

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Output: Internal Product

Senator Ludwig (L&C 9-10) asked:

The DIMIA web site, particularly Mr McGauran's web site, has a National Party web link on the bottom, so when you go into the web site you then have a National Party web link. If you click on it, it does not say, 'We're leaving the web page.' It simply goes straight to the National Party's web site. I know this is one of those issues where senators have an entitlement to have a web page and they have links to their personal sites to their various party affiliations, but this is a ministerial site. It seems a bit novel to me to have a National party web link on it. Who maintains that link? Is that maintained within the department? Who put it up? How is it maintained? Is it maintained by the department? Has the department turned its mind to whether it fits in with APS guidelines? I am curious to find out whether it was an initiative by the department or whether the minister requested that link. What is the department's view about that as a consequence? Did they look at those issues and whether this accords with the ministerial code of conduct as well?

Answer:

Advice received from the Australian Government Information Management Office (AGIMO) is that the way this web site was administered, including the link to the National Party was appropriate and met the guidelines.

There was a clear distinction between the Department's site and the ministerial site and advice was that the site was appropriate and met the guidelines.

The site is no longer operational due to a change in Ministers.

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(2) Output: Internal Product

Senator Faulkner (L&C 37) asked: Was the Secretary paid performance pay last year and the year before?

Answer:

Disclosure of individual performance payments would be contrary to the understanding under which the performance appraisals were conducted.

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(3) Output: Internal Product

Senator Faulkner (L&C 38) asked:

Has the Secretary of the Department of the Prime Minister and Cabinet raised issues with the Secretary about the administration of the department?

Answer:

There were a number of discussions between the two Secretaries, initiated by each, to consider aspects of departmental administration.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(4) Output: Internal Product

Senator Mason asked:

(1) For each of the last four financial or calendar years for which this information is available:

(a) what was the average number of sick leave days taken per full-time equivalent employee?

(b) what was the average number of days of unscheduled absence (encompassing all types of leave) taken per full-time equivalent employee?

(2) Does the department collect, collate and analyse data about unscheduled absence and/or sick leave, for example, which days of the week that employees are away, reasons for absence, dates of absence, employee's age, gender, length of service and work unit location?

(3) Does the department record the number and/or percentage of working days lost due to unscheduled absence and/or sick leave in the Annual Report?

(4) Does the department record the cost of unscheduled absence and/or sick leave in annual financial statements?

Answer:

(1) (a) For the financial years 2001-02; 2002-03; 2003-04; and 2004-05, the average number of sick leave days taken per full-time equivalent employee were as follows:

Financial Year	Days sick leave/FTE
2001-2002	9.1
2002-2003	8.4
2003-2004	8.5
2004-2005	7.8 ⁽¹⁾

Notes

(1) The figure for the 2004-2005 financial year is based on sick leave taken up until 16 June 2005.

(b) For the financial years 2001-02; 2002-03; 2003-04; and 2004-05, the average number of unscheduled leave days taken per full-time equivalent employee were as follows:

Financial Year	Days Unscheduled Leave/FTE
2001-2002	10.5
2002-2003	11.9
2003-2004	12.3
2004-2005	11.3 ⁽¹⁾

NOTES

(1) The figure for the 2004-2005 financial year is based on unscheduled absences recorded up until 16 June 2005.

(2) The Department monitors and analyses unscheduled absence. Analysis is undertaken by the type of leave taken, classification level and work area. Reports on unscheduled absence are provided to the Department's People Management Committee and Management Board.

(3) No.

(4) No.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(5) Output: Internal Product

Senator Carr asked:

1. How many FOI applications do you currently have related to Indigenous Affairs?
2. How many staff are currently employed to process and facilitate FOI applications in DIMIA?
3. What is the estimated current delay on the processing of FOI applications and the provision of information if the application is successful?
4. How does DIMIA intend to deal with any backlog of FOI applications?
5. Have any additional staff been sought? If so, by what means?

Answer:

1. As at 27 July 2005, there were five FOI requests related to Indigenous affairs. They are being processed by an OIPC officer separate to the FOI section in DIMIA.
2. As at 27 July 2005, there was a total of 17 staff within the FOI section, of which 14 are responsible for processing FOI applications. Two of these are employed on a part-time basis.
3. The majority of cases lodged on or after 1 May 2005 is being completed within the 30 day time-frame, with the exception of some more complex cases, where an extension to the dead-line has been negotiated with the applicants. Those applications lodged prior to 1 May 2005 are being processed by a taskforce and processing times range from 3-9 months beyond the 30 day time-frame for processing FOI requests.
4. There has been a rapid rise in FOI application rates. In response to this, the Department has created a dedicated FOI section and recruitment is currently underway for additional staff to deal with the backlog and increasing caseload. In addition an FOI consultant has been engaged to review processes as well as develop a comprehensive procedures manual for staff. The consultant also provides training for new staff as they commence in the section.
5. Since 1 June 2005, six additional staff have commenced with the FOI section and recruitment is progressively continuing for more staff. These staff have been sought from both within the Department as well as externally. External candidates have been engaged on short term contracts while recruitment processes are finalised.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(6) Output: Internal Product

Senator Ludwig asked a follow up question to a question asked in December 2004:

Regarding the employees that your department has identified as having:

- a) fluency;
- b) accredited translator;
- c) accredited interpreter

Of these employees, please indicate what the department is doing in order to make full use of its employees' skills in this regard, and please provide a breakdown of this between employees whose accreditation was paid for by the department and those whose were not?

Answer:

The Department has identified 121 employees who possess accredited language skills to either translator or interpreter standard. This does not include locally-engaged employees overseas.

The Department seeks to draw upon the language skills of employees where appropriate. For example, there are employees working in client areas in Australia and overseas who are able to use their language skills to communicate with clients from non-English speaking backgrounds. This complements the services available through the Translating and Interpreting Service (TIS) which the Department administers. The Department has also drawn upon the language skills of employees in specific circumstances, such as for task forces and to support visiting overseas delegations.

The Department does not currently maintain statistics on the number of employees whose accreditation of language skills has been funded by the Department. Discretion exists for managers to approve funding for individual employees to obtain language skills accreditation where there is an identified business need for such skills in the employee's work area.

The Studies Assistance provisions of the DIMIA and OIPC Certified Agreements provide for partial reimbursement of course fees for tertiary study in Languages.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(7) Output: Internal Product

Senator Carr asked:

1. Is performance pay available under your department/agencies certified agreement?
2. If not, how many staff in your Department/Agency are eligible for performance based pay?
3. Please provide a breakdown of performance pay awarded for this financial year to date including the following details:
 - (a) How many staff have received performance pay?
 - (b) What levels are those staff at?
 - (c) What gender, a breakdown please?
 - (d) How much has each staff member received?
 - (e) When did they receive it?
 - (f) What was the rationale for the awarding of performance pay in each instance?
4. Did the Department/Agency head receive performance pay?
 - (a) How much?
 - (b) When?
 - (c) On what grounds?

Answer:

1. No.
2. 197 employees are eligible for performance based pay.
3. (a) 102 employees received performance pay from 1 July 2004 to 31 May 2005 inclusive.
 - (b) Executive Level 1, Executive Level 2, SES Band 1, SES Band 2 and SES Band 3.
 - (c) 56 male employees and 46 female employees received performance pay from 1 July 2004 to 31 May 2005 inclusive.
 - (d) Please see Attachment A for the amount of performance pay paid to employees by classification level for the period 1 July 2004 to 31 May 2005 inclusive.

(e) Performance pay shown in Attachment A is for the period 1 July 2004 to 31 May 2005 inclusive.

(f) Performance pay was awarded where an employee's performance was assessed and rated as outstanding, superior or fully effective. In the instances of a fully effective rating, the employee's supervisor considered that the operational circumstances in which the employee worked warranted performance pay.

4. (a)-(c) Under the Prime Minister's determination of secretaries' remuneration and other conditions, the Secretary is eligible each year for performance pay of either 10% of total remuneration for superior performance or 15% for outstanding performance. Disclosure of any individual performance payments would be contrary to the understanding under which the performance appraisals are conducted.

ATTACHMENT A

**Performance pay by classification level paid by the Department of Immigration
and Multicultural and Indigenous Affairs for the period 1 July 2004 to
31 May 2005 inclusive**

CLASSIFICATION LEVEL	AGGREGATED AMOUNT	AVERAGE PAYMENT	RANGE OF PAYMENTS
Executive Level 1	\$124,984	\$6,249	\$3,194 - \$11,924
Executive Level 2	\$268,881	\$6,722	\$1,654 - \$13,085
SES B1	\$264,693	\$9,453	\$5,612 - \$15,250
SES B2/ SES B3	\$234,592	\$16,756	\$7,100 - \$26,949

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(8) Output: Internal Product

Senator Carr asked:

1. What financial impact will the increased efficiency dividend have on your Department/agency this financial year and in the out years?
2. The increase in the efficiency dividend was announced in last year's elections, what plans have you made to meet it?
3. What will this mean for staff numbers?
4. Will any specific programs be cut? Please specify which ones and the size of the estimated savings?
5. Will any core functions be affected by these savings measures?
6. How will meeting the efficiency dividend affect your graduate recruitment plans?
7. How will meeting the efficiency dividend affect your ability to retain experienced staff?

Answer:

This answer covers the following four budget funded agencies within the Immigration and Multicultural and Indigenous Affairs portfolio:

Department of Immigration and Multicultural and Indigenous Affairs (**DIMIA**)

Migration Review Tribunal (**MRT**)

Refugee Review Tribunal (**RRT**)

Torres Strait Regional Authority (**TSRA**)

(1) The following table reports the reduction in funding due to the efficiency dividend increasing from 1% to 1.25% for each of the three years 2005-06 to 2007-08.

	DIMIA	MRT	RRT	TSRA
2005-06	\$2.024m	\$0.053m	\$0.054m	\$0.008m
2006-07	\$4.157m	\$0.053m	\$0.051m	\$0.008m
2007-08	\$6.358m	\$0.053m	\$0.049m	\$0.008m
2008-09	\$6.428m	\$0.053m	\$0.049m	-

(2)

DIMIA The savings from the increased efficiency dividend for 2005-06 have been met from DIMIA's Corporate Priorities funding pool, an internally managed reserve which is used to meet the cost of unfunded priorities. The pool is funded through savings from management initiated productivity improvements.

DIMIA's management has not yet determined how the increased efficiency dividend

will be funded in 2006-07 or later years. This will be considered in the context of internal budget allocations.

MRT/RRT The savings from the increased efficiency dividend for 2005-06 will be factored into the internal budget allocations for 2005-06, taking into account management initiated productivity requirements.

The MRT/RRT management has not yet determined how the increased efficiency dividend will be funded in 2006-07 or later years. This will be considered in the context of internal budget allocations.

TSRA Administrative element from which the efficiency dividend is extracted delivers corporate support to operational programs. The efficiency dividend to 2007-08 will be funded from productivity improvements in the management and administration of administrative services.

(3)

DIMIA As the increased efficiency dividend is being met from the Corporate Priorities pool for 2005-06 it is not expected to have any impact on staffing for that year. The impact on staffing in 2006-07 and later years has not yet been determined and will depend on how the additional funding priorities are to be met in each year. This will be considered in the context of internal budget allocations.

MRT/RRT The increased efficiency dividend is not expected to have any impact on staffing in 2005-06. The impact on staffing in 2006-07 and later years has not yet been determined and will depend on how the additional funding priorities are to be met in each year. This will be considered in the context of internal budget allocations.

TSRA Staffing for TSRA has increased from 44 in 2002-03 to 50 in 2004-05. This increase is a result of partnership agreements with other agencies and support for delivery of their programs. The increased dividend will have no immediate impact on TSRA staff numbers.

(4)

DIMIA As the increased efficiency dividend is being met from the Corporate Priorities pool for 2005-06 it is not expected to have any impact on specific programs in that year. The impact in 2006-07 and later years has not yet been determined and will depend on how the additional funding priorities are to be met in each year. This will be considered in the context of internal budget allocations.

MRT/RRT The increased efficiency dividend is not expected to have any impact on specific programs in 2005-06. The impact in 2006-07 and later years has not yet been determined and will depend on how the additional funding priorities are to be met in each year. This will be considered in the context of internal budget allocations.

TSRA Meeting the required dividend has been achievable to date but the TSRA's capacity to deliver programs is likely to be significantly reduced with future increases in the dividend.

(5)

DIMIA The additional efficiency dividend is not expected to affect delivery of DIMIA's core functions.

MRT/RRT The additional efficiency dividend is not expected to affect delivery of the MRT/RRT core functions.

TSRA Meeting the required efficiency dividend has been achievable to date. However, over time the effect of increasing the efficiency dividend through reducing administrative capacity to deliver programs will eventually result in reduced staff development and training, and reduced quality of accommodation, which will affect the TSRA's ability to recruit and retain quality professional staff in a remote locality.

(6)

DIMIA Graduate recruitment is an integral part of DIMIA's workforce and succession planning. Funding is set aside for this program each year. As the increased efficiency dividend for 2005-06 is being met from within the Corporate Priorities pool it will not impact on DIMIA's graduate recruitment plans for 2006. The impact on 2007 or later years' graduate intakes has not yet been determined.

MRT/RRT The MRT/RRT do not have a graduate recruitment program.

TSRA TSRA does not have a graduate recruitment plan. We have in place a tertiary scholarship program that caters for 6 tertiary students every year. An ongoing requirement to deliver increasing efficiency dividends may reduce TSRA's capacity for ongoing commitment to this program in the future.

(7)

DIMIA The increased efficiency dividend is unlikely to impact on DIMIA's ability to retain experienced staff in 2005-06, however the impact in later years will depend on how management determines the savings should be funded.

MRT/RRT The increased efficiency dividend is unlikely to impact on MRT/RRT's ability to retain experienced staff in 2005-06, however the impact in later years will depend on how management determines the savings should be funded.

TSRA The difficulties in retention of experienced staff are exacerbated in this remote area. Cost of recruiting to a remote locality, including relocation expenses, and expenses related to retention of staff (e.g. provision of adequate subsidized housing, maintenance of ageing stock), is very high. These are administrative costs. TSRA's ability to maintain this effort will be reduced by requirements to deliver further increases in the dividend in future years.

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(9) Output: Internal Product

Senator Carr asked:

1. How many staff are covered by AWAs in your Agency/Department?
2. Can you provide a break down of AWAs by gender and by classification?
3. Can you tell me how many of the staff on AWAs are paid more than the band for their classification under the certified agreement?
4. Why were these staff not simply promoted to a higher classification?

Answer:

1. 304 Department of Immigration and Multicultural and Indigenous Affairs' (DIMIA) employees were covered by an AWA as at 31 May 2005.
2. The following is a break down of DIMIA AWAs by gender and classification:
 - SES employees – 35 female and 52 male employees;
 - Executive Level employees & equivalent – 81 female and 119 male employees; and
 - APS Level employees – 6 female and 11 male employees.
3. The AWAs for 22 DIMIA employees include a salary above the band for their classification under the certified agreement. In addition, the AWAs for a further 144 DIMIA employees that include a salary within the band for their classification under the certified agreement also include either a responsibility allowance or a retention bonus.
4. Employees who receive salaries above the band for their classification under the certified agreement or receive a responsibility allowance or retention bonus may do so for the following reasons:
 - the employee is performing a significantly broader role or has additional responsibilities than is usually required at this classification level but the role does not warrant reclassification to the next level; and/or
 - to maintain, the employee's existing salary where they have transferred from another APS agency with a higher top salary level than that of the equivalent DIMIA salary range; and/or

- the particular skill sets required are of a technical or specialist nature which are in high demand in all employment sectors.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(10) Output 1.1: Non-Humanitarian Entry and Stay

Senator Bartlett (L&C 46) asked for a copy of the research done by Melbourne University on working holiday visas.

Answer:

Attached is a copy of the report, "The Working Holiday Maker Scheme and the Australian Labour Market", by Glenys Harding and Elizabeth Webster (Melbourne Institute of Applied Economic and Social Research, the University of Melbourne). The report was released in September 2002.

This can also be viewed electronically from the DIMIA website at:
www.immi.gov.au/research/publications/whm.

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(11) Output 1.1: Non-Humanitarian Entry and Stay

Senator Bartlett (L&C 46) asked: "Are you able to tell me how many of those (slightly different working holiday visas for people from Iran) have been granted?"

Answer:

At 16 June 2005, a total of 325 Work and Holiday (subclass 462) visas have been granted to Iranian nationals.

In 2003-04, 82 Work and Holiday visas were granted to Iranian nationals.

In 2004-05, to 16 June 2005, 243 Work and Holiday visas were granted to Iranian nationals.

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(12) Output 1.1: Non-Humanitarian Entry and Stay

Senator Bartlett (L&C 48) asked:

With regard to the change that was announced last year enabling people on TPVs to apply for other visas, can you give me an indication of how many people have taken up the option?

Answer:

As at 15 July 2005 a total of 34 applications have been received from TPV holders for visas other than protection visas. These have included:

- 12 application under the Regional Sponsored Migration Scheme of which 3 have been granted and one application withdrawn,
- 7 applications under the Employer Nomination Scheme of which 5 have been granted and one application withdrawn,
- 14 spouse applications of which 7 have been granted and one withdrawn, and
- 1 application under the 422 sub class a Medical Practitioner (Temporary) visa that has been granted.

As at 15 July 2005 the remaining 15 application were undergoing processing assessment and checks.

Of the three applications that were withdrawn the persons were subsequently granted sub-class 866 (Protection) visas.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(13) Output 1.3: Enforcement of Immigration Law

Senator Kirk (L&C 48) asked:

Provide an update on the number of student visa cancellations and a breakdown of the reasons for the cancellations.

Answer:

The total number of student visas cancelled during 2004-05 as at 31 March 2005 is 6,165.

Student Visa Cancellations by Reason for 2003-04 and 2004-05 program years

Cancellation Reason	2003-04	2004-05 (Jul-Mar)
Reason code 5 - Student Completed Course (Early)	710	540
Reason code 6 - Student did not Commence Course	443	364
Reason code 7 - Student course Cancelled (Provider still operating)	2	0
Reason code 8 - Student non-attendance at Classes	1,670	1,399
Reason code 9 - Student left provider (transfer to course at another provider)	310	233
Reason code 10 - Student failed to meet course requirements	1,624	990
Reason code 11 - Student Course cancelled - left provider (Provider still operating)	40	10
Reason code 12 - Student unable to start course (provider suspended)	1	0
Reason code 14 - Visa issued for Cancelled COE	35	34
Reason code 15 - Student Deferral	388	291
Reason code 16 - Cessation of Studies/Enrolment cancelled	1,989	1,519
Others	1,031	785
Total	8,245	6,165

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(14) Output 1.3: Enforcement of Immigration Law

Senator Kirk (L&C 49) asked:

Could you give us some information about the Sydney Business and Travel Academy? Has there been any investigation into that academy? What is the consequence if they do not comply with the production notice?

Answer:

DIMIA has served four production notices on the Sydney Business and Travel Academy (SBTA) between November 03 and May 05. Three of the production notices related to enquiries to determine whether individual students had breached their visa conditions. A fourth notice was issued as part of a broader enquiry, concerning a number of education providers, where there were concerns that students had supplied fraudulent documentation during enrolment. There is no evidence that the SBTA and other providers were implicated in fraudulent activity.

The SBTA has co-operated with the Department and complied with the production notices served. The Migration Act provides the following offences in relation to production and attendance notices:

- A person who refuses or fails to comply with a production or attendance notice is guilty of an offence. Maximum penalty imprisonment for 6 months.
- A person who gives false or misleading information in the course of complying or purporting to comply with a production or attendance notice is guilty of an offence. Maximum penalty imprisonment for 12 months.
- A person who gives or shows an authorised officer a document that is false or misleading in a material particular, in the course of complying or purporting to comply with a production or attendance notice, is guilty of an offence. Maximum penalty imprisonment for 12 months.

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(15) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk (L&C 50) asked:

In relation to the education agents who are offshore, provide a copy of the discussion paper issued by the Minister.

Answer:

Please see attached. The paper is also available electronically at www.immi.gov.au/general/agent_reg_paper/



Australian Government

**Department of Immigration and
Multicultural and Indigenous Affairs**

Discussion Paper

**OPTIONS FOR REGULATING
MIGRATION AGENTS OVERSEAS AND
THE *IMMIGRATION* RELATED ACTIVITIES OF
EDUCATION AGENTS**

May 2004

Foreword

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) manages the permanent and temporary entry of people to Australia, enforces immigration law, settles migrants and refugees, promotes the benefits of citizenship and cultural diversity, and works with other Portfolio agencies and departments to advance the social, economic and cultural interests and status of Indigenous people.

Many visa applicants, sponsors and review applicants engage migration agents to obtain immigration advice and assistance. DIMIA and the Migration Agents Registration Authority (MARA) have been working to improve the professional standards within the migration advice profession and address the conduct of unscrupulous agents. Currently only Australian based migration agents must be registered, leaving a significant group of unregistered overseas migration agents; some of whom are particularly problematic. DIMIA and the MARA are examining ways of extending the current regulatory scheme to the overseas environment.

As part of the temporary entry program, DIMIA develops and administers visa arrangements that facilitate the growth of Australia's education export industry through the entry to Australia of genuine full-time students. Integral to this is managing and ensuring the integrity of the student visa program assisted by the Department of Education, Science and Training (DEST).

As part of its international education program, DEST promotes Australia's educational capabilities overseas and develops the policy and legislative framework to support the internationalisation and export of Australian education and training services.

The Education Services for Overseas Students (ESOS) Act 2000 and the associated National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students developed by DEST, place requirements upon education providers to monitor their agents, including overseas agents, and imposes penalties for breaching this duty.

While it is arguable that there is a fine line separating the assistance provided by an education agent onshore to students and the immigration assistance provided by a registered migration agent, in the overseas environment, there appears to be little difference between the assistance given by an education and a migration agent.

This paper, which focuses on possible mechanisms for regulating migration agents overseas and the *immigration* related activities of education agents in Australia and overseas, was developed in consultation with DEST. The broader question of regulating other aspects of education agent activities is not addressed in this paper. This is a matter for the Education, Science and Training portfolio.

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Acronyms

ACPET	Australian Council for Private Education and Training
AIEPB	Affiliation of International Education Peak Bodies
AVCC	Australian Vice-Chancellors' Committee
CPD	Continuing Professional Development
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DEST	Department of Education, Science and Training
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DFAT	Department of Foreign Affairs and Trade
DITR	Department of Industry, Tourism and Resources
EA	English Australia
EAAA	Education Agent Association of Australia (proposed)
ESOS Act	Education Services for Overseas Students (ESOS) Act 2000
ICSE	Integrated Client Service Environment
IRIS	Immigration Records Information System
IDP	IDP Education Australia
IELTS	International English Language Testing System
ILAA	Immigration Lawyers Association of Australasia
MAPLS	Migration Agents Policy and Liaison Section, DIMIA
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia
MOU	Memorandum of Understanding
NCISA	National Council of Independent Schools' Association
LEE	Locally Engaged Employees of DIMIA
PRC	Peoples Republic of China
TDA	Technical and Further Education (TAFE) Directors Australia

1. Introduction

- 1.1. The continued and increasing importance and involvement of third party service providers (such as migration agents) in client service delivery is acknowledged in the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA's) Strategic Plan, Investing for 2005 and Beyond. The involvement of these third parties helps DIMIA to achieve operational efficiencies.
- 1.2. For example, by ensuring that visa applicants apply for the correct visa and lodge complete "decision-ready" applications, quality migration agents are not only providing a service to clients but are also contributing to efficient and cost-effective visa processing by DIMIA. While having a more limited role, education agents may similarly assist their clients, DIMIA and education providers.
- 1.3. The conduct and professionalism of migration and education agents has therefore a very real impact on the clients of DIMIA and education providers.
- 1.4. Many clients of migration agents are particularly vulnerable – they often lack comprehension of the English language, legal knowledge and knowledge of the complexities of migration law. In these circumstances, many place a great deal of trust in their agent – a trust that is sometimes abused.
- 1.5. Clients of education agents may be even more vulnerable despite many having better English skills. The potential for even more significant consumer protection issues exist in relation to overseas students because of the many young secondary school and tertiary students now wishing to come to Australia. In these circumstances, unscrupulous education agents have, among other things, defrauded students and their parents, provided incorrect advice, and been involved in immigration fraud.
- 1.6. In view of the above and the other issues highlighted in this paper (see 2.4 and 3.4 in particular), it is important to:
 - in conjunction with the Migration Agents Registration Authority (MARA):
 - continue to promote and improve professional standards within the migration agent profession and address the conduct of unscrupulous registered migration agents;
 - examine extending the current regulatory scheme to the significant group of unregistered overseas migration agents; and
 - introduce measures to more comprehensively track the activities and performance of education agents in relation to immigration and visa related matters:
 - through some form of registration mechanism; and
 - consider the possibility of a regulatory scheme focussing on their role in immigration and visa matters.
- 1.7. Benefits of closer tracking of education agents include:
 - facilitation of electronic lodgement of visa applications and associated faster processing;
 - better information for industry regarding agent performance; and
 - unscrupulous agents being appropriately sanctioned.

2. Migration Advice Profession

2.1. Activities

- 2.1.1. There were 3,288 Australian registered migration agents as at 31 March 2004. Registration is currently limited to Australian citizens and residents and certain New Zealanders. The majority of agents work in Australia, with approximately ninety percent working on a commercial or for-profit basis.
- 2.1.2. A small number of migration agents are directly contracted by DIMIA, under the Immigration Advice and Application Assistance Scheme, to provide assistance to onshore Protection visa applicants. In addition to complying with the *Migration Act 1958* (the Act) and the Migration Agents Registration Authority (MARA) Code of Conduct, delivery of these services on behalf of DIMIA must also be in accordance with service and performance standards set out in individual service agreements with these agents.
- 2.1.3. Some Australian registered migration agents also have overseas offices or work in partnership with offshore migration agents not registered in Australia.
- 2.1.4. The 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry (the 2002 Review) estimated that 2,500 offshore migration agents regularly lodge applications on behalf of clients at Australian posts overseas. These offshore migration agents are outside the authority or jurisdiction of the MARA and are therefore unregistered. If the offshore profession is growing at a similar pace to that onshore, it is likely that there are now over 3,000 unregistered migration agents operating offshore.
- 2.1.5. The number of migration agents operating offshore varies markedly from country to country as does the percentage of applications they lodge. There is a particularly high incidence of offshore agent involvement in some visa classes, such as students and business.
- 2.1.6. Although there is a large variation across DIMIA overseas posts, some sixty percent of all agents seen by posts are Australian registered migration agents.
- 2.1.7. Visa applicants, sponsors or cancellation review applicants primarily engage migration agents to obtain immigration assistance on the basis that these agents have knowledge of, or experience in, migration procedure. In broad terms, such immigration assistance may involve:
- advising an applicant about an application; or
 - preparing or helping to prepare a visa application, cancellation review application, nomination or sponsorship; or
 - preparing for proceedings before a court or review authority in relation to a visa application or cancellation review application; or
 - representing a visa applicant or cancellation review applicant in proceedings before a court or review authority.

