



BY-LAWS

of

AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING

ACN 054 953 758

Council Limited by Guarantee

**Adopted
21 April 2016**

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Preamble

- A. These By-Laws of the Australian Council for Private Education and Training ("the Council") and are made pursuant to Clause 19 of the Constitution.
- B. These By-Laws are subject to the Constitution and are binding on all members.
- C. Where there is any inconsistency between these By-Laws and the Constitution, the provisions of the Constitution shall prevail.
- D. The powers and obligations delegated in terms of these By-Laws are subject always to the powers and obligations that the Council may have from time to time.

Section A General

1. General

- 1.1 Unless specifically provided for otherwise or unless inconsistent with the context, the Board is empowered to enforce these By-Laws.
- 1.2 The Board shall ensure that all non-members employed, engaged, or retained to advise on, or carry out the duties of the Council or who serve on sub-committees or panels, adhere to the applicable provisions of these By-Laws.
- 1.3 Clause 31 of the ACPET Constitution outlines the process for making changes to the Constitution. Clause 31 provides for changes to the Constitution to be made subject to the achievement of a quorum at the Annual General Meeting and passed by more than 75% per cent of Members present by Representative or proxy voting in favour of a resolution to amend the Constitution.

Section B Membership

2. Requirements for Membership

2.1 Eligibility

- (a) The criteria for eligibility for Membership is set out in clause 4 of the Constitution.
- (b) To further clarify the eligibility criteria:
 - (i) “a person, body, company entity or organisation” includes corporations whether private or public, and if public, whether listed or unlisted;
 - (ii) a company which is a subsidiary of a corporation may be eligible for membership even though the parent corporation is not eligible for membership.

2.2 Membership

- (a) An applicant may be admitted as a Member when the Board is satisfied that the applicant has satisfied its membership requirements.
- (b) The Board may admit to honorary life membership such individuals as it considers warrant recognition for exceptional services to ACPET and to private education and training.
- (c) Members are required to comply with:
 - (i) the Council's Constitution;
 - (ii) the Council's Code of Ethics; and
 - (iii) the applicable State and Federal legislation regarding the protection of prepaid funds, insurance and financial stability and related matters as may be in force from time to time and must provide such evidence thereof as may be required by the Council.
- (d) An individual admitted to honorary life membership pursuant to Constitution clause 4.1(d) and By-Law 2.2(b) shall be categorised as a Life Member and enjoy all privileges attaching to that category of membership except that the honorary life member shall be exempt from any requirement to pay membership fees.
- (e) A person, body, company entity or organisation admitted as an Affiliate Member under Constitution clause 4.1(b) and shall be categorised as an Affiliate Member and enjoy all privileges attaching to that category of membership including voting entitlements. Typically affiliate members are consultants to the sector. Affiliate membership is not open to providers offering solely non-accredited education and training; nor is it open to providers seeking registration but not yet having been registered.
- (f) A person, body, company entity or organisation that does not qualify to be a Member or Affiliate Member but wishes to maintain a close relationship with ACPET may apply for membership as a Partner in Education Member under Constitution clause 4.1(c). Any such entity must agree to abide by ACPET's Code of Ethics and to the operation of a competitive training and education market. Partner in Education Members are not entitled to vote.

2.3 Sub-Categories of Membership

- (a) Clause 4.2 of the Constitution provides that Members may be divided into sub-categories as determined by the Board from time to time.
- (b) Unless otherwise specified sub-categories based on merit shall not affect the level of subscriptions payable by the Members or the number of votes exercisable by the Member.
- (c) The Board has determined that in addition to sub-categories determined by annual turnover, Members will be divided into the following sub-categories based on merit:
 - (i) Endorsed Member;
 - (ii) Member;
 - (iii) Associate Member;
 - (iv) Conditioned Member.
- (d) A Member shall be assigned the applicable merit sub-category in accordance with the following criteria as determined by the Board:
 - (i) Endorsed Member Criteria
 - i. has been a Member of ACPET for not less than 5 years;
 - ii. has demonstrated ongoing compliance with ACPET's Code of Ethics;
 - iii. has demonstrated outstanding leadership in the private education sector;
 - iv. has not had conditions placed by ACPET or sanctions by a sector regulator;
 - v. has submitted a Code of Ethics self-assessment incorporating peer review
 - (ii) Associate Member Criteria

A Member that is subject to By-Law 3.5.
 - (iii) Conditioned Member
 - (A) Criteria

A Member that is subject to By-Law 4.2
 - (B) Votes

The voting rights of a conditioned Member are wholly suspended.

2.4 Representation of Sub-Categories of Membership

- (a) ACPET may publish lists of those Members assigned to each sub-category of membership.
- (b) ACPET will ensure that all such lists are accurate and kept up to date.

- (c) In any promotional material or other publication, where Members state that they are members of ACPET they must only use the designated format applicable to their assigned sub-category of membership as determined by ACPET from time to time.

3. Admission to Membership

3.1 Application Form

Applicants are required to complete a membership application form and submit this together with any required attachments and fees to the ACPET National Office.

3.2 Referral to Board

Applicants for Membership shall be referred to the Board by the Company Secretary once the requirements for membership appear to have been satisfied.

3.3 Board to Approve or Otherwise

The members of the Board upon receipt of a recommendation for membership from the Company Secretary shall approve or not approve the application for membership.

3.4 Date of Admission to Membership

Admission to membership of the Council shall be effective on the later of:

- (a) the day after the application is approved by the Board;
- (b) the date of receipt of the Subscription and any fees payable; or
- (c) the day after the Company Secretary is satisfied that any conditions imposed by the Board have been complied with.

3.5 Associate

- (a) Upon being admitted to membership each Member will be an Associate Member.
- (b) A Member will remain an Associate Member until, in the opinion of the Board, the Member has demonstrated its ongoing commitment to being a high quality provider of tertiary education and its adherence to the Code of Ethics, and in any case for a period of no longer than 1 year.

4. Ineligibility Criteria and sanctions

4.1 Ineligibility for Membership

The criteria which the Council may consider as rendering a member or potential member as ineligible for membership are as follows:

- (a) acting contrary to the spirit of the Council's By-Laws or Constitution or Code of Ethics;
- (b) passing into receivership, being placed in liquidation or being declared insolvent;
- (c) being convicted of a criminal offence which reflects adversely on the industry;

- (d) failing to act in the interests of the private education and training sector in Australia; or
- (e) acting in any manner likely to bring the private education and training sector in Australia into disrepute.

4.2 Conditions on Existing Members

- (a) If, in the opinion of the Board, any Member:
 - (i) acts in a manner contrary to the Council's By-Laws, Constitution or Code of Ethics;
 - (ii) fails to act in the interests of the private education and training sector in Australia;
or
 - (iii) acts in any manner likely to bring the private education and training sector in Australia into disrepute;

Without derogating from the power of the Board to terminate membership pursuant to clause 6.2 of the Constitution, the Board may if it so determines impose conditions on the Member, with which the Member must comply.

- (b) The Board may impose any condition on the Member which is appropriate or reasonable in the circumstances, including but not limited to:
 - (i) changing the sub-category of membership of the Member;
 - (ii) requiring the Member to comply with ACPET's specific requirements in accordance with the Constitution, By-Laws, Code of Ethics, Code of Practice; and
 - (iii) any other reasonable requirement consistent with the objects of ACPET.
- (c) The failure of a Member to comply with conditions imposed upon it shall be deemed a breach of clause 6.2(a) of the Constitution.

5. Membership Fees and Voting Entitlements

5.1 Board Review

The Board shall review annually the fees payable and voting entitlements of Members.

5.2 Payment of Subscriptions

Payment of subscriptions by Members shall be due upon application for membership for a pro-rata part thereof, and annually thereafter falling due on 1 July each year.

