

Submission in Response to the Migration Agents Instruments Review Report

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Introduction

Many students across Australia are investing in courses with the goal of permanent residency and why wouldn't they? State and Regional governments seek to attract students by offering easier pathways to residency through invitations. The federal government offers "points" for 2 years of study and more if the study is zoned as regional Australia. State and regional governments understand that international students are influenced by the opportunity for permanent residency.

The report seeks to focus on at-risk consumers and the unlawful providers of Immigration assistance specifically on applicants paying exorbitant fees for migration advice. Whilst I find it sad that a small portion of Migration Agents charge ridiculous fees, I challenge the reader to consider another big loser of illegal immigration advice, international students. Many international students make a significant investment in Australian courses, often spending tens of thousands of dollars on a course for the opportunity of Australian migration.

International students are particularly vulnerable as often they do not have English as their first language, they are in a new country, often young, without family support, on a budget, paying for courses and working in lower level jobs. Yet there is little protecting these same individuals from unlawful immigration advice. International students will always seek opportunities, and permanent migration to Australia is a very attractive opportunity.

I believe unlawful providers are flourishing in Australia, and it is international students that are exploited with little to no ability to voice their concerns or their injustices. We can see that international students are already exploited in the Australian jobs market¹

- 77% of International students were paid below the minimum casual hourly wage.
- The overwhelming majority of students who were underpaid knew the minimum wage (86%), but 62% believed they were at fault for the underpayment and had broken the law by accepting below minimum wages.
- 38% reported that they did not seek information or help for a problem at work because they did not want 'problems that might affect my visa'.

So how are they being exploited in Australia by unlawful immigration advice providers?

Whilst some education agencies refer their students to migration agents or lawyers, there are some education agents that seek to take advantage of students that have poor English and a poor understanding of the Australian Migration System. During my career as a migration agent I continue to come across many international students that have pinned their hopes to a poor migration pathway that was the result of unlawful advice from an education agency.

¹ International Students and Wage Theft in Australia report 2020 by Bassina Farbenblum and Laurie Berg (<https://www.mwji.org/iswagetheft>)

The Industry of Education Sales

Many states and regions in Australia offer particular migration benefits for international students². This means that education and migration have become more closely related in the past few years.

The education agencies derive most of their revenue from sales commission and it is a very competitive industry. The promise of permanent migration is often the single most important factor that international students have when choosing an Australian course, especially when the student is from an economically challenged non-English speaking country.

Do many international students continue to receive unlawful immigration advice in regards to their studies? In December 2020 there were 449,932 student visa holders in Australia³. If only 1% of international students had acted on unlawful advice, that is 4,499 individuals that have lost thousands of dollars and years of their lives. Whilst some might argue that the students have received an education for their efforts, I would disagree, many students that discover that they have no clear pathway from their Australian studies, will often express the studies as a “waste of time”.

I feel that the report review does little to address the continued problems caused by the Education Sales Industry.

Firstly I would like to acknowledge that there are good education agents that seek to improve and really assist their students towards their goals, however in this submission I will be focussing on the “Education Agency Only Interested in Profit” (EAOIP). Often an EAOIP will sell international students into courses that have “permanent residency pathways”, just to make some money. Often these pathways do not exist or have little to no chance of success.

Advertising by an EAOIP

This advertisement from an Australian based education agency (image A contact details redacted) was found after a 2 minute search on Facebook. It mentions “permanent residency” or “PR” three times, it mentions “better advice” and “free consultancy”.

There is no mention about the courses content or expected earnings outcomes or career benefits. There is no MARN located on the advertisement. It is quite clear that this advertisement is selling permanent residency.

I understand the review is to focus on Migration Agents but I believe there is a continued failure to address misconduct and unlawful activity within the education sales industry. If Australia is committed to developing a world class migration advice industry then it must also seek to regulate the education sales industry as well.

16 March · 🌐

Are you thinking to study a course that can **lead to a Graduate Visa and PR?**

We can help you choose the best option for your career!

