



DFEEST ADMINISTRATIVE INSTRUCTION:

AI/2008/

Title: Student Administration – TAFE South
Australia – International Students– Policy On
External Appeals

Date of issue: 10/04/2008

Previously issued in DFEEST Bulletin no: New administrative instruction

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Warning: DFEEST Administrative Instructions are uncontrolled if printed

TITLE: Student Administration – TAFE South Australia International Student Appeals Policy

ATTENTION:

All Departmental staff, particularly:
TAFE SA Executive Directors,
TAFE SA Directors,
TAFE SA educational management staff
TAFE SA teaching staff
TAFE SA administrative staff

RESPONSIBLE UNIT: Education Services and Programs

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REVIEW Date: 01/02/2010

MANDATE: This Administrative Instruction is issued in accordance with:

- ESOS Act 2000
- Australian Government National Code of Practice for Registering Authorities and Providers of Education and Training to Overseas Students 2007

APPROVAL

Approval in accordance with DFEEST Administrative Policy Framework AI/2006/2

Recommended: Sue Sachs, Director, Education Services and Programs, DFEEST **Date:** 02/02/2008

Endorsed: TAFE SA Executive **Date:** 14/02/2008

Approved: Brian Cunningham, CE, DFEEST **Date:** 08/03/08

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1. Purpose

Where an international student is enrolled with TAFE SA, their continued residence in Australia may be conditional on holding a student visa issued by the Australian Government. For an international student to continue to hold a student visa the student must comply with certain conditions regarding academic progress and attendance at courses. TAFE SA is required by the ESOS Act to determine whether these conditions are being met by each international student enrolled with TAFE SA, and where they are not, and to report accordingly to the Australian Government.

This Administrative Instruction sets out the policy and procedures to be used where a decision is made by TAFE SA which may result in the student visa of an international student being cancelled or withdrawn, and the student concerned wishes to appeal against the decision. A decision made by an authorised staff member of TAFE SA is deemed for the purpose of this Administrative Instruction to be a decision of TAFE SA.

2. Policy Statement

It is the policy of TAFE SA that:

- 2.1 International students are to receive all relevant information on their responsibilities and appeal rights when they enrol with TAFE SA.
- 2.2 TAFE SA will keep records of each student's attendance and academic progress.
- 2.3 Reasonable assistance will be provided to all students (including international students) so as to maximise their opportunities to successfully complete their courses.
- 2.4 Students at risk of breaching their student visa conditions will receive a warning of this fact before action is taken by TAFE SA to report the students breach to the Australian Government.
- 2.5 If a decision is made by TAFE SA which may adversely affect the academic standing of an international student or the continuation of that person's student visa, then the international student concerned shall have the right to appeal against the decision. This appeal will be heard through the Department's internal appeal processes.
- 2.6 If the student concerned is not satisfied with the outcome of the internal appeal process then he/she shall have the right to an external review through processes independent of the Department.
- 2.7 Processes used in the handling of complaints by international students will comply with the provisions of this Administrative Instruction and with the requirements of Standard 8 of the Australian Government's National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.

3. Scope

This Administrative Instruction applies to international students enrolled with TAFE SA who are living in Australia and hold a student visa.

It does not apply to students living outside Australia and studying TAFE SA courses by on-line learning or other means.

It does not apply to Australian students, and does not apply to any provider of vocational education and training services outside TAFE SA.

4. Definitions

“Department” means the South Australian Government Department of Further Education, Employment, Science and Technology (DFEEST) and its successors.

“International student” means a either a person who is living and studying in Australia by virtue of holding a student visa as defined in the ESOS Act, but does not include students of any kind prescribed in the ESOS Regulations. Where the student is under the age of 18 years and the student is required to exercise rights or enter obligations as a legal person, this term may refer to the student’s aren’t or legal guardian.

“National Code” means the National Code of Practice for Registering Authorities and Providers of Education and Training to Overseas Students 2007 issued under the authority of the Australian Government.

