



South Australian Skills Act – Regulations and Standards consultation

The *Training and Skills Development (Miscellaneous) Amendment Bill 2020 (Amendment Bill)* passed through both houses of the South Australian Parliament in November 2020. Draft *South Australian Skills Regulations 2021 (Regulations)* and South Australian Skills Standards (Standards) have been developed for consultation ahead of being finalised for commencement of the *South Australian Skills Act (SAS Act)* on 1 July 2021.

The draft *Regulations* provide further detail on a range of clauses within the *Amendment Bill*. They set out the requirements for preparing Standards, including the requirement for the new South Australian Skills Commission (the Commission) to consider the regulatory impact and compliance costs associated with implementing changes.

Before varying or reviewing a Standard, except in exceptional circumstances, the Commission will consult with relevant parties that may be impacted.

This paper provides an overview of the draft *Regulations*, Fees Notice and Standards and seeks feedback from stakeholders on the questions included.

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Declarations of trades and declared vocations

In South Australia, occupations must be declared a trade or a vocation for the purposes of the *SAS Act* before they can be aligned to an apprenticeship (trade) or traineeship (declared vocation).

In an expansion to the existing arrangements for declaring trades and vocations, the *SAS Act* allows for relevant pathways (such as pre-apprenticeships and pre-traineeships) to a given trade or vocation to be identified and aligned to an apprenticeship or traineeship.

Regulations (Clause 4)

The *Regulations* require a notice declaring an occupation to be a trade or a declared vocation to contain:

- the full name of the trade or vocation
- any conditions attached to an identified relevant pathway to an apprenticeship or traineeship.

Standard

The Standard outlines the application process, including the responsibilities of the applicant (that is, the organisation, such as an employer, employer association, or training organisation, seeking to have the trade or vocation declared by the Commission) related to developing the application, presenting the proposal, and addressing queries or concerns of the Commission. Information required includes:

- occupational title of the trade or vocation
- trade or declared vocation status
- job or occupation, or class of job or occupation, to which the trade or declared vocation relates
- training
- industrial arrangements
- nominal term of the training contract
- probationary period for a training contract
- level of supervision
- supervisor requirements
- entry requirements
- conditions
- identified pathways.

The applicant must provide evidence of the consultation undertaken and evidence of demand and support for the trade or vocation, including:

- industry demand, including an estimate of annual commencements
- support from stakeholders, including any alternative or dissenting views
- the stakeholders consulted, to include Industry Skills Councils, industry and employer associations, employee associations or representatives, and training organisations
- evidentiary requirements, including support letters that reflect the unique perspective of the stakeholder.

Apprenticeships and traineeships linked to trades and declared vocations approved by the Commission will be listed on the Traineeship and Apprenticeship Pathways (TAP) Schedule. Maintenance and review of the TAP Schedule will be undertaken by the Commission as required.

Questions for consultation

- Is there other information that should be gathered during the application process?
- Is the consultation approach and evidence of demand and support for the trade or vocation comprehensive?
- Should proponents have a role in maintaining and reviewing declared trades and vocations?
- Is there anything else that should be considered?

Training contract approval

In accordance with the *SAS Act*, training contracts are to be approved by the Commission. 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) Training contracts.

Regulations (Clause 6)

In addition to the clauses contained in the *SAS Act*, which require the Commission to refuse to approve an agreement as a training contract if the employer is prohibited, unregistered, or not complying with the conditions attached to their registration, the *Regulations* require the Commission to refuse an agreement if:

- the trade or vocation is not declared under the *SAS Act*; or
- the employer, in the opinion of the Commission, is not able to provide, or arrange to provide, an apprentice or trainee with the facilities, range of work, supervision and training required under the training plan.

Standard

The Standard reiterates general conditions relating to training contracts contained in the *SAS Act*, including that:

- training in a trade must be undertaken under a training contract, except in limited circumstances where a person has completed an apprenticeship or has an equivalent qualification
- training in a declared vocation may be undertaken under a training contract
- an employer must be registered and complying with any conditions of their registration (including scope) before entering into a training contract.