6. Extraordinary General Meeting (EGM) – termination of membership

6.1 Extraordinary General Meeting (EGM) – termination of membership

Clause 6.3 in the ACPET Constitution states that: For the purposes of the preceding clause, any Member or Affiliate Member may, by notice in writing lodged with the Company Secretary within 7 days after the passing of a resolution by the Board for the termination of membership or change of Category, elect to have the question dealt with by the Council in General Meeting. It is understood that reasonable costs set out in the By-laws must be met by the Member prior

to the calling of the General Meeting. Once these requirements are met a General Meeting of the Council shall be called for the purpose and if, at the meeting such a resolution require a simple majority (i.e. more than 50%), the Member or Affiliate Member concerned shall be terminated or the change of Category confirmed. In the event that the Member concerned is reinstated, the costs of the General Meeting shall be paid by the Company and the costs paid by the Member shall be refunded.

Section C Committees

7. Committees

7.1 Board May Establish

In accordance with Constitution clause 18.1 the Board may from time to time establish Committees upon such terms as the Board may determine.

7.2 Delegation of Powers

The Board may from time to time delegate any of its powers and duties to a Committee, except the power to delegate.

7.3 State or Territory Committee

The Board may appoint a State or Territory Committee provided that at all times the State or Territory has a financial member. The State or Territory Committee will be chaired by the State or Territory Director of the Board representing that State or Territory unless otherwise determined by the Board. The Chair of ACPET and any Board appointed Director resident in that State or Territory shall be ex-officio a member of any such State or Territory Committee.

7.4 Board Reporting

The Director sitting on a Committee (or such other person appointed by the Board should the nominated Director be unable to so act) will report the activities of the Committee to the Board.

7.5 Conduct of Committees

A Committee will be structured and will conduct itself as per the policies and procedures and guidelines developed and reviewed from time to time by the Board for the conduct and good management of Committees.

7.6 Government Committees

A State or Territory Committee will be delegated to appoint members to any State or Territory government committee or any other committee involved with education and training in their State or Territory to do all things necessary for the benefit of the members in that State or Territory.

7.7 Grants

A State or Territory Committee will have authority to negotiate grants from any authority relating to education and training in their State or Territory. Any such grants obtained must be submitted to the ACPET Board for approval.

7.8 Conferences and Seminars

A State or Territory Committee may propose to the Board that a State or Territory conference be held. The Board shall determine whether such conference is approved.

Section D Board of Directors

8. Election of Board Directors of ACPET

8.1 Election of State and Territory Directors – Constitution clause 11

- (a) All Members of ACPET will be notified not less than sixty three (63) days before the Annual General Meeting of those State and Territory Board Director positions that will fall vacant on the day of the Annual General Meeting, and that nominations to those positions are sought.
- (b) Nominations to State and Territory Board Director positions must be made on authorised nomination forms (Attachment A), and these must be received by the Company Secretary no less than forty nine (49) days before the scheduled date of the Annual General Meeting.
- (c) Nominations will only be valid if they are in accordance with Clause 11 of the Constitution.
- (d) Valid nominations correctly completed and received at the National Office within the specified time for receipt of nominations will be accepted.
- (e) If circumstances arise where nominations equal, or are fewer than vacant positions, no election will be required.
- (f) If an election is required, State and Territory Board Director positions are to be determined through the following voting system:
 - (i) Ballots and explanatory notes in the form shown in Attachment B and Attachment C will be forwarded to respective State Members.
 - (ii) Ballots and explanatory notes can be forwarded either by mail or by electronic means, as determined by the Board of Directors at each election occasion.
 - (iii) Those respective State Members without the means of receiving electronic ballots and explanatory notes must have them forwarded by mail.
 - (iv) Ballot forms must be forwarded with the notice of Annual General Meeting 21 days before Annual General Meeting.
 - (v) The completed Ballot forms must be returned to the Company Secretary, by post, courier or electronic means, no later than three (3) days before the date of the Annual General Meeting.
- (g) An independent Polling Officer will be appointed by the Board at least 21 days prior to the Annual General Meeting to count the ballots for State and Territory Board Director positions.
- (h) The results of the Election for State and Territory Board Directors will be announced by the Company Secretary at the Annual General Meeting.
- (i) Where results cannot be announced at the Annual General Meeting the results will be notified to the Membership within two weeks of the date of the Annual General Meeting.
- (j) Should this circumstance arise, the date that the Membership is notified of the election results, will be the date that the elected members are deemed to have taken office.

8.2 Board Appointed Directors- Constitution clause 11

- (a) In accordance with Constitution clause 11 and 14.11 the Board may appoint up to four (4) Board Appointed Directors.
- (b) At the First Board meeting after each AGM the Board should undertake a review of the skill set on the new Board. It should then consider how the skill set matches the skill required to effectively operate the Board given the type of issues currently on the Agenda or likely to come to the fore in the next 12 months.
- (c) The Board should develop a plan regarding how it will best meet any perceived skill shortage. The options could include:
 - (i) Seeking expert advice from a Consultant.
 - (ii) Appointing a Board Director, if there are vacant positions.
 - (iii) Asking a current Board Director to undertake the role of being a champion for the skill area in question. This may require some up skilling or information gathering.
 - (iv) Request the CEO to provide the cover for the skills gap by whatever means is deemed appropriate.
- (d) If the Board seeks to appoint a Director the following guidelines should be followed:
 - (i) At no time should there be more than one Director from any member.
 - (ii) The balance of State representation should be considered.
 - (iii) The Director would need to meet all the usual Conflict of Interest tests that any other Board Director is bound by.
 - (iv) Where the necessary skill set is available within a Member's organisation the Board should attempt to source the Director from there in the first instance.
- (e) In its evaluation of candidates for a Board Appointed Director, the Board will have regard to normally accepted governance and nomination criteria, including but not limited to:
 - (i) appropriate background, experience, industry knowledge or ability to acquire that knowledge, professional skills and qualifications;
 - (ii) demonstrated and recognised knowledge, experience and competence in business including financial literacy;
 - (iii) ability to analyse information, think strategically and review and challenge management in order to make informed decisions and assess performance;
 - (iv) good communication skills and ability to work harmoniously with fellow directors and management;
 - (v) willingness to devote the required time, including being available to attend Board and Committee meetings;
 - (vi) high levels of personal and professional integrity.

9. Reporting, and financial planning and control

9.1 Board Obligations

The Board shall ensure that at all times adequate systems are in place:

- (a) to safeguard the assets of the Council, and to be aware of its liabilities and commitments;
- (b) to forecast the cash requirements over the following 9 months;
- (c) to forecast the profitability of the Council for the current and succeeding financial years;
- (d) to control capital and revenue expenditure;
- (e) to compare actual income, expenditure and cash flow with approved budgets;
- (f) to prevent the Council from over-committing its budget.

9.2 Reporting to Members

The Board shall report in writing to members annually on the following matters:

- (a) Financial position;
- (b) Projected financial position;
- (c) Activities since the previous report;
- (d) Plans;
- (e) Any other items.

Section E Assurance Schemes

10. Australian Student Tuition Assurance Scheme

10.1 Definition of Student

In this By-law, a student is an Australian student if a citizen or permanent resident of Australia and enrolled as a full or part-time student in approved programs leading to an accredited award who has paid tuition fees of \$1500 in advance or is accessing FEE-HELP or VET FEE-HELP and is not a student as defined in the *Education Services for Overseas Students Act 2000*.

10.2 Purpose

The purpose of the ACPET Australian Student Tuition Assurance Scheme (“ASTAS”) is to ensure that local students receive the education or training for which they have paid.

- (a) ASTAS A is offered to members with more than 75% of their courses offered by five or more other ACPET members in the same jurisdiction and is designed to satisfy the:
 - (i) *Standards for Registered Training Organisations (RTOs) 2015* (Standard 7.3 Relating to Schedule 6) as an ASQA approved alternative fee protection measure; and
 - (ii) Training Accreditation Council Western Australia (TAC). TAC approved the ACPET ASTAS as a learner fee protection measure under Schedule 6 - arrangement number 2 (All other RTOs) of the *Standard for Registered Training Organisations (RTOs) 2015*.
- (b) ASTAS B is offered to members with more than 25% of their courses offered by less than five other ACPET members in the same jurisdiction and is designed to satisfy the legislative provisions as apply to ASTAS A members.
- (c) ASTAS C satisfies the requirements of the Higher Education Support Act 2003 (HESA) in respect of FEE-HELP or VET FEE-HELP.

