



ethnic
communities'
council of
victoria

CLASSROOM VICTORIA

Perspectives and Precedents
regarding the Duty of Care
for International Students



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Research Paper 2010

Ethnic Communities' Council of Victoria (ECCV) Inc. was established in 1974 as a voluntary community based organisation.

Over 35 years later, ECCV is a non-partisan, broadly based, statewide, peak advocacy body representing ethnic and multicultural communities in Victoria.

ECCV's role includes supporting, consulting, liaising with and providing information to Victoria's ethnic communities.

ECCV delivers policy projects for key partners in areas like multicultural policy, aged care programs and skilled migration strategies.

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Acronyms

AEI	Australian Education International
AFIS	Australian Federation of International Students
AQTF	Australian Quality Training Framework 2007
BHI	Box Hill Institute
CQU	Central Queensland University
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
CAPPA	Council of Australian Post Graduate Associations
COAG	Council of Australian Governments Meeting
DEEWR	Department of Education, Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
EAA	Education Access Australia
EATC	Education Agent Training Course
ESOS	Education Services for Overseas Students Act 2000 and associated legislation
ELICOS	English Language Intensive Courses for Overseas Students
IEAA	International Education Association of Australia
IELT	International English Language Testing System
NUS	National Union of Students
The Baird Review	Stronger, Simpler, Smarter ESOS: <i>Supporting International Students</i> , Review of the Education Services for Overseas Students (ESOS) Act 2000 by the Hon Bruce Baird
TAFE	Technical and Further Education
UKCISA	United Kingdom Council for International Student Affairs
VRQA	Victorian Registration and Qualifications Authority
VU	Victoria University
VET	Vocational Education and Training
RTO	Registered Training Organisations



Foreword

For many young people, the opportunity to study overseas represents a valuable life experience and an important step towards achieving their personal independence and professional development. Australia, and Melbourne in particular, stands as a prime destination in this era of cross-border student mobility. Yet this timely report reveals considerable inconsistencies in the comprehension and administration of duty of care principles for these international students.

Sad as it sounds, the much-publicised attacks on Indian students throughout 2008 and 2009 appear to be only the tip of the iceberg. According to numerous studies, the overarching experience of a substantial number of international students is one of severe isolation¹ and exclusion² as well as uncertainty over personal safety. In addition, the closure of providers across Victoria and New South Wales has tested the security of international students' investment in an Australian education. Far from being the ticket for overseas students to "fulfil their dreams"³ and engage with a uniquely Australian community, too many international students are finding the promise of a uniquely Australian study experience falling well short of their expectations.

Addressing these issues is going to take a united effort from all concerned, beginning with an honest appraisal of how well government, education providers and community bodies have upheld their respective duty of care for students and where the urgent and prospective areas of need lie. It is with this in mind that ECCV presents this examination of duty of care as a legal concept, a moral imperative and as a means to protect the integrity of the Australian education industry.

Special thanks must go to ECCV intern Sarah Henderson for her exhaustive research and thoughtful analysis of this topic and to all the individuals and organisations who generously provided their time to be interviewed and share their insights.

The marketplace for international students is growing more competitive every day. With the students of today set to become the leaders of tomorrow, it behoves all of us to ensure that their time living and learning in Australia is as positive and fruitful as possible. Through our own advocacy ties, ECCV will continue to play a prominent role in the push for greater accountability and more comprehensive support administrative reforms. Some specific recommendations are outlined in this report, but indications are that Australia's whole approach toward attracting and retaining international students is in urgent need of an overhaul. The reasons for doing so are self-evident, the rewards from doing do self-perpetuating.

On that note, it gives me great pleasure to commend this report to you.

Sam Afra JP
Chairperson
Ethnic Communities' Council of Victoria



Executive Summary

From dodgy offshore agents to problems with security, accommodation and assistance post-arrival, to rogue operators taking students' money and running, Victoria's reputation as a prime destination for international education has taken a battering in recent years.

Classroom Victoria examines one of the key issues underpinning these concerns – widespread uncertainty over the parameters and implementation of duty of care principles for international students. The paper analyses 'duty of care' from a number of perspectives :

- legal implications
- moral importance and
- pragmatic uses in promoting the integrity of Victoria's international education industry.

The report finds that the duty held by education providers extends beyond the obligations legislated in the Federal Government's Education Services for Overseas Students (ESOS) Act and needs to be identified and applied within an industry specific model. If international education in Australia is to achieve a sustainable future, the sector must consider, define and act to uphold a duty of care for international students.

Structures for advocacy also need to be refined in order to better engage with education providers and governments.

Classroom Victoria identifies a number of impediments to achieving student advocacy objectives and reports on the contemporary terms of reference for the notion of a duty of care amongst government, community and education institutions.

The recommendations put forward in this report seek to reflect the concerns expressed by students and key policy participants, with consideration to the realistic capabilities of key stakeholders to affect positive change. These recommendations include:

- State and Federal Governments ensure that the findings of consultation and inquiry are promptly reflected in policy reform.
- The Victorian Government develop strategies to ease rental conditions and place international students on a more equitable footing to access suitable accommodation.
- International Education Association of Australia works with members to develop an industry code of practice, outlining the scope of Australian education providers' duty of care for their students.
- Education providers provide special support to international students in areas of English language development, safety education and awareness, accommodation and social engagement.
- Education providers take responsibility for their contracted agents; ensuring Australian education is accurately represented overseas.
- International student peak bodies, in conjunction with the National Union of Students (NUS), develop an inclusive, multicultural representative body for international students.
- Education providers expand the program of police-hosted safety and security sessions during student orientation periods, with regular follow up sessions throughout the year.
- Specialised support resources be developed and implemented targeting emotionally fragile international students at grave risk of self harm due to excessive stress.



Introduction

The seemingly limitless ambition of this generation of global students for Australia to be part of their education experience, has seen the international demand for education in this country blossom. So much so that fulfilling this demand has become an integral component of Australia's global export industry, facilitating the expansion and diversification of education providers; opening the market for an array of private colleges, technical and further education (TAFE) institutes, and universities.

