

# Provider Default Obligations

## CRICOS education provider obligations following a provider default

This fact sheet details the obligations of CRICOS education providers following a provider default. The obligations detailed below are given under Subdivision A of Division 2 of Part 5 of the [Education Services for Overseas Students Act 2000](#) (ESOS Act).

### Provider default

Under **section 46A** of the ESOS Act, a registered 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;
  - (ii) the course ceases to be provided 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- (b) the student has not withdrawn before the default day.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 the provider is prevented from providing a course at a location because a sanction has been imposed on the provider under Part 6 of the ESOS Act.

### Providers to notify of provider default

Following a provider default, a provider must give notices to its ESOS Agency, the TPS Director and its students in accordance with **section 46B** of the ESOS Act. The notices must comply with the [legislative instrument](#)<sup>1</sup> made under subsection 46B(6) of the ESOS Act.

### Notifying the ESOS agency and the TPS Director

A defaulted provider must notify, in writing, its ESOS agency and the TPS Director of the default within 3 business days of the default occurring, in accordance with **subsection 46B(2)** of the ESOS Act.

The notice must include the following:

- (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; and
  - (ii) (if appropriate) how the provider intends to discharge those obligations.

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<sup>1</sup> Education Services for Overseas Students (Notice Requirements) Instrument 2022

## Notifying students

The provider must notify, in writing, the students in relation to whom the provider has defaulted, in accordance with **subsection 46B(4)** of the ESOS Act.

## Notifying the TPS Director before a default occurs

Providers should 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, or teachers no longer arriving to teach study material to students.

## Obligations on providers in case of provider default

Under **section 46D** of the ESOS Act, a defaulted provider must discharge its obligations to the overseas students or intending overseas students in relation to whom the provider has defaulted.

A provider must discharge its obligations to students within the provider obligation period of 14 days after the default day.

A provider discharges its obligations to students if:

- (a) the provider arranges for students to be offered a place in a course in accordance with subsection 46D(4) **and** the student accepts the offer in writing; or
- (b) the provider provides a refund in accordance with subsection 46D(6). The refund must be of the amount worked out in accordance with the [legislative instrument](#)<sup>2</sup> made under subsection 46D(7) of the ESOS Act.

## Protected amount

Under **sections 28 and 29** of the ESOS Act, providers are required to maintain a separate account for tuition fees received in respect of an overseas student or intending overseas student before the student has begun the course<sup>3</sup>. Providers must ensure that there is a sufficient amount (the 'protected amount') in the account to repay all tuition fees to these students at all times.

Tuition fees cease to be part of the protected amount (and may therefore be withdrawn from the account) once the student begins the course that the provider is to provide to the student. Otherwise, an amount may be withdrawn from the account only if:

- (a) the amount is withdrawn to pay a refund under section 46D, 47D or 47E in relation to a relevant student; or
- (b) the provider arranges, under section 46D, for a relevant student to be offered a place in an alternative course at the provider's expense **and** the amount is withdrawn to pay the alternative provider in relation to the relevant student; or
- (c) the amount is withdrawn to pay the TPS Director under section 50C in relation to the relevant student.

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<sup>2</sup> Education Services for Overseas Students (Calculation of Refund) Instrument 2024

<sup>3</sup> Providers covered by section 31 of the ESOS Act are not required to comply with sections 28 or 29 of the ESOS Act.

## 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

Under **section 46F** of the ESOS Act, if a provider defaults in relation to one or more overseas students or intending overseas students, the provider must give a notice to its ESOS agency and the TPS Director within 7 days after the end of the provider obligation period.

The notice must include the following:

- (a) whether the provider discharged its obligations to students in accordance with section 46D;
- (b) if the provider arranged alternative courses:
  - (i) details of the students the provider arranged alternative courses for; and
  - (ii) details of the courses arranged; and
  - (iii) evidence of each student's acceptance of an offer of a place in an alternative course;
- (c) if the provider provided refunds:
  - (i) details of the students the refunds were provided to; and
  - (ii) details of the amounts of the refunds provided.

The notice must comply with the [legislative instrument](#)<sup>4</sup> made under subsection 46F(5) of the ESOS Act.

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<sup>4</sup> Education Services for Overseas Students (Notice Requirements) Instrument 2022