10.3 Application

Each member of the ASTAS is bound by this By-law in relation to courses accepted by the ASTAS.

10.4 Membership Fees

- (a) Each member shall pay such ASTAS membership fees as are prescribed by the Board from time to time.
- (b) ACPET may vary the membership fees the member is required to pay quarterly, upon the receipt of information from the member in accordance with clause 10.5.

10.5 Provision of Information

- (a) Upon applying for membership of ASTAS, each member shall provide to ACPET such information as the Board may require to assess an application for membership.
- (b) At the beginning of each quarter, each member must provide to ACPET such information as the Board may require for the continuation of membership and provision of tuition assurance.

- (c) Without limiting the above, the information each member may be required to provide includes:
 - (i) details of student enrolments and placement capacity;
 - (ii) details regarding the number of full-time and part-time students enrolled in each course or program leading to an accredited award covered under the ASTAS;
 - (iii) projected FEE-HELP, VET FEE-HELP or fees in advance revenue;
 - (iv) census dates for each courses covered under the ASTAS;
 - (v) financial information including audited or management accounts;
 - (vi) all information provided to the Commonwealth relating to FEE-HELP and VET FEE-HELP.
- (d) The information shall be provided to ACPET in such a form as ACPET may request.

10.6 Security

- (a) As a condition of membership of ASTAS, each member shall provide to ACPET any additional monies as security (Assurance Amount) as required by ACPET from time to time, in the form of either:
 - (i) an irrevocable unconditional financial guarantee from a bank operating in Australia; or
 - (ii) a deposit into the ASTAS Member Security Trust.
- (b) From time to time, ACPET may vary the Assurance Amount it requires from the member and the member must immediately upon request provide the additional monies to satisfy the Assurance Amount in accordance with clause 10.6(a).

10.7 Membership Restrictions

Membership of the ASTAS is restricted to Council members.

10.8 Termination

- (a) A member's ASTAS membership may be terminated at any time by ACPET, with 90 days' notice, if the member:
 - (i) fails to pay the membership fees in accordance with clause 10.4;
 - (ii) fails to provide the Assurance Amount in accordance with clause 10.6
 - (iii) fails to provide the information required by ACPET in accordance with clause 10.5;
 - (iv) fails to act in accordance with the Code of Ethics; or
 - (v) ceases to be a member of the Council.
- (b) ACPET will inform the relevant regulator or Government department of any termination of a member's ASTAS and will continue to provide appropriate protection for all students enrolled with the terminated member as at the date of such termination.

10.9 No Refund

A member who is expelled or suspended from the Council or whose membership of ASTAS is terminated is not entitled to a refund of ASTAS membership fees.

10.10 ACPET's Costs

Each member may be required to reimburse ACPET for any legal or other professional costs incurred by ACPET in implementing or managing the Assurance Amount provided by that member in accordance with clause 10.6.

10.11 High Risk Members

Where a member is judged by ACPET to be at high risk of financial insolvency, ACPET will work with the member and the appropriate regulatory agencies to ensure students are taught out and/or transferred into equivalent courses with other members (or non-members where relevant).

10.12 Notification to ACPET

A member will advise the Council immediately should either the placement of students under the ASTAS become likely or a refund of tuition fees pursuant to the Higher Education Support Act 2003 or the Standards for NVR Registered Training Organisations (SNR 11.3e and 22.3e) administered by the Australian Skills Quality Authority (ASQA) be contemplated.

10.13 ASTAS Sub-Committee

The Board will appoint a standing Sub-Committee to implement and oversee the operation of the ASTAS. The Board may establish a Working Group under the oversight of the Committee to manage and oversee the operation of the ASTAS.

10.14 Policies for Displaced Students

The Sub-Committee will establish the policies to be adopted for the placement of displaced students or the refund of tuition fees pursuant to the Higher Education Support Act 2003 or the Standards for NVR Registered Training Organisations (SNR 11.3e and 22.3e) administered by the Australian Skills Quality Authority (ASQA), subject to the provisions of applicable statutory legislation or regulation.

10.15 Acceptance of Courses

A member's course/s will be accepted if:

- (a) the member of the ASTAS is a current financial member of ACPET;
- (b) the member is a current financial member of the ASTAS;
- (c) the course is, in the opinion of ACPET, equivalent to another course or other courses offered by other ASTAS members; or provision can be made for the acquisition of an appropriate alternative course through financial and organisational arrangements or is a course for which tuition assurance arrangements are necessary pursuant to the Higher Education Support Act 2003 or the Standards for NVR Registered Training Organisations (SNR 11.3e and 22.3e) administered by the Australian Skills Quality Authority (ASQA).

10.16 Oversight of Student Placements

- (a) In the event of a need for the placement of displaced students the Sub-Committee will assist in the placement of displaced students, comprising local ACPET members chaired by the Coordinator or a Director of the Board.
- (b) ACPET staff, under the oversight of the Committee will communicate with relevant government agencies and any liquidator, administrator or other relevant persons.

10.17 Role of the Committee in Relation to Student Placements

The Committee will ensure ACPET staff:

- (a) arrange a meeting of displaced students to advise them of:
 - (i) ASTAS responsibilities for their placement in another institution,
 - (ii) the reasons for their allocation to another member institution,
 - (iii) eligibility for a refund of fees if students were enrolled in a course for which tuition assurance arrangements were necessary pursuant to the Higher Education Support Act 2003 or the Standards for NVR Registered Training Organisations (SNR 11.3e and 22.3e) administered by the Australian Skills Quality Authority (ASQA), and
 - (iv) other necessary information to assist in the transfer.
- (b) arrange interviews with individual students;
- (c) liaise with relevant regulatory authorities and any administrator or administer a student questionnaire to ascertain:
 - (i) the name of the student's course,
 - (ii) the remaining length of the course
- (d) match students with appropriate courses at members' institutions located at appropriate locations; or offer students placement in an appropriately purchased course to be delivered for this purpose through a member institution or other provider by commercial arrangement between the Scheme and that provider, or determine eligibility for a refund of fees if students were studying in a course for which tuition assurance arrangements were necessary pursuant to the Higher Education Support Act 2003 or the Standards for NVR Registered Training Organisations (SNR 11.3e and 22.3e) administered by the Australian Skills Quality Authority (ASQA);
- (e) upon completion, provide a report to the Board through the Sub-Committee;
- (f) in the case of the Member that deliver courses 100% on-line, contact will be made with all students electronically to determine the most suitable arrangement to interview students.

10.18 Offer

When a student is given an offer of placement, the student may accept or reject the offer and must sign the offer of placement accordingly.

10.19 Acceptance of Offer

A student who accepts the offer must provide the member offering placement with an irrevocable direction to the provisional liquidator, administrator or receiver of the previous provider, or other holder of the student's prepaid fees, requiring that person to account to the member providing placement for any tuition fees held on behalf of that student.

10.20 Refusal of Offer

If a displaced student refuses an offer of placement, or refuses to give the direction referred to in By-law 10.14, the Committee will not provide another offer of placement unless there are special circumstances which it considers justify it so doing.

10.21 Copies to be Provided

A copy of each signed offer of placement will be given to the relevant authority, the student and the accepting provider, and a copy will be retained by the ASTAS.

10.22 Agreement of Displaced Student

A displaced student must agree that he or she will abide by the rules of the ASTAS member providing placement, other than a rule relating to payment of tuition fees for the period for which the student has prepaid to the previous provider.

10.23 Exceptions to Acceptance

When a member is notified that an offer of placement has been made and accepted for a place at the member's institution, the member must accept the displaced student unless:

- (a) the displaced student has failed to give the direction referred to in By-law 10.14;
- (b) the displaced student has failed to agree or abide by the member's rules; or
- (c) the member can provide evidence of special circumstances that indicate placement with the member would not be in the best interests of the displaced student.

10.24 Member Costs

Where a placement occurs as a consequence of a member discontinuing a particular course while continuing to trade, that member may be required to meet the cost of any student relocations arising from the discontinuation of the particular course.

