

G TUITION ASSURANCE, FEES AND COURSE MONEY

Legislation

The ESOS legislation provides three layers of consumer protection in relation to tuition assurance. The first is a requirement on all providers to pay a student a refund of course money in the case of either a student or a provider default. If that remedy fails, the second layer provides for placement of a student in an alternative course through a Tuition Assurance Scheme (a ministerially approved scheme comprising member organisations that can offer comparable courses). If this remedy fails too, the third layer of consumer protection is the National Assurance Fund (the Fund) which organises alternative tuition or a refund to students (**ESOS Evaluation Report, 7.8**).

ESOS ASSURANCE FUND

Overview

‘Section 45 of the Act provides for the establishment of the ESOS Assurance Fund. The purpose of the Fund is to protect the interests of overseas students and intending overseas students of registered providers by ensuring that the students are provided with suitable alternative courses, or have their course money refunded, if the provider cannot provide the courses that the students have paid for.

The Secretary is required to appoint a Fund Manager to perform a range of functions, including:

- holding the money standing to the credit of the Fund on trust for the benefit of overseas students and intending overseas students of registered providers, for the purpose of the Fund;
- managing the Fund in a way that ensures it is able to meet all its liabilities from time to time;
- collecting annual Fund contributions and special levies from providers; and
- arranging alternative courses for students, and to make payments from the Fund, when required to do so.

Under section 54 of the Act, a Contributions Review Panel (CRP) consisting of 10 people is established to determine the contributions criteria and to hear and determine appeals by providers against determinations of their contributions. It is the responsibility of the Fund Manager to propose to the Panel the criteria for determining the amounts of annual Fund contributions for providers; and to determine the amounts of annual Fund contributions for providers in accordance with those criteria.

If at any time the Fund Manager considers that the Fund does not have enough money to meet its current or future liabilities, the Fund Manager may require all registered providers who are liable to pay an annual Fund contribution for that year to pay a special levy to the Fund Manager. This is subject to the approval of the Panel (**ESOS Evaluation Report, 3.2.5**).

Membership of a Tuition Assurance Scheme (TAS)

Registered providers must at all times be a member of a Tuition Assurance Scheme (s. 22(1) (a)) unless exempted by the regulations (s.22 (3)). Providers who are exempt from the requirement to be a member of a Tuition Assurance Scheme are:

- (a) a provider who, under subsection 24 (2) of the Act, is exempt from the requirement to pay annual Fund contributions;
- (b) a provider who has a bank guarantee:
 - (i) that, in the circumstances mentioned in section 27 of the Act, indemnifies the provider for amounts that the provider may be required to pay under section 28 or 29 of the Act; and
 - (ii) that is approved by the Minister;
- (c) a provider who is a body corporate and who has an indemnity agreement, in writing:
 - (i) with another body corporate that is a parent organisation of the provider and is incorporated in Australia; and
 - (ii) that provides either of the following:
 - (A) in the circumstances mentioned in section 27 of the Act, the parent organisation indemnifies the provider for amounts that the provider may be required to pay under section 28 or 29 of the Act;
 - (B) if the provider cannot provide a course for which a student has paid the provider, the parent organisation will arrange, and pay for, provision of a suitable alternative course to the student; and
 - (iii) that is approved by the Minister;
- (d) a provider who the Minister believes on reasonable grounds should not be expected to become a member of a tuition assurance scheme established in accordance with these Regulations (**ESOS regulations, 3.11**).

If exempt, annual notification to DEEWR

A provider who is exempt from the requirements of section 22 of the Act under paragraph 3.11 (b) or (c) must, within 28 days after the end of a calendar year, give the Secretary and the Fund Manager:

- (a) written notice explaining why the provider is exempt from the requirements of section 22 of the Act; and
- (b) a copy of the bank guarantee or indemnity agreement mentioned in paragraph 3.11 (b) or (c). (**ESOS Regulations, 3.16**)

Compliance requirements

Monash University is exempt from belonging to the ESOS Assurance Fund. However, Monash College Pty Ltd (MCPL) as a private provide is not exempt.

MCPL by virtue of its indemnity agreement with Monash University is exempt from belonging to TAS. This exemption in turn results in a 90% discount from the ESOS Assurance fund contribution.

Compliance Obligations

Monash College Pty Ltd (MCPL)

- Pay annual contribution to ESOS Assurance Fund
- Send annual notification (within 28 days of the end of the calendar year) to DEEWR of continued operation of indemnity agreement along with copy of agreement

FEES

Course money

Standard 3 of the National Code imposes an obligation on providers to include in the written agreement 'an itemised list of course money payable by the student'. Course money as defined in s.7 ESOS Act includes tuition fees, any amount received by the provider for overseas student health cover, and any other amount that the student had to pay to the provider in order to undertake the course.

Fee information for inclusion on the CRICOS register

For entry on CRICOS- fees and compulsory payments to complete the course ie tuition and amenities (can average amenities), books if have to be purchased, fieldwork if integral to course, accommodation only if need to board with provider to attend the course.

Should provide both mandatory and optional payments and provide pre enrolment.

Payment of course fees

The general rule is that only registered providers may receive course money (s.18). However, DEEWR has stated that:

A registered provider, who enters into an arrangement with one or more providers to provide a course to overseas students, must ensure that students pay their course money to the registered provider (section 18 ESOS Act 2000, unless there is a clearly understood arrangement between the registered provider and the other provider, whereby the other provider collects the fees as agent of the registered provider.

The consequence of such an arrangement is that, even though another provider (or entity) collects the course money on behalf of the registered provider, the registered provider remains responsible for all obligations relating to the course money under the ESOS Act 2000, including the refund provisions of the Act¹.

¹ DEEWR ESOS Guide pre 2007