Please feel free to contact us to get better advice:

Australia Education
[Redacted]
[Redacted].com.au

We are here to support international students
#studyinperth #StudyinAustralia #studyinaustralia2021 #australia #perth

ARE YOU THINKING TO CHANGE YOUR COURSE PATHWAY TO PR

CARPENTRY

AUTOMOTIVE MECHANICAL DIAGNOSIS

COMMERCIAL COOKERY

TELECOMMUNICATIONS NETWORK ENGINEERING

CIVIL CONSTRUCTION DESIGN/ENGINEERING

COMMUNITY SERVICES

AUSTRALIA EDUCATION

- FREE VISA APPLICATION
- **FREE CONSULTANCY COURSE/CAREER PATHWAY TO PR**
- PROMOTIONS ARE AVAILABLE
- OTHER SERVICES

²<https://www.watoday.com.au/national/western-australia/international-student-numbers-plunge-at-was-colleges-and-training-institutes-20170822-gy1ovt.html>

³ <https://www.homeaffairs.gov.au/research-and-stats/files/student-temporary-grad-program-report-december-2020.pdf>

Advice in languages other than English

An EAOIP will often give their advice in a language other than English, and it is mostly verbal and they will often recruit international students to their agency. They target international students to become education “agents” because of their native language, social circles, and their ability to infiltrate into language schools and get direct access to more international students. Student “agents” can get a commission for introducing new students to the EAOIP and will work for below minimum wage because of the desire to gain valuable experience in an Australian workplace.

Commissions from enrolments are lucrative and signing up a student will have a financial reward. There is plenty of incentive for a EAOIP to manipulate or infer about course benefits. However it is very difficult to find evidence of unlawful immigration advice, international students rarely receive written advice, and the EAOIP are always one step ahead.

Who is watching them?

The Education Sales Industry is often the first place that international students will seek to obtain information about permanent migration. The business model of Education agents is

- Commission Based
- Not in English
- With little governance (when compared to lawyers and migration agents)

To start an education agency requires no registration or qualifications and there are no barriers for entry. It is a highly competitive industry and as they have no overseeing body like MARA, it often produces some very poor outcomes for international students.

I have recently been aware that complaints about education agencies can be made is through the ABF form⁴ or possibly through consumer affairs. But complaints are very few...but we will get to that later.

Education agencies can often leverage cultural “norms”. I have come across numerous situations where an EAOIP has told their student:

- that they have “special” connections with the Department
- that they can apply for a permanent visa upon completing a course
- that they will receive a graduate visa
- they are not able to change agents
- calling themselves “immigration agents”

The purpose of the education sales industry is to assist enrolment into Australian courses. They remain largely unregulated and yet manage one of the most vulnerable onshore groups of visa holders in Australia.

⁴ <https://www.homeaffairs.gov.au/help-and-support/departmental-forms/online-forms/border-watch>

Immigration Advice for the International Student

Who is able to give Immigration advice? The wording of “agents” and “agencies” within the Education and Migration industry is ambiguous and creates confusion for those that do not come from an English speaking background. Many international students do not know the difference between an education agent and a migration agent.

Define “agents”

The Study in Australia website (English version) states what education agents do. By the wording, it outlines that education “agents” can give you information about studying and living in Australia. It also outlines that “agents” have up to date course information... and are required to be aware of any changes to Australian visa policy.

What does an education agent do?

An education agent can give you information about your options for studying and living in Australia, and help you with your study and visa applications. In many cases, agents have studied in Australia and are happy to share their experiences with you.

Agents have up-to-date course information from many Australian institutions and are required to be aware of any changes to Australian visa policy. This means they can give you accurate information that is tailored to your needs.

Only if you scroll to the bottom of the page does it outline information about migration advice

Migration advice

Education agents cannot guarantee a permanent visa or work placement in Australia after you graduate. Their job is to help with study and visa applications.

If an education agent is based in Australia, it is against Australian law for them to provide you with migration advice, unless they are also a Registered Migration Agent.

If you need migration advice, use a migration agent who is registered in Australia. Some Registered Migration Agents are located overseas or have representatives in international markets. Find out more about [Registered Migration Agents](#).

