

## Frequently Asked Questions

### Students

- 1.1 *How do students benefit from the new Tuition Protection Service (TPS)?*
- 1.2 *How will the pre-paid fees measures benefit students?*
- 1.3 *Is a student's visa status going to change during the placement and refund period?*
- 1.4 *Does a student have to take an alternative course if there is a suitable option available?*
- 1.5 *What happens in the event that a student cannot find an alternative course option?*
- 1.6 *Will students still receive a full refund of pre-paid fees if their provider closes?*
- 1.7 *What proportion of pre-paid course fees do providers have to refund to students when required?*
- 1.8 *What happens to students who commenced seeking placement prior to 30 June 2012?*

### 2. Providers

- 2.1 *How is the new system different from the old Tuition Assistance Scheme (TAS)?*
- 2.2 *Are providers still required to be a member of TAS?*
- 2.3 *What will happen to students currently seeking a placement or refund through the ESOS Assurance Fund?*
- 2.4 *What if a provider doesn't want to take a student that has been displaced following provider default?*
- 2.5 *What are the student default reporting requirements in the case of non-payment of fees, breach of a condition of their student visa or misbehaviour?*
  - 2.5.1 *How are refunds calculated in cases of student default when a visa is refused?*
- 2.6 *Where a student is due to start a course but contacts us to advise they will be unable to do so on the agreed start date and they wish to renegotiate their start date, does this constitute student default and do we have to report this?*
- 2.7 *Does student default related to non-commencement only apply to the start date of the course or is it also for non-commencement of subsequent study periods?*

### 3. Record Keeping

- 3.1 *What is the purpose of the new legislative requirements regarding record keeping?*
- 3.2 *Aren't providers already required to keep student records? How is this measure different from what is already required?*
- 3.3 *How will this measure benefit providers?*
- 3.4 *How will this measure benefit students?*
- 3.5 *How will providers provide proof they are adhering to the TPS requirements? Will they be required to give financial records to auditors? How often?*
- 3.6 *Is consideration being given to auto uploads in PRISMS? Would it be possible for students to access PRISMS directly to update their contact details?*
- 3.7 *What information do I now need to include in PRISMS when I enrol a student?*
- 3.8 *What information do I need to include about student payments that I receive from students?*

### 4. Pre-paid Tuition Fees

- 4.1 *What are the requirements on limiting pre-paid tuition fees and requiring initial tuition fees to be placed in a separate account?*
- 4.2 *How will limiting the collection of pre-paid tuition fees work in practice?*
- 4.3 *How will these measures benefit students?*
- 4.4 *What is meant by "registered providers are not to require payment of remaining fees more than two weeks prior to the second study period"?*

- 4.5 *How does the limit on prepaid fees relate to the length of the first study period, i.e. can I collect 50% of fees or only fees for the first study period?*
- 4.6 *Why can't I require any remaining tuition fees until two weeks before the second study period?*
- 4.7 *How should providers deal with course fees that apply to different course lengths?*
- 4.8 *If the course is less than 24 weeks are there any limits on how much of the tuition fees I can collect before the student commences and when I can collect any remaining tuition fees?*
- 4.9 *Are holiday breaks included in the study periods set out in the written agreement?*
- 4.10 *If a holiday break is included in a study period, this may mean that the student's CoE is longer than 24 weeks. Can a provider receive 100% of pre-paid fees for a course where the CoE is longer than 24 weeks even though the course actually has no more than one study period of 24 weeks excluding holidays?*
- 4.11 *Can I amend a course to make it 24 weeks?*
- 4.12 *How should providers manage the situation where a student does not pay for the second study period?*
- 4.13 *Are application fees, i.e., fees for the application process involved in determining whether a student is suitable for enrolment with a provider, included in tuition fees?*
- 4.14 *Does the limit on pre-paid fees also apply to homestay, book fees, OSHC, etc?*
- 4.15 *In the event of a course extension, which will create a longer course than the original enrolment, what fees can be accepted? For example, a student studies 22 weeks (full fees taken at the time of enrolment), they then extend for a further 10 weeks, making a total of 32 weeks. For the second enrolment, can we accept 5 weeks, or 10 weeks? Or does the total of 32 weeks mean they have to refund 6 weeks as they can only accept 50% of the fees?*
- 4.16 *Providers are required to enter into a written agreement with each overseas student setting out the study period and tuition fees for each period. Does this mean that a study period can be set independently for each student based on their individual enrolment period? E.g. for an ELICOS student enrolling for 30 weeks the study period could be defined as 15 weeks + 15 weeks in their agreement whereas a student enrolling for 40 weeks could have the study period defined as 20 weeks + 20 weeks.*
- 4.17 *Are there any limitations on the amount of pre-paid tuition fees that may be collected before 1 July 2012 if the student is not due to commence until after 1 July 2012?*
- 4.18 *If a student has already accepted an offer for a course that does not start until after 1 July 2012 do I have to update the written agreement to include information about study periods?*
- 4.19 *Are providers required to amend promotional course material to reflect the course duration expressed as study periods?*
- 4.20 *If a student has a package of courses or multiple eCOEs at the time of enrolment do these count as multiple courses? If they are multiple courses, can a college accept full fees for each course?*
- 4.21 *Can the provider pay the agent's commission from prepaid tuition fees before the fees are deposited into a designated account? What amount of pre-paid tuition fees should the COE show, the total amount or the amount less the agent's commission?*
- 4.21.1 *What amount of pre-paid tuition fees should the COE show, the total amount or the amount less the agent's commission?*
- 4.22 *We have agents who collect 100% of fees from students. Are they now subject to the new requirements in relation to the collection of prepaid tuition fees?*
- 4.23 *Should providers pay all of an education agent's commission up front or only on the fees received?*

- 4.24 *We are a provider that takes Payment in Arrears. Are we required to abandon this practice given that we will now be required to pay into the TPS?*
- 4.25 *We are a provider that does not collect fees from students at all. Are we still required to pay into the TPS?*

