



BY-LAWS

of

AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING

ACN 054 953 758

Council Limited by Guarantee

Adopted

14 February 2018

Contents

PREAMBLE	5
SECTION A GENERAL	5
1. GENERAL	5
SECTION B MEMBERSHIP	6
2. REQUIREMENTS FOR MEMBERSHIP	6
2.1 Eligibility	6
2.2 Membership	6
2.3 Sub-Categories of Membership.....	7
2.4 Representation of Sub-Categories of Membership.....	7
3. ADMISSION TO MEMBERSHIP	8
3.1 Application Form	8
3.2 Referral to Board	8
3.3 Board to Approve or Otherwise	8
3.4 Date of Admission to Membership.....	8
3.5 Associate.....	8
4. INELIGIBILITY CRITERIA AND SANCTIONS	8
4.1 Ineligibility for Membership	8
4.2 Conditions on Existing Members.....	9
5. MEMBERSHIP FEES AND VOTING ENTITLEMENTS	10
5.1 Board Review.....	10
5.2 Payment of Subscriptions.....	10
6. EXTRAORDINARY GENERAL MEETING (EGM) – TERMINATION OF MEMBERSHIP	10
6.1 Extraordinary General Meeting (EGM) – termination of membership	10
SECTION C COMMITTEES	11
7. COMMITTEES	11
7.1 Board May Establish	11
7.2 Delegation of Powers	11
7.3 State or Territory Committee	11
7.4 Board Reporting	11
7.5 Conduct of Committees.....	11
7.6 Government Committees	11
7.7 Grants	11
7.8 Conferences and Seminars.....	11
SECTION D BOARD OF DIRECTORS	12
8. ELECTION OF BOARD DIRECTORS OF ACPET	12
8.1 Election of State and Territory Directors – Constitution clause 11	12
8.2 Board Appointed Directors- Constitution clause 11.....	13
9. REPORTING, AND FINANCIAL PLANNING AND CONTROL	14
9.1 Board Obligations	14
9.2 Reporting to Members	14
SECTION E ASSURANCE SCHEMES	15

10.	AUSTRALIAN STUDENT TUITION ASSURANCE SCHEMES.....	15
10.1	Definition of "Australian Student"	15
10.2	Purpose.....	15
10.3	Application.....	16
10.4	ASTAS Membership Fees.....	16
10.5	Applying for an ASTAS Membership and provision of Information and Documentation ...	16
10.6	Security.....	17
10.7	Membership Restrictions	17
10.8	Termination of ASTAS Membership	17
10.9	No Refund.....	18
10.10	ACPET's Costs	18
10.11	High Risk ASTAS Members.....	18
10.12	GARC.....	18
10.13	Policies for Displaced Students.....	18
10.14	Interstate Membership	18
10.15	Definitions	18
11.	ASTAS AB.....	19
11.1	Application of By-Law	19
11.2	ASTAS AB Member responsibility for electing to cease to provide services.....	19
11.3	Notification to ACPET	20
11.4	Acceptance of Courses	20
11.5	Oversight of Student Placements.....	20
11.6	Role of ACPET in Relation to Student Placements regarding ASTAS AB.....	20
11.7	Offer.....	21
11.8	Acceptance of Offer.....	21
11.9	Refusal of Offer.....	21
11.10	Copies to be provided.....	21
11.11	Agreement of Displaced Student	21
11.12	Exceptions to Acceptance.....	21
11.13	Refund	22
11.14	Definitions	22
12.	AUSTRALIAN STUDENT TUITION ASSURANCE SCHEME – HIGHER EDUCATION (ASTAS-HE).....	22
12.1	Application of By-Law	22
12.2	Purpose.....	23
12.3	ASTAS-HE Member responsibility for electing to cease to provide a course of study	23
12.4	Limit of Liability	24
12.5	Membership of ASTAS-HE	24
12.6	Notification to ACPET and Regulator.....	25
12.7	Implementation by GARC.....	25
12.8	Role of Administrator	25
12.9	Role of ACPET in Relation to Placements and Refunds	25
12.10	Notification Obligations.....	26
12.11	Acceptance of a Placement Offer.....	27
12.12	Failure to Accept an Offer	27
12.13	Copies of Offers	27
12.14	Compliance with Rules	27
12.15	Acceptance of Displaced Student.....	27
12.16	Costs Consequences	27
12.17	FEE-HELP Debts.....	27
12.18	Commonwealth Supported Places – Students	28
12.19	Definitions	28
13.	AUSTRALIAN STUDENT TUITION ASSURANCE SCHEME-VET (ASTAS-VET)	30

13.1	Overview of the ASTAS-VET Tuition Assurance Scheme	30
13.2	Application of By-Law	31
13.3	ASTAS-VET Member responsibility for electing to cease to provide a VET course of study	31
13.4	Limit of Liability	32
13.5	Membership of ASTAS-VET.....	32
13.6	Notification to ACPET and Regulator.....	32
13.7	Implementation by GARC	32
13.8	Role of Administrator	33
13.9	Role of ACPET in Relation to Placements and Refunds	33
13.10	Notification Obligations.....	34
13.11	Acceptance of a VET Written Tuition Assurance Offer of course placement.....	34
13.12	Failure to Accept an Offer	34
13.13	Copies of Offers	34
13.14	Compliance with Rules	35
13.15	Acceptance of Displaced Student.....	35
13.16	Costs Consequences	35
13.17	FEE-HELP Debts	35
13.18	Definitions	35
14.	AUSTRALIAN STUDENT TUITION ASSURANCE SCHEME-VSL (ASTAS-VSL).....	37
14.1	Overview of the ACPET VSL Tuition Assurance Scheme.....	37
14.2	Application of By-Law 14.....	38
14.3	ASTAS-VSL Member responsibility for electing to cease to provide an approved course ..	38
14.4	Limit of Liability	39
14.5	Membership of ASTAS-VSL.....	39
14.6	Notification to ACPET and Regulator.....	39
14.7	Implementation by GARC.....	39
14.8	Role of Administrator	40
14.9	Role of ACPET in Relation to Placements and Refunds	40
14.10	Notification Obligations.....	40
14.11	Acceptance of a VSL Written Tuition Assurance Offer	41
14.12	Failure to Accept an Offer	41
14.13	Copies of Offers	42
14.14	Compliance with Rules	42
14.15	Acceptance of displaced student	42
14.16	Costs Consequences	42
14.17	FEE-HELP Debts	42
14.18	Definitions	42
	ATTACHMENT A – NOMINATION FORM	45
	ATTACHMENT B – NOTICE OF ELECTION	46
	ATTACHMENT C – BALLOT PAPER	47

BY-LAWS
of
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ACN 054 953 758

Preamble

- A. These By-Laws of the Australian Council for Private Education and Training ("ACPET" or "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. Capitalised terms not defined in these By-Laws have the meanings given to such terms in the Constitution.
- 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

The criteria for eligibility for Membership is set out in clause 4 of the Constitution.

