

FACT SHEET

Private training establishment compliance with the Education Act and NZQA rules for student fee protection

Tertiary education organisations have been operating under a new legislative framework for quality assurance since the passing of the Education Amendment Act in August 2011. As part of the 2011 amendments, the government made a number of changes to Part 18 (Private training establishments) of the Education Act to enhance requirements for protecting student fees.

The New Zealand Qualifications Authority (NZQA) has been engaged in work to develop rules to supplement the new legislative provisions. The changes to the Act are now reflected in the rules, which come into force on 1 January 2013.

Standard trust for protecting student fees during the statutory refund period

All private training establishments (PTEs) must now have a standard trust mechanism covering the relevant withdrawal/refund period of student fee protection (refer pages 2 and 3 of this fact sheet). This requirement is set out under Section 253E(1) of the Education Act 1989.

NZQA is mindful that PTEs most affected by these changes may find it difficult to move to compliant arrangements. PTEs must ensure their student fee protection arrangement is compliant with the Education Act 1989 and the rules for student fee protection. NZQA will continue to monitor risks posed by individual PTEs to students and will actively enforce compliance with the Act and the rules.

New providers that apply for registration as a PTE must have a student fee protection mechanism that is compliant with the rules in place before registration will be granted.

Scenarios

The following scenarios are designed to assist your understanding of the requirements in the Act for protecting fees during the statutory refund period.

PTE 1 is using a standard trust to protect fees over the refund period and a standard trust mechanism during the draw-down period. This PTE's student fee protection mechanism continues to comply with legislation – no change is required.

PTE 2 is using a bank guarantee to cover the whole protection period (refund and draw-down). This PTE's student fee protection mechanisms do not fully comply with legislation – change is required. To be compliant, PTE 2 needs to move from a bank guarantee to a standard trust mechanism for the refund period.

PTE 3 is using a standard trust to cover the withdrawal period and a bank bond to cover the draw-down period. This PTE's student fee protection mechanisms continue to comply with legislation – no change is required.

Allowable draw-downs

The rules detail what portion of a student's fees a PTE is entitled to draw-down from trust to run its business. A PTE may access monies in the following ways.

1. Draw-down of 20 per cent of student fees or \$3000, whichever is the lesser, at the end of the statutory withdrawal and refund period.

The initial draw-down entitlement acknowledges the significant upfront costs to a PTE before and immediately after a new student joins a course, such as recruitment and administration set up, and it is reasonable that the PTE recoups a certain amount earlier rather than later in the course. A student enrolment in a second PTE resulting from the closure of the first PTE does not incur the same upfront recruitment and administrative costs, and the second (or other) PTE is not entitled to a 20 per cent draw-down at the end of the second refund period.

2. The amount remaining after the end of the refund period can be drawn-down in arrears over the length of the course, including holidays. These draw-downs can be weekly, fortnightly or monthly.

Following the initial draw-down made at the end of the withdrawal period (1 above), the PTE must ensure that at all times there are sufficient funds in a compliant student fee protection mechanism to cover any services not yet provided by the PTE. A Maximum Liability Amount calculation is used to calculate the amount of fees that must be protected in a mechanism where an equivalent sum is being protected (i.e. bank bonds and static trusts), rather than a student's actual monies (i.e. standard trust).

3. If the course is weather dependent or involves self-paced learning, the PTE is entitled to the first draw-down set out under 1 above. The amount remaining after the end of the refund should be drawn down in arrears as the course is completed, rather than being drawn down in equal instalments.

Refund and subsequent draw-down entitlements during the statutory refund and withdrawal period

Refunds can be generated by a student withdrawing from a course or by a Course Closure Event.

Students who withdraw from a course at a PTE within the statutory refund period are entitled to a fee refund. If a student withdraws during the statutory refund period, PTEs are entitled to retain a portion of the fees. The portion of the fees refunded to a student and the portion retained by a PTE is dependent on whether a student is international or domestic, and on the length of the course the student is enrolled in.

