Submission to the Inquiry into the Welfare of International Students

The Migration Institute of Australia (MIA) welcomes the opportunity to contribute to the Senate's Inquiry into the Welfare of International Students.

About the Migration Institute of Australia

The MIA is the peak representative body for the Australian migration advice profession, advancing the interests of Registered Migration Agent (RMA) members and their clients.

Registered Migration Agents provide professional services to applicants and sponsors for temporary visas and permanent migration. RMAs facilitate the process of migration by advising people on the most appropriate visa, properly preparing the application with all necessary evidence and representing the case effectively during processing.

There are more than 4000 migration agents registered with the Australian regulatory office, of which approximately half are members of the Institute.

The MIA also provides extensive Continuing Professional Development (CPD) throughout Australia, including CPD programs for lawyers in the field of migration practice.

Preamble

While the Institute recognises the importance of all overseas students being treated fairly and their welfare is a matter of concern, our area of competence relates to immigration processes and so we limit our comments to the following terms of reference;

a) the roles and responsibilities of education providers, migration and education agents, state and federal governments, and relevant departments and embassies, in ensuring the quality and adequacy of information, advice, service delivery and support, with particular reference to:

- student visa requirements
- employment rights and protections from exploitation
- appropriate pathways to permanent migration

b) any other related matters.

A significant part of the current debate surrounding the exploitation of overseas students and the shortcomings of education courses has highlighted the complexity that exists between choosing to undertake a particular course of study and the desire for a migration outcome. The MIA acknowledges that the decision to undertake a course of study should result in a specific education outcome. The MIA is also very aware that DIAC has an onshore General Skilled Migration program

which is aimed specifically at overseas students who successfully complete studies in Australia and who are also able to meet the criteria of various visa subclasses.

It is unhelpful for any agency in Australia to think that overseas students and their families will not at least consider the possibility of a migration outcome following the successful completion of studies in Australia.

Approximately 40% of overseas students come from India and China and a significant number in the HES and VET sectors come from the remainder of the subcontinent and South America. For this cohort of overseas students in Australia, the push-pull factor for permanent migration to Australia is significant compared to that for overseas students from Western Europe and the North America.

Data available from DIAC and the AEI website shows the growth in VET sector enrolments from India and the significant increase in enrolments in courses in Hospitality, Commercial Cookery and Hairdressing. This increase in enrolments is directly attributable to the desire of many students to undertake courses which will enable them to meet the Points Test for General Skilled Migration.

Recent media reporting on the Australian education sector, education providers, relevant legislation and the regulatory authorities has highlighted significant discrepancies within the framework surrounding the education sector and the increasing lack of confidence and distrust in the system felt by international students, community organisations and the Australian public.

The MIA notes that in their passage through the Australian education and migration systems, overseas students have to deal with, or are impacted by, the Department of Immigration and Citizenship (DIAC), the Department of Education, Employment and Workplace Relations (DEEWR), state education authorities, and often many other agencies including the Australian Agency for International Development (AusAID), various skills assessing authorities and various states and territories agencies which administer CRICOS. In addition, they may well have dealings with education agents and migration advisors.

Unfortunately, the system has broken down to the point that it is difficult for an international student to successfully negotiate from one end of the education pathway to the other.

Overseas students are often unfairly maligned for choosing courses based on a perceived pathway to permanent residence. However, it is less frequently acknowledged that education providers structure courses to fit in with permanent residence requirements.

An example of this complexity and confusion is that a course registered on CRICOS and designated under AQF can vary considerably in terms of structure and length among different providers. For example, a search of CRICOS registrations for Certificate III courses in Commercial Cookery reveals that the lengths of these courses range from 28 to 104 weeks.

Recommendations

1. **Regulate persons acting as education agents on behalf of Australian educational and training institutions**

    (a) Formalise education and training standards of education agents

    (b) Consider combining education agent training with existing Registered Migration Agents training (Graduate Certificate) to create a new (optional) specialisation

    (c) Require Australian education providers to only use formally trained education agents

Offshore and onshore education agents recruit overseas students to study in Australia.

At present neither DEEWR nor DIAC has any regulatory or compulsory knowledge-based accreditation system of education agents that protects overseas students, their families and education providers. While the National Code does indicate that Australian Education providers are responsible for the information provided by education agents, a regulatory framework would assist education providers greatly in this regard.

