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Tuition Protection Service
Post-implementation review

Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012

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The document must be attributed as the Post-implementation review *Education for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*

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1 Introduction

The *Education Services for Overseas Students Act 2000* (the ESOS Act) underpins the quality and reputation of international education, Australia's largest service export. The objectives of ESOS are to:

- provide tuition assurance, and refunds, for overseas students where appropriate
- protect and enhance Australia's reputation for quality education and training services
- ensure education institutions collect and report on information relevant to the administration of Australia's immigration laws.

This post-implementation review (PIR) has been undertaken in accordance with Australian Government requirements set out by the Office of Best Practice Regulation (OBPR) to assess the appropriateness, effectiveness and efficiency of three measures introduced through the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012* (ESOS Amendment Act):

1. the establishment of a universal Tuition Protection Service (TPS) for overseas students in Australia on student visas
2. the amended requirement for education institutions in the case of the institution's default to refund only the portion of the course not delivered or assessed
3. the introduction of national registration for education institutions on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

While the ESOS Amendment Act made a number of changes to increase the accountability of Australian education institutions and improve their services to international students, the TPS was the most significant of these measures.

2 Background

The TPS offers universal tuition protection for all education institutions registered on CRICOS, both public and private. It ensures that students receive a fair refund in situations where their education institution is unable to meet their obligations to the student.

The previous tuition protection framework under the *Education Services for Overseas Students Act 2000* (ESOS Act) provided a more complex, three-tiered system of consumer protection for international students. These elements are outlined below.

2.1 Education institution refund obligations

The first level of protection for students under the previous tuition assurance arrangements was an obligation on the education institution to provide a remedy for the student if the institution defaulted. When an education institution was no longer able to provide a course to enrolled students, it was required to either provide the affected students with a full refund of the course money they had paid or, by agreement with the student, arrange an alternative placement in another course.

2.2 Tuition Assurance Schemes

The second layer of protection relied on Tuition Assurance Schemes (TASs) to place the eligible students of private education institutions in an alternative course at no cost to the student. Generally, the student would be placed with another TAS member without any recompense made to the receiving education institution other than an expectation of ongoing fees beyond the pre-paid period. The role of the TASs was crucial to the effective operation of the tuition protection framework, as a failure at this point resulted in calls on the ESOS Assurance Fund. There were six approved TASs for international education:

- Australian Council for Private Education and Training (ACPET)
- Council of Private Higher Education Providers (COPHE)
- English Australia
- Melbourne College of Divinity
- Sydney College of Divinity
- Western Australian Private Education and Training Industry Association (WAPETIA).

The largest TAS was ACPET's, providing coverage for approximately 80 per cent of students of non-exempt CRICOS registered institutions, followed by English Australia covering 10 per cent, WAPETIA covering 2 per cent, COPHE covering 1 per cent, and Melbourne College of Divinity and Sydney College of Divinity covering 2 per cent. The remaining 5 per cent of students were with private education institutions that had obtained exemptions from TAS membership requirements. Education institutions not in receipt of recurrent Government funding (public institutions) were required to be members of a TAS as well as to make financial contributions to the ESOS Assurance Fund (see below). Education institutions were able to apply to the Department of Education for an exemption category, including:

- ministerial exemptions (these were rarely given and mainly in cases where the course was unique and placement was not possible)
- payment in arrears agreements, or indemnities or bank guarantees, which effectively removed or fully protected pre-paid fees.

A TAS was required to be approved under the ESOS Act; however, there were limited requirements for a TAS to report on its activities to the department. Each TAS set internal standards in the form of by-laws, which generally included a code of ethics to approve, cancel and monitor education institution membership. Breaches of TAS by-laws sometimes resulted in the termination of an education institution's membership of that TAS.

2.3 The ESOS Assurance Fund

Where a TAS was unsuccessful in placing a student, the student was referred to the ESOS Assurance Fund. The ESOS Assurance Fund would provide an appropriate alternative placement for the student or pay the student a refund of all fees paid for the course on which the education institution had defaulted.

The ESOS Assurance Fund was established by the ESOS Act in 2001. The Australian Government made an initial contribution of $1 million in seed funding to establish the ESOS Assurance Fund. After that time, non-exempt education institutions were required to make annual contributions. The

ESOS Assurance Fund Manager, which was external to the department and a statutory appointment, managed the ESOS Assurance Fund to ensure it was able to:

- meet all liabilities
- collect annual contributions to the ESOS Assurance Fund and, where warranted, special levies from education institutions
- arrange alternative courses for students or to pay refunds when an alternative placement was not found.

Contributions to the ESOS Assurance Fund were based on criteria set by the Contributions Review Panel (CRP). The CRP was established by the ESOS Act and largely comprised members who represented the interests of education institutions who were liable to pay annual contributions to the ESOS Assurance Fund. The contribution criteria established a base premium, paid annually, and an additional premium rate multiplied by an education institution's estimated overseas student fee income for the year. Education institutions that had a Ministerial Exemption from TAS membership paid a higher additional premium. For the 2012 contributions, the base premium was set at $650 with an additional premium rate of 0.32 per cent multiplied by annual overseas student fee income. For example, an education institution with overseas student fee income of $2 million in 2012 would have paid made an annual contribution of $7,050.

Prior to 2006, while the demand for placements and refunds resulting from education institution defaults remained relatively low, this tuition protection framework appeared to be adequate, notwithstanding some concerns around the TASs' efficiency and effectiveness in placing students, the lack of ability for the student to determine a suitable alternative course and ongoing issues around the granting of exemptions.

As the international education sector evolved, with changing student profiles and more students studying with private education institutions and in education institutions with a limited number of courses, there were growing concerns about the sustainability of the existing arrangements. There was concern that if there were a large number of defaults the existing consumer protections would not be able to meet the demands of placement or refund. In addition there were concerns about the quality of the international student experience and the sustainability of the international education sector as a whole. This prompted a call for a review of the ESOS legislative framework, which was undertaken by the Hon Bruce Baird in 2009.

The Baird Review considered changes to the ESOS framework in four key areas:

- supporting the interests of students
- delivering quality as the cornerstone of Australian education
- effective regulation
- sustainability of the international education sector.

The Baird Review report, *Stronger, simpler smarter ESOS: supporting international students*, was released publically on 9 March 2010. The TPS was a part of the Government response to the Baird Review and was aimed at supporting the interests of students and ensuring the sustainability of international education.

3 Statement of the Problem

a. Market and regulatory failure of consumer protection arrangements

Between 2008 and 2011, following a period of rapid growth in the number of international students in Australia and the increase in education institutions offering international education services, there were a number of adverse factors that combined to contribute to a sudden decline in international student numbers. These factors included revised immigration settings, the high value of the Australian dollar, the global financial crisis and the widely publicised attacks on Indian students. Fifty-four education institutions closed, with over 13,000 international students affected by these closures. Only 312 of the 13,000 students were able to be provided with full or partial refunds by their education institutions. The remaining students had to be assisted through the other consumer protection measures under the ESOS Act in place at the time: the TAS and the ESOS Assurance Fund.

The circumstances leading up to the Government's decision to implement the TPS demonstrated a regulatory and market failure in that the existing system could not meet demand when put under pressure, as it was in 2009.

