



## Review of the Training and Skills Development Act 2008

### Consultation Outcomes Report 2019

#### Context

The Training and Skills Development Act 2008 (the Act) establishes the Training and Skills Commission (TaSC), the Training Advocate and sets the regulatory framework for apprenticeships and traineeships<sup>1</sup>. It has been in operation in its current form for more than a decade. In that time the general vocational education and training (VET) landscape and the broader economy have changed significantly.

#### Review process

Feedback from stakeholders is essential in informing the approach taken to these issues in the development of new legislation. This has been supported by a four-week consultation period during which time all interested stakeholders have been provided with the opportunity to provide input through submissions, comments, questionnaire response and participation in focus group sessions either face to face or via webinar.

In addition to the consultation process arranged for this Review stakeholders have provided information and feedback that is relevant to the Act through other engagement processes including a review of the Act that was commenced in 2016 but not concluded, consultations related to Skilling South Australians and the engagement process that was undertaken by the TaSC to inform its Futureproofing the South Australian Apprenticeships and Traineeships system project.

This report draws on input from stakeholders through all of these engagements with a view to making the most of the time and effort taken by stakeholders to provide input where that input is relevant to the Act. The feedback has also raised a range of associated issues that extend beyond the legislation and require other measures to resolve. The summary of consultation outcomes below seeks to distinguish those issues that warrant a legislative response from those that require other approaches. In what follows stakeholder feedback is summarised as it relates to each theme.

The Government has convened an Expert Advisory Panel to assist it to make important decisions about a number of issues that will influence the way apprenticeships and traineeships, and the broader training system should operate under new legislation.

The Government will develop a draft Bill, taking into account the information provided by stakeholders through the consultation process and the Expert Advisory Panel report.

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<sup>1</sup> This report uses the term 'apprenticeships and traineeships' interchangeably with 'apprenticeships'.

During the second stage the public and interested stakeholders will be given an opportunity to comment on the draft Bill, before a final Bill is introduced into Parliament.

## Review Scope

This Review is part of the South Australian Government's reforms to the training system under the Skilling South Australia initiative.

The Review has been undertaken with the aim of refreshing and updating the Act to ensure that it provides an effective framework for skills and workforce development in South Australia.

The Government's approach to new legislation for the South Australian training system as it relates to the regulation of apprenticeships and traineeships is underpinned by the principle that the regulatory framework ensures that the level of intervention in the affairs of parties to training contracts should be commensurate with the overarching objective of productive, successful and safe training and working relationships. In this regard, the Government seeks an outcome that builds on the strengths of the existing system by:

- Encouraging employers to employ apprentices and trainees;
- Ensuring there are appropriate protections for apprentices and trainees; and
- Ensuring high levels of probity, quality and consumer protection.

In achieving this objective, the legislation will need to:

- Align with government policy;
- Legislate only where a statutory support is necessary to achieve important policy objectives;
- Ensure remedies are appropriate and proportionate to the perceived problem or to the risk posed; and
- Result in compliance costs that are justified and minimised.

The Review has been organised around four themes that encompass the issues that have been identified as being important to address through the Review, where they have a legislative dimension. The four themes and related key issues around which this Report are based are:

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

These themes and associated issues may have implications for both the form and substance of the legislation. This includes considering whether provisions currently in the Act should be more appropriately addressed in other ways, for example, through regulations and/or guidelines; or government policy.

## Feedback on review themes

### Governance and Regulation

#### Simplification

Feedback to this Review and through other fora is clear that end users find apprenticeships and traineeships difficult to navigate and information is not captured at important points in the sign-up process. It was recognised that employers were a key to increasing uptake. Complexity is a barrier in all stages of the sign-up process and beforehand, when prospective apprentices and trainees are considering their options. This encompasses matters that could be addressed through legislation, matters that are to do with the administration of the legislation and matters that are to do with the institutional arrangements, including the interface between Commonwealth and State Government entities.

While input from stakeholders varied in terms of where the balance of simplifying improvements needed to be focussed there was consistent recognition that complexity was a problem which manifested in confusion about roles and responsibilities and created unnecessary barriers to the formation of effective employment and training relationships.

