

Student Fee Protection Bank Bond Trust Deed

Guidance notes for PTEs and Trustees

General Information

The Student Fee Protection Trust Deed (the “Trust Deed”) is made with the intent that the relevant private training establishment (“PTE”) meets the requirements of the Education Act 1989 (the “Act”) and satisfies the criteria of the New Zealand Qualifications Authority (the “Qualifications Authority”) Student Fee Protection Policy.

Terms used in these guidance notes but not otherwise defined have the meaning given to them in the Trust Deed. By signing the Trust Deed the PTE and the Trustee have agreed to the following:

Course Closure Event

A Course Closure Event must be triggered by the Qualifications Authority providing the Trustee with written notice. Written notice may be provided in a number of situations, including liquidation, receivership or withdrawal of accreditation of the PTE, or withdrawal of Course approval. Importantly, a Course Closure Event may be triggered if the PTE fails to comply with any Qualification Authority withdrawal and refund policies in relation to Courses operated by the PTE.

Withdrawal of Approval

If either the PTE or the Trustee fail to comply with any of their obligations under the Trust Deed or the Qualifications Policy and the breach is not remedied within the period specified by the Qualifications Authority then the Qualifications Authority may provide written notice that requires:

- (a) the PTE to implement other student fee protection arrangements that comply in all respects with the Qualifications Authority Policy; or
- (b) the Trustee to transfer any Authorised Investments to the trustee of a new trust.

The Qualifications Authority may also take any further action, or require the PTE or Trustee to take any action, which the Qualifications Authority considers necessary or desirable to protect Student Fees in a manner which achieves the purpose of the Qualifications Authority Policy.

Standard Trust

The Bank Bond Trust is only to be used to cover Students Tuition Fees. If a PTE requires Students to Pay Accommodation Expenses, Living Expenses or Travel and Health Insurance to the PTE then the PTE must use a Standard Trust arrangement for those fees.

Bank Bond Criteria

The Bank Bond procured by the PTE must satisfy the “Bank Bond Criteria” as defined in the Trust Deed. The Bank Bond must also be submitted in draft to the Qualifications Authority for approval at least 5 business days prior to execution of the Trust Deed and the initial receipt by the PTE of any Student Fees.

OBLIGATIONS OF THE PTE

Student Acknowledgment

The PTE must ensure that every Student who enrolls in a Course completes the form prescribed by Schedule 3 of the Trust Deed.

Ability to comply with Policy

The PTE must before receiving any Student Fees, demonstrate to the satisfaction of the Qualifications Authority that it has policies, procedures, records and systems in place that will allow the PTE to comply with the Trust Deed and to correctly calculate the PTE Maximum Liability Amount at any time and that the Bank Bond has been issued by a Registered Bank in New Zealand that satisfies the Bank Bond Criteria.

Calculation of PTE Maximum Liability Amount

The PTE Maximum Liability Amount is the aggregate of the following amounts:

- (a) the aggregate of the amount calculated in respect of each Course as being the maximum amount that would be repayable by the PTE to the Students or Projected Students if a Course Closure Event occurred on the date the calculation is made. For the purposes of calculating the initial PTE Maximum Liability Amount a Course shall include any Course which commences during the first 12 months following the date the PTE calculates the PTE Maximum Liability Amount. Following the initial calculation of the PTE Maximum Liability Amount a Course shall include any Course which commences within three months following the date the PTE calculates the PTE Maximum Liability Amount. The amount will be determined as follows:

$$\frac{a}{b} \times c = x$$

Where:

- a is the amount of Tuition Fees and Projected Tuition Fees for the relevant Course. For the purposes of calculating Tuition Fees under a:

If the relevant Course is between day 1 and day 8 at the date the PTE Maximum Liability Amount is calculated, then the PTE may deduct the lesser of \$500 or 10% of the Tuition Fees by the PTE for that Course per Student; or

If the relevant Course is at day 9 or after at the date the PTE Maximum Liability Amount is calculated, then the PTE may deduct the lesser of \$500 or 10% of the Tuition Fees by the PTE for that Course per Student plus 15% of the balance of Tuition Fees for that Course per Student.

- b is the number of days of the Course.
- c is the number of days remaining in the Course.
- x is the maximum amount of Tuition Fees the PTE would be liable to refund the Students or Projected Students of that Course.

plus

- (b) any Trustee Fee Reserve Amount;

The PTE must use the above calculation to calculate the PTE Maximum Liability Amount every Quarter for every Course that it operates. The purpose of estimating the “Projected Tuition Fees” is to ensure that any

Students who enrol or pay fees to the PTE during the quarter for a Course that has commenced have their fees covered by the amount of the Bank Bond.

