

Submission to the Inquiry
into the Welfare of International Students
by the Senate Education, Employment and
Workplace Relations Committee

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August 2009

Introduction

Many issues must be considered when examining ways to improve the welfare of international students. This submission focuses on issues relating to migration processes and requirements, which in turn can impact on the experiences and welfare of international students while they are in Australia.

I am currently conducting a research project into how best to prepare migration agents for practice. This research also provides the opportunity for me to examine issues relating to the activities of migration agents and others who come into contact with Australia's immigration system in various ways.

The views expressed in this submission are those of the individual author only, and do not in any way reflect the views of the Australian National University, the ANU College of Law or the Migration Law Program delivered by that College.

Terms of reference relating to the roles and responsibilities of migration and education agents

Migration agents are generally responsible only for assisting an applicant to obtain a visa. They are not usually responsible for what happens to the visa holder after their arrival in Australia, unless they have specifically indicated that their services include other assistance such as finding suitable accommodation.

The regulation of migration agents has been seen as a problematic policy area for many years, and has been the subject of four different government initiated reviews in the past twelve years.¹

The federal government has recently changed the arrangements regarding the registration and oversight of the activities of registered migration agents.

From 1998 until 30 June 2009, the Migration Institute of Australia (MIA) – the industry body for migration agents – was appointed² by the federal government to run the Migration Agents Registration Authority (the MARA). The MARA handles applications for registration as an agent and is responsible for following up complaints against Registered Migration Agents (RMAs), and where necessary imposing sanctions on those agents found to have acted inappropriately, illegally or unethically.

From 1 July 2009, the functions of the MARA returned to the Minister for Immigration³. The Minister has delegated responsibility for the MARA to the Office of the MARA, which is within the Department of Immigration and Citizenship, but is intended to operate at arms length from DIAC.

¹ See page 8, 2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession. Published by DIAC May 2008

² section 315 of the *Migration Act 1958*

³ section 275 of the *Migration Act 1958*

Whenever there is controversy regarding aspects of Australia's migration program, there are often also allegations made about malpractice by migration agents. This has been the case with some of the recent controversies regarding international students.⁴ However, it is often difficult to tell whether references to 'agents' relate to Registered Migration Agents (whose activities are overseen by the MARA), education agents (who can work for education institutions and do not need to be RMAs), lawyers (who can give immigration legal assistance without being registered agents), people falsely portraying themselves as RMAs (who also fall outside the jurisdiction of the MARA⁵), or overseas based agents (who do not need to be registered in Australia).

In at least some cases, allegations made against 'agents' involve people who are not RMAs and who therefore fall outside the regulatory requirements of the MARA and the Migration Act⁶. In seeking to ensure that the welfare of international students is not compromised by the actions of unethical or incompetent agents, it is important not to focus solely on improving standards or strengthening sanctions against migration agents, when much of the exploitation of visa applicants may actually be carried out by people who are not registered or qualified migration agents.

Regarding international students, closer attention needs to be paid to what is promised and charged by education agents (including overseas agents) rather than adding to the regulatory burden on Registered Migrants Agents. Education agents, and the institutions they work for, are subject to far less scrutiny.

In addition, it would be prudent to give the new arrangements regarding the MARA time to settle in before further changes are made to regulatory requirements affecting migration agents.

The ESOS Act requires a national code of practice which all providers of education for international students must abide by. In addition DEEWR has prime responsibility for monitoring providers. This does not however include education agents.

Recent reports indicate that the Australian Council for Private Education and Training is planning to establish an online register of approved offshore education agents.⁷ While this would be a welcome move, it would still be a voluntary arrangement and would not completely eliminate the prospect of prospective students being exploited by unscrupulous agents.

It is difficult for Australia to fully regulate agents and others who operate offshore. However, it could be made a requirement of accreditation that all Australian education providers who are accredited to provide courses for international students commit to only receiving applications through agents who are listed as being approved.

Similarly, legislation could be amended to require DIAC to only to accept visa applications from offshore agents if those agents had been approved and were listed

⁴ For example, see "Holy Cash Cows", Four Corners, ABC TV, 27 July 2009

⁵ sanctioning of people who act as agents without registration fall under the jurisdiction of DIAC

⁶ Providing migration advice whilst unregistered is a breach of s280 of the *Migration Act 1958*, and is an offence of strict liability (section 6.1 of the Criminal Code).

⁷ "Crackdown on Rogue Education Agents", The Australian, 27 July 2009

on a register. This would probably create an extra layer of bureaucracy, which would increase costs to government and/or educational institutions. This extra hurdle might also serve to slightly dampen demand from international students. However, the cost would certainly be worth it in terms of improved outcomes for students and an improved reputation for Australia and our education providers.

Recommendation 1: That DIAC undertake further scrutiny and review of the operations of education agents and overseas based agents. Consideration should be given to finding ways to give priority processing or other incentives for overseas based agents who qualify for registration, register with, and are subject to the oversight of the Office of the MARA.

Terms of reference relating to social inclusion, adequate and affordable accommodation, appropriate pathways to permanency and adequate international student supports and advocacy

Because international students are on temporary visas, they do not qualify for any of the settlement support and other assistance that is available to new arrivals on permanent visas. This is despite the fact that in some cases, student visas are used specifically to provide a pathway to permanent residency.

