

Enrolment Agreements

Best practice guidelines

1 Purpose of the Enrolment Agreement

- (a) The Enrolment Agreement between a school and the parent(s)/guardian(s) (**Guardian**) of a student is the legal contract between the parties for the school to provide services to the Guardian for the benefit of the student.
- (b) The Enrolment Agreement should cover the terms and conditions of enrolment that a school considers necessarily to effectively manage the relationship with the Guardian, and student's the successful enrolment and participation in the school.
- (c) As a general rule, an Enrolment Agreement should be in as much detail and as clear as possible, aiming to limit the scope of any misunderstanding or misinterpretation of the terms.

2 A legal contract

- (a) To ensure the Enrolment Agreement is valid and enforceable, the essential legal elements of a contract must be complied with. No matter how detailed a contract is, if the following elements are not present that a contract will not be legally enforceable:
 - (i) Offer – the offer of enrolment of the student at the school.
 - (ii) Acceptance - the acceptance by the Guardian of the student's enrolment at the school.
 - (iii) Intention to create legal relations – for the agreement to be valid the parties must understand that they are creating a legal contract and intend to do so.
 - (iv) Consideration – the exchange of school fees for the provision of the school's services.
 - (v) Legal capacity – the contract needs to be entered into by the people with authority and capacity to do so. This is why the Agreement is entered into with the Guardian and not the student themselves.
 - (vi) Consent – the parties have entered into the Agreement voluntarily and without any duress, undue influence or mistake.
- (b) The following can be included in the enrolment process and Agreement to ensure these fundamental requirements are met.

Contract essential	Inclusion in Enrolment Agreement/documents
Offer and Acceptance	<p>Letter of offer of enrolment, with requirement for the Guardian to return a signed slip or signed copy of the letter confirming acceptance of the offer.</p> <p>Statement in the Agreement to the following effect:</p> <p>“This Enrolment Agreement is a contract between [insert school name] the parents/guardians of the student named on the attached Enrolment Form. The parents/guardians have accepted the School’s offer of enrolment of the student at [insert school name]”</p>
Intention to create legal relations	<p>Statement confirming a contract is being entered into between the parties, as suggested above.</p> <p>Acknowledgement in the Enrolment Agreement, often at end prior to execution, that the Guardian has read and agrees to the terms and conditions set out in the Agreement.</p>
Consideration	<p>The Enrolment Agreement should clearly state that as a condition of the student’s enrolment (or the provision of the services being provided by the school, depending on how the Agreement is worded), the Guardian is required to pay the school fees as directed by the School.</p> <p>It is important that the Agreement make it clear both that the Guardian has an obligation to pay the fees, but also what the Fees are being paid for – e.g. what are the ‘services’ being provided in exchange for the payment of the school fees.</p> <p>The requirement for school to be delivered online during COVID-19 lockdown periods highlighted the importance of making it clear what the Guardian is paying for – which may not necessarily be physical attendance on campus.</p>
Legal capacity	<p>Acknowledgement in the Enrolment Agreement, often at end prior to execution, that the person(s) signing the agreement are the legal parent(s) or guardian(s) of the student.</p> <p>Requirement for the Guardian to provide verification of identity, such as a copy of photo identification, to ensure this requirement is met.</p> <p>It is also advisable to include an acknowledgment that all persons having parental responsibility for the student are aware of and agree to the terms and conditions in the Agreement.</p>
Consent	<p>This generally is not expressly addressed in the Agreement, but the enrolment process should be structured as such to clearly show consent to the contract.</p>

