

SOUTH AUSTRALIAN SKILLS STANDARD

COMPLAINT HANDLING, MEDIATION AND ADVOCACY

Context

Under the *South Australian Skills Act 2008* (the *SAS Act*), the South Australian Skills Commission (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 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.

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *SAS Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

All open cases on file with the South Australian Training Advocate on 30 June 2021 will be transferred to the Commission and support for those cases maintained, including proceedings before the South Australian Employment Tribunal (SAET).

Governance arrangements

The Skills Standard on Complaints Handling, Mediation and Advocacy is governed by the Commission.

Complaints raised with the Department for Innovation and Skills, or other agencies, will be referred to the Commission where appropriate.

Compliance with the Skills Standard

1. SCOPE OF FUNCTIONS (SAS Act s19)

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 SAET.

- 1.2 The following party/parties may raise a Complaint or Dispute with the Commission:
- a) apprentices/trainees
 - b) parents/guardians
 - 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).

2. EXPECTATIONS OF THE PARTIES

- 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 office of the Commission;
 - e) maintain confidentiality;
 - f) not disseminate information or advice provided by the Office;
 - 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; and

3. COMPLAINT HANDLING

- 3.1 The Commission will provide an independent complaint handling service and investigate complaints (other than those deemed to be trivial or vexatious) relating to the provision of apprenticeships and traineeships, vocational education and training, higher education or international education.

- 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.

4. ADVOCACY

4.1 The Commission may:

- a) 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;
- b) speak for and negotiate on behalf of 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/ies to the training contract;
- c) 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 FOLLOWING SECTIONS RELATE TO TRAINING CONTRACTS ONLY

5. MEDIATION

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.

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 54 of the *SAS Act* and Clause 13 of the *Regulations*;
- d) referral of a matter by the delegated regulator under Section 52 of the *SAS Act*; and
- e) any other instances where the Commission sees fit.

5.3 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 three days), refer the matter to the SAET for consideration.

6. ADVOCACY SERVICES FOR PARTIES IN PROCEEDINGS BEFORE THE SAET

- 6.1 The Commission may assist in the resolution of such disputes including by providing advocacy services for parties in proceedings before the SAET.
- 6.2 The 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.
- 6.3 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; and
 - c) suspension of an apprentice or trainee on reasonable grounds of serious and wilful misconduct.
- 6.4 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.
- 6.5 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/trainee.
- 6.6 The SAET has powers to exercise an order under the SAS Act, to which the Commission can accept and act on any recommendation of the SAET. Parties must not contravene an order of the SAET. (Maximum penalty \$5,000).

7. DISPUTE RESOLUTION (SAS ACT, S52)

- 7.1 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.
- 7.2 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.
- 7.3 For the purposes of Section 52 of the SAS Act, dispute resolution will be undertaken by the Commission in accordance with the approach to mediation outlined above. In addition, or as an alternative, the Commission may use direct negotiation in attempt to resolve disputes. Each dispute will be individually assessed.

8. SUSPENSION FOR WILFUL AND SERIOUS MISCONDUCT (SAS ACT, s64)

8.1 An employer may suspend an apprentice/trainee for serious misconduct if the employer has reasonable grounds to believe that an apprentice/trainee employed by the employer is guilty of Wilful and Serious Misconduct.

8.2 The employer may, without first obtaining the approval of the Commission, suspend the apprentice/trainee from employment under the *SAS Act*.

8.3 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); or
- b) the Commission extends the suspension for a specified period (not being more than 3 days after the conclusion of the mediation (not including Saturday, Sunday or Public Holidays)); or
- c) SAET confirms or extends the suspension under section 65.

8.4 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*.

8.5 If an employer suspends an apprentice/trainee from employment for wilful and serious misconduct, the employer must, in accordance with the requirements set out in this Standard, 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; and
- c) notify the apprentice/trainee that the matter has been so referred.

And

- d) the employer must undertake mediation with the Commission;
- e) comply with any reasonable requirements of the Commission in relation to the mediation;
- f) 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 days), refer the matter to the SAET for consideration; and
- g) the employer must not contravene an order of the SAET.

8.6 Where directed, the employer and apprentice/trainee must undertake dispute resolution of a specified kind determined by the Commission.

8.7 The employer and/or apprentice/trainee must not contravene an order of the SAET.

SOUTH AUSTRALIAN SKILLS STANDARD

EMPLOYER REGISTRATION

Context

This South Australian Skills Standard relates to the registration of employers to train apprentices and trainees under a training contract and 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.

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

As a condition of registration, employers are required to comply with the requirements of the SAS Act, the *South Australian Skills Regulations 2021* (the Regulations), the South Australian Skills Standards, and the relevant obligations in any training contract or training plan.

Registered employers will be placed on the South Australian Skills Register, available for viewing at [WEB LINK](#) (from 1 July).

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the Act for a breach of the SAS Act or the Regulations.

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

TRANSITIONAL ARRANGEMENTS

Employer registrations approved by the Commission:

- under the *Training and Skills Development Act 2008*; and
- before 1 July 2021

will remain in force for the duration of the period of registration so approved.

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, it is empowered to:

- register an employer to train a person in a training contract for a period of up to five years;
- renew an employer's registration for a period of up to five years;

- vary, suspend, or cancel an employer's registration, at any time during the period the registration is in force.

Compliance with the Skills Standard

1. REGISTRATION OF EMPLOYERS (SAS Act, S46, S54F)

- 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; and
 - c) complying with any other conditions of the registration.
- 1.2 To become registered, an employer must apply to the Commission.
- 1.3 Upon application, the Commission will register the employer if:
 - a) the employer is not prohibited (for more information, see the [South Australian Skills Standard on Prohibited Employers](#));
 - b) the employer satisfies the requirements set out in this Skills Standard; and
 - c) it is, in the Commission's opinion, appropriate to do so.
- 1.4 An application to be registered as an employer must be made using the online Employer Registration Application System available at [WEB LINK](#) (from 1 July).
- 1.5 The employer must provide all the requested information. The information required includes:
 - a) the legal name, Australian Business Number, and legal entity type of the business being registered;
 - b) the head office and postal addresses of the business;
 - c) contact details for the primary contact for the business (the primary contact must be located in South Australia);
 - d) 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;
 - e) the trades and vocations the business wishes to register for (see scope of registration below);
 - f) the work an apprentice or trainee will be undertaking, including a current job description (if one exists); and
 - g) details regarding the supervisors of apprentices and trainees in each trade or vocation.
- 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;and

- 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. SCOPE OF REGISTRATION (SAS Act, S46, S54F)

- 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 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 hosting arrangements or via the substitution of the employer, see relevant standards for further information) in order to provide the full range of training.
- 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.
- 2.4 An employer must not enter into a training contract to train a person unless the employer is operating within the scope of their registration.
- 2.5 An employer will be required to select at least one trade or declared vocation to be registered for during the initial registration process.
- 2.6 The employer may request additional trades or declared vocations be added to their scope of registration by applying through the online Employer Registration Application System available at [WEB LINK](#) (from 1 July).

