GOVERNMENT OF WESTERN AUSTRALIA

TAFE WA

Ministerial Guidelines

Commercial Activities of TAFE Colleges

Ministerial Guidelines for Commercial Activities of TAFE Colleges

These Guidelines are issued by the Minister for Skills and TAFE to the Western Australian 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 VET Act.

CITATION

These Guidelines may be cited as the *Ministerial Guidelines for Commercial Activities of TAFE Colleges 2026.*

APPLICATION OF THESE GUIDELINES

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

Dated this 3 day of Aug 2026

HON AMBER-JADE SANDERSON MLA
MINISTER FOR SKILLS AND TAFE

Ministerial Guidelines for Commercial Activities of TAFE Colleges

1. Background

The *Vocational Education and Training Act 1996* authorises TAFE colleges to engage in commercial activities through fee-for-service contracts to provide products, consultancy or other services, and by participation in business arrangements.

Section 37 of the VET Act outlines functions of a college relating to commercial activities, including:

(ba) to tender for and enter into contracts for the provision by it of vocational education and training;

(bb) to provide vocational education and training on a fee for service basis;

(ca) to provide, for a fee or otherwise, or enter into contracts to provide, products, consultancy or other services in the course of, or incidental to, the provision by the college of vocational education and training;

(da) to turn to account the vocational education and training expertise of the college by means of sale of the services and the commercial exploitation of intellectual property, including the assignment and licensing of such property;

(f) with the approval of the Minister, on terms and conditions approved by the Treasurer, to participate in business arrangements relating to the provision of vocational education and training;

Section 37(2) of the VET Act requires a college to perform its functions in accordance with its strategic plan last approved by the Minister under section 43 and its business plan last approved by the Minister under section 44A.

Section 48 (b) of the VET Act includes that a college's funds consist of monies received from commercial activities conducted by the college.

2. Definitions

In these Guidelines, unless the contrary intention appears –

'business arrangement' means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits consistent with section 9(4) of the VET Act.

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

'commercial activity' means any activity undertaken by a Governing Council or college under s37(1)(ba), (bb), (ca), (da) or (f) of the VET Act.

'Department' means the Department of Training and Workforce Development.

‘Guidelines’ means these *Ministerial Guidelines for Commercial Activities of TAFE Colleges*.

‘international commercial activity’ means any proposal for a college to enter into a contract or arrangement with an overseas organisation for the provision of vocational education and training related services referred to in section 9(2)(i) of the VET Act.

‘participate’ includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement consistent with section 9(4) of the VET Act.

‘TAFE System’ means the Department of Training and Workforce Development and TAFE colleges.

‘VET Act’ means the *Vocational Education and Training Act 1996* as amended. 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.

Also, the interpretation provisions of the latest version of the General Conditions of Contract (Part B of the Request Conditions and General Conditions of Contract) (a Department of Treasury and Finance document) (mutatis mutandis) apply to and govern the interpretation of these Guidelines.

3. Relevant legislation or authority (as issued or updated)

- *Vocational Education and Training Act 1996*
- *VET (WA) Ministerial Instrument of Delegation (colleges)*
- *VET (WA) Ministerial Instrument of Authorisation (colleges)*
- *Minister’s Statement of Expectations for TAFE Colleges*
- *Ministerial Guidelines for TAFE College Strategic Plans and Annual Business Plans*
- *Ministerial Guidelines for International Commercial Activities of TAFE colleges*
- *Financial Management Act 2006*
- *Public Sector Management Act 1994*
- *Procurement Act 2020*
- *Treasurer’s Instructions*
- *Expenditure Review Committee Handbook*
- *Department of Treasury and Finance Costing and Pricing of Government Services*
- *Australian Foreign Relations (State and Territory Arrangements) Act 2020*
- *Auditor General for Western Australia, June 2001, Report on Public Universities and TAFE colleges. 2000 Annual Reporting Cycle. Report No.5*
- *Facilities Third Party Access Policy*
- *Western Australian Government Risk Management Guidelines*

4. Scope

TAFE colleges enter into commercial activities to:

- support economic growth and diversification;
- support future industry and local economic development;
- deliver positive social impacts for the community and local communities; and
- provide innovative and responsive training solutions developed and delivered in partnership with industry, employers and TAFE colleges.