10.25 Refund

Where it is determined that a student is eligible for a refund of tuition fees pursuant to the requirements of the Higher Education Support Act 2003, the Committee shall authorise such payment to be made expeditiously and directly in accordance with the requirements of the Higher Education Support Act 2003 as amended from time to time.

10.26 Multiple Membership

Members of the ASTAS, delivering courses or programs in two or more States or Territories, must have ASTAS approval for each State/Territory of operation for which cover is sought. Members must also provide details, as required, of each separate location in each State/Territory where students are being taught courses covered under the ASTAS.

11. Australian Student Tuition Assurance Scheme – Higher Education (ASTAS-HE)

11.1 Application of By-Law

- (a) This By-law applies to any higher education provider other than an Exempt Provider that is an ASTAS Member in respect of students to whom the ASTAS-HE Member is providing a course of study, which the ASTAS-HE Member then ceases to provide. It does not apply to overseas students.
- (b) Exempt Providers are nevertheless required to comply with paragraph 3.10.1 of the Guidelines.
- (c) ASTAS-HE Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines (and as amended from time to time) which are available at

<http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/C6BAE37C63EBBD47CA257292001D2909?OpenDocument>
- (d) ASTAS-HE Members should particularly familiarise themselves with their obligations as First Providers and Second Providers under those chapters of the Guidelines (including paragraph 2.3.10 of the Guidelines in relation to Second Providers that are not yet approved as higher education providers under the Act), bearing in mind that each ASTAS-HE Member's approval as a higher education provider under the Act is, in part, contingent upon maintaining compliance with the quality and accountability requirements, as defined in Division 19 of the Act, of which the tuition assurance requirements are part (section 19-40 of the Act refers).
- (e) Under ASTAS-HE, ACPET is, and undertakes to ASTAS-HE Members, that it will meet all the obligations of, a tuition assurance administrator under the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines and as amended from time to time.
- (f) Under ASTAS-HE, ASTAS-HE membership means that members undertake to ACPET that they will meet all of their obligations as First Providers and Second Providers under the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines and as amended from time to time.
- (g) To the extent of any inconsistency between this by-law and the tuition assurance requirements (including any provision of the Act or of chapter 2 or chapter 3 of the Guidelines that is not provided for in this by-law), the tuition assurance requirements take precedence.

11.2 Purpose

The purpose of this by-law is to ensure that: -

- (a) ASTAS-HE Members, in their capacity as First Providers and Second Providers within the meaning of chapters 2 and 3 of the Guidelines and as amended from time to time, comply with the tuition assurance requirements;
- (b) ACPET, in its capacity as tuition assurance administrator within the meaning of chapters 2 and 3 of the Guidelines and as amended from time to time, complies with the tuition assurance requirements; and

- (c) In particular, if an ASTAS-HE Member (First Provider) ceases to provide a course of study, eligible students of the ASTAS-HE Member can use the ASTAS-HE to choose to either:
 - (i) complete their course of study by enrolling in a similar course of study with another higher education provider (Second Provider), leading to the same or a comparable qualification, and receive from the Second Provider full credit for any successfully completed units of study, without paying any tuition fee for the replacement units undertaken with the Second Provider nor be required to request Commonwealth assistance in relation to any replacement unit; or
 - (ii) obtain from ACPET a refund of tuition fees already paid for units of their course of study which they have not completed at the time the ASTAS-HE Member (First Provider) ceased to provide that course of study.

11.3 Membership Fees

- (a) Each ASTAS-HE Member shall pay such membership fees as are prescribed by the Board from time to time.
- (b) ACPET may vary the membership fees the member is required to pay quarterly, upon the receipt of information from the member in accordance with clause 11.4.

11.4 Providing Information

- (a) Upon applying for membership of ASTAS-HE, each ASTAS-HE Member shall provide to ACPET such information as the Board may require to assess an application for membership.
- (b) At the beginning of each quarter, each ASTAS-HE Member must provide to ACPET such information as the Board may require for the continuation of membership and provision of tuition assurance.
- (c) Without limiting the above, the information each member may be required to provide includes:
 - (i) details of student enrolments and placement capacity;
 - (ii) details regarding the number of full-time and part-time students enrolled in each course or program leading to an accredited award covered under the ASTAS-HE;
 - (iii) projected FEE-HELP revenue;
 - (iv) census dates for each courses covered under the ASTAS;
 - (v) financial information including audited or management accounts.
- (d) The information shall be provided to ACPET in such a form as ACPET may request.

11.5 Security

- (a) As a condition of membership of ASTAS-HE, each member shall provide to ACPET any additional monies as security (Assurance Amount) as required by ACPET from time to time, in the form of either:
 - (i) an irrevocable unconditional financial guarantee from a bank operating in Australia; or

- (ii) a deposit into the ASTAS Member Security Trust.
- (b) From time to time, ACPET may vary the Assurance Amount it requires from the ASTAS-HE Member and the ASTAS-HE Member must immediately upon request provide the additional monies to satisfy the Assurance Amount in accordance with clause 11.5(a).

11.6 Termination of ASTAS-HE

- (a) ASTAS-HE Membership may be terminated at any time by ACPET, if the member:
 - (i) fails to pay the membership fees in accordance with clause 11.3;
 - (ii) fails to provide the Assurance Amount in accordance with clause 11.5;
 - (iii) fails to provide the information required by ACPET in accordance with clause 11.4;
 - (iv) fails to comply with section 19-75 of the Act (the obligation to inform the Minister of an event which may affect the ASTAS-HE Member's ability to provide a course) where such failure of compliance results in a notification to ACPET by the regulator according to the HESA and privacy law;
 - (v) fails to act in accordance with the Code of Ethics; or
 - (vi) ceases to be a member of the Council.
- (b) ACPET will inform the relevant regulator or Government department of any termination of a member's ASTAS-HE Membership.

11.7 ACPET's Costs

Each member may be required to reimburse ACPET for any legal or other professional costs incurred by ACPET in implementing or managing the Assurance Amount provided by that member in accordance with clause 11.5.

11.8 Limit of Liability

In relation to ACPET's responsibility to pay to the Commonwealth Government, from the funds held in the ASTAS, any amount required to discharge student's liability for a FEE-HELP debt incurred in advance of tuition, ACPET's total liability for an ASTAS activation for an ASTAS member is limited to the level of ASTAS established for that member.

ACPET's total liability in the advent of a complete or major FEE-HELP program closure, will be limited to the extent of ACPET's cover, as amended from time to time.

11.9 Membership of ASTAS-HE

- (a) Membership of the ASTAS-HE is restricted to Council members.
- (b) Cancellation of ACPET and ASTAS-HE membership or ASTAS-HE membership only must occur under the following circumstances:
 - (i) Written notification to the member and to the regulator outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. The notification must state that the provider will need to provide alternative arrangements under the HESA and the Higher Education Provider Guidelines (HEPG) to the Regulator for

tuition assurance requirements. (Such as exemption in 16-31 or 19-40 HESA and 2.2.2 of the HEPG. All requirements for 2.2.2 of the HEPG must be met by the ACPET member and ACPET in relation to notification to the Regulator).

- (ii) During the 90 day period which provides the ACPET member time to comply with the requirements of point 1, ACPET will continue cover for Tuition Assurance as per normal.
- (c) ASTAS-HE cover for the students of the ACPET member will remain in the following circumstances:
 - (i) Where an ASTAS-HE Member is deregistered with any relevant training regulatory departments (such as Registered Training Organisation status, CRICOS, HEP approval), or is in the process of administration / liquidation or likely to be in such process, in default of the HESA which is deemed by the regulator to be leading to an likely ASTAS-HE activation process.

The intent of this clause is that where ASTAS-HE activation is likely to occur as a result of registration or corporate solvency issues the cover of the students under the ASTAS-HE must remain intact.

11.10 Effect of Expulsion, Suspension or Termination

- (a) An ASTAS-HE Member which is expelled or suspended from ACPET or which ASTAS-HE Membership is terminated is not entitled to a refund of its ASTAS-HE Membership fees.
- (b) ACPET will inform the regulator of any expulsion, suspension or termination of an ASTAS-HE Member according to the requirements of By-Law 11.5

11.11 Notification to ACPET

An ASTAS-HE Member which ceases to provide a course of study must immediately notify the regulator and the Council at the time it does so, and the Council will then convene the Sub-committee. The regulator should be notified by contacting the Group Manager, Higher Education Group, by phone and/or email.

