Smart and Skilled Provider Expression of Interest

Submission to the NSW Government from Community Colleges Australia

7 December 2022

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Executive Summary

Summary

The NSW Government's Smart and Skilled program provides eligible students with access to government subsidised training. All registered training organisations (RTOs) that wish to receive Smart and Skilled funding in 2023/24 must apply (or re-apply) to become providers. The expression of interest (EOI) application process opened on 1 November 2022 and closed on 2 December 2022. Community Colleges Australia (CCA) agrees that the Smart and Skilled program provider base was overdue for a "refresh". However, CCA has identified a number of concerns as to how this process will impact the state's not-for-profit (NFP) adult and community (ACE) sector.

This submission details six issues that need to be addressed as part of the Smart and Skilled EOI selection process from the perspective of New South Wales not-for-profit ACE providers:

1. The way the "financial viability" test may be applied that disadvantages CCA members and other not-for-profit training organisations.
2. Inadequate inclusivity: the criteria for allocation of Smart and Skilled funding should include the ability of providers to meet the needs of their local communities, including engagement with disadvantaged and vulnerable cohorts.
3. The impact of opening the Foundation Skills Entitlement Program to for-profit providers, more than just TAFE and community education providers.
4. The limitations of regional skills forecasting intelligence that may impact the ability of providers to access/apply for relevant qualifications and meet community need.
5. The lack of relationship of the Smart and Skilled EOI and significant national and New South Wales policy developments.
6. Information privacy and information transparency.

Skills strategy developments: The current NSW "ACE Program" targets disadvantaged students in metropolitan, regional and remote areas of NSW and supports students that cannot access Smart and Skilled Entitlement programs. The ACE Program also supports small business owners and their employees. The ACE Program and the Smart and Skilled program thus operate together as complementary NSW government-funded skills strategies to meet the training needs of the state's disadvantaged learners. The NSW Government is currently developing a full strategy for the state's ACE sector, which builds on and extends the "ACE Policy Statement" issued by the NSW Skills Minister in July 2021: this will be the most important strategic development for the NSW ACE sector in at least 10 years. CCA is concerned that the role of community education providers in the state's training strategy has not been properly recognised in the processes and criteria of the EOI. The ACE Strategy does not appear to have a direct relationship with Smart and Skilled EOI, although both are major state skills policy developments.

In addition to the NSW ACE Strategy, four other current major policy developments may impact the Smart and Skilled EOI:
- the Commonwealth's Foundation Skills Strategy – both CCA and the NSW Government are represented on the new national Foundation Skills Advisory Group;
- the establishment of Jobs and Skills Australia;
- the implementation of "free TAFE" with increased funding for 180,000 students in 2023 and a further 300,000 from 2024 onwards; and
- the new Workforce Australia providers, many of which are also RTOs with the capacity to refer their job-seekers to their own training.

Each of these major developments have major potential to impact how the Smart and Skilled program operates and its success in reaching the state's target learners.

Not-for-profit RTOs are different than for-profit RTOs because they are values-based and have explicit "missions" – they exist to serve the communities they work with. This is reflected in their attitudes to profit and surplus – NFP community providers invest surplus funds in their communities and organisations. They generally provide a higher level of service, particularly increased student support for the most disadvantaged and highest needs learners and are much better positioned to provide foundation skills to these learners.

NSW not-for-profit and ACE RTOs also have a significantly greater degree of regulation and oversight than for-profit RTOs. NFP providers are regulated by the Australian Charities and Not-for-profit Commission (ACNC), with substantial ongoing obligations to remain registered and keep charity/NFP status. ACNC requirements easily exceed those of most for-profit organisations, especially those that are not public companies (the great majority of private Smart and Skilled providers). *CCA does not believe this level of regulation and oversight has been reflected in the EOI, which treats NFP RTOs the same as for-profit RTOs.*

The fact is that community education providers are different, not just in regulation, but in their community-oriented mission and their approach towards engagement with disadvantaged learners; NSW community education providers consistently exceed the disadvantaged learner percentage reach of other training sectors (TAFE, for profit RTOs): see Appendix A for more detail.

Requests

Community Colleges Australia requests that the NSW Government:
- Applies flexibility in the "financial viability" test for not-for-profit ACE providers that are well-established, well-performing and well-governed.
- Gives local community networking and support a high ranking in assessment, as indicated by established networks and support from local and regional service organisations.
- Rescinds plans to open the Foundation Skills Entitlement Program to all Smart and Skilled providers, and that it be limited only to TAFE and to not-for-profit community providers which have shown the ability to meet the needs of foundation skills students.
- Conducts a review of the Department's regional skills forecasting intelligence to ensure that it does not disadvantage any region and clarifies how it is applied in the Smart and Skilled EOI.
- Ensures that contracted NSW ACE Providers do not automatically lose their ACE Program contract if they are unsuccessful in obtaining a 2023/24 Smart and Skilled contract.
- Implements protocols between TAFE NSW and NFP ACE providers that allow for career/study pathways and mandate coordination on a regional and local level.
- Develops and implements protocols around "free TAFE" funding that do not disadvantage NFP community providers, including the delivery of Smart and Skilled-funded places.
- Provides details as to the privacy and use of personal data provided to Equifax as part of the EOI.
- Implements a transparent process of detailing the names of business Directors, senior managers and the ownership structures of all Smart and Skilled providers.

Introduction: NSW Smart and Skilled Program

The NSW Government's Smart and Skilled provides eligible students with access to government subsidised training. Smart and Skilled gives eligible students an entitlement to government-subsidised training up to and including Certificate III; and government funding for higher-level courses (Certificate IV and above) in targeted priority areas.[1] The NSW Skills List provides the nationally accredited qualifications and courses that eligible students may undertake. Eligible students may also undertake a short course (either a nationally accredited skills sets or a bespoke skills set made up of nationally accredited units of competency and/or modules) through the Targeted Priorities Prevocational and Part Qualifications Program. Under Smart and Skilled, a student contributes towards the cost of training through the payment of a student fee. There are different categories of student fees, based on the program, the qualification and the characteristics of the student.

