

Tuition Protection Service (TPS)

ACPET Fact Sheet for Students

September 2012

Introduction

The Tuition Protection Service (TPS) is an initiative of the Australian Government to assist those international students whose education providers are unable to fully deliver their course of study. The TPS ensures that international students are able to either:

- Complete their studies in another course or with another education provider; or
- Receive a refund of their unspent tuition fees.

In addition to the TPS there have also been recent changes to the *Education Services for Overseas Students (ESOS) Act 2000* that further strengthen protections for international students.

The following Fact Sheet provides relevant information to assist students in understanding the changes, their obligations and rights under the legislation.

What are the main changes?

- Changes to pre-payment of tuition fees. – See Pre-payment of tuition fees
- Recommended records you as a student need to keep – See Record Keeping.
- Changes to your obligations and rights – See Student default and refunds.
- Changes to your responsibilities when provider defaults – See Provider default.

Pre Payment of Tuition Fees

The recently amended ESOS Act introduces new limits to the amount of prepaid tuition fees a provider can collect from students before they commence the course, and after commencement, before the second study period. It also requires non-exempt providers to place prepaid tuition fees into a designated account before the student commences the course.

- Providers can receive no more than 50% of the **total** tuition fee for the course before the student commences the course (if the course is longer than 24 weeks). This means that if a course is longer than 24 weeks and has multiple study periods (terms/semesters) then a provider can only invoice the student up to 50% of the total tuition fees before the student commences study.
- Providers can receive 100% of the total tuition fee for courses that fall within one study period of 24 weeks or less.
- Providers cannot require a student to pay any further fees until 2 weeks before the start of the second study period. For example if a course has four study periods and each study period is equal in terms of cost, 50% of the total tuition fees (two study periods) can be invoiced before the course commences and 50% (final two study periods) can be invoiced no earlier than two weeks before the beginning of the second study period. Invoices to students must clearly indicate a due date that complies with the requirement that fees are not due and payable until 2 weeks before the start of the second study period. If, however, a student voluntarily pays tuition fees after commencement but earlier than two weeks before the start of the second study period, then providers are not required to return the fees.
- Information about courses and their study periods should reflect the duration of a course as it is registered on CRICOS. Part C of the National Code requires that course duration includes a structured holiday break. If a holiday break is included in a study period and this means that the student's COE

is longer than 24 weeks but only includes one study period of 24 weeks then the obligation for a provider to receive no more than 50% of the student's total tuition fees does not apply. Therefore if a provider has a CRICOS registered course of 26 weeks with 2 weeks holiday, the written agreement (offer letter) could specify a study period of 24 weeks and outline the number of weeks of holidays that are not included in the study period.

Student default and Notification Periods

Student Default

A student defaults in relation to a course at a location if:

- The student's visa is refused (section 47A of the ESOS Act)
- The course starts at the location on the agreed starting day, but the student does not start on that day (and has previously not withdrawn); or
- The student withdraws from the course at the location (either before or after the agreed starting day); or
- The registered provider of the course refuses to provide, or continue providing, the course to the student at the location because of one or more of the following:
 - The student failed to pay an amount payable to the provider for the course;
 - The student breached a condition of his/her student visa;
 - Misbehaviour by the student.
- Students should always inform the provider of any changes to their enrolment or start date as soon as possible. This should be in writing. If students do not agree with a decision made by the provider in terms of their default then they are entitled to appeal the decision through the provider's internal appeals processes. If the student is not satisfied with the result of this process, an external appeals process is available through the Overseas Students Ombudsman. Once the external appeals process is completed and if a student is deemed in default then the provider must notify the TPS Director and DIAC of the breach.
- In the case of student default, the provider needs to inform the TPS Director and DIAC within 5 days.

Provider Default and Notification Periods

Provider Default

- Under Section 46A of the ESOS Act a registered provider defaults, in relation to an overseas student or intending overseas student and a course at a location, if:
 - The provider fails to start providing the course to the student at the location on the agreed starting day; or
 - After the course starts but before it is completed, it ceases to be provided to the student at the location and
 - The student has not withdrawn before the default day.
- In the case of provider default the provider must inform the student in writing of their default and how the provider intends to fulfil their obligations under the ESOS Act.

