



SUPRA

SYDNEY UNIVERSITY POSTGRADUATE REPRESENTATIVE ASSOCIATION

SUPRA Submission:

STUDENT VISA REVIEW

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To the Hon. Michael Knight, AO,

I am writing on behalf of the Sydney University Postgraduate Representative Association (**SUPRA**), the representative body for the University of Sydney's 16,000 postgraduate students. We present this submission to the Student Visa Review anticipating a great deal of positive change for our members and the many other international students in Australia.

We approach this opportunity for consultation with a great deal of insight into the experiences of international students, as key stakeholders in the ongoing support for a high quality and equitable system of migration regulation of student visas. We welcome any further opportunity to consult.

Best regards,

A handwritten signature in black ink that reads "Angelus M". The signature is written in a cursive style with a large, stylized 'M' at the end.

Angelus Morningstar,
SUPRA President 2011

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Introduction

Background

Sydney University Postgraduate Representative Association (SUPRA) is the representative organisation for postgraduate students of the University of Sydney. It is one of 30 student organisations in Australia dedicated to promoting the interests of postgraduate students.

Established in 1970, SUPRA's constituency has grown to a point where today, over 16,000 students undertaking research and coursework degrees at a postgraduate level are represented by SUPRA, and are able to access SUPRA's services. SUPRA provides free casework and legal services to its subscribers. SUPRA's representative and advocacy work is informed by this casework, as well as policy analysis and research on postgraduate education. A significant proportion – around 30.47 per cent – of SUPRA's constituents are international students, the majority of whom are enrolled in postgraduate coursework programmes.

International students are overrepresented in SUPRA's casework and legal service client base. They form some 41 per cent of casework service clients, and up to 70 per cent of legal service clients.

SUPRA's positioning within the higher education sector means that it is amply qualified to present the Review Panel with a unique perspective on the conditions of education for postgraduate students, and the base funding requirements for the delivery of quality education at the postgraduate level.

Executive Summary

SUPRA views international education as a major resource for Australian society. However, SUPRA sees the Australian education system squandering the valuable inter-cultural and international relations fostered through education by treating international education as an export commodity. The failures of this commercial strategy are evident in the experiences of students, who SUPRA assists with numerous difficulties relating to accommodation and tenancy, migration, employment, and academic matters. A commercial orientation towards education is simply incompatible with human rights or student welfare.

In reviewing the student visa program, SUPRA believes considerable changes need to be made in order for the program to be made just. A just and equitable program will attract the best qualified international students to Australia and support Australia's goals for a more high-quality research profile, and a more diverse and effective education system.

In achieving these goals, the costs and processing times for student visas need to be reduced, and made more equitable. The concept of "migration risk" needs to be abolished from the regulation of migration. And measures for compliance must be relaxed and made less punitive for students, particularly those in distress. These changes are discussed

further in SUPRA's submission, and a summary of our recommendations is presented below:

Summary of Recommendations

Recommendation 1

That student visa costs be reduced, and that costs be incremented based on the duration of a student's stay in Australia.

Recommendation 2

That visa processing times be reduced, and all student visa processing times be uniform.

Recommendation 3

That the Government offer credit to international students for their tuition and living costs.

Recommendation 4

That the Government extend legal Occupational Health and Safety protection to international students.

Recommendation 5

That Schedule 3 of the SOL be revised to include a broader selection of academic fields.

Recommendation 6

That the Department do away with the concept of "immigration risk" and replace it with the concept of "risk of non-compliance" as a more transparent measure of risk in the Student Visa Program. SUPRA further recommends that the Department make its calculation of risk with respect to the Student Visa Program public for transparent public scrutiny and evaluation.

Recommendation 7

That the Government delete Section 1.41 of the *Migration Regulations 1994*, and any references to country Assessment Levels from any part of the Student Visa Program.

Recommendation 8

That the Skilled – Graduate (Temporary), subclass 485 visa be extended to 3 years.

Recommendation 9

That DIAC allow students to extend student visas up to the date of their graduation ceremony.

Recommendation 10

That Ministerial discretion be applied to cases where students fail to meet academic progress requirements, and student visas not be cancelled, or exclusion applied, to those students.

Recommendation 11

That the Department of Education, Employment, and Workplace Relations and the Department of Immigration and Citizenship engage an independent investigation of the cancellations of all student visas to date, with a view to revising provisions for the cancellation of student visas.

Recommendation 12

That the Department of Education, Employment, and Workplace Relations, along with the Department of Immigration and Citizenship, engage an independent review of all cases of the detention of student visa holders for breach of visa conditions.