The international education markets are competitive and complex. Education agents are required to have a good knowledge of education products across sectors, the requirements of education providers and the requirements of student visas as well as managing their clients' expectations about living, studying and working in Australia.

Formalising standards of training and education for education agents would be a strong step towards consumer protection, enabling consumers to expect and receive a better standard of service and enabling consumers to more readily identify unscrupulous operators especially offshore.

Enforcing Australian education providers to only engage and pay commissions to education agents who have achieved a minimum standard of training would enable regulation of the industry and would go a long way in providing greater legitimacy to an industry which has suffered in terms of reputation and consumer confidence and has been subject to neglect by all involved.

It is naïve in the extreme to think that overseas students and their families did not seek immigration advice from education agents and education agencies when choosing courses and did not receive it. This being the case the MIA proposes that the current Graduate Certificate that prospective RMAs must complete before applying for full registration be expanded to include components/modules to enable a specialisation in Australian education not dissimilar to the program provided by PIER and endorsed by DEEWR and DIAC. This would enable practitioners to provide lawful and well rounded advice and give consumers greater confidence in the information that they are receiving.

The MIA notes that there have been numerous matters that have come up for merits and judicial review as a result of overseas students being given incorrect and unlawful migration advice by education agents.

The absence of any regulation to prevent the unscrupulous activities of overseas education agents or de facto migration agents in providing poor or misleading migration advice and assistance leaves

consumers vulnerable and tarnishes the reputation of Australia's registered migration agents, education providers and Australia generally.

2. Amend definition of immigration assistance within the *Migration Act*.
- **2.1. Ensure *only* RMAs can legally give advice about migration to Australia**
- **2.2. Require DIAC to accept visa applications from either individuals or RMAs only**
- **2.3. End the ability for applicants to appoint an 'authorised recipient' who is not named within a visa application**

The distinction between the provision of immigration information, immigration assistance, immigration advice and immigration legal assistance needs to be clarified by amending the Migration Act.

Currently unlawful operators circumvent regulations to pose as migration agents, and gives dangerous opportunity for education agents to blur the lines between legitimate immigration assistance and unlawful migration advice.

It is important to note that laws specifying who can give "immigration assistance" only apply to practitioners in Australia and do not apply to offshore advisors. While detailed recommendations regarding offshore regulation are not covered by the scope of this Inquiry, a recent report identified issues with onshore regulation where everyone from registered migration agents to Parliamentary advisors, employers and unregistered volunteers provide immigration advice both formally and informally.

> *Effective regulation is difficult when a profession is porous and 'open' to non-professionals and professionals alike ... leaving Australian immigration particularly vulnerable to abuse*.[1]

To further shut down potential loopholes, it should be enshrined in legislation that only Registered Migration Agents can legally give advice about migration to Australia.

To increase certainty of the role a person has played in a visa application, the Department of Immigration and Citizenship should accept applications only from registered migration agents or from individuals who declare that they did not pay for immigration advice in connection with the application process, or from registered migration agents who are covered under existing regulation.

Furthermore, the current acceptance of a class of people who are 'authorised recipients" enables such people to be "de facto migration agents".

> *Reportedly, unscrupulous operators pose as 'authorised recipients' to circumvent regulation. Their clients may believe that they have hired an agent but may not*

[1] Prepared for: Migration Agents Registration Authority, June 2009, *Changing Together: Perceptions and proposals for reform from stakeholders in the migration advice community*, p56

understand the distinction between appointing an agent and appointing an 'authorised recipient'; at the moment the same form is used to appoint both.[2]

These people charge for their services and have explicit imprimatur of the Australian government, thus appearing to be the same as a Registered Migration Agent.

The MIA's recommendation is for legislation to be amended to limit an applicant from naming an 'authorised recipient' other than a person named within an application (e.g. sponsor, nominator, employer, immediate family member).

3. DIAC to more actively promote use of Registered Migration Agents

Registered Migration Agents help ensure Australia's immigration system runs smoothly. The use of migration professionals assists the migration process by reducing incomplete and unmeritorious applications and to provide integrity to the system.

Unfortunately, DIAC's public education campaigns emphasise not needing to use RMAs and how to make complaints against RMAs.

The Institute recognises that not everyone needs to use an RMA. However immigration regulations and policy are complex and frequently changing and visa applicants often feel the need for assistance. Those needing to negotiate Australia's immigration system are, by definition, not from Australia and thus are often not fluent in English and unused to Australian administration and government requirements such as standards of evidence for applications.

