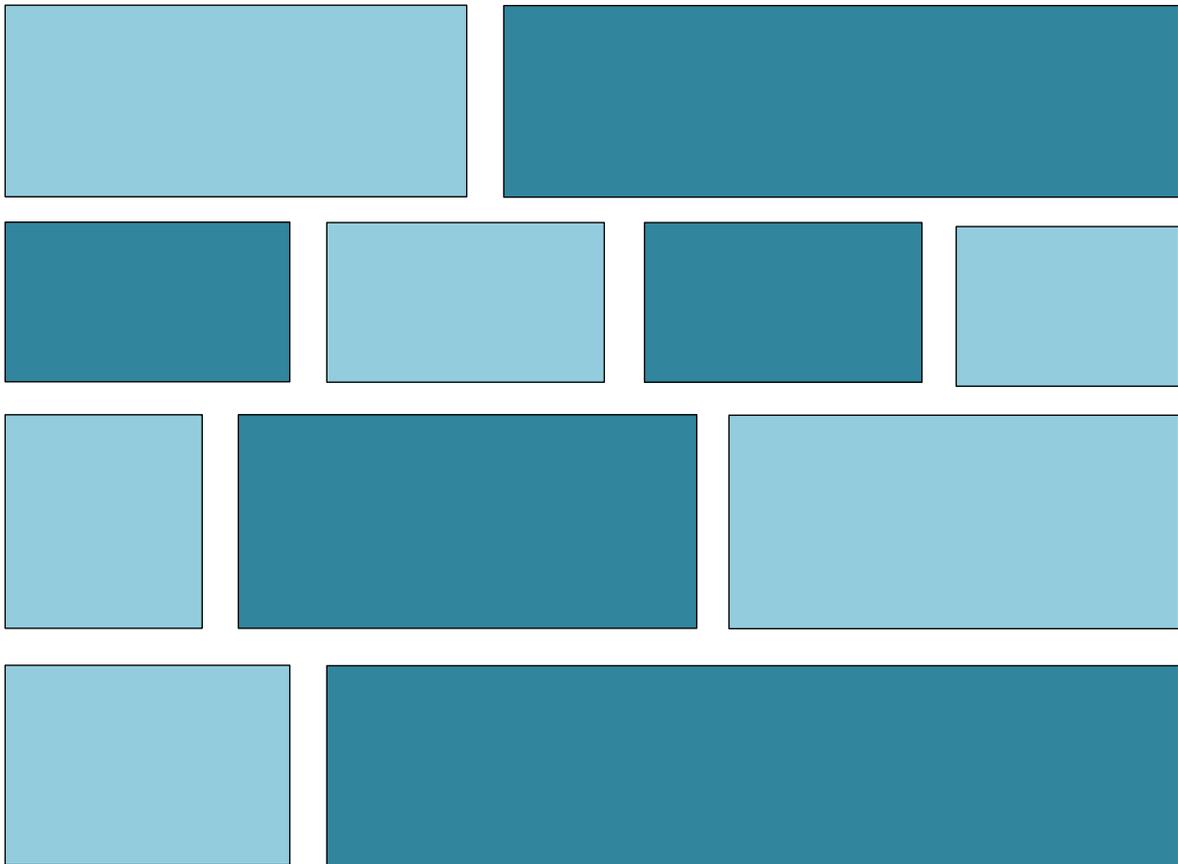




# Ministerial Guidelines (Mandatory)

## International Commercial Activities of TAFE colleges 2017



## MINISTERIAL GUIDELINES FOR INTERNATIONAL COMMERCIAL ACTIVITIES OF TAFE COLLEGES 2017

These guidelines are issued by the Minister for Training and Workforce Development to TAFE colleges under section 13 of the *Vocational Education and Training Act 1996* and must be followed by Governing Councils and colleges pursuant to section 13 (4) of the Act.

### **Citation**

These guidelines may be cited as the *Guidelines for international commercial activities of TAFE colleges 2017*.

### **Application of these Guidelines**

These Guidelines are mandatory and apply with respect to the functions of the TAFE colleges and their Governing Councils in relation to the international commercial activities undertaken by the college.

