# Rapid Review into the Exploitation of Australia's Visa System

31 March 2023

*Declassified for public release*

## Acknowledgement of Country

The Rapid Review Lead acknowledges the Traditional Custodians of Country throughout Australia, their ancient living culture, and their continuing connection to land, sea and community. She pays her respects to all Aboriginal and Torres Strait Islander peoples, their cultures and to their Elders past and present.

## Biography of Rapid Review Lead

### Christine Nixon AO, APM



Ms Christine Nixon AO, APM was the 19th Chief Commissioner of Victoria Police leading 14,000 staff, operating across more than 500 locations, and overseeing an annual budget of $1.7 billion. She joined Victoria Police in April 2001, after serving with the New South Wales Police from 1972 where she became the first Female Assistant Commissioner in 1994.

Ms Nixon led the Victorian Bushfire Recovery and Reconstruction Agency after the 2009 Black Saturday Bushfires.

Ms Nixon is a Fellow of ANZSOG, the Australian Institute of Police Management, the Australian Institute of Management, and a National Fellow of the Institute of Public Administration Australia, and has co-authored two books; 'Fair Cop' with Jo Chandler, Melbourne University Press 2011, and 'Women Leading' with Amanda Sinclair, Melbourne University Press 2017. Ms Nixon was recently appointed a Vice Chancellors Professorial Fellow at Monash University. She was awarded four Honorary Doctorates from Australian universities, and Master of Public Administration from The Kennedy School of Government at Harvard University, USA.

Ms Nixon is the Chair of Leadership Victoria, and was a Board member and then Chair of the Royal Australian College of General Practitioners 2017-22. She was a Council member and Deputy Chancellor of Monash University from 2009- 2020, Chair of Monash College Pty Ltd 2011-2020 and Chair of Good Shepherd Microfinance 2011-2019.

Ms Nixon has a long history of supporting women, children, vulnerable and disadvantaged communities.

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**This document has been declassified for public release.**

**Supporting evidence that if disclosed would have a substantial adverse effect on Commonwealth and state and territory government agency operations, or affect the enforcement of law has been removed.**

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Minister Clare O'Neil MP
Minister for Home Affairs
Parliament House
Canberra ACT 2600

Dear Minister

**Rapid Review into the Exploitation of Australia's Visa System**

I am pleased to hand to you the Rapid Review Report into the Exploitation of Australia's Visa System.

As you know, I am a strong supporter of women and vulnerable communities. I have been appalled by the abuses of sexual exploitation, human trafficking and other organised crime that have been presented to me through this Rapid Review.

I know from a career in policing and law enforcement that criminal organisations and unscrupulous people are always looking for ways to exploit and make money. It is clear that gaps and weaknesses in Australia's visa system are allowing this to happen.

Australia's visa system must be strengthened to resist organised crime syndicates, to ensure they don't prey upon Australia as an easy destination to conduct their exploitative and criminal business, and to protect those who are most vulnerable.

Operation INGLENOOK, established in response to the *Trafficked* media reporting, has brought agencies across government together and has had an impact on key targets. However, more needs to be done to improve information sharing across government, including with the states and territories where these crimes are occurring. It must also be recognised that to have the strongest deterrent effect, these criminals must be investigated and prosecuted.

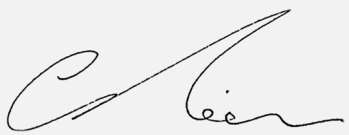
The *Trafficked* media reporting has focussed a spotlight on these abhorrent crimes, which for many years have been hidden due to the secretive nature of the exploitation, and seemingly higher law enforcement priorities such as illicit drugs, tobacco and Unauthorised Maritime Arrivals. The question is: while the focus has been on other things, how big have we allowed this problem to become? We know that victims of crimes, such as money mules and sex slaves, are less likely to come forward due to fear. We also know that our community's experience with family violence and sexual assault has shown the size of the problem is only revealed when focus, commitment, research and resources are applied.

In conducting this Rapid Review, I have focussed specifically on the circumstances of cases recently aired in the media and how those individuals are alleged to have exploited vulnerabilities in Australia's visa system. This Rapid Review has not duplicated, but is aligned with, other reviews and work underway by the Albanese Government.

I would like to thank the Department of Home Affairs team that has supported me in undertaking this review. Their commitment, integrity and examination of the issues raised has been invaluable.

This Rapid Review Report outlines a number of findings and recommendations for the Government's consideration. I hope this report will lead to a strengthening of Australia's visa system so that temporary migrants are protected from the grotesque abuses that have been described, and Australia is reaffirmed as a safe destination for those who wish to visit, study, work or live here.

Yours sincerely



Christine Nixon AO, APM
31 March 2023

# Purpose

In October and November 2022, the *Trafficked* project led by *60 Minutes*, *The Age*, and *The Sydney Morning Herald* reported allegations of visa rorts, sex trafficking and foreign worker exploitation. Specific allegations were made against a number of Registered Migration Agents (RMA).

The Australian Government is deeply concerned by the exploitation and abuse of all vulnerable people including temporary migrants, and has no tolerance for our visa system being abused through the methods alleged in the *Trafficked* media reporting.

The Minister for Home Affairs established this Rapid Review into the Exploitation of Australia's Visa System to complement work that is already being progressed to address migrant worker exploitation, and to identify proposals for both systemic reform and discrete measures to prevent, deter and sanction individuals who seek to abuse Australia's visa system to exploit vulnerable migrants.[1]

# Context

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Since the introduction of Australia's universal visa system in 1994, which requires all non-Australian citizens to hold a visa to enter or remain in Australia, temporary migration volumes have far outstripped permanent migration volumes.

The size and composition of the *permanent* Migration Program is carefully planned each year alongside the Government's Budget process. A range of economic modelling and forecasts inform policy settings, and consultation occurs widely with state and territory governments, representatives of academia, industry, unions and community organisations.

Unlike the permanent Migration Program, which has a planning level of 195,000 visa places in 2022–23, the level of *temporary* migration to Australia is for the most part, uncapped and demand driven.

As a result of increased globalisation and accessibility for those arriving by plane, the number of temporary migrants in Australia steadily increased through the early 2000s to a peak of just over 2 million prior to the COVID-19 pandemic. While numbers reduced during the pandemic, by 30 June 2022 volumes had returned, and there were just under 2 million people in Australia on a temporary visa.

In 2018–19, over 9.2 million visas were granted.[2] Of these, 8.8 million were temporary visas, with an average of 8.6 million temporary visas granted annually in the three years prior to the COVID-19 pandemic. While ever temporary migration remains uncapped and demand driven, the volume of temporary migrants who arrive by plane will almost certainly continue to rise, and the importance of preventing, deterring and sanctioning those who seek to abuse Australia's visa system becomes even more paramount.

This Report identifies the key gaps and areas of weakness in Australia's visa system. It proposes both systemic reform and discrete measures to fix the conditions that have allowed Australia's visa system to facilitate sexual exploitation, human trafficking and other organised crime.

[1] Attachment A: Terms of Reference
[2] Refer to Table 7

# Summary

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# Rapid Review into the Exploitation of Australia's Visa System

## 1 Greater investigative capacity

A **multi-agency task force** with strong state and federal investigative capacity should carry forward the work that Operation INGLENOOK has commenced.

Re-prioritise an immigration **compliance** function.

Consider extending Tranche 2 **anti-money laundering reforms** to include Registered Migration Agents (RMA), education agents and private Vocational Education and Training (VET) providers.

## 2 Strengthened regulation of registered migration agents

Require a comprehensive **background check** on initial and repeat RMA applications.

Introduce a **positive obligation** on RMAs to ensure clients understand Australian workplace rights and protections and how to report exploitation.

Establish a proactive **compliance function** within the Office of Migration Agents Registration Authority (OMARA).

Invest in building a strong and enduring **investigative capability** in the OMARA.

Increase the **compliance** and **investigative powers** of the OMARA to address misconduct by RMAs.

Increase **financial penalties** for misconduct related to the provision of migration advice.

Extend the **requirement to register** with the OMARA to offshore migration agents.

Review the OMARA's **engagement** with **industry associations**.

Undertake a trusted **branding exercise** for RMAs.

## 3 Strengthened regulation of education providers and regulation of education agents

Consider **regulating** onshore and offshore education agents used by Australian education providers.

Conduct **targeted compliance** activity focussed on assessing high risk private VET providers.

Conduct **targeted data matching** activity to compare information holdings across Commonwealth agencies for private VET providers.

Develop a broader set of **systemic risk indicators** for Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered education providers.

Monitor education providers' **compliance with reporting non-attendance** by international students.

Review Australia's student visa policy, with a view to **removing** CRICOS eligibility for **high risk VET providers and courses**.

**Review Australia's working visas** if studying and training visas are being used to support a need for low skilled workers.

## 4 Improved temporary migrant worker protections

Introduce a **prohibition** for temporary migrants working in all roles in the **sex industry**.

Introduce a **strong penalty regime** for any Australian citizen or permanent resident found to employ temporary migrant workers in the sex industry.

Introduce a **public stand-down** list for employers who exploit temporary migrant workers.

Strengthen powers to enable **visa cancellation** where a visa holder is found to be exploiting temporary migrants.

**Monitor** temporary visa holders working in the sex industry, and the exploitation of temporary migrant workers across all industries through the immigration compliance function.

## 5 Increased verification of identity

Prioritise the offshore **biometrics collection** program rollout.

Conduct random **fingerprint capture** and matching at the border.

Increase capability to verify **biographic data**.

Strengthen identity verification requirements in **key immigration systems.**

## 6 Reduced timeframes for some visa processing and merits review

Require onshore protection visa applications to be made through **a lawful provider** of immigration assistance.

**Regulate the fee** a lawful provider of immigration assistance can charge to lodge an onshore protection visa.

Review the **Canadian approach** to refugee claims processing.

Conduct merits review for visit / tourism and study streams **'on the papers' without a hearing**.

**Improved efficiency** to be a key focus in establishment of new federal administrative review body.

## 7 Strengthened departmental integrity framework

Increase **proactive integrity detection** programs.

# Findings

## Finding 1: Greater focus on investigative and enforcement capacity is required at state and federal levels to effectively deter and disrupt serious visa and migration fraud and organised crime related activity

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Australia has demonstrated success in managing serious and organised crime through multi-agency task forces that provide a coordinated and collaborative approach across Commonwealth and state and territory government agencies. Under certain circumstances, task forces can allow partner agencies to share information that is otherwise not able to be shared under each agency's legislative frameworks, and intelligence that leads to the disruption of serious criminal activity. Task forces also enable partner agencies to leverage the resources, strengths and capabilities of participating agencies, and to apply the most effective and appropriate intelligence, investigation and enforcement strategy for each task force.

Operation INGLENOOK was established in November 2022 following the *Trafficked* media reporting. The intent of Operation INGLENOOK is to identify threats, vulnerabilities and available whole-of-government effects in order to deter and disrupt the exploitation of visa holders in the sex industry. This includes identification of individuals, including RMAs and other professional facilitators, who are complicit in the exploitation of Australia's visa system.

The Australian Border Force (ABF) is the lead agency responsible for the coordination of activities, agencies and resources involved in Operation INGLENOOK. The task force is supported in a whole-of-government setting, with partners including Australian Criminal Intelligence Commission (ACIC), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Skills Quality Authority (ASQA), and the Australian Federal Police (AFP) liaison.

As at 31 March 2023, Operation INGLENOOK has assessed more than 175 persons of interest to determine complicity in exploiting the temporary visa program, resulting in more than 57 border alerts being raised. Some 93 foreign nationals are currently of interest to the operation. The alerts have resulted in action against known facilitators, including 26 interdictions at the border to gather intelligence, six associates refused immigration clearance, and three offshore visa cancellations preventing return travel to Australia. The Department has also identified 87 higher risk visa applications.

These activities have had an impact on key targets by degrading their ability to freely communicate as well as exposing their networks and methodology to the ABF and police. However, a key aspect of the operation, raised during the consultation phase of this review, was the need to bring greater investigations and field compliance capacity to the operation.

Operation INGLENOOK and other investigations have exposed that criminal syndicates that exploit Australia's visa system are involved in various serious criminal offending and activities for profit, including but not limited to:

- illegal sex work, human trafficking, modern slavery, illicit drug and tobacco importations, and money laundering
- the use of complex financial structures to facilitate and hide illegal activity, and avoid payment of taxes, creditors and employee entitlements, and
- the use of broad networks of complicit RMAs, lawyers, education agents, and education providers to facilitate exploitation of Australia's visa system.

The ABF has limited legislative powers to effectively investigate visa and migration fraud, and the exploitation of temporary migrant workers. The formation of the ABF in 2015 brought together a variety of legislative powers (across 35 pieces of legislation), within which there are significant discrepancies. For example, ABF investigators can exercise search warrant, arrest and telecommunications powers for *Customs Act 1901* offences but not for all *Migration Act 1958* (Migration Act) offences. This makes the ABF's success in identifying and treating migration fraud predominantly reliant on other Commonwealth agencies whose legislative powers provide greater scope for disruption efforts.

To effectively deter and disrupt these serious criminals, the work that Operation INGLENOOK has commenced should be carried forward for a further three years through a Commonwealth funded multi-agency task force led by the ABF.

