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

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Summary

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 for three months, focussed on assessing 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 **low level private VET and non-award 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 in China and India.

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

Increase capability to verify **biographic data**.

Strengthen identity verification requirements in **ImmiAccount**.

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.

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

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.

Organised crime syndicates and disreputable employers are preying on temporary migrants, who are more vulnerable to exploitation because they may have limited English language skills, limited understanding of Australian workplace laws and visa requirements, and are often exposed to cultural and familial pressures.

Organised crime syndicates are also abusing gaps and areas of weakness in Australia's visa system, to bring criminals or exploited temporary migrant workers into Australia.

This Report identifies these gaps and areas of weakness. 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.

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

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

Case Study No. 1 – Part 1: Key facilitator of a human trafficking syndicate operating in the sex industry

A former temporary migrant has a criminal conviction obtained in the United Kingdom (UK) related to sex trafficking, running a network of illegal brothels, and money laundering. Hundreds of properties around the UK were used to hold women effectively as prisoners, having had their passports removed. The women never came out of the property, stayed naked or semi-naked most of the time, and were directed by the controller of the house to perform extreme and degrading services, including rape fantasies, and unprotected sex. [source: *Trafficked* media reporting]

The former temporary migrant deliberately concealed his criminal history when entering Australia, and has almost certainly been running a similar operation in Australia. [source: the Department of Home Affairs]

It is highly likely the former temporary migrant has been a key facilitator in activities that resulted in the exploitation of other vulnerable temporary migrants working in the sex industry, and in facilitating their entry to Australia through organised exploitation of Australia's student, visitor and protection visa programs. The former temporary migrant is linked to a national network of known and suspected sex workers across Australia, and to money mule activities with women from a number of countries. The former temporary migrant also has links to a broad network of migration agents, education agents, remitters and suspected money laundering organisations. [source: the Department of Home Affairs]

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.[3] 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.[4] 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 ACIC, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Skills Quality Authority (ASQA), and the Australian Federal Police (AFP) liaison.

[3] Attachment B: Police operations [PROTECTED]
[4] Attachment C: Operation INGLENOOK [PROTECTED]

As at 27 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, including 49 who are considered enablers or facilitators. 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, of these, 67 were related to Partner 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 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.[5]

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. 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.[6]

Members of the multi-agency task force will require access to all available federal and state information holdings to support current national criminal intelligence priorities, the ACIC Board current Special Operation Determination on Visa and Migration Fraud, and to augment existing serious organised crime operations. The benefits and effectiveness of multi-agency task forces, especially in instances where agencies have different information gathering and sharing powers, is recognised.[7] 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.

[5] Attachment D: Multi-agency task force structure
[6] Attachment E: State based legislative frameworks for sex work
[7] Parliament of Australia, September 2015, 'Inquiry into financial related crime'

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, investigative skills appear to have been degraded, 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 around 120 investigations staff, 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 ACIC-led 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.

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, random 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.

Police operations have exposed that some RMAs, education agents, and privately owned vocational education and training (VET) providers are helping organised criminals to launder their money.

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 in line with the FATF recommendations to introduce obligations for designated non-financial businesses and professions, also known as 'professional facilitators' or 'gatekeeper professions'.[8]

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'.[9] 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.

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

[9] Attachment F: AUSTRAC Strategic Insights Report [PROTECTED]

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

Case Study No. 2: RMA uses considerable knowledge of Australia's visa system to exploit weaknesses and facilitate criminal activity

A former RMA has almost certainly engaged in fraud to enable non-genuine visa applicants to enter and remain in Australia to act as 'crop sitters' at premises used for cannabis cultivation, and to enable drug offenders to remain in Australia. [source: *Trafficked* media reporting]

As a former RMA, he had considerable knowledge of visa processes and the Migration Act, and is suspected of exploiting gaps and weak points in Australia's migration regulatory regimes, including avenues of independent review. [source: Department of Home Affairs]

The now former RMA has almost certainly provided services to non-citizens that he knows to be engaged in criminal activity, including submitting applications for visitor and student visas containing false and misleading information to facilitate entry to Australia. He is also suspected of securing permanent residence using the partner visa program by facilitating contrived relationships, and submitting non-genuine and unmeritorious protection visa claims. [source: Department of Home Affairs]

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.[10]

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.[11]

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 Part 3 of the Migration Act.
2. Communicate requirements with migration advice industry associations, prospective applicants for registration as a migration agent and all RMAs.

[10] Attachment G: Chronology of Australian migration advice industry regulation
[11] Attachment H: Operational Analysis and Intelligence Assessment [PROTECTED]

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.[12] 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.

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. This capability should develop risk based indicators to support a targeted program of compliance action. 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 (noting that recruitment activity is currently underway for skilled and qualified investigators). This team is currently investigating allegations regarding a number of RMAs, in consultation with Operation INGLENOOK where relevant.

