



Australian Government

Department of Education and Training

Efficacy of current regulation of Australian migration agents

Submission from the Department of Education and Training
to the *Joint Standing Committee on Migration*.

Opportunity through learning

Efficacy of current regulation of Australian migration agents

Introduction

The Department of Education and Training (the department) welcomes the opportunity to make a submission to the Joint Standing Committee on Migration.

The department is responsible for administering the *Education Services for Overseas Students Act 2000* (ESOS Act), which establishes legislative requirements and standards for the quality assurance of education and training institutions offering courses to international students who are in Australia on a student visa. This includes regulation of education providers that engage education agents to recruit overseas students.

In 2017, there were 624,001 students studying in Australia, and international education provisionally contributed \$32.2 billion to the Australian economy.

Education Agents

Education agents play an important role in Australia's international education sector and in providing prospective international students with high quality advice. While there is no legal requirement under Australian law for international students or providers to engage an agent, education providers often engage education agents to recruit students on their behalf. Education agents operate in a global market with students drawn from a broad range of countries. Students use the services of an education agent due to their geographic distance from Australia, ease of language communication, and understanding of cultural requirements.

In 2017 education providers reported that education agents were involved in almost three-quarters of all international enrolments. Some education agents may also be registered migration agents. Table 1 shows a gradually increasing trend in the proportion of international student enrolments facilitated by education agents.

Table 1: Percentage of agents involved in student enrolments by sector

Sector	Total % of enrolments by sector in 2017	2013 (%)	2014 (%)	2015 (%)	2016 (%)	2017 (%)
Higher Education	44	61.2	64.6	67.5	70.2	71.0
VET	27	62.6	66.8	70.8	70.9	72.9
ELICOS	19	78.6	81.5	82.8	83.8	85.1
Non-Award*	6	49.0	49.6	48.3	53.5	52.0
Schools	3	72.7	72.7	74.5	74.5	76.2
All Sectors	**99	65.1	68.5	71.2	72.4	73.6

Sourced from voluntary records by education providers in the Provider Registration and International Student Management System

VET: Vocational Education and Training

ELICOS: English Language Intensive Courses for Overseas Students

*Non-Award courses include courses that do not lead to a qualification, including Foundation Courses and Tertiary Preparation Programs

** does not equal 100 % due to rounding

Since 2013, the number of enrolments involving education agents recorded in the Provider Registration and International Student Management System (PRISMS) has increased by 8.5 per cent. This may be partly due to the increased rate of voluntary reporting in the PRISMS interface of education agent involvement in enrolments.

Table 2: Percentage of agent involvement by nationality, for Australia's top 10 source countries

Ranking for enrolments 2017	Country	% Agent involvement in student enrolments
1	China	76.5
2	India	68.6
3	Nepal	83.0
4	Brazil	89.2
5	Korea, Republic of (South)	84.6
6	Malaysia	66.8
7	Thailand	85.8
8	Vietnam	74.8
9	Colombia	82.6
10	Taiwan	82.7

Sourced from voluntary records by education providers in PRISMS

According to 2017 data recorded in PRISMS, agents were most involved in enrolments of students from Brazil (89.0%), Thailand (85.8%) and the Republic of South Korea (84.6%).

Role of the Australian Government

Australia's quality assurance framework protects the interests of international students and plays a central role in ensuring Australia's education institutions provide them with an outstanding student experience.

The ESOS Act and the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code 2018) are the key elements of a broad legislative framework that places obligations on education institutions to deliver a high-quality service to international students.

To be registered to deliver education in Australia to international students, education providers must meet the requirements established under the ESOS legislative framework, and be listed on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Like other third party arrangements of education providers, education agents are not directly regulated, as the Australian Government is not well placed to regulate activity largely operating offshore. Instead, education providers are best placed to manage the conduct and behaviour of the education agents they choose to contract and work with, the majority of which are based overseas and beyond Australian Government regulation.

The challenges of regulating offshore education agents include a lack of reliable information on agents; limits on the reach of Australian law for extraterritorial jurisdictions; the use by agents of sub-agents; and the lack of education agent peak organisations for the government to communicate with directly.