#### Clarifying Roles and Responsibilities

##### ***Issues that could require legislative change***

Matters that were raised by stakeholders that are relevant for consideration in the drafting of new legislation include:

- The need to be clearer about the roles of TaSC, the Training Advocate (OTA) and the Department. While there was fairly consistent recognition of the important strategic and industry connected advisory role for TaSC there were a range of views about the way in which the regulatory role of TaSC could be clarified in the legislation alongside the day to day role of the Department pursuant to delegations from TaSC.
- For some stakeholders the strategic role of TaSC could constructively be extended to encompass advice on skills across the whole post school education system, including higher education, and skilled migration. A number of submissions identified the potential for TaSC to play more of a role in relation to integration across the VET system.

- Some stakeholders put the view that clarity would be improved by reflecting the actual roles of TaSC and the Department as they are experienced by system users, perhaps by formalising powers with the Minister to be operationalised through delegation. At the other end of this spectrum was the view that the issue was not the current assignment of roles within the legislation, rather it was a matter of TaSC being more active in relation to the performance of the system including utilisation of monitoring and reporting mechanisms, and the activation of enforcement provisions, including penalties.
- A number of submissions addressed the question of roles and responsibilities in relation to disputes. The issue of role clarity in relation to disputes encompassed the current roles of the Training Advocate, TaSC and the South Australian Employment Tribunal (SAET). Some submissions identified the existence of a grievance resolution role for both the Training Advocate and TaSC as a source of potential overlap and complexity that could be streamlined. Comments were also provided about the need for both clarity and assurances of fairness in the processes through which grievances and disputes were handled. Reference was made to the importance of the Training Advocate being seen to be and advocate for all parties. Similarly, the processes that were used by SAET needed to be fair. Comments were made about the desirability of consistency in the way in which disputes were managed and escalated, particularly between the Training Advocate and SAET. In the context of the roles played by Ombudsmen at both State and Commonwealth levels the opportunity was identified for the Training Advocate to be more focussed on a proactive role in relation to dispute resolution and advocacy for apprenticeships and traineeships, and training more generally.
- While there were differing views on the scope of TaSC's role, there was acknowledgement of the importance from a governance perspective of its independence from the Department.

## Employer Registration

### ***Issues that could require legislative change***

Views on the need for, and form of registration differed depending on the balance stakeholders saw between streamlining and removing Red Tape, and protections for apprentices and trainees. This Review seeks a balance between the level of prescription around employer registration and maintaining robust protection for apprentices and trainees. Some stakeholders supported the view that employers' past history (including previous material breaches of the legislation, lack of completions and/or previous convictions for indictable offences) was relevant, with the focus being on evidence of employers who had not acted in the interests of the apprentice and trainee.

This contrasted with the proposition that a first principles approach should be taken to the need for employer registration. For some stakeholders this extended to questioning whether it was needed at all except in the case of licensed trades.

In most cases the feedback on employer registration acknowledged that it was a valuable assurance mechanism, but this could be achieved in a more streamlined way. Streamlining included both legislative and administrative dimensions and applied both to initial application and renewal. There was general support for automatic renewal except where there was evidence of a breach or material change in circumstances.

Reference was made to the model used in some other jurisdictions where employer suitability was addressed at the time of contract sign up. For some stakeholders this extended into consideration of the time taken to complete the contract sign up process. The feedback on this point is addressed under the heading of Responsive Legislation.

### Flexibility

#### ***Issues that don't require legislative change but may warrant further consideration***

Supervision ratios were identified as a barrier for some employers. This reflected issues reported in the TaSC 'Future-proofing' report. The dimensions of the issue include the need for better alignment between supervision requirements and the circumstances of each industry, and the utility of taking a more risk-based approach. There was a reasonable level of consensus that the Act should not prescribe supervision ratios because of the need for flexibility to align requirements with industry circumstances and avoid unintended limitations in some sectors from employing apprentices and trainees. A more flexible approach through regulation and guidelines might offer a suitable alternative.

This includes the need to define what supervision is in light of the specific duties inherent in an apprenticeship and the impact of technology. For example, consideration should be given to the percentage of time supervision is required for minor tasks such as cleaning up at end of day or working over-time. Conversely higher risk elements of a job or task would merit close supervision, for example, around roles in electrical trades.

The Review also heard views on the need to look at the way in which hours were averaged. The examples cited included fly-in fly-out (FIFO) in mining and the irregularity of hours in hospitality

### Other Issues

#### ***Issues that don't require legislative change but may warrant further consideration***

Issues extended into the time taken for training packages to address new vocations. This interacted with the trend towards dual trades in some industries and for some individuals.

Reference was made to the need to improve the understanding and use of flexibility within training packages, as distinct from the Training Package itself.