[12] Parliament of Australia, September 2021. 'Select Committee on Temporary Migration'

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 investigations where individual RMAs are suspected to be exploiting Australia's visa system. Without this capability, individual bad actors who are unlikely to meet the threshold of a multi-agency task force, will have a metaphorical licence to continue to behave contrary to the legislation and code of conduct, and poor behaviour in the industry will continue to be problematic.

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. Section 3E search warrant information is currently available to departmental case officers making decisions on visa and citizenship applications, but is unable to be shared with the OMARA.

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 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. 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. 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.[13]	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.[14]	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.[15]

Some RMAs are deliberately concealing their involvement in their client's visa applications to enable organised crime groups to facilitate the entry and stay of non-genuine visa applicants, potential illegal labour hire arrangements and other criminal activity. 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.[16] Immigration NZ must refuse applications from an adviser who is neither licensed nor exempt.[17]

A 2002 survey of Australia's overseas immigration posts found that, on average, 40 percent of the migration agents they dealt with were unregistered.[18] 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.

[13] Immigration and Refugee Protection Act 2001, s91(9), last amended 15 December 2022
[14] Immigration Advisers Licensing Act 2007, s63, s71, s72, last amended 12 April 2022
[15] Linklaters, 1 April 2015, 'Statutory maximum fine now unlimited'
[16] Law Central, accessed 23 March 2023, 'Immigration Consultants of Canada Regulatory Council'
[17] Immigration Advisers Authority, accessed 23 March 2023, 'Who can give advice?'
[18] 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 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 Part 3 of 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.

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

Case Study No. 3: Network of professional facilitators exploiting student visa program to facilitate work in the sex industry

A network of corrupt education agents and RMAs united through family ties and business co-ownership, is likely to be enrolling non-genuine students in education providers that are also owned by the network.

The network's services are likely being used to enable at least 128 sex workers to maintain student visas without having to attend classes or complete course requirements. Sex workers seeking a student visa are known to pay $4,000-$5,000 to education agents, who in turn pay education providers to obfuscate their attendance and course progression requirements. Of the 128 sex workers linked to a specific network, 89 were enrolled with an education provider identified as complicit in receiving payments for falsification of attendance and course assessments.

There is almost no non-compliance reporting against students from education providers that are part of the network, with the network's complementary fields of specialisation (education agents, RMAs, and controlling interest in several education providers) almost certainly providing the capability to facilitate migration fraud on behalf of student visa applicants.

Practices used by the network could also be conducive to trafficking and exploitation of sex workers. The network is almost certainly capable of managing almost all aspects of visa and study related transactions required for a student visa grant. Many visa applications contain applicant signatures digitally lifted from a scan of the applicant's passport, and appear on documents that provide consent for third parties including RMAs and legal practitioners to act on the applicant's behalf.

[source: Department of Home Affairs]

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.[19]

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 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.[20] 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.

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

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.[21]

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, ASQA, and TEQSA.
2. Consideration be given to the benefits of adopting a similar model to the US.

Significant challenges are also recognised, particularly in the VET sector, with regard to non-genuine providers and collusion between providers and their agents. There are currently around 800 VET providers of international education. The VET sector is more dispersed, and there is more churn with 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 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.

The Department has intelligence holdings on networks of education providers, education agents, and RMAs involved in serious organised crime related to student visas. This risk is most prevalent in private VET providers, offering lower level courses and qualifications.

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. A targeted compliance operation (supported by state and federal agencies) should be undertaken to obtain a better understanding of the extent of exploitation carried out by CRICOS-registered private VET providers, including the nature of VET courses where exploitation appears more prevalent.

[21] Attachment I: Intelligence Assessments [PROTECTED]

Recommendation 14: Conduct a targeted compliance operation for three months, focussed on assessing private VET providers.

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Department of Education and ASQA.
2. Engagement with state and federal agencies.

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 Australian Tax Office, ACIC, and AUSTRAC 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 the role of TEQSA and ASQA, with a view to expanding the primary focus beyond regulating the quality of education.
2. Engagement through regulators' Community of Practice between key agencies; Departments of Education and Home Affairs, TEQSA, ASQA and state and territory education departments.

A known risk indicator is student attendance, particularly students who have withdrawn from a course, not re-enrolled in a new course, and are known to be in Australia. This is particularly prevalent in the VET sector (estimates suggest up to 15 percent of student visa holders), occurring at a rate almost four times than the higher education sector (estimates suggest up to 4 percent of student visa holders). 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 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.

Actions that would deliver on this recommendation include:

1. Engagement between key stakeholders: Departments of Education and Home Affairs, ASQA, VET providers, and Jobs and Skills Australia.
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 and 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

Case Study No. 4: Temporary migrant victims of employer abuse and exploitation in the sex industry

Across a number of ABF and police operations, there is commonality to the appalling stories of employer abuse that temporary migrant victims experience in the sex industry.

