

Contents

1	Introduction	1
1.1	Purpose	1
1.2	The Baild Review	1
1.3	Scope of this Regulatory Impact Statement	1
2	Tuition Protection Service (TPS)	2
2.1	Statement of the Problem	2
2.2	Objectives of Government Action	2
2.3	Options	2
2.4	Impacts of the TPS	2
2.5	Summary benefits compared to status quo	2
3	Limiting pre-paid course fees	3
3.1	Statement of the Problem	3
3.2	Estimate of proportion of providers who collect full pre-paid fees	3
3.3	Objectives of Government Action	3
3.4	Options	3
3.5	Maintain the status quo - no limit to pre-paid fees	3
3.6	Objectives of Government Action	3
3.7	Impact	3
3.8	Summary benefits compared to status quo	3
4	Introducing partial refunds	4
4.1	Statement of the Problem	4
4.2	Objectives of Government Action	4
4.3	Options	4
4.4	Impact	4
4.5	Summary benefits compared to status quo	4
5	Strengthening record keeping requirements	5
5.1	Statement of the Problem	5
5.2	Current requirements	5
5.3	Objectives of Government Action	5
5.4	Options	5
5.5	Impact	5
5.6	Summary benefits compared to status quo	5
6	National registration	6
6.1	Statement of the Problem	6
6.2	Objectives of Government Action	6
6.3	Options	6
6.4	Impact	6
6.5	Summary benefits compared to status quo	6
7	Revisions to the National Code	7
7.1	Statement of problem	7
7.2	Objectives of Government Action	7
7.3	Options	7
7.4	Impact analysis for preferred option	7
7.5	Summary benefits compared to status quo	7
8	Consultation and preferred option	8
8.1	Consultation feedback	8
9	Preferred option	9
10	Implementation and Review	10
10.1	Risks for implementation	10
10.2	Review	10
Appendix A	Background on the ESOS legislative framework	11
Appendix B	Related initiatives	12
Appendix C	The current tuition protection framework	13
Appendix D	Outline of the proposed TPS model	14

27 January 2012

## Contents

<b>1. Introduction</b>	<b>3</b>
1.1 Purpose	3
1.2 The Baird Review	3
1.3 Scope of this Regulatory Impact Statement	4
<b>2 Tuition Protection Service (TPS)</b>	<b>6</b>
2.1 Statement of the Problem	6
2.2 Objectives of Government Action	6
2.3 Options	7
2.4 Impacts of the TPS	8
2.5 Summary benefits compared to status quo	12
<b>3 Limiting pre-paid course fees</b>	<b>13</b>
3.1 Statement of the Problem	13
Estimate of proportion of providers who collect full prepaid fees	14
3.2 Objectives	15
3.3 Options	15
Maintain the status quo - no limit to pre-paid fees	15
3.4 Objectives of Government Action	17
3.5 Impacts	17
3.6 Summary benefits compared to status quo	20
<b>4 Introducing partial refunds</b>	<b>21</b>
4.1 Statement of the Problem	21
4.2 Objectives of Government Action	21
4.3 Options	21
4.4 Impact	22
4.5 Summary benefits compared to status quo	23
<b>5 Strengthening record keeping requirements</b>	<b>24</b>
5.1 Statement of the Problem	24
5.2 Current requirements	24
5.3 Objectives of Government Action	25
5.4 Options	25
5.5 Impacts	26
5.6 Summary benefits compared to status quo	27
<b>6 National registration</b>	<b>28</b>
6.1 Statement of the Problem	28
6.2 Objectives of Government Action	28
6.3 Options	28
6.4 Impacts	29
6.5 Summary benefits compared to status quo	30
<b>7 Revisions to the National Code</b>	<b>31</b>
7.1 Statement of problem	31
7.2 Objectives of Government Action	32
7.3 Options	32
7.4 Impact analysis for preferred option	33
7.5 Summary benefits compared to status quo	35
<b>8 Consultation and preferred option</b>	<b>36</b>
8.1 Consultation feedback	36
<b>9 Preferred option</b>	<b>40</b>
<b>10 Implementation and Review</b>	<b>44</b>
10.1 Risks for implementation	44
10.2 Review	45
<b>Appendix A Background on the ESOS legislative framework</b>	<b>46</b>
<b>Appendix B Related Initiatives</b>	<b>47</b>
<b>Appendix C The current tuition protection framework</b>	<b>50</b>
<b>Appendix D Outline of the proposed TPS model</b>	<b>53</b>

# 1. Introduction

## 1.1 Purpose

This Regulatory Impact Statement (RIS) has been prepared by the Australian Government Department of Industry Innovation Science Research and Tertiary Education (DIISRTE) which is responsible for the administration of the *Education Services for Overseas Students Act 2000* (the ESOS Act) and associated legislation governing the delivery of education services to overseas students in Australia on a student visa.

The purpose of this RIS is to provide information regarding the reforms proposed in the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 (the Bill). These reforms are part of the Government response to the recommendations of the Review of the ESOS Act conducted by the Hon Bruce Baird AM (the Baird Review).

The Government decided to implement the recommendations of the Baird Review in two phases. The first tranche of legislative changes to the ESOS Act were given effect on 8 April 2011. The remainder of the recommendations have now been considered in further consultation with stakeholders and this RIS supports the implementation of this second phase response.

## 1.2 The Baird Review

The Baird Review of the ESOS legislative framework was originally planned for 2012 but was brought forward by the then Minister for Education, the Hon Julia Gillard MP, in August 2009 in response to a number of emerging issues impacting on the international education sector following a period of rapid growth and change. These included concerns about student welfare, educational quality in some areas of the sector and reports of unethical behaviour by some education providers and education agents. Background on the ESOS legislative framework is at **Appendix A**.

The Terms of Reference for the Baird Review were:

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

The Baird Review report, *Stronger, simpler, smarter ESOS: supporting international students*, was publicly released on 9 March 2010 following an extensive consultation period with a wide range of stakeholders.

The report makes 19 recommendations predominantly related to:

- improved information and support for international students
- strengthened complaints and appeals processes
- simpler and sustainable tuition protection mechanisms
- tougher entry requirements and improved risk management
- clear and objective standards, streamlined regulatory processes and greater enforcement for effective regulation of Australia's international education sector.

In releasing the report, the Minister indicated her in-principle support for a small number of recommendations to be taken forward immediately through a first tranche of legislative change, and further consultation on the remainder of the recommendations with a view to a second tranche of legislative change at a later date.

The first tranche of legislative change was passed by Parliament in March 2011 and given Royal Assent on 8 April 2011. The amendments to the ESOS Act 2000 and the *Ombudsman Act 1976* were:

- strengthening the registration requirements of education providers delivering to overseas students with a specific focus on business sustainability
- introducing a consistent risk management approach to the registration of education providers delivering to overseas students, at entry and throughout the registration period
- limiting the period of registration and allowing conditions to be placed on a provider's registration according to risk
- extending the range of non-compliant behaviour that could attract financial penalties to strengthen regulation
- publishing targets and regularly reporting on regulatory activities undertaken and
- expanding the role of the Commonwealth Ombudsman for external complaints relating to private providers.

Further consultations to inform the Government's second phase response to the Baird Review were conducted between December 2010 and March 2011.

There is broad support to create a stronger, simpler, smarter way of regulating the international education sector to ensure Australia continues to offer world-class, quality international education. Australia will benefit broadly from these measures, particularly through trade, tourism, diplomacy, government relations, productivity and social inclusion.

It is important to note that the Baird review is part of a broader suite of measures to both strengthen Australia's reputation for international education and reform regulation of Australia's education system as a whole. As the ESOS legislative framework is underpinned by regulation of quality under various education quality assurance frameworks, a number of these other measures have associated regulatory impacts which are fundamental to what might additionally be imposed through the Government's second phase response to the Baird review. Some of these measures have already been the subject of separate RIS processes. Key initiatives and their links with this RIS are outlined in **Appendix B**.

### 1.3 Scope of this Regulatory Impact Statement

This RIS is an 'implementation RIS' drafted while the Bill is before Parliament to consider the impacts of the options selected by the Government in implementing the recommendations of the Baird Review. The following Baird recommendations have been accepted by the Government and are addressed by this RIS:

#### For implementation through amendments to the ESOS Act in the current Bill

- 16 a-e to establish a single Tuition Protection Service (TPS) based on placements first with refunds as a last resort, placement with any provider, risk based contributions, providers to regularly maintain student contact details in PRISMS and other information based on risk and removes ministerial exemptions from membership of the TPS (**ref section 3, 4 and 6**).

## ESOS Tuition Protection Service (TPS) and other related measures

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- 17a only refund the portion of the course not delivered or assessed (**ref section 5**).
- 6a allowing national registration of providers with assessment of the suitability and capacity of individual courses at each location (**ref section 7**).

### For implementation through amendments to the National Code (**ref section 8**)

- 5b establishing clear, objective and enforceable standards.
- 7b ensuring the level of prescription of the standards is only that which is required to achieve the intent.
- 10 for improving student access to information about the provider, courses and support services.
- 12d expanding the requirements of student written agreements to more completely describe the course, course costs, refund provisions and transfer limitations.
- 12f prohibiting a provider from enrolling a student who is currently studying with another provider and who has yet to complete the first study period of their initial course.

## 2 Tuition Protection Service (TPS)

### 2.1 Statement of the Problem

The unprecedented growth of the international education sector in recent years has placed significant pressure on the ESOS tuition protection framework, which was originally designed to cover a smaller number of providers and a much smaller number of students.

There have been 54 provider closures over the period beginning 2008 to 31 March 2011 affecting over 13,000 students. Of these providers, only 11 have met or partially met their refund obligations to 312 students. The significant number of closures has stretched the ability of the relevant Tuition Assurance Scheme (TAS) to efficiently and effectively deal with student placement and has highlighted a number of weaknesses in the current system. For example, placements have proven difficult when: the number of students displaced by a closure saturates available placement options in a given area; when the students are close to completion and have no unpaid fees remaining; or when the cost of delivering the course is prohibitive, as with aviation courses, and TAS members are unwilling to take on displaced students without recompense.

Key concerns raised about the current tuition protection framework have been the impact on students and Australia's reputation associated with the management of students affected by provider closures; difficulty experienced by some higher risk providers in obtaining TAS membership; and failure of the ESOS Assurance Fund to cope with the unprecedented demand for refunds without significant Government financial assistance. See **Appendix C** for an outline of the current tuition protection framework and analysis of key concerns raised during consultations for the Baird Review.

### 2.2 Objectives of Government Action

The strategic objectives of Government action to reform tuition protection are to:

- ensure overseas students affected by a provider closure receive the tuition they have paid for or if that is not possible, a refund
- protect the reputation and competitiveness of Australia's international education sector by having a robust tuition protection system that attracts prospective students and effectively responds to their needs in the event of a closure
- ensure all education providers delivering to overseas students share in the costs and benefits of the tuition protection system in a way that reflects the diversity of the sector
- ensure tuition protection is able to effectively respond during periods of high demand without the need for government assistance
- ensure tuition protection is operated in a way that is transparent and accountable to providers, students and government
- simplify, streamline and strengthen the tuition protection framework overall.

Within these broader objectives, operational objectives are to:

- encourage all providers to meet their refund obligations
- improve outcomes for students affected by provider default in terms of timeliness and satisfaction with placements or refunds and active involvement of students in the process

- refund unexpended course monies only after placement options have been exhausted
- ensure there are appropriate governance and reporting structures in place to support accountability
- ensure greater consistency and objectivity in the risk assessment of providers to determine appropriate levies to enable the sustainable operation of tuition protection which is fully funded by providers
- ensure a lower regulatory burden for low risk providers
- provide opportunities and incentives for all providers to place students.

### 2.3 Options

The Baird Review considered four main options for a revised tuition protection framework: strengthening the current three tiered system; a tuition insurance scheme; mandatory provider trust accounts; and a tuition protection service (TPS). The TPS was the recommended option. A summary of the cost-benefit analysis of these options conducted by actuaries Taylor Fry is available as an appendix to the review report *Stronger, simpler, smarter ESOS: supporting international students* accessible from the AEI website at [www.aei.gov.au](http://www.aei.gov.au).

#### A Tuition Protection Service (Preferred option)

The Final Report of the Baird Review made a number of recommendations about the establishment of a single TPS to provide a more flexible and streamlined approach to student placement and refund arrangements in the case of provider default.

**Recommendation 16** of the Baird Review is for the establishment of a single TPS that:

- provides a single mechanism to place students when a provider cannot meet its refund obligations and provides refunds as a last resort
- enables placement with any appropriate provider
- makes the cost of being a member of the TPS risk-based
- requires providers to regularly maintain student contact details in Provider Registration and International Students Management System (PRISMS) and other information on a risk basis
- removes provisions for ministerial exemptions from membership of a tuition protection scheme.

The Final Review Report outlined the following principles as critical in underpinning future tuition protection arrangements:

- seamless placement of students
- refunds are provided as a last resort
- all registered providers share the burden of placing students
- the cost of tuition protection needs to be risk-based
- flexibility to scale up or down the tuition protection arrangements as the need arises
- streamlined, cost-effective and sustainable tuition protection into the future.

The TPS model outlined in **Appendix D** is based on this recommendation and on feedback from the sector. Under this option it is proposed a new TPS be established as a single mechanism to place students when a provider cannot meet its obligations in the case of provider default, with unexpended course monies (i.e. tuition the student has

paid for but has not been delivered by the provider) to be refunded to affected students as a last resort. This will replace the current combination of TAS and the ESOS Assurance Fund.

The TPS is a framework for an overall system of tuition protection made up of a number of elements:

- a statutorily appointed TPS Director who will oversee the operation of the TPS framework and responsibility for the determination of the annual risk based TPS Levy on all providers
- a TPS Advisory Board with industry, government and expert representation to advise the TPS Director in setting the TPS levy
- a Secretariat within DIISRTE to provide administrative support to the TPS Director
- the Overseas Students Tuition Fund (OSTF)
- an online information and placement service for overseas students
- the ability of the TPS Director to contract a service provider to manage the day to day operation of the TPS.

### 2.4 Impacts of the TPS

#### *Benefits to students*

This model is still based on a first layer of tuition protection where defaulting providers have an obligation to place or refund students. The proposed provider obligation period is set at 14 days from the day of provider default.

Once referred to the TPA, as placement and refund will be of similar cost to the OSTF, the TPS Director will retain the flexibility to ensure more timely refunds can be made where the student cannot find a placement. Students will need to continue to comply with their student visa conditions although generally extensions are made in the event of a closure.

Currently, students have their placement activity managed for them by the TAS or failing that, by the Fund Manager, with little or no voice in how that placement might be managed. The proposed TPS model will allow greater student choice, control and responsibility in the placement process within a 30 day timeframe through the on-line facility.

- The TPS Director will calculate the student's unused tuition and advise the student of that amount.
- Providers will be able to update the on-line facility on available courses, places and costs and directly liaise with the student.

A more direct relationship in placements between affected students and prospective providers is designed to deliver a more efficient and effective outcome for students and the sector as a whole. Students should benefit from more timely placements or refunds where necessary, improved information, improved record keeping and less double-handling.

#### *Costs to students*

Students will continue to be assisted through the process as necessary but under the proposed model it is expected there will be greater clarity in terms of the reasonable expectations arising through the placement process.