In 2015, the Productivity Commission recognised both the benefits and concerns in relation to the use of education agents. The Productivity Commission presented options to reduce the risks

associated with the unscrupulous behaviours of some education agents, including a systematic tracking of student outcomes against agents by making agents' details a mandatory field in the PRISMS database, and providers approving promotional material to ensure education agents are not providing false or misleading advice to students. The following sections discuss the reforms to the ESOS legislative framework to reflect the concerns identified by the department and addresses concerns raised by the Productivity Commission.

ESOS Act – complementing consumer protections

The ESOS legislative framework is a complement to Australia's broader consumer protections, and should not be seen as a substitute for broader law enforcement actions, which protect students and providers. Australian law enforcement agencies can pursue matters such as fraud under other legislation, such as the Commonwealth *Crimes Act 1914*.

The Government has recently strengthened the National Code 2018, including obligations on education providers who engage education agents. Standard 1 of the National Code 2018 requires education providers to ensure the marketing and promotion of their courses and education services, including through an education agent, is not false or misleading, and is consistent with Australian Consumer Law. In accordance with Standard 4 of the National Code 2018, education providers are responsible for ensuring their education agents act ethically, honestly and in the best interest of overseas students, and uphold the reputation of Australia's international education sector.

Since 1 January 2018, education providers must enter and maintain details of the education agents they use in the PRISMS. Previously, details of education agents were voluntarily entered into PRISMS by education providers.

Under Standard 4 of the National Code 2018, registered providers are required to have a written agreement with each education agent which formally represents their education services. The written agreement must outline:

- the registered provider's responsibilities under the National Code 2018 and ESOS Act
- the requirements the education agent must meet when representing the registered provider
- the registered provider's processes for monitoring the education agent's activities and ensuring the education agent gives the overseas students accurate and up-to-date information
- the corrective actions that may be taken and the grounds for termination of the written agreement with the education agent
- the circumstances in which information about the education agent may be shared by the registered provider and Commonwealth or state and territory agencies

Education providers that become aware, or have reason to believe, that an education agent is engaging in false or misleading recruitment practices, must immediately terminate the relationship with that education agent.

Under the National Code 2018 providers must require their education agents to declare any conflicts of interest. Conflicts of interest may include, but are not limited to:

- when the education agent charges service fees to both overseas students and registered providers for the same service
- where an education agent has a financial interest in the private provider
- where an employee of the education agent has a personal relationship with an employee of the education provider

Under Section 83 of the ESOS Act, education providers' compliance with the National Code 2018 is monitored by the Tertiary Education Quality and Standards Agency (TEQSA), Australian Skills Quality Authority (ASQA), and designated state authorities on behalf of the Australian Government Department of Education and Training.

Enforcement action can be taken against a provider if the regulator has reasonable grounds to believe the provider is breaching or has breached the National Code 2018. Sanctions include the suspension or cancellation of a provider's registration.

Agent Code of Ethics and the London Statement

The Australian Government continues to strengthen the requirements on management of education agents as the international education sector grows and provider and agent business models change. In a significant development, the Government developed a sector-wide code of ethics to raise ethical standards and promote best practice among education agents.

The *Agent Code of Ethics* (ACE) is an important component of Australia's international education quality framework and provides a guide to the expected professional behaviour of individual agents and agencies working with Australian international students, parents, providers and fellow agents across the sector.

In 2016, the Government funded the International Education Association of Australia to develop and implement the ACE to enhance the quality and reputation of Australia's international education sector. The ACE was announced by the Minister for Education and Training, Senator the Hon Simon Birmingham, and endorsed by education peak bodies, at the Australian International Education Conference (AIEC) on 21 October 2016.

As reflected in the National Code 2018, registered providers offering courses to international students must require their education agents to have appropriate knowledge and understanding of the international education system in Australia, including the ACE. Providers are responsible for taking immediate corrective action against the agent when they have reason to believe that agents are engaged in unethical practices.

The ACE builds on the ethical framework of the *Statement of Principles for the Ethical Recruitment of International Students by Education Agents and Consultants*¹, also known as the London Statement, and provides a set of Australian-specific 'standards' for Australia's education agents. It also aims to support Australia's education and training providers to meet their obligations under the National Code.

