

RULES

OF THE TAFE DIRECTORS AUSTRALIA HIGHER EDUCATION TUITION ASSURANCE SCHEME

(As approved by the TDA Board on 18 April 2008 pursuant to
Section 11 of the Rules of the Association)

1 APPLICATION of RULES

These Rules apply to any TAFE Institute higher education provider other than an Exempt Provider that is a TDA TAS Member in respect of students to whom the TDA TAS Member is providing a course of study, which the TDA TAS Member then ceases to provide. They do not apply to overseas students.

TDA TAS 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/LegislativeInstrumentCompilation1nsf/0/C6BAE37C63EBBD47CA257292001D2909?OpenDocument>

TDA TAS 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 TDA TAS 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).

Under the TDA TAS, TDA is, liable to 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, and undertakes to TDA TAS Members that it will do so.

Under the TDA TAS, TAS membership means that members undertake to TDA 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.

To the extent of any inconsistency between these rules 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 rule), the tuition assurance requirements take precedence.

2 PURPOSE

The purpose of these rules is to ensure that:-

- 2.1 TDA TAS 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;
- 2.2 TDA, 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 tuition assurance requirements; and
- 2.3 In particular, if a TDA TAS Member (First Provider) ceases to provide a course of study, eligible students of the TDA TAS Member can use the TDA TAS to choose either:

to 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

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

3 MEMBERSHIP FEES

Each TDA TAS 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 TDA TAS membership or continuation of that membership.

4 PROVIDING INFORMATION

On joining the TDA TAS and when reviewing membership each year, every TDA TAS 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 TDA TAS for the current academic year, in such a form as the TDA Chief Executive Officer, contactable at GPO Box 826 Canberra ACT 2601, may request.

5 MEMBERSHIP OF TDA TAS

Membership of the TDA TAS is restricted to TDA members. TDA TAS Members may only be expelled or suspended from the TDA TAS in accordance with the provisions of the TDA Rules of the Association.

6 EFFECT OF EXPULSION OR SUSPENSION

A TDA TAS Member which is expelled or suspended from TDA is not entitled to a refund of its TDA TAS Membership fees. In addition to the provisions for expulsion and suspension provided for in the TDA Rules of the Association, grounds for expulsion or suspension of TDA TAS Members include their failure to comply with section 19-75 of the Act. TDA will inform DEEWR of any expulsion or suspension of a TDA TAS Member and will continue to provide appropriate protection for all students enrolled with the expelled or suspended member as at the date of such expulsion or suspension.

7 NOTIFICATION TO TDA

A TDA TAS Member which ceases to provide a course of study must immediately notify DEEWR and TDA at the time it does so, and TDA will then convene the TDA TAS Placement Committee. DEEWR should be notified by contacting the Group Manager, Higher Education group, by phone and /or email.

8 TDA TAS SUB-COMMITTEE

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

9 IMPLEMENTATION BY TDA TAS SUB-COMMITTEE

The TDA TAS Sub-Committee will at all times implement these rules in accordance with the provisions of chapters 2 and 3 of the Guidelines.

10 PLACEMENT/REFUND COMMITTEE

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

11 ROLE OF ADMINISTRATOR

The Administrator will liaise, on behalf of the TDA TAS Sub-Committee, with relevant government agencies (including DEEWR and the Australian Taxation Office), any external controller of a TDA TAS Member and any other relevant persons.

12 ROLE OF THE PLACEMENT/REFUND COMMITTEE

The placement/Refund Sub-Committee will:-

- 12.1 Arrange a meeting of displaced students to advise them of:-
 - a) their rights to choose between the course assurance option or the student contribution/tuition repayment option; and
 - b) the process whereby the option chosen by the student under paragraph (a) will be implemented;
- 12.2 issue a written tuition assurance offer to students in accordance with the requirements of chapter 2 of the Guidelines, subject that any such offer shall be indicative only with the final decision by a student not being required until the student is advised of the details of the proposed course.
- 12.3 arrange interviews with individual students
- 12.4 administer a student questionnaire to ascertain:-
 - a) the name of the student's course of study;
 - b) the remaining length of that course; and
 - c) which option under rule 12.1 the student has chosen;
- 12.5 if the student has indicated an interest in the course assurance option:-
 - a) match that student with an appropriate course of study with TDA TAS Member(s) at an appropriate location(s); or
 - b) offer that student placement in an appropriately purchased suitable alternative course of study to be delivered for this purpose through a TDA TAS Member or other higher education provider approved by the TDA TAS Placement Committee for that purpose; and
 - c) give to that student a Tuition Assurance Offer of course placement;