## **5. [Designated Accounts](#)**

- 5.1 *How will the requirement to place the initial study period fees into a designated account work?*
- 5.2 *What kind of systems might Government expect a provider to have in place around designated bank accounts?*
- 5.3 *Providers who are in receipt of Commonwealth Recurrent Funding are exempt from the requirement to place prepaid tuition fees into a designated account. What does in receipt of Commonwealth Recurrent Funding mean?*
- 5.4 *Are there likely to be any exceptions to designated bank account requirements for pathway providers that have been selected to participate in the visa streamlining program?*
- 5.5 *When is a provider allowed to draw down money from the designated prepaid tuition fee account?*
- 5.5.1 *When is a provider allowed to draw down money from the designated prepaid tuition fee account in the case of student default?*
- 5.6 *Is the 'designated account' an actual separate bank account? Or can it be a single bank account with multiple accounts in provider's database/accounting systems?*
- 5.7 *Can the designated account have other fees in it?*
- 5.8 *Can a CRICOS provider have a single designated account for a number of their providers or locations? For example one CRICOS provider may have several RTOs operating across a number of locations. Could the pre-paid tuition fees for not yet commenced students from several of these providers be kept in a single account?*
- 5.9 *Are non-exempt providers required to pay interest to students on the money that has been deposited in a designated account?*

## **6. [TPS Levy](#)**

- 6.1 *What is the TPS Levy and how much will providers have to pay?*
- 6.2 *How will risk be assessed for the purpose of determining levy payment amounts?*
- 6.3 *How will low risk providers be defined and will the sector have any involvement in the process of determining the risk?*
- 6.4 *What is the timeframe for determining the risk factors associated with the TPS Levy?*
- 6.5 *How will providers be able to access the TPS Levy information?*
- 6.6 *Is a provider able to appeal the risk component charged by the TPS Director?*
- 6.7 *When will providers be able to see what the cost will be for the TPS Levy?*
- 6.8 *If I am in the process of registering as a CRICOS provider will I have to pay the TPS Levy?*
- 6.9 *Isn't it possible that include a risk component in the levy amounts going to create a self fulfilling prophecy of provider closure? For example if a provider is "high risk" (due to their financial situation), wouldn't charging them more money for the levies just make it more difficult to keep their head above water?*
- 6.10 *How do ACPET's risk ratings and charges affect the risk component of the TPS?*
- 6.11 *How can sector be assured the new Overseas Student Tuition Fund (OSTF) is more sustainable than the previous Assurance Fund and that its governance is transparent?*
- 6.12 *Why are public providers included in this system when they are exempt from the current system?*
- 6.13 *When will I receive my TPS Levy notice?*
- 6.14 *Are private providers still required to be a member of a Tuition Assurance Scheme?*

**6.15 What if a provider has a bank guarantee, indemnity agreement, payment-in-arrears agreement or ministerial exemption in place?**

**7. [Enforceable Undertakings](#)**

## **1. Students**

### **1.1 How do students benefit from the new Tuition Protection Service (TPS)? (Updated 12 June 2012)**

Under the previous system, students had their placement activity managed for them by the Tuition Assistance Scheme or failing that, by the Fund Manager, with limited say in their alternative enrolment.

The TPS gives students greater control and responsibility within the placement process by allowing students to make a choice from available alternative placement options. A more direct relationship in placements between affected students and prospective providers should lead to a more efficient and effective outcome for students and the sector as a whole. Students should also benefit from more timely placements, or refunds where necessary, and a smoother transition to new providers.

### **1.2 How will the pre-paid fees measures benefit students? (Updated 12 June 2012)**

Under the previous TAS and Assurance Fund arrangements, students could have been required to pay up to 100% of course tuition fees in advance. By only paying up to 50% of tuition fees upfront before the course commences the financial pressure for paying full upfront tuition fees is removed (except for short courses of 24 weeks or less which may require 100% of prepaid tuition fees). Providers also have an incentive to maintain student satisfaction after the student commences the course. Additionally, students should be refunded any pre-paid tuition fees in a timely manner if their visa is rejected or the student or provider defaults.

### **1.3 Is a student's visa status likely to change during the placement and refund period? (Updated 12 June 2012)**

A student's visa status does not change during the placement and refund period. However where a student is refunded an amount of unexpended pre-paid tuition fees by the TPS Director, the Department of Immigration and Citizenship will be notified so as to assess that student for any visa compliance requirements.

### **1.4 Does a student have to take an alternative course if there is a suitable option available? (Updated 12 June 2012)**

The TPS is a placement model with refunds provided as a last resort. It is a condition of the student visa program that students maintain their enrolment and attendance, so the preferable outcome is that students receive the tuition for which they have come to Australia and paid for.

The expectation is that students will accept an alternative place if one is available, for which they meet all the entry requirements and there is no cost disadvantage to them. However, the student is not compelled to accept an alternative place and is eligible for a refund of unexpended tuition fees. The student does need to confirm visa implications with DIAC but other options might include: enrolling in a completely different course, other visa types or returning home.

### **1.5 What happens in the event that a student cannot find an alternative course option? (Updated 12 June 2012)**

In a situation where a student cannot find an alternative course during the placement period the student is eligible to request a refund of the unexpended portion of pre-paid tuition fees.

**1.6 Will students still receive a full refund of pre-paid fees if their provider closes? (Updated 12 June 2012)**

No. 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. These changes recognise that the existing full refund burden on providers has been unreasonable and a disincentive to meeting their refund obligations under ESOS. It also recognises that students part-way through a course of study should be able to obtain credit for units at another education provider of similar standing.

Following default, the provider has 14 days to fulfil its obligations to affected students. During this time the provider is able to either offer the student an alternative place which is acceptable to the student, or the appropriate refund amount. In the event the provider does not satisfy this obligation to an affected student, the TPS Director will facilitate access for the student to course placement as described above.

**1.7 What proportion of pre-paid course fees do providers have to refund to students when required? (Updated 12 June 2012)**

The ESOS Act has been amended to limit refunds paid to students to the portion of the course for which the student has paid but which has not been delivered or assessed in the event of a provider closure.

The TPS model outlined above states that when a defaulting provider fails to meet its refund obligation, the partial refund amount is calculated and is available to place the student in an alternative course in the first instance, and failing that, to provide a refund.

The method of calculating refunds is prescribed in a legislative instrument under the ESOS Act.