The last paragraph does not obligate the reader to use a migration agent but it merely suggests to “use” a migration agent for migration advice. However it then continues with the theme that Education Agents can help with “visa applications” and it does not establish what migration advice actually is.

This seems to have been written by someone already familiar with the Australian system. With the fresh eyes of an aspirational international student, this website seems to suggest that just “agents” can assist with visa applications and living in Australia.

You need an “agent”

We often find ourselves explaining to international students the difference between Migration and Education agents, especially if the student is new to Australia and/or has a low level of English.

For students that do not speak English, the term “agent” is generic. They cannot discern between agents and it is especially difficult to educate applicants that come from countries that do not have Migration Agents (or any other similar occupations) within their own countries. Many have only been exposed to education “agents”. Do you have an agent?

To the right is an image from the recently updated PIERS website. It is an example of a “certified agent” card sent out to Education agents that have passed the Qualified Education Agent Counsellor (QEAC) exam. Whilst we know that a “certified” agent is different to a “registered” agent, for a non



English speaker they can easily be mistaken. An education agent saying that they are a “certified agent” can easily infer they have some authority.

For those that are just grasping the English language, these nuances continue to be manipulated by the EAOIP. With a command of two languages and a basic understanding of the Australian migration system the EAOIP can, 1) create an impression that infers more authority than there actually is and 2) make sure not to leave any hard evidence of the unlawful immigration assistance.

Coupled with the highly competitive sales industry, all of this makes it very easy and lucrative for an EAOIP to provide illegal immigration advice. Selling a course by inferring the course has a permanent visa pathway becomes much more attractive to international students. Australian Education and Migration are now intertwined and the EAOIP is motivated to simplify their sales process. There is little motivation for the EAOIP to introduce migration agents into the sales process as it will only complicate the sale and possibly lose the opportunity completely! Much easier to infer the permanent pathway to finalise the sale and receive the commission.

International students will only seek a Migration agent upon doing more research and coming into contact with people that are aware of the differences in agents. Often it is too late as the study pathway has often been taken.

The PIERS website⁵ currently boasts :



+200 agents per week! Throughout government and industry materials the term “agent” is used in education sales, this continues to cause significant confusion especially for those with lower levels of English and more likely to use Education agencies. Alternative titles such as “Education Sales Representatives” should be used in all government and industry materials to create a clear distinction between those in Education and those that can provide immigration assistance. This will provide much more clarity for the non English speaking student trying to understand what services they are receiving from whom.

I do have a concern about how a tiered system of migration agents will be received. There is already a lot of confusion about what an “agent” actually is? Will there be tier 1, 2 and 3 “agents”? Will the end user be clear on what advice they actually obtain, will they be confident? A tiered system assumes that the individual has a basic understanding of the migration law principles, but many applicants have no clue.

The goal should be to make the system transparent for the end user. It must be easy for the client to 1) discern what is regarded as Immigration advice and 2) who is able to give Immigration advice and 3) why it is important that you receive the correct advice for your situation. I fear that the tier system will further confuse many non-english speaking people whilst having no impact on addressing larger issues.

Immigration factsheets do not exist

Meanwhile in November 2019 the MARA published a fact sheet called “Giving immigration assistance in Australia”. This is the only fact sheet I can find that has a government letterhead and outlines it is illegal for Education Agents to give immigration assistance. This was first published in November 2019 and has been promising other languages for the past 19 months, but no action yet.

⁵ <https://pieronline.org/qeac>

Factsheet – Giving immigration assistance in Australia

The OMARA factsheet '[Giving immigration assistance in Australia](#)' explains who can legally provide immigration assistance in Australia. This is a resource for consumers and the wider community on who can give immigration assistance lawfully.

The factsheet in your language

Translations of the factsheet will be available on this page shortly.

This fact sheet is only available on the MARA website⁶, which is the last place it needs to be. If someone is able to navigate to the MARA site then they are not in need of this factsheet. Where could an international student expect to get this factsheet from?