AND THAT all students currently in detention be released into the community pending such an investigation, in accordance with the stipulations set out by the Minister for Immigration.

Recommendation 13

That student organisations be consulted in the development of guidelines to establish any discretionary powers for DIAC officers.

Recommendation 14

That all restrictions on working hours be removed from student visas.

1. Visa Applications

1.1 Costs

The Visa Application Charge is \$550AUD. This charge is comparatively high, especially for students who rely on loans to pay for their education. To apply for a loan, some students have to provide the lender with a proof of enrolment. This is something they cannot attain until they acquire a visa, pay for their health insurance cover, and pay a deposit to the HEP. So while an initial cost of \$550 AUD may appear to be small in light of other fees students must pay, it is often difficult for students to cover this cost.

The other difficulty with regard to the Student Visa is that the cost is the same regardless of the duration of the visa. The duration of most Masters by Coursework is 1-2 years, while most Higher Degrees by Research (HDRs) are four years (the duration of a PhD by research). \$550 may not seem unreasonable for a duration of four years, however it is substantial for a student who is only applying for a one year course. SUPRA's recommendation is therefore to balance the cost of the visa with the duration that the student plans to stay. SUPRA does not recommend raising the cost of this visa for HDR students, but rather reducing it to match the duration of the student's stay in Australia.

Recommendation 1

That student visa costs be reduced, and that costs be incremented based on the duration of a student's stay in Australia.

1.2 Processing Times

SUPRA finds that student visa processing times are lengthy, causing quite considerable difficulty to students and compromising their educational experience. Often, postgraduate students find out they are accepted shortly before the academic year starts. Prospective students sometimes struggle to obtain their visas in time for the commencement of teaching periods. SUPRA recommends that the Department does what it can to speed up the processing times for student visas, especially as it comes closer to the start of the academic year.

It is also important to note that the processing time for visas varies depending on the student's nationality. While this, in part, relates to the varying visa subclasses for different levels of education, it is not entirely equitable to students. It should be noted that students who come from countries with higher Assessment Levels have longer processing times, in addition to economic or political challenges such as issues with obtaining credit. (See Section 2.1.1 regarding SUPRA's recommendations about Assessment Levels.) Uniform processing times for all student visas would address these issues and inequities.

Recommendation 2

That visa processing times be reduced, and all student visa processing times be uniform.

1.3 Financial Requirements

SUPRA has found that many international students lack information about the actual costs of living in Australia. SUPRA has assisted many students who have difficulties with accommodation and tenancy arrangements. \$18 000 is barely adequate for costs in Sydney, provided students are able to gain employment, have access to reasonable and affordable accommodation, transport and medical services. HEPs and their overseas agents continue to underestimate living costs for international students in their recruitment strategy. There is also no coherent attempt to bring cost of living down by addressing unmet accommodation needs, these being the single biggest cost in most international student budgets.

For this reason, SUPRA does not recommend increasing the financial threshold for a student visa application. Very little is understood about international student finances aside from the very extreme cases of exploitation in employment and housing. While international students must be protected from exploitation, increasing the financial threshold for student visas is an ill-advised method of doing so. Increasing the financial threshold would not provide any additional information or benefit to applicants, and would potentially increase the financial pressures students are under as they simply take on extra borrowings in order to meet the threshold.

Studies from the UK have found that the main reasons for international students encountering financial difficulties were lack of pre-arrival information about costs of living, and exchange rate fluctuations¹, neither of which are factors within students' control. While financial requirements for student visas offer some signalling of costs of living, this signalling is highly ambiguous, as students are also permitted to work part-time to meet their living costs. The expected proportion of funds from previous savings or loans, and the proportion from paid employment, are not made clear, nor are the differences in living costs between Australian cities. Some of these issues are discussed further in Section 3.3 in relation to restrictions on working hours.

SUPRA is thus sceptical about the claim that “[i]n terms of student welfare, the requirement seeks to ensure that students are able to enjoy a reasonable quality and standard of living in Australia”². It is inappropriate for the Department to make statements such as “consideration needs to be given as to whether this would provide an incentive to students to work in poorly paid jobs, live in insecure environments, and damage the credibility of Australian providers”³ implying that insecurity and poorly-paid employment are students' own fault, or that damage to the credibility of Australian providers (presumably to further pressure more students into insecure and poorly-paid circumstances) is the primary negative consequence of these arrangements. Instead, SUPRA advocates an approach to

¹ Forbes-Mewett, Helen, Marginson, Simon, Nyland, Chris, Ramia, Gaby & Sawir, Erlenawati (2009) 'Australian University International Student Finances' in *Higher Education Policy*, Vol. 22, Issue 2, p. 144.

