




The Ultimate Guide to Memberships for Online Educators

Part 1



Creating and delivering online courses is a booming industry. And fascinating. Find a passionate niche, something topical or a new skill, and you've found a cohort of people who want to learn more about it.

If you offer education or training online and you currently use, or would like to use a membership model, then this is the ultimate guide to help you feel confident about your business.

Because we set out to create the 'Ultimate Guide', it turned out a little too long for one sitting. We've broken it up into 3 parts for you, together with a checklist you can download at the end.


This first part looks at setting up your membership business. The [second part](#) sets out what your terms and conditions should include. The [third part](#) looks at the all-important aspect of membership payments and refunds.

Learning online

Back in the 1990's, distant education meant buying expensive textbooks, written requests to the library for photocopies, and lectures on cassette tape.

With the increasing use of technology, education is no longer limited to classrooms, rows of desks and taking notes by hand, and for some of you, you never set up your business that way in the first place.

But for traditional educators it might still be a challenge to recognise that now, people can learn from the comfort of their home and access courses delivered from anywhere on the globe, and that a student's expectation of online delivery is now a long way from the old-fashioned model.



What is a membership business?

From our perspective, every business is about relationships, and one of the best types of relationships you can create for a long-term engagement with your clients is membership.

Why?

Because membership gives a sense of belonging and common purpose.

Membership is more than the benefit of being a mere subscriber. Membership promotes engagement and involvement and being part of something bigger. Although, for some people it's the kudos of being able to say they are a member that keeps them involved, rather than any tangible benefits of membership.

If you have ever signed up to a gym, then you know how a subscriber-based membership works. You make a purchase for a monthly, quarterly or annual deal, and you get access to the gym for the whole of that period...whether you use it or not.

"More than half of all gym members never actually go to the gym - yet year after year, they continue to pay for a service they don't use. Why?"

Zachary Crocket

Your gym membership is only about access, not results. Software subscriptions are another example of 'users' rather than 'members'. There is no sense of belonging, just an on-going obligation to pay if you want access. Again, with software, you may or may not use it.

Professional organisations tend to do membership well.

Professional bodies might support their members through representation and advocacy, provide up-to-date relevant information about the industry and the politics affecting it, and usually offer opportunities to meet with other members in one forum or another. That networking, through the meeting of members, is what helps to build a community where members can learn from the different experiences of each other. Member only forums and Facebook groups are one way to do this.

Sporting clubs are also all about the members. And winning, of course.

Have a look at the different types of organisations that offer membership and what drives people to become a part of that membership to help you work out what benefits you want to offer to engage your members. If you already have members, survey them to find out what is most important to them.

What is important to your members can help frame how you build your membership and the terms and conditions around becoming a member.

How to legally set up a membership business

1. Personal Information

Firstly, think about the personal information you need from members to be able to deliver to them what you are promising. For example, if you are offering a certificate of completion, or attainment, then you need at least their full name to include on that certificate.

If you are only offering access to a resource library for example, you might not need more than an email address to enable a member to set up a login for access. If you want to send out hard copy workbooks, you will need to request a postal address.

We've seen examples of education providers who provide time released education without the offer of a certificate of completion, and all they require is a username, email address and password so that they can send a weekly link to new content, and the purchaser can login to access that content.

It will be your online membership application form (at the point of purchase), where you want to request all the information you need to be able to deliver your course and the promises you have made around that course.

What about protecting your customers' personal information?

When you ask your customers to complete your membership registration, you are collecting and storing their personal information (for example, name and address).

If you are an Australian business with an annual turnover that is more than \$3 million, you will be bound by the Australian privacy law (with some exceptions). You have many obligations under the privacy law which include having a privacy policy for your business.

Your privacy policy needs to specify for example, what personal information you collect, how you use that information, what you do to protect that information, and many other matters.

Be aware that people located overseas can also purchase courses and materials from your website, so you may be collecting personal information from them as well. It is important for you to make sure that you are also complying with international privacy laws such as the General Data Protection Regulation (GDPR) for individuals located in the European Union, or the California Consumer Privacy Act (CCPA) for individuals located in California.