The Review heard views that Training Packages need to, on the one hand, reflect industry's prioritised requirements for particular skills and, on the other, provide consistency for employers operating in multiple state and recognition of qualifications of employees moving across states.

There was general agreement that the Act should place more emphasis on apprenticeship completion and on the importance of supports to assist apprentices complete their training, including mentoring, and financial, or other supports for apprentices under financial stress. Responses also highlighted the importance of pre-apprenticeships as a filtering mechanism for some occupations and an important pipeline for school students with an aptitude for training in a trade.

The review heard that Registered Training Organisations (RTOs) could make improved use of Recognition of Prior Learning (RPL) including in relation to skilled migrants seeking a quicker pathway to having their prior training and work experience recognised.

## Promoting new apprenticeship and traineeship pathways

### Pathways and accessibility

#### ***Issues that could require legislative change***

The Review notes the clear direction provided by participants that the apprenticeship and traineeship landscape is more difficult to navigate than it needs to be, including by practitioners in this field. This is one reason why employers and potential apprentices or trainees may be deterred from pursuing a VET pathway. One aspect of this is the complexity of terminology and language used in the Act, which seems disconnected from the practical realities of an apprenticeship or traineeships. The Review heard of legislation in other Australian states, notably Queensland<sup>2</sup>, that had reduced this complexity and simplified the way apprenticeships and traineeships are explained and understood.

It was acknowledged that Commonwealth initiatives, for example, the National Careers Institute were now part of the broader picture. Further, the Act as it stands does not reflect the arrangement of VET powers and needs to be updated to reflect the referral of VET regulatory powers to the Commonwealth and the enactment of this arrangement in Commonwealth legislation<sup>3</sup>.

In particular, the re-focussed role of the Training Advocate and the value of a nationally consistent approach to independent complaint handling was highlighted.

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<sup>2</sup> The relevant legislation is the Further Education and Training Act 2014 (Qld).

<sup>3</sup> This includes the Australian Skills Quality Authority (ASQA), Tertiary Education Quality and Standards Agency (TEQSA) and the Education Services for Overseas Students (ESOS) Act 2002 and the role and function of the Commonwealth Overseas Student Ombudsman, which have all come into effect since the introduction of the Act.

It was suggested that this should be reflected in the way the Act addresses the role of the Training Advocate, and enables the Training Advocate to avoid duplication and add value through a more proactive role in the impartial resolution of disputes and advocacy for VET.

There is scope, through simplifying the Act, to reduce the administrative costs of apprenticeships for government and end-users, including by reducing the level of prescription under the Act and the mandating of processes that have little or no demonstrative benefit. The Government through the Department for Innovation and Skills has improved the way apprenticeship and traineeship applications are handled and response times. Feedback from the Department is helping to identify changes to the Act that may assist further process improvements.

Further ideas raised included reviewing the structure of the training component and encouraging RTOs to outreach rather than apprentices and trainees having to travel.

The Review heard pre-apprenticeship pathways provide apprentices with some familiarity of workplace culture and protocol and employers with an assurance that the apprentice is familiar with workplace-based practices.

***Issues that don't require legislative change but may warrant further consideration***

Under-represented groups included apprentices in the regions, with a disability and mature age. While there wasn't a clear consensus about how participation among these groups could be improved the broad view was that administrative barriers, cost and perception of the cost of employing an apprentice needed to be addressed.

Regional accessibility of training was identified as an issue with several dimensions including the location of training and the need to travel. Associated with this were issues to do with regional incentives and support such as travel allowances.

The Review notes that the Act has limited capacity to influence apprenticeship and traineeship wage structures, as this is an area thoroughly regulated by other legislative and industrial instruments.

The Review also notes that systems that have tightly integrated school and VET pathways tend to be more successful at attracting and retaining apprentices and trainees beyond formal schooling. The importance of connecting schools with the apprenticeship and traineeship system was raised. The role and focus of VET in schools was identified as an important consideration, an element of which is the pathway VET at this level provides to an apprenticeship or traineeship. The Review notes the importance of avoiding a focus on adult apprentices at the expense of pathways from schools or vice versa.

Supporting this was a need for consistency in career counselling. Foundation skill gaps were identified as an issue requiring remedial support.

There were concerns raised that the status and focus attached to universities misses a whole cohort more suited to a Contract of Training pathway.

### Declared Vocations and the TAPS

#### ***Issues that could require legislative change***

An important issue that this review needs to grapple with is how, if at all, the growth in casual and self-employment arrangements can be supported with the kind of work-based learning opportunities that are possible through a Contract of Training.