The PTE must also make the calculation for every course that commences within 3 months following the date of the calculation. The initial calculation following execution of the Deed should be made for all courses commencing within 12 months from the date the PTE Maximum Liability is calculated. This is to ensure that any Students who enrol or pay Tuition Fees in respect of a course that has yet to commence, are covered in advance by the previous quarters PTE Maximum Liability Amount calculation. For the purpose of calculating “Tuition Fees” and “Projected Tuition Fees” for such a course, these will be the total Tuition fees that the PTE estimates have been paid or are payable by enrolled students and projected students during that quarter. The deduction allowable under (a) in the calculation will not be permitted for such a course until the next calculation of the PTE Maximum Liability.

The Trustee Fee Reserve Amount is an amount agreed upon by the PTE and the Trustee for fees and costs incurred by the Trustee if a Course Closure Event occurs. PTEs and Trustees may or may not have a Trustee Fee Reserve Amount. If there is an agreed Trustee Fee Reserve Amount a copy of the agreement must be forwarded to the Qualifications Authority.

Initial approval and Payment of PTE Maximum Liability Amount

Prior to the PTE receiving any Student Fees from Students, or the PTE’s existing student fee protection arrangements becoming subject to the Trust Deed, the PTE must obtain written approval for the PTE Maximum Liability Amount from the Qualifications Authority. The request for approval must describe, in detail, how the PTE calculated the PTE Maximum Liability Amount.

Following approval by the Qualifications Authority, the PTE must certify in writing to the Trustee the PTE Maximum Liability Amount, and provide evidence of the Qualifications Authority’s approval. Following certification to the Trustee, the PTE must procure the issue of a Bank Bond for an amount that is equal to or greater than the PTE Maximum Liability Amount.

The Bank Bond must be delivered to the Trustee and a copy sent to the Qualifications Authority within 1 business day.

Subsequent Certification of PTE Maximum Liability Amount

The PTE must provide certification (Schedule 4 of the Trust Deed) of the PTE Maximum Liability Amount to the Trustee, within five business days of the end of every quarter following the initial approval of the PTE Maximum Liability Amount by the Qualifications Authority.

Provision of information

Maintenance of Systems and Records

The PTE must maintain accurate and up to date systems and records which will enable the Trustee or Auditor to calculate the PTE Maximum Liability Amount, the Entitled Student Amount and which will enable the PTE to perform its obligations under the Trust Deed. The Qualifications Authority may require the PTE to provide this information and demonstrate that the PTE is complying with these obligations.

Provision of Student details

The PTE must provide the Trustee with the information required by clause 4.9 of the Trust Deed no later than the times stipulated in clause 4.11 of the Trust Deed. The PTE must also provide any other information reasonably requested by the Trustee, the Qualifications Authority, or the Auditor from time to time.

If the PTE becomes Insolvent or a Course Closure Event occurs, the PTE must deliver to the Trustee an up to date Student Details Report and make available to the Qualifications Authority and the Trustee all student records. A security interest over the Student Records is granted by the PTE in favour of the Trustee to secure the obligations.

Annual and Final Audit

After the execution of the Trust Deed the PTE must as soon as possible appoint an auditor on the terms set out in the Auditor Engagement Letter set out in Schedule 6 of the Trust Deed.

Following the appointment of an auditor, the PTE must ensure that an auditor has, at the PTE's cost and expense:

- (a) audited the PTE's Student Records and the Trustee's Trust Account for compliance with the Trust Deed during either the period:
 - (i) ending on each anniversary after the last day of the PTE's financial year; or
 - (ii) from the date of the last audit pursuant to the date that the Trust is terminated and wound up or if applicable the date the Trust Fund is distributed, whichever date is later.
- (b) issued to the Trustee, Qualifications Authority and the PTE an audit opinion (in the form of Schedule 5) on the PTE's compliance with the Trust Deed within 90 business days after the Audit Period; and
- (c) issued to the Trustee, Qualifications Authority and the PTE an audit opinion (in the form of Schedule 5A) on the Trustee's compliance with the Trust Deed within 90 business days after the Audit Period.