- 12.6 If the student has chosen the student contribution/tuition fee repayment option:-
- a) determine the eligibility of that student for that option;
 - b) 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
 - c) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the TDA TAS 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
 - d) provide each student with a Written Tuition Assurance Offer at or before the meeting referred to in paragraph 12.1.
 - e) ensure that, on request of a student, a copy of the student's academic record is provided
- 12.7 Under paragraph 2.1.31 of the Guidelines if a TDA TAS Member is subject to any of those circumstances, the TDA TAS Member must immediately notify TDA 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 a TDA TAS Member, then:
1. The TDA TAS Member must within a reasonable period specified by DEEWR, provide the Secretary with such information that may reasonably be requested in relation to that event;
 2. the Secretary may, after considering any information provided by the TDA TAS Member under the preceding paragraph (j), declare in writing that, for the purposes of the Guidelines, the TDA TAS Member has ceased to provide one or more courses of study specified in the declaration; and
 3. the Secretary must give a copy of the declaration to the TDA TAS Member and TDA.

13 ACCEPTANCE OF A TUITION ASSURANCE OFFER

When a student accepts a Tuition Assurance Offer the student must provide the TDA TAS 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 the student.

14 FAILURE TO ACCEPT AN OFFER

If a displaced student refuses to accept a 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.

15 COPIES OF OFFERS

A copy of each accepted Tuition Assurance Offer will be given to DEEWR, the student (where necessary) and the TDA TAS Member accepting that student and a copy will be retained by the TDA TAS.

16 COMPLIANCE WITH RULES

A displaced student must abide by the rules of the TDA TAS Member in respect of which he/she has accepted a Tuition Assurance Offer of course placement, other than a rule relating to payment of a tuition fee for any replacement unit. A copy of the rules of the TDA TAS Member shall be made available to the student at the time such Tuition Assurance Offer of course placement is made.

17 ACCEPTANCE OF DISPLACED STUDENT

When a TDA TAS Member is notified that a 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 to agree to abide by the member's rules (with which they have been provided), 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 Tuition Assurance Offer of course placement will be made with another TDA TAS member)

18 COSTS CONSEQUENCES

TDA may require a TDA TAS Member to contribute towards the costs of any student relocations which may become necessary as a consequence of that TDA TAS Member ceasing to provide a course of study.

19 FEE-HELP DEBTS

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

DEFINITIONS

In these Rules, unless the contrary intention appears:

'Act' means the *Higher Education Support Act 2003*;

"Administrator" means TDA fulfilling all the requirements of a *Course Assurance TAS Operator*, Second Provider as referred to in paragraph 2.3.1b) of the Guidelines, *Course Assurance Guarantor* (as defined in subparagraph 2.3.1c of the Guidelines)), *Repayment TAS Operator* or *Repayment Guarantor*.

“TDA TAS” means the TAFE Directors Australia Tuition Assurance Scheme;

“TDA TAS Member” means a member of TDA who is not an Exempt Provider and who is accepted by TDA as a member of the TDA TAS;

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

“TDA TAS Sub-Committee” means the sub-committee (comprising TDA appointees) established by Rule 8;

“ceases to provide a course of study” means, in relation to a TDA TAS 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 TDA TAS Member and the student(s) enrolled in the course; or
- b) the TDA TAS 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 TDA TAS 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 to that course; or
- d) notice is served on the TDA TAS Member or proceedings are taken to cancel the TDA TAS Member’s incorporation or registration or to dissolve the TDA TAS Member as a legal entity; or
- e) the TDA TAS Member comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 or equivalent provisions in other legislation, or an order has been made to place the TDA TAS Member under an external administration; or
- f) in the case of a non self-accrediting institution, the TDA TAS 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 or more higher education awards; or
- g) in the case of a self-accrediting institution, the TDA TAS 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 issue its own qualifications; or
- h) a declaration is made by the Secretary of DEEWR under paragraph 2.1.31b) of the Guidelines that the TDA TAS Member has ceased to provide one or more courses of Study specified in the declaration that the TDA TAS Member is subject to any of the following circumstances:

“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 TDA TAS Member without any requirement to pay the other TDA TAS Member any student contribution or tuition fee for any replacement units;

“DEEWR” means Commonwealth Department of Education, Employment and Workplace Relations and its Successors;

“Displaced Student” means a student of a TDA TAS 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 (DEEWR) 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 Rule 8; “replaced unit” and “replacement unit” have the same meanings as they do in the Guidelines;

“Secretary” is the official DEEWR 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 a TDA TAS 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 & 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 a TDA TAS Member has ceased to provide that he/she may choose either the course assurance option or the student contribution/tuition fee repayment option.

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

To the extent necessary, these rules apply to and bind students of TDA TAS Members, subject to all times to the rights given to students by the Act, the Guidelines, other relevant legislation and the common law.