The government should be publishing clear, concise and consistent information on all of the MARA, Study in Australia and the Department of Home Affairs websites. This information must also be available in different languages so that the information is more readily accessible.

⁶ <https://www.mara.gov.au/get-help-with-a-visa/help-from-registered-agents/steps-to-choose/consumer-guide>

Governance

Where are the victims? If unlawful immigration assistance has been given...

Why are there no complaints?

Australia gives many permanent residency incentives for international students, but many international students are not willing to express their intention to permanently reside in Australia. This is in accordance with DIRECTION NUMBER 69⁷ otherwise known as the Genuine Temporary Entrant Criteria – in the preamble of the direction it states:

An applicant who is a genuine temporary entrant will have circumstances that support a genuine intention to temporarily enter and remain in Australia, notwithstanding the potential for this intention to change over time to an intention to utilise lawful means to remain in Australia for an extended period of time or permanently

If an international student has aspirations to migrate permanently and, if they express this desire in their student visa application, then they run a higher risk of refusal. It could be argued that the student does not have a “genuine intention to temporarily enter and remain in Australia” but rather a permanent intention.

For example, a hopeful migrant that has chosen to study cooking as their pathway will not expressly outline in their student visa application that they want to study cooking to get PR. Expressing the desire for PR would likely result in a visa refusal, instead they will often explain that they have a “passion for cooking and want to open their own restaurant someday”. This seems like a genuine intention and does not mention the students actual desire to use cooking as a pathway to permanently migrate to Australia.

Unfortunately this creates two more problems for the student later down the track. 1) If the student has not mentioned a desire to apply for a permanent visa, how are they in a position to complain that the immigration assistance they obtained in regards to a course was incorrect? Basically, how can a student complain about receiving unlawful advice for something they did not express as a desire? 2) Lying on a visa application also has significant consequences and may result in a visa cancellation, so if the student chooses to express that they did not include this intention on their student visa, they may also run the risk of having their student visa cancelled.

The EAOIP will receive no complaints because students will not contradict their student application and do not want to risk any current or future temporary visa applications.

An Australian based education agency has provided an example to the right. The reality is that often education agents will prepare the statement on the student’s behalf, “because they know what to say”. So the student statement is “adjusted” to make the student more “genuine”. The result is that it becomes more difficult for the student to go to the authorities to tell their version of the truth. In fact the GTE statement is the first lesson that international students must “play the game” of migration. An education agency that is a confidant in a lie, holds more power over the student as



⁷ ASSESSING THE GENUINE TEMPORARY ENTRANT CRITERION FOR STUDENT VISA AND STUDENT GUARDIAN VISA APPLICATIONS

a result. The bigger the lie on the genuine statement, the less likely students are to seek help in case of repercussions.

Direction 69 is the trap door that many students unknowingly fall into, it restricts them from complaining and often restricts them from accessing suitable assistance in the future. I have come across some students that feel that if they leave an education agency there is a threat of the “truth” being told, even anonymously, and they will not have their next visa granted.

Complain fatigue before it begins

In addition to contradicting themselves on Direction Number 69. Many students do not believe that the Australian system will support them. They come from countries that do not reward individuals for complaining, so why would it be different in Australia?

It is only after 2 -3 years in most cases will a student find that their pathway is not sufficient for the purposes of migration. This coupled with high turnover of staff in education agencies and excuses for ever changing migration rules, students feel they have little recourse if they have received unlawful immigration advice. Students will not be given any immigration advice in writing, so proving their case will be close to impossible.

Only in extremely serious cases would I expect a student to complain about an EAOIP. I cannot recall a single instance where an international student has made a fuss about poor immigration assistance. What will they get out of it? No evidence, contradicting their official statements, and possibly risking future application refusals, but the education sales industry continues to break records.

International students receiving unlawful immigration advice is so widespread but it is the most vulnerable that are caught in a web that they cannot easily free themselves. Students often accept these poor decisions as their fault and move on.