11.12 ASTAS-HE Sub-Committee

The Board will appoint the Sub-Committee to implement and oversee the operation of the ASTAS-HE. The Sub-Committee will be supported by the ACPET staff member who will fulfil the role of the tuition assurance administrator.

11.13 Implementation by ACPET

The Board-appointed Sub-Committee will at all times implement this by-law in accordance with the provisions of chapters 2 and 3 of the Guidelines.

11.14 Placement/Refund Committee

If an ASTAS-HE Member ceases to provide a course of study, the Sub-Committee will ensure compliance with the provisions of the Guidelines.

11.15 Role of Administrator

ACPET, acting as the tuition assurance administrator will liaise, on behalf of the Sub-

Committee, with relevant government agencies (including the regulator and the Australian Taxation Office), any external controller of an ASTAS-HE Member and any other relevant persons.

11.16 Role of the Sub-committee in Relation to Placements and Refunds

The Sub-Committee will assist in overseeing the:

- (a) arrangement of a meeting of displaced students to advise them of:
 - (i) their rights to choose between the course assurance option and the student contribution/tuition repayment option; and
 - (ii) the process whereby the option chosen by the student under paragraph (a) will be implemented;
- (b) issuing of a written tuition assurance offer to students in accordance with the requirements of Chapter 2 of the Guidelines and which allows for a fair and reasonable time frame to the students to respond to such written offer. Such date must be a fair and reasonable time after the interview of the student and the dispatching of hard copy letter to the students mail address.
- (c) arranging interviews with individual students;
- (d) administering a student questionnaire to ascertain:-
 - (i) the name of the student's course of study;
 - (ii) the remaining length of that course; and
 - (iii) which option under by-law 11.11(a) the student has chosen;
- (e) if the student has chosen the course assurance option: -
 - (i) match that student with an appropriate course of study with ASTAS-HE Member(s) at an appropriate location(s); or
 - (ii) offer that student placement in an appropriately purchased suitable alternative course of study to be delivered for this purpose through an ASTAS-HE Member or other higher education provider approved by the Sub-committee for that purpose; and
 - (iii) give to that student a Placement Offer;
- (f) if the student has chosen the student contribution/tuition fee repayment option:
 - (i) determine the eligibility of that student for that option;
 - (ii) pay the student the total of any up-front payments paid for that unit of study by the student (or on behalf of the student by any party other than the Commonwealth); and
 - (iii) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the ASTAS-HE Member which ceased providing the course of study in discharge of the student's liability to pay his or her student contribution amount for tuition fees for the unit; and

- (iv) provide each student with a Written Tuition Assurance Offer at or before the meeting referred to in paragraph 11.11(a).

11.17 Notification Obligations

Under paragraph 2.1.31 of the Guidelines if an ASTAS-HE member is subject to any of those circumstances, the ASTAS-HE Member must immediately notify the Council and the Group Manager to that effect. If the Group Manager becomes aware by any means that any of those circumstances apply, or may apply, to an ASTAS-HE Member, then:

- (a) the ASTAS-HE Member must within a period specified by the regulator, provide the Secretary with such information that may be reasonably be requested in relation to that event;
- (b) the Secretary may, after considering any information provided by the ASTAS-HE Member under the preceding paragraph declare in writing that, for the purposes of the Guidelines, the ASTAS-HE Member has ceased to provide one or more courses of study specified in the declaration; and
- (c) the Secretary must give a copy of the declaration to the ASTAS-HE Member and the Council.

11.18 Acceptance of a Placement Offer

When a student accepts a Placement Offer the student must provide the ASTAS-HE Member offering placement with an irrevocable direction to the liquidator, administrator, receiver or external controller of the previous provider, or other holder of the student's prepaid fees, requiring that person to account to the member providing placement for any tuition fees held on behalf of that student.

11.19 Failure to Accept an Offer

If a displaced student refuses to accept a Written Tuition Assurance Offer within a reasonable time (but not more than 30 days) ACPET will not make another Written Tuition Assurance Offer to that student unless special circumstances justify it doing so.

11.20 Copies of Offers

Copy of each accepted Written Tuition Assurance Offer will be given to the regulator, the student (where necessary) and the ASTAS-HE Member accepting that student and a copy will be retained by ASTAS-HE.

11.21 Compliance with Rules

A displaced student must abide by the rules of the ASTAS-HE Member in respect of which he/she has accepted a Placement Offer, other than a rule relating to payment of a tuition fee for any replacement unit.

11.22 Acceptance of Displaced Student

When an ASTAS-HE Member is notified that a Placement Offer has been made and accepted for a place at that member's institution, the member must accept the displaced student unless the displaced student has failed to agree or abide by the member's rules, or the member can provide evidence of special circumstances that indicate the placement with the member would not be in the best interests of the displaced students (in which case a placement offer will be

made with another ASTAS-HE Member).

11.23 Costs Consequences

The Council may require an ASTAS-HE Member to contribute towards the costs of any student relocations which may become necessary as a consequence of that ASTAS-HE Member ceasing to provide a course of study.

11.24 FEE-HELP Debts

If a student has a FEE-HELP debt to the Commonwealth Government in respect of a course of study which an ASTAS-HE Member ceases to provide (the FEE-HELP debt) and that student chooses the student contribution/tuition repayment option, the Council will pay to the Commonwealth Government from the funds held in the ASTAS-HE any amount required to discharge the student's liability for the FEE-HELP debt and the balance to the student or whoever has paid the fees on behalf of the student.

11.25 Interstate Membership

ASTAS-HE Members who deliver units or courses of study in two or more States or Territories must have ASTAS approval for each State/Territory of operation for which cover is sought. Members must also provide details of each separate location in each State and Territory where students are being taught units or courses of study covered under the ASTAS- HE.

11.26 Commonwealth Supported Places – Students

- (a) Where students are 'Commonwealth Supported Students,' the students will have the same protection under the ASTAS-HE as all other students. The ASTAS-HE will consider that any fees paid by the student require cover under the scheme regardless of its source (personal, bank loan or grant / Government support). ACPET will, if requested by the students according to By-Law 11, make arrangements in an appropriate similar alternative course where the student will not have to pay for any tuition for which the student has already paid and has not yet received such tuition. The intent of this clause is that the responsibility of how a suitable similar alternative course is found with a Second Provider and secured is the responsibility of ACPET and the arrangements made are to support the student in ongoing education where the student does not pay any fees with the Second Provider that they were not contracted to pay or expected to pay in the original arrangement with the First Provider for the tuition that they have paid for by any legal means but have not yet received.
- (b) Where a refund option is chosen by a student with a Commonwealth Support Place the fees refunded will be to the appropriate payee of the original fees according to the relevant Commonwealth Support legislation.

11.27 Definitions

In this By-law, unless the contrary intention appears:

“Act” means the Higher Education Support Act 2003;

“Administrator” means a person employed by ACPET to manage ASTAS-HE;

“ASTAS-HE” means the Australian Student Tuition Assurance Scheme for Higher Education providers;

“ASTAS-HE Member” means a member of ACPET who is not an Exempt Provider and who is accepted by ACPET as a member of the ASTAS-HE;

“ASTAS-HE Co-ordinator” means a person appointed by the ASTAS-HE Sub-Committee to assist it in the implementation of the ASTAS-HE;

“ASTAS-HE Sub-Committee” means the Sub-Committee (comprising Council appointees) established by by-law 11.12;

“ceases to provide a course of study” means, in relation to an ASTAS-HE Member:

- (a) if a course does not start on;
 - (i) the date the course was scheduled to start;
 - (ii) a later date that has been agreed between the ASTAS-HE Member and the enrolled in the course; or
- (b) the ASTAS-HE Member commences providing the course to a person and then, before the person has completed the course, ceases to provide that course (for any reason); or
- (c) the Minister has suspended or revoked approval of the ASTAS-HE Member as a higher education provider under the Act and has not made a determination pursuant to paragraph 22-25(1)(b) of the Act in respect of that course; or
- (d) notice is served on the ASTAS-HE Member or proceedings are taken to cancel the ASTAS-HE Member’s incorporation or registration or to dissolve the ASTAS-HE Member as a legal entity; or
- (e) the ASTAS-HE Member comes under one of the forms of external administration referred to Chapter 5 of the Corporations Act 2001 of equivalent provisions in other legislation, or an order has been made to place the ASTAS-HE Member under the external administration; or
- (f) in the case of a self-accrediting institution, the ASTAS-HE Member ceases to have its name included, or to own or control a business name that is included, in the list of non self- accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one of more higher education awards; or
- (g) in the case of a self-accrediting institution, the ASTAS-HE Member ceases to have its name included, or to own or control a business name that is included in the list of self- accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution empowered to issues its own qualifications; or
- (h) a declaration is made by the Secretary of the regulator under paragraph 2.1.31b) of the Guidelines that the ASTAS-HE Member has ceased to provide the course by reason that the ASTAS-HE Member is subject to any of the following circumstances:
 - (i) The ASTAS-HE Member fails to comply with or set aside a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
 - (ii) the ASTAS-HE Member is unable to pay all of its debts when they become due; or
 - (iii) proceedings are initiated to obtain an order for the ASTAS-HE Member’s winding up

or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the ASTAS-HE Member;

“Course of study” has the same meaning as it does in the Act;

“Course assurance option” means an offer of a place in a similar course of study with another ASTAS- HE Member without any requirement to pay the other ASTAS-HE Member any student contribution or tuition fee for any replacement units;

“Department” means the Australian Government Department responsible for administering the Higher Education Support Act 2003;

“Displaced Student” means a student of an ASTAS-HE Member which ceases to provide a course of study in which the student is enrolled;

“Exempt Provider” has the same meaning as it does in the Guidelines;

“First Provider” has the same meaning as it does in the Guidelines;

“Group Manager” has the same meaning as it does in the Guidelines. The Group Manager is a person from time to time holding the position of Group Manager of the Department (Regulator) Higher Education Group;

“Guidelines” means the Higher Education Provider Guidelines made under the Act;

“Higher Education Provider” has the same meaning as it does in the Act;

“Placement Offer” means a written offer to be made to a student who chooses the course assurance option;

“Placement/Refund Committee” means the committee established by by-law 11.14;

“Regulator” means the Australian Government Department responsible for administering the Higher Education Support Act 2003;

“Replaced unit” and **“Replacement unit”** have the same meanings as they do in the Guidelines;

“Secretary” is the official Regulator position referred to in the Guidelines;

“Second Provider” has the same meaning as it does in the Guidelines;

“Statement of Tuition Assurance” has the same meaning as it does in the Guidelines;

“Student contribution/tuition fee repayment option” means a refund to students of their up-front payments for any unit of study that the student commences but does not complete because an ASTAS-HE Member ceases to provide the course of study of which the units forms part, and a corresponding re-crediting of any SLE or FEE-HELP balance relating to that unit;

“Tuition assurance requirements” means the tuition assurance requirements set out in chapters 2 and 3 of the Guidelines;

“Written Tuition Assurance Offer” means the written advice that must be provided to students enrolled in a course of study which an ASTAS-HE Member has ceased to provide that he/she may choose either the course assurance option or the student contribution/tuition fee repayment option.

Words or phrases used in this by-law have the meaning given to them in the Act and/or Guidelines, unless the context requires otherwise.

To the extent necessary, these rules apply to and bind students of ASTAS-HE Member, subject to all times to the rights given to students by the Act, the Guidelines, other relevant legislation and the common law.

12. Australian Student Tuition Assurance Scheme-VET (ASTAS-VET)

12.1 Overview of the ACPET VET Tuition Assurance Scheme

The purpose of this By-Law 12 is to establish a VET Tuition Assurance Scheme (ASTAS-VET) to provide course assurance and tuition fee repayment assurance.

- (a) ACPET will:
 - (i) establish and operate an ASTAS-VET for the benefit of all ASTAS-VET Members and their eligible students to ensure that eligible students can access the VET course assurance option or the VET tuition fee repayment option set out in the VET Provider Guidelines as amended from time to time; and
 - (ii) establish and support the ASTAS-VET Sub-Committee and the Replacement/Refund Committee to perform the activities of those committees as specified in this By-Law; and
 - (iii) at all times meet the corporate separation requirements for a VET tuition assurance administrator as specified in the VET Provider Guidelines as amended from time to time.
- (b) ASTAS-VET Members will support the operation of the VET Tuition Assurance Scheme by fulfilling their VET tuition assurance requirements as described in:
 - (i) the Higher Education Support Act 2003 as amended from time to time; and
 - (ii) the VET Provider Guidelines as amended from time to time; and
 - (iii) these By-Laws.
- (c) In the event of any inconsistency between this By-Law and any provision in the VET Provider Guidelines or in the Higher Education Support Act 2003, the terms of the VET Provider Guidelines and the Higher Education Support Act 2003 will prevail to the extent of that inconsistency.

12.2 Application of By-Law

- (a) This by-law applies to any VET provider other than an Exempt Provider that is an ASTAS-VET Member in respect of eligible students (ref clause 43, schedule 1A of the Act) to whom the ASTAS-VET Member is providing a VET course of study, which the ASTAS-VET Member then ceases to provide. It does not apply to overseas students.
- (b) ASTAS-VET Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in chapter 3 of the Guidelines (and as amended from time to time) which are available at <http://www.comlaw.gov.au>
- (c) ASTAS-VET Members should particularly familiarise themselves with their obligations as

First Providers and Second Providers under those chapters of the Guidelines (including paragraph 3.3.10 of the Guidelines in relation to Second Providers that are not yet approved as VET providers under the Act), bearing in mind that each ASTAS-VET Member's approval as a VET provider under the Act is, in part, contingent upon maintaining compliance with the quality and accountability requirements, as defined in Division 4, schedule 1A of the Act, of which the VET tuition assurance requirements are part (clause 20 refers).

- (d) Under ASTAS-VET, ACPET is, and undertakes to ASTAS-VET Members, that it will meet all the obligations of, a tuition assurance administrator under the tuition assurance requirements as set out in chapter 3 of the Guidelines and as amended from time to time.
- (e) Under ASTAS-VET, ASTAS-VET membership means that members undertake to ACPET that they will meet all of their obligations as First Providers and Second Providers under the tuition assurance requirements as set out in chapter 3 of the Guidelines and as amended from time to time.

12.3 Membership Fees

- (a) Each ASTAS-VET Member shall pay such membership fees as are prescribed by the Board from time to time.
- (b) ACPET may vary the membership fees the ASTAS-VET member is required to pay quarterly, upon the receipt of information from the member in accordance with clause 12.4.

12.4 Providing Information

- (a) Upon applying for membership of ASTAS-VET, each ASTAS-VET Member shall provide to ACPET such information as the Board may require to assess an application for membership.
- (b) At the beginning of each quarter, each ASTAS-VET Member must provide to ACPET such information as the Board may require for the continuation of membership and provision of tuition assurance.
- (c) Without limiting the above, the information each member may be required to provide includes:
 - (i) Details of student enrolments and placement capacity;
 - (ii) Details regarding the number of full-time and part-time students enrolled in each course or program leading to an accredited award covered under the ASTAS-VET;
 - (iii) Projected ASTAS-VET revenue;
 - (iv) Census dates for each courses covered under the ASTAS;
 - (v) Financial information including audited or management accounts.
- (d) The information shall be provided to ACPET in such a form as ACPET may request.

12.5 Security

- (a) As a condition of membership of ASTAS-HE, each member shall provide to ACPET any additional monies as security (Assurance Amount) as required by ACPET from time to time, in the form of either:
 - (i) an irrevocable unconditional financial guarantee from a bank operating in Australia; or
 - (ii) a deposit into the ASTAS Member Security Trust.
- (b) From time to time, ACPET may vary the Assurance Amount it requires from the ASTAS-HE Member and the ASTAS-HE Member must immediately upon request provide the additional monies to satisfy the Assurance Amount in accordance with clause 12.5(a).