The Standard provides detail on how a training contract application must be submitted to the Commission, including that the application must use the standard form training contract, may be submitted by an Apprenticeship Network Provider on behalf of an employer, and must include:

- a condition that the apprentice or trainee will be employed in accordance with the applicable award or industrial agreement
- the nominal probationary period and standard conditions for the training contract
- a condition that the apprentice or trainee 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 (NTO) chosen jointly by the employer and the apprentice or trainee); and
- any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the NTO.

The Commission will notify the employer and the apprentice or trainee once it has reached a determination for an application. It will provide an approval date if the application is approved, and the reasons for refusal in the event the application is refused.

The Standard also sets out the obligations under a training contract, on the employer and the apprentice or trainee.

Under the *SAS Act*, a person under 15 years cannot enter into a training contract, unless permitted by an industrial award or the person has, on application, obtained the written approval of the Commission.

A decision of the Commission to refuse an application, by a person under 15 years, to enter into a training contract may be reviewed by the South Australian Civil and Administrative Tribunal (SACAT).

Questions for consultation

- Is there anything else that should be considered by the Commission in approving training contracts?
- What do you believe needs to be strengthened to support achieving this Standard?

Transfer of training contracts and substitution of an employer (including transfer fees)

Substitution of an employer of an apprentice or trainee covers three broad situations in which the training contract for an apprentice or trainee is taken over by (or transferred to) another employer. Transfer of a training contract through any of the situations described below is subject to approval by the Commission.

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;
- There is a change in the ownership of the business under which an apprentice or trainee is employed;
- An application is made to the Commission to substitute the current employer of an apprentice or trainee with a different employer.

Regulations (Clauses 7 and 12)

Transfer of training contracts between jurisdictions (Clause 7)

The Commission must not approve transfer of a training contract if the proposed employer is prohibited.

The Commission may refuse to recognise a training contract made under another State or Territory if:

- there is no nominated training organisation (NTO) for the apprentice or trainee
- there is no training plan
- the trade or vocation is not declared under the *SAS Act* and does not have an equivalent declared trade or vocation under the *SAS Act*
- the proposed employer:
 - o is not registered, or has not applied for registration; or
 - o is not operating within the scope of their registration; or
 - o has contravened or failed to comply with a condition of their registration.

Waiver of transfer fee (Clause 12)

The Commission may waive or reduce the prescribed transfer fee if:

- the transfer is mutually agreed by the proposed employer and the previous employer
- it is unlikely the previous employer will be able to provide the employment for the duration of the training contract; or
- it is unlikely the previous employer will be able to provide the scope of training or supervision for the apprentice or trainee to complete the training required; and
- it is appropriate to do so in the circumstances of the case.

Ministerial notice

The Ministerial notice sets out the transfer fee payable from the proposed employer to the previous employer.

The approach taken to establishing the schedule of transfer fees was as follows.

- Sample data for selected training contracts was reviewed, showing total training hours range from around 650 to 900 hours for training contracts between 3 to 4 years full-time.
- An annual training figure of 200 off-job training hours has been used to determine the transfer fee.
- Wage costs to the original employer have been calculated at 50% of the national minimum wage for first year apprentices.
- Wage costs have been multiplied by an approximate amount of off-job training hours for which the employer has paid wages, accumulated to reflect the proportion of the training contract completed at the time of transfer.
- Fees have been discounted by 20% for small businesses (up to and including 20 employees).

Transfer fees set out in the Ministerial notice are as follows:

Portion of contract completed (at time of transfer)	Transfer fee (medium/large business)	Transfer Fee (small business)
1 Year	\$2,000	\$1,600
2 Years	\$4,000	\$3,200
3 Years	\$6,000	\$4,800
During the 4 th Year	\$8,000	\$6,400

Note: Proposed fee is rounded to nearest \$1,000.

