



Submission by the
Commonwealth Ombudsman

**Efficacy of the current regulation of
Australian migration agents**

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

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Introduction and summary

Under the *Ombudsman Act 1976*, the Office of the Commonwealth Ombudsman (the Office) has oversight of the Department of Home Affairs. Under the *Migration Act 1958*, migration agents must be registered with the Office of the Migration Agents Registration Authority (OMARA) to provide immigration advice and assistance in Australia. The OMARA maintains a list of registered migration agents on its website and considers complaints about registered migration agents. The Office has jurisdiction to investigate complaints about the OMARA, which is part of the Department of Home Affairs.

In its function as the Overseas Students Ombudsman, the Office can also consider complaints about education agents who represent private education providers in Australia and help to enrol international students in a course of study in Australia. Education agents are not required to be registered to provide international students with advice and assistance to enrol in a course of study with an Australian education provider. However, if an education agent provides **immigration** advice or assistance in Australia, they must be registered as a migration agent.

This submission outlines the complaints the Office has received about the OMARA, in relation to its regulation of migration agents. It also provides an overview of the complaints the Office has received about education agents relating to international students and private education providers in Australia.

The information in this submission may be relevant to the Committee's final term of reference which seeks to inquire into 'evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia'.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly, and
- influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action, and
- reviewing statutory compliance by law enforcement agencies with record-keeping requirements applying to telephone interception, electronic surveillance and like powers.

Complaints received by the Office

Complaints about OMARA

The Committee is considering the current regulation of Australian migration agents, which are required to be registered with the OMARA in order to provide immigration advice and assistance in Australia.

In 2007, the Office published a report on our investigation into the OMARA's complaint-handling processes. This was a result of complaints made to our Office, which although few in number, gave rise to concerns about the extent to which the OMARA's processes were robust, accessible, fair, timely, transparent, free from conflicts of interest and in accordance with best practice.

Our investigation concluded that the OMARA's complaint-handling process had improved over the year prior to our investigation, particularly relating to the development of procedures and supporting documentation. The OMARA's response to our report was positive and it accepted in principle all 15 recommendations.

Since January 2016 the Office has investigated three of the 37 complaints received about the OMARA. The investigated complaints related to the time taken by the OMARA to investigate concerns about a migration agent, the outcome of an investigation into an agent and an agent's concerns with their application for registration. Our investigation of these issues found no deficiencies of note.

The Office declined to investigate the remainder of the complaints received for various reasons, but most often because the complainant had not complained directly to the OMARA in the first instance. In these instances, the Office referred complainants to the OMARA's complaint-handling process with the option to contact our Office again if they were not satisfied with the way the OMARA dealt with their complaint.

Complaints about education agents

The Commonwealth Ombudsman's Overseas Students function commenced in April 2011. The Office:

- investigates complaints about the actions and decisions of private registered education providers in connection with intending, current and former international students
- provides information about best practice complaint-handling to help private education providers manage internal complaints effectively, and
- publishes reports on problems and broader issues in international education that we identify through our investigations.

Education agents play an important role in assisting international students to study in Australia. Australian education providers use education agents to recruit prospective students from a range of overseas markets.

Since the Office began receiving complaints from overseas students relating to the actions of private registered education providers in April 2011, the Office has received just over 5,000

complaints in total across a range of issues.¹ Most complaints relate to fees and refunds, complaints about an education providers' intention to report a student to the Department of Home Affairs for unsatisfactory course progress or attendance and education providers refusing to release a student to transfer to another education provider.²

Complaints about education agents have constituted around 1–2 per cent of all complaint issues each year, with the exception of 2017 when education agent complaints made up 10 per cent of complaints due to problems with one particular agent. This case is discussed further under the heading 'Complaints about education agents providing education and/or immigration services overseas without the requirement to be registered with the OMARA'.

The Committee is examining evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia. Education agents providing immigration advice and assistance **outside** Australia are not required to be registered as a migration agent. However, if an education agent is providing immigration advice and assistance **in Australia**, they must be registered as a migration agent.

The complaints the Office has received relate to education agents, some of whom are also operating as registered migration agents in Australia and some who are operating as migration agents overseas, where they are not required to be registered. The Office notes the inquiry is limited to considering the delivery of immigration services in Australia. However, this submission includes information on complaints relating to agents delivering education and immigration services both within and outside Australia.