Some stakeholders emphasised the centrality of the job role or occupation, and the connection of the training to this through an apprenticeship or traineeship. This underpinned a view that apprenticeships or traineeships do not fit well with casual or self-employment arrangements, and that the motivation for an expansion of contract of training arrangements within these employment arrangements was motivation more by an interest in accessing subsidies than in skill development per se.

There were other stakeholders that supported the flexibility for the inclusion of skill sets or micro-credentials in training plans. For some of these stakeholders support this flexibility was linked to the role of the skill set in up-skilling beyond the primary pathway qualification required for the occupation.

A number of submissions made the point strongly that institutional training did not provide the work-based skills that were required by some occupations. There were also submissions that supported the need for better structured skill recognition pathways that could lead to trade certification. A tension in the training system is that Training Packages enable qualifications to be delivered without the on the job learning element that is achieved through a contract of training arrangement.

New South Wales has in place a mechanism for this component to be added to an institutionally acquired qualification and provides an example of the way in which a pathway from an institutional qualification to trade certification can be achieved, through a mechanism that is not currently available in South Australia.

#### ***Issues that don't require legislative change but may warrant further consideration***

Comment was made on the volume of qualifications on and scope of the Traineeship and Apprenticeship Pathways Schedule (TAPS) and that it didn't always reflect a full understanding of the occupational pathways.

Alongside this the point was made that the declaration of vocations and identification of associated pathways was founded on the essential connection between training and the job it was equipping the apprentice or trainee to do. For many, but not all stakeholders this central interconnection underpinned a continuing need to identify those vocations that were appropriately supported through apprenticeships or traineeships.

From this perspective any complexity associated with the TAPS was a matter of administration rather than a case for legislative change.

There was minority view in some submissions that the declaration process was unnecessary.

### Other Issues

#### ***Issues that could require legislative change***

The importance of national harmonisation was acknowledged in the context of national and global markets and entities both because it supported the portability of skills nationally and provided consistency for national employers.

#### ***Issues that don't require legislative change but may warrant further consideration***

There was some support for shorter apprenticeships, premised on competency-based completion so long as this did not result in poorer outcomes. A number of stakeholders made the observation that this was currently possible, and the issue was more to do with the application of existing skill recognition arrangements than it was an area requiring policy or legislative reform.

From an age cohort perspective there was stakeholder recognition of the good outcomes achieved by adult apprentices, but the point was made that in some occupations there was a bias against them. However adult apprenticeships and traineeships do provide an excellent option for adults changing careers or entering the work force after an extended absence from the workforce.

## Responsive Legislation

### Responsiveness

#### ***Issues that could require legislative change***

Feedback consistently indicated that rights and responsibilities were not always clear to all parties. Points of emphasis included the importance of the employer understanding the Training Plan and their obligations under the Training Contract, including enabling training to occur. The point was also made that the apprentice or trainee often has no initial knowledge of the system, and a better shared understanding at the commencement of the Training Contract was important.

Alongside this the Act does not currently clarify the role of training providers in relation to the Training Contract. There were varying stakeholder views on the extent to which this was necessary given that the contractual relationship was between the employer and apprentice or trainee, and that training providers were, from a regulatory perspective accountable to ASQA.

Training providers submit that they are often unaware they have been nominated in a Training plan until well after the Training contract has been signed. Apprentices and their employers say that they are not always aware of which training provider is appropriate and what its role is.

There was support from some stakeholders for flexibility around the number of RTOs that may support the delivery required under a Training Plan. Flexibility is reduced by RTOs' accredited scope of training. The Review heard that the process for changing an RTO's scope is administratively complicated and, while part of the solution has to do with VET regulatory arrangements there was an opportunity to improve flexibility through RTO partnering.

Some stakeholders saw that the nature of the contract can make it difficult for the employer to customise training. Auspicing or sub-contracting may provide a solution, but costs associated with the fee-for-service basis of these arrangements and quality risks need to be managed.

From an apprentice's perspective, the full benefit of the training on scope may not be offered to them because, for example, the employer does not have the necessary equipment or facilities or cannot provide the appropriate level of supervision.

There was consistent support for simplifying terminology in the Act including around key terms such as 'Training Plan', 'Training Contract', and 'elective', to name a few. The Review was referred to the Queensland Act as an example of the use of less terminology and improved user friendliness.

