Governance, Audit and Risk Committee

Terms of Reference

of

AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING
ACN 054 953 758

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1. **Committee Objective**

The objective of the Governance, Audit and Risk Committee (the Committee) is to assist the Board in discharging its responsibilities with respect to overseeing all aspects of ACPET’s corporate governance; financial reporting, control and audit functions; and management of business risk, including specifically the risks associated with the company’s Tuition Assurance Schemes.

2. **Membership**

The Committee shall be appointed by the Board and shall consist of no less than 4 Board members, including the Committee Chair, nominated by the Board.

The National Chair shall be a member of the Committee, *ex officio*, but may not be committee Chair. The Deputy Chief Executive Officer, will provide secretariat support to the Committee.

Committee members shall have skills including:

- A working knowledge of ACPET and its activities
- The ability to read and analyse financial statements.
- A good understanding of business and financial risks and related controls and control processes.
- A sound knowledge of the business/area within which the organisation operates.
- A sound knowledge of corporate governance

A quorum shall be half the members plus one.

3. **Operating Principles**

3.1 **Responsibilities**

The Committee is responsible for providing advice to the Board on matters related to:

a) The governance of the organisation
b) The financial operations and annual external financial audit of the organisation
c) The risks facing the organisation, including explicitly the Tuition Assurance Schemes the organisation operates
d) CEO appointment, performance and remuneration
e) Grievances raised by members or Directors relating to members of the National Board
f) Supervision of ACPET’s Show Cause processes and special investigations when requested by the Board, and
g) Any other functions and responsibilities as directed by the Board.

The Committee shall report to the Board after each committee meeting or as specified or requested by the Board. Committee meetings shall be minuted with a copy to be tabled at the following Board meeting.

The Committee shall submit an annual report to the Board summarising the Committee’s activities during the year and the related significant results and findings.

3.2 **Meeting operations**

The Committee may have in attendance such members of ACPET management and such other persons, as it deems necessary to contribute to the work of the committee.

All directors shall be entitled to attend all meetings of the Committee.
The Chair shall call a meeting of the Committee if so requested by any Committee member, by the Board, or by the external auditors.

Adequate notice of all meetings and such notice shall be distributed to the members of the Committee, directors and appropriate staff. The Chair shall draw up an agenda for the meeting to be circulated to the members of the Committee and other invitees at least one week prior to the meeting.

Meetings shall be held at least four times each year, with additional meetings to be scheduled as and when necessary.

Working Groups

The Committee shall have the authority to establish permanent and temporary working groups to assist it in its work. Membership of these working groups shall be determined by the ACPET Board on the recommendation of the Committee.

3.3 Governance

In relation to the organisation’s corporate governance, the Committee will:

a) ensure that ACPET’s Corporate Governance Policy is reviewed annually
b) provide the Board with strategic advice relating to Corporate Governance, and
c) monitor, oversight and interpret key aspects of compliance with applicable legislation at Federal and State levels.

In fulfilling these responsibilities the Committee needs to be cognisant of the following areas of applicable legislation:

Corporations Act

The primary legislation applicable to ACPET is the Corporations Act 2001, Corporations Regulations and ASIC Regulatory Guides. In particular, the Committee should have a good understanding of Chapter 2D of the Corporations Act "Officers and Employees" which deals with the role and obligations of directors; conflicts of interest; confidentiality; fiduciary duties; misuse of information; disclosure of interests; obligations to be informed; obligations to ask questions and similar concepts.

These are simply legislative embodiments of established common law obligations applicable to directors and the principles of good governance which require the Board to embrace:

- ethics
- honesty
- transparency
- integrity


Taxation

Whilst ACPET is a "Not for Profit" corporation, nevertheless its operations are subject to the provisions of taxation and superannuation legislation and as such it is imperative that the corporation comply with its obligations.
From a governance perspective, the Board will rely on management, tax advisers and auditors to ensure compliance but the Committee should be aware of applicable taxation obligations and should be aware of any changes.

**Occupational Health & Safety**

ACPET is required to comply with applicable OH&S legislation in those States where it has employees and contractors.

