

Submission to the Senate Inquiry into the Welfare of International Students.

This submission has been made in the form of an opinion of the writer. The submission focuses on "education agents" and makes a suggestion as to one possible method of improving the quality of the introductory interface between the student and the educational institution.

The education of international students is big business for Australia. All governments, Federal, State and Territory as well as education institutions benefit financially in a direct way from the influx of overseas students. Whether it is a "sandstone" university or the small office international school, this is an industry which is and has been exceptionally profitable for its participants.

A person only has to walk along the streets of Sydney near the Town Hall during school terms to experience the impact international education has on our society. The footpaths overflow with groups of students gathered together in high spirits, usually communicating in their own language or seeking to breach the language barrier with other students by using English.

The value of being an international student in the Australian education system has increased over the last 15 years with the path to permanent residency having been made easier on the completion of a wider range of courses.

International students are migrants, usually of a temporary nature. These migrants receive advice on coming to Australia and how to obtain a visa. Often advice on coming to Australia is obtained through government websites or education institution websites or through agents. Migration agents cover all visas yet international students often go to recruiters acting as agents for Australian education institutions. The recruiters are usually referred to as education agents and they provide information on school and courses.

The regulatory processes contained in Part 3 of the Migration Act 1958 which the public is led to believe are to provide protection to all the vulnerable individuals within the migration system appear to have been specifically constructed to allow certain groups to fall outside of the protections. This has allowed significant gaps which have allowed individuals to circumvent the regulatory processes.

Included in the groups which are not provided full protection are international students.

The giving of advice outside of Australia, to someone about obtaining an Australian visa does not require registration under Part 3 of the Migration Act 1958. The giving of advice in Australia, to someone about obtaining an Australian visa requires registration under Part 3 of the Migration Act 1958 with some exceptions. Included in those exceptions is advice given by a recruiter in

Australia to an international student in relation to their education experience in Australia.

A migration agent is required to disclose their fees during the initial consultation processes. Recruiters usually receive a commission from the education institution with no requirement to disclose the value of the commission. Where a recruiter is dealing with a student whose end goal is to obtain permanent residency status, it is unlikely that the recruiter will put their commission payment at risk by advising the student to see a migration agent.

The National Code of Practice for Registration Authorities and providers of Education and Training to Overseas Students 2007 (the "National Code") goes some way to putting structure around recruiters through the CRICOS registration process. However, recruiters and educators are still given huge leeway in the way they conduct their relationship and where both parties are less than scrupulous, the international student can suffer huge losses financially, career wise and other significant life choices.

The National Code focuses on a "formal" relationship between the educator and the recruiter. In reality a recruiter may have no experience, no training, may recruit for a number of education institutions in Australia and other countries, may have no national allegiance, and such recruiters probably owe any allegiance they have solely to money. Such recruiters are still able to bring students into the Australian system.

In the past it appears that special self interested groups, which include some of the bastions of the Australian society, have worked hard to ensure that international students are kept away from the protections of the migration legislation. This is because the Migration Act 1958 has a number of areas where the participant has legislation which specifically requires the attribute of integrity. Integrity is a high standard to meet and while easily measured, would appear to be feared by many in business.

Many recruiters within Australia take their responsibilities seriously, however, as in all human endeavours, there is always a smaller group who see the opportunity for manipulation. The adage of the 80/20 rule normally applies where 80% are committed and responsible, 20% either lack the knowledge or are deliberately working the system. Of that 20% normally about 10%, or 2% of the whole cohort, act to circumvent the system. Within the recruiter population, because there have been no controls introduced, the 2% of the cohort is most likely greater than this.

Recruiters, unlike migration agents, are not required to disclose their fees. In fact, the fees paid to recruiters are generally hidden from the student because a commission is often paid by the educational institution directly to the recruiter

without disclosure to the student. This situation allows recruiters outside of Australia to charge a fee directly from the student or their family, which is in addition to the hidden commission.

Fees of 25% appear to be the norm, however on rare occasions fees of up to 35% are paid to a recruiter when a student signs up to a course. Recent media reports have claimed the education of international students is a \$15 billion business. I do not have the same access to the figures that would be available to the Senate Committee, however this is a business subset which could easily be over \$AUS3.0 billion in commissions.

