



ISCA Submission

Overseas Students Ombudsman Consultation Issues Paper - *Problems with Written Agreements between Overseas Students and Registered Education Providers*

The Overseas Students Ombudsman (OSO) has invited ISCA respond to the OSO Consultation Issues Paper – *Problems with Written Agreements between Overseas Students and Registered Education Providers*. The OSO notes that refund and fee dispute complaints are the most frequent type of complaint its office receives and that in the course of investigating these complaints, they often see errors in written agreements.

The purpose of this consultation paper is to:

- i. draw attention to the common mistakes that the OSO sees, and the consequences of these mistakes for overseas students and education providers
- ii. provide guidance to education providers and overseas students about how the OSO resolves complaints where they identify these mistakes
- iii. provide guidance to education providers regarding how they should resolve such complaints themselves during in the course of their own internal complaints and appeals process, and
- iv. help education providers improve their compliance with the Education Services for Overseas Students Act 2000 (ESOS Act) and National Code 2007 requirements.

At Attachment 1 to the consultation issues paper there is a list of questions for “registered education provider peak bodies”. ISCA comments on the Issues Paper and response to questions for peak bodies are below.

ABOUT ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with about 1,080 schools and 567,000 students, accounting for 16 per cent of Australian school enrolments.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools
- Non-denominational Christian schools
- Islamic schools
- Jewish schools
- Montessori schools
- Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states
- Community schools
- Indigenous community schools
- Schools that specialise in meeting the needs of students with disabilities
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.

Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 18 per cent of schools in the independent sector. Independent Catholic schools are a significant part of the sector, accounting for 8 per cent of the independent sector's enrolments.

OVERSEAS STUDENTS IN INDEPENDENT SCHOOLS

The latest AEI data shows that just over 14,000 school students are enrolled in Australian schools. These students comprise 4% of the total overseas student cohort. Forty –one per cent of these students are enrolled in non-government schools. In 2013 there were over 5,700 overseas students enrolled at close to 360 independent schools.

ISCA estimates between 30-40% of all CRICOS registered providers in Australia are independent schools that are individually registered and individually responsible for meeting compliance requirements. Some schools also have ELICOS centres attached to their institutions which may also be separately registered on CRICOS.

Overseas student enrolments in independent schools vary from 1 to close to 200 overseas students. The median number of overseas students at an independent school is 7 students.

This profile differs quite substantially from other sectors. For the vast majority of independent schools, overseas students do not determine the school's sustainability. Rather, overseas students provide a much valued international element and diversity to school populations.

ISCA COMMENTS ON THE OSO WRITTEN AGREEMENTS ISSUES PAPER:

- i. ISCA commends the OSO on taking the initiative to provide constructive feedback to education providers on issues arising from the work undertaken by the OSO.
- ii. The OSO's approach provides valuable insights into the mechanics of complaints handling processes, and ISCA recognises the OSA has gone to some lengths to provide examples and scenarios that are relevant and instructive to providers. In addition provision of "position

statements (p.18), ISCA would like to suggest examples of provider good practice also be made available.

- iii. In finalising this issues paper for publication, ISCA recommends the OSO consider:
 - a. Replacing references to “prepaid fees” with “tuition fees” where applicable, to align with current ESOS legislation
 - b. changing wording of the explanation for **Section 27** (p3) and **Refunds of prepaid fees** (p.13) from *The balance of fees cannot be collected more than two weeks before...* to *The balance of fees cannot be **required** more than two weeks before* to align with wording of [ESOS Act 2000 s 27](#)
 - c. amending advice on “Letter of Offer” to take into account DIBP’s “Minimum contents of a letter of offer” at: http://www.immi.gov.au/business-services/education-providers/roles_responsibilities.htm#mincontents
- iv. ISCA’s responses below are provided from a school sector perspective, and may not reflect specific concerns or issues that are relevant to other sectors.

ISCA RESPONSES TO QUESTIONS FOR EDUCATION PROVIDER PEAK BODIES

1. What tools are available to assist your members to develop compliant written agreements with overseas students?

On the ISCA website ISCA has a checklist for written agreement / acceptance of offer for CRICOS registered non-government schools. This agreement is updated from time to time in response to legislative changes to the ESOS framework.

ISCA will generally seek feedback from relevant national agencies on sample documents provided to non-government schools prior to uploading onto ISCA’s website.