3. OTHER CONDITIONS OF REGISTRATION (SAS Act, S54F)

- 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 the Commission thinks fit. Such conditions may include:
 - a) limiting the number of apprentices and trainees that the employer may employ at any one time; and
 - b) setting a minimum age limit for the apprentices and trainees an employer may employ.
- 3.2 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.

- 3.3 Conditions imposed during the period of registration are variations to a registration and are described in the section below.

4. VARIATION, SUSPENSION, AND CANCELLATION OF REGISTRATION (SAS Act, S54G)

- 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.
- 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 [CONTACT DETAILS TBD].
- 4.3 The Commission must cancel an employer's registration upon application by the employer, and may vary or revoke a condition of the registration.
- 4.4 If the Commission declares an employer to be prohibited, it must cancel the employer's registration.
- 4.5 Additionally, if the Commission is satisfied that:
- a) an employer has contravened a provision of the SAS Act, or a corresponding law; or
 - b) failed to comply with a compliance notice; or
 - c) contravened a condition of the employer's registration; or
 - 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. impose a new condition on the registration;
- ii. vary or revoke a condition of the employer's registration;
- iii. suspend the registration for a specified period, or until further notice;
- iv. cancel the registration.

The Commission may exercise one or more of these powers irrespective of whether the contravention occurred in South Australia or not.

- 4.6 The Commission must give the employer at least 28 days written notice before taking action to vary (or revoke a variation of), suspend, or cancel the registration.
- 4.7 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; and
 - 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.

4.8 The corresponding laws to the SAS Act are:

- the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;
- the *Apprenticeship and Traineeship Act 2001* of New South Wales;
- the *Education and Training Reform Act 2006* of Victoria;
- the *Further Education and Training Act 2014* of Queensland;
- the *Training and Skills Development Act 2016* of the Northern Territory;
- the *Training and Tertiary Education Act 2003* of the Australian Capital Territory;
- the *Training and Workforce Development Act 2013* of Tasmania; and
- the *Vocational Education and Training Act 1996* of Western Australia.

5. SUBSTITUTION OF AN EMPLOYER FOLLOWING THE VARIATION, SUSPENSION, OR CANCELLATION OF REGISTRATION (SAS Act, S54H)

- 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.
- 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.
- 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; and
 - d) consent to the substitution.
- 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.
- 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 via online application form (from 1 July).
- 5.6 Transfer fees will not apply to the substitution of an employer under Section 54H of the SAS Act.

6. RENEWAL OF REGISTRATION (SAS Act, S54F)

- 6.1 The Commission may register an employer for a period of up to five 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.
- 6.2 The Commission will write to an employer within six months of the expiry of their registration period, inviting them to apply for renewal of their registration for a further period of up to five years.
- 6.3 An application to renew registration must be made using the online Employer Registration Application System available via [WEB LINK](#) (from 1 July).

7. OTHER OBLIGATIONS (S54K, S54L)

- 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.
- 7.2 An employer must maintain records in accordance with the [South Australian Skills Standard on Record Keeping](#).

8. OFFENCES RELATING TO EMPLOYER REGISTRATION (SAS Act, S54I)

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

9. REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

- 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*.

- 9.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 9.3 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.
- 9.4 An application to the SACAT to review a decision must be made using the online form available via [WEB LINK](#) (from 1 July).
- 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.

SOUTH AUSTRALIAN SKILLS STANDARD HOST EMPLOYMENT ARRANGEMENTS

Context

This South Australian Skills 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](#).

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;
- The apprentice or trainee who is party to the training contract in question;
- The nominated training organisation (NTO) for the training contract in question; and
- The host employer or employers hosting the apprentice or trainee.

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the Act for a breach of the SAS Act or the *South Australian Skills Regulations 2021* (the Regulations).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

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 Skills Standard

1. REGISTRATION OF EMPLOYERS AND HOSTING ARRANGEMENTS (SAS Act, S46)

- 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; and
 - c) complying with any other conditions of the registration.
- 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; and

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

2. PROHIBITED EMPLOYER (SAS Act, S54B, S54D, SAS Regulations CI 8)

- 2.1 The Commission may declare an employer to be a prohibited employer in accordance with the South Australian Skills Standard on Prohibited Employers. Prohibited employers will be recorded on the South Australian Skills Register.
- 2.2 A registered employer must not permit an apprentice or trainee to be placed with a prohibited employer under a host employment arrangement.
- 2.3 Registered employers looking to place apprentices and trainees with a host employer must refer to the South Australian Skills Register prior to entering into a host employment arrangement.
- 2.4 The maximum penalty for a breach of this requirement is \$10,000.

3. OBLIGATIONS FOR REGISTERED EMPLOYERS UNDER A HOST EMPLOYMENT ARRANGEMENT (SAS Act, S54F)

- 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 (WHS) risk to an apprentice or trainee, who has a genuine fear for their safety;
 - d) ensure the off-the-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 host employment arrangements, and the apprentices and trainees placed with each of those host employers on a quarterly 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; and
 - i) maintain appropriate records to demonstrate that the obligations in this Standard have been met.