To further clarify the eligibility criteria:

- (a) “a person, body, company entity or organisation” includes corporations whether private or public, and if public, whether listed or unlisted;
- (b) 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) these By-Laws;
 - (iii) the Council’s Code of Ethics; and
 - (iv) 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
 - (A) has been a Member of ACPET for not less than 5 years;
 - (B) has demonstrated ongoing compliance with ACPET's Code of Ethics;
 - (C) has demonstrated outstanding leadership in the private education sector;
 - (D) has not had conditions placed by ACPET or sanctions by a sector regulator;
 - (E) has submitted a Code of Ethics self-assessment incorporating peer review.
 - (ii) Associate Member Criteria
 - (A) 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 latter 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;
- (b) 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.
- (c) 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.
- (d) 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 Schemes

10.1 Definition of "Australian Student"

In this By-Law 10, By-Law 11, By-Law 12, By-Law 13 and By-Law 14, a student is an "**Australian Student**" if he or she:

- (a) is a citizen or permanent resident of Australia or other student who meets the citizenship or residency requirements under section 104-5 of the Act;
- (b) is enrolled as a full or part-time student in approved programs leading to an accredited higher education award or VET qualification (as such terms are defined in the Act);
- (c) has paid tuition fees in advance and/or is accessing FEE-HELP assistance, VET FEE-HELP assistance (as such terms are defined in the Act) or a VET student loan (as such term is defined in the *VET Student Loans Act 2016*); and
- (d) 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 Schemes ("**ASTAS**") is to ensure that Australian Students receive the education or training for which they have paid. The two different types of ASTAS available are as follows:

(a) **ASTAS AB**

This is offered to Members (or other organisations subject to By Law 10.7) and is designed to satisfy the:

- (i) *Standards for Registered Training Organisations (RTOs) 2015* (Standard 7.3 relating to Schedule 6 – i.e. in relation to protection of prepaid fees in excess of a total of \$1500 by learners) as an ASQA approved alternative fee protection measure;
- (ii) Training Accreditation Council Western Australia (TAC). TAC approved the ACPET ASTAS AB as a learner fee protection measure under Schedule 6 - arrangement number 2 (All other RTOs) of the *Standard for Registered Training Organisations (RTOs) 2015*; and
- (iii) *Higher Education Standards Framework (Threshold Standards) 2015* (Standard 6.2(1)(i)) under the TEQSA Act.

Please see By-Law 11 for particular requirements of ASTAS AB.

- (b) **ASTAS C** satisfies the requirements of the Act in respect of FEE-HELP, VET FEE-HELP, or the requirements of the VSL Act in respect of VSL and any tuition fees paid in advance less than \$1500 which may be associated with such payments. ASTAS C is comprised of the following:

- (i) **ASTAS-HE** satisfies the requirement of the Act in respect of FEE-HELP. Please see By-Law 12 for particular requirements of ASTAS-HE;
- (ii) **ASTAS-VET** satisfies the requirements of the Act in respect of VET FEE-HELP. Please see By-Law 13 for particular requirements of ASTAS-VET; and

- (iii) **ASTAS-VSL** satisfies the requirements of the VSL Act in respect of VSL. Please see By-Law 14 for particular requirements of ASTAS-VSL.

The remainder of this By-Law 10 relates to each type of ASTAS referred to in this By-Law 10.2.

10.3 Application

Each Member (or other organisations subject to By Law 10.7) may apply to become an ASTAS Member and upon such application being accepted by the Board, is bound by this By-Law 10 and applicable other By-Laws in relation to courses the subject of a particular ASTAS.

10.4 ASTAS Membership Fees

- (a) Each ASTAS Member shall pay such ASTAS Membership fees as are prescribed by the Board from time to time for that ASTAS and in accordance with the invoice for such fees provided by ACPET.
- (b) ACPET may vary the membership fees the ASTAS Member is required to pay annually, upon the receipt of information and documentation from the ASTAS Member in accordance with By-Law 10.5.

10.5 Applying for an ASTAS Membership and provision of Information and Documentation

- (a) Upon a Member (or other organisation subject to By Law 10.7) applying for membership of an ASTAS, that prospective ASTAS Member shall provide to ACPET such information and documentation as the Board may require to assess an application for that ASTAS Membership.
- (b) ACPET may accept or reject an application for an ASTAS Membership in its sole discretion and with or without any conditions as it thinks fit.
- (c) At the beginning of each quarter, each ASTAS Member must provide to ACPET such information as the Board may require for the continuation of that ASTAS Membership and provision of tuition assurance.
- (d) Without limiting the above, the information and documentation each ASTAS Member may be required to provide includes:
 - (i) details of student enrolments (including each student's name and contact details) 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 relevant ASTAS;
 - (iii) the names of such courses or programs and the unit(s) in which each student is currently enrolled;
 - (iv) the amount paid for each unit that each student is currently enrolled in and the nature of that payment (i.e. student contribution or tuition fee, amounts paid up-front or through a FEE-HELP, VET FEE-HELP or VSL (as the case may be));
 - (v) details of the unit(s) successfully completed with the ASTAS Member to date;
 - (vi) projected FEE-HELP, VET FEE-HELP or fees in advance revenue (as the case may be);

- (vii) census dates for each course covered under the relevant ASTAS;
- (viii) financial information including audited or management accounts;
- (ix) all information provided to the Commonwealth relating to FEE-HELP, VET FEE-HELP and VSL;
- (x) declarations from the directors of the prospective ASTAS Member in a form provided by ACPET to verify certain financial information including that the limit of tuition assurance and the forecast revenue of that prospective ASTAS Member is true and correct and that the limit is not less than the maximum amount of prepaid fees that can be collected at any time from students enrolled; and
- (xi) completion rates for courses.

The information and documentation shall be provided to ACPET in such a form as ACPET may request.

10.6 Security

- (a) As a condition of ASTAS Membership, each prospective ASTAS 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,

to secure that prospective ASTAS Member's obligations under these By-Laws including, for the avoidance of doubt, By-Laws 11.2, 12.3, 13.3 and 14.3.
- (b) From time to time, ACPET may vary the Assurance Amount it requires from the prospective ASTAS Member and that prospective ASTAS Member must immediately upon request provide the additional monies to satisfy the Assurance Amount in accordance with By-Law 10.6(a).

10.7 Membership Restrictions

- (a) Membership of an ASTAS is restricted to Members and other organisations approved by the Board from time to time.
- (b) Any ASTAS Membership granted to an ASTAS Member who is not a Member will be governed by and subject to contractual arrangements between ACPET and that ASTAS Member.

10.8 Termination of ASTAS Membership

- (a) ASTAS Membership may be terminated at any time by ACPET if the ASTAS Member:
 - (i) fails to pay the membership fees in accordance with By-Law 10.4;
 - (ii) fails to provide the Assurance Amount in accordance with By-Law 10.6;
 - (iii) fails to provide the information or documentation required by ACPET in accordance with By-Law 10.5

- (iv) fails to comply with the Act and any other relevant legislation (including any obligation to inform the Minister of an event which may affect the ASTAS Member's ability to provide a course);
- (v) fails to act in accordance with the Code of Ethics; or
- (vi) who is:
 - (A) a Member, ceases to be a Member; or
 - (B) not a Member, ceases to be approved by the Board in its sole discretion.

