

ESOS Act Reference	Summary of key changes	
Section 5	Changes to definitions including: <ul style="list-style-type: none"> • agreed starting day • default day • approved unit of study • pre-paid fees • study period. 	
Section 7	<ul style="list-style-type: none"> • Changes 'course money' to 'tuition fees' and clarifies definition to mean fees directly related to provision of a course. 	
Part 2 Division 3 registration of providers	Division restructured and revised to implement national registration: <ul style="list-style-type: none"> • course at a location may be added to an existing registration • if a new location added a risk managed assessment at that location is required according to 9AB • clarifies requirements for renewing registration • clarifies requirements for imposing risk based conditions. 	
Sections 14A and 14B The register	Clarifies information that must be on CRICOS: <ul style="list-style-type: none"> • all or part of the Register may be made public • each course at each location • period of registration • any conditions or sanctions. 	
Reference	Summary	Penalties
Section 19 Giving information about accepted students	Under this amendment, a registered provider must give particulars of a breach by an accepted student of a prescribed condition of a student visa) even if the student has ceased to be an accepted student of the provider (e.g. a student cannot avoid being reported to DIAC for non-attendance or failure to progress by cancelling their CoE with the provider).	Section 19(5) offence 60 penalty units & Division 1 of Part 6 (conditions, suspension, cancellation)
Section 21 Record Keeping	Strengthened requirements: <ul style="list-style-type: none"> • a procedure to confirm in writing and update student contact details (address, and mobile and email if any) at least every 6 months • update records of assessment when the student completes an approved unit of study for a course. 	Subsection 21 (5) 60 penalty points & Division 1 of Part 6
Section 22 study periods	<ul style="list-style-type: none"> • written agreement must include length of each study period for the course and the tuition fees for each study period for the course. • study period may be no more than 24 weeks • there is flexibility in how a study period is defined in the written agreement. 	Division 1 of Part 6
Sections 24 & 26 Tuition Protection Scheme (TPS) levies	Requirements on providers to pay a TPS levy for each calendar year and disclosing information related to determining the amount of the levy.	Division 1 of Part 6 & section 108

Prepaid fees and designated accounts		
Reference	Summary	Penalties
Section 27 Pre-paid fees	Limits on prepaid tuition fees: <ul style="list-style-type: none"> • must not <i>receive</i> more than 50% of the student's total tuition fees for a course before the student has begun the course unless the course has only one study period (i.e. 24 weeks or less) • must not <i>require</i> any remaining fees earlier than 2 weeks before the start of the student's second study period. 	Division 1 of Part 6
Sections 28 - 32 Obligations related to designated account	A provider not administered by a state education authority or eligible to receive recurrent Commonwealth funding must maintain an account : <ul style="list-style-type: none"> • with an Australian ADI • designated as the initial pre-paid fees account • must pay into the account any tuition fees received from an international student before the student has begun the course within 5 business days of receiving them • ensure at all times sufficient amount in the account to repay all tuition fees of non-commenced students • not available for the payment of other debts 	60 penalty units Applies to the registered provider or (if unincorporated) the PEO
Part 5 The Tuition Protection Service and default provisions		
Reference	Summary	Penalties
Section 46A	Clarifies 'provider default'	
Section 46B Notification of provider default	Requirement to notify <ul style="list-style-type: none"> • the Secretary (or delegate) and TPS Director within 3 business days of provider default • notify students in writing. 	Division 1 of Part 6
Section 46D Obligations in case of provider default	Within 14 days: <ul style="list-style-type: none"> • either offer the student an alternative place at the provider's expense, that is accepted by student in writing or • refund the student the <i>unused portion</i> of the prepaid fees . 	section 46E continuing offence – 60 penalty units & Divisions 3, 4 & 1 of Part 6
Section 46F notify outcome of provider default	Requirement to notify the Secretary (or delegate) and TPS Director of the outcome of a provider default within 7 days of the provider obligation period: <ul style="list-style-type: none"> • details of alternative course or refund. 	Division 1 of Part 6
Section 47A	Clarifies 'student default'	
Section 47B written agreement for student default	Provider to have a written agreement setting out the refund requirements in case of student default.	Section 47F continuing offence – 60 penalty units & Division 1 of Part 6