All registered training organisations (RTOs) that wish to receive Smart and Skilled funding in 2023/24 must apply to become providers. The application process opened on 1 November 2022 and closes on 2 December 2022.[2] Smart and Skilled was introduced in 2015, and the last time RTOs had a "broad opportunity" to enter Smart and Skilled was in 2017. CCA agrees that the Smart and Skilled program provider base was overdue for a "refresh", however this submission contains details of concerns as to how this process will impact the state's not-for-profit ACE sector.

This is a competitive application process, based on:
- Initial eligibility criteria, i.e. registration with ASQA, relevant qualifications or units of competency on provider scope listed on the NSW Skills List and financial viability
- Operational structure
- Quality of training provision including:
  - teaching and leadership practice
  - student-centred approach to training experience
  - approach to individualised support for students, particularly students with a disadvantage or with an Aboriginal and/or Torres Strait Islander background.

Community Colleges Australia (CCA) currently has 33 New South Wales-based members receiving Smart and Skilled funding, with a particular focus on foundation skills delivery.

Until 2020, the current NSW "ACE Program" was called the "Community Service Obligation" ("CSO") program of the Smart and Skilled Program, effectively a subset. The ACE Program targets disadvantaged students in metropolitan, regional and remote areas of NSW and supports students that cannot access Smart and Skilled Entitlement programs. The ACE Program also supports small business owners and their employees.[3] Thus, the ACE Program and Smart and Skilled program operate together as complementary NSW government-funded skills strategies to meet the needs of the state's disadvantaged learners.

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[1] See https://www.nsw.gov.au/education-and-training/vocational/funding/smart-and-skilled-program-2023#toc-overview-of-the-smart-and-skilled-program.

[2] See https://www.nsw.gov.au/education-and-training/vocational/funding/smart-skilled-training-providers.

[3] https://www.nsw.gov.au/education-and-training/adult-and-community-education/for-ace-providers.

NSW and National Training Environments in Transition

National and New South Wales state training environments are in a significant period of transition. Impacts of COVID-19[4], a tight labour market with low unemployment, changes accompanying the new Workforce Australia arrangements along with the ongoing reluctance of disadvantaged groups to re-engage with learning and with community activities affects both the numbers and types of learners engaging with training providers. Two NCVER reports reinforce this point:

> VET delivered through blended delivery (that is, online in combination with another delivery mode) has experienced sustained growth, from almost 23% of subject enrolments in 2019 to just over 29% in 2021…. The proportion of online-only VET subjects increased by more than 3% in the year the COVID-19 pandemic was declared (2020)…. Since 2019 there has continued to be a decline in the proportion of VET subjects with no online delivery. This was most pronounced in the first year of the pandemic, with a decrease of almost 7%, followed by a smaller decline of just under 3% between 2020 and 2021.[5]

Government-funded VET student numbers declined in the first six months of 2022 from the same period in 2021, down 4.8% in NSW and 6.5% nationally. This was most acute in community education providers – down by 14.7% in NSW (27.2% nationally), more than any other provider type. Government-funded VET students from the most disadvantaged cohorts also declined in greater percentages than the overall student decline:
- Indigenous student numbers declined 6.8% in NSW (7.5% nationally) – much more than the state's student decline (4.8%).
- Students from the lowest two SEIFA quintiles (the bottom 40% of wealth/income) declined 6.4% in NSW (7.3% nationally), again easily exceeding the overall student percentage decline.[6]

The NCVER reports underline the challenges facing the NSW training system's ability to engage with disadvantaged learners and reinforce the importance that community providers maintain their capacity and capability to deliver and support the skills in the state.

Issues Arising from the Smart and Skilled Expression of Interest Process

CCA has identified six issues that need to be addressed as part of the Smart and Skilled Expression of Interest (EOI) process from the perspective of NSW adult and community education (ACE) providers:

1. The way **the "financial viability" test** will be applied so that it does not disadvantage CCA members and other not-for-profit training organisations.

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[4] See *Fault Lines: an independent review into Australia's response to COVID-19*, The Ramsay Foundation, 20 October 2022, available at https://www.paulramsayfoundation.org.au/news-resources/fault-lines-an-independent-review-into-australias-response-to-covid-19; and "First, COVID hit disadvantaged communities harder. Now, long COVID delivers them a further blow," by Danielle Hitch, Aryati Yashadhana and Evelyne de Leeuw, *The Conversation*, 20 June 2022, https://theconversation.com/first-covid-hit-disadvantaged-communities-harder-now-long-covid-delivers-them-a-further-blow-183908.

[5] Source: *Delivery of VET: emerging trends in response to the COVID-19 pandemic*, by Sheila Hume and Tabatha Griffin, National Centre for Vocational Education Research (NCVER), 1 December 2022, available at https://www.ncver.edu.au/research-and-statistics/publications/all-publications/delivery-of-vet-emerging-trends-in-response-to-the-covid-19-pandemic.

[6] Source: *Government-funded students and courses – January to June 2022*, NCVER, 22 November 2022, available at https://www.ncver.edu.au/research-and-statistics/publications/all-publications/government-funded-students-and-courses-january-to-june-2022 and DataBuilder https://www.ncver.edu.au/research-and-statistics/data/databuilder#gfq-jun-students.

2. **Inadequate inclusivity scope**: The criteria for allocation of Smart and Skilled funding must include the ability of the provider to meet the needs of the local community, including community engagement with disadvantaged and vulnerable communities.
3. The **impact of opening the Foundation Skills** Entitlement Program to all providers, announced by the Department on 31 October 2022.
4. The **limitations in the Department's regional skills forecasting** intelligence that may impact the ability of providers to access/apply for relevant qualifications and meet community need.
5. The **lack of relationship of the Smart and Skilled EOI with significant national and New South Wales policy developments.**
6. **Information privacy** and **information transparency**.

