

# STANDARD 3

## Prohibited Employers

This Standard outlines the conditions under which an employer may be declared by the South Australian Skills Commission (the Commission) to be a prohibited employer and outlines the conditions under which a declaration may be revoked.

A prohibited employer is an employer that the Commission reasonably believes (and declares as such) is not suitable to employ an apprentice or trainee. Employers that are declared as prohibited by the Commission reserve the right to seek a review by the South Australian Civil Administrative Tribunal (SACAT).

This Standard applies to the Commission (including delegate(s) and employers (including prohibited employers and those utilising hosting arrangements)).

Employers must comply with all other legislative requirements of an employer.

## Governance arrangements

The decision to declare an employer prohibited and to revoke or vary a declaration rests with the Commission.

## Compliance with the Standard

- 3.1 Declaring an employer prohibited (*South Australian Skills Act (SAS Act), S54B, S54G, S54H Regulation 8*)**
- 3.1.1 The Commission may, by notice in writing and in accordance with any requirements set out in the *South Australian Skills Regulations 2021 (the Regulations)*, declare an employer to be a prohibited employer if the Commission reasonably believes the employer is not a suitable person to employ an apprentice or trainee.
- 3.1.2 To assist the Commission in determining whether or not to declare an employer to be prohibited, more information may be required from or relating to the employer, including:
- a) the safety and wellbeing of apprentices and trainees employed by the employer
  - b) whether the employer is able to provide, or arrange to provide, an apprentice or trainee with the facilities, range of work, supervision and training required under a Training Plan for the apprentice or trainee
  - c) the employer's record in delivering training to apprentices or trainees
  - d) whether the employer behaves, or permits their employees to behave, in an objectionable way towards apprentices or trainees
  - e) whether the employer has contravened the *SAS Act*, or any other *Act* (whether of the State, another jurisdiction or the Commonwealth) relating to employment
  - f) the criminal history of the employer
  - g) whether the employer is a fit and proper person to employ an apprentice or trainee
  - h) any other matter prescribed by the *Regulations*.
- 3.1.3 The Commission may seek and take into account more information than indicated in the above clause 3.1.2 and may seek information from more than one person concerned in the ownership and/or management of the employer. The Commission may have regard to any other matter the Commission considers relevant to the decision whether to declare the employer to be a prohibited employer.
- 3.1.4 Before declaring an employer to be prohibited, the Commission must give notice in writing to the employer of the proposed declaration and allow a period of 14 days (or such longer period as the Commission may allow) to make submissions in writing to the Commission as to why the declaration should not be made.
- 3.1.5 The Commission may vary, suspend or cancel the registration of a registered employer without notice if it believes on reasonable grounds that an apprentice or trainee employed by the employer is at imminent risk of harm, and it is necessary or appropriate to vary, suspend or cancel the registration of an employer without giving notice, in order to manage the risk.
- 3.1.6 If the Commission declares an employer to be a prohibited employer, that employer's registration to employ an apprentice or trainee is cancelled from the date of the declaration.
- 3.1.7 Under Section 54B(3) of the *SAS Act*, a declaration may be conditional or unconditional and may be for a stated or indefinite period.
- 3.1.8 A notice declaring an employer to be prohibited must set out the following:
- a) the conditions (if any) that apply in relation to the declaration under Section 54B(3)(a) of the *SAS Act*

- b) if the declaration is for a period stated in the notice or an indefinite period in accordance with Section 54B(3)(b) of the *SAS Act*.
- 3.1.9 Prohibited employers will be listed on the [South Australian Skills Register](#), including details of any conditions and the stated period of prohibition.

### **3.2 Obligations for prohibited employers (SAS Act, S54D, S54E)**

- 3.2.1 A prohibited employer must not:
- a) employ, or offer to employ, a person as an apprentice or trainee
  - b) train or undertake to train a person in a trade
  - c) train or undertake to train a person in a declared vocation under a Training Contract
  - d) permit an apprentice or trainee to be placed with the prohibited employer under a host employment arrangement
  - e) falsely represent that they are not a prohibited employer.
- 3.2.2 A prohibited employer who is the subject of a conditional declaration under Section 54B of the *SAS Act* must not falsely represent that the declaration is, or is not, subject to a specified condition, or a condition of a specified kind.
- 3.2.3 A person must not falsely represent that:
- a) another person is not a prohibited employer
  - b) a declaration under Section 54B of the *SAS Act* that another person is a prohibited employer is, or is not, subject to a specified condition, or a condition of a specified kind.
- 3.2.4 A breach of these obligations may result in a maximum penalty of \$10,000.

### **3.3 Revocation of declaration (SAS Act, S54C)**

- 3.3.1 The Commission may, by notice in writing vary or revoke a declaration or a condition of a declaration if the Commission is satisfied that it is, in all circumstances, appropriate to do so.
- 3.3.2 An application to vary or revoke a declaration or a condition of a declaration by a prohibited employer must be made using the application form, available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms) and include the following information:
- a) name of the employer
  - b) contact details of the parties to the application
  - c) reasons for the request to vary or revoke a condition
  - d) evidence to support the application.
- 3.3.3 If the Commission varies or revokes a declaration or a condition of a declaration the South Australian Skills Register must be updated to reflect the revocation or variation.

### **3.4 Obligations for employers (SAS Act, S54J)**

- 3.4.1 An employer must not place, or permit the placement of, an apprentice or trainee under the Training Contract with a prohibited employer.
- 3.4.2 A list of prohibited employers will be available on the South Australian Skills Register, including details of any conditions and whether the declaration is for a specified or indefinite period.
- 3.4.3 If an employer places, or permits placement of, an apprentice or trainee under the Training Contract with a prohibited employer the Commission may do one or more of the following:
- a) give the employer a written warning

- b) vary, suspend or cancel the employers registration under Section 54G(3) of the *SAS Act*
- c) issue a compliance notice under Section 63 of the *SAS Act*
- d) declare the employer to be a prohibited employer.