International students often pay large sums of money to study in Australia. Offering tuition protection to international students is a part of the high-quality experience Australia offers and differentiates Australia from its competitors in a highly competitive global environment.

The economic importance of the international education industry as Australia's largest service export made it imperative for the Government to mitigate the risks to the reputation of the industry of poor education institution behaviour, education institution defaults and student tuition fees not being sufficiently protected. Moreover, the ESOS Assurance Fund insurance had to be supported by Government, since there were no insurers willing to play a role in the market, particularly after the events of 2009.

The ability of the TAS arrangements to deal effectively with student placements was significantly stretched by the large numbers of students. Alternative course placements were difficult to arrange when the number of students displaced by a closure saturated available placement options in a given area. In some instances the cost of delivering a course was prohibitive for education institutions (for instance, for aviation courses) and TAS members were unwilling to take on displaced students without recompense. This meant increasing numbers of students were referred to the ESOS Assurance Fund for refunds. The department's data indicates that ESOS Assurance Fund contributions from 2008-11, at just over $13 million, covered less than half the refunds provided by the ESOS Assurance Fund, which came to over $27.5 million.

The Baird Review confirmed stakeholders' concerns that the three-tiered protection framework in place at the time was inefficient and could collapse if there were large and/or multiple claims made. Students complained about lengthy delays in placements under the previous arrangements, as well as the lack of support available to them. Many experienced a number of provider defaults, not just one, adding to their frustration and disappointment. Students also wanted to have a greater say in what was considered to be a suitable alternative course. The TAS scheme was felt to be unnecessarily complex and unbalanced, given it was dominated by one scheme. There were additional concerns about the cost to education institutions in maintaining the tuition protection coverage through the TASs and ESOS Assurance Fund.

b. Education institutions required to pay full refunds to students in cases of education institution default

Prior to the introduction of the TPS there was a requirement that a student be paid a full refund of their course money—both tuition and non-tuition fees—when an education institution defaulted. This requirement did not take into account how much of the course had been completed or assessed, or what proportion of the fees paid by the student would classify as ‘unspent’. Peak industry bodies and education institutions argued that it was unreasonable for them to be required to provide a full refund when education institutions had incurred costs and the student had received tuition that could be credited at another institution.

At the time this requirement for a full refund was put in place, the number of likely calls on the relevant TAS and/or the ESOS Assurance Fund was much smaller and the full refunds that were provided to students were not a significant cost. A contributing factor to increased demand for refunds was the inability of the TASs to cope with a significant number of placement requirements after a large provider defaulted, or a greater number of defaults. As international education grew and the demand for refunds significantly increased, the total amount that had to be refunded to students either by the education institution or by the ESOS Assurance Fund became unsustainable. Maintaining the requirement for a full refund represented a regulatory failure by the Government that could only be remedied by introducing a more equitable and sustainable system of student tuition fee protection.

The financial impost of providing full refunds to large numbers of students may also have motivated defaulting education institutions to close without warning in order to avoid paying refunds rather than working with regulators or the Government to provide the best possible outcome for students. In 2009 and 2010 a total of 49 education institutions closed, affecting over 11,000 students. Only 11 were able to meet or partially meet their obligations to refund the entire course. This system failed to take account of the value or benefit a student derived from the proportion of the course that had already been delivered. This significant impost on education institutions had the potential to undermine rather than support the policy intent of the ESOS legislation, which was to ensure that students received the tuition for which they had paid and were recompensed for what they did not receive.

c. Duplicative state-based registration of education institutions

The Baird Review identified that it would be preferable to move education institutions to a national registration basis, rather than the separate registrations they were required to seek in each state. By not allowing sufficient flexibility and creating unnecessary red tape, the requirement for education institutions to register separately in each state represented both a policy and regulatory failure that could only be addressed by legislative change.

Prior to national registration, approximately 100 organisations (comprising 300 education institutions) were operating across Australian state and territory jurisdictions and were required to have separate registrations with separate CRICOS numbers. State-based registrations often involved different processes and charges and, in some cases, duplication of registration assessments around residency, fit and proper person tests and financial viability reporting. Multiple registrations also made it more complex for the regulators to assess and manage risk, track the activities of an education institution nationally and fully consider the implications of regulatory decisions on international students. The system imposed unnecessary red tape and protracted processes with no additional benefits in ensuring integrity within the sector or a higher quality of education for international students.

4 Government policies introduced to address the issues

a. Failure of consumer protection arrangements to cope with education institution defaults

The 2012 ESOS Amendment Act established a single layer system through the TPS, as recommended by the Baird Review (recommendation 16). The TPS provided a more flexible and streamlined approach to student placement and refund arrangements when a defaulting education institution did not meet its refund obligations under the ESOS Act. The TPS was designed to reduce double-handling and the delays associated with the previous layers of TASs and the ESOS Assurance Fund. It also focused solely on protecting tuition fees paid by students rather than 'course fees', which had often included non-tuition fees under the previous arrangements.

The TPS facilitates a more active role for students in selecting from suitable placement options through an online information service. Where a student does not access a placement through the placement facility provided by the TPS, the student may be eligible for a refund of their unexpended tuition fees from the TPS.

Additional measures introduced to support and complement the TPS and further protect students included:

- limiting the amount of pre-paid fees that may be collected by education institutions prior to the students commencing the course to no more than 50 per cent of the total tuition fees for courses of more than one study period (defined as up to 24 weeks to align with semesters), requiring education institutions to specify study periods for students in written agreements and limiting the collection of remaining tuition fees until two weeks prior to the start of the second study period. These measures were aimed at reducing the potential refund liabilities of both the education institution and the TPS
- requiring all education institutions not in receipt of recurrent Government funding or administered by a state to keep the pre-paid fees in a designated account until a student commenced the course. This was to ensure money was available to pay refunds when a visa was refused and to reduce the potential refund liability on the TPS
- strengthening record-keeping obligations related to student contact details and academic progress to support placing students affected by a closure
- strengthening risk management through the national quality assurance agencies to ensure compliance monitoring was targeted at education institutions of highest risk.

b. Education institutions required to pay full refunds to students in cases of education institution default

Sections 46D and 46E of the ESOS Act were introduced to address the problem of education institutions that defaulted being required to pay full refunds to students irrespective of the amount of tuition the students had received. The amended ESOS Act includes provisions for determining appropriate refund obligations in cases of education institution default based on the student's 'unspent' tuition fees.

The amendment removed the unreasonable impost on education institutions of refunding students for services delivered and ensured students would be able to either complete their studies with another education institution or receive a refund of their unspent tuition fees. The effect has been to ensure the system is more appropriate and sustainable system for students, education institutions and the Government.

c. Duplicative state-based registration of education institutions

The national registration process introduced in March 2012 allows education institutions to request an amalgamation of all of the education institution's registrations into a single CRICOS registration. The process facilitated a realignment of registered courses and ensures re-registration processes are more streamlined for the education institution. New education institutions also benefit from a more streamlined application process.

