



# Training and Skills Development (Miscellaneous) Amendment Bill 2020

## Extended Explanation of Changes

### Outline

The purpose of the *Training and Skills Development (Miscellaneous) Amendment Bill 2020* (Bill) is to introduce important updates to the *Training and Skills Development Act 2008* (Act), the principal Act in relation to the regulation of apprenticeships and traineeships, and related matters.

The Bill is the result of extensive consultation with employers, training providers, apprentices and trainees, employees and government. The reforms it introduces aim to deliver a more responsive training system.

Since the current Act commenced operation in 2008, the workforce development needs of the state, and the associated training and skills landscape, has changed significantly. We have seen changes to industry structures, the nature of work and the tools and technologies used in the workplace – particularly as Industry 4.0 is rapidly transforming how businesses operate. The training system needs to be flexible and responsive both in relation to the kinds of skills that are required and the way that training is accessed and delivered.

The Bill relies on a number of regulations for its operation, for example, in relation to the development of training plans. Several clauses under the Bill also link to guidelines (South Australian Skills Guidelines) that provide greater direction for implementing elements of the Bill, for example, in relation to supervision ratios. Regulations and guidelines to support the new Act will be provided for public comment at a later date.

This document provides a detailed description of the key clauses in the Bill. Minor, technical and consequential amendments in other legislation are not covered by this document.

### Explanation of key clauses

#### Clause 1 – Short title

Clause 1 provides the short title of the Bill.

#### Clause 2 – Commencement

Clause 2 establishes that the Act will commence on a day to be fixed by proclamation.

#### Clause 4 – Amendment of long title

Clause 4 amends the long title of the Act to remove reference to higher education (a matter now regulated under Commonwealth laws); and refer to the establishment of a new entity, the South Australian Skills Commission (SASC), which streamlines and combines the functions of the South Australian Training and Skills Commission (TaSC) and the South Australian Training Advocate.

#### Clause 6 – Guiding principles and objects of Act

Clause 6 amends the objects under the current Act to better reflect contemporary values underpinning vocational education and Training (VET), apprenticeships and traineeships and Adult Community Education (ACE), and other forms of lifelong learning. The revised high-level objects include:

- strengthening the state's economic base by providing a modern, skilled workforce that meets the current and future needs of industry, government and the community
- promoting partnerships within government, industry and other enterprises for the purpose of training and skills development for the state's workforce
- 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 VET system, including ACE
- facilitating lifelong learning and supporting South Australians who change careers or wish to improve their skills
  
- promoting equity in training and skills development (including access to such development).

#### Clause 7 – Interpretation

Clause 7 removes redundant definitions and inserts new definitions to give effect to the Act, including:

- inserting new definitions for a “certificate of proficiency” and a “prohibited employer”
- a new definition of a “host employment arrangement”
- renaming and formalising guidelines developed by the new SASC as “South Australian Skills Guidelines”
- clarifying that a “qualification” means a vocational education and training (VET) qualification under the *National Vocational Education and Training Act 2011* (Cth).
- inserting a definition of a “training plan”, to reflect the Bill’s increased emphasis on training plans.

### **Clause 8 - Declarations relating to universities and higher education**

This clause removes the Minister's power to declare that an institution is a self-accrediting higher education institution. However, the Minister's power to declare that an institution is a university, university college or a specialised university of a specified kind; or an overseas higher education authorised to offer non AQF qualifications to the state is retained. This will maintain the state's ability to establish a new university (but not deal with matters of regulation, including quality of standards) and is consistent with Crown Solicitor's Office advice.

### **Clause 9 – Declarations of trades and declared vocations**

Clause 9 amends section 6 of the current Act to provide greater detail on the declaration of trades and declared vocations process (without changing the overall ambit of the Minister's powers in this regard). It specifies that the Minister may, on recommendation of the newly-established South Australian Skills Commission (SASC), declare an occupation to be a trade (apprenticeship) or declared vocation (traineeship) through Gazetted notice, which identifies a job or occupation, or class of job or occupation to which the trade or vocation relates and relevant pathways to the trade or vocation.