Dated this 21st day of December 2016



**LIZA HARVEY MLA**

**DEPUTY PREMIER; MINISTER FOR POLICE; ROAD SAFETY;**

**TRAINING AND WORKFORCE DEVELOPMENT; WOMEN'S INTERESTS**

## TABLE OF CONTENTS

### GUIDELINES FOR INTERNATIONAL COMMERCIAL ACTIVITIES OF TAFE COLLEGES 2017

<b>1. BACKGROUND.....</b>	<b>2</b>
<b>2. DEFINITIONS.....</b>	<b>2</b>
<b>3. SCOPE .....</b>	<b>3</b>
<b>4. RELEVANT LEGISLATION OR AUTHORITY .....</b>	<b>3</b>
<b>5. OBJECTIVES .....</b>	<b>3</b>
<b>6. GUIDING PRINCIPLES .....</b>	<b>4</b>
<b>7. PROCEDURES.....</b>	<b>5</b>
7.1 DEVELOPMENT OF A BUSINESS CASE .....	5
7.2 APPROVAL OF THE FINAL BUSINESS CASE BY THE MINISTER .....	5
7.3 DEVELOPMENT AND EXECUTION OF A COMMERCIAL CONTRACT .....	6
7.4 APPROVAL FOR EXTENSION OF EXISTING COMMERCIAL CONTRACTS .....	6
7.5 INTERNATIONAL ENGAGEMENT ACTIVITIES.....	7
7.6 APPROVAL FOR RELATED OVERSEAS TRAVEL .....	7
<b>8. CONSIDERATIONS TO APPLY TO ALL INTERNATIONAL COMMERCIAL PROPOSALS.....</b>	<b>8</b>
8.1 STRATEGIC ALIGNMENT WITH THE STATE'S INTERNATIONAL TRADE STRATEGY .....	8
8.2 DUE DILIGENCE.....	8
8.3 RISK MANAGEMENT.....	9
8.4 INTERNATIONAL COMMERCIAL ACTIVITY COSTING .....	9
8.5 INTERNATIONAL COMMERCIAL CONTRACT MANAGEMENT .....	10
<b>9. ROLE OF TAFE INTERNATIONAL WESTERN AUSTRALIA .....</b>	<b>10</b>

# GUIDELINES FOR INTERNATIONAL COMMERCIAL ACTIVITIES OF TAFE COLLEGES 2017

## 1. Background

The *Vocational Education and Training Act 1996* ('the VET Act') designates overseas commercial activities as a function of the Minister as follows:

Section 8 Functions of the Minister

(1)(d) to enter into commercial activities both within Australia and overseas, to generate revenue for, and otherwise benefit, the State training system.

Section 9 Power of the Minister

(2)(i) enter into contracts and arrangements with overseas organisations for the provision of vocational education and training and related services.

Under the VET Act the Minister can delegate these powers (Section 10) and the authority to enter into contracts under the body corporate name of the *VET (WA) Ministerial Corporation* (Section 7).

Under the VET (WA) Ministerial Instrument of Delegation (Colleges) No 1 of 2016, the Minister has retained the power for decision making in respect of contracts to enter into commercial activities overseas or arrangements with overseas organisations. Where colleges seek to enter into commercial activities overseas, approval must first be obtained from the Minister.

The Instrument of Delegation also states that TAFE International Western Australia (TAFE International WA) will provide a coordinating role for offshore activity in consultation with the colleges.

## 2. Definitions

In these guidelines, unless the contrary intention appears –

**'the VET Act'** means the *Vocational Education and Training Act 1996* as amended;

**'college' or 'TAFE college'** means a college established under section 35 of the VET Act;

**'international commercial activity'** means any activity where a college enters into a contract or arrangement with overseas organisations for the provision of vocational education and training and related services;

**'TAFE International Western Australia'** means the institute established under section 57 of the VET Act and the *TAFE International WA Order 1997* (as amended in 2002 and 2011).

In these guidelines, unless the contrary intention appears, a term that is used in the VET Act and in these guidelines has the same meaning as is given to the term in the VET Act.

### **3. Scope**

These guidelines apply to all activities where TAFE colleges provide vocational education and training (VET) and related services beyond the borders of Australia. These may include:

- The development and full delivery of training programs and courses;
- Provision of partial training to learners enrolled by offshore educational institutions;
- Provision of full training programs through a third party arrangement with another educational institution;
- Consultancy services and client capacity building services.

These guidelines do not apply to activities where TAFE colleges enter into commercial contracts and arrangements with overseas organisations for delivery within Australia. These arrangements are within the scope of the *Ministerial Guidelines: TAFE Colleges Commercial Activities Guidelines 2016*.