Standards

The Standard outlines the scenarios under which the transfer of a training contract may take place, as outlined below.

Apprentice relocating from another state or territory to South Australia

The Standard outlines the requirements for transfer of contracts between jurisdictions, including permitting the Commission to recognise the training contract, substitute the employer, recognise the previous employment and training completed in another state or territory and make other appropriate arrangements.

The Standard also specifies information to be provided by the apprentice to the Commission to give effect to the transfer.

Change of ownership of a business that employs an apprentice or trainee

The Standard outlines how rights, obligations and liabilities are transferred from the previous owner to the new employer; the matters that the transacting owners should notify the Commission of and the matters the Commission takes into account when recognising a transfer.

Application to substitute an employer of an apprentice or trainee and transfer fee

The Standard describes the process for applying to substitute the employer of an apprentice or trainee; and the criteria the Commission applies when considering an application. It also outlines the requirements for notifying the parties to an application of the outcome; and the process for transacting the transfer fee; and circumstances under which the transfer fee may be waived.

A decision of the Commission to approve or refuse substitution of an employer under section 54N of the SAS Act may be reviewed by the SACAT.

Questions for consultation

- Does the Standard clearly set out the scenarios under which a transfer of a training contract may occur?
- Is the information about the transfer fee clear? Would it be clear to a business owner what transfer fee applies for their business?

Prohibited Employers

A prohibited employer is an employer that the South Australian Skills Commission (the Commission) reasonably believes (and declares as such) is not suitable to employ an apprentice or trainee

Regulations (Clause 8)

The *Regulations* set out that before declaring an employer as a prohibited employer, the Commission must give notice in writing to the employer and allow the employer a period of 14 days to make submissions to the Commission as to why the declaration must not be made.

A notice declaring an employer prohibited must set out:

- the conditions (if any) in relation to the declaration
- whether the declaration applies for a specific period or an indefinite period.

Standard

The Standard outlines the process and conditions for declaring an employer prohibited, obligations for prohibited employers, revocation of a declaration, obligations for employers in relation to prohibited employers, other conditions related to prohibited employers.

In determining whether to prohibit an employer, the Commission must have regard to:

- the safety and wellbeing of apprentices and trainees employed by the employer
- whether the employer can provide, or arrange to provide, an apprentice or trainee with the facilities, range of work, supervision and training required
- the employer's record in delivering training to apprentices or trainees
- whether the employer behaves, or permits their employees to behave, in an objectionable way towards apprentices or trainees
- whether the employer has contravened the *SAS Act*, or any other *Act* (whether of the State another State or Territory or the Commonwealth) relating to employment
- the criminal history of the employer
- whether the employer is a fit and proper person to employ an apprentice or trainee.

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 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.

If the Commission declares an employer to be a prohibited employer, the employer's registration to employ an apprentice or trainee is cancelled from the date of the declaration.

Prohibited employers will be listed on the South Australian Skills Register, which will include details of any conditions, the stated period of prohibition, and whether the declaration applies generally or in respect of a particular training pathway, apprentice or trainee.

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.

Questions for consultation

- Is there anything the Commission should consider in determining whether to prohibit an employer that is not listed above?
- What do you believe needs to be strengthened to support achieving this Standard?

Nominated Training Organisations (NTO) and Training Plans

A Nominated Training Organisation (NTO) may be –

- A Registered Training Organisation (RTO); or
- A recognised higher education provider

NTOs have requirements under the *SAS Act* where they are nominated in a training contract.

Regulations (Clauses 13, 14 and 15)

Training Plans (Clause 13)

The *Regulations* require an NTO to inform the Commission that a training plan has been developed within 28 days of being nominated as the NTO for the training contract. The Commission may allow a longer time period in a particular case.