² Knight, Michael (2011) *Strategic Review of the Student Visa Program 2011 Discussion Paper*, Australian Government, available at: <http://www.immi.gov.au/students/student-submissions/pdf/student-discuss.pdf> (last accessed: 14/04/2011), p. 18.

³ *Ibid*, p. 18.

student financial difficulty which involves enabling students to undertake study rather than imposing additional financial burdens.

Access to credit for higher education is difficult for many students. As such, most countries offer loan programmes for tuition and/or income support. Many Nordic countries offer students income-contingent loans for income support. Students carry these liabilities into their working lives, and repay the loans through the taxation system, similar to the Higher Education Loan Program (**HELP**) in Australia.

Access to credit is more difficult for students from countries of the Global South. These countries often have less developed formal banking systems, and very high rates of interest for borrowings. Students from the Global South often have higher real debt burdens than students from the Global North.

As such, SUPRA recommends that the Federal Government offer credit to international students for both tuition costs and living expenses. The Government is the best placed to judge the costs of living and to provide credit accordingly. Such a scheme would attract the most academically proficient international students and contribute to a high quality education system.

Recommendation 3

That the Government offer credit to international students for their tuition and living costs.

1.4 Attractiveness to Higher Degree by Research Students

1.4.1 Discrimination, Harassment and Bullying

Perceived racism at government and university levels is increasingly prevalent amongst many international students, especially higher degree by research students, who strongly feel unwelcome and discriminated against during their time in Sydney. Many of the restrictions on student visa holders imposed by Federal and State Governments and HEPs cause financial, social and personal hardship for students and their families; such treatment is often unique to their international status.

One key example of an institutional barrier experienced by many international research students is bullying behaviour by their research supervisors, a growing concern amongst this student population, but currently without adequate procedural recourse. SUPRA is aware of HDR international students who complain about racism or being humiliated, patronised, exploited, ignored or alienated by university teaching staff and faculties.

International students who complain about institutional barriers can feel aggrieved and many are very vocal and threaten to lodge complaints with their own governments or advise their friends and colleagues against coming to Sydney.

Relevant Occupational Health and Safety legislation at a State level provide some recourse for institutional staff who have been bullied in a workplace environment, and SUPRA would argue that the Federal government should extend comparable protections to students.

Recommendation 4

That the Government extend legal Occupational Health and Safety protection to international students.

1.4.2 Support for Research Training

The Department of Innovation, Industry, Science and Research (**DIISR**) is developing a Research Workforce Strategy which is currently deliberating on strategies to attract and retain high quality research students, and improve research training. The Consultation Paper released by the Research Workforce Strategy Reference Group states that:

while the strong growth in international HDR student commencements and completions in recent years is accompanied by positive indications that this is translating to significant workforce supply (around 40 per cent of international HDR students who complete their degrees convert to permanent residency), the increasingly competitive global market for students and researchers and the vulnerability of Australia's intake to changing economic conditions in source countries mean that this performance can not be taken for granted in the future⁴

The Consultation Paper furthermore discusses making International Postgraduate Research Scholarships (**IPRS**) more readily available so as to attract highly skilled research training candidates, and to make Australia a more attractive destination for research students. With announcements about the 2011-2012 Federal Budget indicating that funding for research will be reduced⁵, the Government can hardly hope to attract research training candidates from overseas.

Furthermore, SUPRA has become aware that many doctoral graduates are no longer eligible to apply for permanent residency under the Skilled Migration Program. This issue will be addressed further in Section 2.2, however the specific effects of the 2010 changes to the Skilled Migration Program affect the desirability of Australia as a destination for international research students in particular.

A number of SUPRA's members have indicated that, despite being enrolled in HDRs, they are ineligible to apply for permanent residency once they meet other eligibility criteria, due to their field not being listed on Schedule 3 of the Skilled Occupations List (**SOL**). This is despite one of the explicit aims of those changes being to attract more highly skilled graduates to Australia. Many of SUPRA's international research student members have indicated that they have offers of employment in Australia, yet are unable to take them up

⁴ DIISR (2010) *Meeting Australia's research workforce needs: A consultation paper to inform the development of the Australian Government's research workforce strategy*, Research Workforce Strategy Reference Group, Department of Innovation, Industry, Science & Research, available at: <http://www.innovation.gov.au/Research/Documents/ResearchWorkforceStrategyConsultationPaper.pdf> (last accessed: 14/04/2011), p. 23.

⁵ Blackwell, Annette (2011) 'Growing campaign to halt cuts to NHMRC funding' in *Campus Review*, 11 April, available at: <http://www.campusreview.com.au/pages/section/article.php?s=News&idArticle=20573> (last accessed: 15/04/2011).

as HEPs do not ordinarily offer employer sponsorship for migration. Further discussion of issues relating to employment are in Section 3.2 of this submission.