(b) ACPET will inform the Regulator of any termination or cessation of ASTAS Membership.

10.9 No Refund

An ASTAS Member whose ASTAS Membership terminates under By Law 10.8 is not entitled to a refund of ASTAS Membership fees.

10.10 ACPET's Costs

Each ASTAS 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 ASTAS Member in accordance with By-Law 10.6.

10.11 High Risk ASTAS Members

Where an ASTAS Member is judged by ACPET to be at high risk of financial insolvency, ACPET will work with the ASTAS 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 GARC

The Governance Audit and Risk Committee of the Council (**GARC**) implements and oversees the operation of each ASTAS. The Board may establish a Working Group under the oversight of the GARC to manage and oversee the operation of each ASTAS.

10.13 Policies for Displaced Students

The GARC will establish the policies to be adopted for the placement of displaced students or the refund of tuition fees pursuant to the Act and any other relevant legislation or regulation.

10.14 Interstate Membership

ASTAS 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. ASTAS 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 relevant ASTAS.

10.15 Definitions

In By-Laws 10, 11,12,13 and 14, unless the contrary intention appears:

"Act" means the *Higher Education Support Act 2003* (Cth.);

"ASTAS" means an Australian Student Tuition Assurance Scheme referred to in By-Law 10.2;

"ASTAS Member" means an organisation who is accepted by ACPET as a member of a particular ASTAS subject to By-Law 10.7 and **"ASTAS Membership"** has a corresponding meaning;

"Code of Ethics" means the ACPET Code of Ethics for Members dated February 2015;

"displaced student" means a student of an ASTAS Member which ceases to provide a course of study in which the student is enrolled;

"FEE-HELP" has the meaning given to that term in the Act;

GARC has the meaning given to that term in By-Law 10.12;

"Regulator" means the Australian government department(s) responsible for administering the Act, the VSL Act and the TEQSA Act (as the case may be);

"TEQSA Act" means the *Tertiary Education Quality and Standards Agency Act 2011* (Cth.);

"VET FEE-HELP" has the meaning given to that term in the Act;

"VSL" has the meaning given to "VET Student Loan" under the VSL Act; and

"VSL Act" means the *VET Student Loans Act 2016* (Cth.)

11. ASTAS AB

11.1 Application of By-Law

This By-Law 11 applies specifically to ASTAS AB and ASTAS AB Members.

11.2 ASTAS AB Member responsibility for electing to cease to provide services

If an ASTAS AB Member is unable to provide services under paragraphs (a) and (b) of the definition of "unable to provide services" to a learner under By-Law 11.14 (i.e. where the ASTAS AB Member is unable to provide particular services but otherwise may continue business), that ASTAS AB Member

- (a) must:
 - (i) ensure the learner will be placed into an equivalent course such that the new location is geographically close to where the learner had been enrolled and the learner receives the full services for which they have prepaid at no additional cost to the learner; or
 - (ii) if an equivalent course cannot be found, be responsible for the total amount of any prepaid fees paid for those services to that ASTAS AB Member by the student (or on behalf of the student by any party); and
- (b) acknowledges that such amounts referred to under By-Law 11.2(a)(ii) will form part of the Assurance Amount subject to By-Law 10.6; and
- (c) indemnifies and must keep indemnified ACPET, its officers and employees, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis and other direct, reasonable and necessary third party costs)

that may be brought against ACPET or which ACPET may pay, sustain or incur as a direct or indirect result of such ceasing to provide services.

11.3 Notification to ACPET

An ASTAS AB Member must advise the Council immediately if either the placement of students under the ASTAS AB becomes likely or a refund of tuition fees pursuant to the Act under the Standards for Registered Training Organisations administered by the Australian Skills Quality Authority (ASQA) (see Standard 7.3) or any other relevant legislation including pursuant the TEQSA Act under the Higher Education Standards Framework (Threshold Standards) 2015 (see Standard 6.2(1)(i)), be contemplated.

11.4 Acceptance of Courses

An ASTAS AB Member's course/s will be accepted if:

- (a) the ASTAS AB Member has complied with all of its obligations under these By-Laws; and
- (b) the course is, in the opinion of ACPET, equivalent to another course or other courses offered by other ASTAS AB 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 Act or the Standards for Registered Training Organisations administered by the Australian Skills Quality Authority (ASQA) (see Standard 7.3) or any other relevant legislation including pursuant the TEQSA Act under the Higher Education Standards Framework (Threshold Standards) 2015 (see Standard 6.2(1)(i)).

11.5 Oversight of Student Placements

- (a) In the event of a need for the placement of displaced students of an ASTAS AB Member, the GARC will assist in the placement of displaced students.
- (b) ACPET staff, under the oversight of the GARC will communicate with relevant government agencies and any liquidator, administrator or other relevant persons.

11.6 Role of ACPET in Relation to Student Placements regarding ASTAS AB

ACPET will ensure ACPET staff:

- (a) arrange a meeting of any displaced students to advise them of:
 - (i) ASTAS AB responsibilities for their placement in another institution;
 - (ii) the reasons for their allocation to another ASTAS AB 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 Act or the Standards for Registered Training Organisations administered by the Australian Skills Quality Authority (ASQA) (see Standard 7.3) or any other relevant legislation including pursuant the TEQSA Act under the Higher Education Standards Framework (Threshold Standards) 2015 (see Standard 6.2(1)(i)); 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; and
 - (ii) the remaining length of the course;
- (d) match students with appropriate courses at ASTAS AB Members' institutions located at appropriate locations; or offer students placement in an appropriately purchased course to be delivered for this purpose through an ASTAS AB Member institution or other provider by commercial arrangement involving ASTAS AB 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 Act or the Standards for Registered Training Organisations administered by the Australian Skills Quality Authority (ASQA) (see Standard 7.3) or any other relevant legislation including pursuant the TEQSA Act under the Higher Education Standards Framework (Threshold Standards) 2015 (see Standard 6.2(1)(i));
- (e) upon completion, provide a report to the Board through the GARC; and
- (f) in the case of an ASTAS AB Member that deliver courses 100% on-line, contact will be made with all students electronically to determine the most suitable arrangement to interview students.

11.7 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.

11.8 Acceptance of Offer

A student who accepts the offer must provide the ASTAS AB 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 ASTAS AB Member providing placement for any tuition fees held on behalf of that student.

11.9 Refusal of Offer

If a displaced student refuses an offer of placement, or refuses to give the direction referred to in By-Law 11.8, the GARC will not provide another offer of placement unless there are special circumstances which it considers justify it so doing.

11.10 Copies to be provided

Electronic copies of each signed offer of placement will be given to the relevant authority, the student and the accepting provider, and electronic copies of each will be retained by ASTAS AB.

11.11 Agreement of Displaced Student

A displaced student must agree that he or she will abide by the rules of the ASTAS AB 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.