RIGHTS AND OBLIGATIONS OF THE TRUSTEE AND THE PTE REGARDING THE PTE MAXIMUM LIABILITY AMOUNT

Adjustment of PTE Maximum Liability Amount

Shortfall

If:

- (a) the PTE Maximum Liability Amount certified by the PTE at the end of the quarter is more than the Bank Bond Amount, or
- (b) during the quarter, the Trustee, or the PTE becomes aware for any reason, that the PTE Maximum Liability Amount is more than the Bank Bond Amount; then
 - (i) the PTE must, immediately upon becoming aware of the shortfall amount advise the Qualifications Authority and the Trustee in writing of the Shortfall Amount and the basis of such calculation; and/or
 - (ii) the Trustee must notify the Qualifications Authority and the PTE of any Shortfall Amount and the basis on which the Shortfall Amount was calculated within one business day of the Trustee becoming aware of the shortfall.

The PTE must after being notified by the Trustee on becoming aware of a Shortfall Amount, consult with the Qualifications Authority and the Trustee. The Qualifications Authority will decide on the best course of action which may include:

- (a) procuring a replacement Bank Bond with a Bank Bond Amount equal to or greater than the PTE Maximum Liability Amount; or
- (b) paying to the Trustee an amount equal to or greater than the Shortfall Amount into the No.1 Trust Account.

It is the Trustee's responsibility to ensure that if the PTE is to pay money under (b) above, that the No. 1 Trust Account is opened and maintained within 1 business day of notice of the payment and the details are notified to the PTE. Following this notification the PTE must pay the Shortfall Amount to the Trustee.

The Trustee must provide the Qualifications Authority with the details of the calculation of the Shortfall Amount and of any course of action that is to be taken within 5 business days of the procurement or payment.

Excess

If the PTE Maximum Liability Amount certified by the PTE is less than the Bank Bond Amount and the PTE has made a cash payment to the Trustee on account of the PTE Maximum Liability, then the PTE may request in writing that the Trustee pay the PTE the amount by which the Bank Bond Amount exceeds the PTE Maximum Liability Amount. The PTE may only request a maximum of four such payments during each rolling 12 month period.

Following a request by the PTE for payment of an excess in relation to the PTE Maximum Liability Amount, the Trustee must notify the Qualifications Authority of the request. The Trustee must pay the excess amount (but only to the extent that monies are available in the No.1 Trust Account) requested to the PTE no earlier than ten business days after notifying the Qualifications Authority. The Trustee must not pay the amount requested if:

- (a) a Course Closure Event has occurred;
- (b) the Qualifications Authority has notified the Trustee that no monies are to be refunded to the PTE or that it intends to audit the PTE's calculation of the PTE Maximum Liability Amount; or
- (c) there have already been four refund payments made to the PTE in the last rolling 12 month period.

Deferral of refund

If the Qualifications Authority provides notice under paragraph (b) above, that no monies are to be refunded to the PTE then the Trustee must defer the proposed payment until the Trustee receives written notice from the Qualifications Authority advising that the PTE Maximum Liability Amount has been adjusted, or that the monies may be paid to the PTE. If the Qualifications Authority notifies the Trustee of an adjusted PTE Maximum Liability Amount, the Trustee must treat that new amount as the correct PTE Maximum Liability Amount.

RIGHTS AND OBLIGATIONS OF THE TRUSTEE

Qualifying Trustee

The Trustee must be an independent person who either a Trustee Company (as defined under the Trustee Companies Act 1967), or a Solicitor or a Chartered Accountant in public practice. If the Trustee is a Chartered Accountant or a Solicitor it must comply with either the ICANZ Code of Ethics or the Rules of Professional Conduct for Barristers and Solicitors (respectively) in relation to conflicts of interest.

Investment of Trust Fund

The Trustee must ensure at all times that any monies paid to the Trustee under the Bank Bond on account of the PTE Maximum Liability Amount (the "Trust Fund") are deposited and maintained with a Registered Bank in New Zealand dollars.

The Trustee must ensure that the Trust Fund is deposited in a bank account with a Registered Bank (whose credit rating is not less than A) ("the No.1 Trust Account"). The Trustee Fee Reserve Amount should be placed in a separate trust account ("the No.2 Trust Account"). The Trustee must use its best endeavours to ensure that the bank accounts are interest bearing accounts. No other investment of the Trust Fund is permitted.

Until the balance of the Trust Fund is distributed to the Student, a Loan Provider, the PTE or an Alternative Provider, any interest earned on the Trust Fund must be paid to the PTE. Payment of interest should be made as agreed between the Trustee and the PTE.

