



**UNITE SUBMISSION TO THE  
OVERSEAS STUDENT  
EXPERIENCE TASKFORCE**

**Submitted by Anthony Main,  
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## Introduction:

The UNITE Union has for many months been running a campaign to expose the exploitation of international students in the workplace. Through our work with international students working in 7-Eleven franchises, we have uncovered a host of breaches of workplace rights which require thorough investigation. On the back of the UNITE union's campaign around 7-Eleven, we have been working with the Workplace Ombudsman. In the process of the investigation into the practices of 7-Eleven, we have come across a number of barriers that international students face in regards to coming forward about workplace issues.

UNITE has come across egregious abuses of workplace rights, including unpaid trial work lasting more than a month.

**Example 1:** Indian international student, male, in his early 20s, worked for 30 days without pay as "trial work". He earns \$8 an hour flat rate at a 7-Eleven franchise in the south-eastern suburbs.

**Example 2:** Chinese international student, in his early 20s, studying at university, also worked for 20 days on a trial basis. This student reported to UNITE that he was paid from the till, not into his bank account, and he alleged that the franchise owner was manipulating the books to misrepresent the number of hours worked for pay received. (see <http://www.unite.org.au/2008/09/01/interview-with-7-eleven-worker/> for more information)

These kinds of horror stories should not, by now, be news to government. The problem we face is what to do about it. UNITE has a number of recommendations for the committee to consider that would improve the employment situation of the hundreds of thousands of international students juggling work and study in Victoria.

## **Visa condition 8105: an inappropriate tool for managing study and compliance**

The reality that international students need to work to meet their other visa obligations, namely their financial obligations to the university, was recognised by the Australian government this year, when in April 2008, it amended the migration regulations to include work rights on all initial student visa grants.

UNITE argues that the 20 hour work restriction, coupled with the lack of avenues for international students to come forward to complain about breaches of workplace rights, has created a thriving black market in which gross underpayment of wages, fraud by employers, bullying and intimidation of international student workers thrives.

In the opinion of UNITE, the key barrier to international students speaking up about occupational health and safety breaches, and breaches of award wages and conditions, is the visa condition 8105 that restricts work to 20 hours per week during semester, and the total lack of discretionary power provided to the Migration Review Tribunal (MRT) by the Act to take account of students' individual circumstances in relation to such a breach.

This visa condition was last subject to serious government scrutiny by the Industry Commission, in its 1991 report: *Exports of Education Services*<sup>1</sup>. The Commission noted at the time:

Work rights may also affect the Australian labour market. Students working create an increase in the pool of part-time labour. The impact of this depends in part upon whether Australian workers are displaced from employment, any effects on wages for those not displaced, and whether foreigners undertake jobs which Australians will not undertake. 6.1 pg 97

UNITE argues that the restriction on international student work rights is having a serious impact on the local labour market. International students who are subject to the 20 hour work restriction now number over 400,000, and in certain industries, such as night-time taxi work and convenience stores, they are the overwhelming majority of workers in these particular industries. The restriction on international students work rights makes them vulnerable to exploitation by unscrupulous bosses. It is also ineffective as a measure of commitment to studies. This was noted by Coffey MPW Pty Ltd, in their submission to the Commission in 1991:

20 hours per week is obviously unenforceable and ridiculous in terms of a stated regulation. ...It does not seem to be relevant in academic terms to restrict the number of hours of work; rather the number of hours of study

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<sup>1</sup>Industry Commission *Exports of Education Services* REPORT NO. 12  
14 AUGUST 1991

should be the primary issue. If concern is to limit the potential impact of working students on working Australians, then the 20 hour limit has also failed because, coupled with taxation requirements to conform to tax number legislation, this has created an active black market in labour (Submission No. 63, p. 7). Pg 102

The 20 hour work restriction was introduced in a period before the higher education sector became almost totally reliant on the international student dollar to survive, and well before student numbers reached close to half a million. The thriving market in technical training colleges, and the breaches that have finally been exposed after years of student complaints<sup>2</sup>, should lead to a total re-examination of the appropriateness of these restrictive rules for what has become a massive proportion of the student body. It is now impossible to argue that the restrictions on workplace rights for international students are not having an effect on the labour market that is deleterious for locals as well as international students. In an environment where the vast majority of both local and international students now need to work to live whilst studying, the restriction on international students forces them into the lowest paid and most exploitative work. International students are the dominant workforce in many convenience stores, late-night taxi work, and restaurants. An easily exploited workforce like international students, confused about their rights and in fear of an Immigration regime seemingly utterly indifferent to their work conditions is having a distortionary effect on the local labour market, and driving wages down for all workers.

The 20 hour work restriction is inappropriate for mass education. It takes no account of the vast difference in the types of course structure in degrees and diplomas that international students now undertake. It effectively removes the students' capacity to properly manage their studies, and in fact undermines the discretion and responsibility that educational institutions have under the ESOS Act to intervene and assist international students at risk of breaching condition 8202. When, as recognised by the April 2008 amendments to work rights, students have to work to maintain their financial stability, they must have the capacity to properly balance this with their studies, and allow work to follow the flow of their study timetable, not the other way around.

