BY-LAWS

of

AUSTRALIAN COUNCIL FOR PRIVATE
EDUCATION AND TRAINING
ACN 054 953 758

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Section A  General

Preamble

A. These By-Laws of the Australian Council for Private Education and Training ("the Council") and are made pursuant to Clause 19 of the Constitution.

B. These By-Laws are subject to the Constitution and are binding on all members.

C. Where there is any inconsistency between these By-Laws and the Constitution, the provisions of the Constitution shall prevail.

D. The powers and obligations delegated in terms of these By-Laws are subject always to the powers and obligations that the Council may have from time to time.

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 50% of those present at the AGM in person or by proxy, voting in favour of a resolution to amend the Constitution.
Section B  Membership

2. Requirements for Membership

2.1 Eligibility

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

(b) To further clarify the eligibility criteria:

(i) “a person, body, company entity or organisation” includes corporations whether private or public, and if public, whether listed or unlisted;

(ii) a company which is a subsidiary of a corporation may be eligible for membership even though the parent corporation is not eligible for membership.

2.2 Membership

(a) An applicant may be admitted as a Member when the Board is satisfied that the applicant has satisfied its membership requirements.

(b) The Board may admit to honorary life membership such individuals as it considers warrant recognition for exceptional services to ACPET and to private education and training.

(c) Members are required to comply with:

(i) the Council's Constitution;

(ii) the Council’s Code of Ethics; and

(iii) the applicable State and Federal legislation regarding the protection of prepaid funds, insurance and financial stability and related matters as may be in force from time to time and must provide such evidence thereof as may be required by the Council.

(d) An individual admitted to honorary life membership pursuant to Constitution clause 4.1(c) and By-Law 2.2(a) shall be categorised as a Category 1 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 registered and located outside Australia and who is a provider involved with private education and training may be admitted as an Affiliate Member under Constitution clause 4.1(b) and shall be categorised as a Category 1 Member and enjoy all privileges attaching to that category of membership including voting entitlements.
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 Chief Executive Officer 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 Chief Executive Officer shall approve or not approve the application for membership.

3.4 Date of admission to membership

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

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

4. Ineligibility Criteria

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; or
(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.

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.
Section C Committees

6. Committees

6.1 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.

6.2 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.

6.3 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 Category A Director of the Board representing that State or Territory unless otherwise determined by the Board. The Chair of ACPET and any Category B Director resident in that State or Territory shall be ex-officio a member of any such State or Territory Committee.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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

7.  Election of Board Directors of ACPET

7.1 Election of Category A 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 Category A 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 Category A Board Director positions must be made on authorised nomination forms (Attachment A), and these must be received by the Chief Executive Officer 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, Category A 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 Chief Executive Officer, 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 Category A Board Director positions.

(h) The results of the Election for Category A Board Directors will be announced by the independent Polling Officer 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.

7.2 Election of Category B Board Directors – Constitution clause11

(a) All Members of ACPET will be notified not less than sixty three (63) days before the Annual General Meeting of those Category B 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 Category B Board positions must be made on authorised nomination forms (Attachment G), and these must be received by the Chief Executive Officer no less than forty two (42) 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, Category B Board Directors positions are to be determined through the following voting system:

   (i) Ballots and explanatory notes in the form shown in Attachment H and Attachment I will be forwarded to each Member falling within their specific Category.

   (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 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 Chief Executive Officer, 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 Category B Board Directors.

(h) Ballots will be counted by the independent Polling Officer the day before the Annual General Meeting.
(i) Candidates may appoint a Scrutineer by completing a form as stipulated in Attachment J. The completed form must be returned to the Chief Executive Officer no less than 7 days before the date of the Annual General Meeting.

(j) The results of the Election for Category B Board Directors will be announced by the independent Polling Officer at the Annual General Meeting.

(k) 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.

(l) 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. Reporting, and financial planning and control

8.1 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.

8.2 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

9. Overseas Student Tuition Assurance Scheme

9.1 Definition of student

In this By-law, a student is an overseas student as defined in the ESOS Act 2000 (“the Act”).

9.2 Purpose

The purpose of the ACPET Overseas Student Tuition Assurance Scheme (“OSTAS”) is to ensure that overseas students receive the education or training for which they have paid, in accordance with the Act.

9.3 Application

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

9.4 Membership fees

Each member shall pay such membership fees as are prescribed by the Board from time to time and provide such information as the Board may require to assess an application for membership or continuation of membership.

9.5 Membership restrictions

Membership of the OSTAS is restricted to Council members, and members may only be expelled or suspended from the OSTAS in accordance with the provisions of the ACPET Code of Ethics.

9.6 No refund

A member who is expelled or suspended from the Council is not entitled to a refund of OSTAS subscription, save that the possibility of financial insolvency of a member is not grounds for expulsion or suspension from the OSTAS.

9.7 Notification to ACPET

A member will advise the Council immediately should the placement of students under the OSTAS become likely.

