

## Chapter 2

### The international education sector and immigration policy

2.1 Through its administration of the *Migration Act 1958* (the Act), the Department of Immigration and Citizenship (DIAC) is responsible for the entry of students to Australia. This is managed through the assessment of student visa applications. DIAC is also responsible for the compliance of student visa holders with their visa conditions.<sup>1</sup>

#### Appropriate pathways to permanency

2.2 Witnesses told the committee that the linking of immigration and education policies had contributed to the growth in international students with agents and RTOs ready to exploit them with the lure of permanent residency.

2.3 The student visa allows a temporary stay for the purposes of study. Under current arrangements, student visa holders may be eligible to apply for a range of further visas, depending on their personal circumstances and the eligibility criteria of the visas that they seek.<sup>2</sup>

2.4 Since 2001, overseas students have been permitted to apply for permanent residency while onshore, within six months of completion of their course. To do so, they are required to satisfy broad threshold eligibility criteria including meeting:

- the Australian study requirement (successful completion of a course or courses in Australia registered on the Commonwealth Register of Institutions and Courses for Overseas Students for a minimum of 92 weeks and which result in the award of a Degree (or higher), Diploma or Trade qualification); and
- the prescribed English language standard.<sup>3</sup>

2.5 The measure was intended, at least partially, to address skills shortages in the domestic workforce. Witnesses who appeared before the committee, including DIAC, gave evidence that over time a perception has developed that a student visa can provide an automatic pathway to permanent residency.

2.6 DIAC gave evidence that departmental information, including on the student visa application form, makes it clear that separate and distinct processes are involved

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1 DIAC, *Submission 111*, p. 6.

2 DIAC, *Submission 111*, p. 25.

3 DIAC, *Submission 111*, p. 26.

and that the requirements for permanent residency visas change from time to time in response to the requirements of the labour market.<sup>4</sup>

2.7 In addition, DIAC set out the following information from their website:

Students **should not** make educational choices solely on the basis of hoping to achieve a particular migration outcome, as the GSM program will continue to change and adapt to Australia's economic needs.<sup>5</sup>

2.8 DFAT gave evidence to the committee that the recent visits by ministers from Australia to India have made the point very clearly that there is no connection between getting a visa to reside in Australia and study.<sup>6</sup>

2.9 DIAC emphasised the effort taken to provide correct information:

There is a range of information that is available to students. We cannot guarantee that they access that information and we cannot interpret or cannot guarantee what it is they take from that information. But there is no shortage of information available...Before they apply there is access to information about what is in store for them et cetera. The department's website is a vast source of information. We have a thing called the Visa Wizard which helps prospective visa applicants across a range of these classes to determine the most appropriate visa for them if they put in certain details or a scenario that they may wish to pursue. Visa application forms contain a lot of information and DIAC posted officers around the world have a function to provide information as well. So there is a lot of information available from our portfolio about study in Australia...<sup>7</sup>

### **Effect of the perception of automatic pathway to permanent residency**

2.10 Some witnesses gave evidence to the committee that the perception that a student visa can provide an automatic pathway to permanent residency had contributed to the growth in international students with some agents and RTOs delivering training, not for the purpose of skill development but for the purpose of a migration outcome.

2.11 Ms Michelle Bissett, Senior Industrial Officer, Australian Council of Trade Unions (ACTU), explained the distortion in the system that has resulted from linking immigration and education policies:

Our concerns generally and quite specifically go to changes that occurred in the migration program from 2001 onwards that have left the door open, we believe, to unscrupulous practices by migration agents, by some registered training providers and by some employers. These practices have resulted in

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4 Mr Peter Vardos, *Committee Hansard*, 18 September 2009, p. 85.

