

Approved version 4

## Student Fee Protection Rules 2013

### 1. Authority

1.1 These Rules are made under section 253 of the Education Act 1989.

### 2. Commencement

2.1 These Rules commence on 1 January 2013.

### 3. Interpretation

3.1 In these Rules, unless the context otherwise requires: "Act" means the Education Act 1989:

**Agent** means a person to whom section 234D(1) of the Act applies, regardless of whether or not that person has been appointed by the Student:

**Alternative Provider** means a university, polytechnic, wānanga, or registered private training establishment:

**Approved Independent Trustee** means an independent trustee as defined in section 234C(1) of the Act where that trustee has no conflict of interest in carrying out the role of trustee for the Provider and is approved by NZQA under Rule 11.1; and includes firms of accountants and lawyers acting through an accountant or lawyer who is an independent trustee of that kind:

**Compliant**, in relation to a Provider or Agent and a Mechanism, means the Provider or Agent and Mechanism meet the requirements specified in the Act and under provisions of the Act (including under these Rules and under sections 235A(1)(c) and 235B of the Act):

**Conditions Dependent Course** means a Course, or part of it, that is dependent on weather or water conditions, or that involves self-paced learning:

**Course** means a programme or training scheme that is not Exempt:

**Course Closure Event** means:

- (a) the provider is no longer delivering or capable of delivering the Course for which students are Enrolled;
- (b) any regulatory closure of the Provider;
- (c) insolvency of the Provider;
- (d) the Provider ceases to operate or loses its body corporate status;
- (e) any cancellation by NZQA of the Provider's registration;
- (f) any withdrawal by NZQA of the Provider's accreditation to provide a programme;
- (g) any withdrawal by NZQA of the Provider's training scheme approval; or

(h) the Provider ceases to be a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016.

**Enrolled** means (and Enrol, Enrolling, and Enrolment have corresponding meanings):

- (a) the Student has accepted an offer from the Provider of entry into a Course at the Provider, and the Provider has received that acceptance; or
- (b) the Student is recorded by the Provider as enrolled with the provider or in a Course of the Provider:

**Exempt** means a programme or training scheme exempt from the requirements of section 234E(1) by rules made under section 253(1)(pb) of the Act:

**Mechanism** means any of the Student Fee Protection Mechanisms (including their requirements) detailed in Appendix B:

**NZQA** means the New Zealand Qualifications Authority:

**Pro Rata Refund** means a refund of Student Fees paid by the student for which services or goods have not been provided to the Student, with the Tuition Fees component of the refund being calculated in accordance with Appendix C:

**Provider** means a private training establishment as defined in section 159(1) of the Act:

**Refund Period** means, in relation to -

- (a) international Students on a Course of three months' duration or more, the Refund Period referred to in section 235A(1)(a) and as specified in a Gazette notice made under section 235B of the Act:
- (b) international Students on a Course of less than three months' duration, the Refund Period specified by NZQA under section 235A(1)(c) of the Act:
- (c) domestic Students on a Course of three months duration or more, the Refund Period defined in section 234C(1) of the Act:

**Student** means any domestic student or international student:

**Student Fees** means any and all funds of the following kinds that are paid by or on behalf of a Student in respect of a Course:

- (a) Tuition Fees:
- (b) accommodation expenses, travel and health insurance, and living expenses:
- (c) any other financial commitments associated with the Course:

**Supplier** means a supplier of a Mechanism approved under Rule 11, and for the avoidance of doubt includes Approved Independent Trustees:

**Tuition Fees** means the gross payment relating to all costs of a Course (for the avoidance of doubt including commissions, Course expenses, and other financial payments related to the Course) paid by or on behalf of a Student.

- 3.2 Other terms used in these Rules that are defined in the Act are: accreditation; polytechnic; private training establishment; programme; training scheme; university; wānanga.

#### **4. Application of these Rules**

##### 4.1 These Rules:

- (a) apply to any person who receives money from a Student for the purpose of Enrolling, or helping a Student to Enrol, in a Course at a Provider, including Providers, Agents and Suppliers;
- (b) are in addition to the obligations of any Provider, Agent or Supplier under the student fee protection provisions in the Act;
- (c) reinforce the requirements of section 234E of the Act for payment of Student Fees directly to, or for the deposit of sufficient money with, an Approved Independent Trustee; and
- (d) do not alter the entitlements of any Provider to the relevant payment where a student withdraws during the relevant Refund Period.