9.8 OSTAS Subcommittee

The Board will appoint a standing Subcommittee known as the OSTAS Subcommittee (“the Subcommittee”) to implement and oversee the operation of the OSTAS.

9.9 Policies for displaced students

The Subcommittee will establish the policies to be adopted for the placement of displaced students, subject to the provisions of applicable statutory legislation or regulation and will appoint an OSTAS Coordinator (“the Coordinator”) to assist it in its operations.
9.10 Acceptance of courses

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

(a) the member of the OSTAS is a current financial member of ACPET;
(b) the member is a current financial member of the OSTAS;
(c) the course is, in the opinion of the Coordinator, equivalent to another course or other courses offered by other OSTAS members; or in the opinion of the OSTAS Coordinator, provision can be made for the acquisition of an appropriate alternative course through financial and organisational arrangements to meet the continuance obligations under the Act.

9.11 Provision of details

OSTAS members will provide details of student enrolments and placement capacity on request by the Coordinator.

9.12 Placement committee

(a) In the event of a need for the placement of displaced students the Subcommittee will appoint an ad hoc Placement Committee to assist in the placement of displaced students, comprising local ACPET members chaired by the Coordinator or Director of the Board.

(b) The Coordinator of the Placement Committee will act as Liaison Officer to communicate with the Department of Education, Employment and Workplace Relations (DEEWR), the Department of Immigration and Citizenship (DIAC), and any liquidator, administrator or other relevant persons.

9.13 Role of the Placement Committee

The Placement Committee will:

(a) arrange a meeting of displaced students to advise them of:
   (i) OSTAS responsibilities for their placement in another institution,
   (ii) the reasons for their allocation to another member institution, and
   (iii) other necessary information to assist in the transfer.

(b) arrange interviews with individual students;

(c) administer a student questionnaire to ascertain:
   (i) the name of the student's course,
   (ii) the remaining length of the course,
   (iii) the student's study and travel plans, and
   (iv) the student's current accommodation arrangements;
(d) match students with appropriate courses at members' institutions located at appropriate locations; or offer students placement in an appropriately commissioned course to be delivered for this purpose through a member institution or other provider by commercial arrangement between the Scheme and that provider.

(e) mechanisms will be put in place which will attempt to identify offshore students (with or without visas).

(f) upon completion, provide a report to the board through the Subcommittee.

9.14 Offer of placement

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.

9.15 Acceptance of offer

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

9.16 Refusal of offer

If a displaced student refuses an offer of placement, or refuses to give the direction referred to in By-law 9.15, the Placement Committee will not provide another offer of placement unless there are special circumstances which it considers justify it so doing.

9.17 Copies to be provided

A copy of each signed offer of placement will be given to DEEWR, DIAC, the student and the accepting provider, and a copy will be retained by the OSTAS.

9.18 Agreement of displaced student

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

9.19 Exceptions to acceptance

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

(a) the displaced student has failed to give the direction referred to in By-law 9.15; or

(b) the displaced student has failed to agree or abide by the member's rules; or

(c) the member can provide evidence of special circumstances that indicate placement with the member would not be in the best interests of the displaced student.
9.20 Condition of membership

A condition of membership of the ACPET OSTAS shall be that members participate in the ACPET/IDP International Students in Australian Public and Private Institutions Survey, as and when required by the Board.

9.21 CRICOS Individual Provider Report

On joining the OSTAS and when renewing OSTAS membership each year, every OSTAS member with a current CRICOS registration is required to provide a copy of the member’s CRICOS Individual Provider Report to the Membership Renewal Officer.

9.22 Multiple membership

Members of the OSTAS who have two or more CRICOS Provider Codes must have one ACPET membership and one OSTAS membership for each CRICOS code for which coverage under the OSTAS is required. Members must also provide details, as required, of each separate location where courses registered under the CRICOS code covered by the OSTAS are being delivered.

9.23 Reimbursement

Where a member of the OSTAS exempt by statutory right from the financial requirements of the ESOS Act is no longer able to deliver a course(s), enrolled students shall be eligible for a reimbursement of fees paid in advance for services not provided where the student decides to return home rather than be placed with an alternative provider.

10. Australian Student Tuition Assurance Scheme

10.1 Definition of student

In this By-law, a student is an Australian student if a citizen or permanent resident of Australia and enrolled as a full or part-time student in approved programs leading to an accredited award who has paid tuition fees in advance for a period of ten weeks or more and not a student as defined in the ESOS Act 2000.

10.2 Purpose

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

10.3 Application

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

10.4 Membership fees

Each member shall pay such membership fees as are prescribed by the Board from time to time and provide such information as the Board may require to assess an application for membership or continuation of membership.
10.5 Membership

Membership of the ASTAS is restricted to Council members, and members may only be expelled or suspended from the ASTAS in accordance with the provisions of the ACPET Code of Ethics.

10.6 No refund

A member who is expelled or suspended from the Council is not entitled to a refund of ASTAS subscription, save that the possibility of financial insolvency is not grounds for expulsion or suspension from the ASTAS.

