

Smart and Skilled Third Party (Brokering Arrangement) Policy

Released 12 May 2023

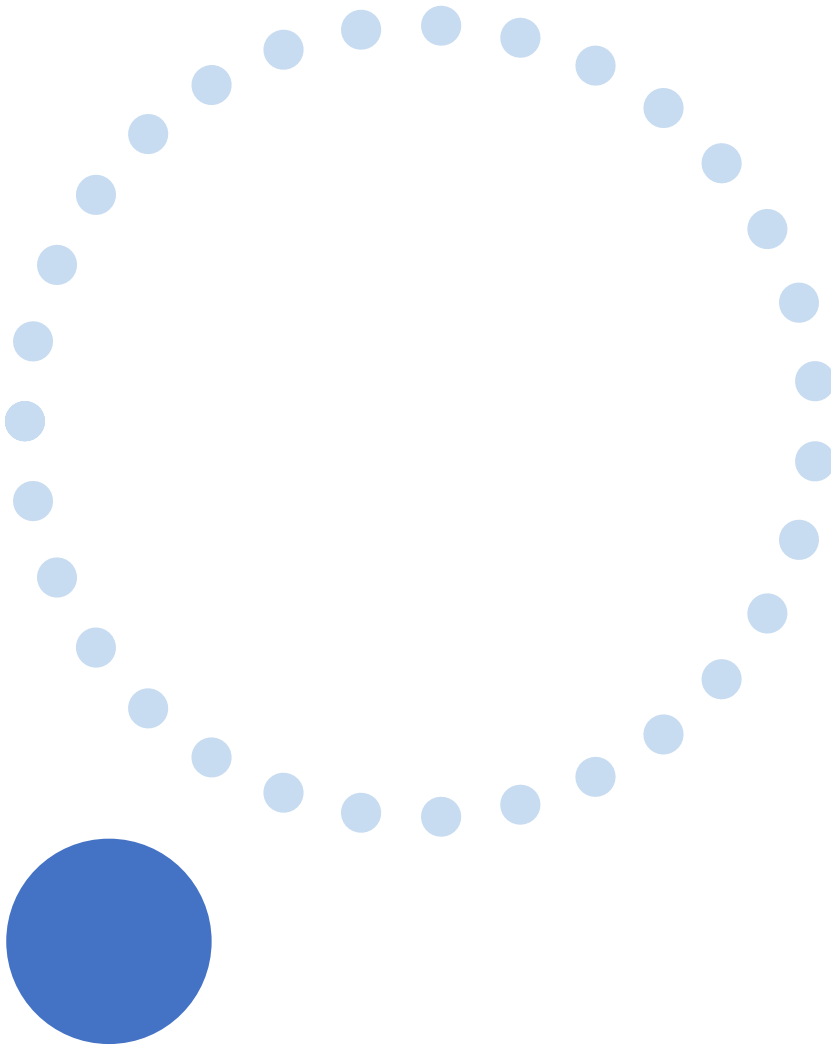
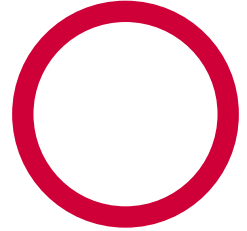


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This policy must be read in conjunction with all Smart and Skilled Terms and Conditions and Smart and Skilled Operating Guidelines. Particular attention should be given to the Third Party Arrangement clauses of the Contract and the Third Party Arrangement paragraphs in the Smart and Skilled Operating Guidelines.

This policy sets out how a Provider applies for the Department's approval of a Brokering Arrangement under the Smart and Skilled Contract.

The Provider must not enter into any Brokering Arrangement in relation to the Smart and Skilled Contract without the Department's written consent. The Department may, in its absolute discretion, reject or approve any proposed Brokering Arrangement. It is an Event of Default if a Provider does not comply with ASQA's [General Direction](#) and seek the Department's approval for any Third Party Brokering Arrangement(s).

