

# SOUTH AUSTRALIAN SKILLS STANDARDS

Under the South Australian Skills Act 2008 and  
the South Australian Skills Regulations 2021

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## INTRODUCTION

Pursuant to the provisions of Division 3, Section 26 of the *South Australian Skills Act 2008* (SAS Act) and Section 5 of the *South Australian Skills Regulations 2021* (the Regulations), the South Australian Skills Commission (SASC) gives notice of the publication of the South Australian Skills Standards (Standards).

South Australia's apprenticeship and traineeship system is underpinned by the SAS Act, the Regulations, and the Standards.

The 14 Standards came into force on 1 July 2021. Compliance with the Standards is required, and a failure to comply with a provision of the Standards may result in compliance action being taken.

The SAS Act or the Regulations (whichever is applicable) will prevail to the extent that that there is any inconsistency with a provision of the Standards.

Each Standard should be read in conjunction with 1) the other Standards and 2) **supporting information** for employers of apprentices and trainees.

In addition to the requirements under the SAS Act, employers must comply with such other laws, professional standards or regulatory frameworks as may apply to their business and industry sector. In particular, these Standards do not override the *Work Health and Safety Act 2012* and *Fair Work Act 2009*.

## TRANSITIONAL ARRANGEMENTS

Transitional arrangements for these Standards will apply. For more detail see: [www.skillscommission.sa.gov.au/2021-legislation-changes/transitional-arrangements](http://www.skillscommission.sa.gov.au/2021-legislation-changes/transitional-arrangements).

## STANDARD 1

## DECLARATION OF TRADES AND VOCATIONS

This Standard relates to the occupations that must be declared a trade or declared vocation in accordance with the *South Australian Skills Act 2008* (the *SAS Act*) before they can be aligned to an apprenticeship (trade) or traineeship (declared vocation).

The purpose of this Standard is to outline the steps that must be taken in order to have an occupation declared as a trade or declared vocation, and the obligations on applicants who are looking to have their application assessed by the South Australian Skills Commission (the Commission).

### Governance arrangements

The Minister for Education, Training and Skills (the Minister) has delegated the responsibility for declaring an occupation to be a trade or declared vocation to the Commission. The Commission maintains the Traineeship and Apprenticeship Pathways (TAP) Schedule, which lists all apprenticeships and traineeships available in South Australia.

The TAP Schedule can be accessed via the South Australian Skills Commission website [www.skillscommission.sa.gov.au/regulations-and-standards/taps-schedule](http://www.skillscommission.sa.gov.au/regulations-and-standards/taps-schedule).

### Compliance with the Standard

#### 1.1 Gazettal of declared trades and vocations (*SAS Act*, S6, S45, Regulation 4)

- 1.1.1 Under Section 6 of the *SAS Act*, the Minister may, by notice in the South Australian Government Gazette (the Gazette) and on the recommendation of the Commission, declare an occupation to be a trade or declared vocation.
- 1.1.2 A declaration notice published in the Gazette must, in relation to each trade or vocation to which the notice relates:
  - a) identify the job or occupation, or class of job or occupation, to which the trade or vocation relates
  - b) identify any relevant pathways (including, where appropriate, pathways at a national level) to the trade or vocation
  - c) contain any information required by the *South Australian Skills Regulations 2021* (the *Regulations*).
- 1.1.3 A relevant pathway to a trade or vocation may, in addition to the primary qualification relating to that trade or vocation, include:
  - a) pre-apprenticeships or pre-traineeships
  - b) specified skill sets
  - c) higher qualifications
  - d) such other matters as the Minister thinks appropriate.
- 1.1.4 Apprenticeships and traineeships are established by the Commission to link Australian Quality Framework (AQF) approved primary qualifications to trades and declared vocations. Part 4 of the *SAS Act* confers regulatory requirements for the establishment of apprenticeships and traineeships on the Commission. Under Section 45(2), the Commission may, by notice in the Gazette:
  - a) determine a standard form contract for the purposes of this part
  - b) determine a probationary period for a Training Contract for a specified trade or declared vocation
  - c) determine standard conditions for a Training Contract for a specified trade or declared vocation including:

- i. the term of the contract
  - ii. the qualifications available for a person in the trade or declared vocation
  - iii. any other condition considered necessary by the Commission.
- 1.1.5 Under Section 45(3), the Commission may, by further notice in the Gazette, vary or revoke a notice under Section 45(2).
- 1.1.6 Under Section 45A of the *SAS Act*, training in a trade must occur under a Training Contract, except in the further training or re-training of a person who has:
  - a) already completed the training required under a Training Contract; or
  - b) has an equivalent qualification; or
  - c) has been certified by the Commission as competent in relation to the relevant trade.
- 1.1.7 Under Section 45B of the *SAS Act*, training in a declared vocation may occur under a Training Contract.

## **1.2 Application process**

- 1.2.1 An application to declare a trade or vocation must be in the approved form located at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms) and contain all the requested information.
- 1.2.2 The applicant is responsible for:
  - a) Developing the application for declaring a trade or vocation, including providing information on the proposed apprenticeship(s) or traineeship(s) aligned to that trade or vocation, and relevant industry support for the proposed trade or vocation
  - b) Nominating a contact person who can speak on the applicant's behalf in discussions with the Commission
  - c) Ensuring the application is signed by the Chair, Chief Executive, or other delegate of the applicant, as approved by the Commission
  - d) Submitting the application to the Commission (or its delegate) for an initial assessment of the application's completeness, accuracy and suitability. The Commission (or its delegate) may request amendments to the application to address any gaps in information or matters of concern.
  - e) Attending a meeting of a subcommittee of the Commission to present their proposal as outlined in the application and to discuss any concerns or questions raised. Where applicable, the relevant Industry Skills Council Chair will also be invited to attend.
  - f) Where required, addressing any queries or concerns raised by the subcommittee regarding the application. This may include amending and re-submitting the application, and/or attending a further meeting to discuss the amendments. The process by which an application, or responses to the subcommittee's questions should be re-submitted, will be determined on a case-by-case basis.
- 1.2.3 Upon receipt of all requested information, the subcommittee of the Commission will recommend whether to approve the application or not. The Commission will make the final determination.
- 1.2.4 In addition to applicant-driven applications, the Commission may of its own volition elect to declare occupations as trades or declared vocations.

## **1.3 Information required**

- 1.3.1 In the application, the applicant must include the proposed:
  - a) Occupational title of the trade or declared vocation
 

The applicant should use occupational titles listed on the Australian Apprenticeships Training Information Services (AATIS). For pre-apprenticeships and pre-traineeships, the term 'pre-apprenticeship' or 'pre-traineeship' may be appended to an existing occupational title, or a unique occupational title may be used. If the occupational title is not listed by AATIS or is not considered

- appropriate, a case will need to be made in the application for a new occupational title.
- b) Trade or declared vocation status  
In determining the proposed status, the applicant should be aware the *SAS Act* prohibits employers from training a person in a trade except under a Training Contract, and that many industrial instruments prohibit the employment of juniors in declared trades other than through an apprenticeship. Pre-apprenticeships and pre-traineeships are declared vocations.
- c) Job or occupation, or class of job or occupation, to which the trade or vocation relates  
In most instances, the job or trade title will be the same as the proposed occupational title. However, where the occupational title is broad (for example, Horticulture), the application should list the job or occupation, or class of job or occupation, to which the trade or vocation relates, to demonstrate the connection to an employment outcome.
- d) Training
- The application must demonstrate the alignment between the proposed trade or vocation and the associated AQF aligned qualification.
  - The qualification must be either:
    - a nationally recognised Vocational Education Training (VET) qualification approved by the Australian Skills Quality Authority (ASQA) and taken from a training package or existing accredited course
    - a higher education qualification approved by the Tertiary Education Quality and Standards Agency (TEQSA).
  - Applicants can check available training package qualifications and VET accredited courses through the National Register of VET.
- e) Industrial Arrangements  
The application should include the relevant awards or other industrial arrangements, including enterprise level agreements.
- f) Nominal term of a Training Contract  
The nominal term of a Training Contract will dictate the standard probationary period. For more information, applicants are referred to [Standard 8, Training Contract Conditions](#).
- g) Probationary period for a Training Contract  
Standard probationary periods are 60 and 90 days, depending on the nominal term of the Training Contract. For more information, applicants are referred to [Standard 8, Training Contract Conditions](#). If the applicant is seeking a non-standard probationary period, a case will need to be made in the application.
- h) Level of supervision  
The level of supervision may be Low, Medium, or High. The proposed level must comply with [Standard 5, Supervision](#).
- i) Supervisor requirements  
The application should list the qualifications, experience, and/or licensing required of a person supervising an apprentice or trainee in the trade or vocation.
- j) Entry Requirements  
Entry requirements may include minimum levels of training or experience, certification or licensing requirements, or a combination of these requirements.
- k) Conditions

In addition to any other relevant conditions, the application should indicate whether the proposed trade or vocation is suitable for school-based Training Contracts, people below a certain age, and new and existing workers.

- l) Identified pathways  
The application should identify any relevant pathways to the trade or vocation, or, in the case of pre-apprenticeships or pre-traineeships, the trade or vocation to which the proposal is a pathway.
- m) Maintenance  
Where a primary qualification is accompanied by non-accredited training, the application should indicate how the applicant will maintain the currency of the training and acknowledge the applicant will participate in any future review of the trade or declared vocation by the Commission.

1.3.2 In addition to the information required in Clause 1.3.1, applications for higher education qualification-aligned trades and vocations must include information on:

- a) Student tuition fees and wages  
The applicant must provide the proposed arrangements regarding the payment of student tuition fees (HECS-HELP; FEE-HELP; tuition fees) and wages under the trade or vocation.
- b) Commercial in confidence or intellectual property (IP)  
Where there are commercial in confidence or IP matters arising as a result of the proposed pathway, the applicant must describe how these will be managed.
- c) Work placements  
Under training contract arrangements, work-based training (recorded in a Training Plan) replaces any 'work placement' requirements. Where the proposed qualification includes work placement requirements, the applicant must 1) list these, and 2) describe how the requirements will be satisfied under training contract arrangements.
- d) Nominal term of a high education qualification-aligned training contract  
In addition to providing the proposed nominal term, applicants must outline how the proposed term considers the Equivalent Full Time Study Load (EFTSL), AQF requirements for off-job training, and the expectations of employers and industry regarding hours of work and training contract hours.
- e) Delivery providers  
The applicant must list the provider/s or consortia that are approved to deliver the qualification or course.
- f) Conditions  
The applicant must list any proposed conditions or industry requirements associated with the declaration, including any requirements for endorsement by professional associations. The applicant should also note the following standard conditions will apply to all higher education qualification-aligned trades and vocations:
  - any material updates to the qualification/course must be agreed to by the professional associations and industry partners identified in the application; and
  - the higher education partner is required to notify the Department for Education of any material changes to the course/qualification during the term of the declaration; and
  - an employment contract and a training contract are both required as a condition of the declaration.

## **1.4 Consultation and evidence of demand and support for the trade or vocation**

- 1.4.1 The applicant must consult with relevant stakeholders when developing the application, in order to provide evidence of:
- a) Industry demand in South Australia – where possible to include an estimate of annual commencements in the proposed trade or vocation.
  - b) Broad support for the trade or vocation – any alternative or dissenting views should be included in the application for the Commission’s consideration.
- 1.4.2 At a minimum, consultation should be undertaken with the relevant:
- a) Industry Skills Council, where applicable
  - b) Industry and employer association(s)
  - c) Professional associations
  - d) Registering bodies
  - e) Employee representatives
  - f) Training organisations.
- 1.4.3 Evidence to support the application should include submissions from the relevant Industry Skills Council, industry and employer associations and employee representatives.
- 1.4.4 All submissions must be signed by the Chair, Chief Executive, or other delegate of the organisation, as approved by the Commission.
- 1.4.5 The submissions should reflect the unique perspective of the stakeholder and must confirm:
- a) Industry demand for the trade or vocation
  - b) Support for the proposed:
    - Occupational title
    - Trade or declared vocation status
    - Job or occupation, or class of job or occupation, to which the trade or vocation relates
    - Training
    - Industrial arrangements
    - Nominal term
    - Probationary period
    - Level of supervision
    - Supervisor requirements
    - Entry requirements
    - Conditions
    - Identified pathways.