- 2.1.8. Further to the above, most agents also:
- lodge the visa application and fee with DIMIA on behalf of a client;
 - undertake related clerical work;
 - provide or arrange translation or interpreting services to help prepare a visa application or document; and
 - are nominated by a visa applicant on Form 1231 'Appointment of authorised person' as the 'authorised recipient' for communication.
- 2.1.9. Migration agent activities, the nature of the service provided by them to clients, and the way migration agents interact with DIMIA will increasingly be affected by the continuing implementation of DIMIA business operations and client service reforms.
- 2.1.10. To address increasing workloads overseas, improve timely responses to client and migration agent inquiries, visa processing times, consistency of decision making and integrity checking, DIMIA is increasingly repatriating visa processing work to onshore processing centres of excellence.
- 2.1.11. Integral to this new way of doing business, also referred to as "Global Working or Globalisation", is the increasing use of electronic visa (e-visa) lodgement (e-lodgement) and processing. This allows DIMIA to process visas in one location, rather than in each of the countries where applications are lodged. The results of this are significant program delivery efficiencies that include better client service, and greater caseload integrity.
- 2.1.12. Global Working and e-lodgement are obviously a marked departure from the very long- standing practice of lodging all offshore visa applications at overseas posts using hardcopy visa application forms, and the post where an application was lodged also then processing it.
- 2.1.13. To date, the following onshore processing centres of excellence have been established:
- Adelaide Skilled Processing Centre;
 - Adelaide Chinese Student Processing Centre;
 - Canberra Offshore Work and Holiday Visa Applications from Iran Processing Centre;
 - Canberra Special Eligibility and Distinguished Talent Processing Centre;
 - Hobart Dependant Child Visa Processing Centre;
 - Hobart Sponsored Professional Development Visa Processing Centre;
 - Hobart Working Holiday Maker Processing Centre;
 - Hobart Tourist Visa (Short Stay) Processing Centre;

- Perth Business Skills Processing Centre;
- Perth Offshore Parent Centre;
- Perth Offshore Students Processing Centre;
- Perth Retirement (Temporary Entry) Processing Centre;
- Perth Resident Return Visa Processing Centre;
- Perth Tourist (Long Stay) Processing Centre;
- Sydney Entertainer Visa and associated Sponsorship Processing Centre;
and
- Sydney Health Processing Centre for Selected Repatriated Visa Subclasses.

2.1.14. DIMIA will also be repatriating onshore the processing of sponsored business visitor applications and sponsored visitor applications in 2005. In the longer term DIMIA is looking to centralise the lodgement and finalisation of a number of other visa applications. E-lodgement and other process automation will be crucial in enabling this.

2.1.15. E-lodgement arrangements are currently available for:

- offshore Student visas (Assessment Level 1 only);
- offshore Short Stay Visitor visa for United Arab Emirates and Kuwait nationals;
- offshore Working Holiday Maker visas;
- offshore/onshore Long Stay Business visas;
- onshore initial/further stay Student visas & associated permission to work;
- onshore Visitor Extension applications;
- onshore Resident Return visas (3 months and 5 years); and
- onshore Citizenship applications.

2.1.16. It is clear that the continued rollout of DIMIA's global working and e-lodgement strategy will significantly re-shape migration agent activities. Already, the blurring of the once clear demarcation between DIMIA offshore and onshore visa operations and processing has impacted on migration agent activities. As even greater numbers of offshore visa applications are lodged and decided onshore so too will the environment in which migration agents work change. This situation could potentially lead to more and more partnerships forming between offshore migration agents and onshore migration agents; thus making overseas agent registration and regulation all the more important to the protection of consumers.

2.2. Review

- 2.2.1. The regulatory arrangements in relation to the migration advice profession have been the subject of three reviews; one (1996-97) which led to the move away from government regulation and the implementation of statutory self-regulation in 1998; another (1999) that reviewed statutory self-regulation of the industry; and the most recent review, the 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry (the 2002 Review). A copy of the report of the 2002 Review can be found on DIMIA's website (www.immi.gov.au under 'information resources/ publications').
- 2.2.2. The 2002 Review made 27 recommendations to improve the migration advice profession, with the Government indicating in September 2002 that it will act on all recommendations in the report.
- 2.2.3. In respect of the activities of migration agents offshore, the 2002 Review had recommended that:
- To strengthen consumer protection to visa applicants offshore, amend the legislation to extend registration to foreign nationals.*
- This would include a measure limiting the categories of people who can be appointed as representatives or agents of a visa applicant.*
- (Recommendation 20)
- 2.2.4. The extent to which the profession has come under review is a measure of the Government's commitment to further reform the migration agents profession to offer better protection to consumers, many of whom are particularly vulnerable. The profession will be reviewed again in approximately five years.

2.3. Regulation

- 2.3.1. The migration advice profession was largely unregulated until 1992 when government regulation was introduced in response to:
- exploitation of consumers by some agents;
 - the lack of protection for vulnerable consumers; and
 - an increase in the number of consumer complaints against agents.
- 2.3.2. Following the first review of the migration advice profession, government regulation was replaced with statutory self-regulation in 1998.
- 2.3.3. The Migration Institute of Australia (MIA) - the peak representative body - was appointed in 1998 to act as the Migration Agents Registration Authority (MARA) to regulate the Australian migration advice profession. The MARA has the power to take action to ensure that registered agents act in accordance with the requirements of the *Migration Act 1958* (the Migration Act) and the MARA Code of Conduct (the Code).

- 2.3.4. The powers of the MARA have been steadily increased over time through legislative and regulatory changes to implement review recommendations. As soon as practicable, the Government will be bringing forward a number of other legislative changes to implement many of the remaining 2002 Review recommendations. These steps will be further aimed at removing unscrupulous agents from the industry/profession and ensuring consumer protection.
- 2.3.5. The second of several packages of changes was the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill passed by the Senate on 23 March 2004 and will come into effect on 1 July 2004.
- 2.3.6. The Bill includes strong consumer protection measures and tough provisions against unscrupulous agents, who promote schemes that exploit vulnerable clients and encourage applications with no chance of success.
- 2.3.7. Some of the main features of the Bill are:
- new powers for DIMIA to refer agents, who lodge large numbers of applications with no chance of success, to the MARA for sanctioning;
 - new criminal offences for agents who fail to declare their involvement, in visa or review applications;
 - new powers for the MARA to publish sanction information immediately, without waiting for appeal proceedings, as well as a list of recently de-registered agents;
 - protection from civil action for people (including DIMIA staff) who make complaints against agents to the MARA or DIMIA;
 - provisions enabling increased sharing of information about agents of concern between the Migration Review Tribunal, Refugee Review Tribunal, the MARA and DIMIA;
 - provisions enabling mandatory professional indemnity insurance for registered migration agents to be prescribed; and
 - provisions ensuring agents can not avoid the effects of sanction action taken against them via lengthy appeal proceedings.

2.4. Need for further Reform

- 2.4.1. At present, the MARA only has jurisdiction to regulate the conduct of migration agents who operate within Australia and the small number of Australian registered agents who work offshore. Currently, there are some 3,300 migration agents registered with the MARA.
- 2.4.2. Most people operating offshore are unregistered migration agents as they remain outside the jurisdiction of the MARA's control.
- 2.4.3. DIMIA's ability to take action in relation to unprofessional conduct by such unregistered agents is limited. Under the current legislation, action is restricted to a range of policy and administrative measures. For onshore

agents, the Commonwealth Director of Public Prosecutions on behalf of DIMIA prosecutes unregistered Australian based agents. There are penalties ranging up to ten years imprisonment for people who practise in Australia as unregistered agents.

2.4.4. During January 2002, Migration Agents Policy and Liaison Section (MAPLS) surveyed overseas posts to ascertain the quality of service provided to clients and DIMIA by overseas migration agents (Australians and foreign nationals). The results of the survey appear at Attachment A. Some key findings include:

- many agents do not keep up with legislation/procedural changes, frequently ask DIMIA officers very basic questions and are unaware of local conditions and documentation;
- a majority of posts reported that agents have limited competence, reporting that applications received are generally incomplete, constant requests are made for extra time to submit a complete application, and agents are also slow to respond to requests from DIMIA officers;
- the majority of posts reported that many agents are discourteous to staff, do not pass on requests to clients, take on cases with little chance of success, and appear to charge unnecessarily high fees. Some posts also reported that some agents were suspected of lodging fraudulent documents and trying to obtain favours from Locally Engaged Employees (LEE); and
- several posts distinguished between Australian registered agents as more knowledgeable, generally competent, and more professional in their dealings with clients in comparison to local agents, in particular 'student agents'.

2.4.5. Further to the 2002 Review recommendation regarding overseas practice, DIMIA is currently examining options for addressing the issue of regulation of overseas migration agents. DIMIA is also examining ways of tracking, monitoring and regulating the immigration related activities of education agents simultaneously, due to the overlapping activities of these two groups.

2.5. Key Stakeholders

2.5.1. In developing options for regulating overseas migration agents, DIMIA will be consulting with key stakeholders, including the MIA, the MARA, and the Immigration Lawyers Association of Australasia (ILAA). The development of this discussion paper is the first step in this process.

2.5.2. It will also be useful to test the proposed arrangements with DIMIA staff, particularly those processing visa applications overseas, but also within state and territory offices and in Central Office, including areas involved in legal opinions, legislation, visa architecture, overseas resources and liaison and client services.

3. Education Advice Profession – Immigration related activities

3.1. Activities

- 3.1.1. The key role of education agents is to identify prospective students for institutions that provide education services in Australia, ie schools, English language colleges and tertiary institutions such as universities and technical colleges. Some education agents may also assist the student with matters relating to his or her visa application.
- 3.1.2. The number of education agents is unknown but could be up to 10,000 worldwide, including an anecdotal 2,000+ in the Peoples Republic of China (PRC); although as at mid September 2003 there were only some 270 agents registered with the PRC Ministry of Education. Similarly, there is no solid information on the numbers of onshore education agents but DIMIA estimates that there could be some 3,000.
- 3.1.3. Education agents operate both as individuals and as companies. The people who deal directly with the student clients are generally known as “student counsellors”.
- 3.1.4. IDP Education Australia is amongst the largest education agencies. It promotes Australian education overseas, acts as an education agent on behalf of various universities, and administers the International English Language Testing System (IELTS) in Australia.
- 3.1.5. There is no peak body in Australia representing education agents, although informal education agent groups may exist across Australia. For example, in Sydney a group of some fifteen agents meets regularly to discuss issues of practice and conduct within their profession. The majority of the Sydney group are also registered migration agents.
- 3.1.6. There is an informal national peak body for education providers; the Affiliation of International Education Peak Bodies (AIEPB). Members of the AIEPB are the Australian Vice-Chancellors’ Committee (AVCC), English Australia (EA), National Council of Independent Schools’ Association (NCISA), Australian Council for Private Education and Training (ACPET), Australian Council of Independent Vocational Colleges (ACIVC), Government Schools, and TAFE Directors Australia (TDA). However, not all Australian international education providers are represented by these organisations.
- 3.1.7. All education providers who offer courses to international students are required by the *Education Services for Overseas Students Act 2000* (ESOS Act) to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). There are approximately 1,200 education providers registered under the CRICOS to offer courses to overseas students in Australia. Many of these education providers employ education agents and registered migration agents. Additionally, some education agents are also registered migration agents (whilst the exact number is not known it is estimated by MARA to be twenty-five percent of the approximately 3,300 registered migration agents).

3.1.8. Education agents in Australia who are not registered migration agents are able to undertake the following activities, as they do not amount to providing 'immigration assistance' under the Migration Act:

- lodging (posting or delivering) a visa application and fee with DIMIA on behalf of a client;
- doing clerical work to prepare (or help prepare) a visa application at the request of an applicant or registered migration agent, which could include writing or typing an application form, indicating where names, addresses and other information must be put on a form or collating and copying documents relevant to an application;
- providing translation or interpretation services to help prepare a visa application or other document;
- providing generic advice to a person that he or she must apply for a visa;
- passing on to a person information produced by a third party, without giving substantial comment on or explanation of the information, eg information publicly available from DIMIA; or
- being nominated by a visa applicant on a Form 1231 'Appointment of authorisation person' as the 'authorised recipient' for communication.
 - This essentially means to receive DIMIA correspondence on behalf of a visa applicant and may lead to translating or passing on the correspondence to the applicant without providing substantial comments on or a detailed explanation of the substance of the correspondence.

3.1.9. Activities that are restricted to registered migration agents are:

(1) *providing 'immigration assistance'*

Under the Migration Act a person must be registered if he or she uses or purports to use *knowledge of or experience in migration procedure to advise an applicant about an application, or prepare or help to prepare a visa application, cancellation review application, nomination or sponsorship*. A person who provides immigration assistance but is not registered as a migration agent is, with limited exceptions, in breach of the Migration Act.

(2) *asking for or receiving a fee for immigration representations*

The Migration Act also provides that a person who is not a registered migration agent must not ask for or receive any fee or other reward for making immigration representations, ie communicating with DIMIA or the Minister on behalf of an applicant or sponsor. For example, a person who is not registered as a migration agent must not receive a fee or reward for seeking to expedite another person's application by:

- telephoning DIMIA for a progress report or to ask whether there are any documents missing; or

- telephoning DIMIA in the presence of an applicant.

Such action may amount to an offence under the Migration Act, the penalty for which is up to ten years' imprisonment.

- 3.1.10. While it is arguable that there is a fine line separating the assistance provided by an education agent onshore to students and the immigration assistance provided by a registered migration agent, in the overseas environment, there appears to be little difference between the assistance given by an education and a migration agent.
- 3.1.11. In the absence of any firm data on the extent of education agent involvement in student visa applications, the numbers of student visa grants offer the best available indicator (albeit limited) of the possible volume of business conducted by education agents. Additionally, one could expect higher levels of involvement by education agents in countries where English is not the main language and where cultural, political and legal systems are significantly different from Australia's.
- 3.1.12. Table 1 at Attachment B presents figures on all offshore and onshore student visa grants, by the country of citizenship, for the 2001-02 Financial Year for the top 12 countries. These top 12 countries account for almost 75 percent of student visa grants. All but one (USA) are countries where English is not the main language. The highest proportion of student visa grants are to PRC nationals (14 percent), followed by the Republic of Korea, Japan and Indonesia (each at 7.3 percent). Hong Kong, Malaysia and Thailand come in at 6.9, 6.2 and 5.9 percent, respectively.
- 3.1.13. Further to Section 2.1 (above) in relation to migration agents, education agent activities, the nature of the service provided by education agents to clients, and the way education agents interact with DIMIA will also increasingly be affected by the continuing implementation of DIMIA business operations and client service reforms.
- 3.1.14. For example, since August 2001 student visa applicants (subclass 573 Higher Education) from Norway, Sweden and United States of America (USA) have been able to lodge electronic applications via the Internet. Additionally, from 1 July 2002, certain Assessment Level 1 students outside of Australia have been eligible to apply for, and be granted, their Student visa via the internet (Student e-visa). Under this arrangement, a Student e-visa may be granted:
- electronically immediately after lodgment ('immediate auto-grant') where no health assessment or additional information/follow-up are required;
 - electronically ('delayed auto-grant') where a health assessment or health assessment and additional information/follow-up are required; or
 - manually ('manual grant') by the Perth Offshore Students Processing Centre (POSPC) where additional information/follow-up are required but either no health assessment is required or health clearance has been finalised through eHealth.

- 3.1.15. The POSPC is currently involved with the following student related visa sub-classes:
- subclass 570 – Independent ELICOS;
 - subclass 571 – Schools;
 - subclass 572 – Vocational Education and Training;
 - subclass 573 – Higher Education;
 - subclass 574 – Masters and Doctorate; and
 - subclass 575 – Non-award Foundation/Other.
- 3.1.16. Further, from March 2002 all Chinese student applications have been processed by the Adelaide Chinese Student Processing Centre (ACSPC). From July 2002 this centre also took over assessing certain Chinese student applications before forwarding them to the Beijing post for finalisation.
- 3.1.17. DIMIA's Strategic Plan, Investing for 2005 and Beyond, envisages that DIMIA's On-Line Lodgement Service will be expanded, inter alia, to encompass all onshore Student visas, as well as, selected offshore Student visas. In line with this, students in Australia who hold a student visa (regardless of assessment level), or visitors and other temporary resident visa holders, who are Assessment Level 1, can apply directly over the internet for a student visa. Student visa holders may also apply on the internet for permission to work.
- 3.1.18. Additionally, it is envisaged that similar arrangements could be put in place to facilitate the e-lodgement of student visas by agents as already exists for the electronic lodgement of Subclass 457 - Temporary Business (Long Stay) sponsorship, nomination and visa applications (ie e457), and Subclass 676 - Tourist (Short Stay) visa applications (ie e676).
- 3.1.19. Clients may access the e457 system independently, via DIMIA's website, www.immi.gov.au. Alternatively, if clients are likely to be lodging at least ten 457 applications per year, they may set up an Established Client Account. Established Client Account holders are called, simply, "Established Clients" and are in the main migration agents and employers.
- 3.1.20. Being an Established Client allows those who regularly make a high volume of 457 applications to access a number of resource saving features including:
- bypassing the general information and terms and conditions screens;
 - pre-populating applications with contact details; and
 - the ability to generate template nomination applications.
- 3.1.21. Electronically lodged 457 applications will generally receive priority processing over paper lodged applications. This priority applies to applications that have

been fully completed and where all relevant documentation has been forwarded in support of the application.

- 3.1.22. Similarly, from 10 March 2003, applicants from the United Arab Emirates (UAE) have been eligible to lodge an application for a visitor visa (Tourist Short Stay, Subclass 676) over the internet. From 29 March 2004, nationals from Kuwait have also had access to this service, which will be further extended from 1 July 2004 to include European Union (EU) accession countries.
- 3.1.23. Applicants can apply for their visa online and pay the visa application charge by credit card. The current processing times are 7-10 days. Applicants are advised by email when a decision is made on their application.
- 3.1.24. The e676 facility already provides an efficient alternative method for lodging and processing visitor visa applications from UAE and Kuwait passport holders. From 1 July 2004, selected travel agents will also have access to the e676 facility via a logon screen and applicants will be able to lodge their e676 application through travel agents. This will also enable DIMIA to monitor applications lodged by travel agents and compare these to applications lodged by individuals.
- 3.1.25. Similar arrangements to e457 and e676 could be introduced for Student visa applications. Indeed, DIMIA is currently seeking to involve education agents in a program where they will play a vital part in lodging Student visa applications over the internet. Education agents in four countries (India, Thailand, Indonesia and the PRC) will be invited to nominate to be included on an electronic visa application initiative using the internet planned for commencement in mid-2004.
- 3.1.26. Initially, only a small number of agents will be assisting in a systems testing phase. Following the systems testing and a positive assessment of the initiative, further agents will be granted permission to use the e-lodgement facility for Student visa applications. While there already exists an e-lodgement facility for Student visas, the current facility is limited to students from low risk countries and does not have any component of education agent involvement.
- 3.1.27. Eventually, students worldwide will be able to lodge applications electronically, with the requirement that their visa applications are lodged through education agents who are already known to DIMIA and have been granted access to the e-lodgement system.
- 3.1.28. Clearly the student area is a significant element of DIMIA's work repatriation, globalisation and e-lodgement strategy, with an increasingly important role to be played by agents in helping DIMIA to realise operational efficiencies and deliver better client service. In order to maximise e-lodgement take-up, DIMIA continues to review and enhance the efficiency and user-friendliness of its business processes and associated systems. In line with this, the e457 and e676 lodgement systems are designed to be self explanatory and easy to use.

3.2. Review

- 3.2.1. The performance and conduct of education agents in relation to immigration and visa related activities has not been the subject of any review process.

3.3. Regulation

- 3.3.1. Education agents are not directly subject to any Australian registration scheme or regulatory framework in relation to immigration and visa related activities.
- 3.3.2. However, the *Education Services for Overseas Students Act 2000* and the associated National Code of Practice developed by DEST places requirements upon education providers to monitor their agents, including overseas agents, and imposes penalties for breaching this duty. A copy of the DEST National Code can be found on the DEST website (www.dest.gov.au).

3.4. Need for Reform

- 3.4.1. The question of whether education agents should be registered has been around for some years. There have been ongoing but ad hoc discussions between DIMIA, the Department of Education, Science and Training (and previously the Department of Education, Training and Youth Affairs) and the MARA over the past few years.
- 3.4.2. This paper considers the possibility of regulating the immigration related activities of education agents. The broader question of regulating other aspects of education agent activities is not addressed in this paper. This is a matter for the Education, Science and Training portfolio.
- 3.4.3. Issues regarding the immigration related activities of some education agents include:
 - charging unreasonably high fees for their recruitment activities and associated immigration related work;
 - advertising deceptively overseas;
 - lodging visa applications supported by fraudulent academic records, financial statements and employment statements;
 - providing wrong/deliberately false advice to potential applicants in relation to conditions associated with student visas (eg that they do not have to attend classes);
 - lending money to applicants to allow them to meet the financial requirements under the student visa program (this has been countered in part by measures requiring students to show a savings history); and
 - using the student visa program to bring non-genuine students into Australia for non-academic purposes, including to work in brothels.
- 3.4.4. For example, in relation to Australia's largest source country for overseas students, DIMIA's Beijing post reports that for 2002-03 Financial Year:
 - fraud remains a significant problem in relation to the PRC student caseload, but with high variance by application source province. The highest risk provinces for student applications were Xinjiang, Fujian,

Neimenggu, Hainan, Jilin, Tianjin, Guangxi, Henan, Jiangxi and Shaanxi;

- twenty-seven percent of Beijing post decided student cases were refused, with 10 percent refused on false documents;
- sixty-one percent (9,467) of the total Beijing decided cases were represented by a declared agent, with 39 percent (6,130) not declaring any agent involvement in their applications;
- there were 270 education agents registered with PRC authorities (for the global market) as at September 2003, but DIMIA records show over 300 separate agents were recorded as having assisted more than 5 cases each in their applications for Australia. The top 15 agents represented around 21 percent of the total caseload. Seven of these top 15 agents had refusal rates of 15 percent or higher; and
- there is a perception among decision makers in Beijing that non-registered and non-declared agents are more likely to be involved in fraud than declared agents.

3.4.5. Further to the above, tables 2 - 5 at Attachment C present for 2002-03 student application refusal rates and refused on false documents rates for Beijing post decided cases by application source province in PRC, type of student application fraud detected for Beijing post decided cases, application refusal rates by agent/agency for Beijing post decided student cases, and false documents refusal rates by agent/agency for Beijing post decided student cases.

3.4.6. DIMIA also received anecdotal evidence that some onshore education agents were also providing immigration advice and assistance in contravention of the Migration Act. To address this situation DIMIA provided guidelines in May 2001 for the AIEPB, and education providers to pass to education agents. The guidelines were also placed on DIMIA's website in 2002 and the content has been included in 3.1 above.

3.4.7. DIMIA recommended to AIEPB that education agents either refer students to DIMIA or a registered migration agent, or that education agents consider becoming a registered migration agent themselves.

3.4.8. More recently, as part of the 2003 Budget, the Government announced a number of integrity measures for student visas. Among these was that DIMIA will seek to more comprehensively track the immigration related activities of education agents, to identify those agents who are authorised to act on behalf of Australian educational institutions in recruiting overseas students, and to track their performance.

3.4.9. The registration for education agents should facilitate the monitoring of immigration related activities of education agents and ensure not only the integrity of the overseas student program in Australia, but also the integrity of the wider migration program.

3.4.10. The flow of students into the general migration program (ie former overseas students applying for skilled migration after completing studies) has increased in recent years and it is therefore essential to maintain the integrity of the student visa program. On 1 July 2001, three new onshore Skilled visa sub-

classes (880, 881 and 882) were introduced specifically for overseas students studying in Australia. Additionally, overseas students who have obtained an Australian undergraduate degree or diploma or trade qualification or a PhD are allocated additional points when applying for a sub-class 136 (Skilled – Independent) and 138 (Skilled – Australian – Sponsored) visa. As a result of these measures, overseas students are more readily able to gain access to the skilled migration program than applicants who have not studied in Australia, which heightens the need to ensure the overall integrity of the student visa program.

3.4.11. Table 6 at Attachment D provides an indication of overseas student flow-on into the skilled migration program by country of applicant citizenship for the 2001-02 Financial Year for the 12 top countries. These top 12 countries account for 85 percent of all Skilled visa grants in the 136, 138, 880, 881 and 882 subclasses. The top three countries are India (22.4 percent), the PRC (15 percent) and Indonesia (15 percent), together accounting for 52 percent of all Skilled visa grants in these subclasses.

3.5. Key Stakeholders

3.5.1. In developing options for regulating migration agents overseas and the immigration and visa related activities of education agents, the following key external and internal stakeholders have been identified:

- Department of Education, Science and Training (DEST), including AEI Education Network;
- Department of Foreign Affairs and Trade (DFAT);
- Department of Industry, Tourism and Resources (DITR);
- Department of Prime Minister and Cabinet (PM & C);
- Austrade;
- State and Territory government education departments;
- Affiliation of International Education Peak Bodies (AIEPB) and member organisations;
- MIA/MARA;
- Immigration Lawyers Association of Australasia (ILAA);
- CRICOS registered education providers;
- education agents, including IDP Education Australia;
- National Liaison Committee for International Students in Australia (national international student representative body);
- DIMIA overseas posts, State/Territory offices and sections in Central Office, including areas involved in legal opinions, legislation, visa architecture, student policy and operations, overseas resources and liaison and client services;
- Australian Competition and Consumer Protection Commission; and
- Office of Regulatory Review

3.5.2. The preparation of this discussion paper is the first step in consulting with these and other interested stakeholders about the options that should be considered.

4. Options for regulating migration agents overseas, and monitoring and improving the performance of education agents in relation to immigration related activities

4.1. Migration Advice Profession

4.1.1. DIMIA is currently considering how the registration/regulation arrangements for Australian migration agents might be extended to unregistered offshore migration agents. Two options include:

Option A: Extend the current registration scheme offshore in its present form except with:

- **the threat of administrative sanction rather than criminal penalty for practising while unregistered; and**
- **a greater role for DIMIA in the disciplinary process (similar to the role of DIMIA in relation to the proposed vexatious activity scheme).**

Option B: Option A, plus the introduction of **restricted registration categories** offshore (and onshore) so that:

- **unregistered offshore migration agents could register as migration agents to practise within certain defined areas (eg student, business, skilled, family, protection and humanitarian visas); and while**
- **agents registered in a limited category would be required to pay a registration fee, they would be required to undertake more limited Continuing Professional Development (CPD) activities.**

4.1.2. The Canadian Government is in the early stages of regulating immigration consultants. The Canadian Society of Immigration Consultants was appointed in October 2003 to serve as a self-regulating body for immigration consultants, with the Government anticipating implementing legislation before the end of April 2004.

4.1.3. The May 2003 Report of the Advisory Committee on Regulating Immigration Consultants presented to the Minister of Citizenship and Immigration, Canada, which set the framework for Canada's regulatory scheme, also recommended a tiered system. A copy of the Canadian report can be found on the Citizenship and Immigration, Canada website (<http://cicnet.ci.gc.ca>).

4.1.4. The Canadian Committee, cited the example of the United Kingdom's Office of the Immigration Services Commissioner, and recommended development of levels of practice to allow current immigration consultants to apply for registration, based on their level and area(s) of experience (Recommendation 26).