Accompanying this remarkable growth, however, a number of issues have emerged, highlighting a number of fault lines within administration and governance frameworks for international education. Simply put, current frameworks for international student care and education have proven glaringly insufficient in dealing with serious issues of exploitation, vulnerability and shortages of appropriate student accommodation. The consequences for the sector are one thing. Far more serious is the impact on the students themselves, which in the worst cases can end up with students taking their own lives.

To explore the possible reasons behind these shortfalls in the sector, this report refers to both quantitative and qualitative data in analysing Victoria's duty of care for international students. It begins by considering the historical background of international education in Australia, before outlining current sector conditions in Victoria. It will then reflect on current perceptions of duty of care by key policy participants, including the State and Federal Governments, education providers and student advocacy groups.

Finally, this paper will report on the extent to which the Victorian community, government and education sectors have upheld their duty of care for international students and recommend avenues for reform to help ensure the sustainability of the Australian industry.

Researcher's Note

In preparing this report, interviews were conducted with senior executives from Central Queensland University (CQU), Latrobe University, the University of Melbourne and Monash University, along with representatives from international student services at Box Hill Institute (BHI) and Education Access Australia (EAA).

Senior-Constable Craig McDonald from Victoria Police's Crime Prevention Unit, Footscray division, was interviewed in relation to incidences of assault of Indian students, as well as the unit's joint initiative with Victoria University to promote international student safety.

International students have participated in surveys and casual discussions regarding their study and living experiences in Victoria.

All data collected with regards to Victorian State Government policy and perspective has been taken from government publications, media releases and submissions to State and Federal inquiry committees.



I. Industry Snapshot

Australia wide, the role of international education, as a commodity for export, has broadened in scope and direction, becoming an integral component of trade for the nation's states and territories. Nation wide, the international education industry now represents the third largest Australian export commodity, contributing \$17.2 billion to the national economy in 2008-09⁴.

In Victoria, international education serves as the single largest contributor to the State's export income⁵, worth \$5.4 billion in 2008-09⁶, creating one new job for every three international students arriving to study in Victoria⁷. In addition to the economic benefits of growth within the sector, international education has facilitated the integration of a community of global students within the fabric of Victorian society.

Growth within this sector has increased in pace over the last decade, with international student enrolment in Victorian courses more than doubling between 2004 and 2009⁸.

1.1 From AID to TRADE: An Industry in Transition

The history of international education in Australia extends over 55 years and comprises two distinct phases⁹.

- *Phase One* : "educational aid"
- *Phase Two* : "educational trade"¹⁰.

1.1.1 *Education for Aid*

The first program to welcome international students into Australian universities was implemented under the Colombo Plan in 1950¹¹. The Colombo Plan, developed as an Australian aid program, was implemented with the aim to build upon human skills and capacity in developing nations¹². To achieve this objective, the Colombo Plan enabled an estimate of 40,000 international students to study in Australia with the support of Australian Government scholarships¹³.

By the early 1980s, concerns emerged regarding the effectiveness of the Colombo program to achieve Australia's diplomatic and aid objectives. As such, two key committees were commissioned to inquire into Australia's overseas student programs¹⁴. The report presented by the Jackson committee in 1984 recommended the end of Australian education as an instrument of aid, suggesting instead the introduction of a full-fee paying program¹⁵.

1.1.2 *A Commodity for Trade*

The first full-fee education program for international students in Australia commenced in 1985¹⁶, transitioning Australian education into the phase of "educational trade"¹⁷. It is during this phase that international education developed into the robust and profitable industry recognised today as Australia's third largest export commodity¹⁸. Australian Education International (AEI) figures, for the 2009 intake, place the number of enrolments of full-fee paying international students at 631,935¹⁹.



1.2 Sector Growth

Enrolment figures in Australian education programs continue to reach new highs, growing by 84% between 2005 and 2009²⁰. The impetus for such rapid growth within the international education sector is contested; however, there are a number of factors which are noted to have encouraged growth:

- Firstly, the quality of Australian educational institutions promotes the nation's good reputation for education, ensuring continued growth in international demand.
- The influx in international student enrolments in Australia reflects the emerging global phenomenon of cross-border student mobility, a global trend which has increased two fold in ten years and reached 3 million in 2007²¹.
- Additionally, the influx of students studying in fields specified by the Australian Government's Skilled Occupation List suggest a correlation between student immigration pathways to permanent residence and increases in Australian education enrolments²².

1.2.1 *Limits to Sustainability*

The key concerns to arise from booming growth within the education sector have centred on the sustainability of the industry. Some have questioned Australia's capacity to accommodate the influx of students within the nation's existing social infrastructure²³. These concerns have proven well founded as enrolments reacted strongly to negative media reports on international student welfare, exploitation and assault, with enrolments from India dropping nationally by 40% in 2010²⁴.

The immediate drop in overseas enrolments serves as a reminder of the intrinsically human face of the international education industry. Following the 2010 slowdown in international student enrolments, Professor Richard Larkins, chairman of Universities Australia, observed; "there is fragility about our sector in relation to its high dependence on income from international students". This fragility is ultimately dependant upon international students' perceptions of their study experience, emphasising the inadequacy of understanding education as simply a cold commodity for export.



