Australian Government
Department of Education and Training

Regulation Impact Statement

Proposed changes to the Education Services for Overseas Students framework

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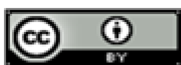

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The document must be attributed as the Regulations Impact Statement: Proposed changes to the Education Services for Overseas Students framework.

Contents

1 The Education Services for Overseas Students framework ... 5
1.1 The role of ESOS ... 5
1.2 Recent reviews of ESOS ... 5
1.3 The need for a universal tuition protection scheme ... 6
1.4 Minimising risk under the new arrangements ... 7
2 Objectives of Government action ... 7
3 The problem ... 9
3.1 The scope of this Regulation Impact Statement ... 9
3.2 Profile of education institutions ... 9
3.3 Nature of the problem—stakeholder views ... 10
3.4 Regulatory failure ... 11
4 The need for Government action ... 17
5 Consultation with stakeholders ... 20
5.1 Consultation to identify key issues ... 20
5.2 Outcomes of consultations on proposed measures ... 21
5.3 Further consultation ... 25
6 Options that may achieve the objectives ... 26
6.1 Option 1—No change ... 26
6.2 Option 2—Legislative changes to reduce regulation based on risk assessment ... 26
6.3 Option 3 – Legislative changes to reduce regulation but retain appropriate safeguards to preserve the viability and integrity of the Tuition Protection Service ... 27
6.4 Option 4 – Legislative change to reduce regulation, maintain some safeguards and address stakeholder concerns ... 28
7 Impact analysis—costs and benefits ... 29
7.1 Option 1 ... 29
7.2 Option 2 ... 29
7.3 Option 3 ... 38
7.4 Option 4 ... 51
8. Preferred option ... 56
8.1 Summary of policy options ... 56
8.2 Option 1 – Not preferred ... 57
8.3 Option 2 – Not preferred ... 58
8.4 Option 3 – Not preferred ... 60

8.5 Option 4 – Option 4(i) preferred 61
9 Implementation and review 62
9.1 Implementation process and timeframe 62
9.2 Risks to implementation 63
9.3 Evaluation of the effects of the preferred option 63
Attachment A – Summary of benefits and costs of each option, by stakeholder 64
Attachment B – ESOS review Stakeholder submissions received October – November 2014 72

1 The Education Services for Overseas Students framework

International education is our highest earning service export, and over the last 12 months international student enrolments have been increasing. While the recent growth is encouraging, the Australian Government remains strongly committed to building an even more prosperous future for international education in Australia so that it remains sustainable and central to economic growth. As an overarching policy, the Government has also committed to deregulation to reduce the burden on Australian businesses. Reducing red tape in the Education Services for Overseas Students (ESOS) framework will increase productivity and ensure Australia's education institutions are more competitive and can take advantage of global opportunities.

1.1 The role of ESOS

The *Education Services for Overseas Students Act 2000* (*ESOS Act*) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (National Code) place obligations on Australian institutions to ensure international students receive services of the highest quality. The *ESOS Act*:

- provides tuition assurance and refunds for overseas students
- protects and enhances Australia's reputation for excellence in education and training services
- ensures that education institutions report information necessary to support the administration of immigration laws relating to student visas.

1.2 Recent reviews of ESOS

In 2009 the ESOS framework was reviewed by the Hon Bruce Baird, AM. The Baird review recommended measures to:

- improve support for students
- strengthen complaints and appeals processes
- create a simpler and more sustainable tuition protection framework
- tighten entry to market requirements
- improve risk management
- ensure there were clearer, more objective and streamlined processes for registering education institutions and that there was better enforcement of standards.

The Baird review recommendations led to the implementation of the following:

- the *Education Services for Overseas Students (Tuition Protection Service and Other Measures) Act 2012*, which was designed to support the consumer interests of students through establishing simpler and more sustainable tuition protection arrangements

- the *Education Services for Overseas Students (Registration Charges) Act 2011* and the *Education Services for Overseas Students (TPS Levies) Act 2011*, which introduced a new costing and pricing structure for monitoring new entrants to the market and for ongoing registration, as well as charging for the new tuition protection framework prior to its passage in 2012
- the *Education Services for Overseas Students (Re-registration of Providers and Other Measures) Act 2010*, which included new processes for re-registration using a risk management approach, stronger registration requirements and measures to increase the accountability of education institutions in relation to education agents.

The most significant changes were concerning the previous tuition protection arrangements. These changes, including the establishment of the Tuition Protection Service (TPS), were designed to strengthen Australia's reputation and competitiveness by offering international students one of the most comprehensive schemes available in the world to protect their financial investment.

1.3 The need for a universal tuition protection scheme

The TPS provides a universal, flexible and streamlined approach to placing or refunding students when their education institution cannot meet its obligations. The TPS was established in response to events that exposed the inadequacy of the previous system.

In the period 2008 to 2011, 54 education institutions closed and over 13,000 international students were affected. Only 11 of these education institutions were able to meet, or partially meet, their refund obligations to a small number of these students.

At the time there were three tiers of tuition protection:

1. providers meeting their obligations to students of their own accord
2. the Tuition Assurance Schemes (TASs) operated by the Australian Council for Private Education and Training (ACPET) (the largest), English Australia, Council of Private Higher Education (COPHE), Western Australian Private Education and Training Industry Association, Melbourne College of Divinity and Sydney College of Divinity
3. ESOS Assurance Fund.

The ESOS Assurance Fund was activated only when the first two tiers failed. It received set-up funding of $1 million from the Australian Government in 2001 and collected annual contributions and special levies from education institutions. The ESOS Assurance Fund was responsible for arranging alternative courses for students or paying them a refund.

Contributions to the ESOS Assurance Fund from 2008 to 2011 were just over $13 million. This amount covered less than half the refunds required after the 54 closures, which totalled over $27.5 million. Moreover, the three-tiered nature of the system was complex and often resulted in significant delays for students in receiving assistance and support.

1.4 Minimising risk under the new arrangements

Measures introduced in the amendments to the *ESOS Act* in 2012 to deal with risk and to support the viability and sustainability of the TPS included:

- a limit on the amount of tuition (course) fees that could be collected by education institutions to no more than 50 per cent of the total fees for courses of more than 24 weeks' duration prior to a student commencing the course. This measure was aimed at reducing the potential refund liabilities of both the education institution and the TPS
- a requirement that 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 upfront tuition fees in a separate 'designated' account. This measure was to ensure sufficient funds were retained by the institution to ensure refunds could be made if the education institution defaulted, reducing the potential refund liability of the TPS
- stronger record-keeping of student contact details and academic progress. This information enabled quicker placement of students when their education institution defaulted.

The TPS is funded through the collection of an annual TPS levy, which is paid by all education institutions registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The revenue from the TPS levy is paid into the Overseas Student Tuition Fund (OSTF). This is a 'special account' under the *Public Governance, Performance and Accountability Act 2013 (PGPA Act). The PGPA Act* commenced on 1 July 2014 and replaced the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The TPS Director was established in 2012 as an independent statutory officer to administer the TPS and OSTF. The TPS Advisory Board provides advice and makes recommendations to the TPS Director on the making of a legislative instrument for the TPS levies each year.

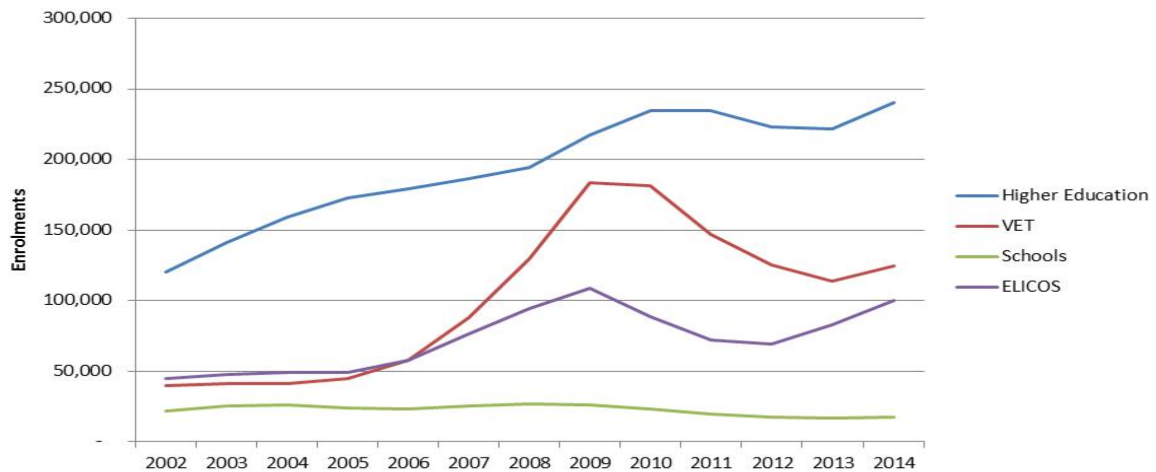
2 Objectives of Government action

The objectives of Government action to reform tuition protection in 2012 remain pertinent today given the significant number of overseas students studying in Australia. As at September 2014 there were 534,870 international student enrolments in Australian education institutions. The current growth in enrolments of 12 per cent to YTD September 2014 is moderate compared to the years leading up to YTD September 2009, when there were three successive years of annual enrolment growth of over 17 per cent (see Figure 1).

This prolonged period of growth, largely driven by an increase in vocational education and training (VET) enrolments, peaked in 2009, then declined suddenly. [(1)] Recent growth has been strongest in higher education (38 per cent for 2013-14) and English Language Intensive Courses for Overseas Students (ELICOS) enrolments (20 per cent between YTD September 2013 and YTD September 2014). [(2)] The significant increase in ELICOS enrolments is largely

explained by the need for many students to study an ELICOS course prior to further study, such as higher education.

Figure 1 International student enrolments by sector, 2002 to 2014



Source: Department of Education and Training Student Data

The Government's objectives in introducing the TPS were to:

- ensure overseas students are placed with an alternative education institution or receive a refund if their education institution defaults
- protect the reputation and competitiveness of Australia's international education sector by having a robust tuition protection system that attracts prospective students and responds effectively to their needs
- ensure all international education institutions share in the costs and benefits of the tuition protection system and benefit from its contribution to Australia's reputation for quality and integrity in international education
- ensure tuition protection can respond to high demand without the need for government assistance
- ensure the arrangements are transparent and accountable to education institutions, students and government
- ensure the system is simple, streamlined and sustainable.

The TPS meets these objectives by:

- encouraging all education institutions to meet their refund obligations
- improving outcomes for students by finding them a satisfactory alternative placement or refunding unexpended tuition fees after placement options have been exhausted
- ensuring there are appropriate governance and reporting structures in place to support the accountability of the TPS

- ensuring consistency and objectivity in assessing the risk of education institutions to determine appropriate levies so the TPS is sustainable and fully funded by education institutions
- reducing the regulatory burden for low risk education institutions.

The effectiveness of the TPS was the subject of a post implementation review, completed in December 2014.

3 The problem

This section of the RIS will:

- discuss the measures under the scope of the Regulation Impact Statement (RIS)
- provide a brief snapshot of education institutions in the sector
- summarise stakeholders' views with respect to their perception of the problem
- describe the regulatory failures from the measures under the scope of this RIS.

3.1 The scope of this Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that two measures relating to the TPS, among those being considered as part of the reform of ESOS, require a RIS given their impact on the market. These are:

- the 50 per cent limit on the amount of tuition fees that may be accepted by an education institution prior to a student commencing a course—the limit applies to all providers in all sectors, with the exception of courses of 24 weeks or less duration
- the requirement that non-exempt education institutions retain the amount of tuition fees collected prior to course commencement in a designated account until such time as the student commences his or her course.

This RIS examines the two TPS requirements in the context of the Government's commitment to deregulation, as well as the changing needs of international education institutions and students. The measures were also canvassed in the *Reform of the ESOS framework* discussion paper, which was released for public comment on 1 October 2014 (see section 5 of this RIS for further discussion on the consultation process).

3.2 Profile of education institutions

As at October 2014, there were 1,040 education institutions on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), with around 515,000 student enrolments. The largest volume of international student enrolments was in higher education (47 per cent). VET and ELICOS accounted for a further 24 per cent and 20 per cent of enrolments respectively.

Table 1 Number of institutions and enrolments per sector, 2014

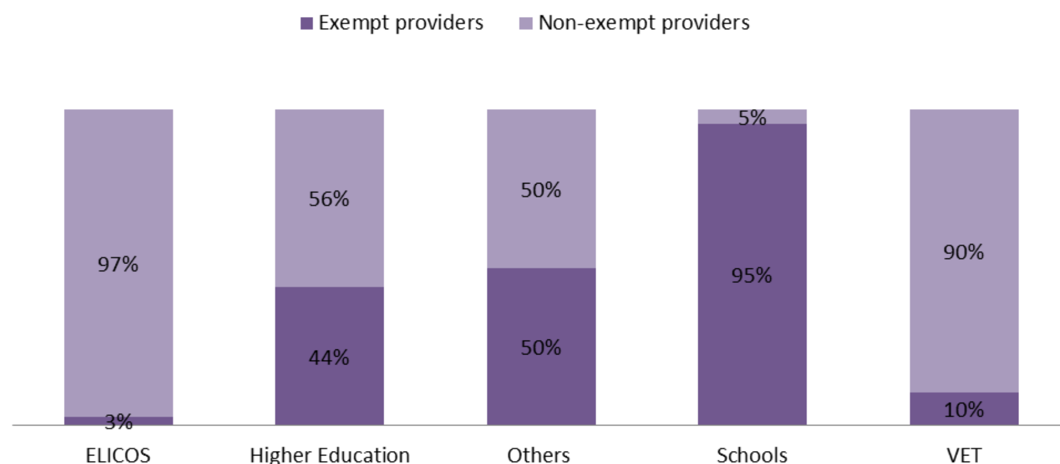
Sector	Enrolments [1]	
	No.	*% total*
Schools	17,271	3%
Non-award [2]	31,935	6%
ELICOS	100,406	20%
VET	124,865	24%
Higher Education	240,307	47%
Total	514,784	

Table notes:

1. Enrolment data sourced from Department of Education and Training Data, as at August 2014.
2. Non-award means a course leading to a qualification or an award not covered by the Australian Qualification Framework.

Figure 2 shows the number of CRICOS-registered institutions that were exempt for the purposes of section 31 of the *ESOS Act*.[1] By sector, schools have the highest number of exempt providers (95 per cent) and the ELICOS sector has the highest number of non-exempt providers (97 per cent).

Figure 2 Proportion of CRICOS-registered providers exempt and non-exempt from the designated requirement [1], by sector, June 2014



Source: Department of Education and Training, unpublished data extracted from PRISM on June 2014.
Table note (1): Relates to exempt and non-exempt providers under Section 31 of the *ESOS Act*.

3.3 Nature of the problem—stakeholder views

While there is general consensus that the role of ESOS is valued and that the TPS measures should remain, education institutions, peak bodies, quality assurance agencies, and state and territory agencies believe the framework could better reflect the modern international education environment. This view was expressed early in consultations on the current legislative requirements and quality assurance arrangements, which commenced in March 2014.

[1] Exempt institutions under section 31 are those 'who receive Commonwealth funding and providers administered by a state education authority' and are therefore generally perceived to be lower risk. These institutions are exempt from obligations as set out by sections 28 to 29 of the E*SOS Act* relating to the designated account. [*Parliament of Australia, Bill Digest no. 95 (2011-12), Accessed July 2015: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd095*]

These stakeholder views relate in part to the age of the National Code, which was introduced in 2007, and the many changes to the way education institutions deliver their services and attract international students since then. The introduction of the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA)—around the same time as the TPS—have also had a substantial impact.

The two most frequently cited issues identified with the TPS measures under the scope of this RIS were:

- **Reduced choice in payment options**: The current legislated requirement that limits education institutions from collecting more than 50 per cent of tuition fees up front has had the unintended consequence of reducing student choice. International students are currently unable to pay more than 50 per cent of their tuition fees up-front, even if they wish to do so. This is seen as an unnecessary barrier to market efficiency. There was widespread agreement among stakeholders to change the wording of the ESOS Act so that education institutions be able to 'accept' more than 50 per cent of the tuition fee up front.
- **Inappropriate approach to managing risk**: Applying blanket regulation over the entire international education sector means that any benefits associated with the TPS measure under scope are likely to be outweighed by the costs associated with excessive regulatory burden on low and medium risk education institutions. There is widespread support for moderating current requirements to education institutions by a proportionality or risk managed approach.

In reforming the ESOS framework, therefore, the department is considering ways in which the ESOS framework can be improved to balance reducing the regulatory burden on low risk institutions, allowing students greater choice with respect to the payment of their fees and minimising risk.