Students will have to meet any extra costs associated with a higher value course and will only receive refunds for unexpended tuition amounts, as opposed to a refund calculated by the current Fund Manager, which is generally a partial refund but may be more than the proposed refunds of only the unexpended portion of prepaid fees. Some students may prefer to have a placement negotiated entirely on their behalf. There may also be rare occasions



where a student affected by a closure is close to the end of their course for which no alternative place is possible and a partial refund is poor compensation for the lack of a qualification after a period of study. Such cases will need to be managed by the TPS Director on a case-by-case basis in accordance with the legislation.

### ***Benefits to providers***

The proposed TPS will impact on all CRICOS providers (currently approximately 1200).

Importantly, there will be enhanced reputational benefits for all providers across the sector in implementing a stronger tuition protection framework as well as increased opportunities for public providers to benefit from ongoing fees by placing students affected by a closure. Providers who place students will now also receive the equivalent of the students' unexpended prepaid tuition fees as a financial incentive to take students. There will be no compulsory placements and providers will not be obligated to take on students that do not meet their entry requirements or who are unable to pay any difference in fees.

The TPS will modernise the placement activity as well as streamlining the placement function allowing students to choose a provider and create a direct relationship with that provider. This will remove third party intervention which comes with additional administration costs that ultimately need to be reflected in the tuition protection levy on providers.

All providers will benefit from a reduced requirement to refund only the unexpended portion of prepaid tuition fees rather than the full amount of prepaid fees (see section 4). This will make it easier for providers to manage closures or partial closures with their reputation intact should they wish to re-establish as a provider at a later date. In order to calculate partial refunds accurately, however, existing requirements for providers to keep up to date records in relation to course progress and attainment will be strengthened and monitored more closely (see section 5 on strengthening record keeping).

Private providers currently required to be members of a TAS (approximately 700 providers) will no longer be required under the ESOS Act to separately pay for and meet the conditions of membership imposed by the TAS administrator. They will have one fee which will vary according to the risk profile of the provider. At a minimum this will be a monetary saving approximately of between \$500 and \$20,000 for TAS membership.

Providers who have until now been unable or have had difficulty obtaining TAS coverage will benefit from the implementation of this TPS proposal that is inclusive of all providers. In order to obtain TAS coverage some high risk providers have had to pay for additional assurance, such as partial bank guarantees, although this is commercial in confidence information and unable to be quantified. Similarly difficult to quantify, some providers would have incurred costs (e.g. for rent and wages) related to delays in obtaining CRICOS registration because they have had difficulty obtaining TAS coverage for courses and may have had additional regulatory and cost burden to apply for an exemption under the ESOS regulations (e.g. submitting financial statements, indemnity agreements or payment in arrears agreements with students). Approximately 44 providers currently have exemptions, including 11 ministerial exemptions.

### ***Cost to providers***

As the TPS Levy, and the risk based component of that Levy, will be set annually by the TPS Director it is difficult to quantify what that Levy will be or how many providers will be affected by a higher risk premium. The revised governance arrangements which provide for a statutorily independent TPS Director to make and publish an annual

## ESOS Tuition Protection Service (TPS) and other related measures

decision in relation to the TPS Levy having regard to a range of advice, including from sector representatives, will allow for a more balanced approach to the setting of the Levy.

If providers are assessed as having a higher level risk profile, they may have to pay an additional risk based charge noting that under the existing arrangements they may also have had to meet onerous TAS or exemption requirements in order to obtain and then maintain CRICOS registration. The criteria for the risk rated component of the TPS Levy will be set by the TPS Director on advice from the Advisory Board and these criteria will be transparent and consistently applied. That means that all providers will have all criteria under the risk rated premium apply to them equally. It is envisaged that each provider will have a different risk rated premium component each year as individual business circumstances vary and change. This will mean a more streamlined and simpler process for providers.

The table below based on actuarial advice shows the estimated average amounts on a per provider basis, broken down by sub-sector in the industry for each component of the TPS Levy in the first year and compared to the existing annual contribution to the Assurance Fund. It must be noted that the Special levy amount is not included in this table and the table represents all providers eligible under the TPS whereas currently approximately 46 per cent of the sector were exempt from making contributions to the Fund.

All Providers	Number	ESOS Fund contribution	Base fee	Admin fee	Risk Premium	Total TPS
ELICOS	115	\$4,769	\$1,247	\$519	\$3,829	\$5,595
Higher Education	148	\$5,043	\$8,106	\$3,262	\$3,968	\$15,337
Others	22	\$2,753	\$532	\$233	\$1,613	\$2,377
Schools	446	\$15	\$359	\$161	\$14	\$534
VET	484	\$3,553	\$1,628	\$671	\$3,616	\$5,915
All	1215	\$2,536	\$1,895	\$777	\$2,321	\$4,993
Total Fees		\$3,081,808	\$2,302,828	\$944,331	\$2,819,616	\$6,066,775

There are several providers, mainly in the public sector, that are exempt from the requirements to belong to a TAS and do not currently make any contribution to the Fund. Under the proposed TPS, these providers would now be required to make a contribution to the OSTF. For the 2011 contribution year, approximately 651 providers were eligible to make a contribution to the Fund while 564 providers were exempt from making a contribution. Under the proposed TPS arrangements, however, while all public providers will be required to pay the base contribution they will be exempt from paying the risk rated premium component. Public providers do not pose a refund risk and therefore may, on principle, prefer the existing exemptions from contributing to tuition protection requirements to be maintained. This has been considered and is discussed above.

It should be noted that through a separate measure announced in the 2011 Budget, the majority of these providers will receive a reduction in the Annual Registration Charge (ARC) as a result of the Government's decision to restructure and rebase that Charge. Charges for providers will be more consistent with risk. Low risk providers will be paying less in total ARC and TPS levy charges than currently. The majority of universities for example, will receive a reduction in the ARC ranging from just over \$500 per annum to as much as \$280,000 per annum while a minority might expect an increase in ARC ranging from approximately \$700 to approximately \$16,000 in the first year. In the VET sector, the majority of TAFEs are likely to experience a reduction in the ARC ranging between \$50

and up to \$104,000 in the first year while a small number can expect to see an increase in the ARC of between \$300 and \$900 in the first year.

Across other sectors the impact of these changes to the tuition protection framework on providers is varied.

While there is likely to be a small number of public institutions experiencing increased overall charging, it is estimated there will be more who experience financial relief. It is estimated that across the whole sector in the first year of the TPS Levy, a maximum individual provider amount of approximately \$184,000 and a minimum individual provider amount of approximately \$300 will be collected through the TPS Levy for the OSTF. Among the ELICOS providers in the sector as an example, it is expected that TPS Levy amounts will range between \$300 and approximately \$91,000 in the first year. For those private higher education providers who are currently required to make contributions to the Fund, it is expected that the TPS Levy amounts will range between \$300 and up to \$184,000 (the upper end for all providers) in the first year. For the private VET providers who are eligible to make contributions to the Fund, it is expected that the TPS Levy amounts will range between \$300 and up to \$150,000. In the schools sector it is expected that the TPS Levy amounts will range between \$0 and up to \$18,700; while for those operating in other sub-sectors (such as foundation courses), it is expected that the TPS Levy amounts will range between \$300 and up to \$33,400.

### ***Benefits to TAS operators***

1. There are only six TAS operators. Bilateral consultations have been held with the main TAS operators both through the Baird Review consultation process and in further refining the TPS model. In the most recent consultation round English Australia and the Western Australian Private Education and Training Industry Association (WAPETIA) have indicated that they do not wish to continue as a TAS operator and welcome the proposed TPS. The Council of Private Higher Education (COPHE) was advised about the likelihood of reform to existing tuition protection arrangements when applying to become a TAS provider in 2010. The Melbourne College of Divinity and Sydney College of Divinity are both education providers in their own right and do not derive income from their TAS arrangement which exists only to meet a specific need for the unique courses they offer. As a universal system the TPS will now be able to cover these courses.

The proposed governance arrangements coupled with the proposed selection of a consultant or service provider accountable to the TPS Director through a transparent tender process to assist in the management of the online placement system responds to consultation feedback from peak organisations calling for ongoing industry involvement in placements in recognition of sector expertise.

### ***Costs to TAS operators***

The removal of the existing three-layer system has a significant cost impact on the larger existing TAS operators. The removal of the requirement for providers to belong to a TAS will effectively remove a compulsory contribution revenue stream from TAS operators, most notably the Australian Council of Private Education and Training (ACPET) where TAS forms a significant part of ACPET's business model and ACPET membership is a pre-requisite for TAS membership. The income derived from this business and staff employed to operate the TAS is commercial-in-confidence information and unable to be quantified. ACPET has other sources of income, for example, as a peak body, through its annual conference, and as a TAS provider for domestic students.

### ***Benefits to Government***

Under the existing arrangements, the ESOS Assurance Fund is unsustainable and has not served the best interests of the industry as a whole. This has been compounded by the resulting erosion of confidence in the sectors' ability

to meet ESOS obligations which is detrimental to both the reputation of Australia's international education sector and to the Government.

The Government will therefore benefit from improved sustainability and accountability mechanisms built into the proposed TPS model.

The appointment of the TPS Director will provide a direct line of accountability to the Minister for the efficient and effective operation of the TPS and use of funds in accordance with the *Financial Management Accountability Act 1997*. The appointment of Board members will bring balance to representation at more visible and accountable levels in the tuition protection framework.

With all providers registered on the CRICOS required to pay a TPS Levy on 1 January each year which incorporates elements of risk, the pool of funds available to meet calls on the OSTF is forecast, over the longer term, to be more sustainable without further financial assistance from Government.

### **Costs to Government**

There are likely to be some transition costs between the current system of tuition protection and the proposed TPS. These transition costs will encompass the balance of the 2012 Assurance Fund collection, the outstanding repayment amounts from the \$5.1m loan to the Fund, the unexpended portion (if any) of the \$25m conditional allocation made available to the Fund by Government, any closures in the intervening period resulting on calls to the Fund and proposed \$5m in seed funding for the new TPS. An allocation of \$3.25m for the development of the on-line facility was announced in the 2011-2012 Federal Budget.

### **2.5 Summary benefits compared to status quo**

The TPS will provide for a more responsive tuition protection framework, fully industry funded designed for a diverse sector and a large number of students. Unlike the current framework where a large number of providers are exempt from participating, all providers will contribute according to risk and this will ensure an adequate pool of placement options and funds to place or refund affected students. The proposed governance arrangements for the TPS will provide greater accountability to Government for sustainability without the need for further Government funding than is currently achieved with multiple privately run TAS providers and a contracted Fund Manager arrangement. No provider will be refused coverage and so all overseas students on a student visa will be protected. There will be incentives for providers to place affected students and using up-to-date technology, students will be assisted in a timely manner which gives them some choice and responsibility in the process.

### 3 Limiting pre-paid course fees

#### 3.1 Statement of the Problem

The problem to be addressed is that students who have paid large amounts of pre-paid fees upfront may subsequently have to be refunded, either by the provider or through the TPS if the provider is unable to deliver the course or the student is not approved for a student visa. The greater the amount of pre-paid fees the greater likelihood that a provider will not be able to meet their refund obligations. This can be a source of delay in receiving a refund for the student and places pressure on the tuition protection arrangements under ESOS, currently the ESOS Assurance Fund. The ability to collect large amounts of pre-paid fees also encourages poor business practices with some providers starting up with little capital to fall back on should there be a down-turn in enrolments or an increase in visa refusals. Further, once all fees are paid there is little incentive for providers to ensure students continue to be satisfied with the service being provided and this can undermine quality.

Against this, the provider has a number of upfront costs associated with preparing for the delivery of a course (e.g. rent, teaching resources and staffing) as well as the initial investment in recruitment before the student commences. Providers are also concerned about the ability of students, once onshore, to pay ongoing fees to complete the course given work restrictions conditional to a student visa. In assessing a visa application, the Department of Immigration and Citizenship (DIAC) takes into account the size of the initial pre-paid financial commitment from overseas students as evidence of financial resources to support the student when in Australia.

The problem therefore is achieving a balance between the need to protect student fees and ensure timely refunds if necessary and at the same time give providers some certainty of income and ensure overseas students have sufficient resources to meet ongoing costs while studying in Australia.

The Baird Review made a number of recommendations regarding the need to strengthen consumer protection arrangements through developing a more sustainable and effective system. This is in light of a number of recent provider closures which have put considerable pressure on the current system. In 43 cases between 2008 and 2011, providers have not been able to fulfil their responsibilities in providing refunds to students. This has resulted in some students experiencing lengthy delays in receiving a refund from the provider or being referred to the Fund.

The Government does not set course fees or the amount that may be collected in advance. This is a matter set out in the written agreement between the provider and student. Providers are able to collect course fees prior to study commencing and from students who have yet to have their visa approved. Upfront fees can be for specified study periods or for the entire course. This can involve considerable sums of money.

At present, providers have the capacity to utilise these funds prior to a student commencing, however, if a student's visa is not approved or the provider is unable to provide the course, these funds must be refunded in full. For the period June 2010 to May 2011 for example approximately 14,000 student visa applications offshore were refused and a further approximately 2,000 applications were withdrawn.

Some providers may rely heavily upon prepaid course fees from students who have not yet arrived in Australia and perhaps not even had their visa approved, to manage day-to-day operating costs. This raises concerns about the provider's financial viability and business sustainability, particularly in the context of the recent decline in student numbers and increases in visa refusals due to new visa integrity measures (student visa grants in the year to the

## ESOS Tuition Protection Service (TPS) and other related measures

end of March 2011 showed an overall decrease of 11.1 per cent compared to the same period in 2009 – 10)<sup>1</sup>. Providers heavily reliant on enrolments from some parts of India, for example, may have been required to repay large amounts of fees which may have already been spent and this may have contributed to some of the closures in recent years. Additionally, some failing providers may actively recruit students in an attempt to remain solvent. These factors can add significantly to the number of students owed a refund and the associated reputational damage when a provider closes.

### Estimate of proportion of providers who collect full prepaid fees

When a confirmation of enrolment is made in the PRISMS database, the provider records the estimate of total course costs and any initial prepaid fees taken. A student cannot apply for a student visa until they have received this confirmation of enrolment. Analysis of this information calculated against total course length provides an indication of the number of enrolments where students have prepaid more than one 24 week study period in advance as set out in the following table.

Sample indicator of prepaid fees by enrolments*				
Sector	Significant prepayment more than one semester	Partial prepayment less than one semester	Total number of enrolments	Ratio
<b>All ELICOS</b>	<b>2873</b>	<b>3671</b>	<b>6544</b>	<b>44%</b>
Private	2666	3213	5879	45%
Public	207	458	665	31%
<b>HIGHER EDUCATION</b>	<b>9677</b>	<b>225875</b>	<b>235552</b>	<b>4%</b>
Private	1691	22812	24503	7%
Public	7986	203063	211049	4%
<b>Other private</b>	<b>421</b>	<b>1682</b>	<b>2103</b>	<b>20%</b>
<b>Schools</b>	<b>7473</b>	<b>12904</b>	<b>20377</b>	<b>37%</b>
Private	3031	7167	10198	30%
Public	4442	5737	10179	44%
<b>VET</b>	<b>4822</b>	<b>88940</b>	<b>93762</b>	<b>5%</b>
Private	3225	71847	75072	4%
Public	1597	17093	18690	9%
<b>Grand Total</b>	<b>25266</b>	<b>333072</b>	<b>358338</b>	<b>7%</b>

\*excluding courses less than 24 weeks duration

<sup>1</sup> Australian Government Department of Immigration and Citizenship, *Student Visa Quarterly Report 31 March 2011*

### 3.2 Objectives

The overarching objective of this proposal is to strengthen consumer protection arrangements. More specifically the objectives are to:

- ensure providers are better able to meet their refund obligations to students
- improve outcomes for students upon provider default
- encourage providers to establish sustainable business models
- reduce the potential refund liability on the tuition protection arrangements under ESOS – currently the ESOS Assurance Fund
- continue to support the DIAC visa application assessment process.

