

Commercial Guidelines – TAFE Institutes

Guidelines concerning commercial activities in accordance with Part 5.2 of the *Education and Training Reform Act 2006*

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Authorising provisions

1. These Guidelines –
 - (a) are issued pursuant to section 5.2.1(2)(b) of the **Education and Training Reform Act 2006** (the Act); and
 - (b) must be complied with by TAFE institutes pursuant to section 5.2.1(3)(a) of the Act.

Purpose

2. These Guidelines provide a set of principles and outline the process for the development and conduct of commercial activities by TAFE institutes, in order to operate efficiently and to minimise the risks to the TAFE institutes undertaking such activities.

Commencement

3. These Guidelines take effect on the date of their publication in the Government Gazette.

Application of other laws

4. These Guidelines are subject to –
 - (a) the **Education and Training Reform Act 2006**;
 - (b) the provisions of **Financial Management Act 1994**, and any directions or regulations under that Act that apply to the TAFE institutes;
 - (c) the provisions of the **Audit Act 1994** that apply to the TAFE institutes; and
 - (d) other Acts, laws or subordinate instruments that apply to the TAFE institutes.

Definitions

5. Words or expressions defined in the Act have the same meaning for the purposes of these Guidelines. In these Guidelines, unless the contrary intention appears –

Act means the **Education and Training Reform Act 2006**;

Auditor-General has the same meaning as in the **Audit Act 1994**¹;

Board means the board of a TAFE institute established under the Act;

Commercial Activity means –

- (a) the provision or sale by the TAFE institute (or the TAFE institute in partnership, in trust, joint venture or association with others) of land, property, goods, services, or other activities on a commercial basis; or
- (b) the acquisition by the TAFE institute of, or capital expenditure on, land, property, goods, services or other things; or
- (c) other activities conducted on a commercial basis or of a commercial nature;

Company means a company registered under the *Corporations Act 2001* (Cth) and includes a company limited by guarantee;

Constitution means an Order made under section 3.1.11 of the Act in respect of the TAFE institute;

Controlled entity is one that satisfies the test of control in section 50AA of the *Corporations Act 2001* (Cth)²;

Crown land means land which is or is deemed to be unalienated land of the Crown and includes –

- (a) land of the Crown reserved permanently or temporarily by or under the **Crown Land (Reserves) Act 1979**³; and

¹ Section 3 of the **Audit Act 1994** defines the Auditor-General as “the Auditor-General appointed under section 94A of the *Constitution Act 1975*”.

² Section 50AA of the *Corporations Act 2001* (Cth) states:

- “(1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (2) In determining whether the first entity has this capacity:
 - (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
 - (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (4) If the first entity:
 - (a) has the capacity to influence decisions about the second entity's financial and operating policies; and
 - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members;the first entity is taken not to control the second entity.”

- (b) land of the Crown occupied by a person under a lease, licence or other right;

Department has the meaning given in section 1.1.3(1) of the Act;

Entity has the meaning given in section 64A of the *Corporations Act 2001* (Cth)⁴;

Freehold land is land in freehold title either in the name of the Minister or the TAFE institute;

Joint venture means an association of persons which includes the TAFE institute for the purposes of a trading, commercial, mining or other financial undertaking or endeavour with a view to mutual profit, with the TAFE institute agreeing to contribute money, property or skill⁵;

Major Commercial Activity means a Commercial Activity that involves a transaction or transactions with a total estimated cost greater than 5 per cent of annual revenues, but does not include –

- (a) the supply of vocational training and higher education that is consistent with the TAFE institute's strategic plan; or
- (b) the supply of vocational training and higher education that is supplied pursuant to a competitive tender process;

Minister means the Minister responsible for administering the Act;

³ Section 4 of the *Crown Land (Reserves) Act 1978* states: the Governor in Council may by Order published in the Government Gazette reserve by a general or particular description either temporarily or permanently any Crown lands which in his opinion are required for any public purposes.