3.4 Regulatory failure

Given the stakeholder views canvassed above, this section will discuss the following regulatory failures associated with the measures under the scope of this RIS:

- reduced choice for students on payment options
- regulatory burden on education institutions
- reduced competition in the international education sector.

Reduced choice for students on payment options

As touched on earlier, the TPS limits the flexibility of specific cohorts of students who would like to pay more than 50 per cent of their tuition fees up front but are currently prevented from doing so. This impacts on overseas student sponsor Governments, scholarship providers and even some parents who may find it less costly and administratively simpler to pay tuition fees up front. It also limits students from taking advantage of any concessions offered by education institutions linked to greater upfront payments, or favourable changes in rates of currency exchange.

While no conclusive data could be found on the size of these groups, data published in 2011 (before the 50 per cent limit was introduced) indicated that only 7 per cent of students on

average had made a significant prepayment (more than one semester) at the time of their enrolment (see table 2). However, this varied significantly by sector, with 44 per cent of students in the ELICOS sector paying tuition fees more than one semester in advance, compared to only 4 per cent in the higher education sector and 5 per cent in the VET sector.

A number of factors may explain differences across the sectors including average course length by sector, incentives provided to students to encourage the payment of tuition fees up front, competition and an education institution's own fee policies.

Feedback from stakeholders suggests that the issue of reduced payment choice is important across the international education sector and that, as a minimum, the current anomaly in the *ESOS Act* should be removed.

Table 2 Upfront tuition fees by enrolments by sector* —pre-2012

Sector.	Significant pre-payment (more than one semester)	Partial pre-payment (less than one semester)	Total number of enrolments	Ratio
All ELICOS	**2,873**	**3,671**	**6,544**	**44%**
Private	2,666	3,213	5,879	45%
Public	207	458	665	31%
Higher Education	**9,677**	**225,875**	**235,552**	**4%**
Private	1,691	22,812	24,503	7%
Public	7,986	203,063	211,049	4%
Other private	**421**	**1,682**	**2,103**	**20%**
Schools	**7,473**	**12,904**	**20,377**	**37%**
Private	3,031	7,167	10,198	30%
Public	4,442	5,737	10,179	44%
VET	**4,822**	**88,940**	**93,762**	**5%**
Private	3,225	71,847	75,072	4%
Public	1,597	17,093	18,690	9%
Grand total	**25,266**	**333,072**	**358,338**	**7%**

Source: Australian Government (2012), *Regulatory Impact Statement – ESOS Tuition Protection Service and Other Related Measures*, http://ris.dpmc.gov.au/files/2012/02/02-Tuition-Protection-RIS-20120130.pdf , accessed October 2014.

** Excluding courses less than 24 weeks duration.*

Regulatory burden for education institutions

The costs to education institutions of administering and complying with both requirements under section 27 (upfront tuition fees) and sections 28 to 32 (designated accounts) of the *ESOS Act* are significant. For 2013-14, the costs were estimated by the department, in stage two of the Audit of Regulation, at approximately $38.3 million.

The greatest regulatory impost on education institutions is associated with the designated account, estimated at $27.7 million on average per annum, or an average cost per enrolment of $73 for non-exempt institutions (table 3). These costs represent the additional resources expended by institutions to maintain the appropriate level of funds in the designated accounts at all times. The establishment and maintenance of the designated account is estimated as taking one person 1.5 hours per confirmed enrolment (as outlined in Table 3). The cost also includes minor monthly bank fees and charges associated with the designated accounts.

Table 3 Average annual regulatory costs associated with the designated account, by sector

Sector[1]	Average annual regulatory costs			
	Total	*Per enrolment[2]*	*Hourly wage rate*	*Hours spent*
Schools	$70,000	$81	$52	1.55
Non-award[3]	$270,000	$60	$40	1.49
Higher education	$5,290,000	$95	$63	1.50
ELICOS	$9,100,000	$60	$40	1.49
VET	$12,980,000	$67	$45	1.50
All sectors	**$27,710,000**	**$73**	**$48.07**	**1.52**

Source: Department of Education and Training.

Notes:

1. Operators broken down by main course sector.
2. Enrolments counted as confirmations of enrolment created in PRISMS in 2013-14. Enrolment figures in table 1 are from Department of Education and Training Data, which only include enrolments with actual study.
3. Non-award means a course leading to a qualification or an award not covered by the Australian Qualifications Framework.

Compliance with the 50 per cent limit requirement costs the international education industry a total of $10.6 million on average per annum, or an estimated average regulatory cost per enrolment of $43 for all CRICOS-registered institutions (table 4). These costs represent the additional ongoing resources expended by education institutions in sending out invoices and reminders to comply with the 50 per cent limit requirement. The work involved in complying with this requirement is estimated as taking one person one hour per confirmed enrolment.

For domestic students there is no equivalent restriction on how much and when their tuition fees must be paid. Therefore, domestic students have far greater flexibility. Their education providers also have a relatively straightforward administrative process, by invoicing or issuing a reminder, or setting up a payment plan for the domestic student from the beginning. The process for international students is quite different given the timing and level of payment of their tuition fees are largely determined by the legislative requirements, not only on tuition fees paid up front (currently offering the student no choice) but also on the subsequent payment of fees. This means that, for international students, education providers must invoice at different intervals, issue reminders as appropriate, and explain the process to students. Education providers have individual systems for invoicing and making decisions about when and how to invoice students.

A significant determinant of the timing of tuition fee payments is how each provider deals with the operation of the student visa arrangements. A student makes contact with a CRICOS-registered education provider and enrols with the provider before being granted a visa. That is because a confirmation of enrolment with a provider is required by the Department of Immigration and Border Protection (DIBP) before a student's visa application will be considered. Not all visas are granted, and so some providers wait to invoice until a student's visa is approved by DIBP. However, students are aware of the fees at the time they

enrol, because the information is provided to them early in the enrolment process. In many cases the student transfers a portion (sometimes all) of the tuition fees required before their visa is approved or before they have commenced the course. If the student transfers all of their fees, under the current legislation the provider must reimburse the student. For some international students the process is therefore complex. This administrative complexity and burden was emphasised in Government consultations with international education stakeholders over 2014-15, who indicated the regulatory burden can differ even between individual students. Based on the issues raised by education peak bodies during consultations, and their indication that many students required more 'personalised' responses than an automated billing system offered, the factors considered in determining the time taken (and associated cost) in implementing the 50 per cent limit and associated fee paying requirements included the following:

- enrolment dates for international students, which are not uniform because the dates are linked to the granting of the visa
- students often not understanding that (currently) they can only pay up to 50 per cent before commencing their course. Those who pay more before the course commences have to be refunded, and this process has to be carefully explained to them, taking into account cultural and language diversity
- use of education agents as intermediaries, who are often offshore, particularly in countries where it is a cultural norm to use third parties in dealing with any communication or transaction between the education provider and the student
- the need to report in PRISMS certain information relating to the payment of tuition fees, and the study periods to which those fees relate
- if the student is a scholarship student, the need to liaise with the sponsor of the student, particularly with regard to the restriction on paying any more than 50 per cent of tuition fees up front.

Given the variability reported by stakeholders during consultations (sorting some students' adherence to the 50 per cent limit can take hours) an assumption of around one hour per student has been made as an average across all providers (see table 4) for the purposes of assessing the regulatory cost of the 50 per cent limit requirement.

Sectors with a higher number of international students are disproportionately impacted by the TPS requirements. Table 1 showed that the largest volume of international student enrolments was in higher education. The cost per enrolment is also higher for particular sectors depending on remuneration awards for administrative staff. Table 3 shows that the combination of these factors has resulted in higher education institutions—44 per cent of which are exempt for the purposes of section 31 of the *ESOS Act*—having the highest compliance cost per enrolment ($95) associated with the designated account. Similarly, table 4 shows that schools—95 per cent of which are exempt for the purposes of section 31 of the *ESOS Act*—have the highest compliance cost per enrolment ($52) associated with the 50 per cent limit on upfront tuition fees.

Table 4 Average annual regulatory cost per enrolment associated with the 50 per cent limit on upfront tuition fees, by sector

Sector[1]	Average annual regulatory costs			
	Total	*Per enrolment[2]*	*Hourly wage rate*	*Hours spent*
Schools	$470,000	$52	$52	1.0
Non-award[3]	$540,000	$40	$40	1.0
Higher education	$790,000	$40	$40	1.0
ELICOS	$3,700,000	$44	$40	1.1
VET	$5,110,000	$40	$45	0.9
All sectors	**$10,610,000**	**$43**	**$43**	**1.0**

Source: Department of Education and Training.

Notes:

1. Operators broken down by main course sector.
2. Enrolments counted as confirmations of enrolment created in PRISMS in 2013-14. Enrolment figures in table 1 are from Department of Education and Training Data, which only include enrolments with actual study.
3. Non-award means a course leading to a qualification or an award not covered by the Australian Qualifications Framework.

Competition impacts on the international education sector

The *ESOS Act* currently requires non-exempt education institutions to set up separate 'designated accounts' in which to keep any tuition fees received up front from students who have yet to commence their course. Non-exempt institutions under section 31 of the *ESOS Act* are those that are neither entitled to receive funding from the Commonwealth for recurrent expenditure on education/training nor institutions administered by a state education authority. They are therefore considered to be of higher risk of defaulting on student refunds relative to their exempt counterparts. Together, non-exempt institutions comprised 51 per cent of all those registered on CRICOS and catered to 55 per cent of international students in 2013-14.[2]

While this targeting is broadly in line with a risk management approach, an education institution cannot be solely assessed on its status as a public or private operator. In practice, most private institutions are subject to the same regulations as their public counterparts. For example, many non-TAFE VET institutions are in receipt of government funding and therefore are already regulated and accountable to governments. As at February 2015, 58 per cent of VET institutions regulated by ASQA had been classified as low risk, with only 10 per cent classified as high risk.[3] This includes 73 per cent of all ELICOS institutions. The remaining ELICOS institutions are regulated by TEQSA (21 per cent) and state authorities (6 per cent).[4] Non-university and non-government schools in receipt of government funding are similarly accountable to government through regulatory authorities for those sectors.

The selective application of the designated account requirement to non-exempt institutions may therefore unfairly put them at a competitive disadvantage relative to the rest of the market. The impact of this will be felt most acutely by new entrants to the sector, which are

[2] Department of Education, Provider Registration and International Students Management System (PRISMS) Database, report generated October 2014.

[3] Australian Skills Quality Authority, *Provider Risk Ratings*, http://www.asqa.gov.au/about/risk-based-regulation/provider-risk-ratings.html, accessed June 2015.

[4] Provided by the Department of Education and Training.

likely to have higher upfront costs associated with securing facilities, recruiting employees and developing course materials.

The requirement for a designated account may also particularly disadvantage smaller education institutions, given that they have fewer resources than their larger counterparts to enable them to administer and comply with requirements. For example, most universities devote entire departments to human resources and financial support functions. In contrast, a small VET institution delivering a few courses would sometimes employ only a small number of people to undertake the administrative functions of the organisation.

As a result, for new entrants into the sector, in particular smaller education institutions, the selective application of the designated account may contribute to barriers of entry. By requiring tuition fees paid by students to be kept in a designated account prior to their commencement, the TPS limits the cash flow of education institutions. For new entrants whose reserve capital is lower, potentially more capital would need to be borrowed. New entrants that could extend their loan would have higher associated borrowing costs. Those unable to access additional resources may be prevented from entering the market altogether. Box 1 below provides an example of how removing designated accounts could potentially reduce borrowing costs for institutions no longer required to maintain a designated account.

Box 1 Example of borrowing costs for a hypothetical education institution

A student enrolling in a course with a VET institution pays $5000 of their course up front. The student's course commences in six months. This means that the non-university institution must place these funds in a designated account not to be used for six months.

It is assumed that designated accounts would mostly be low interest yielding cash accounts that currently average returns of around 3 to 4 per cent. In comparison, an institution's average cost of capital is likely to be much higher than this. For example, a study by the New York University found the Weighted Average Cost of Capital (WACC) for the education sector in the United States to be 8.4 per cent on average in 2014. [1] The WACC is a weighted average of the cost of debt (interest rate that an organisation would have to pay to borrow money) and the cost of equity (the rate of return an investor would expect from buying a company's shares). To the best of our knowledge, an equivalent WACC for the education sector in Australia is not publicly available. So for the purposes of this example the figure for the United States is used. Depending on differences in risk between the education sectors of both countries, this may overestimate or underestimate the borrowing costs for education institutions in the domestic setting.

Non-exempt education institutions currently required to borrow capital would be losing out on the money in their designated accounts by approximately the difference between their WACC and the cash account's interest rate. Over a period of six months, assuming upfront tuition fees of $5000, and an interest return of 3.5 per cent on the designated account, the institution would lose out around $250 in borrowing costs. While this is a relatively small loss, over longer periods, for larger deposits and across the entire sector the costs for providers would compound. For example, multiplying $250 by the currently 545 non-exempt education institutions, borrowing savings to providers from removing the requirement of designated accounts on one transaction could be in the vicinity of $136,250.

Savings in borrowing costs from removing the requirement for designated accounts have not been estimated for the entire international education sector. This is due to the subjectivity involved in determining many of the factors that would be required to estimate a whole of sector impact.

[1] New York University Stern School of Business (January 2014), *Cost of Capital by Sector*, *Source: http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/wacc.htm,* accessed October 2014.

4 The need for Government action

Since 2000 the ESOS framework has represented Australia's strong commitment to international students. It ensures that their financial investment in their education here is protected, that they have appropriate support and access to services to enable them to adapt to life in Australia while they study, and that they understand their visa obligations. The previous tuition protection framework under the *ESOS Act* provided a more complex, three-tiered system of consumer protection for international students.

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, a number of adverse factors contributed to a sudden decline in international student numbers. These factors included changes to the immigration settings, the high value of the Australian dollar, the global financial crisis and the widely publicised attacks on Indian students.

During this period 54 education institutions closed. 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 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 regulatory 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 review of ESOS conducted by the Hon Bruce Baird in 2009 (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 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 TAS 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.

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, exempt and non-exempt, 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.

The main Government objective in establishing the TPS was to ensure the sustainability of tuition protection arrangements for international students. Measures introduced to support the sustainability of 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.

In December 2014 the Department of Education and Training completed a post-implementation review (PIR) of the TPS and two other measures introduced in the 2012 ESOS Amendment Act. The PIR assessed the overall appropriateness of the TPS, but did not focus on the measures within the scope of this RIS specifically. Prior to completion of the PIR there had been several stages of consultation with the international education community regarding the TPS. In addition to the consultations on reforms to ESOS outlined in this RIS, 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 concerns raised by education institutions raised included the imposition of the 50 per cent limit. Generally stakeholders indicated that the TPS requirements were considered burdensome and not reflective of genuine risk.

In the time from the commencement of the TPS on 1 July 2012 to December 2014:

- Twelve education institutions have defaulted in the delivery of courses, affecting a total of 1,332 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 from January to November 2014, affecting 425 students.

A total of 324 international students approached the TPS for assistance during that period. Of these:

- 68 students (21 per cent) had placements finalised with another education provider
- 188 students (58 per cent) received a refund payment compared to 2 per cent of students in the period between 2008 and 2011, which saw the closure of 54 education institutions

- 68 cases (21 per cent) are either still awaiting further information from the student or are ineligible for assistance.

This demonstrates the benefits to date of having the TPS as a universal scheme for tuition protection, particularly as the international education sector continues to grow each year. The TPS is seen as enhancing the reputation, integrity and quality of Australia's international education system to the benefit of all international education institutions. 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.

However, while there is general consensus that the role of the TPS is valued, a number of stakeholders believe that the ESOS framework could better reflect the current environment. The international education sector is in a much better place now than what it was in the period preceding the establishment of the TPS, ASQA and TEQSA in 2011 and 2012. Applying blanket regulation over the entire sector means that any benefits associated with the TPS measures under scope are likely to be outweighed by the costs associated with excessive regulatory burden on low and medium risk providers. For this reason, Government is exploring options through this RIS that seek to maintain the sustainability of the tuition protection service, while also reducing unnecessary burden on education institutions.

5 Consultation with stakeholders

5.1 Consultation to identify key issues

From March to May 2014 the department held a number of one-on-one discussions concerning the ESOS framework with key organisations in the international education community. This helped identify their priority issues in the context of the Government's commitments to expanding international education and reducing red tape. Consultations were held with the following education peak bodies:

- ACPET
- Council of International Students Australia
- Council of Private Higher Education
- English Australia
- Independent Schools Council Australia
- International Education Association of Australia
- TAFE Directors Australia
- Universities Australia.

There were also consultations with key agencies from states and territories, as well as with:

- ASQA
- Australian Government Schools International
- Department of Immigration and Border Protection
- Overseas Students Ombudsman
- TEQSA
- TPS.