## **1.5 Maintenance and review**

- 1.5.1 Maintenance of the Traineeship and Apprenticeship Pathways (TAP) Schedule will be undertaken by the Commission.
- 1.5.2 Apprenticeships and traineeships listed on the TAP Schedule will be varied as required, by notice in the Gazette, to maintain the currency of the training associated with the trade or declared vocation.
- 1.5.3 Where an updated qualification is deemed by ASQA to be equivalent to the one it replaces, no consultation will be undertaken. Where an updated qualification is deemed to be non-equivalent, relevant stakeholders will be consulted prior to any update.
- 1.5.4 Where a primary qualification is accompanied by non-accredited training, the applicant must participate in any review of the trade or declared vocation undertaken by the Commission to maintain the currency of the training.
- 1.5.5 The Commission will review every new pathway approved after 1 July 2021, where there has been no take-up within 24 months, with the review to ideally include the original applicant.



1.5.6 More comprehensive reviews will be undertaken on an as needs basis as determined by the Commission.

## STANDARD 2

## EMPLOYER REGISTRATION

This Standard relates to the registration of employers to train apprentices and trainees under a Training Contract in accordance with the *South Australian Skills Act 2008* (the *SAS Act*).

The primary purpose of the Training Contract system is to ensure the provision of quality training for apprentices and trainees while they undertake employment relevant to the trade or vocation.

Employer registration assists in this process by ensuring employers are made aware of their rights and obligations when employing apprentices and trainees.

Registered employers will be placed on the South Australian Skills Register at [www.skillscommission.sa.gov.au/regulations-and-standards/employer-register](http://www.skillscommission.sa.gov.au/regulations-and-standards/employer-register)

### Governance arrangements

Under the *SAS Act*, the South Australian Skills Commission (the Commission) (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system. To this end, it is empowered to:

- register an employer to train a person in a Training Contract for a period of up to 5 years
- renew an employer's registration for a period of up to 5 years
- vary, suspend, or cancel an employer's registration, at any time during the period the registration is in force.

### Compliance with the Standard

#### 2.1 Registration of employers (*SAS Act, S46, S54F*)

2.1.1 An employer must not enter into a Training Contract to train a person unless the employer is:

- a) registered
- b) operating within the scope of their registration
- c) complying with any other conditions of the registration.

2.1.2 To become registered, an employer must apply to the Commission.

2.1.3 Upon application, the Commission will register the employer if:

- a) the employer is not prohibited
- b) the employer satisfies the requirements set out in this Standard
- c) it is, in the Commission's opinion, appropriate to do so.

2.1.4 An application to be registered as an employer must be made using the online Employer Registration Application Portal available at <https://atlas.skills.sa.gov.au/>

2.1.5 The employer must provide all the information requested in the application form.

2.1.6 In addition, the employer must:

- a) have completed any training exercises included in the application process
- b) read and accept the terms and conditions contained in the application form
- c) declare the information contained in the application is true and accurate and that the applicant is authorised to make the application on behalf of the employer.

#### 2.2 Scope of registration (*SAS Act, S46, S54F*)

- 2.2.1 When applying for registration, an employer must select the trades (apprenticeships) or declared vocations (traineeships) for which they wish to be registered.
  - 2.2.2 As part of the application, the employer must certify they are able to deliver and support the full range of on and off-job training required for an apprentice or trainee to become competent in the selected trade or vocation, or that they otherwise have arrangements in place to transfer the Training Contract (whether through host employment arrangements or via the substitution of the employer – for more information, applicants are referred to [Standard 4, Host Employment Arrangements](#), and [Standard 9, Transfer of Training Contracts and Substitute Employer](#), respectively) in order to provide the full range of training.
  - 2.2.3 Each trade or declared vocation selected by the applicant and approved by the Commission represents a condition placed on the employer’s registration under Section 54F(3)(b) of the *SAS Act*. Collectively, the list of one or more trades and declared vocations represents the scope of the employer’s registration.
  - 2.2.4 An employer must not enter into a Training Contract to train a person unless the employer is operating within the scope of their registration.
  - 2.2.5 An employer will be required to select at least one trade or declared vocation to be registered for during the initial registration process.
  - 2.2.6 The employer may request additional trades or declared vocations be added to their scope of registration by applying through the online Employer Registration Application Portal available at <https://atlas.skills.sa.gov.au/>
- 2.3 Other conditions of registration (SAS Act, S54F, Regulation 9)**
- 2.3.1 In addition to the scope of registration, under Section 54F(3)(b) of the *SAS Act* the Commission may impose such other conditions on an employer’s registration as determined by the Commission. Such conditions may include:
    - a) limiting the number of apprentices and trainees that the employer may employ at any one time
    - b) setting a minimum age limit for the apprentices and trainees an employer may employ
    - c) provision to enter into a host employment arrangement in accordance with [Standard 4, Host Employment Arrangements](#).
  - 2.3.2 The Commission must impose a condition on registration as prescribed by the *South Australian Skills Regulations 2021* (the *Regulations*). Regulation 9 makes it a requirement of the registration that an employer satisfies the employer supervision requirements as set out in [Standard 5](#).
  - 2.3.3 The Commission may impose conditions on an employer’s registration at the time of the initial registration, or renewal of registration, or during the period of registration.
- 2.4 Variation, suspension, and cancellation of registration (SAS Act, S54G)**
- 2.4.1 An employer’s registration may be varied, suspended, or cancelled, whether through an application by the employer or on the Commission’s own volition.
  - 2.4.2 An employer may apply to the Commission to vary or revoke a condition placed on their registration, or to cancel their registration. Applications to vary or cancel a registration should be made via <https://atlas.skills.sa.gov.au/>
  - 2.4.3 The Commission must cancel an employer’s registration upon application by the employer and may vary or revoke a condition (not being a condition imposed by the *Regulations*) of the registration as outlined in Section 54G(2)(b) of the *SAS Act* and the *Regulations*.

- 2.4.4 If the Commission declares an employer to be prohibited, it must cancel the employer's registration.
- 2.4.5 Additionally, if the Commission is satisfied that:
- a) an employer has contravened a provision of the *SAS Act*, or a corresponding law (the corresponding laws are determined in accordance with Section 54G of the *SAS Act* and are contained in the appendices to these Standards)
  - b) failed to comply with a compliance notice
  - c) contravened a condition of the employer's registration
  - d) it is otherwise in the public interest, or the interest of the apprentices or trainees employed by the employer, to vary, suspend, or cancel the employer's registration, it may do such of the following as it thinks fit:
    - i. vary or revoke a condition of the employer's registration
    - ii. impose a new condition on the registration
    - iii. suspend the registration for a specified period, or until further notice
    - iv. cancel the registration.
- 2.4.6 The Commission may exercise one or more of these powers irrespective of whether the contravention occurred in South Australia or not.
- 2.4.7 The Commission must give the employer at least 28 days written notice before taking action to vary (or revoke a variation), suspend, or cancel the registration.
- 2.4.8 However, the Commission may suspend an employer's registration without providing 28 days written notice if it believes on reasonable grounds that:
- a) an apprentice or trainee employed by the employer is at imminent risk of harm
  - b) it is reasonably necessary or appropriate to suspend the employer's registration without providing 28 days written notice, in order to manage that risk.
- 2.5 Substitution of an employer following the variation, suspension, or cancellation of registration (SAS Act, S54H)**
- 2.5.1 When an employer's registration is suspended or cancelled, or varied such that it is no longer, in the opinion of the Commission, appropriate for the employer to continue as the employer in relation to a Training Contract, the Commission may substitute the employer for another employer.
- 2.5.2 The Commission may do so on its own motion or on the application of a party to the Training Contract. A substitution may be permanent, or for a period specified by the Commission.
- 2.5.3 The proposed employer must:
- a) not be a prohibited employer
  - b) be registered (or have applied for registration)
  - c) be complying with all the conditions of their registration
  - d) consent to the substitution.
- 2.5.4 When an employer is substituted under Section 54H of the *SAS Act*, the employment of the apprentice or trainee continues with the new employer and the Training Contract continues in force. Any rights, obligations, and liabilities of the former employer in respect of the Training Contract are transferred to the new employer.
- 2.5.5 A party to a Training Contract affected by the variation, suspension, or cancellation of an employer's registration may apply to substitute another employer for the Training Contract.
- 2.5.6 Transfer fees will not apply to the substitution of an employer under Section 54H of the *SAS Act*.

## **2.6 Renewal of registration (SAS Act, S54F)**

- 2.6.1 The Commission may register an employer for a period of up to 5 years. To continue to enter into Training Contracts to train a person, the employer must renew their registration prior to the expiry of this period.
- 2.6.2 The Commission will notify an employer within 6 months of the expiry of their registration period, inviting them to apply for renewal of their registration for a further period of up to 5 years.
- 2.6.3 An application to renew registration must be made using the online Employer Registration Application Portal available at <https://atlas.skills.sa.gov.au/>

## **2.7 Other obligations (SAS Act, S54K, S54L)**

- 2.7.1 The employer is responsible for maintaining the accuracy and currency of their registration. An employer must notify the Commission if:
  - a) there is a material change in any information provided to the Commission regarding the registration
  - b) the employer sells, or offers for sale, the business relating to the registration
  - c) the employer, or the business relating to the registration, becomes insolvent or bankrupt
  - d) the employer is convicted of an indictable offence or a summary offence for which a term of imprisonment may be imposed.
- 2.7.2 An employer must maintain appropriate records to demonstrate that the obligations in the *SAS Act, Regulations* and [Standard 14, Record Keeping](#), have been met.

## **2.8 Offences relating to employer registration (SAS Act, S54I)**

- 2.8.1 A person must not falsely represent that they are a registered employer.
- 2.8.2 A registered employer must not falsely represent that the employer's registration is, or is not, subject to a specified condition, or a condition of a specified kind.
- 2.8.3 A person must not falsely represent that:
  - a) another person is a registered employer
  - b) the registration of another person is, or is not, subject to a specified condition, or a condition of a specified kind.
- 2.8.4 The maximum penalty for each of these offences is \$10,000.

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

- 2.9.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to refuse to register or renew a registration, to impose a condition on a registration, or to vary, suspend or cancel a registration under Part 4, Division 3A of the *SAS Act*.
- 2.9.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 2.9.3 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.
- 2.9.4 An application to the SACAT to review a decision must be made using the online form available at [www.sacat.sa.gov.au/application-form](http://www.sacat.sa.gov.au/application-form)

2.9.5 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.

## STANDARD 3

## PROHIBITED EMPLOYERS

This Standard outlines the conditions under which an employer may be declared by the South Australian Skills Commission (the Commission) to be a prohibited employer and outlines the conditions under which a declaration may be revoked.

A prohibited employer is an employer that the Commission reasonably believes (and declares as such) is not suitable to employ an apprentice or trainee. Employers that are declared as prohibited by the Commission reserve the right to seek a review by the South Australian Civil Administrative Tribunal (SACAT).

This Standard applies to the Commission (including delegate(s) and employers (including prohibited employers and those utilising hosting arrangements).

Employers must comply with all other legislative requirements of an employer.

### Governance arrangements

The decision to declare an employer prohibited and to revoke or vary a declaration rests with the Commission.

### Compliance with the Standard

#### 3.1 Declaring an employer prohibited (*South Australian Skills Act (SAS Act), S54B, S54G, S54H Regulation 8*)

3.1.1 The Commission may, by notice in writing and in accordance with any requirements set out in the *South Australian Skills Regulations 2021* (the *Regulations*), declare an employer to be a prohibited employer if the Commission reasonably believes the employer is not a suitable person to employ an apprentice or trainee.

3.1.2 To assist the Commission in determining whether or not to declare an employer to be prohibited, more information may be required from or relating to the employer, including:

- a) the safety and wellbeing of apprentices and trainees employed by the employer
- b) whether the employer is 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
- c) the employer's record in delivering training to apprentices or trainees
- d) whether the employer behaves, or permits their employees to behave, in an objectionable way towards apprentices or trainees
- e) whether the employer has contravened the *SAS Act*, or any other *Act* (whether of the State, another jurisdiction or the Commonwealth) relating to employment
- f) the criminal history of the employer
- g) whether the employer is a fit and proper person to employ an apprentice or trainee
- h) any other matter prescribed by the *Regulations*.