⁴ Section 64A of the *Corporations Act 2001* (Cth) states a reference to an entity: "(a) is a reference to a natural person, a body corporate (other than an exempt public authority), a partnership or a trust; and (b) includes, in the case of a trust, a reference to the trustee of the trust."

⁵ This definition is a modified version of the High Court's comments in *United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 157 CLR at 10, per Mason, Brennan and Deane, JJ "The term "joint venture" is not a technical one with a settled common law meaning. As a matter of ordinary language, it connotes an association of persons for the purposes of a particular trading, commercial, mining or other financial undertaking or endeavour with a view to mutual profit, with each participant usually (but not necessarily) contributing money, property or skill. Such a joint venture (or, under Scots' law, "adventure") will often be a partnership. The term is, however, apposite to refer to a joint undertaking or activity carried out through a medium other than a partnership: such as a company, a trust, an agency or joint ownership. The borderline between what can properly be described as a "joint venture" and what should more properly be seen as no more than a simple contractual relationship may, on occasion, be blurred or activity carried out through a medium other than a partnership: such as a company, a trust, an agency or joint ownership. The borderline between what can properly be described as a "joint venture" and what should more properly be seen as no more than a simple contractual relationship may, on occasion, be blurred."

Partnership means the relationship subsisting between persons carrying on business in common with a view to profit⁶;

Property means real property as distinct from personal property.

⁶ Partnership Act 1958, section 5.

Guideline 1 – Prior to Entering into or Expanding a Commercial Activity

6. Before entering into a new Commercial Activity or expanding an existing Commercial Activity, the Board must be satisfied that the following assessments and measures have been undertaken, as appropriate to the nature of the Commercial Activity –
 - (a) that the Commercial Activity is consistent with the TAFE institute's strategic plan, or its objects or functions as set out in the Act and the TAFE institute's constitution;
 - (b) a financial analysis that assesses the projected cash flow, the expected rates of return to the TAFE institute, and the level of exposure of the TAFE institute's resources and assets;
 - (c) a cost/benefit analysis including, as appropriate, social costs and benefits;
 - (d) a risk assessment of the Commercial Activity and development of associated risk management measures;
 - (e) a market analysis, that identifies the opportunities, strengths, weaknesses and threats of the TAFE institute to enable the development of adequate business strategies;
 - (f) whether the governance arrangements, legal structures and audit requirements are appropriate for the size, risk and type of activity;
 - (g) whether the terms and conditions of the arrangements and agreement are appropriate, including those dealing with governance, representation of the TAFE institute on any board or decision making group formed for the purpose of undertaking the Commercial Activity, risk (including insurance), taxation, intellectual property, the rights of the TAFE institute to terminate its involvement in the Commercial Activity, and any indemnities;
 - (h) a due diligence assessment in a form appropriate for/commensurate with the Commercial Activity;
 - (i) whether there are actual or perceived conflicts of interest for TAFE institute staff or Board directors that may arise from the Commercial Activity, and measures to address those conflicts; and
 - (j) in respect to Commercial Activities conducted overseas, appropriate legal advice in respect of relevant overseas laws, having regard to the nature of the arrangement.

7. A full business case must be prepared by the TAFE institute and approved by the Minister before undertaking a Major Commercial Activity. The business case will include, where applicable –
- (a) a project brief clearly stating –
 - i. the scope and objectives of the Commercial Activity;
 - ii. whether the Commercial Activity is consistent with the TAFE institute's strategic plan or its objects or functions;
 - iii. as appropriate, the Commercial Activity's consistency with applicable Victorian Government policies (for example, Lifecycle Guidelines); and
 - iv. any previous transactions that relate to the Commercial Activity;
 - (b) a detailed cost/benefit analysis of a range of options with realistic assumptions and evidence of consultation with a range of stakeholders;
 - (c) a financial plan, that provides a reasonable assurance that there will be sufficient financial resources available to implement the Commercial Activity as planned, and the rate of return for the Commercial Activity;
 - (d) a project schedule identifying all key milestones;
 - (e) a governance structure, that indicates responsibilities and key decision-making processes;
 - (f) stakeholder management strategies (including communication, levels of commitment and roles);
 - (g) a detailed procurement plan incorporating the following –
 - i. procurement processes that are fair, open and transparent to ensure the integrity of the process;
 - ii. procurement opportunities that are tendered publicly, using competitive processes (only in unusual circumstances, such as in matters of urgent public health and safety, can reasonable exceptions be made); and
 - iii. procurement strategies that allocate risks to the party that is best able to manage them;

