



# Smart and Skilled Subcontracting and Brokering Arrangement Approval Policy

20 November 2020

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# Smart and Skilled Subcontracting and Brokering Arrangement approval policy

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

The Department may, in its absolute discretion, reject or approve any proposed subcontracting and Brokering arrangements. The Provider must not subcontract any part of its obligations or enter into any Brokering Arrangement in relation to the Smart and Skilled Contract without the Department's written consent.

This policy sets out how a Provider may apply for the Department's approval of subcontracting or Brokering Arrangements under the Smart and Skilled Contract.

The Provider maintains the obligation to ensure that all activities conducted under a subcontracting or Brokering Arrangement comply with all Terms and Conditions of the Smart and Skilled Contract.

Any approved subcontracting or Brokering Arrangement must not allow the subcontractor or broker to further subcontract or assign their obligations to any third party without the Department's written approval.

## Subcontracting

Subcontracting without the approval of the Department is an Event of Default under the Smart and Skilled Contract Terms and Conditions. The occurrence of an Event of Default may result in consequences including suspension or termination of the Provider's Smart and Skilled Contract.

### What is subcontracting?

Subcontracting is an arrangement where any part of the Provider's obligations is carried out by an individual or organisation other than the Provider (or the Provider's employees or officers). This includes the Provider's general obligations as listed in the *Smart and Skilled Contract Terms and Conditions*.

Examples of subcontracting arrangements can be found in the subcontracting paragraph of the *Smart and Skilled Operating Guidelines* and below.

**NOTE:** Providers do not need to apply to the Department for approval if the subcontractor is an individual engaged to conduct the role of trainer and/or assessor on a contract basis provided that the individual is the contracting party. This means that the trainer and/or assessor is directly personally engaged by the Provider and not via a trust or company structure.

*For example, if the Provider proposes to engage Lisa Miller via her company LM Training Pty Ltd – prior approval is required.*

## Examples of subcontracting

The Provider engages an organisation to conduct the role of trainer and/or assessor on a contract basis.

The Provider enters into a contract with another RTO to provide training for certain units of competency, skill sets or a full qualification.

The Provider engages a contractor to carry out the administration of its student enrolments, fee payments system and undertaking Recognition of Prior Learning assessments.

## What is a Brokering Arrangement?

A Brokering Arrangement, as defined in the *Smart and Skilled Terms and Conditions*, is an arrangement between a person and the Provider for the person to do one or more of the following:

- recruit students, or enrol students, or accept applications for enrolment, in Subsidised Training
- market, or provide information or advice in relation to, Subsidised Training
- assist students to complete or submit applications for Subsidised Training;
- 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.

A Brokering Arrangement application will generally not be considered for approval by the Department. Exceptions to considering applications may include whether the person is a Passive Intermediary and/or there is a specific alignment with any of the following NSW Government priorities, including:

- disadvantaged groups
- regional and rural communities
- apprenticeships
- the NSW Infrastructure Skills Legacy Program
- Jobs of Tomorrow Scholarships
- National Insurance Disability Insurance Scheme (NDIS) workforce development

If the Brokering Arrangement application is considered to involve a person who is a Passive Intermediary and/or to align to any of the NSW Government priorities it will be subject to further criteria associated with the assessment of applications.

## Examples of Brokering Arrangements

The Provider engages an agent to recruit potential students. The broker is not an employee of the Provider.

The Provider engages an agent to assist potential students with their enrolment applications for Smart and Skilled Subsidised Training.

## What is a Passive Intermediary?

A Passive Intermediary is a person 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, Department of Correctional Services, some employment service providers and the 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 and Smart, Skilled and Hired.

## What is the process for applying for subcontracting or Brokering Arrangement approval?

To apply for approval, both the Provider and the proposed subcontractor or party to a Brokering Arrangement must complete the relevant application.