DIAC has a prominent disclaimer on its website - "*You do not need to use a migration agent to apply for any visa. However, if you choose to use a migration agent, you should use a registered migration agent*"[3] but it does not provide similar warnings to students about the use of education agents and how their role may differ from registered migration agents. Rather, DIAC provides information for onshore and offshore education agents on "how to lodge visa applications for international students who want to study in Australia". Indeed, the Australian Government endorses the provision of immigration assistance by education agents.

> *Australian education institutions have authorized agents to represent them in India. These agents can provide you with information about the education institutions that they represent and help students to apply for enrolment and facilitate the application for an Australian Student Visa.*
>
> Australian High Commission India website http://www.india.embassy.gov.au/ndli/indianstudents.html

This muddying of the waters of who is allowed to provide immigration assistance is exacerbated by the Australian Government's appointment of VFS Global Services Pvt. Ltd to provided Australian visa application services:

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[2] Prepared for: Migration Agents Registration Authority, June 2009, *Changing Together: Perceptions and proposals for reform from stakeholders in the migration advice community*, p18

[3] Department of Immigration and Citizenship 2006, *Migration Agents*, accessed 25/8/09, http://www.immi.gov.au/visas/migration-agents/

VFS Global Services Pvt. Ltd. has an agreement with the Commonwealth of Australia to provide Australian visa application services in India and Nepal from 1 October 2007. Applicants can lodge their visa application with VFS in person at their nearest of the 10 centres across India and Nepal. You can also send your visa application directly to VFS Application Centres New Delhi through courier.

VFS Global website (through link to Australian High Commission in India website)
http://www.vfs-au-in.com/index.aspx

The MIA considers that if government departments, including DIAC and DEEWR, take a more positive approach to the use of RMAs by visa applicants, then consumers would have a much greater appreciation of the correctness of registered practitioners and veer more readily to professionals endorsed by government and regulatory authorities.

This assists government in terms of correctness of advice given to clients and the higher standard of visa application preparation, completeness and integrity. It also serves to protect clients form exploitation.

The MIA acknowledges that stamping out the unlawful provision of migration advice by unregistered persons, particularly offshore, is a massive task and recommends that DIAC would do much better by instilling confidence in the existing regulations covering registered migration agents by actively promoting the benefit and services offered by professional and qualified RMAs.

4. Introduce transparency of commissions to secure student enrolments paid by Australian educational and training institutions

4.1. Require educational and training institutions to publish who they pay commissions

4.2. Require education agents to declare commissions to their clients

The MIA welcomes the introduction of an Amendment Bill to the *Education Services for Overseas Students (ESOS) Act 2000* to Parliament which includes consideration of transparency and accountability issues for education providers, including their use of education agents.

Education providers should publish to whom they pay commissions for the recruitment of overseas students and commission percentages. Consumers require and deserve this basic level of transparency.

The MIA recommends education agents should provide a statement to their clients of the commission or financial benefit they have received for the placement of a student into a course of study. This applies equally to registered migration agents or unlicensed operators who may act either as an education agent or own an educational and training institution which they recommend to clients.

Declaring commissions also enables a fairer playing field to RMAs who prefer to charge a fee for their professional services rather than offering “free” consultations which, in reality, are financed by commissions from an educational institution.

5. Avoid retrospective legislative and policy changes for current students and existing visa applicants, and improve certainty of migration outcomes during course duration

DIAC and other government agencies should always be mindful that overseas students are guests in Australia, consumers of education products and also consumers of immigration services and products. From a consumer protection perspective, overseas students do have "expected outcomes" from the decisions they and their families made.

The MIA requests that the DIAC refrain from implementing retrospective legislation or regulation and also allow for transitional arrangements for current overseas students and existing visa applicants when implementing new legislation, regulations or policy.

The MIA is concerned that overseas students who have paid a lot of money and commenced a course based upon aspirations of a perfectly legitimate education and migration outcome or who have applied for a permanent visa based upon an expected outcome are now subject to priority processing per the Ministerial Direction Nr 40. This means potential applicants and actual applicants are in limbo and have no clear way of finding out how long an application for permanent residency may take to be processed. For those on Bridging Visas it is even worse, as very often this precludes them from applying for anything else while they are onshore. Even though a Bridging Visa may give full employment rights, Australian employers do not always understand what this means and the Bridging Visa holder has less chance of obtaining skilled employment.

