



Standard 3: Written Agreements

National Code of Practice for Providers of Education and Training to Overseas Students 2018

Overview

Obligations and rights of both registered providers and overseas students must be clearly set out in a formal written agreement between the two parties.

Registered providers must:

- have a written agreement with overseas students or intending overseas students they enrol, which may take any form, as long as it meets the requirements under the National Code and the *Education Services for Overseas Students Act 2000*;
- ensure the written agreement is signed or otherwise accepted by the overseas student, or if they are under 18 years of age, their parent or legal guardian;
- include information in the written agreement about course details, prerequisites and conditions on enrolment (if applicable), fees, refund and cancellation policies, and the provider's complaints and appeals processes; and
- advise overseas students of required information.

Key Requirements

Written agreement form

Registered providers must have a written agreement with each overseas student they accept for enrolment and it must be signed or otherwise accepted by the student, or if the overseas student is under 18 years of age, their parent or legal guardian.

Registered providers do not need to update any written agreements with overseas students entered into before 1 January 2018. Any new written agreements entered into with overseas students after 1 January 2018 should comply with the National Code 2018.

Overseas students may *otherwise accept* the written agreement by signing a form or indicating their acceptance online. If a registered provider chooses to recognise online acceptances, they will need to consider how to verify the authenticity of an online acceptance.

While providers' systems for receiving online acceptances do not have to be approved by the Department of Education, Skills and Employment prior to implementation, providers using such systems must be able to demonstrate that the student entered into the agreement with them.

Written agreements can take any form provided they meet the requirements of the ESOS Act and the National Code. This means that an application form or a letter of offer could be the basis for the written agreement once it is signed or accepted by an overseas student. This is particularly relevant for overseas students undertaking English Language Intensive Courses for Overseas Students, as some registered providers may not need to assess the overseas student's previous qualifications or issue a separate letter of offer.

Overseas students enrolled in a number of consecutive courses with the one provider do not need a separate written agreement for each course. If the terms of the agreement are the same for each course, the registered provider may have a single written agreement covering all the courses. If a registered provider and an overseas student enter into a single agreement for more than one course, all of the courses to which the agreement applies, and any conditions upon enrolment in each of the courses, must be clearly listed in the agreement. In addition, the agreement must include the tuition and non-tuition fees payable for each course the agreement covers.

What is included in a written agreement

In addition to the requirements under section 47B and 47D of the ESOS Act, the written agreement must **explicitly include** the key details listed under 3.3.1 to 3.3.8 of the National Code. This includes outlining the course or courses in which the student is to be enrolled, any prerequisites necessary to enter the course or courses, tuition and non-tuition fees, refund policies, and any conditions imposed on the student's enrolment. To manage the length of written agreements, supplementary material such as a course handbook can be included as a hyperlink.

Registered providers must outline tuition and non-tuition fees in written agreements. Tuition fees are defined in the ESOS Act as being directly related to the provision of the course. In listing tuition and non-tuition fees in the written agreement, registered providers should give students a clear guide to the range of fees they may incur throughout the course, to assist overseas students in budgeting for the payment of those fees. This also ensures registered providers are protected if a dispute arises over 'hidden' costs.

All written agreements must outline internal and external complaints and appeals processes, and contain a statement advising that the agreement does not affect the rights of an overseas student to take action under Australian Consumer Law, where applicable.

All written agreements need to outline a process for claiming a refund and any specified person(s) who can receive a refund (other than the overseas student). The written agreement should also provide an explanation of what happens in the event of a course not being delivered, including the role of Tuition Protection Service (TPS).

Written agreements must contain advice to overseas students that they are required to notify the registered provider of current contact details, any changes to contact details, and who to contact in an emergency, while in Australia and studying with that registered provider.

Written agreements must also set out the circumstances in which personal information may be disclosed, in accordance with the *Privacy Act 1988*.

Registered providers must retain records of all written agreements, as well as receipts of payment made under the written agreement, for at least two years after the overseas student ceases to be an accepted student. This is consistent with the record keeping requirements under section 21 of the ESOS Act and section 13 of the *Education Services for Overseas Students Regulations 2019*.

Payment of fees

Registered providers must not accept tuition or non-tuition fees until the overseas student (or the parent or legal guardian if the overseas student is under the age of 18) has signed or otherwise accepted the agreement.

Registered providers may accept tuition or non-tuition fees at the same time as the overseas student signs or accepts the agreement. For example, if an overseas student sends a signed written agreement with an accompanying payment, or makes the payment in person to the registered provider with the signed agreement, this meets the requirements of the National Code and the ESOS Act.

Disclaimer

The Department of Education, Skills and Employment provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.

However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.