10.7 Notification to ACPET

A member will advise the Council immediately should either the placement of students under the ASTAS become likely or a refund of tuition fees pursuant to the Higher Education Support Act 2003 be contemplated.

10.8 ASTAS Subcommittee

The Board will appoint a standing Subcommittee known as the ASTAS Subcommittee (“the Subcommittee”) to implement and oversee the operation of the ASTAS.

10.9 Policies for displaced students

The Subcommittee will establish the policies to be adopted for the placement of displaced students or the refund of tuition fees pursuant to the Higher Education Support Act 2003, subject to the provisions of applicable statutory legislation or regulation and will appoint an ASTAS Coordinator (“the Coordinator”) to assist it in its operations.

10.10 Acceptance of courses

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

(a) the member of the ASTAS is a current financial member of ACPET;

(b) the member is a current financial member of the ASTAS;

(c) the course is, in the opinion of the Coordinator, equivalent to another course or other courses offered by other ASTAS members; or in the opinion of the ASTAS Coordinator, provision can be made for the acquisition of an appropriate alternative course through financial and organisational arrangements or is a course for which tuition assurance arrangements are necessary pursuant to the Higher Education Support Act 2003.

10.11 Provision of details

(a) ASTAS members will provide details of student enrolments and placement capacity on request by the Coordinator.

(b) On joining the ASTAS and when renewing membership each year, every ASTAS member is required to provide to the TAS Coordinator details regarding the number of full-time and part-time students enrolled in each course or program leading to an accredited award covered under the ASTAS for the current academic year, in such a form as the Chief Executive Officer may request.
10.12 Placement committee

(a) In the event of a need for the placement of displaced students the Subcommittee will appoint an ad hoc Placement Committee to assist in the placement of displaced students, comprising local ACPET members chaired by the Coordinator or Director of the Board.

(b) The Coordinator of the Placement Committee will act as Liaison Officer to communicate with relevant government agencies and any liquidator, administrator or other relevant persons.

10.13 Role of the Placement Committee

The Placement Committee will:

(a) arrange a meeting of displaced students to advise them of:
   (i) ASTAS responsibilities for their placement in another institution,
   (ii) the reasons for their allocation to another member institution, and
   (iii) eligibility for a refund of fees if students were enrolled in a course for which tuition assurance arrangements were necessary pursuant to the Higher Education Support Act 2003.
   (iv) other necessary information to assist in the transfer.

(b) arrange interviews with individual students;

(c) administer a student questionnaire to ascertain:
   (i) the name of the student's course,
   (ii) the remaining length of the course,

(d) match students with appropriate courses at members' institutions located at appropriate locations; or offer students placement in an appropriately purchased course to be delivered for this purpose through a member institution or other provider by commercial arrangement between the Scheme and that provider, or determine eligibility for a refund of fees if students were studying in a course for which tuition assurance arrangements were necessary pursuant to the Higher Education Support Act 2003.

(e) upon completion, provide a report to the board through the Subcommittee.

10.14 Offer

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

10.15 Acceptance of offer

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

10.16 Refusal of offer

If a displaced student refuses an offer of placement, or refuses to give the direction referred to in By-law 10.13, the Placement Committee will not provide another offer of placement unless there are special circumstances which it considers justify it so doing.

10.17 Copies to be provided

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

10.18 Agreement of displaced student

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

10.19 Exceptions to acceptance

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

(a) the displaced student has failed to give the direction referred to in By-law 10.13;

(b) the displaced student has failed to agree or abide by the member’s rules; or

(c) the member can provide evidence of special circumstances that indicate placement with the member would not be in the best interests of the displaced student.

10.20 Member costs

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

10.21 Refund

Where it is determined that a student is eligible for a refund of tuition fees pursuant to the requirements of the Higher Education Support Act 2003, the Placement Committee shall authorise such payment to be made expeditiously and directly to the student or to another provider with whom the student has decided to undertake a similar course of study.

10.22 Multiple membership

Members of the ASTAS, delivering courses or programs in two or more States or Territories, must have one ASTAS membership for each State/Territory of operation for which cover under the ASTAS is sought. Members must also provide details, as required, of each separate location in each State/Territory where students are being taught courses covered under the ASTAS.
11. Australian Student Tuition Assurance Scheme – Higher Education (ASTAS-HE)

11.1 Application of By-Law

(a) This by-law applies to any higher education provider other than an Exempt Provider that is an ASTAS Member in respect of students to whom the ASTAS-HE Member is providing a course of study, which the ASTAS-HE Member then ceases to provide. It does not apply to overseas students.

(b) (Exempt Providers are nevertheless required to comply with paragraph 3.10.1 of the Guidelines.)

(c) ASTAS-HE Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines (and as amended from time to time) which are available at http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/C6BAE37C63EBBD47CA257292001D2909?OpenDocument

(d) ASTAS-HE Members should particularly familiarise themselves with their obligations as First Providers and Second Providers under those chapters of the Guidelines (including paragraph 2.3.10 of the Guidelines in relation to Second Providers that are not yet approved as higher education providers under the Act), bearing in mind that each ASTAS-HE Member's approval as a higher education provider under the Act is, in part, contingent upon maintaining compliance with the quality and accountability requirements, as defined in Division 19 of the Act, of which the tuition assurance requirements are part (section 19-40 of the Act refers).

