



Information for education providers: Fairness of refund terms

This factsheet is for education providers. It is about ensuring refund terms in written agreements between education providers and international students are fair and reasonable. This information is intended as guidance only and not legal advice. Education providers should seek independent legal advice if required.

The Office of the Commonwealth Ombudsman (the Office) receives complaints from international students about their education providers' decisions to not refund their pre-paid tuition fees. This is usually after a student's change of circumstances leads to them withdrawing from a course.

Written Agreements and Australian Consumer Law

Under the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code), education providers must include their refund policy in written agreements with international students.

Written agreements are given to students on a 'take it or leave it' basis, making them **standard form consumer contracts**. Accordingly, these agreements are subject to the [Australian Consumer Law](#) (ACL) including provisions about [Unfair Contract Terms \(UCTs\)](#). The ACL aims to protect consumers in Australia and ensure fair trading.

Unfair Contract Terms

In their written agreements with international students, education providers can protect against some losses when a student withdraws. However, in our view, providers should only seek to retain or recover an amount that is a fair and reasonable estimate of the actual expenses incurred in relation to the student.

Under the ACL, a contract term may be considered unfair if:

1. it would cause a **significant imbalance** in the parties' rights and obligations arising under the contract, giving one party a significant advantage over the other;
2. it is **not reasonably necessary to protect the legitimate interests** of the party who would be advantaged by the term; and
3. it would **cause detriment** (whether financial or otherwise) to a party if it were to be relied upon.¹

¹ [Australian Competition and Consumer Commission \(ACCC\), Unfair terms in standard form contracts](#), accessed 15 March 2023.

Contact us

ombudsman.gov.au
1300 362 072

GPO Box 442
Canberra ACT 2601

The Australian
Consumer Law
protects
Overseas Students in
Australia.

Providers should
only consider the
actual costs
incurred because of a
student's agreement
to study, and mitigate
those costs.

Written agreements
should be easy for
international students
to understand.

If a court decides that a term is unfair, it will be 'void'. This means it will no longer apply to the parties to the contract. From 9 November 2023, a provider including or relying on an unfair contract term in a standard form consumer contract may also face financial penalties.

A provider's refund terms should protect no more than their actual costs when a student withdraws. Some **relevant** considerations for providers include:

- Do the terms seek to only recover costs for your actual expenditure on the individual withdrawing student?
 - Have you assessed the actual costs of course / subject withdrawal? How do you calculate these costs?
- Could the terms allow you to keep fees when you have not incurred any significant costs in relation to a specific student, such as where:
 - the student gives notice before costs are incurred,
 - the participation of the student did not add significant operating costs,
 - the student has been replaced in the course, or
 - you can re-arrange classes to minimise the financial impact of the student's withdrawal?
- Could the terms amount to a penalty on the withdrawing student?
- Do you have a hardship policy or principles to accommodate refunds in special circumstances, regardless of what your written agreement allows for?

Some **irrelevant** considerations for providers include:

- marketing, branding and recruitment costs not attributable to an individual student,
- corporate overheads not attributable to an individual student, and
- education agent commission, fee or incentives paid for recruitment of that individual student, as these are governed by agreements between providers and agents, and any recovery of those fees is within the provider's control.

Transparency

The National Code requires written agreement terms to be in plain English. Transparency is also an important consideration for fairness under the ACL. International students may have trouble reading and understanding terms in English, so providers should take extra care to ensure written agreements are expressed clearly, simply, and are easy to understand.

Refunds due to visa refusal

If a student withdraws because their application for a student visa was refused, the *Education Services for Overseas Students Act 2000* (ESOS Act) requires providers to refund international students according to a formula in the Education Services for Overseas Students (Calculation of Refund) Specification 2014.

Providers may choose to make more generous provisions for visa refusal refunds in their written agreements, but they cannot apply more restrictive refund terms to students who have their visas refused. This includes by excluding students from being eligible for a refund on the basis that their student visa was refused.

Summary of recommendations

In line with the principles of the ACL, providers should:

- only seek to keep or recover monies that are fair and reasonable estimates of the actual expenses they have incurred in relation to a student,
- seek to mitigate and reduce the amount of these losses using other means that would have a less detrimental effect on the student (for example, by replacing the withdrawn student), and
- ensure that their written agreements are easy for students to read and understand.

Providers should also ensure their written agreements meet the requirements of the ESOS Act and instruments.

The Office's role in determining fairness

Students may approach multiple bodies for assistance to resolve a dispute over pre-paid fees, including the Office. If a student complains to the Office about a dispute with their provider over a refund, our investigation may assess the following:

- Has the provider applied its fee and refund policies correctly?
- Do the provider's policies meet the requirements in the Education Services for Overseas Students (ESOS) framework including the National Code?
- Is the provider's application of the policies consistent with the UCT provisions in the ACL, and does it appear reasonable in the circumstances?
- Are the terms easily understandable?

For further information:

- Read the Office's [Issues Paper](#) on improving fairness in written agreements between international students and Australian education providers
- Talk to your legal / compliance policy staff
- Look at the [ACCC website for guidance on UCTs](#).

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. For the most up-to-date versions of cited Acts, please visit www.legislation.gov.au.