3.1.3 The Commission may seek and take into account more information than indicated in the above clause 3.1.2 and may seek information from more than one person concerned in the ownership and/or management of the employer. The Commission

- may have regard to any other matter the Commission considers relevant to the decision whether to declare the employer to be a prohibited employer.
- 3.1.4 Before declaring an employer to be prohibited, the Commission must give notice in writing to the employer of the proposed declaration and allow a period of 14 days (or such longer period as the Commission may allow) to make submissions in writing to the Commission as to why the declaration should not be made.
- 3.1.5 The Commission may vary, suspend or cancel the registration of a registered employer without notice if it believes on reasonable grounds that an apprentice or trainee employed by the employer is at imminent risk of harm, and it is necessary or appropriate to vary, suspend or cancel the registration of an employer without giving notice, in order to manage the risk.
- 3.1.6 If the Commission declares an employer to be a prohibited employer, that employer's registration to employ an apprentice or trainee is cancelled from the date of the declaration.
- 3.1.7 Under Section 54B(3) of the *SAS Act*, a declaration may be conditional or unconditional and may be for a stated or indefinite period.
- 3.1.8 A notice declaring an employer to be prohibited must set out the following:
- a) the conditions (if any) that apply in relation to the declaration under Section 54B(3)(a) of the *SAS Act*
  - b) if the declaration is for a period stated in the notice or an indefinite period in accordance with Section 54B(3)(b) of the *SAS Act*.
- 3.1.9 Prohibited employers will be listed on the [South Australian Skills Register](#), including details of any conditions and the stated period of prohibition.

### **3.2 Obligations for prohibited employers (SAS Act, S54D, S54E)**

- 3.2.1 A prohibited employer must not:
- a) employ, or offer to employ, a person as an apprentice or trainee
  - b) train or undertake to train a person in a trade
  - c) train or undertake to train a person in a declared vocation under a Training Contract
  - d) permit an apprentice or trainee to be placed with the prohibited employer under a host employment arrangement
  - e) falsely represent that they are not a prohibited employer.
- 3.2.2 A prohibited employer who is the subject of a conditional declaration under Section 54B of the *SAS Act* must not falsely represent that the declaration is, or is not, subject to a specified condition, or a condition of a specified kind.
- 3.2.3 A person must not falsely represent that:
- a) another person is not a prohibited employer
  - b) a declaration under Section 54B of the *SAS Act* that another person is a prohibited employer is, or is not, subject to a specified condition, or a condition of a specified kind.
- 3.2.4 A breach of these obligations may result in a maximum penalty of \$10,000.

### **3.3 Revocation of declaration (SAS Act, S54C)**

- 3.3.1 The Commission may, by notice in writing vary or revoke a declaration or a condition of a declaration if the Commission is satisfied that it is, in all circumstances, appropriate to do so.
- 3.3.2 An application to vary or revoke a declaration or a condition of a declaration by a prohibited employer must be made using the application form, available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms) and include the following information:
- a) name of the employer



- b) contact details of the parties to the application
  - c) reasons for the request to vary or revoke a condition
  - d) evidence to support the application.
- 3.3.3 If the Commission varies or revokes a declaration or a condition of a declaration the South Australian Skills Register must be updated to reflect the revocation or variation.
- 3.4 Obligations for employers (SAS Act, S54J)**
- 3.4.1 An employer must not place, or permit the placement of, an apprentice or trainee under the Training Contract with a prohibited employer.
- 3.4.2 A list of prohibited employers will be available on the South Australian Skills Register, including details of any conditions and whether the declaration is for a specified or indefinite period.
- 3.4.3 If an employer places, or permits placement of, an apprentice or trainee under the Training Contract with a prohibited employer the Commission may do one or more of the following:
- a) give the employer a written warning
  - b) vary, suspend or cancel the employers registration under Section 54G(3) of the *SAS Act*
  - c) issue a compliance notice under Section 63 of the *SAS Act*
  - d) declare the employer to be a prohibited employer.
- 3.5 Other conditions related to prohibited employers (SAS Act, S48, S54F, S54H)**
- 3.5.1 The Commission must refuse to approve an agreement as a Training Contract if the employer is a prohibited employer, and may refuse to approve a Training Contract if the Commission reasonably suspects that the employer has engaged in conduct that is likely to result in the employer being declared a prohibited employer.
- 3.5.2 The Commission must confirm that an employer is not prohibited prior to:
- a) registering an employer
  - b) substituting an employer in relation to a Training Contract.
- 3.6 Review of decisions by the South Australian Civil and Administrative Tribunal (SAS Act, S70F)**
- 3.6.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to prohibit an employer.
- 3.6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 3.6.3 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.
- 3.6.4 An application to the SACAT to review a decision must be made using the online form available at [www.sacat.sa.gov.au/application-form](http://www.sacat.sa.gov.au/application-form)
- 3.6.5 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.

## STANDARD 4

## HOST EMPLOYMENT ARRANGEMENTS

This Standard relates to the hosting of apprentices and trainees to a host employer (or employers) providing on the job training and experience. It supplements and should be read in conjunction with [Standard 2, Employer Registration](#).

Host employment arrangements apply to the:

- employer, registered under the *South Australian Skills Act 2008* (the *SAS Act*), who is party to a Training Contract utilising hosting arrangements
- apprentice or trainee who is party to the Training Contract in question
- Nominated Training Organisation (NTO) for the Training Contract in question
- host employer or employers hosting the apprentice or trainee.

### Governance arrangements

Under the *SAS Act*, the South Australian Skills Commission (the Commission) (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system.

### Compliance with the Standard

#### 4.1 Registration of employers and host employment arrangements (*SAS Act, S46*)

4.1.1 An employer must not enter into a Training Contract to train a person unless the employer is:

- a) registered, however see paragraph 4.3.2, below, regarding the Commission's general authority to register employers to host to unregistered employers.
- b) operating within the scope of their registration
- c) complying with any other conditions of the registration, including any provision to enter into host employment arrangements

4.1.2 However, an employer that does not wish to directly employ an apprentice or trainee may enter into a host employment arrangement with a registered employer, whereby:

- a) the registered employer remains the legal employer of the apprentice or trainee in question
- b) the host employer trains the apprentice or trainee on-job and otherwise meets its responsibilities and obligations as outlined in a written agreement with the registered employer.

#### 4.2 Prohibited employer (*SAS Act, S54B, S54D, Regulation 8*)

4.2.1 The Commission may declare an employer to be a prohibited employer in accordance with [Standard 3, Prohibited Employers](#). Prohibited employers will be recorded on the [South Australian Skills Register](#).

4.2.2 A prohibited employer must not permit an apprentice or trainee to be placed with the prohibited employer under a host employment arrangement.

The maximum penalty for a breach of this requirement is \$10,000.

4.2.3 To ensure an apprentice or trainee is not unintentionally or inadvertently placed with a prohibited employer, registered employers seeking to place an apprentice or trainee with a host employer must refer to the [South Australian Skills Register](#) prior to entering into a host employment arrangement.

### **4.3 Obligations for registered employers under a host employment arrangement (SAS Act, S54F, S54J)**

4.3.1 In addition to meeting any other obligation of their registration, registered employers seeking to enter into host employment arrangements are required to:

- a) develop an upfront written agreement between the registered employer and the host employer regarding their respective roles and responsibilities with regard to the apprentice or trainee
- b) ensure apprentices/trainees are able to raise issues of concern with the registered employer at any time
- c) provide a timely, responsive service to their apprentices and trainees, and an immediate response where there is an alleged workplace health and safety risk to an apprentice or trainee, who has a genuine fear for their safety
- d) ensure the off-job training arrangements are meeting the needs of their apprentices and trainees in accordance with the Training Plans entered into with those apprentices and trainees
- e) rotate apprentices and trainees to alternative work sites, as necessary, to ensure that all work-based learning requirements are met
- f) provide pastoral care/monitoring support to the apprentice or trainee in line with the requirements described below
- g) provide the Commission with a list of the host employers utilised in all host employment arrangements, and the apprentices and trainees placed with each of those host employers on a 6 monthly basis
- h) notify the Commission in the event they believe a host employer is not suitable to either directly employ, or host apprentices or trainees under a host employment arrangement
- i) 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.

4.3.2 The registered employer must not, without authorisation of the Commission:

- a) place, or permit the placement of, an apprentice or trainee under the Training Contract with an employer who is not a registered employer
- b) For the purposes of the above clause 4.3.2 (a), and subject to the requirements of this Standard, the Commission provides a general authorisation for registered employers to place apprentices/trainees with unregistered host employers.

#### 4.4 Pastoral and monitoring support meetings

4.4.1 In addition to responding as required to any issues of concern raised by apprentices and trainees, registered employers must provide pastoral and monitoring support to individual apprentices and trainees at least every 8 weeks, in accordance with the following matrix:

Apprentice / Trainee Year	Minimum pastoral care meetings per year	Face-to-face pastoral care meetings per year
1 or 2	6	6 (3 of these must be at the worksite)
3 or more	6	3 (1 of these must be at the worksite)

4.4.2 For apprentices and trainees in the third or greater year of their apprenticeship/traineeship, communication methods such as phone, email or video calls may be used, where it is not practicable to hold a face-to-face meeting (either at the worksite or away from it).

4.4.3 In the event of exceptional or unforeseen circumstances (for example, restrictions caused by COVID-19 outbreaks), the Commission may determine that all face-to-face pastoral care meetings with apprentices and trainees at all year levels can be held using communication methods such as phone, email, or video calls. The Commission will publish any such determinations on its website, and include (where known) the duration for which the determination applies.

4.4.4 These meetings should confirm that the on-job training is commensurate with the level and stage of the apprenticeship or traineeship and the qualification.

4.4.5 A written record of these discussions must be kept.

4.4.6 Apprentices and trainees must be given the opportunity to speak with their legal employer in a confidential manner, irrespective of the method of communication. Some pastoral care meetings may also occur away from the worksite.

#### 4.5 Obligations for employers under a host employment arrangement

4.5.1 An employer, operating as a host employer, must comply with all obligations contained in a written agreement with the registered employer. In addition, employers operating as host employers must:

- a) provide suitable work to enable the apprentice or trainee to develop some or all of the required competencies, as outlined in the upfront written agreement, to the required standard
- b) ensure the apprentice or trainee has access to a suitable range of equipment, tools, materials, personnel, and other resources to achieve some or all of the required competencies, as outlined in the upfront written agreement, to the required standard
- c) provide supervision to the apprentice or trainee in accordance with the [Standard 5, Supervision](#)
- d) support the apprentice or trainee to speak with the registered employer in a confidential manner and to raise any issues of concern both directly with the host employer and with the registered employer.

- 4.6 Commission may require information from a prescribed person (SAS Act, S70C, Regulations, 17, 18)**
- 4.6.1 For the purposes of Section 70C of the *SAS Act*, a prescribed person as stated in the *Regulations* includes:
- a) a host employer with whom an apprentice or trainee is or was placed
  - b) a supervisor of an apprentice or trainee under a Training Contract.
- 4.6.2 Employers (including both registered and host employers), supervisors and Apprenticeship Network Providers are required to provide information or documents related to the host employment arrangement or the apprentice or trainee to the Commission, if requested. The request must be in the form of a notice in writing and specify the nature of the information or documents required and the time in which they must be provided.
- 4.6.3 The maximum penalty for a breach of this requirement is \$10,000.
- 4.6.4 If a host employer that is a public sector agency refuses or fails to comply with a notice to provide information or documents, the Commission may, after consultation with the public sector agency:
- a) report the refusal or failure to the Minister for Education, Training and Skills (the Minister) and to the Minister responsible for the public sector agency (if any)
  - b) include details of the refusal or failure in the annual report of the Commission.

## STANDARD 5

## SUPERVISION

This Standard relates to the requirements for the training and supervision of apprentices and trainees in the workplace in accordance with *South Australian Skills Act 2008 (the SAS Act)*.

The primary purpose of the Training Contract system is to ensure the provision of quality training for apprentices and trainees while they undertake employment relevant to the trade or declared vocation. Appropriate and effective supervision is a key element in achieving this purpose. It is intended to create minimum standards that all employers must meet, to develop apprentices' and trainees' skills, knowledge, and experience to a standard where they can work safely, confidently and effectively in their occupation, trade or declared vocation. This includes setting maximum supervision ratios and defining what types of supervision can be used.

### Governance arrangements

Under the *SAS Act*, the South Australian Skills Commission (the Commission) (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system. To this end, it is empowered to:

- register an employer to train a person in a Training Contract for a period of up to 5 years
- renew an employer's registration for a period of up to 5 years
- vary, suspend, or cancel an employer's registration, at any time during the period the registration is in force.

### Compliance with the Standard

#### 5.1 Supervision of apprentices and trainees

5.1.1 Supervision is the oversight and coordination of on-job training provided to an apprentice or trainee learning a trade or declared vocation.

5.1.2 Employers are responsible for ensuring an apprentice or trainee:

- a) is supervised
- b) receives on-job training by a skilled or qualified person in the competencies laid out in the agreed Training Plan
- c) is provided with work relevant and appropriate to the trade or declared vocation.