5 Mr Peter Vardos *Committee Hansard*, 18 September 2009, p. 85.

6 Ms Deborah Stokes, *Committee Hansard*, 18 September 2009, p. 84.

7 Mr Peter Vardos *Committee Hansard*, 18 September 2009, p. 83.

exploitation of international students tarnishing our education reputation. Even though they might be migration issues that have come into play, it is having a negative effect, we believe, on our education reputation. The migration pathway that has been opened up for international students has led to a growth in training organisations delivering training, not for the purpose of skill development but for the purposes of migration and that is a matter of concern.<sup>8</sup>

2.12 To address this distortion, Ms Bissett advocated the removal of the link between education and independent skilled migration:

The reason that we would seek the removal of the strong link that exists at the moment is that the migration purpose is distorting the study purpose. What we believe is happening in the market at the moment is that students are coming to Australia, not for the purposes of gaining skills or for education, but for the purposes of finding a pathway to migration. And because of the changes that were made for international students to be able to seek permanent migration on shore once they had finished their study, once that change was made we saw a distortion of the training that was being undertaken by international students, so there was an explosion in hairdressing and cookery. What we are seeing is those students not working as a hairdressers and cooks—mind you, we see the same things in domestic students. The purpose of the study is to gain a migration pathway, not to utilise the skills that they are gaining in their studies in Australia. So there is a bit of distortion happening in both the training sector and in the migration sector and they are affecting each other...<sup>9</sup>

2.13 Ms Virginia Simmons, Board Member, TAFE Directors Australia, gave evidence of the effect of the Migration Occupations in Demand List (MODL):

It is often in direct response to the MODL, the Migration Occupations in Demand List. Providers set up to respond directly to that and they recruit students on that basis, often with nobody in their administration that has any education background at all. A recent example is one that was owned by a cleaner. This is not uncommon.<sup>10</sup>

2.14 These views were supported by Mr Christopher Evason, Managing Director International Education Services:

...the unintended change in the international education environment caused by adding low-level qualifications for hospitality and hairdressing to the MODL in 2005 has led to the current difficulties. The current issues flow from a flawed policy that has enabled the entry of a different kind of player into the industry, one that did not exist previously, blurring the distinction between education and migration outcomes. Nevertheless, problems arising have exposed the need to professionalise the industry so that quality

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8 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 1.

9 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 3.

10 Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 17.

education providers, both public and private, and their agents, who are doing great work, are able to maintain Australia's place as a world leader in international education.<sup>11</sup>

2.15 Ms Bissett explained to the committee that, rather than a shortage of people skilled as hairdressers and cooks, there is a shortage of people prepared to work in these jobs for the wages and conditions offered. She stressed that this is a labour market problem and not a skills problem.<sup>12</sup>

2.16 Mr Andrew Bartlett, Research Fellow, Australian National University, told the committee it must be made clear to international students that permanent residency is not automatic. He also argued that whatever measures are taken to remove the distortion in the education market, they should not disadvantage those students already in the system.<sup>13</sup>

2.17 The Department of Education Services, Western Australia, noted that 'the current nexus between education and skilled migration is problematic and has given rise to many of the current difficulties facing the international education sector'. However, it noted the importance of factoring international students into the mix of sources for skills:

While international education is not the sole, nor necessarily the predominant, external source of skills it should have a significant place in the mix of courses that Australia maintains. With most advanced economies facing the same demographic imperative as Australia it is likely that the international competition to attract younger skilled people will intensify. In this context completely shutting down or neglecting the importance of intentional education as a source of skills is likely to be counter productive over the longer term.<sup>14</sup>

### **Regulating information provided offshore**

2.18 Witnesses gave evidence to the committee that some education agents provide students with false or misleading evidence in relation to potential migration outcomes. In this regard, DEEWR stated:

Under the [National] code, No. 1 is about marketing the information and practices, and that requires that providers ensure their agents do not give false or misleading information or advice in relation to possible migration outcomes. Obviously there is whole issue around agents and how and whether they should be regulated and it is part of the Baird review, and that will be tackled. But I think, as you have rightly pointed out, this is an issue

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11 Mr Christopher Evason, *Committee Hansard*, 18 September 2009, p. 43.

12 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 3.

13 Mr Andrew Bartlett, *Committee Hansard*, 18 September 2009, p. 18.

14 Department of Education Services Western Australia, *Submission 120*, p. 2.

which applies all round the world in many different places and regulating exactly what people say about us is extremely hard to do directly.

In fact I brought along for the committee—and I do not know whether you would like to see this—an extract from the *Times of India* which has got some pages of adverts by agents, and you might just like to see how this comes across. I hasten to add, most of them are for the UK and New Zealand and other countries and not particularly for Australia. But you can see exactly how this plays out overseas. The challenge is to take the intent of what is in the code and make it stick.