The MIA also wishes to point out the impact of policy and legislation changes which act in contravention to the expectations of visa applicants and to RMAs. These changes can impact significantly on the credibility of an RMA who deals with overseas students and may in turn impact on their business.

The MIA encourages DIAC and other government agencies to consider the impact of sudden policy changes not only on clients, but also on RMAs and their businesses.

Many people choose to come to Australia as students with a view to permanent residence. International students who study in Australia with the aim of eventually getting permanent residence are not exploiting illegitimate, "back door" entry. Rather, the Australian Government has, for overseas students studying in Australia, provided the General Skilled Migration (GSM) pathway through the subclass 885, 886, 887, 485 and 487 visa programs. It is therefore disingenuous for DIAC to assert that the student visa program and the General Skilled Migration program are separate and discrete entities.

Ongoing changes to the GSM program, due to its previous failure in addressing Australia's skills shortages and flexibility to respond to economic conditions, adversely affect overseas students.

It is no longer unusual for currently enrolled students to become ineligible to apply for General Skilled Migration using a previously acceptable course of study. Changes can come right at the end of an extensive period of study, giving students the choice to either pay large amounts of money to gain further Australian qualifications, or return to their home countries feeling that they have wasted money on Australian qualifications which may not be recognised in their country of origin. Neither option enhances Australia's diminishing reputation for quality education, as overseas

students increasingly regard themselves as victims of money-hungry, uncaring government departments and education providers.

6. **Further consumer protection measures for overseas students in the event of college closures**

Under current arrangements, DEEWR and state and territory governments have the responsibility of ensuring that the provisions and requirements of ESOS Act and the National Code are adhered to by education providers. It has become increasingly apparent that even though legislation and guidelines are in place, the mechanisms for overseas students to correctly access these provisions appear to be variable. There does not seem to be any specific client service apparatus in place whereby overseas student may discuss their circumstances or ascertain information relevant to their studies. DEEWR currently offers various hotlines and email addresses, however these appear to be inadequate for the needs of overseas students and very often the advice from DEEWR is to refer the overseas student on to another jurisdiction. The MIA notes that while DIAC has continued to develop strategies in assisting individual clients, DEEWR has limited experience in doing this.

Given the foundation of ESOS and the National Code's purpose of treating overseas students as consumers, the MIA suggests that strong client service systems are put into place by DEEWR or a future agency to ensure that services and information may be delivered effectively and coherently.

Overseas students must at all times remain fully protected against financial disadvantage should an education provider close its doors.

DIAC, DEEWR and relevant authorities must also ensure that overseas students are not disadvantaged in terms of their choice of study, nor should they face any disadvantage in terms of visa eligibility or duration.

Relevant authorities should clearly specify service standards of re-enrolment for overseas students in a course of study that is at least the equivalent in level and content of the course in which the overseas student was previously enrolled. Failure to do so should entitle the overseas student to a full refund.

The MIA also recommends that a system of grading education providers and their courses be considered so that overseas students and their families are better able to compare education products offered in Australia. The MIA notes that overseas students and their families may make choices on courses based upon advertising material and representation that bears little resemblance to reality. Australia offers a wide range of educational products at widely varying standards and this should be made clear to consumers.

7. Form a working group of relevant government agencies to consider student visa conditions

Potential overseas students often consider study in Australia on the basis that the current student visa regime provides for various levels of permission to work. The MIA accepts that overseas students should demonstrate that they have sufficient funds to study in Australia and to maintain a decent albeit modest standard of living. However, employment is a fundamental part of the transition to adulthood for young persons and employment in Australia allows for greater social and

vocational inclusion and allows for increases in the cost of living and places less financial stress on the family in the home country. Employment in Australia is also increasingly important as part of the pathway to skilled migration should that be a consideration.

The MIA considers that a working group should be formed to assess the current levels of work permission available to overseas students on student visas. The MIA notes that breaches of these current conditions may result in mandatory visa cancellation. The MIA considers that this is too harsh, given the vulnerability of overseas students, and that overseas students should be made aware of their rights in employment and have full access to better information services about employment in Australia.

The Institute has heard concerns about how current student visa requirements adversely affect the welfare of international students during their Australian stay, specifically regarding the limit of 20 hours paid work per week, and 900 hours of (possibly unpaid) work experience which must be accumulated to satisfy some General Skilled Migration applications.