Domestic students enrolled in courses three months or longer are covered by the withdrawal rules. The statutory withdrawal period covers the seven days that follow Day 1 of the course start date (i.e. after 8 calendar days). If a domestic student withdraws within the refund period, PTEs are entitled to retain up to 10 per cent of any amount paid or \$500, whichever is the lesser.

If a domestic student withdraws from a course of less than three months (noting that there is no statutory withdrawal and refund period for these courses) providers are entitled to retain 20 per cent of any amount paid or \$3000, whichever is the lesser, provided the student has agreed, after the following periods:

- (a) two days of course attendance in respect of courses up to and including four weeks and six days
- (b) five days of course attendance in respect of courses of five weeks or more, but less than three months

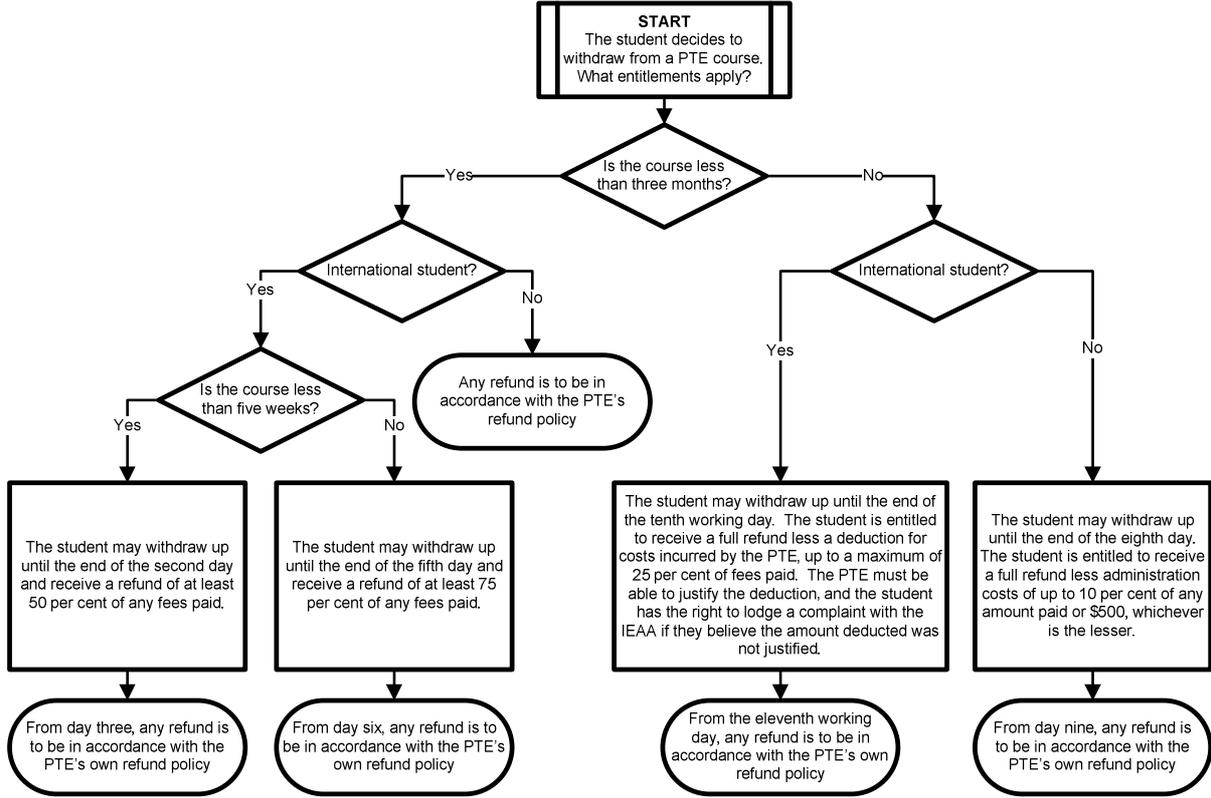
The statutory refund period for international students studying courses that are three months or longer in duration is 10 working days from the day the student is first required to attend. If an international student withdraws during the refund period, a PTE is entitled to retain **up to 25 per cent** of the fees the student pays. PTEs must be able to justify the deduction. If the student is unhappy with the amount a PTE withholds, they can lodge a complaint with the International Education Appeals Authority (IEAA).