4.1.5. Although at present there are no details available on the proposed tiered system, the Report indicated that it would be designed with reference to the

three levels of registration available in the UK, which allow for immigration assistance to be provided at different levels of competence and expertise.

- 4.1.6. Immigration levels in the UK are broken down into: 1 - signposting and information (no advice given and therefore no registration required), 2 - general (needs diagnosis and administrative support), 3 - general casework (casework and paper appeals), and 4 - specialist (court advocacy). As part of levels 3 and 4 agents are able to specialise in the areas of naturalisation, asylum, detention, work permits, marriage, and students.
- 4.1.7. Information on the UK scheme can be found on the UK Immigration and Nationality Directorate website (<http://194.203.40.90/>).

4.2. Immigration Related Activities of the Education Advice Profession

- 4.2.1. DIMIA is currently considering options for dealing with the immigration related activities of the education advice profession. Any new arrangements should complement the proposed reforms for extending the regulatory scheme for migration agents offshore, and would also represent a staged approach.
- 4.2.2. *The four options below are not mutually exclusive and some could be adopted in combination.*

Option A: Implement a monitoring scheme

- 4.2.3. This option proposes to link education agents more directly to CRICOS registered education provider(s).
- 4.2.4. Under this arrangement education providers could be informed of any concerns with its education agents in relation to immigration and visa related matters (eg non-bona fides of student visa applications). Provider(s) could disassociate themselves from the particular agent if the concern is found to be valid. This in effect is a “commercial outcomes” based sanction regime, which could be replaced by statutory regulation in the longer term, if required.
- 4.2.5. Alternatively, information on the education agent could be passed on to DEST who could investigate the matter under the existing ESOS arrangements. It would also be useful to DIMIA if education providers could monitor the performance and conduct of education agents in relation to immigration matters; in turn informing DIMIA of agents of concern to them. DIMIA could then investigate the activities of these agents on behalf of the provider(s). Again if the concern is found valid, the provider(s) would disassociate itself from the agent.
- 4.2.6. These mechanisms would place the onus on education providers, and would be consistent with current ESOS obligations. It would be an important step forward in helping to ensure an appropriate professional standard within the education advice profession with regard to immigration and visa matters and removing unscrupulous agents.

Option B: Encourage education agents to become registered migration agents

- 4.2.7. Education agents could become registered migration agents with MARA or a similar organisation under the current statutory regime if they do not register as education agents under Option A.
- 4.2.8. In regard to offshore agents, similar proposals could be implemented as those suggested for the Migration Advice Profession in 4.1.

Option C: Restricted migration agent registration

- 4.2.9. Building on Option B introduce, a form of restricted migration agent registration to allow agents specialising in the education sector to provide immigration related advice only in relation to overseas student visas.
- 4.2.10. Given the current regulatory arrangements for migration agents onshore, the MARA, as the migration advice profession regulator, could also administer the proposed system of restricted agent registration offshore and onshore.
- 4.2.11. Alternatively, a similar organisation to MARA could be set up to cover restricted education agents providing immigration advice.
- 4.2.12. In regard to offshore agents, similar proposals could be implemented as those suggested for the Migration Advice Profession in 4.1.

Option D: Industry/profession self-regulation

- 4.2.13. Implement an industry self-regulation model for education agents representing Australian CRICOS registered education providers. This could apply to onshore and offshore education agents.
- 4.2.14. The Sydney group, in partnership with the MIA, have proposed a model based on industry/profession self-regulation through the formation of a subsidiary MIA company; the proposed Education Agent Association of Australia (EAAA).
- 4.2.15. This proposal focuses on the full range of education agent activities not just the immigration related activities of education agents. The broader regulation of education agent activities is a matter for the Education, Science and Training portfolio and is not addressed in this paper.
- 4.2.16. However, an industry self-regulation model could be developed specifically to govern the immigration related activities of education agents.

5. Full and restricted migration agent and education agent registration - Issues

- 5.0.1. Under both Options A and B for migration agents overseas (see p.20), and Options B, C and D for education agents (pp 21-22), it may make sense that as far as possible the same requirements and conditions be applied onshore and offshore to those people wishing to become, and continue to be, registered migration agents, or education agents providing immigration related services.
- 5.0.2. All offshore migration agents and on-and offshore education agents could be registered on an annual basis by the profession regulator to provide immigration assistance and would be able to renew their registration yearly. The level of registration fees that would be charged would need to reflect the workload for the administrator and perhaps also local factors (eg relative value of currencies).
- 5.0.3. All agents would have to meet certain entry criteria prior to registration and then comply with a universal Code of Conduct for their profession and undertake Continuing Professional Development (CPD). The CPD requirement could again vary for agents holding restricted registration. Transitional provisions in relation to entry requirements and CPD requirements may however be necessary. For example, foreign nationals acting as migration agents offshore may need to be given some time to become registered or be allowed to register initially on the basis of demonstrated competence in immigration related matters over the last five years.

5.1. Competency and Continuing Professional Development

- 5.1.1. It is proposed that as far as possible newly fully registered offshore migration agents should be required to meet the same educational standards as onshore migration agents – to ensure the largely universal application of the registration scheme.
- 5.1.2. Under such arrangements, onshore and offshore education agents who have acquired limited registration as migration agents would be required to complete a more limited form of CPD and meet distinct entry standards.
- 5.1.3. This would mean that the MIA and other CPD providers would need to ensure that all agents operating offshore are able to complete the prescribed educational requirements. Issues of access, security and cost would need to be addressed. It would also be essential that any applicants for overseas registration would be able to undertake the MARA's common examination, or any other examination developed for restricted migration agent registration or education agent registration.
- 5.1.4. DIMIA could provide information on its website to keep offshore agents informed about changes to legislation and best practice procedures.

5.2. Conduct standards and complaints handling

- 5.2.1. Similarly, it would make sense that the same Code of Conduct should apply irrespective of geographic location to all registered migration agents and education agents, although some minor amendments may be necessary to take into account local circumstances offshore. For migration agents it would be the MARA Code of Conduct. A similar Code could be developed for education agents.
- 5.2.2. Again it would make sense for complaints handling in relation to onshore education agents providing immigration advice to mirror as far as practicable the existing complaints procedures for migration agents.
- 5.2.3. Any offshore migration or education agents scheme would need to address issues of the difficulty and expense of the profession regulator investigating complaints made offshore, or about offshore agents. There may be an advantage in utilising embassy staff and having their investigation reports considered conclusive by the MARA, or any new organisation established for education agents. The MARA may find sufficient economies of scale to engage their own staff in countries where there may be a significant number of agents operating.
- 5.2.4. In addition, DIMIA staff at overseas posts and regional offices (in co-ordination with MAPLS) could make a referral to the MARA, or any new organisation established for education agents, that an agent had breached a provision of the Code of Conduct following the investigation of a complaint.
- 5.2.5. One possibility is for DIMIA staff to issue a “conclusive report” as to the facts and perhaps a conclusion as to whether a breach had occurred. The MARA board, or any new organisation established for education agents, would be required to accept the contents of such a report as facts and proceed to make a decision accordingly. They would not need to reconsider the original investigation of the complaint by DIMIA officers unless they wished to.
- 5.2.6. The MARA, or any new organisation established for education agents, would then be required to make a decision to sanction or refuse to re-register an agent on the basis that the breach of the Code had occurred as determined by DIMIA. The level of sanction imposed, if any, would remain at the discretion of the respective boards, in respect of discretionary sanction powers.
- 5.2.7. Under this model, consideration would also need to be given to what avenues of review rights would apply to offshore registration and sanction decisions.
- 5.2.8. Additionally, DIMIA would also encourage education providers to directly refer matters of concern or complaints about the immigration related activities of education agents to any new organisation established for education agents. In return, it would be useful for this organisation, to provide either, regular complaints handling reports (perhaps monthly) to all education providers, DIMIA and DEST, or have a website similar to that of the MARA showing sanctions information.

5.3. Legal issues

- 5.3.1. Onshore persons face being prosecuted for unregistered practice as a migration agent. Prosecution offshore is not a practical option due to the difficulty of extending the application of criminal provisions offshore, including extradition and extra-territoriality issues. Similarly, proposed legislative changes onshore to require agents to declare their role or face prosecution, or a fine, would not be viable offshore.
- 5.3.2. Given these constraints, consideration needs to be given as to how DIMIA can distinguish between registered agents and unregistered providers of migration advice in its visa decision making processes. Administrative sanctions are therefore the focus of approaches being considered.
- 5.3.3. Instead of refusing to deal with certain agents (although this could be an option), it is proposed that DIMIA could tighten requirements for submitting applications. For example, DIMIA could require applicants to provide their personal address details and the current business address of their registered migration agent (if applicable), in order to submit a valid application.
- 5.3.4. DIMIA may also need to amend s494D of the Migration Act to minimise opportunities for unregistered agents to fail to declare their involvement in an application. “Authorised recipients” may need to be restricted to close family members (to be defined narrowly) and registered migration agents.
- 5.3.5. On the other hand, the Canadian advisory committee on regulating immigration consultants referred to earlier recommended a slightly different and perhaps tougher approach.

The Committee further recommends that Canadian embassies, consulates and high commissions deal only with those individuals who fall within the definitions of Recommendation 3.....

.....”Counsel” refers to a barrister or solicitor, or to a licensed immigration consultant.

“Other Representative” refers to a person who, without collecting any fee, remuneration or other benefit whatsoever, represents or advises a person who is the subject of a proceeding or application before the Minister an officer or the Board.

- 5.3.6. Legal issues in relation to regulating education agents would initially surround the nature of the monitoring and tracking scheme of immigration related activities and considerations in relation to the appropriate level of regulation; statutory self-regulation or profession self-regulation. As noted above, it is often the employees of so-called education agents that are in fact in direct contact with student visa applicants and may be providing immigration assistance. Any proposed registration and regulatory scheme would need to consider how the immigration related activities of these intermediaries, whether strictly employees or otherwise, can be supervised.
- 5.3.7. It is DIMIA’s view that education agents would need to be responsible for the performance and behaviour of these student counsellors, to whom they have in effect sub-contracted work.

5.4. Promoting the scheme

- 5.4.1. As there can be no threat of unregistered offshore migration agents or education agents facing prosecution, DIMIA/the MARA/DEST/education providers/any new organisation for education agents, would need to adopt strategies for encouraging such persons to become registered to be able to provide immigration related assistance or related services.
- 5.4.2. The biggest advantage to registered agents would be the ability to advertise as 'registered', giving them legitimacy in providing advice. Following on from this, it is expected that the costs of registration would be small in comparison to the increased profit resulting from registration. Nevertheless, at least in the early stages it may be necessary to convince prospective agents of the benefits of registration.
- 5.4.3. It may also be necessary to clarify DIMIA officers' obligations to registered agents, and how they should deal with unregistered agents. For example, DIMIA may need to guarantee to communicate with registered agents within strict limits – eg a communication system that only registered agents can access, such as a secure email system, may need to be developed.
- 5.4.4. It is likely that any legislative basis for offshore regulation should allow international organisations to continue to provide immigration assistance to applicants for humanitarian visas offshore.
- 5.4.5. Incentives for education agents joining an expanded or parallel registration scheme would be particularly important in the initial stages of regulation, both onshore and offshore. A mechanism to facilitate this may be that all education agents need to be linked to a CRICOS provider(s) and registered in order to be able to assist students with immigration related matters. Under this scenario, one approach could be that if a student does not engage such an agent they could be required to produce a letter from the education provider saying so, or the bona fides of their application may be questioned.
- 5.4.6. The Australian education export industry would be expected to benefit as a result, among other things, through better quality immigration related advice and assistance provided to their clients by registered education agents.
- 5.4.7. The issue of what may constitute appropriate incentives for migration and education agents to register is a difficult one. For any industry registration and regulation scheme to work, there must be an acceptable take up rate by members of the industry. To achieve this, it may be necessary to have a combination of both significant incentives for registering and significant disincentives for not registering.
- 5.4.8. At the end of the day, for example, DIMIA offices and overseas posts may need to advertise that they will only deal with registered agents, and advise applicants how/where they can ascertain that a person is a registered agent. If this approach were adopted, applications lodged by non-registered persons could be treated as if they have been lodged by the applicant and all communication would be with the applicant, informing them that the office does not recognise the *agent*. This would very quickly send a strong message to unregistered agents as to the value of registration. Flowing from this, de-registration for code of conduct breaches etc then becomes a real penalty.

5.5. Sanctions

- 5.5.1. Sanctions for registered education agents onshore could be expected to closely mirror those imposed on onshore registered migration agents.
- 5.5.2. Similarly, sanctions for unregistered education agents onshore providing immigration related services could also be expected to mirror as far as possible those imposed on onshore unregistered migration agents.
- 5.5.3. In relation to all offshore agents, one approach could be that standards could be enforced via re-registration, rather than suspension and cancellation decisions as occurs onshore. This may simplify the decision-making process and reduce the resource impact offshore and the time taken to deal with agents overseas.
- 5.5.4. Re-registration could also be refused automatically if certain objective criteria were met - if an agent's visa application refusal rate was over a certain threshold percentage, or a certain number of visa applications were received with fraudulent documents or statements. The former could mirror the proposed sanctions for onshore registered migration agents engaged in vexatious activity. Alternatively, an application for re-registration could be considered invalid if such criteria were met.
- 5.5.5. Having said this, a suspension and cancellation regime may, however, more quickly remove unscrupulous overseas agents from the industry and thereby also better ensure consumer protection.

5.6. Existing overseas registration schemes

- 5.6.1. DIMIA would need to address how any expanded registration scheme for migration agents or new registration scheme for education agents would work along side existing registration schemes overseas run by other countries.
- 5.6.2. While most countries do not regulate migration agents, some do and their schemes vary markedly. Germany does not allow the operation of migration agents while South Korea, the United Kingdom, the People's Republic of China (PRC), and South Africa already have schemes in place. Canada is also in the early stages of regulating their agents, with the Canadian Society of Immigration Consultants appointed in October 2003 to serve as a self-regulating body for immigration consultants, with the Government anticipating implementing legislation before the end of April 2004. Closer to home, while New Zealand currently does not have any form of registration scheme, the New Zealand Government is examining a number of regulatory options including the idea of an expanded jurisdiction for the MARA across the Tasman.
- 5.6.3. Similarly, while relatively little is known about overseas registration and regulation of education agents, it would be reasonable to conclude that most countries do not regulate them either. Some countries may, however, have education associations who may be interested in participating in any new Australian scheme. The MIA has indicated that the Thai and Indian education agents' associations may be interested in forging such links.

- 5.6.4. Memorandums of understanding (MOUs) may be required with countries that already have a registration scheme. Reciprocal arrangements could be created with the few countries that require registration. For example, if registration is required in the PRC, we should insist that any local requirements have been met and continue to be met and that Australian offshore registration would be contingent on the local registration being in place. In the PRC, the interaction between their student visa registration stream and any Australian scheme for the regulation of education agents would be particularly important given the increasing numbers of students coming to Australia from the PRC.
- 5.6.5. It may be useful for DIMIA and the MIA/MARA to start up a discussion group with our overseas regulatory counterparts and their immigration departments (perhaps via a secure web site). This would also enable sharing of information on current schemes and plans for improvement and change.

5.7. Who should be the regulator?

- 5.7.1. In board terms, there are three general approaches to industry regulation. These include government regulation through a government department or agency (eg DIMIA), statutory self-regulation (eg as with the MARA), and industry/profession self-regulation.
- 5.7.2. Government regulation is highly interventionist and therefore not considered necessary or appropriate in the majority of situations, although in some cases this form of regulation is a precursor to subsequent statutory or industry/profession self-regulation.
- 5.7.3. The migration advice profession has moved from government regulation introduced in 1992, to statutory self-regulation in 1998, with a view to eventually moving to full self-regulation. The 2002 Review found that the achievement of key milestones and improvements in the profession would be necessary if full voluntary self-regulation is ultimately to be achieved. A key indicator for assessing progress towards full self-regulation would be evolutionary progress in improving professionalism and client protection. Both DIMIA and the MARA are using their best endeavours to enable the migration advice profession towards a self-regulation model.
- 5.7.4. Given the current regulatory arrangements for migration agents onshore, the MARA, as the migration advice profession regulator, could also administer the proposed expanded migration agent scheme overseas and the proposed system of full and restricted agent registration offshore and onshore.
- 5.7.5. In line with this, the following statement was included in the MARA 2001-02 Annual Report as part of the MIA President's Report:

Offshore jurisdiction was also pursued in 2001-2002 as part of the Review of Statutory Self-Regulation of the Migration Advice Industry and, although the recommendations made in this financial year were not finalised, the Authority is keen to press ahead with this process.
- 5.7.6. Education agents are not subject to any Australian registration scheme or regulatory framework. However, the ESOS Act's National Code places obligations on education providers to manage their education agents.

- 5.7.7. Possible regulators of education agents providing migration advice include:
- MARA, as the migration advice profession regulator, could also administer the proposed restricted agent registration offshore and onshore;
 - a new statutory self-regulation authority similar to MARA;
 - the education industry/profession itself. The Sydney group, in partnership with the MIA, have discussed a model based on industry/profession self-regulation through the formation of a subsidiary MIA company; the EAAA. The EAAA, or equivalent, could also be responsible for managing the registration scheme for education agents necessary to track their immigration related activities and performance; or
 - alternatively, another option for regulating the immigration related activities of education agents may be suggested in response to distributing this discussion paper.
- 5.7.8. Regardless of the chosen regulatory option, to facilitate tracking there would need to be unique identifiers for both education agents and overseas migration agents, similar to the MARA's current Migration Agent Registration Number. There would also need to be unique identifiers for education providers (perhaps the CRICOS number) to ensure that only those agents accredited by a provider(s) put forward student visa applications for courses provided by that institution(s).
- 5.7.9. Capturing these fields would require modification of DIMIA's "Integrated Client Services Environment" (ICSE) system and the "Immigration Records Information System" (IRIS). Further, it may be useful if the electronic confirmation of enrolment (E-COE) could be amended by DEST to record the education agent involved. There may also be some implications for the DEST PRISMS system, although it is DIMIA's understanding that this is currently beyond the scope and purpose of the PRISMS system.

6. Implementation – A Staged Approach

6.1. Migration Advice Profession

- 6.1.1 It is clear from the overseas DIMIA post survey of overseas migration agents (see Attachment A) that implementation would be a complex task and that it would therefore take some time.
- 6.1.2. In view of this, it may be necessary to consider implementation in a staged manner.
- 6.1.3. Initial consideration suggests that there could be two possible approaches:
- i. on a geographic basis (eg country by country where an MOU is required, or region by region where there are no local laws and few migration agents); or
 - ii. on a visa class/sub-class basis (eg commencing with Students and then Business Skills)
- 6.1.4. While i) above, may appear to be an effective approach, it would run contrary to the universal visa system. Additionally, any geographically based approach would also become increasingly impractical given the continuing implementation by DIMIA of the business operations and client service reforms it is pursuing in line with “Global Working/Globalisation” and the increasing use of electronic visa (e-visa) lodgement (e-lodgement) and processing.
- 6.1.5. This essentially leaves ii), which the 2002 Review also suggested may be preferable. A universal trial of the scheme for only certain visa classes would enable a staged approach involving first tackling those classes where there are known difficulties, and would also allow evaluation of effectiveness without impacting on most clients. Furthermore, offshore migration agents who decide not to become registered could be given an opportunity to leave the profession over time.

6.2. Education Advice Profession – Immigration related activities

- 6.2.1. The introduction of any monitoring arrangements or registration scheme for education agents would also need to be staged and sensitive to industry needs.
- 6.2.2. If all four options proposed in section 4.2 were to be implemented, a first step could include a recording and monitoring scheme for education agents in respect of their immigration activities, by linking them to a CRICOS registered education provider(s) (Option A). At the same time, education agents providing immigration related services could also be encouraged to become registered migration agents under the current statutory regime (Option B).
- 6.2.3. In the longer term, a form of restricted registration as a migration agent could be put in place (Option C), or education agents could be fully registered in regard to their immigration related activities under an industry self-regulation model (Option D).

- 6.2.4. Under any scenario, education agents would only be able to provide advice in relation to student visas.
- 6.2.5. The PRC is the largest single source country for overseas students, with the second largest flow-on into the general migration program. It has the largest number of education agents with the majority of students using them and its agents appear to be most problematic. Given these factors, the PRC education advice profession should perhaps be an early focus for registration, tracking and regulation.
- 6.2.6. To assist any new approach, it would be useful (indeed essential) to obtain a full listing of education agents offshore and onshore from education providers and agents and/or DIMIA offices and overseas posts. It would be crucial for this register to be maintained and kept up to date.

7. Possible options and their Benefits

- 7.0.1. DIMIA has no preferred options at this stage. Additionally, as mentioned earlier, the four options presented in relation to education agents are not mutually exclusive and some could be adopted in combination.
- 7.0.2. Implementation of any of the options would bring various benefits with them for consumers, the migration and education agent professions, the Australian education export industry, and government. Some options may also bring with them a cost (perhaps only initially), which will hopefully be identified as part of the consultation process. Possible benefits in relation to each option are set out below.

7.1. Migration Advice Profession

- 7.1.1. **Option A:** Extend the current registration scheme offshore in its present form except with the threat of administrative sanction rather than criminal penalty for practising while unregistered.
- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
 - more certainty for departmental officers in relation to who they should deal with;
 - an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness;
 - reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for the migration agents registration scheme to be extended offshore. Posts have indicated that they are prepared to help with any such implementation; and
 - anticipated short to medium implementation timeframe and medium cost to government.
- 7.1.2. **Option B:** Option A, plus the introduction of restricted registration categories offshore (and onshore) so that agents could register as migration agents to practise within certain defined areas.
- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);

- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness; and
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for the migration agents registration scheme to be extended offshore. Posts have indicated that they are prepared to help with any such implementation;
- current weaknesses in the onshore registration scheme could be addressed simultaneously, eg the ambiguous role of education agents relative to migration agents and other problematic aspects associated with the education advice profession in the delivery of immigration related services to clients;
- limited/restricted registration available for agents to specialise in certain visa streams;
- agents could obtain limited registration at first and work towards full registration if they wish;
- limited registration (with limited fees and CPD requirements) could be available to non-commercial organisations onshore who, for example, may assist with a limited range of visa classes, eg Protection visa applications.
- less local migration agents operating offshore are forced out of the profession, thereby avoiding a possible shortage of agents;
- more objective sanctions, eg those based on visa application refusal rates, could easily be introduced in the case of limited registration where agents only operate in certain visa classes; and
- anticipated medium implementation timeframe and medium cost to government.

7.2. Education Advice Profession – Immigration related activities

7.2.1. Option A: Implement a monitoring scheme.

- higher levels of professionalism and increased consumer protection;
- problem agents could be dealt with through the existing ESOS arrangements; and

- anticipated short implementation timeframe and low cost to government.

7.2.2. **Option B:** Encourage education agents to become registered migration agents.

- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness;
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for some registration and regulatory framework to be introduced for education agents in relation to immigration related activities. Posts have indicated that they are prepared to help with any such implementation; and
- anticipated short to medium implementation timeframe and low cost to government.

7.2.3. **Option C:** Restricted migration agent registration.

- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness; and
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for some registration and regulatory framework to be introduced for education agents in relation to immigration related activities. Posts have indicated that they are prepared to help with any

such implementation;

- would facilitate the registration of education agents as part of a “restricted registration” scheme either as migration agents or as restricted education agents, thereby addressing eg the ambiguous role of education agents relative to migration agents and other problematic aspects associated with the education advice profession in the delivery of immigration related services to clients;
- limited/restricted registration available for agents to specialise in Student visas;
- agents could obtain such limited registration at first and work towards full registration if they wish;
- limited registration (with limited fees and CPD requirements) could be available to non-commercial organisations onshore who, for example, may assist with a limited range of visa classes, eg Protection visa applications.
- less local migration agents operating offshore are forced out of the profession, thereby avoiding a possible shortage of agents;
- more objective sanctions, eg those based on visa application refusal rates, could easily be introduced in the case of limited registration where agents only operate in certain visa classes; and
- anticipated medium implementation timeframe and medium cost to government.

7.2.4. **Option D:** Industry/profession self-regulation.

- this option represents more a mechanism for implementing and administering some form of registration and regulation scheme for education agents, rather than a regulatory framework in itself. As such, the regulatory framework implemented and administered as part of industry/profession self-regulation could include various components (and associated benefits), including those described under options A, B or C; and
- anticipated longer term implementation timeframe and medium cost to government.

7.3. Summary of Benefits

Option	Implementation timeframe	Clarification of role	Strong onshore regulation	Strong offshore regulation	Cost to government
Migration Agents					
Option A	Short - Medium	High	N/A	Medium	Medium
Option B	Medium	High	High	Medium	Medium
Education Agents					
Option A	Short-term	Low	Medium	Medium	Low
Option B	Short - Medium	Medium	High	Medium	Low
Option C	Medium	High	High	Medium	Medium
Option D	Longer-term	High	High	Medium	Medium

8. Next Steps

- I. Consultation with key stakeholders, in particular with regard to benefits, costs and savings associated with each option.
- II. Determining a preferred approach with industry.
- III. Developing a proposal to the Government, including a timeframe for implementation.

ATTACHMENTS

RESULTS OF OVERSEAS DIMIA POST SURVEY OF OVERSEAS MIGRATION AGENTS PRACTICE

The following presents the results of a survey of the 41 DIMIA overseas A-based posts conducted by the Migration Agents Policy and Liaison Section in January 2002. 39 posts responded to the survey.

1) Please estimate the number of agents you post deals with regularly?

No. of agents dealt with by overseas post ranged from 5 or less to 100 +.

Approx. average no. of agents dealt with by overseas posts – 40

It should be noted that a number of posts reported that a large percentage of applicants are assisted by travel or student agents in their region. Only some posts defined these professionals as 'agents'.

2) Of agents do you have any idea about the percentage that are:

- **Registered in Australia?**

Percentage of agents registered in Australia dealt with by overseas posts ranged from 0 to 100%.

Approx. average percentage of Australian registered agents dealt with by posts – 60%

- **Registered by your host government?**

Very few overseas posts reported dealing with agents registered by the host government (see answer to question 10).

The DIMIA post at Amman reports that it deals with 5 agents who are required to register as a business under local law.

The DIMIA post in Tehran also reported that 5% of the agents that they deal with a registered by the host government. Once again, these agents must acquire general company, rather than specifically "migration agent", registration.

3) Can you estimate the percentage of applications lodged at posts that use a migration agent?

17 posts recorded an overall estimate of the percentage of applications lodged at posts that use a migration agent. The average was 30%.

Other posts recorded estimates according to particular visa categories (see question 4).

4) Of those supported by a migration agent, what are the major visa subclasses?

The survey revealed that subclass 457 visa applications were most commonly supported by a migration agent. Other types of business and skilled visa applicants also made great use of the services of migration agents.

Student visas also proved to be a common category of visa supported by migration agents. Many posts reported that 'student agents' rather than migration agents were also often involved.

At certain posts, migration agents were also used by people applying for visitor visas (Beirut, Manila, Moscow, Ho Chi Minh city) and family migration (Athens, Jakarta, Seoul, Phnom Penh, Colombo, Guangzhou, Berlin, Kuala Lumpur).