The Provider must maintain all its obligations to ensure that all activities conducted under a Third Party Arrangement including a Brokering Arrangement comply with the Smart and Skilled Contract.

For all approved Brokering Arrangement(s), the Provider must not allow the broker to further assign their obligations to any other organisation or person.

NOTE: The Department may, in its absolute discretion, rollover an approved Brokering Arrangement into any subsequent Activity Period. Where this does not occur, the Provider must reapply.

What is a Third Party Arrangement?

Smart and Skilled providers sometimes work with other organisations and/or person(s) (third parties) to deliver a range of services, including marketing, undertaking recruitment, using facilities and resources and training and/or assessment of vocational education and training (VET) courses. A Third Party Arrangement occurs where the Provider defers day-to-day responsibility to another organisation or person for such services.

Brokering Arrangements

Brokering Arrangements are a type of Third Party Arrangement defined in Schedule 1 of the Smart and Skilled Contract Terms and Conditions, as an arrangement between the Provider and another person for the person to do one or more of the following:

- (a) recruit students, or enrol students, or accept applications for enrolment, in Subsidised Training
- (b) market, or provide information or advice in relation to, Subsidised Training
- (c) assist students to complete or submit applications for Subsidised Training; or
- (d) assist, or provide support for, students who could be eligible for Subsidised Training to complete any assessments required to show that students are academically suited to undertake the Subsidised Training.

The Department will consider a Brokering Arrangement where the Provider is able to justify their proposed use of a broker. This may encompass a specific alignment with NSW Government priorities, including but not limited to:

- improving outcomes for disadvantaged groups
- supporting and/or improving student outcomes
- supporting specific government initiatives and targeted program deliverables
- improving outcomes in regional and rural communities
- improving apprenticeship and traineeship commencements and completions; and
- strengthening connections with industry.

What is a Passive Intermediary?

A Passive Intermediary is a person or organisation who refers clients to various programs including Subsidised Training that does not recruit learners on behalf of specific Providers, but rather fulfils their obligations in relation to their clients, normally on behalf of a government department. They do not receive funding from a government department, Providers or Prospective Students in exchange for referrals.

Examples of Passive Intermediaries

A government-appointed intermediary, 'ABC Training Centre', has an arrangement in place with a government department to provide programs to unemployed youth, which may include a training component. 'ABC Training Centre' refers its clients to one or more government contracted RTOs in order to provide training to its clients.

Examples of government appointed Passive Intermediaries may include Australian Apprenticeship Centres, Disability Services Commission, Correctional Services NSW, some employment service providers and the Australian Migrant Resource Centres.

In New South Wales, intermediaries may include those operating in relation to programs such as Regional VET Pathways, or programs such as the Refugee Employment Support Program.

Brokering Arrangements involving a Passive Intermediary do not require the approval of the Department.

What is the process for applying for Brokering Arrangement approval?

The application

The Provider is responsible for submitting the application, which must be lodged at least 28 days prior to the intended commencement of the proposed Brokering Arrangement. To apply for a Brokering Arrangement the Provider must provide the Department with:

- the Provider's details

- details of the proposed third party to the Brokering Arrangement
- details of the responsibilities that the Provider proposes to broker (including information regarding the relevant program, Approved Qualification(s), unit(s) of competency, skills set(s) and region(s))
- justification for the selection and use of the Broker
- justification on the benefit of the proposed Brokering Arrangement, this should explain how it will meet any student, industry and community training needs
- start and end date* of the Third Party agreement
* *the end date must not fall outside of the current Activity Period*
- details of strategies to mitigate any identified risk(s)
- a signed copy of the Third Party Agreement; and
- verification that the Provider has an appropriate completed third party agreement with the proposed broker as required by the Australian Skills Quality Authority (section 2.3 of the *Standards for Registered Training Organisation (RTOs) 2015*).

The Provider must submit a fully completed Brokering Arrangement application. Where an application is deemed incomplete, the application will be rejected. The Department may also request additional information regarding an application.

