

South Australian Skills Standards

# STANDARD 8

## Training Contract Conditions

This Standard relates to the setting of Training Contract conditions, including the probationary period in accordance with the *South Australian Skills Act 2008* (the *SAS Act*). The South Australian Skills Commission (the Commission) is responsible for the regulation of the apprenticeship and traineeship system.

## Governance arrangements

The Commission, under Section 45(2) of the *SAS Act*, may determine 'standard conditions' for specified trades and declared vocations, through notice in the South Australian Government Gazette (the Gazette). These standard conditions, which form part of the standard form contract, include:

- the term (duration in months) of the Training Contract
- the qualifications available for a person in the trade or declared vocation
- any other condition considered necessary by the Commission
  - the Commission has determined that parties to a (full-time or part-time) Training Contract may agree to average the hours worked under the Training Contract as a condition of the Training Contract.

Refer to [Standard 1, Declaration of Trades and Vocations](#) for more information on this Standard's conditions.

## Compliance with the Standard

### 8.1 Gazettal of standard form Training Contract (*SAS Act*, S45, S46, S49A)

8.1.1 Section 46(6) of the *Act* states that a standard form contract must be in the required form and contain the following additional terms and conditions:

- a) that the apprentice or trainee will be employed by the employer who is party to the contract in accordance with the applicable award or industrial agreement
- b) the probationary period for the relevant trade or declared vocation
- c) the standard conditions for the relevant trade or declared vocation
- d) that the apprentice or trainee will be trained and assessed in accordance with the Training Plan (to be agreed between the employer, the apprentice or trainee and a nominated training organisation chosen jointly by the employer and the apprentice or trainee)
- e) any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the nominated training provider.

8.1.2 The Commission may determine a probationary period for a Training Contract for a specified trade or declared vocation, through notice in the Gazette. The Commission may also extend the probationary period for an individual Training Contract on application by a party to a Training Contract, or for a specified class of Training Contracts by notice in the Gazette with the approval of the Minister for Education, Training and Skills (the Minister).

8.1.3 The Commission may vary hours of training under a Training Contract to reflect a part-time or full-time training arrangement.

8.1.4 The Commission may also vary or revoke a previously gazetted condition under Section 45(3) of the *SAS Act*. Any revocation or variation will apply to all qualifications to which the gazetted notice relates.

## **8.2 Contract variation to full-time and part-time training arrangements (SAS Act, S50)**

- 8.2.1 Employers and their apprentices and trainees must comply with the standard conditions of the Training Contract. They may seek to vary these in prescribed circumstances.
- 8.2.2 Parties to a Training Contract by agreement may apply, and the Commission may approve, a variation to a Training Contract:
- a) from a part-time to a full-time training arrangement
  - b) from a full-time to a part-time training arrangement
- provided the agreed working arrangement is permitted by the relevant award or industrial agreement under which the apprentice or trainee is employed.
- 8.2.3 An application must be made in the prescribed form and must contain any information required by the Commission to consider the application. The application form is available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms).
- 8.2.4 The Commission on its own motion may vary the full-time or part-time training arrangement under a Training Contract if there are circumstances to justify the change. For example, if the Commission determines that an agreed full-time or part-time training arrangement is inconsistent with a relevant award or other industrial instrument under which the apprentice or trainee is employed.
- 8.2.5 Where the Commission makes a determination on its own motion, the Commission will provide any affected party an opportunity to provide its views on the proposed variation to the Training Contract.

## **8.3 School-based apprenticeships or traineeships (SAS Act, S50)**

- 8.3.1 Parties to a school-based apprenticeship or traineeship, by agreement, must apply to the Commission for approval of a variation to the Training Contract:
- a) from part-time to full-time training
  - b) from full-time to part-time training
- commencing when the school-based apprentice or trainee completes school.
- 8.3.2 Alternatively, the Commission on its own motion may vary the full-time or part-time training arrangement under a school-based apprenticeship or traineeship when the apprentice or trainee finishes school, for example, when:
- a) the agreed training arrangement is not conducive to the apprentice or trainee meeting their workplace-based training obligations under the Training Contract or Training Plan
  - b) the Commission determines that the agreed full-time or part-time training arrangement is not consistent with a relevant award or other industrial agreement under which the apprentice or trainee is employed.

## **8.4 Averaging of hours (SAS Act, S45)**

- 8.4.1 Parties to a (full-time or part-time) Training Contract may agree to average the hours worked under the Training Contract as a condition of the Training Contract.
- 8.4.2 Hours worked under a standard apprenticeship or traineeship may be averaged over a four-week cycle.
- 8.4.3 Hours worked under a school-based apprenticeship or traineeship may be averaged over a three-month cycle.