5.1.3 If an employer delegates or assigns the responsibility of supervising or providing on-job training to any staff member, or a contractor, the employer must make sure that the staff member or contractor understands these requirements and adheres to them.

5.1.4 Employers are responsible for ensuring that supervisors:

- a) have not been convicted of an indictable offence under a law of the Commonwealth or any Australian state or territory, where these offences have been disclosed to the employer
- b) have an aptitude for and interest in training others
- c) have the relevant technical skill and qualifications and good understanding of the trade or declared vocation
- d) are competent and experienced in the activities in which they will be providing training and instruction

- e) do not supervise more apprentices or trainees than is permitted by the supervision ratios specified in this Standard
- f) use the correct supervision type in accordance with this Standard
- g) are not themselves an apprentice or trainee, unless Commission approval for this to occur has been obtained.

## **5.2 Provision of on-job training**

5.2.1 The employer appointed to provide on-job training to an apprentice or trainee must meet specific quality standards of training.

5.2.2 While providing on-job training in a task to an apprentice or trainee, employers must ensure that they, or the nominated supervisor:

- a) formally induct the apprentice(s) or trainee(s) into the workplace
- b) give clear instructions, and set clear expectations, about what the apprentice or trainee is being asked to complete, and to what standard
- c) explain how the task relates to other tasks undertaken in the trade/declared vocation
- d) discuss safety issues connected to the task before the apprentice or trainees commences the task
- e) break down the task into a step-by-step process
- f) demonstrate how the task is performed, and explain its steps while the apprentice or trainee observes
- g) observe the apprentice or trainee while they attempt the task
- h) provide opportunities for the apprentice or trainee to practice the task
- i) provide feedback about what they did well and what they need to do differently
- j) coach the apprentice or trainee to develop their confidence in performing the task
- k) routinely check the apprentice or trainee's subsequent work in that task
- l) provide positive constructive feedback that assists the apprentice or trainee to become proficient in the task.

## **5.3 Supervision ratios**

5.3.1 Some apprentices or trainees need more supervision than others. To make sure that all apprentices or trainees are adequately supervised, employers must not exceed the supervision ratios that apply to them.

5.3.2 There are different supervision ratios, depending on the 'prescribed supervision level' for the trade or vocation which is published in the [Traineeship and Apprenticeship Pathways \(TAP\) Schedule](#). Employers must refer to the schedule, to find the prescribed supervision level that applies to the apprentices or trainees they employ.

5.3.3 If an employer employs apprentices or trainees with different prescribed supervision levels, then they must use the supervision ratio for the highest of those levels.

5.3.4 The table below sets out the supervision ratios that employers must not exceed and is drawn from the [Traineeship and Apprenticeship Pathways \(TAP\) Schedule](#).

<b>SUPERVISION LEVEL RATING</b>	<b>MAXIMUM SUPERVISION RATIO</b>
<b>HIGH</b>	<b>1:3</b> A single supervisor may not supervise any more than 3 apprentices or trainees at any one time.
<b>MEDIUM</b>	<b>1:6</b> A single supervisor may not supervise any more than 6 apprentices or trainees at any one time.
<b>LOW</b>	<b>1:10</b> A single supervisor may not supervise any more than 10 apprentices or trainees at any one time.

5.3.5 An employer must not exceed these supervision ratios unless they have applied for and received written approval from the Commission to do so (and they must also comply with any conditions set out in that written approval). Application form available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms).

#### **5.4 Types of supervision**

In determining the appropriate type of supervision, refer to clause 5.5 of this Standard.

5.4.1 An apprentice or trainee's supervision may be:

- a) direct
- b) indirect; and/or
- c) in some special circumstances, remote.

The default type of supervision is direct supervision, which must be provided until an employer can demonstrate that they have assessed the apprentice or trainee as being able to work under indirect supervision in relation to a task. Remote supervision cannot occur without the written approval of the Commission.

5.4.2 If an apprentice or trainee is carrying out work requiring a high-risk work licence under the *Work Health and Safety Regulations 2012 (SA)*, the:

- a) apprentice must be enrolled in the applicable course to obtain that high-risk work licence
- b) employer must make sure the apprentice is under the direct supervision of a person who holds a high-risk work licence of the same class, until the apprentice has successfully passed the high-risk work licence assessment.

#### Direct Supervision

5.4.4 Direct supervision means that the apprentice or trainee's supervisor (a person qualified or experienced in the apprentice or trainee's trade or declared vocation) is:

- a) physically able to see and hear the apprentice or trainee; and
- b) physically present in the workplace with them (i.e. they must not provide supervision electronically by phone, radio or webcam); and
- c) working with them to provide training and instruction on a given task; and
- d) accessible to them at all times on site and available to respond to their issues as they arise, or answer questions.

#### Indirect Supervision



- 5.4.5 An employer may provide indirect supervision for an apprentice or trainee performing a task if:
- a) It is reasonable in the circumstances and has regard for any health and safety risks to the apprentice or trainee undertaking the task independently; and
  - b) before the task is undertaken, the employer can demonstrate that a supervisor has assessed the apprentice or trainee as having the required skills, technical knowledge and experience to safely, correctly, effectively and autonomously perform the task without risk to their safety or the safety of others.

5.4.5 Indirect supervision means that:

- a) before the apprentice or trainee commences a work task under indirect supervision for the first time, the supervisor must discuss and plan that task with them in person; and
- b) while the apprentice or trainee is performing a task:
  - i. the supervisor must intermittently observe the apprentice or trainee to ensure that the task is being completed safely and to a satisfactory standard; or
  - ii. if working separately from their supervisor intermittently or temporarily (for example, attending a job at a client's premises), the apprentice or trainee must be able to communicate with their supervisor via telephone, radio, webcam or other technology; and
- c) if the supervisor leaves the worksite for any reason (for example, to take a lunch break), the apprentice or trainee is not engaged on a task for which direct supervision is required and/or that is a high-risk task.

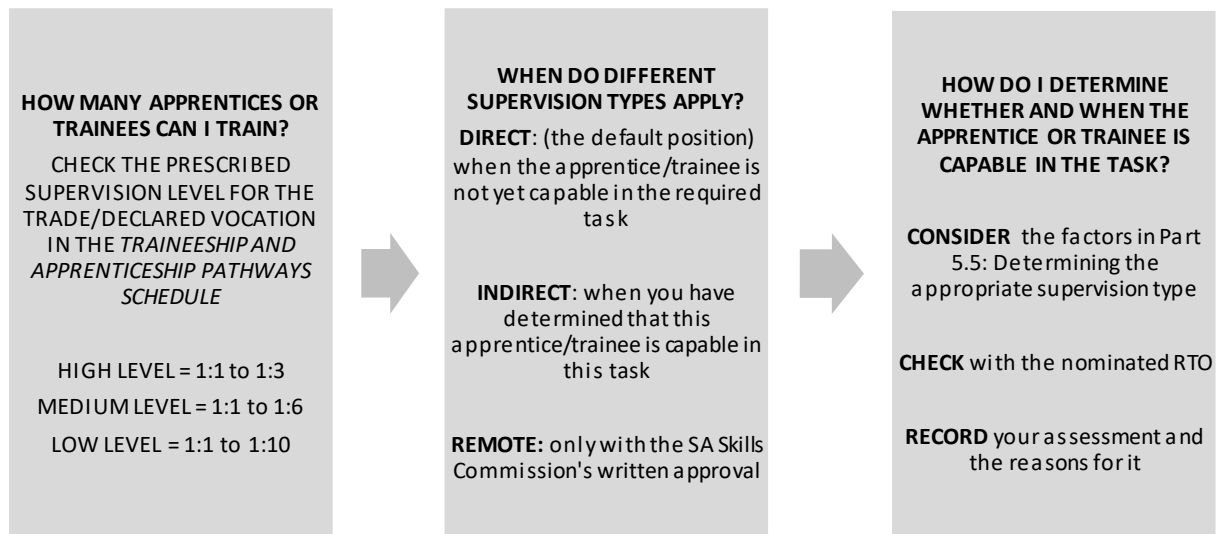
#### Remote Supervision

5.4.6 Remote supervision, where a supervisor is not present at the site where the apprentice or trainee is working, is prohibited unless the Commission has given its written approval. An application for remote supervision should only be made where:

- a) the apprentice or trainee is geographically remote from their supervisor; and
- b) the apprentice or trainee's separation from their supervisor is not intermittent or of a temporary nature (in this situation, indirect supervision may be appropriate); and
- c) the apprentice or trainee is able to communicate with their supervisor via telephone, radio, webcam or other technology; and
- d) the supervisor (or another suitably qualified supervisor) can attend the apprentice or trainee's physical location within a reasonable time if an issue arises.

5.4.7 An employer must record all periods of work that an apprentice or trainee undertakes under remote supervision and maintain appropriate records, to demonstrate obligations in the *SAS Act, South Australian Skills Regulations 2021* (the *Regulations*) and [Standard 14, Record Keeping](#) have been met.

**Table 2: How to determine the type of supervision required**



## 5.5 Determining whether direct or indirect supervision is the appropriate supervision type

- 5.5.1 Employers are required to use direct supervision until they have made an assessment about the task, and about the apprentice or trainee, which permits them to use indirect supervision.
- 5.5.2 The type of supervision provided at any given time must be consistent with the purpose of developing an apprentice's or trainees' skills, knowledge and experience such that, upon completion, they can work confidently, effectively and safely in the trade or vocation in which they are being trained according to their Training Contract.
- 5.5.3 Employers should start from the assumption that an apprentice or trainee has minimal or no capability or awareness of the work to be undertaken or the risks associated with it. They should only depart from that assumption if they can see (either from their work, or from some evidence of previous training) that the apprentice or trainee has some relevant prior knowledge or experience.
- 5.5.4 To avoid any uncertainty, in relation to tasks or activities undertaken, direct supervision must be provided where an apprentice or trainee is attempting or undertaking activities or tasks they have not previously performed.
- 5.5.5 For apprentices and trainees who commence an apprenticeship or traineeship while they are at school, or are otherwise under 18 years of age, a presumption should be made in favour of constant and direct supervision, unless a risk assessment determines otherwise. However, this presumption only applies for that part of the Training Contract served while the student is at school, or under 18 years of age, and not for the full duration of the Training Contract.
- 5.5.6 Indirect supervision by an employer is only permitted:
- a) where the task/activity is not inherently dangerous or hazardous
  - b) where the apprentice or trainee has:
    - i. been provided with on-job training and instruction relevant to the task in the workplace
    - ii. been provided with training relevant to the task by the Nominated Training Organisation (NTO)

- iii. routinely performed the task or activity proficiently and safely under supervision
  - iv. demonstrated the ability to understand when to seek guidance and support.
- 5.5.7 In determining whether supervision can progress from direct supervision to indirect supervision, employers must consider the tasks/activities the apprentice or trainee is to undertake, before considering the following factors, in consultation with the apprentice or trainee's NTO:
- a) any accepted industry supervision standards and Codes of Practice (for example, the National Electrical and Communications Association's *Guidelines for the Supervision of Apprentices/Trainees in the Electrical, Electricity Supply, Refrigeration, Instrumentation, Electronics, and Communications Declared Vocations*)
  - b) the apprentice or trainee's age and maturity
  - c) whether the apprentice or trainee is a new or existing worker
  - d) the complexity of the task
  - e) whether the task is new to the apprentice or trainee
  - f) the apprentice or trainee's level of experience in performing the task
  - g) the apprentice or trainee's level of skill in performing the task
  - h) the apprentice or trainee's level of confidence in performing the task
  - i) the apprentice or trainee's willingness to seek guidance and support when required
  - j) the workplace, health and safety risks involved in performing the task
  - k) the training risks associated with the worksite and the task arising from:
    - i. characteristics of people (for example, co-workers, clients, customers, patients) with whom they will be interacting
    - ii. the tools, machinery, equipment and materials to be used
    - iii. characteristics of animals with which they will be working or may encounter
    - iv. the environment in which they are working.
  - l) for apprentices or trainees with a disability, any additional supervision or other supports to ensure the apprentice or trainee can undertake their task/s effectively and safely.
- 5.5.8 An employer must be able to demonstrate that they made their assessment of the apprentice or trainee, and the task, before permitting indirect supervision, and maintain appropriate records to demonstrate that the obligations in the *SAS Act, Regulations* and [Standard 14, Record Keeping](#) have been met.
- 5.5.9 Some apprentices or trainees will be in greater need of direct supervision. A supervisor may find themselves with some apprentices or trainees who require direct supervision, and others who they have assessed as requiring indirect supervision. In such situations:
- a) the supervisor's supervision ratio remains unchanged, however
  - b) the supervisor may simultaneously provide direct supervision of apprentices or trainees who require it, while at the same time permitting indirect supervision of those apprentices or trainees who have been assessed as capable of performing the relevant task under indirect supervision.
- 5.5.10 The supervisor's duties for direct and indirect supervision will remain the same.

