

South Australia

## South Australian Skills Act 2008

An Act relating to apprenticeships, traineeships, vocational education and training, adult community education, and education services for overseas students; to establish the South Australian Skills Commission; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Skills Act 2008*.

### 3—Objects

- (1) The objects of this Act are—
- (a) to strengthen the State's economic base by providing a modern, skilled workforce that meets the current and future needs of industry, Government and the community; and
  - (b) to promote partnerships within government, industry and other enterprises for the purpose of training and skills development for the State's workforce; and
  - (c) to support 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; and
  - (d) to establish a simple, streamlined apprenticeship and traineeship system featuring flexible, industry-endorsed approaches to training and skills development that reflects—
    - (i) the purpose of apprenticeships and traineeships is to develop the skills, knowledge and experience necessary for a person to acquire a vocation and qualification that contributes towards the person's employment and future occupational requirements; and
    - (ii) the responsibilities of an employer of an apprentice or trainee for the training required for the purposes of the apprenticeship or traineeship; and
    - (iii) the integral role of registered training organisations in the development of training goals and the success of apprenticeships and traineeships; and
    - (iv) the responsibilities of each party to a training contract to take appropriate action to support completion of the apprenticeship or traineeship, including where appropriate by resolving disputes in a timely manner that preserves the training relationship; and
  - (e) to recognise the importance of the vocational education and training system, including adult community education; and
  - (f) to facilitate life-long learning and supporting South Australians who change careers or wish to improve their skills; and
  - (g) to promote equity in training and skills development (including in access to such development).

- (2) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to further the objects set out in this section.

#### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

**accredited**—see subsection (3);

**apprentice** means a person who is being trained under an apprenticeship pursuant to a training contract that is in force;

**AQF** means the policy framework entitled "*Australian Qualifications Framework*" that defines qualifications recognised nationally in post-compulsory education within Australia, as approved by the Ministerial Council on Education, Employment, Training and Youth Affairs from time to time;

**ASQA** means Australian Skills Quality Authority established under the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

**Commission** means the South Australian Skills Commission established under Part 3;

**compliance notice** means a compliance notice issued under section 63;

**condition** includes a limitation or restriction;

**contravene** includes fail to comply with;

**Department** means the administrative unit of the Public Service assisting a Minister in the administration of this Act;

**declared vocation** means an occupation declared under section 6 to be a declared vocation for the purposes of this Act;

**employer**, in relation to a training contract, means an employer who is a party to the training contract;

**employer's obligations under the training contract**—see section 54J;

**higher education**—see subsection (2);

**Higher Education Standards** means the Higher Education Standards Framework (Threshold Standards) 2015 made under the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth, as in force from time to time;

**host employment arrangement** means an arrangement under which the employer of an apprentice or trainee places the apprentice or trainee with another person or body for particular training required under a training contract or training plan;

**nominated training organisation**—see section 54P;

**prohibited employer** means an employer with respect to whom a declaration is in force under section 54B, and includes—

- (a) in the case of an employer that is a body corporate—any person who, when the body corporate became a prohibited employer, was a director of the body corporate or was concerned in the management of the body corporate; and

- (b) in the case of an employer that is a partnership—any person who, when the partnership became a prohibited employer, was a partner in the partnership or was concerned in the management of the partnership;

**qualification** means a VET qualification within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

**recognised higher education provider** means a body established and recognised as a higher education provider by or under the law of the State, or of the Commonwealth or another State or Territory;

**Register** means the South Australian Skills Register;

**registered** means registered under Part 4 Division 3A, and a reference to a **registered employer** has a corresponding meaning;

**registered training organisation** means a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

**repealed Act** means the *Training and Skills Development Act 2003* repealed under Schedule 2;

**SAET** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**scope of the registration**, in relation to a registered employer, means the declared trades or vocations in relation to which the employer may enter into a training contract, as determined by the conditions imposed on the registration;

**South Australian Skills Standards** or **Standards** means the South Australian Skills Standards prepared under section 26, as in force from time to time;

**State university** means a university established under an Act of this State;

**TEQSA** means the Tertiary Education Quality and Standards Agency established under the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth;

**trade** means an occupation declared under section 6 to be a trade for the purposes of this Act;

**trainee** means a person who is being trained in a traineeship pursuant to a training contract that is in force;

**training contract** means—

- (a) a training contract approved under section 48; or  
(b) a training contract transferred from another jurisdiction under section 48A,

as in force from time to time;

**training plan**, for an apprentice or trainee, means a training plan for the apprentice or trainee prepared and endorsed under section 54Q, as in force from time to time;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

**vocational education and training**—see subsection (2).

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- (2) For the purposes of this Act—
- (a) education in relation to which qualifications are issued under the higher education provisions of the AQF is **higher education**;
  - (b) education and training for work in relation to which qualifications and statements of attainment are issued under the vocational education and training provisions of the AQF is **vocational education and training**;
  - (c) education and training services provided to persons holding a student visa within the meaning of the *Education Services for Overseas Students Act 2000* of the Commonwealth are **education services for overseas students**.
- (3) For the purposes of this Act, a course is accredited if it is a VET accredited course within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.
- (5) A reference in this Act to a particular agreement, policy framework or protocol defined in subsection (1) is—
- (a) a reference to the agreement, policy framework or protocol as amended from time to time; or
  - (b) if the regulations declare a document to be in substitution for the agreement, policy framework or protocol—a reference to the substituted document as amended from time to time.