1.Financial Viability Test for Smart and Skilled Providers

The Smart and Skilled EOI includes a "financial viability" test in which applicants must demonstrate financial viability "to ensure that future Smart and Skilled providers have the financial resources to meet their obligations under the contract throughout 2023/24."[7]

Australian Charities and Not-for-profit and Commission requirement: Most Australian not-for-profit organisations – including all CCA's NSW members – are regulated by the Australian Charities and Not-for-profits Commission (ACNC). They have ongoing obligations to the ACNC to remain registered and keep charity status, which included notifying the ACNC of changes, keeping records, reporting annually and complying with ACNC Governance Standards and External Conduct Standards.[8] ACNC obligations are additional to any other requirements NFPs have under other laws or to other Commonwealth, state and territory regulators. Most ACNC-regulated organisations have their annual accounts, details of Directors and governing documents (constitutions) published on the ACNC website.[9] The ACNC has numerous powers to investigate NFPs, including accountability, transparency, proper use of funds, accuracy of information, suitability of board directors, conflicts of interest and "acting in good faith".[10] These requirements easily exceed those of most for-profit organisations, especially those that are not public companies (the great majority of private Smart and Skilled providers). As a result, not-for-profit organisations – in other words, NSW community education RTOs – already have a significantly greater degree of regulation and oversight than for-profit RTOs.

Profitability: Low profitability must be viewed differently between for-profit providers and not-for-profit providers. For-profit providers may frequently pay extensive dividends to the owners of the business and therefore remove the funds from services provided to students. Almost without exception, for-profit providers pick and choose their client groups, avoiding (even with government-funded VET) many of the most disadvantaged, highest need and hard to reach learners. CCA's research, based on NCVER data (see Appendix A), shows how significant the difference is between the student populations between NSW ACE providers, TAFE and for-profit VET providers: in summary, ACE providers engage many times more disadvantaged and higher need learners on a percentage basis, usually coming at a significant cost in time, staff, administrative and corporate effort and resources.

For not-for-profit providers, government-funded VET usually means the organisations are involved in delivering services to disadvantaged people that are only marginally profitable *and* the organisation

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[7] See https://www.nsw.gov.au/education-and-training/vocational/funding/smart-and-skilled-program-2023#toc-financial-viability-assessment.

[8] See https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc. The exceptions are Aboriginal and Torres Strait Islander corporations registered with the Office of the Registrar of Indigenous Corporations; see https://www.acnc.gov.au/for-charities/manage-your-charity/other-regulators/aboriginal-and-torres-strait-islander.

[9] See https://www.acnc.gov.au/charity/charities, the database of Australia NFPs.

[10] See https://www.acnc.gov.au/raise-concern/concerns-about-charities/what-acnc-can-investigate.

over-delivers on quality, personal attention, mentoring and student support. CCA opposes implementation of an inflexible financial viability test for well-established, well-performing and well-governed NFP community providers. CCA asks: "When was the last time the NSW Government has lost money on a not-for-profit ACE provider?" ACE providers, almost universally, embody the highest degree of ethical behaviour, to their students, their staff, their communities and their funders. All CCA members have agreed to comply with the CCA "Code of Ethics".[11]

CCA requests *flexibility in applying the "financial viability" test to not-for-profit community providers that are well-established, well-performing and well-governed.*

2. Inclusivity: Meeting the Needs of Local Communities, and Disadvantaged and Vulnerable Learners

CCA believes strongly that the criteria for allocation of Smart and Skilled funding must include the ability of providers to meet the needs of their local communities, including community engagement with disadvantaged and vulnerable communities, local councils and not-for-profit community service organisations. Extensive Australian literature supports the importance of community engagement in the design and delivery of services.[12] One of the major differentiating points in Australian VET between public (i.e. TAFE) and not-for-profit ACE on the one hand, and for-profit RTOs on the other is that public and community providers invest in their communities, and take a genuine interest in the economic, social and educational outcomes of the communities that they serve.

CCA requests *that local community networking and support be given a high ranking in assessment, as indicated by established networks and support from local and regional service organisations.*

3. Opening Foundation Skills Entitlement Program to All Smart and Skilled Providers

CCA is extremely concerned about the impact on ACE providers – and on NSW learners generally – of "opening" the Foundation Skills Entitlement Program to all Smart and Skilled providers, announced by the Department on 31 October 2022. CCA supports the inclusion of all not-for-profit community-based RTOs in funding of foundation skills full qualification training, if they have shown proper governance processes and the ability to meet the support needs of disadvantaged and vulnerable students. CCA does not support the extension of this funding to for-profit providers, because there may be numerous unintended consequences of this significant policy change.

CCA requests *that the opening of the Foundation Skills Entitlement Program to all Smart and Skilled providers be rescinded, and that it be limited only to TAFE and NFP community providers which have shown the ability to meet the needs of foundation skills students.*

3.1 Changes to Smart and Skilled in 2023/24

In its Smart and Skilled Update dated 31 October 2022, the Department of Education announced:

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[11] The CCA Code of Ethics was last updated in May 2019; it is available from: https://cca.edu.au/wp-content/uploads/2021/01/CCA-Code-of-Ethics-20May2019-2.pdf.

[12] *Community engagement: A key strategy for improving outcomes for Australian families*, by Tim Moore, Myfanwy McDonald, Harriet McHugh-Dillon and Sue West, Child Family Community Australia, CFCA PAPER NO. 39, April 2016, Australian Institute of Family Studies, https://aifs.gov.au/resources/practice-guides/community-engagement.

From 1 July 2023, Smart and Skilled foundation skills full qualification training will be funded under the Entitlement Full Qualification (EFQ) program – instead of the Entitlement Foundation Skills (EFS) program – for all new commencements from the 2023-2024 Activity Period onwards…. The change is intended to improve ease-of-access to foundation skills training for NSW students and result in simplified and more flexible funding and administration arrangements for providers…. Qualifications in the EFS Program are currently available for funding to TAFE NSW and Department-approved ACE providers. Smart and Skilled-eligible Registered Training Organisations (RTOs), excluding non-government Enterprise-based RTOs but including the current EFS-approved providers, will be eligible to apply through the Smart and Skilled Provider Application 2023-24 for funding under the EFQ program to commence students in foundation skills full qualifications from 1 July 2023.

There are several issues relating to the "opening" of Foundation Skills Entitlement delivery.