### 3.3 Options

#### **Maintain the status quo - no limit to pre-paid fees**

The option of maintaining the status quo, of having no limit on prepaid fees is not supported. This is because of the problems associated with the collection of large amounts of pre-paid fees upfront. It is expected that the issue of high refund liabilities being passed onto the tuition protection arrangements under ESOS and associated timeliness issues in students receiving refunds owing will continue. The threats to the sustainability of the TPS are exacerbated by high refund liabilities.

#### **Limit the collection of pre-paid course fees to only one study period in advance (preferred option)**

Complements Baird Recommendation 16 for a sustainable tuition protection system

The Bill limits the collection of pre-paid course fees to allow providers to collect no more than one study period in advance. Providers will only be able to collect fees for one study period at a time and a maximum of 50 per cent of total course fees in the first study period (except for courses less than 24 weeks where collecting 100 per cent of fees upfront is possible). Providers will be required to define the length of each study period for a course, generally to reflect units of academic attainment, such as a semester. However, because of the diversity across sectors the study period is not always obvious (e.g. English language courses). It is therefore proposed that study periods must be a maximum of 24 weeks which is the average of a 6 month semester. Following consultation with English Australia the proposed study period was increased from 20 weeks to 24 weeks to better accommodate short courses. Anything longer than this would significantly dilute the effectiveness of the proposed measure. By way of example, the closure of a large multi-jurisdictional ELICOS provider in 2010 due to the business decision of a foreign owner affected 2,000 students, most of whom had paid full fees upfront amounting to a total refund liability of \$11 million. If these controls had been in place, this would have significantly reduced the potential refund liability.

A study period of up to 24 weeks could be the only study period and it would then be appropriate for the entire fees to be collected. A study period could also include more than one short course as long as together they still fall within a 24 week period. The study periods and a schedule of fees payable would need to be outlined in the agreement the provider is already required to have in place with each student under the ESOS legislation. Currently that agreement must identify all course costs and refund policies. In summary, the provider would have the flexibility to determine the study period and the fees associated with each study period within two key parameters. These are that the study period is no more than 24 weeks and that the fees for the initial study period

## ESOS Tuition Protection Service (TPS) and other related measures

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are no more than 50 per cent of the total course cost. This is to give sufficient business flexibility and better secure the commitment of the student.

This means, for example, a student enrolled in a three year degree course with 6 semesters costing \$50,000 may be asked to pay \$25,000 for the first semester on enrolment with \$25,000 distributed over the remaining semesters. This is considered a generous upfront amount which may be taken at any time before a student commences, generally on enrolment at the visa application stage. It is therefore proposed that providers are restricted in taking subsequent prepayments until 2 weeks before each successive study period. This is to prevent providers from undermining the policy objective of the measure by requiring the bulk of the remaining fees to be paid as soon as the student commences study.

### **A requirement to place the initial study period fees into a designated account (preferred option)**

Complements Baird **Recommendation 16** for a sustainable tuition protection system

The Bill requires that all providers not in receipt of recurrent government funding place pre-paid course fees for the first study period into a designated account which can only be drawn down when the student's first study period begins. Providers must establish a mechanism for keeping pre-paid fees separate to day-to-day operating expense accounts, so that if a refund is payable before the student commences, the refund can be made in full and in a timely way without impact on the financial operations of the business or recourse to the tuition protection arrangements under ESOS.

Initial pre-paid course fees held in this designated account will not be available for the payment of debts of the provider or any of its high managerial agents, including if the provider is under administration. A provider must not mix pre-paid course fees held in a designated account with other money. Strong penalties would be imposed for non-compliance with this requirement. To minimise the regulatory burden, no routine regular reporting on this requirement by the provider is envisaged, rather providers will only be required to demonstrate maintenance of the designated accounts on request by the relevant regulator.

Providers will be required to define the length of the initial study period for a course in the written agreement with the student. It is proposed that the initial study period be a maximum of 24 weeks. This will also satisfy a requirement related to student transfers as outlined in section 8.

This measure will operate in conjunction with the measure to limit prepaid fees as outlined in section 4.3.2. Non-exempt providers will be required to set up a separate account and keep initial pre-paid fees received from students who have not yet commenced their study (i.e. mainly those who are still offshore and may be waiting for their visa to be approved and travel plans finalised) in that account. Once the student arrives and commences study the provider may transfer the money out of that account. All publicly funded providers, which are of lower risk of not refunding students, will be exempt from this requirement. All other providers will be required to demonstrate at any time on request that the amount held in the account is sufficient to refund all initial pre-paid fees for enrolled overseas students not commenced. A sanction would apply for non-compliance with this requirement. In the event of a provider closure, the money held in this account would only be able to be used by the administrator to provide refunds to non-commenced students and not for the discharge of any other liabilities.



### 3.4 Objectives of Government Action

The objective sought by the combined proposal to limit pre-paid fees to no more than one study period and introduce a requirement on non-exempt providers to keep initial pre-paid fees in a designated account is to better protect a student's pre-paid fees, reduce pressure on the TPS and encourage providers to establish sustainable business models.

There are several reasons for including all providers, including public providers in the proposed requirement to limit prepaid fees to one study period.

- The measure complements the TPS where the review recommended approach is for a universal system to ensure a robust model that supports the reputation and competitiveness of Australia's international education.
- Taking full fees up front is at odds with reasonable business transactions where the consumer pays in instalments as they continue to be satisfied with the quality of the service being delivered.
- Other than for courses of less than 6 months durations, taking full fees in advance is most common for ELICOS, Foundation programs and school courses which means that the majority of providers should have financial and administrative systems in place to manage more than one collection of fees.
- Limiting pre-paid fees is consistent with strengthened registration criteria introduced in March 2010 and April 2011 requiring increased scrutiny of the business sustainability of providers.

### 3.5 Impacts

#### ***Benefits to Providers***

As providers will only be able to collect fees for one study period in advance and (if non-exempt) keep initial fees separate, should the student's visa not be approved or the provider defaults, they will not have to refund large amounts of money to the students and should be able to make refunds readily. Additionally, as a system of regular payments should be more manageable for students, there may be increased enrolments, improvements in student attendance and a reduction in student debt as a result of this measure.

Providers will continue to have business flexibility and be able to secure a significant financial commitment from students in that they will be allowed to take up to 50 per cent of total fees in the initial study period with no restrictions on when this may be taken prior to the student commencing.

In 2010 the Victorian Registration and Qualifications Authority (VRQA) required a number of Victorian private CRICOS registered RTOS (approximately 60) to establish and regularly audit on a legally constituted trust account for initial pre-paid fees from overseas students to meet new AQTF financial requirements introduced in July 2010. Feedback received from some of these providers has been that having this level of protection on the fees gave them a marketing benefit in a time of declining enrolments and media reports about provider closures.

#### ***Costs to providers***

All providers would have some administrative costs associated with business adjustments to limit prepaid fees, such as extra invoicing for the proportion of students currently required to pay full upfront fees and changes to student information and written agreements.

## ESOS Tuition Protection Service (TPS) and other related measures

Given the variation in provider administrative and financial systems and current policies for invoicing students it is difficult to estimate the costs for a provider to comply with both the pre-paid fees and designated account requirements. Obviously too, the actual costs will depend on the number of overseas students enrolled with a provider and proportional to the ratios outlined in the table earlier in section 3.1 . The proposal has been costed in two parts but recognises that there is an overlap in administrative costs related to set up in terms of adjustments to internal policies and student written agreements.

### Limiting the collection of pre-paid fees

The administrative cost on providers to implement this measure is estimated to be one administration staff member for one week for all providers to cover editing any electronic material for staff and students related to the way fees are collected and managed, modifying administrative processes to implement the change and communicating this change to all staff and existing students.

Ongoing costs will relate to tailoring individual student agreements and extra resources to send out additional invoices and reminder notices for the 7 per cent of all students that currently pay greater than one semester in fees. This is estimated to be one administration staff member for 2 hours per week ongoing.

To get an average per provider figure the ratio of students that pay more than the first semester is calculated against the number of providers in that sector as follows:

- 37% of students across 446 schools = 165 schools
- 44% of 115 ELICOS = approximately 51 ELICOS providers
- 4% of 148 higher education providers = approximately 6 providers
- 5% of 484 VET providers = approximately 24 providers
- 20% of other private providers = approximately 4 providers

It is assumed therefore that the equivalent of 250 providers will have an ongoing cost of 2 hours administration time. A summary of the Office of Best Practice Regulation (OBPR) Business Cost Calculator estimate of these costs is below:

Pre-paid fees and regular fee collection		
	Per business	Total cost for all businesses
Start up cost (one off) 1200 providers	\$1,125	\$1.35 million
Ongoing compliance cost per year	\$1,400	\$350,000

In response to consultation feedback outlined above, it is possible that, together with proposed changes to simplify student transfers outlined in another section, students will feel less committed financially to a provider and there may be an increase in poaching behaviour by onshore agents and the number of students choosing to transfer between providers in search of cheaper fees. It is also possible that there may be an increase in student debt or late payment of fees. These, however, may be considered routine matters in a competitive market and running a business. The provider has the option to cancel a student's enrolment for failure to pay fees and as this has implications for a student's visa it is a strong incentive for students to continue to pay their fees.

## ESOS Tuition Protection Service (TPS) and other related measures

### Designated accounts

To minimise unnecessary regulatory burden where possible, it is proposed that publicly funded providers at low risk of provider default or not refunding course fees be exempt from the requirement to maintain a designated account and for those that are non-exempt (approximately 660 providers) this requirement is only on the collection of the first study period tuition fees. Of this group of providers, it is likely only the smaller providers, i.e. those with less 100 overseas students, that may rely on pre-paid course fees to fund their operating costs. Approximately 400 providers fall into this category. These providers may need to ensure that they have financially viable fees structures in place and some may need to upgrade administration and management systems.

Non-exempt providers would be required to set up a designated account for all initial prepaid fees with a reputable financial institution. There may be administrative fees and charges associated with such accounts. However, these would be minor. The NAB, for example, charges around \$5 per month account keeping fees. For this analysis an average \$10 monthly fee is anticipated. Such fees would be tax deductible and offset by any interest earned on the accounts.

In addition, providers will be required to ensure sufficient working capital to meet the service delivery obligations of existing students without using the pre-paid fees of future students. This might require the provider to take out or extend a loan until such time as the income and expenditure related to delivering education services to each cohort of students is more closely aligned. Most providers have a mixture of students paying only one semester at a time and paying more than one semester at a time.

For aspiring providers, this requirement will mean that they will be unable to establish until they had secured sufficient capital. Providers will be required to produce the relevant documentation related to these accounts on request of the regulator. Non-compliant providers will be subject to significant penalties. There will be no regular reporting requirements attached to this account. Protecting the money in these accounts will rely predominantly on strict liability offences that apply to the managerial agents and the fact that the money cannot be used for the payment of other debts.

Assuming changes to student agreements and internal policies will be undertaken as part of implementing limits on pre-paid fees (costed above), additional set up costs will be incurred establishing the designated account and updating administration systems. This is estimated as 1 person for 0.5 week. Ongoing administration costs will be required for maintaining the appropriate level of funds in the account at all times. This is estimated as 1 person, 2 hours per week ongoing. Bank fees and charges, estimated at \$10 per month would also be applicable to the designated accounts. A summary of the Office of Best Practice Regulation (OBPR) Business Cost Calculator estimate of these costs is below:

Designated accounts		
	Per business	Total cost for all businesses
Start up cost 660 providers	\$540	\$356,400
Ongoing compliance cost per year 660 providers	\$3,000	\$1.98 million
Bank fees and charges per year 660 providers	\$120	\$79,200

**Impact on Students**

By only paying one study period at a time, students should be able to more easily manage their finances. The measure provides a greater security for students as they will also only be committing one study period of fees at a time. Additionally, students should be refunded any pre-paid course fees in a timely manner if their visa application is rejected or the study period fails to commence.

For example, an analysis of the refunds made for a closure affecting a large number of students in 2009 indicates that 681 or approximately 24.5 per cent of students refunded were for visa refusals. This figure does not include students who may in other circumstances have been still offshore at the time of the closure.

There should be no costs to students unless providers decide to pass on any additional administrative costs to students through fees. This would be a decision taken in a competitive market. To be approved for a student visa, students must provide evidence of sufficient funds to meet study and living costs in Australia. If students do not pay ongoing fees they risk cancellation of their enrolment and subsequently their visa. Similarly, if they do not maintain sufficient financial resources to cover their ongoing costs and have to work in excess of their allowable work hours and/or fail to attend/progress in their course then they also risk visa cancellation.

**Impact on Government**

Limiting the amount of fees that may be collected in advance at any one time and keeping initial pre-paid fees in a separate account will ensure providers or administrators are in a better position to fulfil their refund obligations to students if necessary. This will reduce the potential liability on the ESOS tuition protection arrangements and ultimately the Government if the solvency of the tuition protection refund pool is threatened.

Government will be responsible for monitoring and enforcing compliance with these new requirements as part of routine risk management and regulatory activities. No additional reporting requirements on providers have been proposed. DIAC has noted that there may be implications for student visa application processing to supplement evidence of pre-paid course fees as an indicator of a student’s commitment to studying in Australia.

**3.6 Summary benefits compared to status quo**

The preferred options for limiting pre-paid fees and designated accounts for initial prepaid fees will eliminate the practice of some providers seeking full fees upfront before any tuition has been received, provide an incentive for providers to maintain high levels of student satisfaction, better ensure students receive a timely refund if the provider fails to deliver the course as promised because the refund owing will be less and initial fees are kept separate, and this in turn will reduce the potential refund liability flowing on to the TPS.

Measure	Benefit	Cost
Limiting pre-paid fees	Reduces potential refund liability	None
Designated accounts	Ensures funds are held separately	None

### 4 Introducing partial refunds

#### 4.1 Statement of the Problem

Under the current system, in the case of provider default, providers are required to provide a full refund of all course fees paid to students. This means students, even those close to the end of their course, have an expectation of being refunded the full amount of the course fees they have paid irrespective of the cost of the remaining period of study needed to obtain their qualification. In the Baird Review consultations, many industry stakeholders argued that when a service has been received by the affected student, resulting in costs incurred by the provider and academic attainment that can be credited at another institution such an expectation by students is unreasonable. Domestic students currently have a much lower level of tuition protection.

The full refund requirement has proved a major deterrent to defaulting providers meeting their refund obligations and has encouraged many of those who have closed to close without warning and without paying refunds. In 2009-2010, 49 providers closed, with only 12 of these able or choosing to meet their obligations. Of these 49 providers, 37 closed without honouring their obligations to a total of over 11,000 students. The relevant TAS has attempted to place students but in the main, as the receiving TAS member provider does not receive any fees for placing the student, this has been a disincentive for the placement of students who have pre-paid fees for the full course. A further criticism of the TAS system has been the expectation of students or the TAS that a student enrolled in a low cost, lower quality, and often higher risk provider, may be placed at no additional cost to the student in a higher cost, higher quality provider.

