a result of his depression Ramon was not able to attend classes. Ramon was failed and reported by the institution to DIMIA as being in breach of his visa conditions.*

3.4 We recommend that pastoral care responsibilities of institutions should be broader and more rights focused, and include active support on issues such as tax obligations, industrial rights and tenancy advice.

3.5 Our experiences as student advocates have taught us that untimely administrative and appeals procedures directly disadvantage and discriminate against international students and constitute a breach in institutions' duty of care.

3.6 We recommend that the ESOS Act protect student rights by ensuring that timelines for administrative and appeals procedures are suitable and that students are not effectively academically penalised because of timelines linked to visa cancellations.

3.7 There are currently no standards in the National Code pertaining to services provided to students by education institutions. This is a serious omission.

3.8 We recommend that there be benchmarks to measure services provided to students, and these must be commensurate with industry standards and should include things such as student-staff ratios and student support services. We commend the New Zealand Code of practice for the Pastoral Care of International Students as a document that attempts to do this.

4 "Genuine" students

4.1 Trying to establish the "genuineness" of students is problematic and treats international students as suspicious. Domestic students are not monitored in this way. Determining the "genuineness" of international students amounts to discrimination.

4.2 Validity of a student visa should not be solely tied to academic record, nor attendance rates. The idea that "genuineness" can be determined by such factors needs to be challenged. Extenuating circumstances do arise but are often not handled sensitively by institutions.

Example: *(RMIT) 'Nisha' was identified as having 78% attendance and as a result her student visa was cancelled. It was identified that Nisha had experienced difficulties with the teaching staff. This resulted in her not attending the full 80% required.*

4.3 We recommend that the National Code require institutions to develop satisfactory progress procedures that better enable them to recognise and

support students experiencing difficulties in any area. Students should be identified as soon as possible and appropriate support provided.

4.4 We recommend that the National Code state that all students should be granted at least two semesters of study before institutions issue a Section 20 notice under the ESOS Act requirements and subsequent visa cancellation.

5. Enforcement

5.1 Our experiences of student issues at different universities across Australia make it clear that there are systemic breaches of duty of care by large institutions, including those within the Group of Eight (Go8), as well as smaller institutions.

5.2 There is currently a lack of resources for ensuring compliance by institutions.

5.3 We recommend that more resources and energy be directed towards ensuring universities fulfill their duty of care.

5.4 We recommend that there are heavier and more enforced sanctions when institutions breach their duty of care to international students.

6. Grievances

6.1 Processes for grievances are unclear to students and their advocates.

6.2 The processing and appeal of student visa cases must be done in a more timely fashion than is currently possible through the Migration Review Tribunal.

6.3 Section C.45 of the National Code states that institutions must have appropriate arrangements in place for independent grievance handling/dispute resolution for international students which allow for prompt resolution. Footnote 10 details this by talking of mediation or conciliation services.

6.4 Our experience as student advocates at institutions across Australia tells us that students are not aware of such arrangements.

6.5 Where such arrangements have been identified, they are do not have regard for prompt resolution necessary by virtue of student visa time constraints. For example, we understand that some Universities have nominated the State Ombudsman office. State Ombudsman offices are unlikely to be able to resolve student issues in a necessary timeframe.

6.6 Student rights cannot be upheld through mediation or conciliation services. We believe that student rights can only be upheld through an Ombudsman-like body.

6.7 We recommend that an independent and cost-free Ombudsman should be established with a mandate to deal with international student issues, including visa issues.