- The provider has 14 days after the day of the default to satisfy their tuition protection obligations to the student. The provider's obligations to the student in these circumstances involve either:
 - Finding an alternative course for the student to enrol in (both of the following apply):
 - The provider arranges for the student to be offered a place in a course in accordance with subsection 46D(4);
 - The student accepts the offer in writing; **or**
 - Provide a refund of unexpended tuition fees to the student in accordance with subsection 46D(6).
- In circumstances where a default has occurred and the provider cannot satisfy their obligations, the TPS Director will invite relevant providers to participate in a placement round
 - The TPS Director will create a round of TPS placements for affected students.
 - Providers who offer alternative courses suitable to affected students will be identified, and the TPS Administrator will contact these providers via email.
 - Providers contacted by TPS Administrator may either agree to offer the student a place or decline to accept the student.
 - If a provider agrees to accept students, the details of the course become available to affected students. Interested students may then contact the provider to discuss the course and enrolment process
 - A provider may then create an offer of placement to the student through the TPS system. The student is then able to complete the enrolment process.
 - Once the provider has issued a Confirmation of Enrolment for the student on the TPS system the provider will receive a payment of the unspent tuition for that student.

Refunds

Provider default refunds

- If a provider defaults a student is eligible to receive a refund of the unexpended pre-paid tuition fees which the student has paid to that provider. That means that the refund arrangements have changed from full refund to partial refund, and cover only that portion of tuition for which the student has paid but for which tuition has not yet been received

Refunds must be paid to students within 14 days in cases of provider default.

Student default refunds

Refunds are dependent on the circumstances of the default. Students may be eligible for a refund:

- In the case of student default, refunds must be made in accordance with the written agreement between the provider and the student (provider's refund policy).
- In circumstances where a student default occurs because a student has been refused a visa, the refund must be the total amount of the pre-paid fees a provider has received for the course LESS the following amount:

The lesser of:

- 5% of the total amount of pre-paid fees that the provider received in respect of the student for the course before the default day; or
 - The sum of \$500.
- Refunds must be paid

- Within a period of 4 weeks after the day of default in the case of a visa refusal (or where the provider has not entered into a written agreement with the student) – s47E; or
- Within 4 weeks from the day the provider receives a written claim form from the student – s47D.
- Refunds must be paid to:
 - The student;
 - If a person (other than the student) is specified in the agreement (between the provider and the student) to receive any refund under this section—the specified person.

Please check your written agreement and provider refund policy very carefully to ensure you understand your rights and obligations and the consequences if you default.

Agents

- Agents who collect pre-paid tuition fees from students do so on the provider’s behalf and are therefore, from a legal perspective, acting on behalf of the provider. Agents therefore must comply with the requirements of the ESOS Act relating to collection of prepaid fees. See prepayment of tuition fees above.
- If there is a clause in a student’s agreement with their education agent limiting the amount of refund of course fees in the case of a refused student visa this is not valid. The ESOS Act states that if a student is refused a student visa, the provisions of a written agreement cannot apply and a refund must be paid for full prepaid tuition fees less an administrative charge as outlined in the student default refunds section above. If it is a fee that is paid in addition to course fees, then any refund would be as per a business arrangement agreed between the agent and the student.

Record Keeping

- The new legislation strengthens obligations on providers for specific record keeping. However it is highly recommended that students keep records of the following:
 - written agreement between the agent and the student (if any)
 - written agreement between the provider and the student.
 - A per semester record of academic progress given to students by the provider.
 - all financial records received and paid to providers (including invoices and receipts).

