

The Legality and Standards of Commission-based Recruiting

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This paper will examine the present state of play from the perspective of one who worked within the Australian recruiting system, and who now is a strong advocate for American universities to adopt these time-tested innovations.

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Prologue

For many years, American colleges and universities have been utilizing agents of various types to recruit international students. Most institutions undertake such strategies in the absence of clear ethical guidelines for international recruitment, and virtually no understanding of best practices and industry standards which have been evolving globally.

Most American institutions shy away from commission-based recruitment due to legal and ethical concerns. Many of these campuses – if they utilize agents at all – solely work with agents who exclusively charge a fee to students, and over whom the institution wields little, if any, influence. A significant percentage of international students – perhaps as much as 20% from some markets – apply and are admitted to American institutions with the assistance of agents unbeknownst to the recipient institutions, which have had no prior contact and have provided no guidance or assistance to the process.

The present situation should be a significant concern to all responsible colleges and universities. International recruiting practice requires both professionalization and the adoption of common practices and standards to ensure the highest level of integrity to the international admissions process.

Introduction

IDP Education Australia was formed by the Australian universities in 1969 to manage their growing international development program activities. As time passed, its functions evolved and expanded. By the mid-1980s, IDP's growing network of international offices was acting as recruiting outposts for Australian institutions. IDP pioneered the development of commission-based recruitment methods. In 2004, IDP recruited 18,565 students for Australian institutions, accounting for 21.2% of student visas issued.¹

IDP's approach to student recruitment became a model for other agencies. By the 1990s, many commission-based recruiters emerged, primarily catering to the rapidly expanding Australian educational export industry. Throughout this period – and even up until today – most American universities have refused to adopt a commission-based recruitment methodology.

Stop Blaming 9/11

Foreign student enrollments in the United States remain lackluster despite the passing of six years since the terrorist attacks. Many U.S. colleagues persist in blaming the State Department for perceived blockages in visa issuance. However, there is an abundance of evidence that visa problems have eased in recent years. The

¹ Melissa Banks, Head, Research Services, IDP Education, personal communication, February 11, 2008.

State Department has added hundreds of new consular officers worldwide, and visa processing times have declined as approvals have increased in recent years.

At the University of Cincinnati, where more than 2,000 international students are enrolled and about 450 new students arrive each year, the number of rejections annually are very small, typically fewer than a dozen.

If, in fact, visa processing has improved in recent years, should not growth in U.S. student numbers track similarly to that of Australia, a U.S. ally in the same War on Terror? But this is not the case. Table 1 shows the number of international students in the two countries over the most recent twelve year period for which data is available.

Table 1
International Students Enrolled in Australia and the United States: 1994/5 to 2005/6

	1994/5	1995/6	1996/7	1997/8	1998/9	1999/0
Australia	35,290	39,685	46,773	52,897	56,897	60,914
United States	452,635	453,787	457,984	481,280	490,933	514,723
	2000/1	2001/2	2002/3	2003/4	2004/5	2005/6
Australia	72,717	86,269	116,236	135,683	151,304	163,930
United States	547,867	582,996	586,323	572,509	565,039	564,766

Most interesting is the graphic comparison below. When looking at total international enrollment, it becomes clear that Australia grew while the U.S. stagnated, particularly during the most recent five-year period (Chart 1).

More shocking, however, is the relative growth experienced by these two countries. Chart 2 illustrates the relative growth of Australia and the U.S. over the same period, starting at the same indexed of 100 for 1994/5. During that period, the U.S. grew only to an index of 125, while Australia grew to a staggering index value of 465.

The obvious stagnation of U.S. international enrollment, particularly in the context of improved visa processing – and especially in light of the dramatic growth in Australian enrollment during the same period – screams out for another explanation. Blaming U.S. problems on its consular officers may be convenient, but it is also lazy and perhaps even intellectually dishonest.

In this author’s view – which is informed though personal experience within the Australian recruiting machine – the reasons lie in marketing: In particular, Australia’s use of a proven approach, and America’s rejection of the same.