### Training Contract – Development, Approval and Enforcement

#### ***Issues that could require legislative change***

The consultation provided important input on the nature of the training contract, the timeliness and quality of contract development and approval and how well the contract was operationalised alongside the training plan to achieve quality outcomes.

The contract sign-up process was a concern for a number of stakeholders from a number of perspectives. The underpinning importance of the relationship between the employer and the apprentice or trainee, and the nature of the agreement they were entering into was acknowledged. The establishment of this relationship on a sound footing that balanced the need for each party to understand their responsibilities and for there to be adequate protections was a common reference point for stakeholders. There were differing views on the extent to which the current Act dealt appropriately with the requirements for contract establishment and enforcement.

For some stakeholders the focus for improvements was improved administration of the provisions of the current Act, including the application of penalties. Others saw the opportunity for improved clarity and simplicity in the provisions of the Act and the way in which it addressed the requirements for contract approval.

The issues to be brought together and addressed are the interaction between the requirement for employer registration and training plan formation as prerequisites for contract approval.

Opportunities for streamlining were identified by combining the timing of employer registration with contract approval and enabling contract approval on the basis that a firm tri-partite relationship had been established between the employer, apprentice/trainee and training provider to underpin the development and fulfilment of the training plan.

The Act does not currently impose specific obligations on the RTO. Legislation in some other jurisdictions does and this question is raised for the current review. There were various views on legislative formalisation of RTO responsibilities. Clear parameters for considering this issue were raised by a number of stakeholders including that the role of the RTO should not detract from the primary relationship, that is between the employer and the apprentice. Equally, any RTO role provisions should avoid creating a conflict of interest in relation to the design, delivery and assessment of training.

#### ***Issues that don't require legislative change but may warrant further consideration***

A number of stakeholders made the point that alongside the legislative issues was the importance of information and support for parties to the contract. For example, pre-sign up support, and support with information the employer needs to provide as part of the regulatory and contracting process.

Feedback provided to the Review about the potential for improvement through both simplification and improvements in support were consistent with feedback provided to the TaSC as part of its 'Future-Proofing' consultations.

#### **Effectiveness of Training Packages and Training plans**

##### ***Issues that could require legislative change***

While there was support for the Training Plan, delays in Training Contract approval pending the development of the Training Plan, and the quality of the Training Plan and its implementation were problematic in some circumstances. Issues were identified in circumstances where apprentices/ trainees were engaged before the Training Plan is lodged because this could lead to apprentice termination and/or underpayment if the Training Contract is later not approved.

Feedback indicated that the Training Plan could be a barrier to improved outcomes if it was treated as 'tick the box' exercise in which case it didn't drive the right behaviour. Training plans may be developed in good faith at the commencement of the apprenticeship but shelved and not meaningfully reviewed throughout its duration.

The Review has identified examples of legislation in other states that places a more stringent obligation on the employer and/or the RTO to actively monitor the Training plan and progress against its goals.

Quality of training was uniformly important to stakeholders but the Training Plan language and relationship between the RTO and employer did not always support this. There was a view the Training Plans are not well related to business and could be better focussed on streamlined and supported processes that don't result in disagreements or disputes around, for example, rostering, underpayment and backpay. One stakeholder saw value in the availability of training plan "proposals" to speed up signing on of apprentices and trainees.

E-profiling in electrotechnology was identified as an example of an effective way of recording and communicating information about training.

The TaSC future proofing report recommends the need to review supervisory requirements and strengthen the ability to enforce supervision arrangements by establishing an expiable offence in the Act.

### ***Issues that don't require legislative change but may warrant further consideration***

A number of stakeholders raised matters that were concerned with the flexibility to terminate a contract of training on the one hand, and the need for additional measures such as support and mentoring to improve contract completion. Termination or suspension is currently a power of the Commission. Where flexibility was sought in relation to this it was primarily around the length of probationary periods. The TaSC currently has the ability to review and revise probationary periods for a specified trade or vocation if there is sufficient justification. However, at least one stakeholder supported a process for the parties to the training contract to extend the probation period for a single apprenticeship or traineeship, through an application process. This is permitted in some other Australian jurisdictions, in cases of up to three and six months, or as prescribed in regulations

#### State-based accreditation of courses.

### ***Issues that could require legislative change***

The Review heard National regulatory arrangements for training package development were not as responsive as necessary. Stakeholders raised concerns about time to market issues with the national system. This provides a rationale for a state level capability to develop courses that are identified as in demand in the local context, noting that many stakeholders support national Training Packages wherever possible because they provide national consistency.