5 Objectives of Government intervention

a. Tuition Protection Service

A key objective of the ESOS Act is to provide for tuition protection. Under the previous arrangements, when an education institution was not in a position to provide a refund the ESOS Act specified that eligible students must be placed in a comparable course by the education institution's TAS. If that was not possible, it was the responsibility of the ESOS Assurance Fund to place the student or, failing that, to provide a refund to the student. The implementation of the TPS was intended to place students more effectively, provide greater choice for students in selecting an alternative course, remove unnecessary administrative layers and fees, and create incentives for education institutions to place students. All education institutions are included in the TPS, which means that when students require a placement there are more institutions to choose from than under the previous scheme. Through the TPS students have more involvement in the placement process and are able to negotiate directly with their new provider about what the arrangement involves. The new TPS also provides for more transparent decision-making and fee-setting arrangements that better target education institution risk and ensures sufficient funds are collected from the sector to support the long-term sustainability of the Overseas Students Tuition Fund (OSTF) to meet future education institution defaults.

The key elements of the TPS aimed at meeting the objectives of Government intervention are as follows:

- The TPS is a universal scheme with no exemptions for education institutions from contributions to the operation of the TPS. Under the previous system close to half the sector were exempt from the annual ESOS Assurance Fund contributions. By including all education institutions registered on CRICOS, public and private, the TPS addresses capacity issues in the previous arrangements and ensures all education institutions share in the costs and benefits of having tuition protection system in a way that reflects the diversity of the sector.

- The TPS provides sustainable tuition protection arrangements that are able to effectively manage financial shock in the sector and respond during periods of high demand without the need for Government assistance.
- The TPS framework provides a single point of access and a streamlined process for placements or refunds (as a last resort) for students affected by education institution default, rather than several tuition assurance schemes and the ESOS Assurance Fund.
- The TPS provides a wider range of possible placement options for students and ensures more active involvement of students in the placement process.
- The cost of tuition protection under the TPS includes risk-based charges, with education institutions that pose a higher level of risk to the industry proportionally bearing more of the financial burden of tuition protection. Public institutions are exempt from the risk rated premium component of the levy.
- The TPS placement and refund processes are transparent and accountable to education institutions, students and Government, with more stringent reporting requirements.

Taken together the elements of the TPS improve outcomes for students affected by education institution default. They ensure a cost-effective tuition protection service that is both flexible and sustainable in placing students and supporting them to get the education they paid for, consistent with the objectives of the ESOS Act. In addition, by ensuring that students are not left without a placement or a refund, the TPS assists in maintaining the reputation of the international education industry, to the benefit of all education institutions.

Refunds and placements arranged by the TPS are funded through the collection of an annual TPS levy, which is paid by all CRICOS registered institutions. The revenue collected through the TPS levy is paid into the OSTF. Further details about the governance of the TPS and the collection of the levy are at **Appendix A**.

b. Reduced requirement to refund only the unexpended proportion of the tuition fees

The objective of Government action in reducing refund requirements to require education institutions to only refund to students the tuition fees paid for the portion of the course not delivered or assessed (unspent tuition fees) was to increase the likelihood of defaulting education institutions meeting their refund obligations in the first instance. This objective sought to address the concerns about the previous system, which had acted as a disincentive to education providers meeting their refund obligations by requiring them to refund all course (tuition and often non-tuition fees). The amendment to the ESOS Act ensures that now students do not receive a refund for an education service that has been delivered. This measure strengthens the sustainability of tuition protection arrangements by reducing the overall refund demand on the TPS.

c. National registration

The objectives of the Government in establishing a national registration system were to provide a more seamless system for registering education institutions on CRICOS when they operated across jurisdictions. Education institutions with multiple registrations in different states or territories, or across a number of locations within one state or territory, were given the option of amalgamating their registrations into a single national registration for all of their ESOS related activities.

6 Achievement of objectives

a. Tuition Protection Service

Since the commencement of the TPS on 1 July 2012:

- Twelve education institutions have defaulted in the delivery of courses, affecting a total of 1,332 to international students
- Seven of these defaults occurred in the period from 1 July 2012 to 31 December 2012, affecting approximately 572 students
- Two institutions defaulted in 2013, affecting 345 international students.
- Three institutions defaulted in from January to November 2014, affecting 425 students.
- A total of 324 international students have approached the TPS for assistance since 2012. Of these:
    - 64 students had placements finalised with another education provider
    - 188 students received a refund payment
    - 68 cases are either still awaiting further information from the student or are ineligible for assistance.

Of the defaults recorded above, four were the result of education institutions making a business decision to cease delivery of courses in some subject areas and in some locations. Having informed the TPS of their intentions, these providers have worked closely with the TPS to ensure the 760 affected students were appropriately supported to find a suitable alternative course or paid a refund of their unspent tuition fees.

The remaining eight closures managed by the TPS resulted from issues identified by the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA). This is in contrast to the closures that occurred before the TPS, which were predominantly the result of business failures.

Although a key objective of the TPS is to provide students with a placement rather than a refund to ensure that students receive the education for which they had paid, the TPS did not need to directly make any placements in the 2013-14 financial year. Instead, the TPS helped defaulting providers to meet their own obligations to pay refunds to the students. In other instances students made their own placement arrangements. Provider Registration and Information Management System (PRISMS) data indicates that most students used their refunds to continue their study in Australia. English Australia supported this in its response to the PIR consultation paper:

> Whilst the majority of students have opted for refunds rather than placements, they have subsequently used these refunds to enrol with another provider rather than returning to their country. This is reassuring to the industry.

As well as dealing with the calls made on the OSTF during 2012–14, the TPS also managed the liabilities of the 170 claims settled prior to the commencement of the TPS.

The TPS supports providers to meet their obligations to affected students and provides assistance where necessary.

The TPS Director is assisted in his role of placing and providing refunds to students by the TPS Administrator. PricewaterhouseCoopers is currently engaged to provide the TPS Administrator services; it is contracted to case manage education institution defaults and student claims. The original contract for service ran for two years between July 2012 and July 2014 and has been extended for a further year until July 2015.

TPS stakeholder management

Since its establishment, the TPS Director has regularly consulted with peak sector stakeholders on a range of issues relating to the TPS. Each closure, depending on its circumstances, usually requires the input and collaboration of a number of agencies, including state and territory governments, the Department of Immigration and Border Protection, ASQA and TEQSA. To assist in the effective coordination of closures, the TPS drafted default management protocols (‘closure protocols’), which were endorsed by all parties on 7 May 2013 and have since proven useful in clarifying the roles and responsibilities of parties following an unexpected closure.

The TPS Director consults with stakeholder groups each year as a part of the process to set the annual TPS levy for the following year. The TPS has memorandums of understanding (MoUs) in place with ASQA and TEQSA setting out communication protocols and how the parties will work together at times of regulatory action and education institution closures. The TPS also has an MoU in place with the Office of the Overseas Student Ombudsman and works closely with the office to address complaints received from international students about their CRICOS registered institution.

TPS sustainability

A key objective of the TPS was to ensure the sustainability of tuition protection arrangements for overseas students. The financial position of the OSTF for the period 2012-14 highlights that the TPS has continued to work towards consolidating its financial position while at the same time meeting its refund payment obligations and paying expenses incurred by the Commonwealth in the performance of the TPS Director’s functions and managing the OSTF. Table 1 shows the financial status of the OSTF from 1 July 2012 to 30 June 2014.

