

26 August 2008

Stephen Dunstan  
Immigration Policy Manager  
Workforce Policy Group  
Department of Labour  
56 The Terrace  
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Dear Stephen,

**IMMIGRATION ADVISERS LICENSING ACT 2007**

Thanks again for your email about the Immigration Advisers Licensing Act 2007.

I have undertaken further consultations within the industry with a group of providers – six randomly selected institutions (2 schools, 2 polytechnics and 2 universities) and asked them to identify the non-student visa/permit advising that they currently undertake on a day-to-day basis. In response, they have given me thirty examples of what they consider to be non-student visa/permit advising that are likely to be a breach of the Immigration Advisers Licensing Act after May 2009.

**Types of people that will need to become licensed under the Immigration Licensing Act 2007**

Please note these issues/questions arise for the following onshore persons within the international education sector/industry, and our reading is that they will need to become licensed if their assistance for international students goes beyond: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers:

Onshore:

- international student advisers;
- scholarship managers and their staff;
- study abroad managers and their staff;
- general student support staff;
- guardianship managers/advisers;
- pastoral care managers/advisers;
- student union advisers;
- international student support clusters/buddy groups; and
- international students themselves.

Offshore:

- school Principals/Deputy Principals;
- ITP and PTE Chief Executives;
- University Pro Vice Chancellors;
- general marketing staff from all types of institutions that attend education fairs and offshore promotions;
- former international student alumni (that assist ENZ and institutions in marketing events offshore); and
- university and other TEI academic researchers that attend research collaboration forums

As you can see, there are a wide range of people in the education sector who assist international students and are potentially at risk of prosecution.

Perhaps the most absurd example as a result of the legislation is that international students will need to become licensed in order to talk to each other about immigration matters. Because international students are far away from home they often form close-knit groups with other international students. Both ENZ and institutions are encouraging this informal networking as an additional support mechanism for international students. Our advice suggests that as a result of the Act, international students are unable to even talk to each other about immigration matters (such as applying for permanent residency) unless they themselves become licensed.

**Issues/Questions**

Please find annexed to this letter the list of issues and questions that institutions are dealing with on a daily basis. We respectfully request that DoL provide a formal response to Education New Zealand on each particular question of whether answering/advising on each topic is a breach of the Act by responding to the “yes” or “no”.

From the industry's perspective, it is quite clear that education sector personnel are not immigration agents, because for the vast majority, they are in the business of selling education services to foreign nationals. Because the State sector dominates the scene (with about 80% of the market by economic value), their core business is prevented from going beyond providing education services, and therefore very few of them have the remotest interest in morphing/evolving into immigration agents.

However, we are in the business of selling something - I know this commercial reality can sound rather crass in education circles, but that is the reality. As such, the sector needs to adopt a value-adding, customer-is-always right attitude when they are soliciting for prospective students. If they are to successfully recruit a student, they need to be able to positively respond to the following question, which is fairly typical: “if I come to NZ and complete my Masters Degree, could I apply for permanent residency at the conclusion of my degree?”. To respond negatively (or in a bureaucratic way, but saying they cannot comment on this and instead direct them to a website), simply means that they will not successfully recruit the student and the student will simply go to Australia where institutions can provide a more customer-focussed approach.

In terms of the extent of the problem that we are trying to fix, we have severe doubts that the handful of cases referred to by the Ministry of Education as justification for including education is symptomatic of a wider problem with international students (this small handful of cases needs to be considered alongside the fact that we have 96,000 students in the country, and our supply-side research indicates that the vast majority of them return to their home country happy with their experience).

If the industry is prevented from answering the annexed questions, the Department of Labour needs to offer urgent advice on how they will effectively and efficiently counsel students who will continue to have these type of enquiries. Bluntly, we question how directing them to a website is an effective way of responding to a personal and complicated enquiry. The type of enquiry that emerges from students seeking more information about long term post-qualification opportunities for them in New Zealand.

Should the student have further questions beyond the "Frequently Asked Questions" that could be answered on a website, has the Department calculated the cost of dealing with many high/intense level of enquires into your planning budgets? Each enquiry institutions receive in this area is specific and personal, and requires a personalised response, and usually includes a number of follow up hours.

If the industry is not exempted from answering these sort of queries, we wish to request the Department's response on how DoL will meet the needs and service demands of these students - have they calculated the cost of answering and attending to possibly thousands of specific enquiries - and more broadly, has DoL calculated the lost opportunity cost to New Zealand as a whole when skilled students who would contribute to New Zealand's economic and social develop choose to study/immigrate in another country?

### **Going Forward**

Bearing these points in mind, we request that the Department exempt New Zealand education provider Code of Practice signatories (we have a draft of an Aide Memoire for the Minister requesting this exemption), but make it a requirement that when asked immigration advice questions they can express a lay-person's opinion but they must refer people to either the DoL's website or your list of approved/accredited/licensed immigration agents.

In ENZ's opinion, this simple, common-sense modification would get around the whole problem. Potentially this could be a win-win that keeps everyone happy.