A distinction was drawn between course development and accreditation, and the development of curriculum within the Training Package to meet market needs. Both components raised capability and resourcing issues with much of the work required at the development front end.

While it is recognised that the Act has limited ability to influence what is essentially a national process, there was support for a state-based course development service, linked to a faster accreditation process if there are gaps at the national level.

## Other Issues

The Review heard of the need to improve mechanisms supporting completions. This reflected related issues that were addressed in the TaSC futureproofing report.

## Modern Best Practice Legislation

### Issues concerning the form and substance of the Act

#### ***Issues that could require legislative change***

The Review was made aware of the impact of wages, safety, supervision considerations and other aspects of the training relationship on the successful completion of apprenticeships. Similarly, the Review is aware that parties are interested in having simple legislation that is easy to interpret and apply to the practical reality of apprenticeships and traineeships.

Wages, safety, privacy, rosters and supervision are areas that are regulated by external legislative and industrial instruments, including modern awards, and enterprise agreements. These operate in conjunction with the Training and Skills Development Act but are not within the jurisdiction of the Act. The related issue that was raised by stakeholder was the importance of clarity about where disputes are appropriately referred, and which established fora was intended to adjudicate on particular issues. Stakeholders support an open and fair forum to de-escalate disputes before they reach the South Australian Employment Tribunal.

In the interests of role clarity, an Act for apprenticeships and traineeships should avoid duplication of regulation in these areas, notably, wages, safety, privacy and so on. It should however identify the obligations of all parties and the constituents of misconduct. This includes the obligations and protections for employers and apprentices in a way that made their responsibilities and risks clear. It is important to consider which matters are best addressed through 'best practice' guidelines rather than legislation, and where there is a role for statutory measures, including penalties, to reinforce compliance with regulatory or contractual requirements.

### Grievances and Dispute Resolution

#### ***Issues that could require legislative change***

The Act currently does not permit a party to a dispute to be represented by a legal practitioner in the relevant forum, namely, the South Australian Employment Tribunal (SAET). Parties can however be represented by employer or employee associations, such as an industrial advocate or union representative. There are a range of views on the efficacy of this arrangement. On the one hand, employers may feel overwhelmed by the process of being party to a dispute and not being equipped with adequate legal representation. On the other hand, introducing legal practitioners to disputes about apprenticeships can escalate the dispute and make conciliation more difficult. The Training Advocate also plays an important role in this area, by representing apprentices and trainees when a dispute arises, if the matter cannot be resolved through mediation and conciliation.

The Act as it stands allows the employer to refer a matter of serious misconduct by an apprentice or trainee to the SAET<sup>4</sup>, which must determine the matter within a set timeframe. This effectively bypasses the processes of the Training Advocate and TaSC which may have the potential to resolve a matter before it escalates to the SAET. The Review notes that only the TaSC can terminate or suspend a training contract including on the application of a party to a training contract<sup>5</sup>. The Act does not prescribe any process that may otherwise salvage the employment relationship and/or the training contract relationship. The Review is interested in arrangements that maximise the opportunities for a successful outcome from the employment/training contract relationship.

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<sup>4</sup> Training and Skills Development Act, s.64.

<sup>5</sup> Training and Skills Development Act, s.51.

## Appendix A - Terms of Reference for the Review

### Background

The Government is reviewing the Training and Skills Development Act 2008 (SA) (the T&SD Act) to ensure it meets the needs of industry, employers, apprentices and other trainees into the future. The review responds to the community-wide input to the Training and Skills Commission's review of the South Australian apprenticeships and traineeships system and is intended to result in draft legislation that supports future jobs and aligns with contemporary legislative language and approaches.

The review is guided by a four-member independent advisory panel which has extensive experience in vocational education and training (VET), industry and dual sector training delivery and skills delivery. There will be broad public consultation including with the key statutory bodies established by the Act, namely, the Training and Skills Commission and the Training Advocate.