The clause permits a relevant pathway to a trade or vocation, in addition to the primary qualification relating to the trade or qualification to include:

- pre-apprenticeships
- specified skill-sets
- higher qualifications in a specified area in response to changing requirements of the trade or vocation
- matters the Minister considers appropriate.

#### *Example*

*Following an industry review, a project proponent identified a gap in the skills required to undertake a new work process used more frequently within the industry. The proponent consulted with stakeholders on the skills required to fill the gap and developed a new traineeship pathway, aligned to the Certificate II recognised in the industry. This in turn was considered by the SASC, which declared the traineeship pathway.*

### **Clause 10 – Interaction with other Acts and awards**

Clause 10 inserts a section that replaces section 69 of the current Act to ensure that instruments made under the Act, including regulations, prevail to the extent of any inconsistency with the *Fair Work Act 1994* (SA) or similar Act. The new clause retains the current stipulation that a requirement under an award or determination, enterprise agreement or industrial agreement to employ apprentices or trainees in preference to junior employees is valid.

## Clause 11 – Role of the Minister

Clause 11:

- ascribes to the Minister the functions the Bill incorporates into the new Act (for example, to facilitate conciliation and advocacy services previously performed by the Training Advocate)
- retains functions assigned to the Minister under the current Act (for example, to manage and promote the state’s system of VET and adult community education)
- removes functions no longer relevant based on the referral of certain powers to the Commonwealth Government (for example, managing the state’s system of higher education, and regulating the provision of public and private training)
- includes the Minister’s functions in relation to VET and international education
- aligns the Minister’s functions to those carried out under delegation by the Department for Innovation and Skills (for example, to administer the state’s apprenticeship and traineeship system), and makes such powers delegable to the South Australian Skills Commissioner, or another person occupying a specified office (for example, an officer of the Department).

## Establishment of the South Australian Skills Commission and South Australian Skills Commissioner

The Bill repeals Part 3 of the current Act, which contains powers relating to the regulation and accreditation of training providers and courses that were referred to the Commonwealth in 2012, and replaces this with new sections to establish the South Australian Skills Commission (SASC).

Clause 11 establishes the SASC, a new body, and office holder, the South Australian Skills Commissioner (Commissioner); and enables the appointment of an Acting Commissioner.

The Bill determines that the Commissioner is appointed by the Governor for a term of up to five years, renewable for a maximum of two terms.

The SASC amalgamates the functions of the current TaSC and the Training Advocate.

The Commissioner’s functions are to:

- advise and assist the Minister in relation to the Minister's functions under the Act
- further the objects of the Act
- carry out functions conferred on the Commissioner under the Act or other legislation
- report before 31 March of each year to the Minister on the performance of the Commissioner’s functions.

The Bill determines that the SASC comprises the Commissioner and up to 10 other persons who, in the Minister's opinion, together have the abilities and experience required for the effective performance of the SASC's functions. The model will build on the success of the eight Industry Skills Councils established to inform government's training objectives and investment.

Members of the SASC are appointed for a term not exceeding two years and may be reappointed for a further term(s). The Bill incorporates further sections relating to SASC members' terms and conditions of membership, remuneration and procedures.

Consistent with the new membership structure of the SASC, the Bill stipulates that a quorum of the SASC is constituted by half the number of members plus one.

### **Functions of the Commission**

The Bill resolves weaknesses in the structures underpinning governance of the state's training system identified through various reviews. In summary, duplication of roles and functions of the TaSC, Training Advocate and the Department is minimised under the model introduced by the Bill through combining and rationalising the roles and functions of the respective bodies established by the current Act.

