

Student Default Obligations

Tuition protection obligations of CRICOS education providers following a student default

This document provides guidance intended to help Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) education providers understand and meet their tuition protection obligations following a student default under the [Education Services for Overseas Students Act 2000](#)¹ (ESOS Act). The information in this document is not exhaustive. The Tuition Protection Service (TPS) recommends providers refer to the ESOS Act and any other relevant legislation to ensure they comply with all requirements following a student default.

Overview of student default obligations

A CRICOS provider must meet the following tuition protection obligations after a student default:

- (a) **within the applicable 4-week provider obligation period**, refund the student either:
 - (i) under **section 47D** of the ESOS Act, in accordance with the written agreement, or
 - (ii) under **section 47E** of the ESOS Act, in accordance with the legislative instrument made under subsection 47E(4) of the ESOS Act
- (b) **within 7 days after the end of the 4-week provider obligation period**, if a refund is required under **section 47E** of the ESOS Act, notify the relevant ESOS agency and the TPS Director
- (c) **as soon as practicable and within any specified timeframe**, respond to any communication or notices received from the TPS Director or a delegate of the Director.

These obligations are outlined in further detail below.

Student default

Under **section 47A** of the ESOS Act, an overseas student or intending overseas student defaults, in relation to a course at a location, in any of the following circumstances:

- (a) the student does not start the course on the agreed starting day (and has not previously withdrawn)
- (b) the student withdraws from the course (either before or after the agreed starting day)
- (c) the provider refuses to provide, or continue providing, the course to the student for one or more of the following reasons:
 - (i) the student failed to pay an amount they were liable to pay the provider to undertake the course
 - (ii) the student breached a condition of their student visa
 - (iii) misbehaviour by the student.

¹ www.legislation.gov.au/C2004A00757/latest/text

Requirement to provide a refund to a defaulted student

Following a student default, a provider must refund to the defaulted student in accordance with either **section 47D or 47E** of the ESOS Act.

Refund under a written agreement (section 47D)

A refund must be provided to a defaulted student under **section 47D** of the ESOS Act if:

- (a) the provider **has** entered into a written agreement with the student that meets the requirements of section 47B of the ESOS Act, and
- (b) the student **was not** refused a student visa in circumstances that would require a refund to be provided under section 47E of the ESOS Act instead.

The provider must pay the refund amount required under the written agreement within the 'provider obligation period' of 4 weeks after receiving a written claim from the student.

Refund in other cases (section 47E)

A refund must be provided to a defaulted student under **section 47E** of the ESOS Act if:

- (a) the provider **has not** entered into a written agreement with the student that meets the requirements of section 47B of the ESOS Act², or
- (b) the student **was** refused a student visa and, because of that refusal, failed to start the course, withdrew from the course, or failed to pay an amount required to undertake the course.

The provider must pay the refund amount worked out in accordance with the [legislative instrument](#)³ made under subsection 47E(4) of the ESOS Act within the 'provider obligation period' of 4 weeks after the default day.

Protected amount

Under **sections 28 and 29** of the ESOS Act, CRICOS providers must keep tuition fees received in respect of an overseas student or intending overseas student before they start their course (a 'relevant student') in a separate account⁴. Providers must ensure that the account always contains enough money (the 'protected amount') to repay all tuition fees received in respect of all relevant students.

Once a student starts their course, the tuition fees received in respect of that student are no longer part of the protected amount and may be withdrawn from the account. An amount may also be withdrawn from the account to pay a refund under section 47D or 47E of the ESOS Act in relation to a relevant student, or to pay the TPS Director under section 50C of the ESOS Act in relation to a relevant student.

Offence for failure to provide a refund

Under **section 47G** of the ESOS Act, a provider's failure to provide a refund to a defaulted student is an offence of strict liability.

² For the consequences of failing to enter into a written agreement that complies with the requirements of section 47B of the ESOS Act, see section 47F and Division 1 of Part 6 of the ESOS Act.

³ Education Services for Overseas Students (Calculation of Refund) Instrument 2024:
www.legislation.gov.au/F2024L01231/asmade/text

⁴ Providers covered by section 31 of the ESOS Act are not required to comply with sections 28 or 29 of the ESOS Act.

Providers to notify of outcome of discharge of obligations

Note: This section only applies where a refund is provided under section 47E of the ESOS Act. Providers **are not** required to comply with this section where a refund is provided under section 47D of the ESOS Act.

Within 7 days after the end of the provider obligation period, a provider that is required to provide a refund under section 47E of the ESOS Act must notify its ESOS agency and the TPS Director in accordance with **section 47H** of the ESOS Act.

The notice must include the following information:

- (a) whether the provider provided a refund under section 47E of the ESOS Act
- (b) details of the student who received the refund, and
- (c) details of the amount refunded.

The notice must comply with the [legislative instrument](#)⁵ made under subsection 47H(5) of the ESOS Act.

How the TPS supports students following a student default

The TPS may only assist a defaulted student if their CRICOS provider fails to refund the student in accordance with section 47D or 47E of the ESOS Act (as the case requires) by the end of the provider obligation period. In these circumstances, the TPS may assist the student by providing a refund in accordance with **sections 50A and 50B** of the ESOS Act.

If the TPS makes a payment to a student under section 50B of the ESOS Act, the provider must repay that amount to the TPS Director in accordance with **section 50C** of the ESOS Act.

⁵ Education Services for Overseas Students (Notice Requirements—Student Defaults) Instrument 2026:
www.legislation.gov.au/F2026L00312/asmade/text