The continuation of Operation INGLENOOK should bring together an expert group made up of representatives from federal and state agencies, to reduce abuse and fraud in Australia's visa system. The expert group should particularly focus on abuse of student visas, education providers, sexual exploitation and human slavery.

The expert group should leverage the capacity of all agencies involved, and draw upon experiences from federal and state investigations. This approach would achieve the optimal use of individual skills, state and federal resources, previous and current intelligence, and current policing and ABF investigations.

The expert group should have sufficient investigative capacities to conduct thorough investigations leading to prosecutions, asset seizure, visa cancellation, and removal of unlawful non-citizens from Australia. In addition to ABF investigative resources, state and federal police resources should be leveraged, particularly to account for the various state-based legislative frameworks, and coercive powers as well as the full range of traditional investigative methods should be applied.[3]

The benefits and effectiveness of multi-agency task forces, especially in instances where agencies have different information gathering and sharing powers, is recognised.[4] Leveraging partner agencies' capabilities provides the opportunity to achieve a multi-layered disruption effect across whole of government including visa and migration fraud, tax fraud and money laundering.

**Recommendation 1: Provide Commonwealth funding for Operation INGLENOOK to continue for a further three years, as an ABF led, multi-agency task force (state and federal levels) with strong investigative capacity.**

Actions that would deliver on this recommendation include:

1. Engage resources and capabilities relevant to investigating and disrupting this crime type, with federal and state police each contributing.

With the integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service in 2015, the field compliance and immigration investigation function and associated staff were transferred from the Department to frontline ABF operations. With diminishing investigative and field compliance resources, specialist migration investigations have reduced, and visa and migration fraud competes for priority with other high priority activity including serious and organised criminal threats involving illicit drugs, tobacco and supply chain integrity.

The ABF currently has an investigations capability of 120 across the full ABF jurisdiction and difficult decisions are regularly made about the prioritisation of finite resources to protect the border against constantly evolving threats. Other than a limited capacity that exists within the Office of the Migration Agents Registration Authority (OMARA), there is currently no compliance or investigative capability within the Department's Immigration Group.

To become more proactive and considered as an effective deterrent, a regular embedded immigration enforcement and compliance function should be re-prioritised. Initially, this function should focus on understanding the extent of visa and migration fraud, then build upon this understanding to enhance risk based indicators to support a targeted program of enforcement and compliance action. Working with other Commonwealth agencies and foreign law enforcement agencies to continuously evaluate information holdings in order to proactively identify vulnerabilities and exploitation at the border for investigation. Consideration should also be given to undertaking an annual threat assessment process to feed into the enforcement and compliance program, and partnering with regulators through a regulators' Community of Practice to support complementary regulation efforts relating to RMAs and education providers.

[3] Attachment E: State based legislative frameworks for sex work
[4] Parliament of Australia, September 2015, 'Inquiry into financial related crime'

It is worth noting that the effective conduct of the compliance program may be impacted by the limit on the number of people in onshore immigration detention. People who have either overstayed their visa, or have had their visas cancelled for reasons including failing the character test, breaching their visa conditions or presenting a risk to the safety, health or good order of the community, are required to be taken into immigration detention while removal from Australia is effected if they hold no other visa. ABF funding for onshore immigration detention may require adjustment as compliance program targets are achieved.

**Recommendation 2: Re-prioritise an immigration compliance function.**

Actions that would deliver on this recommendation include:

1. Resource teams of compliance officers, full time in the function.
2. Conduct statistically valid, sample-based, compliance and investigative work across visa holders to determine the extent of exploitation of Australia's visa system.
3. Ensure intelligence and information holdings are appropriately shared to support the development of a targeted risk based compliance program.
4. Review onshore immigration detention population limits as necessary.

Australia is a founding member of the Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog. At present, Australia's anti-money laundering and counter-terrorism financing regime only applies to casinos, bullion dealers, and solicitors (known as 'Tranche 1' entities), and reporting obligations only exist for cash transactions over $10,000.

The March 2022 Senate Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing regime recommended the Commonwealth accelerate its consultation with stakeholders on the timely implementation of Tranche 2 reforms in line with the FATF recommendations to introduce obligations for designated non-financial businesses and professions, also known as 'professional facilitators' or 'gatekeeper professions'.[5]

Designated non-financial businesses and professions (or 'Tranche 2' entities) are defined by the FATF as casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers.

Anticipating that the Government will enact Tranche 2 reforms by extending the existing anti-money laundering and counter-terrorism financing legislation to the categories of professional facilitators as defined by the FATF, consideration should then be given to further extending the legislation to RMAs, education agents, and privately owned VET providers as 'professional facilitators'. This would place certain obligations to identify, limit and manage their associated anti-money laundering and counter-terrorism financing risks.

**Recommendation 3: Consider further extension of anti-money laundering reforms to include RMAs, education agents, and privately owned VET providers.**

Actions that would deliver on this recommendation include:

1. Following Tranche 2 reforms, expand stakeholder consultations to include additional 'professional facilitators'.
2. Work with RMAs, education agents, and privately owned VET providers to prepare for new obligations including client due diligence, and 'suspicious matter' reporting.

[5] Parliament of Australia, March 2022, 'The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime'

## Finding 2: The regulation of registered migration agents must be strengthened to stop exploitation of the system

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The OMARA is responsible for the regulation of RMAs in Australia. Key OMARA functions include deciding applications for registration as a migration agent, monitoring the conduct of RMAs, investigating complaints relating to the provision of immigration assistance by RMAs and, where appropriate, taking disciplinary action against RMAs or former RMAs.

Regulation of the Australian migration advice industry has a 75 year history, shifting in and out of government and industry regulation, and has been the subject of five reviews over the past 20 years.[6]

In response to recent reviews, the Department has recognised the need to strengthen the regulation of migration agents, particularly around complaint handling and investigation activities. The OMARA is currently upskilling OMARA's investigative capability and implementing an enhanced framework to distinguish the severity and impact of specific RMA conduct and identify appropriate risk treatments.

While the enhanced framework will contribute to the Department's improved response to temporary migrant worker exploitation, modern slavery, and transnational serious and organised crime, further strengthening measures are needed.

Limited identity and background verification is required when registering to become a migration agent. To strengthen the fit and proper person and integrity tests, and prevent bad actors obtaining registration as a migration agent, applicants should be required to undertake a comprehensive background check at the time of initial registration, annually on renewal, and as directed by the OMARA (for example, when the OMARA receives allegations of inappropriate conduct relating to an RMA). The background check should be developed for the OMARA, and involve character, associate and criminal history checks.

**Recommendation 4: Comprehensive background checks to be required on initial and repeat RMA applications, and as directed by the OMARA.**

Actions that would deliver on this recommendation include:

1. Develop a comprehensive background check to strengthen the OMARA fit and proper person test.
2. Embed the background check in the Migration Act.
3. Communicate requirements with migration advice industry associations, prospective applicants for registration as a migration agent and all RMAs.

While it's believed some visa holders may be complicit, working in concert with their migration agent to exploit Australia's visa system, it is widely accepted that temporary migrant workers are at greater risk of employer abuse and exploitation.[7] A positive obligation should be written into the code of conduct, so RMAs must ensure their clients understand Australian workplace rights and protections and how to report worker exploitation. The OMARA should use the Continuing Professional Development (CPD) framework to educate RMAs on their positive obligation. To support this, a visible, proactive compliance focus will be needed.

[6] Attachment G: Chronology of Australian migration advice industry regulation
[7] Parliament of Australia, September 2021, 'Select Committee on Temporary Migration'

**Recommendation 5: RMAs should have a positive obligation to ensure their clients understand Australian workplace rights and protections and how to report migrant worker exploitation.**

Actions that would deliver on this recommendation include:

1. Obligation for RMAs to ensure clients understand Australian workplace rights and how to report work exploitation to be prescribed in the code of conduct.
2. Utilise the CPD framework to build understanding amongst RMAs regarding the change in onus.
3. Establish a visible, proactive compliance program.

A proactive compliance/monitoring capability should be established within the OMARA. The compliance program should be tiered to positively influence RMA behaviour. For example, RMAs who have been operating for a certain period with no substantiated complaints should receive a light touch compliance response. For newly registered agents and those who have had complaints against them substantiated, compliance officers should be more engaged to ensure the RMA understands the conduct and integrity of RMAs is taken seriously by government.

A range of compliance responses should be available to the OMARA to address compliance related issues, including more frequent targeted compliance activities and the ability to prohibit RMAs from providing advice to certain industries or about certain visa types.

**Recommendation 6: Establish a proactive compliance capability within the OMARA.**

Actions that would deliver on this recommendation include:

1. Resource dedicated teams of compliance officers.
2. To determine the extent of exploitation of Australia's visa system by RMAs, the initial focus should be statistically valid, random sample-based, compliance and investigative work across the RMA population.
3. Amend the Migration Act to prohibit RMAs from providing advice to certain industries or about certain visa types.

As described in Finding 1, greater investigative capacity is also required for the OMARA. In May 2022, the OMARA commenced a strategy to enhance and build upon its investigative capability. The OMARA is currently funded for 19 Full Time Equivalent (FTE) staff for all functions including management of its information and communications technology system. Resources have been diverted from visa processing to the OMARA to increase resourcing to 50 Full Time Equivalent staff (once fully staffed).

The current staffing footprint includes a small team primarily allocated to investigating complaints and sanction outcomes. This team is currently investigating allegations regarding a number of RMAs, in consultation with Operation INGLENOOK where relevant.

While this investigation activity has had an impact on key targets involved in complex networks of serious and organised crime, there is a need for OMARA to enhance its own investigative capability to conduct more timely and sophisticated administrative investigations where individual RMAs are suspected to be exploiting Australia's visa system.

**Recommendation 7: Invest in building a strong and enduring investigative capability in the OMARA.**

Actions that would deliver on this recommendation include:

1. Resource teams of investigators, full time in the function.
2. Pivot the OMARA's orientation to investigation and sanction activities.

The powers and sanctions available to the OMARA need strengthening so that it has the compliance and investigative capabilities to respond effectively to suspected exploitation. The OMARA should be empowered to exercise all of the powers currently provided by the legislation under threat of penalty for non-compliance (compelling the provision of documents, the making of a statutory declaration, and appearance to answer questions). This should apply to any individual, including RMAs.

The OMARA should also be able to use information obtained as a result of a section 3E *Crimes Act 1914* (Crimes Act) search warrant in their investigations and complaint handling processes. This will enable the OMARA to conduct more thorough investigations, and to refer serious suspected criminal misconduct to the ABF for further investigation.

**Recommendation 8: Increase the compliance and investigative powers of the OMARA to address misconduct by RMAs.**

Actions that would deliver on this recommendation include:

1. Enact power to compel any individual under threat of penalty.
2. Use of section 3E Crimes Act search warrant information.

Financially, there can be much profit to gain for those who choose to engage in the provision of immigration assistance that aids illegal sex work, human trafficking, modern slavery and money laundering. While Australia's term of imprisonment for provision of unlawful immigration assistance is higher than comparable regimes in Canada, New Zealand (NZ) and the United Kingdom (UK), Australia's financial penalty regime is considerably lower. RMAs may perceive engaging in such illegal activity is low risk, and high reward.

Some bad actors, including those who lose their registration as a migration agent, also operate in Australia as unlawful providers of immigration assistance, using family and business connections through networks of education agents, education providers, and travel agents, onshore and offshore.

Increased financial penalties for provision of unlawful immigration assistance, and strong application of these penalties, is needed.

*Table 1* – Financial penalties across comparable regimes:

| Australia | Canada | NZ | UK |
|---|---|---|---|
| The Migration Act provides for up to 10 years imprisonment or a fine of up to 60 penalty units for the provision of unlawful immigration assistance.<br><br>The value of a penalty unit is prescribed by the Crimes Act and is currently $275 for offences committed on or after 1 January 2023.<br><br>60 penalty units currently equates to $16,500. | The *Immigration and Refugee Protection Act 2002* (Canada), provides for up to two years imprisonment and a fine of up to $200,000 for unlawful representation.[8] | The *Crimes Act 1961* (NZ), provides for up to seven years imprisonment and a fine of up to $100,000 for provision of immigration advice without being licenced to do so. In addition to the penalty, the court may order the offender to pay reparation to the victim or an amount not exceeding the value of the commercial gain as a result of the offence, if applicable.[9] | The *Immigration and Asylum Act 1999* (UK), provides for up to two years imprisonment and a fine not exceeding the statutory maximum (which is now unlimited) for provision of unlawful immigration advice or services.[10] |

[8] Immigration and Refugee Protection Act 2001, s91(9), last amended 15 December 2022
[9] Immigration Advisers Licensing Act 2007, s63, s71, s72, last amended 12 April 2022
[10] Linklaters, 1 April 2015, 'Statutory maximum fine now unlimited'

The Migration Act provides for a fine of up to 60 penalty units for non-disclosure of client representation (currently valued at $16,500). An increase in penalties and application of tough sanctions for not declaring client representation is needed.