## 5.6 Approved exemptions and variations

- 5.6.1 Employers may apply to the Commission for:

- a) approval to exceed the maximum supervision ratio applicable to them (Low, Medium or High)
  - b) approval to provide remote supervision for an individual apprentice or trainee.
- 5.6.2 Employers must make their application in writing, using the [online application template](#).
- 5.6.3 Employers applying for approval to exceed the maximum supervision ratio must:
- a) state their reasons for wishing to exceed the maximum supervision ratio (including the rationale for engaging additional apprentices or trainees instead of additional tradespersons or qualified persons)
  - b) demonstrate how appropriate supervision will be maintained under an alternative ratio regime
  - c) demonstrate how they would manage on-job training under an alternative ratio regime
  - d) demonstrate how they would mitigate the risks associated with their type of work under an alternative ratio regime
  - e) demonstrate that they have a good completion rate at or above the South Australian average for that trade or declared vocation
  - f) provide evidence to substantiate their application.
- 5.6.4 Industry sectors and Industry Skills Councils may apply in writing to the Commission for a variation, including a strengthening or relaxation, of existing supervision ratios for specific occupational areas. Each application will require evidence to support the proposed variation and will be considered on its merits by the Commission. If the Commission approves an application by an industry sector or Industry Skills Council, it will publish the decision (including any conditions attaching to the decision) on its website.

## STANDARD 6 TRAINING PLAN AND NOMINATED TRAINING ORGANISATIONS

This Standard relates to training organisations and their requirement to provide a workable framework for parties to Training Contracts and their Nominated Training Organisation (NTO). NTOs have requirements under the *South Australian Skills Act 2008* (the *SAS Act*) where they are nominated for an apprentice or trainee in relation to each Training Contract.

The NTO must be a:

- Registered Training Organisation (RTO)
- recognised higher education provider.

The NTO Standard applies to the:

- RTO or higher education provider nominated for an apprentice or trainee under each Training Contract to which the apprentice or trainee is a party
- employer who is party to the Training Contract
- apprentice or trainee who is party to the Training Contract.

### Governance arrangements

NTOs are providers and assessors of nationally recognised training that have been registered by the Australian Skills Quality Authority (ASQA) in the case of RTOs or the Tertiary Education Quality and Standards Agency (TEQSA) in the case of higher education providers. Only NTOs can issue nationally recognised qualifications.

The South Australian Skills Commission (the Commission) (or its delegate) regulates apprenticeships and traineeships in South Australia under the *SAS Act*. Obligations of NTOs under the *SAS Act* will be regulated by the Commission.

### Compliance with the Standard

#### 6.1 Selection of a Nominated Training Organisation (SAS Act, S54P)

- 6.1.1 As part of the process to establish a Training Contract, the employer and apprentice or trainee must agree on which RTO or higher education provider will be the NTO for the Training Contract.
- 6.1.2 Having agreed, the employer and apprentice or trainee must obtain the acceptance of the NTO in relation to the nomination.
- 6.1.3 The Apprenticeship Network Provider (ANP) facilitating the establishment of the Training Contract may assist the employer and apprentice or trainee to select the NTO and may obtain the proposed NTOs acceptance on their behalf.
- 6.1.4 The NTO must accept or decline their nomination in the online portal located at <https://atlas.skills.sa.gov.au>, within 30 calendar days of the data becoming available in the portal.
- 6.1.5 The NTO becomes responsible for their obligations when they accept the nomination.

#### 6.2 Training Plan (SAS Act, S54Q, S54R, Regulation 14)

- 6.2.1 The NTO for a Training Contract must prepare (and obtain the necessary endorsement of) the Training Plan for that contract within 28 days of accepting a nomination.

- 6.2.2 If the NTO is unable to prepare a Training Plan within this timeframe, it must apply to the Commission for an extension via <https://providers.skills.sa.gov.au/file/tools/form-training-plan-extension> and in the prescribed manner, at least 7 days in advance of the 28 day deadline. Note: an extension to inform the Commission a training plan has been developed, if granted, will apply for a further period of 28 days only and not an indeterminate or other period of time.
- 6.2.3 The Training Plan must be presented on the form approved by the Commission and contain all the requested information. The Commission has approved a proforma Training Plan, available at <https://providers.skills.sa.gov.au/file/tools/form-training-plan>.
- 6.2.4 The Training Plan must contain the following information:
- a) contact details of the apprentice or trainee, employer and NTO
  - b) details of the school (for school-based apprenticeships or traineeships)
  - c) details of the apprenticeship or traineeship being undertaken
  - d) the Australian Qualification Framework (AQF) qualification to be undertaken and any other relevant pathway to a trade or declared vocation (including non-accredited training) that the Commission has aligned to the qualification as part of the trade vocational declaration process
  - e) the units of competence/units of study and any other training (accredited/non-accredited) that will make up the AQF qualification (including elective units) and a timeline of when these units will be undertaken by the apprentice or trainee
  - f) the mode of delivery of formal training (on-job or off-job)
  - g) the developmental goals of the apprentice or trainee under the Training Plan
  - h) the responsibilities of the apprentice or trainee, employer and NTO, with respect to training under the Training Contract
  - i) any additional expectations of the apprentice or trainee, employer or NTO that are agreed to by the parties to the Training Contract.
- 6.2.5 When developing the Training Plan, the NTO must engage with the employer and the apprentice or trainee and discuss:
- a) how, when and where the training will be delivered
  - b) the units of competence/units of study that will be delivered
  - c) who will assess the apprentice or trainee
  - d) the type of assessments that will be conducted.
- 6.2.6 The Training Plan must be endorsed by the employer and the apprentice or trainee, as well as additional endorsement (as appropriate) from:
- a) an apprentice's or trainee's parent or guardian, where the apprentice or trainee is under 18, and where the apprentice or trainee's parents are party to the Training Contract
  - b) a school principal (or delegate of the principal), where the Training Plan is for a school-based Training Contract.
- 6.2.7 Once a Training Plan has been endorsed by all parties, the NTO must notify the Commission within 28 days.
- 6.2.8 The Training Plan comes into effect from any commencement date specified in the document.
- 6.2.9 The NTO must provide a copy of the Training Plan to the employer and the apprentice or trainee within 14 days of the Training Plan coming into effect.
- 6.2.10 The NTO is responsible for delivering training in accordance with the Training Plan and as agreed with the employer and the apprentice or trainee.

- 6.2.11 The NTO must maintain the currency and suitability of the Training Plan, and monitor the apprentice's or trainee's progress towards meeting the required training, over the life of the Training Contract, until all outcomes are achieved, or the Training Contract ceases.
- 6.2.12 The NTO must review the Training Plan as required, including:
  - a) if the training that is the subject of the Training Plan is modified
  - b) upon request by the parties to the Training Contract
  - c) at a minimum, every 6 months regardless.
- 6.2.13 A variation to the Training Plan must be endorsed by all the relevant parties and will come into effect from a date specified in the Training Plan.
- 6.2.14 The NTO must provide a copy of the revised Training Plan to the employer and the apprentice or trainee within 14 days of the revised Training Plan coming into effect, and must notify the Commission of the variation within 28 days.

### **6.3 Substitution of a Nominated Training Organisation (SAS Act, S54T)**

- 6.3.1 The employer and the apprentice or trainee may substitute the NTO for a Training Contract, where:
  - a) the employer and apprentice or trainee agree on the new NTO
  - b) the employer and apprentice or trainee seek acceptance of the new NTO in respect of the nomination
  - c) the NTO accepts the nomination and agrees to be the NTO for the apprentice or trainee.
- 6.3.2 The nominated ANP for the Training Contract may assist the employer and apprentice or trainee to select a new NTO and may obtain the new NTO's acceptance on their behalf.
- 6.3.3 Substitution of the NTO triggers an automatic review of the Training Plan by the new NTO. Notwithstanding any revisions made necessary by this review, the Training Plan for the apprentice or trainee continues in force and any rights, obligations and liabilities of the former NTO are transferred to the new NTO.
- 6.3.4 Where the NTO ceases to be the NTO in relation to a Training Contract, it must make the Training Plan and progress towards agreed learning outcomes available to the new NTO and maintain records for the period of which it was the NTO in accordance with Section 54U of the *SAS Act*.
- 6.3.5 The new NTO must notify the Commission of its inclusion under the Training Contract within 14 days.

### **6.4 Obligations for Nominated Training Organisations (SAS Act, Division 3D, Regulations 14, 15)**

- 6.4.1 Where there are issues with an employer or with the apprentice or trainee, the NTO should engage with the employer and/or apprentice or trainee in the first instance. Where concerns are ongoing, the NTO should contact the Commission.
- 6.4.2 The NTO must notify the Commission where:
  - a) it becomes aware that an apprentice or trainee is not meeting the requirements of the Training Plan
  - b) it becomes aware that an employer is not meeting its obligations under the Training Contract or Training Plan
  - c) it becomes aware that the health or safety of an apprentice or trainee is at risk
  - d) it becomes aware that it may not be able to comply with any obligations applicable to the NTO under the Training Plan

- e) it ceases to be the NTO under the Training Contract
  - f) ASQA or TEQSA has made a decision in relation to the NTO that impacts its ability to fulfil its obligations under the Training Plan.
- 6.4.3 When notifying the Commission of any of the above matters, the NTO must include details of the:
- a) name of the employer
  - b) name of the apprentice or trainee
  - c) name of the NTO
  - d) relevant contact person's name, phone number and email address in the NTO
  - e) progress achieved against the Training Plan at the date of the notice
  - f) details of efforts made to engage the employer and apprentice or trainee, where the training goals are not being achieved.
- 6.4.4 The NTO for a Training Contract must keep such records in accordance with ASQA requirements for RTOs, TEQSA requirements for higher education providers and the [Standard 14, Record Keeping](#). Records must be retained for at least 7 years after the completion, expiry or termination of the Training Contract to which the record relates.
- 6.4.5 The NTO must not refuse or fail to comply with the obligations outlined in Division 3D of the *SAS Act*.
- 6.4.6 The Commission may notify the Department for Education (DfE), ASQA or TEQSA of any failure to comply with the obligations for NTOs set out in the *SAS Act*.
- 6.4.7 The maximum penalty for a breach of the requirement is \$5,000 and the expiation fee is \$315.

## **6.5 Obligations for employers (SAS Act, S54J)**

- 6.5.1 The employer must not prevent or obstruct apprentices or trainees from participating in training required to be delivered by the NTO under a Training Plan or prejudice the employment of the apprentice or trainee as a result of participating in, or attempting to participate in, such training.
- 6.5.2 The employer must not take any other steps to discourage the apprentice or trainee from participating in training as outlined in the Training Plan and must comply with any other obligations specified in the Training Contract or Training Plan that are applicable to the employer.
- 6.5.3 These conditions are taken to be a condition of the employer's registration. If the employer fails to comply with these obligations the Commission may do one or more of the following:
- a) give the employer a written warning
  - b) vary, suspend or cancel the employers registration under Section 54G(3) of the *SAS Act*
  - c) issue a compliance notice under Section 63 of the *SAS Act*
  - d) declare the employer to be a prohibited employer.

## **6.6 Obligations for apprentices and trainees (SAS Act, S54M)**

- 6.6.1 The apprentice or trainee must comply with obligations specified in the Training Contract or Training Plan that are applicable to them.
- 6.6.2 The apprentice or trainee must, participate in the development of their Training Plan as far as is reasonably practicable, attend training specified in the Training Plan, and contribute to the attainment of their development goals under the Training Contract or Training Plan.



- 6.6.3 If the apprentice or trainee fails to comply with these obligations the Commission may 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 conciliation conference under Section 52 of the *SAS Act*
  - c) suspend or terminate the Training Contract under Section 51 and 52B of the *SAS Act*.

## 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 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/application-form](http://www.sacat.sa.gov.au/application-form)
- 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.

## 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/application-form](http://www.sacat.sa.gov.au/application-form)
- 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.

