

STANDARD 12

Complaint Handling, Mediation and Advocacy

This Standard details a range of complaint handling, mediation, and advocacy services in accordance with the *South Australian Skills Act 2008* (the *SAS Act*) and the South Australian Skills Commission (the Commission). The services are provided free of charge and are confidential and impartial.

The services of complaint handling, mediation and advocacy may relate to the resolution of disputes in respect of apprenticeships and traineeships, vocational education and training, higher education, and international education.

Stakeholders to whom this Standard applies include apprentices, trainees, employers, students, international students and training and education providers. Stakeholders may also include a parent or guardian, where applicable.

Governance arrangements

To ensure any potential conflict of interest is managed, the Commission has delegated regulatory decision-making functions to the Department for Education (DfE). The Standard on Complaint Handling, Mediation and Advocacy is governed by the Commission, and not DfE. Complaints raised with DfE or other agencies will be referred to the Commission where appropriate.

Compliance with the Standard

12.1 Scope of functions (SAS Act, S19, S52)

12.1.1 The functions of the Commission under the *SAS Act* are to undertake complaint handling and provide, where appropriate, mediation and advocacy services in disputes relating to apprenticeships and traineeships, vocational education and training, higher education or international education, and to otherwise assist in the resolution of such disputes including by providing advocacy services for parties in proceedings before the South Australian Employment Tribunal (SAET).

12.1.2 The following party/parties may raise a complaint or dispute with the Commission:

- a) apprentices/trainees
- b) parents/guardians of apprentices and trainees
- c) employers
- d) Nominated Training Organisations (NTOs)
- e) students
- f) international students
- g) the delegated regulator of the apprenticeship and traineeship system, where issues are identified through the course of regulating the system (including under Section 52).

12.2 Expectations of the parties

12.2.1 All parties accessing services of the Commission through complaint handling, mediation, advocacy, or dispute resolution are expected to:

- a) attempt to resolve the matter with the other party verbally or in writing
- b) provide full contact details including physical address, mobile number and email
- c) provide copies of relevant correspondence, documentation, and evidence to the Commission
- d) maintain appropriate contact with the Commission
- e) maintain confidentiality
- f) not disseminate information or advice provided by the Commission
- g) not misuse confidential information
- h) make and attend appointments, as required
- i) follow all reasonable instructions
- j) comply with any other reasonable requirement of the Commission in relation to the dispute resolution.

12.2.2 Parties may raise complaints confidentially, however, the Commission will be limited in what action it can take in these circumstances.

12.3 Complaint handling

12.3.1 The Commission will provide an independent complaint handling service and investigate complaints relating to the provision of apprenticeships and traineeships, vocational education and training, higher education or international education.

- 12.3.2 The independent complaint handling process may include:
- a) the investigation of a complaint
 - b) the negotiation and mediation of matters arising out of a complaint
 - c) making recommendations in relation to complaints
 - d) notifying the parties of the outcome of the complaint within a reasonable timeframe.

12.4 Advocacy

- 12.4.1 The Commission may speak for and negotiate on behalf of:
- a) education and training providers and clients of education and training providers, in the resolution of any matters arising out of the delivery of education and training
 - b) an employer, an apprentice/ trainee and/or an NTO in the resolution of any matters arising in relation to a Training Contract with the other party/parties to the Training Contract
 - c) an employer or an apprentice/ trainee in the resolution of any matters arising in relation to a Training Contract, including by providing advocacy services for parties in proceedings before the SAET.

12.5 Mediation (SAS Act, S54N, S54O, s64, Regulation 13)

- 12.5.1 The Commission may provide mediation between parties to a Training Contract or between previous and proposed employers, in the case of transfer. Mediation aims to resolve disputes in a timely manner and the parties are encouraged to act in good faith during discussions or negotiations to reach an outcome that is satisfactory for all parties.
- 12.5.2 The Commission may provide mediation services in the following instances:
- a) arising from a complaint as outlined above
 - b) referral of a matter by an employer where an apprentice or trainee has been suspended for serious misconduct
 - c) where there is disagreement between the parties in relation to the transfer fee under Section 54O of the *SAS Act* and *Regulation 12*
 - d) any other instances where the Commission sees fit.
- 12.5.3 An explicit settlement agreement made between the parties as a result of a mediation (facilitated by the Commission) is legally enforceable.
- 12.5.4 If a matter related to wilful and serious misconduct is unable to be resolved by mediation, the employer must as soon as is reasonably practicable after the conclusion of the mediation (but in any event within 3 days), refer the matter to the SAET for consideration.