NTO to notify Commission of certain matters (Clause 14)

The *Regulations* require an NTO to notify the Commission if:

- there is more than one NTO for an apprenticeship or traineeship
- the NTO becomes aware that an employer is not meeting its obligations under the training contract or training plan
- the Australian Skills Quality Authority (ASQA) or Tertiary Education Quality and Standards Agency (TEQSA) has made a decision in relation to the NTO, including:
 - o suspending or cancelling their registration or recognition
 - o cancelling a qualification or statement of attainment
 - o rejecting an application for renewal of a registration or recognition
 - o amending their scope of training
 - o imposing a condition on their registration or recognition
 - o allowing them to enter into an enforceable undertaking.

Making and retention of records (Clause 15)

The NTO is required to keep records related to:

- the training contract and training plan for all apprentices and trainees they are the NTO for
- details of all employers under training contracts they are the NTO for
- records of meetings with employers, apprentices and trainees and outcomes of the meetings including; progress of apprentices or trainees, any agreed remedial action to address lack of progress, supports provided by an employer to assist the apprentice or trainee to meet training goals outlined in the training plan.

Standard

Under the *SAS Act*, the parties to a training contract must select an NTO to deliver the training to the apprentice or trainee. The organisation may be a Registered Training Organisation (RTO) or recognised higher education provider.

The Standard describes how an RTO, or registered higher education provider, is selected by the employer and the apprentice or trainee, and how one NTO may be substituted for another. A training organisation must accept its nomination before it becomes the NTO for a training contract.

The Standard outlines the requirements regarding preparation, endorsement and review of the Training Plan for each training contract. The Training Plan must be presented on the form approved by the Commission and contain all requested information.

The NTO must engage with the employer and apprentice or trainee in preparing the training plan and must be endorsed by the employer and apprentice or trainee, parent or guardian (if a party to the training contract), and in the case of school-based apprentices, the school principal (or delegate).

The NTO may be substituted where the employer and apprentice agree and the new NTO agrees to take on the apprentice or trainee.

The Standard outlines the obligations for employers, apprentices and trainees in relation to the NTO and training plan.

Questions for consultation

- Should the practice of gaining acceptance of the selected RTO or higher education provider occur prior to the signing of a Training Contract?
- Is there anything else that should be considered by the Commission regarding Nominated Training Organisations and Training Plans?
- Are the reporting obligations clear for NTOs?
- What do you believe needs to be strengthened to support achieving this Standard?

Arrangements for Employers using Hosting Provisions

A host employer is an employer that does not wish to directly employ an apprentice or trainee but that hosts an apprentice or trainee under a placement by a registered employer.

Regulations (Clauses 16 and 17)

Compliance notices (Clause 16)

The *Regulations* set out the requirements that the following persons are prescribed for the purposes of the definition of prescribed person in the *SAS Act*:

- a host employer with whom an apprentice or trainee is placed
- a supervisor of an apprentice or trainee under a training contract.

Commission may require information (Clause 17)

The Commission may, by notice in writing, require a prescribed person to provide information or documents that it reasonably requires to fulfil its functions under the Act. The *Regulations* set out that host employers with whom an apprentice or trainee is or was placed are considered a prescribed person under the *SAS Act*.

Standard

The Standard relates to the hosting of apprentices and trainees. It supplements and should be read in conjunction with the South Australian Skills Standard for Employer Registration.

The Standard outlines that employers that do not wish to directly employ an apprentice or trainee may enter into a host employment arrangement with a registered employer. In this situation, the registered employer remains the legal employer of the apprentice or trainee and the host employer trains the apprentice or trainee on the job with the host employer's responsibilities and obligations outlined in a written agreement with the registered employer.

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

The standard outlines obligations for registered employers under a host employment arrangement and specifies that registered employers must provide pastoral care/monitoring support to apprentices and trainees placed with a host employer.

The standard outlines obligations for host employers under a host employment arrangement including the need to:

- provide suitable work
- ensure access to a suitable range of equipment, tools, materials personnel and other resources
- provide supervision to the apprentice or trainee in accordance with the South Australian Skills Standard on Supervision
- support the apprentice and trainee to speak with the registered employer in a confidential manner.