#### **5. Provider withdrawal and refund policies**

##### 5.1 A Provider must have withdrawal and refund policies that cover:

- (a) Student withdrawal before, during and after the relevant Refund Period;
- (b) the Provider voluntarily ceasing its Course or Courses;
- (c) voluntary closure by a Provider;
- (d) a Course Closure Event; and
- (e) international students whose visa applications are declined.

##### 5.2 These withdrawal and refund policies can be more beneficial to Students, but must not be less beneficial, than the obligations specified in the Act and under provisions of the Act (including under these Rules and under sections 235A(1)(c) and 235B of the Act).

#### **6. Voluntary closure or Course cessation**

##### 6.1 Where a Provider voluntarily closes, or ceases to offer a Course in which students are Enrolled, the Provider and Supplier are required to ensure at least the amount of a Pro Rata Refund is made for the affected Students within five working days from the date of the closure or cessation, unless NZQA permits a longer period.

#### **7. Course Closure Event**

##### 7.1 Where NZQA gives notice to the Supplier and Provider, of a Course Closure Event of a Provider, the Provider's Mechanism(s) will be triggered, requiring Pro Rata Refunds to be made to Students affected by the Course Closure Event.

##### 7.2 Where a Course Closure Event is due to a natural disaster any notice by NZQA under Rule 7.1 will not take effect where:

- (a) the Course resumes before the start of the 11th working day after the date of the notice; and
- (b) each Student is notified by the Provider within five working days from the date of the notice of the right to opt out of the Course, and where the Student does opt out within 20 working days of the date of the notice, a Pro Rata Refund is made to the Student for the remaining Tuition Fees, calculated from the time the Student ceased attending.

## **8. Student Fee Protection Mechanism(s) for Providers**

- 8.1 Providers must have or put in place prior to the Provider or any person acting on behalf of the provider accepting any Student fees from a Student, and keep in place, a Mechanism which meets the criteria for that Mechanism set out in Appendix B, and meets the criteria in Appendix D.
- 8.2 For the Refund Period the Mechanism must be a standard or static trust managed by an Approved Independent Trustee (under Mechanism 1 in Appendix B).
- 8.3 After the Refund Period, and where no Refund Period applies, one or more of the Mechanisms must be used.

## **9. Student Fee Protection Mechanism(s) for Agents**

- 9.1 For the purposes of section 234E(2) of the Act, an alternative arrangement that is acceptable to NZQA is for the Agent to transfer the Student Fees to the trust account of the Provider's Supplier by the close of business on the working day following the day it is received by the Agent.
- 9.2 Where an Agent does not avail itself of the acceptable alternative arrangement in Rule 9.1, the Agent must use a standard trust (under Mechanism 1 in Appendix B) which is managed by an Approved Independent Trustee and which meets the following general criteria:
  - (a) it must cover every Student who has paid Student Fees to the Agent or any person acting on behalf of the Agent for Enrolment in a Provider;
  - (b) the Agent must deposit the Student Fees into the trust account of its Approved Independent Trustee by close of business on the working day following the day the Student Fees were received by the Agent or any person acting on behalf of the Agent; and
  - (c) it must require the Agent's Approved Independent Trustee to transfer the Student Fees held in relation to a Student to the Provider's Approved Independent Trustee by close of business on the working day following the day the Student Fees were deposited with the Agent's Approved Independent Trustee.

## **10. Public Notification of approved Student Fee Protection Mechanism**

- 10.1 Unless otherwise agreed by NZQA, a Provider, Agent or Supplier may only use the following words to describe the acceptability of its Mechanism:

*This arrangement has been accepted by the New Zealand Qualifications Authority as meeting the requirements of the Education Act 1989 and the Student Fee Protection Rules 2013.*

## **11. NZQA approval of Suppliers**

- 11.1 Suppliers must be approved in writing by NZQA before operating a Mechanism.
- 11.2 Where the Mechanism being operated is not a standard trust, NZQA must be satisfied the Mechanism provides equivalent protection to a standard trust.
- 11.3 A Supplier approved under Rule 11.1 may not operate or change a Mechanism without NZQA's written approval.