These Guidelines apply to activities where a TAFE college provides commercial vocational education and training and related activity and services and the college is the “seller” as prescribed in the functions of a college under section 37(1) of the VET Act.

Commercial activities of a TAFE college must be conducted in accordance with the college’s strategic plan and the college’s annual business plan approved by the Minister in accordance with the *Ministerial Guidelines for TAFE College Strategic Plans and Annual Business Plans*.

These Guidelines do not apply to college contracts where a college is the “buyer” of services or goods that support their general operations, as covered by the *Procurement Act 2020 (WA)* and related policies.

These Guidelines do not apply to contracts or arrangements with overseas organisations. A college must refer to the *Ministerial Guidelines for International Commercial Activities of TAFE Colleges* to progress a contract or arrangement with and overseas organisation under s9(2)(i) of the VET Act.

5. TAFE College Governing Council

A college’s Governing Council must ensure the TAFE college conducts commercial activities which are:

- approved by the Minister in accordance with the *Ministerial Guidelines for TAFE College Strategic Plans and Annual Business Plans;*
- progressed in compliance with the *VET (WA) Ministerial Instrument of Delegation (colleges)* and *VET (WA) Ministerial Instrument of Authorisation (colleges);*
- in compliance with these *Ministerial Guidelines for Commercial Activities of TAFE Colleges;*
- in compliance with the *Ministerial Guidelines for International Commercial Activities of TAFE Colleges;*
- approved by the Minister, on terms and conditions approved by the Treasurer, before entering into a business arrangement as defined in s9(4) of the VET Act;
- supported by legal and other advice when deciding to undertake commercial contracts and arrangements as and where necessary;

- consistent with risk management practices as set out in the *Treasurer's Instructions* and any other requirements of public sector entities;
- consistent with Department of Treasury and Finance *Costing and Pricing Government Services*; and
- considerate of impacts on other businesses, including but not limited to the private RTO fee for service market.

6. Approval for Commercial Activities

A college's commercial activities are to be consistent with:

- State Government priorities;
- the *Minister's Statement of Expectations for TAFE Colleges;*
- a college's approved strategic plan under section 43 of the VET Act; and
- a college's approved annual business plan under section 44A of the VET Act.

Commercial activities may be a valuable source of income for emerging, new and thin markets, and to support training sustainability including in regional and remote areas.

6.1 ANNUAL BUSINESS PLAN

A college must include proposed commercial activities in the draft annual business plan for the year that begins on the following 1 January in accordance with the *Ministerial Guidelines for TAFE College Strategic Plans and Annual Business Plans.*

Commercial activity with a total contract value over $1 million must be approved by a college's Governing Council and the Minister.

Commercial activity with a total contract value up to $1 million must be approved in line with a college's approved delegations and the college's job pricing template.

A TAFE college must complete a business case for all new commercial activity.

A template business case for TAFE college commercial activities is at **Attachment A**.

6.2 NEW COMMERCIAL ACTIVITY DURING A YEAR

For proposed commercial activities that arise after an annual business plan has been approved, a college must:

- gain Governing Council approval and the Minister's approval if the contract value is over $1 million over the life of the contract*;*
- include all new contracts and business arrangements in the draft annual business plan for the following year.

New commercial activity with a contract value up to $1 million commenced and completed during a year must be approved in line with a college's approved delegations and the college's job pricing template; and appropriately reported in the college's Annual Report for that year.

New proposed commercial activity with a contract value over $1 million developed during a year, and not already included in a college's Annual Business Plan approved by the Minister, must be submitted in accordance with the process outlined at section 10 of these Guidelines.

6.3 CONTRACT SPLITTING

Contract splitting shall not be used to circumvent the above monetary limit requirements.