- 8.4.4 An agreement to average the training hours over a particular work cycle must be in advance of the training commencing and must include the rostered hours of employment and training for the period over which the averaging applies.
- 8.4.5 The agreed arrangement must:
- a) provide a regular pattern of on and off-job training that enables both on-job and off-job structured training to be planned and implemented according to the Training Plan. For example, a full-time pattern of hours per week of 40, 40, 40 and 30 (average 38 hours) is appropriate. However, under a school-based apprenticeship or traineeship, a part-time pattern of hours per week of 20, 0, 12, 8 is unlikely to be appropriate, as the training pattern is not conducive to the student meeting their academic obligations.
  - b) be consistent with (and not disrupt) the training objectives contained in the Training Contract and Training Plan
  - c) in relation to school-based apprenticeships or traineeships, not interfere with the student's school commitments
  - d) be consistent with the award, industrial agreement and national employment standards that apply to the employment of the apprentice or trainee, including any requirements relating to:
    - i. rostering
    - ii. consultation
    - iii. notice periods.
- 8.4.6 An employer must maintain records of an apprentice or trainee's attendance at the workplace and at training and 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.
- 8.4.7 These records should include any agreement to average hours and the hours recorded should reflect the pattern of work and training agreed by the employer and apprentice or trainee.
- 8.4.8 The maximum penalty for a breach of the requirements relating to the making and retention of records is \$5,000, and the expiation fee is \$315.

## **8.5 Minimum hours under part-time Training Contracts (SAS Act, S46)**

- 8.5.1 As published by notice in the Gazette an apprenticeship or traineeship may be undertaken on a full or time-part basis but cannot be undertaken on a casual basis.
- 8.5.2 Parties to a part-time apprenticeship or traineeship may agree on the hours worked under the Training Contract, provided:
- a) part-time minimum hours worked under a standard apprenticeship or traineeship are at least 15 hours per week
  - b) part-time minimum hours worked under a school-based apprenticeship or traineeship are at least 7.5 hours per week.
- 8.5.3 The agreed arrangement must be consistent with the award or industrial agreement to which the apprenticeship or traineeship relates.

## **8.6 Standard probationary periods under Training Contracts (SAS Act, S46)**

- 8.6.1 The Commission, by notice in the Gazette, has determined the standard probationary period for Training Contracts. The standard (or nominal) probationary period for a Training Contract:
- a) up to and including 24 months duration is 60 days
  - b) greater than 24 months duration is 90 days.

- 8.6.2 These standard probationary periods apply to full-time and part-time apprenticeships and traineeships.
- 8.6.3 The Commission by further gazetted notice may vary the above standard probationary periods.
- 8.6.4 The Commission has the discretion to approve probationary periods that differ from the standard probationary periods noted in Clause 8.6.1.

## **8.7 Application to extend the standard probationary period for a Training Contract (SAS Act, S49A)**

- 8.7.1 A party to a Training Contract may apply to the Commission to vary the Training Contract to extend the probationary period for that Training Contract.
- 8.7.2 An application to extend the probationary period:
- a) may be made by the employer, the apprentice or trainee, or both (Note: if the application is not a joint application by the employer and apprentice or trainee, the Commission must not decide an application unless it has sought the views of the other party to the Training Contract about whether or not the application should be granted)
  - b) may not be for a period in excess of 6 months in total, or 25% of the term of the Training Contract, whichever is the lesser.
  - c) must be submitted to the Commission no less than 14 days before the expiry of the nominal probationary period, unless the Commission is satisfied that:
    - i. good reasons exist to accept a shorter notice period; and
    - ii. the other party to the Training Contract will not be unreasonably disadvantaged
  - d) if an application to extend the probationary period is not resolved within 14 days, the apprentice or trainee will continue to be employed on a probationary basis until such time as the application is resolved.
- 8.7.3 Upon assessing an application to extend the probationary period for a Training Contract, the Commission will advise the parties to the application of the outcome, in writing. The Commission will advise:
- a) if the application is approved, the period for which the probationary period is extended
  - b) if the application is declined, the reason(s) and process for review.

## **8.8 Variation by the Commission of the probationary period for a class of Training Contracts (SAS Act, S49A(3))**

- 8.8.1 The Commission, with the approval of the Minister, may extend the probationary period for a specified class of Training Contracts. However, the probationary period, as extended, must not exceed 6 months in total or 25% of the term of the Training Contract, whichever is the lesser.
- 8.8.2 Before the Commission varies the probationary period for a specified class of Training Contracts, it must:
- a) consult with apprentices or trainees who are a party (or likely to be party) to a Training Contract that is among the specified class of contract, or a body representing the interests of those apprentices or trainees
  - b) consult with employers who are a party (or likely to be party) to a Training Contract that is among the specified class of contract, or a body representing the interests of those employers.

