




Onyx
Legal

The Ultimate Guide to Memberships
for Online Educators

Part 3



Creating and delivering online courses is a booming industry, but there is a little point having loads of students if you can't be profitable.

In this part, we will discuss payment terms and how to make sure you get paid. If you'd like to know more about the legal set up for your online membership business then check out [Part 1](#), and if you'd like to know more about membership and conditions and compliance, then go back and read through [Part 2](#).


Membership Payment Terms

The most common payment method applied to education is upfront payment before someone can start a course. This is easy with lower value courses, but not necessarily with higher value courses.

What is lower and higher value? This will depend on your market.

For some people \$97.00 seems like a lot of money and for others \$9,997.00 sounds cheap. You need to know your market to know your price point.

No matter what type of course you are offering, at least one payment should be required upfront before providing access because that payment demonstrates a person's intent to get started in the course.



Upfront Payments v Instalments

The biggest risk with instalment payments is that a member gets part way through a course and says they have changed their mind and don't want to finish it and expect to be able to simply stop paying.

Instalment payments are not the same as subscription payments.

A monthly subscription will give your members monthly access to your member's area, and if they stop paying, their access is removed at the end of the paid-up month.

However, if a member purchases a course, and you provide the option to pay by monthly instalments, your member has agreed to pay the full amount of what they have purchased. Sometimes members forget this, and your terms and conditions and landing pages should be very clear on the point that the full amount will be due, no matter what payment method they chose.

Your terms and conditions will also need what is called an 'acceleration' clause, which allows you to claim the full balance of course fee outstanding if they stop paying. If you don't have an acceleration clause, then you are only able to recover each instalment as it becomes due and owing, and you have to keep chasing each instalment.

It is important to make it clear to your members that they will still be liable to pay the full amount of the course fee if they decide to drop out in the middle of the course.

How you explain your course fees

Another aspect of upfront payments versus instalments is that you might decide to charge a greater fee for people who pay over time, rather than people who pay up front. You probably want to charge members who pay over time a little more than those who pay upfront, due to the delay and administration involved. You can do that, provided that the amount you add to the course fee is not disproportionate to the upfront fee.

So how can you tell what is disproportionate?

Well, if you can demonstrate that the additional amount you are charging is no more than current interest rates, plus your reasonable costs (if any) of administration, then the fees are not likely to be considered a penalty. However, if you decide you want to charge 30% more for members who pay over time, without any justification as to how you calculate that figure, then you could be at risk of having the additional amount deemed a penalty and unable to be recovered by you.

We have suggested to clients that you explain your fees in a way that the full course fee is the sum of instalment payments, and the upfront payment is discounted. Even if that is not the way you see it. If you explain it that way, you reduce the risk of losing money because your fees are deemed a penalty.

Do You Have to Give a Refund?

A lot of educators and trainers hate giving refunds. We understand.

You've invested a lot of time, energy and experience into designing education for someone else that shortens their learning experience from the years you invested, into a year or less of training. It might have taken you years and cost you a fortune to come up with what you are teaching, and it doesn't seem fair that someone who starts a program with you can turn around and say, "my circumstances have changed" or "I changed my mind, I just don't want to do it".

You are not obliged to provide a refund if someone changes their mind, however you ARE legally required to provide a refund if you fail to comply with a consumer guarantee or are found to have participated in false or misleading advertising of your course.

The consumer guarantees apply when your course or program has a value of less than \$40,000, regardless of the purpose of the education and whether the purchaser is an individual or a business. If your course has a higher value and is usually purchased for personal, domestic or household use or consumption, then it may still be covered by consumer law.

The statutory consumer guarantees that you must meet are:

Products Must:

- Be of acceptable quality, taking into consideration the type of product and cost
- Match the description whether through verbal sales, packaging, labelling, promotions or advertising
- Match any demonstration model or sample supplied
- Be fit for the purpose advertised, or as requested by the purchaser before purchase
- Be delivered within a reasonable time
- Come with full title and ownership
- Not carry any hidden debts or extra charges
- Meet any guarantees or money back offers you make.

