# Skills Standard 9

## Transfer of Training Contracts and Substitute Employer

This Standard relates to the substitution of an employer of an apprentice or trainee and covers three broad situations in which the Training Contract is taken over by (or transferred to) another employer.

Transfer of a Training Contract through the first two situations described below are subject to approval by the Commission. A change of business ownership requires the South Australian Skills Commission (the Commission) to be notified of the change of ownership.

A substitution or transfer of a Training Contract occurs where:

- an apprentice or trainee under a Training Contract established in another state or territory transfers to a South Australian-based employer
- an application is made to the Commission to substitute the current employer of an apprentice or trainee with a different employer
- the Commission determines, on its own motion, to substitute the current employer of an apprentice or trainee with a different employer
- there is a change in the ownership of the business under which an apprentice or trainee is employed.

This Standard applies to the Commission, employers and prospective employers of apprentices and trainees.

### Governance arrangements

Decisions to approve the transfer of a Training Contract and substitution of an employer are decided by the Commission (or its delegate).

### Compliance with the Standard

**9.1 Transfer of Training Contracts between jurisdictions (SAS Act, S45, S48A, Regulation 7)**

9.1.1 In the event an apprentice or trainee under a Training Contract established in another state or territory relocates to South Australia, the SAS Act permits the Commission to:

a) recognise (with or without modification) the Training Contract (and associated Training Plan) as a Training Contract and Training Plan under the SAS Act

b) substitute the employer under the Training Contract with a South Australian based employer

c) recognise the previous employment and training completed in the jurisdiction

d) make other appropriate arrangements.

9.1.2 The Commission must decline to recognise the Training Contract of a relocating apprentice or trainee if the proposed new employer is a prohibited employer.

9.1.3 The Commission may refuse recognition of the Training Contract if:

a) there is no nominated training organisation for the apprentice or trainee

b) there is no Training Plan relating to the Training Contract

c) the trade or vocation is not a declared trade or vocation under the SAS Act or does not have an equivalent under the SAS Act

d) the proposed employer

i. is not registered or has not applied for registration

ii. is not operating within the scope of their registration

iii. has failed to comply with a condition of their registration.

9.1.4 A relocating apprentice or trainee seeking to have their Training Contract recognised and/or the proposed (South Australian-based) employer must notify the Commission as early as practicable (the Training Contract made in another jurisdiction will not be enforceable until the Commission recognises it).

9.1.5 Notification of the transfer, via a form determined by the Commission is available at https://skillscommission.sa.gov.au/resources-and-publications/forms and should include:

a) name and contact details of the apprentice or trainee and of the previous and proposed employer

b) name and contact details of the training organisation under the Training Contract

c) commencement date of employment with proposed employer

d) a copy of the Training Contract and Training Plan

e) name of the nominated training organisation (if not the training organisation under the Training Contract).

9.1.6 The Commission will consider this information in reaching a decision whether or not to recognise the transfer and will advise the applicant(s):

a) whether or not the Training Contract is recognised

b) the date from which it is recognised

c) the trade or vocation, or equivalent trade or vocation under the recognised Training Contract

d) conditions (if any) under which the Training Contract is agreed to be recognised.

9.1.7 If the Commission has insufficient information to enable it to determine whether a Training Contract is recognised, it will notify the applicant(s) and request further information.

### 9.2 Transfer due to a change of ownership of business (SAS Act, S54 MA)

9.2.1 In the event an owner of a business who employs one or more apprentices or trainees transfers ownership of the business to another employer, the Training Contract continues with the new employer and the rights, obligations and liabilities of the former owner/employer transfer to the new owner/employer.

9.2.2 Rights, obligations, and liabilities include:

a) to provide training as required by the Training Contract and Training Plan

b) to meet relevant occupational, health, safety and welfare requirements.

9.2.3 Both the former owner/employer and new owner/employer must notify the Commission and the NTO of the change of business ownership and consequent transfer of the Training Contract(s) within 21 days of it occurring. Notification is to be via mySkillsSA or in writing to the South Australian Skills Commission.

9.2.4 Notice to the Commission and the NTO should include:

a) date of the transfer of ownership of the business (note, an employer must also notify the Commission of an offer to sell the business to which the Training Plan(s) relates and in the event the business becomes insolvent or bankrupt)

b) name and contact details of the apprentice or trainee

c) name and contact details of the former owner/employer and new owner/employer

d) a copy of the Training Contract and Training Plan

e) name of the NTO

f) proof of registration by the new owner/employer, or that the employer has applied for registration.

### 9.3 Substitution of an employer under Training Contract and transfer fees (SAS Act, S54N, S54O, Regulation 13)

9.3.1 An application may be made to the Commission to substitute the employer of an apprentice or trainee and determination of the application may, unless waived or previously paid between the parties to the transfer, invoke a transfer fee payable by the proposed employer to the previous employer.

9.3.2 This application may be made by:

a) the existing/previous employer (or person on their behalf)

b) the proposed employer (or a person on their behalf)

c) the apprentice or trainee (or a person on their behalf).

9.3.3 The application must contain the following information:

a) contact details of the parties to the application

b) reason(s) for the substitution

c) the number of employees employed by the business to which the apprentice or trainee is being transferred

d) evidence of the transfer fee transaction or of an agreement to pay the transfer fee, if a request to waive the transfer fee is not made to the Commission

e) if the proposed employer is seeking to have the transfer fee waived (see below for grounds to waive the transfer fee) by the Commission, the ground(s) for waiving the fee

f) if the previous/existing employer objects to the transfer, reasons for the objection.