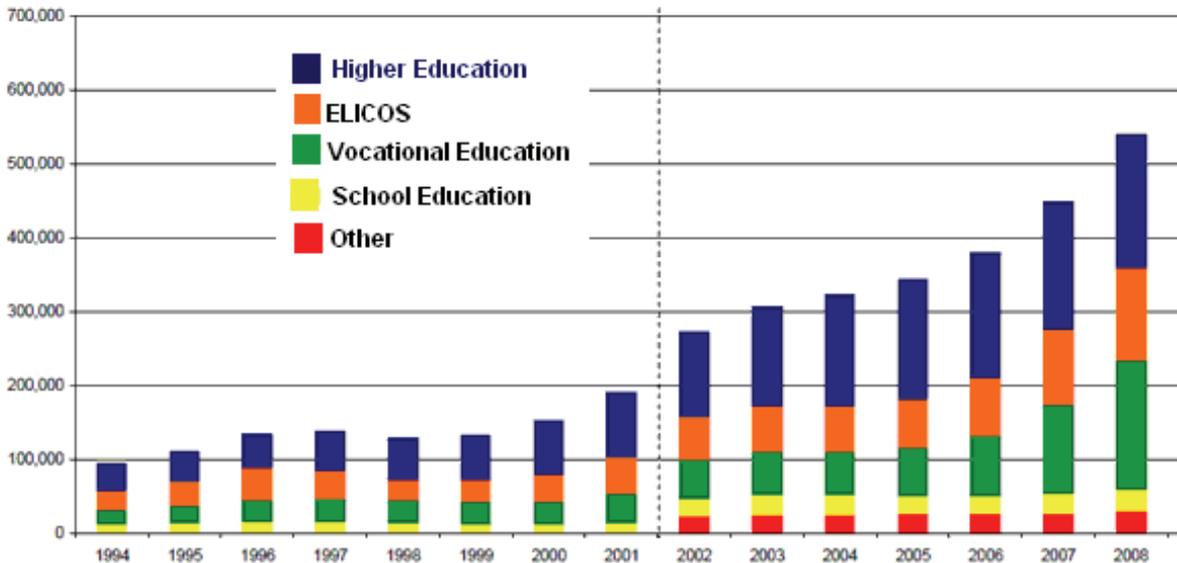
1.3 Overseas Student Profile

International education in Victoria has followed the same path of rapid growth experienced throughout Australia. Statistics released by the Department of Education, Employment and Workplace Relations (DEEWR) show that the number of international students enrolling in Victorian courses has more than doubled since 2005²⁵. As of 2010, Victoria holds approximately a 31% share of the 17.2 billion dollar international education market²⁶.

1.3.1 Countries of Origin

International students studying in Victoria in 2007 originate from 187 different countries²⁷. Approximately 50% of the overseas student cohort comes from India or the Peoples Republic of China²⁸. The next most highly represented nations in 2009 included Vietnam, Malaysia and Sri Lanka²⁹. Below is a snapshot of industry transition in Australia since 1994:

**International Student Enrolments in Australia
1994-2009**



Note: there is a break in series between 2001 and 2002

Source: *Australian Education International*

1.3.2 Study Choices

The vast majority of international students in Victoria are undertaking post secondary education and training; with 95% enrolled in higher education courses, vocational education and training (VET) courses and English language intensive courses for overseas students (ELICOS)³⁰.

Within the post secondary education sector, the majority of overseas students are studying in VET courses³¹. It is worth noting that the VET majority share within the international education market has only come about in recent years.



AEI data indicates that Higher Education courses led the Victorian market in 2007, receiving 42% of international enrolments just three years ago, with VET courses receiving only 29%³². AEI's figures emphasise the rapid rate of transition experienced within the international education sector, as VET courses continue to increase in popularity, expanding the market for private colleges and small education providers.

The rapid growth in VET course enrolments has been reflected within the Australian industry at large.





2. Legal Perspectives and Precedents

While the crisis affecting Victoria's international students stems from a variety of causes and spans a number of jurisdictions, at heart many share a common basis – they reflect ongoing uncertainties about duty of care – how it is perceived, how it is implemented, and who is responsible. Moreover, the failure to uphold this duty of care for international students presents very real concerns for the sustainability of the industry, not least in terms of the potential for highly damaging class action law suits from disaffected parties.

Some have flagged their intent to conduct a wholesale review of the sector, but such an evaluation cannot meet its objectives without first establishing a clearly defined notion of duty, and a firm understanding of the community's obligations to care for international students.

2.1 Definitions and Implications of Duty of Care

Duty of care can be considered in both theoretical terms and as a strict legal concept. For many within the international education sector, the notion of duty of care is primarily undertaken for its ethical value in addition to its role in marketing a reputation for quality and care, ensuring sustainable industry growth.

However, in its legal sense duty of care outlines the explicit responsibilities owed by one party to another and when a duty of care is breached, the faulting party's conduct constitutes an act of negligence under tort law, entitling the injured party to claim compensation³³.

It is important to consider duty of care in light of the legal obligations it creates, along side its ethical merits and marketing capabilities within the industry. While this report draws its conclusions using a multifaceted approach to duty of care, this section seeks to firstly define duty of care within its legal constructsⁱ.

2.1.1 *Duty within Australian Legal Frameworks*

In deciding where relationships of duty of care exist, the Australian judicial system oscillates between two key approaches³⁴:

- *Approach One* : Distinguishes duty of care using a method of “proximity-as-principle”³⁵, taking into consideration the dynamics of relationships involving a duty of care;
- *Approach Two* : Applies incrementalism, by which the courts ascertain new relationships of duty though analogy with previously defined cases³⁶.

The notion of foreseeable harm is a third key component in determining the existence of a duty of care.

ⁱ NOTE : This report presents only an introduction to the legal reasoning required to define a duty of care. Due to the contemporary nature of emerging issues of international student welfare, the case law for this area does not yet offer a clear framework for duty of care relationships between international students and key actors within the education sector.



2.1.2 *Foreseeable Harm*

Issues of international student welfare have gained much wider exposure in recent years due to extensive media reporting of assaults on Indian students throughout 2008 and 2009, the publication of academic research such as *International Student Security* (Marginson, 2010) and findings of government enquiries and roundtable discussions such as the Victorian Overseas Student Education Experience Taskforce (December 2008) and Senate Committee on the Welfare of International Students (November 2009).

The cumulative impression generated from these various sources is far from flattering. International students are characterised as “soft targets”³⁷ for assault, vulnerable to severe isolation and depression³⁸, at times exploited in the workplace and disadvantaged in seeking accommodation³⁹. From a legal standpoint, this heightened consciousness carries immediate implications for governments, education providers and community authorities. With awareness of the potential harms their conduct (or lack of) may cause comes the necessity to enact reasonable steps to mediate the risk of harm in order to legally discharge their duty of care.

FORESEEABILITY IN THE AUSTRALIAN LEGAL SYSTEM

- For a duty of care to exist between two parties, it must be reasonably foreseeable that the conduct of one party has the capacity to cause harm to the other¹.
- The foreseeability of harm need not extend to an explicit knowledge of the type of harm, nor the instances in which the harm will occur².
- This aspect of duty of care simply requires that it must be reasonably foreseeable that harm “of some kind”³ is able to impinge upon one party as the result of the policies, actions or omissions of the other.