Table 1 Financial status of the Overseas Students Tuition Fund 2012-14

OSTF Revenue and Expenses for the period 1 July 2012 to 30 June 2014		
Revenue		
Opening balance - seed funding		$5,000,000
2013 TPS Levy collected	$5,981,998	
2014 TPS Levy collected	$6,520,739	$12,502,737
Total Revenue		**$17,502,737**
Expenses		
Student and Providers payments	$1,195,212	
TPS Administrator services	$553,862	
Other operational/administrative expenses	$631,213	$2,380,287
OSTF remaining		$15,122,450
Less: Repayment of balance of seed funding ($5,000,000-$1,866,958)		$3,133,042
Balance of OSTF as at 30 June 2014		**$11,989,408**

As an added measure of security, re-insurance arrangements have been negotiated by the TPS Director with support from the board and took effect from 1 July 2014. It is expected that re-insurance will only be required over the short term until adequate reserves of at least $20 million are built into the OSTF.

i. Reduced requirement to refund only the unexpended proportion of the tuition fees

The amended refund obligations introduced on 1 July 2012 mean that, where an education institution is not able to provide or continue to provide a course to a student for which they have paid or partially paid, the education institution must refund the students the unspent tuition fees. The method for calculating the refund is prescribed in the legislative instrument, *Education Services for Overseas Students (Calculation of Refund) Specification 2014*.

When a defaulting education institution fails to meet its refund obligations, the partial refund amount is calculated by the TPS. The refund amount is made available from the OSTF to pay to place the student in an alternative course or, as a last resort, provide a refund.

ii. National registration

The national registration process for education institutions listed on CRICOS was introduced in March 2012. By enabling education institutions to amalgamate all of their registrations into a single CRICOS registration the new arrangements reduce associated costs for education institutions with multiple registrations on CRICOS.

At 18 November 2014, 39 education institutions had reduced their CRICOS registrations. PRISMS data indicates that significant savings have been achieved through reductions in data required from education institutions, the education institution Annual Registration Charge (ARC) and the TPS annual levy. National registration therefore reduces the red tape burden on education institutions and improves risk management through greater transparency of an education institution's registration on CRICOS.

Table 2 shows the significant reduction in the number of data entries required from education institutions who have opted to amalgamate all of their registrations into a single CRICOS registration.

Table 2 Effects of national registration on the 39 education institutions' data requirements as at 18 November 2014

Data category	Before national registration	After national registration	Reduction in data items
Courses	4,070	2,925	1,145
Course to location links	10,635	6,501	4,134
Education institution to agent links	20,998	13,577	7,421
Contacts	285	221	64
PRISMS user access roles	1,338	568	770

7 Consultation

This PIR has been prepared on the basis of stakeholder feedback, internal evaluation and consultation with the TPS. Data has also been included from the PRISMS to determine the impacts of the TPS and other measures introduced in 2012.

There have been several stages of consultation with the international education community regarding the TPS.

The TPS Director consulted with peak body representatives in November and December 2013, and with education institutions during the TPS levy information sessions held in February 2014. The purpose of this consultation was to seek input to and feedback on the operation of the TPS and the levy. However, the TPS Director also offered an opportunity for stakeholders to raise any issues or concerns. The issues raised were communicated back to the department by the TPS Director.

From March to May 2014 one-on-one consultations were undertaken with all stakeholders, including peak bodies and a range of Commonwealth and state and territory Government agencies, on possible reforms to the broader ESOS framework. During this process stakeholders largely raised concerns about the duplication and complexity of processes within the ESOS Act, as well as specific areas of regulatory burden. Several of these were associated with the TPS, in particular:

- that a CRICOS registered institution must not receive, in respect of an overseas student or intending overseas student, more than 50 per cent of the student's total tuition fees for a course before the student has begun the course

- that a non-exempt provider (that is, all education institutions not administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education or training) keep those pre-paid tuition fees in a designated account
- the obligations on CRICOS registered institutions to report instances of student default within five business days of the default occurring, including notice of the circumstances and date of the default, and details of the affected students. In addition institutions must report the outcome of discharging their obligations within seven days after the end of the provider obligation period.

These issues were also discussed with the TPS Director at the time.

A discussion paper, outlining high level proposals to deal with issues raised through stakeholder consultations, was released in October 2014. The discussion paper, titled *Reform of the ESOS framework*, received 70 submissions, a number of which referred to the requirements associated with the TPS listed above. These issues will be examined as part of the overall changes to streamline and reduce the administrative burden of the ESOS framework, and are outside of the scope of this RIS. However, it is important to note that in consultations there was broad support for the TPS, with one state Government agency in particular referring it as 'an integral part of Australia's consumer protection arrangements for students'.

To meet the department's obligations in completing this PIR a consultation paper requiring answers to specific questions on the TPS and other measures introduced in 2012 was sent to education peak bodies in September 2014. The questions were aimed at obtaining stakeholder comments and views so that the effectiveness of the measures to date could be assessed. The consultation paper is at **Appendix B**.

There were seven submissions to the consultation paper, from: ACPET, English Australia, the International Education Association Inc (ISANA), the Independent Schools Council of Australia, Universities Australia, Sydney University and the University of Notre Dame Australia. Most focused on the TPS.

Responses to questions regarding the operation of the TPS

To the broader question, 'Is the TPS effectively meeting its goals', all submissions agreed, with a range of supporting comments. English Australia commented:

> It is also pleasing that the TPS has handled defaults/closures in a timely and sensitive manner, with the result that there has been no negative media.

ACPET stated:

> … TPS has executed a professional service with progressive information feedback and event closure being seamless... The scheme is clearer and simpler to the students and the institutions than previous systems that had different tiers of process.

In a broader observation about the performance of the TPS, ACPET stated:

> There is some concern about the administrative burden but [this is] seen as a normal part of involvement with an insurance type service.

All submissions noted the advantages of the TPS, including:

- consistent processes
- financial protection for students' tuition fees
- students affected by student default being quickly placed or refunded
- because the TPS includes all education institutions, there is a wider range of courses for students to choose from when they are affected by an institution closure;
- protection of the industry brand and a higher level of market confidence
- sufficient income to fund the scheme
- greater visibility and transparency
- an improved reputation for Australia internationally.

While the submissions generally acknowledged that the existence of the TPS enhanced Australia's reputation for quality and the protection of students, higher education institutions noted that they had little involvement with the TPS and had little risk of closure. The University of Sydney stated:

> The TPS may have benefits in protecting students from private providers who default in their obligations to students, however, as a higher education provider, we do not consider the benefit to be commensurate with the cost and burden attached to reporting/regulation.

In its response to the *Reform of the ESOS framework* discussion paper, COPHE noted the importance of consumer protection through the TPS as part of the broader benefits of ESOS:

> The ESOS Framework has contributed significantly to the reputation of Australian international education, and it is important that this community and consumer confidence is maintained.

Universities Australia stated:

> The Education Services for Overseas Students (ESOS) Act is a vital pillar of the quality assurance regime for Australian international education (and) ... the envy of many competitor nations and a hallmark of good practice for consumer protection.

Changes to refund only the portion of the course not delivered or assessed

All submissions agreed that the amended refund requirements are fairer with no negative impacts. However, that the additional reporting required was seen by some as unnecessarily burdensome.

National registration

Generally submissions agreed that, where national registration applies, the cost savings have been significant. Further, they see national registration as a logical and useful policy change that has improved previous practice. National registration does not affect most schools or ELICOS education institutions.

