



Training and Skills Development (Miscellaneous) Amendment Bill 2020

Explanation of changes - overview

Introduction

Training and skills development underpin economic growth and industry diversification and provide people with the lifelong skills to share in economic wealth through employment.

The *Training and Skills Development Act 2008* (Act) is being updated to improve the regulation of apprenticeships and traineeships and to assist employers and trainees to engage in training and skills development that meets the needs of modern workplaces and the changing nature of work.

Since its introduction in 2008, the Act has regulated users of the vocational education and training system, including apprentices, trainees, employers and training organisations without being updated to accommodate a modern training system. The training and skills landscape has changed and employers value flexibility in the way training is delivered, and apprentices and trainees want industry-relevant skills, including digital competencies, delivered flexibly to equip them for occupational or career changes.

The *Training and Skills Development (Miscellaneous) Amendment Bill 2020* (Bill) is informed by stakeholder input into a review of the Act and the Training and Skills Commission's *Future-proofing the South Australian Apprenticeship and Traineeship System* report and accompanying recommendations.

The draft Bill introduces revised objects, including:

- strengthening the state's economic base by providing a modern, skilled workforce
- promoting partnerships within government, industry and other enterprises
- supporting South Australians to access and complete the skills training they need to get a job and contribute to the state's economy and their own prosperity
- establishing a simple, streamlined apprenticeship and traineeship system featuring flexible, industry-endorsed approaches to training and skills development
- recognising the importance of the vocational education and training (VET) system, including adult community education (ACE)
- facilitating lifelong learning
- promoting equity in training and skills development.

The key reforms introduced by the Bill include:

- establishing the South Australian Skills Commission, supported by the South Australian Skills Commissioner (building on the success of the Industry Skills Councils)
- introducing an expanded scope of trades and declared vocations
- streamlining employer registration and introducing a new category of prohibited employer
- introducing a fee payable by employers on the transfer of a training contract
- balancing and substantiating the obligations of parties to training contracts
- recognising other forms of trade training.

Discussion of changes

A simplified Act that is easier to use

The Bill improves the structure and clarity of the Act, to assist stakeholders to meet the obligations the Act imposes on them. In this context, improvements are made to:

- the Act's objects and guiding principles
- the fee and penalty structure, linked to more logical use of compliance notices
- reducing the amount of prescription under the Act, including by moving elements of the Act to regulations and guidelines
- removing redundant and inconsistent definitions and terminology
- reflect the referral of state powers relating to higher education, VET quality and supervision of registered training organisations to the Commonwealth in 2012.

The South Australian Skills Commission is established

The South Australian Skills Commission (Commission) is established. This role is responsible to the South Australian Skills Commissioner (Commissioner), a new office created by the Bill. The Commission will replace and combine the roles of the Training and Skills Commission and the Training Advocate (streamlining the training system and removing confusion and duplication). The Commissioner supports the work of the Commission but is not bound by its recommendations.

The Commission is subject to direction by the Minister (but not to make a particular finding or recommendation).

The Commission consists of the Commissioner and up to 10 other members appointed by the Minister. Members must have the abilities and experience required for the effective performance of the Commission's functions.

The functions of the Commission are to:

- advise the Minister on workforce development, strategies for developing VET and ACE, funding needs and South Australia's role in an integrated national system
- promote the development of investment, equity and participation in, and access to, VET and ACE, including expenditure of public money
- regulate apprenticeships and traineeships
- prepare South Australian Skills Guidelines
- assist in settlement of disputes between parties to training contracts
- assist in conciliation or advocacy services in disputes, including providing advocacy services before the South Australian Employment Tribunal (SAET)
- enter reciprocal arrangements with appropriate bodies for the recognition of education and training
- promote pathways between secondary school, VET, ACE and the higher education sectors
- monitor the administration and operation of the Act.

The South Australian Skills Commissioner is established

The Bill establishes the South Australian Skills Commissioner. This role is appointed by the Governor for a term up to five years and may be renewed for up to two consecutive terms.

The Commissioner is subject to direction by the Minister but cannot be directed to make a particular finding or recommendation. Any such direction must be published in an annual report.

The Commissioner is subject to the standard conditions of appointment for statutory appointments. In addition to supporting the operations of the Commission, the functions of the Commissioner are to:

- advise and assist the Minister in relation to the Minister's functions and further the objects of the Act
- carry out functions conferred on the Commissioner under the Act or other legislation
- provide reports before Parliament.

Pathways and declaration of trades and declared vocations

Under the Bill the Minister may, on the recommendation of the Commission, declare an occupation to be a trade or declared vocation. This power expands the scope, in addition to primary qualifications, to include:

- pre-apprenticeships
- specified skill sets
- higher qualifications
- other matters the Minister thinks appropriate.

Streamlined employer registration

The Bill streamlines provisions under the current Act relating to employer registration. As a result of changes introduced by the Bill, the Commission must register an employer if:

- the employer is not a prohibited employer
- the application to register satisfies any requirements under regulations or guidelines
- it is appropriate to register the employer.

The Commission will continue to have the power to impose restrictions on registration in appropriate circumstances.