4. PASTORAL/MONITORING SUPPORT MEETINGS

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

Trainee/Apprentice Year/Stage	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 4	6	3 (1 of these must be at the worksite)

- 4.2 These meetings should confirm that the on-job training is commensurate with the level and stage of the apprenticeship or traineeship and the qualification.
- 4.3 A written record of these discussions must be kept.
- 4.4 Apprentices and trainees must be given the opportunity to speak with their registered employer in a confidential manner, irrespective of the method of communication. Some pastoral care meetings may also occur away from the worksite.
- 4.5 For apprentices and trainees in their third or fourth year/stage of their apprenticeship/traineeship, in lieu of face-to-face meetings, communication methods such as phone, email or video calls may be used.

5. OBLIGATIONS FOR HOST EMPLOYERS UNDER A HOST EMPLOYMENT ARRANGEMENT

- 5.1 A host employer must comply with all obligations contained in a written agreement with the registered employer. In addition, host employers must:
- provide suitable work to enable to the apprentice or trainee to develop some or all of the required competencies, as outlined in the upfront written agreement, to the required standard;
 - 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;
 - provide supervision to the apprentice or trainee in accordance with the [South Australian Skills Standard on Supervision](#); and
 - 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.

6. PRESCRIBED PERSON (SAS Act 70C, SAS Regulations, CI 16, CI 17)

- 6.1 The Commission may require a prescribed person to provide information or documents. A prescribed person means an employer in relation to a training contract, an NTO for an apprentice or trainee, or any other person, or class of persons, prescribed by the *Regulations*.
- 6.2 For compliance notices, the *Regulations* extend the definition of a prescribed person to include:
- a) a host employer with whom an apprentice or trainee is placed; and
 - b) a supervisor of an apprentice or trainee under a training contract.
- 6.3 Host employers and supervisors 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.
- 6.3 The maximum penalty for a breach of this requirement is \$10,000.
- 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 and to the Minister responsible for the public sector agency (if any); and
 - b) include details of the refusal or failure in the annual report of the Commission.

SOUTH AUSTRALIAN SKILLS STANDARD

NOMINATED TRAINING ORGANISATIONS AND TRAINING PLAN

Context

A South Australian Skills Standard (Standard) for Nominated Training Organisations (NTOs) is required to provide a workable framework for parties to training contracts and their NTOs.

NTOs have requirements under the *South Australian Skills Act 2008* (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); or
- A 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.
- The employer who is party to the training contract.
- The apprentice or trainee who is party to the training contract.

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

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 Skills Standard

1. SELECTION OF AN NTO (SAS ACT, 54P)

- 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 should be the NTO for the training contract.
- 1.2 Having agreed, the employer and apprentice or trainee must obtain the acceptance of the selected RTO or higher education provider in relation to the nomination.
- 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 NTO's acceptance on their behalf.
- 1.4 An apprentice or trainee may have more than one NTO in relation to their training contract.
- 1.5 If more than one NTO is required, the NTOs must:
 - a) liaise as required in the preparation of the Training Plan;
 - b) endorse the Training Plan;
 - c) meet all obligations in relation to the training they are to deliver under the Training Plan; and
 - d) ensure all other obligations are met.
- 1.6 When lodging an application to establish a training contract, the name and contact details for each NTO for a training contract must be included in the standard form contract.

2. TRAINING PLAN (SAS ACT, 54Q)

- 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.
- 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 [WEB FORM](#) (from 1 July), and in the prescribed manner, at least five working days in advance of the 28 day deadline.
- 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 via [WEB LINK](#) (from 1 July).
- 2.4 The Training Plan is intended to record the following agreements between the parties:
 - 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;
- e) the units of competence/units of study 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;
- h) the responsibilities of the apprentice/trainee, employer and NTO, with respect to training under the training contract; and
- i) any additional expectations of the apprentice/trainee, employer or NTO that are agreed to by the parties to the training contract.

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; and
- d) the type of assessments that will be conducted.

2.6 The Training Plan must be endorsed by the employer and the apprentice or trainee, as well as additional endorsement (where appropriate) from:

- a) an apprentice's or trainee's parent or guardian, where the apprentice or trainee is under 18 and provided the apprentice or trainee's parents are party to the training contract; and
- b) a school principal (or delegate of the principal), where the Training Plan is for a school-based training contract.

2.7 Once a Training Plan has been endorsed by all parties, the NTO must notify the Commission within 28 days, via [WEB LINK](#) (from 1 July)

2.8 The Training Plan comes into effect from any commencement date specified in the document, or if no commencement date is specified, from the date the Training Plan is endorsed by all relevant parties.

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.

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.

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.

2.12 The NTO must review the Training Plan as required, including:

- a) if the qualification or accredited course that is the subject of the Training Plan is modified;
- b) upon request by the parties to the training contract; and
- c) at a minimum, every six months regardless.

2.13 A variation to the Training Plan must be endorsed by all the relevant parties, and will come into effect either from a date specified in the Training Plan, or otherwise from the date the revised Training Plan is endorsed by all relevant parties.

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, via [WEB LINK](#) (from 1 July).

3. SUBSTITUTION OF AN NTO (SAS ACT, 54T)

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 RTO or higher education provider;
- b) the employer and apprentice or trainee seek acceptance of the new RTO or higher education provider in respect of the nomination; and
- c) the RTO or higher education provider accepts the nomination and agrees to be the NTO for the apprentice or trainee.

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.

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.

3.4 Where the NTO ceases to be the NTO in relation to a training contract, it must make the Training Plan 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. All obligations outlined above remain in force for the period the NTO was listed under the training contract.

3.5 The new NTO must notify the Commission of its inclusion under the training contract within 14 days, via [WEB LINK](#) (from 1 July).

4. OBLIGATIONS FOR NTOS (SAS ACT, DIVISION 3D, REGULATIONS, CL14, 15)

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.

4.2 The NTO must notify the Commission where:

- a) the NTO becomes aware that an apprentice or trainee is not meeting the requirements of the Training Plan;
- b) the NTO becomes aware that an employer is not meeting its obligations under the training contract or Training Plan;
- c) the NTO becomes aware that it may not be able to comply with any obligations it holds under the Training Plan;
- d) the NTO ceases to be the NTO under the training contract;
- e) the name of any additional NTO's that are party of the training contract, where more than 1 NTO is listed; and
- f) if ASQA or TEQSA has made a decision in relation to the NTO that impacts its ability to fulfil its obligations under the training plan.