**1.8 What happens to students who commenced seeking placement prior to 30 June 2012? (Updated 12 June 2012)**

Students affected by provider defaults up to 30 June 2012 are managed under the previous TAS and Assurance Fund arrangements. Any students who have not been placed or who have not been provided with a refund after 30 June 2012 are managed by the TPS Director but under those existing arrangements. Provider defaults occurring from 1 July 2012 onwards are managed under the new TPS arrangements.

## **2. Providers**

**2.1 How is the new system different from the old Tuition Assistance Scheme (TAS)? (Updated 12 June 2012)**

Providers are still obligated under ESOS to offer students an alternative place (acceptable to the student) or to provide students with a refund in the event of provider default; or a refund as per the written agreement with the student in the event of a student default.

Consistent with the recommendations of the Baird review, the Government established a new TPS as a single layer tuition protection mechanism when a provider fails to meet its obligations in the case of a default. The new TPS framework facilitates the placement of students in the first instance, and where this is not possible, provides a refund of unexpended tuition fees (i.e. tuition the student has paid for but has not been delivered by the provider). This replaced the previous combination of Tuition Assurance Schemes and the ESOS Assurance Fund.

Contributions to the TPS framework are universal but also risk based, with all currently available exemptions from the Assurance Fund arrangements removed. All providers of international education services will be required to pay an annual TPS Levy. All providers must participate and no provider can be refused tuition protection cover.

Two other key differences are that students have a greater role in the placement process and receiving providers receive a placement fee equivalent to the student's unexpended pre-paid tuition when they agree to accept a displaced student.

**2.2 Are providers still required to be a member of TAS? (Updated 12 June 2012)**

From 1 July providers are no longer required to be a member of a Tuition Assurance Scheme (TAS) as a condition of their CRICOS registration.

**2.3 What will happen to students currently seeking a placement or refund through the ESOS Assurance Fund? (Updated 12 June 2012)**

Students affected by provider defaults up to 30 June 2012 are managed under the previous TAS and Assurance Fund arrangements. Any students who have not been placed or who have not been provided with a refund after 30 June 2012 will be managed by the TPS Director but under those existing arrangements. Provider defaults occurring from 1 July 2012 onwards are managed under the new TPS arrangements.

**2.4 What if a provider doesn't want to take a student that has been displaced following provider default? (Updated 12 June 2012)**

Under the new TPS framework, there are no compulsory placements. A provider is under no obligation to accept a student that has sought placement with them following a default. In the event a student cannot find an alternative course placement option, the student is eligible to request a refund of unexpended pre-paid tuition fees from the TPS, and is required to comply with any relevant immigration requirements.

**2.5 What are the student default reporting requirements in the case of non-payment of fees, breach of a condition of their student visa or misbehaviour? (Updated 12 June 2012)**

Under the legislation, there are a number of circumstances where a student may be in default. In the situation where a student has breached their visa conditions or does not pay fees or in cases of student misbehaviour, a student default situation is triggered when the provider refuses to provide or continue providing the course to the student. However, in terms of the student default notification and reporting obligations under the ESOS Act, the student default is not confirmed until any internal or external complaints and appeals process is completed. Additionally, a provider cannot cancel a student's CoE without giving the student access to complaints and appeals processes.

Once any complaints and appeals processes are complete and the student default is confirmed, the provider has:

- 5 business days to notify the Secretary and the TPS Director (via PRISMS) of the student default
- 14 days to report cancellation of the student's enrolment to DIAC (via PRISMS) (i.e. a section 19 report)
- 28 days to finalise the student default obligations as set out in the written agreement with the student and
- a further 7 days to report the outcome of the student default (via PRISMS).

**2.5.1 *How are refunds calculated in cases of student default when a visa is refused? (Updated 1 August 2012)***

Refunds in the case of student default visa refusal are not part of the written agreement and therefore cannot be covered by section 47D of the ESOS Act which relates to written agreements.

Instead refunds in the case of visa refusal must be calculated in accordance with the legislative instrument under subsection 47E(4). The reason for this is so that visa refusal refunds are calculated in the same way across all providers.

The calculation under subsection 47E(4) is as follows:

**Calculation of the amount of unspent pre-paid fees – other cases**

The amount of unspent pre-paid fees that the provider must refund the student for the purpose of subsection 47E(2) of the Act is the total amount of the pre-paid fees the provider received for the course in respect of the student *less* the following amount:

the lesser of:

- (a) 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
- (b) the sum of \$500.

**2.6 *Where a student is due to start a course but contacts their provider to advise they will be unable to do so on the agreed start date and they wish to renegotiate their start date, does this constitute student default and does the provider have to report this? (Updated 12 June 2012)***

No. Where a student contacts the provider to arrange a later start date and the provider agrees to the later start date there is no requirement for a provider to notify this as a student default.

**2.7 *Does student default related to non-commencement only apply to the start date of the course or is it also for non-commencement of subsequent study periods? (Updated 12 June 2012)***

Student default for non-commencement only applies to the start date of the course. The agreed starting day for a course means the day on which the course was scheduled to start, or a later day agreed between the provider and the student.

**3. Record Keeping**

### **3.1 What is the purpose of the new legislative requirements regarding record keeping?**

The legislative amendments strengthen obligations on providers to keep up to date student records related to academic progress and contact details. The purpose of this measure is to:

- make it easier to contact students affected by a provider closure and to facilitate timely and accurate placement in an alternative course
- improve protection for the welfare of students, particularly those under 18 years of age
- ensure students are kept informed of course progress and to support the timely identification of and intervention by the provider where a student is not making good course progress, and
- improve provider business practice through effective student information systems.

### **3.2 Aren't providers already required to keep student records? How is this measure different from what is already required?**

Currently, there are record-keeping requirements in both the ESOS Act and the National Code. These new measures strengthen the existing requirements to ensure records are up-to-date.

The new requirement on all providers is to regularly contact students to actively verify student contacts, including mobile phone numbers and email addresses. There will be penalties if a provider cannot demonstrate at least six monthly attempts have been made to update contact details. The objective is to facilitate better record keeping of student contact details so that providers and relevant government officials are able to readily contact the student should the need arise, for example, in the event of a provider closure, a critical incident, or to check that providers are meeting welfare obligations to younger students.