## 5—Declarations relating to universities and higher education

- (1) For the purposes of this Act, the Minister may, by notice in the Gazette, make any of the following declarations:
- (a) that an institution is—
    - (i) a university; or
    - (ii) a university college; or
    - (iii) a specialised university of a kind specified in the declaration;
  - (c) that an institution that is an overseas higher education institution is an institution authorised to offer non AQF higher education qualifications in the State.
- (2) The Minister must, in making a declaration under this section, apply—
- (a) the Higher Education Standards; and
  - (b) any other guidelines determined by the Minister.
- (3) A declaration under this section—
- (a) may be subject to such conditions (including conditions that determine the scope of the operations of the institution) as the Minister thinks fit and specifies in the declaration; and
  - (b) will operate for the period set in the declaration; and
  - (c) may, by further notice in the Gazette, be varied or revoked.

- (4) It is an offence for an institution in relation to which a declaration has been made under this section to contravene a condition imposed by the Minister and specified in the declaration.

Maximum penalty: \$10 000.

Expiation fee: \$500.

## 6—Declarations of trades and declared vocations

- (1) The Minister may, by notice in the Gazette and on the recommendation of the Commission, declare an occupation to be a trade or a declared vocation (as the case requires).
- (2) A notice under subsection (1) must, in relation to each trade or vocation to which the notice relates:
- (a) identify the job or occupation, or class of job or occupation, to which the trade or vocation relates; and
  - (b) identify any relevant pathways (including, where appropriate, pathways at a national level) to the trade or vocation; and
  - (c) contain any other information required by the regulations.
- (3) To avoid doubt, a relevant pathway to a trade or vocation may, in addition to the primary qualification relating to the trade or vocation, include—
- (a) pre-apprenticeships or pre-traineeships; or
  - (b) specified skill sets; or
  - (c) higher qualifications; or
  - (d) such other matters as the Minister thinks appropriate.

## 6A—Interaction with other Acts and awards etc

- (1) Subject to subsection (2), this Act and any statutory instrument made under this Act prevail to the extent of any inconsistency over the *Fair Work Act 1994* or any other similar Act (including any regulation, award or other determination, enterprise agreement or industrial agreement made under those Acts or an Act repealed by those Acts).
- (2) A provision of an award or other determination, enterprise agreement or industrial agreement (whether made under the *Fair Work Act 1994* or otherwise) requiring employers to employ apprentices or trainees in preference to junior employees remains in full force.

## Part 2—Role of Minister

### 7—Functions of Minister

The Minister has the following functions under this Act:

- (a) to establish priorities and workforce development strategies to meet the State's current and future work skills needs in conjunction with industry, commerce, employee representatives and governments;

- (b) to manage the State's system of vocational education and training and adult community education by allocating resources within the State on a program and geographic basis;
- (c) to promote opportunities for adults to engage in further training and skills development opportunities, including through adult community education;
- (d) to manage the State's role as part of an integrated national system of education and training;
- (e) to administer the State's apprenticeship and traineeship system;
- (f) to facilitate complaint handling, mediation and advocacy in relation to the resolution of disputes relating to apprenticeships and traineeships, vocational education and training or international education, and to otherwise assist in the resolution of such disputes (including by providing advocacy services for parties in proceedings before the SAET);
- (g) any other function assigned to the Minister under this or any other Act or that the Minister considers appropriate.

## **8—Delegation by Minister**

- (1) The Minister may delegate a function or power of the Minister under this Act—
  - (a) to the Commissioner, the Commission or any other specified person or body;  
or
  - (b) to the person for the time being occupying a specified office or position.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) must be made by instrument in writing; and
  - (b) may be made subject to conditions specified in the instrument of delegation;  
and
  - (c) is revocable at will and does not prevent the delegator from acting in a matter.

## **Part 3—South Australian Skills Commission**

### **Division 1—South Australian Skills Commissioner**

#### **9—South Australian Skills Commissioner**

- (1) There is to be a South Australian Skills Commissioner.
- (2) The Commissioner is to be appointed by the Governor on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment.
- (3) An appointment of a person as Commissioner may be renewed, but a person must not hold office as Commissioner for more than 2 consecutive terms.

- (4) The Commissioner is subject to direction by the Minister but—
- (a) the Commissioner cannot be directed to make a particular finding or recommendation; and
  - (b) the Minister must, within 3 sitting days after giving a direction, cause a copy of the direction to be laid before both Houses of Parliament; and
  - (c) a direction must be published in the annual report of the Commissioner relating to the period in which the direction was given.
- (5) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## 10—Term of office and conditions of appointment

- (1) The Governor may remove the Commissioner from office on the presentation of an address from both Houses of Parliament seeking the Commissioner's removal.
- (2) The Governor may suspend the Commissioner from office on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
  - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Commissioner's removal has not been presented to the Governor, the Commissioner must be restored to office.
- (3) The office of Commissioner becomes vacant if the Commissioner—
- (a) dies; or
  - (b) resigns by written notice given to the Minister; or
  - (c) completes a term of office and is not reappointed; or
  - (d) is removed from office by the Governor under subsection (1); or
  - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
  - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
  - (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.