The outcomes of these initial discussions formed the basis of high-level proposals in the discussion paper, *Reform of the ESOS framework*, released on 1 October 2014. These included:

- streamlining the administrative arrangements for quality assurance agencies undertaking registration activities
- better aligning the legislative frameworks that apply to ASQA and TEQSA in particular with the ESOS Act
- reducing the reporting burden associated with information technology (IT) systems, reducing manual entry and allowing more opportunities for data to be provided once for many purposes
- minimising TPS requirements
- increasing flexibility in education delivery, particularly in online learning
- arrangements for the transfer of students
- ensuring welfare arrangements for students under 18 years are appropriate.

There were 70 submissions.

5.2 Outcomes of consultations on proposed measures

Overall, stakeholders are seeking changes to the ESOS framework that achieve more effective, appropriate and efficient oversight of institutions involved in international education. Feedback received during the department's initial consultations and submissions to the *Reform of the ESOS framework* discussion paper support some relaxation of the current measures associated with the TPS to more effectively manage risk. Attachment B lists the submissions.

Peak education bodies indicated that the 50 per cent limit is burdensome and unnecessary. Universities in particular, as well as schools, argue that under some other provisions they are exempted because they receive recurrent government funding (their exemption from the designated account requirement being one example) yet not in relation to the 50 per cent limit.

Education peak bodies representing private education institutions also 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.

A number of respondents to the discussion paper indicated that there is a significant impact on an education institution's administrative resources in meeting the TPS related requirements, particularly where both the 50 per cent limit and the designated account requirement apply. Further, and of most concern to peak bodies, is that some students are unable to pay for the full course before commencing, even if they want to.

The TPS Director has indicated that any changes to the TPS requirements that may affect risk management and need to be carefully considered. Advice sought by the TPS Director from the Australian Government Actuary states that removing the 50 per cent limit requirement on its own does not significantly increase risk. However, the removal of both the 50 per cent limit and designated account requirements and imposing these on the basis of risk assessment may have a significant impact:

> In combination with higher up-front payments, however, removing the designated account requirement increases the risk considerably, particularly if the discretion to receive the higher payments rests with the provider. Under the latter scenario, I would be concerned about adverse selection; that is, providers with a relatively higher risk (and hence a higher probability of resulting in a call on the OSTF) choosing to take up the option. This might argue for not just a substantially higher premium but also a higher level of scrutiny by the relevant regulator. For example, it might be appropriate to seek verification that the provider has been complying with their obligations with regards to the designated account to date.

In responses to the *Reform of the ESOS framework* discussion paper education peak bodies and universities noted a number of difficulties with the current arrangements:

Universities Australia stated:

> The legislation is designed to prevent the TPS having to repay substantial prepaid funds in the event of provider closure, and was introduced to prevent providers funding current business using the prepaid deposits of future students, a characteristic of some smaller private VET providers at the time. Publicly funded education providers and many long-established and reputable private providers are highly unlikely to close, let alone close without repaying prepaid tuition fees. Yet this requirement is not moderated by a proportionality or risk managed approach.

The **Group of Eight (Go8)** stated:

> This requirement has been problematic for universities because students may prefer to pay more upfront when there is a favourable exchange rate or their sponsor's policy is to pay full fees upfront. The 50% limit places too much restriction on the providers, the students and the sponsors.
>
> The Go8 supports Universities Australia's call for an exemption from this requirement for trusted low-risk providers.
>
> The Go8 does not support removing this requirement on high-risk private providers. This restriction was put in place to prevent high-risk providers entering the system, collecting the fees and then going insolvent, taking the money with them and leaving the Tuition Protection Service to pick up the bill.
>
> If an exemption for universities is not forthcoming, the Go8 also supports the proposal from Universities Australia to change the wording of ESOS Section 27 (I) from "must not *receive* more than 50% of the student's total tuition fees" to "must not *require* more than 50% of the student's total tuition fees". This will allow students to pay more when they choose to do so.
>
> Alternatively and at the very least there should be an exemption for all university students funded by sponsorship bodies.

Federation University Australia stated**:**

> Federation University Australia strongly supports a change to the requirement that all education institutions be subject to the 50 per cent limit on the collection of tuition fees prior to a course

commencing. On this matter, we would accept a ‘change of wording’ compromise that providers are unable to require more than 50 per cent of the total tuition fee.

Other peak bodies suggested that the TPS related measures should be imposed in a way that manages risk:

The **International Education Association of Australia (IEAA)** stated:

The current 50% limit on the collection of tuition fees has, since being put into practice, created a number of previously anticipated consequences for education providers. The duration of different courses and the capacity of providers’ systems to manage this requirement have caused damage to Australia’s reputation overseas.

The fact that overseas student sponsor Governments, scholarship providers and even some parents would prefer to pay an entire course of study amount upfront is further cause for concern. The ELICOS sector has been particularly affected by this 50% limit.

IEAA would again emphasise the importance of a proportionate risk assessment that may be appropriate for certain providers so that they not be exempted from the 50% limit. Quality assurance agencies could determine which providers this should be applied to.

English Australia stated:

English Australia recommends that this be removed as a blanket requirement for all providers, however that it remain as an optional ‘condition’ that quality assurance agencies can apply to education providers that meet a particular risk profile.

ACPET stated**:**

ACPET supports the Government’s initiative to establish the TPS. It does however share the concerns of other peak bodies that some of the risk management measures are in fact not useful in TPS achieving its objectives and are burdensome to providers. Therefore, ACPET would be looking for:

- the removal of the requirements of a limit on collection of tuition fees, other than for those providers determined as being of high risk of default;
- the removal of the requirement to maintain a designated account for TPS purposes, other than for those providers considered at risk of default, which in such cases should be required to have a trust account arrangements; and
- the removal of the requirements to identify study periods—arrangement should be similar to those required by the domestic regulators.

The TPS should have confidence in providers with a low risk profile and therefore give them greater flexibility in education delivery.

The review should push for a risk based approach, where high risk providers are limited to charging only 50% of fees (where the course is no less than 6 months) in line with the current regulators’ approach to the sector.

Some submissions indicated that the imposition of the 50 per cent limit had encouraged students to move from one provider to another:

Monash University stated:

Monash supports the removal of the 50% limit on the collection of tuition fees prior to student course commencement for low-risk educational providers. There are many scenarios where students may prefer to pay more upfront themselves (e.g. when there is favourable exchange rate) or it is the sponsor’s policy to pay upfront, for instance. The 50% limit is too rigid and places too much restriction to both the providers and the students/sponsors.

However, there may still be benefits for this requirement to be in place for high-risk providers.

We look forward to seeing the details of this change including whether any differentiation will be made for Table A providers.

COPHE stated:

> Many higher education students enter on pathway packages under SVP, and the restriction on fee collection in the preliminary courses, has made it difficult to counter 'course hopping.'

Other submissions highlighted both the visa integrity issue and increased administrative and resource burden of maintaining the 50 per cent limit:

The **University of New South Wales** stated**:**

> The introduction of the 50% limit has added considerable workload and required additional resourcing to manage the issuing of invoices post commencement and the chasing of students for payment including issuing warning letters followed by an Intention to Report Warning followed by an appeals process. Moreover this has presented a risk with students who manage to pass the GTE assessment and provide a declaration that they are able to pay the tuition fees only to arrive in Australia and start shopping around for a cheaper course.

Submissions from a number of TAFEs supported removing the requirement. However, there was some difference in views among schools. One state department indicated that caution was necessary as some schools courses could run for several years:

The **Queensland Government Department of Education, Training and Employment (DETE)** stated**:**

> Limits to the amount of tuition fees collected upfront prior to course commencement was introduced in 2012 as a specific measure to protect the financial interests of international students. DETE suggests consideration be given to retaining the 50% provision for courses with a duration of 2 years or more, with a further provision added to allow a student to voluntarily pay more than this maximum amount prior to commencement …

Some submissions, however, supported the effectiveness and appropriateness effectiveness of the 50 per cent limit and designated account requirements in their current form:

Phoenix Academy stated:

> This requirement has been extremely effective in monitoring the business behaviour of what one might call unscrupulous operators.

International Student Experience Association (ISEA) stated:

> ISEA has concerns that allowing institutions to collect more than 50% student fees could cause significant financial pressure on students and have unintended consequences of limiting the market. While this may be able to be regulated by institutions themselves and market forces ISEA believes the existing provisions are more than reasonable.

There was some concern about the limited exemption for courses of 24 weeks' duration from the 50 per cent limit requirement, particularly for ELICOS providers:

ISANA stated**:**

> Members working in the ELICOS sector report that the limit on collecting fees to 50 per cent of the total has caused serious issues, in that students may not follow the agreement and either pay their second instalment late or fail to pay at all. Those who pay late cause significant problems for the ELICOS timetable, in engaging and payment of teachers as well as in allocation of classrooms. It is suggested that fees for English Language courses with a maximum of 30 weeks should be paid in full before a student commences a course, as this is not the student's primary course of study.

English Australia stated:

> Whilst the average ELICOS enrolment is much less than 24 weeks, there are a significant number of students that enrol in ELICOS courses for longer. This limit on prepaid fees has reduced the student's

commitment to a maximum of 24 weeks, at which point they can leave with no risk of penalty since the provider is holding no more of their fees, although the provider may have been holding a place for them for well over 6 months.

English Australia also said:

There has been a considerable increase in administrative costs for ELICOS providers to chase unpaid fees. Changes have been required to databases to provide reports, invoicing and to monitor payment. In addition, both students and schools have incurred further bank fees for payments from overseas.

The Queensland Government Department of Education, Training and Employment (DETE) stated:

As this requirement was introduced to protect the financial interests of international students, it will be important to consider the length of course and risk of the provider in development of the reforms, i.e. greater flexibility should exist for low risk providers offering short courses than for higher risk providers offering longer courses of study.

The Council of International Students Australia (CISA) did not support removal of the 50 per cent limit on tuition fees paid up front, stating:

CISA stated:

CISA did a preliminary comparison of the practices at universities in the US and the UK. A spectrum of various practices exist regarding deposits from minimal admission deposits to 50% tuition to 100% tuition. It would seem that the 50% practice is not unusual and therefore CISA would not support a change at this time.

5.3 Further consultation

Exposure drafts of the Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015 (the Streamlining Regulation Bill) and the Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015 (the Charges Bill)) were released for public consultation from 7 July 2015 until 7 August 2015. Thirty-two submissions were received from education peak bodies, several universities, two VET providers, ASQA and TEQSA, and state and territory agencies. During this one-month period the department also held several meetings with a group of peak bodies, as well as some individually, and with Commonwealth and state and territory agencies.

An Early Assessment RIS was prepared to inform the proposals put forward in the exposure drafts of the Bills. The department shared information from the RIS with stakeholders during face to face consultations. Stakeholders requested the department reconsider the initial preferred option in the RIS (option 3(i)) and assess a new option that would include all elements of option 3(i) but increase the exemption from the 50 per cent limit for courses of up to 24 weeks to courses of up to 30 weeks. Stakeholders indicated this was particularly an issue for ELICOS providers, as many enrolled in five-week blocks. The department agreed to seek additional analysis on the risk associated with extending the exemption to courses of up to 30 weeks in further developing the RIS. The outcome is reflected in option 4.

The introduction of the Bill into parliament in September 2015 represents the major and final decision point in the policy process.

6 Options that may achieve the objectives

The options presented below are based on the outcomes of extensive consultation by the department on ways to more effectively and efficiently manage risk to achieve policy objectives. They specifically relate to some of the TPS requirements introduced in 2012. Section 7 of this RIS analyses the market impacts of the options.

6.1 Option 1—No change

The initial design of the TPS policy determined 50 per cent of tuition fees was an appropriate limit for education institutions to collect prior to students commencing a course. The measure was intended as a disincentive to institutions relying on early and large injections of cash and to deter institutions that may otherwise be financially unviable. The designated account requirement was implemented to ensure the education institution retained sufficient funds to meet any refund obligations, rather than relying on the TPS.

The status quo would not address the restriction on scholarship and other students wishing to pay more than 50 per cent of their tuition fees up front, which has been identified as an unintended consequence of the measures.

6.2 Option 2—Legislative changes to reduce regulation based on risk assessment

(a) Remove the 50 per cent limit on the amount of tuition fees paid prior to the commencement of a course, unless imposed as a condition of registration under the *ESOS Act* based on an assessment of risk

(b) Remove the requirement to retain tuition fees collected prior to course commencement in a designated account, unless imposed as a condition of registration under the *ESOS Act* based on an assessment of risk.

Option 2 proposes to retain the current TPS measures but allow the quality assurance agencies to apply them on the basis of their risk assessment of individual education institutions. Quality assurance agencies would be able to consult with the TPS Director before making their decision on the risk level of an education institution applying for registration on CRICOS, or indeed at any time during the registration period. The basis for this option is that it better reflects real risk and reduces an unnecessary administrative burden on lower risk education institutions.

Unlike the 50 per cent limit on tuition fees paid before a student commences a course, a designated account is not required for all CRICOS-registered institutions. Only education institutions that are not administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education must keep upfront tuition fees in a designated account. Around 49 per cent of all CRICOS-registered institutions are exempt. This measure currently applies risk to the basis of funding, not the quality or financial viability of an individual education institution. Under this option these measures would be related directly to risk, assessed by the quality assurance agencies. The requirements could also be applied separately or in tandem to allow for degrees of risk management, as appropriate.

6.3 Option 3 – Legislative changes to reduce regulation but retain appropriate safeguards to preserve the viability and integrity of the Tuition Protection Service

As a minimum, option 3 would remove the requirement for a designated account from all education institutions. Option 3 would also ensure that any education institution could accept – although it could not require students to pay—more than 50 per cent of tuition fees prior to course commencement. This means students would have more flexibility in their payment options, which is a key concern of education peak bodies and universities.

Consisting of four suboptions, option 3 analyses the impact of progressive relaxation of the 50 per cent limit on education institutions. The suboptions have been designed to explore suggestions from stakeholders that:

- the exemptions for courses of up to 24 weeks' duration should be extended to courses of up to 52 weeks
- an exemption should be extended to all public institutions—that is, government funded universities, TAFEs and schools.

The suboptions are as follows:

Option 3(i) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) maintain the existing exemption from the 50 per cent limit for courses of up to 24 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

OR

Option 3(ii) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) maintain the existing exemption from the 50 per cent limit of courses of up to 24 weeks' duration

(c) exempt from the 50 per cent limit providers administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education or training

(d) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

OR

Option 3(iii) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 52 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

OR

Option 3(iv) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 52 weeks' duration

(c) exempt from the 50 per cent limit providers administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education or training

(d) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

6.4 Option 4 – Legislative change to reduce regulation, maintain some safeguards and address stakeholder concerns

During consultations on the draft RIS, stakeholders proposed that the department should consider two additional variations on option 3. The variations would share the same characteristics as option 3(i); with the exception that they would exempt from the 50 per cent limit, courses of up to 25 weeks and courses of up to 30 weeks respectively These variations are intended to better reflect the structure of some CRICOS-registered courses that are delivered in blocks of five-week intervals.

The variations are presented as option 4, with the suboptions as follows:

Option 4(i) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 25 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

OR

Option 4(ii) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 30 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account.

7 Impact analysis—costs and benefits

The following section presents an analysis of the potential regulatory and market impacts of the options presented in this RIS. This analysis has been undertaken by Ernst & Young for the purposes of this RIS. Attachment A contains a summary of the options and assessment presented below.

7.1 Option 1

Under option 1 students, education institutions and the Government would continue to operate in the context of existing regulatory arrangements under the TPS.

This option would maintain regulatory certainty for all parties. The benefits cited for the current arrangements under the original RIS included:

- reputational benefits for the education industry
- the protection of tuition fees and decreased delays in fee refunds for students
- fewer calls on Government resources to assist students in the event of provider default.

The benefits outlined above are associated with the broader package of reforms introduced under the TPS in 2012, including specific risk management measures such as those subject to this RIS and strengthened reporting provisions. External measures such as the strengthening of student visa requirements and the establishment of TEQSA and ASQA have also supported a more robust system of managing risk. It is not possible, therefore, to isolate the impact of individual measures under the scope of this RIS on the overall risk of the sector. However, given the number of large-scale reforms to the sector since 2009, it is likely the TPS measures subject to this RIS have played a limited role in contributing to the overall regulatory environment.

While the current benefits of the TPS would be maintained, the status quo option would also involve the continuation of costs associated with the current settings. These were discussed in Section 3 and can be summarised as:

- reduced choice with respect to payment arrangements for students
- administrative and compliance costs for education institutions
- reduced competition in the international education sector.