3 Recommended key inclusions

- (a) The Enrolment Agreement should cover those key terms and conditions of enrolment that the school wishes to be contractually enforceable against a Guardian and are unlikely to change during the period of enrolment.
- (b) Key elements of an Enrolment Agreement may include:
 - (i) Payment of school fees (often with the actual schedule of fees being a separate document or subject to annual review).
 - (ii) Who has responsibility to pay the fees (which may include joint and several responsibility of all guardians), and method(s) of payment.
 - (iii) Responsibility for student welfare – including clarifying during what times the school takes responsibility for this, and hours of supervision.
 - (iv) Compliance with the school’s expectations of student and Guardian conduct, as set out in school policies/codes of conduct (which can be amended by the School as required).
 - (v) In what circumstances a Guardian can terminate the Agreement, and any associated requirements (such as notice periods).
 - (vi) In what circumstances the School can suspend or terminate the Agreement.
 - (vii) Limitations of school liability (e.g. for the personal belongings of students).
 - (viii) The school’s right to implement subject and curriculum offerings within the parameters of the relevant Commonwealth and ACT Education Acts, and other applicable legislation or instruments.
 - (ix) External legal matters – such as an obligation to provide the school with any court orders or other documents relevant to the student, and to keep the school informed of any changes to such information.
 - (x) Privacy, which would likely include reference to a more comprehensive privacy policy.
- (c) If there are terms that are more flexible, or likely to change from time to time, then these are best placed in a code of conduct and school policies. The general obligation for a Guardian and student to comply with all school policies recommended above allows the school to contractually enforce compliance, but flexibility to amend the actual expectations and rules as appropriate.
- (d) Policies may include school expectations relating matters such as:
 - (i) Student code of conduct
 - (ii) Parent code of conduct
 - (iii) Excursions and Co-curricular activities
 - (iv) Use of technology and personal devices
 - (v) Student illness

4 Dealing with specific events

- (a) A comprehensive and effective Enrolment Agreement should provide a road map for both the school and a Guardian in dealing with specific events or incidents, whether expressly in the Agreement or by reference to an applicable policy.
- (b) The intent is that when certain events take place, which can be difficult events, then there is a clear process to be following in dealing with that incident. This can limit difficult discretionary decision making for the school, and provide a clear and transparent process for all parties from the outset (which may include set potential outcomes).
- (c) An example of such an event may be financial hardship of a Guardian which results in temporary inability to pay the schools fees. The relevant section of the Agreement should set out, whether in the Agreement itself or in a separate policy which the Agreement requires the parties to follow, the next steps to follow in dealing with that situation.
- (d) A school may also like to consider other events for which having a pre-determined process to follow would be helpful, including investigation into allegations of student or parent misconduct, and the resulting disciplinary actions that the school could take.

5 Australian Consumer Law

- (a) Schools are subject to the requirements of the Australian Consumer Law (ACL) and thus should consider this when undertaking any financial dealings.
- (b) Enrolment agreements should be reviewed in line with the ACL so that they:
 - (i) allow the opportunity for parents to withdraw enrolment of students at the end of the school year without incurring a financial penalty, for example with ample time to give the required notice after notification of the fees for the next school year;
 - (ii) imposition of a penalty at other times may still be valid; and
 - (iii) allow parents ample time to withdraw enrolment their children without penalty following any amendment to the terms of the contract between the parties.
- (c) Subject to the schools' resources, these requirements could be achieved concurrently by only amending fee schedules, and any other contractual documents, at, or towards, the end of term 3 each year, allowing parents to still provide a term of notice if they wish.
- (d) All negotiations with parents in relation to fees should be done so with utmost transparency.

6 Enforceability

- (a) To be effective the Enrolment Agreement also needs to be enforceable and set out the steps a School can take if there is a breach of the Agreement. This may include expressly stating the consequences of the key contract terms, such as:
- (i) late payment of fees – which could include escalating consequences from the application of interest to an overdue account to formal debt recovery action being taken.
 - (ii) non-compliance with school policies.
 - (iii) non-attendance of the student.
- (b) Having express acknowledgements at the end of the Agreement can assist with enforceability of the contract as it limits the ability of a party to later claim that they did not agree to or understand a certain obligation. Such acknowledgements can also support a school having to take enforcement steps. Examples of such acknowledgements are:
- (i) I/We have read and agree to the terms and conditions set out in this Enrolment Agreement;
 - (ii) The information we have provided to the School in relation to the Students enrolment is true and correct;
 - (iii) If there is any change to the information we have provided to the School, we will inform the school of that changed information and any change in circumstances which may be relevant to the Student’s wellbeing, education or enrolment;
 - (iv) All persons having parental responsibility for the Student is aware and in support of the Student’s enrolment at the School;
 - (v) I/we agree to pay all fees as notified by the School and honour all financial commitments to the School;
 - (vi) The student will comply with the School’s expectations in relation to conduct and behaviour.