NOTE: Providers who want to enter into a Brokering Arrangement associated with the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program must seek the Department's approval before submitting a Training Need Identification (TNI) application. The relevant Brokering Arrangement approval numbers must be submitted as part of the TNI application. Obtaining an approval number for a Brokering Arrangement does not guarantee that the TNI application will be accepted or that a Provider Activity Schedule (PAS) will be issued.

Assessment of applications

The Department will assess the Third Party Brokering Arrangement application against the following mandatory criteria:

Organisation	Criteria
Smart and Skilled Provider	<ul style="list-style-type: none"> • Training quality and compliance including: <ul style="list-style-type: none"> ○ compliance with the NSW Quality Framework and NSW Fair Trading ○ compliance with the <i>VET Student Loans Act 2016</i> (Cth) or any legislation governing the VET Student Loan program ○ any regulatory condition(s), suspension(s), sanction(s) or written direction(s) associated with the delivery of the qualification(s), unit(s) of competency or skills set(s) on the RTO's scope of registration

	<ul style="list-style-type: none"> ○ compliance with the Smart and Skilled Contract or any other vocational education and training (VET) related contract with a Government Agency, whether in New South Wales or any other Australian jurisdiction, and ○ whether there is any pending investigations against the Provider.
Third Party Organisation/Person	<ul style="list-style-type: none"> ● Compliance and performance history in the last 5 years: <ul style="list-style-type: none"> ○ held a Smart and Skilled Contract or any other VET related contract terminated due to any reason, and/or ○ held a Smart and Skilled Contract or any other VET related contract where non-compliance or poor performance were identified. ● Personnel that held, or currently hold, a management position within, or ownership of, a company that is linked to an organisation that: <ul style="list-style-type: none"> ○ held a VET related contract that was terminated for non-compliance or poor performance ○ the RTO's registration was refused, cancelled, terminated or revoked, or ○ have any pending investigations.
Third Party Agreement	<ul style="list-style-type: none"> ● Associated service charges or inducement(s)

The Department also takes a case-by-case approach to evaluate the risk when assessing a Third Party Brokering Arrangement application against the criteria listed below:

Criteria
<ul style="list-style-type: none"> ● Any similarity of the arrangement to that of a Passive Intermediary ● The proportion and volume of the request associated with: <ul style="list-style-type: none"> ○ the Program(s), qualification(s), unit(s) of competency and/or skills set(s) and region(s) being considered; and ○ occurrence and track record of training delivery in the qualification(s), skills set(s) and/or unit(s) of competency. ● The relevance and adequacy of the Third Party Arrangement and the third party agreement ● The extent to which student, industry, the Department's priorities and community training needs are being met ● The relationship with the Third Party organisation, in that, are there any: <ul style="list-style-type: none"> ○ shared ownership/operational structure, whether indirect or direct ○ shared personnel at any level of management, and ○ any perceived conflict of interest from the past or present. ● Whether the mitigation strategies adequately address the identified risk(s) ● The adequacy of quality assurance, monitoring and validation of the Third Party Arrangement, and ● Any other Third Party Arrangements that may be in place.

NOTE: The Department applies a risk-based approach to determine the outcome of the Brokering Arrangement application. Any decision regarding the Brokering Arrangement application will remain at the Department's absolute discretion.

How will the Provider be notified of the outcome of the application?

The Provider will be advised of the Brokering Arrangement application outcome via a Notice. Where a Brokering Arrangement application is approved, the Department will issue a 'reference number' which the Provider should maintain for future reference.

Related information

- [Smart and Skilled Contract Terms and Conditions](#)
- [Smart and Skilled Operating Guidelines](#)
- [Application for Approval of a Smart and Skilled Third Party Brokering Arrangement](#)

These documents are available on the [NSW Government website](#).

Further information can be obtained by contacting smartandskilled.application@det.nsw.edu.au