

# Trustee's Memorandum of Undertaking Form

**To: New Zealand Qualifications Authority**

1 I am:

a) a sole legal practitioner; or

b) a partner in the law firm of

(Check one)

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or

c) a chartered accountant in sole public practice; or

d) a partner in the chartered accountant firm of

(Check one)

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2 I am the holder of a current practising certificate issued by the High Court of New Zealand. I know of no reason why that certificate may be subject to revocation.

or

I hold a current practising certificate issued by the New Zealand Institute of Chartered Accountants. I know of no reason why that certificate may be subject to revocation.

(Check one)

3 I agree to act as trustee for student fees and any other amounts received by

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a private training establishment.

4 I have no direct financial interest in the provider.

5 I undertake to be directly answerable to you for the proper disbursement of all such student fees and other amounts, strictly in accordance with section 236A of the Education Act 1989.

6 I acknowledge that I have read and understood the provisions of that section.

7 The fees and other amounts to be held in trust will be placed on deposit, in my name/the name of my firm [delete one], as follows:

- a) Name of trading bank \_\_\_\_\_
- b) Location of branch of bank \_\_\_\_\_
- c) Account number \_\_\_\_\_
- d) Name of firm \_\_\_\_\_

8 Such account will be operated in accordance with and subject to the Law Practitioners Act 1982, the Solicitors Audit Regulations 1987 and the Solicitors Trust Account Rules 1969.

or

Such account will be operated in accordance with and subject to the ethical provisions for control of clients' monies and trust accounts. This information is contained in the Code of Ethics of the New Zealand Institute of Chartered Accountants.

(Check one)

9 I undertake not to pay or transfer the fees and other amounts held in this account to any person or to any other account unless:

- a) the payment or transfer is strictly in accordance with Section 236A of the Education Act 1989, or
- b) I have been given written authority to do so.

10 If I have indicated (in paragraph 1 on previous page) that I am a partner in a firm then I acknowledge that, by signing this document, I bind the firm as a whole.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Full name \_\_\_\_\_

Name of firm  
(if applicable) \_\_\_\_\_

Business address \_\_\_\_\_

\_\_\_\_\_

Telephone No \_\_\_\_\_ Facsimile No \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name of witness \_\_\_\_\_

Address of witness \_\_\_\_\_

\_\_\_\_\_

Occupation of witness \_\_\_\_\_

## **Guidance Notes**

### **Refund and withdrawal provisions in accordance with s236A of the Education Act 1989**

Students enrolling in courses of three or more months offered by a private training establishment are entitled to a refund:

- if they withdraw at any time up to the end of the eighth day on which their attendance on a course is required;
- that is equal to the full amount paid, less 10 percent of those payments or \$500, whichever is the lesser.

Registered training providers must without delay place fees paid for courses of three months or more into a trust account operated by an independent person approved by the New Zealand Qualifications Authority (NZQA).

Such portion of these fees as is not required to remain in trust as required by NZQA's student fee protection policy may be released to the provider after the eighth day that students are required to be in attendance on the particular course.

These payments, whether described as fees or otherwise, may only be released to the provider after the eighth day that students are required to be in attendance on the particular course. This requirement on training providers is found in s236A of the Education Act 1989.

#### **Trust accounts**

The amount held in the trust account must be equal to the amount payable to the student should a refund be required. The Act states that this must be the total amount actually paid by the student less 10 percent of the actual payments or \$500, whichever is the lesser. If a student pays only a deposit, 10 percent of the deposit can be retained, not 10 percent of the total fees payable. For example, if a student pays a \$300 deposit on a \$3,000 course, a PTE is entitled to retain \$30 (being the lesser of \$500 or 10 percent of the payments made). If the student pays the course fee in full, the provider is entitled to retain \$300.

PTEs can make statements about non-refundable deposits, although these statements must still comply with the refund requirements of the Education Act. Should students withdraw from the course within the first eight days, they are entitled to a refund of all payments made, less \$500 or 10 percent of any amount paid, whichever is the lesser amount. Any provision for 'non-refundable' deposits must accord with this. Providers are not able to contract out of the statutory refund requirements through their statements regarding non-refundable deposits. Care should be taken in the wording of any statements about non-refundable deposits.

The refund provisions apply to withdrawals any time up to the eighth day of the course. The provisions are not confined to withdrawals after the commencement of the course. If a student pays fees a month before the first day they are required to attend a course, they are entitled to a refund if they withdraw any time from the date of payment to the end of the eighth day after attendance is required.

#### **Agents' fees**

The refund provisions also apply where course fees are paid to overseas agents who then release fees to the provider in instalments. The payment of fees to an agent is considered payment of fees to the provider. The amount or amounts necessary to meet the refund payable should be paid into a

trust account as the provider or the provider's agent receives them. The amount to be held for refund is based on the full amount paid; not the amount paid less any agent fees.

Payments covered by the refund provisions include any monies paid to the provider for services or goods necessary for the student to undertake the course.

*(Note: providers are also required to have their own refund policy covering any withdrawal following the eighth day after attendance on a course, and for courses of less than three months.)*

### **Trustee's Memorandum of Undertaking**

This form is to be used only if the proposed trustee is a solicitor or a chartered accountant. It must be completed on initial application for registration *and* whenever the provider changes its trustee.

Providers wishing to use other forms of trust account or a trustee other than a solicitor or a chartered accountant must contact NZQA to seek prior approval of the alternative form of trustee and discuss the appropriate form of documentation to be provided.

The proposed trustee for the student fees to be received by a registered PTE should complete this Memorandum of Undertaking and return it to:

Risk Team  
Quality Assurance Division  
New Zealand Qualifications Authority  
Box 160  
WELLINGTON 6140