It is crucial for you to have an appropriate privacy policy for your website. You should consider getting a lawyer to prepare one for your website to ensure that you are complying with your privacy obligations.

2. Application Forms

You have options for your application forms. Forms can be online with click-wrap agreements for terms and conditions. What this means is that after an applicant fills in all the information you need from them, they are required to tick a box next to words like “By checking this box you agree to our terms and conditions” with an active link to the terms and conditions.

Your applicant should not be able to progress to payment unless they have checked that box. The box should not be pre-ticked for them.

You want your applicant to think about and either take the opportunity to read or make the choice not to read your terms and conditions. If you pre-tick the box for them, you have no way of demonstrating that they made that decision. An applicant will be bound by your terms and conditions even if they didn’t read them if you can demonstrate that they had to take a positive action to tick the box before they could proceed to payment.

Some of our clients require prospective members to scroll through their terms and conditions before they can tick the ‘I agree’ check box. This is not a bad idea for higher value memberships, but probably not necessary for a program at the lower end of the scale.

For higher cost programs, you might incorporate a vetting process into the application process so that you can reduce the chance of people asking for a refund.

By way of example – we have clients who offer limited space annual programs with a value over \$20,000 per annum. Those courses are not transferable to another student and not refundable if the applicant decides to drop out, partly because they took one of a limited number of spaces and partly because their decision to drop out has nothing to do with the quality of the course. We'll cover refunds in [Part 3](#).

To ensure that the limited available spaces are only taken by applicants who genuinely want to participate in and complete the course, our clients go through a process where they:

- require applicants to agree to terms and conditions before submitting their application
- review every application (received electronically)
- remove anyone who doesn't meet their minimum requirements
- then hold interviews with all remaining applicants to check compatibility.

The process of applying and having to back up the application goes a long way to removing risks under consumer law that the applicant could say they were induced to participate through misleading advertising, or that the terms and conditions were unfair, or that they didn't know what the terms and conditions were, or that they did not agree to payment terms and should be entitled to a [membership refund](#).

3. Access Levels

The next step is to work out what access you are providing, and at what cost. This is your business model. Access levels should match your payment terms.

Examples are:

- Membership (free or paid) gives access to library of short courses, some free some paid, all charged up front.
- 9 week course, paid up front, fixed price, weekly delivery of content, 10 week access then locked out.
- 12 month course, paid up front or by instalments, discount if paid in full up front, immediate access to all content but makes sense to step through, 18 months access.
- Limited access, application only, mixed mode offering largely delivered online with optional face to face 'intensives' offered periodically throughout the course, paid up front or by instalments, not completed until paid in full.
- One on one high level coaching access, annual fee paid up front or by instalments, with free access to other program resources.

There are many more examples on how people offer education through membership, the main thing is that your membership offering is explained to a potential member clearly and unambiguously before the point of purchase. More on payment terms [later](#).

We recommend that your membership terms and conditions either contain terms specific to your offerings, or link to a page (your landing page) where you spell out what is included, and what is excluded for each price point.

We also recommend that, where possible, you have one set of membership terms and conditions with the flexibility to include or remove specific provisions for specific courses if appropriate. This is to simplify your set up process and to ensure that at any point in time, you know what you are asking people to agree to.

4. What if you engage other people to do the work?

You may decide that you want to engage contractors to help design or deliver your courses. They could be content writers, graphic designers, or tutors. No matter what type of work they do, you should have a contractor agreement to adequately define each party's obligations and protect your rights, especially addressing the ownership of intellectual property (IP).

Business owners often assume that they automatically own all IP rights in the work their contractors create for them. Unfortunately, that is not true. The creator of the work (ie. the contractor) is the owner of the copyright. So, if your contractor agreement does not expressly transfer ownership in the work from your contractor to you, the contractor is entitled to claim their copyright and produce the same material for one of your competitors.

