

Submission to the Efficacy of the Regulation of Registered Migration Agents Inquiry

International Student Education Agents Association (ISEAA)

I have 25 years' experience in the international education sector as an education marketing manager, manager of an RTO / private education provider, working with peak bodies including English Australia and ACPET, and as a consultant to state government (NSW, VIC, QLD, NT, SA) and education providers across all education and training sectors. This submission has been prepared in consultation with the International Student Education Agents Association (ISEAA), the nascent peak or professional body representing Australian education agents. I would like to thank the Joint Standing Committee on Migration for the opportunity to provide this submission to the *Efficacy of the Regulation of Registered Migration Agents Inquiry*.

Having attended the Sydney public hearing for the *Efficacy of the Regulation of Registered Migration Agents Inquiry* on July 16, 2018 and read the submissions from other parties to the Inquiry I present this submission. Of particular note from the hearing was the amount of time the committee spent examining education agents. This submission seeks to address the item from the Terms of Reference;

• *evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.*

It would be useful to provide some balance on the role of education agents in Australian international education with recommendations of how to address some of the concerns raised by the committee and in submissions. The international education sector is now 30 years old with the introduction of student visas in 1988. This is an Australian success story that has its base as a partnership between education providers and education agents. Countries such as Canada, the UK and now the U.S.A are emulating the Australian model in working with education agents to assist in spreading the word about their institutions to international students.

The 'Education Services Overseas Students Act 2000' (ESOS Act) currently covers the regulation of agents. It regulates education providers and their operation, including, but not limited to, Agents / Education agents. Education agents are recognised under the ESOS Act as third-party providers to Australian education providers to provide marketing and recruiting services in return for commission or service payments. The National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code 2018) Standard 4 provides explicit requirements for providers to monitor the activity of agents and to investigate, address or cease the agreement if there are any issues. Under ESOS an education agent is defined as: *an agent of a provider means a person (whether within or outside Australia) who represents or acts on behalf of the provider, or purports to do so, in dealing with overseas students or intending overseas students.*

Registered education providers must maintain a list of all the provider's agents and be published on its website. Standard 4 of the National Code describes the role and responsibility of Education Agents¹. Under the ESOS Act, education providers are responsible for their education agent's actions.

¹ <https://internationaleducation.gov.au/Regulatory-Information/Documents/National%20Code%202018%20Factsheets/Standard%204.pdf>

Education agents are currently regulated under the ESOS Act. The possibility that the Office of Migration Agent's Registration Authority (OMARA) have oversight of education agents could be problematic as there are vast numbers of education agents offshore and outside Australian jurisdiction. Furthermore, the services and scope of the education agent go beyond migration and visas. In many cases, such as in the language travel industry, students are coming on tourist visas only to study English (ELICOS courses) and do not require migration services.

The additional cost of OMARA registered staff in Education Agencies would make the cost of business untenable, and threaten the productivity of the industry. It is estimated more than 90% of international enrolments to private colleges and approximately 70% of university enrolments are facilitated through education agents. They are an essential link in the \$32 billion dollar international education industry.

Unlawful Immigration Services

- *evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia*

Regulation around unlawful immigration advice is clear, but the execution in the real world is not as smooth. Education agents and migration agent services do overlap in the area of migration law on student visas. However, education agents do much more than assisting students to choose institutions or give advice on living and studying abroad. Education agents are tasked with providing accurate and relevant information relating to the diverse range of courses offered by CRICOS registered organisations. Education agents help students select the appropriate course, assist in the enrolment process, help find accommodation, cultural integration, internship and part-time work opportunities.

Their role as it relates to student visas, is to provide administrative assistance and break down the complex requirements for non-native English speakers. The changes brought about by the Department of Home Affairs in the Simplified Student Visa Framework (SSVF) has had the unintended consequence of increasing the reliance on education agents by both institutions and students more than almost any other factor. The SSVF and stricter interpretations of the Genuine Temporary Entrant (GTE) criteria have made the student visa application process more lengthy and complicated for both students and education agents. The visa application's Statement of Purpose (SOP) is an open document completed by the student that requires their reasons for coming to Australia to study, their plans post-study with regards to post-graduate work rights or their plans to return to their country of origin. It is important to understand that international students coming to Australia are generally second language speakers and need translation and other professional assistance in preparing the statement.