11.12 Exceptions to Acceptance

When an ASTAS AB Member is notified that an offer of placement has been made and accepted for a place at the ASTAS AB Member's institution, the ASTAS AB Member must accept the displaced

student unless:

- (a) the displaced student has failed to give the direction referred to in By-Law 11.8;
- (b) the displaced student has failed to agree or abide by the ASTAS AB Member's rules; or
- (c) the ASTAS AB Member can provide evidence of special circumstances that indicate placement with the ASTAS AB Member would not be in the best interests of the displaced student.

11.13 Refund

Where it is determined that a student is eligible for a refund of tuition fees pursuant to the requirements of the Act or any other legislation, the GARC shall authorise such payment to be made expeditiously and directly in accordance with the requirements of the Act or that legislation as amended from time to time.

11.14 Definitions

In this By-Law 11, unless the contrary intention appears:

"ASTAS AB" means an Australian Student Tuition Assurance Scheme referred to in By-Law 10.2(a);

"ASTAS AB Member" means an organisation who is accepted by ACPET as a member of ASTAS AB subject to By-Law 10.7 and **ASTAS AB Membership** has a corresponding meaning; and

"unable to provide services" means, in relation to an ASTAS AB Member:

- (a) if a course provided by that ASTAS AB Member does not start on;
 - (i) the date the course was scheduled to start; or
 - (ii) a later date that has been agreed between the ASTAS AB Member and the learner to receive the services; or
- (b) the ASTAS AB Member commences providing the services to a learner and then, before the learner has completed receiving the services, ceases to provide those services (for any reason).

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

12.1 Application of By-Law

- (a) This By-Law 12.1 applies specifically to ASTAS-HE - i.e. to any higher education provider other than an Exempt Provider that is an ASTAS-HE 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 only applies to Australian 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:

- (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 2.10.10 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 (sections 16-25(1)(c) and 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 subject to these By-Laws.
- (f) Under ASTAS-HE, each ASTAS-HE Member shall, as a condition of its membership, meet all of their obligations as First Providers and Second Providers under the tuition assurance requirements.
- (g) To the extent of any inconsistency between this 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 By-Law 10 or this By-Law 12), the tuition assurance requirements take precedence.

12.2 Purpose

The purpose of this By-Law 12 is to ensure that: -

- (a) ASTAS-HE Members, in their capacity as First Providers and Second Providers, comply with the tuition assurance requirements;
- (b) ACPET, in its capacity as tuition assurance administrator, complies with the tuition assurance requirements; and
- (c) in particular, if an ASTAS-HE Member (i.e. the First Provider) ceases to provide a course of study, eligible students of the ASTAS-HE Member can, subject to and depending upon the circumstances upon which that ASTAS-HE Member ceases to provide a course of study (see By-Law 12.3) 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 (i.e. the 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 contribution amount or 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 contribution amounts or tuition fees already paid for, or a re-credit of the eligible student's FEE-HELP balance in respect of, units of their course of study which they have not completed at the time the ASTAS-HE Member (i.e. the First Provider) ceased to provide that course of study.

12.3 ASTAS-HE Member responsibility for electing to cease to provide a course of study

If an ASTAS-HE Member ceases to provide a course of study under paragraphs (a) and (b) of the definition of "ceases to provide a course of study" under By-Law 12.19 (i.e. where the ASTAS-HE Member ceases to provide a particular course of study but otherwise may continue business), that

ASTAS-HE Member:

- (a) is responsible for:
 - (i) the total amount of any up-front payments paid for that unit of study to that ASTAS-HE Member by the student (or on behalf of the student by any party other than the Commonwealth); and
 - (ii) any amounts paid for that unit of study by the Commonwealth to that ASTAS-HE Member in discharge of the student's liability to pay his or her student contribution amount or tuition fee for the unit,
- (b) acknowledges that such amounts will form part of the Assurance Amount subject to By-Law 10.6; and
- (c) indemnifies and must keep indemnified ACPET, its officers and employees, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis and other direct, reasonable and necessary third party costs) that may be brought against ACPET or which ACPET may pay, sustain or incur as a direct or indirect result of such ceasing to provide that course of study.

12.4 Limit of Liability

- (a) In relation to ACPET's responsibility to pay to the Commonwealth Government as the Repayment TAS Operator under paragraph 2.4.3(b) of the Guidelines from the funds held in the ASTAS-HE, any amount required to discharge a student's liability for a FEE-HELP debt incurred in advance of tuition, ACPET's total liability for an activation of ASTAS-HE in respect of an ASTAS-HE Member is limited to the level of ASTAS-HE established for that ASTAS-HE Member.
- (b) 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 insurance cover, as amended from time to time.

12.5 Membership of ASTAS-HE

- (a) Subject to By-Law 10.8, cancellation of Membership and ASTAS-HE Membership, or ASTAS-HE Membership only, must occur under the following circumstances:
 - (i) the ASTAS-HE Member must be given written notification of ACPET's concerns and the allegations of breach against it and be given a reasonable period to respond and rectify the breaches;
 - (ii) the ASTAS-HE Member must be given an opportunity to be heard before any cancellation resolution is passed;
 - (iii) if a cancellation resolution is passed, written notification to the ASTAS-HE Member and to the Regulator must be given outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. Any appeal will be conducted by the Board of ACPET. The notification must state that the provider will need to provide alternative arrangements under the Act and the Guidelines to the Regulator for tuition assurance requirements. Such alternative arrangements may include obtaining an exemption under sections 16-31 or 19-40 of the Act and paragraph 2.5.5(c) of the Guidelines. All requirements for paragraph 2.5.5(c) of the Guidelines must be met by the provider and ACPET in relation to notification to the Regulator; and
 - (iv) during the 90 day period which provides the provider time to comply with the

requirements of sub-paragraph (i), ACPET will continue to provide tuition assurance under the ASTAS-HE.

- (b) ASTAS-HE will continue for the students of an ASTAS-HE Member

where that 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 external administration under the Corporations Act 2001 or likely to be in such process, in default of the Act and which is deemed by the Regulator to be leading to a likely ASTAS-HE activation.

12.6 Notification to ACPET and Regulator

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 Board will then convene the GARC. The Regulator should be notified by phone and/or email.

12.7 Implementation by GARC

The GARC will at all times implement this By-Law 12 in accordance with the provisions of chapters 2 and 3 of the Guidelines.

12.8 Role of Administrator

ACPET, acting as the tuition assurance administrator, will liaise, on behalf of the GARC, 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.

12.9 Role of ACPET in Relation to Placements and Refunds

The ACPET will assist in overseeing the following:

- (a) arranging 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 sub-paragraph (i) 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 for 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 12.9(a) the student has chosen;

- (e) if the student has chosen the course assurance option:
 - (i) matching that student with an appropriate course of study with ASTAS-HE Member(s) at an appropriate location(s); or
 - (ii) offering 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 GARC 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) subject to payment of the Assurance Amount by the ASTAS-HE Member under By Law 10.6, 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) subject to payment of the Assurance Amount by the ASTAS-HE Member and amounts directly payable by the ASTAS-HE Member under By-Law 12.17, pay the Commonwealth an amount equal to the sum of 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 By-Law 12.9(a).

