

Comments from the Deputy Vice-Chancellors (International) on particular sections of the Tuition Protection Service (TPS) Bill

Proposed section 46B – Registered providers to notify of provider default

A provider defaults if a course does not start on the agreed start date or the provider cannot continue to provide a course. The proposed section 46B requires that a provider which defaults must notify the Secretary of DEEWR and the TPS Director within 24 hours. This timeframe is unrealistic and cannot realistically be complied with. The notice is required to contain advice on whether the provider intends to discharge its obligations and how it intends to do so. It is likely that a provider in this situation will be ascertaining whether it can discharge its obligations and how it will do so which in all probability will take more than 24 hours.

Proposed section 46F – Registered providers to notify of outcome of discharge of obligations

Providers have 14 days to discharge their obligations (either by offering an alternative course at their own expense or by providing a refund to students). After this 'obligation period' providers have 7 days to notify the Secretary of DEEWR and the TPS Director of how they have discharged their obligations.

If the provider's obligations are discharged, then notification seems unnecessary. Surely it would cut down on unnecessary bureaucracy if providers only had to notify if they were unable to discharge their obligations.

Proposed section 47C – Registered provider to notify of student default

A student defaults if they do not commence their course; they withdraw from their course or their provider cancels their enrolment due to non-payment of fees, visa breach or misbehaviour (proposed section 47A).

The proposed section 47C requires that a provider must notify the Secretary of DEEWR and the TPS Director of every student default within 24 hours. This timeframe is unrealistic and cannot realistically be complied with. Universities enrol thousands of international students. Many international students may decide not to commence their course or withdraw from their course. This happens all the time and is reported to DEEWR and DIAC via PRISMS for which providers have 14 days. The same applies in relation to enrolment cancellations based on non-payment of fees, visa breaches or misbehaviour. The number of potential notifications from all universities under the student default categories could number in the hundreds on any one day. A notification period of 24 hours simply cannot be met. Given that providers already have to report these student course variations via PRISMS within 14 days, it seems unnecessary to move to such a short timeframe.

Proposed section 47G – Offence for failure to provide a refund

Proposed section 47G makes it an offence not to provide a student with a refund within 4 weeks in the case of student default. Clarification around these requirements is warranted given

that the section seeks to make it an offence not to comply. Many international students want their refunds paid to them overseas. Bank drafts and telegraphic transfers to other countries can take in excess of 4 weeks to reach the student. If a provider has done all they can to effect a refund on time but there is a hold up with a third party, eg. bank, it is unreasonable to find the provider guilty of an offence because the cause of the delay will be beyond their control.

Proposed section 47H – Registered providers to notify outcome of discharge of obligations

Providers have 4 weeks to pay refunds in the case of student defaults. After this 'obligation period' providers have 7 days to notify the Secretary of DEEWR and the TPS Director that a refund has been paid, the amount of the refund and the details of the student to whom it was paid.

This proposed provision imposes a huge administrative burden on providers and the timeframe is unrealistic and it will be difficult for universities to comply. Universities collectively refund thousands of students every year. Furthermore, if the provider's obligations are discharged, then notification seems unnecessary.

Proposed Division 4 – Calls on the Overseas Students Tuition Fund (OSTF)

Amongst other things, these proposed provisions allow for a call to be made on the fund when a student has not been paid a refund on time. Again this begs the question of when a refund can be said to have been paid. Bank drafts and telegraphic transfers to other countries can take in excess of 4 weeks to reach the student. If a provider has done all they can to effect a refund but there is a hold up with a third party, eg. bank, can a call be made on the fund?

Proposed section 26 – Obligation to advise of any matter that may increase the levy

Under this proposed section, providers would be obliged to advise the Director of the TPS as soon as practicable of any matter that may increase the levy.

It is not clear what is envisaged here or what will be required of providers under this provision.

Proposed national registration

The proposal to have one CRICOS provider code for multiple jurisdictions is helpful.

Proposed section 14A – The Register

Proposed section 14A expands the information that is currently registered on CRICOS to include the location where a course is delivered. Most universities work over multiple campuses and may have some students studying a course with different components of the course delivered on different campuses. The proposed change should not add a level of complexity to each low risk university's CRICOS register. In particular, universities should not have to register the same course multiple times on CRICOS if it is taught at different locations.

Proposed changes in relation to pre-paid fees

The proposed requirement that providers' written agreements with their students specify the length of each study period and the tuition fees payable for each study period (proposed sections 21 and 22) are likely to be problematic for universities given the flexibility of university teaching periods. Universities can have 10 or more teaching periods in any one academic year, all of differing lengths and these can vary from year to year.

It is proposed that providers cannot receive more than 50% of a student's total tuition fees for a course before a student has begun the course. This does not apply if a course is only one study period but a study period cannot be more than 24 weeks.

Universities would not normally receive more than 50% of a new student's total tuition fees for a course except in the case of ELICOS. This proposed change will mean that universities can only receive fees for 20 weeks of ELICOS (as ELICOS is taught in 5 week blocks). The explanatory memorandum to the TPS Bill indicates that this change is designed to limit the amount of money that providers have access to and which might need to be refunded by the TPS in the case of provider default. However, universities have not failed to provide refunds to students or needed to call on external sources of funds to do so. Hence the justification of applying this restriction to universities is not clear.

Initial prepaid fees are to be paid into a designated account and there are specific requirements about when the money must be paid into the account and how it is to be managed. Universities are exempt but private corporate bodies established in connection with universities may not be. Unless there are demonstrable reasons to be concerned that these bodies would result in calls on the OSTF, there would seem to be no reason they should not also be exempt from this additional regulatory burden.

For continuing students, it is proposed that providers must not receive tuition fees more than two weeks before the start of a study period. This proposal has far reaching implications and is unrealistic for universities. University students regularly pay their fees more than two weeks in advance. Some do this because it is difficult to transfer funds out of their home country. Some students' parents elect to do this for their own convenience. Payments are regularly made by telegraphic transfers to university accounts well in advance of two weeks before the start of a study period. This proposal is exceedingly difficult for universities to administer and unnecessary given their risk status.

Proposed changes to record keeping requirements

It is proposed that providers records must contain the student's residential address, mobile phone number (if any), email address (if any) and any other details prescribed by regulation (proposed subsections 21(2)). It is proposed that providers will need to have a procedure to ensure that, at least every six months, the provider confirms these contact details in writing and the records are updated accordingly (proposed subsection 21(2A)). The explanatory memorandum to the TPS Bill indicates that providers can comply with this provision at the time of enrolment or re-enrolment or by sending a text message or email to confirm the currency of the provider's records. This interpretation of the requirement is feasible, but providers cannot be held accountable if students do not update their contact **details. Time will also be required**

to make the technical changes to university student management systems to make the completion of the required fields mandatory.

Proposed powers to make legislative instruments and include additional requirements in regulations

The proposed legislative changes also include many powers for the Minister to create legislative instruments to govern certain aspects of provider compliance and for additional requirements to be included in regulations. It is hoped that the sector will be consulted regarding the proposed contents of any legislative instruments or new regulations so that it has a chance to comment including to provide advice on proposals that are simply unworkable for the industry.

Should further information or clarification be required in relation to this submission please contact Jennie Lang or Jeffrey Smart at