12.6 Termination of ASTAS-HE

- (a) ASTAS-HE Membership may be terminated at any time by ACPET, if the member:
 - (i) fails to pay the membership fees in accordance with clause 12.3;
 - (ii) fails to provide the Assurance Amount in accordance with clause 12.5;
 - (iii) fails to provide the information required by ACPET in accordance with clause 12.4;
 - (iv) fails to comply with clause 25, schedule 1A of the Act (the obligation to inform the Minister of an event which may affect the ASTAS-VET Member's ability to provide a course) where such failure of compliance results in a notification to ACPET by the Regulator according to the HESA and privacy law;
 - (v) fails to act in accordance with the Code of Ethics; or
 - (vi) ceases to be a member of the Council.
- (b) ACPET will inform the relevant regulator or Government department of any termination of a member's ASTAS-HE Membership.

12.7 ACPET's Costs

Each member may be required to reimburse ACPET for any legal or other professional costs incurred by ACPET in implementing or managing the Assurance Amount provided by that member in accordance with clause 12.5.

12.8 Limit of Liability

In relation to ACPET's responsibility to pay to the Commonwealth Government, from the funds held in the ASTAS, any amount required to discharge student's liability for a VET FEE-HELP debt incurred in advance of tuition, ACPET's total liability for an ASTAS activation for an ASTAS member is limited to the level of ASTAS established for that member.

ACPET's total liability in the advent of a complete or major VET FEE-HELP program closure, will be limited to the extent of ACPET's cover, as amended from time to time.

12.9 Membership of ASTAS-VET

- (a) Membership of the ASTAS-VET is restricted to Council members.

- (b) Cancellation of ACPET and ASTAS-VET membership or ASTAS-VET membership only must occur under the following circumstances:
 - (i) Written notification to the member and to the Regulator outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. The notification must state that the provider will need to provide alternative arrangements under the HESA and the VET Provider Guidelines (VETPG) to the Regulator for tuition assurance requirements. (Such as exemption in 3.2.5 of the VETPG. All requirements for 3.2.5 of the VETPG must be met by the ACPET member and ACPET in relation to notification to the Regulator).
 - (ii) During the 90 day period which provides the ACPET member time to comply with the requirements of point 1. ACPET will continue cover for VET Tuition Assurance as per normal.
- (c) ASTAS-VET cover for the students of the ACPET member will remain in the following circumstances:
 - (i) Where an ASTAS-VET member is deregistered with any relevant training regulatory departments (such as Registered Training Organisation Status, CRICOS, HEP approval), or is in the process of administration / liquidation or likely to be in such process, in default of the HESA which is deemed by the Regulator to be leading to an likely ASTAS-VET activation process.
- (d) The intent of this clause is that where ASTAS-VET activation is likely to occur as a result of registration or corporate solvency issues the cover of the students under the ASTAS-VET must remain intact.

12.10 Effect of Expulsion, Suspension or Termination

- (a) An ASTAS-VET Member which is expelled or suspended from ACPET or which ASTAS-VET Membership is terminated is not entitled to a refund of its ASTAS-VET Membership fees.
- (b) ACPET will inform Regulator of any expulsion, suspension or termination of an ASTAS-VET Member according to the requirements of By-Law 12.5.

12.11 Notification to ACPET

An ASTAS-VET Member which ceases to provide a VET course of study must immediately notify the Regulator and the Council at the time it does so, and the Council will then convene the Sub- committee. The Regulator should be notified by contacting the appropriate Group Manager, by phone and/or email.

12.12 ASTAS-VET Sub-Committee

- (a) The Board will appoint the Sub-Committee to implement and oversee the operation of the ASTAS-VET. The Sub-Committee will be supported by the ACPET staff member who will fulfil the role of the tuition assurance administrator.
- (b) The Sub-Committee will be comprised of a majority of people who do not represent ASTAS-VET members.
- (c) The Sub-Committee will review all activities including ensuring there are no conflicts of interest in relation to Placement/Refund.

12.13 Implementation by ACPET

The Board-appointed Sub-Committee will at all times implement this by-law in accordance with the provisions of chapters 3 and 4 of the Guidelines.

12.14 Placement/Refund Committee

If an ASTAS-VET Member ceases to provide a VET course of study, the Sub-Committee will ensure compliance with the provisions of the Guidelines. Any member of the Placement/Refund Committee must declare all actual or perceived conflicts of interest (in relation to their role as member of the Placement/Refund Committee) to the ASTAS-VET Sub-Committee and manage those conflicts of interest as directed by the ASTAS-VET Sub-Committee.

12.15 Role of Administrator

ACPET acting as the tuition assurance administrator will liaise, on behalf of the Sub-Committee, with relevant government agencies (including the regulator and the Australian Taxation Office), any external controller of an ASTAS-VET Member and any other relevant persons.

12.16 Role of the Sub-Committee in Relation to Placements and Refunds

The Sub-Committee will assist in overseeing the:

- (a) arrangement of a meeting of displaced students to advise them of:
 - (i) their rights to choose between the course assurance option and the student contribution/tuition repayment option; and
 - (ii) the process whereby the option chosen by the student under paragraph (a) will be implemented;
- (b) issuing of a written VET tuition assurance offer to students in accordance with the requirements of Chapter 3 of the Guidelines and which allows for a fair and reasonable time frame to the students to respond to such written offer. Such date must be a fair and reasonable time after the interview of the student and the dispatching of hard copy letter to the students mail address.
- (c) arranging interviews with individual students;
- (d) administering a student questionnaire to ascertain:
 - (i) the name of the student's VET course of study;
 - (ii) the remaining length of that course; and
 - (iii) which option under By-law 12.16(a)(i) the student has chosen;
- (e) if the student has chosen the course assurance option:
 - (i) match that student with an appropriate VET course of study with ASTAS-VET Member(s) at an appropriate location(s); or
 - (ii) offer that student placement in an appropriately purchased suitable alternative VET course of study to be delivered for this purpose through an ASTAS-VET Member or

other VET provider approved by the ASTAS-VET Placement Committee for that purpose; and

- (iii) give to that student a written VET tuition assurance offer of course placement;
- (f) if the student has chosen the student contribution/tuition fee repayment option:
 - (i) determine the eligibility of that student for that option;
 - (ii) pay the student the total of any up-front payments paid for that unit of study by the student (or on behalf of the student by any party other than the Commonwealth); and
 - (iii) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the ASTAS-VET member which ceased providing the VET course of study in discharge of the student's liability to pay his or her tuition fees for the unit; and
 - (iv) provide each student with a written VET tuition assurance offer of course placement at or before the meeting referred to in paragraph 12.16(a)(i).

12.17 Notification Obligations

Under paragraph 3.1.35 of the Guidelines if an ASTAS-VET member is subject to any of those circumstances, the ASTAS-VET Member must immediately notify the Council and the Group Manager to that effect. If the Group Manager becomes aware by any means that that any of those circumstances apply, or may apply, to an ASTAS-VET Member, then:

- (a) the ASTAS-VET Member must within a period specified by the Regulator, provide the Secretary with such information that may be reasonably be requested in relation to that event;
- (b) the Secretary may, after considering any information provided by the ASTAS-VET Member under the preceding paragraph (12.17(a)), declare in writing that, for the purposes of the Guidelines, the ASTAS-VET Member has ceased to provide one or more courses of study specified in the declaration; and
- (c) the Secretary must give a copy of the declaration to the ASTAS-VET Member and the Council.

12.18 Acceptance of a Written VET Tuition Assurance Offer of Course Placement

When a student accepts a written VET tuition assurance offer of course placement the student must provide the ASTAS-VET member offering placement with an irrevocable direction to the liquidator, administrator, receiver or external controller of the previous provider, or other holder of the student's prepaid fees, requiring that person to account to the member providing placement for any tuition fees held on behalf of that student.

12.19 Failure to Accept an Offer

If a displaced student refuses to accept a Written VET Tuition Assurance Offer within a reasonable time (but not more than 30 days) the Placement/Refund Committee will not make another Written VET Tuition Assurance Offer to that student unless special circumstances justify it doing so.