ISCA is currently working on updates to resources required by legislative changes that came into effect on 1 July 2014.

2. Has your organisation developed any tools, such as checklists, boilerplate clauses or model contracts to facilitate compliance?

ISCA’s resources for ESOS changes from July 2012 include:

- *Checklist for letter of offer*
- *Sample letter of offer*
- *Checklist for written agreement / acceptance of enrolment*
- *Sample written agreement / acceptance of enrolment*
- *Sample refund policy*

3. What do you consider are the barriers to members achieving and maintaining written agreements that are compliant with legal requirements?

In the schools sector, one very large challenge lies in disseminating information to providers regarding changes to requirements. We have a large number of providers for whom enrolling a small number of overseas students takes up a disproportionate amount of their enrolments and administration workload. Ensuring that all providers are up-to-date with current requirements

can be a lengthy process, particularly when there are a large number of changes over a long period of time, as has been the case since 2010.

Additionally, there are usually only limited administrative resources at schools to respond to increasingly complex legislation. Ensuring that requirements are communicated in a manner that can be easily understood is very important. Staff turnover in administration can adversely affect the level of compliance knowledge at a particular institution at different times, without any commensurate effect on student welfare or course progress.

Currently in ISCA's materials, we encourage schools to seek independent legal advice to ensure that their documentation meets all the requirements of the ESOS Framework, the National Code and other legislation due to the complex nature of these requirements.

We have consistently advised regulators that constantly changing and increasingly complex compliance requirements will result in non-government schools cancelling their CRICOS registration, and we note this is indeed happening.

4. Do you consider that the Written Agreement Checklist at Attachment 2 would be useful for developing compliant written agreements? Would you make any changes to it?

Overall the checklist looks like a useful tool but as sections 7 and 8 are in essence a subjective self-evaluation, they might be better separated from the rest of the checklist which is based on actual legislative requirements.

Specifically, ISCA suggests the following changes to the Checklist:

2.e)	Add	, or, in the case of a provider issuing a CAAW for a student under 18 years of age, must not change accommodation, support and general welfare arrangements without the written approval of the education provider (Visa Condition 8532: http://www.immi.gov.au/students/visa-conditions-students.htm)
8.a)	Add	...use language or provide definitions which are.....
ADD	9.	Record Keeping
		(Add record keeping requirements of Section 5 of this paper to the checklist)

5. Do you have, or would you consider developing, tools such as model contracts, checklists or boilerplate clauses to assist your members to make and maintain compliant written agreements?

We use these tools and we believe they are a very helpful guide for providers to maintain compliance with the requirements of the ESOS Act. However, we are aware that different schools will take different approaches to the form the written agreement takes so we try not to be prescriptive. For example in the handbook we stated that "the sample written agreement is provided as a 'stand-alone' document however schools may also use the enrolment form if it meets the stated requirements."

We would want providers to be educated in what are the minimum compliance requirements for school documents to meet their obligations with options for the various ways this can be achieved.

6. If you developed a model contract as a guide for providers how would you address issues such as:
- cancellation fees
 - early termination
 - refunds
 - variation clauses?

Broad guidelines can be provided for a refund policy, but specific terms and conditions for other items such as cancellation fees and some instances of variation clauses would be up to the provider to decide within the broader context of their legislative requirements. ESOS already has requirements for refund in the case of early termination with various provision for student default (s 47A, 47D & 47E) and advice for the potential for fees to change (NC St 2.1.e.)

7. Do you have any concerns about the development or application of a standard form contract?

Yes if this is intended to be a universally applicable document. The procedures for enrolment and the provision of a Letter of Offer can be quite sector specific and this needs to be taken into account so that schools can continue to use school sector 'accepted practice' in formulating their written agreements. Exemplars for providers needs to be flexible in nature so that these can be adapted to suit individual providers' requirements.

8. Are there any other tools that you consider would be useful in facilitating compliance and reducing the costs of compliance for registered providers?

Education is key in assisting providers to facilitate compliance. This could include webinars, additional written materials, seminars, fact sheets, checklists, etc. As noted above, the main difficulty for non-government schools is the administrative burden that compliance brings. Any means to assist schools to streamline processes and maintain compliance would be welcomed.

ISCA

1 September 2014