12.10 Notification Obligations

Under paragraph 2.1.30 of the Guidelines if:

- (a) an 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
- (b) an ASTAS-HE Member is unable to pay all of its debts when they become due; or
- (c) proceedings are initiated to obtain an order for an ASTAS-HE Member's winding up or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of an ASTAS-HE Member,

that ASTAS-HE Member must immediately notify the Council and the Regulator to that effect. If the Regulator becomes aware by any means that any of those circumstances apply, or may apply, to that ASTAS-HE Member, then:

- (d) that 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;
- (e) 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, that ASTAS-HE Member has ceased to provide one or more courses of study specified in the declaration; and

(f) the Secretary must give a copy of the declaration to the ASTAS-HE Member and the Council.

12.11 Acceptance of a Placement Offer

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

12.12 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.

12.13 Copies of Offers

Copies of each accepted Written Tuition Assurance Offer will be given to the Regulator, the student (where necessary) and the ASTAS-HE Member acting as the Second Provider, and a copy will be retained by ASTAS-HE.

12.14 Compliance with Rules

A displaced student must abide by the rules of the ASTAS-HE Member acting as the Second Provider 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.

12.15 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 ASTAS-HE Member's institution, the ASTAS-HE member must accept the displaced student unless the displaced student has failed to agree or abide by the ASTAS-HE Member's rules, or the ASTAS-HE Member can provide evidence of special circumstances that indicate the placement with the ASTAS-HE 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).

12.16 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.

12.17 FEE-HELP Debts

- (a) Subject to paragraph (b) of this By-Law 12.17, 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.
- (b) The ASTAS-HE Member referred to in paragraph (a) must:

- (i) under section 104-42 of the Act, re-credit the student's FEE-HELP debt with an amount equal to the amounts of FEE-HELP assistance that the student received for a unit of study if the ASTAS-HE Member ceases to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
- (ii) under section 110-5 of the Act, pay to the Commonwealth an amount equal to the amount of FEE-HELP assistance to which the student was entitled for the unit.

12.18 Commonwealth Supported Places – Students

- (a) Where students are Commonwealth Supported Students, such 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 By-Law 12.18 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 student contribution/tuition fee repayment option is chosen by a Commonwealth Supported Student with a Commonwealth supported place, the fees refunded will be to the appropriate payee of the original fees according to the relevant Commonwealth support legislation.

12.19 Definitions

In this By-Law 12, unless the contrary intention appears:

“ASTAS-HE” has the meaning given in By-Law 10.2(b)(i), being the Australian Student Tuition Assurance Scheme for higher education providers;

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

“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; or
 - (ii) a later date that has been agreed between the ASTAS-HE Member and the enrolled student 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 or 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 non self-accrediting institution, the ASTAS-HE Member ceases to be a registered higher education provider authorised by or under the TEQSA Act to issue one of more higher education awards; or
- (g) in the case of a self-accrediting institution, the ASTAS-HE Member ceases to be a registered higher education provider authorised by or under the TEQSA Act to self-accredit one or more courses of study that lead to a higher education award; or
- (h) a declaration is made by the Secretary of the Regulator under paragraph 2.1.35(b) 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;

"Commonwealth Supported Student" has the same meaning as it does in the Act;

"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;

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

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

"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;

"Repayment TAS Operator" has the same meaning as it does in the Guidelines;

"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 unit forms part, and a corresponding re-crediting of any HECS-HELP or FEE-HELP balance relating to that unit;

"**TEQSA Act** means the *Tertiary Education Quality and Standards Agency Act 2011*;

"**tuition assurance administrator**" has the same meaning as it does in the Guidelines;

"**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 12 have the meaning given to them in the Act and/or Guidelines as amended from time to time, 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.

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

13.1 Overview of the ASTAS-VET Tuition Assurance Scheme

The purpose of this By-Law 13 is to govern the ASTAS-VET which provides course assurance and tuition fee repayment assurance for Australian Students of VET providers.

- (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 Guidelines as amended from time to time; and
 - (ii) establish and support the GARC to perform the activities of those committees as specified in this By-Law 13; and
 - (iii) at all times meet the corporate separation requirements for a VET tuition assurance administrator as specified in the Guidelines as amended from time to time.
- (b) ASTAS-VET Members shall, as a condition of its membership, support the operation of the VET Tuition Assurance Scheme by fulfilling their VET tuition assurance requirements as described in:
- (i) the Act as amended from time to time; and
 - (ii) the Guidelines as amended from time to time; and
 - (iii) By-Law 10 and this By-Law 13.
- (c) In the event of any inconsistency between By-Law 10, this By-Law 13 and any provision in the Guidelines or in the Act, the terms of the Guidelines and the Act will prevail to the extent of

that inconsistency.

- (d) ASTAS-VET will only operate insofar and to the extent that VET tuition assurance requirements must be complied with by VET providers under the Act. It is contemplated that ASTAS-VET Members will transition from ASTAS-VET Membership to ASTAS-VSL Membership as their respective courses of study are completed during 2017 and 2018.

13.2 Application of By-Law

- (a) This By-Law 13 applies to any VET provider other than an Exempt Provider that is an ASTAS-VET Member in respect of eligible students (ref section 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 only applies to Australian Students.
- (b) ASTAS-VET Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in Part 3 of the Guidelines (and as amended from time to time) which are available at <https://www.legislation.gov.au/Details/F2015L02124>
- (c) ASTAS-VET Members should particularly familiarise themselves with their obligations as First Providers and Second Providers under those Parts of the Guidelines, bearing in mind that each ASTAS-VET Member's approval as a VET provider under the Act is, in part, contingent upon complying 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 (section 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 Part 3 of the Guidelines and as amended from time to time.
- (e) Under ASTAS-VET, each ASTAS-VET member shall, as a condition of its membership meet all of their obligations as First Providers and Second Providers under the VET tuition assurance requirements.

13.3 ASTAS-VET Member responsibility for electing to cease to provide a VET course of study

If an ASTAS-VET Member ceases to provide a VET course of study under paragraphs (a) and (b) of the definition of "ceases to provide a VET course of study" under By-Law 13.18 (i.e. where the ASTAS-VET Member ceases to provide a particular VET course of study but otherwise may continue business), that ASTAS-VET Member:

- (a) is responsible for:
 - (i) the total of any VET tuition fee payments paid for a VET unit of study within that VET course of study to that ASTAS-VET Member by the VET student (or on behalf of the VET student by any party other than the Commonwealth); and
 - (ii) any amounts paid for that VET unit of study by the Commonwealth to that ASTAS-VET Member in discharge of the VET student's liability to pay his or her student VET tuition fee for that VET unit of study;
- (b) acknowledges that such amounts will form part of the Assurance Amount subject to By-Law 10.6; and
- (c) indemnifies and must keep indemnified ACPET, its officers and employees, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs

(including legal costs on a full indemnity basis and other direct, reasonable and necessary third party costs) that may be brought against ACPET or which ACPET may pay, sustain or incur as a direct or indirect result of such ceasing to provide that VET course of study.