In most cases, where a student is unable to be placed by the TAS, the ESOS Assurance Fund is called upon to refund these students and due to the high number of cases in recent years, the sustainability of the current tuition protection arrangements is under threat. Furthermore, under the Fund arrangements, the amount of refund is a decision of the Fund Manager and is not necessarily a full refund, even though this is often an expectation of the student. This apparent inconsistency can be a source of frustration for the student.

#### 4.2 Objectives of Government Action

The objective of Government action is to strengthen the sustainability of tuition protection arrangements in order that:

- defaulting providers are more likely to meet their refund obligations in the first instance
- students receive a timely placement, or failing that, a refund which accurately reflects the education service that has been delivered
- overseas students have realistic expectations of any refund amounts for which they may be eligible
- the overall refund demand flowing onto the tuition protection arrangements under ESOS, currently the ESOS Assurance Fund, is reduced so that the system operates more effectively, efficiently and sustainably into the future without further government financial assistance.

#### 4.3 Options

##### Limiting refunds (preferred option)

**Recommendation 17a** of the Baird Review states that the ESOS Act be amended to limit refunds paid to students to the portion of the course for which the student has paid but which has not been delivered or assessed in the

event of a provider closure. Implemented together with the proposal to limit pre-paid fees, this measure will significantly strengthen tuition protection for overseas students.

It should also be noted that the TPS model proposed in section 3 incorporates the partial refund recommendation. In addition, this model provides that when a defaulting provider fails to meet their refund obligations, the partial refund amount will be calculated and that amount will be available to place the student for placement in an alternative course in the first instance, and failing that, for a refund.

The method of calculating the refund will be a matter prescribed in a legislative instrument.

#### 4.4 Impact

##### ***Benefits to Providers***

The main benefit to providers is that they will no longer be required to refund the full amount of course fees paid to students. Combined with the proposed limits on prepaid fees, this will reduce the refund pressures on providers which sometimes trigger closures and better ensure providers are able to meet their refund obligations. Even where a business decision is made to close, providers will be in a better position to fulfil their obligations under the ESOS Act and leave the sector with their reputation intact. This will then not come against them in a fit and proper test should they decide to seek registration again in the future.

##### ***Costs to Providers***

Australia's tuition protection framework has provided a competitive advantage in the global international education market. Full refunds in the case of provider default are not provided by other countries such as New Zealand, the United States, the United Kingdom and Canada. Therefore, moving to a framework of partial refund may reduce this competitive advantage in terms of attractiveness to students. In practice, the majority of defaulting providers do not refund students and the existing Fund is not obligated to pay students a full refund.

Any concern by overseas students about not being able to claim a full refund should be more than compensated for by all the other proposed measures to strengthen the tuition protection framework. These include a TPS that prioritises timely student placements or refunds and gives students much more say in the placement process, limits on prepaid fees which reduces the amount of fees a student makes at any one time and protection initial fees in designated accounts provides added assurance to students that they will not be unduly disadvantaged if a provider defaults. Further, strengthened regulatory system overall through recent reform measures, such as re-registration should help ensure provider closures are much less likely.

The primary compliance cost to all providers (approximately 1200 providers) relates to the administrative tasks established by this proposal. These tasks include any updates to policy documentation and student written agreements which, if implemented in a package as intended, may be done at the same time as implementing the proposed limiting pre-paid fees requirement.

It will also include the need for accurate record keeping by providers of the amount of prepaid fees accepted in relation to an overseas student for a CRICOS course. It is envisaged that providers will be able to do this for all overseas students through the existing data facility used for student and provider records (PRISMS) via a single file upload for provider records to minimise administrative impost on providers. Accurate record keeping in relation to prepaid fees for each student is critical information for each provider as it is likely to affect several measures across the TPS framework, including the tuition refund or placement amount (from the provider or the OSTF) as well as

the amount under the risk component of the TPS Levy. Accurate record keeping will also help to minimise the number of student complaints and appeals related to refunds.

It is estimated therefore that additional set up costs may be in the order of 1 person for 0.5 week. Using the Business Cost Calculator this compliance costs is estimated to be around \$450 per business per annum and \$540,000 total for all businesses.

Ongoing administration will be related to the calculation of student refunds in the case of provider default where that provider meets the provider obligations for placement or refund. It is difficult to estimate these costs as it will only affect the minority of providers who default and who meet their obligations to the affected students. Any cost calculation is made more difficult by the fact that the method for the calculation is yet to be determined by the Minister in a legislative Instrument. The sector will be consulted in the development of that instrument.

### ***Impact on Students***

Due to the increased affordability of refunding students, providers may be less likely to close without warning and to teach out courses or have their closure closely managed to minimise the impact on students. Under this proposal also, students will benefit from more robust and reliable TPS. It is envisaged students are more likely to receive a timely refund from their provider as the amount for the provider to pay out will not be as significant as under the current system. These students will not experience delays due to lengthy tuition protection processes to receive a refund. It is also expected that students will benefit from the strengthened record keeping requirements associated with this measure (detailed in section 5) which will better ensure a student's statement of attainment is kept up-to-date and is accessible. Accessible records will support recognition of prior learning and timely placement and will facilitate the calculation of any refunds required.

These amendments to the ESOS legislation remove provisions for full refunds to students in the case of provider default. A small number of students who are approaching the completion of their course or who study a unique course not readily offered by other providers, may in fact be disadvantaged because even with a partial refund they may still be unable to complete the qualification they came to Australia to obtain. The legislation provides the TPS director with the capacity to pay a larger amount than the calculated refund where the student has been placed and this is in the interests of the student.

### ***Impact on Government***

By limiting the amount of refunds to the unexpended portion of pre-paid fees, this measure will reduce the potential liability on the ESOS tuition protection arrangements. Providers will be in a better position to fulfil their obligations and refund students without resorting to tuition protection measures.

The costs to government will be the normal costs associated with monitoring and enforcing compliance with refund requirements that currently apply.

## **4.5 Summary benefits compared to status quo**

Partial refunds rather than full refunds will better recognise that a provider has incurred costs in delivering even part of a course and students generally are able to receive credit for units of study completed. This should make it easier for providers to pay out refunds without triggering a closure and in turn, support the sustainability of the TPS.

### 5 Strengthening record keeping requirements

#### 5.1 Statement of the Problem

Concerns have been raised in a number of contexts, including the Baird review consultations, about poor record keeping by providers delivering education services to overseas students. In particular, recent provider closures have highlighted difficulties contacting and placing students in a timely way because the defaulting provider has failed to keep up-to-date records or the administrator has delayed releasing this information to the tuition protection operators.

Up-to-date contact information is essential in the event of a closure, and when there is a critical incident involving a student. There are significant reputational and political risks associated with any mismanagement of the welfare arrangements of overseas students under 18. Current residential address is important but could be supplemented by email and mobile phone contacts as these are often more stable and reliable as students rely on rental accommodation and move frequently. Currently many providers take a passive role in this regard and only update contact information when offered by the student.

During debate of the *ESOS Amendment Act 2010 (Re-registration and other measures)* and the associated Senate Committee Inquiry, the issue of overseas students gaining access to their academic records and recognition of prior learning was raised. This information will also be increasingly important to the calculation of unexpended pre-paid fees and timely placements under the TPS provisions of the Bill. These would see a requirement for partial rather than full refund of all pre-paid fees on a pro-rata basis and placements based on completed units of academic progress, with the equivalent of this partial refund amount used by the proposed TPS in the first instance to purchase a place for a student impacted by provider default where the provider does not meet their obligations.

Poor record keeping practices also make it difficult for enforcing provider compliance with a range of obligations, in particular, standards related to student welfare, especially young students.

#### 5.2 Current requirements

It should be noted that there are existing record-keeping requirements both in the ESOS Act and the National Code so the regulatory impact of strengthening record keeping should be minimal on providers who are already fully compliant with existing requirements.

- a. Section 21 of the ESOS Act requires a registered provider to keep records of each accepted student including each student's current residential address and any other details prescribed by the regulations, which must be retained for at least 2 years. A maximum penalty of 60 units applies for breaching Section 21.
- b. Standard 5 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code) requires the provider to advise the Department of Immigration (DIAC) as soon as possible when a student under 18 has changed living arrangements.
- c. Standard 10 and 11 of the National Code require the provider to record the course progress of each student for each unit, in accordance with documented policies and procedures, and, unless exempt, record the attendance of each student for the scheduled course. Under the ESOS Regulations 4.01, breaches of Standard 10 are punishable by a fine up to 1 penalty unit.



In the domestic sphere, currently under the AQTF, RTOs are required to keep a student records management system in place and maintain records regarding the students contact details, relevant course information and results and course progress.

### 5.3 Objectives of Government Action

The objectives of this proposal are to:

- support strengthened tuition protection arrangements for contacting students affected by a provider closure, support accurate and timely placements or the calculation of refund entitlements
- improve protection of the welfare of students, particularly those under 18 years of age
- ensure students are kept informed of course progress and to support timely identification of and intervention by the provider where a student is not making good course progress and
- improve provider business practice through improved student information systems.

### 5.4 Options

Baird review **recommendation 16d** is that ESOS be amended to establish a single TPS that requires providers to regularly maintain student contact details in PRISMS and other information on a risk basis. **Recommendation 17** is to limit refunds only to the portion of the course not delivered or assessed when the provider fails to meet their obligation which will depend on accurate records on student course progress.

#### **Obligations on providers to actively update student records in a timely way (recommended)**

While it is not reasonable to expect providers to follow up students individually to ensure contact details are always up-to-date, it is proposed that all providers be required to regularly contact all students by some general and routine mechanism to actively verify student contacts, including more enduring contacts such as mobile phone numbers and email addresses if available, and that there be penalties if a provider cannot demonstrate such routine attempts have been made to encourage students to update their contact details. This could be, for example, asking all students attending classes in the first week of each study period to check a print out of their contact information or through a student intranet system if the provider has one.

The Bill before Parliament includes specific new requirements and penalties related to ensuring academic records are kept up-to-date and the regulator (The Tertiary Education Quality and Skills Agency [TEQSA], Australian Skills Quality Authority [ASQA], DIISRTE or the relevant state or territory designated authority) may access these records at any time on request, including when a provider is under administration. This could be in the form of a routine request automated through PRISMS in a form prescribed in the regulations. Such a request would be targeted to providers who have a history of non-compliance or who are assessed as at greater risk of closure as part of risk assessment requirements introduced in the legislation in April 2011. This will encourage compliance with existing requirements and good practice in record keeping to enable the accurate calculation of refunds, recognition of prior learning and the timely placement of students in the event of a provider closure.

### 5.5 Impacts

#### ***Benefits to Providers***

Providers will benefit from improved management of student information in a number of ways. It will support smooth day-to-day operations and dealings with students, support forward planning and early detection and intervention for students who may be at risk of failure to progress. It will also help with verifying information relevant to complaints and appeals processes, enable the provider to determine the amount of a student's refund more readily and to contact students quickly when necessary.

#### ***Costs to Providers***

As all providers are currently required to maintain student contact and academic records they should have good record keeping systems in place and therefore there should be few system upgrade costs associated with this proposal. A routine mechanism for encouraging students to update their records could be linked to providers' existing processes, for example, as a part of course enrolment processes at the beginning of a study period. It is estimated that all public providers (approximately 550 providers) and most large private providers (conservative estimate of 40 of the 660 private providers) will have good systems in place to meet these requirements without additional cost.

Those providers whose record keeping processes are not currently satisfactory may have to make improvements to comply (up to approximately 620 providers). This may involve setting up processes for contacting students on a regular basis to update their contact details and updating student records at the end of each study period. The time taken will clearly depend on the number of students.

Set up costs are estimated to be two administration staff members for one week for 620 providers. Using the Business Cost Calculator this is estimated at \$1,750 per business and \$1.085 million total across 620 businesses.

Ongoing costs are estimated to be 1 administrative staff for 2.5 days a year for 620 providers. Using the Business Cost Calculator this is estimated at \$900 per business per annum and \$558,000 per annum across 620 businesses.

Providers who are identified as presenting a greater level of risk may be asked to provide the regulator with an upload of their student contact and/or specific academic records on a regular basis as a precaution in the case of potential closure (a conservative estimate of up to 50 providers at any one time may have this risk based condition imposed). Such risk management measures are consistent with provisions under a recently enacted amendment to the ESOS Act. The regulatory impost would be minimised by allowing the information to be provided as a direct download from an existing information management system to avoid any data entry into a prescribed format.

Compliance with this risk based condition is estimated to be 0.5 day twice a year for up to 50 providers. Using the Business Cost Calculator this is estimated at \$100 per business per annum and \$5000 per annum across 50 businesses. There will also be any costs associated with any sanctions (e.g. financial penalties) or conditions imposed on non-compliant providers.

#### ***Impact on Students***

Through the implementation of this proposal, students will be more easily contacted by their providers. They will be less likely to miss out on important information or opportunities and will have access to their attainment records in the event of a provider closure. Students should receive their refunds in a timely manner and experience

## ESOS Tuition Protection Service (TPS) and other related measures

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a smoother transition and recognition of prior learning process if they change providers or are placed following a closure. Under 18 year old students will benefit from the strengthened compliance around welfare arrangements.

There should be no costs to students associated with these measures. Students will be reminded of their responsibilities to notify any changes in their contact details and of possible visa implications if they fail to make satisfactory course progress.

### **Impact on Government**

The benefit to the Government is improved risk mitigation, including risk related to delays in refunding and placing students following a closure, assisting students following a critical incident or concerns about the welfare of an under 18 year old overseas student. The measure will support arrangements to limit refund, a key measure in ensuring a more robust TPS.

Minor enhancements to PRISMS may be needed to successfully implement this measure, for example, a function that enables a quarterly request to specific providers to submit student academic records and for targeted compliance activity. Funding of \$3.3 m was allocated in the 2011/2012 Federal Budget for IT enhancements to support strengthening the tuition protection arrangements under ESOS. The IT cost related to this measure, for example to contract business analysts and IT developers over an 8 month period, is broadly estimated at approximately \$250,000.

### **5.6 Summary benefits compared to status quo**

Record keeping on student contacts and academic history is an existing requirement under ESOS and other education quality regulatory frameworks, however, the preferred option as recommended by Baird will improve the timeliness and accuracy of these records and strengthen the compliance regime related to provider refund obligations and in support of the TPS and student welfare.

## 6 National registration

### 6.1 Statement of the Problem

The ESOS Act currently requires that a designated authority for a state recommend to the Secretary of DIISRTE that a provider for that state be registered to provide a specified course for that state to overseas students (subsection 9(1)). Each provider so registered is assigned a registration number in line with subsection 10(4) of the ESOS Act.

Current figures indicate that approximately 230 providers now operate across sectors and across jurisdictions. Providers may have separate registrations, i.e. separate CRICOS numbers, with a state or in several states for different operations. This practice contributes to a disjointed system for providers in that they currently experience different processes and charges at the state level and different initial and annual registration charges at the Commonwealth level. There may also be duplication in terms of registration assessments which are more global to the organisation rather than local to the courses being delivered at a particular campus. Duplicated assessments may include, for example, residency, fit and proper person tests and financial viability. In addition, multiple registrations of the same provider make it more difficult from a regulator's perspective to assess and manage risk, to track the activities of a provider nationally and to fully consider implications of regulatory decisions on overseas students enrolled with the provider.