7. Commercial Activities

The VET Act provides four paths by which a TAFE college may engage in commercial activities under section 37(1) of the VET Act.

7.1 FEE FOR SERVICE TRAINING PROGRAMS

The authority for a college to provide training programs on a fee-for-service basis is conferred by section 37(1)(ba) and (bb) of the VET Act:

> *s37(1) The functions of a college are as follows —*
> *(ba) to tender for and enter into contracts for the provision by it of vocational education and training;*
> *(bb) to provide vocational education and training on a fee for service basis;*

7.2 CONTRACTS TO PROVIDE PRODUCTS, CONSULTANCY OR OTHER SERVICES

The authority for a college to provide training programs on a fee-for-service basis is conferred by section 37(1)(ca) of the VET Act:

> *s37(1) The functions of a college are as follows —*
> *(ca) to provide, for a fee or otherwise, or enter into contracts to provide products, consultancy or other services in the course of, or incidental to, the provision by the college of vocational education and training;*

7.3 INTELLECTUAL PROPERTY

The authority for a college to market their training expertise by the sale of services and commercial exploitation of intellectual property is conferred by section 37(1)(da) of the VET Act:

> *s37(1) The functions of a college are as follows —*
>
> *(da) to turn to account the vocational education and training expertise of the college by means of the sale of services and the commercial exploitation of intellectual property including the assignment and licensing of such property;*

When a college enters into a contract or business arrangement to provide vocational education and training expertise, it must ensure the contract or business arrangement addresses the assignment or licensing of intellectual property at commercial rates. It is important to not disadvantage the college or the Minister, both in the short term and long term (for example sharing or selling IP that will enable competitors to secure future contracts at the expense of WA industry).

7.4 PARTICIPATION IN BUSINESS ARRANGEMENTS

The authority for a college to enter into a business arrangement is conferred by section 37(1)(f) of the VET Act:

> *s37(1) The functions of a college are as follows —*
>
> *(f) with the approval of the Minister, on terms and conditions approved by the Treasurer, to participate in business arrangements relating to the provision of vocational education and training;*

Supplementary guidance for commercial activities is provided at **Attachment B**.

8. Other Activities

8.1 INTERNATIONAL COMMERCIAL ACTIVITIES

A college must refer to the *Ministerial Guidelines for International Commercial Activities of TAFE Colleges* to progress a contract or arrangement with an overseas organisation.

8.2 LEASING OUT OF TAFE COLLEGE FACILITIES

The Minister has power under s9(2)(f) of the VET Act to authorise, by lease, licence or other arrangement, the use for commercial, community or any other purpose of any land, buildings, equipment, facilities or services used or provided for, or in connection with, the provision of vocational education and training as long as the use for such a purpose does not detract from the provision of vocational education and training.

The Minister has delegated this power to Governing Councils with conditions and limitations specified in the *VET (WA) Ministerial Instrument of Delegation (colleges).* In accordance with this delegation, Governing Councils are authorised to execute contracts on behalf of the VET (WA) Ministerial Corporation with conditions and limitations as specified in the *VET (WA) Ministerial Instrument of Authorisation (colleges).*

Colleges are encouraged to make full commercial use of their facilities and allow third party access in accordance with the *Facilities Third Party Access Policy.*

Where a college identifies an opportunity to lease out TAFE facilities, it is limited to arrangements where:
- the total contract value is up to $500,000 including the cost of outgoings; and
- the contract period is less than 12 months including former and subsequent contracts.

Colleges are required to provide the Department's Training Infrastructure Management branch with a copy of all leases, licenses or arrangements. The Department must be consulted for all other leasing contracts and arrangements for external facilities.

8.3 COMMONWEALTH AGREEMENTS

A college must follow the processes outlined in the *Expenditure Review Committee Handbook* to negotiate and sign a contract, agreement or grant with the Commonwealth Government.

A college must seek approval from the Minister to commence the process to sign an agreement with the Commonwealth. The Department can provide information and assistance to a college that intends to bid for a contract with the Commonwealth.