¹ Lambiris, Michael, *First Principles of Business Law* 2010 Edition, Wolters Kluwer Group, p86.

² Lambiris, Michael, *First Principles of Business Law* 2010 Edition, Wolters Kluwer Group, p87.

³ *ibid.*

2.1.3 *Proximity as a Legal Principle for Duty of Care*

Historically, Australian courts have also noted proximity to be an integral component in relationships where duty of care exists⁴⁰. This principle firstly requires a degree of closeness in any relationship of responsibility⁴¹. Further, proximity as a principle of duty acknowledges factors such as reliance and vulnerability, alongside relative power, knowledge and resources as contributing to a relationship of responsibility⁴².

With consideration to these factors, a duty of care is inferred in the relationship between international students and those upon whom they rely whilst living and studying in Victoria. The basis for such a relationship of responsibility lies in the vulnerability of the international student cohort (see **Appendix One**), along side the relative authority and knowledge of education providers, concerned government agencies and community authorities.



2.1.4 *Incrementalism: Defining Duty for Education Providers*

The incrementalist approach to defining duty of care places emphasis on established categories of duty⁴³. In order to expand upon these specified relationships, the courts seek to draw analogies between old and emerging categories of duty of care.⁴⁴ This method can be used to tentatively outline the scope of duty of care between international students and their education providers.

A relationship of duty is already acknowledged to exist between an educational authority and its pupils⁴⁵. The case of *The Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman and Anor* discusses some important aspects of duty in this relationship⁴⁶ (see **Appendix Two**). Provided that the relationship between international students and their education providers can be found analogist to this category of duty, universities, TAFES and colleges must warn students of perceived risks and take reasonable steps to protect the safety of students enrolled in their courses.

While ECCV accepts that the vast majority of players in the international education industry have the best interests of international students at heart, it appears few have taken sufficient account of the potential for litigation as a result of ill-considered, ill-defined or poorly enacted efforts to uphold a duty of care for international students in Australia. There are firm foundations upon which a legal duty of care can be challenged and defined within the Australian legal system. As a result, ECCV strongly urges Victorian education providers to better assess and enact a duty of care that is duly reflective of their special knowledge, interest and engagement with the international student cohort.

Recommendation :

- **The international education industry take better account of the present potential for litigation when working to consider, define and act to uphold a duty of care for international students in Australia.**



3. Role of Governments

Australian governments at both federal and state level play an active role in Australia's international education sector. As well as gaining from the close diplomatic ties and economic stimulus perpetuated by the international education industry, they also exert significant influence on the lives of Australian student visa holders, defining a special relationship of responsibility with each member of the international student cohort. Yet it appears that not all players in the Australian education industry – and the international education industry in particular – are fully aware of the duty of care incumbent to and exercised by the Victorian and Federal Governments for international students studying in Victoria.

3.1 A Shared Responsibility Framework

Under the respective responsibilities outlined under the Education Services for Overseas Students (ESOS) Act 2000⁴⁷ regulation of Australia's international education industry is shared by state and federal governments.

3.1.1 *The Australian Government*

Within the international education sector, the objective of Australia's government is largely two-pronged. In simple terms, the federal government :

- assumes responsibility for the protection of Australia's reputation as a provider of high quality education and training, and
- maintains the integrity of Australia's student visa program⁴⁸.

To fulfil this role, the Federal Government has enacted ESOS legislation in conjunction with associated support instruments, including The National Code 2007 and the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). ESOS legislation is interfaced with immigration law with the aim to safeguard Australia's student visa program⁴⁹.

At a departmental level, DEEWR manages CRICOS whilst also monitoring provider compliance with the ESOS act and associated National Code⁵⁰. The Department of Immigration and Citizenship (DIAC) administers the Commonwealth student visa program, in accordance with Australian immigration law.

While the specific purpose of ESOS legislation is *functional* – to ensure national consistency in the standards of tuition, support for international students and the registration of education providers in Australia⁵¹ – there is also a notable *promotional* element in that it helps governments demonstrate the integrity of the Australian education industry. ECCV argues that such a promotional benefit would apply just as resoundingly to a clearly defined duty of care within government policy.



3.1.2 *The Victorian State Government*

The Victorian Government works within the legislative framework of ESOS to monitor the compliance of education providers to the National Code⁵². The principal method employed to undertake this task is through regular audits of registered training organisations (RTO). Audits of RTO are undertaken by the Victorian Registration and Qualifications Authority (VRQA) within the first year of registration and prior to renewal, as well as on a risk management basis throughout the five year registration period⁵³.

The Victorian Government recognises a number of persistent issues that are unable to be addressed within the ESOS legislative framework⁵⁴. In light of this acknowledgement, the Victorian government advocates additional reform to Commonwealth Immigration legislation and review of the Australian Quality Training Framework 2007 (AQTF)⁵⁵.

3.2 Committees of Review

“Markets and expectations do not stand still and the policy and regulatory environments must recognise and respond to this.”ⁱⁱ

— The Hon Bruce Baird

In response to rapid changes in industry conditions, governments at state and federal level have commissioned a review of current policies and frameworks employed relating to the Australian international education industry. Key inquiries commissioned at a federal government level include:

- *Stronger, Simpler, Smarter ESOS: Supporting International Students*, Review of the ESOS Act 2000 by the Hon Bruce Baird (The Baird Review), released in February 2010.
- Education, Employment and Workplace Relations References Committee: Senate Committee on the *Welfare of International Students*, November 2009.

A notable inquiry commissioned by the Victorian Government is;

- The Overseas Student Education Experience Taskforce, completed in December 2008.

ⁱⁱ The Hon Bruce Baird, *Stronger, Simpler, Smarter ESOS: Supporting International Students*, Review of the Education Services for Overseas Students (ESOS) Act 2000, February 2010, page 5.