(e) Under ASTAS-HE, ACPET is, and undertakes to ASTAS-HE Members, that it will meet all the obligations of, a tuition assurance administrator under the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines and as amended from time to time.

(f) Under ASTAS-HE, ASTAS-HE membership means that members undertake to ACPET that they will meet all of their obligations as First Providers and Second Providers under the tuition assurance requirements as set out in chapters 2 and 3 of the Guidelines and as amended from time to time.

(g) To the extent of any inconsistency between this by-law and the tuition assurance requirements (including any provision of the Act or of chapter 2 or chapter 3 of the Guidelines that is not provided for in this by-law), the tuition assurance requirements take precedence.

11.2 Purpose

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

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

(b) ACPET, in its capacity as tuition assurance administrator within the meaning of chapters 2 and 3 of the Guidelines and as amended from time to time, complies with the tuition assurance requirements; and
(c) In particular, if an ASTAS-HE Member (First Provider) ceases to provide a course of study, eligible students of the ASTAS-HE Member can use the ASTAS-HE to choose to either:

(i) complete their course of study by enrolling in a similar course of study with another higher education provider (Second Provider), leading to the same or a comparable qualification, and receive from the Second Provider full credit for any successfully completed units of study, without paying any tuition fee for the replacement units undertaken with the Second Provider nor be required to request Commonwealth assistance in relation to any replacement unit; or

(ii) obtain from ACPET a refund of tuition fees already paid for units of their course of study which they have not completed at the time the ASTAS-HE Member (First Provider) ceased to provide that course of study.

11.3 Membership Fees

Each ASTAS-HE Member shall pay such membership fees as are prescribed by the Board from time to time and provide such information as the Board may require to assess an application for ASTAS-HE membership or contribution of that membership.

11.4 Providing Information

On joining the ASTAS-HE and when reviewing membership each year, every ASTAS-HE Member is required to provide to the Administrator details regarding the number of full-time and part-time students enrolled in each course or unit covered under the ASTAS-HE for the current academic year, in such a form as the ACPET Chief Executive Officer may request.

11.5 Membership of ASTAS-HE

(a) Membership of the ASTAS-HE is restricted to Council members. ASTAS-HE Members may only be expelled or suspended from the ASTAS-HE in accordance with the provisions of the ACPET Code of Ethics.

(b) Cancellation of ACPET and ASTAS-HE membership or ASTAS-HE membership only must occur under the following circumstances:

(i) Written notification to the member and to the Regulator outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. The notification must state that the provider will need to provide alternative arrangements under the HESA and the Higher Education Provider Guidelines (HEPG) to the Regulator for tuition assurance requirements. (Such as exemption in 16-31 or 19-40 HESA and 2.2.2 of the HEPG. All requirements for 2.2.2 of the HEPG must be met by the ACPET member and ACPET in relation to notification to the Regulator).

(ii) During the 90 day period which provides the ACPET member time to comply with the requirements of point 1. ACPET will continue cover for Tuition Assurance as per normal.

(c) ASTAS-HE cover for the students of the ACPET member will remain in the following circumstances:
(i) Where an ASTAS-HE member is deregistered with any relevant training regulatory departments (such as Registered Training Organisation Status, CRICOS, HEP approval), or is in the process of administration / liquidation or likely to be in such process, in default of the HESA which is deemed by the Regulator to be leading to an likely ASTAS-HE activation process.

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

11.6 Effect of Expulsion or Suspension

(a) An ASTAS-HE Member which is expelled or suspended from ACPET is not entitled to a refund of its ASTAS-HE Membership fees.

(b) In addition to the provisions for expulsion and suspension provided for in the ACPET Code of Ethics, grounds for expulsion or suspension of ASTAS-HE Members include their failure to comply with section 19-75 of the Act (the obligation to inform the Minister of an event which may affect the ASTAS-HE Member’s ability to provide a course) where such failure of compliance results in a notification to ACPET by the Regulator according to the HESA and privacy law. The intent of this clause is that where HEP status is cancelled ACPET may act according to By-Law 11.5

(c) ACPET will inform REGULATOR of any expulsion or suspension of an ASTAS-HE Member according to the requirements of By-Law 11.5

11.7 Notification to ACPET

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

11.8 ASTAS-HE Sub-Committee

The Board will appoint the ASTAS-HE Sub-Committee to implement and oversee the operation of the ASTAS-HE. The ASTAS-HE Sub-Committee will appoint a person as the Administrator.