Other visa classes only appeared to involve the use of migration agents at certain posts eg. RSHP visas (Beirut and Belgrade), Retirees (Pretoria) and Working Holiday Makers (Tokyo and Seoul).

5) Can you comment on agent performance?

- **Are most knowledgeable?**

Fourteen posts reported that many agents appear to have very limited knowledge of the Migration Act or the Regulations. Many local agents, in particular, were reported to act largely as document collectors.

Nevertheless, a majority of posts reported that despite varying standards, most agents are reasonably knowledgeable. But many clarified this by explaining that many agents do not keep up with legislation/procedural changes, frequently ask DIMIA officers very basic questions and are unaware of local conditions and documentation.

A number of posts also differentiated between Australian registered agents as more knowledgeable in comparison to local agents and, in particular, student agents.

Paris reports that while agents demonstrate knowledge of relevant criteria they may present poor information in support of an applicant's ability to meet that criteria and thus are not familiar with wider legislative provisions or detailed procedural issues.

- **Are most competent?**

As above, the posts reported that standards vary considerably between agents.

Fourteen posts reported that the vast majority of agents are competent whilst noting some are 'just competent'.

However, a majority of posts reported that agents have limited competence. They report that applications received are generally incomplete. Constant requests for extra time to submit a complete application are made. Agents are also slow to respond to requests from DIMIA Officers.

Again several posts distinguished between Australian registered agents as generally competent in comparison to local agents.

- **Are their ethics good or do they harass your staff?**

Fourteen posts reported that agents are generally ethical. However, the majority of posts reported that many agents are discourteous to staff, do not pass on requests to clients, take on cases with little chance of success, and appear to charge unnecessarily high fees. Some posts also reported that agents were suspected of lodging fraudulent documents and trying to obtain favours from DIMIA Locally Engaged Employees (LEEs).

- **Do you get many complaints about agents?**

Most overseas posts reported that they receive few complaints in relation to agents and even less formal complaints. However, Hanoi, Hong Kong, Pretoria and Phnom Penh report that they get many complains about agents, particularly when both applicant and sponsor are in country. Posts such as Amman and Athens report that they had a large number of complaints in relation to certain agents who are the subject of an investigation, but this is largely atypical.

Belgrade reported that it gets hundreds of complaints about local agents but few about Australian registered agents.

Complaints are usually in regard to high fees charged by agents.

6) Does the post have much to do with agent groups, give seminars to agents etc.?

Twenty posts surveyed reported that they had little to no contact with migration agent groups.

However, nineteen posts reported that they had more contact with agents, in particular student agents. Many posts hold seminars in relation to legislation changes (particularly in relation to student and visitor visas). At some posts, one on one appointments with A based staff and quarterly meetings are also available for agents.

7) What percentage of agents charge fees?

Almost all overseas posts surveyed reported that most if not all agents charged fees.

8) Is there any registration scheme for agents by your host government?

The great majority of posts surveyed indicated that there was no registration for migration agents by the host government.

Registration schemes were known in the following countries but varied greatly in scope and none were analogous (or as comprehensive) as Australia (although Canada, UK and New Zealand were moving in this direction):

<ul style="list-style-type: none"> • Baltic States • Canada • New Zealand • Hong Kong • Iran • Japan • Jordan 	<ul style="list-style-type: none"> • Lebanon • Peoples Republic of China • Poland • Taiwan • UK • Vietnam
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ATTACHMENT B

TABLE 1: STUDENT VISA GRANTS BY COUNTRY OF APPLICANT CITIZENSHIP (1 July 2001 to 30 June 2002)

Offshore Visa Grants			Onshore Visa Grants			Total Visa Grants (Offshore + Onshore)					
	Country of Citizenship (in order of number of visa grants offshore)	No. of visa grants (a)	Percent of visa of grants total		Country of Citizenship (in order of number of visa grants onshore)	No. of visa grants (b)	Percent of total of visa grants		Country of Citizenship (in order of total number of visa grants)	Total no. of visa grants (a)+(b)	Percent of total of visa grants
1	China, People's Rep of	13452	13.9	1	China, People's Rep of	7674	14.1	1	China, People's Rep of	21126	14.0
2	United States of America	8938	9.3	2	Korea, Republic of	6756	12.5	2	Korea, Republic of	11079	7.3
3	Malaysia	7427	7.7	3	Indonesia	5107	9.4	3	Japan	11073	7.3
4	HKSAR of the PRC	6862	7.1	4	Japan	4830	8.9	4	Indonesia	10943	7.3
5	Japan	6243	6.5	5	Thailand	3586	6.6	5	HKSAR of the PRC	10396	6.9
6	Indonesia	5836	6.0	6	HKSAR of the PRC	3534	6.5	6	United States of America	9652	6.4
7	Thailand	5341	5.5	7	India	2558	4.7	7	Malaysia	9279	6.2
8	Singapore	4687	4.9	8	Taiwan	2374	4.4	8	Thailand	8927	5.9
9	Korea, Republic of	4323	4.5	9	Malaysia	1852	3.4	9	Singapore	5787	3.8
10	India	2925	3.0	10	Brazil	1115	2.1	10	India	5483	3.6
11	Taiwan	2797	2.9	11	Singapore	1100	2.0	11	Taiwan	5171	3.4
12	Brazil	2147	2.2	12	Bangladesh	917	1.7	12	Brazil	3262	2.2
	Top 12 Countries Total	70978	73.5		Top 12 Countries Total	41403	76.3		Top 12 Countries Total	112178	74.4
				17	United States of America	714					
	All Others	25627	26.5		All Others (incl USA)	12841	23.7		All Others	38671	25.6
	Total	96605	100.0		Total	54244	100.0		Total	150849	100.0

TABLE 2: REFUSAL RATE & REFUSED ON FALSE DOCUMENTS RATES FOR BEIJING POST DECIDED CASES BY APPLICATION SOURCE PROVINCE IN PRC (1 July 2002 to 30 June 2003)

Location/ PRC Province	Total student applns	% student applns lodged	Refused	Province Refusal Rate	Cases refused on false documents	% of cases refused on false docs
Third Country	163	1%	118	72%	1	0%
Not Recorded	20	<1%	13	65%		0%
Xinjiang	78	<1%	42	54%	22	28%
Fujian	965	6%	456	47%	243	25%
Neimenggu	120	1%	49	41%	23	19%
Hainan	62	1%	24	39%	15	24%
Jilin	235	2%	89	38%	46	20%
Tianjin	292	2%	107	37%	48	16%
Heilongjiang	290	3%	104	36%	36	12%
Guangxi	335	2%	120	36%	52	16%
Henan	524	3%	184	35%	91	17%
Jiangxi	97	1%	34	35%	13	13%
Shaanxi	251	2%	87	35%	40	16%
Hunan	270	2%	87	32%	18	7%
Shanxi	177	1%	56	32%	21	12%
Yunnan	111	1%	33	30%	12	11%
Liaoning	1312	8%	388	30%	193	15%
Qinghai	7	<1%	2	29%	0	0%
Sichuan	420	3%	117	28%	34	8%
Gansu	58	<1%	16	28%	4	7%
Anhui	82	1%	22	27%	10	12%
Hebei	302	2%	80	26%	25	8%
Shandong	828	5%	212	26%	65	8%
Guangdong	2287	14%	580	25%	194	8%
Guizhou	41	<1%	10	24%	4	10%
Zhejiang	792	5%	179	23%	67	8%
Jiangsu	948	6%	209	22%	71	7%
Hubei	560	4%	123	22%	39	7%
Xizang	5	<1%	1	20%	0	0%
Beijing	1659	11%	300	18%	74	4%
Ningxia	20	<1%	3	15%	1	5%
Shanghai	2286	15%	325	14%	88	4%
Total	15597	100%	4170	27%	1550	10%

TABLE 3: TYPE OF STUDENT APPLICATION FRAUD DETECTED FOR BEIJING POST DECIDED CASES (1 July 2002 to 30 June 2003)

Type of Fraud	Number of Cases	Proportion
False Work Docs	1010	65%
False Bank Docs	422	27%
False Edu Qualifications	98	6%
False Relationships	11	1%
False IELTS Scores	6	0%
Age Changed	2	0%
COE Altered	1	0%
Total	1550	100%

Notes:

IELTS – International English Language Testing System

COE – Confirmation of Enrolment

As documentation checks were conducted in less than half of the caseload, it is highly probably that the true level of fraud was significantly higher than the rates detected above.

Work references continue to be the major area where fraud is identified by staff. While this may be because many of the documents referred for checking are work references, there would still appear to be a higher proportion of fraud among these documents than other types of documents.

TABLE 4: APPLICATION REFUSAL RATES BY AGENT/AGENCY IN DESCENDING RATE ORDER FOR BEIJING POST DECIDED STUDENT CASES (1 July 2002 to 30 June 2003)

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Personal Name	6	6	100%
Personal Name	6	6	100%
Personal Name	5	5	100%
Business Name	5	5	100%
Personal Name	7	6	86%
Business Name	6	5	83%
Personal Name	6	5	83%
Personal Name	6	5	83%
Personal Name	5	4	80%
Business Name	5	4	80%
Business Name	8	6	75%
Personal Name	6	4	67%
Business Name	6	4	67%
Personal Name	6	4	67%
Business Name	8	5	63%
Business Name	10	6	60%
Business Name	5	3	60%
Business Name	5	3	60%
Business Name	5	3	60%
Business Name	5	3	60%
Personal Name	5	3	60%
Personal Name	7	4	57%
Business Name	7	4	57%
Personal Name	7	4	57%
Business Name	9	5	56%
Personal Name	9	5	56%
Personal Name	11	6	55%
Business Name	14	7	50%
Business Name	12	6	50%
Personal Name	8	4	50%
Business Name	8	4	50%
Business Name	6	3	50%
Personal Name	6	3	50%
Business Name	15	7	47%
Personal Name	26	12	46%
Business Name	11	5	45%
Business Name	11	5	45%
Business Name	11	5	45%
Business Name	9	4	44%
Business Name	9	4	44%
Personal Name	16	7	44%
Personal Name	16	7	44%
Business Name	7	3	43%
Personal Name	7	3	43%
Personal Name	7	3	43%
Business Name	7	3	43%
Business Name	7	3	43%
Personal Name	7	3	43%
Business Name	7	3	43%
Personal Name	27	11	41%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	32	13	41%
Personal Name	18	7	39%
Personal Name	18	7	39%
Business Name	26	10	38%
Business Name	13	5	38%
Business Name	8	3	38%
Business Name	8	3	38%
Personal Name	8	3	38%
Business Name	8	3	38%
Business Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	19	7	37%
Business Name	19	7	37%
Personal Name	22	8	36%
Business Name	11	4	36%
Business Name	11	4	36%
Business Name	14	5	36%
Business Name	111	38	34%
Business Name	44	15	34%
Business Name	12	4	33%
Business Name	6	2	33%
Business Name	6	2	33%
Personal Name	6	2	33%
Personal Name	6	2	33%
Business Name	6	2	33%
Business Name	6	2	33%
Personal Name	6	2	33%
Business Name	52	17	33%
Personal Name	19	6	32%
Business Name	26	8	31%
Business Name	13	4	31%
Business Name	13	4	31%
Personal Name	10	3	30%
Business Name	48	14	29%
Business Name	21	6	29%
Business Name	7	2	29%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	25	7	28%
Business Name	43	12	28%
Business Name	18	5	28%
Personal Name	18	5	28%
Business Name	47	13	28%
Business Name	40	11	28%
Personal Name	11	3	27%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	11	3	27%
Business Name	11	3	27%
Personal Name	15	4	27%
Business Name	19	5	26%
Business Name	54	14	26%
Business Name	27	7	26%
Personal Name	16	4	25%
Personal Name	12	3	25%
Business Name	12	3	25%
Personal Name	8	2	25%
Business Name	8	2	25%
Personal Name	8	2	25%
Business Name	37	9	24%
Personal Name	91	22	24%
Business Name	13	3	23%
Personal Name	9	2	22%
Business Name	9	2	22%
Business Name	9	2	22%
Personal Name	9	2	22%
Business Name	41	9	22%
Business Name	23	5	22%
Business Name	33	7	21%
Personal Name	19	4	21%
Business Name	130	27	21%
Business Name	49	10	20%
Business Name	64	13	20%
Business Name	25	5	20%
Business Name	15	3	20%
Personal Name	10	2	20%
Personal Name	10	2	20%
Business Name	111	22	20%
Business Name	87	17	20%
Business Name	36	7	19%
Business Name	57	11	19%
Business Name	99	19	19%
Business Name	47	9	19%
Business Name	11	2	18%
Business Name	39	7	18%
Business Name	68	12	18%
Business Name	34	6	18%
Business Name	115	20	17%
Business Name	24	4	17%
Business Name	12	2	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Business Name	25	4	16%
Business Name	19	3	16%
Business Name	13	2	15%
Business Name	13	2	15%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	138	21	15%
Personal Name	20	3	15%
Business Name	108	16	15%
Business Name	117	17	15%
Business Name	360	52	14%
Business Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	36	5	14%
Business Name	225	31	14%
Business Name	22	3	14%
Business Name	162	22	14%
Business Name	15	2	13%
Business Name	61	8	13%
Business Name	656	85	13%
Business Name	102	13	13%
Business Name	16	2	13%
Personal Name	16	2	13%
Business Name	8	1	13%
Business Name	8	1	13%
Business Name	41	5	12%
Personal Name	17	2	12%
Personal Name	17	2	12%
Business Name	417	49	12%
Business Name	482	54	11%
Business Name	27	3	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	37	4	11%
Business Name	20	2	10%
Business Name	10	1	10%
Business Name	10	1	10%
Personal Name	10	1	10%
Business Name	61	6	10%
Business Name	66	6	9%
Business Name	11	1	9%
Business Name	35	3	9%
Personal Name	12	1	8%
Business Name	123	10	8%
Personal Name	25	2	8%
Personal Name	14	1	7%
Business Name	15	1	7%
Personal Name	15	1	7%
Business Name	212	10	5%
Business Name	18		0%
Business Name	14		0%
Personal Name	11		0%
Personal Name	8		0%
Personal Name	7		0%
Personal Name	7		0%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Personal Name	7		0%
Business Name	6		0%
Business Name	6		0%
Personal Name	6		0%

Notes:

This table represents only those agents/agencies with over 5 cases represented.

Individual agent/agency names have been replaced with "Personal Name" and "Business Name", respectively.

The **top 15 agents/agencies by volume** are shown in **bold**.

Of concern are the high volume agencies with high refusal rates. Of these however, none recorded exceptionally high fraudulent document detection rates in Table 5.

TABLE 5: FALSE DOCUMENT REFUSAL RATES BY AGENT/AGENCY IN DESCENDING PERCENTAGE RATE ORDER FOR BEIJING POST DECIDED STUDENT CASES (1 July 2002 TO 30 June 2003)

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Personal Name	7	5	71%
Personal Name	6	4	67%
Personal Name	5	3	60%
Personal Name	5	3	60%
Personal Name	6	3	50%
Business Name	6	3	50%
Personal Name	6	3	50%
Business Name	6	3	50%
Personal Name	7	3	43%
Business Name	7	3	43%
Business Name	5	2	40%
Business Name	5	2	40%
Business Name	5	2	40%
Personal Name	5	2	40%
Business Name	8	3	38%
Personal Name	8	3	38%
Business Name	8	3	38%
Business Name	11	4	36%
Business Name	12	4	33%
Business Name	9	3	33%
Personal Name	9	3	33%
Personal Name	6	2	33%
Personal Name	6	2	33%
Business Name	6	2	33%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	7	2	29%
Business Name	7	2	29%
Personal Name	11	3	27%
Business Name	11	3	27%
Business Name	11	3	27%
Business Name	11	3	27%
Personal Name	11	3	27%
Business Name	15	4	27%
Personal Name	47	12	26%
Personal Name	12	3	25%
Business Name	8	2	25%
Business Name	8	2	25%
Personal Name	8	2	25%
Personal Name	26	6	23%
Business Name	13	3	23%
Business Name	32	7	22%
Business Name	10	2	20%
Personal Name	10	2	20%
Business Name	5	1	20%
Business Name	26	5	19%
Personal Name	16	3	19%
Business Name	27	5	19%
Business Name	11	2	18%
Business Name	40	7	18%

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Business Name	41	7	17%
Business Name	18	3	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	19	3	16%
Personal Name	19	3	16%
Business Name	19	3	16%
Business Name	13	2	15%
Business Name	111	17	15%
Business Name	48	7	15%
Business Name	14	2	14%
Personal Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Business Name	7	1	14%
Business Name	52	7	13%
Business Name	15	2	13%
Business Name	23	3	13%
Business Name	16	2	13%
Business Name	8	1	13%
Business Name	8	1	13%
Business Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Business Name	33	4	12%
Business Name	44	5	11%
Personal Name	36	4	11%
Personal Name	18	2	11%
Business Name	9	1	11%
Business Name	9	1	11%
Personal Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	19	2	11%
Business Name	20	2	10%
Personal Name	10	1	10%
Personal Name	10	1	10%
Business Name	21	2	10%
Business Name	43	4	9%
Business Name	54	5	9%

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Personal Name	22	2	9%
Business Name	11	1	9%
Business Name	11	1	9%
Business Name	12	1	8%
Business Name	37	3	8%
Business Name	37	3	8%
Business Name	25	2	8%
Business Name	13	1	8%
Business Name	13	1	8%
Business Name	13	1	8%
Business Name	27	2	7%
Business Name	138	10	7%
Business Name	111	8	7%
Business Name	14	1	7%
Business Name	225	16	7%
Business Name	99	7	7%
Business Name	87	6	7%
Business Name	15	1	7%
Business Name	15	1	7%
Business Name	108	7	6%
Business Name	656	41	6%
Personal Name	16	1	6%
Personal Name	16	1	6%
Business Name	360	22	6%
Personal Name	18	1	6%
Business Name	57	3	5%
Personal Name	19	1	5%
Business Name	19	1	5%
Business Name	117	6	5%
Business Name	102	5	5%
Business Name	64	3	5%
Business Name	68	3	4%
Personal Name	91	4	4%
Business Name	417	18	4%
Business Name	24	1	4%
Business Name	49	2	4%
Business Name	25	1	4%
Business Name	162	6	4%
Business Name	482	17	4%
Business Name	61	2	3%
Business Name	66	2	3%
Business Name	34	1	3%
Business Name	35	1	3%
Business Name	212	6	3%
Business Name	36	1	3%
Business Name	115	3	3%
Business Name	39	1	3%
Business Name	123	3	2%
Business Name	41	1	2%
Business Name	130	3	2%
Business Name	47	1	2%
Business Name	61	1	2%

Notes:

This table represents only those agents with over 5 cases represented.

Individual agent/agency names have been replaced with “Personal Name” and “Business Name”, respectively.

The **top 15 agents/agencies by volume** are shown in **bold**.

TABLE 6: SKILLED VISA GRANTS (in subclasses 136 with AQF, 138 with AQF, 880, 881 & 882 by Country of Applicant Citizenship (1 July 2001 to 30 June 2002)

TOP 12 COUNTRIES

Total Visa Grants (highest to lowest no. of visas)

In 136, 138, 880, 881 and 882 (permanent entry) visa subclasses

	Country of Citizenship	Visas	% total
1	India	2410	22.42
2	China, Peoples Republic of	1616	15.03
3	Indonesia	1614	15.02
4	Malaysia	708	6.59
5	Hong Kong SAR of the PRC	583	5.42
6	Korea, Republic of (South)	434	4.04
7	Singapore	415	3.86
8	Pakistan	322	3.00
9	Taiwan	309	2.87
10	Bangladesh	294	2.74
11	Thailand	243	2.26
12	Nepal	212	1.97
	Top 12 Total	9160	85.22
	All Others (1)	1589	14.78
	Total (2)	10749	100.00

136: Skilled - Independent visa (onshore application, applicant must be outside Australia when granted)

138: Skilled - Australian-Sponsored visa (onshore application, applicant must be outside Australia when granted)

880: Skilled - Independent Overseas Student visa (onshore application, applicant must be in Australia when granted)

881: Skilled - Australian-Sponsored Overseas Student visa (onshore application, applicant must be in Australia when granted)

882: Skilled - Designated Area-Sponsored Overseas Student visa (onshore application, applicant must be in Australia when granted)

(1) "All Others": 83 countries, including Australia (1 applicant with Australian citizenship born in Indonesia), plus "Stateless" (2 s/c 136 (AQF=5) and 1 s/c 138 visa grants (AQF=5)),

plus "Not Stated" (224 s/c 880, 8 s/c 881 and 2 s/c 882 visa grants)

(2) 10749 visas granted across all 5 subclasses (136, 138, 880, 881 & 882) for FY 2001-02

AQF:

136 and 138 visas: Australian Qualification Factor (AQF) applies (Migration Regulations 1994, Schedule 6A, Items 6A61 & 6A62):

AQF gives points to Schedule 6A applicants who have completed an Australian doctorate, degree, diploma or trade qualification for which at least 1 academic year of full-time study was undertaken in Australia.

Schedule 6A - General Points Test - Qualifications and Points: Each qualification specified in Schedule 6A is prescribed as a qualification in relation to the grant of a subclass 136, 137, 138, 861, 862, 880, 881 (Reg 2.26A) and 882 (Reg 2.27A) visa.

AQF = 5 points for those applicants who have completed an Australian degree, diploma or trade qualification.

AQF = 10 points for those applicants who have completed an Australian doctorate.

USEFUL WEBSITES

Bureau of Citizenship and Immigration Services, USA	www.immigration.gov
Citizenship and Immigration, Canada	cicnet.ci.gc.ca
DEST	www.dest.gov.au
DIMIA	www.immi.gov.au
Immigration Service, New Zealand	www.immigration.govt.nz
Immigration and Nationality Directorate, UK	194.203.40.90
MARA	www.themara.com.au
MIA	www.mia.org.au

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARINGS: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(16) Output 1.1: Non-Humanitarian Entry and Stay

Senator Bartlett (L&C 51) asked:

“On the area I think called partner visas now rather than spouse visas, are you able to provide the numbers of the cancellations of spouse visas in the current financial year due to the breakdown of the relationship?”

Answer:

Of the five cancellation powers in the Migration Act 1958 that empower visa cancellations, only two cancellation powers, sections 109 and 116, are used for partner visa cancellations for reasons such as the breakdown of a relationship. In 2004-2005 (until 31 March 2005), under these cancellation powers, there have been 91 Spouse and Prospective Marriage visa cancellations and no Interdependency visa cancellations.

It is not possible to readily obtain an accurate report on the number of these (91) cancellations that are specifically due to relationship breakdown since the systems reporting capability does not currently drill down to this level of detail.

It should be noted that this figure relates only to cancellations and not to refusals. The majority of refusals of second stage spouse visa applications relate to an assessment that a relationship has either broken down or is not “genuine and continuing”. In the period 1 July 2004 till 31 March 2005 there were 1,313 refusals of second stage spouse applications in Australia.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(17) Output 1.1: Non Humanitarian Entry and Stay

Senator Carr asked:

1. Can you confirm details of an article concerning the case of Mr Damilola Olajide, a Nigerian student visa holder that appeared in the *Age* on 14 April this year?

The article alleges that DIMIA committed a "blunder" in connection with this person's application for a temporary graduate skilled work visa after finishing his doctorate at Monash University in May 2004.

It is alleged that Mr Olajide made an error in answering a question on the application form because it was ambiguous. He replied "yes" to a question about whether he had completed his study, but "no" to a question on whether he had been awarded his degree.

This was not because he had failed his exams, but because he had submitted his doctoral thesis and was awaiting the result.

He was assured by a DIMIA officer, when he inquired about these answers, that he would be contacted straight away if there was a problem with how he had answered these questions. Instead, he was eventually told his application for a skilled work visa was invalid and he was required to leave Australia.

2. What has been the outcome of this case?

3. Have you investigated how Mr Olajide came to receive what turned out to be wrong advice as to the procedure that would be followed?

4. Have you amended your procedures in the light of this case?

5. Have you rectified the ambiguity on the application form for the skilled work visa in the light of this case?

6. If you have not taken these steps, why not?

Answer:

1. and 2. Following an investigation in Mr Olajide's case it can be confirmed that the broad facts of the case are as follows:

- Mr Olajide arrived in Australia on 26 April 2000 on a Subclass 560 (Student) visa. Further student visas were granted, the last of which was valid to 25 May 2004.
- Mr Olajide lodged an application for a Subclass 497 (Graduate Skilled Temporary)

visa on 13 May 2004 with the Adelaide Skilled Processing Centre (ASPC). He was the holder of a Subclass 574 (Postgraduate Research Sector) student visa at the time.

- Mr Olajide claims to have contacted the ASPC on 18 May 2004 and that he was advised that if his application was not returned within a week, it should have been validly accepted – there is no record of this conversation. However, records show a later conversation with the ASPC on 19 August 2004 when Mr Olajide rang the Department and informed that whilst his thesis had been submitted it had not been marked.
- Mr Olajide and his family were sent a letter dated 26 May 2004 granting him and his family Bridging Visa As in respect of the Subclass 497 application.
- On 19 August 2004 Mr Olajide was advised that his application for the Subclass 497 visa was invalid as he failed to satisfy the primary criteria. In particular there was no evidence that Mr Olajide had completed a Degree for award by an Australian Educational Institution as a result of at least 2 years of full-time study at that institution, while physically being in Australia.
- This resulted in Mr Olajide being unable to apply for a further Subclass 574 visa as it had been more than 28 days since his last substantive visa ceased.
- Mr Olajide appealed this decision to the MRT which affirmed the decision to refuse the application on 3 February 2005.
- An application for Ministerial Intervention was also commenced on 31 January 2005.
- This process was completed on 26 April 2005 and resulted in the Minister intervening and granting Mr Olajide a further Subclass 574 visa.
- The grant of this visa will enable Mr Olajide to remain in Australia, and subsequently be eligible to apply for skilled migration once his thesis has been marked.

3. and 4. As indicated above, we have been unable to confirm that Mr Olajide received the advice as claimed. However, it would appear that the error made by the department was the sending of the letter dated 26 May 2004 mistakenly advising Mr Olajide that a Bridging visa was granted. This could be considered to be the provision of wrong advice – in that he was advised his application was valid when in fact it was not. The processes undertaken in assessing these cases have been reviewed and amended to avoid errors of this nature happening in future.

In addition, we have reviewed the information that is provided to applicants in relation to the procedures followed in accepting and processing a visa application, including through our client contact centres and the information provided on the Department's website. Recent developments include:

- an updated version of the skilled migration website that became available on 1 July 2005;
- introduction of electronic lodgement for some of the general skilled migration visas from 1 July 2005;
- initial development of step-by-step guides to assist applicants through the completion of visa application forms; and
- a review of the forms visa applicants are required to complete.

5. and 6. As mentioned above, a review of the forms applicants are required to complete has been undertaken. Similar reviews are undertaken in three distinct cycles per year.

The particular form in question has been reviewed and it has been determined that changes of the nature suggested are not required. However, as also mentioned above, it is recognised that additional client-friendly information to guide applicants through the completion of visa application forms would help to prevent similar occurrences in future. These internet-based step-by-step guides are currently being developed.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(18) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr asked:

Articles in the *Sydney Morning Herald* of 9 May 2005 detail several examples of the role of so-called education agents in defrauding the Commonwealth in relation to student visa applications.