## **8.9 Apprentice or trainee is under 18 years of age**

8.9.1 If an application to extend the probationary period under a Training Contract is made in relation to an apprentice or trainee under the age of 18, and provided the apprentice or trainee's parent(s) or guardian(s) are party to the Training Contract, the Commission must, if practicable, consult the apprentice or trainee's parent or guardian.

## **8.10 Review of decisions by the South Australian Civil and Administrative Tribunal (SAS Act, S70F, Regulation 20)**

8.10.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to approve or refuse an application to extend the probationary period for a Training Contract under Section 49A of the SAS Act.

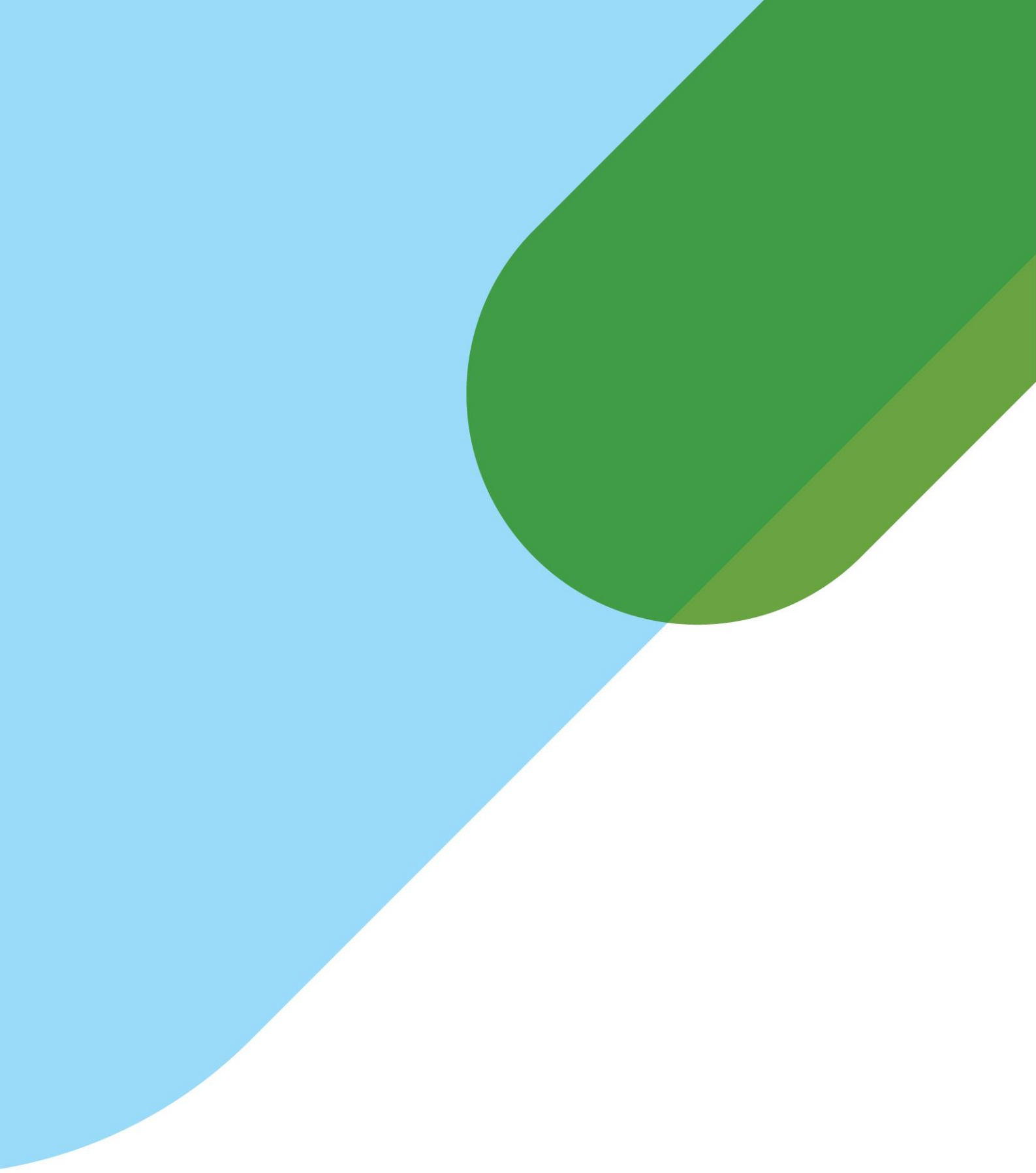
8.10.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.

8.10.3 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.

8.10.4 An application for 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)

8.10.5 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)

