

# CRICOS Provider Default Obligations

## Tuition protection obligations of CRICOS education providers following a provider 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 provider default under the [Education Services for Overseas Students Act 2000](#)<sup>1</sup> (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 provider default.

### Overview of CRICOS provider default obligations

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

- (a) **within 3 business days**, notify the relevant ESOS agency and the TPS Director of the default in writing
- (b) **as soon as practicable**, notify all students affected by the default in writing
- (c) **within 14 days**, discharge obligations to all affected students
- (d) **within 7 days after the end of the 14-day provider obligation period**, notify the relevant ESOS agency and the TPS Director of whether and how obligations were discharged to affected students
- (e) **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.

### Early notification of potential provider default

Providers are strongly encouraged to notify the TPS Director of any change of circumstances indicating that the provider may default as soon as possible. Examples of such circumstances include the appointment of an administrator or liquidator, teachers no longer arriving to teach study material to students, or any other significant operational disruption likely to affect the delivery of courses to overseas students and intending overseas students.

### Provider default

Under **section 46A** of the ESOS Act, a CRICOS provider defaults, in relation to an overseas student or intending overseas student and a course at a location, if:

- (a) either of the following occurs:
  - (i) the provider fails to start providing the course to the student at the location on the agreed starting day

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<sup>1</sup> [www.legislation.gov.au/C2004A00757/latest/text](http://www.legislation.gov.au/C2004A00757/latest/text)

- (ii) the provider ceases providing the course to the student at the location at any time after it starts but before it is completed, and
- (b) the student has not withdrawn before the default day.

To avoid doubt, a provider defaults if it is prevented from providing a course at a location because a sanction has been imposed on it under Part 6 of the ESOS Act.

## Providers to notify of provider default

Following a provider default, a CRICOS provider must notify its ESOS Agency, the TPS Director, and affected students of the default in accordance with **section 46B** of the ESOS Act. The notices must comply with the [legislative instrument](#)<sup>2</sup> made under subsection 46B(6) of the ESOS Act.

### Notifying the ESOS agency and the TPS Director

**Within 3 business days of the default occurring**, the provider must notify its ESOS agency and the TPS Director of the default in writing. A provider may notify the Director of a default by emailing [support@tps.gov.au](mailto:support@tps.gov.au).

The notice must include the following information:

- (a) the circumstances of the default
- (b) the details of the students in relation to whom the provider has defaulted
- (c) advice as to:
  - (i) whether the provider intends to discharge its obligations to those students under section 46D of the ESOS Act, and
  - (ii) (if appropriate) how the provider intends to discharge those obligations.

### Notifying students

**As soon as practicable**, the provider must notify the students in relation to whom the provider has defaulted in writing.

## Obligations on providers in case of provider default

**Within 14 days of a default occurring**, a CRICOS provider must discharge its obligations to all affected students in accordance with **section 46D** of the ESOS Act. The 14-day period is the 'provider obligation period'.

A provider discharges its obligations to a student if the provider:

- (a) arranges for the student to be offered a place in an alternative course at the provider's expense, **and** the student accepts the offer in writing, or
- (b) pays the student a refund of any unspent tuition fees in accordance with the [legislative instrument](#)<sup>3</sup> made under subsection 46D(7) of the ESOS Act.

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<sup>2</sup> Education Services for Overseas Students (Notice Requirements) Instrument 2022:  
[www.legislation.gov.au/F2022L01298/asmade/text](http://www.legislation.gov.au/F2022L01298/asmade/text)

<sup>3</sup> Education Services for Overseas Students (Calculation of Refund) Instrument 2024:  
[www.legislation.gov.au/F2024L01231/asmade/text](http://www.legislation.gov.au/F2024L01231/asmade/text)

## 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 account<sup>4</sup>. 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. Otherwise, an amount may only be withdrawn from the account to:

- (a) pay a refund under section 46D, 47D or 47E of the ESOS Act in relation to a relevant student
- (b) pay an alternative provider where the provider has arranged, under section 46D of the ESOS Act, for a relevant student to be offered a place in an alternative course, or
- (c) pay the TPS Director under section 50C of the ESOS Act in relation to a relevant student.

## Offence for failure to discharge obligations

Under **section 46E** of the ESOS Act, a provider's failure to discharge its obligations to students following a provider default is an offence of strict liability.

## Providers to notify of outcome of discharge of obligations

**Within 7 days after the end of the provider obligation period**, a defaulted CRICOS provider must notify its ESOS agency and the TPS Director, in accordance with **section 46F** of the ESOS Act, of whether and how it discharged its obligations to students.

The notice must include the following information:

- (a) whether the provider discharged its obligations to students in accordance with section 46D of the ESOS Act
- (b) if the provider arranged alternative courses:
  - (i) details of the students for whom alternative courses were arranged
  - (ii) details of the courses arranged, and
  - (iii) evidence that each student accepted an offer of a place in an alternative course, and
- (c) if the provider provided refunds:
  - (i) details of the students who received refunds, and
  - (ii) details of the amounts refunded.

The notice must comply with the [legislative instrument](#)<sup>5</sup> made under subsection 46F(5) of the ESOS Act.

## How the TPS supports students following a CRICOS provider default

The TPS may only assist students affected by a CRICOS provider default if the provider fails, or is unlikely to be able, to discharge its obligations to all affected students by the end of the provider obligation period. In these circumstances, the TPS may assist affected students by arranging suitable alternative course

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

<sup>5</sup> Education Services for Overseas Students (Notice Requirements) Instrument 2022:  
[www.legislation.gov.au/F2022L01298/asmade/text](http://www.legislation.gov.au/F2022L01298/asmade/text)

placements or providing refunds of unspent tuition fees, in accordance with **sections 49, 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.