

STANDARD 7

Training Contract Approval

This Standard relates to the approval of Training Contracts to train apprentices and trainees in accordance with the *South Australian Skills Act 2008* (the *SAS Act*).

Training contracts are between an employer and an apprentice or trainee, through which the employer agrees to employ and train the apprentice or trainee in the qualification aligned to the trade or declared vocation. All Training Contracts are to be approved by the South Australian Skills Commission (the Commission).

Governance arrangements

Under the *SAS Act*, the Commission (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system. The Commission's powers include the authority to assess, approve or decline Training Contracts.

Australian Apprenticeship Support Network (AASN) and Australian Network Providers (ANP) are contracted by the Australian Government to deliver support services to the parties to the Training Contract, this may include lodgement of Training Contract applications with the Commission.

Compliance with the Standard

7.1 Training under Training Contracts (SAS Act, S45A, S45B S46)

- 7.1.1 Under the *SAS Act*, an employer must not undertake to train a person in a trade except under a Training Contract.
- 7.1.2 However, the above clause 7.1.1 does not apply in relation to the further training or re-training of a person who has:
- a) already completed the training required under a Training Contract
 - b) an equivalent qualification
 - c) been certified by the Commission as competent in relation to the relevant trade.
- 7.1.3 An employer who wishes to train an employee in a declared vocation can choose whether to enter in a Training Contract or not.
- 7.1.4 An employer must not enter into a Training Contract to train a person unless the employer is:
- a) a registered employer
 - b) operating within the scope of the employer's registration
 - c) complying with any other condition of the registration.
- 7.1.5 The maximum penalty for a breach of this requirement is \$5,000, and the expiation fee is \$315.
- 7.1.6 Two or more employers may, with the approval of the Commission, enter into a Training Contract with the same apprentice or trainee.
- 7.1.7 The Commission provides a general authorisation for Registered Employers to place apprentices and trainees with unregistered host employers, in accordance with [Standard 4, Host Employer Arrangements](#).

7.2 Training contract applications (SAS Act, S46, S48)

- 7.2.1 An employer must apply to the Commission for approval of an agreement as a Training Contract within 28 days after entering an agreement where:
- a) the employer is to train a person in a trade, or to otherwise train a person under a Training Contract
 - b) it is intended to be a Training Contract.
- 7.2.2 The maximum penalty for a breach of this requirement is \$5,000, and the expiation fee is \$315.
- 7.2.3 A Training Contract application must utilise the relevant standard form contract and contain the following conditions:
- a) a condition that the apprentice or trainee will be employed by the employer party to the Training Contract in accordance with the applicable award or industrial agreement
 - b) a condition specifying the probationary period for a Training Contract for the relevant trade or declared vocation

- c) the standard conditions for a Training Contract for the relevant trade or declared vocation
 - d) a condition that the apprentice or trainee will be trained and assessed in accordance with the Training Plan (to be agreed between the parties and a Nominated Training Organisation (NTO) chosen jointly by the parties)
 - e) any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the registered training provider.
- 7.2.4 A person under the age of 15 years must not enter into a Training Contract unless otherwise permitted by an industrial award, or the person has, on application, obtained written approval of the Commission.
- 7.2.5 An Apprenticeship Network Provider (ANP) may submit an application on behalf of a party to the Training Contract.
- 7.2.6 The Commission may, by notice in writing, require an employer to provide, within a specified period, such other specified information or documents as may be required by the Commission for the purposes of determining an application.
- 7.3 Training contract approval (SAS Act S48, SAS Regulation 6)**
- 7.3.1 The Commission must, on determining an application for a Training Contract, notify the employer and apprentice or trainee of:
- a) the Commission's determination
 - b) the date of the determination
 - c) reasons for the refusal, if refused.
- 7.3.2 The Commission will refuse to approve an application for a Training Contract if:
- a) the employer is a prohibited employer
 - b) the employer would commit an offence under Section 46(4) of the *SAS Act* by training a person under the proposed Training Contract
 - c) the trade or vocation that is the subject of the Training Contract is not a declared trade or vocation under the *SAS Act*
 - d) in the opinion of the Commission, the employer is not 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.
- 7.3.3 The Commission may refuse to approve an agreement as a Training Contract for any other reason the Commission considers appropriate, including where:
- a) the agreement does not utilise the relevant standard form contract
 - b) the agreement does not otherwise comply with the *SAS Act*
 - c) the qualification to which the agreement relates is, in the opinion of the Commission, an inappropriate qualification for a Training Contract
 - d) the employer, or the apprentice or trainee, will, in the opinion of the Commission, be unable to fulfil their obligations under the proposed Training Contract
 - e) the requirements under the *SAS Act* in relation to a Training Plan for the apprentice or trainee are unlikely to be satisfied
 - f) a term of the proposed Training Contract is, in the opinion of the Commission, prejudicial to the interests of the apprentice or trainee
 - g) the Commission reasonably suspects that the employer has engaged in conduct that is likely to result in the employer being declared a prohibited employer.
- 7.3.4 An employer who has made an application under this section that has been refused by the Commission must not, except with the written authority of the Commission, continue to train a person in a trade under the refused agreement.
- 7.3.5 The maximum penalty for a breach of this requirement is \$5,000, and the expiation fee is \$315.