- 11.4 For the purposes of granting approval under Rules 11.1 and 11.3, NZQA must be satisfied that the Supplier will meet, and continue to meet, its obligations in or under the Act, including under these Rules.
- 11.5 NZQA will take into account any previous performance of a Supplier when deciding whether to grant approval under Rules 11.1 and 11.3.

## **12. Obligations of Suppliers**

- 12.1 Suppliers must:
- (a) ensure that they meet all obligations under their Mechanisms, and in or under the Act, including under these Rules;
  - (b) where funds are held on behalf of Students, manage them prudently and in accordance with the law; and
  - (c) provide NZQA with the information described and pursuant to the timeframes in Appendix A, and any of that information outside of those timeframes when reasonably requested by NZQA.
- 12.2 Without limiting a Supplier's obligations under the Act to make refunds to Students withdrawing within the Refund Period, where -
- (a) there is a voluntary closure or Course cessation by a Provider; or
  - (b) NZQA gives notice to the Supplier of a Course Closure Event - the Supplier must make Pro Rata Refunds to eligible Students.
- 12.3 Where any payments out of a trust account leave a risk of a shortfall in the amount of a refund to a Student, the Supplier must have appropriate arrangements in place with the Provider or other person to cover that shortfall.

## **13. Obligations of Providers**

- 13.1 Providers are required to provide to a Supplier the information they hold, which is relevant to information that a Supplier must provide to NZQA under Appendix A, within five working days of the Supplier's request to the Provider.
- 13.2 A Provider must supply to NZQA and to its Supplier, before the end of five months following each financial year end of the Provider, and at the Provider's expense:
- (a) an audit opinion from an independent chartered accountant confirming that the provider is Compliant; and
  - (b) a further audit opinion from the independent chartered accountant confirming the compliance of the provider's Supplier with these Rules and relevant Mechanisms (however, if the Supplier is Public Trust, this paragraph (b) does not apply).
- 13.2A NZQA may contact any independent chartered accountant (or firm) who provided an audit opinion for the purposes Rule 13.2, to clarify any of the content of the opinion or any related matter.
- 13.3 Providers must request and retain from a Student, who has paid Student Fees to the Provider via an Agent, a copy of the invoice the Student receives from the Agent.
- 13.4 Where there is -
- (a) a voluntary closure or Course cessation by a Provider; or
  - (b) NZQA gives notice of a Course Closure Event under Rule 7.1 -

the Provider must provide the Supplier and NZQA with the information set out in Appendix A within five working days, and must ensure Students are paid their refund entitlements.

- 13.5 Without limiting Rule 11.3, a Provider must not change a Mechanism it has in place unless it seeks NZQA approval by giving at least 20 working days' notice and unless NZQA approves the change.
- 13.6 Providers must, as a minimum and as part of their Student information obligations under section 234B of the Act, inform Students about:
- (a) the applicable Mechanism(s); and
  - (b) when the Mechanism is triggered:
    - (i) the process for the Student's entitlement to any payment for the relevant Refund Period or any Pro Rata Refund;
    - (ii) who the Student should contact;
    - (iii) a list of any documents Students will require; and
    - (iv) instructions to attend any meetings arranged for Students.
- 13.7 In respect of Providers operating either Mechanism 1 (standard trust or static trust) or Mechanism 3 (bank bond) in Appendix B:
- (a) where the Provider becomes aware that it has drawn down fees of a higher amount than the amount of the tuition actually delivered, the Provider must reimburse to the Supplier, by the close of the next business day, sufficient funds for the trust to cover the Tuition Fees represented by the undelivered tuition;
  - (b) where a Course Closure Event, or voluntary closure or Course cessation by a Provider occurs, and the Provider has been paid by the Supplier an amount more than the Provider is entitled to (based on tuition actually delivered), the Supplier may withhold further payments due to the Provider to offset that amount of undelivered tuition; and
  - (c) where a Student is enrolled in a Conditions Dependent Course, the Provider may only draw down Tuition Fees in relation to the Student upon confirmation to the Supplier that the tuition for which payment is claimed has been delivered.
- 13.8 In respect of Providers operating Mechanism 2 (company or parent body guarantee) in Appendix B, where the Provider becomes aware that the company or parent body might or will be unable to meet its obligations under the guarantee, the Provider must immediately advise NZQA and put in place an alternative Mechanism that is Compliant.
- 13.9 Providers must:
- (a) ensure that the correct amount of Student Fees is held by an Approved Independent Trustee when the Provider or any person acting on behalf of the Provider receives a payment of Student Fees, along with the amount of any deductions made by an Agent prior to the Provider receiving the Fees (whether that Agent is based overseas or in New Zealand);
  - (b) when aware that the Student has paid Student Fees to an Agent or any person acting on behalf of the Agent but unaware of the actual amount paid, deposit funds that cover the provider's normal advertised price of the Course (including any expected commission fees if they are not included in that advertised price),

