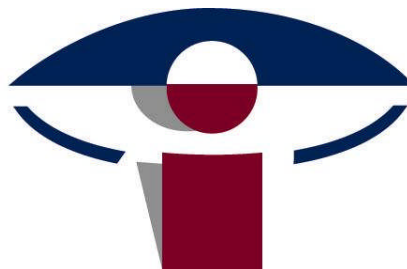


Victorian TAFE
Association



**TAFE Institutes and the Requirements of the
Higher Education Support Act – Issues and
Options for Consideration**

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Purpose

This paper has been prepared to assist discussions between the Office of Tertiary Education and Training and the Victorian TAFE Association on issues and options to enable Victorian TAFE institutes to meet the Federal Government's requirements for Fees Help under the *Higher Education Support Act 2003* (HESA) and in anticipation of further developments in national and international full fee student markets.

Background

The Commonwealth's *Higher Education Support Act 2003* and *Higher Education Provider Guidelines* set out conditions governing requirements for higher education providers to access Fees Help. Fees Help provides access for full fee paying higher education students to access income contingent and deferred payment loans.

Victorian TAFE Institutes are now able to offer higher education programs including degrees on a full fee basis. Four Institutes-Box Hill, Gordon, Northern Melbourne and Holmesglen - have received accreditation for degree programs, and in some instances are in the process of having accreditation submissions considered.

Fees Help is available to three classes of institutions

- Table A providers which are self accrediting public universities
- Table B providers which are self accrediting private universities and other providers
- Non self accrediting higher education providers

Table A providers as public universities are able to access Fees Help without meeting the conditions set out in HESA relating to tuition assurance.

TAFE institutes are not listed in Table A and in order to access Fees Help must satisfy the requirements of the Higher Education Provider guidelines. These guidelines under section 2.5.1 and section 2.20.1 require non Table A providers to become members of an approved Tuition Assurance Scheme (TAS) or enter into a legally binding agreement with a separate legal entity to:

- arrange for students to transfer with credit to another provider to complete their course or a similar course
- refund students for uncompleted units of study where the provider has ceased to provide the course and has not transferred tuition fees to another provider to enable the student to complete the course.

Where a legally binding agreement exists with a separate legal entity, the entity must have the resources to fulfill such a guarantee. It is understood that a bank guarantee or a government guarantee would satisfy these requirements.

A Tuition Assurance Scheme must be approved by the Commonwealth Minister.

Section 2.25 of the guidelines also allows for a higher education provider to be exempted from the guidelines by seeking the approval of the Commonwealth Minister.

These provisions do not apply to fee paying overseas students enrolled in providers under the *Education Services for Overseas Students Act 2000*. Under that Act, private providers are required to have tuition assurance arrangements in place. These provisions do not currently apply to TAFE Institutes and Universities, but it is understood that a review of the Act has recommended that governments should provide an explicit guarantee for public providers or alternatively that providers be required to contribute to the Commonwealth administered tuition assurance scheme for international students.

Fees Help is also not available to full fee paying VET students, but it is understood that ACPET is strongly lobbying the Federal Government for Fees Help to be extended to fee paying VET students. Victorian TAFE Institutes are also running a range of VET programs on a full fee basis.

To date, three Victorian TAFE Institutes Box Hill, Gordon and Northern Metropolitan have joined the ACPET tuition assurance scheme in order for their full fee degree students to access Fees Help. It is understood that these TAS costs can be considerable and in some instances in excess of \$40,000 per annum.

The Higher Education & Regulation Division of OTTE requires evidence of arrangements to protect students' tuition contributions as part of the quality assurance arrangements for the accreditation of higher education providers.

Principles

The VTA believes that the following principles should guide this consideration.

- Public and student interest should be paramount;
- Victoria's market position in leading the nation in fee for service and commercial activity and in full fee vocational degree provision must be maintained;
- Consistent with the treatment of public universities as table A providers, the specific position of TAFE Institutes as public institutions should guide policy decisions by government;
- There should be equity of treatment between public providers;
- The most cost effective arrangements should be put in place with resources directed to delivery and outcomes.

- Institutes should not be able to transfer risk to the Crown and should be liable for the management of commercial risk and for all of their liabilities.

Issues

The current arrangements for tuition assurance follow experience with market failure in relation to the international student market initially, and the domestic market subsequently. The principle of tuition assurance schemes is to spread the costs of management of risk of market failure between numbers of providers operating in a common market and to ensure that student investments are fully protected compared to other creditors in the event of market failure.

The guidelines also allow for the risk to be managed by a more substantial entity providing a legally binding guarantee. This provision allows for providers owned by religious and other organisations to be guaranteed by the owner of the provider. Alternatively providers may receive a bank or other financial guarantee based on a prudential assessment by the bank or other institution that the provider has sufficient reserves to meet liabilities including fees paid by students where tuition has not been provided.

It is almost impossible to establish a satisfactory Assurance arrangement other than through an established TAS. An alternative satisfactory Bank Guarantee appears remote as based upon current explorations; Banks are only prepared to consider a fee guarantee and will not consider the administration of fee refunds, thereby not complying with requirements.