There are also specific new requirements and penalties related to ensuring academic records are kept up-to-date and ensuring the regulator is able to access these records at any time on request, including when a provider is under administration. This could be in the form of a routine request automated through PRISMS in a form prescribed in the regulations. Such a request is targeted to providers who have a history of non-compliance or who are assessed as at greater risk of closure as part of risk assessment requirements introduced in the legislation in April 2011. This encourages compliance with existing requirements and good practice in record keeping to assist with recognition of prior learning assessments and the timely placement of students in the event of a provider closure.

### **3.3 How does this measure benefit providers?**

Providers benefit from improved management of student information in a number of ways. It supports smooth day-to-day operations and dealings with students, forward planning and early detection and intervention for students who may be at risk of failure to progress. It also helps with verifying information relevant to complaints and appeals processes, and enables the provider to contact students quickly when necessary.

### **3.4 How does this measure benefit students?**

Students are more easily contacted by their providers. They are also less likely to miss out on important information or opportunities and may have improved access to their attainment records. Students are also likely to experience a smoother transition and recognition of prior learning process if they change providers or are placed following a closure. Under 18 year old students benefit from the strengthened compliance around welfare arrangements.

**3.5 How do providers provide proof they are adhering to the TPS requirements? Are they required to give financial records to auditors? How often?**

For all aspects of the TPS regime, including limits on prepaid fees, designated accounts, default notifications and reporting, student record keeping and contact detail requirements, providers need to be able to demonstrate that they are complying on the request of the regulator. This may include an audit of files (usually a sample) and financial statements that can demonstrate, for example, that the amount of funds held in the designated account is sufficient to cover all prepaid fees of all non-commenced students.

**3.6 Is consideration being given to auto uploads in PRISMS? Is it possible for students to access PRISMS directly to update their contact details?**

There is consideration being given to how best to facilitate the upload of student contact details into PRISMS to comply with existing requirements and to minimise data entry for providers. Providers will be advised if there are any changes to the way this information may be entered into PRISMS.

The recent amendment is a requirement on providers to have an active mechanism to keep provider-held student contact records up-to-date.

**3.7 What information do I now need to include in PRISMS when I enrol a student? (Updated 7 August 2012)**

Previously, under Section 19 of the ESOS Act, providers were required to give certain information about accepted students within 14 days of enrolling the student, including the student's name, starting day and expected duration of course.

In addition, providers must now provide the following information (please note this is not an exhaustive list and providers may need to give additional information under Section 19 of the ESOS Act and ESOS Regulation 3.1, depending on the student's circumstances):

- The student's gender;
- the student's date of birth;
- the student's country of birth;
- the student's nationality;
- the student's current residential address, mobile phone number (if any) and email address (if any) (if the student has given that information to the provider);
- if the student is under 18 years old:
  - (i) the current residential address, mobile phone number (if any) and email address (if any) of a person other than the provider who has legal authority to act on the student's behalf (such as a parent or guardian); and
  - (ii) the relationship of the person to the student.

In order to reduce administrative burden, providers may use the bulk upload function in PRISMS for multiple CoEs (please consult the PRISMS Provider User Guide for more information).

**3.8 What information do I need to include about student payments that I receive from students? (Updated 7 August 2012)**

Non-public providers are required to provide the following information on tuition fees received during a calendar month, within 14 days of the payment:

- The amount of each payment was made;
- the date the payment was made;
- the start and end dates of the period to which the payment relates.

In order to reduce the administrative burden, providers may use the bulk upload function in PRISMS for multiple CoEs (please consult the PRISMS Provider User Guide for more information).

#### **4. Prepaid Tuition Fees**

##### **4.1 What are the requirements on limiting pre-paid tuition fees and requiring initial tuition fees to be placed in a separate account? (Updated 12 June 2012)**

The amended legislation introduces new limits to the amount of prepaid tuition fees a provider can collect from the student before they commence the course and, after commencement, before the second study period. It also requires providers not administered by a state authority or eligible to receive recurrent Commonwealth funding to keep initial prepaid tuition fees in a designated account before the student commences the course.

This measure will support the TPS by:

- ensuring providers are better able to meet their refund obligations to students
- improving outcomes for students affected by a provider default
- encouraging providers to establish sustainable business models
- reducing the potential refund liability on the TPS
- facilitating the DIAC visa application assessment process.

##### **4.2 How does limiting the collection of pre-paid tuition fees work in practice? (Updated 12 June 2012)**

The ESOS Act now limits the collection of pre-paid tuition fees. Providers can receive no more than 50% of the total tuition fees for the course before the student commences the course (or 100% for short courses that fall within one study period of 24 weeks or less) and then, after the student commences, providers cannot require a student to pay any further fees until 2 weeks before the start of the second study period.

This measure means that with the exception of short courses, providers are no longer able to collect up to 100% of tuition fees up-front for courses. Providers are required to define the length of a study period for a course, generally to reflect units of academic attainment, such as a semester. Study periods must be a maximum of 24 weeks in length. A study period may also include more than one consecutive short course, for example, two ten week English Language Intensive Courses for Overseas students if together they do not exceed the 24 week limit.

##### **4.3 How do these measures benefit students? (Updated 12 June 2012)**

Previously, students may have been required to pay up to 100% of course tuition fees in advance. By only paying up to 50% of tuition fees upfront before the course commences the financial pressure for paying full upfront tuition fees is removed (except for short courses of 24 weeks or less which may require 100% of prepaid tuition fees). Providers now have an incentive to maintain student satisfaction after the student commences the course. Additionally, students should be refunded any pre-paid tuition fees in a timely manner if their visa is rejected or the student or provider defaults.

##### **4.4 What is meant by “registered providers are not to require payment of remaining fees more than two weeks prior to the second study period”?**

Providers may ‘receive’ up to 50% of total tuition fees for the course at any time before a student commences a course. After the student commences, providers may not ‘require’ a student to pay any remaining tuition fees earlier than two weeks before the start of the second study period. This will apply to remaining tuition fees of all overseas students who

have not yet begun the course prior to 1 July 2012. Invoices to students must clearly indicate a due date that complies with the requirement. If a student voluntarily pays tuition fees after commencement but earlier than two weeks before the start of the second study period, the provider is not required to return the fees and would not be considered in breach of this requirement.