The powers of the SASC are to:

- advise the Minister on matters relating to the development, funding, quality and performance of VET and ACE
- regulate apprenticeships and traineeships
- assist in the settlement of disputes (including, where appropriate, by providing support in relation to advocacy and conciliation services, described in more detail below)
- promote the development of investment, equity and participation in, and access to, VET and ACE
- advise the Minister on:
  - strategies and priorities for workforce development in the state, with the aim of supporting employment growth and investment in the state (including the recognition of skills and qualifications gained outside of Australia)
  - strategies for the development of VET and ACE in the state
  - funding needs for VET and ACE
  - the state's role as part of an integrated national system of education and training
- monitor and report on the state of VET and ACE in the state, including the expenditure of public money in these areas
- prepare the South Australian Skills Guidelines and other guidelines for the purposes of the Act
- promote pathways between the secondary school, VET, ACE, and higher education sectors

- assist in the provision of conciliation or advocacy services in disputes relating to apprenticeships and traineeships, including by providing advocacy services for parties in proceedings before the South Australian Employment Tribunal (SAET)
- enter into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training
- monitor, and make recommendations to the Minister on, the administration and operation of the Act
- carry out any such functions assigned to the Commission by the Minister.

The SASC, with the Minister's approval, may delegate its functions to a specified person or body and may establish committees to advise it or carry out its functions. This replicates powers residing with the TaSC under the current Act. The review of the Act identified that the delegation of certain of the TaSC's powers to the Department (notably, in relation to the administration of apprenticeships and traineeships) have contributed to misunderstanding among stakeholders as it is not always clear who is the office or body making a decision). This issue may be further resolved through the recasting of some delegations to better reflect the Bill's refocusing of the SASC's and Department's functions.

Staff of the SASC are public service employees assigned to it.

#### **South Australian Training Guidelines**

Clause 11 inserts a section that describes the powers of the new SASC to develop guidelines. These powers largely mirror the TaSC's powers under the current Act. The Bill adds a requirement (reflective of current practice but not specified in the current Act) that SASC guidelines are to be reviewed every five years.

This clause includes a requirement for the laying of new guidelines before both houses of Parliament. Guidelines can cover a range of matters key to the administration of the apprenticeship and traineeship system and new concepts introduced by the Bill; for example, for:

- guiding decision making for declaring an employer a prohibited employer
- assessing applications and issuing certificates of proficiency to eligible individuals
- assessing applications for employer registration under the modified criteria implemented by the Bill.

The clause also inserts a section to confirm that the SASC must have regard to and seek to give effect to guidelines in the performance of its functions.

#### **Clause 12 – Heading to Part 4**

Clause 12 amends the heading to Part 4 of the Act to "Apprenticeships, traineeships and training contracts" to reflect the new Act's structure.

### **Clause 13 – Training contracts**

Clause 13 inserts sections (contained within Part 4, Division 1A) relating to training contracts, the process for their approval and, in appropriate cases, transfer between jurisdictions. It also clarifies when a training contract commences.

The Bill preserves the requirement that training in a trade must occur under a training contract. However, the Bill allows this requirement to be set aside in relation to training or re-training if the person:

- has already completed the training required under a training contract
- has an equivalent qualification
- is the subject of a certificate of proficiency in relation to the relevant trade issued under Part 4A.

A note is included that the section does not limit the SASC's ability to recognise trade skills obtained through other pathways.

Consistent with national harmonisation of apprenticeship and traineeship arrangements, the Bill inserts a stipulation that a person under the age of 15 years may not enter into a training contract unless permitted by an industrial agreement or award, or the SASC has granted a person permission to do so.

### **Clause 15 – Approval of training contracts by the SASC**

The Bill retains the key requirements for training contract approval under the current Act. The grounds on which the SASC may approve or decline to approve a training contract mirror those under the current Act with the following alterations, which reflect new concepts introduced under the Bill.

The SASC may decline to approve a training contract in the following circumstances:

- Where the requirements in relation to the training plan for the apprentice or trainee are unlikely to be satisfied. This reflects the Bill's increased focus on the parties to the training contract having obligations to engage in the development of the training plan, in conjunction with a nominated registered training organisation (see sections 54P, 54Q, and 54R as inserted by the Bill and discussed below). Note that the discretion of the TaSC under the current Act to decline a training contract if it is not accompanied by a training plan is omitted by the Bill. This addresses a key barrier to the expeditious processing of training contract approval applications identified through various reviews (including internal reviews) of the Act.
- Where there is a reasonable suspicion that the employer has engaged in conduct that is likely to result in the employer being declared a prohibited employer.