Be particularly careful if you engage a contractor who later becomes an employee, or vice versa. Employee copyright work automatically belongs to the employer, but where there are blurred lines in the type of engagement of that person when the work is produced, you may have problems.

You should also consider behaviour management and retain the right to remove a contractor if their behaviour adversely impacts your business reputation or operations.

Just like terms and conditions and privacy policies, a contractor agreement also needs to be carefully drafted to protect your rights. You should get a lawyer to prepare one for you.

Protecting your content

Content theft and plagiarism is a huge risk for you as an online educator because you are putting a significant amount of intellectual property online.

Examples of your intellectual property (IP) may include your audio or video recordings, PowerPoint slides, worksheets, practice exams, course design, learning objectives or other learning materials. Even your website itself including the text, design, graphics layout, images are protected by copyright. The name or logo that you use for your courses or learning materials may also be your trade mark which can also be protected.

If you don't want other people to exploit all your creations and hard work, or use them in a way that could be damaging to your business, you need to think about what content you want to protect and how you can protect it.

Some quick examples of content theft:

1. Participant loves the course and copies all the content, re-brands it and tries to deliver it as their own creation.
2. Participant likes the course and thinks it is missing something so adopts some of your content and re-frames it and launches a course in competition to you.
3. Participant starts promoting their own stuff inside your closed Facebook group or forum to leverage your customers.
4. Participant takes a couple of core learnings from your course and promotes it as their own idea.

In the [next part](#) we will look at some of the strategies you can put in place to protect your content, as well as covering what to include in your terms and conditions to protect your business.

We'd love to work with you to review the way you are offering education online and areas where we can help better protect your business and limit your liability to being sued.


Contact us to find out how we help get organised and feel confident in what you offer.

Check out our [website](#) where you can book a short advice appointment or [get in touch](#).



The Ultimate Guide to Memberships for Online Educators


Part 2



This is the second in our series of articles talking about setting up your online membership business and what you need to have in place to protect it. In our [first part](#) we covered some fundamental concepts for setting up legally, and in this part we're just finishing the topic of protecting your content, then looking at what you need to have in your membership terms and conditions. Our [third part](#) looks at the all-important aspect of membership payments and refunds.

How to protect your content

You can manage membership access by:

- Making membership access terms and conditions available for reading before the point of purchase and inside the membership area.
 - Including a specific copyright licence or intellectual property licence as part of your terms and conditions.
 - Adding watermarks or branding to all your materials.
 - Using technology so that materials can only be viewed within the membership area and not downloaded.
 - Having a paid membership.
 - Requiring each member to login with their username and password, with terms and conditions requiring the protection of that username and password.
 - Using technology to track and restrict the number of internet addresses or devices that can be used to access the membership area using a member's details.
 - Including webinars or other events that require the attendance of the member.
 - Delivering some materials only to the email addresses used for setting up the member account.
 - Delivering materials by post.
 - Removing access if membership comes to an end, or at the end of a course access period.
 - Requiring members to download their course content within a specified time before it expires or lose it.
 - Using gamification to require successful completion of a level before advancing to the next stage.
 - Enforcing your terms and conditions consistently.
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It is difficult to protect your intellectual property 100% because there will always be someone who thinks the rules do not apply to them, or who hasn't read your terms and conditions, or who would exploit your content regardless because they don't think you'd do anything about it.

That does seem like quite enough for this session - see [part 3](#) for Membership Payments and Refunds.

Why do you need membership terms and conditions?

It's your playground and you get to set the rules, provided the rules don't contravene any law that applies to your business.

Membership terms and conditions are the contract between you and your members. It is legally binding. If someone fails to follow the terms and conditions, that contract should be written in a way that enables you to take action against the offending member for any damage you suffer as a result of their breach.

A simple example - you might specify in your terms and conditions that you are the owner of all content contained on your website and that no one is allowed to reproduce your content or trade mark without your written consent. Then, if a member copies your content, or enables someone else to do so and as a result your business suffers loss, you may take action against the member seeking to recover that loss. Unfortunately, it still is not automatic. You must take legal action to enforce your rights.