For international students enrolled in courses less than three months, the Education Act specifies two separate refund periods. For courses less than five weeks, a student may withdraw up to until the end of the second day and receive a refund. The student is entitled to receive a refund of at least 50 per cent of any amount paid. For courses of five weeks or more, but less than three months, a student may withdraw up to until the end of the fifth day and receive a refund. The student is entitled to receive a refund of at least 75 per cent of any amount paid.

PTEs may choose to offer students more than the statutory entitlement, but it cannot offer less. If a student withdraws after the relevant withdrawal period the student has no statutory entitlements to a refund. PTEs must have a policy explaining what, if any, refunds are given to students who withdraw outside the statutory withdrawal and refund period. PTEs are not obligated to provide a refund after this point unless their policy specifies they will offer refunds.

The diagram below illustrates the student fee refund entitlements in place in the Education Act and the rules in student fee protection.

Flow chart: Student fee refund entitlements



Refunds resulting from a Course Closure Event

In a Course Closure Event, a student is entitled to a refund that is pro-rated according to the proportion of the undelivered services provided by a PTE to the student. This pro-rated amount is subject to the allowable draw-down in 1 above.

In situations where a PTE offers to refund students more than the statutory entitlement, but there are insufficient funds to cover the additional amount, the only money available to refund to the

student will be the amount of the statutory entitlement that is subject to student fee protection. If there is a dispute in the amount retained by the PTE and a resolution cannot be found between both parties, NZQA advises international students to contact the IEAA.

Student fee attestation and independent audit

PTEs using a standard trust to protect student fees are no longer required to provide their trustee with a quarterly attestation. Trustees for standard trust arrangements must still advise NZQA as soon as practicable if it appears that a provider may not be compliant with the rules.

All PTEs will now have five months following their financial year end to submit their independent audit of student fee protection arrangements, rather than the current requirement of 90 working days.

Agents protecting student fees

The Education Amendment Act inserted a new requirement into the Education Act 1989 for agents who receive fees from students for the purposes of enrolling students into programmes or training schemes at PTEs. The inclusion of agents in statutory requirements is intended to safeguard the interests of students from the time they pay their fees. This is to help prevent students being left out of pocket in relation to agent commissions.

The requirement is in the new section 234E(2), and gives agents two options, which will be outlined in the rules for student fee protection.

The first option is likely to require little change in how agents pay student fees to a PTE. At the point when the student's enrolment is confirmed, agents must transfer the fees into the trust account of the PTE by close of business the next working day. This option requires PTEs to have a contract with agents, which is predicated on the requirement under clause 10.3 of the *Code of Practice for the Pastoral Care of International Students* for PTEs to have a written contract with an agent before they can accept students from that agent.

The second option is for agents to establish a trust for protecting student fees and to deposit money into trust until payment is made to the PTE's trust.

This requirement does not preclude PTEs from protecting the full amount of fees paid by a student. This may include 'topping up' the difference in a standard trust arrangement if an agent retains a portion of the fees.

Exemptions to the rules for student fee protection

NZQA is unable to grant exemptions to the rules for student fee protection. Exemptions granted under the student fee protection policy prior to the 2011 amendments to the Education Act continue to apply to the situations they were specifically approved for.

Forms and trust deeds

The bank bond form and static trust deed currently available on NZQA's website are being updated to align with the rules. The rules will specify additional requirements for bank bonds, static trusts and insurance. NZQA will advise the PTE sector on any updates when required.

Withdrawal of fee protection by a student fee protection supplier

PTEs should note that individual suppliers of student fee protection mechanisms may at any time make business decisions to exit from the fee protection market. In the event that a supplier leaves the market, or ceases to provide the service to a PTE, affected PTEs must move immediately to an alternative arrangement that complies with the rules. If a PTE is unable to do so it should contact NZQA to discuss a possible transition plan.