4.3 When notifying the Commission of any of the above matters, the NTO must include details of:

- a) the name of the employer;
- b) the name of the apprentice or trainee;
- c) the name of the NTO;
- d) the 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; and
- f) details of efforts made to engage the employer and apprentice or trainee, where the training goals are not being achieved.

4.4 The NTO for a training contract must keep such records in accordance with the ASQA requirements for RTO's, TEQSA requirements for higher education providers and the [South Australian Skills Standard on Record Keeping](#). Records must be retained for at least seven years after the completion, expiry or termination of the training contract to which the record relates.

4.5 The NTO must not refuse or fail to comply with the obligations outlined in Division 3D of the SAS Act.

4.6 The maximum penalty for non-compliance is \$5,000. The expiation fee is \$315.

4.7 The Commission may notify the Department (for Innovation and Skills), ASQA or TEQSA of any failure to comply with the obligations for NTOs set out in the SAS Act.

5. OBLIGATIONS FOR EMPLOYERS (SAS ACT, S54J)

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.

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.

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; and
- d) declare the employer to be a prohibited employer.

6. OBLIGATIONS FOR APPRENTICES AND TRAINEES (SAS ACT, S54M)

6.1 The apprentice or trainee must comply with obligations specified in the training contract or Training Plan that are applicable to them.

6.2 The apprentice or trainee must participate in the development of their Training Plan, attend training specified in the Training Plan, and contribute to the achievement of their developmental goals under the training contract or Training Plan.

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 the training contract under Section 51 of the SAS Act; and
- d) terminate the training contract under Section 51B of the SAS Act.

SOUTH AUSTRALIAN SKILLS STANDARD

RECOGNITION OF OTHER TRADE OR DECLARED VOCATION EMPLOYMENT AND TRAINING

Context

This South Australian Skills Standard relates to the assessment and recognition of a person's 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. This Skills Standard is in accordance with the requirements contained in the *South Australian Skills Act 2008* (the *SAS Act*).

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.

The recognition service is 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 at [WEB LINK](#) (from 1 July).

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

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

Governance Arrangements

Under the *SAS Act*, the Commission (or its delegate) is empowered to:

- determine whether an individual's qualifications or experience in relation to a particular trade or declared vocation (not being qualifications obtained under a

training contract) make the individual competent in that trade or declared vocation;
and

- certify to that effect.

Compliance with the Skills Standard

1. APPLICATION FOR RECOGNITION OF OTHER TRADE TRAINING (SAS Act S70A, S70B)

- 1.1. An individual 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 South Australian training contract).
- 1.2. 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 the 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.
- 1.3. An application must be made using the application form, available at [WEB LINK](#) (from 1 July), and must be accompanied by:
 - a) such supporting information and documents as are stipulated in the application form; and
 - b) the prescribed fee (see below for more information regarding prescribed fees).
- 1.4. Upon receipt of an application a committee established by the Commission for the purposes of assessing applications under Section 70A will:
 - a) assess the application; and
 - b) make a recommendation in writing to the Commission (or its delegate) that the applicant be certified as competent in the specified trade or declared vocation, or not.
- 1.5. To inform the assessment, the committee may require the applicant to:
 - a) undergo an independent competency assessment (to determine whether the applicant has acquired the skills of the relevant trade or declared vocation); and/or
 - b) undertake an examination or test (to determine whether the applicant has acquired the required knowledge of the relevant trade or declared vocation).

- 1.6. The committee will inform the applicant in writing of any competency assessments, examinations, or tests required.
- 1.7. If the report of an independent competency assessment specifies that the applicant requires further training to acquire the competencies of the relevant trade or declared vocation, the committee may determine to not make a recommendation to the Commission (or its delegate) until it is satisfied that the applicant has satisfactorily completed such training.
- 1.8. Any training undertaken to acquire the competencies of the relevant trade or declared vocation will be at the individual's expense.
- 1.9. In making its assessment, the committee must have regard to:
 - a) the length of time for which 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 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); and
 - e) the applicant's performance in any examination or test, or any independent competency assessment; and
 - f) any other matters as the committee thinks appropriate.
- 1.10. An applicant may appeal a decision made by the committee using the form available at [WEB LINK](#) (from 1 July).

2. PRESCRIBED FEES (SAS Act S70A, South Australian Skills (Fees) Notice 2021 under the SAS Act, cl 1)

- 2.1. Prescribed fees are published in the South Australian Skills (Fees) Notice 2021. Fees are payable to the Commission by the individual applying to have their skills and/or experience recognised.
- 2.2. The mechanism for paying the prescribed fee is contained in the application form.
- 2.3. The prescribed fees payable to the Commission for recognition of qualifications and/or experience in relation to a particular trade or declared vocation are:
 - a) \$500 for a first or initial assessment
 - b) \$1,000 for a competency assessment or exam
 - c) \$200 for a second or subsequent assessment

3. COMMISSION MAY DETERMINE A PERSON ADEQUATELY TRAINED (SAS Act S70B)

- 3.1. On the recommendation of the committee established by the Commission to assess applications under Section 70A of the SAS Act, or on its own motion, the Commission (or its delegate) may:
 - a) determine a person is adequately trained to pursue a specified trade or vocation; and
 - b) certify to that effect.
- 3.2. In making a determination on its own motion, the Commission (or its delegate) must have regard to the same criteria as considered by the assessment committee (outlined above).
- 3.3. The certification will be in the same manner and take the same form as that provided by the Commission to apprentices or trainees upon the successful completion of a training contract.

4. REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

- 4.1 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 SAS Act.
- 4.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 4.3 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.
- 4.4 An application to the SACAT to review a decision must be made using the online form available at [WEB LINK](#) (from 1 July).
- 4.5 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.

SOUTH AUSTRALIAN SKILLS STANDARD

PROHIBITED EMPLOYERS

Context

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.

The purpose of this Standard is to outline the conditions under which an employer may be declared by the Commission to be a prohibited employer. This South Australian Skills Standard (Standard) also outlines the conditions under which a declaration may be revoked.

The Standard applies to the Commission (including delegate(s)) and employers (including prohibited employers and those utilising hosting arrangements) and relates to the Employer Registration Standard.

This Standard should be read in conjunction with other South Australian Skills Standards and supporting information for employers of apprentices and trainees. In particular, employers should also read and ensure they understand other Standards as they relate to apprenticeships and traineeships.