- (h) a risk management plan with adequate risk ratings and appropriate mitigation strategies; and
- (i) an asset management plan, that provides general guidance in relation to the acquisition, operation and maintenance, renewal and disposal of assets.

Guideline 2 – Disposal of Crown land

8. The Board must seek the Minister's approval to sell or otherwise dispose of Crown land.
9. In the event that the land is approved for sale by the Minister, following a public land assessment by the Department of Sustainability and Environment, it must be referred to the Department of Treasury and Finance (DTF) for disposal as the Assistant Treasurer is solely responsible for the sale and alienation of Crown land under the **Land Act 1958**.
10. Unless otherwise approved under Guideline 4, all proceeds of sale will be remitted to the State's Consolidated Fund via the Department, and any costs associated with the sale will be recovered from the Department via a tax invoice issued by DTF.

Note

In disposing of Crown land, a TAFE institute is bound to comply with the Victorian Government's *Policy and Instructions for the purchase, compulsory acquisition and sale of land*.

Crown land or interests in Crown land may only be disposed of in accordance with the law relating to that land.⁷

⁷ See, for example, section 12 of the **Land Act 1958**, and section 8 of the **Crown Land (Reserves) Act 1978**.

Guideline 3 – Disposal of Freehold Land

11. The standard process followed by the Board for the disposal of freehold land is primarily governed by the provisions of the **Sale of Land Act 1962** and the **Transfer of Land Act 1958**.
12. The process must also be tailored for each individual project depending on project requirements and must broadly include the following steps –
 - (a) the Board assesses that the land should be disposed;
 - (b) the Board seeks the Minister's approval to sell and authorise the administration of the sale by the Board if –
 - i. the freehold land is in the name of the Minister; or
 - ii. the freehold land is in the name of the TAFE institute and the value of the land is greater than \$5 million;
 - (c) property is prepared for sale pursuant to the provisions of the **Sale of Land Act 1962**;
 - (d) the Board arranges for the land to be valued and sold in accordance with any applicable guidelines or policies;
 - (e) the Board engages legal representatives to act on its behalf in connection with preparation of contract documentation and arrange and bring transaction to settlement;
 - (f) when the sale value exceeds \$100,000 (including GST), ensure that the sale is recorded on the Victorian Government Contracts Publishing System; and
 - (g) arrange for the asset to be removed from the TAFE institute's and Department's Asset Register.

Note

In disposing of freehold land, a TAFE institute is bound to comply with the Victorian Government's *Policy and Instructions for the purchase, compulsory acquisition and sale of land*.

Guideline 4 – Proceeds from the sale of assets

13. The proceeds from the sale of assets in the name of the TAFE institute will be retained by the institute.
14. Where approved by the Minister and Treasurer, the proceeds from the sale of assets in the name of the Minister may be retained by the TAFE institute.
15. Where approved by the Treasurer, the proceeds from the sale of Crown land may be retained by the TAFE institute.
16. Before submitting a proposal for retaining the proceeds, the Board must be satisfied that the following assessments and measures have been undertaken, as appropriate to the nature of the use of the proceeds from the sale of assets –
 - (a) that the use of the proceeds from the sale of assets is consistent with the TAFE institute's strategic plan or its objects or functions;
 - (b) a financial analysis that assesses the projected cash flow, the expected rates of return to the TAFE institute, and the level of exposure of the TAFE institute's resources and assets;
 - (c) a cost/benefit analysis including, as appropriate, social costs and benefits;
 - (d) a risk assessment and development of associated risk management measures;
 - (e) a market analysis, that identifies the opportunities, strengths, weaknesses and threats of the TAFE institute to enable the development of adequate business strategies;
 - (f) whether the governance arrangements, legal structures and audit requirements are appropriate for the size, risk and type of use of the proceeds from the sale of assets; and
 - (g) a due diligence assessment in a form appropriate for/commensurate with the use of the proceeds from the sale of assets.
17. A full business case must be prepared by the TAFE institute and approved by the Minister for the use of the proceeds from the sale of assets. The business case will include, where applicable –
 - (a) a project brief clearly stating –