As public institutions, TAFE Institutes in all states are in effect 'owned' by the Crown. In Victoria and Western Australia governance is devolved to Institutes as individual legal entities compared to other states where governance is based on either a single statutory model (NSW, ACT and Tasmania) or where TAFE institutions are effectively administrative units within the Department (Queensland).

However in all jurisdictions the governance model does not affect, and should not be confused with, the role of the Crown as the owner— governance is merely the model chosen by the State as the most effective way to realize its, and the public interest. Institutions in devolved governance models have obligations and accountabilities to government.

In practice, experience in all jurisdictions and internationally has shown that where public providers do become, or are in danger of becoming technically insolvent, governments intervene through equity injections to ensure that salary and creditors are paid, and also through new management arrangements, restructuring and expenditure controls until the Institution returns to financial viability. Even if an institution was disestablished or merged, the Crown would have ultimate legal, political and moral responsibility to ensure that creditors' (including students) debts are met.

It is for this reason that the Victorian Government monitors the financial performance of all Institutes and requires Institutes to meet specific benchmarks in terms of working capital levels and their overall financial position. These requirements are set out in Ministerial Guidelines and Performance and Funding Agreements. Institutes cannot currently borrow funds without the State Government approval.

Using the performance, benchmark and capital level mechanisms, and recognising its ultimate role as owner, the State Government could on a case by case approval basis provide a legally binding guarantee to meet the provisions of HESA for TAFE Institutes wishing to access Fees Help.

The determining criteria would be that Institutes would continue to meet the required benchmarks (that is the current short term liabilities incurred through the provision of full fee programs would not result in an Institute exceeding working capital benchmarks and the Institute would continue to have sufficient reserves to meet all liabilities).

This mechanism would guard against ‘moral hazard’ that is where one party acts irresponsibly as the result of a second party taking on the first party’s risks and liabilities, particularly where the second party is not able to monitor and influence the first party’s behavior. In this instance, the consequences of management of risk still sit firmly with the Institute as part of its overall financial operation, with established mechanisms in place for monitoring of performance by OTTE and the government more generally, including the power of Ministerial direction.

It should be emphasised that VTA is not proposing that a Treasurer’s Guarantee be provided for a commercial loan. Rather the guarantee is really as formal recognition for the purposes of Commonwealth requirements that the institute is able to meet its liabilities including those to fee paying students.

Institutes not able to meet these requirements could have the option of TAS membership; Government could also decide to extend the guarantee in order to meet specific economic and social objectives for example to assist regional and rural institutions or for emerging markets.

The level of risk that is contemplated with TAFE Institutes as public entities is very low in that it is extremely unlikely that a TAFE Institution would seek to retain student funds in the case of an inability to deliver a course or unit of a course.

The objective of the Act and the Provider Guidelines is to ensure that students’ interests are protected; the Act and the Guidelines provide two mechanisms for that to take place but is neutral as to the most appropriate mechanism.

Tuition Assurance Schemes are not cost neutral and ultimately costs are born by students if the principles of full cost recovery are observed. It will be increasingly costly and inefficient for Institutes to deplete their working capital and reserves by paying substantial contributions to a third party TAS scheme or for a specific TAS to be set up

for TAFE Institutes in Victoria or nationally. In the long term millions of dollars could be locked up in such schemes when the Government has established mechanisms in place which can satisfy the requirements of HESA and protect the public interest.

There are other factors to also take into account in considering this issue:

- The level of financial performance monitoring and accountability by and for the State is much greater for TAFE than universities, but universities are not required to meet either of the conditions under current arrangements;
- Four Victorian Universities are multi-sector providers, but Table A listing is for the whole institution, not higher education divisions or components of the universities, meaning that there is the potential for substantial differential treatment between public providers (Note: TAFE qualifications including Graduate Certificates accredited through the TAFE Division of a University are not eligible for Fees Help);
- Although consideration of this issue has been triggered initially by the introduction of full fee degrees in TAFE in Victoria, moves by the Commonwealth to require State Government to provide an explicit guarantee for public providers in relation to international students and the potential extension of Fees Help to full fee VET students suggest a comprehensive long term position should be adopted by the Victorian Government;
- In states where TAFE is a single statutory entity (particularly in NSW where the Director General is also the Managing Director of TAFE NSW) and where TAFE institutes are administrative units of Departments (that is the entity is the Department) a government guarantee is inevitable. This would not only place Victorian TAFE Institutes at a cost and marketing disadvantage in national and international markets as other states will market their programs as 'government guaranteed' placing Victoria's market leadership position at jeopardy.

Should the government not be prepared to consider the option of providing a guarantee, the VTA would want to enter into discussions with the Government about the option of the VTA itself establishing and administering a TAS with the support of the government.

Process and Timing

Consideration and resolution of this issue is urgent as Institutes have either made interim arrangements to join a TAS for 2006 in order for students to access Fees Help or have held off at least until second semester 2006. VTA understands that some of these issues may have been raised and considered in the context of the Ministerial Inquiry into VET and would welcome discussion with OTTE and with the Minister with a view that having a policy established in the Government's response to the Inquiry or by way of specific decisions early in 2006.