### **4. Relevant legislation or authority**

- *Vocational Education and Training Act 1996*;
- VET (WA) Ministerial Instrument of Delegation (Colleges) No 1 of 2016;
- VET (WA) Ministerial Corporation Instrument of Authorisation (Colleges) No 1 of 2016;
- *Ministerial Guidelines: TAFE Colleges Commercial Activities Guidelines 2016*;
- Ministerial Guidelines for TAFE college strategic plans (issued from time to time);
- Ministerial Guidelines for TAFE college annual business plans (issued from time to time);
- Premier's Circular – Guidelines for Official Air Travel by Ministers, Parliamentary Secretaries and Government Officers 2014/02;
- Costing and pricing of Government services: Guidelines for use by agencies in Western Australian Public Sector, Department of Treasury (June 2015).

### **5. Objectives**

These guidelines provide a set of principles and outline procedures for the development and conduct of international commercial activities by TAFE colleges in order to provide a clear framework for colleges' participation in international commercial activities while minimising the risks to the TAFE colleges in undertaking such activities.

The key objectives of the guidelines are to:

- establish a consistent planning and decision-making approach for managing TAFE college offshore commercial activities;
- facilitate a coordinated and strategic approach to TAFE colleges international commercial activities which aligns with the international trade strategy of the State; and

- provide the Minister for Training and Workforce Development with confidence that TAFE colleges are managing risks and accountabilities and are able to operate in an economically sustainable manner when engaging in international commercial activities.

## 6. Guiding Principles

The following principles will guide the initiation, development, establishment and continuation of international commercial activities by TAFE colleges. It is not expected that each program or project will meet all of the principles listed below, however, Principles 1, 2 and 3 are the minimum criteria for approval:

- Principle 1: International commercial activity should enhance the reputation of Western Australia's TAFE sector as a high quality provider of VET and related services.
- Principle 2: International commercial activity must be charged at a commercial rate in accordance with the Department of Treasury *Costing and Pricing Government Services: Guidelines for use by agencies in Western Australian Public Sector*<sup>1</sup>, provide a commercial return and be viable and sustainable over the life of the contract without compromising delivery of services to the domestic market.
- Principle 3: The development of new international commercial activity must align with the State Government's international trade strategy and priorities as articulated by the Department of State Development.
- Principle 4: TAFE colleges should consider collaborative and consortium approaches to international commercial opportunities where this will enhance global competitiveness, quality and/or commercial returns.
- Principle 5: International commercial activity should be aimed at delivering tangible, long term benefits to the State of Western Australia. These benefits may include one or more of the following:
- a) Increasing the numbers of overseas students studying onshore in Western Australia;
  - b) The development of a repeatable program for which there is a strong overseas demand;
  - c) The provision of VET and related services which supports a significant industry export initiative; and
  - d) The provision of VET and related services which supports a strategic economic and cultural relationship such as a Sister State relationship.

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<sup>1</sup> Department of Treasury, June 2015, *Costing and Pricing Government Services*. Downloaded from:  
[https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing\\_and\\_pricing\\_guidelines\\_june2015.pdf](https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing_and_pricing_guidelines_june2015.pdf)

## **7. Procedures**

### **7.1 Development of a business case**

- a) A college is able to enter into exploratory discussions regarding potential opportunities but it must be made clear that no agreement can be made without the Minister's approval.
- b) All new offshore commercial activities must have a business case which conforms to the International Commercial Activity Business Case Template (Appendix A).
- c) Colleges should develop a preliminary or draft business case using the template at Appendix A for endorsement of the Managing Director.
- d) In developing a draft business case there are a range of considerations which should apply to all international commercial proposals. These are detailed in Section 8 below.
- e) Following endorsement by the Managing Director, the draft business case is submitted to TAFE International WA, which will liaise with a panel of individuals with relevant expertise to provide consolidated feedback and advice to the college. The type of expertise consulted will vary according to the proposal and may include a representative of the Department of State Development.
- f) After considering the advice provided by TAFE International WA, if a college decides to pursue the international commercial activity, the college will prepare a final business case for endorsement of the Managing Director and Governing Council.

### **7.2 Approval of the final business case by the Minister**

There are two avenues for colleges to submit a business case for approval by the Minister:

- a) New business cases can be submitted with the college annual business plan in accordance with the Ministerial Guidelines for Annual Business Plans. If feedback has not previously been provided by TAFE International WA on the draft business case, the advice from TAFE International WA will be provided to the Minister with the Department's recommendations relating to the annual business plan.
- b) For proposed international commercial activities that arise after the annual business plan has been submitted, colleges may submit a final business case for the Minister's approval via the Department (Executive Services). The Department will provide recommendations relating to the business case for the Minister's consideration.

