

Overseas Students Ombudsman

*ESOS reform workshop:
written agreements*



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Overview

- Why written agreements matter
- Brief summary of legislative requirements
- Observations from complaint handling
- Observations from consultation process
- ESOS submission
- Questions?



Why written agreements matter

- Set expectations and avoid disputes
- Required by the ESOS Act and National Code
- Non-compliance may mean that providers can't implement their refund policies
- Failure to comply with s47B a strict liability offence, and makes providers liable to regulatory action.



Key ESOS requirements

Providers must enter into a written agreement with students, signed or otherwise accepted by that student (or the student's parent or legal guardian if the student is under 18 years of age), concurrently with or prior to accepting course money from the student.



Key ESOS requirements

Written agreements must:

- Be signed/accepted appropriately
- Identify the course/s in which the student is to be enrolled and any conditions on his/her enrolment
- Set out the study periods, tuition fees and course money
- Provide information in relation to refunds of course money where a student or provider defaults.



Complaint handling and written agreements

Fee and refund disputes

- Almost 1/3 of complaints OSO receives list fees, refunds or written agreements as an issue.
- We have investigated about 1/3 of these refund/written agreement complaints
- When investigating these complaints we have identified common problems with written agreements between providers and overseas students.



Complaint handling and written agreements

Common mistakes we see in written agreements include:

- Receiving money from students before a the offer is accepted and the agreement is formed
- Failing to include complete and accurate information in agreements about the course, fees and refund policies
- Failing to include terms and conditions about refunds in the written agreement
- Providers using the refund policy to charge a cancellation fee
- Unclear or inconsistent use of key terms
- Terms and conditions which are contradictory.



Observations - complaints

- Providers are often not aware of the requirements of the ESOS Act and National Code about written agreements.
- Many students appear to have a poor understanding of the implications of signing written agreements especially for packaged courses.



Purpose of consultation

- To raise awareness amongst providers and peak bodies about ESOS requirements
- To understand what the barriers to compliant written agreements might be
- To explore how written agreements might be improved particularly with regard to compliance with ESOS requirements and what tools might assist in achieving this objective.



Observations - consultation

Barriers to compliance:

- One size fits all approach
- Complexity of regulatory requirements
- Regulatory change is too frequent and not always well communicated
- Difficult for peak bodies to communicate regulatory requirements and changes to members
- Staff turnover can mean loss of corporate knowledge.



Observations - consultation

Tools for compliance (checklist):

- Respondents were supportive of a checklist provided it was a guide and did not constitute additional regulatory obligations
- Some said the checklist should be more detailed others said it should be less detailed
- Some peak bodies said that the checklist did not reflect their enrolment processes
- One respondent thought checklists would be good for other areas of compliance.



Observations - consultation

Tools for compliance:

- There was less support for a model contract
- Many respondents felt that practices in each sector differed too much for a model contract to be useful
- Some respondents were concerned about model contract terms being imposed on them
- A number of respondents suggested position statements and best practice examples would be useful tools to increase compliance.



Observations - consultation

Other observations:

- Some concern about the fairness of some refund and cancellation clauses in written agreements for packaged courses.
- More clarity is needed around the consequences of transfers and the cost of course variation especially when students fail subjects.



ESOS reform submission

Our submission to the ESOS reform consultation is on our website. In it we make the following points about written agreements:

- If providers want to charge cancellation fees this must be explicit in their written agreement
- A revised code should require that cancellation and refund policies are fair and do not amount to a penalty
- Cancellation and refund policies should not operate to lock students in to packaged courses without making any allowance for reasonable notice for withdrawal or for extenuating circumstances.



Questions?



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