A more appropriate mechanism for ensuring that a student is genuinely in the country to study already exists. It is called visa condition 8202, and is best managed via the obligations placed on students and educational institutions under the ESOS ACT, and then by the Minister under the existing regulations. The taskforce should recommend to DIAC that a more appropriate work restriction regime, if it exists at all, would involve averaging out hours over a semester, and maintaining the capacity to work unrestricted outside of semester.

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<sup>2</sup>Sushi Das, "Trade College closed for breach of rules", *The Age*, October 20<sup>th</sup> 2008  
<http://www.theage.com.au/national/trade-college-closed-for-breach-of-rules-20081019-5401.html>

**Recommendation 1: The Taskforce should work with DIAC, student groups to develop a more appropriate work rights restriction regime for international student visa holders. This could include creating a regime of average hours over a semester or investigating abolishing work restrictions altogether.**

The migration regulations Regulation 2.43, (Grounds for cancellation of visa (Act, s 116)) indicates that the Minister can cancel a student visa for breaches of conditions 8105 and 8202. 8202, the condition relating to attendance and satisfactory academic performance, mandates cancellation for breaches, *except in exceptional circumstances*. This means that, unlike with a breach of 8105, the grounds for an appeal to the Minister for cancellation of the visa are not simply administrative. Even in the case where a breach is proven, a student can demonstrate exceptional circumstances that caused the breach. A student in breach of condition 8105 has no such option, even in the case where they might have evidence of workplace exploitation or illegal behaviour by an employer. This contrasts sharply with a bridging visa holder without work rights in the first place – a ludicrous situation currently exists whereby the Migration Review Tribunal is able to exercise its discretion in cases where the visa holder, for example, was working without any work rights at all, whereas a student with those rights who has fallen foul of the regulations for whatever reason, can not benefit from the exercise of the tribunal's discretion.

The mandatory cancellation of an international student's visa for breaches of restriction 8105 contrasts sharply with the department's attitude towards breaches by employers:

From the DIAC website:

**Warnings for first-time offenders:**

Most first-time offenders will be given a warning notice rather than being referred for prosecution.

The exceptions would be where:

- an employer actually knew the worker was working illegally; or
- the illegal worker is being exploited; or
- the employer or labour supplier is involved in an organised employment racket.<sup>3</sup>

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<sup>3</sup> DIAC, "Employer obligations, Understanding Your obligations"  
<http://www.immi.gov.au/managing-australias-borders/compliance/employer-obligations/your-obligation.htm>  
last viewed October 24<sup>th</sup> 2008

Not only do many employers receive a first-time warning, but there is no information provided as to how the department determines that an illegal worker has been exploited. If that illegal worker is an international student, they would not be in a position to remain in the country to facilitate an appropriate investigation because of the rigidity of the current migration regulations. There appears to be no mechanism for ensuring that employer breaches in relation to exploitation of international student workers could be thoroughly investigated if a breach of condition 8105 is evident. Without some kind of amnesty provided for students who provide information of workplace exploitation, or who are discovered working for an employer breaching the law by underpaying wages or for breaches of Occupational Health and Safety law, there is little hope that illegal activity by employers will actually be uncovered. The lack of discretion provided to the MRT to take account of the circumstances surrounding a breach of condition 8105 undermines DIAC's stated commitment to stamping out illegal activity by employers.

**Recommendation 2: That the taskforce work with the Workplace Ombudsman, DIAC, and appropriate union, community and student groups to develop an appeals mechanism, and appropriate amendments to the migration regulations, for international students alleged to have breached condition 8105, that allows for MRT taking account of student's circumstances, and that facilitates thorough investigation of breaches by employers.**

**Recommendation 3: That the Workplace Ombudsman work with student and union groups and DIAC to develop a mechanism to assist students reported for breaches of condition 8105 to participate in investigations of employer illegality. This may involve an amnesty or the granting of bridging visas and extensions for students who participate in investigations.**

In addition, educational institutions must take seriously their duty of care towards students. All educational institutions should be expected to provide information on workplace rights to enrolling students, and referrals to appropriate, independent advisory services.

**Recommendation 4: That the taskforce work with the Workplace Ombudsman, community, union and student groups to develop detailed information on international student workplace rights, with detailed information on the hospitality, convenience store, taxi and call centre sectors in particular. That the Workplace Ombudsman make money available to union and community groups to develop this material. The material should be multilingual, and provide reference to government as well as community, trade union and student union services. This material should be compulsorily provided by educational institutions to every enrolling international students.**

## **Conclusion:**

These practical recommendations would resolve existing inconsistencies in the migration regulations in the treatment of work rights breaches, and strengthen the hand of international students to expose unscrupulous employers. This can only improve international students faith in the system, thereby improving both compliance, and the international student experience.

UNITE looks forward to discussing these recommendations with the Minister and the Overseas Student Experience Taskforce, in order to improve work place conditions for international students.

Yours sincerely,

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