11.9 Implementation By ASTAS-HE Sub-Committee

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

11.10 Placement/Refund Committee

If an ASTAS-HE Member ceases to provide a course of study, the ASTAS-HE Sub-Committee will appoint a Placement/Refund Sub-Committee, comprising local ASTAS-HE Members chaired by the Administrator or a Director of the Board, to ensure compliance with the provisions of the Guidelines. The ASTAS-HE Sub-Committee may also appoint such further sub-committees as it determines are necessary to implement and operate the ASTAS-HE.
11.11 Role of Administrator

The Administrator will liaise, on behalf of the ASTAS-HE Sub-Committee, with relevant government agencies (including The REGULATOR and the Australian Taxation Office), any external controller of an ASTAS-HE Member and any other relevant persons.

11.12 Role of The Placement/Refund Committee

The Placement/Refund sub-committee will:-

(a) Arrange a meeting of displaced students to advise them of:-

   (i) their rights to choose between the course assurance option and the student contribution/tuition repayment option; and

   (ii) the process whereby the option chosen by the student under paragraph (a) will be implemented;

(b) issue a written tuition assurance offer to students in accordance with the requirements of Chapter 2 of the Guidelines and which allows for a fair and reasonable time frame to the students to respond to such written offer. Such date must be a fair and reasonable time after the interview of the student and the dispatching of hard copy letter to the students mail address.

(c) arrange interviews with individual students;

(d) administer a student questionnaire to ascertain:-

   (i) the name of the student’s course of study;

   (ii) the remaining length of that course; and

   (iii) which option under by-law 11.12(a) the student has chosen;

(e) if the student has chosen the course assurance option:-

   (i) match that student with an appropriate course of study with ASTAS-HE Member(s) at an appropriate location(s); or

   (ii) offer that student placement in an appropriately purchased suitable alternative course of study to be delivered for this purpose through an ASTAS-HE Member or other higher education provider approved by the ASTAS-HE Placement Committee for that purpose; and

   (iii) give to that student a Placement Offer;

(f) if the student has chosen the student contribution/tuition fee repayment option:-

   (i) determine the eligibility of that student for that option;

   (ii) pay the student the total of any up-front payments paid for that unit of study by the student (or on behalf of the student by any party other than the Commonwealth); and

   (iii) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the ASTAS-HE member which ceased providing the
course of study in discharge of the student’s liability to pay his or her student contribution amount for tuition fees for the unit; and

(iv) provide each student with a Written Tuition Assurance Offer at or before the meeting referred to in paragraph 11.12(a).

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

(a) the ASTAS-HE Member must within a period specified by the REGULATOR, provide the Secretary with such information that may be reasonably be requested in relation to that event;

(b) the Secretary may, after considering any information provided by the ASTAS-HE Member under the preceding paragraph declare in writing that, for the purposes of the Guidelines, the ASTAS-HE Member has ceased to provide one or more courses of study specified in the declaration; and

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

11.14 Acceptance of a Placement Offer

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

11.15 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) the Placement/Refund Committee will not make another Written Tuition Assurance Offer to that student unless special circumstances justify it doing so.

11.16 Copies of Offers

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

11.17 Compliance with Rules

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

11.18 Acceptance of Displaced Student

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

11.19 Costs Consequences

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

11.20 Fee-Help Debts

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

11.21 Interstate Membership

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

11.22 Commonwealth Supported Places – Students

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

(b) Where a refund option is chosen by a student with a Commonwealth Support Place the fees refunded will be to the appropriate payee of the original fees according to the relevant Commonwealth Support legislation.

11.23 Definitions

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

Act means the Higher Education Support Act 2003;
Administrator means a person employed by ACPET to manage ASTAS-HE;

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

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

ASTAS-HE Co-ordinator means a person appointed by the ASTAS-HE sub-committee to assist it in the implementation of the ASTAS-HE;

ASTAS-HE Sub-Committee means the sub-committee (comprising Council appointees) established by by-law 10.9;

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

(a) if a course does not start on;

(i) the date the course was scheduled to start;

(ii) a later date that has been agreed between the ASTAS-HE Member and the enrolled in the course; or

(b) the ASTAS-HE Member commences providing the course to a person and then, before the person has completed the course, ceases to provide that course (for any reason); or

(c) the Minister has suspended or revoked approval of the ASTAS-HE Member as a higher education provider under the Act and has not made a determination pursuant to paragraph 22-25(1)(b) of the Act in respect of that course; or

(d) notice is served on the ASTAS-HE Member or proceedings are taken to cancel the ASTAS-HE Member's incorporation or registration or to dissolve the ASTAS-HE Member as a legal entity; or

(e) the ASTAS-HE Member comes under one of the forms of external administration referred to Chapter 5 of the Corporations Act 2001 of equivalent provisions in other legislation, or an order has been made to place the ASTAS-HE Member under the external administration; or

(f) in the case of a self-accrediting institution, the ASTAS-HE Member ceases to have its name included, or to own or control a business name that is included, in the list of non self-accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one of more higher education awards; or

(g) in the case of a self-accrediting institution, the ASTAS-HE Member ceases to have its name included, or to own or control a business name that is included in the list of self-accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution empowered to issues its own qualifications; or

(h) a declaration is made by the Secretary of the REGULATOR under paragraph 2.1.31b) of the Guidelines that the ASTAS-HE Member has ceased to provide the
course by reason that the ASTAS-HE Member is subject to any of the following circumstances:

(i) The ASTAS-HE Member fails to comply with or set aside a statutory demand within the meaning of section 459F of the Corporations Act 2001; or

(ii) the ASTAS-HE Member is unable to pay all of its debts when they become due; or

(iii) proceedings are initiated to obtain an order for the ASTAS-HE Member’s winding up or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the ASTAS-HE Member;

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

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

Regulator means Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) and its successors;

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

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

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

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

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

higher education provider has the same meaning as it does in the Act;

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

Placement/Refund Committee means the committee established by by-law 10.11;

replaced unit and “replacement unit” have the same meanings as they do in the Guidelines;

Secretary is the official REGULATOR position referred to in the Guidelines;

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

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

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

**tuition assurance requirements** means the tuition assurance requirements set out in chapters 2 and 3 of the Guidelines;

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

11.24 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.

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

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

12.1 Overview of the ACPET Vet Tuition Assurance Scheme

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

(a) ACPET will:

(i) establish and operate an ASTAS-VET for the benefit of all ASTAS-VET Members and their eligible students to ensure that eligible students can access the VET course assurance option or the VET tuition fee repayment option set out in the VET Provider Guidelines as amended from time to time; and

(ii) establish and support the ASTAS-VET Sub-Committee and the Replacement/Refund Committee to perform the activities of those committees as specified in this By-Law; and

(iii) at all times meet the corporate separation requirements for a VET tuition assurance administrator as specified in the VET Provider Guidelines as amended from time to time.

(b) ASTAS-VET Members will support the operation of the VET Tuition Assurance Scheme by fulfilling their VET tuition assurance requirements as described in:

(i) the Higher Education Support Act 2003 as amended from time to time; and

(ii) the VET Provider Guidelines as amended from time to time; and

(iii) these By-Laws.

(c) In the event of any inconsistency between this By-Law and any provision in the VET Provider Guidelines or in the Higher Education Support Act 2003, the terms of the VET Provider Guidelines and the Higher Education Support Act 2003 will prevail to the extent of that inconsistency.
12.2 Application of By-Law

(a) This by-law applies to any VET provider other than an Exempt Provider that is an ASTAS-VET Member in respect of eligible students (ref clause 43, schedule 1A of the Act) to whom the ASTAS-VET Member is providing a VET course of study, which the ASTAS-VET Member then ceases to provide. It does not apply to overseas students.

(b) ASTAS-VET Members are required to become familiar with the requirements and operation of the tuition assurance requirements as set out in chapter 3 of the Guidelines (and as amended from time to time) which are available at http://www.comlaw.gov.au

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

(d) Under ASTAS-VET, ACPET is, and undertakes to ASTAS-VET Members, that it will meet all the obligations of, a tuition assurance administrator under the tuition assurance requirements as set out in chapter 3 of the Guidelines and as amended from time to time.

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

12.3 Membership Fees

Each ASTAS-VET Member shall pay such membership fees as are prescribed by the Board from time to time and provide such information as the Board may require to assess an application for ASTAS-VET membership or contribution of that membership.

12.4 Providing Information

On joining the ASTAS-VET and when reviewing membership each year, every ASTAS-VET Member is required to provide to the Administrator details regarding the number of full-time and part-time students enrolled in each course or unit covered under the ASTAS-VET for the current academic year, in such a form as the ACPET Chief Executive Officer may request.

12.5 Membership of ASTAS-VET

(a) Membership of the ASTAS-VET is restricted to Council members. ASTAS-VET Members may only be expelled or suspended from the ASTAS-VET in accordance with the provisions of the ACPET Code of Ethics.

(b) Cancellation of ACPET and ASTAS-VET membership or ASTAS-VET membership only must occur under the following circumstances:
(i) 1) Written notification to the member and to the Regulator outlining the cancellation to occur in 90 days from notification with right to appeal to ACPET. The notification must state that the provider will need to provide alternative arrangements under the HESA and the VET Provider Guidelines (VETPG) to the Regulator for tuition assurance requirements. (Such as exemption in 3.2.5 of the VETPG. All requirements for 3.2.5 of the VETPG must be met by the ACPET member and ACPET in relation to notification to the Regulator).

(ii) 2) During the 90 day period which provides the ACPET member time to comply with the requirements of point 1. ACPET will continue cover for VET Tuition Assurance as per normal.

(c) ASTAS-VET cover for the students of the ACPET member will remain in the following circumstances:

(i) 1) Where an ASTAS-VET member is deregistered with any relevant training regulatory departments (such as Registered Training Organisation Status, CRICOS, HEP approval), or is in the process of administration / liquidation or likely to be in such process, in default of the HESA which is deemed by the Regulator to be leading to an likely ASTAS-VET activation process.

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

12.6 Effect of Expulsion or Suspension

(a) An ASTAS-VET Member which is expelled or suspended from ACPET is not entitled to a refund of its ASTAS-VET Membership fees.

