



Written agreements, fees and refunds

Introduction

We investigate more disputes about fees and refunds than any other issue. The Department of Education, Skills and Employment (Education) has published a [factsheet about written agreements](#).

This factsheet highlights a few issues of importance related to common dispute issues. We have found:

- some providers are not aware of the requirements of the [Education Services for Overseas Students \(ESOS\) legislative framework](#)¹ and [National Code of Practice for Providers of Education and Training to Overseas Students 2018 \(the National Code\)](#)² for written agreements
- many overseas students appear to have a poor understanding of the implications of accepting written agreements, especially for packaged courses
- some providers did not give the overseas student a copy of their accepted written agreement.

Written agreements and the ESOS framework

The ESOS Framework sets out what must be included in written agreements.

Standard 3 of the National Code sets out the specific things providers must include in their written agreements with overseas students. These include:

- all fees payable, including tuition and additional non-tuition fees associated with reassessment, deferral, cancellation or late payments
- details about the course including the start date, the location and the modes of study
- any conditions on the student's enrolment
- information about refunds of tuition and non-tuition fees in cases of student or provider default.

This is not a complete list of the information that needs to be included in written agreements. To make sure that your documents are compliant, refer to Standard 3 of the National Code and the [Education factsheet](#). Contact the Department of Education, Skills and Employment [ESOS Policy Team Mailbox](#)³ if you need assistance.

¹ <https://internationaleducation.gov.au/regulatory-information/education-services-for-overseas-students-esos-legislative-framework/esos-regulations/pages/default.aspx>

² <https://www.legislation.gov.au/Details/F2017L01182>

³ ESOS-PolicyTeam@dese.gov.au

Contact us

ombudsman.gov.au
1300 362 072

GPO Box 442
Canberra ACT 2601

The Commonwealth Ombudsman is impartial, independent and does not advocate for the student or the provider.

We use a balanced approach when investigating a dispute and look at both sides of the issue.

Investigations are conducted in private under the *Ombudsman Act 1976*.

Common mistakes in written agreements

When investigating disputes about fees and refunds, we have found common problems with written agreements. These include:

- Receiving money from overseas students before the offer is accepted and the agreement is formed.
- Not ensuring that a legal guardian signs the agreement when the overseas student is under 18 years of age. Note: the provider is not the legal guardian.
- Failing to include complete and accurate information in agreements about the course, fees and refunds.
- Failing to include all terms and conditions about refunds, who can receive refunds, unclear or inconsistent use of key terms or terms and conditions that are contradictory.
- Failing to obtain and record the student's agreement to changes to any terms of their written agreement.

What if a student asks for a refund of fees?

In most cases, if a student asks for a refund of fees, you will need to consider what your written agreement with the student says about fees and refunds.

In some cases, the overseas student is entitled to a refund regardless of what the written agreement says. Where the provider fails to deliver the course in full, the student's visa has been refused, or the provider's written agreement does not comply with the ESOS Framework including Standard 3 of the National Code, the student's refund should be calculated under the *Education Services for Overseas Students (Calculation of Refund) Specification 2014*.

Who investigates complaints about providers not paying refunds?

Under Standard 10 of the [National Code](#)⁴, education providers are required to have an external complaints and appeals process that overseas students can access. Students should use their education provider's internal complaints and appeals process if they have a complaint, including complaints about fees and refunds.

If the overseas student is not satisfied with their education provider's internal complaint or appeal decision, the student can contact our Office. If we investigate and find that the provider has not paid a refund that the overseas student is entitled to, we may recommend the provider pay the refund to the student in accordance with the provider's obligations. In some circumstances we will transfer these complaints to the [Tuition Protection Service](#)⁵(TPS) if we determine that the TPS is better able to assist the student with their refund dispute.

The TPS can investigate complaints about unpaid refunds and if it finds that the provider owes a refund, can direct the provider to pay the refund to the overseas student. The TPS is also able to seek monies from a provider who has failed to refund an overseas student in accordance with the provider's obligations under the ESOS Act.

What if a student withdraws but still owes money?

Whether or not an overseas student owes you money depends mostly on the terms and conditions in your written agreement.

Depending on the content of the written agreement, a provider may choose to pursue the student for outstanding fees.

Some providers include cancellation clauses in their written agreements which require students to pay fees for a subsequent term or semester if they have not given adequate notice of withdrawal. Sometimes students complain to our Office because they are being pursued for money which they do not believe they owe.

⁴ <https://www.legislation.gov.au/Details/F2017L01182>

⁵ <https://www.dese.gov.au/tps>

It is worth noting that:

- a provider cannot charge a cancellation fee if the written agreement does not include a clear and transparent term outlining the circumstances in which a cancellation fee will be charged and how much it will be
- a provider cannot use their refund policy to charge a cancellation fee – refunds relate to pre-paid fees, cancellation fees are an additional charge
- a cancellation fee which is no more than a genuine estimate of the provider's actual loss would not be considered unreasonable, however it should make allowance for withdrawal with reasonable notice
- ambiguities in a cancellation clause may result in our Office forming a view in support of the overseas student.

Withholding evidence of study

Disputes sometimes arise where withdrawing students are in arrears for study periods or parts of study periods **already undertaken**.

Sometimes overseas students complain to our Office that the provider will not issue them with a certificate or statement of results because of outstanding fees. In these cases we will consider whether:

- under the written agreement, the student actually owes the disputed amount
- the written agreement allows the provider to withhold the certificate or statement of results on the basis of outstanding fees.

A provider should only consider withholding evidence for the qualification or period of study for which fees may be owed. It is not reasonable to withhold evidence of earlier, completed study if a problem develops later on.

Helpful tips

- If the written agreement is clear and compliant with legal requirements, it is likely that our Office will find in support of the provider.
- Make sure overseas students understand what they are agreeing to before they accept the written agreement.
- Make sure your overseas students have a copy of their written agreement, including any changes that may be made to the initial agreement. A provider cannot unilaterally change the terms of an agreement; it should seek and record the student's agreement prior to any changes becoming effective.
- Written agreements should be clearly dated so there is no ambiguity about the terms that apply at any point in time.

Need more information?

For further information, you can contact the [ESOS Policy team mailbox](#).

Our Office provides information about best practice complaint handling to help private education providers manage internal complaints effectively. We also publish reports on common or systemic issues identified through our investigations. Our resources can be found on our website ombudsman.gov.au

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](#).