

Overseas Students Ombudsman

Webinar on Written Agreements
for English Australia members

11 June 2015





Overview

- OSO – who we are and what we do
- Why written agreements matter
- Legislative requirements
- General principles
- Case studies
- English language assessment and written agreements



Overseas Students Ombudsman – who we are, what we do

We investigate complaints from overseas students about private registered education and training providers.

- We have jurisdiction over nearly 1000 private providers around Australia
- We have received more than 2000 complaints since we began operating in April 2011
- We see good and bad provider practices
- We help providers improve their practices & promote effective complaints handling

Overseas Students Ombudsman – who we are, what we do

- Providers must refer students to an external complaints and appeals body if unhappy with the conduct or outcome of a complaint.
- Where action taken by a provider appears to be contrary to law or unreasonable or unjust, improperly discriminatory or otherwise wrong we may make recommendations to the provider.
- Standard 8 of the National Code requires providers to implement our recommendations
- If a provider does not implement our recommendations we may, subject to procedural fairness, disclose this information to the appropriate regulator.

Fee and refund complaints closed to 8 April 2015

<u>Total Received</u> 679	<u>Not investigated</u> 455				
	<u>Total investigated</u> 224	Outcome supports provider 51			
		Outcomes Supports student 115			
		Reconsidered 24			
		Referred back to provider 19			
		Transferred 4	lapsed 1	Withdrawn 5	Other outcome 5



What is a written agreement?

- A contract in writing
 - Offer
 - Terms and conditions
 - Reasonable notice
 - Acceptance
 - Intention to create legal relations
 - Consideration



Why written agreements matter

- They are legally required by the ESOS Act (s 22 and s 47B)
- Providers must have compliant written agreements with students in order to enforce their fees and refund policies
- Ensure parties have a record of their agreed rights and responsibilities
- Section 47E: If no written agreement, or non-compliant with s 47B, then the provider must refund all unspent tuition fees
- Failure to comply with ss 47B and 47E is a strict liability offence, and makes providers liable to regulatory action

Why written agreements matter?

Education Services for Overseas Students Act 2000

- s 22: Written agreements must set out the length of each study period and the tuition fees for the course for the location
 - Study periods must not be longer than 24 weeks
- s 47B: Written agreements must:
 - (a) set out the refund requirements that apply if the student defaults in relation to a course at a location; and
 - (b) meets the requirements (if any) set out in the national code.



National Code requirements

Standard 3 – Formalisation of Enrolment - Outcome:

Written agreements between registered providers and students set out the services to be provided, fees payable and information in relation to refunds of course money.

Standard 3.1

- The written agreement must be signed by the student (or the student's parent or legal guardian if the student is under 18 years of age), concurrently or prior to accepting course money from the student.

National Code requirements

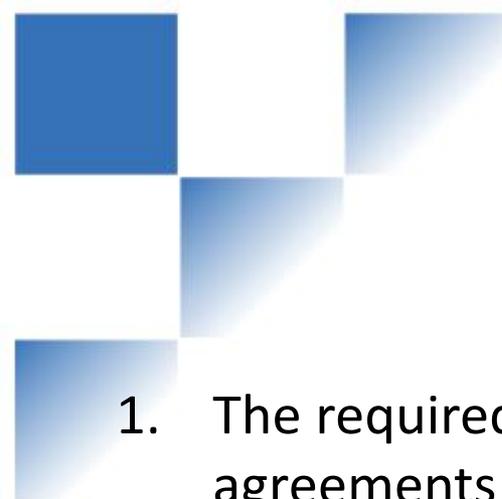
Standard 3.1

- The agreement must:
 - a) identify the course/s in which the student is to be enrolled and any conditions on his/her enrolment
 - b) provide an itemised list of course money payable by the student
 - c) provide information in relation to refunds of course money
 - d) set out circumstances in which information might be shared
 - e) advise student of obligation to notify student of change of address.