accommodation expenses, travel and health insurance, living expenses, and other financial commitments associated with the Course; and

- (c) advise NZQA where a situation of the kind described in paragraph (b) of this Rule occurs.

13.10 Before a Provider Enrols a student in a Course at the Provider via an Agent, there must be a written contract in place between the Provider and the Agent that properly covers the requirements of these Rules and the Act (noting that for international Students a contract is required between Providers and Agents under clause 10.3 of the Code of Practice for the Pastoral Care of International Students).

13.11 Providers must give all reasonable assistance to their Supplier(s) for the purposes of their Supplier(s) meeting their obligations in the Act, these Rules, and any relevant trust deed.

#### **14. Obligations of Agents**

14.1 Agents must ensure they have a written contract in place as described in Rule 13.10, before an Agent receives money from a Student for the purpose of Enrolling, or helping the Student to Enrol, in a Course at a Provider.

14.2 Where there is -

- (a) a withdrawal by a Student within the relevant Refund Period or a withdrawal after the Refund Period where the Provider's withdrawal and refund policies allow a refund; or
- (b) a voluntary closure or Course cessation by a Provider; or
- (c) NZQA gives notice to the Supplier of a Course Closure Event -

and the Agent or any person acting on behalf of the Agent holds any Student Fees (whether through a Supplier or in a trust account or otherwise), the Agent must ensure Students are paid their full refund entitlements.

14.3 Agents must retain records demonstrating they are Compliant and provide those records to NZQA on request under section 255A of the Act.

14.4 Where an Agent has not availed itself of the alternative arrangements acceptable to NZQA as set out in Rule 9.1 above, the Agent must obtain NZQA approval for any change to their Mechanism and/or Supplier prior to that change occurring.

#### **15. Failure of Provider or Agent to comply with Rules**

15.1 Should a Provider or Agent fail to put in place or act under a Mechanism in a manner that complies with these Rules, NZQA may, without prejudice to its rights under the Act or Rule 17.1, direct the Provider or Agent to arrange an alternative or specific alternative Mechanism that is Compliant.

#### **16. Withdrawal of Mechanism by Supplier**

16.1 Where a Supplier withdraws its product from the market, or ceases to provide the Mechanism to a Provider or Agent, the Supplier must give at least 20 working days' notice to the Provider or Agent and copy that notice to NZQA.

16.2 Where the Supplier gives notice under Rule 16.1, each Provider or Agent affected must take immediate steps to put in place an alternative Mechanism that is Compliant,

and the alternative Mechanism must be in place by the end of the period of notice given by the Supplier.

#### **17. Failure of Supplier to comply with Rules**

- 17.1 If a Supplier of a Provider or Agent does not put in place a Mechanism that is Compliant:
- (a) NZQA may immediately withdraw approval of the Supplier and/or its Mechanism; and
  - (b) NZQA may appoint an alternative Supplier and/or require a particular Mechanism.
- 17.2 Where NZQA has appointed an alternative Supplier and/or required a particular Mechanism under Rule 17.1(b), the Provider or Agent must take immediate steps to move to the appointed alternative Supplier and use the required Mechanism.

#### **18. Transitional matters**

- 18.1 Where issues arise regarding the transition from the Student Fee Protection Policy (deemed by section 44(1)(a) of the Education Amendment Act to be rules made under section 253 of the Act until 31 December 2012) to these Rules, NZQA will discuss individual situations with Providers and Suppliers with a view to reaching a workable outcome which takes the interests of students into account.