## 11—Remuneration

The Commissioner is entitled to remuneration, allowances and expenses determined by the Governor.

## 12—Acting Commissioner

- (1) The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Commissioner—
  - (a) during a vacancy in the office of Commissioner; or
  - (b) when the Commissioner is absent from, or unable to discharge, official duties; or
  - (c) if the Commissioner is suspended from office under this Act.
- (2) A person appointed to act as the Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## 13—Functions of Commissioner

In addition to being responsible for the operations of the Commission, the functions of the Commissioner are—

- (a) to advise and assist the Minister in relation to the Minister's functions under the Act; and
- (b) to further the objects of this Act; and
- (c) such other functions as may be conferred on the Commissioner by or under this or any other Act.

## 14—Reporting obligations

- (1) The Commissioner must, on or before 31 March in each year, report to the Minister on the performance of the Commissioner's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Commissioner, have copies of the report laid before both Houses of Parliament.

## Division 2—South Australian Skills Commission

### 15—South Australian Skills Commission

- (1) The South Australian Skills Commission is established.
- (2) The South Australian Skills Commission is responsible to the Commissioner for the performance of its functions (and, to avoid doubt, the Commissioner is not bound by the recommendations of the Commission).
- (3) The Commission is subject to direction by the Minister but—
  - (a) the Commission cannot be directed to make a particular finding or recommendation; and
  - (b) the Minister must, within 3 sitting days after giving a direction, cause a copy of the direction to be laid before both Houses of Parliament; and
  - (c) a direction must be published in the annual report of the Commission relating to the period in which the direction was given.
- (4) The Commission consists of—
  - (a) the Commissioner (*ex officio*); and

- (b) up to 10 persons appointed by the Minister who, in the Minister's opinion, together have the abilities and experience required for the effective performance of the Commission's functions.
- (5) The Minister appoint a suitable person to be the deputy of a member and a person so appointed may act as a member of the Commission in the member's absence.

## 16—Terms and conditions of membership

- (1) Subject to this section, a member of the Commission will hold office on conditions, and for a term (not exceeding 2 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (2) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
  - (e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (f) is removed from office by the Minister under subsection (3).
- (3) The Minister may remove a member from office—
  - (a) for misconduct or conduct that may bring the Commission into disrepute; or
  - (b) for breach of, or non-compliance with, a condition of appointment; or
  - (c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
  - (f) for incompetence or neglecting the duties of the position; or
  - (g) any other reason the Minister thinks fit.

## 17—Remuneration

A member of the Commission is entitled to remuneration, allowances and expenses determined by the Minister.

## 18—Procedures of Commission

- (1) The Commissioner will preside at each meeting of the Commission at which the Commissioner is present.
- (2) The Minister may appoint a member to preside at meetings of the Commission in the absence of the Commissioner.
- (3) If the Commissioner is absent from a meeting of the Commission, the following provisions apply:
  - (a) if another member has been appointed to chair meetings in the absence of the Commissioner and is present at the meeting—that member will preside at the meeting;
  - (b) in any other case—a member chosen by the members present at the meeting will preside at the meeting.
- (4) A quorum of the Commission consists of half of the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (5) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Commission.
- (6) Each member present at a meeting of the Commission has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (7) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Commission at which the participating members are present.
- (8) A proposed resolution of the Commission becomes a valid decision of the Commission despite the fact that it is not voted on at a meeting of the Commission if—
  - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Commission; and
  - (b) a majority of the members express their concurrence in the proposed resolution by letter, fax or other written communication setting out the terms of the resolution.
- (9) The Commission must cause accurate minutes to be kept of its proceedings.
- (10) Subject to this Act and to any direction of the Commissioner, the Commission may determine its own procedures.
- (11) Subject to the directions of the Commission, this section applies to a committee of the Commission in the same way as to the Commission.

## 19—Functions of Commission

- (1) The Commission's functions are—
  - (a) to advise the Minister on—
    - (i) matters relating to the development, funding, quality and performance of vocational education and training and adult community education; and

- (ii) 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); and
    - (iii) the State's role as part of an integrated national system of education and training; and
  - (b) to regulate the State's apprenticeship and traineeship system; and
  - (c) to prepare the South Australian Skills Standards and other information for the purposes of this Act; and
  - (d) to undertake complaint handling and provide, where appropriate, mediation and advocacy services in disputes relating to apprenticeships and traineeships, vocational education and training, higher education or international education, and to otherwise assist in the resolution of such disputes (including by providing advocacy services for parties in proceedings before the SAET); and
  - (e) to monitor, and report to the Minister on, the state of vocational education and training and adult community education in the State, including the expenditure of public money in those areas; and
  - (f) to promote the development of investment, equity and participation in, and access to, vocational education and training and adult community education; and
  - (g) to promote pathways between the secondary school, vocational education and training, adult community education, and higher education sectors; and
  - (h) to enter into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; and
  - (i) to monitor, and make recommendations to the Minister on, the administration and operation of this Act; and
  - (j) such other functions as may be assigned to the Commission by the Minister or by or under this or any other Act.
- (2) The Commission must, in advising or making recommendations to the Minister, to such extent as may be reasonably practicable, consult with—
- (a) industry and commerce, including industry, skills and other advisory bodies and associations and organisations established by or representing industry and commerce; and
  - (b) associations and organisations representing employees; and
  - (c) relevant bodies, associations or organisations representing higher education, vocational education and training and adult community education; and
  - (d) relevant government and community bodies.
- (3) The Commission may, in accordance with any requirements in the regulations, establish such industry engagement or advisory bodies as the Commission thinks appropriate (which may but need not consist of members of the Commission).