Some things we expect to see in your terms and conditions might include:

- Membership policies
- Access timeframes
- Content storage
- Payment terms
- Refund policy
- How your customers can give feedback or seek guidance
- Limitation of your liability
- Disclaimers, and so on.

Your website terms and conditions provide protection for you and your business. You should get a lawyer to prepare them for you to make sure that they are tailored to your situation and can effectively protect you, rather than copying someone else's and hoping for the best.

Can you update membership terms any time?

You can update your membership terms and conditions at any time, but you may not be able to make them binding on your members, depending on the changes. We always recommend a notice period, and that period could be until the expiry of the current billing period, or something else.

To ensure that changes are binding, you need to demonstrate agreement. You do that by offering to allow someone to exit with no penalty - not feasible in a 12 month program paid by installments. You could update terms and let your members know that if they want to renew their membership at the end of their current term, they can, but it will be under the new terms and conditions.

You have to give people the chance to opt-out as a result of the changes to the terms if you make changes.

Customer Service

"70% of buying experiences are based on how the customer feels they are being treated"
McKinskey.

Customer service can be tricky. A lot of people develop online education programs to move away from the one-to-one service delivery method and shift to a one-to-many model, which is more profitable.

However, it is important to understand how you will deal with different issues. The Pareto principle suggests that 20% of your members will generate 80% of your problems and dealing with those problems will consume your time.

We have clients who propose a hard line 'no cancellations or refunds' in any circumstances approach. We also have clients who look at people's circumstances and make their decisions on a case by case basis. We also have clients who will not accept some people as members.

You need to develop policies for managing different enquiries from members. Sometimes, a quick refund is the absolute best response. Other times, it might be worth arguing.

Establish systems and methods for responding to client queries. Every large enterprise – think banking, telecommunications, power etc. all have knowledge bases and generate automated responses to questions based on words used in the search string. A good system should help you manage some issues, but there will always be some people who need personal attention.

The more personal attention a person needs, the more likely it is that accepting their cancellation and providing a refund is going to solve your headaches quicker and more easily than having an argument.

Never ignore member problems. Always deal with them, as quickly as you can.

Don't create unreasonable expectations for your customers

When you advertise your business, you need to be very careful not to make any misleading or deceptive representations. This is why we recommended defining what you mean by 'lifetime access' if that is what you plan to offer.

Another thing that you should pay particular attention to as an online educator is how you name and describe your courses and materials. You may want to stay away from using words such as 'diploma' or 'degree' unless you are accredited and authorised to deliver these courses. The delivery of accredited courses is protected by law and heavily regulated.

Using accredited course titles is likely to suggest to your customers that by completing your course they will receive recognised qualifications. If that is not the case, then you could get into trouble for misleading your customer by creating unreasonable expectations and be required to refund fees paid and pay fines on top.

If you are a provider of an accredited course, be clear about who provided the accreditation and what value that has. For example, a course accredited by the Australian Skills Quality Authority (ASQA) is nationally recognised, meets quality assurance requirements, provides appropriate competency outcomes, and has a satisfactory basis for assessment.

A professional body might accredit your course for continuing professional development (CPD) for a particular profession or industry. If so, that accreditation will need to be kept up to date.

Something you've accredited yourself will need your members to promote it to build a reputation of quality and value, which doesn't mean it won't have value. Think of all those Google certified or Salesforce certified trainers.

Understanding how long to make a course available for students

Let's look at access time frames for a minute.

Fixed time frames are easy to understand. You might offer your members monthly, quarterly or annual access, or any other period you feel is appropriate. We have clients who offer courses on a per semester basis, matching with school terms.

Then there is 'lifetime access'. But what does that mean?

We recently saw a Facebook post where a purchaser was complaining that they purchased a course for not a small sum of money and didn't have the capacity to complete it at that time, then came back some time later to complete it, and found it had been discontinued and was no longer available.

The course provider offered to speak with the purchaser to tell them all about their new replacement course. Naturally, this annoyed the purchaser because they did not want to be upsold, they just wanted what they purchased in the first place.