Complaints about education agents who were also registered migration agents

Since April 2011, the Office has investigated nine complaints concerning education agents where it was clear the agent was also a registered migration agent. A brief summary of these complaints is set out below:

- 1) 2014: An agent did not explain the total course package to a student and did not provide receipts for fees paid. The provider ceased its relationship with the agent as a result of our investigation. The agent has since been de-registered by the OMARA.
- 2) 2014: The same agent as above, faked a student's signature on the letter of offer of enrolment, thereby enrolling the student in a course of study to which the student did not agree.
- 3) 2014: An agent charged \$1,000 to enrol a student with an education provider when the student did not meet the provider's entry requirement (had not finished year 12). The agent refused to provide a refund. Our Office obtained a refund for the student through our investigation.
- 4) 2014: An agent claimed to be a solicitor when they were not.

¹ Complaints data generated from the Ombudsman's Resolve complaints management system, 20 April 2018.

² For more information on complaint numbers and trends, please see our Quarterly Reports <http://www.ombudsman.gov.au/about/overseas-students/oso-publications/reports/oso-quarterly-reports> and our Overseas Students Ombudsman report on first four years of operation (http://www.ombudsman.gov.au/data/assets/pdf_file/0024/37329/Overseas-Students-Ombudsman-report-on-first-four-years-of-operation,-November-2015.pdf).

- 5) 2015: An agent provided misleading advice to a student, seeking to enrol them in a course with another provider when they had not yet completed six months of their principal course and were therefore still restricted from transferring to another provider. The provider investigated but was not able to confirm which advice had been provided to the student.
- 6) 2015: An agent advised a student there would be no charge to him to enrol with the education provider as the provider paid the agent a commission. However once the enrolment and student visa were granted, the agent asked the student for fees for its services. The dispute was resolved during our investigation.
- 7) 2015: A student was owed a refund by their education provider. The provider paid the refund to the agent, but the agent did not pass on the refund to the student. The agent subsequently went out of business. The provider then refunded the student directly.
- 8) 2016: An agent falsely advised a student that the courses they were enrolling them in would provide a pathway to gaining permanent residence in Australia. The provider investigated but was not able to confirm what advice had been provided to the student.
- 9) 2018: A student was owed a refund by their education provider. The provider paid the refund to the agent, but the agent did not pass on the refund to the student. The student had not yet complained to their education provider about the problem so we advised the student to complain to their provider first before we would consider the complaint.

Complaints about education agents operating in Australia but not registered as migration agents

In a further four complaints, the agent complained about had an address in Australia, but was not registered as a migration agent. In the first complaint, it appears the education agent may have been providing unlawful immigration services in Australia:

- 1) 2012: An agent lodged a student's visa application without supporting documents, resulting in the visa being refused. The refusal letter was sent to the agent but the agent did not give it to student, which led to the student becoming unlawful in Australia. The education provider refused to provide a refund without the visa refusal letter. Our Office reported the education provider to the regulator. Following our report, the education provider finally paid the student the refund.
- 2) 2012: An agent enrolled a student in a course but the course was full so their enrolment was cancelled by the education provider and tuition fees refunded to the agent. However the agent did not pass on the refund to the student. Following our investigation, the education provider paid the refund to the student.
- 3) 2017: An agent incorrectly advised a student that she could change providers as long as she continued to use the agent's services. Our Office investigated and found the education provider should have released the student, which it did in response to our recommendation, without any requirement for the student to continue to use its services.
- 4) 2018: A student discovered her education provider was closing and she would need to transfer to another provider. The closing provider told her it could only transfer her pre-paid tuition fees to the new provider if she signed a form authorising a particular education agent to act on her behalf. The student refused as she did not want to appoint this agent. She sought advice from the new provider who told her she did not have to sign the form. The closing provider refused to transfer the fees. Our Office transferred this complaint to the Tuition Protection Service (TPS), which assists international students affected by a college closure.

Complaints about education agents providing education and/or immigration services overseas, without the requirement to be registered with the OMARA

In late 2016 and early 2017, the Office received a significant number of complaints about an education agent who engaged in fraudulent behaviour affecting scores of intending international students overseas. The agent had an Office in Queensland but primarily operated overseas, providing both education and immigration advice and assistance.

Students informed the Office that they paid the education agent tuition and other fees to enrol them with private education providers in Australia and to apply for a student visa. However, the agent:

- failed to enrol them
- failed to pass some (if not all) of the fees on to the education provider, and/or
- lodged poor quality visa applications that often resulted in visa refusals.