The negative consequences of these changes and the reluctance of many employers to sponsor skilled graduates requires the Department to raise a great deal more awareness about sponsorship and the requirements of employers engaging in employer sponsorship.

Recommendation 5

That Schedule 3 of the SOL be revised to include a broader selection of academic fields.

2. Migration

2.1 “Migration risk” and Assessment Levels

The concept of “migration risk” is poorly defined in legislation and legislative instruments relating to the student visa program. SUPRA finds many of the claims about this concept spurious, as the determination of “risk” is based on opaque factors, and SUPRA finds the application of this concept through the Assessment Level categories to be arbitrary and racially discriminatory.

The concept of “migration risk” or “immigration risk” conflates two types of probability: (1) the probability of a cohort of student visa holders not complying with conditions of their student visa, and (2) the probability of a cohort of student visa holders applying for further visas for either temporary or permanent residency under the Skilled Migration Program. A Departmental Media Release stated:

measures of immigration risk used to determine assessment levels include the fraudulent documentation rate, the visa cancellation rate, the unlawful rate, applications for residence – excluding residence on the basis of skill – the refusal rate and applications for protection visas.⁶

The Discussion Paper states:

Measures such as English language ability and financial capacity are often used to evaluate the student’s intention to return to their home country after undertaking a course of study

Migration risk is measured for all visa applicants and involves health and character checks and a judgement about the applicant’s motivation to abide by visa conditions including departing Australia on or before the expiry of their visa. For students, this latter criterion is the perceived willingness to study and return to their home country upon completion of study.⁷

Conflation of measures that encompass lawful activity such as legitimate rates of application for residency, and unlawful activities such as provision of fraudulent documentation serve to indicate that applications for residency are regarded by the Department as unlawful. Furthermore, the opacity of the calculation of this measure serves to further render ambiguous lawful and unlawful activities with respect to migration and visa compliance.

⁶ DIAC (2008) ‘Student visa assessment levels changed’, Department of Immigration and Citizenship, available at: http://www.newsroom.immi.gov.au/media_releases/602?page=23& (last accessed: 14/04/2011).

⁷ Knight, Michael (2011) *Strategic Review of the Student Visa Program 2011 Discussion Paper*, Australian Government, available at: <http://www.immi.gov.au/students/student-submissions/pdf/student-discuss.pdf> (last accessed: 14/04/2011), p. 6.

There is no indication about how rates of application for residency by student visa holders vary in proportion to the population of international students of a particular nationality. These rates vary annually, and according to a variety of factors, such as political or economic changes in students' countries of origin. The calculus of "immigration risk" is thus not comprehensive or objective and its opacity only renders it more so.

Such conflation of migration and unlawful activity only serves to support elements of racism and xenophobia in the Australian community which have targeted international students' migration status, alleging they having no place in the country. For instance, many of the violent assaults and verbal abuse reported by international students have included statements such as "go back home".⁸

SUPRA cautions the Department to be wary of encouraging these sentiments further through the design of the Student Visa Program. Institutional discrimination is often a precursor to anti-social verbal abuse and physical violence. Both types of prejudice affect SUPRA's constituency strongly.

There is no demonstrable link between unlawful non-compliance with visa conditions and lawful applications for residence. The Department's own Annual Report notes:

A total of 6814 student visa holders became unlawful (did not hold a valid visa) in 2009–10. The unlawful rate in 2009–10 was 1.61 per cent. This rate remains low as a proportion of the increased total number of student visa holders in Australia.⁹

SUPRA recommends that the Department do away with the concept of "immigration risk" and replace it with the concept of "risk of non-compliance" as a more transparent measure of risk in the Student Visa Program. SUPRA further recommends that the Department make its calculation of risk with respect to the Student Visa Program public for transparent public scrutiny and evaluation. The current information available about calculation of "risk" measures are vague and imprecise. Any other course of action renders the scope of this Review unreasonable and arbitrary, as the Department is seeking comment on matters that respondents to this Review cannot access.

Recommendation 6

⁸ See for instance Babacan, Hurriyet, et. al. (2010) *The Community Safety of International Students in Melbourne: A Scoping Study*, Institute for Community, Ethnicity and Policy Alternatives (ICEPA), February, available at: <http://www.vu.edu.au/sites/default/files/icepa/The%20Community%20Safety%20of%20International%20Students%20in%20Melb%20A%20Scoping%20Study.pdf> (last accessed: 02/04/2011), p. 53. Or Smith, Sharon (2009) *International Students' Security and Safety Needs in Australia*, Report – National Union of Students, available at: http://www.unistudent.com.au/site/?option=com_content&task=view&id=119 (last accessed: 02/04/2011).