Agreements exempt from the ERC process must be approved by the Minister and reported in the Exempt Agreements Report to the Treasurer. These reports must be provided to Treasury via the Department by 31 August each year, and disclose agreements signed in the financial year ending the previous 30 June.

9. Considerations for Commercial Activity Proposals and Decisions

9.1 RISK MANAGMENT

Risk management is an important issue to be addressed by a TAFE college when negotiating commercial activities. A college should undertake a risk assessment for commercial activities in line with the college's risk appetite approved by its Governing Council.

The Auditor General recommends that TAFE colleges:

- determine whether they have the necessary authority before entering into any 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.

TAFE colleges must comprehensively address risk management for commercial activities. Colleges should refer to:
- *Treasurer's Instructions*;
- *Western Australian Government Risk Management Guidelines.*

9.2 LEGAL ADVICE

If you think you need or might benefit from legal advice/assistance, think about getting it sooner rather than later (perhaps even before you begin to embark on any planned course of action).

9.3 IMPACT ON THE TRAINING MARKET

A college should consider the impact that a proposed commercial activity will have on other businesses, including but not limited to the private RTO fee for service market.

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9.4 COMMERCIAL ACTIVITY COSTING AND PRICING

A college must ensure commercial activity is developed in accordance with Department of Treasury and Finance *Costing and Pricing of Government Services.*

10. Approval for New Commercial Activity During a Year

A college may progress new commercial activity during a year.

Where the contract value for new proposed commercial activity is over $1 million, a college must submit its Governing Council approved business case and supporting documents to the Department by email to executive.services@dtwd.wa.gov.au.

Where the contract value for new proposed commercial activity is up to $1 million, a college must ensure the commercial activity is approved in line with the college's approved delegations and the college's job pricing template.

11. Role of the Department of Training and Workforce Development

The Department assists the Minister to administer the VET Act and subsidiary legislation and is the System Manager for the TAFE sector.

On receipt of a new proposed commercial activity with a contract value over $1 million during a year the Department will:

- review a college's Governing Council approved business case and supporting documents;
- where further information is required, work collaboratively with the college's Managing Director; and
- advise the Minister as to whether the new proposed commercial activity meets the requirements set out in these Guidelines and any other requirements.

Attachment A

TAFE College Business Case for Commercial Activities - template

SUMMARY

Provide a summary of the business case in 100 words or less.

SCOPE OF BUSINESS CASE

Include:

- name of client/contractor and location.
- Nature of the engagement (activities to be undertaken)

OBJECTIVES TO BE ACHIEVED

Include:

- Intended benefits (strategic and economic)
- Targets (e.g. number of fee for service students)

ALIGNMENT WITH STRATEGIC GOALS

- Link to current college business priorities college and/or sector priorities.

PROPOSED ACTIVITIES AND TIMELINES

- Key stages and decision points, including proposed consultations and decision makers.

FINANCIAL OVERVIEW

Include:

- Expenditure and anticipated/actual return.
- Internal business costs including human resources allocated to this activity.
- Overview of pricing assessment consistent with Treasury guidelines, college resources and competitive neutrality

ASSOCIATED RISKS

Include:

- Outline any key assumptions.
- Any previous experience in similar engagements
- Impacts on other businesses (including but not limited to the private RTO fee for service market)
- Risk assessment and risk management strategies.

PROJECT EVALUATION

Include:

- Measures of success.

RECOMMENDATIONS

Include :

The Minister to approve.......

Attachment B

Supplementary Guidance

CONTRACTS VS BUSINESS ARRANGEMENTS

All proposed business arrangements require the approval of the Minister and the Treasurer in accordance with section 37(f) of the VET Act. In addition, the Department of Treasury requires all proposals to satisfy extensive prudential requirements.

Most college commercial activity with industry has been conducted through contracts to provide fee-for-service training programs, and contracts to provide products, consultancy or other services. This method has proved to be efficient, timely and effective.