The Advisory Panel is asked to provide advice and recommendations to the Department for Innovation and Skills on how the Act can more effectively support South Australia's current and future training needs (including under apprenticeships and traineeships) and workforce development. The review will canvass:

1. Governance and regulatory arrangements that build on the strengths of the current apprenticeship and traineeship system; and balance regulatory protection with simplicity, quality outcomes, protections for apprentices and trainees and labour market needs.
2. A legislative framework best suited to modern apprenticeships and traineeships, state based course development and course accreditation.
3. The legislative remit, and roles and responsibilities of the Training and Skills Commission ("the Commission") and the Training Advocate, including the potential for broadening the Commission's role to encompass skilled migration as part of the skills mix needed to meet industry demand in South Australia.
4. Streamlining or removing overlapping state and Commonwealth legislative requirements in relation to apprenticeships and traineeships and related processes, and minimising unjustifiable administrative costs incurred by parties to apprenticeships and traineeships.
5. Reviewing penalties under the Act and how compliance can be better incentivised through a risk managed framework.
6. Ensuring the Act contributes to high quality training outcomes that lead to jobs, based on best practice and knowledge around on-job training, institutional delivered training, training that incorporates elements of the higher education training model; and evidence based, best practice pathways to trade recognition.
7. Ensuring the Act supports quality training outcomes and meets workforce development needs in light of technological disruption, automation, high level qualifications and untraditional forms of training.
8. A legislative framework for increasing training participation, and pathways into training, including for hard-to-reach sections of the community.
9. Whether and how the Act should recognise pathways into apprenticeships and traineeships that sit outside mainstream and traditional apprenticeship and trade pathways.
10. The Act's role and function in relation to gatekeeping quality, for example, through employer registration and re-approval, regulating risk through balanced intervention in the affairs

of employers and training organisations; and amending the Act to reflect the current Commonwealth regulation of training providers and accreditation processes.

11. The Act's role and function in relation to the declaration of trades and declared vocations and consideration of streamlined employer-led alternatives.

12. Constraints or incompatibilities between the State's apprenticeship and traineeships system and other legislation affecting apprentices and trainees, including Commonwealth legislation.

13. Any other issues the panel consider are vital to underpinning improvements identified by end-users through the Commission's Futureproofing the South Australian Apprenticeship and Traineeship system review or other fora.

## **Appendix B - Harmonisation of apprenticeships and traineeships arrangements**

In 2013 the South Australian Government endorsed in principle, nationally consistent policies relating to the regulation of apprentices and trainees. Nationally consistent regulatory requirements benefit national employers, ensure the employment experience of apprentices and trainees and the quality of their training is similar across the nation, and supports the interstate movement of apprentices and trainees. Many of the agreed harmonisation requirements already exist in South Australia. However, a small number of changes to the Act are required to implement nationally agreed requirements.

In response stakeholders noted that differences may arise in practice across states and territories in relation to the implementation of harmonisation requirements across legislative provisions, administrative instructions and operation. It may be worthwhile investigating how harmonisation requirements have been framed in legislation in other states and territories.

Stakeholders also raised varying views regarding harmonisation requirements, with some emphasising the importance of ensuring consistency across states and territories, while others conversely noted the value of the State retaining responsibility for particular matters. The declaration of trades and vocation function saw such differences raised.

Concerns were raised in relation to a proposal that TASC relinquish responsibility for determining the standard form training contract as part of the implementation of national harmonisation arrangements. As an outcome of consultation, it was recognised that without this TASC would have difficulty in regulating the system, and in any case the Act made the Commission subject to control and direction by the Minister.

It was also suggested that section 69 of the Act will need to be updated to reflect current industrial relations arrangements, eg. the Fair Work Act, modern awards and agreements.

## Appendix C - Red Tape Reduction and Simplification

In recent years the Government has received feedback from a range of stakeholders regarding the burden and cost of regulation in the VET sector, including the apprenticeship and traineeship system. This includes administrative processes and reporting burden. In particular, concerns have been raised around the complexity of the current employer registration process required before establishing a training contract to take on an apprentice or trainee, and current training contract approval delays.

### **Employer Registration**

In response the 2016 Review suggested that the employer registration process needs to be simplified. In particular, the current 'fit and proper standard' could be replaced by a 'suitable person standard', with the onus moved on to employers to confirm through statutory declaration that this standard is met, rather than the Department being required to assess and approve it.

Stakeholders confirmed that concerns exist about the complexity and delays associated with the current employer registration and re-registration process. While some stakeholders support the employer registration concept being removed completely, all stakeholders saw the proposal as an improvement on current arrangements and were supportive. It was also suggested that a positive general statement in the Act affirming the elements of a good employer would be valuable.

Support specifically existed for placing a greater onus on the employer as part of employer registration and for the Department to take a more risk-based approach to its regulatory role. Some stakeholders went on to suggest that as a result of these proposals every employer should not be required to receive an employer registration visit (this is currently required for all new employers and most employers re-registering).