8 Impact analysis

a. Tuition Protection Service

i. Benefits to education institutions

A range of benefits to education institutions of universal and sustainable tuition protection arrangements were identified in submissions to the PIR consultation paper.

ACPET highlighted ‘protection of the industry brand, greater coordination and better use of funds, especially with priority given to alternative placement rather than just refund of fees’ and ‘a higher level of market confidence which has flow on effects for the individual students, the institutions involved and the Australian Government’.

ISANA’s view was that the ‘consistent, regulated consumer-centric approach’ was a benefit and that the TPS ‘is a safeguard against the high risk providers and protects the students as a consumer’.

While not all submissions agreed that the costs outweighed the benefits, most appeared to agree with the sentiment expressed by English Australia that *‘*there are significant benefits to "brand Australia" from the assurance that Australia can offer to students and their families’.

The following case study setting out the Federation University experience was provided by Universities Australia and demonstrates from an education institution perspective the operation of the TPS. The experience was described in University Australia’s submission as ‘entirely favourable’.

The TPS plays a key role in liaising with relevant parties to minimise inconvenience and possible disruption to international students. The key steps involved in default management are essentially the same, but the level and intensity of activity may differ depending upon the provider, the number of affected students and the underlying reasons for the default of the education institution. Generally, the activity involves close liaison and discussions with the relevant oversight agency or agencies, and activation of the default management and closure protocols. The protocols require close liaison with external and internal stakeholders, including relevant state and territory bodies, government representatives, the Overseas Student Ombudsman and the Department of Immigration and Border Protection.

ii. Costs to education institutions

Under the previous arrangements all public education institutions and those entitled to receive Commonwealth recurrent funding for education and training, or institutions that accepted payment in arrears, were exempt from the requirement to contribute to the ESOS Assurance Fund. For the remaining non-exempt institutions the ESOS Assurance Fund contributions were based on the institution's Primary Assurance Mechanism (PAM). PAMs included holding membership of a TAS, having a bank guarantee or an indemnity agreement or having a Ministerial Exemption. The ESOS Assurance Fund contributions rate for PAMs was the same except in the case of Ministerial Exemption, which was considered to result in high risk and the rate was adjusted to reflect this. The complicated system of exemptions saw some TASs refuse institutions membership resulting in the ESOS Assurance Fund being left to cover the risk. In addition the exemption system resulted in confusion in its application and administrative burden for institutions required to report compliance with the exemption.

The current TPS arrangements were therefore intended to change this system so that tuition protection became universal, with all education institutions sharing in the costs and benefits to protect the reputation and quality of Australia's international education and training sector.

While on the surface it would make sense to compare the current TPS levy settings and the system of ESOS Assurance Fund contributions and TAS membership fees, this ignores the fundamental difference between the current and previous systems. The current system is a universal scheme in contrast to the previous arrangements, which applied only to private providers, excluding the independent school sector.

In addition, at the time the TPS was designed, amendments to other parts of the ESOS Act in relation to the ARC for CRICOS institutions were made. The ARC charges that applied previously were much higher and and these independent processes sought to restructure the costs applied to all international education institutions, to make them more proportionate to risk while ensuring that the joint benefits of maintaining Australia's reputation and integrity were shared by all. This is an important point in determining the context of concerns expressed by education institutions, particularly public institutions, about the additional cost arising from the TPS Levy. While the TPS introduced proportionate contributions to the OSTF by all education institutions, at the same time a very large reduction in the ARC took effect. Table 3 shows only the cost difference in consumer protection arrangements prior to and following the introduction of the TPS.

Table 3: Costs associated with consumer protection arrangements before and after introduction of the TPS

Education institutions	International student enrolments	Previous TAS+ESOS Assurance Fund calculation ($)	Current TPS Levy (TPS Base +admin,+TPS RRP) calculation ($)	Difference in costs under current arrangements ($)
Public universities	195,533	Exempt	1,386,431 (exempt RRP)	+1,386,431
Private higher education	24,352	2,476,332	999,121	-1,477,211
Public VET	25,588	Exempt	190,302 (exempt RRP)	+190,302
Private VET	86,700	2,780,285	1,755,709	-1,024,576
Government schools	8,656	Exempt	63,592 (exempt RRP)	+63,592
ELICOS	26,816	1,545,809	720,105	-825,704

RRP = TPS risk rated premium

The major cost to education institutions is the TPS Levy, which includes a risk rated premium component. (Universities, government schools and State and Territory VET institutions are exempt from the risk component.) Education institutions assessed as posing the greatest risk of default and not being able to meet their obligations to international students pay a higher risk component. Risk factors include such matters as length of operation, growth in overseas student enrolment, maximum overseas source country concentration and non-compliance history. The application of these risk factors in relation to the levy is set out in the legislative instrument made by the TPS Director each year.

Education institutions with a higher risk rating generally pay a higher TPS levy than the contributions they were require to make under the previous arrangements. However, the analysis conducted for the implementation of the TPS Levy 2012 determination (for collection in 2013) identified that, for the overwhelming majority of education institutions that previously contributed to the ESOS Assurance Fund, the risk rated premium component of the TPS levy was lower than their ESOS Assurance Fund contribution for 2012.

Table 4: Reduction in costs to education institutions by type under the current arrangements

Education institutions	International student enrolment numbers ($)	Previous costs for ARC and ESOS Assurance Fund ($)	Current costs for ARC and TPS levies ($)	Overall reduction in costs under the current arrangements ($)
Public universities	195,533	6,229,777	3,418,461	2,811,317
Private higher education	24,352	3,326,188	1,534,142	1,792,046
Public VET	25,588	802,492	471,026	331,465
Private VET	86,700	5,963,844	3,579,301	2,384,514
Government schools	8,656	282,009	163,152	118,857
ELICOS	26,816	1,933,448	1,118,271	815,176

Table A providers, in accordance with the Higher Education Support Act 2003, government schools and state or territory VET institutions, are exempt from paying the risk rated premium component of the TPS Levy and the course component of the ARC.

Despite education institutions on the whole paying less than previously, Universities Australia makes the following point:

> In 2014 public universities (Table A providers) contributed $3,418,416.00 in combined ARC and TPS fees at a cost per enrolment of approximately $17.50 per student of which approximately $7.00 goes to TPS funds to insure against the risk of other providers failing... UA appreciates the inclusion of a risk based component to the levy; however, this does not mitigate the sector's concern with proportionality.

During consultations undertaken prior to and following the release of the discussion paper *Reform of the ESOS framework* stakeholders raised specific concerns about some of the requirements relating to the TPS being disproportionate. Universities and all schools, both public and private, argued that they were low risk and would always meet their refund obligations to a student.

As previously discussed, a number of respondents to the discussion paper indicated that there is a significant cost impact on an education institution's administrative resources in meeting the TPS related requirements, particularly where both the 50 per cent limit on tuition fees that can be collected prior to a student commencing and the designated account requirement apply. Education peak bodies representing private education institutions believe their members are low risk and high quality and are unfairly subject all to the same restrictions as competitors who present a higher risk of default. The reporting of student defaults was also considered burdensome. It is proposed that these issues be considered and addressed appropriately as part of the broader reform agenda for the ESOS framework. Tables 5 and 6 show the costs calculated by education sector for education institutions to meet student and education institution default reporting requirements introduced on 1 July 2012.