12.6 Dispute resolution (SAS Act, S52)

- 12.6.1 Parties who wish to vary a Training Contract must mutually agree to do so via application to the Commission. An exception to this is a withdrawal from a Training Contract during a probationary period, where mutual agreement is not required and either party can apply individually to the Commission.
- 12.6.2 Under the *SAS Act*, the Commission may, before determining an application for termination, suspension, or substitution of an employer in relation to a Training Contract, require the parties to the Training Contract to undertake dispute resolution of a specified kind.
- 12.6.3 For the purposes of Section 52 of the *SAS Act*, dispute resolution may be undertaken by the Commission in accordance with the approach to mediation outlined in clause 12.5. In addition, or as an alternative, the Commission may use direct negotiation when attempting to resolve disputes. Each dispute will be individually assessed.

12.7 Suspension for wilful and serious misconduct (SAS Act, S64, s65)

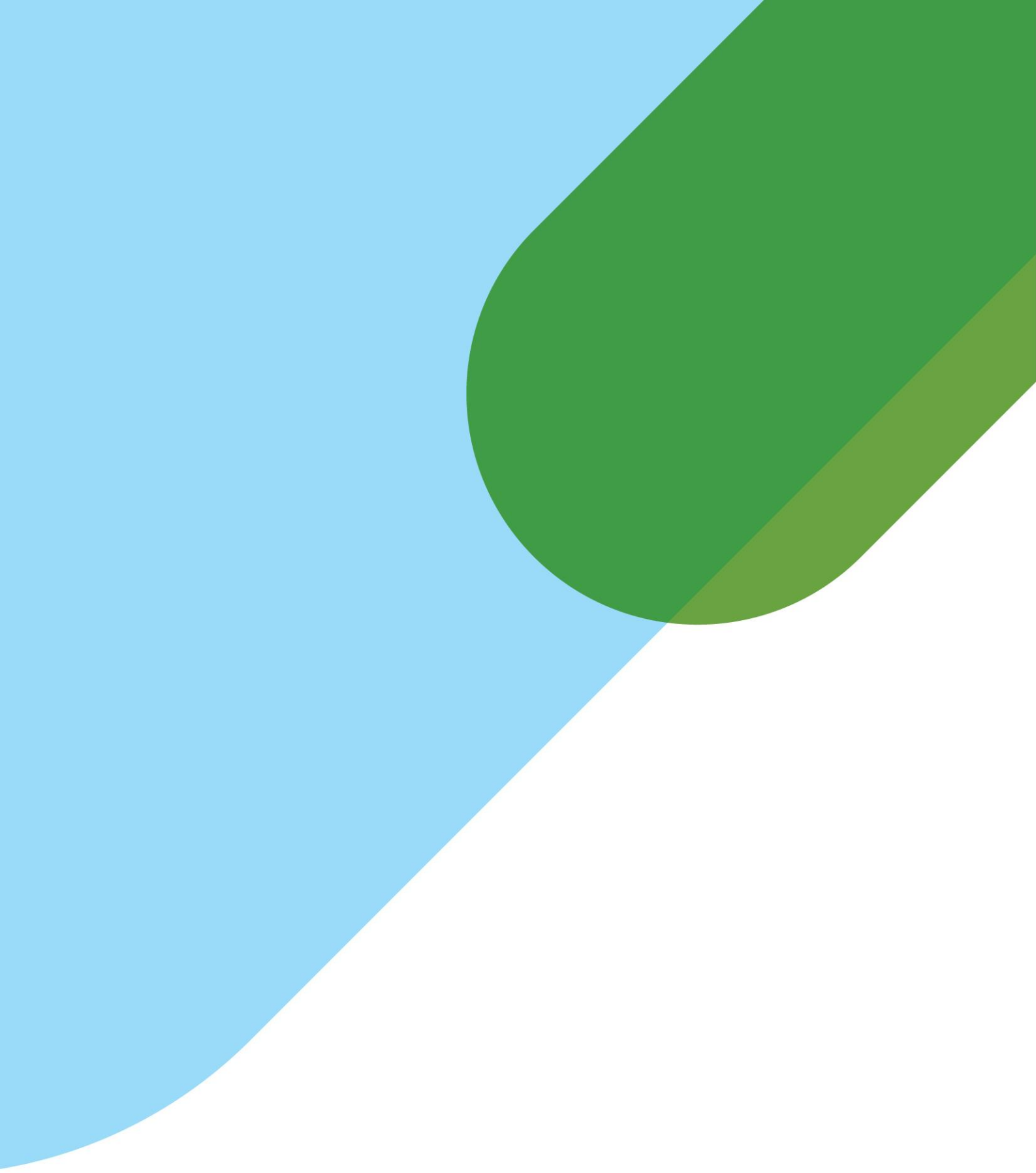
- 12.7.1 An employer may suspend an apprentice or trainee for serious misconduct if the employer has reasonable grounds to believe that an apprentice or trainee employed by the employer is guilty of wilful and serious misconduct.
- 12.7.2 The employer may, without first obtaining the approval of the Commission, suspend the apprentice or trainee from employment under the *SAS Act*.
- 12.7.3 A suspension under this Section will cease after 7 working days, unless cancelled sooner, except where:
- the employer and the trainee or apprentice agree to a longer suspension (whether in the course of mediation or otherwise)
 - the Commission extends the suspension for a specified period (not being more than 3 business days after the conclusion of the mediation)
 - the South Australian Employment Tribunal (SAET) confirms or extends the suspension under Section 65.
- 12.7.4 A referral to the SAET under this Section will be dealt with under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014*.
- 12.7.5 If an employer suspends an apprentice or trainee from employment for wilful and serious misconduct, in accordance with the requirements set out in this Standard, the employer must, as soon as reasonably practicable:
- refer the matter to the Commission for mediation
 - notify the SAET that the matter has been so referred
 - notify the apprentice or trainee that the matter has been so referred
 - comply with any reasonable requirements of the Commission in relation to the mediation.
- 12.7.6 If a matter is unable to be resolved by mediation the employer must, as soon as is reasonably practicable after the conclusion of the mediation (but in any event within 3 business days), refer the matter to the SAET for consideration.
- 12.7.7 Where directed, the employer and apprentice or trainee must undertake dispute resolution of a specified kind determined by the Commission.
- 12.7.8 The employer and/or apprentice or trainee must not contravene an order of the SAET.