- i. the scope and objectives of the use of the proceeds from the sale of assets;
- ii. whether the use of the proceeds from the sale of assets is consistent with the TAFE institute's strategic plan or its objects or functions;

Note

The proceeds from the sale of assets may be used for re-investment, paying down debt or building up cash reserves.

- iii. as appropriate, consistency with applicable Victorian Government policies, for example, Lifecycle Guidelines; and
 - iv. any previous transactions that relate to the use of the proceeds from the sale of assets;
- (b) a detailed cost/benefit analysis of a range of options with realistic assumptions and evidence of consultation with a range of stakeholders;
 - (c) a financial plan, that provides a reasonable assurance that there will be sufficient financial resources available to implement and operate the use of the proceeds from the sale of assets as planned, and the rate of return for the activity;
 - (d) a project schedule identifying all key milestones;
 - (e) a governance structure, that indicates responsibilities and key decision-making processes;
 - (f) stakeholder management strategies (communication, levels of commitment and roles);
 - (g) a detailed procurement plan including the following –
 - i. procurement processes that are fair, open and transparent to ensure the integrity of the process;
 - ii. procurement opportunities that are tendered publicly, using competitive processes (only in unusual circumstances, such as in matters of urgent public health and safety, can reasonable exceptions be made); and

- iii. procurement strategies that allocate risks to the party that is best able to manage them;
- (h) a risk management plan with adequate risk ratings and appropriate mitigation strategies; and
- (i) an asset management plan, that provides general guidance in relation to the acquisition, operation and maintenance, renewal and disposal of assets.

Guideline 5 – Acquisition of Freehold Land

18. The Board –

- (a) may acquire by purchase, long term lease, gift, grant, bequest or devise any property for the purposes of the Act;
- (b) may agree to and carry out any conditions of any such gift, grant, bequest or devise; and
- (c) has control and management of all property vested in or acquired by the TAFE institute.

19. A standard process is followed by the Board for the acquisition of freehold land. The process is tailored for each individual project depending on project requirements, and is broadly covered by the following steps –

- (a) the Board to undertake due diligence investigations including but not limited to Certificate of Title, environmental issues, town planning, heritage, flora and fauna, check survey;
- (b) if the land is contaminated, the nature of the end use will determine whether the acquisition should be abandoned or further legal and appropriate technical advice be obtained to determine the options available to contain or remove the contaminants;
- (c) the Board arranges for the land to be valued in accordance with any applicable Victorian Government policies;
- (d) the Board engages legal representatives to arrange and bring the transaction to settlement;
- (e) when the purchase value exceeds \$100,000 (including GST), ensure that the purchase is recorded on the Victorian Government Contracts Publishing System; and
- (f) arrange for the asset to be added to the institute's and Department's Asset Register.

Note

In acquiring freehold land, a TAFE institute is bound to comply with the Victorian Government's *Policy and Instructions for the purchase, compulsory acquisition and sale of land*.

Guideline 6 – Leasing

20. The TAFE institute must not enter into an arrangement with a third party to lease out Crown land or buildings on Crown land.
21. The TAFE institute must seek the prior approval of the Minister before entering into an arrangement with a third party to lease out freehold land in the name of the Minister, or buildings on freehold land in the name of the Minister.
22. Any proposal submitted to the Minister seeking approval to lease out land or buildings or part thereof to a third party must include, where applicable –
 - (a) an overview of the proposal;
 - (b) a detailed plan of the land and the location of the proposed facility;
 - (c) a risk assessment of the activity and development of associated risk management measures;
 - (d) funding arrangements; and
 - (e) the general terms and conditions of the lease.
23. The Minister recommends that the Board does not enter into a lease for longer than 30 years in total, inclusive of any option periods.