3.2.1 The Baird Review

The Baird Review was commissioned by then Deputy Prime Minister, the Hon Julia Gillard MP, in August 2009 to review the ESOS regulatory framework. The recommendations presented by the Baird Review emphasise :

- the need for greater scrutiny in the registration of providers;
- enhanced protocols for the ethical recruitment of students;
- additional student support services;
- the introduction of a single 'Tuition Protection Service'; and
- reform to current student complaints processes, including the extension of the Commonwealth Ombudsman's jurisdiction to include the international education sector⁵⁶.

The Council of Australian Governments Meeting (COAG) in April 2010 presented the State and Federal Governments' policy responses to the findings of the Baird Review. According to COAG, reform to the regulation of international education is to take place in two ways:

- through the 'National International Student Strategy'; and
- immediate and progressive reforms to ESOS legislation by the Federal Parliament⁵⁷.

Changes to ESOS have already been introduced, requiring the re-registration of all providers under a more detailed CRICOS registration criterion by 31 December, 2010⁵⁸. The 'National International Students Strategy', still due for release, outlines the following reforms :

- development of a 'Study in Australia' information portal;
- a Provider Closure Taskforce in each state; and
- an independent statutory complaints body, or ombudsman, for international students from January 2011⁵⁹.

The Baird Review has been supported extensively throughout the sector. The review's recommendations have been welcomed by industry peak bodies, including TAFE Directors Australia⁶⁰. International student advocacy groups, including the Australian Federation of International Students⁶¹ (AFIS) and the National Union of Students⁶² (NUS), have also supported the findings of the Baird Review.

ECCV believes it is imperative that the recommendations put forward by the review are implemented fully by State and Federal Governments. ECCV particularly emphasises the Baird Review's finding that "International students should have access to equitable travel concessions"⁶³, noting that the Victorian government has repeatedly declined to respond to this finding in its policies.



Recommendation :

- ▶ **State and Federal governments work to implement the recommendations of the Baird Review, particularly that the Victorian government develops an equitable concession system inclusive of international students.**

3.2.2 *The Overseas Student Education Experience Taskforce: Victoria*

The Overseas Student Education Experience Taskforce, completed in November 2008, reported to the Victorian Government on the experiences of international students studying in Victoria⁶⁴. The findings of the taskforce suggested reform in areas of accommodation, employment, safety, social inclusion and quality of information⁶⁵.

The Victorian Government's response to the findings of the taskforce is presented in the September 2009 publication, *Thinking Global; Victoria's Action Plan for International Education*. The document outlines the State Government's \$14 million allocation of funds to support the international education sector and restates the Government's commitment to implementing the recommendations of the taskforce⁶⁶.

“At the moment, international student issues have been put
on the table but actions need to follow”

— Honorary President AFIS, Ms Wesa Chau

Almost one year on from the release of *Thinking Global*, many of the initiatives outlined within the “action plan”⁶⁷ are yet to be accessed by international students studying in Victoria. Most notably, the initiatives targeted at providing “better support and information for international students”⁶⁸ have been slow in reaching completion.

Victoria's “Buddy Up” mentoring program is still to be introduced within Victoria's Universities, TAFES and colleges and the “Culture Card” has only recently been completed. The Culture Card, launched on the 23 May 2010, now offers international students discounted rates at Victorian cultural events and attractions⁶⁹.

The proposed \$1million website redevelopment has produced the ‘Study Melbourne’ website offering online information for international students. However, the website is still in the process of development and does not currently stream the “safety DVD”⁷⁰ recommended by the taskforce. Indeed, further improvements are required to make the ‘Study Melbourne’ website a comprehensive information portal.



Identified shortcomings of the 'Study Melbourne' site include;

- translated ESOS legislation is provided in English, Chinese, Japanese, Korean, Malaysian and Vietnamese⁷¹, but fails to include Hindi despite the large number of Indian students in Victoria.
- some informational links are no longer valid and need to be updated.

Recommendations :

The Victorian Government International Education Unit ...

- **review the Study Melbourne website, ensuring information, links and translated documents are up to date, relevant and accurately targeted at contemporary international student groups.**
- **develop an informational DVD similar to "Life at VU" produced by Victoria Police in conjunction with Victoria University. This information should be made accessible within the Government's proposed "Information Kits"⁷² and streamed via the Study Melbourne website.**

A further concern is that State Government initiatives fail to tackle a number of serious issues facing international students during their study in Victoria. The 2008 taskforce highlighted issues of exploitation in the workplace and the severe pressure experienced by international students seeking appropriate accommodation⁷³. These issues are echoed by international students still encountering exploitation and hardship⁷⁴.

The findings of the taskforce indicate that a lack of accessible information regarding the rental market often places international students at a disadvantage⁷⁵. Moreover, new students often lack character references and evidence of their financial ability to meet rental payments⁷⁶. International students' inexperience in the Victorian rental market is a further obstacle in finding accommodation⁷⁷.

Recommendations :

- **the Victorian Government consider strategies to ease rental conditions and place international students on a more equitable footing to access suitable accommodation.**
- **Consumer Affairs Victoria work to engage with international students, informing students at orientation programs and providing follow up seminars throughout the year.**



4. Education Sector

The ESOS legislative framework establishes a “partial duty of care”⁷⁸ on education providers through Section D of the National Code. The obligations legislated within Section D require providers to take specific actions to inform and monitor international students, including the provision of an orientation program prior to commencing study⁷⁹. While it has been noted that some requirements within the National Code offer a best practise guide for all student services⁸⁰, many institutions have demonstrated a level of care beyond their ESOS obligations.

Additional standards of care, undertaken by providers, recognise the unique needs and vulnerabilities of international students, as well as reflect the economic input of international education within Australian universities, TAFEs and colleges. On average, Australian universities rely on international student fees for 15% of their total revenue⁸¹. This proportion is much higher in many private colleges where close to 100% of the student cohort are international students⁸².

In recognition of the important mutual roles played by providers and students in accessing the benefits of the Australian education industry, an extended definition for duty of care is required. It is important for providers to define and uphold a duty of care which reflects their special knowledge of student issues, and supports the long term economic objectives of the industry.