See:
- Tas: [http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=1++2012+AT@EN+SESSIONAL;histon=;prompt=;rec=;term](http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=1++2012+AT@EN+SESSIONAL;histon=;prompt=;rec=;term)

**Good Governance Principles**

Listed public companies are required to comply with the Australian Stock Exchange's "Principles of Good Corporate Governance" which lists a number of behavioural principles:

- **Companies should recognise and disclose the respective roles and responsibilities of board and management.**
- **Companies should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.**
- **Companies should actively promote ethical and responsible decision-making.**
- **Companies should have a structure to independently verify and safeguard the integrity of their financial reporting.**
- **Companies should respect the rights of members and facilitate the effective exercise of those rights.**
- **Companies should establish a sound system of risk oversight, risk management and internal control.**

Whilst ACPET is not a public company and is not required to comply with these Principles, it would seem they have been incorporated within ACPET's Corporate Governance and again it would be as well for the Committee to monitor developments. See: [http://asx.ice4.interactiveinvestor.com.au/ASX0301/Principles%20of%20Good%20Corporate%20Governance/EN/body.aspx?z=1&p=1&v=1&uid=](http://asx.ice4.interactiveinvestor.com.au/ASX0301/Principles%20of%20Good%20Corporate%20Governance/EN/body.aspx?z=1&p=1&v=1&uid=)

**Trade Practices Act**

The Committee should have regard to aspects of the Trade Practices Act which deal with conduct that may be considered anti-competitive or discriminatory or constitute a form of boycott.

The Board of ACPET is made up exclusively of member representatives – that is to say, persons who are potentially commercially competitive both with existing and prospective members. Decisions made by the Board to exclude, terminate or discipline members may be seen to have an anti-competitive element and as such the Board needs to act with caution and in accordance with both good governance principles and any obligations under the Act.

**Privacy Act**

The Federal Privacy Act deals with obligations of privacy with respect to certain personal information. ACPET is required to comply with this legislation and the National Privacy Principles and as such it is appropriate for the Committee to oversee that appropriate policies and procedures are in place.

Again, whilst it is unlikely that the legislation will be subject to significant change, the interpretation and application needs to be monitored by the Committee.


**Fair Work Act**

As an employer, ACPET needs to be aware of the applicable work place legislation, awards, and regulations. It would be usual for the Committee to be guided by management and HR advisers as to ACPET's particular obligations and compliance therewith.


The Committee may constitute a Working Group to undertake work and provide advice in relation to some or all of these matters.

### 3.4 Finance

In relation to the oversight of the organisation's financial operations, the Committee will:

- a) meet with the external auditor before and after the end of year audit, and if, after review of the audit findings, the Committee or the auditor decides the contents of the audit report necessitate, the committee will arrange a meeting between the external auditors and the Board
- b) monitor and review the propriety of any related party transactions
- c) recommend to the Board the appointment of the external auditor
- d) annually review the appointment of the external auditor, their independence, performance, the audit fee, and any questions of resignation or dismissal, and
- e) evaluate the adequacy and effectiveness of the Company's administrative, operating and accounting policies through active communication with operating management, internal auditors and the external auditors.

In fulfilling these responsibilities the Committee may constitute a Working Group to undertake work and provide advice in relation to some or all of these matters.

### 3.5 Risk

In relation to the oversight of the risks to the organisation, including specifically its Tuition Assurance Schemes, the Committee will:

- a) oversee the establishment and implementation by management of a system for identifying, assessing, monitoring and managing material risk, including the Company's internal control systems
- b) regularly review and update the risk profile and risk register
- c) oversee the organisation’s Show Cause process given the risks to ACPET of poor conduct by members
- d) ensure the adequacy of insurance cover
- e) ensure participating members in the ASTAS Schemes are protected through tuition assurance or fee refunds as appropriate
f) monitor the growth and review the numbers and type of the ASTAS membership

g) liaise with government regulatory bodies on the approval of and any required maintenance to the ASTAS, and

h) oversee the activation and effectiveness of any required intervention of the ASTAS in the case of College closures, and

i) give notice to the management of the TAS program and requirements for access to ASTAS funds to satisfy relocation requirements and/or fee refunds in the case of a member college closure as appropriate under the current provisions of the Policy and Procedures of the ASTAS.

In fulfilling these responsibilities the Committee may constitute a Working Group to undertake work and provide advice in relation to some or all of these matters.

3.6 CEO appointment, remuneration and performance review

The Committee will provide recommendations to the Board in relation to the recruitment and remuneration of the ACPET CEO.

The Committee will undertake an annual performance review of the CEO’s performance against agreed key performance indicators.

In fulfilling these responsibilities the Committee may constitute a Working Group to undertake work and provide advice in relation to some or all of these matters.

4. Authority

The Committee is authorised by the Board to investigate any activity covered by its functions and responsibilities, in so doing recognising the cost of investigating any or all such matters. It is authorised to seek any information it requires from the CEO who shall co-operate with any reasonable request made by the Committee and to report the findings and costs to the Board.

The Committee shall have no executive powers with regard to its findings and recommendations other than those bestowed by the Board.

The Committee is authorised to request the ACPET CEO to obtain such external resources as may be reasonably required to assist with its work.

The Committee will give reasonable notice to the management of its program and requirements for access to key financial personnel and all financial records.