### 6.2 Objectives of Government Action

The primary objective of this proposal is to ensure the smooth transition to national regulation through the establishment of TEQSA and ASQA. Due to some of the complexities within the current system, the secondary objectives are to reduce the regulatory burden on providers and improve risk management through greater transparency of a provider's registration on CRICOS.

The complementary Government objectives of establishing national regulators for the VET and higher education sectors is to strengthen quality of the education and training delivered across these sectors and promote streamlined and consistent regulation regardless of which state or territory the education service is delivered in.

### 6.3 Options

#### **Require national registration for all providers operating in more than one location (preferred option)**

**Recommendation 6(a)** of the Baird Review recommends that ESOS be made simpler by providing for the single, national registration of providers, with assessment of the suitability and capacity of individual courses at each location. It is proposed that there be an initial registration process and the ability to add a location to the scope of an existing registration which will be risk managed and may include all or any of the initial registration assessments at the new location. This will enable more flexibility by the regulators to reduce unnecessary regulatory burden. This will not limit the existing ability of the regulator to impose conditions or take compliance action against any aspect or all of the provider's operations in response to assessed risk or non-compliance. This would apply to all new registration applications. Existing providers with multiple registrations will be able to apply to merge registrations to the one of the registration numbers as determined by the delegate in consultation with the provider and taking into account any risk considerations. Alternatively this requirement would be grandfathered so that whenever a registration is renewed a decision will be taken to merge an existing registration with another registration of the same provider if there is more than one.

## ESOS Tuition Protection Service (TPS) and other related measures

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National registration has been recommended to better position ESOS regulation for the anticipated transfer of ESOS functions in 2012 to the national regulators currently being established for the VET and higher education sectors.

Registering providers on a national basis with a single registration for each provider will:

- enable monitoring a provider's activities nationally and in each jurisdiction
- support comprehensive risk assessment and management
- simplify the management of and correspondence with providers by the regulator
- remove unnecessary duplication and increase consistency in the treatment of providers operating in different jurisdictions
- help ensure a smooth transition of ESOS functions and support more consistent and streamlined registration and ongoing risk management approaches with domestic quality assurance arrangements under the new national regulators
- create the concept of a single provider to be accredited and regulated nationally, while retaining a suitable level of control over the operations of providers at the local level.

### 6.4 Impacts

#### *Benefit to providers*

Providers will benefit from streamlined and consistent processes. As the same legal entity they will no longer have to submit separate applications for registration with the associated charges or follow different processes by different state designated authorities every time they wish to set up in a new location. When the national regulators are established, together with this amendment, a provider should only have to apply for CRICOS registration or to increase their scope to one designated authority, although there may be situations where there is more than one designated authority as for dual sector providers. As the regulator will have all the information related to that registration, including compliance history and any recent audits, providers may not have to repeat certain processes when they apply to add a new location. Any charges that apply will relate to the one registration and will likely reflect risk factors, such as number of courses and students and transparent cost recovery principles.

ASQA has released a schedule of fees and charges for the VET which gives an indication of the differences in fees that might apply if national CRICOS registration is introduced.

- The application for CRICOS registration fee is \$640
- The CRICOS registration assessment fee for up to 2 qualifications and up to 2 sites is \$4,300 + \$375 (capped at 37,500) for each additional qualification and \$700 for each additional delivery site.
- The CRICOS annual registration fee up to 2 qualifications is \$600 + \$100 (capped at \$10,000) for each additional qualification
- An application for additional CRICOS locations is \$700.
- Application for additional qualifications to scope starting at \$375 for 4 qualifications and reducing according to number.

Currently the ESOS legislation requires a separate registration so that each time a VET provider wants to set up in a new jurisdiction they would have to pay at a minimum \$640 + \$4,300 (i.e. around \$5,000) and then a separate annual fee of at least \$600. If national CRICOS registration is introduced the provider would only have to pay the initial application fee of \$600 + \$4300 once and could include more than one location at the same time with no

extra or marginal extra cost. If another site is added at a different time then the cost would be in the order of \$700 plus \$375 (i.e. around \$1,000). This represents a base saving of between \$5000 if more than one location registered at the same time to around \$4,000 per location added at a later date. The annual fee would also be reduced as it would only relate to the one registration with the qualification component of the fee unchanged. This represents a base saving of around \$600 for each secondary location added to a registration.

### **Costs to providers**

The operations of the provider from a risk management perspective will be more transparent to the regulator and therefore non-compliant providers may experience greater scrutiny of all their operations as a result of a significant compliance issue identified in one or more locations. As providers are currently required to include their CRICOS number on all marketing material, existing multi-registered providers will be required to alter their marketing material when they have consolidated registrations under one identifier.

This measure will affect approximately 200 providers. Related providers will need to come under one CRICOS number and all of their course codes similarly aligned (where applicable). The course code matching will be conducted by DEEWR. The providers will be responsible for changing their CRICOS numbers on their marketing and administration material.

Using the Business Cost Calculator, a cost of \$640 per business and a total cost of \$128,000 for 200 businesses is estimated. This cost is made up of two activities:

1. Labour costs of changing the CRICOS number (1 staff member for 8 hours at \$30 per hour) and
2. Printing costs for updating hard copy marketing material (2000 A4 double sided folded pamphlet).

### **Impact on students**

Students will benefit by improved transparency of a provider's registration on CRICOS. Prospective students will be in a better position to make an informed choice of provider. Students will benefit from improved risk management and regulation of multi-jurisdictional providers. A provider who has a history of non-compliance in one jurisdiction will no longer be able to establish with the same legal entity in another jurisdiction.

### **Impact on Government**

The benefits to government are improved risk management and better targeting of limited compliance resources.

There may be some costs associated with PRISMS enhancements to facilitate national registration. These will be incorporated in the IT enhancements required in implementing Baird recommendations already funded in the 2011/12 Federal Budget. There may be some minor offsets in rationalising the ESOS initial registration charge and the ARC which have been considered in the current rebasing of this charge recently announced as a 2011/12 Federal Budget measure. The costs to enhance PRISMS to implement national registration, including consolidating existing multiple registrations under a single national registration, for example costs in contracting business analyst and IT developers over a 3 month period, is broadly estimated at \$100,000.

## **6.5 Summary benefits compared to status quo**

National registration will remove a source of duplication in processes and fees for multi-jurisdictional providers, and better support risk management and streamlined regulation by the National Regulators.

### 7 Revisions to the National Code

#### 7.1 Statement of problem

Since the implementation of the National Code of Practice for Registration Authorities and Providers of Education and Training (National Code) 2007, there have been issues raised around the interpretation of certain standards and protecting the interests of students as consumers that can be addressed through revisions to the standards.

Baird review consultations revealed widespread concerns about the provision of information and support to students, and whether the current requirements of ESOS are sufficient to ensure students have a positive study experience.

Similar concerns were also expressed around the mandatory written agreement between students and their provider. Students often claim that they do not fully understand their written agreements and that the written agreements do not provide sufficient detail around refunds or courses offered. Claims have also been made that not all providers have fair and reasonable refund provisions or policies around allowing students to transfer providers.

Under the current National Code, providers are restricted from enrolling students who have not completed six months of their principal course. The objective of this restriction is to protect students newly arrived in Australia from potentially misleading onshore recruitment behaviour. Given the significant upfront investment made in marketing and recruiting by providers which has enabled the student to obtain their visa and travel to Australia, the transfer restriction is also to protect the initial provider from this kind of poaching activity as well as from students who might enrol in one course offshore in the hope of an advantage in the visa application process but with full intention of transferring to a different course once onshore.

The limitation also permits the initial provider to fulfil their ESOS obligations to the student including providing the student with the information needed to make decisions about future study plans. Students who are poached from their initial provider on arrival at the airport, for example, can be provided with misleading information about the courses which may be available to them and the pre-requisites needed for those courses. This deprives the student of the opportunity to properly engage with the course for which their visa has been issued and deprives that provider of the income that would have been generated by their investment in ESOS compliant enrolment procedures, including assessing whether the student has the appropriate pre-requisites for the course they are undertaking.

Various problems have developed around this standard. The main one is that when students are enrolled in a package of courses, such as an English language course followed by a foundation program and then a university degree course, the six month restriction applies to the principal course which is usually the highest level course (i.e. the degree). Unless provided with a letter of release, a student may be locked in for lengthy periods, sometimes a couple of years, with a provider with whom they do not wish to study. Previously a twelve month restriction on the transfer of overseas students was in place and a shorter period was recommended by the ESOS Evaluation undertaken in 2005. It was not then envisaged that students in package courses would be unable to transfer after a reasonable period at their initial provider.

The current application of standard 7 has caused a number of unintended consequences. Some students who have been refused a letter of release have simply cancelled their enrolment and then found they have been unable to be enrolled with another provider and been in breach of their visa conditions. Many students go through lengthy

appeals processes to resolve the issue with their provider which can disrupt their study. Some providers have ignored the requirement not to enrol a student who has not received a letter of release and this has created an enforcement burden on regulators.

Whether providers do or do not issue the student with a release letter, the administrative burden around assessing the student and providing access to complaints and appeals processes is quite onerous and the impact on individual students can be quite significant without a corresponding overall benefit to the industry. There are serious complications for students who cancel their enrolment without being issued a release letter. Revised provisions around this requirement are needed to simplify the requirements on providers and address the consumer choice concerns of students by ensuring that they are not prohibited from transferring longer than is necessary.

### 7.2 Objectives of Government Action

The Government objectives are to:

- protect the consumer interests of students
- protect students from unscrupulous poaching behaviour and supporting student choice
- protect providers from unscrupulous poaching behaviour and minimising administrative burden.

### 7.3 Options

Regulatory and non-regulatory measures were considered in relation to achieving the stated objectives. These options are discussed below.

#### Regulatory revision (preferred option)

Amendments to the National Code are proposed to implement the following recommendations of the Baird Review noting that all proposed revisions aim to meet criteria also recommended by the review for establishing clear, objective and enforceable standards (**Recommendation 5b**) and ensuring the level of prescription of the standards is only that which is required to achieve the intent (**Recommendation 7b**):

- **recommendations 10 and 11** relate to improving student access to information
- **Recommendation 12d)** is to restrict unethical recruitment practices by expanding the requirements of student written agreement to more completely describe the course, course costs, refund provisions and transfer limitations
- **Recommendation 12f)** is to restrict unethical recruitment practices by prohibiting a provider from enrolling a student who is currently studying with another provider and who has yet to complete the first study period of their initial course.

To address the issue of students not being fully informed of their prospective provider policies or about the courses in which they are to be enrolled, the Baird Review proposed that ESOS be amended to ensure students are provided with sufficient information to enable them to accurately compare potential study choices and that information is available to students on an ongoing basis. The impact of this change is that providers will need to ensure the pre-enrolment information they provide to students is comprehensive and that induction information is available to students on an ongoing basis through a website or written documentation.



Providers will also need to make changes to the written agreement they have with their students. It is proposed that standard clauses be provided by DIISRTE to assist providers in ensuring that their written agreements are ESOS compliant.

To address the issues identified around prohibiting a provider from enrolling a student who is currently studying with another provider until the student has completed six months of their principal course, the Baird Review recommended that the limitation apply only to the student's initial study period. This will assist in discouraging poaching activities which prey on newly – arrived students and give the initial provider the opportunity to carry through on ensuring the student is enrolled in a suitable course and is provided with the orientation and study and welfare related information required under ESOS. By limiting the restriction to the student's initial study period rather than for the much longer period of time where the principal course is taken onto account, the revised National Code will recognise the student's right as a consumer to move to another provider if they so wish. It is also proposed to remove the requirement for letters of release and introduce instead an IT solution as part of the PRISMS system to allow the originating provider to authorise a student transfer during this initial 6 month period. Where this is not authorised the student will simply have to forgo the initial study period as a consequence of their enrolment choice.

### 7.4 Impact analysis for preferred option

#### Benefits

The proposed changes to the National Code around the provision of information and the requirement for more comprehensive written agreements provide benefits for students by ensuring they have a better understanding of the course of study they are planning to undertake. Individual providers and the international education sector as a whole will benefit from a more informed student cohort. Students will be in a position to make more discriminating choices which will maximise their chances of success and boost the reputation of Australian international education.

All stakeholders will benefit from clarified transfer of provider provisions. Students will benefit from a greater level of consumer choice. Students who are not satisfied with the cost or education service will be able to 'vote with their feet' and this will encourage providers to remain competitive in terms of price and quality. Providers will benefit from a significant reduction in the current administrative burden involved in assessment of requests and provision of letters of release. Additionally, at the present time, where students are not able to transfer for unreasonably long periods, a significant amount of time and expense is taken up with ongoing complaints and appeals processes. Introducing a much more reasonable limitation will minimise the impact on students while maintaining the intent of the restriction. The receiving provider will benefit from the students' ability to attend the provider of their choice.

#### Costs to Providers

All providers will need to ensure that marketing materials, pre-enrolment information, orientation materials and written agreements meet the requirements of the National Code. However, as the revised requirements around the provision of comprehensive information outline what is generally provided to overseas student as good practice by the majority of providers, the cost to the sector as a whole will not be significant.

There will be some cost to the initial provider in terms of loss of ongoing fees when students are able to transfer providers prior to the completion of the principal course. However, the policy intent of this standard has always been that providers have reasonable policies allowing students to change providers, not that they unreasonably restrict the movement of overseas students for the entire course simply to protect their income. Such a practice would not be tolerated by domestic students and may be considered consumer exploitation. The impact of changing the transfer restrictions will be mainly on those providers who have unreasonable policies around granting students a letter of release. Currently only seven per cent of total student enrolments appear as having transferred providers prior to the completion of the principal course. As the revision applies only to the period of time from the end of the initial study period to the end of the first six months of the principal course and only to packaged courses, the cost of this revision will not be significant.

Compliance costs to business of new requirements in the National Code 2007 have been assessed using the Business Cost Calculator.

### Accurate and comprehensive enrolment and pre-enrolment course information

The majority of providers already meet this requirement and there is good evidence that larger public providers generally have comprehensive websites. Therefore, this compliance cost has been calculated against smaller providers which have been defined as those with less than 100 international students. There are 400 of these providers. The majority of these providers would be able to incorporate the additional information with no more than 10 hours of administrative work.

Using the Business Cost Calculator it is estimate that one-off set up costs per provider will be \$250 and for 400 providers will be \$100,000.

### Written agreement requirements and change of policy around transfer of provider restrictions.

Requiring amended written agreements will affect all 1200 providers. It is assumed that providers revise their written agreement documents annually to ensure that they reflect current policy therefore the work would be an expansion of ongoing administrative work. Given the fact that the additional wording providers would need to include in their written agreements would be standard clauses provided by DEEWR, that work should take no more than a few hours.

All providers will need to ensure that their policy documentation, in addition to the written agreement, is consistent with the amended requirements around transfer of provider requirements. The implementation of the new requirements will not have compliance costs other than the revision of documentation. The time for the revision of written agreements and any other relevant policy documentation has been calculated at 10 hours of admin staff time.

Using the Business Cost Calculator this is estimated to be a per business set up cost of \$400 and a total cost across approximately 1200 providers of \$300,000.

### ***Impact on Students***

Concerns have been raised that where providers' costs under the National Code 2007 may increase these additional costs could be passed on as increased fees and charges to students. The consumer benefits generated for students by these requirements and the resultant benefits for the international education sector's reputation, outweigh the possibility of Australia being regarded less favourably by prospective students.