**Recommendation 9: Increased financial penalties for misconduct related to the provision of migration advice.**

Actions that would deliver on this recommendation include:

1. Penalty units to be reviewed in light of the penalty regime in other comparable like-minded countries.

The legal definition of registered migration agent that applies in Australia is not applicable overseas, and offshore migration agents are not currently required to be registered with the OMARA to provide immigration assistance. This is unlike Canada's and NZ's migration advice regulatory schemes.

Individuals providing Canadian immigration or citizenship services abroad are subject to Canadian law even if they reside outside of Canada, and anyone providing NZ immigration advice anywhere in the world must be licensed, unless exempt.[11] Immigration NZ must refuse applications from an adviser who is neither licensed nor exempt.[12]

A 2002 survey of Australia's overseas immigration posts found that, on average, 40 percent of the migration agents they dealt with were unregistered.[13] Given offshore applications for Australian visas are still lodged and processed at overseas posts, Australia should require that only the currently defined lawful providers of immigration assistance can provide immigration advice offshore. This would have the effect that all migration agents would need to be registered with the OMARA if they are to lawfully provide immigration assistance, irrespective of whether they reside onshore or offshore.

**Recommendation 10: The requirement to register with the OMARA should be extended to offshore migration agents.**

Actions that would deliver on this recommendation include:

1. Amend the Migration Act to apply extraterritorially.
2. Work with the migration advice industry to implement changes.
3. Develop and implement an offshore public communications strategy.
4. Develop and implement a strategy to handle anticipated increase in registrations and ongoing regulation activities.

The role of migration advice industry associations should be examined, as should the role RMAs play in reporting misconduct. There are currently two migration advice industry associations, and membership of an association is not mandatory. The Government should review its engagement with the migration advice industry, particularly whether engagement with one industry association is preferable (rather than two), and whether RMA membership should be encouraged.

The Department should be prescriptive regarding its expectations of the association/s with regard to supporting a highly qualified and professional industry, and effectively combating misconduct and unlawful operators. The behaviour and actions of the association/s should be monitored to ensure alignment with government values.

Action being taken to stop bad actors within the industry exploiting the system should be communicated to RMAs, and the majority of RMAs, who provide a great service assisting migrants to navigate Australia's visa system, should be encouraged to report suspected misconduct to the OMARA.

[11] Law Central, accessed 23 March 2023, 'Immigration Consultants of Canada Regulatory Council'
[12] Immigration Advisers Authority, accessed 23 March 2023, 'Who can give advice?'
[13] Australian Institute of Criminology, December 2016, 'Migrating for work and study: The role of the migration broker in facilitating workplace exploitation, human trafficking and slavery'

**Recommendation 11: The OMARA's engagement with migration advice industry associations should be reviewed.**

Actions that would deliver on this recommendation include:

1. Consideration be given to whether engagement with one industry association is preferable, and whether RMA membership of the industry association should be encouraged.
2. Department to be prescriptive regarding its expectations of the industry association.
3. Industry association/s to be monitored to ensure alignment with government values.
4. Communicate the OMARA's intent and encourage RMAs to report suspected misconduct.

Given the efforts to strengthen the regulation of migration agents and stop exploitation of the system, a trusted branding exercise should be undertaken to ensure RMAs are readily identifiable to individuals (both onshore and offshore) seeking Australian immigration advice.

The term 'agent' is used by many different facilitators including RMAs, unlawful providers of immigration advice (who may refer to themselves as migration agents), education agents, and travel agents.

To reduce confusion for those wishing to seek legitimate immigration advice, and to reduce the risk that a traveller may inadvertently engage an unlawful provider of immigration advice, RMAs need to be clearly and easily recognisable.

**Recommendation 12: Undertake a trusted branding exercise, so that RMAs are readily identifiable to individuals seeking Australian immigration advice.**

Actions that would deliver on this recommendation include:

1. Engagement with migration industry association/s.
2. Develop and implement a communications strategy to support the trusted branding exercise.

## Finding 3: The regulation of education agents must be considered, and the regulation of education providers strengthened to stop exploitation of the system

**Declassified for public release**

While research shows Australia gains social, cultural and skilled workforce benefits from international education as well as contributing to the national economy, earning $40.3 billion and supporting around 250,000 Australian jobs prior to the COVID-19 pandemic in 2019, some education providers and their agents are exploiting Australia's visa system.[14]

The legal framework governing the delivery of education to international students in Australia, including the obligations of registered international education providers and enforcement and compliance arrangements, is set out in the *Education Services for Overseas Students Act 2000* (ESOS Act). Education providers must also comply with the *National Code of Practice for Providers of Education and Training to Overseas Students* (the National Code) to maintain their registration to provide education services to international students.

There are two principal regulators: Tertiary Education Quality and Standards Agency (TEQSA) for higher education and ASQA for vocational education and training (VET).

Approximately 75 percent of international students obtain the assistance of an education agent (many of whom are based overseas) for research, enrolling and applying for a visa in Australia.[15] While education agents are recognised as having an important role in recruiting overseas students for the Australian market, the regulators currently play no part in the supervision of agents.

Instead, the regulatory onus is placed on education providers. Registered education providers must ensure the agents they deal with do not engage in false or misleading conduct, and providers must take corrective action or terminate their relationship with an agent who engages in any unethical recruitment practices.

In 2015, a *Four Corners* investigation *Degrees of Deception* reported evidence of corruption among overseas education agents who compete to place international students in Australian higher education. The investigation reported Australian universities were paying an estimated $250 million each year to unregulated education agents for the recruitment of international students despite widespread acknowledgement that a number of these agents are corrupt and deal in fraudulent documents. In 2016, a court in China sentenced an education agent to three years jail for facilitating Australian student visa fraud.

Under Australia's previous Government, attempts were made to regulate education agents used by Australian education providers, however the potential cost to education agents was considered a barrier. The United States (US) has implemented a regulation framework for education agents, including those based outside the US. The American International Recruitment Council (AIRC) develops standards and certifies educational agents. AIRC-certified agents complete a registration process involving an onsite inspection to verify the validity of agents seeking registration (offshore inspections are generally undertaken by University Directors, already offshore undertaking marketing exercises). A second University Director (onshore in the US) also undertakes a desktop audit of the education agent's application to register. AIRC then monitors agents, and any public complaints about them are reviewed for potential investigation and sanction.

Given the prevalence of education agents, and the known integrity risk, consideration must again be given to regulating onshore and offshore education agents used by Australian education providers.

[14] Department of Education prepared by Deloitte Access Economics, April 2016, 'The value of international education to Australia'
[15] Australian Skills Quality Authority, accessed 23 March 2023, 'Education agents'

**Recommendation 13: Consideration be given to regulating onshore and offshore education agents used by Australian education providers.**

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Department of Education, Department of Employment and Workplace Relations (DEWR), Department of Home Affairs, ASQA, and TEQSA.
2. Consideration be given to the benefits of adopting a similar model to the US.

The VET sector is a crucial element of responding to Australia's skill needs, with the majority of providers delivering high quality education and training. Of the approximately 4,000 VET providers in Australia, there are currently around 800 VET providers of international education. The VET sector is more dispersed compared to universities, and there is a greater frequency of providers entering and exiting the market. The volume of VET providers necessitates ASQA's risk-based regulatory approach, and while delivery to international students including detection and deterrence of non-genuine and high risk providers has been identified as one of ASQA's regulatory 2022–23 risk priorities, ASQA's primary focus is on achieving quality education outcomes rather than deterring and disrupting visa exploitation.

Operation INGLENOOK and other investigations have exposed that non-genuine providers are colluding with disreputable agents to facilitate student visas, and then funnelling students into criminal activities. While some international students are misled by agents who give false advice about a course or provider, living and working conditions, or through provision of immigration advice when not a RMA, some students may be complicit.

As the VET regulator, ASQA conducts compliance and enforcement activities to assess the performance of the practices of *Commonwealth Register of Institutions and Courses for Overseas Students* (CRICOS) providers. Further targeted compliance operations (supported by state and federal agencies) should be undertaken to obtain a better understanding of the extent of exploitation and to address breaches of regulations and the law carried out by CRICOS-registered private VET providers, including the nature of VET courses where exploitation appears more prevalent.

**Recommendation 14: Conduct a targeted compliance operation, focussed on assessing high risk private VET providers.**

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Departments of Education, DEWR, Home Affairs, and ASQA.
2. Engagement with state and federal agencies.
3. Consider impact on resources to ensure effective implementation of this strategy.

When shared, connected, and considered as a whole, information holdings across Commonwealth agencies can point to other forms of serious non-compliance. A targeted data matching activity should be conducted to compare private VET provider business registrations against Government information holdings to assist in identifying high risk cohorts within the industry.

**Recommendation 15: Conduct a targeted data matching activity to compare information holdings across Commonwealth agencies for private VET providers.**

Actions that would deliver on this recommendation include:

1. Engagement between key Commonwealth agencies.
2. Establish a permanent data sharing mechanism.

Using the information garnered through the targeted compliance and data matching activities, education regulators should evolve the risk indicators for CRICOS-registered education providers beyond issues related predominantly to the quality of education, to other systemic integrity issues such as the exploitation of Australia's visa system and financial viability.

**Recommendation 16: Education regulators to develop a broader set of systemic risk indicators for CRICOS-registered education providers.**

Actions that would deliver on this recommendation include:

1. Review existing legislation, resourcing, and data holdings to ensure TEQSA and ASQA have the capability to identify and respond to non-genuine providers.
2. Engagement through regulators' Community of Practice between key agencies; Departments of Education, DEWR and Home Affairs, TEQSA, ASQA and state and territory education departments.

In 2019, the ESOS regulations regarding the information that education providers must report in the Government's Provider Registration and International Student Management System (PRISMS), were updated to mandate provision of information about students who have breached a condition of a student visa with respect to course attendance or progress requirements. Education provider compliance with this requirement should be closely monitored, and reporting should contribute to the risk-based immigration compliance program (Finding 1, Recommendation 2).

**Recommendation 17: Education providers' compliance with reporting non-attendance by international students through PRISMS should be closely monitored.**

Actions that would deliver on this recommendation include:

1. Review of the regulators' compliance programs.
2. Communications with education providers.
3. PRISMS reporting of non-attendance to contribute to risk based immigration compliance program.

Should the targeted compliance operation focussed on assessing private VET providers expose that exploitation of the visa system by private VET providers is significant, Australia's student visa policy should be reviewed, with a view to removing CRICOS eligibility for low level private VET and non-award courses.

**Recommendation 18: Should the implementation of recommendations 14 and 15 expose that exploitation of the visa system by non-genuine private VET providers is significant, Australia's student visa policy should be reviewed, with a view to removing CRICOS eligibility for high risk providers and courses.**

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Departments of Education, DEWR, Home Affairs, and ASQA.
2. Updates to Australia's study and training visas.
3. Updates to CRICOS.
4. Amend the ESOS Act, and the National Code.

If it is considered that Australia's studying and training visas are being used to support a need for low skilled workers, a broader review of Australia's working visas is needed.

**Recommendation 19: Consider whether Australia's studying and training visas are being used to support a need for low skilled workers. If so, a broader review of Australia's working visas should be undertaken.**

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Departments of Education, DEWR, Home Affairs, and Jobs and Skills Australia.
2. Updates to Australia's working visas.

## Finding 4: Temporary migrant workers are at greater risk of employer abuse and exploitation

**Declassified for public release**

In October 2022, the *Trafficked* reports outlined a series of allegations centred on the abuse of Australia's visa system to facilitate human trafficking for sexual exploitation, and other organised crime.

Trafficking in human beings is an internationally recognised human rights violation which can result in a chain of other human rights abuses such as forced labour, sexual servitude, and debt bondage.[16] The Government has a long-standing commitment to combatting human trafficking and modern slavery in Australia and around the world, and there is much work occurring across Government (at Federal and state and territory levels) to deter and disrupt perpetrators, and across Government and the not-for-profit sector to support victims.[17]

It has been found that temporary migrants destined to work in the sex industry are at higher risk of being exploited, abused, or trafficked.[18] Other forms of exploitation, such as underpayment of wages, and not meeting work health and safety obligations, are also prevalent for temporary migrant workers in the sex industry.

Prevention strategies are key, and some like-minded countries have adopted a prohibition stance to protect temporary migrants destined to work in the sex industry where there is a heightened risk of exploitation.

In Canada, temporary migrants are barred from working for employers in the sex industry. This bar extends beyond sex work – employers in the sex industry may not hire any temporary migrant, even for positions such as receptionist or book-keeper. Temporary migrants found engaging in work in the sex industry may be removed from Canada, and employers may be charged with a criminal offence.

Under NZ law it is illegal for migrants on temporary visas to offer commercial sex services. If found doing so, the worker may be removed from NZ. In September 2022, NZ introduced the Worker Protection (Migrant and Other Employees) Bill. Key measures include disqualification from managing or directing a company for those convicted of temporary migrant worker exploitation, a public register to name such individuals, and expansion of the existing employer stand-down list to cover offending under the NZ *Immigration Act 2009* (if an employer breaches minimum employment standards the employer may be stood-down or permanently banned from supporting temporary migrants on work visas).

Critics of the prohibition model cite that temporary migrant workers who illegally work in the sex industry are less likely to come forward to report exploitation due to the risk they may be removed from the country.

