



Consultation Outcomes Report

Review of the *Training and Skills Development Act 2008*

Review Scope

A Review of the *Training and Skills Development Act 2008* (the *TSD Act*) was undertaken to ensure a modern, responsive, and effective framework for skills and workforce development in South Australia. The *TSD Act* established the Training and Skills Commission (TaSC) and the Training Advocate and set the regulatory framework for apprenticeships and traineeships¹. It had been in operation for more than a decade, in which time the vocational education and training (VET) landscape and the broader economy had changed significantly.

The South Australian Government's approach throughout this Review was underpinned by the principle that the regulatory framework implemented is proportionate with the overarching objective of productive, successful and supported training and working relationships. In this regard, the South Australian Government has built on the strengths of the existing system, with renewed provisions to streamline and simplify arrangements for employers while ensuring appropriate supports for apprentices and trainees, and high levels of probity, quality and consumer protection.

Review Process

Feedback from stakeholders was essential in informing the approach and development of this legislation. The *Training and Skills Development (Miscellaneous) Amendment Bill 2020* (the *Amendment Bill*) was drafted following a four-week consultation period on the *TSD Act*, during which time all interested stakeholders were given the opportunity to provide input through submissions, comments, and participation in focus group sessions. This was followed by a seven-week consultation on the draft *Amendment Bill*, which consisted of meetings with stakeholders, and broader engagement through the YourSAy platform.

The *Amendment Bill* passed through the South Australian Parliament in November 2020. The new Act is known as *South Australian Skills Act 2008* (the *SAS Act*). To facilitate the operation of the *SAS Act*, *South Australian Skills Regulations 2021* (*Regulations*) and the South Australian Skills Standards (*Standards*) were drafted and a four-week consultation period was held in April 2021.

In addition to the consultation processes undertaken over the course of this Review, feedback relevant to the *TSD Act* was obtained through other engagement processes, including a review of the *TSD Act* conducted in 2016, and consultations pertaining to Skilling South Australians and the TaSC. The TaSC's Futureproofing the South Australian Apprenticeships and Traineeships system project, was also considered. The South Australian Government also convened an Expert Advisory Panel to assist in making important decisions about matters which arose during the course of the Review.

This report summarises the feedback received from stakeholders through all formal engagement processes, with a focus on the key themes and consultation outcomes.

¹ This report uses the term 'apprenticeships and traineeships' interchangeably with 'apprenticeships.'

Training and Skills Development Act 2008

Key Consultation Outcomes

Initial consultation on the *TSD Act* sought input from all interested stakeholders on how the legislation could be amended to address issues and opportunities relating to four key themes:

- Governance and regulation;
- Promoting new apprenticeship and traineeship pathways;
- Responsive legislation; and
- Modern best practice legislation.

Stakeholders in this initial phase of the Review acknowledged the need to simplify the current apprenticeship system to make it easier to navigate. Feedback identified that the governance structures in the *TSD Act* would benefit from clarification, as the roles and responsibilities of the TaSC, Training Advocate and the Department were not clear to all stakeholders. This issue of role clarity also extended to disputes. In response to this feedback, the *SAS Act* establishes the South Australian Skills Commission (SASC) overseen by a new statutory position, the South Australian Skills Commissioner (the Commissioner), amalgamating the TaSC and the Training Advocate. This aims to resolve the confusion experienced by stakeholders resulting from the previous governance structures by minimising the duplication of roles and functions performed by the TaSC, Training Advocate and Department.

Significant feedback was received in relation to employer registration, with differing views expressed in relation to the extent to which this should be streamlined whilst still affording appropriate protections for apprentices and trainees. In most cases the feedback on employer registration acknowledged that it was a valuable assurance mechanism. As a result, the *SAS Act* streamlines the process for employer registration to align this legislation with contemporary, risk-based processes that balance streamlined access for employers with protections against unscrupulous employers entering the system. The streamlined employer registration process is complemented by the introduction of prohibited employers.

Supervision ratios were also identified as an area of potential reform. There was general agreement that the revised legislation should not prescribe set supervision ratios, to allow for flexibility and alignment with the requirements of industry. As a result of this feedback, a flexible approach to supervision ratios has been provided for in Standard 5, Supervision.

Various suggestions for reform were also put forward by stakeholders in relation to Training Plans and Training Contracts. As a result, the *SAS Act* adopts a stronger framework around the development and use of Training Plans for apprentices and trainees, and details the obligations of parties to the Training Contract.

Training and Skills Development (Miscellaneous) Amendment Bill 2020

Key Consultation Outcomes

The *Amendment Bill* was drafted taking into consideration the feedback received in the initial consultation phase outlined above. The *Amendment Bill* was subject to further consultation, with the key consultation outcomes summarised below.