7 The fine print

- (a) While often glossed over, the general or ‘boilerplate’ clauses at the end of the agreement can be important protections for the school. They are also important in limiting any disputes that do arise to the key legal issues, rather than ancillary issues which consume time and costs.

- (b) These general provisions should include:
- (i) Jurisdiction – if there is a dispute, what state or territory court should deal with it
 - (ii) Amendment – how the agreement can be varied or amended (usually only in writing signed by both parties). If there are terms that a school wishes to be able to unilaterally change, then these should be included in a policy.
 - (iii) Entire agreement – that the signed Enrolment Agreement is the entire agreement between the parties and supersedes any previous discussions or agreements. This is important to make it clear that the enrolment terms are as per the Enrolment Agreement, and that a Guardian cannot rely on what was said in an email or verbal discussion.
 - (iv) Severance – if a provision of the agreement is invalid or unenforceable, it gets carved out of the agreement and the balance of the agreement remains enforceable.
 - (v) Waiver – if the school waives a Guardian’s obligation to do something under the Agreement then that is a standalone waiver, and does not change the ongoing obligations of the Guardian as set out in the Agreement.

8 Student Movement Register

- (a) The school has an obligation to keep a register of enrolments and attendances for the school – the Student Movement Register
- (b) While the enrolment agreement does not need to reflect this new change to the Education Act, it is important that enrolment processes include the updating of the Student Movement Register and the required reporting.

Enrolment Checklist

Enrolment Agreements

- Review enrolment agreements to ensure compliance with the Australia Consumer Law (ACL).
- Ensure enrolment agreements allow for:
 - a. Parents to withdraw students at the end of the school year without financial penalty.
 - b. Imposition of a penalty at other times if deemed valid according to ACL regulations.
 - c. Parents to withdraw students without penalty following any amendments to the contract terms.

Application documents

- Completed application with all mandatory fields completed?
- Signed by all persons with parental responsibility?
- If any applicable court orders, have they been provided?

Identity documents

- Student birth certificate?
- Student passport?
- Photo identification of all parents/guardians
- proof of residential address (eg rates notice, rental agreements, electricity bill etc)
- copy of visa or naturalisation document (if student is born outside of Australia)
- copy of baptism documents (if applicable)

Education history

- for all students enrolling in any year but kindergarten - copies of two most recent school reports
- all students enrolling in any year above year 3 - copy of most recent NAPLAN results

Medical History

- Copy of immunisation history provided

- Are immunisations up to date?
- any medical/healthcare or emergency action plans?
- If yes – has a copy been provided?
- any disability or other support plans?
- If yes – has a copy been provided?

Executed Agreement

- The Enrolment Agreement has been signed by all parents/guardians
- The acknowledgments at the end of the Agreement have been completed (if required)
- All ancillary documents have been completed and returned, such a direct debit forms

Student Movement Register

Has the Student Movement Register been updated with the new enrolment?

Transparency in Fee Increases

- Ensure all fee increases are notified by the end of Term 3
- Provide clear and comprehensive information about fee structures, payment schedules, and any potential penalties.
- Allow sufficient time for families with withdraw enrolment following fee increases being notified

Documentation and Record-Keeping:

- Maintain accurate records of enrolment agreements, fee increases, and any amendments to contractual terms.
- Ensure all documents are easily accessible for reference and audit purposes.

Communication Strategy:

- Develop a clear communication strategy to inform parents about enrolment procedures, fee structures, and any changes to contractual terms.
- Utilise various communication channels, such as newsletters, school website, and parent meetings, to keep parents informed and engaged.

Regular Review and Update:

- Regularly review enrolment policies and agreements to ensure ongoing compliance with ACL requirements and best practices.
- Update documentation as needed to reflect any changes in regulations or school policies.