Services must:

- Be delivered with due care and skill or technical knowledge
- Be fit for the purpose or give results agreed with the purchaser
- Be delivered within a reasonable time.

A course may be classified as a product (goods under the consumer law) where it is like software - something that someone can download and use without your further involvement.

A course is likely to be classified as a service where it involves a contract for a supply in relation to the provision of or access to facilities for instruction.

Your course sales might include both products and services. For example, we have a client who offers membership to a platform, and once you access the platform, you can purchase or access for a free variety of courses. The membership access is services, and the courses once members are inside, are products.

So, when do you have to give a refund?

You are legally required to provide a refund if there is a major fault - which is a fault that cannot be remedied, in your product or service.

Where a fault can be fixed, and provided your terms and conditions are clear on this point, you can offer a replacement (they can re-sit the course) or a refund, or a partial replacement or refund at your option.

Examples of where a refund has been ordered are:

- VCAT 2015 - Where the education provider represented in advertising that a nail technician training course was an accredited course, and the education provider was not a registered training organisation. The course did not meet the description and the education provider was ordered to refund \$2,500.
- QCAT 2011 - Where an art course was advertised as being delivered by a particular artist, and a different artist was substituted at the last minute in accordance with the terms and conditions. All course advertising mentioned the artist, so the terms and conditions were insufficient to overcome that, and the course did not meet the description. The education provider was ordered to refund \$913.
- NCAT 2018 - Where a course was offered for teaching Forex trading and comprised a variety of modules, some of which the education provider failed to deliver for over a year. The explanation was that there were insufficient participants to run those components, and that the participant had not yet qualified for one module. The course provider was ordered to refund 60% of the \$29,990 course fees because the course was found to be not fit for purpose or delivered with due care and skill.

Examples of where a refund was refused are:

- VCAT 2015 - Where a student claimed lack of due care and skill in delivery of a Certificate IV in Residential Drafting and sought a refund of the \$7,525 he had paid toward course fees. The tribunal decided that delivery was not perfect, but did not fall short of the consumer guarantee. The education provider did not claim the outstanding balance of fees due of \$3,525.
- VCAT 2015 - A student was ordered to pay the balance of fees of \$9,500 for a life coaching course she had partially completed and then withdrawn from due to personal circumstances.
- QCAT 2015 - A student claimed a refund of \$9,600 for a course in cosmetic tattooing claiming in adequate instruction. The tribunal decided that delivery met the representations made about the course and refused the claim for refund.
- NCAT 2016 - A student paid the full amount of a discounted course fee of \$2,450 after being pressured by the salesperson to pay in full during the phone enquiry to secure his place in a carpentry course. A 25% deposit would have secured his place. In under 24 hours he rang to cancel his enrolment. The education provider's terms included a 25% administration fee in the event of a cancellation, and a discretionary refund policy where a student changed their mind. The tribunal permitted the education provider to keep the administration fee but ordered a refund of the balance due to misleading conduct.

Keep in mind that sometimes it is easier (less time, stress, energy, cost to you) to give a refund than argue the point. Look at your business and the value of the course being offered, and the amount of time involved in managing the issue.

We have clients who worry that if they agree to provide one member with a refund, they will be inundated with requests for refunds and they fear being seen as a 'push over'. When you offer great value and have lots of happy members, this is not a real fear.

There will always be someone who, for whatever reasons of their own, thinks they are entitled to get their money back. Their reasons are not always rational and often have nothing to do with you. We usually recommend you focus on your business and attracting the type of members you really do want to keep and building that attraction rather than being distracted with resisting a refund request in circumstances where it is not worth your time given the money involved.

We can help you to design a Deed of Release or similar document that requires your refunded member to keep the fact they received a refund confidential, not disparage you once released and not take any action against you in future regarding their membership. Depending on the circumstances, we can also write in additional terms that are important to you, for example, that they return materials or are prohibited from using your intellectual property.

This at least gives your certainty and closure, if not satisfaction.

We hope that you have enjoyed this series of articles and can apply some of this information into your membership business. A simple checklist to remind you of the topics we have covered and allow you to identify any gaps you might like to action can be accessed below.