Guideline 7 – Conflict of Interest

24. Consultants engaged in connection with any Commercial Activity must be independent and not have any personal or pecuniary interest in the transaction. A written declaration in this regard is essential.

Guideline 8 – Indemnities

25. Before providing an indemnity which is considered by the Board to be significant or high risk, having regard to relevant accounting standards, the Board must –
- (a) seek the approval of the Minister and Treasurer; and
 - (b) consider whether the indemnity should be supported by an insurance policy which indemnifies the TAFE institute to the same value, where insurance coverage is available.

Guideline 9 – After Entering or Expanding a Commercial Activity

26. After entering a new Commercial Activity or expanding an existing Commercial Activity, the Board must regularly monitor the Commercial Activity as appropriate to the scale and nature of the Commercial Activity.

Guideline 10 – Register of Major Commercial Activities and Report

27. The Board will –

- (a) maintain a register of its current Major Commercial Activities which discloses –
 - i. all the TAFE institute’s Major Commercial Activities, and Major Commercial Activities of the TAFE institute’s controlled or related entities;
 - ii. other Commercial Activities which it considers sufficiently important or of interest to list on the register;
 - iii. the TAFE institute’s involvement in each of those Commercial Activities, and TAFE institute staff or Board directors that occupy a board seat or some other office in connection with the Commercial Activity, and the directors’ and officers’ liability insurance or other insurance arrangements that apply to the Commercial Activity;
 - iv. the results of any assessment undertaken (if any) to determine whether the Commercial Activity is meeting its purposes and objectives; and
 - v. whether the Commercial Activity is ongoing or its anticipated termination date; and
- (b) provide a summary of the above matters in the annual report of its operations under section 45 of the **Financial Management Act 1994**, together with the matters listed under paragraph 33(c) of Guideline 12.

Note

When maintaining the register of major commercial activities, the Board must be mindful of sensitive commercial information that could be sought through a request for information under the **Freedom of Information Act 1982**.

Guideline 11 – Section 3.1.12C of the Act – Powers of TAFE Institutes

28. Before exercising any of the powers in section 3.1.12C(2) of the Act to be a member of, form or participate in, a company, association, trust, partnership, or enter into a joint venture (collectively referred to as the *undertaking*), the Board must –
- (a) assess whether –
 - i. it will be doing so for a purpose (not necessarily the main purpose) of engaging in a Commercial Activity; and/or
 - ii. in the case of the TAFE institute being a member of, forming or participating in a company, the main object of the company is to engage in a Commercial Activity, despite whether the Commercial Activity meets the definition of “Commercial Activity” in paragraph 5; and
 - iii. it is the most efficient and effective means of engaging in that Commercial Activity; and
 - (b) obtain the approval of the Minister if the total investment exceeds \$5,000,000.
29. If the assessment under paragraph 28 concludes that the TAFE institute –
- (a) will be engaging in a commercial activity, the Board must comply with Guidelines 1 to 9 inclusive;
 - (b) will be a member of, forming or participating in a company not engaging in a commercial activity, the Board will comply with Guideline 8;
 - (c) will be engaging in an undertaking other than through a limited company and will not be engaging in a commercial activity, the Board must make an assessment of the TAFE institute’s exposure to liability and, if that assessment is greater than an amount deemed to be material having regard to relevant accounting standards, must consider which, if any, of Guidelines 8 and 9, should apply to the undertaking.
30. Before being a member of, forming or participating in, a company, the Board should have regard to –
- (a) who will hold the shares or other interests in the company; and

- (b) the legal relationship between the holders of shares and the Board.
31. Where the TAFE institute engages in an undertaking, the undertaking must be a controlled entity of the TAFE institute unless otherwise approved by the Minister.
32. Where a Board has engaged in an undertaking prior to the commencement date of these Guidelines, it may continue to engage in that undertaking until 1 January 2014, but not after that date unless –
- (a) it complies with paragraphs 28 to 31; or
 - (b) any non-compliance with paragraphs 28 to 31 has been approved by the Minister.