4.1 Education Sector and Duty of Care

Perceptions of duty amongst education providers vary in scope and detail, presenting a number of challenges in establishing a cohesive definition for duty of care beyond the ESOS framework. This report identifies four key aspects of duty of care consistently outlined by education providers during interviews:

- provision of information prior to departure;
- on campus educational support;
- supporting social inclusion and an “Australian Experience”⁸³; and
- provision of information and services with a focus on student safety and welfare.

The four areas listed above are widely understood to be key responsibilities of education providers in fulfilling their duty to students. These principles are reflected within ESOS and are generally acknowledged throughout international education markets abroad. Education providers in the United Kingdom, through the United Kingdom Council for International Student Affairs (UKCISA), have codified and defined similar principles of duty within a code of practice (see **Appendix Three**)⁸⁴. Adherence to the code is requisite for membership with UKCISA⁸⁵, working to enforce equitable standards of care amongst UK providers.

The International Education Association of Australia (IEAA) has the capacity to provide Australian education providers with a comparable code, with membership reaching most institutions. An Australian code within IEAA has the potential to define duty of care among members and support consistency within the international education sector.



Recommendation :

- **The IEAA work with members to develop a code of practice for the international education industry.**

4.2 Pre-Departure Obligations

Standards 1-4 in section D of the National Code mandates registered providers act ethically when recruiting students⁸⁶. Providers must take reasonable measures to ensure the integrity of agents and provide basic information regarding the courses, campus, resources and services offered to international students⁸⁷.

4.2.1 *Accurate Information*

In response to the obligations outlined by the National Code, institutions frequently use the internet as the primary means of informing and marketing to prospective students. The use of internet based resources is often considered the most effective means of communication, as students increasingly seek contact via the provider's website⁸⁸.

As a minimum, providers publish the required information on the web or in printed publications. In contrast to the minimal efforts required to discharge the obligations set out in the National Code, some institutions are demonstrating the potential for positive contact with students via in-country informational seminars, online networking sites and live online seminars.

WEBINARS

CENTRAL QUEENSLAND UNIVERSITY (CQU)

- **CQU Webinars are a series of proposed online seminars to be screened live over the web.**
- **Webinars deliver live information over the internet and are complimented by a question and answer session.**

CQU intends to host webinars as a means to engage with a variety of global audiences, including :

- **Prospective students through pre-departure webinar briefings; and**
- **Agents through CQU training sessions.**



TRANSITION @ LA TROBE – “E-FRIENDS PROGRAM”

LA TROBE UNIVERSITY

- *Transition @ La Trobe* offers a “pre arrival Facebook support group”¹ for international students at La Trobe University.
- The “E-Friends Program”² provides a forum for future students to interact with other international students.
- New students can ask questions online and receive answers from current international students.
- *Transition @ La Trobe* also allows future students to meet international students commencing study in the same semester intake.

¹La Trobe University, *Students*,
www.latrobe.edu.au/international/india/students, last accessed
18/06/2010

² Ms Liz Stinson, Director of La Trobe International

An informed student ultimately proves to be a wise consumer, a prepared scholar and an empowered individual. As the potential for effective communication is enhanced by online resources, including CQU development of *Webinars* and La Trobe University’s *E-Friends* on facebook, education providers are presented with the opportunity to better connect with, and inform, prospective students.

Recommendation :

- **Education providers seek closer engagement with prospective students; ensuring students have realistic expectations and accurate knowledge regarding their study choices prior to departure.**

4.2.2 *Integrity of Agents*

Under ESOS, it is the responsibility of education providers to ensure that agents represent their institution accurately⁸⁹. Moreover, it is a condition under the National Code that education providers “do not use agents who are dishonest or lack integrity”⁹⁰. Despite the repeated mandate that providers take responsibility for their contracted agents, concerns of misrepresentation abroad are persistently raised⁹¹.

The findings of the 2009 Senate Committee on the Welfare of International Students highlights a lack of agent training as contributing to the poor performance of some education agents abroad⁹². The Education Agent Training Course (EATC), developed by International Education Services in conjunction with the Australian Government, offers training courses to ensure the competency of agents in Australia and abroad. The EATC course was favourably reviewed by the 2009 Senate Committee and recommended to providers as a valuable qualification for their contracted agents⁹³.



Recommendation :

- **Education providers only enter into agreements with agents who have completed the EATC or similar training program.**

4.3 Quality and Equality in Education

The “core business”⁹⁴ of Australian TAFEs, universities and colleges is in providing quality education and training. As such, the core duty of education providers to their students is to facilitate learning, supporting students’ access to education. The ultimate barrier to achieving this objective within the international student cohort lies in the poor English language competency of some international students.

Research undertaken by Monash University Professor, Bob Birrell, suggests that a significant portion of international students completing Australian further education courses are not considered “competent” by International English Language Testing System (IELT) standards⁹⁵. While Birrell’s contention is not conclusive, due to the limited scope of the report’s data, English language competency continues to present “red flags”⁹⁶ within education providers, emphasising the need for further research in this area.

Recommendation :

- **Education providers undertake studies to identify the scope of English language problems amongst international students within their courses.**

The approach taken by providers to support English language varies between universities and VET providers. The University of Melbourne uses a diagnostic English language assessment to stream students with an IELTS of 6.5 into tutorial groups with English language support built into the tutorial material⁹⁷. The *Assist* program through Box Hill Institute (BHI) offers computer based English language programs designed to compliment the student’s course materials⁹⁸.

To inform and support English language policies within education institutions, DEEWR published the *Good Practice Principles for English language proficiency for international students in Australian Universities*, outlining a number of best practice policies⁹⁹. The good practice principles presented in this publication recommend the integration of English language within relevant course materials¹⁰⁰, allowing students to improve their English skills without taking additional subjects.



Recommendation :

- **Education providers develop English language support policies that reflect the DEEWR *Good Practice Principles*.**
- **Providers incorporate English language support within course materials.**

4.4 Safety and Welfare: Facilitating the Connection

Beyond student recruitment and education, many providers endeavour to “look at the whole life cycle”¹⁰¹ of international students’ education experience. Throughout interviews, education providers discussed their duty to support students’ safety and welfare in terms of informing and facilitating student access to services.