For example, one student is reported to have paid \$6665 to a Mr Bob Chen of the Oriental Education Centre in Sydney for documentation that proved to be false. This person's visa cancellation was overturned by the Migration Review Tribunal on the basis that the student did not realise the documents were false.

1. Can you provide a report with details of the number of cases that have come before the Migration Review Tribunal since 1 July 2001 that involve:
 - Student visa-holders;
 - Fraudulent or fake documentation; and
 - Education or migration agents?
2. In the cases where the fraud has originated or been perpetrated in another country, please provide details of the numbers for each country.

Answer:

1. The requested information in relation to fraudulent or fake documentation and specifically in relation to education agents (as distinct from migration agents) is not readily available from the Migration Review Tribunal's (MRT) electronic Case Management System (CMS). Accordingly, the hard copy case files would need to be examined to extract the requested information and given the large number of relevant cases, compiling a response would require an unreasonable diversion of the MRT's resources.

However, the MRT can provide statistical information in relation to student visa refusals, cancellations and non-revocation cases and percentage of applicants represented by a migration agent by financial year from 1 July 2001 to 31 May 2005, as set out in the table below:

	Lodgements	% Represented	Finalisations	% Represented
2001/02				
Student refusals	701	55.8%	1,055	54.5%
Student cancellations	739	61.4%	510	58.2%
Non-revocations	75	69.3%	15	46.7%
2002/03				
Student refusals	628	61.6%	583	57.6%
Student cancellations	962	60.9%	861	63.2%
Non-revocations	147	66.7%	151	72.2%
2003/04				
Student refusals	505	57.8%	748	60.8%
Student cancellations	998	58.5%	1,126	58.0%
Non-revocations	95	71.6%	112	64.3%
2004/05 to date				
Student refusals	424	58.7%	463	58.7%
Student cancellations	881	56.6%	867	60.7%
Non-revocations	79	60.8%	85	67.1%

2. As for question one, the regional information for fraudulent cases where fraud has originated or been perpetrated in another country is not readily available from the MRT electronic Case Management System (CMS). Accordingly, the hard copy case files would need to be examined to extract the requested information and given the large number of relevant cases, compiling a response would require an unreasonable diversion of the MRT's resources.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(19) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr asked:

In an article in the *Sydney Morning Herald* of 9 May this year, Debra Jopson reports that "internal research" by DIMIA last year provided details of the activities of education agents. This work had involved a survey of 39 Australian posts.

1. Can a copy of the relevant report be provided to the Committee?
2. Can you confirm that you found the following:
 - Agents sometimes charge unreasonably high fees and use deceptive advertising;
 - Some use fraudulent documentation in connection with visa applications;
 - Some tell applicants that they don't have to attend classes; and
 - Some use student visas to bring people to Australia for work, including prostitution?
3. How widespread were each of these practices? Were they concentrated in particular countries? Which countries?
4. Were they associated with visa applications with respect to particular providers? Which providers featured prominently?
5. Can you confirm the SMH report that the DIMIA research found that one in 10 student visa applications made in Beijing was refused because of false documents?
6. (a) Were 1550 such cases found in Beijing in 2002-03? (b) How many were detected in 2003-04?
7. How many such cases were detected in other posts in those years? Please provide details.
8. (a) Are you any closer to regulating education agents, acting here or overseas? (b) There have been many calls for this to happen. Can you provide details of correspondence to the Department or the Minister on this topic since 2000?
9. Please provide a report to the Committee on progress with regulating education agents.

Answer:

1. The article in the *Sydney Morning Herald* of 9 May this year includes information drawn from the discussion paper *Options for regulating migration agents overseas and the immigration related activities of education agents* released by the Government on 26

May 2004 (please see attached). The paper is also available electronically at www.immi.gov.au/general/agent_reg_paper/

The internal research by DIMIA of the activities of education agents is reported under Section 3.4 Need for Reform and at Attachment C of the discussion paper. The survey of 39 Australian posts was undertaken during January 2002, and was in relation to overseas migration agents. The key findings are presented at paragraph 2.4.4 of the attached paper, with the more detailed results at Attachment A.

2. Yes.

3. The discussion paper, which concerns both migration and education agents, identified the charging of high fees as the chief source of complaint by clients against agents, although it should be stressed that the majority of the 39 surveyed posts reported that they received very few complaints against agents. Posts reported that most, if not all, agents do charge fees. The countries where posts reported high levels of complaints against agents were Vietnam, Hong Kong, Cambodia, South Africa, Jordan, Greece and Serbia and Montenegro. Deceptive advertising was reported anecdotally but was not reported by posts as being a chief complaint by clients.

Analysis has shown that education agents operating in some markets are very likely to be actively involved in producing false documentation for the purposes of securing student visas. This is based upon certain agents being disproportionately represented in cases where fraud has been detected. The discussion paper provides some statistical analysis on this issue in regards to China. Levels of detected fraud in the student visa program are also a concern in relation to India and Bangladesh.

The extent to which students were being informed that they did not have to attend classes, and the extent to which agents have been involved in organised malpractice within the student visa program for the purposes of bringing non-genuine students to Australia to work in the sex industry is not readily quantifiable. However, DIMIA's records show that in the 12 months to March 2005, 34 students were found to be working in the sex industry in contravention of their visa conditions.

4. Analysis of fraud within the student caseload relating to individual education providers is being carried forward. At this stage, data is not sufficiently comprehensive to provide a substantive response.

The wording used in the *Sydney Morning Herald* article is misleading when it refers to one in ten student visa applications from Beijing were refused because of false documents.

It would have been more accurate if it had stated that one in ten applications lodged and decided at the Beijing post during 2002-03 were refused because of fraudulent documents. This is because not all student visa applications from Chinese nationals are processed in Beijing.

From March 2002, all Chinese student applications have been processed by the Adelaide Chinese Student Processing Centre (ACSPC), with only certain Chinese student applications forwarded to the Beijing post for finalisation during 2002-03.

In 2002-03, 5.49% of all Chinese Student visa applications were refused on the basis of fraud.

6. (a) Further to the above, there were 1550 cases of fraud detected for Beijing post *decided* student cases in 2002-03.

(b) Comparable data is not available for 2003-04 as the Beijing post was no longer responsible for deciding any student cases. The ACSPC commenced deciding all Chinese student applications shortly after the commencement of the 2003-04 Financial Year (see response to part 7).

7. In the absence of information on a post basis, the following table presents numbers of Student visa application refusals on the basis of fraud by country of citizenship which is almost comparable.

Student Visa Applications and Refusals on the basis of fraud for
2003-04 PY Top 10 Countries of Citizenship

Citizenship	2003-04 Applications	2003-04 Fraud Refusals	2003-04 Fraud Refusal Rate
China, Peoples Republic of	31422	907	2.89
India	14648	273	1.86
Bangladesh	5300	197	3.72
Pakistan	1306	28	2.14
Nepal	768	20	2.60
Vietnam	2436	18	0.74
Slovakia	1033	15	1.45
Russian Federation	449	12	2.67
Brazil	3641	10	0.27
Indonesia	9023	8	0.09
Others	118749	52	0.04
Total	188775	1540	0.82

8. (a) The provision of immigration assistance (as opposed to just administrative assistance) by onshore education agents is regulated by the Migration Agents Registration Authority (MARA). With regard to education agents overseas, see response to part 9 below.

(b) 44 responses were received from a range of governments, peak bodies, student organisations and individuals on the discussion paper referred to in response to part 1 of this question. There was support for further regulation of these agents from some quarters, but there is also concern that government not create more costs that would reduce Australia's competitive advantage.

The Department has been able to identify one item of correspondence since 2000 on this matter. It was from the Migration Institute of Australia and drew attention to unregistered practice by onshore education agents and that they should be registered and regulated by the Migration Agents Registration Authority (MARA).

Ministerial correspondence on this matter since 2000 could not readily be determined from the Department's Parliamentary Correspondence Management System, however, from canvassing relevant staff, we are not aware of any other correspondence about education agents. DEST, as the Department responsible for the non-immigration assistance related activities of education agents may, however, have received correspondence on education agents.

9. DIMIA is working closely and collaboratively with DEST on developing options for Government's consideration on regulating the immigration-related activities of education agents.

One of the options for overseas agents includes building on the student elodgement pilot in the PRC, India and Thailand to improve standards of knowledge and professionalism, including a code of conduct. This option is consistent with Recommendation 16 of the Evaluation of the *Education Services for Overseas Students Act 2000* (the ESOS Act).

Onshore, the provision of immigration assistance by education agents is covered by the existing MARA-based regulatory scheme. There are clear criminal offences for unregistered practice. Onshore education agents, who provide administrative assistance to student visa applicants, rather than immigration assistance, are not, however, required to be registered. They may also be authorised to receive correspondence about a visa application - as there are no restrictions on who can be appointed as an authorised recipient.

Consultations with education and migration advice industries about management of education agents on- and off-shore, are also continuing.

The broader question of regulating other aspects of education agent activities is a matter for the Education, Science and Training portfolio and was the subject of the recently published Evaluation of the ESOS Act.



Australian Government

**Department of Immigration and
Multicultural and Indigenous Affairs**

Discussion Paper

**OPTIONS FOR REGULATING
MIGRATION AGENTS OVERSEAS AND
THE *IMMIGRATION* RELATED ACTIVITIES OF
EDUCATION AGENTS**

May 2004

Foreword

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) manages the permanent and temporary entry of people to Australia, enforces immigration law, settles migrants and refugees, promotes the benefits of citizenship and cultural diversity, and works with other Portfolio agencies and departments to advance the social, economic and cultural interests and status of Indigenous people.

Many visa applicants, sponsors and review applicants engage migration agents to obtain immigration advice and assistance. DIMIA and the Migration Agents Registration Authority (MARA) have been working to improve the professional standards within the migration advice profession and address the conduct of unscrupulous agents. Currently only Australian based migration agents must be registered, leaving a significant group of unregistered overseas migration agents; some of whom are particularly problematic. DIMIA and the MARA are examining ways of extending the current regulatory scheme to the overseas environment.

As part of the temporary entry program, DIMIA develops and administers visa arrangements that facilitate the growth of Australia's education export industry through the entry to Australia of genuine full-time students. Integral to this is managing and ensuring the integrity of the student visa program assisted by the Department of Education, Science and Training (DEST).

As part of its international education program, DEST promotes Australia's educational capabilities overseas and develops the policy and legislative framework to support the internationalisation and export of Australian education and training services.

The Education Services for Overseas Students (ESOS) Act 2000 and the associated National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students developed by DEST, place requirements upon education providers to monitor their agents, including overseas agents, and imposes penalties for breaching this duty.

While it is arguable that there is a fine line separating the assistance provided by an education agent onshore to students and the immigration assistance provided by a registered migration agent, in the overseas environment, there appears to be little difference between the assistance given by an education and a migration agent.

This paper, which focuses on possible mechanisms for regulating migration agents overseas and the *immigration* related activities of education agents in Australia and overseas, was developed in consultation with DEST. The broader question of regulating other aspects of education agent activities is not addressed in this paper. This is a matter for the Education, Science and Training portfolio.

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Acronyms

ACPET	Australian Council for Private Education and Training
AIEPB	Affiliation of International Education Peak Bodies
AVCC	Australian Vice-Chancellors' Committee
CPD	Continuing Professional Development
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DEST	Department of Education, Science and Training
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DFAT	Department of Foreign Affairs and Trade
DITR	Department of Industry, Tourism and Resources
EA	English Australia
EAAA	Education Agent Association of Australia (proposed)
ESOS Act	Education Services for Overseas Students (ESOS) Act 2000
ICSE	Integrated Client Service Environment
IRIS	Immigration Records Information System
IDP	IDP Education Australia
IELTS	International English Language Testing System
ILAA	Immigration Lawyers Association of Australasia
MAPLS	Migration Agents Policy and Liaison Section, DIMIA
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia
MOU	Memorandum of Understanding
NCISA	National Council of Independent Schools' Association
LEE	Locally Engaged Employees of DIMIA
PRC	Peoples Republic of China
TDA	Technical and Further Education (TAFE) Directors Australia

1. Introduction

- 1.1. The continued and increasing importance and involvement of third party service providers (such as migration agents) in client service delivery is acknowledged in the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA's) Strategic Plan, Investing for 2005 and Beyond. The involvement of these third parties helps DIMIA to achieve operational efficiencies.
- 1.2. For example, by ensuring that visa applicants apply for the correct visa and lodge complete "decision-ready" applications, quality migration agents are not only providing a service to clients but are also contributing to efficient and cost-effective visa processing by DIMIA. While having a more limited role, education agents may similarly assist their clients, DIMIA and education providers.
- 1.3. The conduct and professionalism of migration and education agents has therefore a very real impact on the clients of DIMIA and education providers.
- 1.4. Many clients of migration agents are particularly vulnerable – they often lack comprehension of the English language, legal knowledge and knowledge of the complexities of migration law. In these circumstances, many place a great deal of trust in their agent – a trust that is sometimes abused.
- 1.5. Clients of education agents may be even more vulnerable despite many having better English skills. The potential for even more significant consumer protection issues exist in relation to overseas students because of the many young secondary school and tertiary students now wishing to come to Australia. In these circumstances, unscrupulous education agents have, among other things, defrauded students and their parents, provided incorrect advice, and been involved in immigration fraud.
- 1.6. In view of the above and the other issues highlighted in this paper (see 2.4 and 3.4 in particular), it is important to:
 - in conjunction with the Migration Agents Registration Authority (MARA):
 - continue to promote and improve professional standards within the migration agent profession and address the conduct of unscrupulous registered migration agents;
 - examine extending the current regulatory scheme to the significant group of unregistered overseas migration agents; and
 - introduce measures to more comprehensively track the activities and performance of education agents in relation to immigration and visa related matters:
 - through some form of registration mechanism; and
 - consider the possibility of a regulatory scheme focussing on their role in immigration and visa matters.
- 1.7. Benefits of closer tracking of education agents include:
 - facilitation of electronic lodgement of visa applications and associated faster processing;
 - better information for industry regarding agent performance; and
 - unscrupulous agents being appropriately sanctioned.

2. Migration Advice Profession

2.1. Activities

- 2.1.1. There were 3,288 Australian registered migration agents as at 31 March 2004. Registration is currently limited to Australian citizens and residents and certain New Zealanders. The majority of agents work in Australia, with approximately ninety percent working on a commercial or for-profit basis.
- 2.1.2. A small number of migration agents are directly contracted by DIMIA, under the Immigration Advice and Application Assistance Scheme, to provide assistance to onshore Protection visa applicants. In addition to complying with the *Migration Act 1958* (the Act) and the Migration Agents Registration Authority (MARA) Code of Conduct, delivery of these services on behalf of DIMIA must also be in accordance with service and performance standards set out in individual service agreements with these agents.
- 2.1.3. Some Australian registered migration agents also have overseas offices or work in partnership with offshore migration agents not registered in Australia.
- 2.1.4. The 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry (the 2002 Review) estimated that 2,500 offshore migration agents regularly lodge applications on behalf of clients at Australian posts overseas. These offshore migration agents are outside the authority or jurisdiction of the MARA and are therefore unregistered. If the offshore profession is growing at a similar pace to that onshore, it is likely that there are now over 3,000 unregistered migration agents operating offshore.
- 2.1.5. The number of migration agents operating offshore varies markedly from country to country as does the percentage of applications they lodge. There is a particularly high incidence of offshore agent involvement in some visa classes, such as students and business.
- 2.1.6. Although there is a large variation across DIMIA overseas posts, some sixty percent of all agents seen by posts are Australian registered migration agents.
- 2.1.7. Visa applicants, sponsors or cancellation review applicants primarily engage migration agents to obtain immigration assistance on the basis that these agents have knowledge of, or experience in, migration procedure. In broad terms, such immigration assistance may involve:
- advising an applicant about an application; or
 - preparing or helping to prepare a visa application, cancellation review application, nomination or sponsorship; or
 - preparing for proceedings before a court or review authority in relation to a visa application or cancellation review application; or
 - representing a visa applicant or cancellation review applicant in proceedings before a court or review authority.

- 2.1.8. Further to the above, most agents also:
- lodge the visa application and fee with DIMIA on behalf of a client;
 - undertake related clerical work;
 - provide or arrange translation or interpreting services to help prepare a visa application or document; and
 - are nominated by a visa applicant on Form 1231 'Appointment of authorised person' as the 'authorised recipient' for communication.
- 2.1.9. Migration agent activities, the nature of the service provided by them to clients, and the way migration agents interact with DIMIA will increasingly be affected by the continuing implementation of DIMIA business operations and client service reforms.
- 2.1.10. To address increasing workloads overseas, improve timely responses to client and migration agent inquiries, visa processing times, consistency of decision making and integrity checking, DIMIA is increasingly repatriating visa processing work to onshore processing centres of excellence.
- 2.1.11. Integral to this new way of doing business, also referred to as "Global Working or Globalisation", is the increasing use of electronic visa (e-visa) lodgement (e-lodgement) and processing. This allows DIMIA to process visas in one location, rather than in each of the countries where applications are lodged. The results of this are significant program delivery efficiencies that include better client service, and greater caseload integrity.
- 2.1.12. Global Working and e-lodgement are obviously a marked departure from the very long- standing practice of lodging all offshore visa applications at overseas posts using hardcopy visa application forms, and the post where an application was lodged also then processing it.
- 2.1.13. To date, the following onshore processing centres of excellence have been established:
- Adelaide Skilled Processing Centre;
 - Adelaide Chinese Student Processing Centre;
 - Canberra Offshore Work and Holiday Visa Applications from Iran Processing Centre;
 - Canberra Special Eligibility and Distinguished Talent Processing Centre;
 - Hobart Dependant Child Visa Processing Centre;
 - Hobart Sponsored Professional Development Visa Processing Centre;
 - Hobart Working Holiday Maker Processing Centre;
 - Hobart Tourist Visa (Short Stay) Processing Centre;

- Perth Business Skills Processing Centre;
- Perth Offshore Parent Centre;
- Perth Offshore Students Processing Centre;
- Perth Retirement (Temporary Entry) Processing Centre;
- Perth Resident Return Visa Processing Centre;
- Perth Tourist (Long Stay) Processing Centre;
- Sydney Entertainer Visa and associated Sponsorship Processing Centre;
and
- Sydney Health Processing Centre for Selected Repatriated Visa Subclasses.

2.1.14. DIMIA will also be repatriating onshore the processing of sponsored business visitor applications and sponsored visitor applications in 2005. In the longer term DIMIA is looking to centralise the lodgement and finalisation of a number of other visa applications. E-lodgement and other process automation will be crucial in enabling this.

2.1.15. E-lodgement arrangements are currently available for:

- offshore Student visas (Assessment Level 1 only);
- offshore Short Stay Visitor visa for United Arab Emirates and Kuwait nationals;
- offshore Working Holiday Maker visas;
- offshore/onshore Long Stay Business visas;
- onshore initial/further stay Student visas & associated permission to work;
- onshore Visitor Extension applications;
- onshore Resident Return visas (3 months and 5 years); and
- onshore Citizenship applications.

2.1.16. It is clear that the continued rollout of DIMIA's global working and e-lodgement strategy will significantly re-shape migration agent activities. Already, the blurring of the once clear demarcation between DIMIA offshore and onshore visa operations and processing has impacted on migration agent activities. As even greater numbers of offshore visa applications are lodged and decided onshore so too will the environment in which migration agents work change. This situation could potentially lead to more and more partnerships forming between offshore migration agents and onshore migration agents; thus making overseas agent registration and regulation all the more important to the protection of consumers.

2.2. Review

- 2.2.1. The regulatory arrangements in relation to the migration advice profession have been the subject of three reviews; one (1996-97) which led to the move away from government regulation and the implementation of statutory self-regulation in 1998; another (1999) that reviewed statutory self-regulation of the industry; and the most recent review, the 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry (the 2002 Review). A copy of the report of the 2002 Review can be found on DIMIA's website (www.immi.gov.au under 'information resources/ publications').
- 2.2.2. The 2002 Review made 27 recommendations to improve the migration advice profession, with the Government indicating in September 2002 that it will act on all recommendations in the report.
- 2.2.3. In respect of the activities of migration agents offshore, the 2002 Review had recommended that:
- To strengthen consumer protection to visa applicants offshore, amend the legislation to extend registration to foreign nationals.*
- This would include a measure limiting the categories of people who can be appointed as representatives or agents of a visa applicant.*
- (Recommendation 20)
- 2.2.4. The extent to which the profession has come under review is a measure of the Government's commitment to further reform the migration agents profession to offer better protection to consumers, many of whom are particularly vulnerable. The profession will be reviewed again in approximately five years.

2.3. Regulation

- 2.3.1. The migration advice profession was largely unregulated until 1992 when government regulation was introduced in response to:
- exploitation of consumers by some agents;
 - the lack of protection for vulnerable consumers; and
 - an increase in the number of consumer complaints against agents.
- 2.3.2. Following the first review of the migration advice profession, government regulation was replaced with statutory self-regulation in 1998.
- 2.3.3. The Migration Institute of Australia (MIA) - the peak representative body - was appointed in 1998 to act as the Migration Agents Registration Authority (MARA) to regulate the Australian migration advice profession. The MARA has the power to take action to ensure that registered agents act in accordance with the requirements of the *Migration Act 1958* (the Migration Act) and the MARA Code of Conduct (the Code).

- 2.3.4. The powers of the MARA have been steadily increased over time through legislative and regulatory changes to implement review recommendations. As soon as practicable, the Government will be bringing forward a number of other legislative changes to implement many of the remaining 2002 Review recommendations. These steps will be further aimed at removing unscrupulous agents from the industry/profession and ensuring consumer protection.
- 2.3.5. The second of several packages of changes was the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill passed by the Senate on 23 March 2004 and will come into effect on 1 July 2004.
- 2.3.6. The Bill includes strong consumer protection measures and tough provisions against unscrupulous agents, who promote schemes that exploit vulnerable clients and encourage applications with no chance of success.
- 2.3.7. Some of the main features of the Bill are:
- new powers for DIMIA to refer agents, who lodge large numbers of applications with no chance of success, to the MARA for sanctioning;
 - new criminal offences for agents who fail to declare their involvement, in visa or review applications;
 - new powers for the MARA to publish sanction information immediately, without waiting for appeal proceedings, as well as a list of recently de-registered agents;
 - protection from civil action for people (including DIMIA staff) who make complaints against agents to the MARA or DIMIA;
 - provisions enabling increased sharing of information about agents of concern between the Migration Review Tribunal, Refugee Review Tribunal, the MARA and DIMIA;
 - provisions enabling mandatory professional indemnity insurance for registered migration agents to be prescribed; and
 - provisions ensuring agents can not avoid the effects of sanction action taken against them via lengthy appeal proceedings.

2.4. Need for further Reform

- 2.4.1. At present, the MARA only has jurisdiction to regulate the conduct of migration agents who operate within Australia and the small number of Australian registered agents who work offshore. Currently, there are some 3,300 migration agents registered with the MARA.
- 2.4.2. Most people operating offshore are unregistered migration agents as they remain outside the jurisdiction of the MARA's control.
- 2.4.3. DIMIA's ability to take action in relation to unprofessional conduct by such unregistered agents is limited. Under the current legislation, action is restricted to a range of policy and administrative measures. For onshore

agents, the Commonwealth Director of Public Prosecutions on behalf of DIMIA prosecutes unregistered Australian based agents. There are penalties ranging up to ten years imprisonment for people who practise in Australia as unregistered agents.

2.4.4. During January 2002, Migration Agents Policy and Liaison Section (MAPLS) surveyed overseas posts to ascertain the quality of service provided to clients and DIMIA by overseas migration agents (Australians and foreign nationals). The results of the survey appear at Attachment A. Some key findings include:

- many agents do not keep up with legislation/procedural changes, frequently ask DIMIA officers very basic questions and are unaware of local conditions and documentation;
- a majority of posts reported that agents have limited competence, reporting that applications received are generally incomplete, constant requests are made for extra time to submit a complete application, and agents are also slow to respond to requests from DIMIA officers;
- the majority of posts reported that many agents are discourteous to staff, do not pass on requests to clients, take on cases with little chance of success, and appear to charge unnecessarily high fees. Some posts also reported that some agents were suspected of lodging fraudulent documents and trying to obtain favours from Locally Engaged Employees (LEE); and
- several posts distinguished between Australian registered agents as more knowledgeable, generally competent, and more professional in their dealings with clients in comparison to local agents, in particular 'student agents'.

2.4.5. Further to the 2002 Review recommendation regarding overseas practice, DIMIA is currently examining options for addressing the issue of regulation of overseas migration agents. DIMIA is also examining ways of tracking, monitoring and regulating the immigration related activities of education agents simultaneously, due to the overlapping activities of these two groups.

2.5. Key Stakeholders

2.5.1. In developing options for regulating overseas migration agents, DIMIA will be consulting with key stakeholders, including the MIA, the MARA, and the Immigration Lawyers Association of Australasia (ILAA). The development of this discussion paper is the first step in this process.

2.5.2. It will also be useful to test the proposed arrangements with DIMIA staff, particularly those processing visa applications overseas, but also within state and territory offices and in Central Office, including areas involved in legal opinions, legislation, visa architecture, overseas resources and liaison and client services.

3. Education Advice Profession – Immigration related activities

3.1. Activities

- 3.1.1. The key role of education agents is to identify prospective students for institutions that provide education services in Australia, ie schools, English language colleges and tertiary institutions such as universities and technical colleges. Some education agents may also assist the student with matters relating to his or her visa application.
- 3.1.2. The number of education agents is unknown but could be up to 10,000 worldwide, including an anecdotal 2,000+ in the Peoples Republic of China (PRC); although as at mid September 2003 there were only some 270 agents registered with the PRC Ministry of Education. Similarly, there is no solid information on the numbers of onshore education agents but DIMIA estimates that there could be some 3,000.
- 3.1.3. Education agents operate both as individuals and as companies. The people who deal directly with the student clients are generally known as “student counsellors”.
- 3.1.4. IDP Education Australia is amongst the largest education agencies. It promotes Australian education overseas, acts as an education agent on behalf of various universities, and administers the International English Language Testing System (IELTS) in Australia.
- 3.1.5. There is no peak body in Australia representing education agents, although informal education agent groups may exist across Australia. For example, in Sydney a group of some fifteen agents meets regularly to discuss issues of practice and conduct within their profession. The majority of the Sydney group are also registered migration agents.
- 3.1.6. There is an informal national peak body for education providers; the Affiliation of International Education Peak Bodies (AIEPB). Members of the AIEPB are the Australian Vice-Chancellors’ Committee (AVCC), English Australia (EA), National Council of Independent Schools’ Association (NCISA), Australian Council for Private Education and Training (ACPET), Australian Council of Independent Vocational Colleges (ACIVC), Government Schools, and TAFE Directors Australia (TDA). However, not all Australian international education providers are represented by these organisations.
- 3.1.7. All education providers who offer courses to international students are required by the *Education Services for Overseas Students Act 2000* (ESOS Act) to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). There are approximately 1,200 education providers registered under the CRICOS to offer courses to overseas students in Australia. Many of these education providers employ education agents and registered migration agents. Additionally, some education agents are also registered migration agents (whilst the exact number is not known it is estimated by MARA to be twenty-five percent of the approximately 3,300 registered migration agents).