# Appendix A

## Information Suppliers must hold and provide to NZQA

Rules 12.1(c), 13.1 & 13.4

- 1.1 Following approval of a Mechanism by NZQA, the Supplier must hold at all times, in a format that allows it to be made readily available and readable, the following information by named Provider and for each Student of that Provider:
  - (a) Student name:
  - (b) Course start date:
  - (c) Course end date:
  - (d) Total monies paid (showing Tuition Fees and non-tuition fees and expenses separately):
  - (e) Percentage of tuition delivered against Tuition Fees remaining:
  - (f) Non-active accounts, being providers of the Supplier that are not using the Mechanism:
  - (h) Providers who have withdrawn from using the Mechanism or from the Supplier, or who have notified their intention to do so:
  - (i) In respect of static trusts and bank bonds, the maximum liability amount and supporting documentation.
  
- 1.2 Where a Provider uses either a static trust or a bank bond or Student-based insurance policies as its Mechanism, the Supplier of that Mechanism to that Provider must supply to NZQA an attestation, as at the last day of February, May, August, and November of each year (supplied within 10 working days of the last days of those months), that contains the following information:
  - (a) The maximum liability amount required to be held (as defined in clauses 1.14, 3.2, and 5.3 of Appendix B);
  - (b) Notification of the amount protected by the Mechanism;
  - (c) Confirmation of any drawdown requested where the amount notified under paragraph (b) exceeds the amount required to be held under paragraph (a); and
  - (d) Confirmation of the completion of any top-up amount required to be paid by the Provider where the amount notified under paragraph (b) is less than the amount required to be held under paragraph (a).
  
- 1.3 Where it appears to a Supplier, or comes to the attention of a Supplier, that a Provider may not be Compliant, the Supplier must notify NZQA as soon as reasonably practicable.

## Appendix B

### Student Fee Protection Mechanism Options for Providers and Agents, and detailed criteria

Rules 3.1 (definition of “Mechanism”), 8.1, 8.2, 9.2, 13.7, & 13.8; clause 1.2(a) of Appendix A, & Appendix D

#### Mechanism 1

##### Trust accounts - general requirements for standard and static trusts

1.1	Must be held by a Supplier that is an Approved Independent Trustee.
1.2	NZQA approved trust deeds must be used between a Provider and a Supplier and between an Agent and a Supplier.
1.3	The standard or static trust must cover the period following receipt of Student Fees, up to and including at least the end of the relevant Refund Periods. Standard trusts or static trusts or the other Mechanisms in this Appendix must provide cover from the end of the relevant Refund Period to the end of the Course ( <i>inclusive of holidays</i> ).
1.4	The Trustee is responsible for ensuring it holds sufficient information about individual Students to enable it to carry out its role as Trustee.
1.5	There must be prudent investment rules in place which guide the investment of funds by the Trustee.
1.6	Appropriate reporting arrangements must be in place and allow NZQA to assess, on short notice, that an appropriate level of funds is held in trust.
1.7	In addition to the independence requirements in these Rules, the Trustee must meet any statutory and professional independence requirements.

##### Standard trust - specific requirements

*(to cover the Refund Period, the period after that Period where the fees of individual Students are drawn down in arrears, and in respect of Courses under three months where no Refund Period applies)*

1.8	The payment provided for in Criterion 7, Criterion 8, Criterion 9, or Criterion 10 of Appendix D must be clearly stated.
1.9	Subject to Rule 13.7, the Provider is paid from the balance of Tuition Fees (taking into account any payments under Criterion 7, Criterion 8, Criterion 9, or Criterion 10 of Appendix D) pro rata in arrears for the proportion of tuition delivered under the payment schedule referred to in clause 1.13 below.
1.10	The monies must be held in trust for individual Students rather than as a group.

1.11	Where accommodation expenses are paid by the Student, the Approved Independent Trustee may pay this expense to the Provider, the Student, or a nominated accommodation provider on a pro rata basis up to a month in advance where the Student has agreed.
1.12	Where living expenses are paid to the Student, then the Trustee may pay those expenses as an allowance to the Student, via the Provider, on a pro rata basis in advance or as otherwise agreed in writing with the Student.
1.13	There must be a payment schedule that indicates the dates and amounts of payments to be made, signed by both the Provider and the Student.

