

## Issues of Concern

The following information outlines the collective concerns of a Coalition of Peak Disability Organisations and members of the NSW Teachers Federation in respect to proposals to change the way in which services are provided to students who have disabilities and are undertaking VET courses under "Smart and Skilled".

### 1. Level of support

In the IPART Draft Report (July 2013) it was recommended that under "Smart and Skilled" students who have disabilities, irrespective of the nature or level of their disability, will receive a 10% loading on *'the base price for the relevant qualification to reflect the average (or typical) additional cost associated with providing training to a high cost learner'*. There is no indication as to how this *'average additional costs loading'* is determined. Furthermore, it reflects neither the nature of disability nor the degree of the functional impairment of the individual. It also fails to consider the impact of multiple disability and comorbidities. In a broader sense the IPART Draft Report also fails to recognise the compounding effects of multiple types of disadvantage such as low socio-economic status, non-English speaking women with disabilities.

In real terms it has been estimated that a 10% loading based on the average cost of courses would equate to an additional \$440 per Certificate II qualification and \$880 per Certificate III qualification. The 10% loading is intended to cover the additional costs associated with providing training to high cost learners. However, students with disabilities may need a variety of support services, eg note-takers, reader/writers, 1:1 learner support, mentoring, counselling and advocacy, to enable them to successfully engage in VET. A flat 10% loading (or an additional \$440 per Certificate II qualification and \$880 per Certificate III qualification), fails to recognise the individual learning needs of students with disabilities, (there is no *'average'* student so there can be no *'average'* cost), and will not provide the type and level of support they need to reach their potential and gain employment.

For example, a deaf student, who is undertaking a three (3) year trade course will be eligible to receive a loading of \$880 to pay for their additional support. Considering that Auslan Interpreters are currently paid at a rate of \$66 per hour, this means that such a student would have access to an Auslan Interpreter for a total of 13.3 hours over a course of 3 years in duration, (ie 4.4 hours per year interpreting support for approximately 960 hours of face to face teaching). Therefore, the recommendation of a 10% loading will deny many students access to VET and the means to gain skills, qualifications and employment. Consequently, this recommendation has the potential to lead to mass litigation, on the basis of discrimination under the Disability Discrimination (1992), and presents a risk to the NSW Government.

In addition to this, support based on a flat 10% loading is not in keeping with the statement you made to the NSW Parliament on 23<sup>rd</sup> October 2012 that under Smart and Skilled "students with disabilities will receive the same support that they have always received through TAFE and also non-government providers".

## **2. Community Service Obligations**

The Draft IPART report acknowledges that *'in some circumstances, the base price and loadings will not be sufficient to compensate RTO's for the cost of delivering training'*. IPART refers to these circumstances as 'thin markets' and recommends provision of additional funds through "Community Service Obligation" or CSO payments. However, there is a lack of clarity about what constitutes a 'thin market', exactly who will be eligible for CSO payments, who will determine if an individual student should have access to such payments and how this funding stream will operate under Smart and Skilled.

Unless there are some clear guidelines on who are the appropriate people to determine if an individual with high support needs requires additional support through a CSO payment this recommendation will result in a discretionary and unregulated system of support. Not only does this have the potential for ad hoc precedents to be created it could also result in decisions on who can or cannot receive additional support being made by individuals who may not be suitably qualified and skilled. Consequently, decisions that could impact directly on the legal rights of people who have disabilities could be made by individuals who do not understand the relevant legislation, in particular the Disability Discrimination Act and the Disability Standards for Education.

## **3. Support for students undertaking higher level qualifications**

It is unclear from reading the IPART Recommendations whether students who have disabilities who are undertaking courses above a Cert III Level (Cert IV or Diploma level) will be eligible for any support. In TAFENSW, students who are undertaking short TAFE Plus or Fast Track courses are currently not eligible for fee exemption and do not automatically receive learner support (as these are commercial courses). Once Smart and Skilled is implemented Cert IV and Diploma courses that are currently offered as mainstream courses will become user pays or commercial courses. This effectively means that those students with disabilities who need additional support will no longer be eligible to register with the disability services and access reasonable adjustment through a Disability Teacher/Consultant.

How will students with disabilities access support when all VET courses are offered on a commercial basis? In a tight labour market, people who have disabilities may find it necessary to achieve higher level qualifications to demonstrate their potential and competence to prospective employers and compete for employment against able bodied people. If support for people with disabilities to undertake higher level VET qualifications is no longer made available this will deny students the opportunity to reach their potential and to gain employment. Once again this may give reason for some individuals to make complaints to the Human Rights Commission and/or to take legal action.

## **4. Eligibility for support and fee exemption**

The IPART report does not detail the definition of disability that will be used to determine who will be eligible for support and who will be eligible for fee exemption. The IPART document specifies that *'the specific definition of students who are Aboriginal or Torres Strait Islander or, have a disability should be the same as applies under the Strategic Skills Program'*. State Training, (who administers SSP funding), was contacted and asked for the definition of disability used and the response given was that anyone who applied for SSP funding on the basis of disability was granted funding.