- c) The criteria for approval of the final business case are listed at Appendix B. Proposals which do not meet the requirements of Principles 1-3, may be approved by the Minister where the Minister agrees to exempt the proposal from one or more Principles.

### **7.3 Development and execution of a commercial contract**

- a) Where available, colleges are required to use relevant model contract templates developed by the State Solicitors Office and issued by TAFE International WA.
- b) If an appropriate model contract template is not available, TAFE International WA will obtain legal advice in consultation with the colleges as to the most appropriate form of agreement for an international commercial contract.
- c) Legal advice must be obtained prior to signing a commercial contract that is provided by an international partner, client or agent.
- d) The VET Ministerial Corporation signature block must be used and signed as outlined in the VET (WA) Ministerial Corporation Instrument of Authorisation (colleges) No 1 of 2016 and related VET (WA) Ministerial Instrument of Delegation (colleges) No 1 of 2016. If used, the VET Ministerial Corporation common seal can only be applied by Minister.
- e) Colleges may also apply their common seal and signature block if considered desirable below the VET Ministerial Corporation signature block. If a college affixes the college seal, compliance with Part 6 of the VET (Colleges) Regulations is required.
- f) Key issues for consideration when developing and negotiating international commercial contracts are provided in the *TAFE International Commercial Activity Resource Manual*.

### **7.4 Approval for extension of existing commercial contracts**

- a) Colleges are required to obtain ministerial approval to extend the terms of contracts.
- b) Offshore commercial programs or projects that were in place prior to the issuing of these *Guidelines of international commercial activities for TAFE colleges 2017* may continue for the duration of the contract.
- c) Proposals to extend contracts which do not meet the requirements of Principles 1-3, may be approved by the Minister where the Minister agrees to exempt the proposal from one or more Principles.

- d) Key considerations used for approving extension would include:
- commercial returns;
  - the client's track record for making payments;
  - risk rating and management plan; and
  - project evaluation report.

Further guidance on the criteria is provided in the *TAFE International Commercial Activity Resource Manual*.

## **7.5 International engagement activities**

TAFE colleges may undertake international engagement activities of a non-commercial nature for the enhancement of the reputation of Western Australia's VET sector and enrichment of the students' learning outcomes. These activities may include:

- Knowledge sharing or professional development in overseas locations (eg. presenting at a conference, staff exchange);
- Representation of industry, the State or the nation in overseas locations (e.g. fulfilling the role of international skills competition judge);
- Provision of pastoral care, coaching and guidance to TAFE college students travelling overseas (e.g. accompanying students for global mobility programs);
- Undertaking research under scholarship and fellowship programs.

Colleges need to seek prior approval by the Minister for these activities either through the college annual business plan in accordance with the Ministerial Guidelines for Annual Business Plans or by submitting a brief business case to the Minister.

The minimum information required to be submitted for each proposed international engagement activity includes: benefits of the activity, full costs and how the anticipated costs will be covered.

The costs of these activities must be fully covered by a third party. No State funding source (including cash reserves) should be used to cover the costs of these international engagement activities.

## **7.6 Approval for related overseas travel**

- a) All international travel by TAFE college staff must be approved by the Minister in accordance with the *Premier's Circular – Guidelines for Official Air Travel by Ministers, Parliamentary Secretaries and Government Officers 2014/02*, or its replacement document.
- b) The International travel application portal (the portal) is the online system to be used to gain ministerial approval for a TAFE college staff member to undertake official international travel and reporting of the outcome afterwards. TAFE colleges should use the International travel application portal unless instructed otherwise by the Department or Minister.

- c) All international travel applications must be submitted to the Minister for approval a minimum of six weeks prior to the intended departure date.
- d) A one page summary of the approved business case must accompany each request by TAFE colleges for overseas travel related to international commercial activities, using the template provided in the portal.
- e) Further guidance has been developed to assist TAFE colleges' staff to submit international travel applications and post travel reports for approval. This is provided in the *TAFE International Commercial Activity Resource Manual*.

## **8. Considerations to apply to all international commercial proposals**

### **8.1 Strategic alignment with the State's international trade strategy**

In order to support the application of Principle 3, TAFE International WA will seek advice from the Department of State Development on the strategic priorities for the State's international trade strategy. These priorities will be updated and communicated to TAFE colleges on an annual basis.