## 20—Delegation

- (1) The Commission may, with the approval of the Minister, delegate any of its functions or powers under this Act to a specified person or body.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not derogate from the power of the delegator to act in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 21—Committees

- (1) The Commission may establish committees—
  - (a) to advise the Commission; or
  - (b) to carry out functions on behalf of the Commission.
- (2) The membership of a committee will be determined by the Commission and may, but need not, consist of, or include, members of the Commission.
- (3) The Commission will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Commission; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

## 22—Validity of acts

An act or proceeding of the Commission is not invalid by reason only of a vacancy in its membership.

## 23—Staff

- (1) The Commission's staff consists of—
  - (a) Public Service employees assigned to work in the office of the Commission under this Act; and
  - (b) officers or employees under the *TAFE SA Act 2012* assigned to work in the office of the Commission under this Act.
- (2) The Minister may, by notice in the Gazette—
  - (a) exclude—
    - (i) Public Service employees who are members of the Commission's staff from specified provisions of the *Public Sector Act 2009*; and
    - (ii) officers or employees under the *TAFE SA Act 2012* who are members of the Commission's staff from specified provisions of that Act; and

- (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)(i) or (ii)—determine that those provisions will apply,

and such a notice will have effect according to its terms.

#### **24—Use of staff etc of Public Service**

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

#### **25—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Commission will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employers generally or employees generally, or a substantial section of employers or employees.

### **Division 3—South Australian Skills Standards**

#### **26—Commission to prepare South Australian Skills Standards**

- (1) The Commission must, in accordance with any requirements set out in the regulations, prepare and maintain standards for the purposes of this Act (the *South Australian Skills Standards*).
- (2) The Commission may, in accordance with any requirements set out in the regulations, vary the South Australian Skills Standards (and must review the Standards at least every 5 years).
- (3) The Commission must cause the South Australian Skills Standards, or the South Australian Skills Standards as varied, (as the case requires) to be published—
  - (a) in the Gazette; and
  - (b) on a website determined by the Commission.
- (4) The South Australian Skills Standards, and any variation of the Standards, have effect from the day on which they are published in the Gazette.
- (5) For the purposes of this section, a reference to a variation of the South Australian Skills Standards will be taken to include a reference to the substitution of the Standards.

## **Part 4—Apprenticeships, traineeships and training contracts**

### **Division 1—Interpretation**

#### **45—Interpretation**

- (1) In this Part, unless the contrary intention appears—

*probationary period* for a training contract for a trade or declared vocation—see subsection (2);

*remuneration* means wages and other monetary benefits of employment;

*standard conditions* for a training contract for a trade or declared vocation—see subsection (2);

*standard form contract*—see subsection (2);

*training plan*—see section 46(6).

- (2) The Commission may, by notice in the Gazette—
  - (a) determine a *standard form contract* for the purposes of this Part;
  - (b) determine a *probationary period* for a training contract for a specified trade or declared vocation;
  - (c) determine *standard conditions* for a training contract for a specified trade or declared vocation, including—
    - (i) the term of the contract; and
    - (ii) the qualifications available for a person in the trade or declared vocation; and
    - (iii) any other condition considered necessary by the Commission.
- (3) The Commission may, by further notice in the Gazette, vary or revoke a notice under subsection (2).

## **Division 1A—Certain training to occur under training contract**

### **45A—Training in trade must occur under training contract**

- (1) A person must not undertake to train a person in a trade except under a training contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) However, subsection (1) does not apply in relation to the further training or re-training of a person who—
  - (a) has already completed the training required under a training contract; or
  - (b) has an equivalent qualification; or
  - (c) has been certified by the Commission as competent in relation to the relevant trade.

**Note—**

This section does not limit the Commission's ability to recognise trade skills obtained through other pathways.

### **45B—Training in declared vocation may occur under training contract**

An employer may undertake to train a person in a declared vocation under a training contract.

## Division 2—Training contracts

### 46—Training contracts

- (4) An employer must not enter into a training contract to train a person unless the employer is—
- (a) a registered employer; and
  - (b) operating within the scope of the registration of the employer; and
  - (c) complying with any other condition of the registration.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) 2 or more registered employers may, with the approval of the Commission, enter into a training contract with the same apprentice or trainee.
- (6) A training contract must—
- (a) be in the form of the standard form contract; and
  - (b) contain the following conditions:
    - (i) a condition that the apprentice or trainee will be employed by the employer party to the contract in accordance with the applicable award or industrial agreement;
    - (ii) a condition specifying the probationary period for a contract for the relevant trade or declared vocation;
    - (iii) the standard conditions for a contract for the relevant trade or declared vocation;
    - (iv) a condition that the apprentice or trainee will be trained and assessed in accordance with the *training plan* (to be agreed between the employer, the apprentice or trainee and a registered training provider chosen jointly by the employer and the apprentice or trainee);
    - (v) any other conditions that have been agreed between the employer and the apprentice or trainee after consultation with the registered training provider.
- (7) A person under the age of 15 years must not enter into a training contract unless—
- (a) otherwise permitted under an industrial agreement or award; or
  - (b) the person has, on application, obtained the written approval of the Commission granted in accordance with any requirements under the South Australian Skills Standards.
- (13) Non-compliance with any of the provisions of this section does not of itself affect the validity of a training contract.