3.2 Will the Changes Work?

CCA understands that this opening is, in part, an attempt to provide additional access to foundation skills, a noteworthy objective which CCA supports. However, *CCA is not aware of any modelling undertaken or commissioned by the NSW Department of Education that supports the conclusion that additional quality access to foundation skills will take place with this planned change.* CCA expresses concern that a significant number of the state's for-profit VET providers have historically shown an *inability* to deal with high needs learners when easy funding is available.

The lessons from the much-abused VET FEE-HELP program shows what can happen when funding for vulnerable and disadvantaged learners is provided with little or no oversight – oversight that is systematically employed with both TAFE and NSW ACE providers. The Australian National Audit Office (ANAO) report of December 2016 found:

Poor design and a lack of monitoring and control led to costs blowing out even though participation forecasts were not achieved and insufficient protection was provided to vulnerable students from some unscrupulous private training organisations…. The design of the expanded VFH scheme in 2012 was weighted heavily towards supporting growth in the VET sector, but an appropriate quality and accountability framework addressing identified risks was not put in place.[13]

With many Smart and Skilled providers (CCA estimates there are up to 500 providers in the scheme in 2022/23[14]) additionally delivering foundation skills in 2023/24, CCA does not believe that the NSW Government has the capacity or the monitoring capability to ensure quality delivery of foundation skills with so many new providers. Further, CCA believes that by the time the flaws in this policy change become apparent, at least 18 months will have passed, to the substantial detriment of NSW learners, quality delivery of foundation skills and the NSW ACE sector.

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[13] Australian National Audit Office, "Administration of the VET FEE-HELP Scheme," 20 December 2016, https://www.anao.gov.au/work/performance-audit/administration-the-vet-fee-help-scheme.
[14] In 2018, the Audit Office of NSW reported more than 450 Smart and Skilled provider (see https://www.audit.nsw.gov.au/our-work/reports/matching-skills-training-with-market-needs), to which a number of Skilling for Recovery providers have been added.

3.3 Issues in For-Profit Delivery of Foundation Skills

Examination of who delivers government-funded VET in New South Wales to the most vulnerable and disadvantaged students consistently indicates that ACE providers do the most – the "heaviest lifting" – on a percentage basis, followed by TAFE, with for-profit providers almost always a "distant last" in percentage reach to the most vulnerable and disadvantaged students. See Appendix A for details of how ACE providers over-perform in reaching the highest needs learners in New South Wales.

The Community Council for Australia has shown community engagement produces much better outcomes for not-for-profit training providers compared to for-profit providers. Extensive research shows that, as a rule, for-profit organisations allocate much more to profit (or surplus) than NFPs do; the result invariably is poorer service (because of less resources spent) and less support for disadvantaged clients/students, which in turn impacts educational outcomes.

There are many concerns around the viability of current funding levels and the attractiveness of foundation skills "full qualifications" which colour any discussion in this area. This includes a crisis in the supply of skilled language, literacy, numeracy and digital literacy (LLND) teachers.[15] These factors fundamentally impact the way in which both investment and delivery of foundational skills may be best managed.

The only way that most for-profit VET providers will be able maintain profitability in foundation skills delivery under Smart and Skilled will be to deliver to learners who are relatively advantaged and do not have high or complex needs. Another possibility is that for-profit providers will deliver foundation skills to larger than ideal groups, not supplying sufficient individual attention where needs may be glossed over, so that learners come away disillusioned and resistant to engaging with further learning. This will result in the opposite effect of what this policy wishes to achieve: it will ensure that ACE and TAFE providers will end up with *the most disadvantaged and needy* learners, without additional resources. For-profit providers are likely to offer little in the way of student support. There is also an increasing tendency to offer inappropriate online learning and to skip the required community engagement.

The Reading Writing Hotline recently released a major report that emphasises the challenges in delivering adult literacy and foundation skills. A consistent message from the report is that ACE and TAFE delivery can and must be the preferred delivery means for foundation skills – 80% of respondents to the Hotline's survey worked for either an ACE provider (32%) or TAFE (48%).[16]

One of the most important questions in the report was about what community literacy needs are not being met. The most cited were for:
- "individual and tailored literacy assistance" (64%);
- "wrap-around supports to address barriers and enable participation" (52%);
- "help with form filling" (49%);
- "pathways into accredited courses" (47%); and
- "lack of non-accredited courses delivered in community settings" (43%).[17]

CCA does not believe that opening foundation skills funding to all providers will assist in meeting these needs.

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[15] See https://www.readingwritinghotline.edu.au/new-hotline-report-on-adult-literacy-numeracy-and-digital-literacy-needs/; see page 6.

[16] *Insights from the Classroom: A Survey of Adult Literacy Providers*, The Reading Writing Hotline and Social Equity Works, 2022, https://www.readingwritinghotline.edu.au/new-hotline-report-on-adult-literacy-numeracy-and-digital-literacy-needs/.

[17] *Insights from the Classroom: A Survey of Adult Literacy Providers*, The Reading Writing Hotline and Social Equity Works, 2022, https://www.readingwritinghotline.edu.au/new-hotline-report-on-adult-literacy-numeracy-and-digital-literacy-needs/.

The Reading Writing Hotline report also concluded:

- Face-to-face individualised and learner-centred delivery is what works best for literacy, numeracy and digital (LND) learners.
- Online courses can provide access for some. However, the digital divide and low LND skills make it a less appropriate delivery mode for most LND learners.
- Face-to-face teaching and learning models have higher delivery costs than digital and online learning.
- Provision of LN programs is best done in person rather than online. The move to digital delivery tends to disproportionately disadvantage LN learners due to limited digital literacy skills, lack of access to secure internet access, print-based resources being preferable for adult LN learners, lack of access to home computers and insufficient self-directed learning skills to manage online programs.[18]

CCA is concerned that for-profit Smart and Skilled providers will cut costs of foundation skills delivery by providing courses online, to the detriment of both teaching quality and learner outcomes.

3.4 Lack of Consultation Around the Foundation Skills Decision

CCA expresses its highest level of concern that it was not properly consulted regarding this change until it had been decided by the Department. Many organisations involved in the delivery of foundation skills might also have wished to provide advice to the Department, including the Reading Writing Hotline and the Australian Council for Adult Literacy (ACAL). Foundation skills delivery is a complex area that requires careful investigation; CCA believes that this decision has been made in haste without sufficient research and consultation.