Genuine students preparing their visa applications without the assistance of education agents are often turned away for not completing their applications correctly. Due to a lack of training and transparency in GTE regulation, many students do face refusals even with the assistance of agents. It is with regards to these cases that ISEAA believes we can work with Government to develop effective training materials to ensure rules and conditions around student visas, GTE processes and academic requirements are communicated and managed effectively.

Education agents play a vital role in assisting students to navigate the complex tasks of choosing the right institution, meeting college GTE requirements and preparing for successful studies in Australia. Agents are critical for students of all kinds, even students looking to take on short English courses are now required to submit lengthy visa applications and justify why they wish to travel to Australia for their studies. Rather than focusing on penalising education agents for assisting students with the

student visa enquiries, ISEAA advocates more training and resources are provided to improve the quality of visa applications.

The majority of education agents do not provide migration advice. Their role is to provide a link between student visa regulations, study choices and successful education outcomes. While some education agents have staff with migration credentials, this is not essential, nor necessary for education agents to perform an effective job. Students with migration questions extending beyond matters relating to their studies are usually referred to a migration agent, as education agents often do not have specialist knowledge to service these enquiries.

ISEAA and the majority of education agents support the introduction of GTE and the SOP. However the subjective nature and interpretation of the requirements can lead to visa refusals. The difficulty of the SOP, in turn, leads students to seek out more assured ways of applying for an Australian visa. The high cost of an Australian student visa application (the highest in the world) is a significant upfront investment with no guarantee of success hence education agents are sometimes seen as a way of increasing the chances of a successful outcome. The move into then giving unlawful immigration advice from clerical assistance is a grey area. The definition of immigration assistance on the immigration website states;

*Activities **not** regarded as immigration assistance include:*

- *clerical work to prepare (or help prepare) an application or other document.*
The term clerical work includes, but is not be limited to:
 - *typing answers into an application/document*
 - *writing answers into an application/document*
 - *translating answers into an application/document*
 - *photocopying an application/document*
 - *collating documents*
 - *indicating where certain information should go in an application form*
 - *paying the Visa Application Charge*
 - *physically lodging an application*
 - *posting or emailing an application/document.*
- *providing translation or interpretation services to help prepare an application or other document*
- *advising another person that the other person must apply for a visa*
- *passing on information produced by a third person, without giving substantial comment on or explanation of the information².*

Students need guidance on what the intention of the SOP is and how to approach it. This would be covered, for example, by passing on information from the Home Affairs website, communicating the conditions required of the student to remain compliant on their visa and how it relates to their study. Anything further, such as residency outcomes or skilled migration is clearly a migration discussion and requires the attention of a registered professional. Such accreditation is not needed for most study related matters.

ISEAA has a number members who are both education and migration agents. It is our belief that education agents giving migration advice is not a significant issue, although it should be monitored and be kept as part of the dialogue with government and industry.

The global reach and coverage of education agents is broad. Department of Education and Training (DET) estimates that there are approximately 7,900 education agencies registered by providers worldwide (and onshore) that send students to Australia. They are a vital component of the

² <https://www.homeaffairs.gov.au/trav/visa/usin/immigration-assistance>

international education ecosystem. The key to success is to work in consultation with the international education industry to ensure more protection for international students. The main risks for students are insufficient or incorrect information on how to apply for a student visa and financial fraud with tuition and other fees.

While there have been some recent incidents of education agents collecting fees for tuition, accommodation and health insurance and then not passing the appropriate fees to the provider, in reality there have been only 3 major reported incidents in the past 2 years out of the hundreds of thousands of cases managed by agents. More importantly, the industry has responded quickly and appropriately via:

- Providers retracting contracts with these agents
- Many providers covering the tuition fees of impacted students
- Social media communities exposing poor practices by those agents
- Established agents speaking out against such behaviour

It is our assertion that having education agents OMARA registered would not be sufficient to solve or prevent these incidents.