**4.5 How does the limit on prepaid fees relate to the length of the first study period, i.e. can providers collect 50% of fees or only fees for the first study period? (Updated 1 May 2012)**

The requirement that a provider must not receive more than 50% of the total tuition fees is not related to the length of the study period but is a percentage of total tuition fees. However, after the course begins, no further pre-paid tuition fees may be taken before the beginning of the second study period. No study period can be longer than 24 weeks.

**4.6 Why can't providers require any remaining tuition fees until two weeks before the second study period? (Updated 1 May 2012)**

This limitation ensures that students have the opportunity to determine whether the course is appropriate for them before becoming liable for the entirety of course fees. If the provider was able to collect the remainder of fees immediately on commencement, this would undermine the intent of this restriction.

**4.7 How should providers deal with course fees that apply to different course lengths? (Updated 12 June 2012)**

Providers have flexibility to determine the length of each study period (within the 24 week bandwidth) and the fees that apply to each study period.

**4.8 If the course is less than 24 weeks are there any limits on the amount of tuition fees providers can collect before the student commences and when can providers collect any remaining tuition fees? (Updated 1 May 2012).**

No. If a course is only 24 weeks or less it only has one study period and therefore there are no restrictions on when or how much of the tuition fees for the course you can collect either before or after commencement.

**4.9 Are holiday breaks included in the study periods set out in the written agreement? (Updated 1 May 2012).**

The information about courses and their study periods should reflect the duration of the course as it is registered. Part C of the National Code requires that course duration includes structured holiday breaks and also allows the duration of ELICOS courses to vary according to each student's learning goals as reflected in the expected duration of study on the student's CoE.

There is no requirement for holiday breaks to be included in any particular study period, this is up to each provider to determine. This means, for example, that if a provider has a CRICOS registered course of 26 weeks with 4 weeks of holidays, the written agreement could specify a study period of 22 weeks. In this case, in the interests of transparency, the written agreement should also outline the number of weeks holiday that are not included in the study period.

**4.10 If a holiday break is included in a study period, this may mean that the student's CoE is longer than 24 weeks. Can a provider receive 100% of pre-paid fees for a course where the CoE is longer than 24 weeks even though the course actually has no more than one study period of 24 weeks excluding holidays? (Updated 4 May 2012).**

Yes. The student's CoE should accurately represent the course of study being undertaken by the student and if it includes a holiday break, it may be longer than 24 weeks but only include one study period. The obligation for a provider to receive no more than 50% of the student's total tuition fees does not apply if the course has only one study period.

**4.11 Can I amend a course to make it 24 weeks? (Updated 1 May 2012).**

For any amendments to your course registration details you need to apply to your regulator.

**4.12 How should providers manage the situation where a student does not pay for the second study period?**

Providers should continue to manage non-payment of fees according to their own policies and procedures. PRISMS provides the option to cancel the student CoE for non-payment of fees. Timeframes around cancellation of the CoE should take into account the requirement to give the student 20 working days to appeal a provider initiated cancellation of a CoE.

**4.13 Are application fees, i.e., fees for the application process involved in determining whether a student is suitable for enrolment with a provider, included in tuition fees? (Updated 1 May 2012).**

No. A provider is not required under the ESOS Act or the National Code to refund application fees. Application fees are a relatively small amount and are those fees payable so that a student can apply to undertake the course and are generally paid for the purposes of assessing a student's previous academic history to determine whether or not the student is suitable for enrolment with the provider.

**4.14 Does the limit on pre-paid fees also apply to homestay, book fees, OSHC, etc?**

The limits apply to tuition fees within the definition of the ESOS Act – these are fees directly related to the provision of a course that the provider is providing, or offering to provide to the student. This would not apply to homestay or OSHC or similar consequential costs not directly related to the provision of the course but may apply to book fees if included in the course package (i.e. where books are provided directly by the provider as part of the course, not just a list of book requirements given to the student).

**4.15 In the event of a course extension, which will create a longer course than the original enrolment, what fees can be accepted? For example, a student studies 22 weeks (full fees taken at the time of enrolment), they then extend for a further 10 weeks, making a total of 32 weeks. For the second enrolment, can we accept 5 weeks, or 10 weeks? Or does the total of 32 weeks mean they have to refund 6 weeks as they can only accept 50% of the fees?**

If a student requests an extension after they commence their course there would be no requirement to refund tuition fees already paid. However, if the extension means that the course is longer than a study period of 24 weeks, the remaining tuition fees cannot be required earlier than two weeks prior to the commencement of the second study period. There are no limitations on the collection of tuition fees for any extensions beyond the second study period.

**4.16 Providers are required to enter into a written agreement with each overseas student setting out the study period and tuition fees for each period. Does this mean that a study period can be set independently for each student based on their individual enrolment period? E.g. for an ELICOS student enrolling for 30 weeks the study period could be defined as 15 weeks + 15 weeks in their agreement whereas a student enrolling for 40 weeks could have the study period defined as 20 weeks + 20 weeks.**

There is no reason why a provider could not tailor study periods to suit the needs of individual students and the courses taking into account the requirement that the structure is consistent with the way the courses are registered on CRICOS including approved holiday periods. Part C of the National code requires that 'the registered duration of the course must include approved holiday periods' (par 7.3).

**4.17 Are there any limitations on the amount of pre-paid tuition fees that may be collected before 1 July 2012 if the student is not due to commence until after 1 July 2012? (Updated 17 May 2012).**

No. There were no limitations on the amount of prepaid tuition fees collected from an international student before the 1 July 2012, even if the student was not due to commence until after 1 July 2012. If an international student accepted an offer of enrolment and paid more than 50 per cent of the total tuition fees for the course before 1 July 2012, they were doing so within the current legislation and you do not have to return any money. If they commenced the course after 1 July 2012 and have any remaining fees, you may not require them to pay any remaining fees until two weeks before their second study period.

After 1 July 2012, a provider may not 'receive' more than 50 per cent of total course tuition fees (unless the course fits within one study period of no more than 24 weeks) before a student commences a course. All fees received after July 1 must be in accordance with the legislation. Therefore, after 1 July 2012 if an international student pays you more than 50 per cent of the total tuition fees before they commence the course, you must return any amount over the 50 per cent (unless the course is 24 weeks or less).