### **Static trust – specific requirements**

*(applying before or after the Refund Period, or in respect of Courses under three months where no Refund Period applies)*

1.14	The trust must hold an amount that covers the maximum liability required to reimburse Students that the provider could experience should it close. The maximum liability is defined as the highest amount of Student Fees that could be paid out at any one time, including in relation to Students anticipated to pay fees within the next quarter.
1.15	The maximum liability calculations must be externally reviewed by an independent chartered accountant as required by Rule 13.2.
1.16	A static trust may be used to provide protection for homestay or accommodation payments and for living expenses, and may be used as a trust supplementary to another Mechanism if approved by NZQA.

## **Mechanism 2**

### **Company or parent body guarantees**

*(applying after the Refund Period, or in respect of Courses under three months where no Refund Period applies)*

2.1	Guarantees must be made in favour of an Approved Independent Trustee.
2.2	<p>Approval for guarantees by NZQA will be considered on a case-by- case basis. Important features other than those already specified in these Rules that will be taken into account include (without limitation on any other concerns that may arise):</p> <ul style="list-style-type: none"><li>(a) clear evidence that the proposed guarantor entity is financially sound and is demonstrably in a position to provide protection for the maximum liability in a voluntary closure or cessation by a Provider, or Course Closure Event;</li><li>(b) the financial viability of the proposed guarantor as indicated by a financial security rating to the standard required of insurance or bond companies;</li><li>(c) the wording of the formal guarantee and its recognition in the financial statements of the respective parties;</li><li>(d) the adequacy of security for the amount of the guarantee; and</li><li>(e) clear evidence that the proposed guarantor can pay the Approved Independent Trustee the necessary amounts to cover all refunds to Students, and can make the refunds to Students in a timely manner.</li></ul>
2.3	<p>The following are not acceptable as a company or parent body guarantee:</p> <ul style="list-style-type: none"><li>(a) a guarantee from a company that is not registered in New Zealand;</li><li>(b) a guarantee from any other entity without a formal legal presence in New Zealand; or</li><li>(c) personal guarantees.</li></ul>
2.4	A standard or static trust must be used to provide protection for homestay or accommodation payments and for living expenses.

### **Mechanism 3**

#### **Bank bonds**

*(applying after the Refund Period, or in respect of Courses under three months where no Refund Period applies)*

3.1	The bond must be from a bank that is currently registered with the Reserve Bank of New Zealand under the Reserve Bank Act 1989 (other than banks marked “(B)”).
3.2	The bond must be for an amount that covers the maximum liability required to reimburse Students. The maximum liability is the highest amount of Tuition Fees that could be paid out at any one time, including in relation to Students anticipated to pay fees within the next quarter.
3.3	The bond must be held by, and expressed to be in the favour of, only the Approved Independent Trustee (and not the Provider).
3.4	There must not be a default clause for non-disclosure that allows the bank to decline cover due to non-disclosure by the Provider, and the bank bond must not have an expiry date.
3.5	The maximum liability calculations must be externally reviewed by an independent chartered accountant as per Rule 13.2.
3.6	A standard or static trust must be used to provide protection for homestay or accommodation payments and for living expenses.  A bank bond may be used as a trust supplementary to another Mechanism if approved by NZQA.
3.7	The Provider will need to discuss this option with their proposed bank, and must ensure the proposed bond is provided to NZQA for approval prior to entering the bond.

## **Mechanism 4**

### **Deferred payment**

Where no Student fees have been paid before the end of the Refund Period, use of a standard trust for the Refund Period is not needed.

Where Students pay Student Fees after the end of the Refund Period or prior to the end of tuition in respect of courses under three months where no Refund Period applies, and the fees include payment for undelivered tuition, a Mechanism must be used to protect them from the time of payment until the end of the Course.

A Mechanism does not need to be used where Student Fees are paid in arrears (eg: *weekly, fortnightly, monthly*) after the end of the Refund Period or paid in arrears in respect of Courses under three months where no Refund Period applies. Where Student Fees are paid by a student in arrears of tuition delivered, the Student would not have advanced any fees for undelivered tuition, and should the Course cease to be provided the Student can stop paying the fees and there would be no risk of loss of fees paid.