It is timely to review the appropriateness of current work conditions and it is recommended an appropriate intergovernmental group undertake such a review.

8. Connect and regularise DIAC, DEEWR and Australian Qualifications Framework (AQF) requirements

The AQF system was designed to codify educational awards and to provide a framework that enabled a better understanding of qualification content and level of attainment.

The MIA notes that DIAC requires visa applicants to have completed various qualifications for certain lengths of time as indicated in the AQF system in order to apply various temporary and permanent visa subclasses.

The fact that DIAC has these visa requirements has led to education providers adjusting courses to fit in with visa requirements. [See Preamble regarding varying length of courses.]

If visa regulations, policy or procedures change, then this may have significantly adverse effects upon overseas students who may wish to proceed to another temporary or permanent visa.

There is a need to regularise DIAC, DEEWR and AQF requirements.

9. Rely on marketplace demands more, and rely less on process, to achieve demand-driven marketplace (broaden pathway to permanent entry based on skills shortage).

The MIA understands the broad policy objectives of increasingly using demand driven models for skilled entry into Australia. With this in mind, the MIA considers that DIAC should provide clearer pathways to permanency for overseas students who are able to demonstrate the required skill sets and sponsorship or nomination by an Australian employer or state or territory.

The MIA also agrees that permitting skilled entry into Australia based upon completion of specific courses only, without commitment to employment in an occupation, is likely to continue to lead to

distortions in the market, unwanted behaviours by stakeholders and continue to lead to education choices based solely on an expected migration outcome.

A significant innovation to satisfy both the need for a demand-driven model for skilled migration, and the need to provide certain overseas students with a greater degree of certainty of migration outcomes, would be to have a provisional residence visa (instead of a student visa) for students who undertake particular gazetted Australian courses (which provide graduates skilled in areas of high demand in Australia) at particular gazetted high level educational institutions.

This provisional residency visa would allow selected students to undertake their studies and then move to permanent residence without a points test. If specific work experience is required, the provisional residency visa could be extended to allow that work experience to be gained prior to the granting of permanent residency.

Such a provisional residency visa would not be available for study at shonky colleges providing "mickey mouse" courses, and would do much to enhance the integrity and transparency of the education-migration pathway.

Summary

The fact that the educational experience for overseas students in Australia is so closely connected to expectations of a migration outcome has encouraged unscrupulous individuals to seize the opportunity to make significant income from commissions paid to them by Australian education providers, to establish of shonky "colleges" in Australia, and to provide unsuspecting vulnerable clients with extremely poor advice and assistance.

This has happened without due care having been taken by governments to ensure that there has been a whole-of-government approach to regulating and monitoring the entire education and migration process for overseas students. The fact that so many governmental authorities are involved may explain, but not excuse, the reality that everyone has been asleep on their watch.

The realistic solution is <u>not</u> to completely separate education outcomes and migration outcomes for overseas students. That is not fair to current overseas students or recent graduates with visa applications lodged, and it is not in Australia's best interest that the opportunity is lost to gain highly skilled overseas students to address Australia's skills shortages.

The realistic solution is:

- To regulate the qualifications and activities of education agents
- To improve the regulation and monitoring of the establishment and operations of education providers in Australia
- For DIAC to better define who may provide immigration assistance
- For DIAC to redefine or abolish the concept of an "authorised recipient"
- For DIAC to more positively promote the use of registered migration agents
- To make the payment of commissions by education providers transparent to all concerned

- To remove retrospective legislation and policy changes for current students and existing visa applicants and to make for greater certainty of migration outcomes for overseas students studying in Australia
- To increase flexibility in visa requirements to ensure that overseas students are not disadvantaged by college closures
- To form a working group of relevant government agencies to consider student visa conditions
- To regularise DIAC, DEEWR and Australian Qualifications Framework (AQF) requirements
- To rely more on marketplace demands, and less on process, to achieve demand-driven marketplace (broaden pathway to permanent entry based on skills shortage).
- To grant a provisional residency visa (instead of a student visa) to enable certain high calibre overseas students to undertake gazetted courses at gazetted educational institutions to better satisfy Australia's skills demands, and to provide a transparent pathway to permanent residence.

No time can be lost in regulating, reforming and monitoring the activities of all stakeholders who impact on overseas students. Enough damage has already been done to Australia's reputation and to overseas students themselves.

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