A Canadian House of Commons' report found the prohibition unfairly put temporary migrant sex workers at elevated risk of violence and danger by making them unable to report incidents to law enforcement without fear of deportation.[19] Critics of the prohibition model also argue that temporary migrant workers may also be less likely to come forward for social, healthcare, and legal support. Currently though, women who are exploited in the sex industry come forward in very few circumstances. Implementation of a prohibition will not worsen the current situation, but does provide a way forward and a potential circuit breaker.

Firewalls for the sharing of certain information would also provide protection for temporary migrant sex workers seeking support services. This is supported by the House of Common's report, which noted that in British Columbia, guidelines for police are not to seek immigration enforcement.

Noting the various state based legislative frameworks for sex work, and that some Australian states remain in the process of decriminalising sex work, careful consideration should be given to how the prohibition is implemented, including in such a way that does not trigger criminal liability for temporary migrants found to be working in the sex industry. The timing and sequencing of this in relation to the Jobs and Skills Summit package of reforms that will provide protections and address migrant worker exploitation should also be considered.

[16] Parliament of Victoria, June 2010, 'People Trafficking for Sex Work'
[17] Parliament of Australia, December 2017, 'Hidden in Plain Sight'
[18] Government of Canada, June 2013, 'Regulations Amending the Immigration and Refugee Protection Regulations'
[19] House of Commons Canada, June 2022, 'Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act'

The prohibition of temporary migrants working in the sex industry would send a strong and clear message that the Australian Government has no tolerance for the exploitation of temporary migrants, and abuses of human rights that have no place in Australia. It would put other industries on notice that the Government can and will take these serious steps where temporary migrant exploitation is known to be occurring.

**Recommendation 20: Introduce a prohibition for temporary migrants working in all roles in the sex industry, including business owner/operators.**

Actions that would deliver on this recommendation include:

1. Prior to introducing the prohibition:
    a. run the ABF-led, multi-agency task force (recommendation 1) for at least 12 months to build the disruption effect, and
    b. progress the package of reforms to address migrant worker exploitation following the Jobs and Skills Summit.[20]
2. Foster greater community awareness of safeguards that enable temporary migrant workers to come forward for social, healthcare, law enforcement and legal support.
3. Foster greater community awareness of victim support mechanisms for breaches of human rights and trafficking.
4. Develop law enforcement operational policy guidance related to checking a premises in the sex industry.
5. Amend the legislation to impose a visa condition prohibiting all temporary visa holders from working in the sex industry (including business owners / operators).
6. Communicate changes with sex industry representatives, business councils / industry associations, and current and future visa holders.

The prohibition model should be complemented by a strong penalty regime for any Australian citizen or permanent resident found to employ or hire temporary migrant workers in the sex industry. It should be an offence to employ or hire a temporary migrant worker in any role in the sex industry. Penalties should include disqualification from managing or directing a company, and such individuals should be named in a public register.

**Recommendation 21: Introduce a strong penalty regime for any Australian citizen or permanent resident found to employ or hire temporary migrant workers in the sex industry.**

Actions that would deliver on this recommendation include:

1. Amend the legislation to create an offence for employers to engage temporary migrant workers in the sex industry.
2. Introduce a strong penalty regime for employers who engage temporary migrants in the sex industry, including disqualification from being able to manage or direct a company.
3. Communicate changes with sex industry representatives and business councils / industry associations.

A public stand down list for employer breaches of the Migration Act should be introduced for all other industries. An Australian citizen or permanent resident employer found to be exploiting temporary migrant workers, should be stood-down or permanently banned from further employing temporary migrants. The stand down list should be publicly available, as it is in NZ.

[20] Minister for Home Affairs, 30 October 2022, 'Human trafficking'

**Recommendation 22: Introduce a public stand-down list for Australian citizen or permanent resident employers found to breach the Migration Act.**

Actions that would deliver on this recommendation include:

1. Amend the Migration Act to create a mechanism which gives the ability to make a prohibited employer declaration.
2. Amend the legislation to introduce a list of prohibited employers.

A key characteristic of networks exploiting temporary migrant workers is 'single nationality'. That is, it is common for temporary migrants in Australia to recruit workers from their same country of origin. A temporary migrant, who in their capacity as an employer is found to be exploiting other temporary migrant workers, should have their visa considered for cancellation.

**Recommendation 23: Strengthen powers to enable visa cancellation where a visa holder is found to be exploiting temporary migrants.**

Actions that would deliver on this recommendation include:

1. Amend the Migration legislation to give the Minister (or delegate) the power to cancel a person's visa for exploiting another non-citizen.

The prohibition model and associated employer penalty regime must be supported by a strong compliance enforcement program (see Finding 1, Recommendation 2).

**Recommendation 24: The initial focus of the immigration compliance function (see Finding 1, Recommendation 2) will be to monitor:**

- **temporary visa holders working in the sex industry, and**
- **the exploitation of temporary migrant workers across all industries.**

Actions that would deliver on this recommendation include:

1. Communicate priority focus areas publicly.

## Finding 5: Australia's visa system is being exploited when identity and criminal history is not verified

**Declassified for public release**

The ability to trust the identity of visa holders travelling to Australia is essential. When we don't know who is crossing our border, we leave Australia's door open to organised crime.

Both identity crime and visa fraud are significant enablers of organised crime in Australia. During the consultation phase of this review, it was raised that visa fraud was a common theme in many major investigations over the last five to 10 years relating to gangs, drug cartels, and casino money laundering.

Biometrics are physical characteristics that can be used to identify individuals. Biometrics collection and matching is critical to strengthen border security and detect persons of concern while facilitating legitimate travel. Increased biometric collection will strengthen the Department's and ABF's capability to biometrically anchor an identity to better support and inform visa decision makers.

A key biometric is fingerprints, which are used extensively by police agencies to identify individuals, and also by the International Criminal Police Organization (INTERPOL). In particular, a visa applicant's fingerprint biometrics may be checked with other Australian or international agencies to verify identity, criminal history or protection status.

The Department's Identity and Biometrics Strategy is focussed on the collection of facial images and fingerprints and, when fully implemented, will collect facial images from all travellers before they enter Australia, with fingerprint collection based on risk.

The Department continues to rollout the offshore biometrics collection program, which has two elements: the visa subclass and the country of lodgement. To date, the Department has incorporated the collection of fingerprint and facial images into:

- the visa application process for 33 visa subclasses across permanent and temporary family visas, visitors, student and other temporary visas, and humanitarian visas,[21] and
- visa application lodgements made in 53 countries (regardless of the applicant's nationality).[22]

**Recommendation 25: Prioritise the offshore biometrics collection program rollout in selected countries.**

Actions that would deliver on this recommendation include:

1. Leverage existing partner biometric collection centres in selected countries to enable faster rollout of the offshore biometrics collection program.

A gap in the overall collection and matching capabilities will remain until the rollout of the biometrics collection program is complete. To lessen the impact of this gap, the ABF should increase biometric collection from incoming visa holders on arrival into Australia.

Stratified random fingerprint capture and matching by the ABF at immigration clearance would act as a deterrent to those who exploit the system by not honestly declaring their identity, criminal or deportation history when applying for a visa or at the border. This strategy draws on research from Victoria and NZ that found Random Breath Testing operations were an effective deterrent, particularly when linked to enforcement and supported by media campaigns highlighting the probability of detection.[23]

[21] Attachment J: Visa subclasses included in offshore biometrics collection program
[22] Attachment K: Countries included in offshore biometrics collection program
[23] Australian Institute of Criminology, February 2014, 'Effective drink driving prevention and enforcement strategies: Approaches to improving practice'

While a greater proportion of the stratified random fingerprint capture should be taken from flights originating from countries not yet included in Australia's biometrics collection program, fingerprint capture should otherwise be arbitrary and be conducted across all Australian international airports. The stratified random fingerprint capture should be accompanied by a public advertising campaign to strengthen the deterrent effect.

**Recommendation 26: Increase capability to conduct stratified random fingerprint capture and matching at the border.**

Actions that would deliver on this recommendation include:

1. Develop and implement a stratified random fingerprint verification program including sample sizes and population, staff training, standard operating procedures and a reporting mechanism to measure effectiveness.
2. Develop and implement a public advertising campaign to strengthen the deterrent effect of the fingerprint verification activity.
3. Purchase of additional mobile fingerprint verification devices.
4. Consider impact on resources to ensure effective implementation of this strategy.

While the offshore biometrics collection program is being rolled out, the Department should also increase checks against biographic data available through traveller passports (names, date of birth, nationality) for higher risk nationalities and visa streams not currently captured by the biometrics collection program.

**Recommendation 27: Verify biographic data with international partners for higher risk nationalities and visa streams not currently captured by the offshore biometrics collection program.**

Actions that would deliver on this recommendation include:

1. Enter into arrangements with international partners to exchange information based on biographic (names, date of birth, nationality) match.

Given the importance of online services in today's digital economy, public facing immigration systems have not had the necessary investment or updates to ensure they include identification requirements for the end user.

**Recommendation 28: Strengthen identity verification requirements in key immigration systems.**

Actions that would deliver on this recommendation include:

1. Two factor authentication for the end user to be introduced for key immigration systems.

## Finding 6: Protracted processing times for some visa subclasses and merits review processes are motivating abuse of Australia's visa system

**Declassified for public release**

*Figure 1* – An example of how Australia's visa system can be exploited by bad actors:

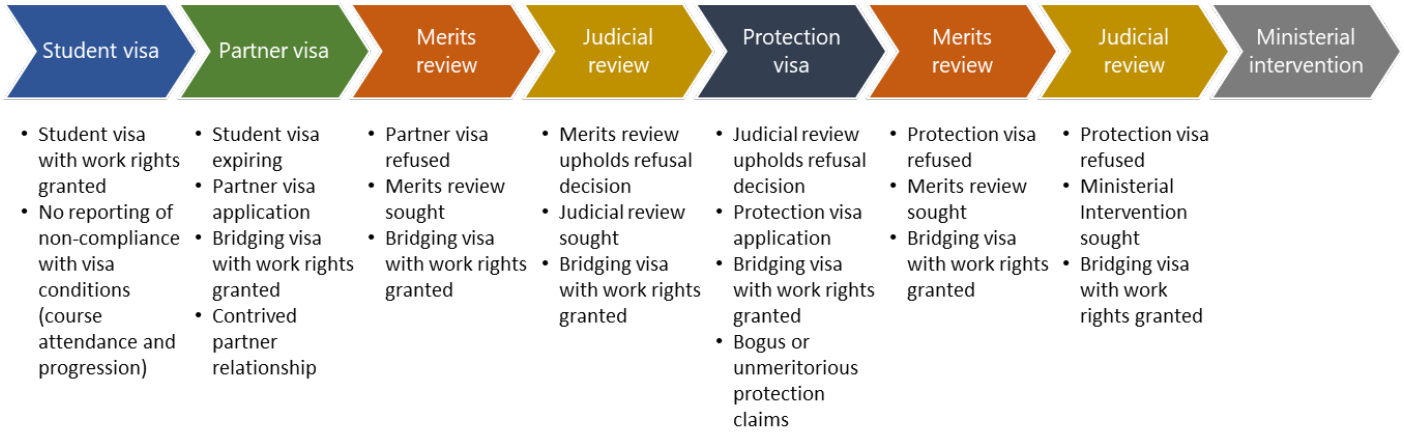



*Table 2* – With current median processing times, **cumulatively**, the above example would add up to almost a decade:

| Decision | Current median processing time [24] | Responsible agency |
|---|---|---|
| Student visa | 49 days | Department of Home Affairs |
| Partner visa | 8 months | Department of Home Affairs |
| Onshore protection visa | 2 years, 3 months | Department of Home Affairs |
| Migration review | 2 years | Administrative Appeals Tribunal |
| Refugee review | 2 years, 2 months | Administrative Appeals Tribunal |
| Judicial review | 6-12 months | Federal Court |

Visa processing and review timeframes for onshore protection visa applications are particularly high. This is motivating bad actors to take advantage by lodging increasing numbers of non-genuine applications for protection.

In the last five years, the Department's average processing times for onshore protection visas from lodgement to primary decision have varied from 11 months, to two years and six months. For the same period, the number of onshore protection visa decisions finalised has remained fairly stable at around 15,000 annually.[25]

[24] Department of Home Affairs, December 2022, 'Visa processing times'
Administrative Appeals Tribunal, September 2022, 'Annual Report 2021-22'
Parliament of Australia, November 2022, 'Question on notice no. 180'
Federal Court of Australia, September 2022, 'Annual Report 2021-22'

[25] Parliament of Australia, November 2022, 'Question on notice no. 180'

*Table 3* – Onshore protection visa processing times:

| Program year | Average number of days to primary decision |
|---|---|
| 2017–18 | 933 |
| 2018–19 | 334 |
| 2019–20 | 508 |
| 2020–21 | 727 |
| 2021–22 | 841 |

*Table 4* – Onshore protection visa, decisions finalised:

| Program year | Onshore protection visa decisions |
|---|---|
| 2017–18 | 14,925 |
| 2018–19 | 14,700 |
| 2019–20 | 16,853 |
| 2020–21 | 14,249 |
| 2021–22 | 15,726 |

The Administrative Appeals Tribunal (AAT) conducts independent merits review of administrative decisions made under Commonwealth laws including the Migration Act.[26] Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The largest caseload in the AAT's Migration and Refugee Division is reviews of decisions to refuse or cancel refugee (protection) visas.