The revised governance structure was generally well received with acknowledgment from stakeholders that the structure would reduce the confusion and duplication of functions identified in the initial consultation phase. Stakeholders expressed mixed views on the composition of the new SASC, including the removal of consultation provisions relevant to composition and representation. In line with the scope of this legislative review, the updating of this provision is consistent with modern, responsive best practice legislation, and reflects modern skills based appointment processes. The *Amendment Bill* requires the Minister to ensure that the SASC has the appropriate skills mix to enable it to respond to the changing needs of the economy, skills and vocational education in South Australia. Appointments to similar interstate bodies also allow for appointments to be made on the basis of individuals the Minister believes have the experience and skills necessary to perform the relevant functions.

Feedback received from stakeholders identified the need to clarify functions related to complaint handling, advocacy and conciliation. In response to this feedback, the South Australian Government brought forward an amendment refining and clearly articulating the scope of the SASC in relation to complaint handling, mediation and advocacy, with responsibility for conciliation resting with the South Australian Employment Tribunal (SAET).

Stakeholder feedback on the *Amendment Bill* also identified that the term 'guidelines' can be a source of confusion for stakeholders, who may perceive guidelines to be optional or merely advisory in nature, as opposed to a legislative instrument under the *TSD Act*. In response to this feedback, the *SAS Act* now refers to the 'South Australian Skills Standards.' This change provides greater clarity on the enforceable nature of the Standards by reducing ambiguities previously associated with the term guidelines.

Feedback in relation to the declaration of trades and declared vocations by the Minister was overwhelmingly positive. Stakeholders identified in the initial consultation process that the current process for the declaration of trades and declared vocations was an area which required further clarity and improvement. Feedback received indicated that the reforms outlined in the *Amendment Bill* provide the requisite clarity on the process and purpose of this function. Furthermore, feedback received identified a need to promote blended learning through higher apprenticeship pathways and include pre-traineeships as a relevant pathway to a trade or declared vocation to avoid doubt in this regard.

The *Amendment Bill* also provides clarity regarding the SASC's ability to determine probationary periods. Feedback in relation to the original provision was met with positive feedback overall, however some concerns were raised about the interaction of this provision with short training contracts. As a result, the South Australian Government amended the *Amendment Bill* to cap the probationary period to a maximum of 25 percent of the contract's nominal term, up to a total of six months.

South Australian Skills Regulations 2021 and South Australian Skills Standards

Key Consultation Outcomes

The *Regulations* and Standards complete the regulatory framework established under the *SAS Act*. The draft *Regulations* and Standards were developed and made available for consultation over a four-week period in April 2021. The *Regulations* and Standards provide further detail on the implementation of a range of clauses outlined in the *Amendment Bill*. Clarity in relation to such clauses was a key topic of feedback throughout the consultation process for the *Amendment Bill*.

Stakeholders generally supported the introduction of the prescribed fees outlined in the draft Ministerial Fee Notice, however feedback received during the consultation process identified that provisions to waive or reduce certain fees in appropriate circumstances should be provided for in the *Regulations*. Accordingly, the South Australian Government amended the *Regulations* to provide the SASC with discretion to waive or reduce, in whole or in part, the prescribed transfer fee in appropriate circumstances. Feedback on the *Regulations* also resulted in the South Australian Government amending the *Regulations* to include a subclause requiring Nominated Training Organisations (NTOs) to notify the SASC in the event that an NTO becomes aware that the training of an apprentice or trainee is at risk.

Feedback received in relation to the Standard 1, Declaration of Trades and Vocations, identified that an applicant in making an application to declare a trade or declared vocation should identify the qualification as a nationally recognised qualification taken from a training package, and for such a qualification to be approved by the Australian Skills Quality Authority (ASQA) as a VET accredited course, or be a higher education qualification approved by the Tertiary Education Quality and Standards Agency (TEQSA). The South Australian Government has included this requirement in the Standard.

Standard 6, Training Plan and Nominated Training Organisations (NTOs) outlines the process for substitution of an NTO. In accordance with feedback received from stakeholders, an additional clause was included in this Standard to ensure that in the event an NTO ceases to be an NTO under the training contract, the NTO 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. This clause will ensure transparency between NTOs in the event of a substitution, as well as appropriate retention of records as outlined in the *SAS Act*.

In response to feedback received on Standard 10, Training Contract Suspension, the South Australian Government has amended the clause pertaining to training contract suspension criteria. This clause was amended to clarify that any party to a contract can apply for a suspension. A further amendment was also made to provide the SASC with discretion to determine a suspension period if appropriate.

Furthermore, in response to stakeholder feedback regarding Standard 12, Complaint Handling, Mediation and Advocacy, the South Australian Government has included a clause allowing parties to raise complaints confidentially, noting the SASC may be limited in what action it can take in such circumstances.