Because these fees are generally hidden they are similar to secret commissions which in other circumstances in Australia are unlawful. Yet these payments appear to have been deliberately excised from the regulatory purview and recruiter commissions or fees do not rate a mention in the National Code. Also, with such large revenue flows it beggars belief that criminal elements, both in Australia and other countries, are not receiving significant benefits from participating in this industry segment.

A recruiter without a "formal" relationship does not have to have any qualifications or any knowledge about such things as pastoral care. A recruiter simply has to have the contacts with an institution and then connections into a pool of students.

There is a fringe group of education institutions who will accept anyone as their recruiter as long as they deliver students. These institutions in the past encouraged current students who are near the end of their course, to go out and find other students. There would appear to have been no reason for this practice to have stopped. The other students are usually attending a different institution and the recruiting student, while not getting the usual 25-35% is still given a large commission to sign up transferring students. It could be expected that a first time recruiter is not going to properly set the expectations of the transferring student and this is one area where many problems can arise. While the National Code seeks to prevent this activity, the porous nature of the National Code allows this situation to continue.

A lot of focus of the Australian media has been on the more mature international students who have come to Australia for tertiary education. Little focus has been put on the international students who attend our secondary and some primary schools.

Some recruiters, who are either Australian based or who have business partners in Australia, have developed their business model further to allow vertical integration of business opportunities presented by international students. These opportunities have included providing accommodation in recruiter owned housing and employment in recruiter owned businesses.

Where the vertical integration has occurred in relation to secondary students there are no controls in place to check the conditions the students live or operate in. While some of the conditions that female and some male secondary students find themselves in would cause outrage in Australian families, it is left to the educational institution to determine if the conditions are acceptable. Not all of the institutions would appear to bother with the appropriate level of pastoral care. This is of concern as it may leave open an opportunity for criminal elements to take advantage of certain situations. Cultural norms may prevent any complaint from families who prefer to take evasive action rather than confront the situation.

It has to be recognized that the problem does not only reside with the management of the recruiters or some migration agents. Students and their families are often willing partners in schemes which skirt the boundaries of the requirements of the visa system.

When the scheme goes wrong the student is often able to construct a plausible story which casts an Australian based recruiter or migration agent in an unfavourable light. This results in a misallocation of limited resources which would otherwise be available for improving the international student protections.

Unfortunately for the recruiter, these types of students occasionally find a willing staff member in a Parliamentarian's electoral office to assist them. Regrettably these electoral office staff members are usually not trained in the intricacies of the migration legislation, and while ably handling the emotional issues, may develop a myopic view of recruiters and migration agents. This results in further dilution of the focus on giving real protection to the students.

There have been a number of attempts to have the Australian based recruiters form a professional association which could provide some form of self regulation, but most have failed due to lack of critical mass.

The launch of the Consultant and Advisor Register by the Australian Council for Private Education and Training (ACPET) is a step in the right direction and ACPET is to be congratulated on its belated initiative which is done at no cost to the Australian taxpayer. However, there is a great danger that this initiative may result in excluding certain recruiters, because of subjective reasons rather than those based on merit.

The ACPET register requires an inquirer to identify themselves and provide an email address. The undated press release about the register talks about a code of conduct, however an anonymous search of the ACPET site where the register is stored, does not disclose any code of conduct.

Something different has to be done, again at no cost to the Australian taxpayer.

Many recruiters operate outside of Australia and therefore beyond the reach of Australian Law. The education institutions that the recruiters feed are within Australian Law and it is easily possible for those institutions to be held accountable for their recruiters if the Parliament was prepared to take the necessary steps to ensure this. The Parliament has already implemented the Education Services for Overseas Students Act 2000 (ESOS) and its related acts where in the words of the Australian Educational International website:

"The legislation mandates a nationally consistent approach to registering education providers so that the quality of the tuition, and care of students, remains high. The professionalism and integrity of the industry is further strengthened by the ESOS legislation's interface with immigration law."

While the National Code of Practice 2007 under the ESOS legislation has moved to put some integrity into the recruiter process, there are still major opportunities for recruiters to interface with educational institutions while still acting outside of the framework.

The education providers are already registered, therefore a possible solution to the Recruiter issue is to expand the scope of the CRICOS register or set up a separate register and have the activity funded 75% by educational institutions, 25% by recruiters. I will refer to this as the Recruiters Register. The Recruiters Register could be operated by a government department or a private enterprise entity, but the Recruiters Register is to be governed by an independent committee of no more than 5, I will refer to this as the Recruiters Register Committee.