Just looking at India, which is just one country—although a big one and an important one here—when we visited India recently the department there expressed its intention to regulate agents and their behaviour. In fact we are hoping to go back in two weeks time for the first of a series of working groups to work out with the Indians how best that legislation could operate. So we are taking this forward vigorously.<sup>15</sup>

2.19 The committee notes the Education Services for Overseas Students Amendment (Re-registration of Provider and Other Measures) Bill 2009 reported on by the Legislation Committee in October 2009 will require providers to list the agents used to increase transparency. The committee also notes that ACPET will have a register of their recommended agents.

2.20 The committee notes the steps taken by the government in this area to sever the perception of the link between permanent residency and education. The committee also notes the changes announced by the Minister for Immigration and Citizenship in December 2008 which focus on skilled recruitment around employer and state government sponsorships.<sup>16</sup>

2.21 In July 2009, the Office of the Migration Agents Registration Authority (MARA) was established to regulate the activities of the migration advice profession to provide consumers with appropriate protection and assurance.<sup>17</sup> In August 2009, the Minister announced that his department would be strengthening checks on student visa applications to address fraud and ensure students have the financial capacity to live and study in Australia.<sup>18</sup> The Deputy Prime Minister as well as the Minister for Immigration both reaffirmed that:

...coming to Australia to study is about being a student in Australia while applying for permanent residence is about Australia's migration system and

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15 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 84.

16 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Migration program gives priority to those with skills most needed', *media release*, 19 December 2008. See also DIAC, *Submission 111*, p. 30.

17 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'New migration agent authority commences', *media release*, 1 July 2009. See also DIAC, *Submission 111*, p. 32.

18 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Student visa checks strengthened', *media release*, 20 August 2009.

the two should be seen as separate systems with no automatic link between studying in Australia and access to permanent residence.<sup>19</sup>

2.22 Dr Withers supported the actions taken by the government:

...The other one is the migration distortions, of which we cop the unintended consequences in various ways. But at present DIAC seems to be reviewing that in a highly constructive way. We think the blow-out of the MODL—the occupation listings that in turn carry benefits for migration for permanent residency—has in the last four or five years created crucial distortions that helped encourage migration-driven education decisions rather than properly educationally founded entry into Australian education. We would hope that that can be cleaned up as well—along with many other activities, but we think those two, in the quality assurance area and the migration area, were quite important in the sudden breaking out of problems we had.<sup>20</sup>

2.23 Mr Warwick Freeland, IDP Education also acknowledged the work being undertaken by government:

I think a lot of this is happening now, looking at the processes that are being put in place. For example, the department put in place increased scrutiny for high-risk countries to check on the financial creditworthiness of applicants for visas. We have seen in the last week the direct effect in certain countries of that, where an increased number of visas are being rejected at this point in time because of that increased scrutiny. So things are already happening. There have been continuous changes to the rules through these programs. Every six months or so there is another set. But there is a need to better focus on the skills that are required. We do not have a specific recommendation but we know that we need to reduce the opportunity for some of these people who are coming at effectively the low end, with lower skills and with a particular focus on permanent residency.<sup>21</sup>

***Committee view***

2.24 The committee accepts the evidence that over time a perception has developed that a student visa may provide an automatic pathway to permanent residency, despite this not being the case. This perception has in turn been exploited by some education agents and providers who have used the perception of permanent residency to recruit students and then provide them with inadequate education or training.

2.25 The committee endorses steps that have been taken to ensure that international students coming to Australia to study are fully cognisant of the rules that apply to them and make it clear that separate and distinct processes are involved and that the

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19 DEEWR *Submission 112*, p. 5.

20 Dr Glenn Withers, *Committee Hansard*, 18 September 2009, p. 32.

21 Mr Warwick Freeland, *Committee Hansard*, 1 September 2009, p. 14.

requirements for permanent residency visas change from time to time in response to the requirements of the labour market.

2.26 In most cases, exploitation starts overseas with expectations fuelled by unscrupulous education agents advertising courses solely as a means to permanent residency. Regulation of providers and quality are discussed in chapter four and agents are discussed in more detail in chapter five.