¹ The *London Statement* was initially agreed to by Australia, the United Kingdom, Ireland and New Zealand in 2012.

At the AIEC in October 2015, education peak bodies committed to the *London Statement*, alongside an address from Minister Birmingham. The *London Statement* promotes best practice among education agents and stresses the need for professionalism and ethical responsibility on the part of the agents who facilitate enrolment of international students to study in Australia.

The *London Statement* sets out seven principles that agents must adhere to in an effort to ensure they practise responsible business ethics and provide current, accurate and honest information to prospective students so students can make informed choices. Underpinning these principles is an ethical framework that emphasises professionalism, integrity, objectivity, transparency and confidentiality. Heads of every sector of Australia's international education industry have officially endorsed the *London Statement*.

Improving transparency about the performance of education agents

In a proactive move, in 2017 Australian Government announced new legislation to strengthen already-high standards in place to ensure ongoing compliance by those seeking to enter the international education sector. In August 2017, the Education Legislation Amendment (Provider Integrity and Other Measures) Bill 2017 was passed in Parliament to, among other measures, improve transparency about the performance of education agents.

The new legislation was designed to 'keep the gate shut on rorters and shonks'² that may be trying to move into areas of the education system, including international education.

As a result of this legislation, the Government can now share information about education agents' performance with education providers, and publish information regarding the functions of education agents to promote compliance with the ESOS framework. Enhanced transparency of education agents' performance will help providers make more informed decisions about the agents they work with.

Agent data for providers

To support education providers to meet their legislative obligations, the department has recently commenced reporting on the performance of education agents to the education providers which engage them. The reports show student enrolment outcomes and provider reliance on particular agents. Enrolment outcomes include whether a student went on to:

- successfully complete their enrolment
- transfer to another provider
- notify early cessation of their studies
- have their studies terminated for non-payment of fees or disciplinary reasons
- be reported for unsatisfactory course progress or course attendance
- defer or suspend their studies

Education providers only see reports for their own students recruited through education agencies. The new reports have received positive feedback from the international education sector.

² Senator the Hon Simon Birmingham 2017, *Education Legislation Amendment (Provider Integrity & Other Measures) Bill*, media release, accessed 27 April 2019, < <https://www.senatorbirmingham.com.au/education-legislation-amendment-provider-integrity-other-measures-bill-2017-2/>>

The department is releasing further enhanced reports on education agents' average performance (including visa outcomes) by country and sector, which could eventually be shared publically. Making reports publicly available will assist providers and ultimately students in deciding which agents to engage.

Resolving student concerns and complaints

Students should raise any concerns about their education agent with their education provider in the first instance. Education providers must respond to complaints about their education agents and are required to have an internal complaints handling and appeals process, as set out in the National Code 2018.

If the internal complaints handling and appeals process does not result in a satisfactory outcome for the student, the provider must advise the student that they can access an external complaints handling and appeals process and give the student the appropriate contact details.

For private providers, the appropriate external complaints handling and appeals body is the Overseas Students Ombudsman (OSO). For public providers, the appropriate external complaints and appeals body is the relevant state or territory ombudsman. The purpose of an external appeals process is to consider whether the registered provider has followed its own policies and procedures.

Complaints about education agents

The OSO is a specialist role of the Commonwealth Ombudsman and investigates complaints about problems that intending, current or former overseas students have with private schools, colleges and universities (education providers) in Australia.

The Commonwealth Ombudsman received a total of 981 complaints from international students in 2016-17, a 12 per cent increase on the previous year [source Commonwealth Ombudsman Annual Report [2016-17](#)]. This increase is consistent with the sustained growth in the international student sector. The Australian Government Department of Education and Training's data shows there were 13 per cent more students in 2017 than in 2016.

We understand that complaints about education providers concerning an education agent represent, on average, less than two per cent of complaints closed each year. In 2017, there was an increase in the number of complaints. Up to ten per cent of all complaints closed as a result of complaints that related to the alleged fraudulent actions of one specific education agent.