### **Transferring training contracts between jurisdictions**

The Bill enables a training contract and attendant training plan to be transferred to and recognised within South Australia. The SASC may substitute an employer in South Australia for a relocating apprentice or trainee. Regulations may create other stipulations in relation to the transfer of training contracts.

### **Clause 16 – Additional sections relating to training contracts**

The Bill preserves the power of the TaSC (embodied in the new SASC) to make certain determinations in relation to the commencement and completion of training contracts. These mirror provisions in the current Act and provide the SASC with broad powers to determine that an apprentice or trainee has completed the contract-based time served and competencies to satisfy obligations imposed under the training contract. Note that, consistent with provisions inserted by the Bill for certificates of proficiency, the clause affirms that a training contract remains in force until, among other reasons, a certificate of proficiency is issued to the apprentice or trainee.

### **Clause 17 – Probationary period for an apprenticeship or traineeship**

The current Act gives the TaSC the power to determine a probationary period for a training contract for a specified trade or declared vocation. However, the Act does not set a minimum or maximum period of time for a probationary period determined in this manner. The TaSC's current guidelines for determining probationary periods specify that for training contracts up to two years, a probationary period of 60 days applies, and for training contracts greater than two years, a 90 day probationary period applies. The guidelines go on to state that the TaSC has the discretion to approve probationary periods of different duration to those specified in the guidelines.

Feedback to the review of the Act submitted that the amended Act should allow an extended probationary period, up to a maximum of six months. This was argued on the basis that at the completion of the nominal three months for most training contracts, some employers and apprentices or trainees were not satisfied that they could commit to the full duration of the apprenticeship or traineeship. However, it was submitted that an extension of the probationary period (up to three additional months in most cases) would better equip the parties to make that decision.

Accordingly, the Bill permits a party to a training contract to apply to the SASC to extend the probationary period specified in the training contract, provided the total duration of the probationary period does not exceed six months. The Bill also maintains power of the TaSC to determine a probationary period for a class of training contracts.

### **Clause 19 – Commission may suspend training contract**

Clause 19 mirrors the powers of the TaSC in the current Act to suspend a training contract in certain situations on application by a party to the training contract, and adds that an application must be accompanied by a prescribed fee.

### **Clause 20 – Termination of training contracts**

Clause 20 mirrors the current Act's sections relating to the termination of training contracts, and adds a stipulation that an application to terminate a training contract must be accompanied by a prescribed fee.

### **Clause 21 – Dispute resolution for parties to certain applications relating to training contracts**

Clause 21 is a new clause that allows the SASC to require the parties to a training contract to undertake dispute resolution of a specified kind when resolving an application to terminate or suspend a training contract, or substitute a new employer in relation to a training contract.

## **Clause 22 – Effect of time spent training on employment of apprentice or trainee**

This clause mirrors provisions in the current Act regarding treatment of time spent by an apprentice or trainee attending a course as part of the apprenticeship or traineeship, including in the event that an apprentice or trainee needs to re-attend a course.

## **Clause 23 – SASC to issue certificate of proficiency on completion of apprenticeship or traineeship**

The Bill rationalises powers under the current Act of the TaSC to certify the competency of individuals. These amendments fortify the TaSC's powers under s40 of the current Act to allow the SASC to certify that a person has acquired the relevant skills and competencies required in a particular trade or declared vocation through the issue of a certificate of proficiency.

The Bill introduces a new section (54A) permitting the issue by the SASC of a certificate of proficiency to an apprentice or trainee who has (1) completed the term of their apprenticeship or traineeship, (2) has been awarded an appropriate qualification by an RTO and (3) if required by the SASC, has been assessed by an RTO the SASC nominates as having acquired the competencies of the trade or vocation. (Note: clause 70B introduces certificates of proficiency gained through other training pathways).

