

Australian Education International (AEI)
 Education Services for Overseas Students Amendment Bill 2013:
Frequently Asked Questions

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Subject: Education Services for Overseas Students Amendment Bill 2013

FAQ	Answer	Status
<i>What is the ESOS Amendment Bill 2013?</i>	The purpose of the Bill is to amend the <i>Education Services for Overseas Students Act 2000</i> (ESOS Act) to clarify refund provisions for overseas students studying in Australia, as well as for intending overseas students yet to arrive in Australia. The amendments ensure the Act is consistent with the policy intent of the 2012 amendments of the ESOS Act.	New
<i>Why are the proposed amendments necessary?</i>	<p>Amendments proposed in the Bill will ensure that the refunds registered providers are required to make encompass tuition fees paid by overseas students both before and after the commencement of a study period, where those tuition fees are unspent at the time that a default occurs.</p> <p>The provisions, as currently worded, could unintentionally restrict the amount a student might be refunded to only the amount of tuition fees they had paid prior to the commencement of a study period. The change ensures that tuition fees paid after the commencement of a study period are also eligible to be refunded.</p> <p>In addition, the Bill will amend provisions of the ESOS Act relating to refunds in the case of an overseas student being refused a student visa. This will clarify existing arrangements and ensure that providers refund both unspent tuition fees and unspent non-tuition fees (such as for accommodation and text books) where the student is yet to commence their course. This clarification will be delivered through amendments to the current legislative instrument made by the Minister under section 47E(4). The amended instrument will also specify a calculation for situations where a student who has commenced study subsequently has their visa refused, so that they will be able to receive a refund of both the tuition fees paid prior to the commencement of their study period and the tuition fees paid after the commencement of that study period but before the default/visa refusal.</p> <p>The amended legislative instrument will also cover circumstances where a student defaults and there is no written agreement in place. These circumstances have not previously been articulated in the legislative instrument and are designed to provide clarity for both providers and students. These inclusions in the legislative instrument will more clearly align with the arrangements originally intended by the amendments to the ESOS Act in 2012.</p> <p>The Bill will also make a minor amendment to Part 4 of the ESOS Act to ensure that the title of the <i>National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007</i> (National Code) properly reflects its content and scope consistent with the 2012 amendments to the ESOS Act. This amendment will flow through to the National Code when it is updated in 2014.</p>	New

<p>How will the proposed amendments differ from the current system?</p>	<p>The proposed amendments will ensure that a refund is for the full amount of <u>tuition</u> paid for by a student, minus the amount calculated as having been delivered by the provider.</p> <p>Under the current definition of pre-paid fees in section 5 of the ESOS Act there is the potential to unintentionally restrict the amount of a refund to the amount the student paid prior to commencing the study period only.</p> <p>The Bill proposes to remove the definition of ‘pre-paid fees’ to ensure that refunds providers give as a result of a default can include tuition fees paid by the student <u>both before and after</u> the commencement of a study period where those fees are unspent at the time the default occurs.</p>	<p>New</p>
<p>What is the difference between ‘tuition’ and ‘non-tuition’ fees</p>	<p>Section 7 of the ESOS Act defines the term tuition fees to mean fees a provider receives, directly or indirectly, from an overseas student or intending overseas student (or another person who pays the fees on behalf of an overseas student or intending overseas student) that are ‘directly related to the provision of a course that the provider is providing, or offering to provide, to the student’. In this context, ‘tuition’ takes its common meaning—that is, a charge or fee for educational instruction.</p> <p>Non-tuition fees constitute any other additional fees charged by a provider that are not included in tuition fees.</p>	<p>New</p>
<p>What will the proposed changes/ amendments mean for education providers?</p>	<p>The proposed changes will remove the current definition of ‘pre-paid fees’ and all references to ‘pre-paid’ throughout the ESOS Act, and replace them with a reference to ‘tuition fees’. This change will formalise and clarify what providers are already doing in practice and will ensure that refund obligations are clearer and simpler.</p> <p>As a result, the legislative instruments in the case of student default (visa refusal 47E(4) or no written agreement) and provider default (s. 46A ESOS Act) will be updated once the Bill is passed.</p> <p>The current instruments are:</p> <ul style="list-style-type: none"> • Education Services for Overseas Students (Calculation of unspent pre-paid fees – provider default) Determination 2012 (No. 1) and is located at: http://www.comlaw.gov.au/Details/F2012L01351 • Education Services for Overseas Students (Calculation of unspent pre-paid fees – other cases) Determination 2012 (No. 1) and is located at: http://www.comlaw.gov.au/Details/F2012L01378 <p>The updates to these instruments will ensure that the intent of the refund requirements are clear for providers and students and that there is no additional refund requirement placed on providers beyond the intention of the 2012 amendments to the ESOS Act.</p>	<p>New</p>

<i>What will the proposed changes/ amendments mean for students?</i>	The changes will simplify the terminology for students and ensure they receive a fair and reasonable refund. The amendments improve certainty for students and ensure that there is no unintended restriction on refunds to students.	New
<i>Will providers and students need to update or change their written agreements when the amendments take effect?</i>	No. Written agreements made between providers and students under the existing arrangements will not be affected and do not need to be changed. Written agreements made after the amendments in the Bill have taken effect should be drafted <u>without</u> reference to 'pre-paid fees'. All written agreements must be made consistent with the requirements of the National Code, in particular Standard 3.	New
<i>When will these changes/ amendments take effect?</i>	The Bill was introduced into Parliament on 4 December 2013. Subject to passage, the measures in the Bill would take effect on a date to be fixed by Proclamation. Updated information will be provided once the measures in the Bill take effect.	New