However, while the definition remains unknown rumours will continue to circulate. Currently it is rumoured that only individuals who are receiving the Disability Support Pension will be eligible for support under Smart and Skilled even though this is contrary to the definition used in the Disability Discrimination Act. The definition of disability is crucial. Should the definition of disability used to determine eligibility for support under Smart and Skilled be different to that used by the Human Rights Commission and the Disability Discrimination Act, many people with disabilities will experience disadvantage and be effectively excluded from VET. This raises a very strong possibility of complaints of discriminatory practices. This risk becomes even greater as TAFENSW has applied the definition of disability as outlined in the Disability Discrimination Act in determining eligibility for support since 1993. Consequently many precedents have been established that are well known and accepted in NSW.

Currently it is the role of TAFE Disability Teacher Consultants to assess students with disabilities and recommend reasonable adjustment (learner support). This decision comes at the end of an intensive interview and individual assessment process that Teacher Consultants take very seriously. In consultation with the students (and their advocate/s) Teacher/Consultants evaluate the potential of a student to undertake and complete a course, the reasonable adjustments required to make this achievable, the vocational outcome of the training for the individual, the underpinning skills and knowledge required and the student's readiness to study at the specified level. In addition to this, consideration is paid to other factors that support successful course completion such as stable housing, study skills, impact of medication, family, social and /or community support and referral to other support services such as counselling services and child care. An integral part of this assessment process is ensuring students with disabilities are appropriately placed in VET and, if their chosen program is unsuitable, they are referred to alternative services that are more appropriate to the needs of the individual concerned.

This is a complex process that demonstrates successful placement of students with disabilities cannot be achieved by a one size fits all formula or a tick the box assessment based on the benefits an individual receives from Centrelink. Furthermore, the VET system is complex and all students, once the entitlement model is in operation, will need appropriate guidance, advice and assessment before using their entitlement and/or incurring a significant debt (VET Fee Help). All learners, but especially the most vulnerable, will need some protection against unscrupulous private providers who offer incentives to students to entice them to enrol in high level, (Cert IV and Diploma), courses that they do have the capacity to successfully complete. Indeed, we are already aware of situations where students with intellectual disabilities have been enticed into diploma level programs that they have very little possibility of successfully completing without a complete understanding of the debt liability incurred. At this point in time we are aware that complaints about one private RTO operating in NSW have been submitted to ASQA.

## **5. Process for accessing support funds**

The members of our Coalition are greatly concerned about the lack of detail surrounding the process that will be implemented to allocate and access funds for students with disabilities under Smart and Skilled, (both the loading and CSO funding). It is imperative that support is available to students with disabilities at the commencement of a course of study as any delay in providing support may result in students dropping out of their courses. As students will be using their entitlement and/or incurring a debt through Fee Help, delaying the delivery of appropriate support will cause hardship and possible failure. Unless a system is established that will facilitate a means by which students needs can be assessed and accommodated very quickly it is highly probable that numerous students will drop out of courses and will blame the RTO concerned for failing to meet their needs. Once again this is likely to result in complaints being made many of which would have the potential to progress to formal complaints and litigation.

## **6. Access to equipment and technology**

The needs of many students can be met most effectively through provision and training in the use of ergonomic equipment and technology, in particular computer software and hardware. Currently, Teacher Consultants have the means to demonstrate to potential students the technology that is available to assist them to become independent learners and workers and they are able to provide training in the use of this equipment so individuals can undertake courses with little if any support.

An example of this can be seen on the short video clip using the link below.

<http://youtube/Uqg-iGoTto>

As evident in this video clip, once the student concerned was trained in the use of computer hardware and software he was able to undertake high level courses in Architectural Design and since this video clip was made he has found work that he has maintained for over 2 years.

Unfortunately, while use of technology can enhance the ability of students with a disability to learn and work independently IPART failed to acknowledge the need for and benefit of pre-mainstream enrolment training for students with disabilities by making no provision for funds to purchase assistive technology or to provide training in the use of such equipment.

## **7. Access to specialised courses and training for students who have disabilities**

For many students who have intellectual disabilities the issues of concern under Smart and Skilled centre around their ability to access modes of course delivery that meet their specific learning needs. While students with intellectual disability, like many VET students, may need pre vocational skills prior to undertaking mainstream courses, they also need vocational programs that enable more time, and highly specialised teaching, for reinforcing skill acquisition, development and transfer. This requires the modified delivery of standard mainstream courses and needs to be identified as separate from, and additional to a loading for high cost learners.

There are numerous examples of 'access' costs that are incurred by VET providers before they begin to support students with disabilities in direct training. Students with Intellectual Disability, for instance, may need "Access Courses" that provide modified delivery, task analysis, repetition and additional time; students with physical disability and those who are blind/visually impaired may need training in specialised technology that will enable them to access mainstream VET training (eg. Jaws, Zoomtext, speech recognition technology), and students with Autism Spectrum Disorders may need social and communication support prior to beginning a mainstream program.