### 47—Minister may enter training contracts

- (1) The Minister may enter into a training contract assuming the rights and obligations of an employer under the contract.

- (2) The Minister may not enter into a training contract except—
  - (a) on a temporary basis; or
  - (b) where it is not reasonably practicable for some other employer to enter into the contract.

#### **48—Training contracts to be approved by Commission**

- (1) An employer must, not later than 28 days after entering an agreement—
  - (a) under which the employer is to train a person in a trade, or to otherwise train a person under a training contract; and
  - (b) that is intended to be a training contract,apply to the Commission for approval of the agreement as a training contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) An application under subsection (1)—
  - (a) must be made in a manner and form determined by the Commission; and
  - (b) must be accompanied by the agreement; and
  - (c) must be accompanied by any other information or documents specified by the Commission.
- (3) The Commission may, by notice in writing, require an employer to provide, within a specified period, such other specified information or documents as may be required by the Commission for the purposes of determining an application.
- (4) The Commission must refuse to approve an agreement as a training contract—
  - (a) if the employer is a prohibited employer; or
  - (b) if, by training a person under the proposed training contract, the employer would commit an offence under section 46(4); or
  - (c) in any other circumstances prescribed by the regulations.
- (5) The Commission may refuse to approve an agreement as a training contract for any other reason the Commission considers appropriate including where—
  - (a) the agreement—
    - (i) is not in the form of the standard form contract; or
    - (ii) does not otherwise comply with this Act; or
  - (b) the qualification to which the agreement relates is, in the opinion of the Commission, an inappropriate qualification for a training contract; or
  - (c) the employer, or the apprentice or trainee, will, in the opinion of the Commission, be unable to fulfil their obligations under the proposed training contract; or
  - (d) the requirements under this Act in relation to a training plan for the apprentice or trainee are unlikely to be satisfied; or
  - (e) a term of the proposed training contract is, in the opinion of the Commission, prejudicial to the interests of the apprentice or trainee; or

- (f) the Commission reasonably suspects that the employer has engaged in conduct that is likely to result in the employer being declared a prohibited employer.
- (6) The Commission must, on determining an application under this section—
- (a) notify the employer and apprentice or trainee in writing of the Commission's determination; and
  - (b) if the Commission refuses to approve an agreement—the reasons for the refusal; and
  - (c) if the Commission approves an agreement as a training contract—the date of approval of the agreement.
- (7) An employer who has made an application under this section that has been refused by the Commission must not, except with the written authority of the Commission, continue to train a person in a trade under the refused agreement.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **48A—Transfer of training contracts between jurisdictions**

- (1) The Commission may, in the case where a trainee or apprentice under a training contract (however described) entered into under the law of another State or Territory that is in force wishes to relocate to this State—
- (a) recognise (with or without modification) the training contract as a training contract under this Act; and
  - (b) recognise (with or without modification) a training plan relating to the training contract as a training plan under this Act; and
  - (c) substitute the employer in relation to the training contract for an employer in this State; and
  - (d) recognise any employment undertaken, or achievement in relation to the training contract, in the other State or Territory; and
  - (e) make such other arrangements in respect of the apprentice or trainee, or training contract, as the Commission considers necessary or appropriate.
- (2) The regulations may make further provisions in relation to the transfer of training contracts between jurisdictions (including, to avoid doubt, provisions limiting a training contract, or class of training contract, from being recognised under this section).

#### **49—Commencement date of apprenticeship or traineeship and term of training contracts**

- (1) Subject to this section, an apprenticeship or traineeship under a training contract will be taken to commence on—
- (a) if a commencement date is specified in the training contract—that date; or
  - (b) if no such commencement date is specified—on the day on which the relevant agreement is approved as a training contract under section 48.