Questions for consultation

- Does the Standard appropriately capture requirements of the registered and host employer under hosting arrangements?
- Is there anything else that should be considered by the Commission in relation to hosting arrangements?

Complaint Handling, Mediation, and Advocacy

Under the *SAS Act*, the Commission provides a range of complaint handling, mediation, and advocacy services. The services are provided free of charge and are confidential and impartial.

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

Regulations

There are no specific regulations in relation to complaint handling, mediation, and advocacy.

Standard

The Standard outlines the role of the Commission in providing complaint handling, mediation, and advocacy services to stakeholders in South Australia. The Standard also describes the role of the South Australian Employment Tribunal (SAET) in providing dispute resolution and conciliation services.

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 disputes, including by providing advocacy services for parties in proceedings before the SAET.

The Standard outlines the expectations of all parties accessing the Commission's complaint handling, mediation, advocacy, or dispute resolution services.

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

- apprentices/trainees
- parents/guardians
- employers
- nominated training organisations
- students
- international Students
- the regulator of the apprenticeship and traineeship system, where issues are identified through the course of regulating the system (including under Section 52 of the *SAS Act*).

The independent complaint handling process may include:

- the investigation of a complaint
- the negotiation and mediation of matters arising out of a complaint
- making recommendations in relation to complaints
- reporting the outcome of any such process.

Regarding advocacy, the Commission may:

- speak for and negotiate on behalf of education and training providers and clients (and prospective clients) of education and training providers in the resolution of any matters arising out of the delivery of education and training

- speak for and negotiate on behalf of an employer, an apprentice/ trainee and/or a Nominated Training Organisation (NTO) in the resolution of any matters arising in relation to a training contract with the other party(ies) to the training contract
- speak for and negotiate on behalf of 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.

The Commission may provide mediation services for parties to a training contract in the following instances:

- arising from a complaint as outlined above
- referral of a matter by an employer where an apprentice or trainee has been suspended for serious misconduct
- where there is disagreement between the parties in relation to the transfer fee under Section 54 of the *SAS Act* and Clause 12 of the Regulations
- referral of a matter by the delegated regulator under Section 52 of the *SAS Act*; and
- any other instances where the Commission sees fit.

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.

Dispute resolution

Where a dispute arises, parties must participate in dispute resolution, if directed by the Commission, prior to approval for suspension, substitution of an employer or termination.

Wilful and serious misconduct

Under Section 64 of the *SAS Act*, an employer may suspend an apprentice/trainee for serious misconduct for up to 7 working days, if the employer has reasonable grounds to believe the apprentice/trainee is guilty of wilful and serious misconduct. This suspension can be in place, without first obtaining approval by the Commission.

The employer must, as soon as reasonably practicable, refer the matter for mediation with the Commission, notify the SAET and notify the apprentice or trainee that the matter has been referred.

The employer must:

- undertake mediation with the Commission, where directed
- comply with any reasonable requirements of the Commission in relation to the mediation
- if the matter is unable to be resolved by mediation, refer the matter to the SAET for consideration as soon as practicable, and in any event within three days.

Questions for consultation

- Does the standard clearly outline the service offering in relation to complaint handling, mediation, advocacy and dispute resolution?
- What else should be considered by the Commission in providing these services?

Employer Registration

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.

Regulations

There are no specific regulations for the registration of employers, or the variation, suspension, or cancellation of an employer's registration.

Standard

The SAS Act allows the Commission to register an employer for a period of up to five years, renew an employer's registration for up to five years, and vary, suspend, or cancel an employer's registration, at any time during the period the registration is in force.

The Standard outlines the application processes for employers to register. It also outlines requirements on the Commission and employer, along with the process to have a decision regarding employer registration reviewed by the SACAT.

An employer must apply to the Commission to become registered. The Commission will register the employer provided the employer is not prohibited, the employer satisfies the requirements of the Skills Standard, and it is, in the Commission's opinion, appropriate to do so.