## 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 and available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms), 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 made via a form, determined by the 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 54O, 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**

9.8.1 The transfer fee payable upon confirmation of the substitution being approved outlined in the South Australian Skills (Fees) Notice 2021 is as follows:

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

First year of Training Contract	\$1,710
Second year of Training Contract	\$3,421
Third year of Training Contract	\$5,131
Fourth year of Training Contract	\$6,841

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

First year of Training Contract	\$ 2,138
Second year of Training Contract	\$ 4,276
Third year of Training Contract	\$ 6,414
Fourth year of Training Contract	\$ 8,552

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 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 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/application-form](http://www.sacat.sa.gov.au/application-form)
- 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.

## 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.

## STANDARD 11 TRAINING CONTRACT COMPLETION

This Standard relates to the completion of Training Contracts in accordance with the *South Australian Skills Act 2008* (the *SAS Act*). It is the responsibility of each party to a Training Contract to take appropriate action to support completion of the apprenticeship or traineeship.

### Governance arrangements

Under the *SAS Act*, the South Australian Skills Commission (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, approve or decline applications for Training Contract completion.

### Compliance with the Standard

#### 11.1 Means to complete Training Contracts (*SAS Act, S49*)

- 11.1.1 A Training Contract may be considered complete when:
- a) there is agreement from the employer and the apprentice or trainee that the apprentice or trainee has achieved competency in the workplace
  - b) a Nominated Training Organisation (NTO) has certified that the qualification specified in the Training Contract has been completed by the apprentice or trainee.
- 11.1.2 A party to a Training Contract must notify the Commission, before the nominal completion date for the contract is reached, if the contract will not be completed by that date.
- 11.1.3 An application to extend the term of a Training Contract must be made prior to the expiry of the training contract, using the prescribed form available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms).
- 11.1.4 The Commission may consider whether a Training Contract is completed in the following circumstances:
- a) a party to a Training Contract may apply to the Commission to complete a traineeship or apprenticeship
  - b) the Commission may certify on its own motion that the apprentice or trainee is to be considered to have completed the training required under the contract, without an application from one or both of the parties.
- 11.1.5 Applications under above clause 11.1.4 a) must:
- a) be made in the prescribed form, available at [www.skills.sa.gov.au/business/forms](http://www.skills.sa.gov.au/business/forms).
  - b) be accompanied by such information or documents as required by the Commission to consider the application, including evidence of successful completion of the qualification specified in the Training Contract.
- 11.1.6 Where the contractual parties are in dispute, and the employer or apprentice or trainee does not accept the apprentice or trainee is competent, or the employer cannot be found, the Commission may obtain independent industry advice in regard to the competency of the apprentice or trainee.
- 11.1.7 The Commission will notify the parties to a Training Contract of the result of the application, and if successful certify that the apprentice or trainee is to be taken to have completed the training required under the contract.
- 11.1.8 If the Commission certifies that the (current or former) apprentice or trainee has completed the training required under the contract, the Commission may:

- a) if the contract is still in operation, finalise the contract and relieve the parties of their obligations under the contract; and
- b) certify that the apprentice or trainee has completed the training required under the contract for the relevant trade or declared vocation.

## **11.2 Dispute resolution (SAS Act, S65)**

11.2.1 Where the contractual parties are in dispute about whether:

- a) the apprentice or trainee has achieved competency in the workplace
- b) there is evidence that the apprentice or trainee has successfully completed the qualification specified in the Training Contract

a party to the Training Contract may apply to the South Australian Employment Tribunal (SAET) for consideration of the matter.

11.2.2 As per Section 65(2)(a) of the *SAS Act*, the SAET may make recommendations to the Commission about the assessment of the skills of an apprentice or trainee and, if appropriate, the granting of an appropriate qualification under the Australian Qualifications Framework (AQF).

11.2.3 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.

11.2.4 Under Section 66 of the *SAS Act* and as described in Section 43 of the *SAET Act 2014*, parties are required to attend a compulsory conciliation conference, if directed to do so. This applies to both the employer and the apprentice or trainee.

11.2.5 If a conflict occurs between a determination of the Commission about the completion of a Training Contract and a determination of the SAET, the determination of the SAET prevails.

11.2.6 The SAET has powers to exercise an order under the *SAS Act*. Parties must not contravene an order of the SAET, with the maximum penalty for non-compliance being \$5,000.

## **11.3 False or misleading information (SAS Act, S75)**

11.3.1 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 *SAS Act*.

11.3.2 The maximum penalty for a breach of this requirement is \$10,000.

## 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:

- a) the employer and the trainee or apprentice agree to a longer suspension (whether in the course of mediation or otherwise)
- b) the Commission extends the suspension for a specified period (not being more than 3 business days after the conclusion of the mediation)
- c) 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:

- a) refer the matter to the Commission for mediation
- b) notify the 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 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:
- a) disputes between parties to a Training Contract
  - b) a grievance by one party to the Training Contract about the conduct of the other party
  - c) 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.

## STANDARD 13 RECOGNITION OF OTHER QUALIFICATIONS AND EXPERIENCE IN TRADES AND DECLARED VOCATIONS

This Standard relates to the assessment and certification of a person's qualifications and/or experience in relation to a particular trade or declared vocation, where the person has:

- Not completed an apprenticeship or traineeship but developed the skills and knowledge for a trade or declared vocation through employment and training in an occupation listed on the Traineeship and Apprenticeship Pathways Schedule.
- Gained a trade or declared vocation-related qualification overseas.

This Standard is in accordance with the requirements contained in the *South Australian Skills Act 2008* (the *Act*).

Recognition arrangements outlined in this Standard are not provided for the purposes of migration. Individuals requiring skills assessment for the purpose of applying for an Australian visa should seek information from the Australian Government Department of Home Affairs.

The Commission provides certification arrangements for trades and declared vocations that acknowledge employment-based skills outcomes, and also provide recognition for:

- obtaining non-conditional occupational licenses (if a license is required for the purpose of employment in South Australia)
- accessing trade or declared vocation-level remuneration under awards or other industrial agreements
- further career progression and up-skilling
- recognising overseas-qualified applicants.

The Commission does not award qualifications under the Australian Qualifications Framework (AQF), or occupational licenses. Individuals are responsible for acquiring these if required.

### **Governance arrangements**

Under Section 70A of the *Act*, a person may apply to the Commission for recognition of the person's qualifications or experience in relation to a particular trade or declared vocation (not being qualifications obtained under a Training Contract).

Under Section 70B of the *Act*, the Commission, if it is satisfied that an applicant for recognition of qualifications or experience in a particular trade or declared vocation has acquired the competencies of the trade or declared vocation, may:

- Determine that the applicant is adequately trained to pursue that vocation; and
- Certify to that effect.

Where the Commission determines that an individual competency assessment is required, the Commission will utilise any appropriate skilled or experienced person or body to undertake the competency assessment of applications, and may engage with appropriately skilled or experienced persons or bodies to provide any other advice to the Commission in relation to applications for the recognition of qualifications or experience.

This Standard is limited to the recognition of qualifications or experience in the trades and vocations declared by the South Australian Skills Commission as listed on the Traineeship and Apprenticeship Pathways Schedule excluding higher education apprenticeships and traineeships.

## **Compliance with the Standard**

### **13.1 Criteria for certification**

- 13.1.1 The assessment arrangements for an application for a Certificate of Recognition must have regard to:
- a) the need to maintain a satisfactory level of equivalence to the standards and outcomes of the relevant nationally endorsed qualification
  - b) the breadth, depth and currency of employment experience required for trade or declared vocation recognition.
- 13.1.2 In the case of an overseas qualification, the assessment arrangements must establish a satisfactory level of equivalence between the overseas qualification and requirements for trade or declared vocation recognition in Australia. The assessment may lead to a recommendation that an overseas qualification is equivalent, contingent upon the satisfactory attainment of specified units of competence from an AQF qualification.

### **13.2 Application process**

- 13.2.1 A person may apply to the Commission for recognition of their qualifications (not being obtained under a Training Contract) and/or experience in relation to a particular trade or declared vocation.
- 13.2.2 An individual may have acquired the skills and knowledge for a particular trade or declared vocation through any combination of:
- a) employment
  - b) training in a qualification aligned to a particular trade or declared vocation in South Australia, or
  - c) other training that allowed the person to develop skills related to the trade or declared vocation in question.
- 13.2.3 An application must be made using the application form and must be accompanied by:
- a) such supporting information and documents as are stipulated in the application form
  - b) the prescribed fee.

### **13.3 Assessment of applications (SAS Act, S70A)**

- 13.3.1 To determine whether the applicant has acquired the competencies of the relevant trade or declared vocation, the Commission may require the applicant to:
- a) Undertake an examination or test; or
  - b) Undergo an independent competency assessment of a kind specified by the Commission.
- 13.3.2 The Commission may, in determining the application, seek advice from any person or body who, in the Commission's opinion, has special knowledge of, and experience in, the relevant trade or declared vocation.
- 13.3.3 In determining whether a person has acquired the competencies of the trade or declared vocation the Commission must have regard to:

- a) The length of time the applicant has been working in the relevant trade or declared vocation
  - b) The nature and duration of any instruction or training received by the applicant in the relevant trade or declared vocation
  - c) The nature of any qualifications held by the applicant in relation to the relevant trade or declared vocation
  - d) Any advice received from a person or body under section 13.3.2 of this Standard.
- 13.3.4 If the Commission, or delegate, determines that the applicant requires further training to acquire the competencies of the relevant trade or declared vocation, it may refuse to make a determination until it is satisfied that the applicant has satisfactorily completed such training.
- 13.3.5 Any training undertaken to acquire the competencies of the relevant trade or declared vocation will be at the individual's expense.
- 13.4 Issuance of a Certificate of Recognition (SAS Act, S70B)**
- 13.4.1 The Commission will determine whether it is satisfied the applicant has acquired the competencies of the relevant trade or declared vocation and, if satisfied, certify to that effect.
- 13.4.2 The certification issued by the Commission (or appropriate delegate) will take the form of a Certificate of Recognition.
- 13.5 Prescribed fees (SAS Act, S70A, South Australian Skills (Fees) Notice 2021, Schedule 1, cl. 1)**
- 13.5.1 Prescribed fees are published in the South Australian Skills (Fees) Notice 2021.
- 13.5.2 The mechanism for paying the prescribed fee is contained in the application form.
- 13.5.3 The prescribed fees payable for recognition of qualifications and/or experience in relation to a particular trade or declared vocation are:
- a) \$534 for a first or initial assessment
  - b) \$1,069 for a competency assessment or examination or test
  - c) \$ 214 for a second or subsequent assessment.
- 13.5.4 Under the *South Australian Skills Regulations 2021 (the Regulations)*, the Commission has the ability to:
- a) waive the prescribed fee in full, or
  - b) charge 80 per cent of the fees specified in Clause 13.5.3 (in effect, a 20 per cent reduction in the fees).
- 13.5.5 Application fees are reviewed annually and increased in line with the standard indexation rate.
- 13.6 Review of decisions by the South Australian Civil and Administrative Tribunal (SAS Act, S70F)**
- 13.6.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to refuse an application for recognition of a person's qualifications or experience under Section 70B of the *Act*.
- 13.6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.

- 13.6.3 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.
- 13.6.4 An application to the SACAT to review a decision must be made using the online form available at [www.sacat.sa.gov.au/application-form](http://www.sacat.sa.gov.au/application-form)
- 13.6.5 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.

## STANDARD 14 RECORD KEEPING

This Standard relates to the records that employers and Nominated Training Organisations (NTOs) must keep in accordance with the *South Australian Skills Act 2008 (SAS Act)*.

The primary purpose of the Training Contract system is to ensure the provision of quality training for apprentices and trainees while they undertake employment relevant to the trade or vocation.

Record keeping requirements assist with this process by ensuring that a comprehensive record is available for regulatory purposes.

To avoid duplication, where records are required to be kept for other reasons (for example, to meet workplace health and safety obligations under the *Workplace Health and Safety Act 2012*), these records can be utilised for the purposes of meeting this Standard.

### Governance arrangements

Under the *SAS Act*, the Commission (or its delegate) is responsible for the regulation of the apprenticeship and traineeship system.

### Compliance with the Standard

#### 14.1 General record keeping requirements (*SAS Act*, S54L, S54U, Regulations 12 and 16)

- 14.1.1 An employer in relation to a Training Contract and an NTO under a Training Contract must keep such records as required by the *South Australian Skills Regulations 2021 (the Regulations)*. NTOs that were, but are no longer, the NTO under a Training Contract are also bound by the requirements contained in this Standard.
- 14.1.2 To avoid doubt, all record keeping requirements contained in the *Regulations* are consistent with this Standard.
- 14.1.3 An employer and an NTO must retain their records for at least 7 years after the completion, expiry, or termination (as the case requires) of the Training Contract to which the record relates.