4.4.1 Accommodation

Education providers are in a position to positively influence international students experience in finding accommodation. The 2008 Victorian Taskforce recommends that providers be responsible for securing international student accommodation for the first 6-12 months of their stay¹⁰².

Short of taking direct responsibility for students’ accommodation, providers understand their responsibility in providing information about the rental market during orientation¹⁰³, some taking steps to connect students with real estate agents¹⁰⁴.

Box Hill Institute supports students to find suitable accommodation by providing students with a letter of reference from the institute at orientation¹⁰⁵. It is currently negotiating with real estate agents to establish a formal pathway for students seeking accommodation with the Box Hill Institute acting as guarantor for the students¹⁰⁶.

In order to uphold a duty of care for students, providers must commit to policies that support students’ access to suitable accommodation. Box Hill Institute’s initiative to facilitate the connection between students and real estate agents demonstrates one possible avenue through which providers are able to support their students.

Recommendation :

- **Education providers actively support international students seeking appropriate accommodation.**



4.4.2 Safety

“It is proven, with our crime statistics, that [international students] are in a vulnerable group”

— Senior Constable Craig McDonald, Victoria Police

International students are considered a vulnerable group within the Victorian community (see **Appendix One**). Where a potential for harm is apparent, education providers have a responsibility to mediate the risk of harm, informing students and referring them to specialised services.

Among the many factors which contribute to international students' vulnerability, mistrust of police works to limit the effectiveness of Victoria Police to ensure the safety of students¹⁰⁷. One international student, when asked about his perception of the police, remarked; “*They are not really trusted*”¹⁰⁸. Another student described the police as “*discriminating [against] non-white people*”¹⁰⁹. Broader issues of students' mistrust of the police were acknowledged during interviews with education providers.

In recognising problems of mistrust, education providers have an important part to play in informing students' opinions of police and increasing safety awareness¹¹⁰. Reflecting on his work with Victoria University (VU), Senior Constable Craig McDonald emphasised that the lasting benefits of police involvement are principally achieved through follow up visits to the university after initial orientation programs¹¹¹. He also recommended that police safety seminars take place at strategic times throughout the year, facilitating stronger connections and trust between the police and international student community¹¹². Finally, Senior Constable McDonald emphasised the importance of safety seminars, linking students' increased safety awareness with recorded drops in robbery and assault of international students¹¹³.

Recommendations :

- **Education providers establish ongoing relationships with Victoria Police's Multicultural Liaison Unit.**
- **Education providers expand the program of police-hosted safety and security sessions during student orientation periods, with regular follow up sessions throughout the year.**



5. Community Sector

Student advocacy is an importance tool in upholding a duty of care for international students through the identification and broader communication of aspects of students' vulnerability. Advocacy groups, such as Australian Federation of International Students (AFIS), have been called to partake in recent government inquiries¹¹⁴, helping to emphasise the scope of international student issues. In spite of their important advocacy role however, international student peak bodies are often limited in their capacity to successfully achieve their roles and objectives.

5.1 Strengthening International Student Advocacy

A number of specific problems have been identified which adversely impact the student advocacy within the international education sector. These include :

- insufficient funding¹¹⁵;
- fledgling and fractured representation among the multicultural student cohort, and
- limited relationships with key stakeholders within the education sector¹¹⁶.

With this in mind, it is apparent that Victoria requires a well recognised and inclusive advocacy voice for international students in order to inform key policy makers into the future. ECCV calls for a concerted effort to strengthen the reach and reputation of international student peak bodies to improve the quality and frequency of interaction with education providers and governing authorities.

Recommendation :

- **A concerted effort be made to strengthen the reach and reputation of international student peak bodies and improve the quality and frequency of interaction with education providers and governing authorities.**



Conclusion

International education remains a highly lucrative, rapidly expanding, and increasingly competitive industry. In Victoria – and indeed, Australia – however, the future of international education is by no means certain. After ten years of astonishing growth and a formidable reputation as a prime destination for international study, cultural experience, and English language development, the local international education sector suddenly appears to be on the brink of decline¹¹⁷.

Notwithstanding some extenuating circumstances such as the Global Financial Crisis (GFC) and other offshore factors, conditions within the Australian education sector continue to change markedly, and with these changes comes the need to re-evaluate the current mechanisms for the regulation and care of students arriving from abroad. The recommendations outlined in this paper are intended to help achieve that end.

Aside from calling for a consistent and cohesive approach by all stakeholders to clarify the concept of a “duty of care” for international students, concerted efforts are required by all stakeholders to ensure the continued success of Victoria’s international education industry.

Victorian education providers must work to use their influence, and special knowledge of international students, to protect student safety and welfare and promote a beneficial study experience. Governments need to work cohesively and responsively at state and federal level. And investigation needs to be followed by prompt reform. Serious issues of exploitation, vulnerability and shortages of appropriate student accommodation need to be dealt with before incidents of desperation and despair turn tragic.

To work effectively, the care given to international students must be of a uniformly high standard and enshrined within an industry specific code.

Finally, as the voice of international students within the broader community, overseas student advocacy groups must work to properly fulfil their advocacy function for students. Victoria requires a well recognised and inclusive advocacy voice for international students in order to inform key policy makers into the future.

Without immediate action to define and uphold a duty of care for international students, Victoria risks the integrity of our education institutions and the sustainability of the industry. The actions of key participants in the industry, including state and federal governments, education providers and advocacy groups, all play a part in determining whether the international education industry can continue to sustainably contribute to the Victorian community and international students receive an enriching study experience.



Appendices

Appendix One

International Student Vulnerability

There are many factors which define the overseas student cohort as a particularly vulnerable community within Victorian society. It has been noted that:

- Vulnerability often results from the general inexperience of many international students living and studying in Victoria for the first time.
- In addition to this factor, it has been suggested that the statutory limitations enforced under the student visa program have indirectly contributed to aspects of overseas student vulnerability whilst working part-time in Australia².

The findings of various inquiries into the experience of international students have highlighted a number of instances in which students are vulnerable to exploitation and hardship during their everyday living, working and study experiences. Particular attention has been drawn to the vulnerability of students being exploited at work³, some suggesting that the student visa 20 hour work limit creates opportunities for employers to exploit their international employees under pressure to work beyond this limit⁴.