Chart 1
Total International Enrollment

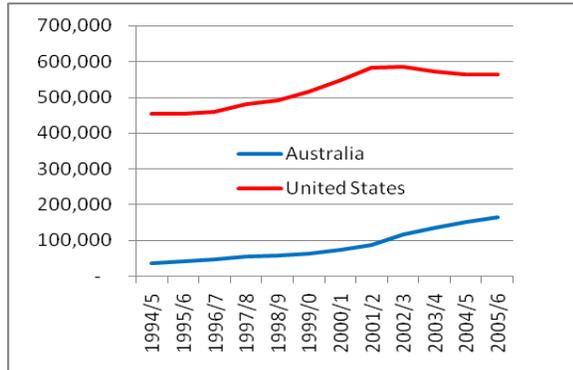
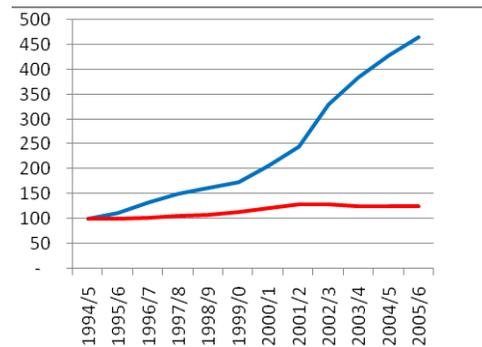


Chart 2
International Enrollment Index
(1994/5 = 100)



Generalizing about American International Recruitment Practices

To the extent that American colleges and universities engage in international recruitment, most have changed their approach very little since the 1960s. Exceptions exist, but in general the following pattern is pervasive:

- Heavy reliance on Road Shows and Recruiting Fairs. The companies and organizations that specialize in these activities are not without value. However, they are high-cost, short duration, and lack adequate follow up.
- Minimal use of Local Recruiting Teams. Most institutions do not have well developed alumni organizations which are capable of assisting with student recruitment, nor do they utilize professional, local academic counselors and recruiters.
- Inappropriate Recruiting Organizations. Some institutions utilize recruiters, but largely focus on those that charge fees to students and who are not compensated on a success-based commission model. In some cases these agents charge exorbitant fees (thousands of dollars) and make extreme promises to relatively uninformed consumers.
- Long Distance Counseling. Since most institutions do not have a reliable local presence, all advising – from initial inquiry through application – must be done by staff based in the United States. These staff are located in the wrong time zone, usually do not speak the language of the applicant, may not understand the nuance of the foreign education system, and are generally not well positioned to see a high percentage of inquiries through to conversion.

In short, American institutions engage in “Helicopter Marketing”: They drop in, and take off. U.S. international recruitment practices tend to be *high cost, short half-life* and *low impact*. A model developed in the 1960s, but clearly unsuited to the conditions of the 21st century.

Australian International Recruiting Methods

Australian universities work almost exclusively with commission-based agents. Their approach is decidedly *sustained, success-based* and *localized*.

Australian universities typically pay agents 10% of the first year’s tuition paid by the student. This fee is paid following matriculation of the student each semester during the first year. Effectively, this model allows

for a cost-shift: many front-end admissions processes are *outsourced* to a trusted third-party who can perform the tasks more efficiently.

Unlike most American universities, Australian universities rely on local experts, permanently in-country, operating on the same time and in the same language as their student prospects. Recruiting fairs are seen as a supplemental activity – not a central activity – and are more frequently staffed by the representative and alumni. Overseas visits by university staff are much more focused on training agents and interviewing pre-screened candidates who already have been vetted as strong prospects.

No superficial “helicopter drops” for the Australians; they employ a “flat world” strategy.

Time to End American Exceptionalism

While the world has marched on, and the British, New Zealanders, Canadians, Irish, and others, have adopted the Australian recruiting model, Americans seem incapable of adapting to the new reality.

In numerous conversations over the past five years with American admissions officers, international administrators, and even senior staff working within the Institute of International Education (IIE), two refrains are often repeated when asked why American universities are not adopting what is clearly a successful recruiting model. The most frequent reasons given are:

“It’s illegal. Title IV prohibits paying commissions to recruiters. And the National Association for College Admission Counseling (NACAC) prohibits the practice.”

And,

“It’s unethical. Agents do not work in the interest of the students.”