(b) In addition to the provisions for expulsion and suspension provided for in the ACPET Code of Ethics, grounds for expulsion or suspension of ASTAS-VET Members include their failure to comply with clause 25, schedule 1A of the Act (the obligation to inform the Minister of an event which may affect the ASTAS-VET Member's ability to provide a course) where such failure of compliance results in a notification to ACPET by the Regulator according to the HESA and privacy law. The intent of this clause is that where RTO status is cancelled ACPET may act according to By-Law 12.5

(c) ACPET will inform REGULATOR of any expulsion or suspension of an ASTAS-VET Member according to the requirements of By-Law 12.5.

12.7 Notification to ACPET

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

(a) The Board will appoint the ASTAS-VET Sub-Committee to implement and oversee the operation of the ASTAS-VET. The ASTAS-VET Sub-Committee will appoint a person as the Administrator.

(b) The ASTAS-VET Sub-Committee will be comprised of a majority of people who do not represent ASTAS-VET members.

(c) The ASTAS-VET Sub-Committee will review all activities of the Placement/Refund Committee to manage any conflicts of interests for Placement/Refund Committee members.

12.9 Implementation by ASTAS-VET Sub-Committee

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

12.10 Placement/Refund Committee

(a) If an ASTAS-VET Member ceases to provide a VET course of study, the ASTAS-VET Sub-Committee will appoint a Placement/Refund Sub-Committee, comprising local ASTAS-VET Members chaired by the Administrator or a Director of the Board, to ensure compliance with the provisions of the Guidelines. The ASTAS-VET Sub-Committee may also appoint such further sub-committees as it determines are necessary to implement and operate the ASTAS-VET.

(b) Any member of the Placement/Refund Committee must declare all actual or perceived conflicts of interest (in relation to their role as member of the Placement/Refund Committee) to the ASTAS-VET Sub-Committee and manage those conflicts of interest as directed by the ASTAS-VET Sub-Committee.

12.11 Role of Administrator

The Administrator will liaise, on behalf of the ASTAS-VET Sub-Committee, with relevant government agencies (including The REGULATOR and the Australian Taxation Office), any external controller of an ASTAS-VET Member and any other relevant persons.

12.12 Role of the Placement/Refund Committee

(a) The Placement/Refund sub-committee will:

   (i) Arrange a meeting of displaced students to advise them of:

       (A) their rights to choose between the course assurance option and the student contribution/tuition repayment option; and

       (B) the process whereby the option chosen by the student under paragraph (a) will be implemented;

   (b) issue a written VET tuition assurance offer to students in accordance with the requirements of Chapter 3 of the Guidelines and which allows for a fair and reasonable time frame to the students to respond to such written offer. Such date must be a fair and reasonable time after the interview of the student and the dispatching of hard copy letter to the students mail address.
(c) arrange interviews with individual students;

(d) administer a student questionnaire to ascertain:-

(i) the name of the student’s VET course of study ;

(ii) the remaining length of that course; and

(iii) which option under by-law 12.12(a)(i) the student has chosen;

(e) if the student has chosen the course assurance option:-

(i) match that student with an appropriate VET course of study with ASTAS-VET Member(s) at an appropriate location(s); or

(ii) offer that student placement in an appropriately purchased suitable alternative VET course of study to be delivered for this purpose through an ASTAS-VET Member or other VET provider approved by the ASTAS-VET Placement Committee for that purpose; and

(iii) give to that student a written VET tuition assurance offer of course placement;

(f) if the student has chosen the student contribution/tuition fee repayment option:-

(i) determine the eligibility of that student for that option;

(ii) pay the student the total of any up-front payments paid for that unit of study by the student (or on behalf of the student by any party other than the Commonwealth); and

(iii) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the ASTAS-VET member which ceased providing the VET course of study in discharge of the student’s liability to pay his or her tuition fees for the unit; and

(iv) provide each student with a written VET tuition assurance offer of course placement at or before the meeting referred to in paragraph 12.12(a)(i).

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

(a) the ASTAS-VET Member must within a period specified by the REGULATOR, provide the Secretary with such information that may be reasonably be requested in relation to that event;

(b) the Secretary may, after considering any information provided by the ASTAS-VET Member under the preceding paragraph (12.13(a)), declare in writing that, for the purposes of the Guidelines, the ASTAS-VET Member has ceased to provide one or more courses of study specified in the declaration; and

(c) the Secretary must give a copy of the declaration to the ASTAS-VET Member and the Council.
12.14 Acceptance of a Written Vet Tuition Assurance Offer of Course Placement

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

12.15 Failure to Accept an Offer

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

12.16 Copies of Offers

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

12.17 Compliance with Rules

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

12.18 Acceptance of Displaced Student

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

12.19 Costs Consequences

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

12.20 Fee-Help Debts

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

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

12.22 Definitions

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

‘Act’ means the Higher Education Support Act 2003;

“Administrator” means ACPET (as a corporate entity);

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

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

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

“ASTAS-VET Sub-Committee” means the sub-committee (comprising Council appointees) established by by-law 10.9;