Those students who had their student visa applications refused were able to apply for a refund of prepaid tuition fees to their education provider. However some students complained that when the provider paid their refund to the education agent, the agent failed to pass on the refund to them.

Due to the actions of this education agent, students claim to have lost tuition fees, Overseas Student Health Cover premiums, visa application fees and fees paid to the agent for its services. One student claims to have also paid the agent for accommodation in Australia.

Australian Commonwealth and state government agencies responded to the incident with a coordinated approach which included liaison with the Australian Embassies in Brasilia and Santiago. Due to the alleged criminal nature of the incident, consumer protection and law enforcement agencies also became involved.

As a result of our investigations and the collaboration and support of other departments and agencies, positive results were achieved for students who were validly enrolled but were not paid the refund they were entitled to under the *Education Services for Overseas Students Act 2000* (the ESOS Act). However those who were not enrolled (i.e. intending students) did not get the same outcome.

We received a further 10 complaints where an agent was based overseas. This suggests the agents were not required to be registered with the OMARA in order to provide immigration advice and assistance. Nevertheless, where an education agent has an agreement with an Australian education provider to formally represent it, that education provider is responsible for ensuring the agent is not acting dishonestly or lacking integrity.

The complaints are set out below:

- 1) 2011: An agent did not forward a student's deferral request to the education provider prior to the course start date, resulting in the student being ineligible for a refund. As a result of our investigation, the provider terminated its relationship with the agency.
- 2) 2011: An agent provided false information, including advising a student not to disclose their marriage on their visa application. The agent advised the student that they must start at the Certificate IV level when they could have started at the Diploma level (saving time and money). The agent also advised the husband and wife that they needed to study at different institutions, which was incorrect. The agent enrolled them with two

different education providers that were hours apart, while telling them the colleges were geographically close. As a result of the complaint to the Office, the provider investigated the agency. The agent who had given information to the student no longer worked at the agency so they were not able to substantiate the claims made.

- 3) 2011: Misleading information provided by an agent which did not have an agreement with any education provider. As the agency did not have an agreement with the provider, the provider was not liable for its actions.
- 4) 2011: An agent enrolled a student with an education provider that the student had not agreed to and arranged accommodation with a relative of the agent. The agent also made false promises of employment and an immigration outcome. The education provider did not cooperate with the Office's investigation, so the Office made a disclosure about the provider to the (then) Minister for Education, Employment and Workplace Relations. The Minister's Department investigated the provider, which prompted the provider to terminate its relationship with the agency.
- 5) 2012: An agent charged a student over \$7,000 but only passed on \$1,000 to the provider. The Office was unable to achieve a remedy for this student, as he had not been formally enrolled in the provider's courses and the agency was based offshore and underwent a change of ownership.
- 6) 2013: An agent did not lodge the correct request for a refund of fees. The Office assisted the student to make the correct request.
- 7) 2014: An agent failed to lodge a refund request on time, resulting in a deduction of \$1,500 from a student's refund entitlement. The provider refunded the outstanding amount as a result of our investigation.
- 8) 2014: A student's visa was refused. The education provider refunded the tuition fees to the agent but the agent did not pass the refund on to the student. The student complained and the education provider paid the refund to the student directly and terminated its relationship with the agent.
- 9) 2016: An agent did not pass on a refund cheque to a student. The agent is no longer operating. Therefore, the Office was unable to achieve a remedy for this student.
- 10) 2017: A student complained that his education agent was receiving a commission each semester he remained enrolled and believed this was costing him more in fees than other students. Our investigation found the student had signed an agreement with the provider agreeing to these fees, therefore it was entitled to collect the tuition fees agreed to.

Conclusion

The Committee is considering the current regulation of migration agents in Australia. The OMARA maintains a register of registered migration agents in Australia and considers complaints about registered agents. The Office can consider complaints about the OMARA and has found no deficiencies to note in the small number of complaints investigated.

The Office also considers complaints received about education agents formally engaged to represent private education providers in Australia in recruiting and enrolling international students. The Committee is examining evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.

The complaint summaries in this submission indicate that some education agents appear to have provided unlawful immigration services in Australia, while other agents are delivering immigration services overseas, where there is no requirement to be registered.

Overall, the number of complaints the Office has received in relation to agents is small in comparison to other complaint issues, with the exception of some complaints received in 2016–17 regarding the actions of one education agent operating overseas. While not all the complaints in this submission relate directly to the Committee’s terms of reference, the Office hopes this information assists the Committee with its inquiry more generally.