“TAFE SA” includes all the TAFE Institutes under the administrative control of the Department, and any Departmental units supporting them.

“Chief Executive of the Department” includes all authorised officers who have been delegated powers to carry out particular tasks in relation to this policy

Other terms are as defined in the National Code Appendix A.

5. Processes

Enrolment and progress

- 5.1 When an international student is enrolled a file is to be opened by TAFE SA on the student. The file may be electronic or otherwise. This file is to be used to record details of the student’s academic progress, attendance, and other matters as detailed below.
- 5.2 When the international student’s enrolment is accepted by TAFE SA the student is to be given a copy of this Administrative Instruction and must sign a document confirming that he/she has received it. This signature of receipt is to be kept by TAFE SA in the student’s record file.
- 5.3 The student’s progress is to be monitored by TAFE SA. Where the progress and/or attendance record of the student are deemed by TAFE SA to be unsatisfactory, support and corrective action is to be applied. The processes to be used for this are set out in DFEEST Administrative Instructions AI/2007/91 “TAFE South Australia Course Intervention Policy” and AI/2007/90 “Student Administration- TAFE South Australia Course Progress Policy”.

5.4 The processes referred to in paragraph 5.3 above may result in a notice being issued to the student advising him/her of the intention of TAFE SA to advise relevant Australian Government agencies that TAFE SA has determined that the student has failed to comply with specified visa conditions. Before TAFE SA makes such a report, the student has the right to appeal against the determination of TAFE SA.

Internal appeals

5.5 In the first instance the student may appeal through TAFE SA's internal appeal processes. These are set out in DFEEST Administrative Instructions AI/2006/75, AI/2007/90 and AI/2007/91.

5.6 The outcome of the internal appeal process must be notified by TAFE SA to the student as soon as is reasonably practical. Where the outcome of the internal appeal process will, in the absence of a successful further appeal, result in TAFE SA notifying the Australian Government of a breach of student visa conditions, the letter of notification to the student must advise the student of his/her right to make an external appeal.

External appeals

5.7 Where the student has made an internal appeal against the decision of TAFE SA and the appeal is not upheld, the student has the right to make an external appeal according to the processes set out below. A student may not make an external appeal before he/she has made an internal appeal and the internal appeal process has been concluded.

5.8 TAFE SA will not report the alleged breach to the Australian Government before the student has had the opportunity to make an external appeal.

5.9 The Chief Executive of the Department (or authorised officer as delegated by the Chief Executive) will appoint and maintain a standing panel of not less than three persons who will be available to conduct external reviews relating to alleged breaches of student visa conditions by students of TAFE SA. These persons shall have no current connection with the Department other than being a part of the panel of external reviewers, and must not have been in the employ of the Department more recently than three years before appointment to the panel.

5.10 Where a student wishes to make an external appeal, he/she must notify the Chief Executive of the Department or the Executive Director of the TAFE Institute at which he/she is enrolled of this in writing within 10 working days of being sent formal advice from TAFE SA that the internal appeal has been unsuccessful.

5.11 Within 10 working days of receipt of advice from the student that he/she wishes to make an external appeal, TAFE SA must acknowledge (in writing) receipt of this advice and proceed with the external appeal process.

5.12 TAFE SA must advise the Chief Executive of the Department that the student concerned wishes to avail himself/herself of the external review process. The Chief Executive must within 10 working days select a person to conduct the review from the panel of external reviewers and notify the student of the name and contact details of the reviewer.