7.2 Option 2

Option 2 would apply legislative changes to reduce regulation based on an assessment of risk. This option has two components:

(a) Remove the 50 per cent limit on the amount of tuition fees paid prior to the commencement of a course, unless imposed as a condition of registration under the *ESOS Act* based on an assessment of risk

(b) Remove the requirement to retain tuition fees collected prior to course commencement in a designated account, unless imposed as a condition of registration under the *ESOS Act* based on an assessment of risk.

The main problem to be addressed by option 2 is that requirements under section 27 (upfront tuition fees) and sections 28 to 32 (designated accounts) of the *ESOS Act* do not apply the principle of 'proportionality'. A number of stakeholders responding through submissions have suggested that the TPS requirements do not sufficiently reward lower risk education institutions. They argue that low risk education institutions are unlikely to call on the services of the TPS and therefore should not have the same restrictions as those at a higher risk of defaulting on their obligations to students.

Education institutions have a number of upfront costs associated with preparing for the delivery of a course (for example, rent, resources and equipment, and training and appointing skilled staff) as well as the initial investment in recruitment of students before they commence. By capping the amount of tuition fees institutions can access up front, the

TPS requirements may impose an artificial misalignment between income and expenditure streams that can impact an institution's ability to meet debts as they fall due or invest in further innovation.

Against this, students who have paid large amounts of their tuition fees up front may subsequently have to be refunded, either because the institution is unable to deliver the course or the student is not approved for a student visa. The greater the amount of tuition fees paid up front, the greater the likelihood of a higher risk operator not being able to meet its refund obligations. This can be a source of delay in receiving a refund for the student and places pressure on the TPS.

The ability to collect and use large amounts of upfront tuition fees may also encourage poor business practices. Some education institutions may operate with limited capital to rely on should there be a downturn in enrolments or an increase in visa refusals. Once all tuition fees are paid, there may also be less incentive for education institutions to provide the highest quality service to students or invest in improvements. This can undermine quality. However, given that education institutions rely on their reputation to continue to attract students and sell their products, quality is likely to be of continued importance.

The problem then is achieving a balance between the need to encourage good business practices and ensure timely refunds and the need to meet the Government's objective of maximising the efficiency of quality assurance and oversight processes.

The remainder of this section addresses the impacts of option 2 on three groups of stakeholders—education institutions, students and government.

Education institutions

Benefits

Improved competition

As it would be up to the discretion of quality assurance agencies to mandate requirements for education institutions assessed as higher risk, quantifying the impact of changes proposed under this option is challenging. Nevertheless, assumptions can be made on the

basis of publicly available information about the spread of existing education institutions across risk categories. If education institutions are assessed as having a higher level of risk, current requirements may be still enforced. Otherwise, arrangements for the collection and maintenance of upfront tuition fees would be entirely up to the discretion of education institutions.

This would create a more equal playing field for education institutions operating within the international student education sector. Any distinction between public and private providers would be removed. Instead, the level of regulatory requirements imposed on a particular education institution would be moderated by that institution's own risk profile. This is more in keeping with the objectives of the TPS and would minimise the level of regulatory distortion on competition within the international education sectors.

For new entrants who are assessed as low to medium risk, removal of the 50 per cent limit on upfront tuition fees may mean education institutions would need to secure less capital to establish operations and incur lower borrowing costs. In this way, option 2 may reduce barriers to entry for new entrants, in particular smaller education institutions.

Increased business flexibility

Education institutions not subject to the TPS requirements would benefit from increased market efficiency. In particular, education institutions would have more flexibility to make decisions based on their operating environment and aligned to their business models. They would be able to use tuition fees to cover operational costs and to fund investments in innovation. The latter may have benefits for both the reputation of the industry and student outcomes.

To the extent that the changes encourage higher financial commitments from students up front, education institutions would also have more certainty around their financial forecasts. More certainty around cash flows would in turn enable a better match between the timing of income inflows and expenditure outflows.

Many of the benefits described above depend on changes to the amount of tuition fees paid by students up front. The extent to which this occurs would be limited by students' willingness and capacity to pay, as well as competition between education institutions.

Reducing the regulatory burden associated with upfront tuition fees

Option 2(a) would remove the 50 per cent limit on upfront tuition fees, providing the quality assurance agencies with the discretion to impose the limit on education institutions assessed as carrying a higher level of risk of not being able to refund upfront tuition fees in the event of provider default. At present, the quality assurance agencies for higher education and VET oversee 57 per cent of CRICOS-registered institutions, representing over 90 per cent of international student enrolments in the VET, higher education and ELICOS sectors.[5]

There is limited publicly available information indicating the likely proportion of education institutions that would be assessed by the quality assurance agencies as being 'high risk' under option 2(a) and thus subject to the 50 per cent limit on upfront tuition fees. Neither TEQSA nor the TPS publish data on their institution risk analysis. ASQA does publish some

[5] Department of Education and Training, unpublished data.

guidance on the risk profile of its registered institutions (see box 2). The direct applicability of this information for the purposes of this RIS is limited, however, given that:

- the risk profiling information outlined in box 1 relates to all of the approximately 4,000 registered training organisations overseen by ASQA, of which a smaller subset (approximately 15 per cent) are also CRICOS-registered providers. The risk profile of this smaller subset cannot be directly compared to the overall population of registered training organisations.
- ASQA's risk model is primarily focused on the risk of an institution delivering low quality training outcomes. ASQA's risk profiles therefore do not provide a direct indication of the likelihood that an institution will suffer financial difficulty or voluntarily cease operations.

Box 2 ASQA risk ratings

ASQA uses a risk profile approach to determine the type and frequency of monitoring and assessment activities in relation to that institution. The use of a risk profile allows ASQA to operate fairly and devote resources appropriately and efficiently.

As at 28 February 2015, according to its website, ASQA had profiled its registered institutions as follows:

- high risk – 385 institutions (9.9 per cent)
- medium risk – 818 institutions (20.9 per cent)
- low risk – 2,263 institutions (57.9 per cent)
- no ratings assigned – 442 institutions (11.3 per cent).

Source: Australian Skills Quality Authority, Provider Risk Ratings, http://www.asqa.gov.au/about/risk-based-regulation/provider-risk-ratings.html accessed October June 2015.

In light of the data limitations above it is assumed that, under option 2(a), up to 15 per cent of education institutions could be assessed by the relevant quality assurance agencies as being 'high risk'. This assumption is intended to be a likely average across education sectors (from the perspective of calculating deregulatory savings), taking into account that:

- it is higher (by 50 per cent) than the 10 per cent of private registered training organisations assigned a high risk rating by ASQA for its quality assurance purposes
- VET institutions are generally considered to pose a higher risk of financial collapse and/or closure than other sector participants (such as schools and universities)
- there is such diversity across the sector and in the way education services are delivered
- there has been substantial growth across sectors in international student enrolments over the last year.

On the basis of this information, it is estimated that as many as 979 CRICOS-registered institutions would potentially benefit under option 2(a). This assumes that all currently exempt institutions (considered to be lower risk due to their status as public education

institutions) as well as 85 per cent of currently non-exempt institutions would have the relevant restrictions lifted.

All CRICOS-registered education institutions currently incur administrative costs in adjusting their business operations and systems to limit upfront tuition fees to 50 per cent. Given the diverse administrative and financial systems and current policies for invoicing students, it is not possible to estimate definitively the savings to education institutions that would no longer have to comply with this requirement. However, it is reasonable to assume that ongoing savings would most likely relate to efficiencies in the resources required to send out additional invoices and reminder notices under current regulations around upfront tuition fees. This is estimated to take one administrative staff member one hour per enrolment.

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from this option is provided in table 5. This shows total estimated regulatory savings for education institutions of around $9.5 million on average per annum.

The estimated savings vary for education institutions across the sectors. For example, a high proportion of government funded universities in the higher education sector means that around 90 per cent of operators in this sector would likely have a reduced administrative burden, with associated higher savings. Savings would also depend on the number of international students by education institution and average wage rates across the international education sectors.

Table 5 Average annual regulatory costs associated with Option 2(a), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Schools	(0.5)	-	-	(0.5)
Non-award	(0.5)	-	-	(0.5)
ELICOS	(0.7)	-	-	(0.7)
VET	(3.2)	-	-	(3.2)
Higher education	(4.7)	-	-	(4.7)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (9.5)				

Reducing the regulatory burden associated with designated accounts

Option 2(b) would remove the need for private (non-exempt) education institutions to maintain any upfront tuition fees collected in a designated account.[6] This requirement could still be imposed on institutions assessed as being at higher risk of either default or not meeting their obligations to students in the event of default as a condition of registration.

Assuming that only high risk education institutions would need to maintain a designated account, and assuming that 15 per cent of institutions across the sectors would fall into this

[6] Note that public providers are currently exempt from this requirement under the ESOS Act.

category, a reasonable estimate is that 464 CRICOS-registered institutions would benefit from option 2(b). The number of education institutions that would benefit from the change is smaller compared to those impacted under option 2(a) because public education institutions are already exempt from this requirement. However, the cost saving benefits are far higher than those for option 2(a).

Ongoing savings would be obtained from education institutions no longer having to expend resources to set up designated accounts and ensure the appropriate level of funds are maintained at all times. This is estimated to take one person 1.5 hours per enrolment. Institutions may also save on minor administrative fees and charges associated with maintaining designated accounts. Based on previous estimates, it is assumed that each institution impacted would save an average of $10 a month on bank fees and charges.[7]

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from this option is provided in table 6. This shows total estimated regulatory savings for education institutions of around $23.6 million on average per annum. The estimated savings vary for education institutions across the sectors. The variation is predominantly explained by the number of international student enrolments by institution and average award rates for administration staff by sector.

Table 6 Average annual regulatory costs by sector associated with Option 2(b), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Schools	(0.1)	-	-	(0.1)
Non-award	(0.2)	-	-	(0.2)
Higher education	(4.5)	-	-	(4.5)
ELICOS	(7.8)	-	-	(7.8)
VET	(11.0)	-	-	(11.0)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (23.6)				

Together with regulatory savings from reducing requirements around the 50 per cent limit, the total regulatory savings for option 2 would be $33.1 million per annum.

Costs

Potential increase in the TPS levy

The ability to collect and use larger amounts of upfront tuition fees may increase the refund liabilities of education institutions and the TPS and encourage poor business practices. For example, some education institutions may start up with limited capital to fall back on should

[7] Australian Government (2012), *Regulatory Impact Statement – ESOS Tuition Protection Service and Other Related Measures*, http://ris.dpmc.gov.au/files/2012/02/02-Tuition-Protection-RIS-20120130.pdf , accessed October 2014, p.19.

there be a downturn in enrolments or an increase in visa refusals. Additionally, some failing education institutions may actively recruit students in an attempt to remain solvent. An increase in these types of behaviour may result in the need to re-evaluate the TPS risk levy.

The TPS Director sought advice from the Australian Government Actuary prior to preparing a submission in response to the *Reform of the ESOS framework* discussion paper. With regard to removing both the 50 per cent limit and designated account requirements the Australian Government Actuary stated:

> If it were to be adopted, I would argue that a substantially higher buffer in the OSTF is warranted and that it should be achieved more quickly than is currently planned. This would require either or both of an increase in the specified percentage for the risk rated premium and the activation of the special tuition protection (STP) component.
>
> In the absence of data, it is difficult to be definitive about the additional amounts required. However, I would suggest that a doubling of the current agreed minimum buffer of $20m to $40m would be appropriate and the objective should be to achieve this goal within three to four years. This would require collecting an additional $6m to $8m each year.[8]

However, under option 2 the quality assurance agencies would still have the discretion to impose restrictions on education institutions assessed as carrying a higher level of risk. This means that the change in risk across the sector is likely to be much lower than under the scenario explored by the TPS, which assumes the complete removal of both requirements.

Provided an effective risk management framework is in place, option 2 would have limited impacts on the TPS levy as well as on the sector's reputation and enrolments, which are discussed next. Later on, it is noted that the costs associated with putting in place a risk management framework, as proposed under option 2, could be significant. If government resourcing is not adequate to meet these costs, then the risks discussed in this section would become more likely.

Negative reputations impacts

The market may react negatively to changes to current provisions under the *ESOS Act* if they are perceived as impacting the industry's reputation and Australia's competitive advantage as an exporter of education. This would be compounded by any delays in refunds to students in the future.

Moreover, if students become aware that an institution has had conditions imposed on it by a quality assurance agency, they may not want to enrol with the institution, potentially placing at threat the viability of that institution.

However, any negative reputational impacts on the sector and education institutions are likely to be minor given that students would derive the same consumer protections under the TPS as are currently available, including a placement in another institution or a refund.

A drop in enrolments

A system of less regular payments may be less manageable for students, which may lead to a fall in enrolments for some education institutions. However, it is up to individual education

[8] *Australian Government Actuary Advice: Possible Change to Tuition Protection Arrangements for Overseas Students*; quoted in the submission by the Tuition Protection Service on the discussion paper on the *Reform of the ESOS Framework*, October 2014.

institutions to gauge students' capacity and willingness to pay upfront tuition fees and to respond to demand accordingly.

Under option 2, some education institutions may be inclined to charge students higher up-front fees. However, the evidence to date suggests that there would be little demand for courses with high up-front payments. If students are dissatisfied with tuition fee payment arrangements with one institution they will seek alternative institutions that offer more favourable terms. In this way, competition in the sector should lessen the impact.

Students

Benefits

Students who prefer to pay more of their tuition fees up front may benefit from the changes proposed by option 2 (e.g. scholarship students). Benefits may also accrue to students motivated to pay more of their tuition fees up front because of uncertainty around fluctuating exchange rates, increases in tuition fees and charges by education institutions, and the costs associated with transferring funds. The more students pay up front, the less uncertainty there is with respect to the cost of study, which may encourage more international students to enrol in Australia.

Costs

If payment arrangements become less manageable for some students as a result of the changes proposed by this option, poorer student attendance and an increase in student debt may result. However, as already discussed, this impact would be tempered by competitive forces in the market.

Overall, students would not lose any of the protections currently provided by the TPS under option 2. Should an operator default, affected students would continue to be offered a place with an alternative operator or a refund of their unspent tuition fees. However, delays in refunds may result if changes proposed under this option increase the risk of business collapse in the sector and could place additional pressure on the TPS. The process involved in transitioning to another institution may also have a negative impact on students.

It is worth emphasising, however, that this option would not entirely remove the current TPS requirements.

Government

Benefits

The main benefit of option 2 would be greater alignment with the objectives of Government policy to reduce unnecessary red tape and the risk management approaches to regulation being adopted more broadly. It would introduce a more direct relationship between risk and regulation, focusing on those high risk education institutions more likely to default.

Costs

TEQSA and AQSA are currently responsible for monitoring and enforcing compliance with the ESOS requirements for providers within their jurisdiction. The TPS Director administers

the TPS. Each plays a different role in international education protection and quality enhancement. Neither is currently equipped or resourced to implement option 2 within their current frameworks. Consequently, any additional imposition on their regulatory duties would result in further costs.

During consultations on options for dealing with the two TPS associated regulatory requirements in the scope of this RIS, ASQA and TEQSA were of the view that option 2 would be complex and costly. TEQSA and ASQA have advised that additional costs would be expected as a result of the need to:

- expand and adapt risk assessment processes in order to determine which CRICOS-registered institutions should have the restrictions under the scope of the RIS imposed as a condition of their registration
- respond to an increased number of appeals. Given that the 50 per cent limit requirement would impact on the capacity of education institutions to raise revenue if it were imposed as a condition of registration, it is likely that most institutions would use their appeal entitlements to oppose such a condition being imposed on them
- monitor and enforce compliance with the 50 per cent limit and designated account requirements.

The alternative for implementing option 2 would be through the current framework used to determine the TPS levies. However, there are two significant issues associated with this. Firstly, the TPS Director does not have any power to set conditions of registration under the ESOS Act, hence option 2 could not be imposed as part of the Director's functions. Secondly, the framework used to determine the risk based component of the TPS levy (in section 5 of the *Education Services for Overseas Students (TPS Levies) Act 2012)* only applies to certain providers. Under that legislation, Table A universities, state and territory TAFEs and all Government schools are exempt from paying the risk based levy. This means they are not assessed, for the purposes of the TPS risk based levy, on the basis of their financial risk. The TPS framework is therefore inappropriate for use to determine 'risk' for the purposes of implementing option 2.

Additional costs to the Government may also arise if there is a major increase in the number of business failures and the TPS is unable to meet demand for refunds. However, it is not clear that option 2 would result in a material increase in business failures relative to the status quo. This is because it would seek to impose the 50 per cent limit and designated account requirements on institutions known as, or suspected of, being at risk of default. While an appropriate risk management framework would minimise additional increase in risk, the costs associated with implementing such a framework would need to be met by government and could be extensive.

Summary

The table below provides a qualitative comparison of the broader benefits associated with option 2 against the status quo.