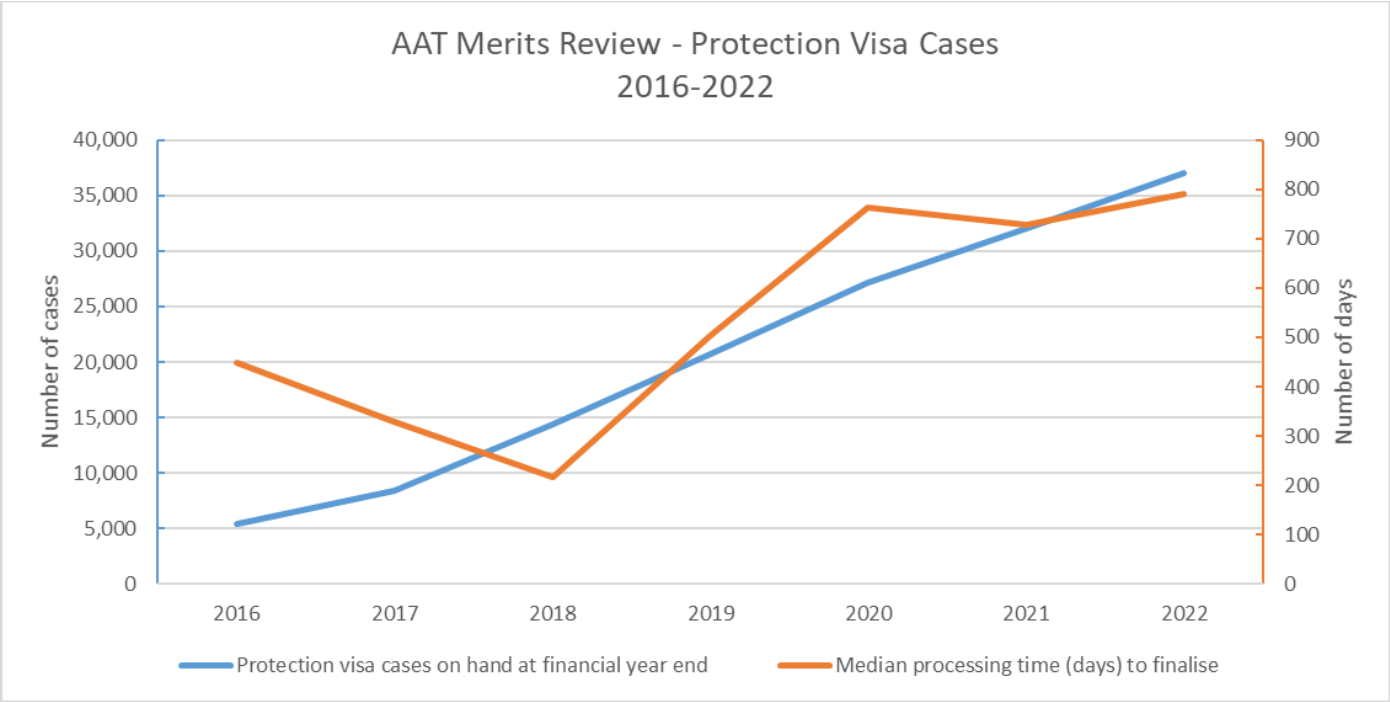
On 30 June 2017 the AAT's on hand protection visa caseload was 8,370. By 30 June 2022, the on hand protection visa caseload had grown by 340 percent to 37,025. Processing times for the review of protection visa refusal or cancellation decisions have also increased significantly. In 2016–17, the median time to finalise the review of such a decision was 10 months. In 2021–22, the median time to finalise the review of a protection visa decision was over two years and two months.

The significant majority of applicants are found not to engage (meet) Australia's protection obligations. In 2021–22, delegates of the Minister refused 89 percent of applications for onshore protection visas. For the same period, where merits review was sought, the AAT only varied, remitted or set aside seven percent of protection visa decisions.

The volume of unmeritorious and non-genuine onshore protection claims needs to be reduced. This will allow Australia to focus on engaging with genuine refugees and those who meet Australia's complementary protection obligations.

[26] On 16 December 2022, the Australian Government announced that the AAT will be abolished and replaced with a new federal administrative review body. The AAT will continue operating until the new federal administrative review body is established. Once the new body is established, any remaining cases will transition to the new body.

*Table 5* – AAT protection visa caseloads and processing times:




To address the volume of onshore protection claims, and within the context that the significant majority of applicants are found not to engage Australia's protection obligations, claims for protection should be required to be made through a lawful provider of immigration assistance – specifically, an RMA or lawyer.[27]

Lawyers are regulated by the relevant state and territory law societies. RMAs are regulated by the OMARA within the Department. RMAs must follow a code of conduct and meet occupational competency standards. They must keep their immigration knowledge up to date, and are well placed to understand whether an applicant will engage Australia's protection obligations. In lodging an onshore protection visa on behalf of their client, a lawful provider of immigration assistance should be required to attest that the onshore protection claim has merit and is based on genuine claimant's evidence.

Mandating submission of onshore protection claims through a lawful provider of immigration assistance is reliant on strengthening the regulation of RMAs, as described in Finding 2, and will then reduce the number of unmeritorious and non-genuine claims, reduce the backlogs and therefore the Department's visa processing times, and free up departmental and AAT staff to focus on genuine claims for protection.

**Recommendation 29: Applications for protection visa subclass 866 must be made through a lawful provider of immigration assistance.**

Actions that would deliver on this recommendation include:

1. Update Australia's protection visa policy, and make necessary legislative changes.
2. Update the RMA code of conduct to reflect the duty to attest that the onshore protection claim has merit.
3. Use the CPD framework to build understanding amongst RMAs regarding the attestation.
4. Work with RMAs and state and territory law societies and regulators to understand the new policy position, and requirements.

[27] Attachment L: Giving immigration assistance in Australia

Most lawful providers of immigration assistance charge a fee for the service they provide. Australia is a party to the 1951 *Convention relating to the Status of Refugees* (the Convention) and its 1967 *Protocol Relating to the Status of Refugees*. Under the Convention, while fees may be charged, such fees should be moderate and commensurate with those charged to nationals for similar services. As this may be challenging to define, the fee a lawful provider of immigration assistance can charge to lodge an onshore protection visa application should be regulated. If the cost to engage a RMA, even with regulation is considered a barrier, the Government may also consider subsidising the fee payable to RMAs.

**Recommendation 30: The fee a lawful provider of immigration assistance can charge to lodge an onshore protection visa subclass 866 should be regulated.**

Actions that would deliver on this recommendation include:

1. Update the RMA code of conduct as required.
2. Work with RMAs and state and territory law society regulators to understand the new policy position, and requirements.

Consideration should also be given to whether the Canadian approach to refugee claims processing would more quickly identify onshore protection visa applicants who do not pass the character test as set out in section 501 of the Migration Act, and result in earlier detection of claimants who pose a danger to community safety for serious non-political crime.

Canada's ineligibility grounds are laid out in the *Immigration and Refugee Protection Act 2001*. If a claim is found to be ineligible, the individual cannot have their claim heard by Canada's independent administrative tribunal, the Immigration and Refugee Board.

Canada's ineligibility assessment process verifies the identity of the refugee protection claimant via biometrics collection and initiates security screening of the refugee claimant at the earliest possible stage of the program. In 2022, approximately five percent of claims made in Canada were found ineligible. Inadmissibility grounds include criminality, serious criminality and organised criminality (including for serious non-political crime).

**Recommendation 31: Undertake a review of the Canadian approach to refugee claims processing, particularly the ineligibility assessment process, to determine whether there may be benefit in adopting this approach in Australia.**

Actions that would deliver on this recommendation include:

1. Engage with Immigration and Citizenship Canada regarding its ineligibility assessment process.

The AAT currently undertakes a full merits review for most visa streams. This involves a hearing of each case, with facts considered *de novo* or 'afresh' at the time of the merits review, including new information that was not available at the time of the original decision. Tourists holidaying in Australia, or students studying a course in Australia are provided the same full review as Australian citizens and those who are, or seeking to become, a permanent resident of Australia. The review process should be proportional.

Certainly those seeking protection, and those seeking to become a permanent resident through a family, work or other stream should be afforded a full review. For visit / tourism and study streams, however, the review process should be quick and efficient. The faster the merits review process is, the less incentive there is for bad actors to exploit the system. For visit / tourism and study streams, a merits review should be conducted 'on the papers' without a hearing, and within a set period of time. New information should only be considered in exceptional circumstances.

**Recommendation 32: For visit / tourism and study streams, merits review should be conducted 'on the papers' without a hearing, and within a set period of time. New information should only be considered in exceptional circumstances.**

Actions that would deliver on this recommendation include:

1. Amendments to the Migration Act as required.
2. Update the Minister's directions to Tribunal members.

Notwithstanding the effect of the above recommendations, the ever growing and significant AAT on hand caseload for protection and other visa decisions warrants the review of resourcing levels, case management, and the introduction of efficiency performance measures for the new federal administrative review body.

**Recommendation 33: Improved efficiency to be a key focus in the establishment of the new federal administrative review body.**

Actions that would deliver on this recommendation include:

1. Determine appropriate resourcing levels, including use of surge resources.
2. Consider appropriate case management systems and case management innovations, including methods of triage, and alternate dispute resolution.
3. Determine appropriate performance measures to drive efficiency.

## Finding 7: The Department's Integrity and Professional Standards Framework should be strengthened to prevent risks presented by staff corruption, fraud and other unlawful activities

**Declassified for public release**

This Rapid Review into the Exploitation of Australia's Visa System, found no instances of staff corruption, fraud and other unlawful activities, however there is a risk that departmental staff could engage in corrupt conduct, and misuse their trusted access to abuse Australia's visa system.

The Department's Integrity and Professional Standards Frameworks are designed to prevent risks of departmental staff corruption, fraud, inappropriate behaviours, and other unlawful and serious criminal activities.

The Professional Standards Framework is an overarching framework including the Australian Public Service (APS) Code of Conduct, the APS Values, APS Employment Principles and Secretary Directions and Determinations. The Directions and Determinations include the requirement for all staff to hold and maintain both an Employment Suitability Clearance, and an Australian Government Security Vetting Agency (AGSVA) minimum BASELINE clearance.

The Integrity Framework is a component of the Professional Standards Framework, which outlines obligations and requirements through policies that cover:

- employment suitability screening
- reporting declarable associations and changes in personal circumstances
- drug and alcohol testing
- mandatory reporting of serious misconduct, corrupt conduct or criminal activity
- Conflicts of Interest
- Code of Conduct investigations, and
- social media use, including not identifying themselves online as working for the Department, and behaving online in a manner that upholds the APS Employment Principles and Values.

Recommendation 34: Increase proactive integrity detection programs to identify staff involved in corruption, fraud, inappropriate behaviours, and other unlawful and serious criminal activities.

Actions that would deliver on this recommendation include:

1. System improvements to reduce manual nature of current integrity detection programs.

# Context - statistics

## Permanent and temporary visa activity [28]

Visa applications finalised comprises Granted, Refused and Withdrawn outcomes. Visa applications granted is a sub-set of visa applications finalised.

