

South Australian Skills Standards

# STANDARD 10

Training Contract Suspension

This Standard relates to Training Contract suspension in accordance with the *South Australian Skills Act 2008* (the *SAS Act*). The South Australian Skills Commission (the Commission) may, on an application or on its own motion, suspend a Training Contract.

## Governance arrangements

Under the *SAS Act*, the Commission (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system. To this end, its powers include the authority to:

- assess and approve (or decline) applications for Training Contract suspension
- suspend a Training Contract, on its own motion.

## Compliance with the Standard

### 10.1 Training contract suspension (*SAS Act*, S51)

10.1.1 The Commission may, on an application under Section 51 of the *SAS Act*, or on its own motion, suspend a Training Contract.

10.1.2 An application for Training Contract suspension:

- a) may be made by a party to a Training Contract
- b) must be made in the prescribed form, available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms).
- c) must be accompanied by such information or documents as required by the Commission to consider the application.

10.1.3 A suspension:

- a) must be by notice in writing
- b) may be conditional or unconditional.

10.1.4 Additionally, the Commission may, by notice in writing, vary or revoke a condition of a suspension.

10.1.5 A suspension commences on the day specified by the Commission and remains in force for the period specified in the notice, or until further notice by the Commission (as the case requires).

### 10.2 Training contract suspension criteria (*SAS Act* S51, S70G)

10.2.1 Parties may make an application for Training Contract suspension for consideration by the Commission. An application for Training Contract suspension that is not mutually agreed by the parties may require dispute resolution at the discretion of the Commission.

10.2.2 A person must not exert undue influence or pressure on, or use unfair tactics against, another person in relation to any matter relating to or arising out of, a Training Contract, including suspension.

10.2.3 The maximum penalty for breach of the above clause 10.2.2 in this Standard is \$10,000.

10.2.4 A suspension is for a period of time agreed between the parties to the Training Contract or determined by the Commission. This should not be for more than 30 days, although the Commission may apply its discretion to suspend for a longer period in appropriate circumstances.

10.2.5 A suspension is based upon a commitment by the parties to resume the Training Contract after the period of suspension.

10.2.6 During the period of suspension, the parties and the employer are required to keep in contact about resuming the Training Contract.

10.2.7 The period of suspension is not recognised as part of the nominal term of the Training Contract. Upon resumption of the Training Contract, the nominal term of the Training Contract will be extended to cover the period of suspension.

10.2.8 The Training Contract resumes at the end of the period of suspension. However, if the parties agree, and the Commission is advised in writing, the Training Contract can resume prior to the end date of the suspension. Above clause 10.1.5 indicates the Commission's role to determine a period of suspension and notify the parties as the case requires.

- 10.2.9 If a suspension commences during the probationary period of the Training Contract, the probationary period is to be extended by the amount of the probationary period lost through suspension of the Training Contract.
- 10.2.10 Where the parties agree, the apprentice or trainee may continue with their off-job training during the period of suspension. Where the parties agree, time spent at off-job training will be credited towards the Training Contract and an adjustment made to the nominal term of the contract and suspension duration. The apprentice or trainee should continue to be paid for the time they are engaged in their off-job training as per the award under the Training Contract.

### **10.3 Training contract suspension for business-related reasons (SAS Act S51)**

- 10.3.1 An application for Training Contract suspension may be made to the Commission for business related reasons such as re-structuring or re-location of the business.
- 10.3.2 Suspension must be a last resort. Evidence must be provided to the Commission that the Training Contract suspension is required due to all other options having been exhausted.
- 10.3.3 Other options that may first be considered before an application for Training Contract suspension are:
- a) completing outstanding off-job training or bringing forward future off-job training
  - b) placing the apprentice or trainee with an alternative registered employer, host employer or group training organisation
  - c) taking of any accrued leave, for example, annual leave, rostered days off
  - d) rotating the apprentice or trainee with another apprentice or trainee who is due to attend off-job training or due to take leave, where both are employed by the same group training organisation or employer
  - e) negotiating a reduction in hours if possible, under the industrial award/agreement and varying the Training Contract accordingly.
- 10.3.4 After 30 days, the Commission may review and extend a suspension upon consideration of the circumstances, including ongoing action taken to exhaust other options by the parties during the period of suspension.
- 10.3.5 Other options as stated in the above clause 10.3.3 of this Standard must continue to be considered during the suspension period before any further application for suspension are applied for.