12.8 Services for parties in proceedings before the South Australian Employment Tribunal

- 12.8.1 The South Australian Employment Tribunal (SAET) considers disputes between employers and apprentices and trainees related to their Training Contracts or working conditions. Either party to a Training Contract can make an application to SAET for consideration if there is a dispute between the parties, or one of the parties has a grievance.
- 12.8.2 The SAET deals with:
- disputes between parties to a Training Contract
 - a grievance by one party to the Training Contract about the conduct of the other party
 - suspension of an apprentice or trainee on reasonable grounds of serious and wilful misconduct.
- 12.8.3 Applications to the SAET under the *SAS Act* must be during the term of the relevant Training Contract or within 6 months after the expiry, termination, or cancellation of the relevant Training Contract, the SAET may extend the time within which any such application may be made.
- 12.8.4 Under Section 66 of the *SAS Act* and as described in Section 43 of the *South Australian Employment Tribunal Act 2014*, parties are required to attend a

Compulsory Conciliation Conference. This applies to both employer and apprentice or trainee.

- 12.8.5 Under Section 65 of the *SAS Act*, the SAET has powers to make orders binding on parties to Training Contracts; and the Commission, without further inquiry, may accept and act on any recommendation of the SAET.
- 12.8.6 Parties must not contravene an order of the SAET. A maximum penalty for a breach of this requirement is \$5,000.



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