Conclusion

I believe that the Government is missing the real opportunities to effectively combat misconduct and unlawful operators in Australia. Whilst enhancing legislation to target unscrupulous Migration Agents is important, I feel that the education sales industry continues to remain unfettered and unregulated. Australian migration and international education industries are becoming more and more interconnected, and whilst this might not be occurring at a Federal level, states and regions are seeking to attract international students by offering permanent migration opportunities.

I agree that we need to introduce a higher level of professionalism into the immigration advice industry, however I feel that the most vulnerable within Australia are being kept silent. Many international students are sold a dream, however many leave Australia feeling as though they have been chewed up and spat out with only a Diploma of Cooking that will serve no purpose back in their countries. The majority of these students come from countries that are more likely to be poorer and lack the social system we take for granted in Australia, they cannot afford to waste time. This to me is one of the greatest failures of a selfish Australian education sales system and I feel should also be addressed. Again, whilst Chapter 2.2 references people paying exorbitant fees for Migration agents, I argue that the losses upon a student that studies a course with no future, is losing money AND the opportunity cost of the time taken to study that course.

A world class migration system by design will be complex, but it must also allow transparency and be operable for those that are most vulnerable. Introducing lawyers can improve options for those that can afford lawyers fees, but how can you expect international students to pay lawyers fees? This group does not have time nor money to pay a lawyer. The government should admit that international students are being offered Australian migration as an option and that immigration assistance for students should be taken much more seriously.

International students are exploited in the workplace because they have little knowledge about the system, do not want to create 'problems that might affect my visa', and can be financially vulnerable. These are the same vulnerabilities that are being exploited by the Education Agency Only Interested in Profit (EAOIP). These students are your waiters, cleaners, baristas, cooks, etc... Often working hard behind the scenes just for the chance of becoming a future Australian. This is not a fair go, we have a system that has loopholes that are being used to exploit aspirational migrants/students. Let's close them.

I recognise that my submission may cover topics outside of the Review Report mandate but why not finish with some easy to implement suggestions for how Government can more effectively combat misconduct and unlawful operators inside Australia

Suggestions

1. Change the temporary entrant criteria that can allow students to tell the truth about their intentions to pursue a migration opportunity. At the moment the first application for many future Australians will start with a lie. International students should be able to outline that they have aspirations for migration without the threat of refusal. It will also allow the department to identify students that are at most risk of manipulation/deception.
2. Publicise and provide more immigration fact sheets in other languages explaining immigration advice.
3. Monitor what education agencies publish on their websites and social media accounts. They must remove all representations of immigration assistance (especially terms like PR) in marketing materials.
4. Introduce and enforce wording that provides clarity to the students across all government websites. Eradicate the term "education agent" throughout government materials and PIERS website and explore alternative titles such as "Education Sales Representatives". This will provide much more clarity for the non English speaking student trying to understand what services they are receiving from whom.

5. Introduce fines and clear enforcement for Education Sales Agencies and the “Education Sales Representatives” that give any immigration assistance without a Migration agent/lawyer present
6. Restrict education sales agencies from hiring workers that have lower than functional English and are on Student 500 visas. These workers are not hired for their expertise on Australian courses but often used to infiltrate colleges and language schools for no other purpose to “sell” to other international students with low English levels.
7. Provide a means for migration agents and lawyers to make a complaint on behalf of students to highlight predatory marketing material and/or report where students have been given unlawful immigration assistance.
8. Provide less ambiguous and clearer information in different languages on the Study in Australia website. Clearly outline that offshore “Education Sales Representatives” should not give ANY visa advice and it is illegal for any onshore representatives to do so. Also include a new section about “permanent migration for students” on the Study in Australia website to explain the roles and responsibilities when obtaining advice regarding visas.
9. Student visa applications should include evidence (in their own language) that the student understands that they:
 - have a right to make a complaint about their Education Sales Representatives without any repercussions
 - they are able to pursue a migration opportunities whilst in Australia
 - have a right to change Education Sales Representatives at any time without repercussions
 - understand the key differences between Education Sales Representatives and Migration Agents and Lawyers
 - Understand what immigration assistance is
 - It is illegal for Education Sales Representatives to give any immigration assistance including graduate visa advice