

# Student Default Obligations

## CRICOS education provider obligations following a student default

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

### Student default

Under **section 47A** of the ESOS Act, an overseas student or intending overseas student defaults, in relation to a course at a location, if:

- (a) the student does not start the course on the agreed starting day (and has not previously withdrawn); or
- (b) the student withdraws from the course (either before or after the agreed starting day); or
- (c) the provider refuses to provide, or continue providing, the course to the student because of one or more of the following events:
  - (i) the student failed to pay an amount they were liable to pay the provider to undertake the course;
  - (ii) the student breached a condition of their student visa;
  - (iii) misbehaviour by the student.

### Requirement to provide a refund to a defaulted student

Following a student default, a provider is required to provide a refund to the defaulted student in accordance with either **section 47D** or **section 47E** of the ESOS Act.

#### Refund under a written agreement (s 47D)

Under **section 47D** of the ESOS Act, a provider must provide a refund of the amount required by the written agreement entered into with the student under section 47B of the ESOS Act.

The refund must be paid within the provider obligation period of 4 weeks after receiving a written claim from the student.

## Refund in other cases (s 47E)

A provider must provide a refund to a defaulted student under **section 47E** of the ESOS Act if:

- (a) the provider has not entered into a written agreement with the student that meets the requirements of section 47B<sup>1</sup>; or
- (b) the student was refused a student visa for one or more of the reasons given under subsection 47D(5), which caused the student to default.

Under **section 47E** of the ESOS Act, a provider must pay the defaulted student a refund of the amount worked out in accordance with the [legislative instrument](#)<sup>2</sup> made under subsection 47E(4) of the ESOS Act.

The refund must be paid within the provider obligation period of 4 weeks after the default day.

## Offence for failure to provide a refund

Under **section 47G** of the ESOS Act, a provider's failure to provide a refund to a defaulted student in accordance with section 47D or 47E of the ESOS Act is an offence of strict liability.

## Providers to notify of outcome of discharge of obligations

Under **section 47H** of the ESOS Act, if an education provider is required to provide a refund to a defaulted student under section 47E of the ESOS Act, the provider must give a notice to its ESOS agency and the TPS Director within 7 days after the end of the provider obligation period.

The notice must include the following:

- (a) whether the provider provided a refund under section 47E;
- (b) details of the student the refund was provided to;
- (c) details of the amount of the refund provided.

The notice must comply with the [legislative instrument](#)<sup>3</sup> made under subsection 47H(5) of the ESOS Act.

A notice given by a provider under section 47H of the ESOS Act must be given by entering the required information into the relevant fields in the Provider Registration and International Student Management System (PRISMS) for each confirmation of enrolment (CoE) for the student who is in default.

If a provider breaches section 47H of the ESOS Act, the provider's ESOS agency may take action under Division 1 of Part 6 against the provider.

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<sup>1</sup> For the consequences of failing to enter into a written agreement that complies with the requirements of section 47B of the ESOS Act, see section 47F (offence) and Division 1 of Part 6 (conditions, suspension and cancellation).

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

<sup>3</sup> Education Services for Overseas Students (Student default – discharge of obligations – requirements for a notice) Specification 2015 (No. 1)