3.1.8. Education agents in Australia who are not registered migration agents are able to undertake the following activities, as they do not amount to providing 'immigration assistance' under the Migration Act:

- lodging (posting or delivering) a visa application and fee with DIMIA on behalf of a client;
- doing clerical work to prepare (or help prepare) a visa application at the request of an applicant or registered migration agent, which could include writing or typing an application form, indicating where names, addresses and other information must be put on a form or collating and copying documents relevant to an application;
- providing translation or interpretation services to help prepare a visa application or other document;
- providing generic advice to a person that he or she must apply for a visa;
- passing on to a person information produced by a third party, without giving substantial comment on or explanation of the information, eg information publicly available from DIMIA; or
- being nominated by a visa applicant on a Form 1231 'Appointment of authorisation person' as the 'authorised recipient' for communication.
 - This essentially means to receive DIMIA correspondence on behalf of a visa applicant and may lead to translating or passing on the correspondence to the applicant without providing substantial comments on or a detailed explanation of the substance of the correspondence.

3.1.9. Activities that are restricted to registered migration agents are:

(1) *providing 'immigration assistance'*

Under the Migration Act a person must be registered if he or she uses or purports to use *knowledge of or experience in migration procedure to advise an applicant about an application, or prepare or help to prepare a visa application, cancellation review application, nomination or sponsorship*. A person who provides immigration assistance but is not registered as a migration agent is, with limited exceptions, in breach of the Migration Act.

(2) *asking for or receiving a fee for immigration representations*

The Migration Act also provides that a person who is not a registered migration agent must not ask for or receive any fee or other reward for making immigration representations, ie communicating with DIMIA or the Minister on behalf of an applicant or sponsor. For example, a person who is not registered as a migration agent must not receive a fee or reward for seeking to expedite another person's application by:

- telephoning DIMIA for a progress report or to ask whether there are any documents missing; or

- telephoning DIMIA in the presence of an applicant.

Such action may amount to an offence under the Migration Act, the penalty for which is up to ten years' imprisonment.

- 3.1.10. While it is arguable that there is a fine line separating the assistance provided by an education agent onshore to students and the immigration assistance provided by a registered migration agent, in the overseas environment, there appears to be little difference between the assistance given by an education and a migration agent.
- 3.1.11. In the absence of any firm data on the extent of education agent involvement in student visa applications, the numbers of student visa grants offer the best available indicator (albeit limited) of the possible volume of business conducted by education agents. Additionally, one could expect higher levels of involvement by education agents in countries where English is not the main language and where cultural, political and legal systems are significantly different from Australia's.
- 3.1.12. Table 1 at Attachment B presents figures on all offshore and onshore student visa grants, by the country of citizenship, for the 2001-02 Financial Year for the top 12 countries. These top 12 countries account for almost 75 percent of student visa grants. All but one (USA) are countries where English is not the main language. The highest proportion of student visa grants are to PRC nationals (14 percent), followed by the Republic of Korea, Japan and Indonesia (each at 7.3 percent). Hong Kong, Malaysia and Thailand come in at 6.9, 6.2 and 5.9 percent, respectively.
- 3.1.13. Further to Section 2.1 (above) in relation to migration agents, education agent activities, the nature of the service provided by education agents to clients, and the way education agents interact with DIMIA will also increasingly be affected by the continuing implementation of DIMIA business operations and client service reforms.
- 3.1.14. For example, since August 2001 student visa applicants (subclass 573 Higher Education) from Norway, Sweden and United States of America (USA) have been able to lodge electronic applications via the Internet. Additionally, from 1 July 2002, certain Assessment Level 1 students outside of Australia have been eligible to apply for, and be granted, their Student visa via the internet (Student e-visa). Under this arrangement, a Student e-visa may be granted:
- electronically immediately after lodgment ('immediate auto-grant') where no health assessment or additional information/follow-up are required;
 - electronically ('delayed auto-grant') where a health assessment or health assessment and additional information/follow-up are required; or
 - manually ('manual grant') by the Perth Offshore Students Processing Centre (POSPC) where additional information/follow-up are required but either no health assessment is required or health clearance has been finalised through eHealth.

- 3.1.15. The POSPC is currently involved with the following student related visa sub-classes:
- subclass 570 – Independent ELICOS;
 - subclass 571 – Schools;
 - subclass 572 – Vocational Education and Training;
 - subclass 573 – Higher Education;
 - subclass 574 – Masters and Doctorate; and
 - subclass 575 – Non-award Foundation/Other.
- 3.1.16. Further, from March 2002 all Chinese student applications have been processed by the Adelaide Chinese Student Processing Centre (ACSPC). From July 2002 this centre also took over assessing certain Chinese student applications before forwarding them to the Beijing post for finalisation.
- 3.1.17. DIMIA's Strategic Plan, Investing for 2005 and Beyond, envisages that DIMIA's On-Line Lodgement Service will be expanded, inter alia, to encompass all onshore Student visas, as well as, selected offshore Student visas. In line with this, students in Australia who hold a student visa (regardless of assessment level), or visitors and other temporary resident visa holders, who are Assessment Level 1, can apply directly over the internet for a student visa. Student visa holders may also apply on the internet for permission to work.
- 3.1.18. Additionally, it is envisaged that similar arrangements could be put in place to facilitate the e-lodgement of student visas by agents as already exists for the electronic lodgement of Subclass 457 - Temporary Business (Long Stay) sponsorship, nomination and visa applications (ie e457), and Subclass 676 - Tourist (Short Stay) visa applications (ie e676).
- 3.1.19. Clients may access the e457 system independently, via DIMIA's website, www.immi.gov.au. Alternatively, if clients are likely to be lodging at least ten 457 applications per year, they may set up an Established Client Account. Established Client Account holders are called, simply, "Established Clients" and are in the main migration agents and employers.
- 3.1.20. Being an Established Client allows those who regularly make a high volume of 457 applications to access a number of resource saving features including:
- bypassing the general information and terms and conditions screens;
 - pre-populating applications with contact details; and
 - the ability to generate template nomination applications.
- 3.1.21. Electronically lodged 457 applications will generally receive priority processing over paper lodged applications. This priority applies to applications that have

been fully completed and where all relevant documentation has been forwarded in support of the application.

- 3.1.22. Similarly, from 10 March 2003, applicants from the United Arab Emirates (UAE) have been eligible to lodge an application for a visitor visa (Tourist Short Stay, Subclass 676) over the internet. From 29 March 2004, nationals from Kuwait have also had access to this service, which will be further extended from 1 July 2004 to include European Union (EU) accession countries.
- 3.1.23. Applicants can apply for their visa online and pay the visa application charge by credit card. The current processing times are 7-10 days. Applicants are advised by email when a decision is made on their application.
- 3.1.24. The e676 facility already provides an efficient alternative method for lodging and processing visitor visa applications from UAE and Kuwait passport holders. From 1 July 2004, selected travel agents will also have access to the e676 facility via a logon screen and applicants will be able to lodge their e676 application through travel agents. This will also enable DIMIA to monitor applications lodged by travel agents and compare these to applications lodged by individuals.
- 3.1.25. Similar arrangements to e457 and e676 could be introduced for Student visa applications. Indeed, DIMIA is currently seeking to involve education agents in a program where they will play a vital part in lodging Student visa applications over the internet. Education agents in four countries (India, Thailand, Indonesia and the PRC) will be invited to nominate to be included on an electronic visa application initiative using the internet planned for commencement in mid-2004.
- 3.1.26. Initially, only a small number of agents will be assisting in a systems testing phase. Following the systems testing and a positive assessment of the initiative, further agents will be granted permission to use the e-lodgement facility for Student visa applications. While there already exists an e-lodgement facility for Student visas, the current facility is limited to students from low risk countries and does not have any component of education agent involvement.
- 3.1.27. Eventually, students worldwide will be able to lodge applications electronically, with the requirement that their visa applications are lodged through education agents who are already known to DIMIA and have been granted access to the e-lodgement system.
- 3.1.28. Clearly the student area is a significant element of DIMIA's work repatriation, globalisation and e-lodgement strategy, with an increasingly important role to be played by agents in helping DIMIA to realise operational efficiencies and deliver better client service. In order to maximise e-lodgement take-up, DIMIA continues to review and enhance the efficiency and user-friendliness of its business processes and associated systems. In line with this, the e457 and e676 lodgement systems are designed to be self explanatory and easy to use.

3.2. Review

- 3.2.1. The performance and conduct of education agents in relation to immigration and visa related activities has not been the subject of any review process.

3.3. Regulation

- 3.3.1. Education agents are not directly subject to any Australian registration scheme or regulatory framework in relation to immigration and visa related activities.
- 3.3.2. However, the *Education Services for Overseas Students Act 2000* and the associated National Code of Practice developed by DEST places requirements upon education providers to monitor their agents, including overseas agents, and imposes penalties for breaching this duty. A copy of the DEST National Code can be found on the DEST website (www.dest.gov.au).

3.4. Need for Reform

- 3.4.1. The question of whether education agents should be registered has been around for some years. There have been ongoing but ad hoc discussions between DIMIA, the Department of Education, Science and Training (and previously the Department of Education, Training and Youth Affairs) and the MARA over the past few years.
- 3.4.2. This paper considers the possibility of regulating the immigration related activities of education agents. The broader question of regulating other aspects of education agent activities is not addressed in this paper. This is a matter for the Education, Science and Training portfolio.
- 3.4.3. Issues regarding the immigration related activities of some education agents include:
 - charging unreasonably high fees for their recruitment activities and associated immigration related work;
 - advertising deceptively overseas;
 - lodging visa applications supported by fraudulent academic records, financial statements and employment statements;
 - providing wrong/deliberately false advice to potential applicants in relation to conditions associated with student visas (eg that they do not have to attend classes);
 - lending money to applicants to allow them to meet the financial requirements under the student visa program (this has been countered in part by measures requiring students to show a savings history); and
 - using the student visa program to bring non-genuine students into Australia for non-academic purposes, including to work in brothels.
- 3.4.4. For example, in relation to Australia's largest source country for overseas students, DIMIA's Beijing post reports that for 2002-03 Financial Year:
 - fraud remains a significant problem in relation to the PRC student caseload, but with high variance by application source province. The highest risk provinces for student applications were Xinjiang, Fujian,

Neimenggu, Hainan, Jilin, Tianjin, Guangxi, Henan, Jiangxi and Shaanxi;

- twenty-seven percent of Beijing post decided student cases were refused, with 10 percent refused on false documents;
- sixty-one percent (9,467) of the total Beijing decided cases were represented by a declared agent, with 39 percent (6,130) not declaring any agent involvement in their applications;
- there were 270 education agents registered with PRC authorities (for the global market) as at September 2003, but DIMIA records show over 300 separate agents were recorded as having assisted more than 5 cases each in their applications for Australia. The top 15 agents represented around 21 percent of the total caseload. Seven of these top 15 agents had refusal rates of 15 percent or higher; and
- there is a perception among decision makers in Beijing that non-registered and non-declared agents are more likely to be involved in fraud than declared agents.

3.4.5. Further to the above, tables 2 - 5 at Attachment C present for 2002-03 student application refusal rates and refused on false documents rates for Beijing post decided cases by application source province in PRC, type of student application fraud detected for Beijing post decided cases, application refusal rates by agent/agency for Beijing post decided student cases, and false documents refusal rates by agent/agency for Beijing post decided student cases.

3.4.6. DIMIA also received anecdotal evidence that some onshore education agents were also providing immigration advice and assistance in contravention of the Migration Act. To address this situation DIMIA provided guidelines in May 2001 for the AIEPB, and education providers to pass to education agents. The guidelines were also placed on DIMIA's website in 2002 and the content has been included in 3.1 above.

3.4.7. DIMIA recommended to AIEPB that education agents either refer students to DIMIA or a registered migration agent, or that education agents consider becoming a registered migration agent themselves.

3.4.8. More recently, as part of the 2003 Budget, the Government announced a number of integrity measures for student visas. Among these was that DIMIA will seek to more comprehensively track the immigration related activities of education agents, to identify those agents who are authorised to act on behalf of Australian educational institutions in recruiting overseas students, and to track their performance.

3.4.9. The registration for education agents should facilitate the monitoring of immigration related activities of education agents and ensure not only the integrity of the overseas student program in Australia, but also the integrity of the wider migration program.

3.4.10. The flow of students into the general migration program (ie former overseas students applying for skilled migration after completing studies) has increased in recent years and it is therefore essential to maintain the integrity of the student visa program. On 1 July 2001, three new onshore Skilled visa sub-

classes (880, 881 and 882) were introduced specifically for overseas students studying in Australia. Additionally, overseas students who have obtained an Australian undergraduate degree or diploma or trade qualification or a PhD are allocated additional points when applying for a sub-class 136 (Skilled – Independent) and 138 (Skilled – Australian – Sponsored) visa. As a result of these measures, overseas students are more readily able to gain access to the skilled migration program than applicants who have not studied in Australia, which heightens the need to ensure the overall integrity of the student visa program.

3.4.11. Table 6 at Attachment D provides an indication of overseas student flow-on into the skilled migration program by country of applicant citizenship for the 2001-02 Financial Year for the 12 top countries. These top 12 countries account for 85 percent of all Skilled visa grants in the 136, 138, 880, 881 and 882 subclasses. The top three countries are India (22.4 percent), the PRC (15 percent) and Indonesia (15 percent), together accounting for 52 percent of all Skilled visa grants in these subclasses.

3.5. Key Stakeholders

3.5.1. In developing options for regulating migration agents overseas and the immigration and visa related activities of education agents, the following key external and internal stakeholders have been identified:

- Department of Education, Science and Training (DEST), including AEI Education Network;
- Department of Foreign Affairs and Trade (DFAT);
- Department of Industry, Tourism and Resources (DITR);
- Department of Prime Minister and Cabinet (PM & C);
- Austrade;
- State and Territory government education departments;
- Affiliation of International Education Peak Bodies (AIEPB) and member organisations;
- MIA/MARA;
- Immigration Lawyers Association of Australasia (ILAA);
- CRICOS registered education providers;
- education agents, including IDP Education Australia;
- National Liaison Committee for International Students in Australia (national international student representative body);
- DIMIA overseas posts, State/Territory offices and sections in Central Office, including areas involved in legal opinions, legislation, visa architecture, student policy and operations, overseas resources and liaison and client services;
- Australian Competition and Consumer Protection Commission; and
- Office of Regulatory Review

3.5.2. The preparation of this discussion paper is the first step in consulting with these and other interested stakeholders about the options that should be considered.

4. Options for regulating migration agents overseas, and monitoring and improving the performance of education agents in relation to immigration related activities

4.1. Migration Advice Profession

4.1.1. DIMIA is currently considering how the registration/regulation arrangements for Australian migration agents might be extended to unregistered offshore migration agents. Two options include:

Option A: Extend the current registration scheme offshore in its present form except with:

- **the threat of administrative sanction rather than criminal penalty for practising while unregistered; and**
- **a greater role for DIMIA in the disciplinary process (similar to the role of DIMIA in relation to the proposed vexatious activity scheme).**

Option B: Option A, plus the introduction of **restricted registration categories** offshore (and onshore) so that:

- **unregistered offshore migration agents could register as migration agents to practise within certain defined areas (eg student, business, skilled, family, protection and humanitarian visas); and while**
- **agents registered in a limited category would be required to pay a registration fee, they would be required to undertake more limited Continuing Professional Development (CPD) activities.**

4.1.2. The Canadian Government is in the early stages of regulating immigration consultants. The Canadian Society of Immigration Consultants was appointed in October 2003 to serve as a self-regulating body for immigration consultants, with the Government anticipating implementing legislation before the end of April 2004.

4.1.3. The May 2003 Report of the Advisory Committee on Regulating Immigration Consultants presented to the Minister of Citizenship and Immigration, Canada, which set the framework for Canada's regulatory scheme, also recommended a tiered system. A copy of the Canadian report can be found on the Citizenship and Immigration, Canada website (<http://cicnet.ci.gc.ca>).

4.1.4. The Canadian Committee, cited the example of the United Kingdom's Office of the Immigration Services Commissioner, and recommended development of levels of practice to allow current immigration consultants to apply for registration, based on their level and area(s) of experience (Recommendation 26).

4.1.5. Although at present there are no details available on the proposed tiered system, the Report indicated that it would be designed with reference to the

three levels of registration available in the UK, which allow for immigration assistance to be provided at different levels of competence and expertise.

- 4.1.6. Immigration levels in the UK are broken down into: 1 - signposting and information (no advice given and therefore no registration required), 2 - general (needs diagnosis and administrative support), 3 - general casework (casework and paper appeals), and 4 - specialist (court advocacy). As part of levels 3 and 4 agents are able to specialise in the areas of naturalisation, asylum, detention, work permits, marriage, and students.
- 4.1.7. Information on the UK scheme can be found on the UK Immigration and Nationality Directorate website (<http://194.203.40.90/>).

4.2. Immigration Related Activities of the Education Advice Profession

- 4.2.1. DIMIA is currently considering options for dealing with the immigration related activities of the education advice profession. Any new arrangements should complement the proposed reforms for extending the regulatory scheme for migration agents offshore, and would also represent a staged approach.
- 4.2.2. *The four options below are not mutually exclusive and some could be adopted in combination.*

Option A: Implement a monitoring scheme

- 4.2.3. This option proposes to link education agents more directly to CRICOS registered education provider(s).
- 4.2.4. Under this arrangement education providers could be informed of any concerns with its education agents in relation to immigration and visa related matters (eg non-bona fides of student visa applications). Provider(s) could disassociate themselves from the particular agent if the concern is found to be valid. This in effect is a “commercial outcomes” based sanction regime, which could be replaced by statutory regulation in the longer term, if required.
- 4.2.5. Alternatively, information on the education agent could be passed on to DEST who could investigate the matter under the existing ESOS arrangements. It would also be useful to DIMIA if education providers could monitor the performance and conduct of education agents in relation to immigration matters; in turn informing DIMIA of agents of concern to them. DIMIA could then investigate the activities of these agents on behalf of the provider(s). Again if the concern is found valid, the provider(s) would disassociate itself from the agent.
- 4.2.6. These mechanisms would place the onus on education providers, and would be consistent with current ESOS obligations. It would be an important step forward in helping to ensure an appropriate professional standard within the education advice profession with regard to immigration and visa matters and removing unscrupulous agents.

Option B: Encourage education agents to become registered migration agents

- 4.2.7. Education agents could become registered migration agents with MARA or a similar organisation under the current statutory regime if they do not register as education agents under Option A.
- 4.2.8. In regard to offshore agents, similar proposals could be implemented as those suggested for the Migration Advice Profession in 4.1.

Option C: Restricted migration agent registration

- 4.2.9. Building on Option B introduce, a form of restricted migration agent registration to allow agents specialising in the education sector to provide immigration related advice only in relation to overseas student visas.
- 4.2.10. Given the current regulatory arrangements for migration agents onshore, the MARA, as the migration advice profession regulator, could also administer the proposed system of restricted agent registration offshore and onshore.
- 4.2.11. Alternatively, a similar organisation to MARA could be set up to cover restricted education agents providing immigration advice.
- 4.2.12. In regard to offshore agents, similar proposals could be implemented as those suggested for the Migration Advice Profession in 4.1.

Option D: Industry/profession self-regulation

- 4.2.13. Implement an industry self-regulation model for education agents representing Australian CRICOS registered education providers. This could apply to onshore and offshore education agents.
- 4.2.14. The Sydney group, in partnership with the MIA, have proposed a model based on industry/profession self-regulation through the formation of a subsidiary MIA company; the proposed Education Agent Association of Australia (EAAA).
- 4.2.15. This proposal focuses on the full range of education agent activities not just the immigration related activities of education agents. The broader regulation of education agent activities is a matter for the Education, Science and Training portfolio and is not addressed in this paper.
- 4.2.16. However, an industry self-regulation model could be developed specifically to govern the immigration related activities of education agents.

5. Full and restricted migration agent and education agent registration - Issues

- 5.0.1. Under both Options A and B for migration agents overseas (see p.20), and Options B, C and D for education agents (pp 21-22), it may make sense that as far as possible the same requirements and conditions be applied onshore and offshore to those people wishing to become, and continue to be, registered migration agents, or education agents providing immigration related services.
- 5.0.2. All offshore migration agents and on-and offshore education agents could be registered on an annual basis by the profession regulator to provide immigration assistance and would be able to renew their registration yearly. The level of registration fees that would be charged would need to reflect the workload for the administrator and perhaps also local factors (eg relative value of currencies).
- 5.0.3. All agents would have to meet certain entry criteria prior to registration and then comply with a universal Code of Conduct for their profession and undertake Continuing Professional Development (CPD). The CPD requirement could again vary for agents holding restricted registration. Transitional provisions in relation to entry requirements and CPD requirements may however be necessary. For example, foreign nationals acting as migration agents offshore may need to be given some time to become registered or be allowed to register initially on the basis of demonstrated competence in immigration related matters over the last five years.

5.1. Competency and Continuing Professional Development

- 5.1.1. It is proposed that as far as possible newly fully registered offshore migration agents should be required to meet the same educational standards as onshore migration agents – to ensure the largely universal application of the registration scheme.
- 5.1.2. Under such arrangements, onshore and offshore education agents who have acquired limited registration as migration agents would be required to complete a more limited form of CPD and meet distinct entry standards.
- 5.1.3. This would mean that the MIA and other CPD providers would need to ensure that all agents operating offshore are able to complete the prescribed educational requirements. Issues of access, security and cost would need to be addressed. It would also be essential that any applicants for overseas registration would be able to undertake the MARA's common examination, or any other examination developed for restricted migration agent registration or education agent registration.
- 5.1.4. DIMIA could provide information on its website to keep offshore agents informed about changes to legislation and best practice procedures.

5.2. Conduct standards and complaints handling

- 5.2.1. Similarly, it would make sense that the same Code of Conduct should apply irrespective of geographic location to all registered migration agents and education agents, although some minor amendments may be necessary to take into account local circumstances offshore. For migration agents it would be the MARA Code of Conduct. A similar Code could be developed for education agents.
- 5.2.2. Again it would make sense for complaints handling in relation to onshore education agents providing immigration advice to mirror as far as practicable the existing complaints procedures for migration agents.
- 5.2.3. Any offshore migration or education agents scheme would need to address issues of the difficulty and expense of the profession regulator investigating complaints made offshore, or about offshore agents. There may be an advantage in utilising embassy staff and having their investigation reports considered conclusive by the MARA, or any new organisation established for education agents. The MARA may find sufficient economies of scale to engage their own staff in countries where there may be a significant number of agents operating.
- 5.2.4. In addition, DIMIA staff at overseas posts and regional offices (in co-ordination with MAPLS) could make a referral to the MARA, or any new organisation established for education agents, that an agent had breached a provision of the Code of Conduct following the investigation of a complaint.
- 5.2.5. One possibility is for DIMIA staff to issue a “conclusive report” as to the facts and perhaps a conclusion as to whether a breach had occurred. The MARA board, or any new organisation established for education agents, would be required to accept the contents of such a report as facts and proceed to make a decision accordingly. They would not need to reconsider the original investigation of the complaint by DIMIA officers unless they wished to.
- 5.2.6. The MARA, or any new organisation established for education agents, would then be required to make a decision to sanction or refuse to re-register an agent on the basis that the breach of the Code had occurred as determined by DIMIA. The level of sanction imposed, if any, would remain at the discretion of the respective boards, in respect of discretionary sanction powers.
- 5.2.7. Under this model, consideration would also need to be given to what avenues of review rights would apply to offshore registration and sanction decisions.
- 5.2.8. Additionally, DIMIA would also encourage education providers to directly refer matters of concern or complaints about the immigration related activities of education agents to any new organisation established for education agents. In return, it would be useful for this organisation, to provide either, regular complaints handling reports (perhaps monthly) to all education providers, DIMIA and DEST, or have a website similar to that of the MARA showing sanctions information.

5.3. Legal issues

- 5.3.1. Onshore persons face being prosecuted for unregistered practice as a migration agent. Prosecution offshore is not a practical option due to the difficulty of extending the application of criminal provisions offshore, including extradition and extra-territoriality issues. Similarly, proposed legislative changes onshore to require agents to declare their role or face prosecution, or a fine, would not be viable offshore.
- 5.3.2. Given these constraints, consideration needs to be given as to how DIMIA can distinguish between registered agents and unregistered providers of migration advice in its visa decision making processes. Administrative sanctions are therefore the focus of approaches being considered.
- 5.3.3. Instead of refusing to deal with certain agents (although this could be an option), it is proposed that DIMIA could tighten requirements for submitting applications. For example, DIMIA could require applicants to provide their personal address details and the current business address of their registered migration agent (if applicable), in order to submit a valid application.
- 5.3.4. DIMIA may also need to amend s494D of the Migration Act to minimise opportunities for unregistered agents to fail to declare their involvement in an application. “Authorised recipients” may need to be restricted to close family members (to be defined narrowly) and registered migration agents.
- 5.3.5. On the other hand, the Canadian advisory committee on regulating immigration consultants referred to earlier recommended a slightly different and perhaps tougher approach.

The Committee further recommends that Canadian embassies, consulates and high commissions deal only with those individuals who fall within the definitions of Recommendation 3.....

.....”Counsel” refers to a barrister or solicitor, or to a licensed immigration consultant.

“Other Representative” refers to a person who, without collecting any fee, remuneration or other benefit whatsoever, represents or advises a person who is the subject of a proceeding or application before the Minister an officer or the Board.

- 5.3.6. Legal issues in relation to regulating education agents would initially surround the nature of the monitoring and tracking scheme of immigration related activities and considerations in relation to the appropriate level of regulation; statutory self-regulation or profession self-regulation. As noted above, it is often the employees of so-called education agents that are in fact in direct contact with student visa applicants and may be providing immigration assistance. Any proposed registration and regulatory scheme would need to consider how the immigration related activities of these intermediaries, whether strictly employees or otherwise, can be supervised.
- 5.3.7. It is DIMIA’s view that education agents would need to be responsible for the performance and behaviour of these student counsellors, to whom they have in effect sub-contracted work.