12.20 Copies of Offers

Copy of each accepted written VET tuition assurance offer of course placement will be given to the Regulator, the student (where necessary) and the ASTAS-VET member accepting that student and a copy will be retained by ASTAS-VET.

12.21 Compliance with Rules

A displaced student must abide by the rules of the ASTAS-VET Member in respect of which he/she has accepted a written VET tuition assurance offer of course placement, other than a rule relating to payment of a tuition fee for any replacement unit.

12.22 Acceptance of Displaced Student

When an ASTAS-VET Member is notified that a written VET tuition assurance offer of course placement has been made and accepted for a place at that member's institution, the member must accept the displaced student unless the displaced student has failed to agree or abide by the member's rules, or the member can provide evidence of special circumstances that indicate the placement with the member would not be in the best interests of the displaced students (in which case a written VET tuition assurance offer of course placement will be made with another ASTAS- VET Member).

12.23 Costs Consequences

The Council may require an ASTAS-VET Member to contribute towards the costs of any student relocations which may become necessary as a consequence of that ASTAS-VET Member ceasing to provide a VET course of study.

12.24 FEE-HELP Debts

If a student has a FEE-HELP debt to the Commonwealth Government in respect of a VET course of study which an ASTAS-VET Member ceases to provide (the FEE-HELP debt) and that student chooses the student contribution/tuition repayment option, the Council will pay to the Commonwealth Government from the funds held in the ASTAS-VET any amount required to discharge the student's liability for the FEE-HELP debt and the balance to the student or whoever has paid the fees on behalf of the student.

12.25 Interstate Membership

ASTAS-VET Members who deliver units or courses of study in two or more States or Territories must have ASTAS approval for each State/Territory of operation for which cover is sought. Members must also provide details of each separate location in each State and Territory where students are being taught units or courses of study covered under the ASTAS- VET.

12.26 Definitions

In this by-law, unless the contrary intention appears:

'Act' means the Higher Education Support Act 2003;

"Administrator" means ACPET (as a corporate entity);

"ASTAS-VET" means the Australian Student Tuition Assurance Scheme for VET providers;

“ASTAS-VET Member” means a member of ACPET who is not an Exempt Provider and who is accepted by ACPET as a member of the ASTAS-VET;

“ASTAS-VET Co-ordinator” means a person appointed by the ASTAS-VET Sub-Committee to assist it in the implementation of the ASTAS-VET;

“ASTAS-VET Sub-Committee” means the sub-committee (comprising Council appointees) established by By-law 12.12;

“ceases to provide a VET course of study” means, in relation to an ASTAS-VET Member:

- (a) if a course does not start on;
 - (i) the date the course was scheduled to start;
 - (ii) a later date that has been agreed between the ASTAS-VET Member and the enrolled in the course; or
- (b) the ASTAS-VET Member commences providing the course to a person and then, before the person has completed the course, ceases to provide that course (for any reason); or
- (c) the Minister has suspended or revoked approval of the ASTAS-VET Member as a VET provider under the Act and has not made a determination pursuant to paragraph clause 35.1 or 37.1 of schedule 1A of the Act in respect of that course; or
- (d) Notice is served on the ASTAS-VET Member or proceedings are taken to cancel the ASTAS-VET Member’s incorporation or registration or to dissolve the ASTAS-VET Member as a legal entity; or
- (e) the ASTAS-VET Member comes under one of the forms of external administration referred to Chapter 5 of the Corporations Act 2001 or equivalent provisions in other legislation, or an order has been made to place the ASTAS-VET Member under the external administration; or
- (f) the ASTAS-VET Member ceases to be a registered training organisation as listed on the National Training Information Service (NTIS); or
- (g) a declaration is made by the Secretary of the Regulator under paragraph 3.1.35b) of the Guidelines that the ASTAS-VET Member has ceased to provide the course by reason that the ASTAS-VET Member is subject to any of the following circumstances:
 - (i) The ASTAS-VET Member fails to comply with or set aside a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
 - (ii) the ASTAS-VET Member is unable to pay all of its debts when they become due; or
 - (iii) proceedings are initiated to obtain an order for the ASTAS-VET Member’s winding up or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the ASTAS-VET Member;

“Department” means the Australian Government Department responsible for administering the Higher Education Support Act 2003.

“Displaced Student” means a student of an ASTAS-VET Member which ceases to provide a VET course of study in which the student is enrolled;

“Exempt Provider” has the same meaning as it does in the Guidelines;

“First Provider” has the same meaning as it does in the Guidelines;

“Group Manager” has the same meaning as it does in the Guidelines;

“Guidelines” means the VET Provider Guidelines made under the Act;

“Placement Offer” means a written offer to be made to a student who chooses the course assurance option;

“Placement/Refund Committee” means the committee established by by-law 12.14;

“Regulator” means the Australian Government Department responsible for administering the Higher Education Support Act 2003

“Replaced unit” and **“Replacement unit”** have the same meanings as they do in the Guidelines;

“Secretary” is the official Regulator position referred to in the Guidelines;

“Second Provider” has the same meaning as it does in the Guidelines;

“Statement of VET Tuition Assurance” has the same meaning as it does in the Guidelines;

“Student for VET FEE-HELP purposes” has the same meaning as it does in the Act;

“VET course of study” has the same meaning as it does in the Act;

“VET Course assurance option” means an offer of a place in a similar VET course of study with another ASTAS-VET Member without any requirement to pay the other ASTAS-VET Member any student contribution or tuition fee for any replacement units;

“VET provider” has the same meaning as it does in the Act;

“VET tuition fee repayment option” means a refund to students of their up-front payments for any unit of study that the student commences but does not complete because an ASTAS-VET Member ceases to provide the VET course of study of which the units forms part, and a corresponding re-crediting of FEE-HELP balance relating to that unit;

“VET tuition assurance requirements” means the tuition assurance requirements set out in chapter 3 of the Guidelines;

“VET Written Tuition Assurance Offer” means the written advice that must be provided to students enrolled in a VET course of study which an ASTAS-VET Member has ceased to provide that he/she may choose either the course assurance option or VET tuition fee repayment option.

Words or phrases used in this by-law have the meaning given to them in the Act and/or Guidelines, unless the context requires otherwise.

To the extent necessary, these rules apply to and bind students of ASTAS-VET Member, subject to all times to the rights given to students by the Act, the Guidelines, other relevant legislation and the common law.

Attachment A



Nomination Form For the Position of State and Territory Directors on the ACPET Board 200 / 200

I (name in full of candidate) of (organisation) wish to nominate myself or am willing to be nominated for the position (name State or Territory) State and Territory Board Director

SignatureDate.....

I (name in full of seconder) of (name of organisation) wish to second the nomination of (name of candidate) of (name of organisation) for the (name State or Territory) State and Territory Board Director position.

SignatureDate.....

Where necessary:

I (name in full and position) of (name of organization) wish to state that (name of candidate) represents (name of organisation) and is supported in their nomination for the (name State or Territory) State and Territory Board Director position.

SignatureDate.....

Attachment B



Notice of Election For the Election of State and Territory Directors on the ACPET Board 200 / 200

Direction to Voters:

There have been (No) nominations for the (name State or Territory) State and Territory Board Director position.

An election is therefore required.

The following individuals have been nominated for the (name State or Territory) State and Territory Board Director position.

Name

Name 1

Name 2

Name 3

Name 4

Note:

1. Only (name State or Territory) ACPET full members can vote for this position
2. On the attached ballot paper, please indicate your preference in rank order by placing a 1, 2, 3, etc next to each and every name on the ballot paper

(Name)

Chief Executive Officer

Address

Date

Attachment C



Ballot Paper For the Election of State and Territory Director on the ACPET Board 200 / 200

Direction to Voters:

There have been (No) nominations for the (name State or Territory) State and Territory Board Director position.

To record a formal vote, you must indicate your preference for each candidate in rank order by placing a 1, 2, 3 etc next to each and every name on the Ballot Paper

Preference Name

- Name 1
- Name 2
- Name 3
- Name 4

Note:

To be a formal vote a preference must be made for each candidate.

(Name)
Chief Executive Officer
Address
Date