Applications for certificates of competency under s54A must be accompanied by information or documents required by the SASC and payment of a prescribed fee.

## **Clause 24 – Prohibited employers**

Clause 24 removes Division 3 of the current Act and inserts new sections relating to prohibited employers.

This new clause establishes a class of persons who may be declared by the SASC to be a prohibited employer. The consequence of a declaration by the SASC of this kind is that the person concerned is prohibited from employing an apprentice or trainee for the duration of the declaration made against them.

The SASC must have regard to criteria, set out under this clause, before it can determine that a person is a prohibited employer. These criteria are:

- whether the employer can 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
- the employer's record in delivering training to apprentices or trainees
- whether the employer behaves, or permits their employees to behave, in an objectionable way towards an apprentices or trainees
- 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
- the criminal history of the employer (if any)
- whether the employer is a fit and proper person to employ an apprentice or trainee
- any other matter prescribed by the regulations or that the SASC considers to be relevant.

A new section provides that a declaration by the SASC that a person is a prohibited employer may be accompanied by a condition or conditions and be for a finite or indefinite period.

The SASC may revoke a declaration on its own motion or on the application of a declared prohibited employer. An application to revoke a declaration must be accompanied by a prescribed fee.

A prohibited employer must not employ a person under an apprenticeship or traineeship arrangement, or make representations that they are not a prohibited employer.

A prohibited employer must not place an apprentice with another employer who has been declared a prohibited employer under a host employment arrangement.

A maximum penalty of \$10,000 applies for a breach of these offences.

#### *Example*

*The SASC may make a declaration that an employer is a prohibited employer in the event that:*

- *the employer has consistently failed to provide a safe and adequate working environment for its employees, or provide a level of supervision that is appropriate to the risks in the workplace to which the apprentice is exposed*
- *the employer has engaged in underpayment of a number of apprentices and trainees, or has failed to repay underpayment ordered by a court of competent jurisdiction*
- *the employer has a criminal conviction recorded against him/her, and the nature of the offence puts at risk and so is directly relevant to the employer's supervision of apprentices or trainees*
- *the employer has been declared bankrupt.*

#### **Employer registration**

The Bill inserts a new section 54F that amends sections in the current Act relating to employer registration. These aim to streamline the process for employer registration and align the Act with contemporary, risk-based processes that balance incentives to enter into apprenticeships and traineeships with protections against unscrupulous employers entering the system.

The Bill:

- omits the criteria for registration specified under s57 of the current Act (these criteria do, however, continue to apply in relation to prohibited employer declarations).
- inserts a new criterion that, in order to be registered by the SASC, the applicant must (1) not be a prohibited employer and (2) comply with any other requirements under the guidelines.

The Bill also allows a registration fee to be prescribed by regulation.

#### **54G - Variation, suspension and cancellation of registration of employer**

This section carries forward and adapts the powers of the TaSC under the current Act in relation to the registration status of employers, including:

- cancelling the registration of a prohibited employer

- altering registration conditions of non-compliant employers
- suspend registration if an apprentice is at risk.

#### **54H - Substitution of employer under training contract following cancellation, suspension or variation of registration**

This section enables the transfer of a training contract to another employer in relation to training contracts that are cancelled, suspended or varied, and mirror provisions under the current Act. Note, new provisions to deter poaching are included in the Bill (under s54N) and are discussed separately.

#### **54I - Offence to make certain false representations relating to registration**

This section continues the requirement that a person must not falsely claim they are registered and specifies a maximum (increased) penalty of \$10,000.

#### **Employer obligations**

The Bill amends the Act (under new section 54J) to more fully describe the obligations of an employer under a training contract. This is to underline the primary obligations an employer has to an apprentice or trainee, which underpin the development of the competencies and attainment of the qualification to which the apprenticeship or traineeship relates.