The Department's decision to proceed with this change without full consultation contradicts the NSW Government's commitment to principles of "Customer Centricity". Some of the concerns expressed in this submission might have been alleviated had CCA been properly consulted in advance about some of the criteria and program changes. CCA does not believe that the approach undertaken during the development and implementation of the Smart and Skilled EOI reflects the NSW Government's stated "mission to become the world's most customer-centric government."[19]

4. Limitations in the Department's Regional Skills Forecasting

CCA believes that there are limitations in the Department's regional skills forecasting intelligence product that may impact the ability of providers to both access/apply for relevant qualifications and to meet community need.

In CCA's view, the EOI outcomes remain opaque, while expressed broadly as increased provider capacity and assumed market choice, it is still unclear whether there is a specific provider capacity shortfall in markets, particularly given TAFE's significant proportion of Smart and Skilled funding: the Market Assessment document does not clarify this issue. It is also unclear whether regions or providers would be funded for gross training volumes across a suite of products, specific training activities within a region or a mixture of both. The Department may in fact have much better regional marketing research, however it is not apparent from what has been published and available for review by EOI providers.

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[18] *Insights from the Classroom: A Survey of Adult Literacy Providers*, The Reading Writing Hotline and Social Equity Works, 2022, https://www.readingwritinghotline.edu.au/new-hotline-report-on-adult-literacy-numeracy-and-digital-literacy-needs/.
[19] See https://www.nsw.gov.au/nsw-government/projects-and-initiatives/towards-a-customer-centric-government.

CCA understands the intent of the Market Assessment document is to describe market volumes and the opinion of the Department as to whether demand is expanding. The document states: "This aims to strengthen the alignment of Smart and Skilled training to labour market needs, maintain a competitive, high quality training market and provide students with a diverse range of training options across all regions of NSW."

As a market-facing design document, CCA believes that it lacks quantitative information, specific to a region including historical and demand-based projected forecasts which the market desperately needs. It provides no insight into labour market demand and the capacity to enable providers to consider their role in economically addressing market calibration and demand. Rather it runs the risk of overstating market capacity and demand as a result diluting course viability within markets by effectively reducing viability of course delivery.

The Department's market design document and design of operations to suit the market specifically identifies regions and courses where supply is intended to be expanded and interstate RTOs can apply for funded delivery. In some instances, course offerings are identified for expansion where there are is no expressed demand; in others courses where market shaped and increasing demand is no longer represented on the list.

For example, despite requests, there is no clarity as to why the funding of TAE40116 and TAE50216 in the New England Northwest would be simply excluded from this assessment. If there is no basis for its exclusion, then what is the basis for inclusion or exclusion of any training product in any region, the document has little or no validity?

The other issue with the Market Review is that it is qualitative not quantitative. In particular, the Review:
   a. Lacks calibration – *Indicators for the relative size of each market*: how can a market in Sydney region and a market in a regional area be described as small without reference to underlying volumes, populations and demand?
   b. Lacks clarity – *where the Department estimates that training volumes need to increase* – what does expanding supply mean? Training volumes in regions may be constrained by many factors including capacity of the market, geographic shape (distance), availability of funding, the nature of industry expansion.

CCA requests *a review of the Department's regional skills forecasting intelligence, to ensure that it does not disadvantage any region and clarifies how it is applied in the Smart and Skilled EOI.*

5.Lack of Relationship Between Smart and Skilled EOI and National and New South Wales Skills Policy Developments

CCA expresses concern around the timing of the EOI, which has no relationship with several significant NSW state and national and skills policy developments. While CCA believes the "closed shop" of the Smart and Skilled program has gone on too long and that the program was due for renewal, the EOI occurs when many major changes and policy developments are in process which will impact both state's ACE providers and the NSW VET sector. Proceeding with the EOI at this stage means that there is no opportunity to shape the provider selection criteria to take account of five current policy developments: (1) the NSW ACE Strategy; (2) the Commonwealth's Foundation Skills Strategy; (3) the establishment of Jobs and Skills Australia; (4) the implementation of "free TAFE" for 180,000 students in 2023 and a further 300,000 from 2024 onwards; and (5) the new Workforce Australia providers, many of which are also RTOs with the capacity to refer their job-seekers to their own training.

5.1 NSW ACE Strategy

The NSW Government is currently developing a full strategy for the state's adult and community education sector, which will build on and extend the "ACE Policy Statement" issued by the NSW Skills Minister in July 2021.[20] This is the most important strategic development in relation to NSW ACE providers in at least 10 years. CCA does not understand how the NSW Government is making changes to Smart and Skilled provider selection, criteria and delivery without reference to the development of the state's ACE strategy. CCA understands that Smart and Skilled funding to contracted NSW ACE providers roughly approximates the amount of funding of the NSW ACE Program, so the program is very significant to provider capacity and delivery and to the communities they serve. The two programs complement and together provide outcomes greater than their component parts.

Numerous NSW not-for-profit community RTOs participate in Smart and Skilled but are not "contracted ACE Providers"; the new ACE strategy will start to address their role in state training as well. CCA also notes there previously was a legal requirement that contracted NSW ACE Providers must have a Smart and Skilled contract to receive funding under the NSW ACE Program, a carry-over from when the current ACE Program was called the "CSO program" of Smart and Skilled.[21] If that requirement still exists (or is reinstituted), it is possible that one or more contracted ACE Providers will be unsuccessful in obtaining a 2023/24 Smart and Skilled contract and become technically ineligible to participate in the ACE Program. If that occurs, it will be a serious and unwelcome unintended consequence of the EOI.

CCA requests _that contracted NSW ACE Providers do not automatically lose their ACE Program contract if they are unsuccessful in obtaining a 2023/24 Smart and Skilled contract._

The NSW ACE Strategy must also, inevitably, address the relationship between TAFE NSW and the state's ACE providers, ensuring there are proper pathways, facilities integration and coordination between the two sectors – none of which exists to date. The Smart and Skilled EOI simply ignores the relationship (or lack of relationship) between TAFE NSW and ACE – and between TAFE and the state's for-profit VET providers as well. This is a significant oversight that will damage the state's ability to create and sustain an integrated VET and post-secondary education and training system.

