

Purpose of the Information Sessions

- Purpose is to inform the sector about:
 - the Government's reforms and amendments to the *Education Services for Overseas Students Act 2000* (ESOS Act) that were passed in March this year, and are to commence from 1 July; and
 - what providers need to do comply.
- This is not a consultation but rather about the implementation part of the policy development cycle (as outlined below)
 - *Problem identification*
 - *Review*
 - *Recommendations*
 - *Government response*
 - *Parliamentary deliberations*: In this case, Committees of both the House of Representatives and the Senate enquired into the Government's proposed amendments
 - *Enactment*: Some amendments were passed in April last year, and the most recent amendments that are the primary focus of the information sessions were passed and received Royal Assent in March this year.
 - *Implementation*: This will be from 1 July.
- At this stage of implementation, the department is:
 - developing the regulations and legislative instruments that will provide the detail to the provisions of the legislation; and
 - running recruitment and tender processes for the TPS Director and Advisory Board, and the TPS administrator.
 - The TPS online system has been under development since last year.
- At this stage providers will be preparing to be ready for the changes from 1 July.

Baird review

- In August 2009, the Hon Bruce Baird AM was asked to review the ESOS Act. This followed a period of extraordinary growth in international education in Australia. Students had more than doubled between 2002 and 2009.
- In his report in March 2010, Mr Baird said: “*The growth resulted in damaging pressures affecting education quality, regulatory capacity, student tuition protection and infrastructure*”.
- In his consultations Mr Baird met with hundreds of students and providers, received submissions, and held an online discussion about the challenges confronting international education.

- His report, released in March 2010, emphasized the need to better support international students in Australia, and ensure better responses when things go wrong, such as when a provider collapses. He identified poor practices by some providers, and recommended a range of changes to the legislation to make it more effective.

The Government's response to the Baird Review – Phase 1 April 2011

- The Government's response to Baird's recommendations has been in two main phases.
- The first phase changes to the ESOS Act were made in April last year and had a focus on better regulation, including:
 - strengthening the registration process to ensure only quality providers are allowed into the sector;
 - better managing risk; and
 - effective enforcement.
- The Office of the Overseas Students Ombudsman was also created to ensure robust complaints handling for students enrolled with private providers.

Phase two March 2012

- The information sessions are focusing on the second phase response to the review: the legislation passed in March this year.
- This is at the other end of the spectrum – making sure students are well looked after when things go wrong.
- Mr Baird listened to students and providers about closures, and heard:
 - most providers who close do not refund students
 - there were unreasonable delays in placements or refunds
 - of the burden on providers to place students for free and
 - there were difficulties getting TAS membership.
- After considering several options and a thorough cost benefit analysis of these options, Mr Baird recommended establishing a much simpler, single layered process to replace the Tuition Assurance Scheme and the ESOS Assurance Fund.
- Mr Baird's recommendations can be followed through into the changes that have been made to the ESOS Act. Mr Baird recommended:
 - a single mechanism to place students when a provider fails to meet its default obligations: the Tuition Protection Service.
 - placement with any appropriate provider
 - refunds as a last resort: primary goal to replace the course

- all providers to pay into the TPS: the legislation is removing ministerial exemptions from contributing to tuition protection
 - risk based charges in the TPS Levy paid into the OSTF
 - only refunding the unused part of prepaid fees (rather than 100%)
 - providers to maintain student contact and other details.
- In addition Mr Baird found that taking 100 per cent up-front fees was a poor business practice.
- The session will cover:
 - the elements of the TPS
 - how the TPS differs from current arrangements
 - the TPS levy and the risk based component
 - what happens when a provider defaults
 - partial refunds
 - what happens to TAS membership and the ESOS Assurance Fund requirements on 1 July
 - what providers need to do in terms of student records
 - the limits on prepaid tuition fees and designated accounts
 - how the changes apply to existing students
 - National CRICOS registration
- Providers are encouraged to look at the information on the AEI website. There is a comprehensive FAQs document as well as an online enquiry form. The FAQs will be added to it as new questions emerge, so that all providers have the same information.

The Tuition Protection Service (TPS)

- The TPS has a number of elements which can be categorised as either governance or operational in character.

Governance

- On the governance side there is a statutorily appointed TPS Director and a representative Advisory Board, both of which are to be appointed by the Minister
- Additionally the TPS Director and Advisory Board will be supported in their roles by a Secretariat located within the department.
- This governance model is designed to ensure the new TPS is accountable to Government and transparent to the sector.
- Decisions by the TPS Director about fees will be both more transparent and informed by a broad range of sector, government and actuarial expertise on the Advisory Board.
- The main objective is to ensure that the TPS is sustainable into the future, even if there are large closures.