The application requires the employer to provide information on:

- the legal name, ABN, and legal entity type of the business being registered
- the head office and postal addresses of the business
- contact details for the primary contact for the business
- worksite details for each worksite the business wishes to employ apprentices and trainees at, including evidence of the equipment and/or machinery at the worksite
- the trades and vocations the business wishes to register for
- the work an apprentice or trainee will be undertaking
- details regarding the supervisors of apprentices and trainees in each trade or vocation.

In addition, the employer must complete any training exercises included in the application process. They must also read and accept the terms and conditions contained in the application form and declare the information contained in the application is true and accurate and that they are authorised to make the application on behalf of the employer.

An employer must select at least one trade or declared vocation they wish to be registered for, as part of the registration process. Each trade or vocation represents a condition placed on the employer's registration. Collectively, the list of one or more trades and declared vocations represents the scope of the employer's registration.

The employer must certify they are able to deliver the full range of 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 hosting arrangements or via the substitution of the employer) in order to provide the full range of training.

An employer's registration may be varied, suspended, or cancelled, whether through an application by the employer, or through the Commission's own volition. The Commission must cancel an employer's registration upon application by the employer, or if an employer is declared prohibited.

The Commission must give the employer at least 28 days written notice before varying, suspending, or cancelling an employer's registration.

When an employer's registration is varied, suspended, or cancelled, the Commission may substitute the employer for a different employer, to ensure continuity of training for apprentices and trainees.

The Standard also provides information on offences relating to employer registration, with the maximum penalty for each offence being \$10,000.

Questions for consultation

- Employers will likely be required to register, or vary their registration, using an online application form. Do you have recommendations on how to enhance this process to reduce the administrative burden on employers seeking to register, while ensuring the Commission obtains the information it needs?
- Is there anything else that should be considered by the Commission in relation to employer registration?

Recognition of other trade or declared vocation employment and training

Recognition of other trade or declared vocation employment and training provides an approach for individuals to seek assessment and recognition of their qualifications and/or experience in relation to a particular trade or declared vocation, where the qualification and/or experience has not been obtained under a training contract.

The recognition service provided by the South Australian Skills Commission (the Commission) acknowledges employment-based skill outcomes for individuals residing in South Australia and provides assistance with:

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

Regulations

There are no specific regulations for the recognition of other trade or declared vocation employment and training.

Ministerial notice

The Ministerial notice sets out the fee for recognition of other trade training as:

- \$500 for a first or initial assessment
- \$1,000 for a competency assessment or exam
- \$200 for a second or subsequent assessment

The proposed fees were set following consideration of the fee structures for the current skills recognition service delivered in South Australia under the Training and Skills Development Act 2008, as well as equivalent skills recognition services around Australia, including those provided by Trades Recognition Australia, VETASSESS, and other State and Territory jurisdictions.

Standard

The Commission's recognition service acknowledges employment-based skill outcomes for individuals residing in South Australia and helps with:

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

The recognition service is not provided for the purposes of migration, nor does the Commission award qualifications under the Australian Qualifications Framework or occupational licences. Individuals are responsible for acquiring these if required.

The Standard outlines the application process, determination by the Commission, and the review of decisions by the SACAT.

Individuals may apply to the Commission for recognition of their qualifications and/or experience in relation to a particular trade or declared vocation when not obtained under a training contract in South Australia.

An individual may have acquired the skills and knowledge for a particular trade or declared vocation through any combination of:

- employment
- training in the qualification aligned to a particular trade or vocation
- other training that allowed the person to develop skills related to the trade or vocation.

Applications must be submitted using the application form, include supporting information and documents, as required, and be accompanied by the prescribed fee.

The Commission may require the applicant to undergo an independent competency assessment or undertake an examination or test to determine whether the applicant has the required skills and knowledge of the relevant trade or vocation.