Statements such as these reveal a misunderstanding of the situation that presently exists. Legality is not the issue, but concerns of ethical practice very much are at issue.

Title IV Does Not Prohibit Commission-based Recruitment of International Students

It cannot be more explicit than this (from Title IV):

(b) By entering into a program participation agreement, an institution agrees that –

(22)(i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that ***this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.*** [italics added]

Many university administrators – particularly admissions officers for whom NACAC is the primary professional organization and a key element of domestic recruiting strategy – continue to maintain that commission-based recruiting is explicitly prohibited.

In fact, NACAC’s Statement of Principles of Good Practice (SPGP) does state, under Mandatory Practices (section I.A.3), that Members agree to: “[N]ot offer or accept any reward or remuneration from a secondary school, college, university, agency, or organization for placement or recruitment of students.”

This apparent prohibition caused the University of Cincinnati to seek clarification from NACAC. In response to UC’s inquiry in late 2005, and in correspondence as recently as February 2008, the Director of Public Policy wrote, “[NACAC’s] SPGP does not specify whether its ban on commission payments applies to

recruiters of foreign students. However, the ban on commission payments is binding for NACAC member institutions. One practical limitation on the enforcement of our restriction is the fact that federal law, which bans ‘commissioned sales in admission’ domestically, specifically exempts recruiters of foreign students.”² Unlike many university administrators, NACAC has, in fact, read Title IV.

The practice is legal. That point is settled. But can commission-based recruitment of foreign students be undertaken in an ethical manner?

The Question of Ethics: Who Has the Most Ethical Standards?

Whether Americans know it or not, a highly developed regulatory framework for working with commission-based recruiters already exists, one which is becoming an international standard of best practice, consumer protection and ethical practice.

The foundation of this framework is the Australian Educational Services for Overseas Students Act (ESOS) 2000.³ The ESOS Act came about as a response to ethical lapses that occurred in the recruitment of foreign students in Australia during the 1990s. While these problems were primarily contained to the English language training sector, there was significant concern among government and universities that the resulting backlash could jeopardize Australia’s fledgling education export industry. This landmark *criminal code* legislation is the first of its kind and has benefits even for non-Australian institutions involved in international recruiting.

The ESOS Act is comprehensive legislation focused on quality assurance and consumer protection.

[The ESOS Act] protects Australia’s reputation for delivering quality education services and the interests of overseas students ... The legislation mandates a nationally consistent approach to registering education providers so that the quality of the tuition, and care of students, remains high. The professionalism and integrity of the industry is further strengthened by the ESOS legislation’s interface with immigration law. This imposes visa related reporting requirements on both students and providers...⁴ [underlining added]

The ESOS Act also mandated the creation of a National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students. The National Code is a set of fifteen nationally consistent standards that govern the protection of overseas students and delivery of courses to those students.⁵ The standards include the following broad categories: Pre-enrollment Engagement of Students, Care for and Services to Students, Students as Consumers, The Student Visa Program, and Staff, Educational Resources and Premises. Standard 4, which falls under Pre-enrollment, exclusively addresses Educational Agents.

Like all good standards, this one specifies an Outcome:

“[Educational institutions] take all reasonable measures to use education agents that have an appropriate knowledge and understanding of the Australian international education industry and do not use agents who are dishonest or lack integrity.”

Standard 4 then lists four directives specifying the obligations required of educational institutions to achieve this outcome.

The ESOS framework has spawned a number of related documents which collectively can be considered a significant trade regime. For example, the Australian Vice-Chancellor’s Committee (AVCC), the counterpart organization to the American Council of Education (ACE) in the United States, has developed its own *Code of*

² Note that this should *not* be interpreted as an endorsement of the commission-based approach by NACAC, which continues to have significant concerns regarding the ethical basis of such practices.

³ http://aei.dest.gov.au/AEI/ESOS/EasyGuide_ESOS.htm

⁴ <http://aei.dest.gov.au/AEI/ESOS/Default.htm>

⁵ <http://aei.dest.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm>

Practice and Guidelines for Australian Universities.⁶ The AVCC Code explicitly references the ESOS Act and the National Code, and specifically addresses recruiting agents. The AVCC mandates appropriate practices relative to agents in 13 separate sections.

