

COVID-19 related complaints to the Overseas Students Ombudsman

This fact sheet is about international student complaints related to the COVID-19 pandemic. It includes principles to encourage dispute resolution and provides guidance to private registered education providers on the views that the Office of the Commonwealth Ombudsman (the Office) may form on common complaint issues.

First steps and general principles

- Due to the impact of the pandemic on the international education sector, the Office has seen an increase in complaints from students.
- The view of the Office is that international students (students) and education providers (providers) should look for mutually agreeable resolutions as a first step when disputes arise.
- Our Office understands that providers have been significantly impacted by the downturn in international education as a result of the pandemic, and that students are also impacted by the disruption to their study, work, and experience of life in Australia. However, the protections for students under the *Education Services for Overseas Students Act 2000* (the ESOS Act) and its instruments (the ESOS framework) remain in force.
- When the Office receives a complaint, we consider each case on its individual facts, including what both the student and the provider have done (actions, discussions and decisions) to resolve the dispute when forming our view.
- The following general principles should be considered by providers and students when undertaking dispute resolution processes.

For Students

- If you are dissatisfied with any part of your course, you must first raise your concerns with your provider. This includes making a formal complaint to your provider if necessary. More information on how to complain to your provider can be found in our fact sheet [here](#).
- If you have completed the formal complaint and appeals process of your provider and are dissatisfied with your provider's response you can complain to our Office.
- Under your visa you are required to continue studying. While your compassionate and compelling circumstances may prevent you from studying during this period, we expect you to make genuine efforts to stay engaged with your studies where possible.
- Any change to your study plan may affect your visa requirements. If you have any concerns relating to the pandemic's impact on your visa, you should contact the [Department of Home Affairs](#).

Contact us

ombudsman.gov.au
1300 362 072

GPO Box 442
Canberra ACT 2601

Students and providers should try to come to a mutually agreeable resolution

Student protections under the ESOS framework remain in force

Education providers should read relevant [guidance](#) from the Department of Education, Skills and Employment

For Providers

- The Department of Education, Skills and Employment has published [guidance](#) for providers outlining provider obligations to students impacted by travel restrictions, exclusion periods and on-line learning, where providers are unable to teach students face-to-face.
- Providers should be proactive and clear in their communication with students about any change in the delivery, fees and content of their courses as a result of the pandemic.
- Providers should outline all options to support effective dispute resolution for students complaining about their courses. This could include delivering the course in an online learning environment or a suspension or deferral of studies.
- During the internal complaints and appeals processes, providers are encouraged to address student concerns about issues arising from the pandemic in a timely manner in accordance with the principles outlined in this fact sheet. If a provider's internal complaint or appeal decision is not in favour of the student, the provider should give the student a written decision explaining the reasons for the outcome.
- Further guidance from regulators and the Department of Education, Skills and Employment are available from the links below:

[Australian Skills Quality Authority](#)
[Tertiary Education Standards and Quality Agency](#)
[Department of Education, Skills and Employment](#)

Complaint scenarios

The complaint scenarios over the next pages outline our views about best practice in relation to some common issues we have observed in our complaints. These scenarios are designed as a guide for students and providers. They are not intended as advice and the Office's position will vary based on the individual circumstances and merits of each complaint.

Although the issues raised by the complaint scenarios are based on issues raised by students in complaints to our Office, the actual scenarios are fictional and do not represent real complaints. The scenarios have been designed to give guidance on issues that providers may recognise in their own complaints, however any resemblance to actual complaints is coincidental.

My provider has suspended classes and is still seeking payment*

A student is part-way through their course, but due to the pandemic all of their classes and placements have been suspended. The student agreed to a payment schedule with the provider before course commencement, which included instalments every three months.

The student asked the provider for more time to pay their next instalment, however the provider is insisting on payment according to the agreed schedule. The provider advised that they may cancel the student's Confirmation of Enrolment (CoE) and record non-payment as the reason.

Potential view

The provider is no longer delivering courses as outlined in their written agreement with the student, so cannot rely on the payment schedule included in the written agreement.

The provider should try to engage with the student to come to a new agreement, which includes a payment schedule acceptable to both parties.

If the provider and student cannot come to an agreement, the provider should refund the student's unspent tuition fees under Section 7 of [the Education Services for Overseas Students \(Calculation of Refund\) Specification 2014](#), release the student (if applicable), provide the student with recognised evidence of studies completed, and record provider default as the reason for cancelling the student's CoE in the Provider Registration and International Student Management System (PRISMS).

* This scenario is fictional and does not represent an actual complaint made to the Office.

My provider has moved ELICOS classes online and I want a refund*

A student commenced ELICOS classes face-to-face for two weeks, after which classes were moved online. The student told the provider that they did not want to do their studies online as their objective was to have a face-to-face experience. The student also told the provider that they do not have IT resources such as a laptop and stable internet connection with sufficient data to participate in the online classes. The student asked the provider for a refund of their pre-paid tuition fees from when they stopped participating in classes. The provider has offered to suspend the student's studies and credit their pre-paid tuition fees towards studies in future, but has denied a refund.

Potential view

The provider has attempted to offer the student a solution, first by offering classes online, secondly by offering a suspension of studies. However, the student has made it clear that they do not accept the proposed solutions. Without the student's agreement, no valid written agreement exists between the student and provider.

The provider needs to follow ESOS Act requirements related to provider default, specifically under s 46D. Section 46D requires the provider to place the student in an alternative course with the student's agreement, or refund the student's unspent tuition fees under Section 7 of [the Education Services for Overseas Students \(Calculation of Refund\) Specification 2014](#). In this situation, the student has been clear that the outcome they are seeking is a refund, so the provider should refund the student in accordance with the specification.