CCA requests _that the NSW Government urgently implement protocols between TAFE NSW and NFP ACE providers that allow for career/study pathways and mandate coordination on a regional and local level._

5.2 Commonwealth Foundation Skills Strategy

The new Commonwealth Government is working on a foundation skills strategy and has established a Foundation Skills Advisory Group (FSAG), on which both CCA and the NSW Government is represented.[22] The FSAG advises on the redesign of Commonwealth programs such as Skills for Education and Employment (SEE) and Foundation Skills for Your Future Program (FSFYF), the Government's response to the House of Representatives "Inquiry into Adult Literacy and its Importance" and the design of a national study on adult literacy. It is likely that current Commonwealth actions and consultations in foundation skills will see changes to some programs and additional resources for others, with a reporting date during the first six months of 2023, with potential funding to flow from July 2023.

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[20] See https://www.nsw.gov.au/education-and-training/resources/policies-procedures/ace-policy-statement.
[21] This contract requirement may have been removed in some instances, but may still exist.
[22] These were announced by Minister O'Connor at the CCA Conference on 13 September 2022.

5.3 Establishment of Jobs and Skills Australia

The Commonwealth Government's new Jobs and Skills Australia (JSA) became operational in mid-November 2022, and "will have a tripartite approach with state and territory governments, employers, business peaks, unions and training providers to provide independent advice to government on current and emerging workforce needs." [23] The role includes:

> Undertaking workforce forecasting, assess workforce skills requirements and undertake cross industry workforce analysis. We will also prepare capacity studies, including for emerging and growing industries and occupations. Our research and analysis will consider the adequacy of Australia's system of providing VET. We will also consider resourcing and funding requirements for registered training organisations to deliver accessible quality VET courses which will assist students and learners and better support government's investment decisions in the sector. [24]

5.4 Free TAFE

CCA has been critical of the Commonwealth-state/territory plans to proceed with an additional 180,000 "fee-free" TAFE places from January 2023 and a further 300,000 places from 2024, without sufficient "guardrails" that protect ACE providers from possible unintended consequences of this policy. [25]

CCA strongly endorses additional resources to TAFE and supports a strengthened TAFE sector as the anchor VET institution. [26] CCA recognises the shared values and important contributions that public TAFE and community education providers undertake to promote access and equity in education and training, noting that TAFE and ACE are natural allies and not competitors. The "free TAFE" policy concerns CCA because of the possible unintended consequences for Australia's ethical, community-based, not-for-profit ACE providers, which in 2021 delivered accredited training to 168,835 students in New South Wales.

ACE providers should not be disadvantaged by the larger marketing power of TAFE. If undertaken without due care, NSW VET students may very well skip ACE providers – which specialise in enrolling vulnerable and disadvantaged students [27] – and enrol in TAFE courses just because of a higher level of "brand awareness". Vulnerable and disadvantaged students could also enrol in inappropriate TAFE courses just because they are "free" and heavily promoted, commencing higher level qualifications beyond their capability. CCA cannot determine that any aspect of the current Smart and Skilled EOI takes account of this major policy development.

CCA requests *that the NSW Government urgently develop and implement protocols around "free TAFE" funding that do not disadvantage NFP community providers, including in the delivery of Smart and Skilled-funded places.*

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[23] See https://ministers.dewr.gov.au/oconnor/jobs-and-skills-australia-begins-its-work.
[24] See https://www.jobsandskills.gov.au/about.
[25] See https://cca.edu.au/cca-advocates-for-guardrails-to-protect-australian-community-education-providers-from-consequences-of-free-tafe/.
[26] See the CCA statement at https://cca.edu.au/wp-content/uploads/2017/05/CCA-Policy-on-TAFE-and-Community-Education-11April2017.pdf.
[27] See Appendix A of this submission.

5.5 New Workforce Australia Providers

CCA is highly concerned that several private, for-profit, Workforce Australia (job service) providers may become Smart and Skilled providers and use the opportunity to "rort" the system by referring their own clients to their own Smart and Skilled-subsidised places. This is not a misplaced fear, as *The Saturday Paper* reports:

> The new contracts state that providers can refer clients to their own subsidiaries, but no more than 50% of the time. This is called a "referral cap". There appears to be flexibility here, however. Service providers have created entire ecosystems of related entities in which to shuffle unemployed people, gathering so-called "points" for participants, which keep mutual obligations satisfied and delivering a range of fees and payments back to the group.[28]

The Reading Writing Hotline report reinforces this point, stating:

> The relationship between LN and DL provision and employment services was described by some respondents as being problematic. These respondents reported 'lack of referrals' from employment providers, little or no incentives for employment providers to make LND referrals, a focus on employment-only outcomes and/or inappropriate referrals to high level courses and programs delivered by the same employment provider.[29]

6. Information Privacy and Transparency

6.1 Information Privacy

CCA members have expressed concern about the requirement to undertake credit checks on officers of not-for-profit entities who do not derive any economic benefit from fulfilling their governance duties. They are concerned about the risk to data protection (loss and sale) and the actual requirements for this information, a particularly significant issue given recent high visibility "hacks" in Australia. Equifax advises that they retain the data collected in the tender and:

> May disclose your personal information to third parties who are customers of one of our businesses. Equifax may also disclose your personal information to service providers, including data storage providers, call centre operations, technology and operations support providers, who assist us with providing products and services and conducting our business activities (and those service providers may in turn provide us with personal information collected from you in the course of providing the relevant product or service); professional service providers and advisors who perform functions on our behalf, such as lawyers; external dispute resolution schemes; access seekers as contemplated and permitted by the Privacy Act; our related companies; other third parties where it is necessary to enable us to provide a product or service; referees or employers whose details you have provided to us (for example, information about persons who have applied for a job at Equifax is disclosed with their consent to their employer or referee as part of the employment application process); where otherwise permitted by law.

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[28] See "Albanese offers no relief for jobseekers," by Rick Morton, *The Saturday Paper*, 16 July 2022, https://www.thesaturdaypaper.com.au/news/politics/2022/07/16/albanese-offers-no-relief-jobseekers.