## **Mechanism 5**

### **Student-based insurance policies**

*(applying after the Refund Period, or in respect of Courses under three months where no Refund Period applies)*

5.1	The insurance policies for each student must be from a licensed insurer that is currently registered with the Reserve Bank of New Zealand under the Insurance (Prudential Supervision) Act 2010, and must be subject to the jurisdiction of New Zealand Courts and the New Zealand Insurance and Savings Ombudsman.
5.2	The policies must not contain any non-disclosure clause(s) relating to non-disclosure by the Provider that could be used by the insurer to decline cover or prevent payment of claims.
5.3	The policies must cover the maximum liability to reimburse students. The maximum liability is defined as the highest amount of Student Fees that could be paid out to Students of a Provider at any one time.
5.4	The policies must be held by the Approved Independent Trustee used by the Provider for the Refund Period, and payments under the policies must be made at the direction of that Trustee in a Course Closure Event, or in a voluntary closure or Course cessation by a Provider.
5.5	Without limiting student entitlements to a refund in the withdrawal period, the policies must provide for Pro Rata Refunds to Students, or pro rata payments to Alternative Providers (or their Suppliers if the Alternative Provider is a registered private training establishment), in a Course Closure Event, and in a voluntary closure or Course cessation by a Provider.
5.6	A standard or static trust must be used to provide protection for homestay or accommodation payments and for living expenses.

## Appendix C

### Rule 3.1 – definition of Pro Rata Refund

#### Calculating Tuition Fees for the purposes of a Pro Rata Refund

The following calculations are to be used for determining the amount of Tuition Fees that must be refunded, as part of the refund of Student Fees paid by the student for which services or goods have not been provided, in the circumstances outlined in clauses 1 to 6 below.

1. For Courses that are not Conditions Dependent Courses and where the relevant Refund Period has not expired, -  
multiply the total Tuition Fees by the percentage that time remaining in the Course bears to the total time of the Course.
2. For Courses that are not Conditions Dependent Courses and where the relevant Refund Period has expired, -  
total Tuition Fees less the amount paid under Criterion 7 or Criterion 8 of Appendix D, then multiplied by the percentage that time remaining in the Course bears to the total time of the Course.
3. For Courses that are not Conditions Dependent Courses, and where there is no applicable Refund Period, -  
total Tuition Fees less the amount paid under Criterion 9 or Criterion 10 of Appendix D, then multiplied by the percentage that time remaining in the Course bears to the total time of the Course.
4. For Courses that are Conditions Dependent Courses and where the relevant Refund Period has not expired, -  
multiply the total Tuition Fees by the percentage that tuition not delivered in the Course bears to the total tuition to be provided in the Course.
5. For Courses that are Conditions Dependent Courses and where the relevant Refund Period has expired, -  
total Tuition Fees less the amount paid under Criterion 7 or Criterion 8 of Appendix D, then multiplied by the percentage that tuition not delivered in the Course bears to the total tuition to be provided in the Course.
6. For Courses that are Conditions Dependent Courses, and where there is no applicable Refund Period, -  
total Tuition Fees less the amount paid under Criterion 9 or Criterion 10 of Appendix D, then multiplied by the percentage that tuition not delivered in the Course bears to the total tuition to be provided in the Course.



## Appendix D

### Rule 8.1

#### Criteria in addition to criteria in Appendix B that a Mechanism must meet

For the purposes of Rule 8.1 the following are the criteria that a Mechanism must meet.

##### Criterion 1

Every Student on every Course who has paid Student Fees must be covered.

A Provider may have more than one Mechanism in order to cover all Students and Courses it provides.

##### Criterion 2

A Supplier must operate the Mechanism.

##### Criterion 3

Student Fees received by or on behalf of a Provider before the end of the Refund Period must be paid direct into a standard trust or protected by a static trust (*under Mechanism 1 in Appendix B*) of the Provider's Supplier.

Where Student Fees are paid to the Provider by or on behalf of the Student (for example, over the counter) those fees must be deposited directly into the standard trust account of the Provider's Supplier by close of business on the following working day unless they are protected by a static trust.

##### Criterion 4

Where the fees are paid by the Student after the end of the relevant Refund Period they are to be protected through one of the Mechanisms.

Where the Mechanism chosen is a standard trust (*under Mechanism 1 in Appendix B*), and the Student Fees are paid to the Provider by or on behalf of the Student (for example, over the counter), those fees must be deposited directly into the standard trust account by close of business on the following working day.