After 1 July 2012, a provider must not require any remaining tuition fees from a student more than two weeks before the start date of the student's second study period.

**4.18 If a student has already accepted an offer for a course that does not start until after 1 July 2012 do I have to update the written agreement to include information about study periods? (Updated 29 May 2012)**

No. A student who has already accepted an offer for a course, even if they are not due to commence the course until after the 1 July 2012, has done so under the previous legislative arrangements. The requirement for written agreements to include the length of each study period for the course and the tuition fees for those study periods applies to all written agreements signed on or after 1 July 2012. This means that written agreements and letters of offer, if not compliant by that date, will need to be amended to meet the requirements of the legislation.

**4.19 Are providers required to amend promotional course material to reflect the course duration expressed as study periods?**

No. The requirement is for the information to be in the written agreement with the student but not necessarily in the marketing material although the marketing material should give the student a clear idea of the study they would be undertaking.

**4.20 If a student has a package of courses or multiple eCOEs at the time of enrolment do these count as multiple courses? If they are multiple courses, can a college accept full fees for each course?**

Yes. Packaged courses and multiple CoEs where they apply to separate courses would each be considered as separate courses and the provider can either collect up to 100% total tuition fees for courses of no more than 24 weeks in length or 50% of fees for courses longer than 24 weeks. For example, where a student has two CoEs for two 20 week courses then

yes, a college can accept 100% of the tuition fees for each 20 week course, however, the obligation for providers not administered by a state education authority or eligible for recurrent Commonwealth funding to maintain a designated account for tuition fees before the student has begun the course will apply to each course.

**4.21 Can the provider pay the agent's commission from prepaid tuition fees before the fees are deposited into a designated account?**

Agent fees are not mentioned in the ESOS Act or Regulations as they are outside the scope of the legislation. Providers not administered by a state education authority or eligible for recurrent Commonwealth funding must keep the initial tuition fees as per the written agreement in a designated account until the student commences. If the provider chooses to incorporate the agent commission as a part of the tuition fees, as set out in the written agreement, then that entire sum must be kept in a designated account until the student commences study.

**4.21.1 What amount of pre-paid tuition fees should the COE show, the total amount or the amount less the agent's commission? (Updated 1 August 2012)**

Where a provider includes the agent's commission as part of the pre-paid tuition fees this amount must be included on the COE under 'Initial pre-paid fee' and held in a designated account until the student commences the course.

If a provider chooses to identify the agent commission as separate to tuition fees, then these would be classified as non-tuition fees and must be recorded on the COE under 'Other Pre-Paid Non-Tuition Fee' and do not need to be kept in the designated account.

Section 7 of the ESOS Act defines tuition fees as follows:

tuition fees:

(a) means fees a provider receives, directly or indirectly, from:

(i) an overseas student or intending overseas student; or

(ii) 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; and

(b) without limiting paragraph (a), includes any classes of fees prescribed by the regulations for the purposes of this paragraph; and

(c) without limiting paragraph (a), excludes any classes of fees prescribed by the regulations for the purposes of this paragraph.

**4.22 We have agents who collect 100% of fees from students. Are they now subject to the new requirements in relation to the collection of prepaid tuition fees? (Updated 1 May 2012).**

Yes. Agents who collect prepaid tuition fees from international students, do so on a provider's behalf and in that case, from a legal aspect, the acts of an agent are the acts of the provider. So agents must comply with the ESOS requirements relating to the collection of prepaid fees which come into effect on 1 July 2012.

Standard 4 of the National Code places obligations on the provider to take all reasonable measures to use education agents that have an appropriate knowledge and understanding of the international education industry and not to use education agents that are dishonest or lack integrity.

Standard 4.1 requires providers to enter into a written agreement with each agent it engages to formally represent it. The agreement must specify the responsibilities of the education agent and the registered provider and the need to comply with the requirements of the National Code.

In addition, the provider must enter into a written agreement with the student concurrently with or prior to accepting tuition fees for a course from the student. The written agreement must set out the tuition fees for each study period in accordance with the legislation. There should be no circumstance in which either the agent or student are unaware of the amount of tuition fees that can be collected either by the provider or on the provider's behalf.

**4.23 Should providers pay all of an education agent's commission up front or only on the fees received?**

Agent commissions are not within the scope of the ESOS Act. They are a private business transaction between the provider and the agent.

**4.24 We are a provider that takes Payment in Arrears. Are we required to abandon this practice given that we will now be required to pay into the TPS? (Updated 1 May 2012).**

No. Providers who collect Payment in Arrears are able to continue to do so and should ensure that this arrangement is transparent to international students and regulators. While this will not remove the requirement for the provider to pay into the TPS, the TPS Director may take it into account for the purposes of the risk based component of the TPS levy.

**4.25 We are a provider that does not collect fees from students at all. Are we still required to pay into the TPS?**

Yes. All CRICOS providers will be required to pay an annual TPS Levy. Contributions to the TPS framework will be universal but also risk based, with all currently available exemptions from the Assurance Fund arrangements removed. The TPS Director will likely take into account situations where there are fees at risk for the purposes of determining the risk based component of the TPS levy for a particular provider.

## **5. Designated Accounts**

**5.1 How does the requirement to place the initial study period fees into a designated account work?**

This measure requires all providers, except those administered by a state education authority or in receipt of recurrent Commonwealth funding to place all pre-paid tuition fees into a designated account. This account can only be drawn down when the student commences the course. Providers must establish a mechanism for keeping pre-paid tuition fees separate from day-to-day operating expense accounts, so that if a refund is payable before the student commences, the refund can be made in full and in a timely way without impact on the financial operations of the business or recourse to the tuition protection system.

The intention is that initial pre-paid tuition fees held in this account will not be available for the payment of debts of the provider including if the provider goes into administration. A provider must not mix pre-paid tuition fees held in a designated account with other money. Strong penalties will be imposed for non-compliance with this requirement. To minimise the regulatory burden, no routine regular reporting on this requirement by the provider is envisaged, but providers will be required to demonstrate maintenance of the designated accounts on request by the regulator.