- 5.13 The reviewer must consider the process which has led to this point and report to the Chief Executive of the Department. The grounds which the reviewer may consider in determining the outcome of the external appeal are as follows:
- a. Whether TAFE SA had followed the processes required by its policies on academic progress and attendance, in particular AI's 2007/90 and 91;
 - b. Whether compassionate and compelling circumstances applied in the case (as set out in AI/2007/90) but TAFE SA had failed to give reasonable weight to these circumstances;
 - c. Whether a denial of natural justice had occurred in the case.
- 5.14 The external review process must be conducted without TAFE SA or the Department making any financial charges to the student.
- 5.15 Reasonable assistance and support must be provided by TAFE SA to the student to enable them to continue with their studies while undergoing this process. Any relevant information will be provided to both the student and the external reviewer on request. The student will be allowed to have a person accompany him/her, if the student requests this. However, formal legal representation is not allowed.
- 5.16 Where the student chooses to access the external appeals process, TAFE SA must maintain the student's enrolment and give the student continued opportunity to progress in the course while the external appeals process is ongoing.
- 5.17 The external reviewer must make every reasonable effort to expedite the result of the review, and must in any case report his/her determination to the Chief Executive of the Department within 20 working days of his/her commencement of the external review unless the Chief Executive approves an extension of the time available.

Outcome of external appeal

- 5.18 When the external reviewer reports his/her findings to the Chief Executive, the Chief Executive must consider the advice provided and make a final determination on whether the student has been non-compliant or not. Processes to be followed according to the different outcomes of the external appeal are as set out below.
- 5.19 Where the advice of the external reviewer is that the appeal should not be upheld and the Chief Executive agrees with this, then
- a. The student must be notified in writing of the outcome, with reasons for the decision;
 - b. TAFE SA must as soon as practicable report to the Australian Government that the student has breached his/her student visa conditions. The nature of the breach and the fact that appeal processes have been followed according to the National Code must also be reported.
 - c. A Non Compliance Notice (NCN) under section 20 of the ESOS Act must be signed by the Chief Executive of the Department and forwarded to the student who has been non-compliant.
- 5.20 Where the external reviewer advises that substantive grounds for appeal do exist and the Chief Executive does not agree with this, then the processes to be followed are as in 5.19 a. to c. above.

5.21 Where the advice of the external reviewer is that the appeal should be upheld and the Chief Executive agrees with this, then TAFE SA must continue the student's enrolment and supply intervention and support as set out in AI/2007/91. The student must be immediately notified in writing of the outcome, and Department and TAFE SA must immediately implement any corrective and/or preventative actions arising from the external review.

5.22 Where the student does not make application for an external appeal within 10 working days as specified in 5.10 of this Administrative Instruction, then the reporting and notification process set out in 5.19 b. and c. applies.