National Code requirements

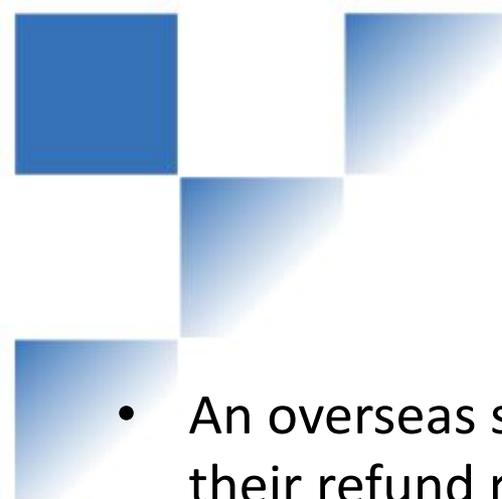
Standard 3.2

- The provider must include in the written agreement “information, which is to be consistent with the requirements of the ESOS Act in relation to refunds of course money”:
 - a) amounts that may or may not be repaid to the student if the provider or student defaults
 - b) processes for claiming a refund
 - c) A plain English explanation of what happens if a course is not delivered
 - d) The statement about a student’s right of action under Australian consumer law.



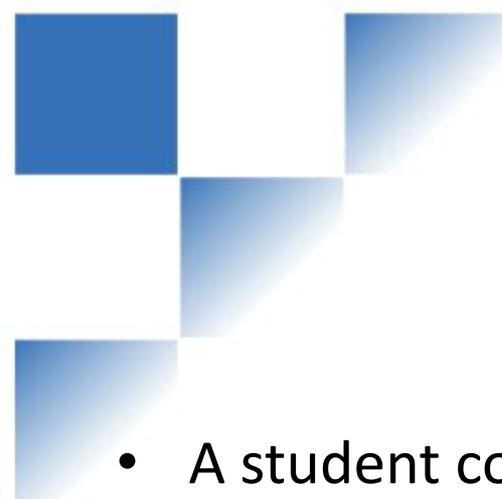
General Principles

1. The required information must be expressly included in written agreements – not incorporated by reference eg to Student Handbook or Website.
2. Gaps, ambiguities and internal inconsistencies in the provider's standard form contract must be resolved in favour of the student.
3. If cancellation fees are to be charged, they must be expressly provided for.
4. Refund and cancellation fee provisions must be fair and reasonable, not operate as 'penalties'.
5. Sections 47B and 47E are mandatory and strict – no excuses and no discretion



Case Study 1

- An overseas student complained that their provider had refused their refund request when they withdrew after the course commenced.
- The provider's refund policy stated no refund would be provided after course commencement.
- The OSO considered the written agreement and found:
 - The provider had not included its refund policy in the agreement
 - The written agreement referred to the student having read the refund policy in the student handbook.
- Outcome?



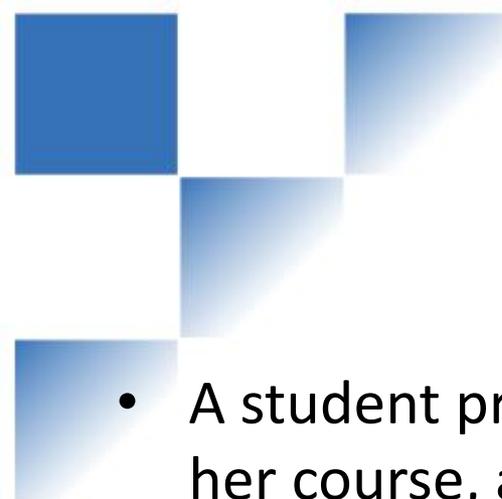
Case Study 2

- A student complained that that he had been refused a refund after withdrawing from a course
- We asked the provider for the written agreement and the provider supplied a signed application form and an unsigned letter of offer.
- Outcome?



Case Study 3

- An overseas student enrolled in a diploma course withdrew for personal reasons before the course started. Their provider rejected their application for a refund of pre-paid fees.
- The provider's refund policy said only that "a non-refundable enrolment fee of \$250 is required at the time of enrolment to guarantee your place in the course".
- Outcome?



Case Study 4

- A student pre-paid the tuition fees for the first study period of her course, and then withdrew without notice half-way through the course.
- The provider's refund policy stated that the provider required 1 study period's notice, or the next study period's fees would not be refundable.
- The provider pursued the student for the next term's fees.
- Outcome?

Assessing English language proficiency

National Code requirements - Standard 2.2

The registered provider must have documented procedures in place, and implement these procedures, to assess whether the student's qualifications, experience and English language proficiency are appropriate for the course for which enrolment is sought

- Explanatory guide: The assessment must occur before enrolment - “The correct procedure is: language assessment – CoE – visa”.



Further Resources

www.oso.gov.au

- [OSO Written Agreements Issues Paper and Checklist](#)
- OSO provider e-newsletter – tips and advice for providers
- OSO Better Practice Complaints Handling Guide for Education Providers
- Other OSO presentations



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