



Explanatory Guidance on the Education Services for Overseas Students (Calculation of Refund) Specification 2014

The information contained in this document is designed to assist education providers and their peak body representatives to understand the changes to the refund calculations specified in the instruments under sections 46D(7) and 47E(4) *Education Services for Overseas Students Act 2000* ('ESOS Act') as a result of the *Education Services for Overseas Students Amendment Act 2014* ('Amendment Act').

The methods for calculating refunds of fees for these provisions of the Act are set out in the *Education Services for Overseas Students (Calculation of Refund) Specification 2014* (refund specification).

Previously there were two legislative instruments that applied for these provisions of the ESOS Act. The refund specification replaces the two previous instruments to give providers a clearer, single resource to enable them fulfil their obligations in relation to these refunds.

When does the Specification apply from?

The refund specification will commence on 1 July 2014 - that is, it will apply to calculating refunds of fees where the default day (as defined in section 5 of the ESOS Act) occurs on or after 1 July 2014.

Providers will be expected therefore to update their documentation and refund students in accordance with the Specification from 1 July 2014.

The previous Determinations continue to apply to calculating refunds of fees where the default day occurred prior to 1 July 2014.

In what circumstances do I need to calculate refunds in accordance with the refund specification?

The refund specification sets out the methods for calculating refunds of fees by a registered provider in the following circumstances:

- Provider default (refer sections 46A and 46D of the Act)
- Student default where the provider has not entered into a written agreement with the student that meets the requirements of section 47B of the Act (refer 47E(1)(b)(i) of the Act)—that is, a compliant agreement
- Student default owing to visa refusal (refer sections 47A, 47D(5) and 47E(1)(b)(ii) of the Act).

Do I have to calculate refunds in accordance with the refund specification?

If the circumstances outlined above apply, yes, because the refund calculations outlined above cannot be covered by a written agreement. Providers are not able to use their own calculations in these circumstances and must use the calculations in the refund specification.

However, the amounts of refunds calculated in accordance with the refund specification are minimum amounts, and providers are able to refund higher amounts if they wish.

Key concepts in the refund specification

Types of fees

Calculation of refunds under the refund specification is undertaken by reference to tuition fees for a course received by a provider in respect of a student. In circumstances where a refund is being calculated because a student has failed to commence a course, the refund is also calculated by reference to the non-tuition fees received by a provider.

Tuition fees

Tuition fees are defined in section 7 of the ESOS Act. They are fees received by a provider (from or 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”.

Tuition fees are typically compulsory fees for the delivery of the enrolled course and include items such as:

- tutorials and tutoring sessions
- lectures
- additional requisite training including practicums and practice hours
- ancillary costs for fieldwork, excursions or laboratories
- specialist materials that are mandatory and relate to the provision of the course.

Non-tuition fees

Non-tuition fees cover other items not directly related to tuition, and may be compulsory or discretionary.

The calculations under sections 7, 8 and 10 relate to tuition fees only.

Overview of the refund specification, with examples

Sections 5, 6 and 7 of the refund specification—Provider default

Sections 5, 6 and 7 of the refund specification endeavour to simplify the refund calculation in relation to provider default where a provider has defaulted and no alternative course has been offered by the provider and accepted by the student. The calculation under section 7 remains essentially unchanged but is simplified as a calculation in the form of an equation. It is intended that this methodology will clarify the somewhat complex wording of the previous instrument.

Section 8 of the refund specification—Provider does not enter into a compliant written agreement

Section 8 of the specification seeks to clarify the refund calculation that applies where a provider fails to enter into a written agreement with a student or where the agreement is not compliant with the requirements of the ESOS Act and the ESOS National Code. In these circumstances the refund specification requires the refund to be calculated in the same way it is calculated for provider default. The rationale for this is that the provider has breached its responsibilities and the student should be protected in the same manner as if the provider had defaulted.



The example below illustrates the refund calculation that would have previously applied and the refund calculation that will now apply to sections 5, 6, 7 and 8 of the refund specification.

