



27 April 2018

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

Via email: migration@aph.gov.au

Inquiry into the efficacy of current regulation of Australian migration agents

This submission is a joint submission of the Federation of Ethnic Communities' Councils of Australia (FECCA) and the Settlement Council of Australia (SCoA).

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistic backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

The Settlement Council of Australia (SCoA) is the peak body for Australia's diverse settlement sector and represents over 90 agencies, which comprise the vast majority of agencies providing settlement support to recently arrived migrants, including those from a refugee background. Our members work directly with a wide range of new arrivals from diverse backgrounds, as well as the mainstream Australian community and various stakeholders.

SCoA believes that Australia should be proud of its multicultural community, and should recognise the role of settlement services in supporting newly arrived migrants. Our members witness firsthand the true value of the contribution made to multicultural Australia by those it welcomes as migrants, as well as the challenges those people face when attempting to settle in their new communities.

FECCA and SCoA would welcome the opportunity to expand on this submission to the Committee as required. For enquiries please contact the FECCA Chief Executive Officer, Dr Emma Campbell at emma@fecca.org.au or on (02) 6282 5755 or SCoA's Chief Executive Officer, Mr Nick Tebbey at ceo@scoa.org.au or on (02) 6282 8515.

Key Messages

While FECCA and SCoA are aware of positive and negative constituent experiences with migration agents, both organisations emphasise that migration agents play a critical role in the migration application process, especially in instances of complexity. They are often crucial in

assisting CALD communities and families to access and navigate the Australian immigration system.

FECCA and SCoA believe that registered migration agents are currently regulated and supported by a strong system and that the majority adhere to sector regulations and guidelines. The robust regulation of migrant agents, combined with a well-resourced effort to reduce the impact of unregistered practice, is in the best interests of CALD and migrant communities and those with family members keen to migrate.

It is also crucial to ensure confidence in the visa application process. People seeking to migrate to Australia are particularly vulnerable to exploitation while navigating a complex and technical system, making stringent regulation and accreditation crucial to ensure strong, safe and prosperous CALD and migrant communities.

Recommendations

FECCA and SCoA therefore recommend:

- There be an ongoing role for migration agents to assist people in the Australian immigration system;
- The current system of regulation of migration agents be maintained, including strong registration and stringent accreditation processes, as well as swiftly enforced penalties for exploitative and unethical migration agents;
- The allocation of resources to further investigate the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia;
- A comprehensive effort be made to inform clients of migration agents of their rights as consumers, and a streamlined process for migrants to raise concerns and have them arbitrated as efficiently as possible;
- Consideration be given to additional resourcing to the OMARA, including the maintenance of a compensation fund for migrants who are left out of pocket as a result of unethical behaviour.

Unregistered Migration Advice in Australia

While only registered migration agents are legally able to provide migration advice, FECCA and SCoA acknowledge the detrimental impact of unregistered migration agents operating unlawfully in the community. Both organisations are aware of instances of unregistered migration agents exploiting vulnerable individuals who are attempting to apply for visas in Australia.

FECCA and SCoA understand that the Office of the Migration Agents Registration Authority (OMARA) does not have the jurisdiction to consider complaints about unregistered migration agents.¹ While there are avenues to report unlawful operators providing immigration assistance through the Department of Home Affairs, it is the experience of FECCA and SCoA that neither bodies are sufficiently resourced to adequately investigate, police or penalise unregistered migration agents.

FECCA and SCoA believe that while registered migration agents are regulated and supported by a strong system and that the majority adhere to sector regulations and guidelines, both organisations are concerned that neither OMARA nor the Department of Home Affairs are adequately resourced to monitor and penalise unregistered migration agents who seek to exploit vulnerable people who are applying for Australian visas, and who require professional

¹ See <https://www.mara.gov.au/using-an-agent/using-a-registered-migration-agent/>.

advice and assistance to do so. FECCA and SCoA therefore recommend the allocation of resources to further investigate the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.

Actions of Registered Migration Agents

It is the belief of both organisations that the system which currently regulates registered migration agents is robust. The Migration Act 1958 and associated Regulations that govern Agents' registration requirements and Code of Conduct are supported by OMARA, which regulates the profession itself. These institutions are also supported by a strong peak body, the Migration Institute of Australia (MIA), which plays a key role as the nation's leading professional association for migration agents. While FECCA and SCoA are aware of instances of registered agents operating unethically, it is our understanding that the vast majority operate lawfully and adhere to sector regulations and guidelines. In saying this, our constituents are particularly vulnerable to exploitation, and have communicated cases of unethical and unprofessional behaviour by both registered and unregistered migration agents. Often people who do not understand the migration system are misled into paying expensive fees up front, and are left out of pocket in the event that agents do not fulfil their obligations in an ethical or professional manner.