⁹ DIAC (2010) 'Departmental item—Students' in *Annual Report 2009-10*, Department of Immigration and Citizenship, available at: <http://www.immi.gov.au/about/reports/annual/2009-10/html/outcome-1/departamental1-1-4.htm> (last accessed: 12/04/2011).

That the Department do away with the concept of “immigration risk” and replace it with the concept of “risk of non-compliance” as a more transparent measure of risk in the Student Visa Program. SUPRA further recommends that the Department make its calculation of risk with respect to the Student Visa Program public for transparent public scrutiny and evaluation.

2.1.1 Assessment Levels

SUPRA is opposed to the operation of Assessment Levels, as per Section 1.41 of the *Migration Regulations 1994*. As a means of differentiating levels of “migration risk” by nationality, Assessment Levels constitute unlawful racial discrimination according to the *Racial Discrimination Act 1975 (RDA)*, are opaque and arbitrary. The RDA defines unlawful racial discrimination as:

any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life

Article 5 of the *Convention on the Elimination of All Forms of Racial Discrimination (CERD)* defines that rights to equality before the law, freedom of movement and residence within the borders of the State, the right to return to one’s country, and the right to nationality cannot be restricted on the basis of race, colour, national or ethnic origin.

Assessment Levels require persons of different national origins to produce differing levels of documented evidence of financial capacity, English language ability (IELTS score), academic qualifications, and other measures of “genuineness”. Such requirements breach clause 1 (A) of the RDA, which states:

the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;

the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national or ethnic origin.

Assessment Levels are thus discriminatory regardless of the assertion that they are based on “objective” measures of visa compliance. The suggestion in the Discussion Paper (p. 10) that levels of “migration risk” can be distinguished on the basis of geographical region would not mitigate this discriminatory effect.

Assessment Levels are furthermore inequitable, as they apply only to student visa applicants. The likelihood of non-compliance with visa conditions of other types of temporary visa, such as Working Holiday visas, is not taken into account when granting such visas. There is no rationale for applying special requirements for applicants for student visas which do not apply to other types of visas.

The notion that efficiency in the application assessment process is obtained through engaging in discriminatory racial profiling is utterly spurious. Along with the above recommendation to dispose of the concept of “immigration risk” or “migration risk”, SUPRA recommends that Assessment Levels be eliminated as an aspect of the Student Visa Program.

Recommendation 7

That the Government delete Section 1.41 of the *Migration Regulations 1994*, and any references to country Assessment Levels from any part of the Student Visa Program.

SUPRA is furthermore concerned at the readiness of the Government to restrict any form of migration to Australia on the basis of national and ethnic origin, given the Government’s highly public launch of its new multiculturalism strategy¹⁰ which, drawing on the 1996 parliamentary statement on racial tolerance, states:

this House [...] reaffirms its commitment to maintaining an immigration policy wholly non-discriminatory on grounds of race, colour creed or origin.¹¹

2.2 Graduate Skilled Migration

One of the results of the changes to the General Skilled Migration (**GSM**) Program is that more students are likely to apply for the subclass 485 Skilled – Graduate (Temporary) visa. This visa subclass is specifically linked with the General Skilled Migration Program by the Department:

[The Skilled – Graduate (Temporary)] visa allows overseas students who do not meet the criteria for a permanent General Skilled Migration visa to remain in Australia for 18 months to gain skilled work experience or improve their English language skills.¹²

Due to the changes to the SOL in 2010, and the new GSM points test which will come into effect as of 1 July 2011, many students are now ineligible for applications for permanent residency visas. This is despite both Government policy and HEPs promoting education in

¹⁰ Bowen, Chris (2011) *The People of Australia: Australia’s Multicultural Policy*, Australian Government, Department of Immigration and Citizenship, available at: http://www.immi.gov.au/media/publications/multicultural/pdf_doc/people-of-australia-multicultural-policy-booklet.pdf (last accessed: 14/04/2011).

Bowen, Chris (2011) Media Release: ‘New Strategy in Support of Multiculturalism in Australia’, 16th February, available at: <http://www.chrisbowen.net/media-centre/media-releases.do?newsId=4155> (last accessed: 14/04/2011).

¹¹ DIAC (2011) ‘Fact Sheet 6 – Australia’s Multicultural Policy’, Australian Government, Department of Immigration and Citizenship, available at: <http://www.immi.gov.au/media/fact-sheets/06australias-multicultural-policy.htm> (last accessed: 14/04/2011).