The current priorities will be published in the *TAFE International Commercial Activity Resource Manual*.

### **8.2 Due diligence**

Due diligence focuses on gathering publicly available and relevant information related to the suitability of the proposed partner and the business opportunity in order to make an informed judgement. The following two stage approach for due diligence is recommended:

- Initial due diligence (Stage 1) to be conducted through the desktop audit as part of the preliminary business case preparation.
- Detailed due diligence (Stage 2) to be conducted as part of a final business case preparation phase and before signing a commercial contract with an international commercial client.

Further guidance on conducting due diligence checks is provided in the *TAFE International Commercial Activity Resource Manual*.

### 8.3 Risk management

Risk management must be addressed by TAFE colleges when negotiating international commercial activities given the inherent higher risk associated with these activities.

The Auditor General has recommended that TAFE colleges<sup>2</sup>:

- determine whether they have the necessary authority before entering into any arrangement (i.e. assessing whether an arrangement meets the definition of a 'business arrangement');
- ensure that all arrangements are subject to proper business planning or cost benefit analysis;
- ensure that all arrangements include clearly detailed objectives and outcomes and where necessary, performance measures;
- obtain legal advice as to the most appropriate form of agreement;
- ensure that all arrangements are appropriately monitored to ensure that contractual conditions are complied with and outcomes are achieved; and
- maintain appropriate records of all arrangements.

The *TAFE International Commercial Activity Resource Manual* provides further guidance on risk management process and template, typical risks associated with the TAFE colleges' offshore commercial activities and their possible mitigations under the following key risk categories:

- commercial/financial risks;
- legal/contract risks;
- reputational risks;
- quality, compliance and academic risk;
- project risks; and
- country risks.

Colleges are required to provide information on how they intend to manage key risks associated with each offshore international commercial contract as part of the business case to be approved.

### 8.4 International commercial activity costing

The business case for each new offshore commercial activity must include details on full costs to deliver the international activity including all direct and indirect cost items.

Colleges must ensure that they refer to and comply with the Department of Treasury *Costing and Pricing Government Services: Guidelines for use by agencies in Western Australian Public Sector*<sup>3</sup>.

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<sup>2</sup> Auditor General for Western Australia, June 2001, Report on Public Universities and TAFE colleges. 2000 Annual Reporting Cycle. Report No.5.

<sup>3</sup> Department of Treasury, June 2015, *Costing and Pricing Government Services*. Downloaded from:

Colleges should avoid travelling overseas to seek new offshore international commercial contracts, unless an exceptional case is approved by the Minister.

The *TAFE International Commercial Activity Resource Manual* provides lists of direct and indirect cost items that may need to be included into the overall cost of offshore project by TAFE colleges.

## **8.5 International commercial contract management**

Once ministerial approval for the final business case is granted, colleges must develop an international commercial contract and ensure that an effective contract management governance and process are in place for each contract. This includes assignment of responsibilities for the management of contract performance, administration, relationships and risks.

The *TAFE International Commercial Activity Resource Manual* provides a contract management framework and a checklist of activities to be considered in the development of a contract management plan.

## **9. Role of TAFE International Western Australia**

TAFE International Western Australia will facilitate and coordinate the international commercial activity of Colleges. This role will include:

- Providing feedback and advice on preliminary business cases to colleges prior to the formal approval processes;
- Providing advice and recommendations to the Minister on final business cases;
- Providing feedback and advice to colleges on contract exit and extension;
- To hold and develop contract templates for offshore commercial programs or projects;
- Obtaining legal advice from the State Solicitor's Office on contracts and model contracts;
- Liaising with the Department of State Development to obtain advice on the State's strategic trade priorities;
- Providing advice, coordination and recommendations to colleges on inbound foreign delegations' visits and outbound trade missions by liaising with the Department of State Development;
- In consultation with stakeholders, reviewing the Guidelines for International Commercial Activity by TAFE colleges and recommending updates and changes to the Minister; and

- Promoting best practice with respect to international commercial activities through the development of resources and information sharing activities.

To enable TAFE International Western Australia to fulfil the role outlined, colleges are required to provide TAFE International Western Australia with:

- electronic copies of all signed contracts to form the international commercial contracts register; and
- information which may be requested from time to time. Such information may include due diligence reports, academic quality audit reports, risk management plans and project evaluation reports.