Stories about temporary migrants with little or no English who have been held in sexual servitude for weeks without being allowed to leave hotel or motel rooms. Victims with debt bondage agreements that average between $40,000 and $50,000. Male 'clients' lined up, one inside the room, one outside the door, one down the hallway, usually of the victim's same nationality, entering the room one after the other to undertake sexual activity with the women.

Call centres with hundreds of phone lines, operating nationally. A controller who moves the women around so they are unaware of their location within Australia, aided by complicit hotel and motel managers.

ABF and police operations have found victims usually arrive in Australia on tourist or student visas:

- 'High end' sex workers generally arrive on tourist visas, and travel in and out of Australia every two to three weeks. Controllers charge each man between $2,000 and $3,000 for sexual services from these women operating from hotels.
- Sex workers aged approximately 25 to 60 years old generally arrive on student visas (with those aged over 35 years old usually studying English Language Intensive Courses for Overseas Students), and are enrolled with education providers of the victim's same nationality. Controllers charge men between $80 and $800 for sexual services from these women operating from brothels.

Controllers have been found to turn over millions of dollars annually operating businesses built on the exploitation of vulnerable temporary migrants.

[source: ABF and police based operations]

The 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.[22] 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.[23]

It has been found that temporary migrants destined to work in the sex industry are at higher risk of being exploited, abused, or trafficked.[24] 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.

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[22] Parliament of Victoria, June 2010, 'People Trafficking for Sex Work'
[23] Parliament of Australia, December 2017, 'Hidden in Plain Sight'
[24] Government of Canada, June 2013, 'Regulations Amending the Immigration and Refugee Protection Regulations'

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.[25] 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.

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.[26]
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.

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[25] House of Commons Canada, June 2022, 'Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act'

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

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.

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

Case Study No. 1 – Part 2: Key facilitator of a human trafficking syndicate operating in the sex industry

The former temporary migrant introduced in Case Study 1 – Part 1 deliberately concealed his criminal conviction when entering Australia, and it was not until he applied for a visa that required him to provide biometrics that his criminal conviction obtained in the UK became known to the Department.

The former temporary migrant arrived in Australia in December 2014 on a student visa, he subsequently applied for a partner visa in March 2016, and also held a number of bridging visas between March 2016 and November 2022.

Character checks for the student and partner visas were completed using information provided by the former temporary migrant, including Australian and Chinese police clearance certificates which identified no convictions. The visa applications were not included in the Department's biometrics collection program, and the former temporary migrant did not declare any criminal convictions, travel to countries other than China and Australia, or removal or deportation from any country. Travel to Australia was undertaken on the former temporary migrant's newly issued, but genuine passport.

In May 2021, the former temporary migrant applied in Australia for a protection visa. This visa is one of 33 visa subclasses included in the Department's biometrics collection program. On 3 June 2021, the former temporary migrant provided his biometrics in response to a request issued under section 257A of the *Migration Act 1958* (Migration Act), and on 15 June 2021, the Department received advice from the UK regarding the former temporary migrant's criminal conviction.

[source: Department of Home Affairs]

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.

Australian and other Migration 5 (M5) countries have established agreements to exchange information based on fingerprint biometric match.[27] Since February 2019, all fingerprints captured through the Department's offshore biometrics collection program are sent automatically in near real time to Canada, NZ and the US for checking. UK checks are manually processed and limited in quota (currently 225 per week) with available places allocated based on risk. Information exchanged manually with the UK can take several business days. The resultant information from M5 countries is considered by visa processing officers when assessing a visa application.

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.

[27] (M5) is an immigration forum comprising Australia, Canada, NZ, the UK and the US

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,[28] and
- visa application lodgements made in 53 countries (regardless of the applicant's nationality).[29]

Chinese and Indian travellers represent significant volumes of temporary visa holder arrivals into Australia. However, India is not yet included in the biometrics collection program, and only one visa subclass has been included for China: the 'visitor visa frequent traveller' stream that can be granted for up to 10 years to Chinese citizens who travel often to Australia for business or personal reasons.

In 2018–19, of the 8.8 million temporary visas granted, approximately 1.6 million were to Chinese travellers and over 500,000 were to Indian travellers.[30] Given the significant volume of travellers from China and India, further rollout of the biometrics collection program in China and India should be prioritised, particularly for higher risk visa subclasses.

Recommendation 25: Prioritise the offshore biometrics collection program rollout in China and India.

Actions that would deliver on this recommendation include:

1. Leverage M5 biometric collection centres in China and India 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.[31]

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 also appear 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.

[redacted]

[28] Attachment J: Visa subclasses included in offshore biometrics collection program
[29] Attachment K: Countries included in offshore biometrics collection program
[30] The COVID-19 pandemic significantly impacted traveller arrivals into Australia from 2019-2022; 2018-19 provides the most useful measure for this purpose
[31] Australian Institute of Criminology, February 2014, 'Effective drink driving prevention and enforcement strategies: Approaches to improving practice'