- (2) Subject to this section, a training contract remains in force until—
- (a) if the training contract specifies a period during which the training contract remains in force—the end of that period; or
  - (b) if the training contract specifies an event on which occurrence the training contract ceases to be in force—the occurrence of that event; or
  - (c) the Commission certifies the apprentice or trainee under the contract as competent in relation to the relevant trade or declared vocation; or
  - (d) the contract is terminated under this Act,
- whichever occurs first.
- (3) The Commission may, on an application under this section or on its own motion, determine—
- (a) that the whole or a part of a period of training that occurred before the date of a training contract be treated as a period of training served under the contract; or
  - (b) that the whole or a part of a period of training that occurred under a previous training contract be treated as a period of training served under a specified training contract; or
  - (c) that a period of absence of an apprentice or trainee under a training contract be excluded from consideration in computing the length of service of the apprentice or trainee under the contract,
- and the training contract (including the term of the contract) is to be construed in accordance with the determination.
- (4) The Commission may, by notice in writing to the parties to a training contract, increase or reduce the term of the contract.
- (5) If the Commission is satisfied of the competence of an apprentice or trainee, or a former apprentice or trainee, the Commission may, on an application under this section or on its own motion, in accordance with any requirements set out in the South Australian Skills Standards—
- (a) certify that the apprentice or trainee is to be taken to have completed the training required under the contract; and
  - (b) if the contract is still in operation—terminate the contract and relieve the parties to the contract of their obligations under the contract.
- (6) To avoid doubt, subsection (5) applies whether or not the relevant training contract is still in operation.
- (7) An application under this section—
- (a) may be made by a party to a training contract; and
  - (b) must be made in a manner and form determined by the Commission; and
  - (c) must be accompanied by such information or documents as may be required by the Commission; and
  - (d) must be accompanied by the prescribed fee.

- (8) Nothing in this section prevents the extension or reduction of the term of a training contract by SAET.
- (9) If a conflict occurs between a determination of the Commission under this section and a determination of SAET, the determination of SAET prevails.

#### **49A—Extension of probationary period**

- (1) The Commission may, on the application by a party to a training contract and in accordance with the South Australian Skills Standards, vary the contract to extend the probationary period for a contract for a specified period (however the probationary period, as extended, must not exceed 6 months in total or 25% of the term of the contract, whichever is the lesser).
- (2) If the Commission extends a probationary period under subsection (1), the Commission must give written notice of that fact to each party to the training contract.
- (3) The Commission may, by notice in the Gazette made with the approval of the Minister, vary a specified class of training contracts to extend the probationary period for a training contract of that class for a specified period (however the probationary period, as extended, must not exceed 6 months in total or 25% of the term of the contract, whichever is the lesser).

#### **50—Commission may vary hours under training contract**

- (1) The Commission may, on application by the parties to a training contract or on its own motion, vary the contract so that it provides for part-time training instead of full-time training, or full-time training instead of part-time training, if to do so is not inconsistent with the award or industrial agreement under which the apprentice or trainee is employed.
- (2) The Commission may, on application by the parties to a school-based training contract or on its own motion, vary the contract so that it provides for full-time training or part-time training (as the case requires) when the school-based apprentice or trainee finishes school.

#### **51—Commission may suspend training contract**

- (1) The Commission may, on an application under this section or on its own motion, suspend a training contract.
- (2) An application under this section—
  - (a) may be made by a party to a training contract; and
  - (b) must be made in a manner and form determined by the Commission; and
  - (c) must be accompanied by such information or documents as may be required by the Commission; and
  - (d) must be accompanied by the prescribed fee.
- (3) A suspension under this section—
  - (a) must be by notice in writing;
  - (b) may be conditional or unconditional.
- (4) The Commission may, by notice in writing, vary or revoke a condition of a suspension.

- (5) A suspension under this section commences on the day specified by the Commission and remains in force for the period specified in the notice or until further notice by the Commission (as the case requires).

### **51A—Termination of training contract during probationary period**

- (1) A party to a training contract may, after the commencement of the term of the contract and within the probationary period, terminate the contract by written notice to the other party or parties to the contract.
- (2) If a training contract is terminated during the probationary period, the employer in relation to the contract must, within 7 days of the termination, notify the Commission in writing of the termination.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **51B—Commission may terminate training contract**

- (1) The Commission may, on an application under this section or on its own motion, terminate a training contract.
- (2) An application under this section—
- (a) may be made by a party to a training contract; and
  - (b) must be made in a manner and form determined by the Commission; and
  - (c) must be accompanied by such information or documents as may be required by the Commission; and
  - (d) must be accompanied by the prescribed fee.
- (3) The Commission must cause written notice of a termination under this section to be given to each party under a training contract.
- (4) A termination under this section has effect on the day specified by the Commission.

### **51C—Offence to terminate etc training contract**

A person who, without being authorised to do so under this Act—

- (a) terminates or purports to terminate a training contract; or
- (b) suspends or purports to suspend a training contract,

is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **52—Commission may require dispute resolution between parties to certain applications**

The Commission may, before determining an application under this Part for termination or suspension of a training contract, or substitution of an employer in relation to a training contract, require the parties to the training contract to undertake dispute resolution of a specified kind.

### 53—Effect of time spent training on employment of apprentice or trainee

- (1) Subject to this section, the time spent by an apprentice or trainee attending a course as part of their apprenticeship or traineeship will be treated for all purposes as part of the employment of the apprentice or trainee.
- (2) If it is necessary for an apprentice or trainee to re-attend a course previously undertaken by the apprentice or trainee, the employer has a discretion as to whether time spent re-attending the course is to be taken into account for the purpose of determining the wages payable to the apprentice or trainee.

### 54—Termination/expiry of training contract and pre-existing employment

If a training contract is entered into between an employer and a person who is already in the employment of the employer, the termination, or expiry of the term, of the training contract does not of itself terminate the person's employment with the employer.