Registration may be renewed after five years in a matter determined by the Commission, and the Commission may vary, suspend or cancel registration with 28 days' notice unless an apprentice or trainee employed is at imminent risk of harm; and it is reasonably necessary or appropriate to suspend the registration of the employer in order to manage that risk.

Prohibited employers

Under changes introduced by the Bill, the Commission may declare an employer to be a prohibited employer, and in making such a declaration, must have regard to:

- the employer's facilities, range of work, supervision and training required for the apprenticeship or traineeship
- the employer's record in delivering training to apprentices or trainees
- the behaviour of the employer or employees towards apprentices and trainees
- a contravention of the Act, or any other Act related to employment
- criminal history of the employer
- whether the employer is a fit and proper person to employ an apprentice or trainee.

A declaration may be conditional or unconditional, for a stated or indefinite period and may be varied or revoked on the application of the employer the subject of the declaration.

The effect of a declaration is that a prohibited employer must not employ or offer to employ or train an apprentice or trainee, nor permit an apprentice or trainee to be placed with a host employer.

A prohibited employer (or one subject to a conditional declaration) may not make a false representation relating to their status as a prohibited employer.

The Commission may revoke a declaration on the application by the employer or on its own motion, and the South Australian Civil and Administrative Tribunal (SACAT) may review a decision of the Commission to declare a person a prohibited employer.

Transfer fee

The Bill introduces a transfer fee payable from an employer to another employer when a training contract is transferred from the former to the latter. Such transfer (or substitution) must be approved by the Commission, which can consider the submissions of the first employer in relation to the proposed transfer of the apprenticeship or traineeship.

An employer or employers of a specified class subject to a transfer fee can be exempt from the fee by regulation.

The amount of the fee is based on the size of business, and small businesses (with fewer than 20 employees) pay a lower fee. The amount of the fee will be specified under regulation and will vary based on the number of years served by the apprentice or trainee in their current apprenticeship or traineeship.

Balance of obligations of parties to training contracts

The Bill places a stronger focus on the obligations of parties to training contracts.

In particular, employers must:

- comply with the South Australian Skills Guidelines
- permit apprentices and trainees to carry out obligations under the training contract and training plan
- not place an apprentice or trainee with a prohibited employer or an employer who is not registered
- not prevent an apprentice or trainee from participating in required training, or prejudice or disadvantage an apprentice or trainee because of training, or discourage participation in training.

The Commission, in relation to a breach of these obligations, may issue a written warning; vary, suspend or cancel registration; issue a compliance notice; or declare the employer a prohibited employer.

Apprentices must:

- comply with the South Australian training guidelines
- comply with obligations specified in the training contract or training plan
- participate in the development of their training plan and attainment of development goals.

In relation to an apprentice or trainee's breach of any of the above, the Commission may issue a warning, require parties to attend conciliation, or suspend or terminate the training contract.

Nominated training organisations

The Bill improves clarity around the role of registered training organisations (RTOs), which are key to the success of apprenticeships and traineeships.

In this context, the Bill:

- prescribes a nominated training organisation (NTO, an RTO or a recognised higher education provider), which must be agreed by the employer and apprentice or trainee
- ensures an apprentice or trainee may have more than one NTO at any time.

NTOs have obligations to:

- comply with South Australian Skills Guidelines
- comply with the obligations in the training plan
- ensure the training required is provided in accordance with the training plan
- notify the Commission if the apprentice or trainee is not meeting goals in the training plan
- notify the Commission if it cannot comply with any obligations, or it ceases to be the NTO.

Parties to a training contract may substitute the NTO for a different NTO.

Recognition of other trade training

The Bill provides a clearer framework for recognition of qualifications or experience in relation to a trade or vocation outside of a training contract.

In relation to this, the Commission may:

- require an examination, test or independent competency assessment or seek expert advice
- determine an applicant is adequately trained and issue a certificate of proficiency.

In making a determination, the Commission must consider work history, training received, qualifications held, expert advice (if sought), and an applicant's performance in an exam, test or assessment.

South Australian Employment Tribunal (SAET)

The Bill empowers the SAET to order an employer to pay another employer specified costs associated with the early termination of a training contract where it occurs partly or wholly due to a financial or other inducement or reward.

The Bill continues rights of parties to proceedings in the SAET to be represented by a member of a registered association acting in the course of employment with the association; or a person appointed by the Commission.

Review of decisions by the South Australian Civil and Administrative Tribunal (SACAT)

SACAT has jurisdiction to review certain decisions of the Commission, including:

- decisions to declare prohibited employers
- a refusal of registration or renewal, imposition of conditions, or to vary, suspend or cancel a registration of an employer
- refusal of an application to substitute an employer
- refusal of an application for recognition of other trade training.

Applications must be made within 20 days of notice of the relevant decision

Additional reforms:

The Bill:

- places a stronger emphasis on the use of conciliation and mediation to assist parties to a training contract to avoid costly disputes that undermine apprenticeships and traineeships
- adopts a stronger framework around the development and use of training plans for apprentices and trainees, and details responsibilities of the parties to the training contract and nominated RTOs in relation to the training plan
- amends the Act to permit a party to a training contract to apply to extend the probationary period for an apprenticeships or traineeship, to a maximum total period of six months.