- 14.1.4 Where an NTO has entered into a Funded Activity Agreement (FAA) with the Department for Education (DfE), any additional record keeping requirements contained in the FAA remain in force.
- 14.1.5 The maximum penalty for refusing or failing to comply with the record keeping requirements is \$5,000, with an expiation fee of \$315.

**14.2 Employer-related record keeping requirements (SAS Act, S46, S54F, S54K, S54O, Regulation 12)**

- 14.2.1 An employer must keep a copy of the Employer Registration Declaration, and evidence to support the declarations made as part of the employer registration process (for example, evidence of suitable equipment and safe methods to be used in training, evidence of supervisor suitability, and evidence of the employer's ability to deliver adequate scope of work to allow the apprentice or trainee to develop the skills and competencies required by the trade or vocation).
- 14.2.2 An employer, in relation to their registration, must keep records, including all correspondence to and from the Commission, regarding:
- a) the scope of the employer's registration
  - b) any conditions placed on the employer's registration by the Commission
  - c) any variation, suspension, or cancellation of the employer's registration
  - d) the prohibition, or revocation of the prohibition, of the employer's registration
  - e) the substitution of an employer following the variation, suspension, or cancellation of registration
  - f) the renewal of the employer's registration
  - g) any other notifications or correspondence to and from the Commission regarding the employer's registration.
- 14.2.3 An employer in relation to a Training Contract is required to keep the following records:
- (a) the Training Contract and Training Plan
  - (b) a letter of appointment (where required under the relevant industrial arrangement)
  - (c) induction records (for example, documented safe working practices and expectations of behaviour in the workplace which have been communicated to the apprentice or trainee)
  - (d) on-job training and competency assessments
  - (e) records that identify the type of work performed by the apprentice or trainee. Examples include certificates of compliance in relation to work performed by apprentices under supervision (in electrical, plumbing, gas fitting or any other trade where a certificate of compliance is required to be issued for work done), e-profiling records, job log books, or job journals
  - (f) attendance and time records for each apprentice or trainee for each day while at work or training (both on-job and off-job training), including start and finish work/training times, meal or other break times, and the location of any training (whether at the workplace or another specified location)
  - (g) disciplinary records
  - (h) where the employer and apprentice or trainee have agreed to average the hours of employment and training, or change a part-time working arrangement to full-time, or vice-versa, records of the agreements, which specify the pattern of employment and training, and are signed and dated by both parties
  - (i) costs incurred by the employer and the apprentice or trainee for training identified in, or associated with, their Training Contract



- (j) records relating to the pay for apprentices and trainees as outlined in *Fair Work Act 2009 (Cth)* or the *Fair Work Act 1994 (SA)*, whichever applied to the apprentice or trainee employed. The records should include:
  - i. the rate of remuneration paid to the apprentice or trainee
  - ii. the gross and net amounts paid to the apprentice or trainee
  - iii. any deductions made from the gross amount paid to the apprentice or trainee
  - iv. any incentive-based payment, bonus, loading, penalty rate, monetary allowance or separately identifiable entitlement paid to the apprentice or trainee.
- (k) records of each payment of a transfer fee under Section 54O of the *SAS Act*
- (l) leave records for the apprentice or trainee, including leave taken and the balance of any outstanding leave (if any). This includes annual leave, personal/carer's and compassionate leave, parental leave, and community service leave
- (m) supervision-related records (for more detail see [Standard 5, Supervision](#)) including:
  - i. a record of the type of supervision the apprentice or trainee is under at any given time in their apprenticeship or traineeship
  - ii. records showing how the employer determined the appropriate supervision type
  - iii. any requests to, and correspondence from, the Commission to operate outside the specified supervision ratio or to provide remote supervision for the apprentice or trainee
  - iv. qualifications and/or evidence of relevant experience and skills in relation to the person(s) who supervise, or who are to supervise, the apprentice or trainee
  - v. a time record for the person(s) responsible for supervising each apprentice or trainee for each day while at work, while supervising the apprentice or trainee.
- (n) where host employment arrangements are utilised, host employment arrangement-related records (for more detail refer to [Standard 4, Host Employment Arrangements](#))
- (o) appropriate business licenses and/or worker registrations, such as a building work contractor's licence, a plumbing contractor's licence, or an electrical worker's registration
- (p) records that confirm compliance with orders of the South Australian Employment Tribunal, where orders have been made
- (q) copies of any notifications the employer submits to the Commission in relation to Section 54K of the *SAS Act*, and any correspondence received from the Commission in return. Under Section 54K, an employer in relation to a Training Contract must notify the Commission if any of the following occurs:
  - i. there is a material change in any information provided to the Commission in relation to the employer's application for registration
  - ii. the employer sells, or offers for sale, the business to which the employer's registration relates
  - iii. the employer, or the business to which the employer's registration relates, becomes insolvent or bankrupt
  - iv. the employer is convicted of an indictable offence or a summary offence for which a term of imprisonment may be imposed
  - v. the failure of an apprentice or trainee in relation to a Training Contract to:

- comply with the Standards
- comply with any other obligation specified in the Training Contract or Training Plan that is applicable to the apprentice or trainee
- as far as is reasonably practicable, participate in the development of their Training Plan, and contribute to the attainment of their development goals under the Training Contract and Training Plan.

### **14.3 Nominated Training Organisation-related record keeping requirements (SAS Act, S54U, Regulation 16)**

14.3.1 An NTO under a Training Contract is required to keep the following records:

- (a) records of the NTO's acceptance of its nomination for each Training Contract for which they are the NTO
- (b) for NTOs utilising third party arrangements, records of these arrangements
- (c) records of discussions with the employer and the apprentice or trainee regarding the development of the Training Plan for a Training Contract, including any discussions on:
  - i. how, when and where the training will be delivered
  - ii. the units of competence or units of study that will be delivered
  - iii. who will assess the apprentice or trainee
  - iv. the types of assessments that will be conducted.
- (d) all iterations of a Training Plan for any apprentice and trainee for whom they are the NTO
- (e) the names and contact details of all apprentices, trainees, and employers under each Training Contract for which they are the NTO
- (f) records of meetings with apprentices, trainees, and employers under each Training Contract for which they are the NTO, and records of outcomes of those meetings, including:
  - i. records of any reviews of the Training Plan, including details of the revisions made as a result of the review
  - ii. the progress or lack of progress in training by an apprentice or trainee
  - iii. any agreed remedial action to address lack of progress in training by an apprentice or trainee
  - iv. supports provided by an employer to assist the apprentice or trainee to meet their training goals as set out in the Training Plan.
- (g) copies of any notifications the NTO submits to the Commission in relation to Section 54S of the SAS Act, and any correspondence received from the Commission in return. Under Section 54S, an NTO under a Training Contract must notify the Commission if any of the following occurs:
  - i. the NTO becomes aware that an apprentice or trainee under a Training Plan is not meeting the goals (however described) set out in the Training Plan
  - ii. the NTO becomes aware that an employer is not meeting its obligations under the Training Contract or Training Plan
  - iii. the NTO becomes aware that it may not be able to comply with any obligations applicable to the NTO under the Training Plan for an apprentice or trainee
  - iv. the NTO ceases to be the NTO under the Training Contract
  - v. if ASQA or TEQSA has made a decision in relation to the NTO:
    - suspending or cancelling their registration or recognition
    - cancelling a qualification or statement of attainment
    - rejecting an application for renewal of a registration or recognition.

- vi. if, in relation to a qualification under a Training Contract in respect of which the NTO, ASQA or TEQSA has made a decision:
  - amending the NTO's scope of training
  - imposing a condition of the NTO's registration or recognition
  - allowing the NTO to enter into an enforceable undertaking.
- (h) records of the qualifications or statements of attainment issued for each Training Contract for which they are the NTO.

## DEFINITIONS AND TERMINOLOGY

### **Advocacy**

Speaking for and negotiating on behalf of education and training providers and students (and prospective students) of education and training providers in the resolution of any matters arising out of the delivery of education and training. Speaking for, and negotiating on behalf of, an employer or an apprentice or trainee in the resolution of any matters arising as defined by the *South Australian Skills Act 2008 (SAS Act)*.

### **Applicant (Trade or Vocation Declaration process)**

The sponsor or initiator of an application for the declaration of a trade or declared vocation.

### **Apprentice**

A person who has entered into a legally binding arrangement to work and undertake training in a trade (a Training Contract) that has been approved by the Commission. Note that apprentice plumbers, gasfitters and electricians are required to have an in-training licence with Consumer and Business Services.

### **Apprenticeship**

Training provided under a declared trade that meets the standard conditions for that trade as specified in the declaration, and as published by notice in the *Gazette*. An apprenticeship is undertaken through a Training Contract, which is underpinned by bona fide industrial arrangements.

### **Apprenticeship Network Provider (ANP)**

An organisation contracted by the Australian Government to deliver essential administrative support, payment processing, and other services to the parties to a Training Contract.

### **Australian Apprenticeship Support Network (AASN)**

The AASN delivers support services to the parties to the Training Contract. This may include lodgement of Training Contract applications with the Commission.

### **Australian Apprenticeships Training Information Services (AATIS)**

AATIS provides information for people considering training options, employers looking at recruitment and those providing support and advice.

### **Declared vocation**

An occupation declared under Section 6 of the *SAS Act* to be a declared vocation for the purposes of the *SAS Act*.

### **Delegate**

Under Section 8 of the *SAS Act*, the Minister may delegate a function or power of the Minister under the *SAS Act* to the:

- (a) Commission or any other particular person or body
- (b) person for the time being occupying a particular office or position.

Under Section 20 of the *SAS Act*, the Commission may, with the approval of the Minister, delegate any of its functions or powers under the *SAS Act* to a specified person or body.

A function or power delegated under Section 8 or Section 20 may, if the instrument of delegation so provides, be further delegated.

### **Direct supervision**

Direct supervision means that a person qualified or experienced in the trade or declared vocation is physically present in the workplace and within eyesight and earshot of the apprentice or trainee, working with them to provide training and instruction on any given task, and available to respond to their needs in accordance with the supervision ratios. Direct supervision cannot be provided by electronic means, including but not limited to, telephones, radios and webcams.

### **Dispute**

An argument or disagreement between people or groups relating to apprenticeships and traineeships, vocational education and training and international education.

### **Education and training provider**

An education and training services provider that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver to overseas students, or an organization that is registered on CRICOS and delivers English Language Intensive Courses for Overseas Students (ELICOS), or a higher education provider, or a school.

### **Employer**

The employer, usually an individual person, sole trader, a company, incorporated association, group training organisation or government agency, is the legal entity that has entered into a legally binding Training Contract that has been approved by the Commission.

### **Funded Activity Agreement (FAA)**

An agreement between a training provider and the South Australian Government wherein the training provider is subsidised to deliver training.

### **Former owner**

In relation to a change of owner of a business under Section 54M of the *SAS Act*, the person who owned the business before the change of ownership occurs.

### **Host employment arrangement**

An arrangement under a written agreement in which the employer of an apprentice or trainee places the apprentice or trainee with another person or body for particular training required under a Training Contract or the Training Plan.

### **Host employer**

An organisation that hosts, under a written agreement, an apprentice or trainee employed at that time by an employer.

### **Indirect supervision**

Indirect supervision occurs where an apprentice or trainee is undertaking a task that may reasonably be undertaken independently or for which the apprentice or trainee has demonstrated a level of competence. The supervisor/on-job trainer will be readily available in the work area for the majority of the time and/or be readily available to communicate directly or by electronic means (i.e. telephone, radio, webcam) with the apprentice or trainee when required.

### **International student**

Classified as a person holding a visa type (categorised by the Department of Home Affairs (DHA)) that is recognised by the *Education Services for Overseas Students (ESOS) Act 2000 (Cth)*.

### **Junior**

An apprentice or trainee under the age of 18.

### **Jurisdictions**

The states and territories of Australia that make up the regional governments in Australia, distinct from the federal government and local governments.

### **Mediation**

A structured negotiation process in which an independent person, known as a mediator, assists the parties to identify and assess options and negotiate an agreement to resolve their dispute.

### **New owner**

In relation to a change of ownership of a business under Section 54MA of the *SAS Act*, the person who owns the business after the change of ownership occurs.

### **Nominated Training Organisation (NTO)**

Is a registered training organisation or registered higher education provider that accepts a nomination by an apprentice or trainee and an employer in relation to a Training Contract, to:

- deliver training to the apprentice or trainee in accordance with the Training Plan
- meet such other obligations as are required of it under the *SAS Act*.

