



Redfern Legal Centre

International Students: Effective complaints about education providers



Sean Stimson

International Students Solicitor
Redfern Legal Centre

Acknowledgement of Country



Redfern Legal Centre

- an independent community legal centre
- free legal advice for people living in inner Sydney
- free legal advice for international students living anywhere in NSW



International Students: Effective complaints about education providers

1. ESOS legal framework
2. Fees
3. Transfers
4. Deferment, suspension & cancellation
5. Questions, more information

Download today's Powerpoint file from:

rlc.org.au/training/resources/international

International Students: Effective complaints about education providers

1. ESOS legal framework

2. Fees

3. Transfers

4. Deferment, suspension & cancellation

5. Questions, more information

Download today's Powerpoint file from:

rlc.org.au/training/resources/international

Complaints about providers by international students

- Disputes over attendance
- Fees
- Refunds
- Transferring between education institutions



Education Services For Overseas Students Act 2000 (ESOS Act)

- Created to ensure that international students have a rewarding, enjoyable and safe experience
- Ensures that education providers are registered and meet certain obligations as part of their registration on Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Education Services For Overseas Students Act 2000 (ESOS Act)

- Creates the National Code of Practice for providers of education and training (s33(1))
- Enhances Australia's quality education and training services
- Supports student visa system

ESOS Standards provide information on:

- Support services
- Education provider's requirements for satisfactory attendance
- Education provider's requirements for satisfactory progress in the courses you study and what support is available
- Course deferral, suspension or cancellation
- Tuition assistance and refunds
- Complaints and appeals process

ESOS Standards:

Key requirements on providers

- Providers give students *a description of the ESOS framework* prior to enrolment
- Providers inform students of the modes of study through which the course may be offered
- Providers list the grounds on which the student's enrolment may be deferred, suspended or cancelled
- *Documented procedures* are in place for assessing students' qualifications, experience and English language proficiency

ESOS Act – General obligations

S15 – Registered provider cannot engage in misleading and deceptive conduct in connection with:

- the recruitment of overseas students or intending overseas students; or
- the provision of courses to overseas students.

ESOS Act – General obligations

S21A – Obligations relating to the agents of registered providers:

- maintain and publish a list of all the provider's agents
- comply with relevant regulations

ESOS Act – General obligations

S21 - Record keeping:

- A registered provider must keep records of each accepted student who is enrolled with the provider or who has paid any tuition fees for a course provided by the provider.

ESOS Act – General obligations

S19 - Giving information about accepted students

ESOS Act – General obligations

S20 - Sending students notice of visa breaches

ESOS Act – Enforcement

S83 - conditions, suspension and cancellation

S89 - automatic suspension if registered provider is no longer fit and proper

s95 - effect of the suspension

ESOS Act – other offences

S120(1) - Offence: failing to comply with a notice

S121 - Offence: giving false or misleading information

ESOS Act – latest changes

December 2015:

- more flexibility in paying tuition fees upfront

International Students: Effective complaints about education providers

1. ESOS legal framework
2. **Fees**
3. Transfers
4. Deferment, suspension & cancellation
5. Questions, more information

Download today's Powerpoint file from:

rlc.org.au/training/resources/international

Fees

Written agreement:

- The provider and students must enter into a written agreement that includes all the detail outlined in Standards 3.1 and 3.2. This agreement must be signed or otherwise accepted. This means students can sign a form or indicate their acceptance online.
- The provider cannot accept course money from the student until the student (or the student's parent or legal guardian if the student is under 18) has signed or otherwise accepted the agreement.

Fees

S27 - Changes to the 50% limit on upfront tuition payments

Refunds

National Code Standard 3.2:

- registered provider must include specified information in written agreement

Refunds

Implications:

- Written agreements need to include refund information in the case of both student and provider default.
- The **Tuition Protection Service (TPS)**

Refunds

Implications:

- Does a provider give a student a refund if paid 12 months in advance but transfer to another provider after 6 months?

Refunds

Implications:

- Student's appeal against a provider's decision not to give a refund



Tips for resolving refund disputes

- Read the refund terms in your written agreement carefully to note the circumstances for refund
- If your education provider notifies you that your course is changing, then you are entitled to a refund of fees, even if your provider offers to enrol you in a new course

International Students: Effective complaints about education providers

1. ESOS legal framework
2. Fees
- 3. Transfers**
4. Deferment, suspension & cancellation
5. Questions, more information

Download today's Powerpoint file from:

rlc.org.au/training/resources/international

Transfers

National Code Standard 7:

- Provider must not knowingly enrol student wishing to transfer from another provider's course, prior to the student completing six months of study, except in specified circumstances.