- In the last couple of years the Government has had to inject both a \$5.1m loan and a \$25m conditional gift – taxpayer dollars – to enable the current ESOS Assurance Fund to pay out all international student affected by closures.
- This was for two reasons:
 - because providers were not meeting their refund or placement obligations when they closed; and
 - not enough had been collected by the ESOS Assurance Fund over the years to build up a nest egg to meet the cost of a large number of provider closures.
- Currently, representation on the Contributions Review Panel which determines the ESOS Assurance Fund contribution each year is quite narrow and the TAS operators have been free to set their own membership criteria and fees.
- In the new TPS, there will be no separate TAS operators and therefore no mandatory TAS membership or fees.
- There will be no exemptions – that means every provider registered on CRICOS, public and private, will be a contributing member of the TPS.

Operations

On the operational side, there will be:

- a new online placement facility;
- the Overseas Students Tuition Fund (OSTF), and
- a contracted administrator to assist the TPS Director in managing the day-to-day placement and refund activities of the TPS.
- In practice this means that after the 14 day provider default period has passed, if a provider has not met their default obligations, affected students will be able to log into the online placement facility.
- Once logged in the student will be able to access information about alternative providers in their area and the amount equivalent to their refund owing, if any, that would go towards enrolment in another course.
- The student will be able to apply for alternative courses online, but would have to meet all pre-requisite entry requirements and any extra costs.
- Students will not be alone during this process: the contracted administrator will be available to assist students through the process and the system itself will be both intuitive and have prompts to help students.
- The key differences with the current system are:
 - Students will have more choice and control in the placement process and assistance will be available from the TPS administrator if necessary.
 - All providers will have the opportunity to benefit from ongoing fees by placing students.

- Alternative providers would receive the equivalent of the student's refund, if any, as an incentive for placing them.
 - Providers will not be forced to take any student. Similarly, students should not expect to place themselves with a higher quality, higher cost provider for free.
 - Additionally, the student will not be compelled to accept an alternative place.
- After 30 days, if the student hasn't been able to find another place, they can simply apply for their refund.
- The student then has the option of enrolling in a completely different course but without any assistance, and may then need to make alternative visa arrangements or return home.
- As having a Confirmation of Enrolment is a condition of a student visa, the TPS Director would inform DIAC of any student that has received a refund rather than a placement.

Transition

TAS Membership requirements

- All providers must maintain TAS membership up to and including 30 June 2012.
- Under the legislation, students affected by closure, up to and including 30 June 2012, will be managed under the current arrangements.
- From 1 July the TPS Director and Administrator will take over from TAS operators and ESOS Assurance Fund in finalising this caseload.

ESOS Assurance Fund

- From 1 July 2012 the ESOS Assurance Fund will no longer exist.
- Provider contributions for the 2012 year will be used to pay out the Government loan.
- The Government has provided the TPS with seed funding of \$5m to carry it through until the first TPS Levy is collected in early 2013.

TPS levy

What is the TPS levy?

- A new annual TPS levy will be applied to ALL registered international education providers.
- This will replace the current annual ESOS Assurance Fund contribution and TAS membership
- All providers will be required to contribute to the TPS through the TPS levy.
- The TPS Director will set the levy annually, with advice from the TPS Advisory Board.
- There will be three main components of the TPS Levy:
 - A base and administrative component, payable by all providers. This covers the main costs in running the TPS. All providers will pay a ‘per institution’ fee as well as a small ‘per student’ fee.
 - A Risk Component, and
 - A Special Levy. This component will initially set at zero and is intended to be only levied on all providers during periods of buoyancy to build a nest egg for future down times, such as experienced recently.

How will risk be determined?

- The TPS Director will determine the risk factors used in calculating the levy with advice from the TPS Advisory Board – so it is not possible to pre-empt exactly what they will be.
- In the work the Government did in preparing these reforms the Australian Government Actuary considered a range of possible factors including the providers compliance history, whether there was a concentration of students from single source countries and the balance between domestic and overseas students.
- It is expected the TPS Director and TPS Advisory Board will meet in the last quarter of 2012 to determine the risk component of the TPS Levy.
- Once determined, the TPS Director will specify the relevant factors in a legislative instrument which will be publicly available.
- Given 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.
- Providers who are very high risk will not be registered at all.