[29] See *Insights from the Classroom: A Survey of Adult Literacy Providers*, The Reading Writing Hotline and Social Equity Works, 2022, p. 19, available at https://www.readingwritinghotline.edu.au/new-hotline-report-on-adult-literacy-numeracy-and-digital-literacy-needs/.

CCA notes that in the Smart and Skilled EOI application that Directors and others have not consented to the collection and subsequent dissemination of their information by Equifax to third parties. CCA believes that it is superfluous for the Department to undertake credit checks on Directors of not-for-profit entities, which area already subject to checking by the ACNC (see ACNC discussion under point 1 above). Much of the additional information sought by the department in respect of this tender submission is already managed by ASQA in the registration of the RTO. CCA expects that there is a carefully thought through service agreement between the Department and Equifax, as such given the Department's intentions to undertake such assessments on not for profits. CCA requests that the Department clarify its agreement with Equifax in respect of privacy and use of information and what confidence the Department will offer in relation to the destruction and prevention of the subsequent use and commercialisation of the personal information provided and infringement on privacy of individuals who are officers of not-for-profit ACE providers.

CCA requests *details as to the privacy and use of personal data provided to Equifax as part of the EOI.*

6.2 Transparency of Provider Management, Directors and Ownership

Irrespective of the privacy issues raised above, CCA is keen that names of the Directors, senior management and the ownership structure of all Smart and Skilled providers be publicly available through a standard format, either on an organisation's website or through a publicly available NSW Government database. There is, to our knowledge, no requirement or provision for that information to be publicly available. The lack of visibility/transparency requirement sets up possible abuses by some providers – especially for-profit companies, which often go to great lengths to hide their ownership and governance structure. Many of them pretend to be not-for-profit – or even government – institutions, knowing that many students would prefer a public or not-for-profit training provider. It is one thing for the Department to know who owns and runs a business through the application process, but it is equally important for the public – including prospective students and their families – to have that information.

CCA requests *the NSW Government implement a transparent process of detailing the names of Directors, senior managers and ownership structures of all Smart and Skilled providers.*

Appendix A: New South Wales ACE Providers Over-Perform in Engaging Vulnerable and Disadvantaged VET Learners

New South Wales ACE providers significantly over-perform on almost all tracked measures in reaching vulnerable and disadvantaged students. The numbers below constitute an extraordinary achievement of outreach and engagement of vulnerable and disadvantaged post-secondary learners in New South Wales, undertaken in collaboration between the ACE providers and the NSW Government. The data indicates how important ACE providers are to the state's economic, educational and social development. Re-engaging disadvantaged Australians, who are often the first to leave training during crises such as COVID-19 or catastrophic floods – and the last to return – should be a high priority for all governments. ACE providers are central to that mission. ACE providers are the "go to" training organisations in their states when policy objectives prioritise reaching regional and rural, disabled, Indigenous, disadvantaged or older learners.

In 2021, NSW ACE providers achieved the following percentage proportions of their government-funded VET student populations:

- **10.6% students with a disability** (13.5% in 2020), compared to 9.3% of TAFE, 5.3% of private for-profits, 2.2% schools and 2.8% enterprise providers;
- **45.9% regional and rural students** (48.6% in 2020) compared to 29.5% TAFE, 29.5% private for-profits, 25.5% schools and 42% enterprise providers;
- **59.7% most disadvantaged students** (64.2% in 2020) – bottom two SEIFA quintiles – compared to 44.2% TAFE, 29.5% private for-profits, 40.6% schools and 50.7% enterprise providers;
- **19.4.% non-English speaking background students**, compared to 21.3% of TAFE, 15.6% of private for-profits and 9.5% enterprise providers;
- **34.8% older (age 45+) students**, compared to 18.6% TAFE, 23.5% private for-profits and 22.5% enterprise providers; and
- **11.4% Indigenous students**, compared to 8.4% of TAFE, 6.9% of private for-profit providers and 5.9% enterprise providers.[30]

In addition, 64.4% NSW ACE provider government-funded VET students were female, the highest of any VET provider group in 2021. This compares to 54.8% of TAFE, 48.9% of private for-profit providers, 45.7% schools and 48.2% enterprise providers. According to the Australian Medical Association and the Grattan Institute, "The challenges and burdens faced by women are exacerbated with women's economic security, participation in formal employment, political representation, health outcomes and educational achievement negatively impacted, and more so than men."[31]

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[30] Source: NCVER 2022, Total VET students and courses 2021: students DataBuilder. Accessed 22 August 2022 https://www.ncver.edu.au/research-and-statistics/publications/all-publications/total-vet-students-and-courses-2021.

[31] Source: "The impact of COVID-19 on women," by Dr Helen McArdle, Chair, AMA Equity Inclusion and Diversity Committee, Australian Medical Association, 3 March 2021, available at https://www.ama.com.au/articles/impact-covid-19-women. Also see: *Women's work: The impact of the COVID crisis on Australian women,* by Danielle Wood, Kate Griffiths, Tom Crowley, Grattan Institute, 12 April 2021, available at https://grattan.edu.au/report/womens-work/.

Appendix B: The New South Wales Adult and Community Education Sector

B.1 History and Perception of ACE

The history of not-for-profit community-based learning in New South Wales links directly to 1913, with the establishment of Workers Educational Associations (WEAs[32]) in Sydney, Newcastle and Wollongong – all of them continuously operating since them, and even back to 1833 with the Sydney Mechanics' School of Arts (SMSA[33]). The community education branding is often confused with TAFE; and private for-profit VET providers, which sometimes attempt to hide the fact that they are not-for-profit organisations by utilising business names such as "community education" or "community college".

While the public perception remains that ACE providers primarily deliver leisure or non-accredited adult education, that has changed in the last 25 years, so that accredited (or pre-vocational/pre-accredited funded) training has become the major focus of the state's ACE providers. There are almost 400+ ACE training providers (RTOs) in Australia, with the majority located in Victoria and NSW – states with governments that systematic funding programs and policies, and an estimated additional 2000 non-RTO ACE providers which deliver pre-accredited, pre-vocational and personal interest learning.[34]

B.2 Australia's Adult and Community Education Student Numbers

The number of Australian adult and community education (ACE) students rebounded by 15.2% in 2021 from a pandemic-impacted low in 2020, according to the NCVER.[35] ACE "Total VET" student numbers increased from 390,185 in 2020 to 449,500 in 2021. This includes 168,835 students in New South Wales (37.6%) of the national total.