Guideline 12 – TAFE Institute Controlled Entities

33. Where an entity is a controlled entity of the TAFE institute, the Board will –
- (a) ensure that the controlled entity is controlled by, and directly accountable to, the Board;
 - (b) ensure that any amendment to the entity's constitution has had the prior approval of the Board before the TAFE institute or its representative shareholder or member can vote in favour of that amendment (or where the entity is a trust, partnership, joint venture or other form of entity, similarly ensure that an amendment to the relevant constituent document or agreement governing that entity has the prior approval of the Board);
 - (c) ensure that a report by the Auditor-General or a registered company auditor, on the accounts of the entity is made every twelve months and is submitted to the Board within three months after the end of each twelve month period to which the report relates;
 - (d) state in the report referred to in paragraph 27(b) of Guideline 10, the name of any entity formed or acquired in the year to which that report pertains, and the reasons the Board decided that the acquisition was in the interests of the management or conduct of the affairs or concerns of the TAFE institute;
 - (e) where it is required to comply with section 45 of the **Financial Management Act 1994**, include in its annual report under that section 45 a copy of the accounts of the entity prepared in accordance with the requirements of the **Financial Management Act 1994**, as if the entity was a public body within the meaning of that Act in respect of the financial year ending during the period to which the TAFE institute's annual report relates; or if it is not required to comply with that section 45, to forward to the Minister a copy of those accounts within three months of the end of the financial year; and
 - (f) within 14 days of lodging any material report, statement or return in respect of the entity with the Australian Securities and Investments Commission under the *Corporations Act 2001* (Cth) or the Australian Taxation Office, other than a routine report of changes in company officers, minor changes in a company's constitution or the like, submit a copy of the report, statement or return to the Minister and Treasurer.
34. Where the TAFE institute forms, participates in the formation of, or is a member of, an entity to which paragraph 33 applies, the Board will ensure

the Auditor-General is appointed as the entity's auditor under the *Corporations Act 2001* (Cth) and –

- (a) has right of access at all times to all the books, securities, accounts, vouchers, and electronic records of the entity; and
- (b) is provided with any information, assistance and explanations necessary for the performance of the duties of the Auditor-General or person in relation to the audit;

except where –

- (c) the controlled entity is not located in Australia; and
- (d) the controlled entity is required to be audited under local laws in accordance with international standards; and
- (e) the accounts of the controlled entity form part of the consolidated annual accounts of the Institute that are subject to audit by the Auditor-General.

This paragraph 34 is subject to any contractual obligation which the entity has in relation to any other auditor prior to the entity becoming a controlled entity of the TAFE institute⁸.

- 35. The requirements of paragraph 34 are in addition to the requirements of the *Corporations Act 2001* (Cth) or any other legislation governing the relevant controlled entity.
- 36. The Board must regularly monitor the significant activities of controlled entities (being activities which it considers sufficiently important or of sufficient interest to list on the register kept under paragraph 27(a), or which it considers sufficiently important or of sufficient interest to monitor), which will include regular reports to the Board. Any such monitoring shall also include any proposals concerning the transfer of ownership of the TAFE institute's controlled entities or investments in controlled entities (whether the transfer is to a third party or pursuant to an internal TAFE institute reorganisation).
- 37. The Minister may arrange for an audit of a controlled entity. Where the Minister arranges for an audit of a controlled entity, the Board must ensure the Minister's auditor –
 - (a) has right of access at all times to all the books, securities, accounts, vouchers, and electronic records of the entity; and

⁸ The Guideline does not authorise entities to breach current contracts.