In practice, this would mean that if asked the question "If I come to NZ and complete my Masters Degree, could I apply for permanent residency at the conclusion of my degree?". The education recruiter would give an honest and helpful answer (and as required under the Code of Practice, the immigration information imparted would also need to be accurate and up to date), but that they would then say "...but I'm not an immigration agent, and I recommend that you direct that specific question to an immigration agent – here is a list of NZ licensed immigration agents (then handover the list of IAA approved agents)".

In terms of a meeting to discuss this, I'm happy to work around your diary. I look forward to hearing from you.

Regards,

Robert Stevens  
Chief Executive

Topic/Issue/Question	<p>Is assisting or advising on this by answering the question a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following:</p> <p>(i) providing DoL information, either printed material or directing them to DoL's website;</p> <p>and/or</p> <p>(ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>	
	YES	NO
<b>QUALIFICATIONS AND IMMIGRATION</b>		
1. "What levels of qualifications provide points for immigration purposes?"		
2. "How many points will this qualification give me towards immigration?"		
3. "How many points are required to immigrate to NZ?"		
4. "Which study programmes that you offer will provide me with points towards immigration?"		
<b>SKILL SHORTAGE LIST</b>		
5. "Which occupations are on the skills shortage list in NZ?"		
6. "Which programmes do you offer that will help me get employment in a skills shortage area?"		
<b>WORK PERMITS</b>		
7. "At the end of my course should I apply for a graduate work permit or a work permit if I get a full-time job offer?"		
8. "Which permit will help me to get residency in NZ?"		
<b>PERMANENT RESIDENCY</b>		
9. "Which qualification will help me to gain residency?"		
10. At an offshore education fair a prospective international student enquires: "If I come to New Zealand to study with your institution and complete my qualification, can I apply for permanent residency at the conclusion of my degree/qualification?".		
11. A current international student asks: "Will my current study programme assist me to get residency?"		

12. "How long will it take to process my residency application?"		
13. "Will they recognise my overseas qualification/s?"		
<b>APPRENTICESHIP</b>		
14. "Can I get a work visa to do an apprenticeship in NZ and complete my trades qualification?"		
15. "If I qualify in a trades area will I be able to apply for residency?"		
16. "Will a trade qualification help me to get permanent residency?"		
17. "What trades are on the skills shortage list?"		
<b>GUARDIANSHIP</b>		
18. Staff at New Zealand educational institutions regularly assist and advise international students in the preparation of their applications, including taking them to have their medicals, police checks, and assistance in filling in forms etc.  Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?		
19. Staff at educational institutions are asked to help when the parents and family members are coming out to visit, or apply for work or for residency.  Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?		
20. Staff at educational institutions issue invitations for certain groups and individuals to visit New Zealand and their institution. Although we suggest they go and read the DOL website their English is sometimes at a level where they do not fully understand, and so where does the line between giving advice end and overstepping the mark begin?  Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?		
<b>WORKING HOLIDAYS FOR INTERNATIONAL STUDENTS</b>		
21. What about helping our students who want to stay on for a holiday or to work after they have finished their course of study?		

<p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>22. What about undertaking, assisting with, or advising on, variation of conditions for international students who want to work on a student permit.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>23. Staff at educational institutions (both schools and TEI's) often get asked whether a child of a parent with a work permit can study as a domestic student.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>24. Staff at educational institutions (both schools and TEI's) often get asked whether a child of a parent studying for a PhD can study as a domestic student.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>25. Is assisting/advising on any aspect of working holiday programmes a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<b>EMPLOYING OVERSEAS TEACHERS/LECTURERS</b>		
<p>26. What about assisting Japanese Language Assistants that come out to NZ and ask advice of how to go about the process?</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>27. What about the teachers from other countries who have</p>		

<p>applied for a teaching position and need a work permit to come out and work, but need advice on the procedure of applying, getting their teaching qualifications recognised, teacher registration etc.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p><b>OTHER</b></p>		
<p>28. An area we often discuss with students is the consequences regarding their student visa should they break the NZ law or school rules. The advice can go beyond the consequences for their student visa, including the implications of the (non-student permit) status of their parents/guardians and/or their work permits.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>29. A Chinese student makes an enquiry about the impact of the New Zealand-China Free Trade Agreement – specifically, whether they can return to New Zealand following their graduation to work as a temporary intra—corporate transferee.</p> <p>Is assisting/advising on this a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		
<p>30. An international student makes an enquiry about learning the words of the New Zealand National Anthem – so that they can better their chances of becoming a permanent resident with the eventual aspiration of becoming a New Zealand citizen.</p> <p>Is assisting/advising on the words of the New Zealand National Anthem a breach of the IAL Act if the New Zealand educational institution staff member goes beyond the following: (i) providing DoL information, either printed material or directing them to DoL's website; and/or (ii) directing the prospective student to the NZ Minister of Immigration, DoL staff, or giving them a copy of the list of licensed immigration advisers?</p>		