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

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *South Australian Skills Act 2008* (SAS Act) for a breach of the SAS Act or the *South Australian Skills Regulations 2021* (the Regulations).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

Governance Arrangements

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

Compliance with the Skills Standard

- 1. DECLARING AN EMPLOYER PROHIBITED (SAS Act, s54B, s54G, SAS Regulation, cl 8)**
 - 1.1 The Commission may, by notice in writing and in accordance with any requirements set out in 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.

- 1.2 In determining whether or not an employer is suitable to employ an apprentice or trainee, the Commission must have regard to the following:
- 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 Act, or any other Act (whether of the State another State or Territory 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.
- 1.3 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.
- 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.
- 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.
- 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.
- 1.7 A declaration may be conditional or unconditional and may be for a stated or indefinite period.
- 1.8 A notice declaring an employer to be prohibited under Section 54B of the SAS Act 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;
 - c) if the declaration applies generally or in respect of a particular training pathway, apprentice or trainee.
- 1.9 Prohibited employers will be listed on the South Australian Skills Register including 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.

2. OBLIGATIONS FOR PROHIBITED EMPLOYERS (SAS Act, 54D, 54E)

- 2.1 A prohibited employer must not -
- a) employ, or offer to employ, a person as an apprentice or trainee; or
 - 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.
- 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.
- 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.
- 2.4 A breach of these obligations may result in a maximum penalty of \$10,000.

3. REVOCATION OF DECLARATION (SAS Act, s54C)

- 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.
- 3.2 An application must be made using the application form, available at [WEB LINK](#) (from 1 July). An application to vary or revoke a declaration or a condition of a declaration by a prohibited employer must 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 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.

4. OBLIGATIONS FOR EMPLOYERS (SAS Act, s54J)

- 4.1 An employer must not place, or permit the placement of, an apprentice or trainee under the training contract with a prohibited employer.
- 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.
- 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

5. OTHER CONDITIONS RELATED TO PROHIBITED EMPLOYERS (SAS Act, s48, 54F, 54H)

- 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.
- 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.

6. REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

- 6.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to Prohibit an Employer.
- 6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 6.3 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.
- 6.4 An application to the SACAT to review a decision must be made using the online form available at [WEB LINK](#) (from 1 July).
- 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.

Draft for Consultation

SOUTH AUSTRALIAN SKILLS STANDARD

TRANSFER OF A TRAINING CONTRACT AND SUBSTITUTION OF AN EMPLOYER UNDER A TRAINING CONTRACT (INCLUDING TRANSFER FEES)

Context

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 South Australian Skills Commission (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.

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

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *South Australian Skills Act 2008* (SAS Act) for a breach of the SAS Act or the *South Australian Skills Regulations 2021* (the Regulations).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

Governance

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

Compliance with the Skills Standard

1. TRANSFER OF TRAINING CONTRACTS BETWEEN JURISDICTIONS (SAS ACT, S48A, SAS REGULATIONS, CL7)

- 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) that 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 other state or territory;
 - d) make other appropriate arrangements.
- 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.
- 1.3 The Commission may refuse recognition of the training contract if:
- a) there is no nominated training organisation for the apprentice or trainee; or
 - b) there is no training plan relating to the training contract; or
 - c) the trade or vocation is not a declared trade or vocation under the Act or does not have an equivalent under the Act; or
 - d) the proposed employer
 - I. is not registered or has not applied for registration; or
 - II. is not operating within the scope of their registration; or
 - III. has failed to comply with a condition of their registration.
- 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 state or territory will not be enforceable until the Commission recognises it). Notification of the transfer, via a form determined by the Commission, should include:
- a) Name and contact details of the apprentice or trainee and the previous and proposed employer;
 - b) Name and contract 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).
- 1.5 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) If the training contract is recognised;

- c) the date from which it is recognised;
- d) the trade or vocation, or equivalent trade or vocation under the recognised training contract;
- e) conditions (if any) under which the training contract is agreed to be recognised.

1.6 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.

2. TRANSFER DUE TO A CHANGE OF OWNERSHIP OF BUSINESS (SAS ACT, S54MA)

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.

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

2.3 Both the former owner/employer and new owner/employer must notify the Commission 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.

2.4 Notice to the Commission 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 nominated training organisation;
- f) registration by the new owner/employer;

3. SUBSTITUTION OF AN EMPLOYER UNDER TRAINING CONTRACT AND TRANSFER FEES (SAS ACT, S54N, S54O, SAS REGULATIONS, CL13)

- 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
- 3.2 This application (in a form determined by the Commission) may be made by (and the parties to the application are):
- a) the existing/previous employer (or person on their behalf); and/or
 - b) the proposed employer (or a person on their behalf); and/or
 - c) the apprentice or trainee (or a person on their behalf).
- 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) if a request to waive the transfer fee is not made to the Commission, evidence of the transfer fee (see below for the amounts of the transfer fee) transaction or of an agreement to pay the transfer fee;
 - d) number of employees employed by the business to which the apprentice or trainee is being transferred;
 - e) if the proposed employer is seeking to have 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.
- 3.4 The Commission may invite the existing employer to provide a written submission on whether or not the application to substitute the proposed employer should be granted and may make any enquiries of any of the parties on whether the transfer of the apprentice or trainee to the new employer is appropriate in the circumstances.

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

- 3.5 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.

Consideration of an application to substitute an employer by application

- 3.6 The Commission is required to consider an application to substitute an employer against the grounds listed under Section 54N(3) of the SAS Act, namely:
- a) the proposed employer consents to the substitution, consent must be genuine and freely given and be given in writing;
 - 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 employer has applied for registration, and the application has yet to be determined and the Commission is satisfied he or she is 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.
 - i. The proposed employer may seek a waiver of the transfer fee and should indicate this as soon as practicable following the making of the application to substitute the employer. See *Waiver of the transfer fee* below for more information.
 - ii. The Commission may request evidence from the proposed employer of the transfer fee being paid; or of an agreement to pay the transfer fee.
- e) The Commission is satisfied that it is appropriate in all the circumstances to grant the application.
 - o 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.

Existing employer may provide a submission on the application

3.7 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.