## Division 3—Prohibited employers

### 54B—Prohibited employers

- (1) The Commission may, by notice in writing and in accordance with any requirements set out in the regulations, declare an employer to be a *prohibited employer* if the Commission reasonably believes the employer is not a suitable person to employ an apprentice or trainee.
- (2) In determining whether or not an employer is suitable to employ an apprentice or trainee, the Commission must have regard to the following:
  - (a) whether the employer is able to provide, or arrange to provide, an apprentice or trainee with the facilities, range of work, supervision and training required under a training plan for the apprentice or trainee;
  - (b) the employer's record in delivering training to apprentices or trainees;
  - (c) whether the employer behaves, or permits their employees to behave, in an objectionable way towards apprentices or trainees;
  - (d) whether the employer has contravened this Act, or any other Act (whether of the State another State or Territory or the Commonwealth) relating to employment;
  - (e) the criminal history of the employer;
  - (f) whether the employer is a fit and proper person to employ an apprentice or trainee;
  - (g) any other matter prescribed by the regulations,and may have regard to any other matter the Commission considers relevant to the decision whether or not to declare the employer to be a prohibited employer.
- (3) A declaration under this section—
  - (a) may be conditional or unconditional;
  - (b) may be for a stated or indefinite period.

- (4) The Commission may, by notice in writing, vary or revoke a condition of a declaration.

#### **54C—Revocation of declaration**

- (1) The Commission may, by notice in writing on the application of a prohibited employer or on the Commission's own motion, revoke a declaration under section 54B if the Commission is satisfied that it is, in all of the circumstances, appropriate to do so.
- (2) An application under this section—
- (a) must be made in a manner and form determined by the Commission; and
  - (b) must be accompanied by any information or documents required by the Commission; and
  - (c) must be accompanied by the prescribed fee.

#### **54D—Offence for prohibited employer to employ etc apprentice or trainee**

- (1) A prohibited employer must not—
- (a) employ, or offer to employ, a person as an apprentice or trainee; or
  - (b) train, or undertake to train, a person in a trade; or
  - (c) train, or undertake to train, a person in a declared vocation under a training contract.

Maximum penalty: \$10 000.

- (2) A prohibited employer must not permit an apprentice or trainee to be placed with the prohibited employer under a host employment arrangement.

Maximum penalty: \$10 000.

#### **54E—Offence to make certain false representations relating to prohibited employers**

- (1) A prohibited employer must not falsely represent that they are not a prohibited employer.

Maximum penalty: \$10 000.

- (2) A prohibited employer who is the subject of a conditional declaration under section 54B must not falsely represent that the declaration is, or is not, subject to a specified condition, or a condition of a specified kind.

Maximum penalty: \$10 000.

- (3) A person must not falsely represent that—

- (a) another person is not a prohibited employer; or
- (b) a declaration under section 54B that another person is a prohibited employer is, or is not, subject to a specified condition, or a condition of a specified kind.

Maximum penalty: \$10 000.

## **Division 3A—Provisions relating to employers**

### **54F—Registration of employers**

- (1) The Commission must, on an application by or on behalf of an employer, register an employer under this section if—
  - (a) the employer is not a prohibited employer; and
  - (b) the employer satisfies any requirements set out in the regulations or the South Australian Skills Standards in relation to registration under this section; and
  - (c) it is, in the opinion of the Commission, appropriate to register the employer under this section.
- (2) An application under this section—
  - (a) must be made in a manner and form determined by the Commission; and
  - (b) must be accompanied by any information or documents that may be required by the Commission; and
  - (c) must be accompanied by the prescribed fee.
- (3) In registering an employer under this section, the Commission—
  - (a) must impose such conditions on the registration as may be prescribed by the regulations; and
  - (b) may impose such other conditions as the Commission thinks fit.
- (4) Registration under this section remains in force for the period (not exceeding 5 years) specified by the Commission and, on expiry, may be renewed in a manner determined by the Commission.

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

- (1) The Commission must, on declaring an employer to be a prohibited employer, cancel the employer's registration.
- (2) The Commission, on an application by a registered employer—
  - (a) must cancel the employer's registration; and
  - (b) may vary or revoke a condition of the employer's registration (not being a condition referred to in section 54F(3)(a)).
- (3) The Commission may, if satisfied that—
  - (a) a registered employer has contravened a provision of this Act or a corresponding law; or
  - (b) has failed to comply with a compliance notice; or
  - (c) a registered employer has contravened a condition of the employer's registration; or
  - (d) it otherwise is in the public interest, or the interest of apprentices or trainees employed by the employer, that the employer's registration be varied, suspended or cancelled (as the case requires),

do such of the following as the Commission thinks fit:

- (e) vary or revoke a condition of the employer's registration;
  - (f) impose a new condition on the employer's registration;
  - (g) suspend the employer's registration for a specified period, or until further notice by the Commission;
  - (h) cancel the employer's registration.
- (4) Subject to subsection (5), the Commission must give a registered employer at least 28 days written notice before taking action under this section.
- (5) The Commission may suspend the registration of an employer under this section without complying with subsection (4) if the Commission believes on reasonable grounds that—
- (a) an apprentice or trainee employed by the employer is at imminent risk of harm; and
  - (b) it is reasonably necessary or appropriate to suspend the registration of an employer without complying with subsection (4) in order to manage that risk.
- (6) To avoid doubt, the Commission may exercise a power under this section whether the contravention occurred within or outside of this State.
- (7) In this section—
- corresponding law* means a law of the Commonwealth, or of another State or Territory, declared by the regulations to be a corresponding law for the purposes of this section.