The Bill refers to core obligations linked to the training contract that the employer must not:

- prevent or obstruct the apprentice or trainee from carrying out their obligations under a training plan
- prevent or obstruct the apprentice or trainee from participating in any training required to be delivered by the nominated RTO under a training plan
- prejudice the employment of the apprentice or trainee, or place the apprentice or trainee at a disadvantage, because the apprentice or trainee participates or attempts to participate in such training
- take any other steps to discourage the apprentice or trainee from participating in such training.

Feedback sourced through reviews of the Act has underlined that in the absence of statutory breach provisions, prosecution of employers for breaching training contract obligations is prohibitively difficult. Accordingly, the Bill clarifies the actions the SASC may take in the event of a breach, including:

- issuing a written warning
- varying, suspending or cancelling the employer's registration
- issuing a compliance notice
- declaring the employer to be a prohibited employer.

### **Employer to notify the SASC of certain matters**

The Bill under s54K requires employers to notify the SASC of certain matters pertaining to the employer's business operations that could impact on an apprenticeship or traineeship regulated by the Act. Events requiring notification are:

- a material change in any information provided to the SASC in relation to an application for registration
- the sale, or offer of sale, of the employer's business
- an employer becoming insolvent or bankrupt
- an employer being convicted of an indictable offence or a summary offence for which a term of imprisonment may be imposed.

### **Making and retention of records**

The Bill under s54L maintains employers' obligations to make and retain certain records, to be prescribed by the regulations.

### **Sections relating to apprentices and trainees**

Section 54M of the Bill, commensurate with the Bill's provisions relating to the responsibilities of employers, includes expression of the obligations of apprentices and trainees under training contracts. This section responds to submissions to the review that parties to training contracts have complementary and reciprocal obligations to one another, which the new Act should reinforce. The Bill sets out reasonable and proportionate obligations that the apprentice or trainee must:

- comply with the Training and Skills Development Guidelines
- comply with any other obligation specified in the training contract or training plan that is applicable to the apprentice or trainee
- as far as is reasonably practicable, participate in the development of their training plan, and contribute to the attainment of their development goals under the training contract and training plan.

In the event of non-compliance with any of the above obligations, the Bill does not prescribe a penalty of any kind. However, the SASC may:

- give the apprentice or trainee a written warning
- require the parties to the training contract to attend a conciliation conference
- suspend the training contract
- terminate the training contract.

### Transfer fee payable for substitution of an employer under a training contract

The Bill under sections 54N and 54O maintains the power of the TaSC under the current Act to approve the substitution of a new employer to an apprentice or trainee in certain prescribed situations. The Bill under s54O introduces a payment fee to compensate an employer's investment in the training and supervision of an apprentice or trainee who seeks to transfer their apprenticeship or traineeship to a new employer while under a current training contract.

In summary, under s54N, the Bill maintains the freedom of parties to training contracts to transfer the training contract to another employer if:

- the proposed employer consents to the substitution
- the proposed employer is not a prohibited employer
- the proposed employer is:
  - a registered employer **or has applied for registration**
  - operating within the scope of the registration
  - complying with any other condition of the registration
- the proposed employer has paid, or has entered into an agreement to pay, any transfer fee payable under section 54O in relation to the training contract
- the SASC is satisfied that it is, in all the circumstances, appropriate to do so.

The transfer fee specified in s54O is based on the size of the employer (determined by employee count). While the Bill specifies this as the key determinant of the scale of the fee, further detail will need to be resolved in regulations or guidelines.

The Bill also provides the SASC, on the basis of any submissions made to it by the original employer, with discretion to decline to transfer a training contract if it is not appropriate in the circumstances to do so (noting that this would not prevent the parties from terminating the current training contract and commencing a new one, subject to the conditions for doing so).