Default notifications and reporting

- It is important to emphasise that all providers are still expected to meet their default obligations under the ESOS Act. This is the first layer of tuition protection for students.
- From 1 July there are a few changes to these default obligations providers need to be aware of.
- Providers are required to notify the Secretary and the TPS Director within 3 business days if they default – that is, if they are not able to deliver the course to a student as agreed.
- Providers will have 5 business days to notify of a student default – that is, if the student does not commence on the agreed starting date or a re-negotiated date or otherwise fails to meet the terms and conditions of their agreement with the provider.
- The Government, in setting these reporting timeframes, listened to the concerns raised by stakeholders during the Parliamentary review process and has put in place even more generous time frames than were initially recommended by the Parliament.
- One of the main objectives of the TPS, as recommended by Mr Baird, was to ensure that the placement and refund process for students are as quick and streamlined as possible.
- The notification requirements are to ensure students are looked after in a timely way following a default, either by the provider, or if necessary by the TPS.
- From this default date the provider will then have 14 days to meet their default obligations, or in the case of a student default, 28 days.
- For provider defaults there are two main options. Providers can offer the student an alternative place that is accepted by the student or refund the student the unused portion of prepaid tuition fees.
- Additionally, providers must report the outcome of the provider or student default within 7 days of the end of the default period, i.e. report whether the student took the offer of an alternative course or a refund, and, if a refund, how much was paid.
- It should be noted that these default notifications are different to the 14 day requirement to report changes to information about accepted students to DIAC through PRISMS (under section 19 of the Act). These DIAC requirements remain.
- All default notifications and reporting will be done through PRISMS which is being enhanced to make data entry as quick and simple as possible. Where possible, for example, providers will be able to upload information directly into PRISMS.
- There are serious penalties for providers who don't meet these obligations.

Partial refunds

- This is a significant change – in the past, if the student did not accept an offer of an alternative course, providers had to give the student a full refund regardless of how much of the course had already been delivered.
- Mr Baird recognised that this was a burden on providers, the sector and tax payers.
- The method for calculating partial student refunds will be spelt out in a legislative instrument.
- The department will send a notice to all providers confirming the details of this legislative instrument, and what it means for providers, once it has been finalised.

Supporting measures

- Apart from the TPS there are a number of changes to ESOS which will support the placement process and reduce the refund burden on providers and the TPS.
- The first of these are strengthened record keeping requirements. Mr Baird made a specific recommendation about this.

Student records

- A main source of delay in the placement and refund process is difficulty contacting students and determining where the student is in their studies, often because student records are out of date.

Contact details

- From 1 July, all providers will need to establish a mechanism to encourage international students to update their contact details at least every six months. Many providers already do this.
- This could be, for example, a reminder email to all international students or getting students to confirm details on a print-out when they start classes each study period.
- The contact details required are a current residential address, and a mobile phone number and email address if the student has them.
- Obviously if the student doesn't give the provider this information, a provider cannot be found non-compliant.
- There will also need to be a requirement in the regulations for a secondary contact person to be entered into PRISMS for any students who are under 18. This is so that in the case of a closure the TPS Director or administrator can arrange alternative placement and welfare arrangements for the student.
- The department will confirm requirements for this when finalised.

Academic records

- All providers are already required to keep up to date student academic records under ESOS and quality assurance frameworks.
- This requirement has been strengthened in ESOS to make it clear that providers are expected to update student records for each unit of study completed and assessed. Strengthened penalties apply for non-compliance.
- The regulator will now be able to request these records at any time, including when a provider is under administration.

Limits on prepaid tuition fees

- Currently there are no limits on how much or when student tuition fees may be collected in advance.
- As mentioned, Mr Baird concluded that collecting 100 per cent of tuition fees upfront was problematic because
 - it increases the refund that would be owed to a student if their visa is refused or the provider closes and
 - it removes any incentive for the provider to ensure the student is happy with the service being delivered.
- Amendments therefore have been introduced to introduce limits on the amount of prepaid tuition fees that may be collected at certain times. These commence from 1 July.
- There has been a bit of confusion about this measure and in response to stakeholder concerns, the Government further simplified and clarified the requirements in the final stages of passage of the legislation through the Senate.
- The first part of the change is the introduction of study periods. A study period is a period of time that may be no more than 24 weeks. All study periods and the tuition fees for each study period for the course must be spelt out in the written agreement with the student. Providers have flexibility to determine the length of a study period. Providers might decide to have study periods of different lengths or even have two short courses sequentially in one study period if together they are less than 24 weeks.
- From 1 July, therefore, a provider may only **collect** up to 50% of the total tuition fees for the course **at any time** before the student commences the course. **The only exception to this is if the course is a short course of 24 weeks or less. In this case the provider may still collect 100% of fees.**
- 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 means that a provider may not ask or encourage the student to pay any further fees until 2 weeks before the second study period. However if the student voluntarily pays earlier the provider will not be considered in breach of the requirement.
- After the second study period there is no restriction on when or how much tuition fees may be collected.

What are tuition fees?

- The definition of tuition fees has also been amended to clarify that tuition fees are only those that are directly related to the provision of the course.
- Tuition fees do not generally include such things as transportation, accommodation or health insurance or books or materials that are not provided as part of the course. It could include materials provided by the provider and agent commissions if you choose to incorporate these as part of tuition fees.
- The limits on prepaid fees only apply to tuition fees and any costs directly related to the course should be included in tuition fees as part of the written agreement.
- Providers are also required to outline non-tuition fees in the written agreement however should make it clear to students that only tuition fees are protected under the ESOS Act.