### **Impact on Government**

A communication and education strategy will need to be implemented by DIISRTE to ensure that all providers are aware of their obligations under the revised National Code. DIISRTE will also assist providers to meet the new requirements around the required student written agreements.

### **7.5 Summary benefits compared to status quo**

The National Code is generally held to be a useful instrument for promoting best practice. The proposed changes will further strengthen and clarify provider standards so they have the right balance of prescription and enforceability. Provider obligations related to student information and student transfers will be clearer and comprehensive to better inform student choice, consumer protection and mobility.

### 8 Consultation and preferred option

#### 8.1 Consultation feedback

Throughout the course of the Baird Review there was extensive consultation with international students, international education providers and peak bodies and state and territory governments on the proposed changes.

In preparing the final report Mr Baird spoke to nearly 200 students and education providers from the tertiary, school and English language sectors at consultation forums held in major capital cities. He also met with provider and student peak bodies, regulators, state and territory government officials, diplomatic missions, education industry bodies and Members of Parliament. The review received approximately 150 formal submissions and more than 300 people registered with the online discussion forum. Mr Baird also considered suggestions from the International Student Roundtable held in September 2009.

Following the publication of the Baird report and the implementation of the first phase of the Government's response to the Baird review through the legislative reforms introduced into Parliament on 27 October 2010, a phase two consultation paper was released on 7 December 2010. Stakeholders, including education peak bodies, regulators, providers, students and agents, were given until 21 January 2011 to provide feedback on options for taking forward the remaining Baird Review recommendations. Specifically the consultation paper focused on risk assessment and management of the registration and ongoing monitoring of education providers delivering to overseas students; a strengthened tuition protection framework; a range of recommendations for making ESOS stronger, simpler and smarter; and the regulatory effect on providers of these proposals and recommendations. Fifty-two submissions were received from a wide range of stakeholders including state regulatory bodies, public and private providers from all sectors, peak bodies, migration agents, homestay associations and student representative bodies. Additionally, individual consultations were conducted over February to April 2011 with all major peak body stakeholders and regulators to further discuss proposed reforms.

The consultations showed general support for reform across the different stakeholders. Support was shown for an improved risk management system of international education which would lead to a more effective targeted enforcement of ESOS requirements. This would include a defined risk criterion for greater transparency and consistency in regulation and a risk based approach to Industry charges and levies on a provider. That deliberate and consistent non-compliance indicated high risk was a strong message as well as the need for a consistent approach to testing for financial viability. Views around the need for stronger governance, better information sharing and harmonisation of registration processes with domestic quality assurance frameworks were also shared across the sector.

#### **Tuition Protection Service (TPS)**

While stakeholders were not asked to comment on a particular TPS model, the consultation paper explored many of the elements which have now been brought together to form the proposed TPS model. As well as highlighting shortcomings in the current tuition protection arrangements, the consultation process indicated widespread support for a simpler and more sustainable model.

Not all respondents, and particularly those in the public university sector and the public TAFE sector, agreed that all providers should be required to financially contribute to the TPS although there was support for a risk based approach to charging. There was recognition by most that the involvement of all CRICOS registered providers in some way would be needed to ensure the success of the service. State government departments in general did not

support extra levies on government providers. It should be noted that the rebasing of the ARC announced in the recent budget will result in a reduction in the charge to all providers and therefore will largely offset any additional charge related to the proposed TPS. This has been communicated to the sector and been well received.

Other elements of the proposed TPS model which were largely supported in stakeholder submissions include, limiting refunds to the unexpended portion of pre-paid fees, placing students in a suitable alternative course with a refund only provided as a final resort and the imperative to facilitate placements within reasonable time limits. Feedback also indicated strong support for a single decision making body and a single contact point with respect to the information that is provided to students.

In general, stakeholders supported a degree of flexibility in student placement with students having both choice and responsibility throughout the placement process. There was strong support for students having the right to choose their own course provided they met the entry requirements.

ACPET and COPHE also argued for a role for industry associations to assist government in managing closures and placing students.

Further details about the proposed TPS have been revealed to peak bodies in individual consultations held from February to April 2011, clarifying and resolving some of the issues raised in various submissions. This has resulted in increased general support for the broad model proposed.

### **The collection of pre-paid fees**

A range of measures to ensure that providers who cannot meet their obligations are not able to shift their responsibilities to the TPS with no disadvantage to themselves were put forward by stakeholders. Proposals included the payment of a bond or provision of a bank guarantee up to the value of six months of the provider's international student fees to be held either by the Government or the TPS. There was clear support for measures to ensure that, where students needed to be paid a refund, the money was available from the fees collected by the provider rather than from the TPS funds. There was widespread agreement that membership of a TAS should not absolve providers from their own financial responsibility to refund students.

Comments from peak bodies representing the ELICOS sector, private providers and TAS providers include:

- Taking 100 per cent up-front fees is seen as a poor business practice that then creates an unreasonable impost on providers taking on displaced students under TAS arrangements without any ongoing fees in return or high calls on the ESOS Assurance Fund if a refund is required.
- Ensuring the maximum study period is long enough to require a sufficient upfront financial commitment by the student – 24 weeks or more is supported. The ELICOS and School sectors have expressed a preference for a full year's tuition in advance, including the option of keeping fees in a trust account and drawing down as required.
- Concern about increasing 'churn' and increased student debt in the ELICOS and school sectors if full pre-paid fees aren't collected, including possible increased administration resources to chase students for late payments.
- The potential for students who have had their enrolments cancelled for non-payment to be in breach of their visa requirements and the importance of DIAC enforcing compliance with student visa requirements in a timely way.

## ESOS Tuition Protection Service (TPS) and other related measures

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- Concern about the impact of limits on prepaid fees on business models and ensuring sufficient time for businesses to make adjustments to regulatory changes.
- Potential difficulties for providers arising from restrictions on when prepaid fees may be collected prior to the start of each study period given student and staff holiday periods and the need to confirm early whether students will continue the following study period for planning purposes.
- A view that limitations on prepaid fees are seen as an unnecessary burden on providers, especially publicly funded providers, at low risk of not meeting default refund obligations.

### Designated accounts

In regard to pre-paid fees, stakeholders felt that where a provider incurred obligations through a closure, those obligations should be met as far as possible by that provider. Trust accounts for pre-paid fees which may be at risk was an option put forward by stakeholders.

### Introducing partial refunds

This measure was extremely well supported. Providers, peak bodies and regulatory bodies agreed that the requirement to refund all course monies is unreasonable. There was no support expressed for the current legislation requiring a full refund of fees.

### Strengthening recordkeeping requirements

The majority of responses agreed that providers should be required to provide student records, including academic records, in the case of closure and that missing or incomplete records compromise the ability to place students quickly and fairly.

There was also strong support for providers to store student details in electronic form and to keep these records up-to-date. The measures, if introduced will put more of an onus on the provider to ensure that student contact details are up-to-date.

### National registration

Many responses indicated support for national regulation and the national regulators currently in the process of being implemented, and for a reduction in duplication of charges. WA Department of Education Services proposed a review of Commonwealth and state costs for registration and regulation with a view to developing a single set of national registration fees.

### Revisions to the National Code

Overall, responses from providers, peak bodies and regulatory authorities to the Baird report have been positive. There was strong support for improving information to students and for standard clauses in written agreements, and while concerns were raised about the ongoing impact on providers of poaching behaviour if student transfer restrictions are reduced, maintenance of the status quo was not an option supported by Government or by the international education sector through the Baird Review or subsequent consultations.

Some in the university sector felt that current ESOS legislation, including the National Code, is adequate provided the requirements are enforced. The issue of enforcement was addressed through the first tranche of amendments to the ESOS Act passed in April 2011. These provisions strengthen enforcement by introducing financial penalties for a broader range of non-compliance and enabled publishing information about regulatory activities.

## ESOS Tuition Protection Service (TPS) and other related measures

Proposed revisions to the National Code will take into account the concerns of those providers already implementing good practice in relation to their written agreements, transfer of provider policies and providing information to students. These providers will not be significantly impacted by the proposed changes which will be consistent with Baird Recommendation 7b 'ensuring the level of prescription is only that which is required to achieve the intent'.

There was clear support throughout the Baird consultation process for enhanced requirements around the provision of accurate and comprehensive information to students both prior to their arrival and on an ongoing basis once they are engaged in study. Concerns were expressed by a number of bodies about the prospect of further obligations being placed on providers. The new information required from providers will balance the consumer interests of the student with the prospective impost on providers. In addition, providers will be supported in meeting these requirements through the enhanced Study in Australia student portal, an initiative of the ISSA and active since 1 July 2010.

Stakeholders in all sectors were supportive of consistent written agreements which ensure students are aware of their obligations and treated fairly by all providers. In particular, there was strong support for more specification on refund policy requirements. Regulatory bodies also expressed support for consistent wording around the fundamental matters covered in the written agreement.

Concerns that the written agreement could become unnecessarily complex were expressed by a few providers. These concerns have been taken into consideration in the proposed changes. Standard clauses will be used to incorporate only the information which is essential for students. Providers were given the opportunity through the consultation process to identify the information that would be most beneficial for students.

While not all providers agreed to the proposed changes to transfer of provider restrictions, there was significant support, including from regulators such as the Western Australian Department of Education Services, for the Baird recommendation of limiting the restriction on transfer of provider to six months or the initial study period. In implementing this restriction, providers also expressed concerns that it was important for students to have the freedom to transfer where a course was found not to be suitable. The proposed changes balance the consumer protection interests of the students against concerns about unethical recruiting behaviour of providers impacting negatively on the educational best interests of the student.

## 9 Preferred option

The Baird Review made a number of recommendations for strengthening the international education sector. The first tranche of legislative changes was passed by Parliament in March 2011 and given Royal Assent on 8 April 2011. This RIS addresses most of the remaining recommendations from the Review, which have been adopted by the Government in its second round response to the Review’s recommendations and incorporated in the Bill currently before Parliament.

The Government’s second round response will focus on:

- a strengthened Tuition Protection Service
- Limiting the collection of pre-paid fees, and requiring non-exempt providers to keep initial pre-paid fees in a designated account
- Changing refunds to include only the unspent portion of up-front fees paid by the student
- Strengthening record keeping requirements
- A national registration scheme to assist providers operating across a number of locations and
- Revisions to standards in the National Code related to the provision of information to students, student written agreements and student transfers.

The following table estimates the summary impact of these measures:

Measure	Impacts, Costs & Benefits			Overall impacts
	Providers	Students	Government	
TPS	<p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Providers receive equivalent of student refund when placing students affected by a closure</li> <li>• Non-exempt providers no longer have to pay separate TAS membership, a saving of between approximately \$500 up to approximately \$20,000</li> <li>• Some providers will pay less than the current Assurance Fund contribution depending on risk profile</li> <li>• Receive same as unexpended prepaid fees when place student compared to placement with no compensation currently.</li> <li>• All providers benefit from improved reputation and opportunity for ongoing fees in placing students.</li> <li>• New role for previously exempt providers in governance of the system.</li> </ul>	<p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Greater choice, control and responsibility in the placement process</li> <li>• More streamlined and timely placements</li> </ul>	<p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Improved sustainability and accountability</li> <li>• Reduced risk of calls on the Government to provide financial assistance in times of peak demand.</li> </ul>	<p>More responsive tuition protection, fully industry funded designed for a diverse sector and a large number of students.</p> <p>Loss of income for existing TAS providers, mostly impacting on ACPET but opportunity to tender for service provider role.</p>
	<p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Current exempt providers will be required to pay a TPS levy but not a risk based component</li> <li>• Highest risk providers may have to pay more than they currently contribute to the Assurance Fund.</li> </ul>	<p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Will need to meet any extra costs for a higher value course</li> <li>• Refunds limited to unexpended tuition</li> </ul>	<p><u>Costs</u></p> <p>Transition costs to move to new system</p>	



## ESOS Tuition Protection Service (TPS) and other related measures

<b>Limiting pre-paid fees</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	This will eliminate the practice of some providers seeking full fees upfront before any tuition has been received, provide an incentive for ensuring high levels of student satisfaction with services delivered and reduce the potential refund liability flowing on to the TPS.
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	
<b>Initial pre-paid fees in designated account</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	This will help to ensure providers set up sustainable business practices that are not heavily reliant on initial prepaid fees, and reduce offshore refunds as a significant source of pressure on the TPS.
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	
<b>Measure</b>	<b>Impacts, Costs &amp; Benefits</b>			<b>Overall impacts</b>
	<b>Providers</b>	<b>Students</b>	<b>Government</b>	
<b>Partial refunds</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	Partial refunds will support the sustainability of the TPS and recognise that students part-way through a course are usually able to gain credit for prior learning when placed with another provider.
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	

## ESOS Tuition Protection Service (TPS) and other related measures

<b>Record keeping</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	Record keeping on student contacts and academic history is an existing requirement – these proposals are about improving the timeliness and accuracy of these records, and strengthen compliance to support the TPS, refunds and student welfare.
	<ul style="list-style-type: none"> <li>• Smoother day to day operations and dealing with students</li> <li>• Assist with efficient appeals and complaints processing</li> </ul>	<ul style="list-style-type: none"> <li>• Easier to receive up to date academic records</li> <li>• Improved student welfare</li> <li>• Easier for provider to keep in contact about important information</li> <li>• receive accurate refunds in a more timely manner</li> </ul>	<ul style="list-style-type: none"> <li>• better risk mitigation especially around student welfare</li> <li>• less likelihood of disputes over refunds</li> <li>• improved compliance and effective enforcement</li> </ul>	
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	
	<ul style="list-style-type: none"> <li>• System and policy upgrades for providers not currently complying with existing requirements, estimated to be</li> </ul>	<ul style="list-style-type: none"> <li>• May be some admin costs passed on to students in the form of fees</li> </ul>	<ul style="list-style-type: none"> <li>• Minor PRISMS enhancements to request regular updates from providers</li> </ul>	
<b>National registration</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	National registration will remove a source of considerable confusion and frustration for multi-jurisdictional providers and better position ESOS for regulation by the new national regulators
	<ul style="list-style-type: none"> <li>• Streamlined and consistent registration processes – less duplication of core assessments where relevant</li> <li>• One CRICOS number, improved branding</li> <li>• Transition arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Improved transparency of a provider's registration on CRICOS</li> <li>• Better able to make an informed choice</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced reputational risk</li> <li>• Better targeting of compliance resources</li> <li>• Improved risk management</li> <li>• Alignment with national regulators for VET and higher education</li> </ul>	
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	
	<ul style="list-style-type: none"> <li>• Operations become more transparent to regulator with possible adverse risk assessment if history of non-compliance</li> <li>• Amend marketing material for one CRICOS number</li> </ul>		<ul style="list-style-type: none"> <li>• PRISMS enhancements to enable national registration</li> </ul>	
<b>National Code</b>	<u>Benefits</u>	<u>Benefits</u>	<u>Benefits</u>	High level of agreement in consultation that these changes are needed to strengthen and clarify important standards to support and inform student choice
	<ul style="list-style-type: none"> <li>• Greater consistency in information for students and in written agreements across the sector so that students can make informed choices</li> <li>• Makes student transfers easier and less time consuming</li> <li>• Less unnecessary complaints and appeals regarding student transfer</li> </ul>	<ul style="list-style-type: none"> <li>• Improved information about providers</li> <li>• Clear and consistent written agreements</li> <li>• Less restrictions on transferring, more freedom of choice and less chance of becoming in breach of visa conditions</li> <li>• Greater incentive for providers to ensure high levels of student satisfaction</li> </ul>	<ul style="list-style-type: none"> <li>• Less queries and appeals from students regarding transfers</li> </ul>	
	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>	
	<ul style="list-style-type: none"> <li>• Changes to policies and student agreement estimated at \$400</li> <li>• Possible higher rates of student transfer following the initial study period</li> </ul>	<ul style="list-style-type: none"> <li>• May be more vulnerable to onshore recruitment efforts</li> </ul>	<ul style="list-style-type: none"> <li>• May require PRISMS enhancements</li> <li>• Communication strategy to ensure providers understand and comply with new requirements</li> </ul>	

## ESOS Tuition Protection Service (TPS) and other related measures

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A number of these measures are complementary. In particular, limiting refunds and pre-paid fees, a requirement on non-exempt providers to place initial pre-paid fees in a designated account and improved record keeping are designed to support the operation and sustainability of the proposed new TPS.