### **Off-Job training**

Off-job training is the education and training in a nationally recognised qualification, delivered in a course provided by a Registered Training Organisation.

How and where off-job training is delivered is negotiated between the employer, the apprentice or trainee, and the Registered Training Organisation. Off-job training may be delivered in a variety of places and modes, including but not limited to:

- Face-to-face in the Registered Training Organisation's premises
- Face-to face in the employer's workplace
- Online.

No matter how and where it happens, employers must make sure that apprentices or trainees are withdrawn or released from their work duties to undertake off-job training.

### **On-Job training**

On-job training is the instruction, training and transfer of skills and knowledge to a person learning a trade/declared vocation in a workplace. On-job training must meet the requirements set out in these Standards.

### **Pastoral and monitoring support meetings**

Is a purposeful meeting with person to person contact between the employer of the trainee/apprentice or their delegate, and the trainee/apprentice, where the employer/delegate:

- determines competency-based training and wage progression
- ascertains any concerns and issues relating to the Training Contract or the safety, health and welfare of the apprentice or trainee
- addresses and resolves those concerns and issues
- provides encouragement, guidance and support to facilitate the successful completion of the Training Contract.

### **Parent/Guardian**

Where a person under the age of 18 years at the commencement of training enters into an apprenticeship or traineeship, a parent/guardian will usually sign and be a party to the Training Contract. Under a Training Contract, a parent/guardian is legally obliged to uphold the responsibilities for the apprentice or trainee until they are 18 years of age. The Training Plan must also be negotiated and agreed between the employer and the apprentice or trainee, and their parent/guardian where they are under the age of 18 years, in consultation with the NTO.

### **Prescribed person**

For the purposes of issuing compliance notices, under Section 63(5) of the *SAS Act*, a prescribed person is:

- a) an employer in relation to a Training Contract
- b) an NTO for an apprentice or trainee
- c) a host employer with whom an apprentice or trainees is or was placed:
- d) a supervisor of an apprentice or trainee under a Training Contract.

For the purposes of the Commission requiring production of information, under Section 70C of the *SAS Act*, a prescribed person is:

- a) a public sector agency (within the meaning of the *Public Sector Act 2009*)
- b) a registered employer, or an applicant for such registration
- c) an Nominated Training Organisation (NTO)
- d) a host employer with whom an apprentice or trainee is or was placed
- e) a former registered employer
- f) a supervisor of an apprentice or trainee under a Training Contract
- g) the ANP for the apprentice or trainee

### **Prohibited employer**

Is an employer with respect to whom a declaration is in force under Section 54B of the *SAS Act*.

**Proposed employer**

In relation to the substitution of an employer under Sections 54H, 54N and 54O of the *SAS Act*, the employer proposed to be substituted for the current or existing employer of the apprentice or trainee.

**Qualification**

Qualification means an Australian Qualifications Framework (AQF) qualification, achieved by completion of an accredited learning program, leading to formal certification that a graduate has achieved learning outcomes.

**Recognised higher education provider**

Is a body established and recognised as a higher education provider by or under the law of the State, or of the Commonwealth, or another state or territory.

**Registered employer**

An employer registered by the Commission under Section 54F of the *SAS Act*.

**Registered Training Organisation (RTO)**

The registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

**Regulations**

The *South Australian Skills Regulations 2021*.

**Remote supervision**

The supervisor is not on site at which the apprentice or trainee is working but must be readily available to communicate directly or by electronic means (i.e. telephone, radio, webcam) with the apprentice or trainee when required. The supervisor must be within such a distance as to be able to attend to the apprentice or trainee within a reasonable time if an issue arises.

**SAS Act**

The *South Australian Skills Act 2008*.

**Scope of the registration**

The declared trades or vocations in relation to which the employer may enter into a Training Contract, as determined by the conditions imposed on the registration.

**Serious and wilful misconduct**

Where an employer reasonably believes an employee is deliberately behaving in a way that is inconsistent with continuing their employment, including causing serious and imminent risk:

- to the health and safety of another person
- to the reputation or profits of their employer's business (theft, fraud or assault)
- by refusing to carry out a lawful and reasonable instruction that is part of their job.



### **South Australian Government Gazette (Gazette)**

The Gazette is the South Australia Government's official publication of weekly record of proceedings by the State and Local Government authorities.

### **South Australian Civil and Administrative Tribunal (SACAT)**

The SACAT is a state tribunal that helps South Australians resolve issues within specific areas of law, either through agreement at a conference, conciliation or mediation, or through a decision of the Tribunal at hearing. SACAT conducts reviews of Government decisions.

### **South Australian Employment Tribunal (SAET)**

The SAET is the South Australian forum for resolving workplace-related disputes and issues. SAET is a statutory independent tribunal that:

- hears and resolves return to work disputes
- hears and resolves employment and industrial disputes
- regulates South Australian industrial awards, agreements and registers
- hears and determines work, health and safety related prosecutions
- conducts hearings in relation to dust disease matters.

### **South Australian Skills Standards (Standards)**

The Standards as prepared under Section 26 of the *SAS Act*, as in force from time to time.

### **Student**

A person undertaking studies (either full-time or part-time) who is not classified as an international student or an apprentice or trainee.

### **Supervision**

Supervision is the oversight and coordination of work, safety, and on and off-job training provided to an apprentice or trainee. Employers must ensure every apprentice or trainee is supervised and receives on-job training by a skilled or qualified person in accordance with these Standards.

### **Supervisor**

Depending on the size and structure of the business or organisation, the supervisor may be:

- the employer
- a person employed by the employer
- an independent contractor engaged in work for the employer, or
- another employer who hosts the apprentice or trainee.

A supervisor is a person with the required skills, knowledge, qualifications and experience to train and instruct an apprentice or trainee in their chosen trade or declared vocation.

### **Tertiary Education Quality and Standards Agency (TEQSA)**

The agency established under the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth.

### **Trade**

Certain trades (for instance, automotive mechanic, cabinetmaker, cook, hairdresser, electrician, and plumber) declared by the Minister as trades governed by the *SAS Act*. To

acquire the skills required to work in such trades, people must complete an apprenticeship. Apprenticeships generally take up to 4 years to complete. Upon successful completion of an apprenticeship in such trades, apprentices become qualified tradespersons.

### **Trade and Vocation Recognition Assessment Panels**

Panels established to assess applications for recognition and certification of a person's qualifications and experience in relation to a particular trade or declared vocation under Section 70A of the *SAS Act* and whose membership and operating procedures are endorsed by the Commission.

### **Trainee**

A person who has entered into a legally binding arrangement to work and undertake training in a declared vocation under a Training Contract that has been approved by the Commission.

### **Traineeship**

Training provided under a declared vocation that meets the standard conditions for that declared vocation as specified in the declaration, and as published by notice in in the *Gazette*. Traineeships undertaken through a Training Contract must be underpinned by bona fide industrial arrangements.

### **Traineeship and Apprenticeship Pathways (TAP) Schedule**

The Traineeship and Apprenticeship Pathways (TAP) Schedule lists all apprenticeships and traineeships available in South Australia.

### **Training Contract**

Is an agreement:

- approved under Section 48 of the *SAS Act* 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; or
- a Training Contract transferred from another jurisdiction and recognised by the Commission as a Training Contract under Section 48A of the *SAS Act*.

### **Training Plan**

Is the plan that describes the content and delivery of training to be provided to an apprentice or trainee, as prepared and endorsed under Section 54Q of the *SAS Act*.

### **Transfer fee**

The fee payable by a proposed employer to the existing (current) employer under Section 54O of the *SAS Act*. The fee is determined according to the number of years served under the Training Contract and the business size.

### **Vocational Education Training (VET)**

VET is education and training that focuses on providing skills for work. Designed to deliver workplace-specific skills and knowledge, VET covers a wide range of careers and industries, including trade and office work, retail, hospitality and technology.

### **VET National Register**

Is the official national register of information on VET in Australia.

## CORRESPONDING LAWS

Corresponding law means a law of the Commonwealth, or of another state or territory, declared by the regulations to be a corresponding law for the purposes of Section 54G(7) of the *SAS Act*.

### **Commonwealth Government**

[National Vocational Education and Training Regulator Act 2011](#)

### **State and Territories**

[Apprenticeship and Traineeship Act 2001 No 80 \(NSW\)](#)

[Education and Training Reform Act 2006 \(VIC\)](#)

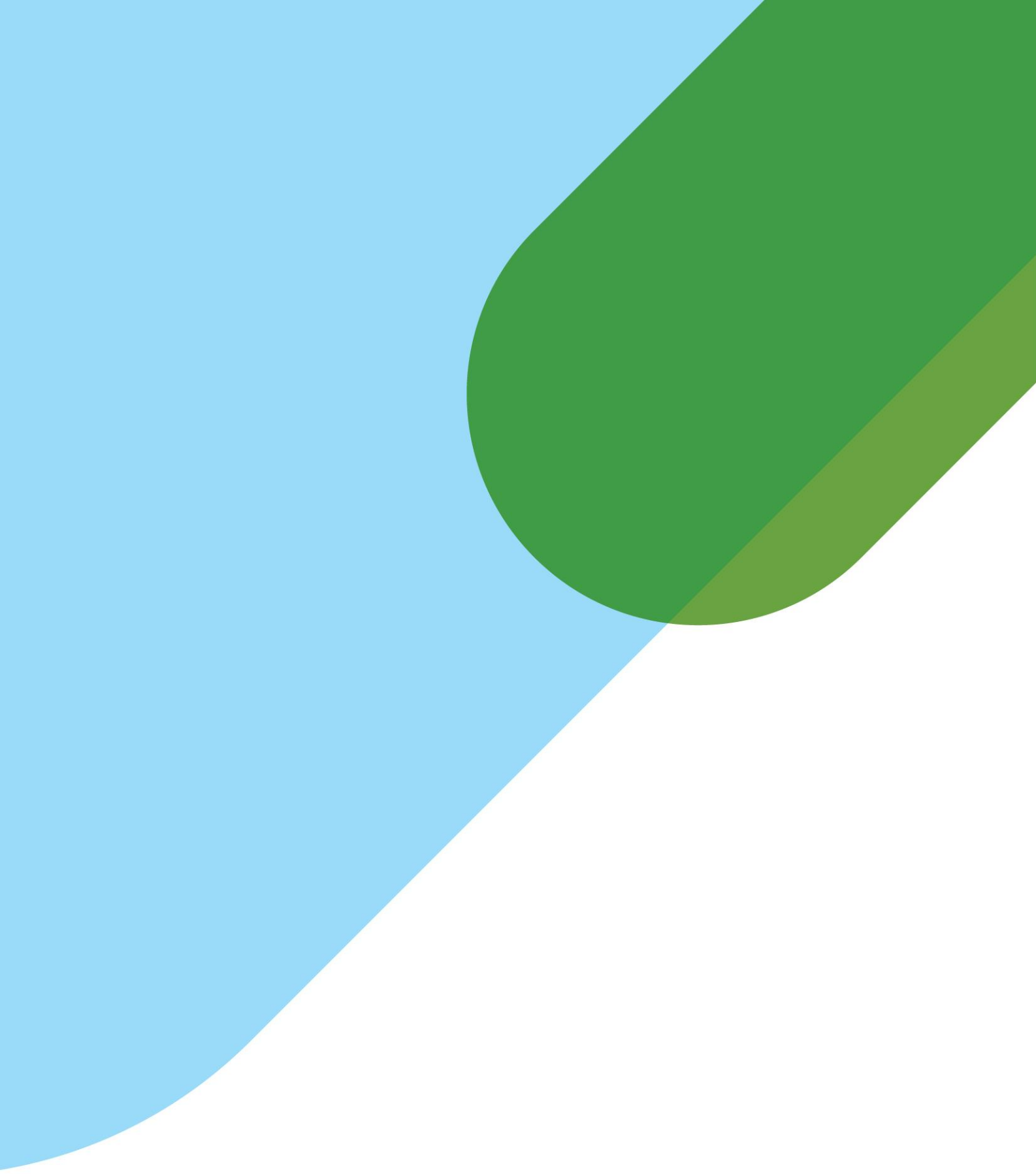
[Further Education and Training Act 2014 \(QLD\)](#)

[Training and Skills Development Act 2016 \(NT\)](#)

[Training and Tertiary Education Act 2003 \(ACT\)](#)

[Training and Workforce Development Act 2013 \(TAS\)](#)

[Vocational Education and Training Act 1996 \(WA\)](#)



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