Table 5: Costs associated with requirements on education institutions to report education institution defaults. Data is from 1 July 2013 – 31 June 2014[1].

Education institutions (by main course Sector)	International student enrolments	Current regulatory burden education institution default – calculation in $
Public universities and Private higher education	219,885	20.561.92
Public and private VET	112,288	35,323.20
Government and non-Government schools	12,637 (As of 1 April 2014)	22,237.20
ELICOS	26,816	4,216.80
Other (incl. Foundation programs)	922 (As of 1 April 2014)	4,819.20

Table 6: Costs associated with requirements on education institutions to report student defaults. Data is from 1 July 2013 – 31 June 2014[1].

Education institutions (by main course Sector)	International student enrolments	Current regulatory burden student default – calculation in $
Public universities and Private higher education	219,885	6,812,059.68
Public and private VET	112,288	6,438,857.40
Government and non-Government schools	12,637 (As of 1 April 2014)	375,057.00
ELICOS	26,816	2,163,820.80
Other (incl. Foundation programs)	922 (As of 1 April 2014)	370,837.44

[1.] 2013-14 is the only full financial year for which PRISMS data is available.

iii. Benefits to students

A key objective of the new tuition protection arrangements was the timely placement of students to minimise disruption to their course of study and to ensure they remained compliant with their visa conditions. During its first two years of operation, all TPS managed student placements occurred within the 30 day timeframe. Refunds took longer in many cases, generally as a result of delays on the student's part in providing evidence to substantiate their claims.

A number of benefits of the TPS to students were highlighted in submissions to the PIR consultation paper. ACPET commented that the service 'is clearer and simpler for the students and the institutions than previous systems that had different tiers of process'. ISANA stated that the universal tuition protection mechanism 'acts as a safeguard against the high risk education institutions and protects the students as consumers' and English Australia commented that 'a universal mechanism ensures consistency in the assurance Australia can provide students and maximises the options in cases of default'.

The TPS has implemented a student/customer survey mechanism and is monitoring responses to ensure its service is timely and helpful. The number of responses obtained so far is very small but indicate that the system is user friendly and the support provided by the TPS has assisted those students in achieving a satisfactory placement or refund. The TPS team will continue to monitor feedback from users.

iv. Cost to students

There is no evidence of additional costs to students as a result of the TPS. Given the data shows that education institutions across all sectors are facing lower costs than under the previous arrangements, there is an expectation that no additional costs would need to be passed on to students.

v. Benefits to Government

At the time of this review the TPS meets the following objectives of Government intervention. These represent the benefits to the Government:

1 ***The TPS is funded by the international education industry and is sustainable***: The TPS Levy collected from all education institutions amounted to approximately $6 million in 2013 and $6.5 million in 2014. Currently, the OSTF is in a sound financial position, with a balance of approximately $11.9 million. It is therefore well placed to facilitate placements of and refunds to international students affected by an education institution default.

2 ***Governance arrangements that provide greater accountability:*** The TPS has met its reporting requirements, including annual reports for the two financial year of its operation, relating to:
   a. the financial status of the OSTF
   b. the number of students placed and time taken to place students in alternative courses
   c. the number of calls made on the OSTF, the total of any amounts paid out and the time taken to pay each amount
   d. an assessment of any issues affecting the operation of the TPS.

3 ***There is an adequate pool of placement options and funds to place students without impost on the Government:*** Placements and refunds have been progressed without any further impost on Government funds. More students have taken refunds over placements than was expected at the time of implementing the TPS. However, PRISMS data indicates that these students have taken up other courses in Australia, in effect placing themselves in an alternative course.

vi. Costs to Government

Following the commencement of the ESOS Amendment Act provisions relating to the ESOS Assurance Fund ceased to operate from 1 July 2012. The TPS and the OSTF commenced from 1 July 2012. On 1 July 2012, the Government provided $5.0 million in seed funding for the OSTF for the first year of its operation. The TPS spent $1,866,958 of the seed funding. The unspent seed funding, $3,133,042, was returned on 1 September 2013 to the Department of Finance, in accordance with the transitional provisions of the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and other Measures) Act 2012.*

b. Reduced requirement to refund only the unexpended proportion of the tuition fees

i. Benefits to education institutions

Partial refunds, rather than full refunds, better recognise that an education institution has incurred costs in delivering part of a course and students generally are able to receive credit for units of study completed. This change has reduced the refund pressures on education institutions and helps ensure that education institutions are able to meet their refund obligations. Even where a business decision is made to close, education institutions are in a better position to fulfil their obligations under the ESOS Act.

ACPET commented that:

> this is a much fairer system where only unspent tuition fees are refunded as compared to previously where the whole course fees had to be refunded even though 90% of the course may have been delivered.

Overall education institutions have indicated that that they feel the system is fairer and encourages students to take a placement, in contrast to the previous system, which allowed students to receive a full refund.

ii. Costs to education institutions

While education institutions support the requirement to only refund the portion of the course not delivered, there is a reporting component associated with the TPS that has a cost impact. The cost burden associated with the reporting requirements will be considered as part of broader reforms to the ESOS framework.

iii. Benefits to students

At the time partial refunds were introduced, it was argued that any concern felt by overseas students about not being able to claim a full refund would be offset by the advantages of a sustainable TPS. To date, students have benefitted from prompt intervention by the TPS, which prioritises timely student placements or refunds and gives students more options and a greater say in the placement process. Based on a small survey of students who received assistance from the TPS conducted in 2014, the majority of students expressed high levels of satisfaction with the TPS website and the level of assistance received from the TPS.

iv. Costs to students

Students have not reported any negative impacts from the changed refund requirements either through the consultation process or to the Overseas Student Ombudsman, which handles students' complaints. ISANA provided the following comments on the changed refund requirements:

> Although we acknowledge there are costs (tuition and administrative) to deliver the course, students are severely disadvantaged if the study period has not been completed and students haven't been awarded their final grades i.e. results for the subjects they have undertaken. Completed subjects on official academic transcripts are like currency to students who require them to gain academic credit to an alternative course at another institution.
>
> Therefore, students who are able to obtain final grades for the subjects they have paid for should not be entitled to a refund.

v. Benefits to Government

Limiting the amount of refunds to unspent tuition fees has reduced the potential liability on the TPS. Education institutions are in a better position to fulfil their obligations and refund students without resorting to tuition protection measures.

The requirement to refund only the unexpended portion of the tuition fees has resulted in a significant reduction of per student refund paid by the TPS in comparison to the previous tuition protection arrangements. For example, for the financial year 2013-14 the average refund/placement cost per student was approximately $1350, compared to $3780 for the financial year 2011-12.

vi. Costs to Government

No additional costs have accrued to the Government as a result of this measure.

c. National registration

i. Benefits to education institutions

PRISMS data indicates that this measure is meeting the Government's objectives of providing more streamlined and consistent processes and reducing compliance costs. The data shows savings of over $600,000 achieved for education institutions as a result of the amalgamation of registrations.