There are separate application forms and processes for subcontracting arrangements and Brokering Arrangements. Further information on these processes can be obtained by contacting [training.market@det.nsw.edu.au](mailto:training.market@det.nsw.edu.au)

### The application

The Provider must only submit the application once it is fully completed. The Provider is responsible for submitting the application, which must be lodged at least 28 days prior to the intended commencement of the proposed subcontracting or Brokering Arrangement. The timeline for the Department to respond to your application is on receipt of a fully completed and correct application and all evidence has been provided.

The application requires information relevant to the subcontracting or Brokering Arrangement. This includes:

- the Provider's details
- details of the proposed subcontractor or proposed party to the Brokering Arrangement
- details of the responsibilities that the Provider proposes to subcontract or broker (including information regarding the relevant Approved Qualifications / Units of Competency and Regions)
- justification for the selection and use of the proposed subcontractor or party to a Brokering Arrangement

**NOTE: Providers that apply for the Department's approval to enter into a subcontracting or Brokering Arrangement associated with the Smart and Skilled Prevocational and Part Qualifications Program must do so before submitting a Training Needs Identification (TNI) Form. Any relevant subcontracting or Brokering Arrangement approval numbers must be submitted as part of the TNI Form. Obtaining an approval number for a subcontracting or Brokering Arrangement does not guarantee that the TNI will be accepted or that a Provider Activity Schedule will be issued.**

### Supporting documentation

The Department may request additional information in support of an application. At a minimum, the Provider must attach a copy of the proposed third party agreement as part of the application (e.g. as also required under section 2.3 of the *Standards for Registered Training Organisation (RTOs) 2015*). The Department may, at its discretion, also request additional information such as details or evidence supporting the proposed subcontractor's or broker's capacity to meet the Provider's obligations under the Smart and Skilled Contract, and to support its financial solvency.

### Assessment of applications

Criteria for assessing applications for subcontracting or Brokering Arrangements may include:

- Consistency with the Smart and Skilled NSW Quality Framework and Statement of Expectations For Smart and Skilled Providers
- Provider Performance Monitoring compliance and NSW Fair Trading compliance history
- Provider capacity, including the type, volume, proportion and range of Subsidised Training involved
- Relevance and adequacy of the third party agreement and any associated service charges
- Compliance with the Commonwealth Government's VET Student Loans Act 2016 (No. 98, 2016)
- Extent to which student, industry and community training needs are met
- Level of innovation or incorporation of flexible training delivery and assessment methods
- Relevance and adequacy of identified risk mitigation strategies

## What happens if the subcontractor or party to a Brokering Arrangement does not satisfactorily perform obligations under the subcontracting arrangement or Brokering Arrangement?

At all times the Provider maintains responsibility for ensuring all of its obligations are being met in accordance with the Smart and Skilled Contract. This includes any activities conducted by a subcontractor or broker under a subcontracting or Brokering Arrangement.

If a subcontractor or broker fails to perform its obligations satisfactorily:

- the Department's approval of this subcontracting or Brokering Arrangement may be withdrawn
- it may be an Event of Default under the Provider's Smart and Skilled Contract and the Department may take action including suspension or termination of the Provider's Smart and Skilled Contract
- future applications made by the Provider for Department approval to enter into subcontracting or Brokering Arrangements may be refused.

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

The Provider will be advised via email of the outcome of an application for approval to enter into a subcontracting or Brokering Arrangement. subcontracting or Brokering Arrangements must not commence without the prior consent of the Department.

If consent is given, the Provider will be given an approval number which the Provider must maintain as evidence of the Department's consent to enter into that subcontracting or Brokering Arrangement.

## Related information

Smart and Skilled Contract Terms and Conditions

Smart and Skilled Operating Guidelines

These documents are available on the Training Services NSW website at

[www.training.nsw.gov.au/smartandskilled/contract\\_policy.html](http://www.training.nsw.gov.au/smartandskilled/contract_policy.html).