**3.5 Other conditions related to prohibited employers (SAS Act, S48, S54F, S54H)**

3.5.1 The Commission must refuse to approve an agreement as a Training Contract if the employer is a prohibited employer, and may refuse to approve a Training Contract if the Commission reasonably suspects that the employer has engaged in conduct that is likely to result in the employer being declared a prohibited employer.

3.5.2 The Commission must confirm that an employer is not prohibited prior to:

- a) registering an employer
- b) substituting an employer in relation to a Training Contract.

**3.6 Review of decisions by the South Australian Civil and Administrative Tribunal (SAS Act, S70F)**

3.6.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to prohibit an employer.

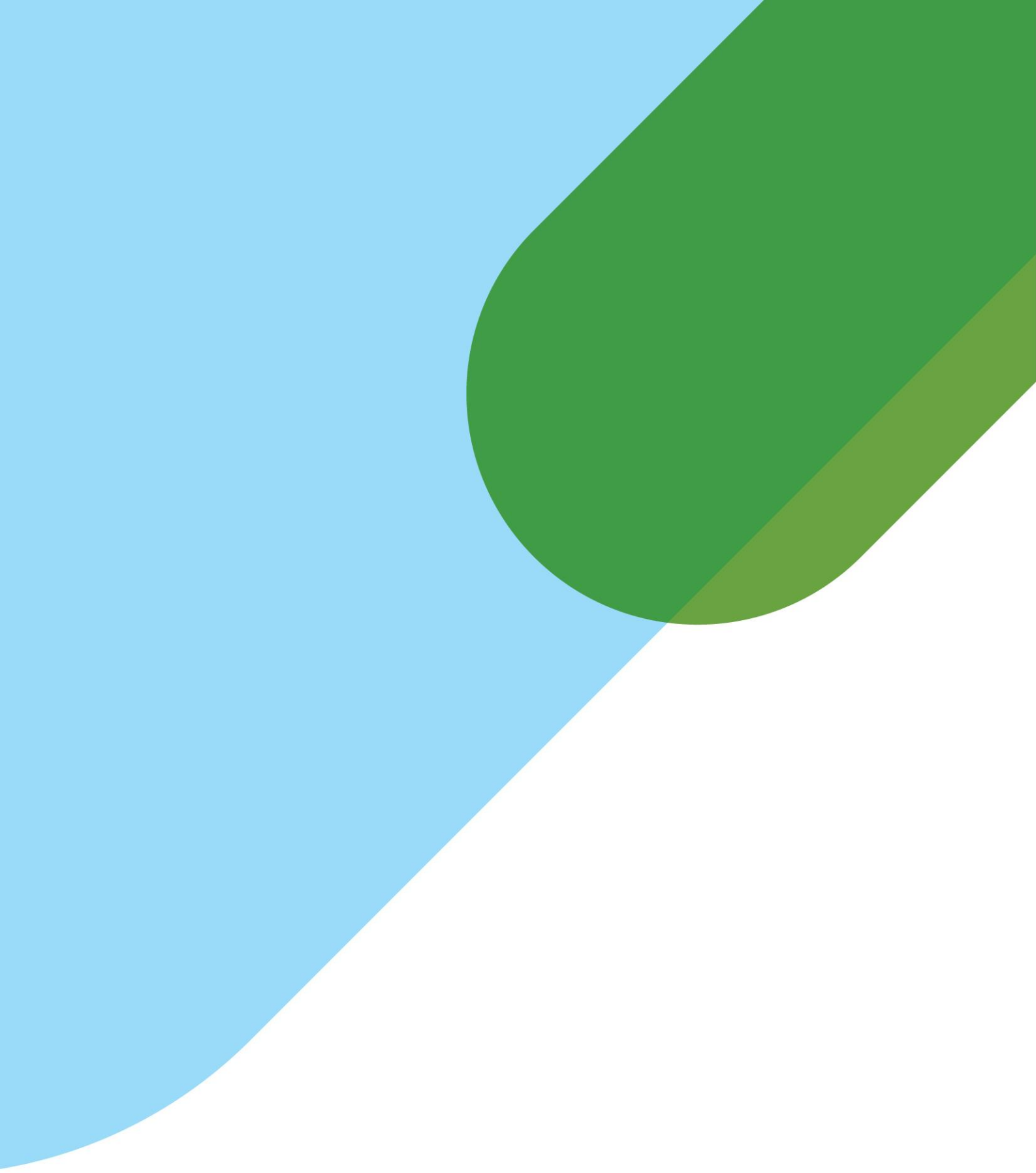
3.6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.

3.6.3 The SACAT may allow an extension of time to this application period if it is satisfied that:

- a) special circumstances exist
- b) another party will not be unreasonably disadvantaged because of the delay in commencing proceedings.

3.6.4 An application to the SACAT to review a decision must be made using the online form available at [www.sacat.sa.gov.au/applications-and-hearings/how-to-apply-to-sacat](http://www.sacat.sa.gov.au/applications-and-hearings/how-to-apply-to-sacat)

3.6.5 Fees apply for commencing a review in the SACAT. The SACAT can reduce or waive a fee in a particular case, or in relation to a particular class of applicant, based on financial hardship or where it is in the interests of justice to do so. An applicant may also apply for a partial waiver of the fee if they hold a valid concession card.



[skillscommission.sa.gov.au](http://skillscommission.sa.gov.au)