In making its assessment, the Commission must consider, in relation to the trade or vocation:

- the length of time the applicant has been working
- the nature and duration of any instruction or training received by the applicant
- the nature of any qualifications held by the applicant
- any advice obtained by the committee from a person or body with special knowledge of, and experience in, the relevant trade or declared vocation (whether that person is on the committee or external to it)
- the applicant's performance in any examination or test, or any independent competency assessment
- any other matters as the committee thinks appropriate.

Questions for consultation

- Does the Standard clearly outline the service offering and requirements for individuals seeking recognition of other trade or declared vocation employment and training?
- What else should be considered by the Commission in providing these services?

Training Contract Conditions (including the Standard Probationary Period and Extending the Probationary Period)

The Commission may determine “standard conditions” for specified trades and declared vocations, through notice in the Gazette.

Regulations

There are no specific regulations relating to training contract conditions, the standard probationary period, or extending the probationary period.

Standard

The Standard describes the Commission’s power to determine conditions for specified trades and declared vocations. This is part of the declaration process and represents the default condition for that trade or declared vocation, as well as the conditions that are included as part of a training contract for an apprenticeship and traineeship.

The conditions aligned to trades and vocations are:

- 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 conditions that must be included in the training contract, as outlined in the *SAS Act*, are:

- that the apprentice or trainee will be employed by the employer party to the contract in accordance with the applicable award or industrial agreement
- the probationary period for the relevant trade or declared vocation (in practice, the default probationary period is set when the trade or vocation is declared by the Commission)
- the standard conditions for the relevant trade or declared vocation (in practice, the default standard conditions are set when the trade or vocation is declared by the Commission)
- 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 provider chosen jointly by the employer and the apprentice or trainee)
- any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the registered training provider.

The Standard allows parties to vary working arrangements under a training contract to:

- change a part-time or full-time working arrangement under the training contract
- average the hours worked over a work cycle.

The Standard also specifies that school-based apprenticeships and traineeships may be varied from part-time to full-time (or vice versa) when the apprentice or trainee leaves school, whether by application of the parties or on the motion of the Commission.

The Standard replicates a Gazette notice (to be published by the Commission upon the commencement of the *SAS Act*) outlining minimum hours under part-time training contracts, with the part-time hours to be:

- at least 15 hours per week for standard part-time apprenticeships or traineeships
- at least 7.5 hours per week for school-based part-time apprenticeships or traineeships.

The Standard also sets out the nominal probationary periods for training contracts, these being:

- 30 days for training contracts with a nominal term of up to 12 months
- 60 days for training contracts with a nominal term between 13 and 24 months
- 90 days for training contracts with a nominal term of greater than 24 months.

The Standard provides detail around how a party to a training contract may apply to the Commission to vary the nominal probationary period, stating that an application:

- may be made by the employer, the apprentice or trainee, or both
- may not be for a period in excess of six months in total, or 25 per cent of the term of the training contract, whichever is the lesser
- must be submitted to the Commission no less than 14 days before the expiry of the nominal probationary period, unless extenuating circumstances exist for reducing this period
- that is not resolved will result in the probationary period continuing until the application is resolved.

Changes to training contract conditions and the working arrangements under a training contract must be documented in accordance with the *Regulations* and the South Australian Skills Standard on Record Keeping. This includes, in relation to an amended training contract:

- any agreement to change the hours worked under the training contract
- the resulting record of the apprentice or trainee's attendance at the workplace, and at training (whether at the workplace or at another location).

A decision of the Commission to refuse to extend the probationary period for a training contract under Section 49A of the *SAS Act* may be reviewed by the SACAT.

Questions for consultation

- Does the draft Standard provide sufficient clarity about changes to standard training contract conditions, and when they may be varied by agreement? If not, how can this be clarified?
- Is it clear, under the draft Standard, what the nominal probationary period is for a standard form contract for a given trade or declared vocation, and when the parties may seek to vary the probationary period?
- Does the approach to extending the probation period sufficiently outline the requirements for an extension to be considered?