3.8 The Commission should, where reasonably practicable to do so, take into account any submission provided by the existing employer in consideration of the application. However, a submission by the existing employer will not be determinative of the outcome.

4. NOTICE OF THE COMMISSION'S DECISION

4.1 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) Unless waived or reduced, the transfer fee payable by the proposed employer to the previous employer.
- c) If applicable, a condition that confirmation of the substitution is subject to an application to register the proposed employer being approved.

4.2 If the application is unsuccessful the Commission will advise the parties of this outcome and the reason/s for the decision.

5. TRANSFER FEE

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

Small business (20 or fewer employees)

First year of training contract	\$1,600
Second year of training contract	\$3,200
Third year of training contract	\$4,800
Fourth year of training contract	\$6,400

Medium to large business (21 or more employees)

First year of training contract	\$2,000
Second year of training contract	\$4,000
Third year of training contract	\$6,000
Fourth year of training contract	\$8,000

5.2 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.

Transacting the transfer fee (SAS Regulations, cl12(e))

5.3 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.

5.4 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.

Disputes relating to payment of the transfer fee (SAS Act, s54O(3))

5.5 Except where an application to waive the transfer fee has been successful, the Commission will advise the parties of the amount to be paid by a proposed employer to the existing employer in the notice of decision. If the Commission decides to reduce the transfer fee, the parties will be advised of the reduced fee.

5.6 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.

Waiver of the transfer fee (SAS Regulations, cl13)

5.7 The transfer fee payable by a proposed employer to the existing employer may be waived in full or in part in certain prescribed circumstances:

- a) The transfer is mutually agreed by the proposed employer and the existing employer; or
- 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; or
- 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; and
- d) It is appropriate to do so in the circumstances.

5.8 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.

5.9 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 it is appropriate to grant a waiver in the circumstance.

6. REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

6.1 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.

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

6.3 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.

6.4 An application to the SACAT to review a decision must be made using the online form available at [WEB LINK](#) (from 1 July).

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.

South Australian Skills Standard

Declaration of Trades and Vocations

Context

In South Australia, occupations must be declared a trade or a vocation for the purposes of 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 vocation, and the obligations on applicants who are looking to have their application assessed by the South Australian Skills Commission (the Commission).

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *SAS Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Governance Arrangements

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 at <https://providers.skills.sa.gov.au/Resources/Forms-and-publications/Apprenticeships-and-Traineeships?EntryId=896>

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

Compliance with the Skills Standard

1. GAZETTING OF DECLARED TRADES AND VOCATIONS (SAS Act, s6, s45, SAS Regulation, cl 4)

1.1 Under Section 6 of the *Act*, the Minister for Innovation and Skills (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.

1.2A 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; and
- c) contain any information required by the *Regulations* (see next section).

1.3A 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; or
- b) specified skill sets; or
- c) higher qualifications; or
- d) such other matters as the Minister thinks appropriate.

1.4 Apprenticeships and traineeships are established by the Commission to link declared trades and vocations to relevant Australian Quality Framework (AQF) approved primary qualifications. Part 4 of the *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; and
 - II. the qualifications available for a person in the trade or declared vocation; and
 - III. any other condition considered necessary by the Commission.

1.5 Under Section 45(3), the Commission may, by further notice in the Gazette, vary or revoke a notice under Section 45(2).

1.6 Under Section 45A of the *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.

1.7 Under Section 45B of the *Act*, training in a declared vocation may occur under a training contract.

2. APPLICATION PROCESS

2.1 The application must be in the approved form and contain all the requested information. For the purposes of this Standard, the Commission has approved a

proforma to be used for applications. A copy of the proforma is attached to this Standard.

2.2 The applicant is responsible for:

- a) Developing the application for the declaration of 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 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 by the subcommittee. 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 of the the subcommittee to discuss the amendments. The process by which an application, or responses to the subcommittee's questions should be re-submitted, will be determined by the subcommittee on a case-by-case basis.

2.3 Upon receipt of all requested information, the subcommittee of the Commission will recommend whether to approve the application or not to the Commission, who will make a determination.

2.4 In addition to applicant-driven applications, the Commission may of its own volition elect to declare occupations as trades or declared vocations.

3. INFORMATION REQUIRED

3.1 In the application, the applicant must include the proposed:

- a) **Occupational title of the trade or vocation** – The applicant should use occupational titles listed on the Australian Apprenticeships Training Information Services (AATIS) website at www.aatinfo.com.au. 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 on the AATIS website, 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 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 the majority of instances, this 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 Australian Qualification Framework (AQF)-aligned qualification. The qualification must be a nationally recognised qualification taken from a training package, be approved by the Australian Skills Quality Authority (ASQA) as a VET accredited course. Applicants can check available training package qualifications and VET accredited courses through the National Register of VET at training.gov.au/Home/Tga. Applicants seeking to develop an accredited course to align to a trade or vocation can request assistance from the Commission via [www.tasc.sa.gov.au/Micro-credentials#COGNITO FORM](http://www.tasc.sa.gov.au/Micro-credentials#COGNITO_FORM)
- e) **Industrial arrangements** – The application should include the relevant awards or other industrial arrangements, including enterprise level agreements, where known.
- 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 the [South Australian Skills Standard for Probationary Periods and Standard Conditions for Training Contracts](#).
- g) **Probationary period for a training contract** – Standard probationary periods are 30, 60 and 90 days, depending on the nominal term of the training contract. For more information, applicants are referred to the [South Australian Skills Standard for Probationary Periods and Standard Conditions for Training Contracts](#). 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 the [South Australian Skills Standard for 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.

4. CONSULTATION AND EVIDENCE OF DEMAND AND SUPPORT FOR THE TRADE OR VOCATION

4.1 The applicant must consult with relevant state and/or national stakeholders when developing the application, in order to provide evidence of:

- a) **Industry demand in South Australia** – where possible, an estimate of annual commencements in the proposed trade or vocation should be included.
- b) **Broad support for the trade or vocation** – any alternative or dissenting views should be included in the application for the Commission's consideration.

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

4.3 Evidence to support the application should include submissions from the relevant Industry Skills Council (where applicable), industry and employer associations, and employee representatives.

4.4 All submissions must be signed by the Chair, Chief Executive, or other delegate of the organisation, as approved by the Commission.