Table 7 Broader benefits (compared to the status quo), Option 2

Benefit	Option 2
Increases choice for students	✓✓
Limits risk to the TPS	✓✓
Enhances competition	✓✓✓
Limits govt. costs	✓

7.3 Option 3

Option 3 responds to stakeholder concerns with option 2 that significantly relaxing the limit on the collection of upfront tuition fees may increase the risk of education institutions not meeting their obligations to students. This is particularly the case if both the designated account requirement and 50 per cent limit were removed. While the coupling of changes proposed under option 2 with a new risk management framework would limit any additional risk, the costs associated with developing, implementing and maintaining such a framework for this purpose could be significant.

To balance the Government's desire to deregulate, contain costs and minimise risk, option 3 would remove the more costly of the TPS requirements on education institutions—the designated account. The practicality of enforcing and monitoring compliance with the designated account has not been fully tested because of the sheer volume of private education institutions, and because monitoring under the current regulatory system is based on identifying highest risk areas and focusing activities on these—that is, applying a risk management framework. Option 3 would also address current anomalies in the *ESOS Act* that prevent sensible practice in allowing students to choose the amount they pay prior to course commencement.

Moreover, while option 2 looks at a substantial and sudden relaxation of the 50 per cent limit on upfront tuition fees, option 3 allows for a staged relaxation of the requirement through a number of suboptions proposed by stakeholders during consultations in 2012:

- Option 3(i)—would maintain the existing exemption for courses of up to 24 weeks in duration for all providers
- Option 3(ii)—would maintain the existing exemption for courses of up to 24 weeks in duration in addition to exempting public providers from the 50 per cent limit altogether
- Option 3(iii)—would extend the exemption to courses of up to 52 weeks in duration for all providers
- Option 3(iv)—would extend the exemption to courses of up to 52 weeks in duration for all providers in addition to exempting public providers from the 50 per cent limit altogether.

Option 3 therefore examines ways in which the current approach to providing exemptions could be applied to reduce cost implications for some education institutions. It also considers whether in these circumstances there can be a reasonable assumption of lower risk for public education institutions based on their receipt of government funding. However, option 3 also considers whether it is appropriate to entrench certain assumptions about sectors based on the division of public and private, and the potential for discouraging competition among individual education institutions to strive for quality, integrity and sustainability.

The main impacts of each suboption for education institutions, students and government are discussed and compared below.

Education institutions

Removing the regulatory burden associated with the designated account

The greatest regulatory saving for education institutions associated with *all four suboptions* would be derived from the removal of the designated account requirement. Ongoing savings would be obtained from education institutions no longer having to expend resources to set up the designated accounts and ensure the appropriate level of funds are maintained in the account. Education institutions would also save on administrative fees and bank charges associated with maintaining the accounts.

The assumptions in option 2(b) relating to the removal of the designated account requirement have been used to cost the impact of this change under option 3, with the exception that all non-exempt education institutions would benefit from this option rather than just those assessed as being of lower risk.

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from this option is provided at table 8. This shows total estimated regulatory savings for education institutions of around $27.7 million on average per annum under *all four suboptions*.

The estimated savings vary for education institutions across the sectors. The variation is predominantly explained by the number of international student enrolments by education institution and average award rates for administration staff by sector.

Table 8 Average annual regulatory costs associated the removal of designated account – Options 3(i), (ii), (iii) and (iv)

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Schools	(0.1)	-	-	(0.1)
Non-award	(0.3)	-	-	(0.3)
Higher education	(5.3)	-	-	(5.3)
ELICOS	(9.1)	-	-	(9.1)
VET	(13.0)	-	-	(13.0)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-

Are all new costs offset?
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required

Total (Change in costs – Cost offset) ($ million) = (27.7)

Reducing the regulatory burden associated with the upfront tuition limit

The change in regulatory burden associated with the 50 per cent limit on upfront tuition fees is different under each suboption. Table 9 shows the total number of course enrolments impacted by each suboption. This shows the impact of progressive relaxation of the current requirements on upfront tuition limits, with option 3(iv) impacting on the most course enrolments, and therefore bringing the highest regulatory savings. The following section addresses each suboption in turn.

Table 9 Number of course enrolments impacted by suboption and by key change to upfront tuition limits

Suboption	Students can pay more than 50% of fees up-front	All public institutions now exempt[1]	All courses <52 wks in duration now exempt [1]	Total	%Total >24 weeks [2]
3(i)	23,900	-	-	**23,900**	**9%**
3(ii)	23,900	72,800	-	**96,700**	**38%**
3(iii)	23,900	-	123,600	**147,500**	**58%**
3(iv)	23,900	72,800	95,000	**191,700**	**76%**

Numbers have been rounded to the nearest hundredth.
Table notes: 1 Additional course enrolments now exempt. 2 Not currently exempted from limits on upfront tuition fees.

Option 3(i)

Option 3(i) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) maintain the existing exemption from of the 50 per cent limit for courses of up to 24 weeks' duration.

As it would be up to the discretion of students to pay more than the limit, it is difficult to quantify the impact of the proposed changes. If students chose to continue with current payment arrangements, no real benefits would accrue to education institutions under this change. If, on the other hand, more students chose to pay more of their tuition fees up

front, then some savings relative to the status quo would be expected for education institutions. The challenge is in estimating the number of students that would pay more than 50 per cent up front, if given the choice.

Given the time value of money, it is reasonable to expect that a large number of students would not choose to pay a significant proportion of their tuition fees up front. However, some students may be compelled or prefer to pay upfront (for example, holders of international scholarships). Moreover, education institutions may be willing to offer students incentives to pay more of their tuition fees up front if the benefits of doing so exceed the cost.

In lieu of asking students how much of their tuition fees they would be willing or able to pay up front if the changes under option 3(i) were progressed, data from the PRISMS database have been used to form assumptions. When a course enrolment is made in PRISMS, the provider records an estimate of total course costs and any initial upfront tuition fees taken. Analysis of this information prior to the 2012 TPS amendments against total course length provides an indication of the proportion of *enrolments* by sector where students paid more than 50 per cent or more of their tuition fees up front.

As table 2 illustrates, approximately 7 per cent of enrolments prior to 2012 involved a significant prepayment on average across the international student sector. This proportion provides a reasonable basis for estimating likely student willingness to make a significant prepayment under option 3, given that there were no constraints placed on institutions with respect to the amount of tuition fees they could charge up-front before 2012.

As shown by table 9, the proposed changes in option 3(i) could impact on up to 23,900 course enrolments per annum, on average across the international education sector (or 9 per cent of all course enrolments greater than 24 weeks not currently exempt). Ongoing savings would relate to a reduction in staff time required to send out additional invoices and reminder notices to students. This is currently estimated to take one administrative staff member one hour per enrolment.

Some administrative costs would be involved in implementing the changes proposed under this option. These would be expected to cover any electronic material and information for staff and students relating to the ways fee will be collected and managed, modifying administrative processes to implement the change and communicating this change to staff and existing students. Based on previous estimates, this is assumed to take one person around half a week for each education institution impacted by the change[9]. It is expected that the costs would be lower this time around as the change should be less significant and less administratively complex to implement.

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from this option is provided at table 10. This shows net regulatory savings to education institutions of $1.0 million on average per annum. The estimated impact varies by sector. There are a number of reasons explaining the observed differences:

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[9] Australian Government (2012), *Regulatory Impact Statement – ESOS Tuition Protection Service and Other Related Measures*, http://ris.dpmc.gov.au/files/2012/02/02-Tuition-Protection-RIS-20120130.pdf , accessed October 2014, p.18.

- The first is the number of international student enrolments by sector. For example, despite their relatively lower number, higher education institutions cater for the largest volume of international student enrolments (47 per cent as at October 2014). VET and ELICOS accounted for a further 24 per cent and 20 per cent of enrolments respectively.
- The second is that preferences towards upfront tuition fees vary by sector. This is demonstrated by table 2, which shows that 44 per cent of ELICOS students paid a significant portion of their tuition fees up front compared to only 4 per cent of higher education students.
- Finally, average wage rates differ across the sectors, and this will also impact on the net cost.

Table 10 Average annual regulatory costs associated with Option 3i (a) and (b), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Non-award	(0.1)	-	-	(0.1)
Schools	(0.1)	-	-	(0.1)
VET	(0.2)	-	-	(0.2)
Higher Education	(0.2)	-	-	(0.2)
ELICOS	(0.3)	-	-	(0.3)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (0.9)				

Together with regulatory savings from the designated account, the total regulatory savings for option 3(i) would be $28.6 million.

Option 3(ii)

Option 3(ii) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) maintain the existing exemption from the 50 per cent limit of courses of up to 24 weeks' duration

(c) exempt from the 50 per cent limit providers administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education or training.

The impacts of this option for education institutions would be broadly similar to those discussed for option 3(i) above. However, the benefits to public education institutions are likely to be larger under option 3(ii). Public education institutions that receive government funding currently account for 49 per cent of all education institutions and around

45 per cent of all course enrolments.[10] Public education institutions are currently exempted from the requirement to maintain tuition fees paid up front in a designated account.

This means that around half of all CRICOS-registered education institutions would no longer be subject to the TPS requirements under the scope of this RIS. These education institutions would be free to set policies and processes around the payment of tuition fees based on their operating environment and aligned to their business models. Education institutions would also be able to use any upfront tuition fees collected for any purpose, including supplementing their cash flow to sustain operations or invest in innovation.

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from parts (a) to (c) of option 3(ii) is provided in table 11. This shows net regulatory savings for education institutions of $4.0 million on average per annum. The proposed changes would impact on up to 96,700 course enrolments on average per annum (or 38 per cent of course enrolments greater than 24 weeks not currently exempt).

Table 11 Average annual regulatory costs associated with Option 3ii (a) to (c), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Non-award	(0.3)	-	-	(0.3)
ELICOS	(0.4)	-	-	(0.4)
Schools	(0.5)	-	-	(0.5)
VET	(0.5)	-	-	(0.5)
Higher Education	(2.3)	-	-	(2.3)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (4.0)				

Together with regulatory savings from the removal of designated account requirement for private education institutions, the total regulatory savings for option 3(ii) would be $31.7 million.

Option 3(iii)

Option 3(iii) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 52 weeks duration

The impacts of this option for education institutions would be broadly similar to those discussed for option 3(i). However, the benefits to both public and private education institutions are likely to be larger under option 3(iii). Under the current arrangements education institutions are exempt from limits on upfront tuition fees for all courses under

[10] Source: Department of Education and Training, unpublished data.

24 weeks in length (around 8 per cent of all courses registered on CRICOS as at 1 July 2014). Option 3(iii)(b) would increase the courses exempted to all those under 52 weeks in length (around 55 per cent of courses registered as at 1 July 2014).

As shown by table 9, the proposed changes could impact on up to 147,500 course enrolments on average across the sector, per annum. This means that the majority (58 per cent) of course enrolments greater than 24 weeks would now be exempt from restrictions on the collection of upfront tuition fees, further decreasing the regulatory burden on education institutions.

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from parts (a) and (b) of option 3(iii) is provided in table 12. This shows net regulatory savings for education institutions of $6.3 million on average per annum.

Table 12 Average annual regulatory costs associated with Option 3iii (a) and (b), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Schools	(0.2)	-	-	(0.2)
Non-award	(0.5)	-	-	(0.5)
ELICOS	(0.8)	-	-	(0.8)
Higher education	(1.6)	-	-	(1.6)
VET	(3.1)	-	-	(3.1)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (6.2)				

Together with regulatory savings from the designated account, the total regulatory savings for option 3(iii) would be $33.9 million.

Option 3(iv)

Option 3(iv) would retain the 50 per cent limit on the collection of tuition fees prior to the commencement of a course, but:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 52 weeks duration

(c) exempt from the 50 per cent providers administered by a state education authority or eligible to receive recurrent funding under a law of the Commonwealth for expenditure on education or training

Option 3(iv) would combine all changes from the suboptions above to bring the biggest regulatory savings to the international education sector. A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from parts (a) to (c) of this option is provided in table 13. This shows net regulatory savings for education institutions of $8.1 million on average, per annum. The proposed changes would impact on

up to 191,700 course enrolments on average per annum (or 76 per cent of course enrolments greater than 24 weeks currently not exempt).

Table 13 Average annual regulatory costs associated with Option 3iv (a) to (c), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
Schools	(0.5)	-	-	(0.5)
Non-award	(0.5)	-	-	(0.5)
ELICOS	(0.8)	-	-	(0.8)
Higher education	(3.1)	-	-	(3.1)
VET	(3.2)	-	-	(3.2)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (8.0)				

Together with regulatory savings from the designated account, the total regulatory savings for option 3(iv) would be $35.8 million.

Competition impacts

This section discusses and compares the competition impacts of changes to the designated account and changes to the upfront tuition limits separately.

Removing the designated account requirement

As the requirement for a designated account currently only applies to non-exempt education institutions, removing the requirement altogether may improve competition in the market. As discussed in section 3, significant resources are currently expended by non-exempt education institutions in administering and complying with this requirement. Removal of the designated account requirement would therefore place all education institutions in the sector on a more level playing field.

Relative to the status quo, non-exempt education institutions would also benefit from increased flexibility around their cash flow management. Any upfront course payments could be accessed immediately by education institutions to sustain their operations or could be placed in higher yielding investment products. Removal of the designated account requirement would also free funds for education institutions to invest in innovation or technology improvements to enhance the quality of the education course.

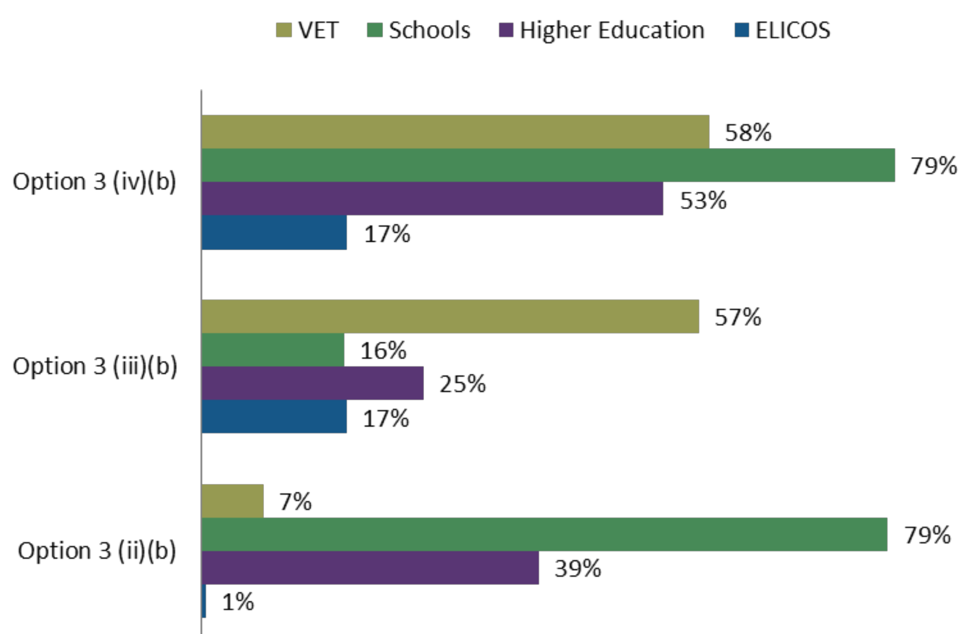
Reducing requirements around the upfront tuition fee limit

By ensuring a student can pay the amount they wish to before a course commences, *all option 3 sub-options* would place education institutions on a level playing field. This is because differences in payment arrangements across the education sector would no longer impact on an international student's choice of the institution attended or course enrolled in. This said, table 2 demonstrates that student preferences with respect to upfront tuition payments appear to differ greatly depending on the sector. In this way, removing

restrictions on how much a student can pay up front is likely to impact on each sector differently.

The competition impacts associated with the relaxation of the current exemption on the 50 per cent limit differs by suboption. Figure 3 shows the potential number of course enrolments that would be impacted from relaxing the current exemption from the 50 per cent limit, by sector and as a proportion of total course enrolments in that sector. Option 3(i)(b) does not feature in the figure as it would keep in place the current exemption for all courses 24 weeks and under.

Figure 3 Number of course enrolments impacted from relaxing the exemption on the 50 per cent limit, by sector and as a proportion of total course enrolments – options 3(ii)(b), 3(iii)(b), 3(iv)(b)



Source: Department of Education and Training, unpublished data. EY calculations.