¹² DIAC (2011) ‘Skilled – Graduate (Temporary) visa (subclass 485)’ in *Professional and other Skilled Migrants*, available at: <http://www.immi.gov.au/skilled/general-skilled-migration/485/> (last accessed: 12/04/2011).

Australia as a pathway to migration, and promoting migration as a pathway to fulfilling Australia's skilled labour requirements.

It is simply false advertising for the Australian Government to have made these links in the past and to have benefited economically from international students' fees, accommodation payments, and contributions to the Australian economy only to reverse the decision with inadequate transitional arrangements in place.

Many employers discriminate against holders of temporary visas in recruitment processes. SUPRA has heard from many of our members that they have difficulty gaining employment due to their residency status and racial discrimination on the part of employers, a practice which has been documented in a recent report by researchers from the Australian National University¹³. The GSM changes serve to exacerbate this discrimination.

Increasing the length of the subclass 485 visa will only partially address these issues. While SUPRA supports an increase in the length of the Skilled Graduate visa, SUPRA also refers to Section 1.4.2 above, which addresses the discriminatory employment practices which limit international student graduates from gaining employment in their field.

Recommendation 8

That the Skilled – Graduate (Temporary), subclass 485 visa be extended to 3 years.

2.3 Attendance at Graduation Ceremonies

SUPRA has also become aware that many of our members miss out on attending their graduation ceremonies due to the length of student visas, and the difficulty of extending student visas. The University of Sydney typically holds graduation ceremonies in April-May, for students who completed their degree requirements at the end of the previous year, and September-October for students completing at the end of semester 1. The length of time between completion of degree requirements and graduation requires international students to either miss their graduation ceremony or to apply for a visitor visa in order to attend.

Postgraduate and international students are typically regarded as outside the student community, and are marginalised in many official University activities. For instance, many activities are targeted at domestic students only, and do not engage international students' interests. Exclusion of international students from graduation ceremonies is yet another means of marginalising international students in the educational experience, and undermines the value of internationalism in education.

SUPRA advocates for full inclusion of international students in all activities of HEPs, and therefore recommends that DIAC allow students to seek an extension on their student visa up to the time of their graduation ceremony. These dates would be simple for the Department to verify, as official dates are published by HEPs and official notices of graduation are sent to students upon completion of their course requirements.

¹³ Booth, Alison, Leigh, Andrew & Varganova, Elena (2010) *Does Racial and Ethnic Discrimination Vary Across Minority Groups? Evidence From a Field Experiment*, July, Centre for Economic Policy Research, Australian National University, Canberra.

Recommendation 9

That DIAC allow students to extend student visas up to the date of their graduation ceremony.

3. Compliance

3.1 Breaches of Visa Conditions

Under the *Migration Regulations 1994*, any person who breaches the conditions of their visa or remains in Australia past the expiry date of that visa is subject to a period of automatic exclusion from Australia for 3 years from the date that person leaves Australia.

There are provisions for the Minister for Immigration and Citizenship (**Minister**) to use discretion in order to waive that exclusion. However, this discretion is rarely exercised.

Each semester, SUPRA assists students who have been excluded from their enrolled course on the grounds of unsatisfactory academic progression in that course. In many cases, these students have only one or two units of study remaining to complete their enrolled courses.

By virtue of exclusion from the University (being a breach of academic progression conditions of a student visa), these students automatically become subject to the exclusion period. A domestic student who has been excluded can apply for readmission to the University in another course, or admission to another HEP. However, the effect of exclusion for a significant proportion of international students is that they will never return to their studies in Australia because of the expense, lapse of time, and serious inconvenience.

This is an inflexible, excessive and disproportionately punitive reaction to a student simply having academic difficulties. SUPRA's experience is that such students often have many other difficulties in their life circumstances as a result of other conditions of being an international student, such as difficulties with accommodation or employment. The effect of the exclusion period is that students are penalised for experiencing difficulties and distress with their academic and living circumstances. The punishment is unfair and unreasonable.

SUPRA therefore recommends that Ministerial discretion be applied to cases where students fail to meet academic progress requirements, and student visas not be cancelled, or exclusion applied, to those students.

Recommendation 10

That Ministerial discretion be applied to cases where students fail to meet academic progress requirements, and student visas not be cancelled, or exclusion applied, to those students.

3.1.1 Immigration Detention

In 2010 SUPRA investigated the numbers of students who were in immigration detention as a result of breaching the conditions of a student visa. As of 7 January 2011, there were 55 persons detained in immigration detention centres as a result of breaching the conditions of

a student visa. This is an increase from the 36 students who were reported to be in immigration detention as of July 2009¹⁴.