Designated accounts

- All providers except those administered by a state education authority or eligible to receive recurrent Commonwealth funding are required to place all pre-paid tuition fees into a designated account that can only be drawn down when the student commences the course.
- This is to ensure that if a student is owed a refund before he or she commences, for example if a visa is refused, the funds are readily available.
- Even if the provider goes into administration, the funds in the account cannot be used for the payment of any other debts.
- The purpose of this is that students are refunded quickly.
- Together the limits on prepaid tuition fees and the designated account requirement will help reduce the calls on the TPS and therefore keep the TPS levy down for all providers.
- The designated account does not have to be a trust account, just a general account that keeps the prepaid tuition fees of non-commenced students separate to the provider's day-to-day operating funds.

- There is no routine reporting requirement but at any time the regulator may ask a provider to show that the funds in the separate account are sufficient to pay refunds to all students not yet commenced.
- There are strict penalties for non-compliance with the requirement to maintain a designated account which may be charged against either the owner or the PEO of the provider.

How do the limits on prepaid fees and designated accounts apply to existing students?

- These requirements will apply to all students you enrol and who commence after 1 July.
- Letters of offer should now be framed with the legislation in mind. If a provider has already sent out letters of offer requiring 100% of tuition fees upfront, they must let students know that if the student accepts the offer after 1 July the provider cannot legally take more than 50% of tuition fees before they commence.
- If students pay more than 50% before commencement, providers will need to return the difference.
- All prepaid tuition fees collected for students who enrol after 1 July 2012 must be kept in the designated account and the 2 week rule on future fees will apply to these students after they commence.
- These are all the requirements related to tuition protection.

National CRICOS Registration

- The legislation just enacted also introduces national registration on CRICOS for providers operating in more than one location – either within a state or in more than one state or territory.
- Currently CRICOS registration is by course by state and each jurisdiction has applied this a bit differently. Several providers have multiple CRICOS registrations and this duplicates administrative work for providers and regulators.
- From 1 July any new providers or existing providers who wish to register courses at multiple locations will be able to do so under one CRICOS registration.
- It is important to emphasise however that the assessment will continue to be location based and each international student and course must be linked to a particular location.
- For existing providers it is intended that national registration be introduced gradually – as each of their separate registrations come up for renewal, unless they apply to consolidate registrations early.

- With the establishment of national regulators for higher education and Vocational Education and Training, that is TEQSA and ASQA, national registration on CRICOS makes sense and will support nationally consistent processes and risk management.
- ASQA and TEQSA have already taken over responsibility from the states and territories as designated authority under the ESOS Act for all sectors except schools. From 1 July, ASQA and TEQSA will also take over the Commonwealth functions under ESOS so regulation is a more seamless process.

Other changes to expect

- There are a few other changes the Government will introduce.

Knight review recommendations

- The Knight review of the student visa program recommended removing automatic cancellation of student visas for unsatisfactory attendance or course progress. Under legislation currently before Parliament:
 - Providers will still need to advise the Immigration Department of unsatisfactory attendance; but
 - They will not have to send the s20 notices to students that require them to go to a DIAC office;
 - There will be obligations to update student contact details.
 - DIAC will contact students about their student visa if necessary.
- It is expected this change will take effect later this year.
- Mr Knight also recommended that agent information be included against the student confirmation of enrolment where an agent is used. Currently, PRISMS prompts providers for this information on a voluntary basis: changes to the Regulations are being developed that will make this a compulsory requirement.

Student transfers

- Mr Baird recommended that students should be allowed to transfer to another provider if they wish, after the first study period.
- Currently students may only transfer after they have completed the first six months of their principal course.
- This will be a change to the National Code that is expected to be implemented by the end of the year.

Student safety plans

- Under the International Student Strategy for Australia state and territory governments agreed that all education providers will be required to develop a safety plan for international students.
- This was in response to much publicised concerns about student safety.
- This will also be implemented through changes to the National Code later this year.

Providers will receive further advice on these proposed changes and what they mean for providers in due course.

What providers need to do by 1 July 2012

Until 1 July this year:

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

To be ready for the 1 July changes:

- **establish a designated account** – providers must establish a designated account. This is for prepaid tuition fees for students who haven't commenced (except for those in receipt of recurrent Commonwealth funding).
- **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.
- **review any letters of offer** – to ensure arrangements comply with prepaid fees legislation.
- **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.

- Providers are also encouraged to **review and update information in PRISMS** relating to courses and course locations both in anticipation of national registration; but also as this information may affect the amount providers pay under the TPS and the Annual Registration Charge.

More information

- AEI website
- FAQs
- ESOS online form
- Legislation