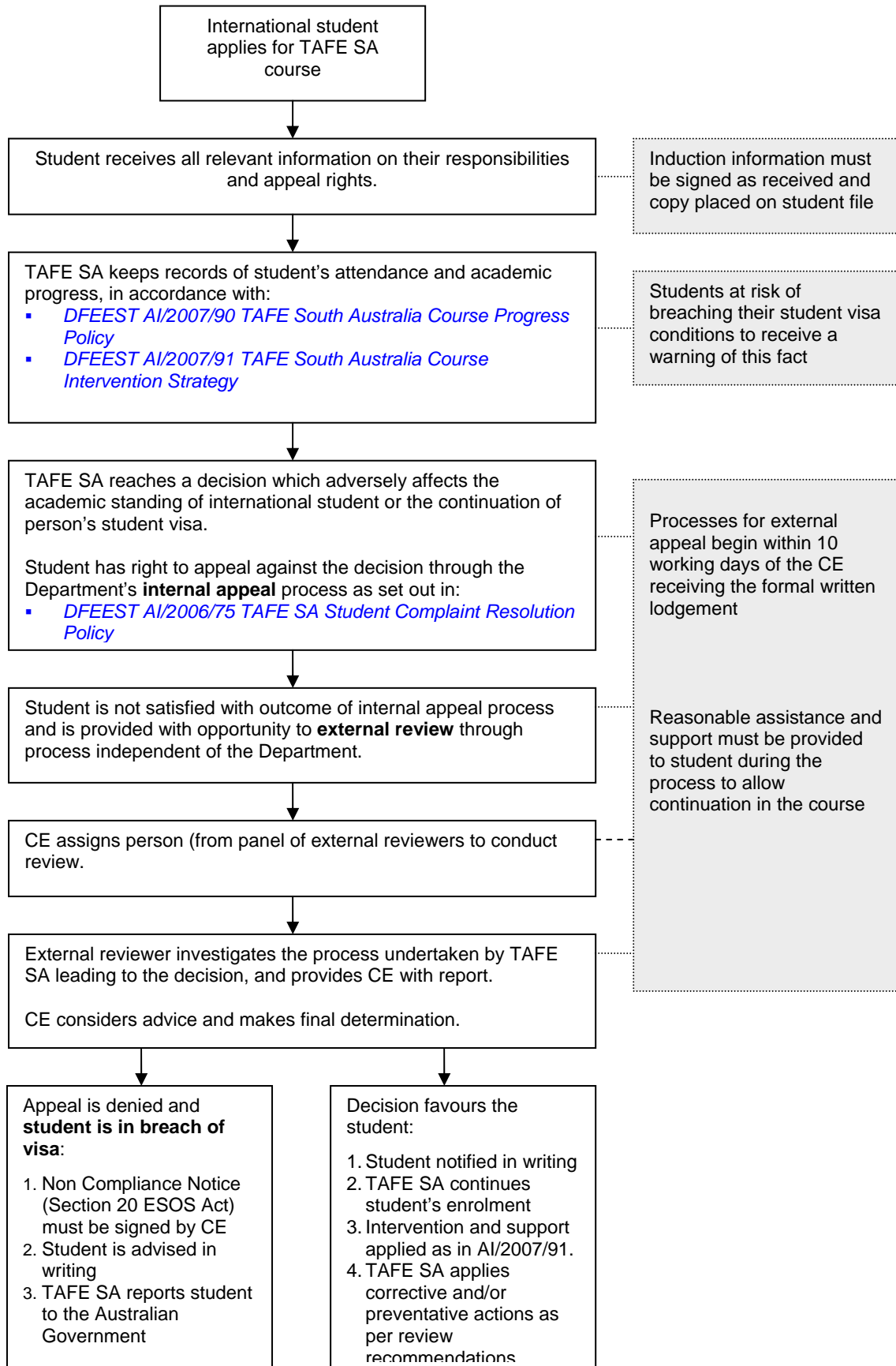
6. Attachments

Material which TAFE SA field staff may find useful in implementing the policy in this Administrative Instruction is attached:

Attachment A **Flow chart of International Student External Appeals Process**

Attachment B **Template - External Review Report to DFEEST Chief Executive**

Flow chart of International Student External Appeals Process



TO:	THE CHIEF EXECUTIVE, DFEEST	
RE:	TAFE SA INTERNATIONAL STUDENT – EXTERNAL APPEAL PROCESS (REVIEW)	
STUDENT:	(surname) _____	(given name(s)) _____
INSTITUTE:	_____	CAMPUS: _____
COURSE:	_____	

1) Administrative Facts

Have the appropriate DFEEST policies and procedures in accordance legislative requirements been followed by TAFE SA? (Refer DFEEST AI/2006/75, DFEEST AI/2007/90, DFEEST AI/2007/91)

(2) Individual factors pertinent to the Appeal

*Have the relevant personal circumstances of the student been considered?
Has the relationship between the student and TAFE South Australia staff played a part in the outcome of the appeal?
Has the student taken personal responsibility for the situation, sought counselling or undertaken additional study?
Have there been any changes in the financial situation or study load which would result in better performance?
Has the student abided by the conditions set by TAFE South Australia?*

(3) TAFE SA personnel (and/or others) consulted during process

List of names and relationship to the student, or relevance to the situation

(4) Determination

After consideration of the administrative facts and any individual factors pertinent to the case the reviewer may recommend to the CE:

- (a) the upholding or dismissing of a Student's appeal, and*
- (c) any corrective or preventative action that has been identified.*

(5) External Reviewer (name) _____ (signature) _____
(contact details)
(date)