Student Records

- Providers are now required to contact students at least every six months to update their contact details
- Providers are also obliged to provide the Australian government with additional information about the student at enrolment including:
 - Gender
 - Date of birth
 - Country of birth
 - Nationality

- Residential address, mobile phone number and email address
- If the student is under 18 years old:
 - Current residential address, mobile number and email address of a person other than the provider who has legal authority to act on the student's behalf (such as parent or guardian); and
 - The relationship of the person to the student.

Student Checklist

This list is provided as a guide only to documents, policies and procedures that may require reviewing to reflect the legislative changes

Records	Items	Checked
Student Offer Letter (Legal Agreement)	Your offer letter (written agreement) should include: <ul style="list-style-type: none"> • the course you are enrolled in and any conditions on enrolment • payment plan for tuition fees including the number and length of each study period • any non-tuition fees • refund entitlements in different situations and the process for claiming a refund • course requirements including minimum English language • requirements for attendance and making satisfactory course progress. • Advice about your obligation to notify the provider of any change of address • The statement: “ this agreement , and the availability of complaints and appeals processes , does not remove the right of the student to take action under Australia’s consumer protection laws.” 	
Refund Policy	<ul style="list-style-type: none"> • Understand the terms of the refund policy in case you do not meet the terms of your written contract. • Understand when you are entitled to a refund under the legislation, for example when your visa is refused. 	
Appeals and complaints policy/process	<ul style="list-style-type: none"> • Understand your rights and obligations if you wish to appeal any decisions made by your educational provider. • Be aware that there is an Overseas Students Ombudsman if you wish to appeal externally. 	
Cancellation/Suspension Policy	<ul style="list-style-type: none"> • Understand your rights and obligations under the educational providers Cancellation and Suspension Policy. 	
Record Keeping	It is highly recommended that you keep the following documents as records: <ul style="list-style-type: none"> • Receipts for all money paid to a provider/agent • Keep a record of all student completed at each stage of your course. • Ensure that you contact your provider as soon as your contact details change. 	

Additional Tools and Resources for Students

Resource	Link
TPS Website	https://tps.gov.au/Information/Students/How
TPS Frequently Asked Questions	https://tps.gov.au/Information/Students/Faq
Australian Government TPS Brochure for students	https://tps.gov.au/Content/Downloads/TPSStudentBrochure03.pdf
ESOS Act	https://aei.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/ESOS-Act/Pages/default.aspx
ESOS Act amendments July 2012 Frequently Asked Questions	https://aei.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/ESOS-Review/Documents/Final%20FAQs%2031%20July%20numbered.pdf or https://www.aei.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/ESOS-Review/Pages/Changescommencing1July.aspx
Immigration and student visas	www.immi.gov.au
The Overseas Students Ombudsman	http://www.oso.gov.au/
Provider policies and procedures	Look at the provider website.

Glossary of Terms and Definitions

Terms		Description
ESOS Act	Education Services for Overseas Students Act	The ESOS Act sets out the legal framework governing delivery of education to overseas students studying in Australia on a student visa.
TPS	Tuition Protection Service	The TPS is a universal tuition protection service in Australia that ensures overseas students are protected when their education provider is unable to deliver their course of study.
Provider	Education Provider	The educational institution you are studying at. This might be a School, ELICOS College, VET College of Higher Education Institution.
Student Default		When you are unable to start the course as agreed with the provider because: <ul style="list-style-type: none"> • Your visa has been refused. • You do not turn up on the agreed day to commence your course. • You cancel your enrolment for some reason. • Non-payment of fees owing. • Breaches of student code of conduct/ visa conditions.
Provider Default		A Provider defaults if: <ul style="list-style-type: none"> • The provider fails to start providing the course to the student at the location on the agreed starting day; or • After the course starts but before it is completed, it ceases to be provided to the student at the location; and the student has not withdrawn from the course before the default day.
Written Agreement	Offer Letter	This constitutes a legal agreement between you and education provider it should have details of your course, tuition fees, refund policy and code of conduct.
Internal and External Appeals Process – Natural Justice		As per the educational providers appeals and complaints processes; External appeals and complaints can also be forwarded to the Overseas Students Ombudsman.