EXAMPLE 1: In the case where a provider defaults

Previous calculation method under the Education Services for Overseas Students (Calculation of unspent pre-paid fees – provider default) Determination 2012 (No. 1):

- a) Pre-paid amount for a particular period / Number of weeks¹ to which the payment relates
= Tuition fee per week
- b) Tuition fee per week × number of weeks² between the date of default and the end of the period to which the payment relates
= unspent pre-paid tuition (the refund amount)

¹ The number of weeks to which the pre-paid amount relates is to be calculated by rounding up the number obtained by dividing the number of days between the start and end dates of the period to which the payment relates (inclusive) by 7.

² The number of weeks between the date of default and the end of the period to which the payment relates is to be calculated by rounding up the number obtained by dividing the number of days between the date of default and the end date of the period to which the payment relates (inclusive) by 7.

William enrolls in a 10-week (70 calendar day) course that costs \$1,000. He pays the provider \$500 tuition fees in advance, for the first 5 weeks (35 calendar days) of the course.

During the course, the provider defaults and William does not agree to undertake the alternative course offered by the provider. The default day is day 25 of the course.

- a) $\$500 / (35 \text{ calendar days divided by } 7 = 5)$
 $\$500 / 5 = \100 (tuition fee per week)
- b) $\$100 \times ((35 \text{ calendar days to which payment relates} - 25 \text{ calendar days from start of course until default day}) / 7)$ and rounded up
= $\$100 \times (10 / 7, \text{ rounded up})$
= $\$100 \times 1.428571$ (rounded up to 2 to represent the nearest whole week)
= $\$100 \times 2$ (weeks) = \$200

William's unspent tuition (refund amount) under the previous calculations would have been \$200.



New calculation under section 7 of the Education Services for Overseas Students (Calculation of Refund) Specification 2014:

- a) Weekly tuition fee = (total tuition fee for the course / number of calendar days in the course) × 7, rounded up to the nearest whole dollar.

b) Weeks in default period =
$$\frac{\text{number of calendar days from the default day to the end of the period to which the payment relates}}{7}$$

- c) Refund amount = weekly tuition fee × weeks in default period

Sabrina is enrolled in a course in a 42-week (294 calendar days) course that costs \$8,000. She pays the provider \$4,000 in tuition fees before commencing the course. This payment relates to the first 12 weeks (84 calendar days) of the course. The provider defaults on day 20 of the course.

- a) Weekly tuition fee = $(\$8,000 / 294 \text{ calendar days}) \times 7$
= $(\$27.210884) \times 7$, rounded up to the nearest whole dollar
= \$191
- b) Weeks in default period = $(84 \text{ calendar days to which payment relates} - 20 \text{ calendar days from start of course to default day}) / 7$
= $64 / 7$
= 9.1428571, rounded up to the nearest whole week = 10 weeks
- c) Refund amount:
Weekly tuition fee × weeks in default period
= $\$191 \times 10 = \$1,910$

Under section 7 of the new refund specification, Sabrina's refund would be \$1,910.

Note that the same calculation would also apply under section 8 of the refund specification if the provider and Sabrina had not entered into a written agreement that complied with section 47B of the ESOS Act.

Sections 9 and 10 of the refund specification—Student default in the event that a student fails to start a course due to visa refusal or where a student commences a course and subsequently has a visa refused.

Sections 9 and 10 of the refund specification outline the refund calculations that apply in circumstances where a student defaults due to their visa being refused, but the provisions take into account whether the student has or has not commenced the course. Many students default as a result of their visa being refused while they are still in their home country/offshore. However, there



may be circumstances where a student is already onshore and commences a course while awaiting the outcome of a new visa or extension of their visa.

Section 9 of the refund specification applies where the student has been refused a visa and has not commenced the course. This provision aligns with the original intent of the student default refund in other cases provision, which was intended to ensure that providers refunded all course fees to a student (not only those paid before commencement of the course), except for a modest sum a provider could retain for administrative costs. This provision recognises both the need to protect students who have often paid large sums of fees in advance as well as the time and resources a provider may have invested in recruiting students.