Transfers

National Code Standard 7.3:

- Provider must grant a letter of release only where student has provided a letter from another registered provider confirming that a valid enrolment offer has been made

Transfers

National Code Standard 7.4:

Letter of release:

- no cost to the student
- must advise the student of need to contact DIAC for advice on whether a new visa is required

Transfers

Transfer after 6 months

- A student can transfer without restriction after he or she has completed six months of the principal course.

Transfers

Transfer policy

Examples of reasonable grounds for granting a request for a letter of release:

- academic grounds
- personal grounds

Transfers

Refusing to grant a letter of release:

- *student wants to leave the course and enrol with a provider that in my view has an inadequate course/ facilities/ will result in poor living conditions for the student*
- Under Standard 7.5, student must be provided with written reasons for refusing request and informed of his or her right to appeal the provider's decision in accordance with the provider's complaints and appeals process.

Transfers

Refund in the event of transfer

- Standard 7 of the National Code does not affect the provider's policies on payment of course fees or its refund policy.
- Under Standard 3 a provider is required to enter into a written agreement with the student which clearly sets out what the course fees are and the amounts that may, or may not, be repaid to the student.

International Students: Effective complaints about education providers

1. ESOS legal framework
2. Fees
3. Transfers
- 4. Deferment, suspension & cancellation**
5. Questions, more information

Download today's Powerpoint file from:

rlc.org.au/training/resources/international

Deferment, suspension or cancellation of study

National Code Standard 13.2 - Provider can only defer or temporarily suspend enrolment of student on grounds of:

- compassionate or compelling circumstances (for example, illness where a medical certificate states that the student is unable to attend classes); or
- misbehaviour by the student.

Deferment, suspension or cancellation of study

National Code Standard 13.3 - The registered provider must:

- inform student that deferring, suspending or cancelling enrolment may affect student visa; and
- notify DEEWR where the student's enrolment is deferred, temporarily suspended or cancelled.

Visa issues

Always seek advice from your migration agent before discontinuing or deferring a course you are taking.

Complaints & appeals

- Provider must have appropriate internal complaints handling and appeals process.
- Provider must have appropriate external complaints handling and appeals process.
- If student is not satisfied with result or conduct of internal process, provider must advise student of right to access external appeals process

Complaints & appeals

Overseas Students Ombudsman (OSO)

investigates complaints:

- by overseas students about **private** universities, schools, and colleges registered with CRICOS,
- about refunds, fees, cancellation of enrolment, admission refusals, course progression or attendance, education agents.

OSO will not investigate a complaint unless you have finalised it with your education provider.

Complaints & appeals

- **State/territory Ombudsmans** investigate complaints about public universities and TAFE about refunds, fees, cancellation of enrolment, admission refusals, education agents
- **State/territory Ombudsmans** will not investigate a complaint unless you have finalised a complaint with your education provider

Australian Skills Quality Authority (ASQA)

- national regulator for vocational education and training (VET) sector
- seeks to make sure that the sector's quality is maintained through the effective regulation of providers and accredited courses

Attendance requirements for international students

- A student must attend at least 80% of the course contact hours, for each course in which they are enrolled. (Standard 11)
- Provider must contact a student who has been absent for more than five consecutive days without approval or where the student is at risk of not attending 80%.

Medical & personal issues preventing 80% attendance

- Ask provider if you can defer or suspend enrolment on the grounds of compassionate or compelling circumstances
- Compassionate or compelling circumstances: serious illness or injury, bereavement of close family members, traumatic experience, where the provider was unable to offer a pre-requisite unit, delay in receiving a student visa

Notice of unsatisfactory attendance

I received a notice from the provider telling me I haven't attended 80% of my course. I disagree with their decision. What can I do?

- The provider must notify you of not having achieved satisfactory attendance, and inform you that you can access the provider's complaints and appeals process within 20 days.

Tips

- Provider can sometimes set higher attendance standards than 80%, so read carefully
- For distance learning students, attendance cannot be monitored. However, these students must **participate** in the learning activities outlined in the course requirements, for example, interactive online discussions and submitting assignments.

Questions?



Sean Stimson

International Students Solicitor
Redfern Legal Centre

Download today's Powerpoint file from:
rlc.org.au/training/resources/international

Before you go...

Your feedback helps us improve our training... So please stay online for 30 seconds more.

Future webinars:

rlc.org.au/training



Training: rlc.org.au/training

Enquiries: Nick Manning

education@rlc.org.au

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

RLC can come to you

We can present this workshop at your staff training... or we can customise training to suit your needs.



Enquiries:

Nick Manning
(02) 9698 7277

education@rlc.org.au

Our law training topics

- Tenancy
- Social housing
- Domestic violence
- Fines
- Debts
- Police complaints
- Discrimination
- Employment
- Navigating the legal assistance sector

rlc.org.au/training



Redfern Legal Centre