Section 10 of the Senate Legal and Constitutional References Committee report on the *Administration and Operation of the Migration Act 1958* expressed concern that student visa cancellations – **more than one-third of which were eventually overturned** – and the detention of international students in immigration detention centres has substantial negative consequences for both the students and the education sector¹⁵. The report refers to the Evaluation of the *Education Services for Overseas Students Act (2000)* in 2005, which reported that exclusion and detention can be a consequence of failing to meet course requirements¹⁶.

The duration of a student visa may need to be extended due to unforeseen circumstances, including changes to course requirements, or interruptions in Higher Degree by Research supervision. The prospect of administrative and legislative processes resulting in a student being detained in an immigration detention facility only serves to add unnecessary pressure to already difficult and stressful circumstances. The case of Megumi Ogawa, a PhD student at the University of Queensland and the University of Melbourne, illustrates some particularly troubling possibilities of students being held in an administrative and legal limbo while their case is determined¹⁷. In Ogawa's case, immigration detention had a devastating effect on her mental health.

SUPRA finds it disproportionately and unreasonably punitive that students would be under threat of detention in cases where they may be in breach of their visa conditions. Given that Minister Senator Chris Evans stated that “detention in immigration detention centres will only be used as a last resort and for the shortest practicable time” and that “[t]he department will have to justify why a person should be detained. Once in detention, a detainee's case will be reviewed every three months to ensure that the further detention of the individual is justified”¹⁸, SUPRA makes the following recommendations:

Recommendation 11

¹⁴ Healy, Guy (2009) '36 overseas students in detention' in *The Australian*, July 15, 2009, available at: <http://www.theaustralian.news.com.au/story/0,25197,25784268-601,00.html> (last accessed: 20/08/2009).

¹⁵ Crossin, Patricia et. al. (2006) *Administration and Operation of the Migration Act 1958*, Department of the Senate, Parliament House, Canberra, March 2006, pp. 305-322. Available at: http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/Migration/report/report.pdf Last accessed: 20/08/2009.

¹⁶ PhillipsKPA and Lifelong Learning Associates (2005) *Evaluation of the Education Services for Overseas Students Act 2000*, Department of Education, Science, and Training, Parliament House, Canberra, June 2005, pp.181-2. Available at: http://www.dest.gov.au/sectors/international_education/publications_resources/profiles/evaluation_report.htm Last accessed: 20/08/2009.

¹⁷ Morton, Adam (2006) 'Learning to fight' in *The Age*, July 29 2006. Available at: <http://www.theage.com.au/news/in-depth/learning-to-fight/2006/07/28/1153816381159.html> Last accessed: 20/08/2009.

¹⁸ Evans, Chris (2008) Media Release: 'Labor unveils new risk-based detention policy', Tuesday 29th July 2008, available at <http://www.minister.immi.gov.au/media/media-releases/2008/ce08072.htm> last accessed: 20/08/2009.

That the Department of Education, Employment, and Workplace Relations and the Department of Immigration and Citizenship engage an independent investigation of the cancellations of all student visas to date, with a view to revising provisions for the cancellation of student visas.

Recommendation 12

That the Department of Education, Employment, and Workplace Relations, along with the Department of Immigration and Citizenship, engage an independent review of all cases of the detention of student visa holders for breach of visa conditions.

AND THAT all students currently in detention be released into the community pending such an investigation, in accordance with the stipulations set out by the Minister for Immigration.

3.2 Visa Extensions

It would greatly assist students if DIAC officers had more discretionary powers to extend a student's visa in relation to the end of their candidature. For HDR students this would greatly assist if a student needed to extend their visa because of a requirement to address thesis issues such as making amendments required by examiners prior to the award of a degree. For coursework students, such discretionary power would be useful when a student has failed the last one or two subjects needed to complete degree requirements and a further semester is required to so complete.

Such discretionary powers would need to be articulated in guidelines.

Recommendation 13

That student organisations be consulted in the development of guidelines to establish any discretionary powers for DIAC officers.

3.3 Work

The current restrictions imply international students threaten employment opportunities for residents and also lack the ability to balance their study-work commitments.

Given that international students are also required to be enrolled on a full time basis this requirement in and of itself limits the amount of time a student can work. For example, an international postgraduate coursework student at the University of Sydney is required to be enrolled in 4 subjects per semester. Each one of the subjects would typically have 3-5 pieces of assessment due across the semester. That means that international students will need to plan their work commitments (if they are going to work) around the due date for each piece of assessment, plus attend lectures (also a requirement of both the University and of DIAC), and work, when/where possible, across the 13 weeks of each semester.