5.4. Promoting the scheme

- 5.4.1. As there can be no threat of unregistered offshore migration agents or education agents facing prosecution, DIMIA/the MARA/DEST/education providers/any new organisation for education agents, would need to adopt strategies for encouraging such persons to become registered to be able to provide immigration related assistance or related services.
- 5.4.2. The biggest advantage to registered agents would be the ability to advertise as 'registered', giving them legitimacy in providing advice. Following on from this, it is expected that the costs of registration would be small in comparison to the increased profit resulting from registration. Nevertheless, at least in the early stages it may be necessary to convince prospective agents of the benefits of registration.
- 5.4.3. It may also be necessary to clarify DIMIA officers' obligations to registered agents, and how they should deal with unregistered agents. For example, DIMIA may need to guarantee to communicate with registered agents within strict limits – eg a communication system that only registered agents can access, such as a secure email system, may need to be developed.
- 5.4.4. It is likely that any legislative basis for offshore regulation should allow international organisations to continue to provide immigration assistance to applicants for humanitarian visas offshore.
- 5.4.5. Incentives for education agents joining an expanded or parallel registration scheme would be particularly important in the initial stages of regulation, both onshore and offshore. A mechanism to facilitate this may be that all education agents need to be linked to a CRICOS provider(s) and registered in order to be able to assist students with immigration related matters. Under this scenario, one approach could be that if a student does not engage such an agent they could be required to produce a letter from the education provider saying so, or the bona fides of their application may be questioned.
- 5.4.6. The Australian education export industry would be expected to benefit as a result, among other things, through better quality immigration related advice and assistance provided to their clients by registered education agents.
- 5.4.7. The issue of what may constitute appropriate incentives for migration and education agents to register is a difficult one. For any industry registration and regulation scheme to work, there must be an acceptable take up rate by members of the industry. To achieve this, it may be necessary to have a combination of both significant incentives for registering and significant disincentives for not registering.
- 5.4.8. At the end of the day, for example, DIMIA offices and overseas posts may need to advertise that they will only deal with registered agents, and advise applicants how/where they can ascertain that a person is a registered agent. If this approach were adopted, applications lodged by non-registered persons could be treated as if they have been lodged by the applicant and all communication would be with the applicant, informing them that the office does not recognise the *agent*. This would very quickly send a strong message to unregistered agents as to the value of registration. Flowing from this, de-registration for code of conduct breaches etc then becomes a real penalty.

5.5. Sanctions

- 5.5.1. Sanctions for registered education agents onshore could be expected to closely mirror those imposed on onshore registered migration agents.
- 5.5.2. Similarly, sanctions for unregistered education agents onshore providing immigration related services could also be expected to mirror as far as possible those imposed on onshore unregistered migration agents.
- 5.5.3. In relation to all offshore agents, one approach could be that standards could be enforced via re-registration, rather than suspension and cancellation decisions as occurs onshore. This may simplify the decision-making process and reduce the resource impact offshore and the time taken to deal with agents overseas.
- 5.5.4. Re-registration could also be refused automatically if certain objective criteria were met - if an agent's visa application refusal rate was over a certain threshold percentage, or a certain number of visa applications were received with fraudulent documents or statements. The former could mirror the proposed sanctions for onshore registered migration agents engaged in vexatious activity. Alternatively, an application for re-registration could be considered invalid if such criteria were met.
- 5.5.5. Having said this, a suspension and cancellation regime may, however, more quickly remove unscrupulous overseas agents from the industry and thereby also better ensure consumer protection.

5.6. Existing overseas registration schemes

- 5.6.1. DIMIA would need to address how any expanded registration scheme for migration agents or new registration scheme for education agents would work along side existing registration schemes overseas run by other countries.
- 5.6.2. While most countries do not regulate migration agents, some do and their schemes vary markedly. Germany does not allow the operation of migration agents while South Korea, the United Kingdom, the People's Republic of China (PRC), and South Africa already have schemes in place. Canada is also in the early stages of regulating their agents, with the Canadian Society of Immigration Consultants appointed in October 2003 to serve as a self-regulating body for immigration consultants, with the Government anticipating implementing legislation before the end of April 2004. Closer to home, while New Zealand currently does not have any form of registration scheme, the New Zealand Government is examining a number of regulatory options including the idea of an expanded jurisdiction for the MARA across the Tasman.
- 5.6.3. Similarly, while relatively little is known about overseas registration and regulation of education agents, it would be reasonable to conclude that most countries do not regulate them either. Some countries may, however, have education associations who may be interested in participating in any new Australian scheme. The MIA has indicated that the Thai and Indian education agents' associations may be interested in forging such links.

- 5.6.4. Memorandums of understanding (MOUs) may be required with countries that already have a registration scheme. Reciprocal arrangements could be created with the few countries that require registration. For example, if registration is required in the PRC, we should insist that any local requirements have been met and continue to be met and that Australian offshore registration would be contingent on the local registration being in place. In the PRC, the interaction between their student visa registration stream and any Australian scheme for the regulation of education agents would be particularly important given the increasing numbers of students coming to Australia from the PRC.
- 5.6.5. It may be useful for DIMIA and the MIA/MARA to start up a discussion group with our overseas regulatory counterparts and their immigration departments (perhaps via a secure web site). This would also enable sharing of information on current schemes and plans for improvement and change.

5.7. Who should be the regulator?

- 5.7.1. In board terms, there are three general approaches to industry regulation. These include government regulation through a government department or agency (eg DIMIA), statutory self-regulation (eg as with the MARA), and industry/profession self-regulation.
- 5.7.2. Government regulation is highly interventionist and therefore not considered necessary or appropriate in the majority of situations, although in some cases this form of regulation is a precursor to subsequent statutory or industry/profession self-regulation.
- 5.7.3. The migration advice profession has moved from government regulation introduced in 1992, to statutory self-regulation in 1998, with a view to eventually moving to full self-regulation. The 2002 Review found that the achievement of key milestones and improvements in the profession would be necessary if full voluntary self-regulation is ultimately to be achieved. A key indicator for assessing progress towards full self-regulation would be evolutionary progress in improving professionalism and client protection. Both DIMIA and the MARA are using their best endeavours to enable the migration advice profession towards a self-regulation model.
- 5.7.4. Given the current regulatory arrangements for migration agents onshore, the MARA, as the migration advice profession regulator, could also administer the proposed expanded migration agent scheme overseas and the proposed system of full and restricted agent registration offshore and onshore.
- 5.7.5. In line with this, the following statement was included in the MARA 2001-02 Annual Report as part of the MIA President's Report:

Offshore jurisdiction was also pursued in 2001-2002 as part of the Review of Statutory Self-Regulation of the Migration Advice Industry and, although the recommendations made in this financial year were not finalised, the Authority is keen to press ahead with this process.
- 5.7.6. Education agents are not subject to any Australian registration scheme or regulatory framework. However, the ESOS Act's National Code places obligations on education providers to manage their education agents.

- 5.7.7. Possible regulators of education agents providing migration advice include:
- MARA, as the migration advice profession regulator, could also administer the proposed restricted agent registration offshore and onshore;
 - a new statutory self-regulation authority similar to MARA;
 - the education industry/profession itself. The Sydney group, in partnership with the MIA, have discussed a model based on industry/profession self-regulation through the formation of a subsidiary MIA company; the EAAA. The EAAA, or equivalent, could also be responsible for managing the registration scheme for education agents necessary to track their immigration related activities and performance; or
 - alternatively, another option for regulating the immigration related activities of education agents may be suggested in response to distributing this discussion paper.
- 5.7.8. Regardless of the chosen regulatory option, to facilitate tracking there would need to be unique identifiers for both education agents and overseas migration agents, similar to the MARA's current Migration Agent Registration Number. There would also need to be unique identifiers for education providers (perhaps the CRICOS number) to ensure that only those agents accredited by a provider(s) put forward student visa applications for courses provided by that institution(s).
- 5.7.9. Capturing these fields would require modification of DIMIA's "Integrated Client Services Environment" (ICSE) system and the "Immigration Records Information System" (IRIS). Further, it may be useful if the electronic confirmation of enrolment (E-COE) could be amended by DEST to record the education agent involved. There may also be some implications for the DEST PRISMS system, although it is DIMIA's understanding that this is currently beyond the scope and purpose of the PRISMS system.

6. Implementation – A Staged Approach

6.1. Migration Advice Profession

- 6.1.1 It is clear from the overseas DIMIA post survey of overseas migration agents (see Attachment A) that implementation would be a complex task and that it would therefore take some time.
- 6.1.2. In view of this, it may be necessary to consider implementation in a staged manner.
- 6.1.3. Initial consideration suggests that there could be two possible approaches:
- i. on a geographic basis (eg country by country where an MOU is required, or region by region where there are no local laws and few migration agents); or
 - ii. on a visa class/sub-class basis (eg commencing with Students and then Business Skills)
- 6.1.4. While i) above, may appear to be an effective approach, it would run contrary to the universal visa system. Additionally, any geographically based approach would also become increasingly impractical given the continuing implementation by DIMIA of the business operations and client service reforms it is pursuing in line with “Global Working/Globalisation” and the increasing use of electronic visa (e-visa) lodgement (e-lodgement) and processing.
- 6.1.5. This essentially leaves ii), which the 2002 Review also suggested may be preferable. A universal trial of the scheme for only certain visa classes would enable a staged approach involving first tackling those classes where there are known difficulties, and would also allow evaluation of effectiveness without impacting on most clients. Furthermore, offshore migration agents who decide not to become registered could be given an opportunity to leave the profession over time.

6.2. Education Advice Profession – Immigration related activities

- 6.2.1. The introduction of any monitoring arrangements or registration scheme for education agents would also need to be staged and sensitive to industry needs.
- 6.2.2. If all four options proposed in section 4.2 were to be implemented, a first step could include a recording and monitoring scheme for education agents in respect of their immigration activities, by linking them to a CRICOS registered education provider(s) (Option A). At the same time, education agents providing immigration related services could also be encouraged to become registered migration agents under the current statutory regime (Option B).
- 6.2.3. In the longer term, a form of restricted registration as a migration agent could be put in place (Option C), or education agents could be fully registered in regard to their immigration related activities under an industry self-regulation model (Option D).

- 6.2.4. Under any scenario, education agents would only be able to provide advice in relation to student visas.
- 6.2.5. The PRC is the largest single source country for overseas students, with the second largest flow-on into the general migration program. It has the largest number of education agents with the majority of students using them and its agents appear to be most problematic. Given these factors, the PRC education advice profession should perhaps be an early focus for registration, tracking and regulation.
- 6.2.6. To assist any new approach, it would be useful (indeed essential) to obtain a full listing of education agents offshore and onshore from education providers and agents and/or DIMIA offices and overseas posts. It would be crucial for this register to be maintained and kept up to date.

7. Possible options and their Benefits

- 7.0.1. DIMIA has no preferred options at this stage. Additionally, as mentioned earlier, the four options presented in relation to education agents are not mutually exclusive and some could be adopted in combination.
- 7.0.2. Implementation of any of the options would bring various benefits with them for consumers, the migration and education agent professions, the Australian education export industry, and government. Some options may also bring with them a cost (perhaps only initially), which will hopefully be identified as part of the consultation process. Possible benefits in relation to each option are set out below.

7.1. Migration Advice Profession

- 7.1.1. **Option A:** Extend the current registration scheme offshore in its present form except with the threat of administrative sanction rather than criminal penalty for practising while unregistered.
- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
 - more certainty for departmental officers in relation to who they should deal with;
 - an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness;
 - reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for the migration agents registration scheme to be extended offshore. Posts have indicated that they are prepared to help with any such implementation; and
 - anticipated short to medium implementation timeframe and medium cost to government.
- 7.1.2. **Option B:** Option A, plus the introduction of restricted registration categories offshore (and onshore) so that agents could register as migration agents to practise within certain defined areas.
- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);

- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness; and
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for the migration agents registration scheme to be extended offshore. Posts have indicated that they are prepared to help with any such implementation;
- current weaknesses in the onshore registration scheme could be addressed simultaneously, eg the ambiguous role of education agents relative to migration agents and other problematic aspects associated with the education advice profession in the delivery of immigration related services to clients;
- limited/restricted registration available for agents to specialise in certain visa streams;
- agents could obtain limited registration at first and work towards full registration if they wish;
- limited registration (with limited fees and CPD requirements) could be available to non-commercial organisations onshore who, for example, may assist with a limited range of visa classes, eg Protection visa applications.
- less local migration agents operating offshore are forced out of the profession, thereby avoiding a possible shortage of agents;
- more objective sanctions, eg those based on visa application refusal rates, could easily be introduced in the case of limited registration where agents only operate in certain visa classes; and
- anticipated medium implementation timeframe and medium cost to government.

7.2. Education Advice Profession – Immigration related activities

7.2.1. Option A: Implement a monitoring scheme.

- higher levels of professionalism and increased consumer protection;
- problem agents could be dealt with through the existing ESOS arrangements; and

- anticipated short implementation timeframe and low cost to government.

7.2.2. **Option B:** Encourage education agents to become registered migration agents.

- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness;
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for some registration and regulatory framework to be introduced for education agents in relation to immigration related activities. Posts have indicated that they are prepared to help with any such implementation; and
- anticipated short to medium implementation timeframe and low cost to government.

7.2.3. **Option C:** Restricted migration agent registration.

- higher levels of professionalism and increased consumer protection (all agents would be expected to abide by a code of conduct and undertake ongoing CPD);
- more certainty for departmental officers in relation to who they should deal with;
- an additional source of income for the MARA, which would allow additional resources to be allocated to improving professional standards and consumer protection and increase its overall effectiveness; and
- reduced resource impact for the MARA, due to involvement of DIMIA staff in overseas complaints investigation on a cost per service basis, which would significantly reduce the need for expensive overseas travel for MARA Board members or MARA employees;
 - would involve significant commitment from DIMIA staff at overseas posts. However, many overseas posts have indicated that they are waiting anxiously for some registration and regulatory framework to be introduced for education agents in relation to immigration related activities. Posts have indicated that they are prepared to help with any

such implementation;

- would facilitate the registration of education agents as part of a “restricted registration” scheme either as migration agents or as restricted education agents, thereby addressing eg the ambiguous role of education agents relative to migration agents and other problematic aspects associated with the education advice profession in the delivery of immigration related services to clients;
- limited/restricted registration available for agents to specialise in Student visas;
- agents could obtain such limited registration at first and work towards full registration if they wish;
- limited registration (with limited fees and CPD requirements) could be available to non-commercial organisations onshore who, for example, may assist with a limited range of visa classes, eg Protection visa applications.
- less local migration agents operating offshore are forced out of the profession, thereby avoiding a possible shortage of agents;
- more objective sanctions, eg those based on visa application refusal rates, could easily be introduced in the case of limited registration where agents only operate in certain visa classes; and
- anticipated medium implementation timeframe and medium cost to government.

7.2.4. **Option D:** Industry/profession self-regulation.

- this option represents more a mechanism for implementing and administering some form of registration and regulation scheme for education agents, rather than a regulatory framework in itself. As such, the regulatory framework implemented and administered as part of industry/profession self-regulation could include various components (and associated benefits), including those described under options A, B or C; and
- anticipated longer term implementation timeframe and medium cost to government.

7.3. Summary of Benefits

Option	Implementation timeframe	Clarification of role	Strong onshore regulation	Strong offshore regulation	Cost to government
Migration Agents					
Option A	Short - Medium	High	N/A	Medium	Medium
Option B	Medium	High	High	Medium	Medium
Education Agents					
Option A	Short-term	Low	Medium	Medium	Low
Option B	Short - Medium	Medium	High	Medium	Low
Option C	Medium	High	High	Medium	Medium
Option D	Longer-term	High	High	Medium	Medium

8. Next Steps

- I. Consultation with key stakeholders, in particular with regard to benefits, costs and savings associated with each option.
- II. Determining a preferred approach with industry.
- III. Developing a proposal to the Government, including a timeframe for implementation.

ATTACHMENTS

RESULTS OF OVERSEAS DIMIA POST SURVEY OF OVERSEAS MIGRATION AGENTS PRACTICE

The following presents the results of a survey of the 41 DIMIA overseas A-based posts conducted by the Migration Agents Policy and Liaison Section in January 2002. 39 posts responded to the survey.

1) Please estimate the number of agents you post deals with regularly?

No. of agents dealt with by overseas post ranged from 5 or less to 100 +.

Approx. average no. of agents dealt with by overseas posts – 40

It should be noted that a number of posts reported that a large percentage of applicants are assisted by travel or student agents in their region. Only some posts defined these professionals as 'agents'.

2) Of agents do you have any idea about the percentage that are:

- **Registered in Australia?**

Percentage of agents registered in Australia dealt with by overseas posts ranged from 0 to 100%.

Approx. average percentage of Australian registered agents dealt with by posts – 60%

- **Registered by your host government?**

Very few overseas posts reported dealing with agents registered by the host government (see answer to question 10).

The DIMIA post at Amman reports that it deals with 5 agents who are required to register as a business under local law.

The DIMIA post in Tehran also reported that 5% of the agents that they deal with a registered by the host government. Once again, these agents must acquire general company, rather than specifically "migration agent", registration.

3) Can you estimate the percentage of applications lodged at posts that use a migration agent?

17 posts recorded an overall estimate of the percentage of applications lodged at posts that use a migration agent. The average was 30%.

Other posts recorded estimates according to particular visa categories (see question 4).

4) Of those supported by a migration agent, what are the major visa subclasses?

The survey revealed that subclass 457 visa applications were most commonly supported by a migration agent. Other types of business and skilled visa applicants also made great use of the services of migration agents.

Student visas also proved to be a common category of visa supported by migration agents. Many posts reported that 'student agents' rather than migration agents were also often involved.

At certain posts, migration agents were also used by people applying for visitor visas (Beirut, Manila, Moscow, Ho Chi Minh city) and family migration (Athens, Jakarta, Seoul, Phnom Penh, Colombo, Guangzhou, Berlin, Kuala Lumpur).

Other visa classes only appeared to involve the use of migration agents at certain posts eg. RSHP visas (Beirut and Belgrade), Retirees (Pretoria) and Working Holiday Makers (Tokyo and Seoul).

5) Can you comment on agent performance?

- **Are most knowledgeable?**

Fourteen posts reported that many agents appear to have very limited knowledge of the Migration Act or the Regulations. Many local agents, in particular, were reported to act largely as document collectors.

Nevertheless, a majority of posts reported that despite varying standards, most agents are reasonably knowledgeable. But many clarified this by explaining that many agents do not keep up with legislation/procedural changes, frequently ask DIMIA officers very basic questions and are unaware of local conditions and documentation.

A number of posts also differentiated between Australian registered agents as more knowledgeable in comparison to local agents and, in particular, student agents.

Paris reports that while agents demonstrate knowledge of relevant criteria they may present poor information in support of an applicant's ability to meet that criteria and thus are not familiar with wider legislative provisions or detailed procedural issues.

- **Are most competent?**

As above, the posts reported that standards vary considerably between agents.

Fourteen posts reported that the vast majority of agents are competent whilst noting some are 'just competent'.

However, a majority of posts reported that agents have limited competence. They report that applications received are generally incomplete. Constant requests for extra time to submit a complete application are made. Agents are also slow to respond to requests from DIMIA Officers.

Again several posts distinguished between Australian registered agents as generally competent in comparison to local agents.

- **Are their ethics good or do they harass your staff?**

Fourteen posts reported that agents are generally ethical. However, the majority of posts reported that many agents are discourteous to staff, do not pass on requests to clients, take on cases with little chance of success, and appear to charge unnecessarily high fees. Some posts also reported that agents were suspected of lodging fraudulent documents and trying to obtain favours from DIMIA Locally Engaged Employees (LEEs).

- **Do you get many complaints about agents?**

Most overseas posts reported that they receive few complaints in relation to agents and even less formal complaints. However, Hanoi, Hong Kong, Pretoria and Phnom Penh report that they get many complains about agents, particularly when both applicant and sponsor are in country. Posts such as Amman and Athens report that they had a large number of complaints in relation to certain agents who are the subject of an investigation, but this is largely atypical.

Belgrade reported that it gets hundreds of complaints about local agents but few about Australian registered agents.

Complaints are usually in regard to high fees charged by agents.

6) Does the post have much to do with agent groups, give seminars to agents etc.?

Twenty posts surveyed reported that they had little to no contact with migration agent groups.

However, nineteen posts reported that they had more contact with agents, in particular student agents. Many posts hold seminars in relation to legislation changes (particularly in relation to student and visitor visas). At some posts, one on one appointments with A based staff and quarterly meetings are also available for agents.

7) What percentage of agents charge fees?

Almost all overseas posts surveyed reported that most if not all agents charged fees.

8) Is there any registration scheme for agents by your host government?

The great majority of posts surveyed indicated that there was no registration for migration agents by the host government.

Registration schemes were known in the following countries but varied greatly in scope and none were analogous (or as comprehensive) as Australia (although Canada, UK and New Zealand were moving in this direction):

<ul style="list-style-type: none"> • Baltic States • Canada • New Zealand • Hong Kong • Iran • Japan • Jordan 	<ul style="list-style-type: none"> • Lebanon • Peoples Republic of China • Poland • Taiwan • UK • Vietnam
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ATTACHMENT B

TABLE 1: STUDENT VISA GRANTS BY COUNTRY OF APPLICANT CITIZENSHIP (1 July 2001 to 30 June 2002)

Offshore Visa Grants

	Country of Citizenship (in order of number of visa grants offshore)	No. of visa grants (a)	Percent of visa of grants total
1	China, People's Rep of	13452	13.9
2	United States of America	8938	9.3
3	Malaysia	7427	7.7
4	HKSAR of the PRC	6862	7.1
5	Japan	6243	6.5
6	Indonesia	5836	6.0
7	Thailand	5341	5.5
8	Singapore	4687	4.9
9	Korea, Republic of	4323	4.5
10	India	2925	3.0
11	Taiwan	2797	2.9
12	Brazil	2147	2.2
	Top 12 Countries Total	70978	73.5
	All Others	25627	26.5
	Total	96605	100.0

Onshore Visa Grants

	Country of Citizenship (in order of number of visa grants onshore)	No. of visa grants (b)	Percent of total of visa grants
1	China, People's Rep of	7674	14.1
2	Korea, Republic of	6756	12.5
3	Indonesia	5107	9.4
4	Japan	4830	8.9
5	Thailand	3586	6.6
6	HKSAR of the PRC	3534	6.5
7	India	2558	4.7
8	Taiwan	2374	4.4
9	Malaysia	1852	3.4
10	Brazil	1115	2.1
11	Singapore	1100	2.0
12	Bangladesh	917	1.7
	Top 12 Countries Total	41403	76.3
17	United States of America	714	
	All Others (incl USA)	12841	23.7
	Total	54244	100.0

Total Visa Grants (Offshore + Onshore)

	Country of Citizenship (in order of total number of visa grants)	Total no. of visa grants (a)+(b)	Percent of total of visa grants
1	China, People's Rep of	21126	14.0
2	Korea, Republic of	11079	7.3
3	Japan	11073	7.3
4	Indonesia	10943	7.3
5	HKSAR of the PRC	10396	6.9
6	United States of America	9652	6.4
7	Malaysia	9279	6.2
8	Thailand	8927	5.9
9	Singapore	5787	3.8
10	India	5483	3.6
11	Taiwan	5171	3.4
12	Brazil	3262	2.2
	Top 12 Countries Total	112178	74.4
	All Others	38671	25.6
	Total	150849	100.0

TABLE 2: REFUSAL RATE & REFUSED ON FALSE DOCUMENTS RATES FOR BEIJING POST DECIDED CASES BY APPLICATION SOURCE PROVINCE IN PRC (1 July 2002 to 30 June 2003)

Location/ PRC Province	Total student applns	% student applns lodged	Refused	Province Refusal Rate	Cases refused on false documents	% of cases refused on false docs
Third Country	163	1%	118	72%	1	0%
Not Recorded	20	<1%	13	65%		0%
Xinjiang	78	<1%	42	54%	22	28%
Fujian	965	6%	456	47%	243	25%
Neimenggu	120	1%	49	41%	23	19%
Hainan	62	1%	24	39%	15	24%
Jilin	235	2%	89	38%	46	20%
Tianjin	292	2%	107	37%	48	16%
Heilongjiang	290	3%	104	36%	36	12%
Guangxi	335	2%	120	36%	52	16%
Henan	524	3%	184	35%	91	17%
Jiangxi	97	1%	34	35%	13	13%
Shaanxi	251	2%	87	35%	40	16%
Hunan	270	2%	87	32%	18	7%
Shanxi	177	1%	56	32%	21	12%
Yunnan	111	1%	33	30%	12	11%
Liaoning	1312	8%	388	30%	193	15%
Qinghai	7	<1%	2	29%	0	0%
Sichuan	420	3%	117	28%	34	8%
Gansu	58	<1%	16	28%	4	7%
Anhui	82	1%	22	27%	10	12%
Hebei	302	2%	80	26%	25	8%
Shandong	828	5%	212	26%	65	8%
Guangdong	2287	14%	580	25%	194	8%
Guizhou	41	<1%	10	24%	4	10%
Zhejiang	792	5%	179	23%	67	8%
Jiangsu	948	6%	209	22%	71	7%
Hubei	560	4%	123	22%	39	7%
Xizang	5	<1%	1	20%	0	0%
Beijing	1659	11%	300	18%	74	4%
Ningxia	20	<1%	3	15%	1	5%
Shanghai	2286	15%	325	14%	88	4%
Total	15597	100%	4170	27%	1550	10%

TABLE 3: TYPE OF STUDENT APPLICATION FRAUD DETECTED FOR BEIJING POST DECIDED CASES (1 July 2002 to 30 June 2003)

Type of Fraud	Number of Cases	Proportion
False Work Docs	1010	65%
False Bank Docs	422	27%
False Edu Qualifications	98	6%
False Relationships	11	1%
False IELTS Scores	6	0%
Age Changed	2	0%
COE Altered	1	0%
Total	1550	100%

Notes:

IELTS – International English Language Testing System

COE – Confirmation of Enrolment

As documentation checks were conducted in less than half of the caseload, it is highly probably that the true level of fraud was significantly higher than the rates detected above.

Work references continue to be the major area where fraud is identified by staff. While this may be because many of the documents referred for checking are work references, there would still appear to be a higher proportion of fraud among these documents than other types of documents.