Case Study 1, South Sudanese Migrant

I am writing to share my positive experience with a registered migration agent ().

I wanted to bring my wife to Australia I have seen many migration agents, and I feel that I was either brushed off and not being understood. But with things were different, I feel that she had genuine care and passion for helping me. It was not about the money but more so about helping me. Anytime I had questions, she always had time for me. She went above and beyond. My wife is now in Australia because of her.

Other members of my community have also experienced this. She treats each case with a lot of passion.

Coming from an African background (South Sudan) it is quite difficult sometimes to be understood. When I married my wife there was no marriage certificate, it was a traditional marriage, with she was able to understand that and helped me explain it to the department. I also had no understanding of the visa process or what sort of documents to provide, but helped a lot, she suggested and provided examples to make things easier for me to understand. She took her time to help me write my relationship history without any charges; she would stay back to ensure that everything was okay and did more than I expected.

I am grateful and appreciate everything she has done for my wife and me, and I wanted to acknowledge her today.

OMARA notes that Australia's migration laws can be complicated and difficult to apply in practice.² FECCA and SCoA agree that migration law is particularly complex and difficult to navigate, even for those with an excellent command of the English language and high levels of literacy. Migration agents therefore play a critical role in the migration application process, especially in instances of complexity.

² See <https://www.mara.gov.au/using-an-agent/using-a-registered-migration-agent/risks-of-receiving-assistance-from-an-unregistered-person/>.

Both FECCA and SCoA support the maintenance of strong registration and stringent accreditation processes, as well as swiftly enforced penalties for exploitative and unethical migration agents. We also recommend a comprehensive effort be made to inform clients of migration agents of their rights as consumers, and a streamlined process for migrants to raise concerns and have them arbitrated as efficiently as possible. We suggest this requires additional resourcing to the OMARA and could involve the maintenance of a compensation fund for migrants who are left out of pocket as a result of unethical behaviour.

Case Study 2, Venezuelan Migrant

On Friday, September 2, 2016 we entered into an agreement for legal counselling with the agent... to carry out the procedures and application for permanent residence in Australia. The contract explicitly establishes in writing the method of payment for the services rendered, as follows... The first payment would cover the initiation process, that is, the skill assessment draft... This step was fulfilled. The second payment, pursuant to the provisions established in the contract, consisted of submitting the Expression of Interest (EOI). This process or step was never performed.... On December 08, 2017, we sent a communication... to the aforementioned immigration agent, that we had accomplished the IELTS (English Test, a necessary requirement to forward the EOI), to which he responded: "In order to continue with the process it is necessary to pay the second part established in the contract and that we had to take it easy and be patient... he needed a few days to analyze our case in order to know how to proceed". He never made this analysis, in spite of him having given his word as guarantee. He did not meet the terms of the contract. We do not understand what type of thorough and exceptional analysis this migration agent was "working on" for almost two years. At this stage of the process, we presumed he was clear on what steps to take in our case.

Despite having previously assured the client that he could have the EOI completed in one day, the migration agent proceeded to stall the applicant via email over a period of 4 weeks. Upon realising that the agent was yet to progress with their case as promised, the applicant informed the agent of their decision to terminate the contract and requested a refund of \$2530 for the second part of the contact, which had never been executed. The agent subsequently refused to refund the applicant.

The main reason why we rescinded the contract... was that when we notified him that we had fulfilled all the requirements needed to submit the EOI, he never tried to send, within a period of one month, the "analysis" that he said he would prepare, and much less send the expression of interest (EOI). He deceived us, and incidentally he unduly collected his professional fees.

Conclusion

The robust regulation of migrant agents, combined with a well-resourced effort to reduce the impact of unregistered practice, is in the best interests of CALD and migrant communities and those with family members keen to migrate. It is also crucial to ensure confidence in the visa application process. People seeking to migrate to Australia are particularly vulnerable to exploitation while navigating a complex and technical system, making stringent regulation and accreditation crucial to ensure strong, safe and prosperous CALD and migrant communities.