### **10.4 Training contract suspension for non-business-related reasons (SAS Act S51)**

- 10.4.1 The Commission may consider an application for Training Contract suspension for non-business-related reasons where the application is mutually agreed and meets the criteria in this Standard.
- 10.4.2 Any accrued leave, including sick leave where appropriate, should be taken prior to seeking a non-business-related suspension.
- 10.4.3 Non-business-related suspension reasons include:
- a) pregnancy
  - b) maternity/paternity leave
  - c) a non-work-related injury or illness affecting the apprentice or trainee's ability to undertake work and training (where sick leave has been exhausted)
  - d) higher level work or duties with the employer
  - e) personal reasons or commitments.
- 10.4.4 In relation to the above clause 10.2.4 the maximum suspension for non-business related reasons is 30 days. The Commission may exercise its discretion to consider longer term suspensions, for example, for reasons of pregnancy, illness, natural disaster or pandemic.

**10.5 Dispute resolution in relation to a Training Contract suspension (SAS Act, S52)**

- 10.5.1 If either party to the Training Contract does not agree to the suspension, the party may dispute the suspension in writing to the Commission.
- 10.5.2 The Commission may, before determining an application for suspension of a Training Contract, require the parties to the Training Contract to undertake dispute resolution of a specified kind.
- 10.5.3 Refer to [Standard 12, Complaints Handling, Mediation and Advocacy](#) for detailed information regarding dispute resolution.

**10.6 Employer may suspend apprentice or trainee for wilful and serious misconduct (SAS Act, S64)**

- 10.6.1 If an employer has reasonable grounds to believe that an apprentice or trainee employed by the employer is guilty of wilful and serious misconduct, the employer may (without first obtaining the approval of the Commission) suspend the apprentice's or trainee's employment.
- 10.6.2 If an employer suspends an apprentice's or trainee's employment under the above clause 10.6.1, the employer must, in accordance with any requirement set out in the Standards, as soon as reasonably practicable:
  - a) refer the matter to the Commission for mediation
  - b) notify the South Australian Employment Tribunal (SAET) that the matter has been so referred
  - c) notify the apprentice or trainee that the matter has been so referred
  - d) comply with any other reasonable requirement of the Commission in relation to the mediation.
- 10.6.3 The maximum penalty for a breach of this requirement is \$5,000 and the expiation fee is \$315.
- 10.6.4 If a matter is not resolved by mediation, the employer must, as soon as reasonably practicable after the conclusion of the mediation (but in any event, within 3 days) refer the matter to the SAET for consideration.
- 10.6.5 The maximum penalty for a breach of this requirement is \$5,000 and the expiation fee is \$315.
- 10.6.6 The above clause 10.6.1 applies, except where:
  - a) the employer and the trainee or apprentice agree to a longer suspension (whether during mediation or otherwise)
  - b) the Commission extends the suspension for a specified period (not being more than 3 days after the conclusion of the mediation)
  - c) the SAET confirms or extends the suspension under Section 65 of the *SAS Act*.
- 10.6.7 A suspension under Section 64 of the *SAS Act* and the above clause 10.6.1 in this Standard will cease after 7 working days, unless cancelled sooner.

**10.7 South Australian Employment Tribunal may suspend employment of apprentice or trainee (SAS Act, S65)**

- 10.7.1 If a dispute arises between parties to a Training Contract or a party to a Training Contract is aggrieved by the conduct of another party, a party to the contract may apply to the SAET for consideration of the matter.
- 10.7.2 The SAET may, if it thinks fit, suspend the employment of an apprentice or trainee commencing on a date specified in the order.
- 10.7.3 The SAET may confirm, extend (for a period not exceeding four weeks), or revoke a suspension imposed by an employer under Section 64 of the *Act* and in the event of revocation:

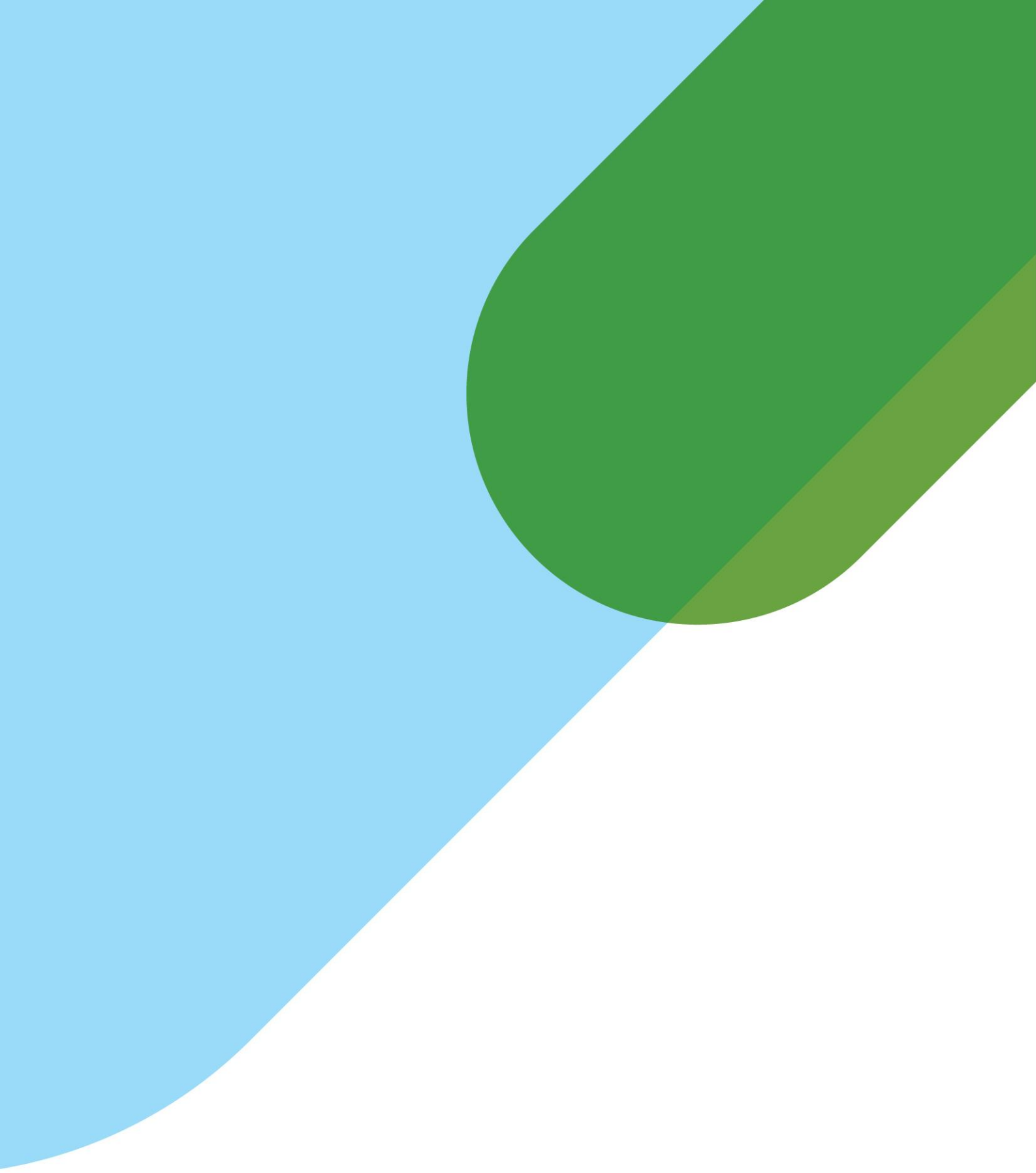
- a) order the employer to pay any remuneration, or compensation for any non-monetary benefit, to which the apprentice or trainee would, but for the suspension, have been entitled
- b) order the employer to treat the period of suspension as service for specified purposes.

**10.8 Offence to suspend Training Contract (SAS Act, S51C)**

- 10.8.1 A person who, without being authorised to do so under the *SAS Act*, suspends or purports to suspend a Training Contract, is guilty of an offence.
- 10.8.2 The maximum penalty for a breach of this requirement is \$5,000 and the expiation fee is \$315.

**10.9 False or misleading information (SAS Act, S75)**

- 10.9.1 A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under the *Act*.
- 10.9.2 The maximum penalty for a breach of this requirement is \$10,000.



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