13.4 Limit of Liability

- (a) In relation to ACPET's responsibility to pay to the Commonwealth Government as the VET repayment TAS operator under paragraph 10(6) of the Guidelines from the funds held in the ASTAS-VET, any amount required to discharge a student's liability for a VET FEE-HELP debt incurred in advance of tuition, ACPET's total liability for an ASTAS-VET Membership activation of ASTAS-VET in respect of an ASTAS-VET Member is limited to the level of ASTAS-VET established for that ASTAS-VET Member.
- (b) 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 insurance cover, as amended from time to time.

13.5 Membership of ASTAS-VET

- (a) Subject to By-Law 10.8, cancellation of Membership and ASTAS-VET Membership or ASTAS-VET Membership only, must occur under the following circumstances:
 - (i) the ASTAS-VET Member must be given written notification of ACPET's concerns and the allegations of breach against it and be given a reasonable period to respond and rectify the breaches;
 - (ii) the ASTAS-VET Member must be given an opportunity to be heard before any cancellation resolution is passed;
 - (iii) if a cancellation resolution is passed, written notification to the ASTAS-VET Member and to the Regulator must be given outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. Any appeal will be conducted by the Board of ACPET. The notification must state that the provider will need to provide alternative arrangements under the Act and the Guidelines to the Regulator for tuition assurance requirements. Such alternative arrangements may include obtaining an exemption under paragraph 20 of the Guidelines. All requirements for paragraph 20 of the Guidelines must be met by the VET provider and ACPET in relation to notification to the Regulator; and
 - (iv) during the 90 day period which provides the VET provider time to comply with the requirements of sub-paragraph (i), ACPET will continue to provide VET tuition assurance under the ASTAS-VET.
- (b) ASTAS-VET will continue for the students of an ASTAS-VET Member where that 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 external administration under the Corporation Act or likely to be in such process or in default of the Act which is deemed by the Regulator to be leading to a likely ASTAS-VET activation.

13.6 Notification to ACPET and Regulator

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 Board will then convene the GARC. The Regulator should be notified by phone and/or email.

13.7 Implementation by GARC

The GARC will at all times implement this By-Law 13 in accordance with the provisions of Parts 3 and 4 of the Guidelines.

13.8 Role of Administrator

ACPET acting as the tuition assurance administrator will liaise, on behalf of the GARC, 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.

13.9 Role of ACPET in Relation to Placements and Refunds

ACPET will assist in overseeing the following:

- (a) arrangement of a meeting of displaced students to advise them of:
 - (i) their rights to choose between the VET Course assurance option and the VET tuition fee repayment option; and
 - (ii) the process whereby the option chosen by the student under sub-paragraph (i) will be implemented;
- (b) issuing of a VET Written Tuition Assurance Offer to students in accordance with the requirements of Part 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 13.9(a)(i) the student has chosen;
- (e) if the student has chosen the VET Course assurance option:
 - (i) matching that student with an appropriate VET course of study with ASTAS-VET Member(s) at an appropriate location(s); or
 - (ii) offering 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 GARC for that purpose; and
 - (iii) give to that student a VET Written Tuition Assurance Offer of course placement;
- (f) if the student has chosen the VET tuition fee repayment option:
 - (i) determine the eligibility of that student for that option;
 - (ii) subject to payment of the Assurance Amount by the ASTAS-VET Member under By-Law 10.6, pay the student the total of any VET tuition fee payments paid for that VET unit of study by the student (or on behalf of the VET student by any party other than the Commonwealth); and

- (iii) subject to payment of the Assurance Amount by the ASTAS-VET Member and amounts directly payable by the ASTAS-VET Member under By-Law 13.17 pay the Commonwealth an amount equal to the sum of any amounts paid for that VET 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 VET Written Tuition Assurance Offer at or before the meeting referred to in By-Law 13.9(a).

13.10 Notification Obligations

Under paragraph 14 of the Guidelines if:

- (a) an 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
- (b) an ASTAS-VET Member is unable to pay all of its debts when they become due; or
- (c) proceedings are initiated to obtain an order for an ASTAS-VET Member's winding up; or
- (d) any shareholder, member or director convenes a meeting to consider a resolution for the winding up of an ASTAS-VET Member,

the ASTAS-VET Member must immediately notify the Council and the Regulator to that effect. If the Regulator becomes aware by any means that any of those circumstances apply, or may apply, to that ASTAS-VET Member, then:

- (e) that 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;
- (f) the Secretary may, after considering any information provided by the ASTAS-VET Member under the preceding paragraph, declare in writing that, for the purposes of the Guidelines, that ASTAS-VET Member has ceased to provide one or more courses of study specified in the declaration; and
- (g) the Secretary must give a copy of the declaration to the ASTAS-VET Member and the Council.

13.11 Acceptance of a VET Written Tuition Assurance Offer of course placement

When a student accepts a VET Written Tuition Assurance Offer of course placement, the student must provide the ASTAS-VET Member offering placement (i.e. the Second Provider) with an irrevocable direction to the liquidator, administrator, receiver or external controller of the First Provider, or other holder of the student's prepaid fees, requiring that person to account to the Second Provider for any tuition fees held on behalf of that student.

13.12 Failure to Accept an Offer

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

13.13 Copies of Offers

Copies of each accepted VET Written Tuition Assurance Offer will be given to the Regulator, the

student (where necessary) and the ASTAS-VET Member acting as the Second Provider and a copy will be retained by ASTAS-VET.

13.14 Compliance with Rules

A displaced student must abide by the rules of the ASTAS-VET Member acting as the Second Provider in respect of which he/she has accepted a VET Written Tuition Assurance Offer of course placement, other than a rule relating to payment of a tuition fee for any replacement unit.

13.15 Acceptance of Displaced Student

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

13.16 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.

13.17 FEE-HELP Debts

- (a) Subject to paragraph (b) of this By-Law 13.17 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 VET tuition fee 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.
- (b) The ASTAS-VET Member referred to in paragraph (a) must:
 - (i) under section 51 of Schedule 1A of the Act, re-credit the student's FEE-HELP debt with an amount equal to the amounts of VET FEE-HELP assistance that the student received for a unit of study if the ASTAS-VET Member ceases to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (ii) under section 56 of Schedule 1A of the Act, pay to the Commonwealth an amount equal to the amount of VET FEE-HELP assistance to which the student was entitled for the unit.

13.18 Definitions

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

"Act" means the Higher Education Support Act 2003;

"ASTAS-VET" has the meaning given in By-Law 10.2(b)(ii), being means the Australian Student Tuition Assurance Scheme for VET providers;

"ASTAS-VET Member" means a Member who is not an Exempt Provider and who is accepted by

ACPET as a member of the ASTAS-VET and **ASTAS-VET Membership** has a corresponding meaning;

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

- (a) all of the following apply:
 - (i) the VET course of study a course does not start on the date the course was scheduled to start or a later date that has been agreed between the ASTAS-VET Member and the enrolled student in the course;
 - (ii) the student has not withdrawn from the VET course of study before the day applying under sub-paragraph (i);
 - (iii) an arrangement has not previously been made between the ASTAS-VET Member and the student to undertake a suitable alternative VET course of study;
- (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) (other than where the person has withdrawn from the VET course of study); 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 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 corresponding provisions in similar 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 other national register maintained under the *National Vocational Education and Training Regulator Act 2001*; or
- (g) a declaration is made by the Secretary of the Regulator under paragraph 14(2)(b) 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
 - (iv) any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the ASTAS-VET Member;

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

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

“Guidelines” means the Higher Education Support (VET) Guideline 2015 made under the Act;

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

“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 tuition fee for any replacement units;

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

“VET tuition assurance administrator” has the same meaning as it does in the Guidelines;

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

“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 unit 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 Part 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.