Even though significant numbers of international students become permanent residents, and the qualification criteria is to some extent set up to encourage and facilitate this, there is little support or encouragement provided to encourage social inclusion, beyond what might be provided by the educational institution.

There have been many reports in a range of cities of international students living in extremely overcrowded accommodation, paying inflated rents.⁸ International students are vulnerable to exploitative housing arrangements. They are not eligible for social housing or other affordable housing initiatives, often receive little or no support from their education institution in accessing affordable and appropriate housing, and are less likely to be aware of their rights or how to access them.

A recent study conducted at the University of Melbourne found that housing near universities is often poorly designed and expensive. The study also found that housing methods and other practices tend to discourage or mitigate against interaction between international students and local students, and between international students and local communities.⁹

Regardless of whether international students are looking to stay in Australia permanently or not, it is beneficial to the Australian economy and society to encourage greater interaction between international students and the wider community. Better interactions would also increase students' knowledge of where to turn to for help, whether it be for housing related issues, problems relating to their studies, employment or other matters.

⁸ E.g. "Slumdog reality of the Sydney lure", The Australian, 15 April 2009

⁹ Transnational and temporary: students, community and place-making in central Melbourne. Fincher et al, University of Melbourne, 2009

Given the enormous economic benefits Australia obtains through international students, it is justifiable for some funds to be spent on providing advocacy and support workers specifically focused on improving the welfare of international students and encouraging greater social inclusion for students individually and collectively..

Recommendation 2: That the federal government establish a funded program to provide advocacy and support workers for international students. The government could encourage education providers to consider the benefits of funding this program through a small levy.

Overall, migration provides significant economic and social benefits for Australia. Providing incentives and pathways to permanent residency is in Australia's self-interest, particular in an ever more interconnected and competitive global economy. However, linking specific educational courses to improved prospects for permanent residency can create perverse incentives. Educational and vocational courses should stand or fall on their own merits.

Reducing the complexity and the number of hurdles people have to overcome to obtain permanent residency will make our migration system more efficient and reduce perverse incentives or distortions in the system. A simpler migration regime would be more transparent to all stakeholders: agents, lawyers, clients, and the general community.

Terms of reference relating to student visa requirements, including employment rights and protections from exploitation.

The current restrictions on the number of hours students are allowed to work each week inevitably makes it more difficult for less wealthy students to be able to get by, particularly if the cost of living – and especially the cost of housing – is much greater than they had anticipated prior to arrival.

A number of Australian students juggle full-time study with full-time work in order to have enough to live on. This is not an ideal situation, but nor is being in poverty. The need to meet living costs can drive international students to run the risk of working for a greater number of hours than they are entitled to. This puts them at risk of having their visa cancelled and also in a position where they can be more vulnerable to exploitation.

It is recognised if international students were able to work for an unlimited number of hours, it could lead to people applying for student visas predominantly with the motivation of being able to work. However, there is an argument that the current limit on hours able to be worked could be lifted to 30 hours a week, or at least up to 25.

In addition, the current work restrictions also apply to any dependents of the primary student visa holder. There is less justification for also restricting the amount of hours which dependants, such as spouses, are allowed to work. It is in Australia's interests

to be able to make full use of people who are able and willing to work, given they are not required to be undertaking other activities such as study.

Recommendation 3: That the federal government lift the existing restrictions on the number of hours able to be worked to at least 25 hours per week for the primary visa holder, and to an unlimited number of hours per week for spouses who are resident as secondary visa holders.

Student visas are categorised by country of origin under a five-tier assessment regime which determine threshold criteria for application for a visa. Therefore the assessment level is dependent on the passport the applicant holds at the time of applying. These levels are based on statistical evidence of students from certain countries of origin meeting and maintaining the requirements of their visa (much like the former visitor visa 'risk list', with level 5 specifying a 'high immigration risk.'). These risks include financial capacity and English ability. Financial capacity relates to the ability to meet living costs.¹⁰ These include school costs for dependant children, child care, health insurance, study, accommodation and living costs. Schedule 5A 104 (1) prescribes living costs to be \$12,000 per year for a single student, increasing incrementally for each dependant.

However the current requirements are too low to accommodate the cost of living, particularly in major cities and areas such as Canberra where rents are high and accommodation is hard to find. The current requirements give prospective students an unrealistic expectation of the costs associated with studying and living in Australia.

Recommendation 4: That the federal government review and increase prescribed living costs to ensure that prospective students are aware of the costs associated with living and studying in Australia.

Conclusion

Because international students tend to be isolated and disconnected from the wider community, and less aware of the processes and procedures available to them, they are more vulnerable to exploitation or to having their needs simply ignored. In many ways they are left to fend for themselves, and are seen as nobody's responsibility, except perhaps the educational institution.

Providing support and advocacy workers would go a long way to ensuring the needs and issues facing international students can be identified and addressed more promptly and properly.

Most importantly, any changes that are made to visa requirements that link to future options for permanency, should only relate to future students, not to those already here. It is grossly unfair to encourage international students to come on the promise of permanent residency, and then change the rules after they have arrived.

¹⁰ schedule 5A of the Migration Regulations