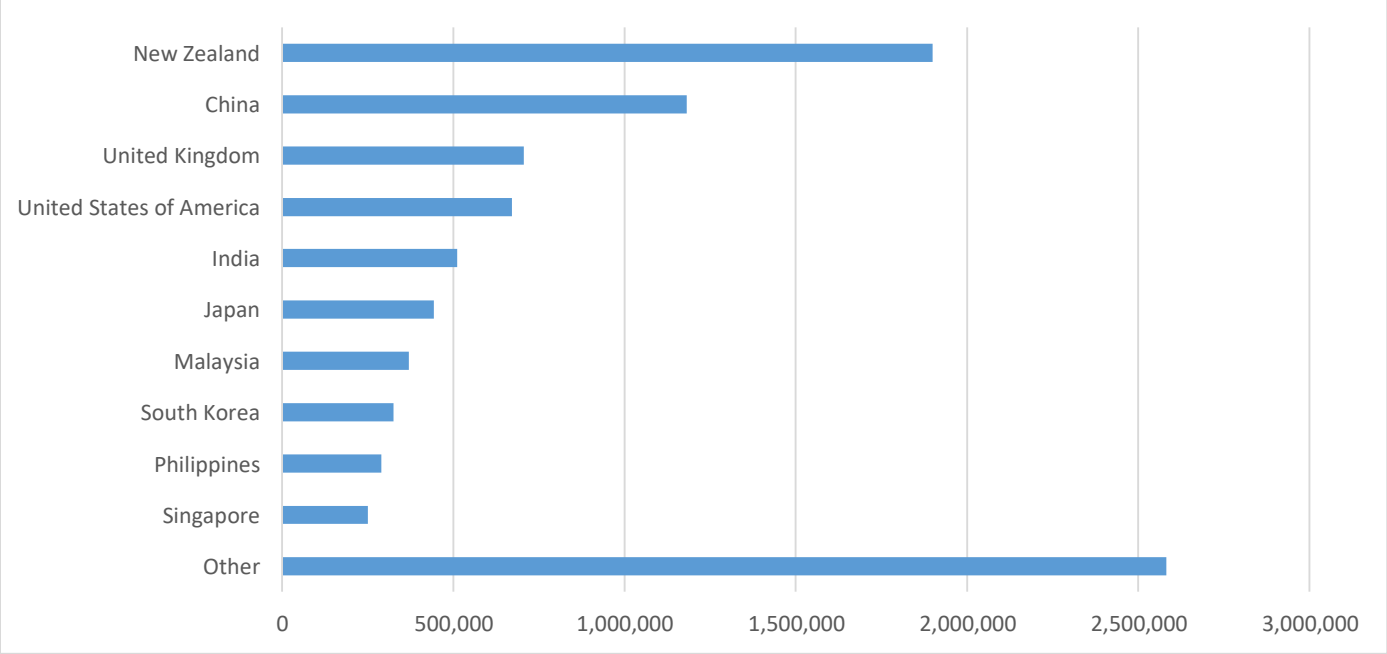
*Table 6* – Visa applications finalised:

| | | Financial Year | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Visa Program | Visa Category | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
| Permanent | Skilled (Permanent) | 159,006 | 162,476 | 164,835 | 152,271 | 152,704 | 149,405 | 144,551 | 140,202 | 120,549 | 99,703 | 104,379 |
| | Family | 129,867 | 137,656 | 129,031 | 128,231 | 121,521 | 125,037 | 128,147 | 128,835 | 131,203 | 141,747 | 129,533 |
| | Other permanent | 86,640 | 95,886 | 111,216 | 125,452 | 137,876 | 156,454 | 156,365 | 185,000 | 148,707 | 72,907 | 141,531 |
| Permanent total | | 375,513 | 396,018 | 405,082 | 405,954 | 412,101 | 430,896 | 429,063 | 454,037 | 400,459 | 314,357 | 375,443 |
| Temporary | Skilled (Temporary) | 131,969 | 135,679 | 109,440 | 102,619 | 93,316 | 97,735 | 74,807 | 93,585 | 58,584 | 48,054 | 68,130 |
| | Student | 284,524 | 282,399 | 319,010 | 331,453 | 348,189 | 379,466 | 422,960 | 457,443 | 378,853 | 257,689 | 300,982 |
| | Visitor | 3,666,963 | 3,852,248 | 4,106,377 | 4,442,565 | 4,956,520 | 5,515,312 | 5,871,934 | 5,972,193 | 4,320,474 | 215,532 | 1,233,017 |
| | Working Holiday Maker | 226,668 | 263,108 | 244,498 | 230,936 | 218,225 | 215,483 | 214,766 | 214,699 | 152,251 | 41,378 | 102,704 |
| | Other temporary | 2,046,641 | 2,112,421 | 2,216,247 | 2,264,409 | 2,353,115 | 2,458,063 | 2,421,948 | 2,464,963 | 1,900,470 | 530,203 | 769,686 |
| Temporary total | | 6,356,765 | 6,645,855 | 6,995,572 | 7,371,982 | 7,969,365 | 8,666,059 | 9,006,415 | 9,202,883 | 6,810,632 | 1,092,856 | 2,474,519 |
| **Grand Total** | | **6,732,278** | **7,041,873** | **7,400,654** | **7,777,936** | **8,381,466** | **9,096,955** | **9,435,478** | **9,656,920** | **7,211,091** | **1,407,213** | **2,849,962** |

*Table 7* – Visa applications granted:

| | | Financial Year | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Visa Program | Visa Category | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
| Permanent | Skilled (Permanent) | 138,929 | 137,920 | 141,237 | 140,167 | 142,146 | 135,503 | 121,314 | 117,528 | 105,665 | 92,124 | 94,720 |
| | Family | 116,246 | 122,063 | 112,943 | 109,592 | 103,104 | 106,006 | 107,665 | 109,685 | 113,476 | 129,738 | 115,667 |
| | Other permanent | 85,267 | 94,555 | 109,545 | 123,505 | 136,019 | 154,814 | 155,661 | 183,506 | 147,058 | 72,130 | 140,952 |
| Permanent total | | 340,442 | 354,538 | 363,725 | 373,264 | 381,269 | 396,323 | 384,640 | 410,719 | 366,199 | 293,992 | 351,339 |
| Temporary | Skilled (Temporary) | 125,075 | 126,361 | 98,571 | 96,084 | 85,611 | 87,580 | 64,470 | 81,975 | 55,060 | 43,195 | 61,987 |
| | Student | 253,286 | 259,321 | 292,063 | 299,540 | 310,845 | 343,035 | 378,292 | 405,742 | 340,152 | 232,750 | 263,737 |
| | Visitor | 3,558,483 | 3,750,640 | 3,990,248 | 4,308,107 | 4,799,173 | 5,345,684 | 5,639,167 | 5,686,318 | 4,056,603 | 167,576 | 1,131,890 |
| | Working Holiday Maker | 222,992 | 258,248 | 239,592 | 226,812 | 214,583 | 211,011 | 210,456 | 209,036 | 149,249 | 39,586 | 97,359 |
| | Other temporary | 2,028,181 | 2,093,083 | 2,200,312 | 2,250,027 | 2,338,375 | 2,431,309 | 2,401,663 | 2,435,766 | 1,876,398 | 510,601 | 741,854 |
| Temporary total | | 6,188,017 | 6,487,653 | 6,820,786 | 7,180,570 | 7,748,587 | 8,418,619 | 8,694,048 | 8,818,837 | 6,477,462 | 993,708 | 2,296,827 |
| **Grand Total** | | **6,528,459** | **6,842,191** | **7,184,511** | **7,553,834** | **8,129,856** | **8,814,942** | **9,078,688** | **9,229,556** | **6,843,661** | **1,287,700** | **2,648,166** |

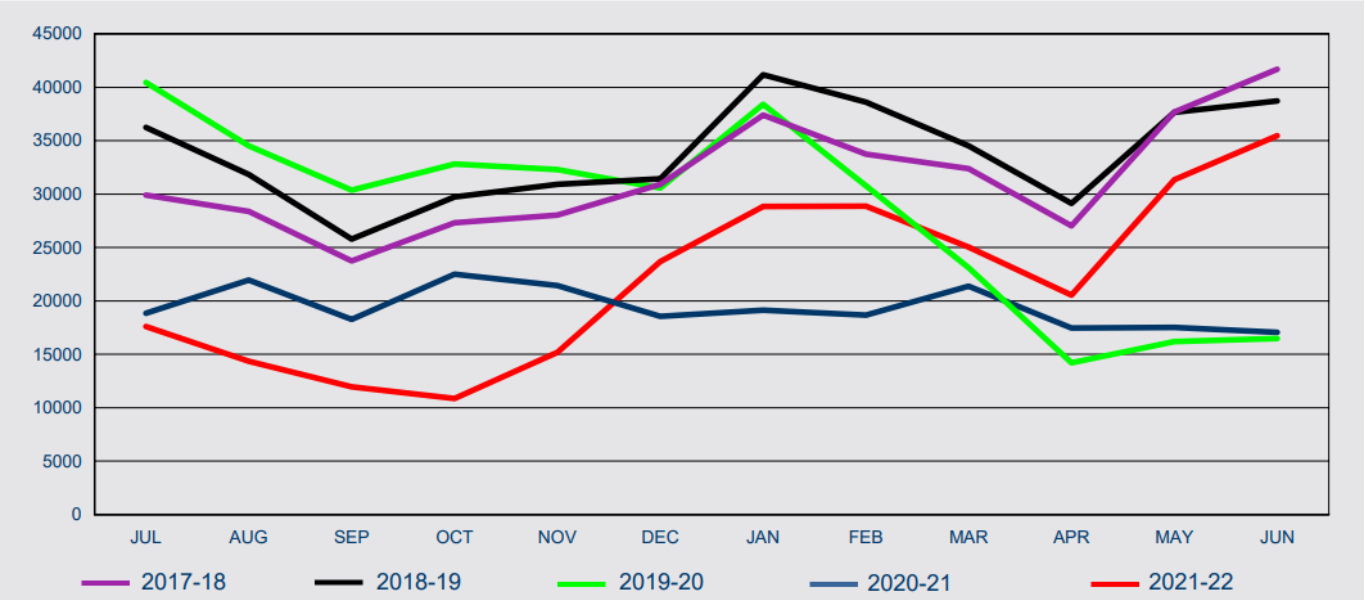
*Table 8* – Visa applications granted in 2018–19 [29] top ten by citizenship:




[28] Department of Home Affairs, accessed March 2023, 'BP0001 Global Permanent and Temporary visa activity'
[29] The COVID-19 pandemic significantly impacted traveller arrivals into Australia from 2019-2022; 2018-19 provides the most useful measure for this purpose.

## Student visa program [30]

*Table 9* – Number of student visa applications granted by month - previous five financial years:




| FY Granted | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2017-18 | 29,909 | 28,385 | 23,754 | 27,323 | 28,045 | 30,925 | 37,401 | 33,744 | 32,384 | 27,032 | 37,696 | 41,694 | **378,292** |
| 2018-19 | 36,252 | 31,832 | 25,772 | 29,726 | 30,919 | 31,446 | 41,171 | 38,604 | 34,514 | 29,116 | 37,659 | 38,731 | **405,742** |
| 2019-20 | 40,436 | 34,518 | 30,360 | 32,811 | 32,293 | 30,555 | 38,413 | 30,771 | 23,102 | 14,199 | 16,206 | 16,488 | **340,152** |
| 2020-21 | 18,842 | 21,961 | 18,262 | 22,487 | 21,433 | 18,561 | 19,135 | 18,663 | 21,380 | 17,469 | 17,510 | 17,047 | **232,750** |
| 2021-22 | 17,614 | 14,339 | 11,972 | 10,859 | 15,178 | 23,692 | 28,829 | 28,854 | 25,040 | 20,542 | 31,358 | 35,460 | **263,737** |

[30] Department of Home Affairs, 30 June 2019, 'Student visa and Temporary Graduate visa program report'

*Table 10* – Number of student visa applications granted in 2018–19 financial year by citizenship country, comparison with same period in previous year:

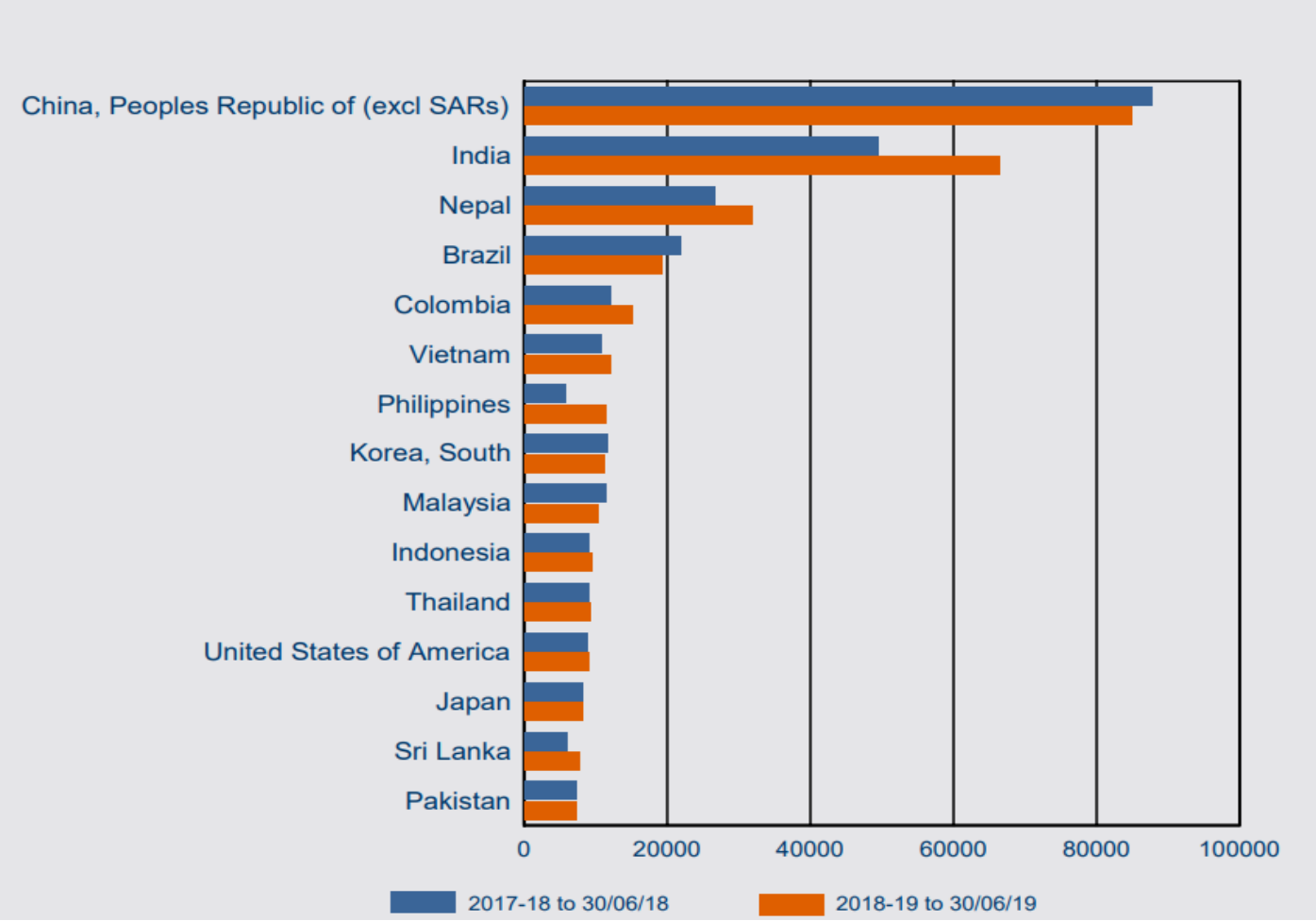



*Table 11* – Number of student visa applications granted by Sector in 2018–19 financial year:

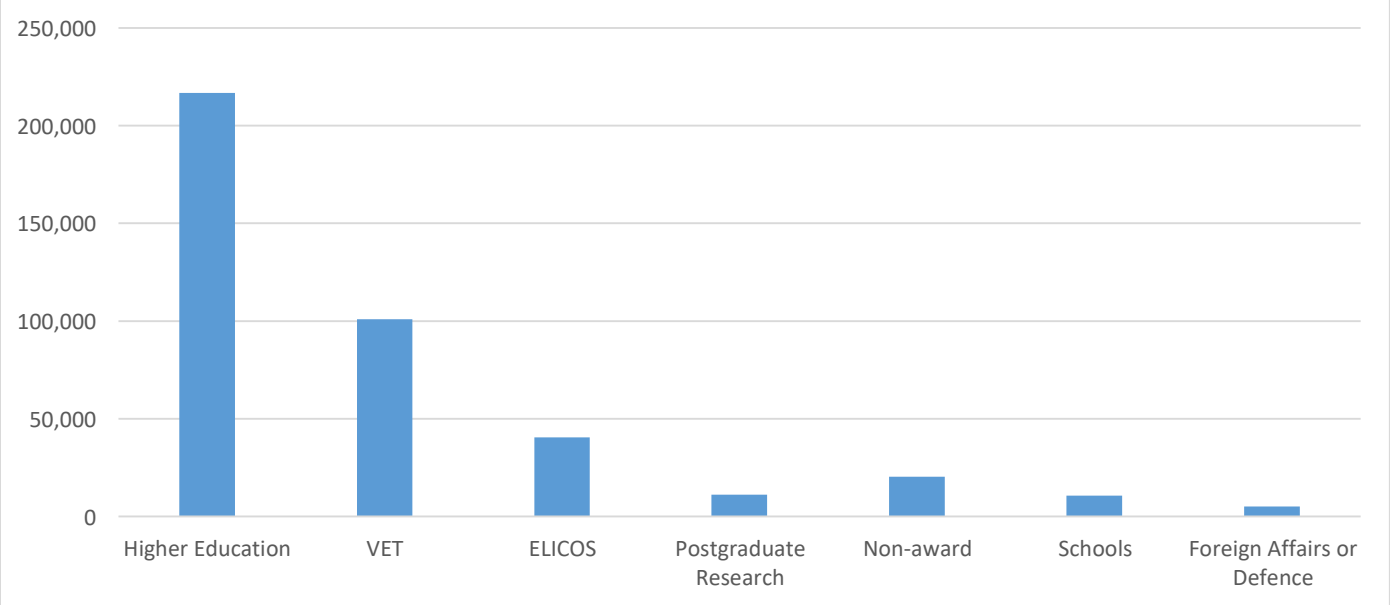


*Table 12* – Grant rate of student visa applications decided in the three month period between 1 April 2019 and 30 June 2019 by sector and client location:




## Onshore humanitarian program [31]

Protection visa figures relating to 2018–19 financial year.

*Table 13* – Protection visa lodgements by citizenship (top 10):

| Country of citizenship | 2017–18 | 2018–19 |
|---|---|---|
| Malaysia | 9,319 | 8,013 |
| China, (PRC) | 9,315 | 4,872 |
| India | 1,529 | 1,864 |
| Thailand | 846 | 1,319 |
| Fiji | 354 | 980 |
| Vietnam | 764 | 782 |
| Indonesia | 515 | 672 |
| Pakistan | 589 | 508 |
| Philippines | 237 | 487 |
| Taiwan | 323 | 478 |
| Other | 4,140 | 4,591 |
| **Total** | **27,931** | **24,566** |

[31] Department of Home Affairs, 30 June 2019, 'Onshore Humanitarian program 2018-19'

*Table 14* – Grant and grant rates by citizenship (top 10):

| Country of citizenship | 2018–19 | Grant rate |
|---|---|---|
| Iran | 285 | 79% |
| Iraq | 271 | 71% |
| Pakistan | 172 | 41% |
| Turkey | 125 | 73% |
| Malaysia | 103 | 1% |
| Libya | 92 | 93% |
| China, (PRC) | 90 | 4% |
| Syrian Arab Republic | 54 | 90% |
| Afghanistan | 48 | 83% |
| India | 36 | 8% |
| Other | 374 | … |
| **Total** | **1,650** | **11%** |

## Department of Home Affairs permanent and temporary visa processing times [32]

Median visa processing times is the most accurate way to show the amount of time it is taking most visa applications to be finalised. 50 percentile is the processing time in which 50 percent of visas are finalised.

*Table 15* – Processing times, 50 percentile (median):

| | | Financial Year | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Visa Program | Visa Category | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
| Permanent | Skilled (Permanent) | 6 Months | 5 Months | 4 Months | 4 Months | 4 Months | 5 Months | 6 Months | 7 Months | 6 Months | 6 Months | 6 Months |
| Temporary | Skilled (Temporary) | 16 Days | 16 Days | 34 Days | 22 Days | 36 Days | 41 Days | 70 Days | 32 Days | 14 Days | 70 Days | 56 Days |
| | Student | 17 Days | 14 Days | 15 Days | 14 Days | 15 Days | 17 Days | 16 Days | 14 Days | 25 Days | 63 Days | 40 Days |
| | Visitor | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | 3 Months | 3 Days |
| | Working Holiday Maker | <1 Day | 1 Day | 1 Day | <1 Day | <1 Day | <1 Day | <1 Day | <1 Day | 2 Days | 43 Days | 6 Days |

[32] Processing times are aggregate calculations for the program

# Methodology

To identify and understand the issues, the Rapid Review Lead consulted widely with relevant stakeholders, including private and public sector organisations.

The Rapid Review Lead had regard to the findings of previous and ongoing reviews and inquiries (including Parliamentary Inquiries) and regulatory approaches in relevant overseas jurisdictions to identify recommendations or insights that may be applicable in the Australia context.

The Rapid Review Lead reported to the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs on a regular basis and, through the Minister, to other Ministers.

The Rapid Review Lead consulted with the following stakeholders:

| **Stakeholder consultation:** |
|---|
| Academic, University of Technology Sydney |
| Attorney General's Department |
| Australian Border Force |
| Australian Competition and Consumer Commission |
| Australian Criminal Intelligence Commission |
| Australian Federal Police |
| Australian Transaction Reports and Analysis Centre |
| Australian Skills Quality Authority |
| Australian Taxation Office |
| Commonwealth Director of Public Prosecutions |
| Department of Education |
| Department of Employment and Workplace Relations |
| Department of Home Affairs |
| Department of Prime Minister and Cabinet |
| Fair Work Ombudsman |
| Immigration, Refugees and Citizenship Canada |
| International Education Association of Australia |
| New South Wales Police |
| New Zealand Ministry of Business, Innovation and Employment |
| Queensland Police |
| South Australia Police |
| VET Assess |
| Victoria Police |

# Attachments

# Attachment A - Terms of Reference

## Context

The Australian Government is deeply concerned by the exploitation and abuse of all vulnerable people, including migrants, and has no tolerance for our visa system being abused through methods alleged in recent media reporting.

An eminent Australian with relevant investigative skills, public policy skills and an ability to draw together an analysis of Home Affairs regulatory frameworks and recently publicised cases of concern will lead this rapid review. It will be supported by the Department of Home Affairs. A report will be handed down at the earliest opportunity, with preliminary findings by no later than 31 March 2023.

## Objectives and Scope

The Report will identify proposals for both systemic reform and discrete measures to prevent, deter and sanction individuals who seek to abuse Australia's visa system to exploit vulnerable migrants.

In preparing this advice, the Review will examine the circumstances of cases recently aired in the media and how those individuals are alleged to have exploited vulnerabilities in the visa system. This will include a review of:

a. Specific circumstances of issues highlighted in recent media reports.

b. the use, storage, treatment and sharing of information within Home Affairs, in respect to investigation, regulation and enforcement efforts to address the behaviour of threat actors who target vulnerabilities in the visa system.

c. the powers, resourcing and sanctions available to the Office of the Migration Agents Registration Authority (OMARA) and the Australian Border Force (ABF), to investigate and take action against third parties who seek to exploit the visa system, including registered and unregistered migration agents.

d. the powers and provisions for checking the character of people across the visa continuum and the gaps and areas of weakness that have allowed threat actors to enter Australia and exploit our system.

e. how visa settings could be optimised to limit the vulnerability of visa holders, uphold the integrity of visa programs, and deter unscrupulous actors.

f. the triage, referral and decision making mechanisms for cases of concern, particularly where there are indicators of the facilitation of the exploitation of migrants in Australia.

The Review will have regard to the findings or proceedings of previous and ongoing reviews and inquiries (including Parliamentary Inquiries) and regulatory approaches in relevant overseas jurisdictions.

The Review will not duplicate but align with work already underway by this Government to tackle the most serious forms of abuse, being modern slavery and human trafficking, including Whole of Government work led by the Attorney General's Department as captured in the National Action Plan to Combat Modern Slavery 2020-25.

It will also align with, and not duplicate efforts to strengthen industrial relations, including through legislation and reforms being pursued by the Minister for Employment and Workplace Relations. Additionally, it will complement but not duplicate the work announced by the Minister for Home Affairs at the Jobs and Skills Summit in September 2022, to introduce reforms to address the exploitation of migrant workers in Australia.

The gravity of these matters requires a targeted exercise specifically focussed on abuse of the visa system. This work will be conducted separately to the recently announced comprehensive Review of Australia's Migration System, which will revisit and define the purpose of Australia's end to end migration system and how it can more effectively enrich the economy, sovereign capability, Australia's international relations and geostrategic influence.

## Governance Arrangements

In the process of their investigation, the lead reviewer may consult with the following agencies:

- Department of Home Affairs
- Australian Border Force
- Australian Federal Police
- Attorney-General's Department
- Australian Criminal Intelligence Commission
- Australian Securities and Investment Commission
- Australian Transaction Reports and Analysis Centre
- Commonwealth Director of Public Prosecutions
- Australian Taxation Office
- Fair Work Ombudsman
- Department of Education
- Department of Employment and Workplace Relations
- Australian Competition and Consumer Commission
- Other relevant agencies with responsibilities that impact on exploitation of migrant workers, as required.

The lead reviewer will report to the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs on a regular basis and, through the Minister, to other Ministers as required.

The lead reviewer will consult with relevant stakeholders, including private and public sector organisations, as required, under standard Commonwealth privacy and secrecy provisions. The Department of Home Affairs will support any meetings.

The Department of Home Affairs will be responsible for ensuring the reviewer has adequate administrative resources to support the review and the drafting of the Report.

Where appropriate, relevant international experience will be examined via desktop review or remote stakeholder engagement (videoconference) to identify recommendations or insights that may be applicable in the Australia context.