In addition to these findings, a number of issues relating to student's general inexperience and misinformation have been emphasised throughout interviews for this report. Comments centred on international student vulnerability while finding accommodation, maintaining rental agreements, using the public transport system, finding appropriate work and adapting to academic and learning norms in Victoria⁵.

¹ Data gathered during elite interviewing

² Sawlani, Girish, *New book highlights vulnerabilities of foreign students in Australia*, ABC Radio Australia, 24/05/2010, available at <http://www.radioaustralia.net.au/connectasia/stories/201005/s2907436.htm>, last accessed 26/05/2010

³ *ibid*

⁴ Overseas student education experience taskforce Victoria, 22 December 2008, p.12, section 6.3

⁵ Data gathered during elite interviewing



Appendix Two

CASE STUDY

The Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman and Anor [1996] NSWSC 346 (9 August 1996)

After school on 8 December 1983, whilst waiting at a bus stop some 400 metres from his school, William Koffman sustained a serious injury to his left eye. Aged twelve at the time of his injury, Mr Koffman successfully sued his high school for damages in 1996. Mr Koffman claimed that the school had negligently failed to fulfill their duty of care to protect his safety as a pupil of the school.

The case of *The Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman and Anor* affirmed two key aspects of the legal notion of duty of care:

1. This case establishes that the relationship between school master and pupil as one in which “the duty [of care] springs from the relationship itself”.
2. Moreover, it was held that the duty of the school authority to its pupils may extend beyond school hours and outside of the school grounds depending on the “particular circumstances of the relationship”¹.

The judgment for this case also commented on the extent of the obligations assumed by a school authority to discharge their duty of care. Short of requiring direct supervision at all times where there is potential for harm, this case affirms that school authorities are obliged to “warn” and inform students about foreseeable risks of harm.

¹ From the extended notes of judgment in *The Trustee of the Roman Catholic Church for the Diocese of Bathurst v Koffman and Anor* [1996] NSWSC 346.



Appendix Three

UK Council for International Student Affairs

Code of practice for members and subscribers

Members of and subscribers to UKCISA are expected to :

1. Familiarise themselves with any relevant codes of practice, such as those listed in the appendix to this code.
2. Behave ethically and responsibly towards prospective, current and past students and towards other educational institutions.
3. Offer an educational experience which is fit for purpose, clearly and accurately described to students and, where appropriate, certificated by recognised qualifications. Institutions offering “degrees” which are not accredited by a nationally recognised authority will automatically be excluded from being UKCISA members or subscribers.
4. Ensure that admissions requirements are such as to maintain appropriate academic standards, and to ensure that international students admitted to courses have a reasonable expectation of successful completion of the course.
5. Offer sufficient levels of information, advice and support services to international students to enable them to make an appropriate choice of course and institution; to prepare for their time abroad; to complete the course successfully; and to progress onwards to the next stage of education or employment.
6. Ensure that students are given appropriate opportunities to experience the wider social and cultural benefits of an international education, through meaningful contact with UK students and local communities.
7. Acknowledge that the conduct of any person acting as an agent of the institution is the responsibility of that institution and must be properly trained, managed and monitored. Ensure that advisers and consultants engaged by the institution provide students with accurate, adequate and timely information and advice. They should also ensure that any charges levied are proportional and clearly stated in advance.
8. Ensure students receive clear and detailed information about fees and other costs relating to their course of study, with reasonable advance notice given of any increases. Where deposits are charged, refund policies should be explicit and refund payments should not be subject to undue delays.
9. Be committed to the provision of staff development and resources sufficient to ensure the delivery of adequate levels of academic and other services to international students.
10. Inform students of the channels for raising complaints both informally and formally within the institution, and of any avenues of complaint open to them outside it, should their complaints not be satisfactorily resolved internally.
11. Adhere to legislation, including but not limited to the UK Border Agency’s requirements for sponsors under Tier 4 of the Points Based System and the requirements of the Immigration Services Commissioner for those offering immigration advice and services.

(Source: UK Council for International Student Affairs)



Appendix Four

INTERNATIONAL STUDENT SURVEY

What university / TAFE / college do you attend?

What course are you currently enrolled in?

Are you satisfied with the quality of education? If no, how can standards be improved?

Do you believe your university/ education provider gives you enough support in your academic studies?

- Yes
- No

Do you believe your university / education provider gives you enough support with the more diverse challenges you have encountered outside of your academic study? E.g. accommodation, settling in, employment and consumer advice.

- Yes
- No

In what areas do you think international students require more support?

What have been the most positive aspects of studying and living in Melbourne?

What are some of the negative aspects of living and studying in Melbourne?

What is your perception of the police?

How safe do you feel in Melbourne? (please circle)

Very safe Mostly safe Sometimes threatened Mostly anxious about safety



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¹⁰⁹ An international student from Carrick Institute of Education

¹¹⁰ Elite interviewing, Box Hill Institute, International Student Services

¹¹¹ Elite interviewing, Senior Constable Craig McDonald, Crime Prevention Officer, Victoria Police

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- Ms Wesa Chau, Honorary President of the Australian Federation of International Students, 9 April 2010
- Professor Susan Elliott, Deputy Vice-Chancellor Global Engagement, The University of Melbourne, 20 April 2010
- Dr Tangerine Holt, Director, International Education & Research, Monash University, 27 April 2010
- Ms Liz Stinson, Director of La Trobe International, La Trobe University, 28 April 2010
- Professor Ken Hawkins, Deputy Vice-Chancellor International, Central Queensland University, 30 April 2010
- Senior Constable Craig McDonald, Crime Prevention Officer, Victoria Police, 3 May 2010
- International Student Services, Box Hill Institute, 10 May 2010
- Ms Nirali Shah, International Student Services, Education Access Australia, 19 May 2010

Survey Participants

- Unnamed Student 1, Carrick Institute of Education
- Unnamed Student 2, Carrick institute of Education
- Eliza (Student 3), Australian Learning Training Education Centre
- Hadi Haryono, Holmesglen TAFE

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