

Overseas Students Ombudsman

*Common mistakes which invalidate
international student written
agreements*



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Overseas Students Ombudsman role

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



Overseas Students Ombudsman role

- We investigate complaints from overseas students about private registered education and training providers.
 - We have jurisdiction over more than 1000 private providers around Australia
 - We have received more than 1,500 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



How we investigate complaints

- We are independent and impartial
- We investigate in private
- We give the provider an early opportunity to resolve any problems
- Both sides have an opportunity to comment before we finalise our investigation
- We try to make clear and helpful recommendations

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
- Section 47E: If no written agreement, or non-compliant with s 47B, then the provider must refund all pre-paid unspent tuition fees, minus \$500 or 5% of fees, whichever is the lesser, even in student default cases.
- Failure to comply with ss 47B and 47E is a strict liability offence, and makes providers liable to regulatory action



ESOS Act requirements

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 provider must enter into a written agreement with the student, 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.



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



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
 - b) processes for claiming a refund
 - c) a plain English explanation of what happens in the event of a course not being delivered; and
 - d) a statement that “This agreement, and the availability of complaints and appeals processes, does not remove the right of the student to take action under Australia’s consumer protection laws”.



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



Common mistakes

- Receiving money from students before a the written agreement is signed and accepted
- 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
- Unclear or inconsistent use of key terms
- Terms and conditions which are contradictory



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 found that:
 - The student had signed an application form that included the refund policy
 - The provider then sent a ‘letter of offer’, also signed by the student, that did not include the refund policy, but referred back to the application form
- 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 50% of their course fees, and then withdrew without notice half-way through the course.
- The provider's refund policy required 1 term's notice, or the next term's fees were not refundable.
- The provider pursued the student for the next term's fees.
- Outcome?

Case study 5

A student withdrew from his course 2 weeks before commencement. Under the written agreement the student was entitled to a partial refund of his pre paid fees when he withdrew. The student emailed the provider requesting a refund and was advised to submit a refund application form. The student submitted the form requesting a full refund but was paid a partial refund within a week. The student appealed the decision but the provider said that he had been refunded the correct amount. The student complained to the OSO. We asked the provider for the complaint record and a copy of the written agreement. The written agreement complied with standard 3 of the code and with the ESOS Act and the provider's decision was consistent with its refund policy as set out in the written agreement.

Outcome?



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