In 2021, 4.3 million students were enrolled in nationally recognised vocational education and training (VET), an increase of 9% compared with 2020.[36] In 2021, 3,186,795 students (74.1%) enrolled at private training providers, 778,300 (18.1%) at TAFE institutes, 449,500 (10.5%) at community education (ACE) providers, 114,100 (2.7%) at schools, 107,000 (2.5%) at enterprise providers and 75,600 (1.8%) at universities.[37]

The Victorian figures do not necessarily include the very large amount of pre-vocational training that ACE providers (often under the Victorian brand "Learn Locals") undertake – not included in accredited VET funded by the Victorian Government.

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[32] See https://atwea.edu.au/history/. WEAs currently exists in New South Wales (Newcastle, Sydney and Wollongong) and South Australia (Adelaide).

[33] See https://smsa.org.au/about/history/.

[34] See *Australian adult community education environmental scan 2022*, prepared by Adult Learning Australia, https://ala.asn.au/wp-content/uploads/2022/03/Australian-ACE-Report-2022.pdf.

[35] See https://www.ncver.edu.au/research-and-statistics/publications/all-publications/total-vet-students-and-courses-2021.

[36] See https://www.ncver.edu.au/news-and-events/media-releases/vet-participation-up-nine-percent.

[37] See https://cca.edu.au/australian-adult-and-community-education-student-numbers-rebound-in-2021/.

Table: ACE Students by State and Territory 2021

State/Territory	2019	2020	2021	Change 2020 to 2021 (%)	National ACE total 2021 (%)
New South Wales	206,940	167,100	168,835	1	37.6
Victoria	84,610	55,955	78,085	39.5	17.4
Queensland	42,380	34,435	37,510	8.9	8.3
South Australia	49,545	38,235	46,760	22.3	10.4
Western Australia	84,895	77,530	84,415	8.9	18.8
Tasmania	4,250	3,845	20,545	534.3	4.6
Northern Territory	9,105	8,030	9,535	18.7	2.1
Australian Capital Territory	8,935	5,235	4,290	-18	1
Offshore	115	205	225	9.8	–
Totals	490,345	390,185	449,515	+15.2%	100%

Source: NCVER 2022, *Total VET Students and Courses 2021*: students DataBuilder[38]

B.3 The Value ACE Providers Bring to New South Wales Training

New South Wales ACE providers bring extra value to the state's skills development and training through numerous factors, as they:

- Obtain strong community and government support because of their not-for-profit status and mission to do good, such as "Our mission is to positively transform the lives of individuals, families and communities".[39]
- Are place-based, building on local and regional strengths to create pathways to jobs.
- Develop and sustain partnerships between government, not-for-profit community and businesses, to develop job skills, encourage economic development and enable citizen participation.
- Provide learner-centred education, with small class sizes, complemented by personal and student support.
- Collaborate with other ACE providers in the state – a rarity for VET organisations, but common for NSW ACE – and build the capacity to leverage collective strengths.
- Operate with flexibility, agility and speed, employing wide range of tools and a freedom to take risks.
- Are not bound by government structures like TAFEs.
- Are not beholden to private shareholders to deliver profit which is "taken out" of the business.
- Re-invest surplus funds in their organisations and local communities, building human, social and economic capital.
- Excel at lifting unemployed learners into employment: 13% of ACE learners move from unemployment to employment, a greater increase than any other provider type.[40]
- Play an essential role in national priority skilling such as aged care workforce training, with 23% of Certificate III Individual support (Ageing) government-funded students in New South Wales.[41]

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[38] Source: NCVER, https://www.ncver.edu.au/research-and-statistics/data/databuilder#tva-students.
[39] See https://www.verto.org.au/about-us (VERTO is a CCA member headquartered in Bathurst NSW).
[40] Source: https://www.ncver.edu.au/research-and-statistics/publications/all-publications/vet-student-outcomes-2021.
[41] See https://cca.edu.au/cca-proposes-support-programs-for-ace-aged-care-trainers-students-and-workers/. This is also the case in Early Childhood Learning training, where ACE providers train more than 12% of government-funded VET students; see https://cca.edu.au/cca-makes-strong-case-for-focus-on-early-childhood-learning-training-places-to-nsw-ace-providers/ and

Appendix C: About Community Colleges Australia

Community Colleges Australia (abbreviation: "CCA") is the peak national body that represents community-owned, not-for-profit adult and community education (ACE) providers. Our vision is for dynamic and vibrant communities, informed and empowered through learning. To make our vision a reality, CCA works to empower Australia's community education sector by increasing the awareness of the sector and its place in the economic and social fabric of our nation. CCA advocates at all levels of government on the value of the community education sector, and for our members' activities and programs.[42]

CCA assists its members to sustain and grow, promoting learning innovation, focussing especially on vulnerable and disadvantaged learners. They focus on student welfare and are strongly committed to employment outcomes for their learners.

Our members have been providing flexible and dynamic education and training opportunities to individuals, groups and businesses for a long time – in some instances almost 110 years. As well as operating in accredited VET, CCA members offer a range of other learning opportunities, including non-accredited training, lifestyle and lifelong and cultural learning courses – education for which they are historically well-known, and independent special assistance secondary schools.[43] These educational activities help build self-esteem, re-engage "missing" learners and create and sustain social and community networks, all of which help to reinforce and sustain the communities in which our members operate.

Our members have an historic commitment to invest in their communities and respond to the needs of vulnerable and disadvantaged Australians, including a commitment to foundation skills. They do this through small class sizes, focussing on personal support, and creating connections to and collaborations with local non-government organisations, government agencies, social services and employers.

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https://www.ncver.edu.au/research-and-statistics/collections/students-and-courses-collection/total-vet-students-and-courses.
[42] See https://cca.edu.au/who-we-are/about-us/.
[43] See https://cca.edu.au/special-assistance-secondary-schools-end-2020-on-a-high-note/.