9.3.4 The Commission may invite the existing employer to provide a written submission about whether the application to substitute the proposed employer should be granted or not, and may make any enquiries of any of the parties about whether the transfer of the apprentice or trainee to the new employer is appropriate in the circumstances.

**9.4 Application in relation to an apprentice or trainee under 18 years of age)**

9.4.1 The Commission must be satisfied, in relation to an application to substitute an employer in relation to an apprentice under 18 years of age, that the application is in the best interests of the apprentice or trainee and where the parent(s) or guardian(s) are party to the Training Contract, may enquire about the merits of the application with the parent(s) or guardian(s) of the apprentice or trainee.

**9.5 Consideration of an application to substitute an employer by application**

9.5.1 For the purposes of Section 54N(3) of the SAS Act, the Commission must be satisfied that:

a) if the proposed employer has consented to the substitution, there is evidence in writing of such consent

b) the proposed employer is not a prohibited employer.

c) the proposed employer is:

i. registered

ii. operating within scope of the registration

iii. complying with conditions of the registration.

(requirement (i.) is suspended when the proposed employer has applied for registration, and the application has yet to be determined and the Commission is satisfied they are a fit and proper person to enter into a Training Contract. The Commission may inform itself of this question in any way it sees fit).

d) The proposed employer has paid, or agreed to pay, any transfer fee payable under Section 540, or that there are grounds for a waiver.

(Note: The Commission may consider information, or a submission provided by the parties, or make any enquiries on its own initiative, on the appropriateness of the substitution. It may consider, for example, whether any coercion or inducement has been applied by any party against another party to agree to the substitution).

**9.6 Existing employer may provide a submission on the application**

9.6.1 Except where the existing employer is an applicant to substitute, the Commission should, where practicable, have regard to any submission of the existing employer in relation to the application. However, a submission by the existing employer will not be determinative of the outcome.

**9.7 Notice of the Commission's decision**

9.7.1 The Commission will notify the parties of its decision on the application and will advise whether the application is successful. If an application is successful, the Commission will advise the parties:

a) the date the substitution is taken to have occurred

b) the transfer fee payable by the proposed employer to the previous employer, unless waived or reduced

c) a condition that confirmation of the substitution is subject to an application to register the proposed employer being approved, if applicable.

9.7.2 If the application is unsuccessful the Commission will advise the parties of this outcome and the reason(s) for the decision.

**9.8 Transfer fee (SAS Act S540)**

9.8.1 The transfer fee payable upon confirmation of the substitution being approved outlined in the South Australian Skills (Fees) Notice 2026 is as follows:

**Small business (20 or fewer employees)**

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|---|---|
| First year of Training Contract | $1,876 |
| Second year of Training Contract | $3,753 |
| Third year of Training Contract | $5,630 |
| Fourth year of Training Contract | $7,504 |

**Medium to large business (21 or more employees)**

| | |
|---|---|
| First year of Training Contract | $2,346 |
| Second year of Training Contract | $4,691 |
| Third year of Training Contract | $7,036 |
| Fourth year of Training Contract | $9,383 |

9.8.2 For the purpose of Section 54O(6) of the SAS Act, the size of the business is to be calculated at the date of the proposed substitution and should include permanent, temporary, casual, part-time, managerial and executive employees in addition to employees on paid leave and workers' compensation.

9.8.3 Transfer fees are reviewed annually and increased in line with the standard indexation rate.

### 9.9 Transacting the transfer fee (SAS Act S54O, Regulation 12(e))

9.9.1 The transfer fee is paid directly by the proposed employer to the existing employer and a record of the transaction must be retained by both the previous and proposed employer.

9.9.2 A proposed employer must not seek compensation for payment of a transfer fee from the apprentice or trainee under the Training Contract to which the application relates.

### 9.10 Disputes relating to an application to substitute an employer and payment of the transfer fee (SAS Act, S52, S54O(3))

9.10.1 The Commission, before determining an application to substitute an employer, may direct the parties to the Training Contract to undertake dispute resolution of a specified kind. For more information, parties are referred to Standard 12, Complaint Handling, Mediation and Advocacy.

9.10.2 If the proposed employer defaults on payment of the transfer fee, the previous employer may commence proceedings for recovery of the transfer fee from a civil court of competent jurisdiction. Independent legal advice should be obtained before commencing proceedings for recovery of the transfer fee and note, in this situation, the Commission does not have a role pursuing an unpaid fee on behalf of an employer.

### 9.11 Waiver of the transfer fee (SAS Regulation 13)

9.11.1 The transfer fee payable by a proposed employer to the existing employer may be waived or reduced in certain prescribed circumstances where:

a) the transfer is mutually agreed by the proposed employer and the existing employer

b) it is unlikely that the existing employer will be able to provide employment to the apprentice or trainee for the duration of the Training Contract

c) it is unlikely that the existing employer will be able to provide the scope of training or supervision necessary for the apprentice or trainee to complete the training required under the Training Contract

d) it is appropriate to do so in the circumstances.

9.11.2 If a request to waive the transfer fee is not made at the same time as the application to substitute the employer, the proposed employer may apply to the Commission for a waiver of the transfer fee within 7 days of the application to substitute the employer.

9.11.3 Where a request to waive the transfer fee is made, the Commission may make enquiries of the existing and/or proposed employer to determine whether, in the circumstances, it is appropriate to grant a waiver.

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

9.12.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to approve or refuse a substitution of an employer under Section 54N of the SAS Act.

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

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

a) special circumstances exist; and

b) another party will not be unreasonably disadvantaged because of the delay in commencing proceedings.

9.12.4 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

9.12.5 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.