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

(a) if a course does not start on;
   (i) the date the course was scheduled to start;
   (ii) a later date that has been agreed between the ASTAS-VET Member and the enrolled in the course; or

(b) the ASTAS-VET Member commences providing the course to a person and then, before the person has completed the course, ceases to provide that course (for any reason); or

(c) the Minister has suspended or revoked approval of the ASTAS-VET Member as a VET provider under the Act and has not made a determination pursuant to paragraph clause 35.1 or 37.1 of schedule 1A of the Act in respect of that course; or

(d) Notice is served on the ASTAS-VET Member or proceedings are taken to cancel the ASTAS-VET Member’s incorporation or registration or to dissolve the ASTAS-VET Member as a legal entity; or

(e) the ASTAS-VET Member comes under one of the forms of external administration referred to Chapter 5 of the Corporations Act 2001 of equivalent provisions in other legislation, or an order has been made to place the ASTAS-VET Member under the external administration; or
(f) the ASTAS-VET Member ceases to be a registered training organisation as listed on the National Training Information Service (NTIS); or

(g) a declaration is made by the Secretary of the REGULATOR under paragraph 3.1.35b) of the Guidelines that the ASTAS-VET Member has ceased to provide the course by reason that the ASTAS-VET Member is subject to any of the following circumstances:

(i) The ASTAS-VET Member fails to comply with or set aside a statutory demand within the meaning of section 459F of the Corporations Act 2001; or

(ii) the ASTAS-VET Member is unable to pay all of its debts when they become due; or

(iii) proceedings are initiated to obtain an order for the ASTAS-VET Member’s winding up or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the ASTAS-VET Member;

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

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

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

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

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

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

“Placement/Refund Committee” means the committee established by by-law 10.11;

“Regulator” means Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) and its successors;

“replaced unit” and “replacement unit” have the same meanings as they do in the Guidelines;

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

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

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

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

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

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

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

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

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

12.23 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.

12.24 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.
Nomination Form
For the Position of Category A Director on the ACPET Board

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

Signature ........................................Date..........  

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) Category A Board Director position.

Signature ........................................Date..........  

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

Signature ........................................Date..........
Notice of Election
For the Election of Category A Directors
on the ACPET Board 200 / 200

Direction to Voters:
There have been (No) nominations for the (name State or Territory) Category A Board Director position. An election is therefore required.

The following individuals have been nominated for the (name State or Territory) Category A 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
Ballot Paper
For the Election of Category A Directors on the ACPET Board 200 / 200

Direction to Voters:
There have been (No) nominations for the (name State or Territory) Category A 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

<table>
<thead>
<tr>
<th>Preference</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name 1</td>
</tr>
<tr>
<td></td>
<td>Name 2</td>
</tr>
<tr>
<td></td>
<td>Name 3</td>
</tr>
<tr>
<td></td>
<td>Name 4</td>
</tr>
</tbody>
</table>

Note:-

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

(Name)
Chief Executive Officer
Address
Date
Nomination Form
For the Position of Category B Director on the ACPET Board 200 / 200

I (name in full of candidate) of (organisation) wish to nominate myself or am willing to be nominated for the Category B Board Director position.

Signature ........................................Date..........  

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 Category B Board Director position.

Signature ........................................Date..........  

Where necessary:
I (name in full and position) of (name of organisation) wish to state that (name of candidate) represents (name of organisation) and is supported in their nomination for the Category B Board Director position.

Signature ........................................Date..........  

(Name )
Chief Executive Officer
Address
Date
Notice of Election
For the Election of Category B Directors
on the ACPET Board 200 / 200

Direction to Voters:
There have been (No) nomination/s for the Category B Board Director positions on the ACPET Board 200 / 200. An election is therefore required.

The following individuals have been nominated for the Category B Board Director positions on the ACPET Board 200 / 200.

Name
Name 1
Name 2
Name 3
Name 4

Note:-
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
Ballot Paper
For the Election of Category B Directors
on the ACPET Board 200 / 200

Direction to Voters:
There have been (No) nomination/s for the Category B Board Director positions on the ACPET Board 200 / 200.

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

<table>
<thead>
<tr>
<th>Preference</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name 1</td>
</tr>
<tr>
<td></td>
<td>Name 2</td>
</tr>
<tr>
<td></td>
<td>Name 3</td>
</tr>
<tr>
<td></td>
<td>Name 4</td>
</tr>
</tbody>
</table>

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

(Name )
Chief Executive Officer
Address
Date
Attachment J

Appointment of Scrutineer

I (Name of candidate) of (Organisation) am a candidate for (nominate Board Director position) on the 200 / 200 Board of the Australian Council for Private Education and Training.

I would like to appoint (name scrutineer) of (name organisation) to act as Scrutineer for election of the (nominate Board Director position).

Signed ..........................................................................

Dated .............................................................................

Note:-
This form must be completed and received by the National Executive Officer no less than seven (7) days before the date of the Annual General Meeting

(Name )
Chief Executive Officer
Address
Date