Where a college has sought to engage in a commercial activity with industry through participation in a business arrangement, the path has been onerous, time consuming and convoluted.

Although the VET Act allows colleges to participate in business arrangements, in nearly every instance there is adequate power through the use of contracts (i.e. other than business arrangements) to achieve the same commercial outcomes without undue exposure to risk.

Such contracts are the most appropriate vehicle with which TAFE colleges should engage in commercial activity with industry.

Colleges should be especially cognisant of the following sections concerning ‘Commercial Terms’ and ‘Risk Management’ when entering into contracts and be aware that a high degree of financial and contractual rigor needs to apply when negotiating and entering contracts.

COMMERCIAL TERMS

The definition of business arrangement is provided in section 9 (4) of the VET Act:

s9 Powers of the Minister
(4) in subsection (2)(1) —

> ***business arrangement*** *means a company, a partnership, a trust, a joint venture or an arrangement for sharing profits;*
> ***participate*** *includes form, promote, establish, enter, manage, dissolve, windup, and do anything incidental to participating in a business arrangement.*
> *property including the assignment and licensing of such property;*

If a TAFE college uses any of the terms in Section 9 (4) above during negotiations for a contract or in a signed contract with industry, then that contract *could be construed or inferred as a business arrangement* because of the way in which the commercial activity was described. That said, the use of any legal label, by itself, may not necessarily be determinative. Courts will look at the substance of a transaction, not just its form (i.e. how it is labelled).

A college should always seek advice (including legal advice) when entering into, or considering entering into, a commercial or business arrangement, agreement, transaction, activity, undertaking or venture.

The consequences would be that a TAFE college could be confronted with increased exposure to the risk of losses, legal disputation and adverse audit findings.

In order to avoid the consequences of any commercial misunderstanding, it must be emphasised that when TAFE colleges are conducting negotiations, it is imperative to ensure that those persons conducting the negotiations:

- are aware of the relevant provisions of the VET Act;
- use the correct terminology;
- take into account the proper identity of the parties to any proposed commercial activities;
- understand the nature of the transaction; and
- get legal advice where necessary or advisable

Fiduciary relationship

A fiduciary relationship is a relationship of confidence, responsibility and honesty to act for the benefit of another. There are different degrees of fiduciary relationships depending on the circumstances. Partners are under a fiduciary duty (to their other partners) and trustees are under the same (to their beneficiaries).

Types of entities a college may conduct commercial activities with

There are different types of entities a TAFE college may enter into a commercial activity with. The following provides information about how different entities are formed.

COMPANY

A company is sometimes referred to as a corporation. A corporation is formed by being registered under the Corporations Law or under corresponding earlier legislation. A corporation is a device by which legal rights, powers, privileges, immunities, duties, liabilities and disabilities may be attributed to an entity.

The entity acquires rights and liabilities by the acts of persons behind it. The people who operate a corporation on a day-to-day basis are its directors and its employees. However, its ultimate controllers are its members or owners (i.e. its shareholders).

PARTNERSHIP

The *Partnership Act 1895* section 7 defines ‘partnership’ as ‘the relation which subsists between persons carrying on a business in common with a view to profit’.

Unlike a company, a partnership does not have a legal existence independent of its partners. As a partnership is not a legal entity it cannot own property. Consequently, the property of a partnership is owned by the partners personally. Similarly, creditors of a partnership are creditors of the partners personally so that each partner is jointly and severally liable for debts and costs incurred by other partners in their role as partner.

Each partner is an agent of the other partners and can make contracts on their behalf for the purpose of the partnership's business. A partner cannot assign his/her interest in the partnership without the consent of the other partners. For these reasons each partner is a fiduciary of the other partners in the partnership.

One exception to the partnership not being a separate legal entity is that partners may sue and be sued in the name of the firm in which they were partners, when the cause of action accrued.

TRUST

A trust is a fiduciary relationship where a person holds the title of property for the benefit of another person(s) or for the benefit of a purpose.