7.4 Training contract obligations on the employer (SAS Act S54J, S54L, Regulation 11)

- 7.4.1 The obligations of the employer who is a party to a Training Contract in this Standard are in addition to those contained in the Training Contract and are to:
- a) employ and train the apprentice or trainee as agreed in the Training Contract and Training Plan
 - b) provide the relevant wages and conditions to the apprentice or trainee employed to complete the Training Contract
 - c) provide appropriate facilities and expertise to assist in the training of the apprentice or trainee in accordance with the requirements of the Training Plan
 - d) ensure the apprentice and trainee receives on-job training and assessment in accordance with the requirements of the Training Plan
 - e) release the apprentice or trainee from work and pay the appropriate wages to attend any training and assessment specified in the Training Plan
 - f) provide supervision to the apprentice or trainee in accordance with [Standard 5, Supervision](#)
 - g) work with an NTO and the apprentice or trainee to ensure that the Training Plan is complied with, training records are kept up to date, and progress is monitored, reviewed and supported, in accordance with [Standard 6, Training Plan and Nominated Training Organisations](#)
 - h) notify the Commission of any material change to the Training Contract, in accordance with the *SAS Act*
 - i) attempt to resolve a dispute between the parties to the Training Contract in the first instance, but if such attempts fail, apply to the Commission for consideration of the matter
 - j) comply with any other obligation specified in the Training Contract or Training Plan that is applicable to the apprentice or trainee
 - k) inform the Commission and the NTO within 5 working days, if the Training Contract has become jeopardised.
- 7.4.2 Additionally, an employer in relation to a Training Contract must comply with the following provisions, which will be taken to be a condition of the employer's registration:
- a) the employer must comply with the Standards
 - b) the employer must permit an apprentice or trainee under the Training Contract to carry out their obligations under the Training Contract
 - c) the employer must comply with any other obligation specified in the Training Contract or Training Plan that is applicable to the employer.
- 7.4.3 The employer must not:
- a) prevent or obstruct the apprentice or trainee from carrying out their obligations under a Training Plan
 - b) prevent or obstruct the apprentice or trainee from participating in any training required to be delivered by the NTO under a Training Plan
 - c) prejudice the employment of the apprentice or trainee, or place the apprentice or trainee at a disadvantage, because the apprentice or trainee participates or attempts to participate in such training
 - d) take any other steps to discourage the apprentice or trainee from participating in such training
 - e) place, or permit the placement of, an apprentice or trainee under the Training Contract with a prohibited employer
 - f) without the authorisation of the Commission, place, or permit the placement of, an apprentice or trainee under the Training Contract with an employer who is not a registered employer.
- 7.4.4 The Commission may, in relation to an employer's failure to satisfy the employer's obligations under the Training Contract, do one or more of the following:

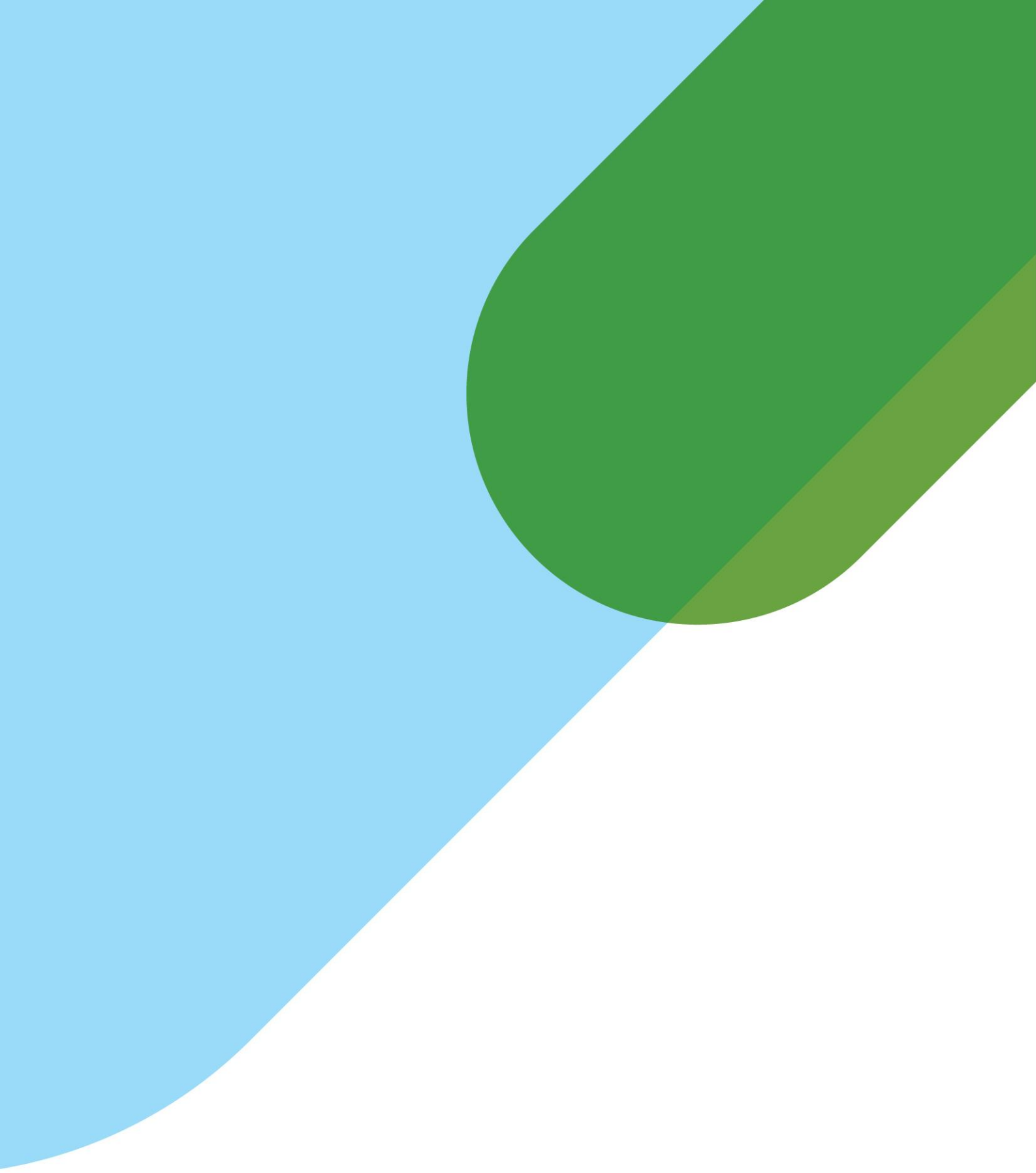
- a) give the employer a written warning
 - b) vary, suspend, or cancel the employer's registration
 - c) issue a compliance notice
 - d) declare the employer to be a prohibited employer.
- 7.4.5 An employer must maintain appropriate records to demonstrate that the obligations in the *SAS Act, South Australian Skills Regulations 2021* (the *Regulations*) and [Standard 14, Record Keeping](#) have been met.
- 7.4.6 The maximum penalty for a breach of this requirement is \$5,000, and the expiation fee is \$315.

7.5 Training contract obligations on the apprentice or trainee (SAS Act S54M)

- 7.5.1 An apprentice or trainee, in relation to a Training Contract, must:
- a) comply with the Standards
 - b) comply with any other obligation specified in the Training Contract or Training Plan that is applicable to the apprentice or trainee
 - c) as far as is reasonably practicable:
 - i. participate in the development of their Training Plan
 - ii. contribute to the attainment of their development goals under the Training Contract and Training Plan.
- 7.5.2 The Commission may, in relation to an apprentice or trainee failing to comply with their obligations under a Training Contract, do one or more of the following:
- a) give the apprentice or trainee a written warning
 - b) require the parties to the Training Contract to attend a dispute resolution process
 - c) suspend the Training Contract
 - d) terminate the Training Contract.

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

- 7.6.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to refuse an application by a person under 15 years of age to enter into a Training Contract under Section 46(7) of the *SAS Act*.
- 7.6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 7.6.3 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.
- 7.6.4 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
- 7.6.5 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.



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