Now, as a course provider, you might think there is nothing wrong with the provider's actions. If we had more facts, you might be right. But it does depend on the facts and whether there are clear time frames in your terms and conditions.

If you are offering courses to Australian consumers, you must comply with Australian Consumer Law. This is something Valve Corporation, a US based online video game retailer discovered to their \$3m detriment, not to mention the court costs of a Federal Court hearing and unsuccessful Appeal.

When offering courses to Australian consumers, don't leave in question any terms and conditions that might be interpreted based on consumer expectations, instead of what is reasonable in your business.

Whose lifetime are we talking about for lifetime access?

So, coming back to 'lifetime access'. What this means is you need to define it, or spell it out in your terms and conditions if you are going to use it in your marketing. If your 'lifetime access' means until you decide not to offer that course anymore, or decide to upgrade or replace that course, then you need to spell it out. You could say it means "10 years from the date of purchase or 12 months after notice of discontinuance of the course, whichever is sooner".

If you rely on this notice period, then you need to be sure that your member details are up to date and you need to give them notice, more than once. If you are decommissioning a course that had lifetime access, then your notice to members should include:

- The name of the course
- When it will be decommissioned
- What replacement, if any, will be made available and any options to take up that new course
- What the member has to do with any information they have stored within your system in association with that course if they want to keep it, eg. download it before it is deleted.

Notice should go out with a long lead time before decommissioning, and then with increased frequency before the decommissioning date arrives, to get your members the best chance to get their data out, or complete the course, before the end.

It is essential to give notice to enrolled students before decommissioning or removing access to a course.

We often get asked, "How much time should I allow?"

Well, how much time does it usually take someone to complete your course? If the worst students could, with persistence, complete the course in 15 months, then that is how much time you should allow after starting to send out notices before you take it down.

If it is a short course that most people complete within say, six weeks, then you might only provide three months of notice before taking it down.

How long should you make courses available?

Your courses should be accessible by the purchaser for the length of time that would be reasonable for them to complete the course. The easiest way to manage this is to set a time frame and include it in your terms and conditions.

Many online education providers offer 12 month courses. Those courses are usually structured and supported in such a way that people can complete them within that time frame. If you are offering a course that is more like a 21 day challenge, then you need to consider how it is structured and the work required of participants and whether it is feasible that everyone could complete it within that timeframe.

Cost will also influence how long the course should remain accessible. We've come across one provider who offers a 9-week challenge scenario and locks people out if they haven't accessed the course within the first 10 days. With the price point of that course, that action was a breach of consumer law, and had to be amended. The course is now accessible for 12 months from the date of purchase with notifications sent out regularly from 6 months after purchase reminding the consumer to use it or lose it.


Why wouldn't you just let members access course content indefinitely?

Indefinite access to course content runs the risk of creating unrealistic expectations in your members. Your course content might become dated and need updating. You might want to restructure the way you offer a course so that it naturally leads into a second course. There might be new developments in the subject that require changes to content, or you might decide a course doesn't have enough traction to make it worthwhile to continue to pay for storage space to make it available.

You also increase the risk of having members who change their mind about doing the course after a long period and expect a refund because they never started the course, or didn't complete it.

Set limited timeframes and include them in your marketing materials and terms and conditions. Encourage members to complete their courses in a timely manner.


In our [next part](#) we will wrap up this series by looking at payments and refunds, because refunds are often a point of contention.



We'd love to work with you to review the way you are offering education online and areas where we can help better protect your business and limit your liability to being sued.

Contact us to find out how we help get organised and feel confident in what you offer.


Check out our [website](#) where you can book a short advice appointment or [get in touch](#).





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	
<input type="checkbox"/>	<p>Membership policies eg. access levels: members' obligation to not share username and password with others</p>
<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"/>	<p>Feedback or guidance</p> <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
Things To Be Careful About	
<input type="checkbox"/>	<p>Do not make any misleading or deceptive representations including:</p> <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	
<input type="checkbox"/>	<p>Give notice to members with:</p> <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)