TABLE 4: APPLICATION REFUSAL RATES BY AGENT/AGENCY IN DESCENDING RATE ORDER FOR BEIJING POST DECIDED STUDENT CASES (1 July 2002 to 30 June 2003)

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Personal Name	6	6	100%
Personal Name	6	6	100%
Personal Name	5	5	100%
Business Name	5	5	100%
Personal Name	7	6	86%
Business Name	6	5	83%
Personal Name	6	5	83%
Personal Name	6	5	83%
Personal Name	5	4	80%
Business Name	5	4	80%
Business Name	8	6	75%
Personal Name	6	4	67%
Business Name	6	4	67%
Personal Name	6	4	67%
Business Name	8	5	63%
Business Name	10	6	60%
Business Name	5	3	60%
Business Name	5	3	60%
Business Name	5	3	60%
Business Name	5	3	60%
Personal Name	5	3	60%
Personal Name	7	4	57%
Business Name	7	4	57%
Personal Name	7	4	57%
Business Name	9	5	56%
Personal Name	9	5	56%
Personal Name	11	6	55%
Business Name	14	7	50%
Business Name	12	6	50%
Personal Name	8	4	50%
Business Name	8	4	50%
Business Name	6	3	50%
Personal Name	6	3	50%
Business Name	15	7	47%
Personal Name	26	12	46%
Business Name	11	5	45%
Business Name	11	5	45%
Business Name	11	5	45%
Business Name	9	4	44%
Business Name	9	4	44%
Personal Name	16	7	44%
Personal Name	16	7	44%
Business Name	7	3	43%
Personal Name	7	3	43%
Personal Name	7	3	43%
Business Name	7	3	43%
Business Name	7	3	43%
Personal Name	7	3	43%
Business Name	7	3	43%
Personal Name	27	11	41%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	32	13	41%
Personal Name	18	7	39%
Personal Name	18	7	39%
Business Name	26	10	38%
Business Name	13	5	38%
Business Name	8	3	38%
Business Name	8	3	38%
Personal Name	8	3	38%
Business Name	8	3	38%
Business Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	8	3	38%
Personal Name	19	7	37%
Business Name	19	7	37%
Personal Name	22	8	36%
Business Name	11	4	36%
Business Name	11	4	36%
Business Name	14	5	36%
Business Name	111	38	34%
Business Name	44	15	34%
Business Name	12	4	33%
Business Name	6	2	33%
Business Name	6	2	33%
Personal Name	6	2	33%
Personal Name	6	2	33%
Business Name	6	2	33%
Business Name	6	2	33%
Personal Name	6	2	33%
Business Name	52	17	33%
Personal Name	19	6	32%
Business Name	26	8	31%
Business Name	13	4	31%
Business Name	13	4	31%
Personal Name	10	3	30%
Business Name	48	14	29%
Business Name	21	6	29%
Business Name	7	2	29%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	25	7	28%
Business Name	43	12	28%
Business Name	18	5	28%
Personal Name	18	5	28%
Business Name	47	13	28%
Business Name	40	11	28%
Personal Name	11	3	27%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	11	3	27%
Business Name	11	3	27%
Personal Name	15	4	27%
Business Name	19	5	26%
Business Name	54	14	26%
Business Name	27	7	26%
Personal Name	16	4	25%
Personal Name	12	3	25%
Business Name	12	3	25%
Personal Name	8	2	25%
Business Name	8	2	25%
Personal Name	8	2	25%
Business Name	37	9	24%
Personal Name	91	22	24%
Business Name	13	3	23%
Personal Name	9	2	22%
Business Name	9	2	22%
Business Name	9	2	22%
Personal Name	9	2	22%
Business Name	41	9	22%
Business Name	23	5	22%
Business Name	33	7	21%
Personal Name	19	4	21%
Business Name	130	27	21%
Business Name	49	10	20%
Business Name	64	13	20%
Business Name	25	5	20%
Business Name	15	3	20%
Personal Name	10	2	20%
Personal Name	10	2	20%
Business Name	111	22	20%
Business Name	87	17	20%
Business Name	36	7	19%
Business Name	57	11	19%
Business Name	99	19	19%
Business Name	47	9	19%
Business Name	11	2	18%
Business Name	39	7	18%
Business Name	68	12	18%
Business Name	34	6	18%
Business Name	115	20	17%
Business Name	24	4	17%
Business Name	12	2	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Business Name	25	4	16%
Business Name	19	3	16%
Business Name	13	2	15%
Business Name	13	2	15%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Business Name	138	21	15%
Personal Name	20	3	15%
Business Name	108	16	15%
Business Name	117	17	15%
Business Name	360	52	14%
Business Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	36	5	14%
Business Name	225	31	14%
Business Name	22	3	14%
Business Name	162	22	14%
Business Name	15	2	13%
Business Name	61	8	13%
Business Name	656	85	13%
Business Name	102	13	13%
Business Name	16	2	13%
Personal Name	16	2	13%
Business Name	8	1	13%
Business Name	8	1	13%
Business Name	41	5	12%
Personal Name	17	2	12%
Personal Name	17	2	12%
Business Name	417	49	12%
Business Name	482	54	11%
Business Name	27	3	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	37	4	11%
Business Name	20	2	10%
Business Name	10	1	10%
Business Name	10	1	10%
Personal Name	10	1	10%
Business Name	61	6	10%
Business Name	66	6	9%
Business Name	11	1	9%
Business Name	35	3	9%
Personal Name	12	1	8%
Business Name	123	10	8%
Personal Name	25	2	8%
Personal Name	14	1	7%
Business Name	15	1	7%
Personal Name	15	1	7%
Business Name	212	10	5%
Business Name	18		0%
Business Name	14		0%
Personal Name	11		0%
Personal Name	8		0%
Personal Name	7		0%
Personal Name	7		0%

Agent/Agency	Student Appl'ns Lodged	Refused	Refusal Rate
Personal Name	7		0%
Business Name	6		0%
Business Name	6		0%
Personal Name	6		0%

Notes:

This table represents only those agents/agencies with over 5 cases represented.

Individual agent/agency names have been replaced with "Personal Name" and "Business Name", respectively.

The **top 15 agents/agencies by volume** are shown in **bold**.

Of concern are the high volume agencies with high refusal rates. Of these however, none recorded exceptionally high fraudulent document detection rates in Table 5.

TABLE 5: FALSE DOCUMENT REFUSAL RATES BY AGENT/AGENCY IN DESCENDING PERCENTAGE RATE ORDER FOR BEIJING POST DECIDED STUDENT CASES (1 July 2002 TO 30 June 2003)

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Personal Name	7	5	71%
Personal Name	6	4	67%
Personal Name	5	3	60%
Personal Name	5	3	60%
Personal Name	6	3	50%
Business Name	6	3	50%
Personal Name	6	3	50%
Business Name	6	3	50%
Personal Name	7	3	43%
Business Name	7	3	43%
Business Name	5	2	40%
Business Name	5	2	40%
Business Name	5	2	40%
Personal Name	5	2	40%
Business Name	8	3	38%
Personal Name	8	3	38%
Business Name	8	3	38%
Business Name	11	4	36%
Business Name	12	4	33%
Business Name	9	3	33%
Personal Name	9	3	33%
Personal Name	6	2	33%
Personal Name	6	2	33%
Business Name	6	2	33%
Business Name	7	2	29%
Personal Name	7	2	29%
Personal Name	7	2	29%
Business Name	7	2	29%
Business Name	7	2	29%
Personal Name	11	3	27%
Business Name	11	3	27%
Business Name	11	3	27%
Business Name	11	3	27%
Personal Name	11	3	27%
Business Name	15	4	27%
Personal Name	47	12	26%
Personal Name	12	3	25%
Business Name	8	2	25%
Business Name	8	2	25%
Personal Name	8	2	25%
Personal Name	26	6	23%
Business Name	13	3	23%
Business Name	32	7	22%
Business Name	10	2	20%
Personal Name	10	2	20%
Business Name	5	1	20%
Business Name	26	5	19%
Personal Name	16	3	19%
Business Name	27	5	19%
Business Name	11	2	18%
Business Name	40	7	18%

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Business Name	41	7	17%
Business Name	18	3	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	6	1	17%
Business Name	6	1	17%
Business Name	6	1	17%
Personal Name	6	1	17%
Personal Name	19	3	16%
Personal Name	19	3	16%
Business Name	19	3	16%
Business Name	13	2	15%
Business Name	111	17	15%
Business Name	48	7	15%
Business Name	14	2	14%
Personal Name	7	1	14%
Business Name	7	1	14%
Business Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Personal Name	7	1	14%
Business Name	7	1	14%
Business Name	52	7	13%
Business Name	15	2	13%
Business Name	23	3	13%
Business Name	16	2	13%
Business Name	8	1	13%
Business Name	8	1	13%
Business Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Personal Name	8	1	13%
Business Name	33	4	12%
Business Name	44	5	11%
Personal Name	36	4	11%
Personal Name	18	2	11%
Business Name	9	1	11%
Business Name	9	1	11%
Personal Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	9	1	11%
Business Name	19	2	11%
Business Name	20	2	10%
Personal Name	10	1	10%
Personal Name	10	1	10%
Business Name	21	2	10%
Business Name	43	4	9%
Business Name	54	5	9%

Agent/Agency	Student Appl'ns Lodged	Refused on False Docs	False Docs Refusal Rate
Personal Name	22	2	9%
Business Name	11	1	9%
Business Name	11	1	9%
Business Name	12	1	8%
Business Name	37	3	8%
Business Name	37	3	8%
Business Name	25	2	8%
Business Name	13	1	8%
Business Name	13	1	8%
Business Name	13	1	8%
Business Name	27	2	7%
Business Name	138	10	7%
Business Name	111	8	7%
Business Name	14	1	7%
Business Name	225	16	7%
Business Name	99	7	7%
Business Name	87	6	7%
Business Name	15	1	7%
Business Name	15	1	7%
Business Name	108	7	6%
Business Name	656	41	6%
Personal Name	16	1	6%
Personal Name	16	1	6%
Business Name	360	22	6%
Personal Name	18	1	6%
Business Name	57	3	5%
Personal Name	19	1	5%
Business Name	19	1	5%
Business Name	117	6	5%
Business Name	102	5	5%
Business Name	64	3	5%
Business Name	68	3	4%
Personal Name	91	4	4%
Business Name	417	18	4%
Business Name	24	1	4%
Business Name	49	2	4%
Business Name	25	1	4%
Business Name	162	6	4%
Business Name	482	17	4%
Business Name	61	2	3%
Business Name	66	2	3%
Business Name	34	1	3%
Business Name	35	1	3%
Business Name	212	6	3%
Business Name	36	1	3%
Business Name	115	3	3%
Business Name	39	1	3%
Business Name	123	3	2%
Business Name	41	1	2%
Business Name	130	3	2%
Business Name	47	1	2%
Business Name	61	1	2%

Notes:

This table represents only those agents with over 5 cases represented.

Individual agent/agency names have been replaced with “Personal Name” and “Business Name”, respectively.

The **top 15 agents/agencies by volume** are shown in **bold**.

TABLE 6: SKILLED VISA GRANTS (in subclasses 136 with AQF, 138 with AQF, 880, 881 & 882 by Country of Applicant Citizenship (1 July 2001 to 30 June 2002)

TOP 12 COUNTRIES

Total Visa Grants (highest to lowest no. of visas)

In 136, 138, 880, 881 and 882 (permanent entry) visa subclasses

	Country of Citizenship	Visas	% total
1	India	2410	22.42
2	China, Peoples Republic of	1616	15.03
3	Indonesia	1614	15.02
4	Malaysia	708	6.59
5	Hong Kong SAR of the PRC	583	5.42
6	Korea, Republic of (South)	434	4.04
7	Singapore	415	3.86
8	Pakistan	322	3.00
9	Taiwan	309	2.87
10	Bangladesh	294	2.74
11	Thailand	243	2.26
12	Nepal	212	1.97
	Top 12 Total	9160	85.22
	All Others (1)	1589	14.78
	Total (2)	10749	100.00

136: Skilled - Independent visa (onshore application, applicant must be outside Australia when granted)

138: Skilled - Australian-Sponsored visa (onshore application, applicant must be outside Australia when granted)

880: Skilled - Independent Overseas Student visa (onshore application, applicant must be in Australia when granted)

881: Skilled - Australian-Sponsored Overseas Student visa (onshore application, applicant must be in Australia when granted)

882: Skilled - Designated Area-Sponsored Overseas Student visa (onshore application, applicant must be in Australia when granted)

(1) "All Others": 83 countries, including Australia (1 applicant with Australian citizenship born in Indonesia), plus "Stateless" (2 s/c 136 (AQF=5) and 1 s/c 138 visa grants (AQF=5)),

plus "Not Stated" (224 s/c 880, 8 s/c 881 and 2 s/c 882 visa grants)

(2) 10749 visas granted across all 5 subclasses (136, 138, 880, 881 & 882) for FY 2001-02

AQF:

136 and 138 visas: Australian Qualification Factor (AQF) applies (Migration Regulations 1994, Schedule 6A, Items 6A61 & 6A62):

AQF gives points to Schedule 6A applicants who have completed an Australian doctorate, degree, diploma or trade qualification for which at least 1 academic year of full-time study was undertaken in Australia.

Schedule 6A - General Points Test - Qualifications and Points: Each qualification specified in Schedule 6A is prescribed as a qualification in relation to the grant of a subclass 136, 137, 138, 861, 862, 880, 881 (Reg 2.26A) and 882 (Reg 2.27A) visa.

AQF = 5 points for those applicants who have completed an Australian degree, diploma or trade qualification.

AQF = 10 points for those applicants who have completed an Australian doctorate.

USEFUL WEBSITES

Bureau of Citizenship and Immigration Services, USA	www.immigration.gov
Citizenship and Immigration, Canada	cicnet.ci.gc.ca
DEST	www.dest.gov.au
DIMIA	www.immi.gov.au
Immigration Service, New Zealand	www.immigration.govt.nz
Immigration and Nationality Directorate, UK	194.203.40.90
MARA	www.themara.com.au
MIA	www.mia.org.au

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(20) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr asked:

You will be aware of newspaper reports in February about alleged student visa rackets involving Chinese students at the central Queensland University Fiji Campus.

The articles reported that some students at the campus were working illegally as prostitutes in Fiji while apparently seeking student visas to Australia.

1. How would a student at an offshore campus of an Australian institution be able to use that status to improve their chances of gaining entry to Australia on a student visa? What provision or regulation allows this to be taken into consideration in assessing a visa application for Australia?
2. Is it possible that CQU students in Fiji might seek to transfer to an Australian campus of CQU, and be favourably regarded in such an application? How would that be possible?
3. Is it possible that a CQU student in Fiji might seek temporary admission to Australia to attend a summer school, workshop or short course of some description at an Australian CQU campus, or seek to come to Australia for some other reason associated with status as a CQU student, and receive favourable treatment by virtue of that status? How would that happen?
4. If none of these scenarios are actually possible. What is the basis for the claims made by authorities in Fiji and others that the students in question are acting as reported?
5. Have you discussed this matter with the Fijian authorities? What has been the outcome of these discussions?
6. Have you looked into the number or prevalence of CQU students or former holders of student visas for CQU working illegally in Australia, in the sex industry or any other industry? What have you found? If you have not looked into this matter, why, in the light of these reports, have you not done so?

Answer:

1. Attendance at an offshore campus of an Australian institution conveys no additional benefit to a student visa applicant under the legislation. The normal legislative criteria relating to financial capacity, English proficiency, age and educational qualifications, potential to breach visa conditions and other relevant matters apply to all applicants, regardless of what offshore institution they are studying at when their offshore application is lodged.

2. CQU students in Fiji might seek to transfer to an Australian campus of CQU, but they would not receive favourable or preferential consideration. Studying at an offshore campus of an Australian institution does not automatically guarantee the grant of a student visa. Students must meet all the evidentiary requirements needed, regardless of where they obtained their overseas academic qualifications.

3. A student at any offshore Australian campus can apply to study for a short period, or for exchange purposes. However, as mentioned above, the student would have to meet the criteria needed for the grant of the visa and this is based on individual merit. Visas are granted on the applicant's ability to meet the visa criteria, as stipulated in the Migration Regulations 1994.

4. While CQU students might seek temporary admission to Australia to attend summer school, workshops or short courses, they do not receive special treatment merely by virtue of the fact that they are enrolled at the CQU Fiji campus.

5. In terms of the allegations regarding Chinese women enrolling in the CQU campus Fiji, as a means to later gain entry to Australia to work as prostitutes, an Australian Federal Police representative met with the Assistant Commissioner of Crime of Fiji Police following the press article, and was informed that there was no evidence of Chinese students in Fiji being engaged in prostitution, or of any organised attempts to improperly gain entry to Australia.

6. No specific analysis of CQU students or former students working illegally in Australia has been undertaken as a result of the alleged student visa rackets involving Chinese students at the CQU Fiji campus. An examination of 56 Chinese (PRCH and HKSAR) students who were located during 2005 working in the Sydney sex industry revealed that only two had certificates of enrolment associated with CQU. One is currently studying at CQU and the other is studying at another provider but due to commence study at CQU in November 2005.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(21) Output 1.1: Non Humanitarian Entry and Stay

Senator Carr asked:

On p.41 of the PBS the Department provides details of revenue from onshore application fees for permanent residency visas. The actual 2004-05 is estimated at \$63 413, and it is estimated that this figure will rise in 2005-06 to \$71 256. That's a rise of 12%.

1. How many applications do these two figures represent, respectively?
2. Please provide details of the numbers of these onshore visas (1) applied for and (2) issued from the commencement of this measure until the latest figure available.
3. How many of these applications, and visas granted, respectively related to student visa holders? Please provide details.
4. Can you provide details, also, of the skill areas and qualifications of former student visa holders granted permanent residency onshore? For example, how many of these people gained their permanent residency on the basis of a bachelor's degree in nursing? A Certificate IV in hairdressing? And so on".

Answer:

1.&2. The estimated revenue figures on page 41 of the PBS against the "Application for permanent visa onshore" entry represent an estimated 42,781 applications in 2004-05 and an estimated 44,784 applications in 2005-06, an increase of 2,003 applications or 4.6% over the two years. The two major components are spouse (42%) and skilled overseas students (34%) applications.

The estimated increase in applications in this category (4.6%) is due to additional skilled stream places in 2005-06 which form part of the 2005-06 Migration Program as announced by the Minister in April 2005.

The increase in revenue includes both:

- the visa application charge (VAC) from the 2,000 additional onshore skill stream applications expected in 2005-06, and
- an increase in the VAC through indexation.

3. In 2004-05, 14,417 applications (cases) for onshore permanent residence visas were lodged by principal applicants who were student visa holders at their time of arrival in Australia and 16,342 visas granted (cases) where the principal applicant held a student visa at their time of arrival in Australia.

4. Data on tertiary qualifications of former student visa holders granted permanent residency onshore is not readily available. The data captured in our visa application systems is limited to the occupation of the migration applicant. In the vast majority of cases there is a very close correlation between the occupation and the enabling qualification.

In relation to the skill areas of former student visa holders who were granted permanent residency onshore in 2004-05, the following table provides the occupations for the principal applicant in each case.

Occupations of Principal Applicants Granted Onshore visas in 2004-05 Who Had Arrived on a Student Visa

Occupational Group	Principals
Business & Information Professionals (Computing Professionals)	5,001
Business & Information Professionals (Accountants, Auditors & Corporate Treasurers)	3,943
Occupation Unknown*	2,649
Science, Building and Engineering Professionals	2,009
Social, Arts & Miscellaneous Professionals	541
Food Tradespersons	398
Business & Information Professionals (Miscellaneous Business & Information Professionals)	352
Education Professionals	237
Health Professionals (Miscellaneous Health Professionals)	217
Health Professionals (Nursing Professionals)	194
Other Tradespersons & Related Workers	187
Business & Information Professionals (Sales, Marketing & Advertising Professionals)	153
Business & Administration Associate Professionals	143
Electrical & Electronics Tradespersons	80
Managing Supervisors (Sales & Service)	77
Specialist Managers	57
Health & Welfare Associate Professionals	24
Science, Engineering & Related Associate Professionals	15
Skilled Agricultural & Horticultural Workers	14
Other Associate Professionals	12
Mechanical & Fabrication Engineering Tradespersons	8
Non Labour Force	8
Generalist Managers	7
Automotive Tradespersons	5
Health Professionals (Medical Practitioners)	4
Construction Tradespersons	2
Intermediate Clerical Workers	2
Other Advanced Clerical & Service Workers	1
Other Labourers & Related Workers	1
Self Employed	1
Total	16,342

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(22) Output 1.1: Non Humanitarian Entry and Stay

Senator Carr asked:

1. Does the Department have any information that would lead it to believe that the onshore permanent residency visa application provisions are being manipulated in some cases? How widespread is it?
2. Have you prepared any advice for the Minister about this issue?
3. Would it be possible to amend the Migration Act or Regulations to minimise these practices, and to ensure that Australia's skill shortages were being met, in a practical sense, by this permanent residency visa category? How might this be done?

Answer:

1. In any caseload there is always the possibility that individuals will seek to manipulate the rules or seek to provide misleading or false information in order to achieve a favourable outcome.

The Department closely monitors the visas providing a pathway for overseas students to on-shore permanent residence. The two key issues that may arise in this area are that:

- The individuals are not successful in the labour market – at present, surveys suggest that the overseas students, obtaining skilled migration are doing reasonably well in the labour market; or
- Some providers may manipulate their courses to suit immigration criteria rather than focusing on delivering quality that meets the needs of Australian employers. Policy and legislation is adjusted where these issues arise.

The Department has also developed a range of strategies and procedures to identify and investigate fraudulent activities. In relation to the onshore skilled migration program which is aimed at 'job-ready' applicants with recognised Australian qualifications, there are institutional mechanisms in place to identify and investigate fraud. There is a substantial "Integrity Unit" attached to the Adelaide Skilled Processing Centre which processes these applications. The integrity unit contains staff with specialist skills including skills in the identification of fraudulent documents. Other complementary mechanisms include:

- A computer based system known as Safeguards which runs all applications against recognised risk characteristics.

- A referrals system whereby cases which may be of concern are referred to overseas posts or to other DIMIA officers in Australia for further investigation.

Our experience to date is that there is a relatively low level of fraud within this caseload.

2. The Department provides the Minister's office with regular reports on monitoring activities including significant trends with immigration fraud (where they arise) and any proposed measures to deal with such fraud. As there are no major concerns with fraud in this caseload at present we have not specifically briefed the Minister on that issue in recent times. We report to the Minister's office on a monthly basis regarding progress with the Migration Program and any trends within it.

3. The Department regularly reviews legislation and procedures. If necessary, measures can be taken to address emerging trends in fraudulent activity which may include amending existing legislation.

Current legislation allows a case to be refused on the grounds that false or misleading information was submitted in the application.

In relation to our strategy to meet skill shortages, the onshore skilled categories are a part of the broader Skill Stream – the primary objective of which in 2005-06 is to address skill shortages.

The Government announced a range of initiatives designed to support that objective in conjunction with the announcement of planning levels for the 2005-06 Migration Program. Some of those initiatives involve amendments to the Regulations. Those initiatives include:

- Stronger engagement with industry and business.
- Proactive promotion to employers of the various sponsorship mechanisms and opportunities.
- Improved skills recognition procedures.
- A range of enhancements to the Skilled Independent Regional visa.
- More flexible employer sponsorship procedures.

Our assessment is that based on current and predicted levels of demand and application pipelines, we will be able to deliver the 2005-06 program within the planned range. Program delivery will be closely and progressively monitored. There are mechanisms which would enable Government to either depress demand or stimulate further demand as required (including adjustments to the General Skilled Migration pass mark) but based on our current analysis we consider the present passmark settings are appropriate and "on track".

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(23) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr asked:

1. Are you aware of the activities of migration agents and/or education agents in certain countries who are apparently encouraging and advising prospective overseas students on ways to take advantage of the onshore skilled migration permanent residency regulations?
2. (a) Have you had discussions with Australian posts in these countries about possible ways to regulate these practices? (b) What practical measures have you implemented to achieve this?

Answer:

1. Yes.
2. (a) Migration Policy explicitly enables overseas students to apply for skilled migration (as one of the pathways to permanent residence) if they have successfully completed two years of post-secondary study in Australia, which results in the award of a degree, diploma or trade qualification. To the extent that agents provide accurate information on these pathways, they are providing a valuable service.
 - On 1 July 2001, three new onshore Skilled visa sub-classes (880, 881 and 882) were introduced specifically for overseas students studying in Australia. Additionally, overseas students who have obtained an Australian undergraduate degree or diploma or trade qualification or a PhD are allocated additional points when applying for a General Skilled Migration visa. The most recent initiative to encourage skilled migrants to come to Australia, introduced in July 2004, is the Skilled Independent Regional (Provisional) Visa (SIR) for skilled people who wish to live and work in a regional or low population growth area in Australia. Successful overseas students can apply for this new visa.

The recently published Report of the Evaluation of the *Education Services for Overseas Students Act 2000* (the ESOS Act) suggests that the Act and its associated National Code of Practice are ambiguous in the degree to which information about permanent residence prospects can be included in marketing to prospective international students. The Report suggests this may lead to a variety of interpretations including that agents must not include information about migration options in marketing to prospective international students. To address this situation, the evaluation recommended that:

“Section 15 of the ESOS Act and Paragraph 49 of the National Code are clarified to permit the provision of accurate information by registered providers and their education agents about the potential for graduates to apply for migration on completion of their approved period and program of study”

DIMIA is consulting with DEST on this recommendation.

(b) To enable potential and current overseas students to obtain accurate and current advice on pathways to skilled migration, DIMIA:

- has modified its website to make information on pathways clearer and more accessible;
- has introduced an interactive electronic lodgement facility for overseas students applying for general skilled migration; and
- is running seminars for overseas students on a range of matters, including pathways to skilled migration.

DIMIA is working with overseas posts to promote the above, including to overseas education and migration agents.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(24) Output 1.1: Non-Humanitarian Entry and Stay

Senator Ludwig asked:

1. Regarding the seventeen sponsors found to be in breach of undertakings to the Department between 1 July 2004 and 31 January 2005.
 - (a) What action was taken against these sponsors?
 - (b) Were any charges laid or convictions recorded?
2. Since 31 January 2005, how many sponsors have been found to be in breach of the undertakings to the department?

Answer:

1. (a) In two cases, where the sponsorship agreement was still current, the sponsorship agreement was cancelled. In the other fifteen cases, cancellation of sponsorship agreements was not an option as the sponsorship agreements had ceased. All of these sponsorships were applied for prior to the commencement of sponsorship sanctions legislation for temporary business sponsorships on 1 July 2004. Legal advice is that other actions such as sponsorship bars can not be considered in these cases as the sanctions legislation can not be used retrospectively. In these cases, details of the breaches were recorded on departmental systems and will be taken into account should the employers apply in the future.

(b) No charges were laid or convictions recorded in terms of the Migration Act. Some cases were referred to other Commonwealth and State agencies for consideration against their legislation.

2. Since 31 January 2005, a further sixteen sponsors have been notified of possible breaches of their sponsorship undertakings. Seven sponsorships have been cancelled and the remainder have been invited to comment. We are currently considering the responses received and await responses from others. Where the sponsorships were applied for after 1 July 2004, other sanctions such as sponsorship bars are also being considered.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(25) Output 1.1: Non-Humanitarian Entry and Stay

Senator Ludwig asked:

1. How many children have been adopted so far under the new visa scheme?
2. What's the fee for adopting a child under the new scheme?
3. Have any extra staff or resources been required?
4. What are the new checks required under the new scheme?
5. Could you provide the figures of overseas adoptions for 00-01-02-03-04-05?
6. Is the Department aware of any reports into any increases?

Answer:

1. There is no new visa scheme for adopted children. Prior to 8 May the adopted children of Australian expatriates could either apply for an adoption visa or apply directly for Australian citizenship. Since 8 May 2005, the provisions enabling adopted children of expatriate Australians to apply directly for Australian citizenship were abolished. This means that adopted children in these circumstances must now apply for an adoption visa. They can subsequently apply for citizenship.
2. The visa application charge for a subclass 102 Adoption visa is currently \$1305.
3. A small increase in the number of Adoption visa applications is expected as a result of the change in citizenship policy requirements. That increase will be spread across a number of overseas posts which will be supplemented if the increase eventuates.
4. At this stage, there have been no amendments to the criteria for an Adoption visa to require new checks.

5.

Grant of Adoption Visas – 2000-01 to 31 May 2005					
	2000-01	2001-02	2002-03	2003-04	2004-05 (to 30/4/2005)
State/ Territory Adoptions	270	267	349	437	332
Expatriate Adoptions	42	13	32	34	30
Total	312	280	381	471	352

Statistics are not readily available for the number of applications for grant of Australian citizenship from children adopted overseas by Australian citizens where the children had not first been granted an adoption visa. However, during 2003-04, the citizenship processing office in Australia received 63 such applications from overseas posts. This compares with 76 such applications in 2004-05 as at 22 June 2005.

6. We are not aware of any reports as such but we do monitor the grant and application rates. As the figures above show there is some year to year variation in numbers with a modest overall increase over the last 5 years. The overall outcome for (full-year) 2004-05 using a straight pro rata calculation is likely to be around 450 (final figures not yet available).