**5.2 What kind of systems might Government expect a provider to have in place around designated bank accounts? (Updated 26 March 2012)**

Providers not administered by a state education authority or eligible for recurrent Commonwealth funding will be required to keep the prepaid tuition fees of non-commenced students in a separate account. Only after the student commences, can the tuition fees be removed from the designated account. The provider will need to be able to demonstrate at any time at the request of the regulator that the funds in the designated account are sufficient to refund all non-commenced students. The provider would need to be able to verify the amount of prepaid tuition fees received from non-commenced students.

**5.3 Providers who are in receipt of Commonwealth Recurrent Funding are exempt from the requirement to place prepaid tuition fees into a designated account. What does in receipt of Commonwealth Recurrent Funding mean?**

A provider receipt of Commonwealth Recurrent Funding is one that is entitled to receive funds under the law of the Commonwealth for recurrent expenditure for the provision of education or training. Providers such as private schools, TAFEs, Universities receive recurrent government funding.

**5.4 Are there likely to be any exceptions to designated bank account requirements for pathway providers that have been selected to participate in the visa streamlining program?**

No. There are no exemptions for pathway providers unless the provider is of the kind exempt under the legislation. Exempt providers include:

- a provider administered by a State education authority
- any provider that is entitled to receive recurrent Commonwealth Government funding
- any other provider specified in the regulations

The legislation also makes it clear that any private corporate body established in connection with a provider exempt under the legislation is not by virtue of that connection an exempt provider.

**5.5 When is a provider allowed to draw down money from the designated prepaid tuition fee account?**

Providers are able to draw down on an international student's prepaid tuition fees in the designated account once the student begins the course. Providers administered by a state education authority or eligible to receive recurrent Commonwealth funding are exempt from this requirement.

**5.5.1 When is a provider allowed to draw down money from the designated prepaid tuition fee account in the case of student default? (Updated 1 August 2012)**

Providers are required to ensure that there is a sufficient amount of money in the designated account to repay all tuition fees for non-commencing students. Money can be withdrawn from the account when the student commences but also to pay a refund. In the case of student default, including visa refusal the provider is required to refund the student according to sections 47D and 47E. To put it simply, once a student default is established the refund must be paid within the given timeframes. There is no requirement on the provider to retain money in the designated account for students whose refund obligations have been fully met.

**5.6 Is the 'designated account' an actual separate bank account? Or can it be a single bank account with multiple accounts in provider's database/accounting systems?**

The designated account should be a separate bank account within the ordinary meaning of 'account'. Providers must establish a mechanism for keeping pre-paid tuition fees separate from day-to-day operating expense accounts, so that if a refund is payable before the student commences, the refund can be made in full and in a timely way without impact on the financial operations of the business or recourse to the tuition protection system.

**5.7 Can the designated account have other fees in it? (Updated 1 May 2012).**

Yes. There is no limit on the amount of money kept in the designated account. The legislation only requires that at all times there is a sufficient amount in the account to repay all prepaid tuition fees for students who have not yet commenced their course.

**5.8 Can a CRICOS provider have a single designated account for a number of their providers or locations? For example one CRICOS provider may have several RTOs operating across a number of locations. Could the pre-paid tuition fees for not yet commenced students from several of these providers be kept in a single account? (Updated 1 May 2012).**

It is the department's view that as long as the designated account is entirely separate from the providers' operating accounts, the account will meet the requirements of the legislation. However, each provider needs to be able to demonstrate to the regulator, if required, that the funds are sufficient to repay all non-commenced students at all locations.

**5.9 Are non-exempt providers required to pay interest to students on the money that has been deposited in a designated account? (Updated 26 March 2012)**

No. There is no requirement on providers to pay interest to students on the amounts deposited in designated accounts.

## **6. TPS Levy**

**6.1 What is the TPS Levy and how much will providers have to pay?**

The annual TPS Levy is designed to support the Overseas Student Tuition Fund (OSTF) which will be managed by the TPS Director for the purposes of student placement and refund activity. The TPS Levy will replace annual Assurance Fund contributions. As The TPS framework will commence on 1 July 2012, The 2012 Assurance Fund contribution will be the last made under the existing framework ahead of the first TPS Levy to be imposed in 2013. The TPS Levy will comprise:

- An *Administrative Fee* component payable by all providers except registered schools that have no international students. As established in the Act, this incorporates a flat fee per provider as well as a per enrolment component.
- A *Base Fee* component payable by all providers except registered schools that have no international students. This fee recognises the reputational benefits to the sector of a robust and sustainable tuition protection framework. The Act establishes that this tier of the Levy incorporates a flat fee per provider and a per enrolment component.
- A *Risk Rated Fee* component. Those providers which present the lowest level of risk will not be required to pay this component. This component recognises the risk of default associated with each relevant provider.

- A *Special Levy*, initially set at zero, would be charged only during times of more buoyant sector circumstances in order to build a 'buffer' in the OSTF in order to insure against future systemic shocks experienced by the sector.

**6.2 How will risk be assessed for the purpose of determining levy payment amounts?**

The TPS Director will determine the risk rated component based on the advice of the TPS Advisory Board. Some providers will be exempt from paying this component on the basis that they are effectively publicly supported. For the remainder, they will be assessed against agreed risk factors which will result in provider-specific outcomes. Each year the TPS Director will publish, through a legislative instrument, the risk factors to be used in assessing each provider's risk and this is then multiplied by the base multiplier of a percentage of tuition fee income as set by the TPS Director each year. The risk factors determined by the TPS Director and recommended by the TPS Advisory Board are designed to reflect the risk of default and therefore the risk of a call each provider represents on the tuition protection framework.

**6.3 How will low risk providers be defined and will the sector have any involvement in the process of determining the risk? (Updated 26 March 2012)**

For the purposes of the TPS Levy, risk criteria will be determined by the TPS Director who will be advised by an advisory board. The board will include broad sector representation as well as government and expert representatives.

**6.4 What is the timeframe for determining the risk factors associated with the TPS Levy? (Updated 16 April 2012)**

We expect the TPS Director, following advice from the TPS Advisory Board, will finalise the determination of the risk factors in the last quarter of 2012.

**6.5 How will providers be able to access the TPS Levy information? (Updated 16 April 2012)**

The risk factors and other relevant material will be set out in a legislative instrument which will be agreed by the Treasurer and Parliament. It will be published on the TPS website for you to access.