##### Criterion 5

All Student withdrawals during and (*if the withdrawal and refund policies allow a refund*) after the Refund Period, all voluntary closures and Course cessations by a Provider, and all Course Closure Events must be covered.

##### Criterion 6

Accommodation expenses deposited into the standard trust account of the Provider's Supplier may be paid by the Supplier to an accommodation supplier up to a month in advance.

Living expenses may be paid by the Supplier to the Student as arranged between the Provider and Student.

Criteria 7-10 apply to standard trusts.

##### Criterion 7

Where a Student is on a Course of three months or longer, the Provider is entitled to be paid by the Supplier after the expiry of the relevant Refund Period:

- (a) 20% of the Tuition Fees, or \$3,000, whichever is the lesser, provided the Student has agreed; and
- (b) thereafter Tuition Fees drawn down in arrears of tuition delivered except for Conditions Dependent Courses for which the draw down is provided for in Rule 13.7(c).

#### **Criterion 8**

Where an international Student is on a Course of less than three months, and a Refund Period applies to that Course, Providers are entitled to be paid by the Supplier after the expiry of the relevant Refund Period:

- (a) 20% of the Tuition Fees, or \$3,000, whichever is the lesser, provided the Student has agreed; and
- (b) thereafter Tuition Fees drawn down in arrears of tuition delivered except for Conditions Dependent Courses for which the draw down is provided for in Rule 13.7(c).

#### **Criterion 9**

Where a domestic Student is on a Course of more than two days but less than three months, Providers are entitled to be paid by the Supplier the following amounts:

- (a) 20% of the Tuition Fees, or \$3,000, whichever is the lesser, provided the Student has agreed, after the following periods:
  - (i) two days of Course attendance in respect of Courses up to and including four weeks and six days:
  - (ii) five days of Course attendance in respect of Courses of five weeks or more, but less than three months; and
- (b) thereafter Tuition Fees drawn down in arrears of tuition delivered except for Conditions Dependent Courses for which the draw down is provided for in Rule 13.7(c).

#### **Criterion 10**

For Courses of two days or less, Providers are entitled to be paid by the Supplier the full amount of Tuition Fees of a Student any time after the date the Course starts for that Student.

#### **Criterion 11**

Students must have the ability to choose between Alternative Providers (where available) or receiving a Pro Rata Refund in a voluntary closure or Course cessation by a Provider, or in a Course Closure Event.

#### **Criterion 12**

Where a Student chooses an Alternative Provider, the monies held by the existing Supplier on behalf of the Student must be paid to the Alternative Provider's Supplier.

Where the Alternative Provider is not a registered private training establishment, the monies must be paid to the Alternative Provider.

#### **Criterion 13**

Where a Student chooses a Pro Rata Refund, the Mechanism must specify the following order of payment:

- (a) the Ministry of Social Development (Studylink) in the case of student loans:
- (b) directly to the Student, or to any other party nominated by the Student.

#### **Criterion 14**

The refund payment process must begin immediately upon a voluntary closure or Course cessation by a Provider, a Student withdrawal, or a Course Closure Event.

Unless NZQA permits a longer period, payment must be made:

- (a) in accordance with Rule 6.1 for voluntary closures and Course cessations by a Provider;
- (b) within five working days of the date of the notification of the withdrawal, for Student withdrawals; and
- (c) within 15 working days of the NZQA notice given under Rule 7.1, for a Course Closure Event.

#### **Criterion 15**

Where Students transfer to an Alternative Provider that is a registered private training establishment:

- (a) the Alternative Provider's Supplier may not provide a Mechanism that is less favourable to that which existing Students enrolled at that Alternative Provider have;
- (b) the transferring student must be treated, and be given refund and withdrawal entitlements, as would be given to a Student commencing a new Course of the same length as that which the Student has transferred from (and for the avoidance of doubt this includes the Student having the benefit of the relevant Refund Period and being able to withdraw in that Refund Period and receive the relevant entitlements);
- (c) Student Fees must be transferred to the Alternative Provider; and
- (d) the lump sum draw down provided for in paragraph (a) of either Criterion 7, Criterion 8, or Criterion 9 above is not payable to the Alternative Provider.

#### **Criterion 16**

Accommodation and living expenses must be separately identified within the Mechanism.