By implementing these measures together, providers will be able to update any policies, procedures, systems and student information at the same time, to minimise administrative and cost burden.

Providers will be encouraged and more easily able to meet their refund obligations and providers operating across sectors or jurisdictions will have more streamlined regulation. All providers will receive reputational benefits as these measures will further reinforce confidence in Australia's international education sector.

Students affected by provider default will have improved outcomes through a tightened and more streamlined approach. Through improved information, standard clauses in written agreements, lifting restrictions on transfers and the proposed online facility as part of the TPS, students will be better informed and empowered to make choices as well as take greater responsibility for their decisions. Students will have greater transparency and flexibility in processes of initially selecting and enrolling with a provider, transferring providers and in the placement/refund process if affected by a provider closure.

The TPS and national registration measures are also underpinned by risk-managed approaches which recognise diversity across the sector so that the costs and regulatory burden are shared more fairly according to the business decisions, experience and compliance history of providers. As a number of the proposed changes seek to build on existing requirements the regulatory impact of these proposed changes will be greatest on providers with high risk profiles and/or those, often smaller providers, who may not be meeting best practice in financial management, administration and student information systems and in their policies and procedures.

These measures also position ESOS regulation for a smooth transfer to the national regulators in 2012.

### 10 Implementation and Review

Subject to passage of legislation, the TPS framework and all other measures are to commence on 1 July 2012. During the interim ongoing placement and refund activities will be undertaken through the existing tuition protection framework. The Bill provides for transition arrangements from the ESOS Fund to the new TPS. Students referred from closures occurring prior to the establishment of the TPS will be managed under existing arrangements until the TPS is operational. From this time it is anticipated that all closures will be handled by the TPS.

To facilitate the transition from the current ESOS Assurance Fund arrangements to the new TPS, the current Fund Manager arrangements have been extended to 30 June 2012.

Transitional provisions are incorporated where warranted in the Amendment Bill, in consultation with the Attorney General's Department to resolve any acquisition of property issues that may arise. As outlined in section 7.3.3, grandfathering arrangements will be put in place to transition existing registrations to a single national registration as they expire, with the option for providers to apply to merge registrations at any time before this.

The National Code is a separate legislative instrument that may be changed at any time in consultation with state and territory governments and the sector. It is envisaged that the National Code will be changed in parallel or as soon as possible after changes to the ESOS Act are passed in Parliament (to allow for any additional changes arising from the Parliamentary debate of the Amendment Bill to be incorporated in the National Code if appropriate). It is anticipated that the National Code will be revised in 2012 with a short transition period to allow providers time to make the necessary changes to their policies and procedures before compliance will be enforced.

Concerns have been raised by the sector about the complexity of the legislation and the importance of all education providers being made aware of their responsibilities under the new legislation. These concerns have been recognised by DIISRTE and will be addressed through a comprehensive communication and provider education campaign which will be developed to assist providers understand and comply with the new requirements.

#### 10.1 Risks for implementation

The most significant risk to implementation is that the legislative changes won't be passed with sufficient time to implement the new TPS framework. In the event of a delay in the passage of the legislation, the implementation date for the TPS may also be delayed to ensure there is a sufficient timeframe for establishment and transition.

A high number of provider closures before or at the time the new TPS is established may also impact on the smooth transition from current arrangements. This is not expected and the rate of provider closures has dropped significantly since the re-registration measure in 2010. However, the remaining funds from the \$25 million conditional Government gift, as well as the 2011 and 2012 Assurance Fund contributions and any seed funding approved for the new TPS are expected to be sufficient to manage such a contingency if necessary.

Previously exempt providers may resist contributing to the TPS. Other providers may question the risk based component of their charges and be concerned about risk information affecting their reputation. These concerns will be managed through communication and transparency around the different components of the TPS charges and factors that underpin them. Communication will emphasise the benefits of a universal TPS to all providers, students and government and the proposed amendments will make it a condition of registration. Apart from a broad recognition of low risk providers who will not be charged a risk based fee, providers will not be given a specific 'risk rating' related to the TPS.

Previously exempt providers which have risk management strategies in place, such as collecting payment in arrears, rather than in advance, will have these factors taken into consideration when calculating their risk component of the TPS levy. Providers with such alternative assurances will need to demonstrate this is made clear to prospective and enrolled students on their marketing material and student agreements and agree to have it noted on their CRICOS entry before it can be taken into account for charging purposes. Those providers who have a Ministerial and other exemptions will be required to contribute to the TPS as a condition of registration. Changes to the ESOS regulations will be made to remove all exemption options. This will greatly simplify administration of the registration process for providers and reduce the regulatory burden on providers and regulators for maintaining exemptions.

The new TPS arrangements will also make the current TAS arrangements redundant. All current TAS providers will be eligible to tender for the service provider role of the new TPS and there is scope for an ongoing role as part of the new governance arrangements. There is considerable expertise among TAS providers and good will among TAS members in their respective sectors in the placement process that will be invaluable for ensuring the effective operation of the new TPS. Government and the new TPS Director will be keen to build on this experience and level of cooperation among providers.

There is likely to be concern from some providers about the impact limiting the amount of pre-paid course fees which can be collected and the requirement for designated accounts may have on cash flow if their business is heavily dependent on pre-paid fees and they do not have sufficient capital to fall back on. With increased focus on financial viability under the revised AQTF and through the re-registration as well as providing an adequate transition period it is hoped that this will not be a significant issue. Once the Amendment Bill is passed, DEEWR will commence a communication campaign and work with providers to help manage the transition smoothly.

Students may similarly have concerns about partial refunds and having to pay a gap if they choose a higher cost course or do not meet pre-requisite requirements. Expectations and feedback around refunds and the placement process will be managed through a communication campaign highlighting the overall benefits to students as consumers. Ensuring an accurate calculation of refund and recognition of prior learning based on strengthened record keeping will be essential. Targeted compliance checks on record keeping and conditions on providers identified as vulnerable to closure will help reinforce the new requirements.

### 10.2 Review

There will be ongoing liaison with peak bodies and regulators during the implementation of these measures. Providers and students will have mechanisms for feedback through their peak body organisations and through the ESOS online form. Student complaints through the state or Commonwealth Ombudsman will also be a reliable source of information about any emerging issues during the implementation process. DEEWR will conduct a communication and provider education campaign to help providers understand and comply with the new requirements. In making changes to the ESOS Act, general provisions for including further detail or additional related requirements in the regulations are usually included to provide some flexibility should any unintended negative consequences become apparent during the implementation phase. Amendments can be made to the ESOS regulations or National Code relatively quickly to make adjustments or points of clarification regarding the new measures if necessary.

Given these measures are the outcomes of a detailed review of the ESOS legislative framework conducted in 2009, a future review of these measures will be a matter for government consideration.

### Appendix A Background on the ESOS legislative framework

International education in Australia strengthens Australia's diplomatic and foreign relations, brings considerable benefits to our education institutions, assists with the internationalisation of education providers, facilitates science and research collaboration, supports trade and investment and business relationships, enhances Australia's multicultural society, and delivers a great economic benefit to Australia. International education is Australia's third largest export industry and the largest services export industry generating export income in the order of \$18.3 billion annually and supporting around 122,000 jobs across Australia.

In the late 1980s, Australia moved to a greater internationalisation of Australian education welcoming full fee-paying overseas students to its education institutions. In 1990, Australia accepted 47,000 overseas students. By 2000, this number had grown to 188,000 and in 2011 there are over half a million overseas students enrolled to study in Australia. In 1990, 31 per cent of students came to Australia to study in higher education and a further 15 per cent studied in VET. In 2011, there are approximately 230,000 students enrolled in higher education and over 150,000 in VET. The growth in the student population has been associated with significant growth in the number of education providers offering services to overseas students. There are now over 1,200 such providers. As with the student population, providers have become much more diverse, ranging from large universities and TAFEs, public and private schools, to small private VET and English language providers.

The ESOS Act and associated legislation was born from this internationalisation of education. The first ESOS Act, *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* was developed and introduced in 1991 due to the closure of a number of private providers that were insolvent when they closed and were unable to refund pre-paid fees to overseas students. In 2000 the *Education Services for Overseas Students Act 2000* established the world's first comprehensive, dedicated tuition protection framework for overseas students and governs the provision of education services to overseas students in Australia. It is widely acknowledged as contributing to the success of international education in Australia. The ESOS requirements are additional to the underpinning education quality assurance frameworks and are administered by the Government.

The principal objects of ESOS are to:

- provide financial and tuition assurance to overseas students for courses for which they have paid
- protect and enhance Australia's reputation for quality education and training services
- complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

### Appendix B Related Initiatives

The Baird review is part of a broader suite of measures to both strengthen Australia's reputation for international education and reform regulation of Australia's education system as a whole. As the ESOS legislative framework is underpinned by regulation of quality under various education quality assurance frameworks, a number of these other measures have associated regulatory impacts which are fundamental to what might additionally be imposed through the Government's second phase response to the Baird review. For example, strengthened entry requirements and risk management processes introduced by the state and national regulators for registration as a registered training organisation or a higher education provider may have regulatory impacts. Some of these measures have already been the subject of separate RIS processes. Key initiatives and their links with this RIS are outlined below.

#### ***The International Student Strategy for Australia (ISSA)***

The ISSA was developed under the Council of Australian Governments (COAG) and was released in October 2010. It contains a number of commitments for supporting overseas student welfare and improving the overall international student experience. In particular, the strategy references the Baird recommendations and includes measures for:

- requiring providers to have student safety plans in place which was the subject of a previous RIS
- establishing provider closure taskforces in each state
- improving student access to information which allows them to make informed choices about studying and living in Australia
- student access to a statutorily independent complaints body, which is consistent with the Baird recommendation recently implemented through changes to *the Ombudsman Act 1976*.

#### ***Establishment of the national regulators for higher education and Vocational Education and Training (VET)***

In March 2009, the Government announced the establishment of a national regulatory and quality agency for higher education, the Tertiary Education Quality and Standards Agency (TEQSA). TEQSA was established on 29 July 2011 and is currently operating in a quality assurance capacity and will begin its regulatory functions in January 2012. Until this time the Government Accreditation Authorities (GAAs) in each state and territory will continue their role as regulation authorities.

In December 2009, COAG similarly agreed to establish a national regulator for the VET sector. All jurisdictions except Victoria and Western Australia have agreed to refer powers to the Commonwealth for its establishment. This means that VET providers for domestic students in these two jurisdictions will not be regulated by the national VET regulator, however, those offering courses to international students in these jurisdictions, along with all VET providers in a jurisdictions that have referred powers, will be regulated by the national VET regulator which is now called the Australian Skills Quality Authority (ASQA). Legislation establishing ASQA came into effect on 12 April 2011, and included a number of consequential amendments to the ESOS Act under the *National Vocational Education and Training Regulator (Consequential Amendments) Bill* to ensure that it reflected the changes to the regulatory environment. ASQA is currently registering and monitoring ESOS providers operating in NSW, NT, ACT, WA and VIC and multijurisdictional NVR registered providers. QLD, SA and TAS are to refer powers late in 2011 or early 2012.

## ESOS Tuition Protection Service (TPS) and other related measures

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Both legislative frameworks allow for these national regulatory agencies to assume responsibility for regulation of providers delivering to overseas students under the ESOS legislation within their respective sectors. These agencies are developing risk management models and data systems to effectively target auditing and other monitoring of providers.

The Baird review made a number of recommendations for ensuring that regulation under ESOS, which covers all education sectors, aligns with that implemented by the two national regulatory bodies to ensure consistency, reduce duplication and otherwise minimise unnecessary regulatory burden for regulators, providers and students.

### ***Changes to the Australian Quality Training Framework***

In December 2009, COAG endorsed amendments to the Australian Quality Training Framework (AQTF) to strengthen the regulatory requirements underpinning the VET sector and provide additional protection for all students undertaking VET in Australia. The revised Conditions and Standards came into effect from 1 July 2010 and provide additional protection for all students undertaking Vocational Education and Training in Australia.

Key changes to the Essential Conditions and Standards include:

- stronger financial viability, financial management, fee protection and governance conditions at initial registration and throughout the registration period
- compliance with the Conditions of Registration will now be audited in the same way that compliance with the Standards is audited
- an application must comply with the Essential Conditions and Standards for Continuing Registration at the date that it is approved for registration
- a range of sanctions for non-compliance, such as additional conditions being placed on an Registered Training Organisation (RTO) registration, an RTO being de-registered, or an application for registration being rejected.

AQTF Condition 5 sets out the financial management requirements that an RTO or an applicant to be an RTO must meet in order to be registered. It includes, amongst other things, the requirement that RTOs, at both initial and continuing registration, must comply with one of five options if they intend to collect student fees in advance. From 1 July 2011, RTOs are required to comply with AQTF Condition 5. The National Quality Council (NQC) has approved principles underpinning alternative fee protection measures of equal rigour (Option 5) and has also approved a set of criteria for determining an approved Tuition Assurance Scheme (Option 2).

### ***ESOS Amendment Act 2010 (Re-registration and other measures)***

Prior to the finalisation of the Baird Review, amendments to the ESOS Act 2000 were introduced and enacted on 3 March 2010. These amendments included:

- a requirement that all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) re-register by 31 December 2010 – this has been completed and resulted in the cancellations, both voluntary and involuntary, of around 180 CRICOS providers
- a requirement that regulators use a risk managed approach to determine the level of scrutiny appropriate for each provider through the re-registration process – a risk management framework was agreed between the Commonwealth and States and Territories through the Joint Committee on International Education (JCIE) and was well received by the sector



## ESOS Tuition Protection Service (TPS) and other related measures

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- the introduction of two new registration criteria – that the provider must have a principal purpose to provide education and that providers must have the demonstrated capacity to deliver education to a satisfactory standard
- enabling the Commonwealth to recognise any conditions on registration imposed by the state registering authority and
- a requirement that all providers publicly list the education agents they use.

