



# Changes to requirements around education agents and commissions

There are a number of changes relating to education agents and agent commission payments under the *Education Services for Overseas Students Act 2000* (the ESOS Act), including:

- replacing the definition of ‘agent’ with a new definition of ‘education agent’ (see page 1)
- introducing a definition of ‘education agent commission’ and collection of commission information (see page 4)
- improving transparency of education agent information for education providers (see page 7).

These changes will impact existing provider obligations, including the requirement to provide certain education agent information under the ESOS Act and the Education Services for Overseas Students Regulations 2019 (ESOS Regulations).

This fact sheet is intended as a plain language guide to the changes and should not be relied upon as legal advice. Where there is doubt, please refer to the [ESOS Act](#).

## Definition of education agent

### What is changing?

The definition of ‘agent’ has been replaced with a new definition of ‘education agent’.

Under the new definition, **education agent** means an entity (whether in or outside Australia) that:

- a) engages in any of the following activities in relation to a provider:
  - i. the recruitment of overseas students, or intending overseas students;
  - ii. providing information, advice or assistance to overseas students, or intending overseas students, in relation to enrolment;
  - iii. otherwise dealing with overseas students, or intending overseas students;and
- b) is not a permanent full-time or part-time officer or employee of the provider.

Casual employees or contractors are included in the definition of education agent if they undertake any of the activities listed above under (a).

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In this context, 'otherwise dealing with overseas students or intending overseas students' refers to a range of activities with overseas students or intending overseas students in relation to a provider. Examples of such activities include, but are not limited to:

- digital, print or electronic media, or promotional event marketing
- distributing provider-endorsed material (e.g. brochures, written agreements)
- education counselling and advice
- tuition or non-tuition fee collection
- database administration (e.g. in the Provider Registration and International Student Management System (PRISMS))
- migration advice (note: to provide migration advice in Australia, a person *must* be a registered migration agent, legal practitioner or exempt person).

In line with existing obligations related to education agents under the ESOS Act and the ESOS Regulations, providers must provide information about the education agents they work with, regardless of whether a written agreement is in place.

### Why the change?

The new definition supports transparency of provider/education agent relationships and integrity in the international education sector by giving a clearer and more comprehensive definition of 'education agent'.

The previous definition was based on a formal relationship between an education agent and a provider. It did not capture all education agent activities and interactions with providers.

Many providers accept and enrol students referred by an education agent or individual they do not have a formal relationship or agreement with. This meant that not all education agent activity was visible to regulators and undesirable behaviours by some unscrupulous agents were not reported.

Basing the definition of education agent on the activities performed in relation to a provider more accurately reflects the interactions, including financial, between providers and education agents. The new definition clarifies the range of activities that an entity undertakes in relation to a provider that makes them an education agent and will improve transparency of agent activity across the sector.

The new definition of education agent will enable the Secretary of the Department of Education (the department) to request information on education agent commissions paid to education agents.

If the Secretary requests information on education agent commissions under section 21B of the ESOS Act, what is classified as a 'commission' relies on the activities mentioned in the new definition of education agent.

The new definition also allows the regulators greater powers to examine cross-ownership arrangements between providers and other entities in the sector under the new fit and proper provider requirements.

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This change will support integrity in the international education sector through improving the transparency of all education agent activity and provider-agent interactions.

### Frequently Asked Questions

#### Are there any exceptions to the definition of 'education agent'?

Yes. Full-time or part-time permanent officers or employees of a provider are not included in the definition. A permanent employee is one that is hired on a long-term basis and that receives an ongoing salary and employment benefits from the provider. This may include overseas and senior staff on long-term contracts with a provider. The [Fair Work Ombudsman](#) provides additional information on the definitions of different types of employees.

For example, a permanent employee of a university who works in the university's student recruitment team and deals with current or intending overseas students for that university, is not considered an education agent under the new definition. It is not the intent for short-term hires to be classified as an education agent where they are temporarily filling the role of a permanent employee, for example where a permanent employee has gone on maternity leave and the permanent position is temporarily backfilled.

#### Who is not an education agent?

As the definition is activity-based, there are no automatic exclusions that apply to a specific role, entity or administrative platform. This upholds the integrity of the measure by ensuring a specific entity is not open to exploitation or used to circumvent the Government's intent.