Normally, a trust is created by a settlor who causes the trust relationship to come into existence. However, in some cases a trust may be created unintentionally and in these cases there will be no settlor. A settlor creates a trust by passing property to a trustee who holds the trust property on trust for (i.e. for the benefit of) one or more beneficiaries. Where a person simply declares that he/she holds his/her own property in trust for another person then he/she is both settlor and trustee.

The trustee is the person in whom the trust property is vested. The trustee holds the legal title to the property and controls the property. However, the trustee can only deal with the property for the benefit of the trust's beneficiaries.

A beneficiary is the person who benefits from the trust. The beneficiary holds the equitable title to the trust property. This means that while they have a right to enjoy the property, they have no right to control the property.

In all trusts the trustee is under a personal fiduciary duty not to use the trust property for the benefit of anyone other than the beneficiary. This duty arises from the double form of ownership found in trusts - namely both the trustee and the beneficiary have a form of ownership in the trust property. The beneficiary's interest is beneath that of the trustee, and superimposed on the trustee's interest is a range of personal duties owed to the beneficiary.

Some arrangements for commercial activities

There are different ways a TAFE college may consider when entering into a commercial activity. When in doubt or you otherwise require legal assistance on the best path forward, get legal advice (including from the State Solicitor's Office) at the earliest opportunity.

CONTRACT

A contract is a legally binding agreement. Before a contract can exist there must be an offer made and an acceptance of that offer. The offer and acceptance need not be in writing nor proved by a signature or handshake. With some exceptions (e.g. the sale of land) contracts can be made orally or by writing.

The parties to a contract must also display an intention to be legally bound by the contract. This intention need not be expressed, rather it may be inferred from the circumstances surrounding the creation of the contract.

Another requirement necessary for the formation of a contract is consideration. Consideration is the price or detriment (i.e. obligation incurred) given as the value for a promise. The price or detriment undertaken by each party under the contract need not be equal to the price/detriment of the other party.

Also, a contract may be void if it is made by parties who are not capable (e.g. minors, people who lack mental capacity) or if an illegal act must be committed for the contract to be performed.

JOINT VENTURE

The term 'joint venture' is not a technical term with a settled legal definition. It has been described as 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. As between the joint venturers themselves, the relationship (when not a partnership) is governed by the terms of the agreement.

Although in some situations a joint venture may constitute a partnership, generally a partnership is concerned with an ongoing business of indefinite duration whereas a joint venture is concerned with a single project. Like a partnership, a joint venture is not a separate legal entity. This, therefore, distinguishes it from a company.

As a joint venture is not a separate legal entity, it cannot sue or be sued in its own name. Therefore, legal rights and obligations are borne by the joint venturers themselves, and the liability for debts of the joint venture is joint and several.

ARRANGEMENT FOR SHARING PROFITS

This term may be used to describe the arrangement under which partners in a partnership or joint venturers in a joint venture agree to share profits.

Alternatively, this term may be used to describe an arrangement whereby employees are paid a share of the profits of the business enterprise in which they are employees. Such payments are distinct from and additional to regular earnings. Profit may be paid out in the form of cash or company stock. In deferred payment plans, profit may be paid into a trust fund from which employees can draw annuities in later years.

MEMORANDUM OF UNDERSTANDING

This is a document recognising that the minds of the parties are at one that a proposed transaction between them should proceed on the basis of maintaining a particular state of affairs, or adopting a particular course of conduct. It will usually set out the principles, strategies and mechanisms for dealing with the common issues at hand.

These documents, by themselves, do not normally create or give rise to legal relations between and are not legally binding on the parties concerned. A memorandum of understanding is therefore distinguished from a contract, as a contract is legally binding. A memorandum of undertaking on the other hand is usually a non-justiciable statement of intent.

Be careful that a document which is labelled a memorandum of understanding could be found by a court to be a legally binding contract (or vice versa). Courts look at the substance of a document, and are not bound by its title or label.

Note, also, that a letter of intent or comfort, likewise, is usually not legally binding (but, again, it depends on the substance, and surrounding circumstances of, the same).