Excluding non-award enrolments due to the small number of providers in the sector:

- The schools and higher education sectors (relative to other sectors) are likely to benefit most from **option 3(ii),** with an additional 79 per cent and 39 per cent of total course enrolments exempt from the 50 per cent limit, respectively. As a reminder, option 3(ii) would maintain the existing exemption for courses up to 24 weeks in duration but in addition exempt public providers from the 50 per cent limit. Figure 2 shows that 95 per cent of schools and 44 per cent of higher education institutions either receive recurrent Commonwealth funding or are administered by a state education authority, only 10 per cent of VET institutions and 3 per cent of ELICOS institutions are considered to be public providers by the same definition. It follows that schools and higher education institutions would likely benefit most from this option.

- The VET sector (relative to other sectors) is likely to benefit most from **option 3(iii),** with an additional 57 per cent of total course enrolments exempt from the 50 per cent limit. As a reminder, option 3(iii) would extend the exemption to courses of up to 52 weeks in duration for all providers. Table 14 shows that the average and median course length in the VET sector is 35 weeks and 27 weeks respectively, which both fall between 24 weeks (threshold for current exemption) and 52 weeks (threshold for proposed exemption). In comparison, the average and median course length for all other sectors represented in the figure either fall below 24 weeks (e.g. the ELICOS sector) or above 52 weeks (e.g. the schools and higher education sectors). It follows that VET education institutions would likely benefit most from increasing the length of courses for which there would be an exemption from the 50 per cent limit.
- As a combination of options 3(ii) and 3(iii), **option 3(iv)** is likely to have significant benefits for the higher education, schools and VET sectors (relative to other sectors). As a reminder, option 3(iv) would extend the exemption to courses of up to 52 weeks in duration for all providers, in addition to exempting public providers from the 50 per cent limit altogether. The ELICOS sector benefits least from these changes, with only an additional 17 per cent of total course enrolments impacted by the increased exemption. However, the fact that both the average and median course length in the ELICOS sector is below 24 weeks (refer table 14), suggests that most ELICOS course enrolments are already exempt from the 50 per cent limit under the current arrangements. Using PRISMS data for the 'total Number of COEs with actual study' in 2013-14 and data for the 'numbers of COEs longer than 24 weeks' for the same period, it is estimated that around 80 per cent of total course enrolments in the ELICOS sector are currently exempt from the 50 per cent limit.

Table 14: Average "proposed course length" for course enrolments with actual study, 2014

Course Sector	Average (weeks)	Median (weeks)
ELICOS	16	13
Higher Education	85	76
Other (Non-Award Courses, Enabling Courses)	31	23
Schools	92	96
VET	35	27

Source: Department of Education and Training, extracted from PRISM August 2015. The median is presented alongside the average, as the former is often a better measure when the distribution of a population is skewed.

As with option 3(iii), option 3(i) is likely to disproportionally impact on international education institutions that offer shorter courses. This is because it keeps in place the current exemption to the 50 per cent limit for all courses under 24 weeks.

While continuing the relatively blunt approach to risk management that is currently applied under the status quo and therefore impacting public providers most favourably; the most competition neutral option is likely to be option 3(iv). This is because it extends the current exemption on the 50 per cent to the majority of course enrolments across the sectors. While the additional impact on ELICOS providers is not as significant, this is because a high proportion of course enrolments in this sector are already exempt under current arrangements.

Impact on the TPS levy

This section discusses and compares the impacts on risk across the international education sector of changes to the designated account and changes to the upfront tuition limits, separately.

Removing the designated account requirement

A number of stakeholders consider the designated account to be a blunt tool, highlighting that the practicality of enforcing this tool and its effectiveness on reducing risk is questionable. The designated account has also failed to operate as a signal to regulators of when an education institution might be in financial trouble.

On its own, therefore, the removal of the designated account is unlikely to lead to a sizeable change in market risk and therefore a large increase in the TPS risk premium. The Government Actuary has indicated that:

> Depending upon how far in advance of course commencement fees are received, removing the designated account provisions while maintaining the limit on up-front fee payments could represent a relatively small departure from current arrangements. While this would inevitably involve an increased risk to the OSTF, my feeling is that the increase is not large.[11]

However, in combination with higher upfront payments, removing the designated account requirement would increase risk, particularly if the discretion for determining the higher payments rests with the provider. Nevertheless, the magnitude of the increase in risk under option 3 is likely to be less than suggested under option 2. The primary reason for this is that the 50 per cent limit on upfront tuition fees would still be in force (albeit for a smaller number of courses). The following section discusses the change in risk to the international student sector associated with relaxing requirements to upfront tuition limits.

Reducing requirements around the upfront tuition limit

Given that option 3(i) represents the smallest departure from the status quo, it will have the smallest impact on risk in the market and therefore the TPS levy. The Government Actuary has stated that:

> If such payments were made at the genuine discretion of the student or those funding the student and the designated accounts arrangements operated, I would see minimal additional risks in permitting providers to receive these fees in advance and no need to apply an additional premium weighting. [12]

While option 3(ii) could lead to relatively more risk than option 3(i), given that public education institutions are generally more stable and financially secure, it is reasonable to expect that the increase in the levy would not need to be large. This is supported by analysis of the ESOS Assurance Fund undertaken prior to the introduction of the TPS, which suggested that only 6 per cent of failures had the lowest risk rating of one[13] In other words,

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[11] *Australian Government Actuary Advice: Possible Change to Tuition Protection Arrangements for Overseas Students*; quoted in the submission by the Tuition Protection Service on the discussion paper on the *Reform of the ESOS Framework*, October 2014.

[12] Ibid.

[13] *Australian Government Actuary Advice: Possible Change to Tuition Protection Arrangements for Overseas Students*; quoted in the submission by the Tuition Protection Service on the discussion paper on the *Reform of the ESOS Framework*, October 2014.

while all education institutions may be susceptible to failure, the likelihood of this occurring is relatively lower for public institutions than for private education institutions.

Continuing this logic, option 3(iii) and option 3(iv) would have the biggest potential impact on risk and the TPS, as they would apply a blanket exemption on all courses less than 52 weeks in duration and exempt the greatest number of course enrolments. The Government Actuary has suggested that, if an education institution could choose to opt out of the designated account requirement, the risk factor would need to be set at 0.6 for those institutions. By comparison, if an education institution could choose to opt out of the 50 per cent limit on upfront tuition fees, the risk factor would double to 1.6. If an education institution could choose to opt out from both requirements, the risk factor could increase by as much as 10 times this.[14]

Students

Student wellbeing

Under option 3, students would gain added flexibility by being able to pay more than 50 per cent of their tuition fees up front if they wish. This may:

- reduce the administrative burden on scholarship students and their sponsors
- decrease uncertainty with respect to the cost of study, which may encourage more international students to come to Australia
- allow students to take advantage of any concessions offered by education institutions in return for upfront payments.

However, relative to option 3(i), which would not require any students to pay more than 50 per cent of their tuition fees up front (see table 9):

- up to 72,800 additional course enrolments per annum with a CRICOS-registered provider could potentially require more to be paid under option 3(ii)
- up to 123,600 additional course enrolments per annum with a CRICOS-registered provider could potentially require more to be paid under option 3(iii)
- up to 167,800 additional course enrolments per annum with a CRICOS-registered provider could potentially require more to be paid under option 3(iv).

A system of less regular payments may be harder for students to manage, which may result in poorer student attendance and an increase in student debt. This may see more international students switch to education institutions for whom the 50 per cent limit would still apply but with whom students could still choose to pay more if they wished. In this way, competition in the sector is likely to moderate any impacts on students.

[14] Unpublished advice provided by the TPS Director on 16 October 2014.

Fee refunds

International students under option 3(i) would not lose out on any of the consumer protections currently afforded to them by the TPS. Potential costs for students under the remaining three suboptions are associated with any increase in risk to eventuate from relaxing requirements under the TPS (refer discussion about TPS levy). For example, delays in refunds may result if the changes proposed under this option increase the risk of provider default or mean fewer education institutions are able to meet their financial obligations to students. The greater the risk associated with the suboption, the greater the likelihood of delays in students receiving a fee refund. This is because the TPS fund would be placed under a greater amount of pressure.

Government

Savings

Given that there is currently no regular reporting or mandatory monitoring of designated accounts, savings to the Government from removing the designated account requirement are likely to be small. Similarly, it is unlikely that quality assurance agencies would undertake audits of CRICOS-registered institutions solely for the purposes of ensuring compliance with TPS requirements. Instead, compliance with the TPS requirements is likely to be considered as part of broader compliance with the ESOS framework.

Costs

No additional costs to Government would be expected from the changes proposed under option 3(i). Under the remaining suboptions there would be a greater chance of cost to the Government and the TPS commensurate with the higher potential for default or closure (refer discussion about TPS levy). The greater the risk associated with each suboption, the greater the pressure placed on the TPS, and therefore the greater the possibility that the Government may have to intervene financially.

Summary

The table below provides a qualitative comparison of the broader benefits associated with option 3 against the status quo.

Table 15 Broader benefits (compared to the status quo), Option 3

Benefit	Option 3(i)	Option 3(ii)	Option 3(iii)	Option 3(iv)
Increases choice for students	✓✓✓	✓✓✓	✓✓✓	✓✓✓
Limits risk to the TPS	✓✓✓	✓✓	✓	✓
Enhances competition	✓✓	✓✓	✓✓	✓✓✓
Limits govt. costs	✓✓	✓✓	✓✓	✓✓

7.4 Option 4

Option 4 was added to the analysis following face to face consultations on the amendments in the Streamlining Regulation Bill, including the findings of the draft RIS underpinning the proposed amendments relating to the TPS requirements.

Option 4(i) is a variant of option 3(i). It would:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 25 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account

Option 4(ii) is also a variant of option 3(i).It would:

(a) allow the provider to accept/receive more than 50 per cent of tuition fees if the student requests to pay it

(b) exempt from the 50 per cent limit courses of up to 30 weeks' duration

(c) remove the requirement to retain tuition fees collected prior to course commencement in a designated account

The only distinction between the options is the extension of the current exemption on the 50 per cent limit for all courses up to 25 weeks [option 4(i)] and 30 weeks [option 4(ii)], compared to 24 weeks [option 3(i)].

Education institutions

Table 16 shows the impact of progressively increasing the exemption currently attached to the 50 per cent limit for courses of less than 24 weeks' duration. As expected, the total number of course enrolments impacted for each option increases as the exemption is relaxed further. However, it appears that the marginal impact on total enrolments falls for every week the exemption is relaxed beyond 25 weeks. Compared to option 3(i), which maintains the current exemption in place:

- raising the exemption for the 50 per cent limit by one week (to 25 weeks) impacts on an additional 7,600 course enrolments. **This brings the total number of course enrolments impacted by option 4(i) to 30,100 (refer table 16)**
- raising the exemption by a further five weeks (to 30 weeks) impacts on an additional 44,500 course enrolments (or an additional 7,400 enrolments for every additional week for which the exemption is extended). **This brings the total number of course enrolments impacted by option 4(ii) to 62,500.**

Table 16 Total number of course enrolments impacted by option

Exemption applied to 50% limit	Additional number of courses now exempt (relative to status quo) (A)	Of courses not exempt, number that likely to make significant pre-payment (B)	Total courses impacted by this option (A+B)
Option 3(i): All courses<24 wks	-	23,900	23,900
Option 4(i): All courses<25 wks	7,600	22,500	30,100
Option 4(ii): All courses<30 wks	44,500	17,900	62,500

Table note: Totals may not add up due to rounding. Numbers have been rounded to the nearest hundredth.

Reducing the regulatory burden associated with upfront tuition fees

A summary of the OBPR Regulatory Burden Measure estimate of the administrative and compliance savings from proposed changes to the 50 per cent limit under option 4 is provided in tables 17 and 18.

Table 17 shows total estimated regulatory savings for education institutions of around $1.2 million on average per annum from the changes in option 4(i)(a) and (b). Together with regulatory savings from the designated account (option 4(i)(c)), the total regulatory savings from option 4(i) would be $28.9 million.

Table 17 Average annual regulatory costs associated with Option 4(i)(a) +(b), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
ELICOS	(0.4)	-	-	(0.4)
VET	(0.3)	-	-	(0.3)
HIGHER-EDUCATION	(0.2)	-	-	(0.2)
SCHOOLS	(0.1)	-	-	(0.1)
OTHERS	(0.1)	-	-	(0.1)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-
Are all new costs offset?				
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = (1.2)				

Table 18 shows total estimated regulatory savings for education institutions of around $2.6 million on average per annum from the changes at option 4(ii)(a) and (b). Together with regulatory savings from the designated account (option 4(ii)(c)), the total regulatory savings from option 4(ii) would be $30.3 million.

Table 18 Average annual regulatory costs associated with Option 4(ii)(a)+(b), by sector

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	**$**	**$**	**$**	**$**
VET	(1.4)	-	-	(1.4)
ELICOS	(0.5)	-	-	(0.5)
HIGHER-EDUCATION	(0.3)	-	-	(0.3)
OTHERS	(0.2)	-	-	(0.2)
SCHOOLS	(0.1)	-	-	(0.1)
Cost offset ($ million)	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	-	-	-	-

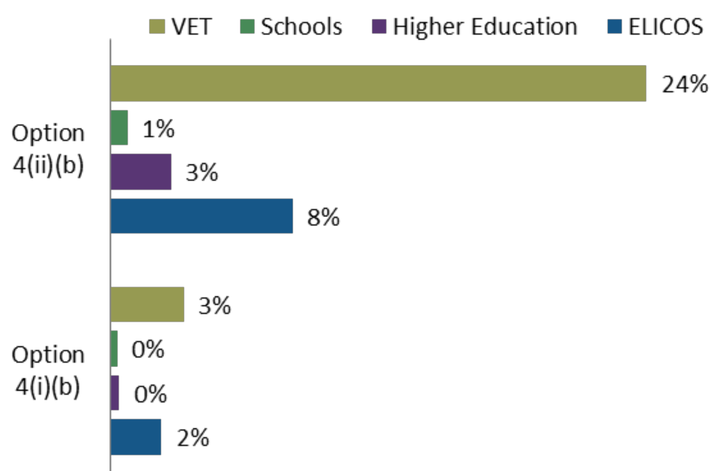
Are all new costs offset?
☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required
Total (Change in costs – Cost offset) ($ million) = (2.6)

Competition impacts

This section discusses the competition impacts from relaxing the current exemption on the 50 per cent limit under options 4(i)(b) and 4(ii)(b). The competition impacts from allowing students to pay more than 50 per cent of their tuition fees upfront (options 4(i)(a) and 4(ii)(a)) and removing the designated account (options 4(i)(c) and 4(ii)(c)) are the same as those discussed under option 3. It should be noted, though, that option 4(i)(b) offers a minimal departure from the status quo exemption for courses of up to 24 weeks' duration.

Options 4(i)(b) and 4(ii)(b) would apply a blanket exemption on all courses under 25 weeks and 30 weeks, respectively. On the surface, this would appear to imply a relatively even impact across the sectors, with minimal resulting impact on competition. However, the benefits associated with options 4(i)(b) and 4(ii)(b) would disproportionally impact on sectors that offer shorter courses. Figure 4 shows the number of course enrolments impacted as a result of relaxing the current exemption on the 50 per cent limit, by sector and as a proportion of total course enrolments in that sector.

Figure 4 Number of course enrolments impacted from relaxing the exemption on the 50% limit, by sector and as a proportion of total course enrolments – options 4(i)(b) and 4(ii)(b)



Source: Department of Education and Training, unpublished data. EY calculations.

Excluding non-award enrolments due to the small number of providers in the sector:

- VET and ELICOS are likely to benefit most from **option 4(i),** with an additional 3 per cent and 2 per cent of total course enrolments exempt from the 50 per cent limit, respectively.
- VET and ELICOS are again likely to benefit most from **option 4(ii)**. The impact, however, would be largest for the VET sector, with an additional 24 per cent and 8 per cent of total course enrolments exempt from the 50 per cent limit, respectively.

The different distributional impacts observed for each option are predominantly explained by the total number of course enrolments by sector, as well as differences in the average study length across the sectors. As discussed in section 7.3, being made up of relatively short courses of around 16 weeks on average, the majority of ELICOS course enrolments are already exempt from the 50 per cent limit under the status quo. In comparison, the VET sector shows a wider spread between the average and median course length (35 and 27 weeks respectively), suggesting that there is a greater selection of shorter and longer VET courses available to students. As a result, VET will benefit most from options both to extend the current exemption to 30 weeks (option 4(ii)) and 52 weeks (option 3(iii)).

Impact on TPS levy

Broadly, the relationship between the number of enrolments impacted from relaxing the 50 per cent exemption and the impact on the TPS levy should be an inverse one. That is, the ability of an education institution to collect and use larger amounts of upfront tuition fees may increase the refund liabilities of the institution and the TPS in the event of closure. This could particularly be the case in respect of education institutions considered to be high risk of non-compliance or default. An increase in the TPS levy could therefore be required to counter the greater risk of exempting more courses.