Whilst some stakeholders questioned the need for employer registration others valued the protections provided by a registration requirement. There was support for clear specific criteria to be met by employers being included in the Act and that employers could confirm that they meet these criteria through a statutory declaration. The criteria should be based on standards relating to the quality of employment and associated training arrangements for apprentices and trainees. This could include supervision and appropriate equipment and methods, along with a range of other criteria such as employer history particularly in the apprenticeship and traineeship jurisdiction. Criteria could extend to other employment related matters where these are related to quality and safety of apprenticeships and traineeships. This could include a requirement to specify and declare serious convictions/contraventions and/or repeated low-level contraventions. Ultimately having clear workable criteria was essential. In particular, having clear criteria would assist relevant future required compliance activities.

Additionally, there was support for the concept of automatic re-registration, albeit provided there were clear criteria as to when this would occur.

A greater focus on auditing and a risk-based approach to compliance throughout the life of the registration was seen as an important part of this proposal by stakeholders. This could include a risk-based focus on apprentices/trainees under 18 years of age. However, it was also noted that most apprentices and trainees are new to the industry sector of their apprenticeship or traineeship whatever their age.

It was suggested that a visit to some employers based on a risk assessment, could happen during the probationary period of some training contracts or early in the life of some training contracts.

### **Training Contract Approval – Training Plan**

The other key regulatory burden raised in the 2016 Review concerned delays in the training contract approval process. It was recognised that this is primarily caused by the need to wait for a training plan to be established as part of the training contract approval process. The proposal in the Discussion Paper would see Training Contract approval followed by a period of time for the training plan to be established and agreed by the employer, apprentice/trainee and RTO.

Stakeholders recognised the value and importance of the training plan. Support was received from stakeholders for separating the establishment of the training plan from the training contract approval process in the Act subject to there being a demonstrably strong link between the contract and commitment to training in order for the contract to be approved. Stakeholders recognised that the time taken to approve the training contract would be improved under the proposal. Additionally, some stakeholders recognised that due to the urgency to meet current training contract approval process and time requirements many training plans are generic in nature currently. Consequently, the quality of training plans could be improved by separating the establishment of the training plan from training contract approval.

Discussions also occurred about setting a specific time period for the establishment of the training plan. While many stakeholders thought a period of around 28 days between contract approval and establishment of the training plan was reasonable, other stakeholders preferred that the Act itself provided some flexibility allowing the training plan to be established within a time period determined by TaSC guidelines. Additionally, stakeholders suggested the inclusion in the Act of a requirement for the RTO to confirm its intention to train the apprentice or trainee as part of the apprenticeship or traineeship, prior to the training contract being approved. A specific suggestion was to link this to enrolment. Feedback also pointed to the need to ensure that the statutory requirements were practically feasible

As part of the proposal stakeholders supported placing stronger obligations on RTOs and including powers in relation to RTO's in the Act, especially in terms of ensuring the quality of training and training plans. Most stakeholders supported penalties being placed against these obligations in the Act. This could also involve including stronger obligations on the RTO in the Training Contract. Feedback did identify the need for such arrangements to operate fairly. For example, the recognition of extenuating circumstances that may result in a need for more time despite the best efforts of the parties to the contract and the RTO.

It was noted that sometimes there is a lack of communication or difficulty in communication between the employer and RTO for whatever reason, so the proposals should assist this. Ultimately there was a strong desire to ensure better, earlier and ongoing, communication between the employer and RTO and to foster high quality training of the apprentice or trainee.

## **Appendix D - Compliance and Response Capacity Strengthened – Risk Based**

Shifting the focus in the Act from up front assessment processes to increased ongoing compliance throughout the life of apprenticeships and traineeships was identified in the 2016 Review as a key reform area. To assist discussion, options were put forward in line with this focus. These included the introduction of a power to prohibit employers; a power to investigate and respond to unregistered employers who employ and train individuals as apprentices or trainees; enhancing powers to inquire, monitor, validate and audit traineeship and apprenticeship related matters; and confirming powers in relation to RTOs who are involved in training apprentices and trainees.

Stakeholders supported a greater focus on compliance and a risk-based approach to compliance throughout the life of apprenticeships and traineeships. Some stakeholders emphasised the importance of compliance related powers being applicable to RTOs as well as employers and apprentices/trainees as they are an important part of the apprenticeship or traineeship on many occasions.

Stakeholders suggested that clear criteria/guidance would be required in terms of when the power to prohibit an employer was appropriate. It was suggested that there could be value in including examples in the Act to assist