ISEAA is proposing student agreements and client accounts between students and education agents similar to those existing for migration agents' clients. This agreement would outline the terms of service and detail what is and what is not provided and specifically state that the information provided is not migration advice.

Isolated incidents of agents embezzling money from student's, do not warrant enforcing new rules for the hundreds of thousands of students who are successfully using the services provided by education agents. Agents provide comprehensive assistance with accommodation, pre-departure and arrival support, insurance and foreign exchange and transfers for students. Asking students to do this without the assistance of an education agent would be onerous and may result in some students taking up other more accessible study destinations.

Education agents who are part of ISEAA are looking to work effectively with the Australian government and operate under the Agent Code of Ethics (ACE). ISEAA is focused on ensuring both agents and providers are fully aware of and compliant with the National Code and ESOS Act. ISEAA is developing its own complaints management criteria as a mechanism for students and other member agents to report unethical or illegal activity by both agents and providers. The need to set a benchmark in the international education recruitment industry is long overdue. With that in mind, the objectives of ISEAA are to:

- Represent the interests of its members and the industry to:
 - Australian government agencies and state government agencies
 - Potential students overseas
 - Educational bodies in Australia and overseas
 - Media and other interested parties in Australia and internationally
- Promote Australian education services internationally by
 - Providing guidelines to ensure high standards of ethical behaviour of its membership by:

- Abiding by the ESOS Act³ covering education agents and the Australia International Education and Training Agent Code of Ethics⁴ (ACE)
- Publication and distribution of a Code of Conduct
- Development of a professional learning program for education agents
- Distribution of training and other resources for education agents
- Act as a forum for the exchange of ideas and information within the membership and other government and industry stakeholders
- Organise and/or participate in events and other initiatives to promote the interests of members
- Develop and distribute resources of interest and benefit to members

ISEAA provides a platform for education agents to step up and be accountable in the international education sector. The Overseas Student Ombudsman's office issue paper (p.11) concluded with;

The Office understands that the sector is considering an association, to be recognised by providers and government, for education agents. The Office supports the steps being taken by sector stakeholders to explore the option of an industry association for education agents, including a membership requirement to adhere to the Agent Code of Ethics and an active disciplinary committee. The international education industry, including education providers and education agents themselves may like to consider developing best practice principles for agent monitoring and termination, with support from the Australian Government.

With the underpinning mandate to develop and promote best practice principles for international education agents, ISEAA makes the following recommendations.

Recommendations

1. ISEAA will work with the international education industry to encourage continuing professional learning for education agents around the definitions of unlawful immigration advice
2. ISEAA recommends that each education agent have a formal agreement with a registered migration agent, to who they can refer cases to when they become matters of migration beyond a student visa. It is important to note that this does not preclude education agents from having dedicated OMARA licenced migration agents within their company structure, but rather does not make it mandatory
3. ISEAA recommends that to manage the risk of financial fraud education agents should have a separate client account for collected student fees that is auditable
4. ISEAA recommends that education agents have a sector specific registration and recognition process developed collaboratively with relevant government departments

Robert Parsonson

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³ <https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/Pages/default.aspx>

⁴<https://internationaleducation.gov.au/News/LatestNews/Documents/Australian%20International%20Education%20and%20Training%20-%20Agent%20Code%20of%20Ethics.pdf>

Appendix I Terms of Reference

The Joint Standing Committee on Migration shall inquire into the efficacy of current regulation of Australian migration agents. In conducting its inquiry, the Committee shall have particular regard to:

- examining the registration and regulation of migration agents in Australia including: education, English proficiency, payment, fee-scheduling as well as the suitability and stringency of the accreditation process and evidence of deficiencies.
- the nature and prevalence of fraud, professional misconduct and other breaches by registered migration agents, the current review mechanisms for migration agents and the adequacy of penalties.
- deficiencies and barriers to relevant authorities' investigation of fraudulent behaviour by registered migration agents in visa applications, including the adequacy of information and evidence sharing between such authorities.
- evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.
- reviewing the appropriateness of migration agents providing other services to clients.