### ***Knight Review of the Student Visa Program***

The regulatory changes proposed in this RIS complement the recommendations of the Strategic Review of the Student Visa Program undertaken by Hon Michael Knight AO. Mr Knight reported to the Government on 30 June 2011 with 41 recommendations which are supported by the Government and will be implemented with some modifications to enhance the performance of the sector and to further safeguard the integrity of the visa system. Recommendations reforms include:

- Enhancements to the current risk managed approach in the student visa program to further recognise that high-quality, lower-risk education providers operate across all education sectors. DIAC will introduce new streamlined visa processing arrangements for a range of Australian university courses for faster, easier visa access for prospective students in time for the second semester next year. This complements the Baird review recommendations for improved risk management regulation of education providers under ESOS, including risk based charges.
- The Government will also take steps to support the competitiveness of the non-university higher education and vocational education training (VET) sectors by reducing the financial requirements for higher risk Assessment Level 3 and Assessment Level 4 student visa applicants.
- Flexibility to the student visa application process made possible through proposed integrity enhancements to the student visa program will be complemented by proposed ESOS amendments such as strengthened record keeping requirements for providers.

The proposed changes to the student visa program and the ESOS amendments will work together with the ISSA, the National Regulators, the changes to the AQTF and previous ESOS amendments to assist the international education sector deliver a quality education service to international students.

### Appendix C The current tuition protection framework

The existing tuition protection framework is provided by the ESOS Act established in 2000 and includes provider refund obligations, student placements and an Assurance Fund. This current three tiered system aims to ensure international students receive the tuition for which they have paid and in case of a provider closure, that they receive either a suitable alternative course or a refund.

#### ***Provider refund obligations***

The first tier is an obligation on the education provider in the case of provider default, that is, where the provider no longer provides a course, to give affected overseas students a full refund of pre-paid fees or, by agreement with the student, to arrange an alternative placement in another course.

#### ***Tuition Assurance Schemes***

Where a provider fails to meet refund or alternative placement obligations, the second tier of the tuition protection framework under ESOS requires that provider's Tuition Assurance Scheme (TAS) to place eligible students in an alternative course at no cost to the student. Generally, the student will be placed with another TAS member without any recompense made to the receiving provider by the TAS other than an expectation of ongoing fees beyond the prepaid period. The TAS does not provide student refunds.

Under the existing framework, the role of the TAS is crucial to the effective operation of the tuition protection framework, as a failure at this point results in calls on the ESOS Assurance Fund (the Fund).

There are currently six approved TAS organisations for the international education sector:

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

By far the largest of these is ACPET covering approximately 80 per cent of students of non-exempt CRICOS providers, followed by EA covering 10 per cent, WAPETIA covering 2 per cent, COPHE covering 1 per cent and MCD and SCD covering 2 per cent. The remaining 5 per cent of students in the private sector are with providers that have obtained exemptions from TAS membership requirements.

Currently there is a general exemption covering publicly funded education providers from the requirement to belong to a TAS. In the main, providers that are required to be members of a TAS and pay into the Fund are therefore private or non-government providers. Providers are able to apply to DEEWR for other exemption categories including: Ministerial exemptions (these are rarely given and are usually because the course is unique and placement is not possible); and payment in arrears agreements, indemnities or bank guarantees which effectively remove or fully protect pre-paid fees.

Although a TAS must be approved under the ESOS Act, each TAS sets internal standards in the form of by-laws, which generally include a Code of Ethics, to approve, cancel and regulate provider membership. Breaches of TAS

by-laws may result in termination of a provider's membership of that TAS. Under the ESOS Regulations 2001, however, there are limited requirements for a TAS to report activity to DEEWR.

### ***The ESOS Assurance Fund***

Where no successful placement is found by the TAS, the student is referred to the Fund. The Fund is established by the ESOS Act and constitutes the third layer of the tuition protection framework. The Australian Government made an initial contribution of \$1 million in seed monies to establish the Fund in 2001. Since that time, non-exempt providers have been required to make annual contributions to the Fund. The Fund Manager has the role of managing the Fund to ensure it is able to meet all liabilities, collect annual Fund contributions and, where warranted, Special Levies from providers, and importantly to arrange alternative courses for students as well as to pay refunds from the Fund in the event a placement cannot be found.

Contributions for the Fund are based on criteria set by the Contributions Review Panel (CRP). The CRP is established by the ESOS Act and largely comprises members who represent the interests of providers who are liable to pay annual Fund contributions. The contribution criteria establish a base premium, a fixed amount paid annually, plus an additional premium rate multiplied by a provider's estimated overseas student fee income for the year. Providers who have a Ministerial Exemption from TAS membership pay a higher additional premium. For 2010 contributions, the base premium was set at \$550 with an additional premium rate of 0.189 per cent multiplied by annual overseas student fee income. For example, a provider with overseas student fee income of \$2 million in 2009 would have paid \$4,330 in its annual contribution to the Fund in 2010.

### ***Key concerns with the current model***

There has been an increase in the number of provider closures in recent years for a range of reasons, including poor provider business practices and/or business decisions by owners. Closures have been related to reduced enrolments which in turn have been linked to the global financial crisis, sustained increases in the Australian dollar, negative publicity, changes in migration policy settings and student visa integrity measures as well as the impact on providers of targeted compliance audits.

Key concerns have been raised about the current tuition protection framework from three perspectives: students, providers and government. For students the concern has been about the lack of warning or monitoring of providers who might be at risk of closure, ongoing recruitment in the lead up to a closure, delays in getting a placement offer or a refund, lack of options or choice in the placement process and placement offers that students may consider unsatisfactory, for example where the location or contact hours are not convenient. In some cases students have been placed with a provider that has subsequently closed before completion of that course.

Reputational damage associated with provider closures affects all providers and has contributed to a general downturn in enrolments. Several providers have had difficulty obtaining TAS membership or have been asked to pay a higher premium or put extra arrangements in place such as a bank guarantee as the TAS has increasingly sought to better manage risk. This has sometimes meant delays in obtaining CRICOS registration and/or seeking a form of exemption such as payment in arrears. As the TAS first seeks to place students with another member, this has narrowed the choices of alternative providers and reduced opportunities for students. Public providers such as TAFEs have not been given the option to place students and benefit from ongoing fees. Some receiving providers have complained that they have had to carry an unreasonable impost in taking on students without fees,

sometimes without the promise of ongoing fees or from a lower cost inferior course where some remedial tuition is required to help the student achieve satisfactory educational outcomes.

From a government perspective, the key concern has been the inability of the industry funded arrangements to meet the unanticipated high demand and the subsequent need for government intervention. The lower rate of TAS placements leading to increased refund demands have depleted the Fund's reserves and diminished the capacity of the Fund to respond effectively to future closures. In February 2010, all non-exempt providers were charged a Special Levy totalling approximately \$1 million. Even this amount proved insufficient to cover the costs of the Fund in dealing with student calls and refunds resulting from provider closures. In 2010, the Government agreed to provide support for the Fund in the form of a loan of \$5.1 million designed to assist with the operation of the activities of the Fund.

On 9 November 2010, Senator Evans announced that through the Mid-Year Economic and Fiscal Outlook process the Government would be providing a further \$25 million over two years to support the operation of the Fund, with that assistance to be drawn down only on an as needs basis. The sum is in recognition of the likelihood that a number of Australian international education providers may remain under sustained external pressure.

It is evident from the recent pressures experienced by the Fund that the current model places an unwarranted financial impost on the Government and measures are needed to ensure that the scheme is able to operate in a sustainable manner into the future.

### Appendix D Outline of the proposed TPS model

The TPS is a framework for an overall system of tuition protection made up of a number of elements.

#### A TPS Director

- The TPS Director would be appointed by the Minister responsible for determining the amount of the TPS levy and accountable for the monies collected and held in an international student fund for administration, placements and refunds.
- The position would have statutory responsibility for the TPS Levy and the Overseas Student Tuition Fund (OSTF) under the ESOS Act.
- The term of office for the TPS Director would be no more than five years, commencing on the date specified in the instrument of appointment.

#### A TPS Advisory Board

- Board members would be appointed by the Minister on the basis of individual expertise and experiences in the industry, as well as the contribution that the member is likely to make in fulfilling the objectives of the TPS.
- The Board would be made up of a maximum of 12 members. These would include expert, government and sector representatives with a specified number of permanent positions, with other non-permanent positions being held for a maximum of 2 years. The permanent positions would be drawn from DEEWR, the Departments of Finance and Deregulation as well as Immigration and Citizenship, the Australian Government Actuary, and the Australian Prudential Regulation Authority. The remainder of the membership is to be representative of the international education service industry and may include representatives from universities, schools and English Language Intensive Courses for Overseas Students (ELICOS), VET providers, as well as private education providers and the national regulators (TEQSA and ASQA).
- The role of the TPS Advisory Board would be to advise the TPS Director in relation to the determination of the annual TPS Levy. The TPS Advisory Board will meet either at its own initiative or at the request of the TPS Director to provide advice and make recommendations in relation to the TPS Levy.
- The duties of the TPS Advisory Board will be carried out on a part-time basis under appointment by the Minister with daily fees payable to Board members. These will be calculated in accordance with the relevant determination by the Commonwealth Remuneration Tribunal. The appointed TPS Advisory Board members from non-government offices will receive a daily fee, inclusive of the amount necessary to meet any taxation obligation in respect of these fees.<sup>2</sup> The daily fee reflects the roles and responsibilities of the Director in determining the appropriate annual TPS Levy rates.

<sup>2</sup> Remuneration Tribunal (2010), *Determination 2010/11: Remuneration and Allowances for Holders of Part-Time Public Office*, p. 2. <<http://www.remtribunal.gov.au/determinationsReports/Current%20Principal%20Determinations/2010-11%20Determination%2016.2.2011.pdf>>

### *A TPS Secretariat to support the Director and Board*

- The TPS Secretariat will be provided by DIIRTE and will provide broad administrative support to the TPS Director. This will also include coordinating the annual submission process on the TPS Levy from the wider sector.
- The Secretariat will also support the TPS Director by analysing and reporting on these submissions. The TPS Secretariat would not be involved in the student placement process.

### *A Service Provider*

- It is proposed the TPS Director will have the flexibility to engage a consultant for the purpose of managing a student placement service. This service provider will have a specified role managed through a contractual arrangement with the TPS Director to manage the student placement arrangements and an online facility to support students in finding places with providers.
- The service provider will be selected through an open tender process and reporting to the TPS Director.
- This provider will be responsible for the day-to-day management of the online information and student placement service access service for students.

### *An on-line placement facility*

- It is envisaged that students affected by a provider default will access a secure on-line information and access service, facilitated by the TPS Director and managed by a service provider contracted to the TPS Director, to obtain information on the options for alternative courses including course costs and availability of places.
- Students will also be able to get information on the amount of their unused tuition from this on-line facility.
- By using the on-line facility, students will be able to indicate their preferences for courses and providers.
- Once confirmed as being enrolled in a suitable alternative course the student's calculated available remaining tuition amount will be paid directly to the relevant receiving provider.
- In the event an alternative course placement cannot be found for the student or if the student wishes not to access a replacement course, the student will be eligible for a refund of unexpended tuition fees. In these circumstances DIAC will be notified that the student is no longer an enrolled student and unless alternative visa arrangements are made the student will be required to comply with relevant immigration requirements.
- The TPS Director will be responsible for recording and reporting on all outcomes.

### *The TPS Levy*

- The amount providers would pay into the TPS Levy would be determined on an actuarial basis under the governance arrangements for the new TPS. It is proposed that the TPS Levy be comprised of four-tiers:
  - An **Administrative Fee** component payable by all providers. This component is designed to recoup the costs to the Commonwealth of running the overall TPS framework.
  - A **Base Fee component** payable by all providers. This variable fee recognises the reputational benefits to the sector of a robust and sustainable tuition protection framework.
  - A **Risk Rated Fee** component payable by all providers. This fee recognises the risk of default associated with each provider.

## ESOS Tuition Protection Service (TPS) and other related measures

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- **A Special Levy**, initially set at zero, would be charged only during times of more buoyant sector circumstances in order to build a 'buffer' in the Overseas Student Tuition Fund (OSTF) in order to insure against future systemic shocks experienced by the sector.
- In modelling the risk rated premium component of the TPS Levy a base multiplier for all eligible providers was used. For modelling purposes only this was set at 0.04 per cent of overseas student fee income. The risk factors that were applied to this amount for the purposes of modelling this component were:
  - The growth of course fees over the past two years
  - The growth in student numbers
  - Whether a provider has (had) TAS membership
  - The late payment of any fees
  - The concentration of overseas students (students from the same source country)
  - The length of the provider's operation and
  - The concentration of overseas students in total student numbers.
- The actual determination of these factors and the base multiplier for the risk factors will be a matter for determination by the TPS Director following advice received from the TPS Advisory Board.
- Prior to the TPS Levy being registered each year on the Federal Register of Legislative instruments, the draft Levy will be submitted by the TPS Director to the Treasurer for approval. The TPS Director will publish a decision every year on the TPS Levy, including an identification of amounts applicable under each of the four tiers of the Levy.
- The Bill provides that the Minister may make available exemptions for one or more classes of registered providers in relation to components of the Levy.
- The currently available provision for Ministerial Exemptions from the Assurance Fund arrangements will be removed and all CRICOS registered providers will be required to pay an annual TPS Levy. Any provider taking payment in arrears will have this noted on their publicly available CRICOS information and this will be taken into account when assessing the provider for the risk based component of the levy.

**Note 1:** The proposed Special Levy is designed as a measure quite different from the levy of the same name which can be applied under the existing framework. The latter empowers the Fund Manager to recommend to the Contributions Review Panel the imposition of a Special Levy if the Fund Manager considers the Fund does not have enough money to meet its current or future liabilities (section 72, ESOS Act). Under this framework the imposition of such a levy logically comes during or immediately following the more difficult times, or systemic shocks, experienced by the industry.

Historic examples of these systemic shocks experienced by the sector have included events such as the Tiananmen Square event which gave rise to the first ESOS Act in 1991; the Asian financial crisis which precipitated the amended Act in 2000; and current global and domestic issues such as visa changes, the Global Financial Crisis and the historically high Australian dollar.

The Special Levy component designed as part of the new TPS Levy and set out above, however, is designed to apply in an almost opposite way. The new Special Levy will be applied, at the discretion of the TPS Director on advice from the TPS Advisory Board, on all registered providers in the sector and during those periods when they have more capacity to pay that Levy. The purpose of the Levy is to ensure a buffer is built up in the OSTF so as to insure against those systemic shocks and to avoid charging providers additional amounts during those times when they are already trying to manage those circumstances.

## ESOS Tuition Protection Service (TPS) and other related measures

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**Note 2:** Providers will also no longer be required under the ESOS Act to pay separate TAS membership fees.

### Related measures:

- Rebasing of the Annual Registration Charge (ARC) announced in the budget means significant reductions in the ARC for many providers which will help offset any new or increased risk based contributions to the TPS.
- Partial rather than full refunds will encourage defaulting providers to meet their refund obligations and reduce the financial risk exposure of tuition protection service fund pool (see section 5 on introducing partial refunds).
- Limiting pre-paid fees to each study period will also reduce total refund liabilities (see section 4 on limiting pre-paid fees).
- Strengthened record-keeping requirements to facilitate contacting students and verifying Prior Learning for refund and placement purposes (see section 6 on strengthening record keeping).
- A proposed requirement for a provider to notify the Secretary and TPS Director of both provider and student defaults within 24 hours of the default occurring. This timeframe is to reduce delays should the student be referred to the TPS and to ensure an early alert where student welfare concerns are paramount. The Minister will make a legislative instrument setting out the requirements of the notification to be provided.
- Other measures to ensure quality, for example, strengthened Australian Quality Training Framework and risk management of CRICOS registrations.