14. Australian Student Tuition Assurance Scheme-VSL (ASTAS-VSL)

14.1 Overview of the ACPET VSL Tuition Assurance Scheme

The purpose of this By-Law 14 is to govern the ASTAS-VSL which provides course assurance and tuition fee repayment assurance for Australian Students with VSL.

(a) ACPET will:

(i) establish and operate an ASTAS-VSL for the benefit of all ASTAS-VSL Members and

their students to ensure that students can access the VSL course assurance or the VSL tuition fee assurance set out in the Rules as amended from time to time; and

- (ii) establish and support the GARC to perform the activities as specified in this By-Law 14; and
 - (iii) at all times meet the corporate separation requirements for a VSL tuition assurance scheme operator as specified in the Rules as amended from time to time.
- (b) ASTAS-VSL Members shall, as a condition of its membership, support the operation of the VSL Tuition Assurance Scheme by fulfilling their VSL tuition assurance requirements as described in:
- (i) the Act as amended from time to time; and
 - (ii) the Rules as amended from time to time; and
 - (iii) this By-Law 14.

14.2 Application of By-Law 14

- (a) This By-Law 14 applies to any approved course provider, other than an Exempt Provider, that is an ASTAS-VSL Member (but not an ASTAS-VET Member) in respect of students to whom the ASTAS-VSL Member is providing an approved course, which the ASTAS-VSL Member then ceases to provide. It only applies to Australian Students.
- (b) ASTAS-VSL Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in Part 6 of the Rules (and as amended from time to time) which are available at:
<https://www.legislation.gov.au/Details/F2016L02030/Download>
- (c) ASTAS-VSL Members should particularly familiarise themselves with their obligations as First Providers and Second Providers under the Rules, bearing in mind that each ASTAS-VSL Member's approval as an approved course provider under the Act is, in part, contingent upon maintaining compliance with the fit and proper person requirements, as defined in Part 4 of the Rules.
- (d) Under ASTAS-VSL, ACPET is, and undertakes to ASTAS-VSL Members, that it will meet all the obligations of, a tuition assurance scheme operator under the VSL tuition assurance requirements as set out in Part 6 of the Rules and as amended from time to time.
- (e) Under ASTAS-VSL, each ASTAS-VSL member shall, as a condition of its membership, meet all of their obligations as First Providers and Second Providers under the VSL tuition assurance requirements.

14.3 ASTAS-VSL Member responsibility for electing to cease to provide an approved course

If an ASTAS-VSL Member ceases to provide an approved course of study but otherwise may continue business, that ASTAS-VSL Member:

- (a) is responsible for the total of any student's tuition fees for an approved course that were covered by a VET student loan;
- (b) acknowledges that such amounts will form part of the Assurance Amount subject to By-Law 10.6; and

- (c) indemnifies and must keep indemnified ACPET, its officers and employees, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis and other direct, reasonable and necessary third party costs) that may be brought against ACPET or which ACPET may pay, sustain or incur as a direct or indirect result of such ceasing to provide that approved course.

14.4 Limit of Liability

- (a) In relation to ACPET's responsibility to pay to the Commonwealth Government as the VSL tuition assurance scheme operator under paragraph 73 of the Rules from the funds held in the ASTAS-VSL, to discharge a student's liability for a VET student loan, ACPET's total liability for an ASTAS-VSL Membership activation of ASTAS-VSL in respect of an ASTAS-VSL Member is limited to the level of ASTAS-VSL established for that ASTAS-VSL Member.
- (b) ACPET's total liability in the advent of a complete or major VET student loan program closure, will be limited to the extent of ACPET's insurance cover, as amended from time to time.

14.5 Membership of ASTAS-VSL

- (a) Subject to By-Law 10.8, cancellation of Membership and ASTAS-VSL Membership or ASTAS-VSL Membership only, must occur under the following circumstances:
 - (i) the ASTAS-VSL Member must be given written notification of ACPET's concerns and the allegations of breach against it and be given a reasonable period to respond and rectify the breaches;
 - (ii) the ASTAS-VSL Member must be given an opportunity to be heard before any cancellation resolution is passed;
 - (iii) if a cancellation resolution is passed, written notification to the ASTAS-VSL Member and to the Regulator must be given outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. Any appeal will be conducted by the Board of ACPET. The notification must state that the provider will need to provide alternative arrangements under the Act and the Rules to the Regulator for tuition assurance requirements. Alternative arrangements may include obtaining an exemption under the Rules. All requirements under the Rules must be met by the approved provider and ACPET in relation to notification to the Regulator;
 - (iv) during the 90 day period which provides the course provider time to comply with the requirements of sub-paragraph (i), ACPET will continue to provide VSL tuition assurance under the ASTAS-VSL.
- (b) ASTAS-VSL will continue for the students of an ASTAS-VSL Member where that ASTAS-VSL Member is deregistered with any relevant training regulatory departments (such as Registered Training Organisation status, CRICOS, HEP approval), or is in the process of external administration under the Corporation Act or likely to be in such process or in default of the Act which is deemed by the Regulator to be leading to a likely ASTAS-VSL activation.

14.6 Notification to ACPET and Regulator

An ASTAS-VSL Member which ceases to provide an approved course must immediately notify the Regulator and the Council at the time it does so, and the Board will then convene a sub-committee of the ASTAS-VSL.

14.7 Implementation by GARC

The GARC will at all times implement this By-Law 14 in accordance with the provisions of Part 6 of the Rules.

14.8 Role of Administrator

ACPET acting as the VSL tuition assurance scheme operator will liaise, on behalf of the GARC, with relevant government agencies (including the Regulator and the Australian Taxation Office), any external controller of an ASTAS-VSL Member and any other relevant persons.

14.9 Role of ACPET in Relation to Placements and Refunds

ACPET will assist in overseeing the following:

- (a) arranging a meeting of displaced students under paragraph 68 of the Rules to discuss the VSL Written Tuition Assurance Notice and the process whereby the VSL tuition fee assurance or the VSL course assurance will be implemented;
- (b) issuing of a VSL Written Tuition Assurance Notice to students in accordance with the requirements of Part 6 of the Rules (including paragraph 68 of the Rules) and which allows the time frame for the students to respond to the VSL Written Tuition Assurance Offer in accordance with paragraphs 69 and 70 of the Rules;
- (c) arranging interviews with individual students;
- (d) administering a student questionnaire to ascertain:
 - (i) the name of the student's approved course;
 - (ii) the remaining length of that course; and
 - (iii) whether they will accept the VSL Written Tuition Assurance Offer;
- (e) if the student has accepted the VSL Written Tuition Assurance Offer:
 - (i) matching that student with an appropriate replacement course with ASTAS-VSL Member(s) at an appropriate location(s); or
 - (ii) offering that student placement in an appropriately purchased suitable alternative replacement course to be delivered for this purpose through an ASTAS-VSL Member or other approved provider approved by the GARC for that purpose; and
- (f) if ACPET determines that there is no replacement course for the student:
 - (i) determining the process by which the student may review that decision under paragraph 72 of the Rules; and
 - (ii) subject to that review, outlining how the student's FEE-HELP balance will be credited by the First Provider on behalf of the Secretary (being the amount of the VET student loan that has been used to pay tuition fees for the student for the approved course (or component of that course) which has ceased to be provided.