#### *Example*

*An apprentice works under the supervision of an employer for three years, receiving high quality instruction and on-job work experience. Halfway through her third year, the apprentice is approached by a local manufacturing firm and offered an apprenticeship at the same level but on higher pay. The apprentice raises this with her employer, who recommends against changing employers. In this scenario, the SASC can consider the submissions of both the employer and the apprentice (or her representative) and decide to approve the substitution if it is satisfied that it is appropriate to do, and the manufacturing firm has agreed to pay a transfer fee, based on the size of the business and the number of years the apprentice has served with the original employer.*

## Sections relating to nominated training organisations and training plans

New Division 3D of the Bill introduces new sections (sections 55-62) that provide greater definition of the obligations of RTOs in relation to employers, apprentices and trainees, and the training plan. This addresses a lack of detail about the role of RTOs under the current Act and reflects submissions to the review that apprenticeships and trainees often fail to commence if the parties do not engage an RTO early in the process.

The Bill provides that:

- the employer and the apprentice or trainee agree on which RTO is to become the nominated registered training organisation (or “*nominated training organisation*”) for the apprentice or trainee
- the employer and the apprentice or trainee seek the acceptance of the RTO in respect of the nomination
- the RTO accepts the nomination and agrees to be the nominated training organisation (NTO) for the apprentice or trainee.

An apprentice or trainee may nominate more than one RTO if the training requires more than one RTO to deliver training for a particular apprentice or trainee.

The Bill also amends the Act to place greater emphasis on the role of the training plan as underpinning the delivery of quality training to an apprentice or trainee.

An amendment requires a nominated training organisation to, as reasonably as practicable but within a timeframe stipulated in regulations, prepare a training plan for the apprentice or trainee and the employer, and ensure the training plan is endorsed by those parties. The completion of this step must be notified to the SASC within 28 days.

Further obligations of NRTOs mandated by the Bill (incorporated variously under sections 54P-54U) are that the NRTO must:

- comply with the Training and Skills Development Guidelines
- comply with obligations specified in the training plan of the apprentice or trainee applicable to the nominated training organisation
- ensure that the training required to be delivered by the nominated training organisation under the training plan for the apprentice or trainee is provided in accordance with the training plan
- notify the SASC if the nominated training organisation becomes aware that an apprentice or trainee under a training plan is not meeting the goals under the training plan
- notify the SASC if the nominated training organisation becomes aware that it may not be able to comply with any obligations applicable to the nominated training organisation under the training plan for an apprentice or trainee
- notify the SASC if the nominated training organisation ceases to be the nominated training organisation under the training contract
- maintain training records.

The Bill, under section 54T, provides that the apprentice or trainee and their employer may, through notification to the SASC, substitute an nominated training organisation for a different RTO without interfering in the continuation of the apprenticeship or traineeship or the training plan.

Nominated training organisations are required to keep records relevant to the apprenticeship or traineeship.

The Bill specifies a maximum penalty of \$5,000 and expiation fee of \$315 for a breach of an obligation under this division.

### **Training plans**

A new section (s54Q) is inserted to provide greater definition of the obligations of the parties to the training contract and nominated training organisation in relation to training plans. Key among these are that the nominated training organisation must:

- as soon as reasonably practicable, but in any event within the time specified in the regulations, prepare a training plan for the apprentice or employee in accordance with any requirements set out in the South Australian Training Guidelines
- take reasonable steps to ensure that the training plan is endorsed by each of the parties in accordance with any requirements set out in the South Australian Training Guidelines.

### **Clause 26 – Employer may suspend apprentice or trainee for serious misconduct**

The Bill inserts a new section 64(1) in respect of an employer who has reasonable grounds to believe an apprentice or trainee in their employment is guilty of wilful and serious misconduct. The effect of this amendment is to de-escalate disputes between parties to training contracts that may otherwise be resolved through mediation by the SASC. An employer's right to suspend employment in these circumstances is preserved, as is their right to have the matter considered by the SAET.

This section allows the employer to suspend the apprentice or trainee with immediate effect and requires them, as soon as reasonably practicable, to:

- refer the matter to the Commission for mediation
- notify SAET that the matter has been referred
- notify the apprentice or trainee that the matter has been so referred
- comply with any other reasonable requirement of the Commission in relation to the mediation.

If the matter is unable to be resolved through mediation, the employer must, as soon as reasonably practicable (but in any event within three days), refer the matter to the SAET for consideration; and the SAET may not consider the matter until it has been referred.