The Recruiters Register would be available via the internet or hard copy, could be accessed anonymously, and would present the information in a logical view which suited most inquiries. The Recruiters Register would require a full evaluation of an applicant to the Register every 24 months.

The Recruiters Register Committee would initially be appointed by the government, and after the first 12 months, would be elected on a biennial basis by secret ballot, where voting is by each person who appears on the Recruiters Register. This would mean that an educational institution would have one vote for itself, although may have influence over votes by recruiters who are on the Recruiters Register. The ballot would be supervised by an external, independent organization.

Grandfathering of applicants to the Register would be allowed for the first 12 months. All applicants who are grandfathered would be required to show that they have met the same entry requirement as later applicants at the time of their first renewal of registration. The offsetting of the election of the Committee by 12 months from the start of the Register would allow new entrants an opportunity to influence the make up of the Committee in a shorter span of time.

The Recruiters Register Committee is responsible for setting the standards for entry of educational institutions and recruiters on the Register. The Recruiters Register Committee may refuse entry to any educational institution or recruiter who does not meet the legislative standards or any other standard set by the Committee. The Recruiters Register Committee may remove the entry of any educational institution or recruiter from the Register who does not meet the legislative standards or any other standard set by the Committee.

Educational institutions would only be able to accept international students who have been put forward by recruiters, which also can be the institution's own staff, who are on the Recruiters Register. The Recruiters Register would list approved educational institutions, both public and private, which offer courses to international students. The Recruiters Register would also list approved recruiters within and outside of Australia who are authorized to recruit international students.

Recruiters would be listed as individuals and would be defined as any individual who gives advice to an international student regarding Australian Education or student visas. A recruiter's staff who are not on the Recruiter's Register would only be involved in the administrative process, not advice giving.

The listing for recruiters would show the number of years the individual has participated in recruiting, the business address(es) of the recruiter, the educational institution(s) the recruiter represents and the courses in which the recruiter has been given recruitment training.

As part of the listing process the recruiter would have to show that they are a person of integrity and a fit and proper person, have completed course in migration covering the potential student visas, in pastoral care, in conflict resolution. They will also have demonstrated an understanding of the Australian cultural environment, including education, social engineering and living standards. The recruiter would also be required to show that they completed an Australian State "Working with Children" (or equivalent) certificate, and do not employ or have a business relationship with individuals who are not persons of integrity or who have been removed from the register because of misconduct. The recruiter would also be required to show that within any 24 month period they have completed further training which updates their basic knowledge and knowledge of the courses they offer. The recruiter would also be required to show that all of their staff have successfully completed the basic knowledge requirements each 24 months. Where the recruiter is dealing with students under the age of 18 they would be required to demonstrate that their employees and consultants dealing with students or having a direct impact on students are individuals who have completed an Australian state "Working with Children" (or equivalent) certificate.

As part of the listing process the educational institution and the recruiter must agree to belong to and be subject to an approved dispute resolution process. The Recruiters Register Committee would be responsible for setting the standards for the approval of a dispute resolution process. The dispute resolution process would be operated by a separate independent organization.

Where there is a dispute or complaint the Recruiters Register will be required to apply the same standards of integrity and fit and proper to the student and the individual against whom the complaint is made. As part of this educational institutions are to make available the students records to the Recruiters Register when required as part of resolution of a complaint or dispute.

Where an individual or an educational institution is to be removed from the Recruiters Register as a result of a dispute, complaint or proof of being not a person of integrity or a fit and proper person, this must be approved by the Recruiters Register Committee.

In circumstances where the recruiter is also a migration agent, there will be attempts at forum shopping by the participants when there is a dispute. As a step to limit forum shopping where a matter relates to an international student the Recruiters Register is to manage and resolve the matter. The organization responsible for migration agents is to be required to take into account findings of the Recruiters Register and the inverse applies. Both organizations will need legislative permission to disclose confidential information regarding registrants and complainants to each other, for the purpose of their respective dispute resolution or investigations.

Thank you for the opportunity to present my views.

David Mawson
14 August 2009

A handwritten signature in black ink, reading "David Mawson". The signature is written in a cursive style, with the first letters of "David" and "Mawson" being capitalized and prominent.