So, how real is all of this? How can such a law and codes of conduct affect the behavior and practices of agents outside of the reach of Australian law? The answer is simple. As mentioned above, the ESOS Act is *criminal code* legislation. Violations of certain sections of the Act can result in prison time for Vice Chancellors. University officers are required to police the organizations with which they have relationships – and they do.

Two examples will suffice. If an agent provides false or misleading information to a prospective student and the student is damaged as a result, a criminal penalty of one year in prison applies. If an agent recruits a student based on a bogus program, and the university does not take corrective action prior to the damage occurring, a two-year penalty applies. These kinds of sanctions have resulted in very close scrutiny of agents by Australian university administrators, even to the point of having agents attend training sessions and memorize sections of the ESOS Act. Every agent working with an Australian university is expected not only to know what the ESOS Act is, but what the consequences of its violation are. This has led to a rapid improvement in professionalization among commission-based agents.

Evidence of this professionalization is evidenced in the 1996 establishment of the Association of Australian Education Representatives in India (AAERI).⁷ AAERI is an independent organization formed at the initiative of the Australian High Commission to assure the integrity and credibility of agents who are recruiting students on behalf of Australian institutions.

Members of AAERI are bound by three core principles:

- Members abide by a Code of Ethical Practices, which must be displayed in their office. It is notable that the first item listed in the AAERI Code is that members “will...abide by the ESOS Act...”
- Members agree to serve prospective students honestly and fairly, provide them with accurate and unbiased information and to refer students to other agents if appropriate
- Members agree to charge only a nominal fee to students, up to a maximum limit prescribed by AAERI (currently no more than approximately US\$220).

This last point is considered very important. AAERI is trying to eliminate the practice of charging exorbitant fees and making extraordinary promises to students and parents, which often creates unrealistic expectations and extreme disappointment. The fee which some, but not all AAERI members charge, is primarily for two purposes: 1) to serve as earnest money to separate serious applicants from those who are on fishing expeditions, and 2) to recover some of the cost of expedited international mail and telephone calls.

It is notable that AAERI is now in discussion with agents in China about creating a parallel organization there, to further professionalize agency recruitment in the People’s Republic.

Prescriptions for a Sick Patient

The foregoing discussion should put to rest concerns about the legality of commission-based recruitment, and should allay some concern about what is perceived as a “Wild West” environment. An understanding of the prevailing conditions can create the conditions for improved recruiting, utilizing new models.

American institutions need to reflect on several things:

- Leadership is not a permanent condition – it must be earned

⁶ <http://www.universitiesaustralia.edu.au/documents/publications/CodeOfPracticeAndGuidelines2005.pdf>

⁷ <http://www.aeri.org/>

- American colleges and universities are not presently competing for students – they should
- Collective marketing can bring benefit to all – the Australians have perfected the approach
- Most experts aren't – demand evidence before dismissing new ideas
- Adopt standards where they exist, don't re-invent them

The Cincinnati Principles – Guidelines for Success in Recruiting

In late 2005, the University of Cincinnati began its journey toward commission-based recruitment. UC's first agent agreements were signed in January 2006, and success in the first two years is very apparent. In the course of the work, UC has developed 10 principles which are not written in stone, but which guide all agent-related actions, and against which assumptions are tested.

If your institution is serious about changing course, consider these principles as you plan your new international recruitment strategy.

1. Work with well-established commission-based agents who already work with the Australian universities.
2. Refuse to work with agents who exclusively charge students.
3. Always check the references of agencies under consideration.
4. Demand that agents operate as though the ESOS Act applies to your U.S. institution.
5. Embrace best practices that are already in place, and do not re-invent the wheel.
6. Utilize the Australian agency agreement with as few modifications as possible.
7. Work within the established operating framework with which agencies are familiar and comfortable – adapt your admissions and marketing practices to the new reality.
8. Establish a dedicated international admissions office to coordinate agency relationships and support their efforts.
9. Do not appoint more than three agents in any given country, and avoid appointing fewer than two.
10. Collaborate with your local competitors – embrace *co-opetition* – the result will be economies of scale in an expanding market with accelerated benefits for all.

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