Providers should consult the legislation and supporting materials, including this fact sheet, to determine whether an entity, i.e., an individual or a business, is undertaking any of the activities which would class it as an education agent.

For example, advocates, peak bodies and vice-chancellors would not be captured by the definition where they perform their substantive role of representing providers at a stakeholder level but are not dealing directly with overseas students or intending overseas students (defined under section 5 of the ESOS Act), or do not do so in relation to a specific provider. Online payment or administrative platforms and tools used by students and agents to streamline the admission process and payment workflow would not generally fall within the definition. Where changes are made so that education agent activities that meet the education agent definition are included on these platforms the entity will be considered an education agent and relevant provider obligations under the ESOS Act and Regulations will apply.

Third -party arrangements where the entity delivers education on behalf of a provider, and does not also deliver education agent activities in relation to the provider, will not be an education agent unless they commence education agent activities in relation to the education provider.

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Similarly, where a provider contracts another entity on a permanent, ongoing basis to perform administrative functions under their name, for example, sending email responses to enrolling students, these entities would generally not be classified as an education agent, unless they also undertake education agent activities.

Any providers who seek to obscure education agent commissions under the guise of other payments may be subject to appropriate regulatory action or penalties including where payments for other services are paid at rates significantly higher than market rates.

### How does the new definition impact my obligations under the ESOS Framework?

The new definition will impact existing provider obligations related to education agents, including the provision of education agent information required under the ESOS Act and the ESOS Regulations.

Where an entity falls under the new definition of 'education agent', providers are required to:

- include them in a list of the education agents they work with on their website (section 21A of the ESOS Act);
- report the education agent's details in PRISMS where they have facilitated the acceptance for enrolment of a student in a course (section 11 of the ESOS Regulations); and
- keep records of the education agent's details where they have facilitated the acceptance for enrolment of a student in a course (section 13 of the ESOS Regulations).

Providers should also be aware of the relationship of the new definitions to other recent changes to the ESOS Act, including changes to the 'fit and proper provider' test that now considers cross-ownership of provider and education agent businesses and the notification requirements under that measure.

## Education agent commissions

The ESOS Act now includes a definition of 'education agent commission'. An education provider registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) (registered provider) must now give information about education agent commissions for the recruitment of overseas students to the department if requested by the Secretary. The Secretary can only request information regarding commissions received on or after commencement of the Bill.

### What is changing?

#### Definition of 'education agent commission'

Under the new definition, **education agent commission** means any consideration or benefit, whether monetary or non-monetary, that:

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- is or will be given by or on behalf of a provider to an education agent, or an associate of the education agent, and
- is in connection with:
  - the recruitment of overseas students, or intending overseas students, or
  - providing information, advice or assistance to overseas students, or intending overseas students, in relation to enrolment; or
  - otherwise dealing with overseas students, or intending overseas students.

### Requirements for giving information on education agent commissions

Under the ESOS Act, the Secretary can request information about education agent commissions given to an education agent in connection with the provider's recruitment of accepted students of the provider.

The Secretary's request must be in writing, specifying:

- the reporting period
- the date by which the information is to be provided to the Secretary
- the manner or form in which the information is to be given, including whether the information is to be entered in a computer system, such as PRISMS
- the documents (if any) that must accompany the information.

Information about education agent commissions requested by the Secretary may relate to one or more of the following:

- the total amount in dollars given to each education agent
- the value and description of non-monetary benefits given to each education agent
- the number of accepted students of the provider recruited by each education agent.

Where the Secretary requests this information, providers will be given further guidance to ensure clear and consistent reporting, such as the kinds of commissions and agents for which information is requested.

If requested by the Secretary, a registered provider must provide this information within the advised timeframe.

### Why the change?

This change responds to sector concerns about substantial increases in education agent commissions and the types of monetary and non-monetary payments made to agents. This has highlighted the need for greater transparency regarding agent and provider activities and interactions for the sector and for students. Introducing a definition of 'education agent commission' will identify the range of payment and incentive arrangements providers have with their education agents in relation to overseas or intending overseas students. This change will have complementary benefits in facilitating the sharing of accurate agent information with providers, to help providers make informed decisions in choosing ethical, high quality education agents. Greater transparency around education agent commissions will support stronger integrity in the sector.