14.10 Notification Obligations

Under paragraph 52 of the Rules, if:

- (a) a notice is served on an ASTAS-VSL Member, or proceedings are taken to cancel that

ASTAS-VSL Member's incorporation or registration under the Corporations Act 2001 or otherwise dissolve it as a legal entity; or

- (b) an ASTAS-VSL Member comes under a form of external administration under the Corporations Act or an equivalent arrangement; or
- (c) an ASTAS-VSL Member fails to comply with or set aside a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
- (d) an ASTAS-VSL Member is unable to pay all of its debts when they become due; or
- (e) proceedings are initiated to obtain an order for an ASTAS-VSL Member's winding up; or
- (f) at a meeting of the ASTAS-VSL Member, a resolution is made to wind up that ASTAS-VSL Member,

or, under paragraph 60 of the Rules, if:

- (g) an ASTAS-VSL Member ceases to be a registered training organisation; or
- (h) an ASTAS-VSL Member's approval as an approved course provider is revoked; or
- (i) an ASTAS-VSL Member makes changes to the training being delivered to the extent that an approved course is no longer the same in substance as the approved course in which students originally enrolled;
- (j) the enrolment of students has been cancelled in a way that does not comply with the ASTAS-VSL Member's procedures for withdrawal and cancellation,

the ASTAS-VSL Member must immediately notify the Council and the Regulator to that effect. If the Regulator becomes aware by any means that any of those circumstances apply, or may apply, to an ASTAS-VSL Member, then:

- (k) the ASTAS-VSL 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;
- (l) the Secretary may, after considering any information provided by the ASTAS-VSL Member under the preceding paragraph, declare in writing that, for the purposes of the Rules, the ASTAS-VSL Member has ceased to provide one or more approved courses specified in the declaration; and
- (m) the Secretary must give a copy of the declaration to the ASTAS-VSL Member and the Council.

14.11 Acceptance of a VSL Written Tuition Assurance Offer

When a student accepts a VSL Written Tuition Assurance Offer, the student must provide the ASTAS-VSL Member offering placement (i.e. the Second Provider) with an irrevocable direction to the liquidator, administrator, receiver or external controller of the First Provider, or other holder of the student's prepaid fees, requiring that person to account to the Second Provider for any tuition fees (if any) held on behalf of that student.

14.12 Failure to Accept an Offer

If, after the GARC complies with paragraph 70 of the Rules and its obligations to make multiple VSL Written Tuition Assurance Offers for a replacement course, a displaced student does not accept a

final VSL Written Tuition Assurance Offer for a replacement course, the GARC must comply, will not make another VSL Written Tuition Assurance Offer for a replacement course to that student unless special circumstances justify it doing so.

14.13 Copies of Offers

Copies of each accepted VSL Written Tuition Assurance Offer for a replacement course will be given to the Regulator, the student (where necessary) and the ASTAS-VSL Member acting as the Second Provider and a copy will be retained by ASTAS-VSL.

14.14 Compliance with Rules

A displaced student must abide by the rules of the ASTAS-VSL Member acting as the Second Provider in respect of which he/she has accepted a VSL Written Tuition Assurance Offer, other than a rule relating to payment of a tuition fee for any replacement component of the course.

14.15 Acceptance of displaced student

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

14.16 Costs Consequences

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

14.17 FEE-HELP Debts

- (a) In accordance with the VSL tuition fee assurance, but subject to By-Laws 10.6 and 14.3, if, upon review under the Part 6 of the Rules, ACPET determines that there is no replacement course that complies with the VSL tuition assurance requirements:
 - (i) the student's tuition fees for the affected parts of the original course that were covered by a VET student loan will be repaid by ACPET to the Commonwealth upon receipt of an invoice from the Commonwealth; and
 - (ii) the student's FEE-HELP balance will be re-credited by the First Provider on behalf of the Secretary.

14.18 Definitions

In this By-Law 14, unless the contrary intention appears:

"Act" means the *VET Student Loans Act 2016* (Cth);

"approved course" has the same meaning as it does under the Act;

"approved course provider" has the same meaning as it does under the Act;

"ASTAS-VSL" has the meaning given in By-Law 10.2(b)(iii), being the Australian Student Tuition

Assurance Scheme for approved course providers whose tuition fees were paid for by a VSL;

“ASTAS-VSL Member” means a Member who is not an Exempt Provider and who is accepted by ACPET as a member of the ASTAS-VSL and **ASTAS-VSL Membership** has a corresponding meaning;

“covered fees” has the same meaning as it does under paragraph 56(3) of the Act;

“covered student” has the same meaning as it does in the Rules;

“Exempt Provider” has the same meaning as "assurance exempt provider" under the Rules;

“First Provider” means the provider of an original course;

“original course” has the same meaning as it does under the Rules;

“replacement component” has the meaning given to it in the Rules;

“replacement course” has the meaning given to it in the Rules;

“Rules” means the VET Student Loan Rules made under the Act;

“Second Provider” has the same meaning as "replacement provider" does in the Rules;

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

“VSL course assurance” means an offer of a replacement course with another ASTAS-VSL Member without any requirement to pay the other ASTAS-VSL Member any tuition fee for the replacement component of the replacement course;

“VSL tuition assurance requirements” means the tuition assurance requirements set out in Part 6 of the Rules;

“VSL tuition assurance scheme operator” has the meaning given to "tuition assurance scheme operator" in the Act;

“VSL Tuition Assurance Scheme” has the meaning given to "approved tuition assurance arrangement" in the Act;

“VSL tuition fee assurance” means, if, upon review under the Part 6 of the Rules, ACPET determines that there is no replacement course that complies with the VSL tuition assurance requirements, the student's tuition fees for the affected parts of the original course that were covered by a VET student loan will be repaid to the Commonwealth and the student's FEE-HELP balance will be re-credited;

“VSL Written Tuition Assurance Notice” means a written notice that must be provided to students enrolled in an approved course which an ASTAS-VSL Member has ceased to provide, which outlines:

- (a) the details of the replacement course to be offered under the VSL course assurance; and
- (b) an explanation of the VSL tuition fee assurance,

and other information in accordance with paragraph 69 of the Rules.

“VSL Written Tuition Assurance Offer” means the offer of a replacement course in accordance with the VSL course assurance and included in the VSL Written Tuition Assurance Notice.

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-VSL Member, subject to all times to the rights given to students by the Act, the Rules, other relevant legislation and the common law.

Attachment A – Nomination Form



Nomination Form For the Position of State and Territory Directors on the ACPET Board 20 / 20

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



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



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