* This scenario is fictional and does not represent an actual complaint made to the Office.

My provider has moved classes online and I cannot pay but would like to defer my studies*

A student applied for a suspension/deferral of studies with their provider due to financial hardship, saying that they have no finances available to pay for the upcoming term due to the pandemic. The student also complained that they are not learning anything from the online studies they have attempted.

Potential view

As the student's written agreement does not support the move to online studies, the provider cannot rely on the written agreement to compel the student to pay for and continue their studies according to the written study plan.

The provider should try to engage with the student to come to a new agreement, which may allow for continuation of studies in a later study period.

If the provider and student cannot come to an agreement, the provider should release the student (if applicable), provide the student with recognised evidence of studies completed, and record provider default as the reason for ending the student's course in PRISMS. The student should seek continuation of studies with another provider.

* This scenario is fictional and does not represent an actual complaint made to the Office.

My provider has moved ELICOS classes online, can I get a reduction in fees?*

A student says they understand that their provider needed to move classes to an online learning environment, but they can easily find much cheaper English lessons on the internet so they are not getting the service they paid for. The student also notes that they are paying additional costs for remote study setup e.g. internet fees. The student would like a reduction in course fees to compensate for their increased costs and the reduced quality of experience.

Potential view

The move to an online learning environment is not supported in the student's written agreement with the provider. As a result, the provider cannot rely on the written agreement to set out fees due from the student.

In this situation, it would be appropriate for the provider and student to come to a new agreement for a fee that is acceptable to both parties. The new fee would need to be negotiated between student and provider, as the Office is not in a position to determine a fair market value for the delivery of education services.

If the provider and student cannot come to an agreement, the provider should refund the student's unspent tuition fees under Section 7 of [the Education Services for Overseas Students \(Calculation of Refund\) Specification 2014](#), release the student (if applicable) and record provider default as the reason for ending the student's course in PRISMS. The student should look for another provider whose offering is acceptable.

* This scenario is fictional and does not represent an actual complaint made to the Office.

I am a student returning overseas due to dissatisfaction with online ELICOS classes and want a refund of unspent tuition fees*

A student has advised their provider that they are returning overseas. They do not find the online classes useful and they want to be with their family during the pandemic. The student has asked for a refund of unspent tuition fees. The provider has responded that per their refund policy, the student is unable to get a refund as their course has commenced. The provider has offered to credit unspent tuition fees towards future studies.

Potential view

The provider is no longer delivering courses as outlined in their written agreement with the student, so cannot rely on the refund policy outlined in that agreement. The provider should refund the student's unspent tuition fees under Section 7 of [the Education Services for Overseas Students \(Calculation of Refund\) Specification 2014](#).

* This scenario is fictional and does not represent an actual complaint made to the Office.

My VET provider has cancelled practical classes but is still seeking full payment*

A student is enrolled in a VET course with a practical and theory component. Their provider has cancelled all practical classes and has moved theory study online. The student is seeking a reduction in fees to reflect that half their study is not being delivered. However, the provider insists on full fees being paid, and states that the practical component will be delivered when possible.

Potential view

The provider should try to come to an agreement with the student about the fees payable for the course during the time of reduced delivery, as the provider cannot rely on the fee schedule outlined in their written agreement with the student.

If the provider and student cannot come to agreement, the provider should refund the student's unspent tuition fees under Section 7 of [the Education Services for Overseas Students \(Calculation of Refund\) Specification 2014](#), release the student (if applicable), provide the student with recognised evidence of studies completed, and record provider default as the reason for ending the student's course in PRISMS. The student should look for another provider whose offering is acceptable.

* This scenario is fictional and does not represent an actual complaint made to the Office.

Q & A

If a student is entitled to a refund, what date should their entitlement be calculated from?

This will depend on the individual circumstances of the student's complaint. Some general guidelines are provided below however these may not apply in your specific situation:

- If a student has been engaging with the provider's online learning platform for a period, but later tells the provider that they would like to opt out, we are likely to view the date that the student informs the provider as the date the refund entitlement should commence.
- If a student has never engaged with the provider's online learning platform, we are likely to view the date that the provider ceased delivering classes according to the written agreement as the date that the refund entitlement should commence.

What happens if a provider and student cannot come to an agreement that satisfies them both?

Under Standard 10 of [the Code](#), all education providers should have an internal complaints and appeals process which allows decisions by providers to be appealed by students. In this way, providers and students may find a mutually agreeable solution to their dispute.

Providers should try to resolve disputes with students about online learning in accordance with the principles outlined in this fact sheet, and the [guidance published by the Department of Education, Skills and Employment](#). If an agreement cannot be reached, providers should release the student from their studies and refund any unspent tuition fees.

If the dispute continues after a student has exhausted their provider's internal complaints and appeals processes, the provider must advise the student that they are able to make an external complaint or appeal about their provider's decision. Students disputing decisions made by private education providers can contact [our Office](#), while students disputing decisions made by public education providers can contact their [State or Territory Ombudsman](#).

What about the student's visa requirements?

Student visa holders who remain in Australia but cease studying with their education provider should contact the [Department of Home Affairs](#) for information on how their visa is impacted by the changes to their study program.

Education providers should not use uncertainty about a student's visa requirements to deny students a release, suspension or refund where a student wants to stop studying due to changes in the agreed mode of course delivery.

Who else can help students at this time?

You can find a list of [useful links](#) to other organisations that may be able to help you on our website.

The Australian government's [Study in Australia](#) website also has information about support for international students.

More information is available at ombudsman.gov.au.

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#).