**6.6 Is a provider able to appeal the risk component charged by the TPS Director? (Updated 1 May 2012).**

The risk factors determined by the TPS Director and Advisory Board will be made public. Providers can appeal to the Administrative Appeals Tribunal (AAT) if they believe the risk component of the TPS Levy as it applies to their business has been incorrectly calculated.

**6.7 When will providers be able to see what the cost will be for the TPS Levy? (Updated 1 May 2012).**

The TPS levy has the following components:

**Administrative component** has two flat fee structures as set out in the ESOS (TPS Levies) Act 2012

- **Admin fee** of \$100 plus \$2 per enrolment for the previous year, and
- **Base fee** of \$200 plus \$5 per enrolment for the previous year

**Risk based component**

- Based on a formula set out in the *ESOS (TPS Levies) Act 2012* and criteria to be determined by the TPS Director [ link to Act available from [www.aei.gov.au](http://www.aei.gov.au)]

**Special levy**

- Initially set at 0.

The TPS Director will determine the risk factors used in calculating the risk component of the levy with advice from the TPS Advisory Board. Once determined, the TPS Director will specify the relevant factors in a legislative instrument which will be made publicly available and may be expected in the last quarter of 2012. The first levy will not be invoiced until March – April 2013.

Given that public institutions such as public universities, public schools and TAFES have a low risk of closure the Government has determined that they will not be required to pay the risk component of the TPS Levy and this will be formalised in a legislative instrument.

**6.8 *If I am in the process of registering as a CRICOS provider will I have to pay the TPS Levy? (Updated 16 April 2012)***

A provider who is in the process of being registered as a CRICOS provider will be liable to pay elements of the administrative and base fee components of the TPS Levy. Those amounts are currently \$100 for the Administrative Fee and \$200 for the Base fee component.

**6.9 *Isn't it possible that by including a risk component in the TPS levy it may create a self fulfilling prophecy of provider closure? For example if a provider is "high risk" (due to their financial situation), wouldn't charging them more money for the risk component of the levy make it more difficult to keep their head above water?***

The risk component of the TPS Levy will be determined by the TPS Director, based on recommendations from the TPS Advisory board which will include actuarial experts, government and sector representation. A risk based approach to the TPS is consistent with normal insurance arrangements.

**6.10 *How do ACPET's risk ratings and charges affect the risk component of the TPS? (Updated 12 June 2012).***

From 1 July providers are no longer required to be a member of a Tuition Assurance Scheme (TAS) as a condition of their CRICOS registration. Providers will no longer have to separately pay for Tuition Assurance Scheme Membership. This includes those who use ACPET as their TAS provider. ACPET's risk ratings and charges have no effect on the risk component of the TPS.

**6.11 *How can the sector be assured the new Overseas Student Tuition Fund (OSTF) is more sustainable than the previous Assurance Fund and that its governance is transparent? (Updated 12 June 2012).***

There are several factors that will make the new OSTF arrangements both more transparent and sustainable into the future.

- The OSTF will be maintained by a TPS Levy which is payable by all providers in the international education services sector, as opposed to the ESOS Assurance Fund Contributions scheme which saw a significant number of exemptions being applied.
- The amounts paid by providers under the TPS Levy will comprise four tiers (as described above) and will be based on risk for each provider. The risk categories will be defined annually by the TPS Director and will be established in a Legislative Instrument.
- In establishing these risk categories, the TPS Director will have regard to the advice of the TPS Advisory Board – an independent body comprising Government, actuarial and sector representatives.

- In order to build up the capital reserve of the OSTF, the TPS Director will be able to introduce a Special Levy component at times when the sector has significant capacity to absorb such an impost. This will provide an additional method of insuring the OSTF against future systemic shocks as experienced by the sector recently.
- The TPS Director as a statutory appointment will be accountable for the management of the OSTF in accordance with the *Financial Management and Accountability Act 1997* (FMA Act), and is obligated under the ESOS Act with ensuring the sustainability of the OSTF.

In addition the TPS Director will report the outcomes for the OSTF as part of the Department's Annual Report each year which will be tabled in Parliament.

**6.12 Why are public providers included in this system when they were exempt under the previous system?**

The inclusion of all providers in a universal tuition protection framework benefits students affected by a closure by providing a larger pool of available placement options. It also ensures all providers have an opportunity to place affected students and benefit from ongoing fees.

Importantly, all providers benefit from the reputational and marketing advantages to Australia of having a robust and sustainable tuition protection framework in place.

**6.13 When will I receive my TPS Levy notice? (Updated 16 April 2012).**

We expect the first TPS Levy notice will be sent to providers in the first quarter of 2013.

**6.14 Are private providers still required to be members of a Tuition Assurance Scheme?**

No. The existing legislated requirement to be a member of a TAS will cease on 1 July 2012. All providers will pay an amount annually for tuition protection – the TPS Levy. This will vary for each provider as the risk rated component is determined according to each provider.

**6.15 What if a provider has a bank guarantee, indemnity agreement, payment-in-arrears agreement or ministerial exemption in place?**

All previous exemptions from TAS and/or from contributing to the ESOS Assurance Fund ceased on 1 July 2012 and all providers will be required to contribute to the OSTF through the annual TPS Levy. If a provider has significantly lowered their risk through the acquisition of a bank guarantee, indemnity agreement or payment in arrears arrangement, these may be considered by the TPS Director among the elements that make up the risk factors for the risk rated premium. However, it should be noted that the TPS Director will set the TPS Levy criteria during the latter half of 2012 ahead of the first levy being imposed in early 2013, and the criteria cannot be anticipated before then.

## **7. Enforceable Undertakings**

Enforceable undertakings seek to protect the integrity of the international education industry as well as deliver timely and cost effective responses to breaches of the ESOS regulatory framework. They will become an important component in the suite of enforcement options available to influence provider behaviour and promote compliance.

Enforceable undertakings are promises a provider voluntarily makes to perform various tasks to address non-compliance with the ESOS Act. The regulator will only accept an

undertaking where it is the most appropriate form of enforcement response and will achieve a more effective and long-term outcome than prosecution or administrative action.