- (b) is provided with any information, assistance and explanations necessary for the performance of the duties of the Auditor-General or person in relation to the audit.

Guideline 13 – Financial Risk

38. The Board must establish policies or procedures for protecting itself against financial risks arising from 'financial arrangements' (as defined in the **Borrowing and Investment Power Act 1987**), as appropriate to the nature of the TAFE institute's operations and the risk tolerance of the Board.
39. The policies and procedures must comply with the Standing Directions of the Minister for Finance under the **Financial Management Act 1994**, the Victorian Government Risk Management Framework and any other relevant legislation or subordinate instrument.

Guideline 14 – Borrowing

40. Ongoing oversight of borrowings is an integral part of the TAFE institute's strategic plan prepared under section 3.1.18A of the Act.
41. Institutes may not borrow until and unless there is an amendment to the Act to provide a power to borrow. Institutes must also obtain the approval of the Treasurer to specifically exercise that power under the **Borrowing and Investment Powers Act 1987**.
42. The Government may consider sanctioning borrowing proposals for a TAFE institute, to a commercially acceptable debt equity ratio, where that TAFE institute has a proven track record of good performance and accountability, and which provides appropriate justification (including expected rates of return) in strategic plans to support proposed capital expenditure programs.
43. When considering whether to exercise its borrowing powers, the Board must ensure that an assessment is undertaken of the financial and operational impacts of the potential borrowings over the expected term of the loan and the TAFE institute's ability to meet the required loan repayments.
44. When submitting a request for borrowing approval to the Minister and Treasurer, the Board must submit the following matters, subject to any additional matters or changes required by the Minister or Treasurer –
 - (a) projected financial statements (operating statement, cash flow statement and balance sheet) over the life of the loan demonstrating the ability to service and repay the loan without causing undue financial stress on the TAFE institute;
 - (b) assumptions underpinning the forecasts;
 - (c) information relating to the purpose of the borrowings (including, but not limited to project details, construction timelines, costs, risk and risk management measures);
 - (d) details of the proposed financial accommodation being sought (including interest rates, terms and conditions); and
 - (e) proposed drawdown and repayment schedule.
45. All borrowings must comply with the Standing Directions of the Minister for Finance under the **Financial Management Act 1994** and any other relevant legislation or subordinate instrument.

Guideline 15 – Treasury risk management

46. The Government may consider sanctioning proposals from TAFE institutes to enter into financial arrangements with a commercial institution to invest cash above the limits as set out in the Standing Directions of the Minister for Finance under the **Financial Management Act 1994** where that TAFE institute has a proven track record of good performance and accountability, and where the proposal provides appropriate justification (including credit rating of the financial institution, the interest rate and the term of the investment).

Note

The power for TAFE institutes to invest is provided in Schedule 2, clause 14 of the Act. TAFE institute must apply to the Treasurer under the **Borrowing and Investment Powers Act 1987** to specifically exercise this power”.

47. When considering whether to exercise its powers to enter into financial arrangements with a commercial institution to invest cash above the limits as set out in the Standing Directions of the Minister for Finance under the **Financial Management Act 1994**, the Board must ensure that an assessment is undertaken of the risk and return of the potential investment.
48. When submitting a request for approval to the Minister and Treasurer, the Board must submit the following matters, subject to any additional matters or changes required by the Minister or Treasurer –
- (a) projected financial statements (operating statement, cash flow statement and balance sheet) over the life of the investment demonstrating the ability to invest for the term of the investment without causing undue financial stress on the TAFE institute;
 - (b) assumptions underpinning the forecasts; and
 - (c) details of the proposed financial arrangement being sought (including interest rates, terms and conditions).
49. Subject to paragraphs 46, 47 and 48, all financial arrangements must comply with the Standing Directions of the Minister for Finance under the **Financial Management Act 1994** and any other relevant legislation or subordinate instrument.

As signed by me on this 17th day of April 2013:



The Hon. Peter Hall, MLC

Minister for Higher Education and Skills