If there are any questions we didn't answer in this series, please drop us an email at advice@onyx.legal and we will add another part to answer those questions for you.

We'd also love your feedback if it has been useful and please share this series with your colleagues if you believe they'd find it helpful too

Checklist 1: Setting up your membership business

SETTING UP YOUR MEMBERSHIP BUSINESS	
Your Business	
<input type="checkbox"/>	Work out what drives people to become a part of your membership
<input type="checkbox"/>	Identify your membership offerings Eg, what resources will be made available, access levels
Personal Information	
<input type="checkbox"/>	Think about: <ul style="list-style-type: none"><input type="checkbox"/> What personal information you will be collecting<input type="checkbox"/> Whether you will be collecting from people overseas<input type="checkbox"/> How you will use that information<input type="checkbox"/> How you will protect that information
<input type="checkbox"/>	Prepare a privacy policy
Application Form	
<input type="checkbox"/>	Ask applicant for all relevant details
<input type="checkbox"/>	Provide link to terms and conditions
<input type="checkbox"/>	Ask applicant to tick a box to agree to the terms and conditions
<input type="checkbox"/>	Vetting process (for high cost programs)
Contractors	
<input type="checkbox"/>	If you will be engaging contractors, think about: <ul style="list-style-type: none"><input type="checkbox"/> The relationship - employee vs. contractor<input type="checkbox"/> What intellection property rights you want to protect<input type="checkbox"/> Behaviour management
<input type="checkbox"/>	Prepare a contractor agreement
Protect your content	
<input type="checkbox"/>	Manage membership access through: <ul style="list-style-type: none"><input type="checkbox"/> Terms and conditions<input type="checkbox"/> Technology
<input type="checkbox"/>	Add watermarks or branding to all your materials
<input type="checkbox"/>	Consider delivering some materials only to the email addresses of members or by post

TERMS AND CONDITIONS	
What To Include	
<ul style="list-style-type: none"> <input type="checkbox"/> Membership policies <input type="checkbox"/> Access timeframes <input type="checkbox"/> Content storage <input type="checkbox"/> Intellectual property rights <input type="checkbox"/> Payment terms (see Table 3) <input type="checkbox"/> Refund policy (see Table 3) <input type="checkbox"/> Feedback or guidance <ul style="list-style-type: none"> <input type="checkbox"/> Develop policies for managing enquires <input type="checkbox"/> Establish systems and methods for responding to queries <input type="checkbox"/> Limitation of liability <input type="checkbox"/> Disclaimers <input type="checkbox"/> Indemnity 	<p>eg. access levels: members' obligation to not share username and password with others</p>
Things To Be Careful About	
<ul style="list-style-type: none"> <input type="checkbox"/> Do not make any misleading or deceptive representations including: <ul style="list-style-type: none"> <input type="checkbox"/> Access timeframe (if you offer 'lifetime access', clearly describe what you mean) <input type="checkbox"/> The name and description of your courses and materials (i.e, do not use the words 'diploma' or 'degree' unless your courses are accredited) 	
Updating Terms and Conditions	
<ul style="list-style-type: none"> <input type="checkbox"/> Give notice to members with: <ul style="list-style-type: none"> <input type="checkbox"/> The chance to opt out <input type="checkbox"/> The chance to renew their membership under the updated terms and conditions 	

PAYMENTS AND REFUNDS	
Payment Terms	
<input type="checkbox"/>	Payment options ie, upfront payments or instalments (it is recommended that you require at least one upfront payment)
<input type="checkbox"/>	Payment due dates
<input type="checkbox"/>	Acceleration clause (if you offer the option to pay by instalments)
<input type="checkbox"/>	Members' obligation to pay full amount even if they drop out of the course
Refund Policy	
<input type="checkbox"/>	Check if consumer guarantees apply to your business
<input type="checkbox"/>	You must provide a refund if there is a major fault in your products or services
<input type="checkbox"/>	Clearly indicate in your terms and conditions, when a fault can be fixed, whether you will offer a replacement or a refund
<input type="checkbox"/>	Prepare a Deed of Release (or similar document)