As noted previously, feedback from submissions to the PIR consultation paper supports these findings. Benefits from national registration were said to include the following:

- no longer a need to pay two sets of fees for state-based regulatory bodies
- reduced administrative burden of maintaining multiple sets of regulatory processes and documentation and the management of the register is much easier and more streamlined
- the option of adding a new CRICOS course nationally has reduced the application preparation time considerably and eliminates the need to double up on evidence for each state in which the course will be offered
- reduced administrative costs associated because only one application is required, even where registrations are separate.

Current indications are that the move to national CRICOS registration will result in further significant cost savings over time. In particular, the national system will result in a reduction of the combined number of courses by location, which will in turn result in a cost saving for 2015 and into the future.

ii. Costs to education institutions

Feedback from the submissions to the PIR consultation paper did not list any additional costs to education institutions from this measure.

iii. Benefits to Government

Overall, the national registration measure removed a source of duplication, provided more streamlined and transparent regulations and allowed for a better targeting of limited compliance resources.

iv. Costs to Government

There were minimal one-off costs to the Government for PRISMS enhancements and the time taken in consolidating the multiple registrations of education institutions that opted for national registration. There are no ongoing costs.

9 Conclusion

This review has found that there is broad support from all international education sectors for a strong consumer protection mechanism for international students. The importance of protecting the reputation of the industry has been highlighted throughout the ESOS reform consultation process. The University of Sydney provided the following evaluation of the TPS in its submission to the PIR consultation paper:

> The universal tuition protection mechanism re-affirms with Australian and international stakeholders that Australia is highly committed to providing quality education and the student's experience instead of profit. Hence it promotes and nurtures long-term relationships with international stakeholders and students.

With enrolments by full-fee paying international students reaching 534,870 in September 2014, representing an 11.6 per cent increase on September 2013 and an average year to date September growth rate of 5.1 per cent per year over the preceding 10 years, it is clear that there is a need to maintain a robust and comprehensive system to protect international student tuition fees and enhance the reputation of Australia's international education industry.

While one higher education institution expressed the view that the contributions of universities to the TPS are disproportionate and not commensurate with the benefit received, all submissions agreed that the TPS is effectively meeting its goals. For example:

> English Australia also views the inclusive nature of the TPS very positively as under the previous regime the burden was not shared equally across all sectors of international education. Whilst it is acknowledged that publicly funded institutions such as universities and TAFEs are highly unlikely to require the services of the TPS, it is also true to say that the majority of private providers would also never make a claim on the Fund. If the intent is to ensure that the financial burden of protecting Australia's reputation is spread equitably across all providers, then this model achieves this goal.

The major concerns prior to the introduction of the TPS, in particular that the considerable investment made in Australia's education sector by international students was not sufficiently secured against regulatory and education institution failures, have been addressed. The TPS is in a sound financial position and is continuing to build its resources against any future downturn in the sector.

Concerns expressed by education institutions about overly complex and burdensome administration requirements were partly addressed through the TPS although there has been considerable feedback that some elements introduced as part of the new arrangements continue to create significant additional compliance workload. These matters are being considered through the separate processes aimed at improving the ESOS arrangements.

Submissions responding to the PIR consultation paper supported the amended requirement to refund only ‘unspent tuition fees’, as it was considered a fairer outcome. Moreover, submissions concurred that the change significantly reduced the costs of refunding and placing students, which contributes to the sustainability of the tuition protection arrangements.

Education institutions also welcomed the national registration measure, which has been successfully implemented and has resulted in a reduction in red tape and TPS related fees.

In summary, the measures introduced in the 2012 ESOS Amendment Act have proven beneficial to education institutions, students and the Government. The issues raised as part of ongoing consultations with the international education community, outlined in section 7 of this PIR, will be considered as part of the reform of the ESOS framework over 2015. It is expected that these reforms will include some adjustment to the administrative burden relating to the TPS requirements. However, any changes will balance the need to ensure the continued sustainability and integrity of the TPS

Overview of the TPS governance and functions

Governance framework

The TPS governance framework comprises the statutorily appointed TPS Director and an advisory board of up to 12 members. The primary functions of the TPS Director under the ESOS Act are to:

- place and/or provide refunds to international students in accordance with the ESOS Act requirements
- report to the Minister on the operations of the TPS and Overseas Student Tuition Fund (OSTF)
- manage the TPS to ensure it meets its liabilities
- make a TPS levy legislative instrument each year.

TPS Advisory Board

TPS Advisory Board members are appointed by the Minister and represent all areas of the sector—higher education, vocational education and training (VET), schools, English language intensive courses and TAFE colleges. The current members appointed in October 2012 and were selected on the basis of their qualifications and extensive experience.

The board's role is to provide advice to the TPS Director on issues relating to the annual TPS levy. Principles adopted by the board at its first meeting include:

- Advice provided to the TPS Director should reflect the overall risk environment and ensure that revenue matches what is needed to sustain the OSTF, while also being sustainable for the industry
- The model for the TPS levy should, as far as possible, reflect gradual change and assist the industry with business planning by providing a stable regulatory environment
- The model should be as simple and transparent as possible, preferably based on a small number of risk factors
- Risk premiums imposed should provide incentives for education institutions to adopt positive behaviours
- Additional imposts on industry, such as data collection, should be minimised as far as possible.

During its meetings the board invites key stakeholders to share knowledge about current and future risks, requests and considers actuarial advice, assesses the impact of Government policy and shapes the advice to be given to the TPS Director regarding the TPS levy settings.

TPS reporting requirements

Reporting requirements for the TPS Director are set out in a legislative instrument. The Director is required to prepare an annual report relating to the following issues for that financial year:

- the financial status of the OSTF
- the number of students placed and time taken to place students in alternative courses
- the number of calls made on the OSTF, the total of any amounts paid out and the time taken to pay each amount
- an assessment of any issues affecting the operation of the TPS.

The Director is also required to provide an assessment of any issues that might affect the operation of the TPS in future financial years and an assessment of the outlook of the industry that provides courses to overseas students, and any potential risk to the OSTF as a result of that outlook.

TPS levy

The operations of the TPS are funded through the collection of an annual TPS levy which is paid by all CRICOS education institutions. The revenue collected through the TPS levy is paid into the OSTF, which is a 'special account' under the Financial Management and Accountability Act 1997.

TPS Levy has four components:

- base fee
- administrative fee
- risk rated premium component
- special tuition protection component.

The calculation methodology for the levy components is set out in the ESOS (TPS Levies) Act 2012. The revenue collected through the TPS levy is paid into the OSTF.

The TPS Director is required to make a legislative instrument each year setting out the parameters of the risk rated premium and special tuition protection components of the TPS levy based on advice and recommendations from the TPS Advisory Board as well as consultations with peak sector representatives.

The TPS Advisory Board provided advice in October 2014 for the settings of the 2015 TPS levy. In forming its advice, the board took into account the health of the sector, the changing policy and regulatory landscape as well as broader economic settings, the outlook in the main overseas student source countries and the increasingly competitive global international education marketplace.

Australian Government
Department of Education

Tuition Protection Service Post-implementation review

Consultation paper 2014

September 2014

Contents

Tuition Protection Service Post-implementation review

Consultation paper

1 Introduction

In March 2012, the Parliament of Australia passed the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012.* This amendment Act was the second tranche of legislation responding to the review of the *Education Services for Overseas Students Act 2000* (ESOS Act) conducted by the Hon Bruce Baird titled, *Stronger, simpler, smarter, ESOS: supporting international students,* released in February 2010.