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Defining 'education agent commission' in the ESOS Act allows for complementary amendments to be made to the National Code of Practice for Providers of Education and Training to Overseas Students 2018 to ban commissions from being paid by providers to education agents for onshore student transfers. Further information on this change will be provided in due course.

## Frequently Asked Questions

### What is considered an education agent commission?

An education agent commission can include, but is not limited to, fees, charges, commissions, bonuses, performance payments, gifts, discounted or free services, rewards and incentives, given in relation to recruitment of, or other activities relating to, an overseas student or an intending overseas student. The definition aims to capture a broad range of monetary and non-monetary payments to provide greater transparency around education provider business relationships with education agents.

Examples of monetary considerations or benefits include:

- *A fixed percentage of a student's tuition fees* – Provider A pays an education agent 5 per cent of a student's tuition fees.
- *A fixed fee per each accepted student* – Provider B pays an education agent \$1,000 for each student recruited by the education agent, regardless of the course the student is enrolled in or the duration of their course.

Examples of non-monetary considerations or benefits include:

- *Subsidised holidays* – Education Agent A undertakes recruitment activities related to intending overseas students for Provider C and takes payment in the form of a subsidised holiday to Australia.
- *Discounted or free services* – Education Agent B assists a number of overseas students to enrol with Provider E and takes payment in the form of undertaking courses delivered by Provider E at a heavily discounted price.

The new definition of education agent commission does not include non-monetary benefits that are unrelated to agents' dealings with overseas students or intending overseas students. For example, subsidised education agent travel for a familiarisation visit prior to recruitment of students would not be included. However, subsidised travel where the subsidy is part of an arrangement to undertake education agent activities in relation to one or more students would come under the definition.

### What activities might an education agent undertake to receive a commission?

A commission is a payment made in connection to activities conducted in relation to an overseas student or intending overseas student. Depending on contractual or other arrangements providers may pay a commission to an education agent for a wide range of activities that are listed in the new definition of education agent. More general activities

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that are not connected to any one individual overseas student or intending overseas student may fall outside of the definition.

Provider payments or benefits given to a third party would not be captured by the definition of an 'education agent commission' if the activity falls outside the activities listed in the 'education agent' definition.

This definition has been designed to prevent unscrupulous providers or agents from attempting to hide payments, for example, by paying the commission indirectly. Payments or benefits related to the activities in the definition are considered an 'education agent commission' if paid by a third party on behalf of a provider or if paid to an associate of the education agent.

### How do I determine if I need to report a commission?

Where the Secretary requests information about education agent commissions, this request will be in writing and specify:

- the relevant reporting period;
- the day by which the information is to be given;
- the manner or form in which the information is to be given; and
- any specific documents that must accompany the information.

The request for information will clearly state what commission information is required.

Providers will be given additional resources to assist in assessing whether certain payments or benefits would be classified as education agent commissions and would need to be reported.

### What happens if a provider fails to comply with the Secretary's request for information on education agent commissions?

A provider does not comply with the Secretary's request if they provide false or misleading information (including incomplete information) or do not provide information in the required timeframe. Non-compliance with the request can attract a range of penalties including issuance of infringement notices and regulatory action by the ESOS agencies.

## Improving transparency of education agent information for education providers

### What is changing?

More information about education agents will be made available to providers through PRISMS, in addition to the existing education agent data that is available. Providers will be able to access information about all agents used by all providers, not just the education agents they currently work with.



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This includes education agent information on:

- the number of transfers of accepted students from one provider to another
- the number of transfers of accepted students from one course to a different course, and
- information about education agent commissions.

Providers will be notified through PRISMS when this information becomes available.

### Why the change?

More information about each education agent's performance will help providers understand the activities of the education agents they currently work with and inform their decisions about what education agents to work with in the future.

This change will help providers choose ethical, high-quality education agents to work with. It will also increase transparency of education agent activities, provider and education agent relationships and help weed out unscrupulous and poor performing education agents from the sector.

### Frequently Asked Questions

#### Who can see this information?

Education providers who are registered on CRICOS and education regulators will be able to access this information within access restricted reports in PRISMS. Where appropriate and necessary to comply with legislative obligations, this information will be deidentified for privacy and commercial in confidence reasons. This information will not be available to education agents or the public.

#### Where will this new information come from?

The ESOS Act and ESOS Regulations require registered providers to provide certain information about their education agents, including commissions paid to those education agents when requested by the Secretary.