### **Clause 27 – Matters dealt with by SAET**

This clause makes technical amendments to section 65 of the Act, including by giving SAET the power to order an employer (including a substituted employer) to pay to another employer specified costs associated with the early termination of a training contract, where that termination occurs wholly or partly due to the use of a financial or other inducement or reward.

### **Clause 28 - Representation of parties in proceedings before SAET**

The Bill does not materially change the arrangements for representation of parties to disputes in the SAET. However, it does make refinements to reflect the discontinuance of the Office of the Training Advocate, which primarily undertakes this task on behalf of aggrieved parties.

The Bill allows a party to proceedings before SAET that is a member of a registered association to be represented by an officer or employee of the registered association acting in the course of employment with that registered association; and adds that a party to proceedings may be represented by a person appointed by the SAET to represent the party in such proceedings.

### **Clause 30 – Recognition of other trade training**

Proof or evidence of proficiency may be required to allow individuals enter into certain jobs or professions, and will have greater value as individuals develop skills through completing multiple or stacked qualifications.

Under clause 30, the Bill introduces new sections (70A and 70B) for the recognition of trade qualifications, outside of qualifications gained through completion of a training contract.

The Bill permits the submission of an application to the SASC to recognise a person's qualifications or experience in relation to a particular trade or declared vocation; and sets out the SASC's powers to determine an application, including through conducting independent assessment of a person's competencies.

New sections permit the SASC, upon being satisfied of a person's competency in a trade or declared vocation, to issue a certificate of proficiency in relation to the trade or declared vocation. The SASC may draw on the expertise of an expert in training delivery to support a determination that a person has or does not have the required competency to receive a certificate of proficiency.

This clause gives the SASC power to issue certificates of proficiency as evidence that a person has acquired the necessary competencies of a trade or declared vocation (apprenticeship or traineeship).

#### *Example*

*A person has worked in various roles in the baking industry for a number of years and can provide evidence by way of logbooks, training and work references that demonstrate the person's proficiency across a number of key tasks, and a breadth of experience in other areas. The SASC considers the application, taking into account the length of time the applicant has worked in the industry, the nature of the training they have received, the relevance and nature of any qualifications gained, and the applicant's performance in an independent competency assessment. Having considered these matters, the SASC decides to issue the applicant with a certificate of proficiency in relation to the Certificate II in the baking trade.*

### **Other powers of the SASC and authorised persons**

The Bill carries forward powers of the TaSC and its authorised officers under the current Act to exercise certain powers, such as examining documents and seizing evidence, in the performance of their functions.

There is a maximum penalty of \$10,000 for obstructing the SASC or an authorised official when exercising powers under this section.

### **Review of decisions by Tribunal**

The Bill confirms the jurisdiction of the South Australian Civil and Administrative Tribunal (SACAT) to review decisions of the SASC 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 2A
- refuse to approve a substitution of an employer under section 54C
- refuse an application for recognition of a person's qualifications or experience under section 70A, or a
- any other decision under this Act of a kind declared by the regulations to be included in the ambit of the section.

### **Offence to exert undue influence in relation to training contracts and training plans**

The Bill continues the offence of exerting undue influence in relation to training contracts and applies the same offence in relation to training plans; and increases the maximum penalty from \$5,000 to \$10,000.

### **Clause 32 - Training and skill register**

The Act is amended to preclude registration of training providers and courses under Part 3 of the Act, given this is a function that was referred to the Commonwealth under the *Vocational Education and Training (Commonwealth Powers) Act 2012 (SA)*; and adds the requirement to include on the register declarations or revocations of a declaration of an employer as a prohibited employer.

### **Clause 35 - Commission may correct certain mistakes**

The Bill amends the Act to allow the SASC to correct an administrative or clerical error in relation to any notice of a determination or decision.

### **Maximum penalty under the Act**

The Bill amends the Act to raise the maximum penalty that may be prescribed by penalty from \$5,000 to \$10,000; and to allow the prescription of expiation fees of up to \$500 for an offence of the regulations.