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:
 - I. Occupational title
 - II. Trade or declared vocation status
 - III. Job or occupation, or class of job or occupation, to which the trade or vocation relates
 - IV. Training
 - V. Nominal term
 - VI. Probationary period
 - VII. Level of supervision
 - VIII. Supervisor requirements
 - IX. Entry Requirements
 - X. Conditions
 - XI. Identified pathways

5. MAINTENANCE AND REVIEW

5.1 Maintenance of the TAP Schedule will be undertaken by the Commission.

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.

5.3 Where an updated qualification is deemed by ASQA (or equivalent regulator) 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.

5.4 The Commission will review all apprenticeships and traineeships listed on the TAP Schedule as required.

Draft for Consultation

SOUTH AUSTRALIAN SKILLS STANDARD

TRAINING CONTRACT APPROVAL

Context

In accordance with the *South Australian Skills Act 2008* (the *SAS Act*) training contracts are to be approved by the South Australian Skills Commission (the Commission). This South Australian Skills Standard relates to the approval of training contracts to train apprentices and trainees under the *SAS Act*.

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *SAS Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

TRANSITIONAL ARRANGEMENTS

An application for Training Contract approval that has been submitted to the Commission but not yet approved by the Commission:

- under the *Training and Skills Development Act 2008*; and
- before 1 July 2021

will receive a grace period of [TBD] for the Commission to approve/decline the application and to notify the parties under the *SAS Act*.

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) Training contracts.

Australian Apprenticeship Support Network (AASN) 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 Skills Standard

1. TRAINING UNDER TRAINING CONTRACTS (*SAS Act*, S45A, S45B S46)

- 1.1 Under the *SAS Act*, an employer must not undertake to train a person in a trade except under a training contract.

- 1.2 However, 1.1 does not apply in relation to the further training or re-training of a person who:
- a) has 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.
- 1.3 An employer who wishes to train an employee in a declared vocation can choose whether to enter in a Training contract or not.
- 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; and
 - c) complying with any other condition of the registration.
- 1.5 The maximum penalty for a breach of the requirements under 1.1 and 1.4 is \$5,000, and the expiation fee is \$315.
- 1.6 Two or more employers may, with the approval of the Commission, enter into a training contract with the same apprentice or trainee.

2. TRAINING CONTRACT APPLICATIONS (SAS Act, S46, S48)

- 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; or
 - b) it is intended to be a training contract.
- 2.2 The maximum penalty for a breach of the requirement under 2.1 is \$5,000, and the expiation fee is \$315.
- 2.3 A training contract application must utilise the [standard form training contract](#) and contain the following conditions:
- a) a condition that the apprentice or trainee will be employed by the employer party to the contract in accordance with the applicable award or industrial agreement;
 - b) a condition specifying the probationary period for a contract for the relevant trade or declared vocation;
 - c) the standard conditions for a 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 employer, the apprentice or trainee and a Nominated Training Organisation (NTO) chosen jointly by the employer and the apprentice or trainee; and
 - e) any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the registered training provider.

- 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.
- 2.5 An AASN provider may submit an application on behalf of an employer.
- 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.

3. TRAINING CONTRACT APPROVAL (SAS Act S48, SAS Regulations CI 6)

- 3.1 The Commission must, on determining an application:
 - a) notify the employer and apprentice or trainee in writing of the Commission's determination;
 - b) if the Commission refuses to approve an agreement—the reasons for the refusal; and
 - c) if the Commission approves an agreement as a training contract—the date of approval of the agreement.
- 3.2 The Commission must refuse to approve an agreement as 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; or
 - 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.
- 3.3 The Commission may refuse to approve an agreement as a training contract for any other reason the Commission considers appropriate, including where the agreement:
 - a) is not in the form of the standard form contract;
 - b) 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; or
 - 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.

- 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.
- 3.5 The maximum penalty for a breach of the requirement under 3.4 is \$5,000, and the expiation fee is \$315.

4. TRAINING CONTRACT OBLIGATIONS ON THE EMPLOYER (SAS ACT S53, S54J & S54L, SAS Regulation CI11)

- 4.1 The obligations of the employer under a training contract are to:
- a) employ and train the apprentice/trainee as agreed in the training contract and training plan;
 - b) provide the relevant wages and conditions to the apprentice/trainee employed to complete the training contract;
 - c) provide appropriate facilities and expertise to assist in the training of the apprentice/trainee in accordance with the requirements of the training plan;
 - d) ensure the apprentice and trainee receives on-the-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 the [South Australian Skills Standard for Workplace Supervision of Apprentices and Trainees](#);
 - g) work with an NTO) and the apprentice/trainee to ensure that the training plan is complied with, training records are kept up to date, and progress is monitored and reviewed, in accordance with the [South Australian Skills Standard for Nominated Training Organisations](#);
 - h) notify the Commission of any material change to the training contract, in accordance with the SAS Act; and
 - 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.
- 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 South Australian Skills 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 not place, or permit the placement of, an apprentice or trainee under the training contract with a prohibited employer; and
 - d) the employer must not, 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.
- 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 nominated training organisation under a training plan;
 - c) prejudice the employment of the apprentice or trainee employment, 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; or
 - e) the employer must comply with any other obligation specified in the training contract or training plan that is applicable to the employer.
- 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; or
 - d) declare the employer to be a prohibited employer.
- 4.5 The maximum penalty for failure to comply with a compliance notice is \$5,000, and the expiation fee is \$315.
- 4.6 An employer must keep a record of:
- a) the training contract and training plan;
 - b) on the job training and competency assessments;
 - c) records of an apprentice or trainee's attendance at the workplace and at training, which must specify whether the training occurred at the workplace or another specified location;
 - d) costs incurred by the employer and the apprentice or trainee in relation to the training; and
1. records of each payment of a transfer fee under section 54O of the SAS Act
- e) for at least seven years after the completion, expiry, or termination of the training contract to which the record relates, in accordance with the [South Australian Skills Standard on Record Keeping](#).
- 4.7 The maximum penalty for a breach of the requirement under 4.6 is \$5,000, and the expiation fee is \$315.

