

## 1. Policy Purpose

- 1.1 The Tuition Protection Scheme (TPS) is an initiative of the Australian Government to assist international students whose education providers are unable to fully deliver their course of study. The TPS and the recent changes to the Education Services for Overseas Students (ESOS) Act 2000 further strengthen protection for international students by ensuring they are able to:
  - 1.1.1 Complete their studies in another course or with another education provider or
  - 1.1.2 Receive a refund of their unspent tuition fees in the case of provider default
  - 1.1.3 Receive a refund of their full tuition fees less administrative charges in the case of visa refusal
  - 1.1.4 Receive a refund of tuition fees in other circumstances as per the student's written agreement/provider's refund policy.
- 1.2 The following Fact Sheet provides relevant information to assist Agents in understanding the changes, and their obligations and rights under the ESOS legislation..

## 2. What are the main changes?

- 2.1 Changes to pre-payment of tuition fees – See Pre-payment of tuition fees
- 2.2 Changes to refunds in certain circumstances – see Refunds.
- 2.3 It should be noted that any Agents' commissions are not currently within the scope of Australian legislation and are deemed to be a commercial arrangement between the agent and a provider and/or between an agent and a student. Any activities that agents undertake in relation to monies considered part of tuition fees will fall under the Act. In this situation agents are deemed to be acting on the provider's behalf.

## 3. Pre-Payment of Tuition Fees

- 3.1 The new amended ESOS Act introduces new limits on the amount of prepaid tuition fees a provider can collect from the student before they commence the course, as well as after commencement of the course but before the start of the second study period for the course. It also requires providers to place prepaid tuition fees into a designated bank account before the student commences the course.
  - 3.1.1 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 must therefore comply with the ESOS requirements relating to collection of prepaid fees.
  - 3.1.2 Agents and the commissions paid to agents by providers are not covered by the ESOS Act and are a commercial transaction between the Agent and the provider.
  - 3.1.3 Where a provider includes the agent's commission as part of the pre-paid tuition fees this amount must be included on the Confirmation of Enrolment (COE) under the 'Initial pre-paid fee' and held in a designated account until the student commences the course.

- 3.1.4 If a provider chooses to identify the agent commission as separate to tuition fees, then this is classified as non-tuition fees and must be recorded on the COE under 'Other Pre-Paid Non-Tuition Fee' and does not need to be kept in the designated account.
- 3.1.5 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 two semesters long (and each semester being 24 weeks) then a provider can invoice the student up to one semester's tuition fees before they commence
- 3.1.6 Providers can receive 100% of the total tuition fee for courses that fall within one study period of 24 weeks or less.
- 3.1.7 Providers cannot require a student to pay any further fees until two weeks before the start of the second study period. For example if a course has four study periods, 50% of the total tuition fees (two study periods) can be invoiced before the course commences and 50% (third and fourth periods) can be invoiced no earlier than two weeks before the beginning of the second study period.
- 3.1.8 If a student voluntarily pays tuition fees of an amount greater than that prescribed by the ESOS legislation before commencement of the course (prior to 1st study period) then providers are required to return/refund the excess amount.
- 3.1.9 If 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.
- 3.1.10 Information about courses and their study periods should reflect the duration of a course as it is registered. Part C of the National Code requires that course duration include 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 however 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 holidays that are not included in the study period. Then the provider can receive 100% of that course's tuition fees.

## 4. Student default and Notification Periods

- 4.1 A student defaults in relation to a course at a location if:
  - 4.1.1 The student is refused a visa.
  - 4.1.2 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
  - 4.1.3 The student withdraws from the course at the location (either before or after the agreed starting day); or
  - 4.1.4 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.

- 4.1.5 Students should always inform the provider of any changes to their enrolment or start date as soon as stipulated in the provider's refund policy. This should be in writing.
- 4.1.6 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, external appeals processes are available through the Overseas Students Ombudsman
- 4.2 Once the external appeals process is completed and if a student is considered to be in default then the provider must notify the TPS Director and Department of Immigration and Border Protection of the breach.

## 5. Provider Default and Notification Periods

- 5.1 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:
  - 5.1.1 The provider fails to start providing the course to the student at the location on the agreed starting day; or
  - 5.1.2 After the course starts but before it is completed, it ceases to be provided to the student at the location; and
  - 5.1.3 the student has not withdrawn from the course before the default day.
- 5.2 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.
- 5.3 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:
  - 5.3.1 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
  - 5.3.2 Provide a refund of unexpended tuition fees to the student in accordance with s46D(6).
- 5.4 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
  - 5.4.1 The TPS director will create a round of TPS placements for affected students
  - 5.4.2 Providers who offer alternative courses suitable to affected students will be identified, and the TPS Administrator will contact these providers via email
  - 5.4.3 Providers contacted by the TPS Administrator may either agree to offer the student a place or decline to accept the student
  - 5.4.4 If a provider agrees to accept students, the details of the course become available to affected students. Interested students may then contact providers to discuss the course and enrolment process
  - 5.4.5 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

- 5.4.6 Once the provider has issued a Confirmation of Enrolment for the student on the TPS system the receiving provider will receive a payment of the unspent tuition for that student.

## 6. Refunds

### 6.1 Provider default refunds

- 6.2 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
- 6.3 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.

### 6.4 Student default refunds

- 6.5 Refunds are dependent on the circumstances of the default. Students may be eligible for a refund:
- 6.6 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).
- 6.7 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:
- 6.8 The lesser of:
- 6.8.1 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
  - 6.8.2 The sum of \$500.
- 6.9 Refunds must be paid
- 6.9.1 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
  - 6.9.2 Within 4 weeks from the day the provider receives a written claim form from the student – s47D.
- 6.10 Refunds must be paid to:
- 6.10.1 The student;
  - 6.10.2 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.

## 7. Record Keeping

- 7.1 The new legislation strengthens obligations on providers for specific record keeping. However it is highly recommended that agents encourage students to keep records of the following:
- 7.1.1 written agreement between the agent and the student (if any)



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- 7.1.2 written agreement between the provider and the student (letter of offer)
- 7.1.3 a per semester record of academic progress given to students by the provider
- 7.1.4 all financial records received and paid to providers (including invoices and receipts).

## 8. Student Records

- 8.1 Providers are now required to contact students at least every 6 months to update their contact details.
- 8.2 Providers are also obliged to provide the Australian government with additional information about the student at enrolment including:
  - 8.2.1 Gender
  - 8.2.2 Date of birth
  - 8.2.3 Country of birth
  - 8.2.4 Nationality
  - 8.2.5 Residential address, mobile phone number and email address
  - 8.2.6 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
  - 8.2.7 Country of birth
  - 8.2.8 Nationality
  - 8.2.9 Residential address, mobile phone number and email address
  - 8.2.10 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.

## 9. Administration

- 9.1 This policy and related documentation is accessible by students on the DNA Kingston Training website.
- 9.2 Staff will be advised of this policy and related procedures via email and staff information sessions.

<b>Document Name</b>	Under 18 Years International Student Policy and Procedure	
<b>Document Owner</b>	College Manager	
<b>Version</b>	<b>Date</b>	<b>Improvements made</b>
4.0	June 2016	• Document reformatted
3.0	July 2014	• Minor changes to DIPB reference