Given that option 3(i) represents the smallest departure from the status quo, impacting on a total of 24,000 course enrolments, it will likely have the smallest impact on risk of the four options presented at table 15. Continuing this logic, option 4(i) would have only a marginally higher impact on risk, impacting on a total of 30,000 course enrolments. Option 4(ii) would have the next highest risk, impacting on a total of 63,000 course enrolments. Option 3(iii) presents the highest risk of the four, impacting on 148,000 course enrolments.

However, the relationship between the number of enrolments exempted from the 50 per cent limit and the impact on the TPS levy is unlikely to be a perfectly inverse one. This is because of the distributional impact of each option across the sectors. As shown by figure 4, option 4(ii) would impact on a potentially greater proportion of course enrolments from the VET and ELICOS sectors (generally considered to be higher risk) compared to the higher education and schools sectors (generally considered to lower risk). Together with the removal of the designated account, therefore, option 4(ii) could have a significant impact on risk.

Students

Under option 4(i) and (ii)(a), international students would be able to choose whether they pay more than 50 per cent of their tuition fees up front. These students would be better off.

Under option 44(i) and (ii) (b), a smaller portion of students may be required to pay more up front. These students would be worse off. More specifically:

- up to 30,100 additional course enrolments per annum with a CRICOS-registered provider could potentially require more to be paid up front under option 4(i)
- up to 62,500 additional course enrolments per annum with a CRICOS-registered provider could potentially require more to be paid up front under option 4(ii)

As discussed in the analysis of options 2 and 3, competition in the market for international education may temper this impact on students, as providers compete for enrolments and seek to accommodate student preferences with respect to payment arrangements.

To the extent that relaxation of the 50 per cent limit on upfront tuition payments increases risk in the market, students may also be impacted by an increase in defaulting institutions. This said, however, option 4 would maintain all consumer protections currently provided to international students under the TPS.

Government

As with option 3, the impact of option 4 on Government costs and savings is likely to be minor. As discussed above, the only real impact on the Government would be felt if the relaxation of the 50 per cent limit eventuated in higher risk in the market and the need for intervention.

Summary

The table below provides a qualitative comparison of the broader benefits associated with option 4 against the status quo.

Table 19 Broader benefits (compared to the status quo), Option 4

Benefit	Option 4(i)	Option 4(ii)
Increases choice for students	✓✓✓	✓✓✓
Limits risk to the TPS	✓✓✓	✓✓
Enhances competition	✓✓	✓✓
Limits govt. costs	✓✓	✓✓

8. Preferred option

8.1 Summary of policy options

A summary of the regulatory savings associated with each option is presented at table 19. Regulatory savings have been costed in line with the *Australian Government's Guide to Regulation.* Administrative and compliance savings to businesses have been calculated per course enrolment to which the TPS measures would no longer apply. This has ensured that regulator savings have been costed consistently under each option.

In line with the *Australian Government's Guide to Regulation*, any potential increase in the TPS levy – which would represent a regulatory obligation to transfer money to government – is not included in the estimates of regulatory savings.[15]

The estimates also exclude any government costs associated with the implementation of the options. This includes costs expected to be incurred under option 2 by quality assurance agencies to enforce TPS requirements on the basis of a risk assessment. No additional administrative costs would be expected from the changes proposed under option 3 and option 4.

Table 20 provides a comparison of the broader benefits associated with each option. These benefits relate to the key regulatory failures identified in section 3. Attachment A contains a more detailed summary of the options and assessment presented in section 7.

Table 20 Broader benefits (compared to the status quo), by option

		Risk approach	Progressive relaxation of requirements				Variants of option 3(i) post exposure	
Benefit	**Option 1 (status quo)**	**Option 2**	**Option 3(i)**	**Option 3(ii)**	**Option 3(iii)**	**Option 3(iv)**	**Option 4(i)**	**Option 4(ii)**
		Risk approach	*No designated account. Students can pay more upfront*	*Public institutions exempt from 50% limit*	*Courses <52 wks exempt from 50% limit*	*Combined 3(i)-3(iii)*	*Courses <25 wks exempt from 50% limit*	*Courses <30 wks exempt from 50% limit*
Increases student choice	No change	✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓
Limits risk to the TPS	No change	✓✓	✓✓✓	✓✓	✓	✓	✓✓✓	✓✓
Enhances competition	No change	✓✓✓	✓✓	✓✓	✓✓	✓✓✓	✓✓	✓✓
Limits govt. costs	No change	✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓
No. course enrolments impacted	-	**n/a ***	**23,900**	**96,700**	**147,500**	**191,700**	**30,100**	**62,500**
Net impact($)	-	**(33.1)**	**(28.6)**	**(31.7)**	**(33.9)**	**(35.8)**	**(28.9)**	**(30.3)**

Table note: * Option 2 regulatory savings have been calculated based on the number of providers impacted.

Taking into account the impacts of the policy options outlined above, the preferred option is option 4(i). Relative to the status quo, the remaining options represent a net benefit but are not preferred for the following reasons:

[15] Australian Government, *The Australian Government Guide to Regulation*, http://cuttingredtape.gov.au/sites/default/files/documents/australian_government_guide_regulation.pdf, p.34.

- while **option 2** has some advantages, there are a number of potentially significant costs and barriers to its implementation, given it could not be implemented within the current risk frameworks
- **option 3(i)** and option 4(i) are very similar, however, option 4(i) provides more benefits to education institutions at only marginally more risk
- by extending the current exemptions provided to public education institutions, **option 3(ii)** further entrenches their comparative advantage in the international education sector relative to their private sector counterparts
- while arguably reducing the regulatory burden of education institutions and going some way to addressing current failures in market competition, **option 3(iii), option 3(iv)** pose an unquantifiable risk to the market and, by consequence, the TPS
- similarly, while **option 4(ii)** translates into higher regulatory savings than option 4(i), the risk to the sector may be significant. This is particularly the case as it would impact on a potentially greater proportion of course enrolments from the VET and ELICOS sectors, which comprise of a relative large number of private providers.

8.2 Option 1 – Not preferred

The status quo offers little response to concerns raised during the department's consultations on reforming the ESOS framework. While the additional non-regulatory approaches such as increasing information may encourage education institutions to more effectively manage their finances, this option would not encourage good performance or recognise the quality, viability and integrity of education institutions by removing red tape.

As is the case now, CRICOS-registered education institutions would be unable to collect more than 50 per cent of tuition fees up-front (i.e. prior to commencement of their course). This limits the flexibility of students and institutions alike:

- By placing a cap on the amount of upfront tuition fees an education institution can collect, the TPS aims to encourage better operational management in the industry. However, a number of submissions have argued for the removal of the requirement for lower risk institutions, suggesting that they are unlikely to collapse and are unnecessarily restricted from making decisions based on their operating environment and aligned to their business models.
- The current provisions in the ESOS Act limit the flexibility of students who wish to pay more up front because of uncertainty around fluctuating exchange rates, increases in tuition fees by education institutions, and the costs associated with transferring funds, or their sponsor wishes to pay up front. Under the current arrangements, students are also unable to take advantage of any concessions offered by education institutions in return for higher upfront payment.

Further, the status quo is acting as an impediment to natural market activity by selectively exempting public providers from a costly administrative requirement—the designated account—thereby unfairly disadvantaging low risk private education institutions.

There is considerable support for making changes to the TPS related requirements under the *ESOS Act* among all public and private education institutions and their representative peak

bodies. Stakeholders would be dissatisfied with the status quo. In the context of deregulation and encouraging growth in international education, this option would offer little or no benefit and is not preferred.

8.3 Option 2 – Not preferred

Option 2 would require quality assurance agencies to impose the requirements under the scope of this RIS as conditions of registration on the basis of their risk assessments. This would appear to reduce the regulatory burden associated with the TPS measures for all education institutions assessed as lower risk—both public and private education institutions, regardless of their sector – and would, on the face of it, produce the highest regulatory savings. For those education institutions assessed as being of higher risk, the current safeguards would remain in place. This implies that the change in risk across the sector is likely to be smaller relative to a scenario where the TPS measures are completely removed and applied subjectively by regulators.

However, there are significant cost and implementation issues associated with option 2. Advice was sought on the viability of this option from ASQA and TEQSA, which would be responsible for its implementation. Both agencies raised concerns about the complexity and cost of this option. They noted that it would not, on balance, reduce the regulatory requirements given there would need to a greater focus on a provider's financial risk. They also noted that these requirements were designed to support the new tuition protection measures introduced for international students in 2012 through the TPS, rather than to complement quality assurance processes. Further, the designated account requirement is less transparent than the 50 per cent limit requirement. While tuition fees are generally publicly available and recorded in PRISMS, it would be necessary to establish that an education provider had a designated account in each individual case—a time consuming process.

The TPS requirements fall under different legislation from the ESOS Act. Section 5 of the *Education Services for Overseas Students (TPS Levies) Act 2012* sets out the four components of the TPS levy: an administrative fee, a base fee, a risk based component and a special tuition protection component. All CRICOS providers are required to pay the administrative and the special tuition protection components of the TPS Levy. Only some education institutions pay the risk based component of the TPS levy. Currently, Table A universities, state and territory TAFEs and all Government schools are exempt from paying the risk based levy. This means they are not assessed, for the purposes of the TPS risk based levy, on the basis of their financial risk. This is problematic given that under option 2 all providers would need to be assessed on the basis of financial risk if the 50 per cent limit and/or designated account requirements were to be imposed as conditions of registration on all high risk providers.

Advice provided by the TPS Director and the Australian Government Actuary on removing both the 50 per cent limit and designated account requirements at the same time and imposing these on a discretionary basis indicated that this option would likely have a greater impact on the risk of provider closure/collapse (and, in turn, on the TPS levy) compared to options 3 and 4. The Actuary's advice was that the removal of the designated account requirement alone did not, however, significantly increase risk.

Option 2 proposes a significant change from current policy, which addresses risk based on the extent of a provider's government funding or administration. By assessing each individual provider's risk of default, option 2 would replace this blunt approach and seek to recognise the quality, viability and integrity of a number of education institutions who are currently inappropriately and unnecessarily restricted by red tape. While this is consistent with taking a risk management approach, as required under the ESOS Act, the regulatory burden on all providers is likely to increase if financial viability is required to be monitored at regular intervals.

Consequently, there are a number of impediments that would have to be addressed before Option 2 could be seriously considered as a viable option, as follows:

- No existing entity is designated or resourced to administer option 2:
  - The TPS Director's functions primarily relate to administering the Overseas Students Tuition Fund. The Director has neither the capacity, nor the legislative authority, to administer option 2 (particularly in terms of monitoring and enforcing compliance)
  - The quality assurance agencies (TEQSA and ASQA) are primarily focused on education quality and the ability of education institutions to meet education quality standards. They currently do not have the capacity or the remit to fully assess, within their current frameworks, the risk that a provider could default or close. Their discretion in determining high risk—noting that these requirements relate solely to financial risk—would be a crucial factor in ensuring the 50 per cent limit and designated account requirements were imposed, monitored and enforced. It should be noted that there is no equivalent limit on tuition fee payment within the TEQSA and ASQA frameworks (the TEQSA Act and associated standards, and the NVETR Act and associated standards) where tuition protection arrangements are already in place
- The imposition of a condition of registration under the ESOS Act is a reviewable or appealable decision. The proposed amendments to the ESOS Act in the ESOS (Streamlining Regulation) Amendment Bill include a new internal review process by an 'ESOS agency'. The ESOS Amendment Bill would give direct powers to ASQA and TEQSA under the revised arrangements as an ESOS agency, whereas they currently act as either designated authorities or delegates of the Minister or Secretary under the ESOS Act.
- The imposition of a condition of registration under the ESOS Act is assessed on a case by case basis. Option 2 suggests a different approach, whereby a regulator would first assess those providers who were high financial risk, then broadly apply the TPS requirements to those providers that feel in the high risk category. In practice this would involve considerable administrative work, both in assessing the appropriateness of imposing the requirements, implementing those requirements through a process of adding a condition to registration, and potentially dealing with appeals of the decision in each case.
- The number of multi-sector providers complicates the implementation of this option. Given that a large number of education institutions TEQSA might considered

to be high risk are dual-sector providers for which ASQA is also responsible, a system through which one regulator considered an education institution low risk while the other considered it high risk would be unworkable.

- The quality assurance agencies would incur additional costs in imposing and monitoring the 50 per cent limit and designated account requirements. Costs to government under option 2, while unquantified, would inevitably be far higher than those under the status quo, option 3 and option 4. Significant additional costs would also be imposed on ASQA and TEQSA if they were required to monitor provider financial viability. Given a lack of data these costs have not been assessed for the purposes of this RIS.
- Costs to government notwithstanding, it is not clear that the quality assurance agencies are best positioned to assess the potential default or closure of education institutions, given their primary focus on education quality and the ability of education institutions to meet education quality standards.

The Australian education regulatory system is not currently constituted to enable option 2 to be adopted. Therefore, option 2 is potentially a high cost option given the significant additional costs (not costed as part of this RIS) that would be imposed on both any potential administrator and providers to enable the option to be administered in an effective manner.

Further, implementing option 2 would require reform of the Australian educational regulatory framework, potentially including legislative changes. This could not proceed without public consultation.

8.4 Option 3 – Not preferred

As a minimum, option 3 would remove the current anomaly that prevents education institutions from collecting, and students from opting to pay, more than 50 per cent of tuition fees up front. Option 3 also removes the designated account requirements, which currently places the largest financial impost (72 per cent of the regulatory burden associated with the TPS measures) on education institutions in the sector. These two issues associated with the TPS requirements have been the primary concerns of stakeholders.

Consisting of four suboptions, option 3 analyses the impact of a progressive relaxation of the 50 per cent limit on education institutions. This responds to concerns with option 2 that significantly relaxing the limit on the collection of upfront tuition fees may increase the risk of education institutions not meeting their obligations to students. This is particularly the case if the designated account requirement is also removed and is consistent with advice provided by the Government Actuary, which stated that removing the designated account requirement while maintaining the limit on up-front fee payment could represent a relatively small departure in risk from the status quo.

Option 3(i) would exclusively address the two primary concerns identified by stakeholders – that is, removing the designated account requirement and allowing students the freedom to choose how much they pay upfront. As it represents the smallest departure from the status quo within the four scenarios canvassed in option 3, it has the lowest (but still significant) regulatory savings. Despite this, option 3(i) maximises benefits to students, minimises costs to government, and removes the most costly contributor to regulatory burden in the sector while having the least impact on risk and the TPS levy. By removing the designated account

requirement, option 3(i) also addresses the single only potential source of competitive advantage that public providers have over their private counterparts under the status quo.

In addition to the changes described above, option 3(ii) would extend the current exemption received by public providers to include the limit on upfront tuition fees. Option 3(ii) is associated with marginally more risk than option 3(i). However, its greatest negative is the fact that it would entrench the current approach to risk management even further and place private education institutions at a greater competitive disadvantage in the sector.

As with option 3(ii), option 3 (iv) would also exempt public institutions from the limit on upfront tuition fees and would therefore also involve a level of market distortion. Despite this, option 3(iv) remains the most competition neutral suboption. This is because it extends the current exemption on the 50 per cent to the most course enrolments across the sectors. Option 3(iv) would also remove the requirement for all courses under 52 weeks. Together, the proposed changes could impact on up to 191,700 course enrolments on average per annum. This would represent around 80 per cent of course enrolments greater than 24 weeks that are currently not exempt. Because of this, option 3(iv) is likely to have a significant impact on risk and the TPS. Option 3(iv) is therefore not preferred.

Similarly, option 3 (iii) proposes to remove the limit on upfront tuition fees for all courses under 52 weeks. This would potentially impact on over half of total course enrolments greater than 24 weeks that are currently not exempt (58 per cent). The likelihood of an increase in the TPS levy to counteract this increased risk is likely to outweigh the benefits of the exemption. For this reason, option 3(iii) is also not preferred.

8.5 Option 4 – Option 4(i) preferred

Option 4 is a variant of option 3(i), the only difference between the options being the extension of the current exemption on the 50 per cent limit. The inclusion of this option is in response to a request from English Australia that the length of courses exempt should be extended to at least 25 or 30 weeks. ELICOS providers indicated that there were administrative issues associated with having to invoice students more than once, and that a number of ELICOS courses are offered at five-week intervals.

By maintaining the exemption on relatively short courses, options 3(i), 4(i) and 4(ii)] are all likely to favour providers in the VET and ELICOS sectors, and therefore have similar competition impacts. However, given that a high proportion of ELICOS enrolments are already exempt from the 50 per cent, it is the VET sector which is likely to benefit most from option 4.