The changes to the ESOS Act in 2012 were part of a broader set of policy measures that responded to the rapid changes in overseas student enrolments in 2008 and 2009. These measures included establishment of the Tuition Protection Service (TPS), which commenced operation on 1 July 2012. Overall the amendments to the ESOS Act were intended to better support the consumer interests of students through simpler and more sustainable tuition protection arrangements, as well as to streamline regulation and protect Australia's reputation for quality education.

On 19 November 2013, the OBPR wrote to the Department of Education indicating that a post-implementation review (PIR) of the legislative amendments to the ESOS Act in 2012 would be required. The measures required to be considered in the PIR largely relate to the TPS, but also include an additional amendment in 2012 that is not related to the TPS—the implementation of national registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The PIR, which is to be completed before the end of 2014, is part of the Australian Government's best practice regulation requirements.

2 Scope of the post-implementation review

The TPS PIR will assess the appropriateness, effectiveness and efficiency of the measures introduced through the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act.* It will also consider how well the measures are meeting their policy objectives, and draw extensively on consultation with stakeholders affected by the changes.

OBPR has requested a focus on:

a. The establishment and operation of a universal Tuition Protection Service (TPS) for international students in Australia on student visas

b. The requirement to only refund the portion of the course not delivered or assessed

c. National registration of education institutions.

As stakeholders will be aware, the department is currently consulting with key stakeholders on a broader reform of the Education Services for Overseas Students (ESOS) framework, in line with the Government's deregulation agenda. These consultations have highlighted a range of views among stakeholders concerning the effectiveness and appropriateness of a number of elements of the TPS arrangements, including the:

- limit of 50 per cent on fees paid for a course before its commencement
- requirement for a designated account in which to hold 'prepaid' fees
- reporting requirements for education institutions and student defaults.

Options for addressing these issues will be considered separately from the TPS PIR and will be examined in a discussion paper on the reform of the ESOS framework, to be released in the near future.

3 Consultation

The key stakeholders affected by the legislative changes made through the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act* are:

- education institutions
- international students
- government and statutory agencies.

This consultation paper is a key element of seeking input and views from stakeholders on the operation of the TPS. The feedback received by the Department of Education will influence the outcomes of the TPS PIR. Written submissions are welcome from stakeholders and should address each of the issues and specific questions in the following sections of this paper.

Written submissions or any questions on this consultation process should be sent to ESOSPolicy@education.gov.au by Friday, 26 September 2014.

4 Issues

This PIR is required to address three specific measures. An overview of these measures, and specific questions in relation to each, are provided below. In your responses to this consultation paper, please provide as much detail as necessary to explain your views.

a. A Operation of the Tuition Protection Service

v. Overview

The TPS commenced on 1 July 2012 and is a universal service covering all education institutions registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The TPS provides streamlined arrangements for placing students and providing refunds in situations where education institutions are unable to do so. The TPS is supported through financial contributions from all CRICOS registered education institutions. The contributions to the Overseas Students Tuition Fund (OSTF) are used to fund the placement and refund services provided by the TPS.

The financial contribution from education institutions is called the TPS levy. The TPS levy includes a risk rated component that recognises the risk of default associated with each education institution. Public institutions are not required to pay this component.

Between 2008 and 2011 there was unprecedented growth in the number of international students in Australia, as well as a significant increase in education institutions offering international education services. However, after the initial growth there was a sudden decline in international student numbers. This structural shock was followed by the closure of 54 institutions. Over 13,000 international students were affected by these closures. Only 312 of the 13,000 students were able to be provided with full or partial refunds by their education institutions. The remaining students had to be assisted through the tuition protection measures in place at the time. This placed pressure on the ESOS Assurance Fund and the TASs, which were unable to cope with demands for either placement or refund. This resulted in pressure on the Australian Government to place students and provide refunds.

Another disadvantage of the previous system was its inability to provide timely assistance to students. In some instances students waited for several months before their issues could be resolved by the relevant TAS. This compromised the reputation of Australia as being committed to the protection of international students. The commitment to provide timely assistance (tuition assurance and/or refunds) for students is one of the principal objects of the ESOS Act.

The TPS was introduced to provide a more sustainable and responsive framework that could be fully funded by international education institutions. The placement of students in alternative education courses is the first option pursued by the TPS, with a refund of the student's tuition available as the second option.

vi. Questions for stakeholders

1. In your experience and that of your members, is the TPS effectively meeting its goals to provide placements or refunds to students affected by education institution closures?
2. In meeting the requirements associated with the TPS, what have been the major impacts for your members in terms of both benefits and costs? Please explain your answer, including indicating the impacts, if any, of the requirement for the TPS levy.
3. What do you see as the main advantages of a universal tuition protection mechanism?

b. B Requirement to only refund the portion of the course not delivered

vii. Overview

Under the tuition protection measures in place prior to the TPS there was a requirement that a student be paid a full refund in situations where an education institution defaulted. That meant students who were close to the end of their course were refunded the full amount of the course fees they had paid, regardless of how much of the course they had completed.

Many stakeholders argued that the full refund was unreasonable when education institutions had incurred costs and the student had received a service that could be credited at another institution. Further, some students took advantage of the system, waiting for a full refund rather than opting for a placement.

Sections 46D and 46E of the ESOS Act were introduced to address this problem by determining appropriate refund obligations in cases of education institution default. These provisions ensure that, when an education institution is unable to deliver a full course to a student studying on a student visa, the student is either able to complete their studies in another course with another education institution or receive a refund of their unspent tuition fees.

c. Questions for stakeholders

1. Education institutions are now required to refund only the portion of the course not delivered or assessed—that is, the unspent tuition fees. Does this change result in a fairer outcome for education institutions and students?
2. Please list any impacts on your organisation resulting from the introduction of this change, including in relation to calculating refunds to students.

d. C Enable national registration of education institutions

viii. Overview

The national registration process for education institutions listed on CRICOS was introduced in March 2012. It enables education institutions to amalgamate all of their registrations into a single, master, CRICOS registration. This process sought to create a more seamless system for registering courses, as well as reduce associated costs for education institutions with multiple registrations on CRICOS.

Under the previous arrangements, separate, state-based registrations on CRICOS often involved different processes and charges. In some cases, there were duplicated registration assessments for domestic and CRICOS registration—for example, residency details, fit and proper person tests and financial viability. These multiple registrations also increased the workload of the quality assurance agencies in undertaking registration and assessment processes.

At 30 June 2014, 36 education institutions had reduced the number of CRICOS registrations associated with their institutions.

e. ***Questions for stakeholders***

1. Has national registration resulted in a cost saving in registration and associated administrative charges for your members? Please provide comments to support your response.
2. Are there any improvements you would suggest to the current system of national registration? Please fully explain your suggestions.

5 Further steps in this process

The information and feedback received from stakeholders in response to this consultation paper will be included in a report on the findings of the TPS PIR. The final report will be submitted to the OBPR by the end of 2014 and will be published on the OBPR's website.

The outcomes of the final report of the TPS PIR will also be considered as part of the broader ESOS reforms taking place over 2014-15. Ongoing communication with stakeholders on the progress of the ESOS review and proposed changes will continue during that period.