To promote Australia as a place to come to study, yet to link that study with a restriction on the number of hours in which a student can work, creates anomalies and indirectly favours those with high skill levels (e.g. a student with high IT skills) compared to those who lack such skills and need to take whatever type of work they can which suits their study commitments.

SUPRA maintains that the majority of international students who gain entry to postgraduate study at the University of Sydney should have the equivalent standing as any resident in applying for suitable part time and casual employment, and are fully committed to completing their degrees within the shortest possible timeframe.

Student Visa holders should be allowed to work an unlimited number of hours to ensure they have legal means to an adequate source of income. SUPRA knows of many cases where international students are forced into unsustainable and occasionally illegal loans and employment arrangements to cover unanticipated costs, including transport and rent and medical bills.

Placing a restriction on the number of hours which international students can work causes several problems. Firstly, wages for part-time and casual work for students are generally low. The majority of university students do not have the skills to gain part time or casual employment in jobs with higher hourly rates, and this is even more the case for many international students for whom English is a second language. This means that in order to survive, students are more susceptible to being forced to work illegally in “cash in hand” jobs.

The problem is exacerbated by the fact that international (and local) students often do not know their rights at work, and if they are working illegally for cash, they will not seek help with knowing or asserting their work rights. Unscrupulous employers can and do exploit the fact that international students can only work 20 hours per week to threaten students with exposure to Immigration authorities. SUPRA is informed that many international students are working for as little as \$5 per hour.

In reality the only benefit to the Australian economy of restrictions on international students' visas is to those employers who are prepared to breach Industrial Relations and Occupational Health and Safety regulations to pressure students to work longer hours under threat of exposure.

The notion that students coming to Australia to study should have the money to cover current fees, fee increases and fees incurred when repeating subjects after failing, as well as the money to cover (often inflated) living expenses, is unrealistic.

In Sydney many international students discover on arrival that they have immediate unanticipated costs when they are forced into rental accommodation outside of the city area and that unlike local students, they are ineligible for transport concessions and required to pay the same travel fares as fully employed citizens. As well SUPRA knows of international students whose accommodation situation can change several times during their time here, causing emotional as well as financial distress.

As argued over many years by all student organisations in relation to Austudy/Youth Allowance, a ‘capital city’ loading is needed in recognition of the higher costs for studying in a capital city.

[International student] monthly expenses for Sydney:

| | |
|----------------------------------|--------|
| Rent for shared accommodation | \$1200 |
| Gas & Electricity | 70 |
| Food | 350 |
| Travel | 80 |
| Internet | 59 |
| Mobile phone & calls to overseas | 50 |
| Miscellaneous | 120 |
| <hr/> | |
| Total | \$1929 |

Another unanticipated significant expense is certain medical and health situations where the Overseas Student Health Cover (**OSHC**) is inadequate. International students can present at public hospital emergency departments and be liable for fees which neither the university nor the student's OSHC insurer will cover. SUPRA is aware of students who have gone without urgent dental assistance, have delayed seeking medical assistance or who have not sought it at all because of prohibitive costs, or who have not been able to access assistance because of exclusion periods applied by OSHC insurers and the limitations of the coverage.

The work restrictions are particularly inappropriate for HDR students who are often older, may have dependents, and are more likely to have opportunities within their faculty to participate in paid teaching or research. The kind of sessional work that is available for such students, doing casual teaching or research assistant work, often gives international research students the chance to work more than 20 hours per week during limited periods of the year, with no work available at other times. It is punitive and inequitable that to take up such work opportunities, brings international students into breach of their visa conditions.

Students who only have twenty hours to work a week must be mindful of the wage they will be earning per hour. The fact that students are limited to twenty hours of work also limits them to employment opportunities that may correlate with student life or professional aspirations. Many internships do not have a high hourly wages because the consensus is that the company is giving a young (and perhaps less skilled) person a chance to develop skills that will give them an edge after graduation. Likewise, many student operated organizations do not have the funds to pay high stipends. While internships and student operated organisations pay living wages for students who can work more than twenty hours a week, an international students may feel pressure to find positions with higher hourly rates because they are limited to only working twenty hours a week. Thus, International students may not be able to take an internship or a position at a student organization. This excludes international students from employment opportunities that are enriching to the student and valuable parts of the student experience.

Allowing no work restrictions for international students makes Australia more competitive, especially for higher degree by research students. Having the flexibility to work if needed and under protected and safe conditions provides legitimate means for students to pay for expenses, not be exploited, be self sufficient, and experience a less stressful stay in Sydney.

Recommendation 14

That all restrictions on working hours be removed from student visas.