# Attachment E - State based legislative frameworks for sex work as at 31 March 2023

| | New South Wales | Victoria | Queensland | Western Australia | South Australia | Tasmania | Australian Capital Territory | Northern Territory |
|---|---|---|---|---|---|---|---|---|
| Principal Legislation | *Summary Offences Act 1988* (Summary Offences Act), the Restricted Premises Act (Restricted Premises Act). | *Sex Work Decriminalisation Act 2022* (Sex Work Decriminalisation Act). | *Prostitution Act 1999* (Prostitution Act), *Criminal Code 1899* (Criminal Code). | *Prostitution Act 2000* (Prostitution Act), *Criminal Code Act Compilation 1913* (Criminal Code Act). | *Summary Offences Act 1953* (Summary Offences Act). | *Sex Industry Offences Act 2005* (Sex Industry Offences Act). | *Prostitution Act 1992* (Prostitution Act). | *Sex Industry Act 2019* (Sex Industry Act). |
| Regulatory authority | NSW Police. Local councils approve business applications. | Victoria Police. | Queensland Police. Prostitution licensing authority grants licences to brothels. | Western Australia Police. | South Australia Police. | Tasmania Police. | Australian Federal Police. The Office of Regulatory Services is responsible for registration. | Northern Territory Police. |
| Street-based work | **Illegal** in certain areas such as near churches or schools (Summary Offences Act). | **Not fully decriminalised** (Sex Work Decriminalisation Act). | **Illegal** (Prostitution Act). | **Illegal** (Prostitution Act). | **Illegal** (Summary Offences Act). | **Illegal** (Sex Industry Offences Act). | **Illegal** (Prostitution Act). | **Decriminalised** (Sex Industry Act). |
| Brothel Work | **Legal** to run a brothel with permission. (Restricted Premises Act). | **Legal** to run, be in, enter or leave a licensed brothel (this applies to clients, sex workers, and non-sex work staff) (Sex Work Decriminalisation Act). | **Legal** to run a brothel but must be licensed and in accordance with planning laws (Prostitution Act). | **Illegal** to run a brothel (the Criminal Code Act). Also **illegal** to live partially or wholly of earnings that the persons knows are the earnings of prostitution (Criminal Code Act). | **Illegal** to manage or keep a brothel, or to receive payment in a brothel for sex work (Summary Offences Act). | **Illegal** to run a brothel (Sex Industry Offences Act). | **Legal** to run a brothel, but must be registered and based in prescribed locations. (Prostitution Act). | **Legal** to run a brothel, subject to planning and, where more than three workers are employed, obtain suitability certificate to operate (Sex Industry Act). |
| Escort agency work | **Not mentioned** within the Summary Offences Act or Restricted Premises Act. | **Legal** to conduct an escort service (Sex Work Decriminalisation Act). | **Legal** to conduct an escort service but clients of a social escort service must be informed that the service does not include prostitution (Prostitution Act). | **Legal** to conduct an escort service but **illegal** to live off the earnings (the Criminal Code Act). | **Not mentioned** within the Summary Offences Act. | **Illegal** to run an escort agency. (Sex Industry Offences Act). | **Legal** to run an escort agency, but must be registered. (Prostitution Act). | **Legal** to run an escort agency, but must be registered. All staff of escort agencies must be registered with NT Police and receive a certificate from the Police Commissioner (Sex Industry Act). |
| Private work/sole operators | **Not mentioned** within the Summary Offences Act or Restricted Premises Act. | **Legal** with some restrictions on independent sex workers (Sex Work Decriminalisation Act). | **Legal** for a person to work solely (Criminal Code). | **Not mentioned** within the Criminal Code Act or the Prostitution Act. | **Not mentioned** within the Summary Offences Act. | **Legal** but only up to two sex workers can work together (Sex Industry Offences Act). | **Legal** but private workers still need to register (Prostitution Act). | **Decriminalised** (Sex Industry Act). |

# Attachment G - Chronology of Australian migration advice industry regulation

| Date | Key milestone |
|---|---|
| 1948 | ***Registration with no monitoring***<br>The *Immigration Act 1948* provided that a person could become a 'registered agent' by satisfying certain fitness and character requirements. |
| 1958 | The *Migration Act 1958* (the Act) provided that a person who gave notice of their intention to practice as an immigration agent, and who received an acknowledgement of that notice, could practice unless the Minister established they were not fit and proper to continue ('negative licensing'). Penalty provisions for false advertising and overcharging for services were introduced. There was no specialist body to monitor or investigate registered agents. |
| 1989 | The *Migration Legislation Amendment Act 1989* amended the Migration Act and removed the requirement to provide notice of intention to practice as an immigration agent. It inserted penalty provisions directed at the activities of migration advisers. The Act required that agents not engage in false advertising, provide statements of accounts to clients and not misrepresent their relationship with the Government and the Department. |
| September 1992 to March 1998 | ***Commonwealth regulation***<br>The Migration Agents Registration Scheme (the MARS) was established. The MARS included the Migration Agents' Registration Board administered by the Department of Immigration, Local Government and Ethnic Affairs; it was charged with regulating the migration advice sector. The scheme was introduced to address concerns about the lack of consumer protection in the industry. |
| 1997 | *Review of the Migration Agents Registration Scheme*<br>A key finding of the review was that full regulation had achieved mixed results.<br>The MARS had increased consumer protection levels, but its mechanisms for dealing with complaints were expensive, slow and unresponsive to consumer concerns. |
| March 1998 to July 2009 | ***Self-regulation under MIA***<br>Following the 1997 review, the MIA assumed the role of the Migration Agents Registration Authority (MARA). The MIA acted as a regulator of the industry under a Deed of Arrangement with the Commonwealth, which represented statutory self-regulation. |
| 1999 | *Review of statutory self-regulation of the migration advice industry*<br>The review found that while statutory self-regulation had achieved its objectives, the industry was not yet ready to move to full self-regulation. The review concluded that the current period of statutory self-regulation be extended for a further three years until 21 March 2003, with a further review to be conducted within that time. |
| 2002 | *Review of statutory self-regulation of the migration advice industry 2001-02*<br>This review found that the industry was not yet ready to move towards voluntary self-regulation. Further, it found that regulatory intervention was still necessary to alleviate a number of concerns, including the quality of service and the level of professionalism within the industry. |
| 2007-2008 | *Hodges Review*<br>The review made 57 recommendations, including establishing an independent statutory body with greater powers to protect consumers, strengthening the regulatory framework and raising the entry requirements. |

| | |
|---|---|
| July 2009 to June 2015 | ***Return to Commonwealth regulation***<br>The OMARA started operating as a discrete office attached to the Department of Immigration and Border Protection. This structure was a result of the Hodges Review. |
| 2009 - 2012 | The OMARA was led by two SES Band 1 officers: a Chief Executive Officer (CEO) with primary responsibility for external stakeholder relationships and leading the reform agenda and a Deputy CEO with a primary focus on the internal governance and practice. The office was established with 27 staff members. In July 2009 the then Minister appointed an Advisory Board to the OMARA to provide advice and guidance to the CEO. The Board met four times a year to discuss and to advise on pertinent regulatory matters. |
| 2012 - 2015 | In 2012, the OMARA consolidated to one CEO leading a team of four Directors (EL2) and 34 staff members. The CEO reported directly to the Secretary of the Department. |
| 2014 | *Kendall Review*<br>The review examined the performance of the OMARA as the industry regulator, its organisational capability and challenges, and the quality and effectiveness of its internal controls and governance. The Review made 24 recommendations, the majority of which were supported by the Government. |
| July 2015 to present | ***Regulation by the OMARA as part of the Department***<br>The OMARA started to progressively consolidate into the Department of Immigration and Border Protection, pursuant to a recommendation of the Kendall Review. |
| 2015 - present | In 2015, the OMARA consolidated into the NSW Regional Office of the Department, led by an EL2 Director. The OMARA currently is a section of the Immigration Integrity and Assurance Branch, Immigration Integrity, Assurance and Policy Division, reporting to the Branch's Assistant Secretary. |
| 2019 | *JSCOM Inquiry*<br>The JSCOM inquired into the efficacy of the regulation of Australian migration agents and made 10 recommendations. The Government has not yet provided its response to the inquiry. |
| 22 March 2021 | *Removal of unrestricted legal practitioners from the OMARA scheme*<br>Unrestricted legal practitioners providing immigration assistance were removed from the OMARA regulatory scheme, to be solely regulated by relevant state and territory legal professional bodies. This change was introduced pursuant to a recommendation of the Kendall Review. Legal practitioners who hold a restricted practising certificate may choose to remain registered with the OMARA for a transitional period of two years, extendable by the OMARA to up to four years in reasonable circumstances. |
| Oct 2021 | *Migration Agents Instruments Review*<br>The Department conducted a wide ranging thematic review of Part 3 of the Migration Act 1958 (the Act) and related instruments triggered by the sunsetting of four instruments covered by the Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019 (the Declaration). The instruments included in the Declaration deal with the governance of migration agents and are integral to the regulation of the migration advice industry. |
| March 2022 | *The Code of Conduct for Registered Migration Agents*<br>The Code of Conduct prescribed for the purposes of subsection 314(1) of the Migration Act 1958 was updated by the Migration (Migration Agents Code of Conduct) Regulations 2021. |
| July 2022 | Commencement of the expansion of the OMARA to increase its complaint handing and investigation capacity. |

# Attachment J - Offshore biometrics collection program

## Visas subclasses included in the biometrics collection program as of March 2023:

### Permanent Family visas

- 100 – Partner
- 101 – Child
- 102 – Adoption
- 114 – Aged Dependent Relative
- 115 – Remaining Relative
- 116 – Carer
- 117 – Orphan Relative

### Visitors and Other Temporary visas

- 400 – Temporary Work (Short Stay Specialist)
- 403 – Temporary Work (International Relations) – Government Agreement, Foreign Government, Domestic Worker (Diplomatic/Consular), and Privileges and Immunities streams
- 407 – Training
- 408 – Temporary Activity – Invited Participant, Australian Government endorsed event, exchange, sport, religious worker, domestic worker (executive), special program, entertainment activities and research activity types
- 462 – Work and Holiday
- 482 – Temporary Skill Shortage
- 491 – Skilled Work
- 494 – Skilled work (Employer Sponsored)
- 600 – Visitor Visa
- 602 – Medical Treatment
- 771 – Transit

### Temporary Family visas

- 300 – Prospective Marriage
- 309 – Partner (Provisional)
- 445 – Dependent Child
- 461 – New Zealand Citizen Family Relationship (Temporary)
- 870 – Sponsored Parent

### Student visas

- 500 – Student
- 590 – Student Guardian

### Other visas

Applicants for the following subclasses of visa might be required by an officer to provide their personal identifiers after the visa application has been lodged with us:

- 200 – Refugee
- 201 – In-country Special Humanitarian
- 202 – Global Special Humanitarian
- 203 – Emergency Rescue
- 204 – Woman at Risk
- 785 – Temporary Protection
- 790 – Safe Haven Enterprise
- 866 – Protection

# Attachment K - Countries included in offshore biometrics collection program

If you are lodging a visa application in a country included in the biometrics program, regardless of nationality, you might need to provide your biometrics in relation to each visa application you lodge.

## Countries included in the offshore biometrics collection program as at March 2023:

Afghanistan *
Albania
Algeria
Bahrain
Bangladesh
Bhutan
Bosnia and Herzegovina
Cambodia
Colombia
Egypt
Ethiopia
Fiji
France
Ghana
Greece
Hong Kong
Iran
Iraq
Jordan
Kazakhstan
Kenya
Kuwait
Lebanon
Malaysia
Mexico
Myanmar
Nepal
New Zealand
Nigeria
Oman
Pakistan
Papua New Guinea
Peru
Philippines
Qatar
Republic of Korea
Russian Federation
Samoa
Saudi Arabia
Singapore
Solomon Islands
Somalia *
South Africa
Sri Lanka
Thailand
Tonga
Turkey
Uganda
United Arab Emirates
Vanuatu
Vietnam
Yemen *
Zimbabwe

*For these countries refer to neighbouring collection locations

# Attachment L - Giving immigration assistance in Australia

## What is immigration assistance?

Immigration assistance is when a person uses knowledge of, or experience in, migration procedure to assist with visa applications or other visa matters by:

- preparing, or helping to prepare a visa application or other document
- advising about a visa application or visa matter
- representing in, or preparing for, proceedings before a court or review authority in relation to a visa matter.

### Immigration assistance does not include:

- doing clerical work to prepare (or help to prepare) an application or other document, for example scanning or posting documents
- providing translation or interpretation services
- advising another person they must apply for a visa
- passing on information produced by a third person, without giving substantial comment on or explanation of the information.

## Who can give immigration assistance in Australia?

Only registered migration agents, Australian legal practitioners or an exempt person can lawfully give immigration assistance in Australia.

### Registered migration agents

Registered migration agents must meet certain knowledge and character requirements to be listed on the Register of Migration Agents available on the Office of the Migration Agents Registration Authority (OMARA) website www.mara.gov.au

### Legal practitioners

A legal practitioner is a lawyer who holds an Australian legal practising certificate. Legal practitioners can provide immigration assistance in connection with legal practice. Legal practitioners with unrestricted legal practising certificates were removed from the regulatory scheme governing RMAs by the *Migration Amendment (Regulation of Migration Agents) Act 2020* on 22 March 2021. Unrestricted legal practitioners are solely regulated by their relevant state or territory legal professional body. Restricted legal practising certificate holders (RLPC) are able to opt-in to the OMARA registration scheme for an eligible period of up to four years. RLPC holders who opt in are regulated by both the OMARA, for the giving of immigration assistance, and their respective state or territory legal professional body. The Legal Practitioner Consumer Guide provides information on how to report legal practitioner misconduct.

### Exempt persons

A person may lawfully give immigration assistance if they do not charge a fee for their assistance and are:

- a nominator, sponsor or close family member of the visa applicant
- a parliamentarian, a member of a diplomatic mission, consular post or international organisation
- a person providing free help to prepare a submission to the Minister.

## More information

For more information about who can give immigration assistance in Australia, including how to report concerns about immigration assistance providers, please visit the Department of Home Affairs website page 'Who can help you with your application?'.

### Education agents

Education agents are not exempt persons and cannot lawfully provide immigration assistance in Australia unless they are also a registered migration agent or a legal practitioner.

## Penalties for giving unlawful immigration assistance

It is an offence for a person to give immigration assistance in Australia unless that person is a registered migration agent, legal practitioner or exempt person. The penalty for providing unlawful immigration assistance can be up to 10 years imprisonment.

## Reporting unlawful immigration assistance

Any person who gives unlawful immigration assistance in Australia should be reported using the Border Watch Online Report on the Department's website.

