

This information sheet is designed to provide an overview of key amendments to the *Education Services for Overseas Students Act 2000* (the ESOS Act) passed by the Australian Parliament in November 2006 which came into effect on 1 January 2007.

Section 27 and 28: Refunds

Purpose

These amendments:

- **clarify the definition of student default for refund purposes to include the circumstances in which a provider may refuse to provide a course to a student.**
- **stipulate that a written agreement does not apply if a student is refused a student visa, regardless of the reason for the refusal.**

Key requirements

- The written agreement managing refunds between a provider and a student must include details of the amount of course money to be refunded if the student defaults and the circumstances which constitute student default.
- A written agreement does not apply if a student is refused a visa and is unable to undertake the course for which they have been accepted.

What do these amendments involve?

Student default

This amendment clarifies the definition of 'student default' under the Act as it relates to the refund of course money. Refund provisions specified for student default will apply where the provider refuses to provide or continue providing the course in one or more of the following circumstances:

- the student failed to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course;
- the student breached a condition of his or her student visa; and
- misbehaviour by the student.

Visa Refusal

Written agreements do not apply where the student default is a result of the student being refused a student visa. Where a prospective student is refused a student visa and as a consequence fails to start on the agreed starting date; withdraws from the course; or fails to pay the provider an amount owing to undertake the course, the refund agreement will not apply. In such circumstances the provider must calculate the student's refund in accordance with ESOS subregulation 3.19(2) which allows a

provider to keep an amount for administrative expenses and a proportion of fees if the student has commenced the course. For your reference an extract of Subregulation 3.19(2) of the ESOS Regulations is at [Attachment A](#).

Note

Under Standard 3 of the National Code 2007, it is compulsory for providers to enter into a written agreement with students (or their parent/legal guardian if the student is under 18 years of age) concurrently or prior to accepting course money from the student. Agreements must include the specified information on refunds of course money as outlined in Standard 3.1 and 3.2.

If you have questions about this amendment, send your enquiry to:
esosmailbox@deewr.gov.au.

Extract from the *Education Services for Overseas Students Regulations 2001*

Division 3.4 Refunds of course money

3.19 Amounts to be subtracted from course money

- (2) For paragraph 29 (1) (b) of the Act, the amounts for a student in the circumstances mentioned in subsection 27 (2) of the Act are the following:
 - (a) administration expenses totalling no more than the lesser of:
 - (i) \$250; and
 - (ii) 5% of the total amount of course money that the provider received in respect of the student for the course before the default day;
 - (b) the part of expenses for travel, accommodation and other domestic services that cannot be offset by providing the services to someone else;
 - (c) the amount of compulsory union fees;
 - (d) the cost of books, equipment and other materials needed for the course;
 - (e) the proportion of the course money that the provider received in respect of the student before the default day that is equal to the proportion of the course that was provided to the student before the default day.
- (3) When a registered provider refunds an amount to a student under section 29 of the Act, the provider must give the student a statement that explains how the amount has been worked out.