The principal source of difference between the options is the number of course enrolments impacted. As expected, the total number of course enrolments impacted for each option increases as the exemption is relaxed further. However, it appears that the marginal impact on total enrolments falls for every week the exemption is relaxed beyond 25 weeks. Given this, and the relatively limited risk from extending the exemption by one week, option 4(i) is preferred.

Further, option 4(i) strikes the most reasonable balance between addressing stakeholder concerns and minimising risk. In particular, it:

- allows greater student choice with respect to the amount of tuition fees paid up front
- removes the highest regulatory cost burden (the designated account) for education institutions
- better reflects the structure of some CRICOS-registered courses that are delivered in blocks of five-week intervals
- maintains sufficient safeguards to support the sustainability of the TPS
- minimises administrative and implementation costs to government.

While raising the exemption by six weeks (to 30 weeks) translates into higher regulatory savings, the increase in risk to the sector would significantly outweigh any benefits under option 4(ii). This is particularly the case because option 4(ii) would impact on a potentially greater proportion of course enrolments from the VET and ELICOS sectors, which are generally made up of a higher proportion of private providers. Further option 4(ii) extends the requirement for full payment of fees by students to a substantial number of courses, which may disadvantage students. Option 4(i) minimises the risks raised by the Australian Government Actuary. Any further relaxation of arrangements could significantly increase risk to the TPS and overall reputation of Australia's international education industry.

9 Implementation and review

9.1 Implementation process and timeframe

The changes to the TPS measures should be able to take effect at the time of proclamation of an amended *ESOS Act*. This is proposed to occur prior to commencement of the student application period, usually in October of any year. Depending on passage of the amendment Bill, that could mean implementation from 1 January 2016.

As the measures overall relax those currently in place, it is expected that education institutions would be able to transition to the new measures in a short period of time, with minimal changes to IT systems as the 50 per cent limit would continue to apply if the student did not indicate their wish to pay more of the fees up front. The removal of the designated account requirement would involve a one-off administrative transaction with the relevant financial institution.

The department would provide information to education institutions through education peak bodies, the quality assurance agencies, the TPS, and the PRISMS message facility to advice on the change through fact sheets and other written material. An online inquiry service would deal with direct questions from education institutions. Systems support would also be available through the PRISMS helpline.

9.2 Risks to implementation

Successful transition to the preferred option will rely on information being provided in a timely manner to education institutions to ensure they align their processes with the time the changes take effect. The department will work closely with the peak education bodies to ensure the impacts and issues that could arise from implementation are considered and addressed.

Implementation will depend on proclamation of the amended *ESOS Act*. However, it is expected education institutions should receive two months advance notice of the changes to the *ESOS Act*.

These risks will be addressed through information provision and support outlined above.

9.3 Evaluation of the effects of the preferred option

The department will continue to work closely with all stakeholders to monitor the effectiveness of the measures. Implementation should be reviewed within 5 years from the date of commencement of the changes to the TPS requirements. This review may occur as part of a broader review of the effectiveness, efficiency and appropriateness of the ESOS framework.

Attachment A – Summary of benefits and costs of each option, by stakeholder

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	**Students**	**Government**	
Status quo No change to restrictions on upfront tuition fees and requirements for designated accounts	Benefits Continuation of current benefits. To the extent that the amendments under scope reduce risk in the sector: • Reputational benefits • Less pressure on the TPS and therefore the TPS levy	Benefits Continuation of current benefits. To the extent that the amendments under scope reduce risk in the sector: • Continuity of education provision • Reduced delays in providing refunds where necessary	Benefits Continuation of current benefits. To the extent that the amendments under scope reduce risk in the sector: • Reduces liability on Tuition Protection Service • Less risk of calls on government funds	**Net cost** The international education sector is more stable now than what it was in the period preceding the large-scale collapse of education institutions in the period from 2009 to 2011. However, it is not possible to isolate the impact of the TPS measures under the scope of this RIS on the overall risk of the sector. For example, some improvements may be associated with the broader package of reforms introduced under the TPS. Other improvements may be attributed to external factors such as the strengthening of student visa requirements and the establishment of national regulators. Applying blanket regulation over the entire sector means that any benefits associated with the measures under scope are likely to be outweighed by the costs associated with excessive regulatory burden on low and medium risk education institutions.
	Costs Continuation of current costs, including: • Overregulation of lower risk education institutions • Reduced competition in the international education sector • Administrative and compliance costs	Costs Continuation of current costs, including: • To the extent that amendments under scope act as a barrier to entry for education institutions, less choice around course options • Limited flexibility for students who may wish to pay more than 50 per cent of their tuition fees up front	Costs Nil to minor	

<table>
<tr><th rowspan="2">Option</th><th colspan="3">Impacts, costs and benefits</th><th rowspan="2">Overall impacts</th></tr>
<tr><th>Education institutions</th><th>Students</th><th>Government</th></tr>
<tr><td rowspan="2">Option 2 – Legislative changes to reduce regulation based on risk assessment</td><td><u>Benefits</u>
Less regulatory distortion and an increase in market efficiency
More flexibility in the way that institutions can use capital
With a higher financial commitment from students, more certainty around financial forecasts and cash flow
For new entrants, they may need to secure less capital
Less costs incurred to administer and comply with regulations
Improved market competition</td><td><u>Benefits</u>
Students would not lose any of the protections currently guaranteed to them by the TPS
Students who prefer to pay a larger portion of their fees up and are able to do so under the changes, would benefit from an increase in flexibility and less uncertainty around their costs of study</td><td>Benefits
Greater alignment with the objectives of the ESOS Act and the risk management approaches adopted by TEQSA and ASQA</td><td rowspan="2">Net benefit
This option would base restrictions on a risk assessment of individual education institutions. This would balance the need to incentivise good business practices and ensure timely refunds, against the government's objective to cut red tape.
The TPS has warned that removal of the both the 50 per cent limit and the designated account would be high risk, and may require the agency to triple the risk premium with respect to the TPS levy. However, it is worth noting that, regulators would still have the discretion to impose restrictions on education institutions assessed as carrying a higher level risk. This may mitigate the need to increase the risk levy to the extent described above.
A key downside of option 2, however, is with respect to the cost and complexity of implementation. The focus of TEQSA and ASQA is on the quality of education provision and not on the financial viability of providers. The TPS does not provide an appropriate risk framework that applies to all education institutions. As a consequence, no agency can give assurances that there will be no additional administrative requirements or costs to education institutions associated with these new registration and assessment activities.</td></tr>
<tr><td><u>Costs</u>
Possible negative reputational impacts on the sector
A possible increase in the risk profile of the sector that may necessitate an increase to TPS risk levy
A system of less regular payments may be harder for students to manage, which may lead to a drop in student enrolments</td><td><u>Costs</u>
If with the removal of limits on upfront tuition fees payment arrangements become less manageable, this could result in poorer student attendance and an increase in student debt
Delays in refunds may result if changes proposed under Option 2 result in more education institutions defaulting on their fee refunds to students</td><td><u>Costs</u>
Implementation and administration costs for TEQSA and ASQA to:
establish appropriate framework or criteria to assess the financial risk of individual education institutions
administer an increased number of appeals as the imposition of these requirements would</td></tr>
</table>

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	Students	Government	
			have to be a condition of registration • monitor and enforce compliance.	
Option 3 (i)– Legislative changes that would allow an education institution to "accept" but not "require" more than 50 per cent of fees upfront and remove the designated account for all education institutions**.**	Benefits • Less regulatory distortion and an increase in market efficiency • Less costs incurred to administer and comply with regulations • Improved market competition	Benefits • Students would not lose any of the consumer protections currently guaranteed by the TPS • Reduced administrative burden on scholarship students and their sponsoring institutions • Decreased uncertainty with respect to the cost of study, which may induce more international students to come to Australia • Would allow students to take advantage of any concessions offered by education institutions in return for upfront payments	Benefits • Given that no regular reporting or monitoring is currently undertaken of designated accounts, savings from the removal of the requirement to Government are likely to be small	**Net benefit** Option 3(i) would exclusively address the two primary concerns identified by stakeholders – that is, removing the designated account requirement and allowing students the freedom to choose how much they pay upfront. As it represents the smallest departure from the status quo, it is associated with the smallest regulatory savings. Nevertheless, Option 3(i) maximises benefits to students, minimise costs to government, and manages to remove the most costly contributor to regulatory burden in the sector while limiting risk to the TPS. By removing the designated account requirement, option 3(i) also addresses the single only potential source of competitive advantage that public education institutions have over their private counterparts under the status quo.
	Costs • Disproportionally benefits providers who typically offer shorter courses.	Costs Nil to minor	Costs Nil to minor	

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	Students	Government	
Option 3(ii) – Variation to 3(i) that would also exempt public education institutions from the 50 per cent limit on upfront tuition fees	Benefits • Public education institutions would be free to set policies and processes around the collection of tuition fees based on their operating environment and aligned to their business models • Public institutions would able to use any upfront tuition fees collected for any purpose including supplementing cash flow to sustain their operations or to fund investment in innovation	Benefits Same as Option 3(i)	Benefits Same as Option 3(i)	**Net benefit** Option 3(ii) would introduce the same changes as under Option 3(i) and in addition provide public education institutions with an exemption from the 50 per cent limit on upfront tuition fees. This recognises that publicly funded education institutions have a lower risk of provider default or not refunding tuition fees. While option 3(ii) would lead to some increase in risk to the TPS, given that public education institutions are more stable and financially secure, it is reasonable to expect that the increase would be small. However, its greatest detractor is the fact that it would entrench the current approach to risk management even further and place private education institutions at a greater competitive disadvantage in the sector. Any impact to students is likely to be tempered by market competition.
	Costs • Some continued distortion on market competition • A possible increase in the risk profile of the sector that may necessitate an increase to TPS risk levy • Possible negative reputational impacts on the sector • A system of less regular payments may be harder for students to manage, which may	Costs • If with the removal of limits on upfront tuition fees payment arrangements become less manageable, this could result in poorer student attendance and an increase in student debt • Delays in refunds may result if changes proposed under the option result in more education institutions defaulting on their fee refunds to students	Costs Same as Option 3(i)	

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	Students	Government	
	lead to a drop in enrolments.			
Option 3(iii) – Variation to 3(i) that would also exempt all courses less than 52 weeks from the 50 per cent limit on upfront tuition fees	Benefits • Increased flexibility in the way that many education institutions in the sector can use capital • With a higher financial commitment from students, more certainty around financial forecasts and cash flow • For new entrants, they may need to secure less capital	Benefits Same as Option 3(i)	Benefits Same as Option 3(i)	**Net benefit** Option 3 (iii) proposes to remove the limit on upfront tuition fees for all courses under 52 weeks. This would potentially impact on over half of total course enrolments greater than 24 weeks that are currently not exempt (58%). The likelihood of an increase in the TPS levy to counteract this increased risk is likely to outweigh the benefits of the exemption.
	Costs Same as Option 3 (ii)	Costs Same as Option 3 (ii)	Costs Same as Option 3(i)	

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	Students	Government	
Option 3(iv) – Would include all the changes proposed under Options 3(i) to 3(iii)	<u>Benefits</u> Combination of impacts from options 3(i) to 3(iii) <u>Costs</u> Combination of impacts from options 3(i) to 3(iii)	<u>Benefits</u> Combination of impacts from options 3(i) to 3(iii) <u>Costs</u> Combination of impacts from options 3(i) to 3(iii)	<u>Benefits</u> Combination of impacts from options 3(i) to 3(iii) <u>Costs</u> Combination of impacts from options 3(i) to 3(iii)	**Net benefit** As with option 3(ii), option 3 (iv) would exempt public institutions from the limit on upfront tuition fees and would therefore also involve a level of market distortion. Despite this, option 3(iv) remains as the most competition neutral suboption within option 3. This is because it extends the current exemption on the 50 per cent limit to the most course enrolments across the sectors. Option 3(iv) would also remove the requirement for all courses under 52 weeks. Together, the proposed changes could impact on up to 191,700 enrolments on average per annum. This would represent around 80 per cent of course enrolments greater than 24 weeks that are currently not exempt. Because of this, option 3(iv) is likely to have the biggest impact on risk and the TPS of all option 3 variants.

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	**Students**	**Government**	
Option 4(i) - Preferred Variant of option 3(i) which would relax the 50 per cent limit on upfront tuition payments on all courses under 25 weeks in duration,	<u>Benefits</u> Same as option 3(i)	<u>Benefits</u> Same as option 3(i)	<u>Benefits</u> Same as option 3(i)	**Net benefit** Option 4(i) is a variant of option 3(i), proposing to extend the exemption to the 50 per cent limit by one week. The inclusion of this option is in response to a request from English Australia that the length of courses exempt should be extended to at least 25 or 30 weeks. ELICOS providers indicated that there were administrative issues associated with having to invoice students more than once, and that a number of ELICOS courses are offered at five-week intervals. The option strikes the most reasonable balance between addressing stakeholder concerns and minimising risk. That is, option 4(i): • allows greater student choice • removes the highest regulatory cost burden (designated account) • better reflects the structure of some CRICOS-registered courses • maintains sufficient safeguards to support the TPS •
	<u>Costs</u> Same as option 3(i)	<u>Costs</u> Same as option 3(i))	<u>Costs</u> Same as option 3(i)	

Option	Impacts, costs and benefits			Overall impacts
	Education institutions	Students	Government	
Option 4(ii) Variant of option 3(i) which would relax the 50 per cent limit on upfront tuition payments on all courses under 30 weeks in duration,	Benefits Same as option 3(i)	Benefits Same as option 3(i)	Benefits Same as option 3(i)	**Net benefit** Option 4(ii) is a variant of option 3(i), proposing to extend the exemption to the 50 per cent limit by six weeks. While raising the exemption by six weeks (to 30 weeks) translates into higher regulatory savings, the increase in risk to the sector is likely to outweigh any benefits under option 4(ii). This is particularly the case because option 4(ii) would impact on a potentially greater proportion of course enrolments from the VET and ELICOS sectors, which are generally made up of a higher proportion of private providers. Any change in risk from further relaxing the exemption on the 50 per cent limit also needs to be considered in the context of removing the designated account requirement that currently applies to private providers.
	Costs Same as option 3(i)	Costs Same as option 3(i)	Costs Same as option 3(i)	

Attachment B – ESOS review Stakeholder submissions received October – November 2014

ESOS review Stakeholder submissions received October – November 2014
1. Australian Council of Private Education and Training (ACPET) 2. Australian Government Schools International (AGSI) 3. Allianz Global Assistance 4. Australian Skills Quality Authority (ASQA) 5. Association of Australian Education Representative in India (AAERI) 6. Association of Independent Schools of SA (AISSA) 7. Australian Homestay Network 8. Board of Studies, Teaching and Educational Standards (BOSTES) 9. Box Hill Institute 10. Central Queensland University 11. Charles Darwin University (CDU) 12. Charles Sturt University (CSU) 13. Council of International Students Australia (CISA) 14. Committee for Melbourne 15. Council of Private Higher Education (COPHE) 16. Deakin University 17. Department of Immigration and Border Protection (DIBP) 18. DIBP NSW 19. Edith Cowan University (ECU) 20. Eltham College 21. English Australia (EA) 22. Federation University 23. Flight Training Adelaide (FTA) 24. Flinders University 25. Future Academy 26. Griffith University 27. Group of Eight 28. Higher Education Standards Panel (HESP) 29. International Education Association of Australia (IEAA) 30. Innovative Research Universities (IRU) 31. InterCultural Education Today (ICET) 32. International Education Services (IES) 33. International Student Experience Association (ISEA) 34. ISA Guardian and Welfare Services 35. ISANA 36. Independent Schools Council of Australia (ISCA) 37. James Cook University

ESOS review
Stakeholder submissions received
October – November 2014

38. Laureate Australia
39. Melbourne Polytechnic
40. Monash College
41. Monash University
42. National Catholic Education Commission
43. National ELT Accreditation Scheme (NEAS)
44. National Tertiary Education Union (NTEU)
45. Navitas
46. NSW Government & TAFE NSW
47. NT Minister for Education
48. Office of the Training Advocate
49. Overseas Students Ombudsman (OSO)
50. Ozford College
51. Pacific College of Technology
52. Phoenix Academy
53. Department of Education, Training and Employment, Queensland Government
54. Study Group Australia
55. TAFE Directors Australia (TDA)
56. TAFE Queensland
57. TAFE SA
58. Tasmanian Government education providers
59. Tertiary Education Quality Standards Agency (TEQSA)
60. Tuition Protection Service/TPS actuary
61. Universities Australia (UA)
62. University of New South Wales (UNSW)
63. University of Newcastle
64. University of Notre Dame
65. University of Southern Queensland
66. University of Sydney
67. University of Wollongong
68. Victorian Government and Victorian Registration and Qualifications Authority (VRQA)
69. Vision International
70. WH Jones