Reference	Summary	Penalties
Section 47C Notification of student default	Requirement to notify the Secretary (or delegate) and TPS Director of student default within 5 business days.	Division 1 of Part 6
Section 47D Refund for student default under written agreement	Requirement to refund student in accordance with the written agreement within 4 weeks after receiving a written claim except for visa refusal.	Section 47G continuing offence – 60 penalty units & Divisions 4 & 1 of Part 6
Section 47E Refund in other cases	Where a provider has not entered into a written agreement that complies with section 47B or where a student has been refused a visa, the provider must pay the student a refund worked out in accordance with the legislative instrument under subsection 47E(4).	
Section 47H notify outcome of student default	Providers to notify Secretary (or delegate) and TPS Director of outcome of discharge of obligations in cases of student default within 7 days of the end of the default period.	Division 1 of Part 6
Section 49(C) TPS Student placement	If a registered provider of an alternative course offers the student a place in the course, the student may accept the offer in writing within 30 days after the end of the provider obligation period unless the period is varied by the TPS Director.	
Section 50C(3) Recovery of debts by TPS Director	The TPS Director may recover from a provider as a debt, the amount equal to the amount paid for a student under the TPS.	
Part 5a OSTF, TPS Levy, TPS Director and TPS Advisory Board		
Reference	Summary	Penalties
Subdivision B TPS Levy	<ul style="list-style-type: none"> • TPS Director to set TPS levy annually • Written notice to each provider of amount of TPS Levy • Provider may seek review of the TPS levy from the AAT • TPS Director to notify the Secretary if a registered provider has not paid by the end of 7 days after a reminder notice. 	Section 90 provider's registration is automatically suspended for failure to comply with the reminder notice
Section 55C TPS Advisory Board membership	<ul style="list-style-type: none"> • Appointed by the Minister • 5 government representatives: Departments of Innovation, Finance, Immigration, Australian Government Actuary, Australian Prudential Regulation Authority and • Up to 7 other members with qualifications and experience relevant to the operations of providers from across the international education and training sector. 	
Part 6 Enforcement		
Section 110A & 110B Enforceable undertakings	Secretary (or delegate) may accept and enforce written undertaking by a registered provider that the provider will take a specified action in order to comply with a provision of the ESOS Act, the National Code or a condition of registration.	

What providers need to do to prepare for the March 2012 changes to the ESOS Act

Until 1 July 2012:

1. **maintain current TAS or exemption arrangements** –you must remain compliant with the existing legislative requirements: i.e. belonging to a TAS or having alternative arrangements such as a bank guarantee or payment in arrears.

By 1 July 2012:

2. **establish a designated account** - providers not administered by a state education authority or eligible to receive recurrent Commonwealth funding must establish a designated account: this is for prepaid tuition fees for students who have not yet commenced .
3. **adapt written agreements** - providers will need to continue to comply with the National Code regarding written agreements, and also include: the length of each study period and the tuition fees for each study period.
4. **review any letters of offer** – to ensure arrangements comply with prepaid fees legislation.
5. **establish systems and processes** - to comply with new reporting and record keeping requirements:
 - to notify the Department and TPS Director of provider and student defaults, and the outcomes of such defaults.
 - to proactively seek from students any updates to their contact details (address, mobile phone number and email address) at least every 6 months
 - to keep up-to-date student academic records for every unit of study completed and assessed.
6. You are also encouraged to **review and update information in PRISMS** relating to courses and course locations both in anticipation of national registration: this information may also affect the amount you pay under the TPS and the Annual Registration Charge.