Also, there are many students who undertake VET programs because they need to retrain because they have acquired a disability, (eg. an Acquired Brain Injury, a work related injury or medical condition), later in life. These learners are often more mature learners and blue collar workers who have very little experience in using a computer and many have low levels of literacy and have been out of education and/or training for many years. Such individuals require access to programs that can deliver prevocational training, including computer skills, to enable them to undertake further training in a mainstream vocational course.

Currently Teacher Consultants working for TAFE NSW have some funds that can be used to offer short preparatory courses for students who need to develop skills that will prepare them for VET programs. However, under Smart and Skilled there does not appear to be any provision to fund for preparatory courses as the flat loading of 10% does not allow for this.

Unfortunately, without access to preparatory courses many students with disabilities will effectively be locked out of VET as they will not be able to successfully engage in mainstream vocational courses.

## **8. Reasonable adjustments**

Many students with disabilities require a modified program as part of their reasonable adjustment. Some are not able to study on a full time basis but this does not mean that these individuals would not be able to work either part time or full time. As evident in the attached video clip the student was not able to undertake the TAFE course on a full time basis as his health care needs would not allow for this. Consequently, he completed his course on a modified attendance basis attending part time over 4 years instead of full time basis over 2 years.

Making such adjustments, to the delivery of VET programs, facilitates access and ensures that Individuals who have high levels of disability are not discriminated against because of their inability to undertake a VET program on a full time basis. This is one of the ways TAFENSW Teacher Consultants can currently accommodate for the needs of many students who have disabilities to complete VET programs. However, it is very unclear how students with disabilities will be able to undertake courses over extended timeframes under Smart and Skilled.

## **9. NDIS Funding**

It has been stated by several TAFENSW Institute Managers publicly, in various forums, that funding to support students with disabilities will be covered in some capacity through the NDIS in the future. Communications with individuals who were directly involved in the design of the NDIS indicate that such statements are incorrect and actually constitute a breach of the agreement that was entered into by the State and Federal Governments.

It should be noted that the National Disability NSW Implementation Plan 2012 – 2014, which underpins the successful implementation of the NDIS by “improving access for all people to mainstream services and community resources” makes no reference to Smart and Skilled. Therefore, it is of great concern to people with disabilities in our community to hear, (if the statements made by TAFENSW Managers are correct), that this can be interpreted to mean that the NSW State Government is planning to renege on its responsibility to funding services that remain under state jurisdiction such as education programs.

The question this also raises is how the introduction of Smart and Skilled will help the NSW Government to “remove structural and attitudinal barriers by focusing its efforts on improving access to mainstream services so people with disability can enjoy equal rights and opportunities including access to **education**, entertainment, health, recreation, transport and housing”.

## **10. Exploitation of people with intellectual disabilities**

Another issue that is of great concern to members of our coalition is that there are now some private RTOs operating in NSW who are enticing people with devices such as “free iPads” to sign up to undertake courses funded through VET FEE Help. We are aware of several individuals across Sydney and some regional areas who have signed up to undertake Diploma level courses through such providers that they simply do not have the cognitive capacity to complete. Payment in some instances has been in excess of \$15,000 but as this is through VET Fee Help many individuals are not even fully aware that in signing up to enrol in a course they have incurred such debt.

While we do not see the NSW Government as being responsible for the conduct of the private RTOs who are exploiting people who have intellectual disabilities we can foresee that this is a problem that is going to escalate when Smart and Skilled is introduced unless appropriate measures are in place to prevent this from happening.

On this issue, it should be noted that while no-one can incur HECS debt unless they can produce evidence to demonstrate the potential to complete a university course anyone can access VET Fee Help loans. If every RTO was prepared to properly assess the potential of an individual to undertake and complete a Cert IV or Diploma level course this would not present as a problem but this is not our experience of some providers. Also, as more and more students enrol through the TAFENSW online enrolment system more and more individuals are being found to be in courses that are not suitable. This will become a major problem once Smart and Skilled is implemented and TAFE NSW courses are funded predominantly through VET Fee Help.

## **Conclusion**

We believe that it should be evident, from the issues raised in this document, that there are many reasons why the members of the Coalition of Peak Disability Organisations and the NSW Teachers Federation have good reason to be concerned about how the needs of people with disabilities undertaking VET programs will be met in the future.

The implementation of Smart and Skilled in NSW will, without doubt, result in people who have disabilities being denied their rights to VET programs, the opportunity to develop skills and acquire formal qualifications, the means to compete for and to gain employment and to maximise their ability to realise their potential. As a consequence of this, the NSW Government is at risk of engaging in discriminatory practices that will lead to costly litigation.

**Recommendation** Considering the hardship it will cause to people who have disabilities and the risk to the Government of implementing the recommendations of the IPART Report the members of our Coalition encourage the NSW Government to quarantine the current disability funding and services provided through TAFENSW to people with disabilities in the interests of all concerned.

We believe that this recommendation, which is in keeping with your statement to the NSW Parliament on 23<sup>rd</sup> October that under Smart and Skilled “students with disabilities will receive the same support that they have always received through TAFE and also non-government providers”, is based on the principles of morality and equity.