The calculation therefore requires providers to work out the deductions for meeting administrative costs based on the 'total course fee' - that is, both tuition and non-tuition fees paid. This rectifies the unintended consequences of the previous provisions of the ESOS Act and legislative instrument, which based the refund calculation solely on tuition fees.

EXAMPLE 2: Student default in the case of visa refusal (before student commences course)

Julia lives in Germany and has paid \$15,000 tuition fees and \$5,000 non-tuition fees to a provider for a course. She is due to leave Germany in April to start the course. In January the Department of Immigration and Border Protection contact her and advise her visa has been refused. Julia informs her provider of the refusal of her visa, and withdraws from the course before it starts. Julia's provider must now calculate her refund under section 9 of the refund specification.

Refund calculation under section 9 of the refund specification:

- a) Total course fee* minus the lesser of:
- (i) 5% of the amount of course fees received by the provider before the default day, or
 - (ii) \$500

(*Course fees = tuition fees + non-tuition fees received by the provider in respect of the student)

Calculation:

- b) Total course fee = \$15,000 + \$5,000 = \$20,000 minus the lesser of:
- (i) 5% of \$20,000 (course fees) = \$1,000
 - (ii) \$500

Therefore the lesser of (i) \$1,000 and (ii) \$500 is \$500

Refund amount: Total course fee minus (ii)
= \$20,000 - \$500 = \$19,500

Under section 9 of the refund specification, Julia's refund would be \$19,500.

Section 10 of the refund specification relates to student default in the case where a student's visa has been refused but where the student has already commenced the course. This may occur when a



student is already onshore and has applied for a new visa (refer to Example 3). It aims to balance the student's right to receive a refund of the unspent tuition fees and the right of the provider to retain the portion of fees for the part of the course that has already been delivered. This will result in a fairer outcome for both students and providers in the limited circumstances where this may apply.

In cases where a student has commenced the course non-tuition fees are not required to be refunded. The reason for this is that non-tuition fees, such as text books or uniforms, which the student has used for the portion of the course they have studied, are not recoverable by the provider. However, as noted above, the amounts of refunds calculated in accordance with the refund specification are minimum amounts, and providers are able to refund higher amounts if they wish.

EXAMPLE 3: Student default in the case of visa refusal (after the student has commenced the course)

Rani is living in Sydney and has just completed a Certificate IV in Hospitality. She decides she would now like to undertake a 40-week (280 calendar day) VET Diploma, and she applies for a new visa.

The tuition fees for the whole course are \$10,000, but Rani pays \$5,000 tuition fees up front for the first half (140 calendar days) of the course.

Rani also pays the provider \$500 in non-tuition fees.

Rani starts the course while awaiting the outcome of her new visa. Two weeks into the course she is refused a visa. She informs her provider and withdraws from the course with effect from the day she was refused the visa (14 calendar days into the course).

Refund calculation under section 10 of the refund specification:

a) Weekly tuition fee = (total tuition fee / number of calendar days in the course) × 7

b) Weeks in default period =
$$\frac{\text{number of calendar days from the default day to the end of the period to which the payment relates}}{7}$$

c) Weekly tuition fee × weeks in default period = Refund amount

Calculation:

a) Weekly tuition fee = $(\$10,000 / 280) \times 7 = \250

b) Default occurs at day 14, therefore number of calendar days between the default day¹ and the end of the period to which the payment of \$5000 relates (140 days) is 140 days minus 14 = 126 days
 $(126 / 7) = 18$ (weeks in default period)

¹ When counting the number of calendar days from the default day to the end of the period to which payment relates, the default day is not included in the count – subsection 36(1) *Acts Interpretation Act 1901*.



- c) Refund amount: Weekly tuition fee × weeks in default period
= \$250 × 18 = \$4,500

Under section 10 of the refund specification, Rani’s refund of tuition fees would be \$4,500. The provider is not required² to refund Rani the non-tuition fees she paid.

² As noted above, the amounts of refunds calculated in accordance with the refund specification are minimum amounts, and providers are able to refund higher amounts if they wish.