Trustee Remuneration and Expenses

If a Course Closure Event occurs then the Trustee shall have a right to be reimbursed from the No.2 Trust Account for any reasonable costs and expenses incurred or payable by the Trustee following a Course Closure Event. Any credit remaining in the No.2 Trust Account after the Trustee's fees have been paid and the No.2 Trust Account has been wound up must be transferred to the No.1 Trust Account.

If the Trust is to continue following a Course Closure Event the PTE and Trustee may agree that additional amounts are deposited in the No.2 Trust Account for any reasonable costs and expenses incurred or payable by the Trustee following a Course Closure Event.

The PTE must also pay the Trustee a fee for its services in accordance with the Trust Deed. The Trustee's fee shall be agreed from time to time between the Trustee and PTE.

Provide Quarterly Attestation Certificate

The Trustee must provide a Quarterly Attestation Certificate to the Qualifications Authority in the form set out in schedule 2, no later than 10 business days following the end of each Quarter, (three month period ending on the last day of February, May, August and November).

Retirement or removal of a Trustee

The Trustee may retire or be removed pursuant to clauses 8 and 9 of the Trust Deed. Parties to the Trust Deed should be aware that there are special conditions that will apply if these clauses apply.

Obligations of the Trustee if a Course Closure Event occurs

If a Course Closure Event occurs the Trustee must:

- (a) ensure the Trust Accounts are open and maintained with a Registered Bank;
- (b) calculate the Entitled Student Amount for each Entitled Student; and
- (c) make demand under the Bank Bond for the Maximum Liability of the PTE as calculated using the Total Entitled Student Amounts and hold the Trust Fund in trust in accordance with the Deed.

The Trustee must then, in consultation with the Qualifications Authority, distribute the Entitled Student Amount for each Entitled Student in the following order:

1. To any Alternative Provider having regard to the following:
 - (a) where the Alternative Provider uses a Standard Trust or a Static Trust, the Trustee must transfer the amount agreed to by the Entitled Student (up to the Entitled Student Amount) to the trust account maintained for that Standard Trust or Static Trust; or
 - (b) where the Alternative Provider uses a Student Fee protection arrangement other than a Standard Trust or a Static Trust, the Trustee must transfer the amount agreed to by the Entitled Student, (up to the Entitled Student Amount) to the Alternative Provider; or
 - (c) where the Alternative Provider uses multiple Student Fee protection arrangements, the Trustee must transfer the amount agreed to by the Entitled Student (up to the Entitled Student Amount) to the Alternative Provider, to be applied in a manner agreed to by the Qualifications Authority.
2. To any Loan Provider in respect of Tuition Fees.
3. To the Entitled Student or to another party (being an amount not already paid to a Loan Provider or transferred to an Alternative Provider). The Trustee must take all practical steps to ensure that such a payment is made within 15 business days of the Course Closure Event.

Should any balance remain in the No.1 Trust Account after all Entitled Students have been paid, the Trustee must distribute any monies still held on trust 12 months from that date to the PTE, provided that the Trustee is satisfied that all Entitled Student Amounts have been paid to, or distributed on behalf of, Entitled Students.

Winding up of Trust

The Trust is not necessarily wound-up following a Course Closure Event. This is because not all courses may be affected. However, the Trust is terminated and wound-up in the following circumstances:

- expiration of a period of 79 years from the date of the Trust Deed; or
- by resolution of the Trustee, provided the PTE and Qualifications Authority are satisfied that the Trustee no longer holds monies on trust under the Trust Deed or the Trust Fund if applicable has been transferred to and the Bank Bond will be payable to another trustee of a student fee protection trust. A deed of termination must also be completed by the Trustee, PTE and Qualifications Authority; or
- the Trustee has received written notice from the Qualifications Authority that the student fee protection arrangements fulfilled by the Trust Deed will be covered by another approved mechanism.

Trustees' powers

The Trustee shall only have the rights, powers and discretions over and in respect of the assets of the Trust Fund specifically granted to it under the Trust Deed. The Trustee may not carry on or enter into any business or transactions that do not constitute a Permitted Activity or an Authorised Investment.

No Indemnity

The Trustee has no right of indemnification from the Trust Fund except in respect of the No. 2 Trust Account in certain circumstances. The Trustee is personally liable, and indemnifies the Trust Fund against any loss of the PTE and/or any Student as a result of any of the Trustee's (or the Trustee's agents) negligence, default, misconduct, breach of trust or breach of any covenants or agreements.