5. TRAINING CONTRACT OBLIGATIONS ON THE APPRENTICE OR TRAINEE (SAS Act S46, S54M)

- 5.1 An apprentice or trainee, in relation to a training contract, must:
- a) comply with the South Australian Skills 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, participate in the development of their training plan; and
 - d) contribute to the attainment of their development goals under the training contract and training plan.

- 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; or
 - d) terminate the training contract.

6. REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

- 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.
- 6.2 An applicant must apply to the SACAT within 28 days of receiving notice of the relevant decision.
- 6.3 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.
- 6.4 An application to the SACAT to review a decision must be made using the online form available at [WEB LINK](#) (from 1 July).
- 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.

SOUTH AUSTRALIAN SKILLS STANDARD

TRAINING CONTRACT CONDITIONS (INCLUDING THE STANDARD PROBATIONARY PERIOD AND EXTENDING THE PROBATIONARY PERIOD)

Context

This South Australian Skills 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*).

Compliance with this Standard is required, and a failure to comply with a provision of this Standard may result in compliance action being taken against you under the *Act* for a breach of the *SAS Act* or the *South Australian Skills Regulations 2021* (the *Regulations*).

Administrative Matters

This Standard comes into force on 1 July 2021 and will be reviewed on [DATE].

Governance

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

The Commission, under Section 45(2) of the *SAS Act*, may determine “standard conditions” for specified trades and declared vocations, through notice in the Gazette. These standard conditions, which form part of the standard form contract, include:

- the term (duration in months) of the training contract; and
- the qualifications available for a person in the trade or declared vocation; and
- any other condition considered necessary by the Commission.

See [South Australian Skills Standard – Declaration of Trades and Vocations](#) for more information on these standard conditions.

Further, the *SAS Act* under s46(6) provides that a standard form training contract must be in the required form and contain the following additional conditions:

- 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;
- the probationary period for the relevant trade or declared vocation;
- the standard conditions for the relevant trade or declared vocation;
- 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 nominated training provider.

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.

The Commission may vary hours of training under a training contract to reflect a part-time or full-time training arrangement.

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.

Compliance with the Skills Standard

Employers and their apprentices and trainees must comply with the standard conditions of the training contract. However, they may seek to vary these in prescribed circumstances.

1 CONTRACT VARIATION TO FULL-TIME AND PART-TIME TRAINING ARRANGEMENTS (SAS Act, s50)

1.1 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; or
- 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.

1.2 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 [WEB LINK](#) (from 1 July).

1.3 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.

2 SCHOOL-BASED APPRENTICESHIPS OR TRAINEESHIPS (SAS Act, s50)

2.1 Parties to a school-based apprenticeship or traineeship, by agreement, may apply to the Commission approve for approval of a variation to the training contract:

- a) from part-time to full-time training; or
- b) from full-time to part-time training,

commencing when the school-based apprentice or trainee completes school.

- 2.2 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; or
 - 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.

3 AVERAGING OF HOURS (SAS Act, ss50, 50L, Regulations, cl15)

- 3.1 Parties to a (full-time or part-time) training contract may agree to average the hours worked under the training contract.
- 3.2 Hours worked under a **standard apprenticeship or traineeship** may be averaged over a four-week cycle.
- 3.3 Hours worked under a **school-based apprenticeship or traineeship** may be averaged over a three-month cycle.
- 3.4 An agreement to average the training hours over a particular work cycle must be in advance of the training commencing (in addition to the rostered hours of employment and training for the period over which the averaging applies).
- 3.5 The agreed arrangement must:
- a) provide a regular pattern of on and off-job training that enables both on 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 his or her 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:
 - rostering;
 - consultation; and
 - notice periods
- 3.6 In accordance with the [South Australian Skills Standard on Record Keeping](#), an employer must maintain records of an apprentice or trainee's attendance at the workplace and at training.

3.7 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.

3.8 The maximum penalty for a breach of this requirement is \$5,000, and the expiation fee is \$315.

4 MINIMUM HOURS UNDER PART-TIME TRAINING CONTRACTS

4.1 As published by notice in the South Australian Government Gazette ([WEBLINK](#) from 1 July), an apprenticeship or traineeship may be undertaken on a full or time-part basis but cannot be undertaken on a casual basis.

4.2 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.

4.3 The agreed arrangement must be consistent with the award or industrial agreement to which the apprenticeship or traineeship relates.

5 STANDARD PROBATIONARY PERIODS UNDER TRAINING CONTRACTS (SAS Act, s46, Regulations, cl13)

5.1 The Commission, by notice in the Gazette, has determined the standard probationary period for standard form contracts. The standard (or nominal) probationary period for a standard form contract:

- a) up to 12 months' duration is 30 days;
- b) up to and including 24 months' duration is 60 days; and
- c) greater than 24 months' duration is 90 days.

5.2 These standard probationary periods apply to full-time and part-time apprenticeships and traineeships.

5.3 The Commission by further Gazetted notice may vary the above standard probationary periods.

6 APPLICATION TO EXTEND THE STANDARD PROBATIONARY PERIOD FOR A TRAINING CONTRACT (SAS Act, s49A)

6.1 A party to a training contract may apply to the Commission to vary the contract to extend the probationary period for that training contract.

6.2 The application form is available at [WEB LINK](#) (from 1 July).

6.3 An application to extend the probationary period:

- a) May be made by the employer, the apprentice or trainee, or both
 - o 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.

- a) May not be for a period in excess of six months in total, or 25% of the term of the training contract, whichever is the lesser.
- b) 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.
- c) 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.

6.4 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; and
- b) if the application is declined, the reason/s and process for review.

7 Apprentice or trainee is under 18 years of age

7.1 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 parents are party to the training contract, the Commission must, if practicable, consult the apprentice or trainee's parent or guardian.

8 REVIEW OF DECISIONS BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SAS Act, S70F)

8.1 The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review a decision of the Commission to refuse to extend the probationary period for a training contract under Section 49A of the SAS Act.

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

8.3 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.

8.4 An application to the SACAT to review a decision must be made using the online form available at [WEB LINK](#) (from 1 July).

8.5 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.

9 VARIATION BY THE COMMISSION OF THE PROBATIONARY PERIOD FOR A CLASS OF TRAINING CONTRACTS (SAS Act, s49A(3))

- 9.1 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.
- 9.2 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; and
 - 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.