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

- (1) This section applies to a training contract where the registration of the employer in relation to the training contract—
- (a) has been cancelled under section 54G; or
  - (b) has been suspended under section 54G; or
  - (c) has been varied (whether under section 54G or otherwise) such that it is no longer, in the opinion of the Commission, appropriate that the employer continues as the employer in relation to the training contract.
- (2) The Commission may, on its own motion or on the application of a party to the training contract, substitute an employer in relation to a training contract to which this section applies if—
- (a) the proposed employer consents to the substitution; and
  - (b) the proposed employer is not a prohibited employer; and
  - (c) the proposed employer is—
    - (i) a registered employer; and
    - (ii) operating within the scope of the registration of the employer; and
    - (iii) complying with any other condition of the registration.

- (3) Despite subsection (2)(c), the Commission may approve a substitution despite a proposed employer not being a registered employer if the proposed employer has applied for registration under this Division, but that application has not yet been determined.
- (4) A substitution of an employer under this section may be permanent, or for a period specified by the Commission.
- (5) The following provisions apply where an employer is substituted under this section:
  - (a) the employment of the apprentice or trainee to which the training contract relates continues as employment with the new employer;
  - (b) the training contract continues in force, subject to the substitution;
  - (c) any rights, obligations and liabilities of the former employer in respect of the training contract are, by force of this paragraph, transferred to the new employer.

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

- (1) A person must not falsely represent that they are a registered employer.  
Maximum penalty: \$10 000.
- (2) A registered employer must not falsely represent that the employer's registration is, or is not, subject to a specified condition, or a condition of a specified kind.  
Maximum penalty: \$10 000.
- (3) A person must not falsely represent that—
  - (a) another person is a registered employer; or
  - (b) the registration of another person is, or is not, subject to a specified condition, or a condition of a specified kind.Maximum penalty: \$10 000.

#### **54J—Employer's obligations under training contract**

- (1) An employer in relation to a training contract must comply with the following provisions (the *employer's obligations under the training contract*):
  - (a) the employer must comply with the South Australian Skills Standards;
  - (b) the employer must permit an apprentice or trainee under the training contract to carry out their obligations under the training contract;
  - (c) the employer must not place, or permit the placement of, an apprentice or trainee under the training contract with a prohibited employer;
  - (d) the employer must not, without the authorisation of the Commission, place, or permit the placement of, an apprentice or trainee under the training contract with an employer who is not a registered employer;
  - (e) the employer must not—
    - (i) prevent or obstruct the apprentice or trainee from carrying out their obligations under a training plan;

- (ii) prevent or obstruct the apprentice or trainee from participating in any training required to be delivered by the nominated training organisation under a training plan; or
  - (iii) 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; or
  - (iv) take any other steps to discourage the apprentice or trainee from participating in such training;
- (f) the employer must comply with any other obligation specified in the training contract or training plan that is applicable to the employer.
- (2) Each of the provisions referred to in subsection (1) will be taken to be a condition of the employer's registration.
- (3) Without limiting any other provision of this Act, the Commission may, in relation to an employer's failure to satisfy the employer's obligations under the training contract, do 1 or more of the following:
  - (a) give the employer a written warning;
  - (b) vary, suspend or cancel the employer's registration under section 54G(3);
  - (c) issue a compliance notice under section 63;
  - (d) declare the employer to be a prohibited employer under Part 3.

#### **54K—Employer to notify Commission of certain matters**

- (1) An employer in relation to a training contract must notify the Commission if any of the following occurs:
  - (a) there is a material change in any information provided to the Commission in relation to the employer's application for registration;
  - (b) the employer sells, or offers for sale, the business to which the employer's registration relates;
  - (c) the employer, or the business to which the employer's registration relates, becomes insolvent or bankrupt;
  - (d) the employer is convicted of an indictable offence or a summary offence for which a term of imprisonment may be imposed;
  - (e) any other matter prescribed by the regulations.
- (2) A notice under subsection (1)—
  - (a) must be given in a manner and form determined by the Commission; and
  - (b) must be given as soon as is reasonably practicable after the relevant matter occurs; and
  - (c) must contain the information required by the regulations for the purposes of this paragraph.

- (3) An employer who refuses or fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **54L—Making and retention of records**

- (1) An employer in relation to a training contract must keep such records as may be required by the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) An employer must retain a record kept under subsection (1) for at least 7 years after the completion, expiry or termination (as the case requires) of the training contract to which the record relates.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **Division 3B—Provisions relating to apprentices and trainees**

#### **54M—Obligations of apprentices and trainees under training contracts**

- (1) An apprentice or trainee in relation to a training contract must comply with the following provisions:
- (a) the apprentice or trainee must comply with the South Australian Skills Standards;
  - (b) the apprentice or trainee must comply with any other obligation specified in the training contract or training plan that is applicable to the apprentice or trainee;
  - (c) the apprentice or trainee must, 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.
- (2) Without limiting any other provision of this Act, the Commission may, in relation to a failure of an apprentice or trainee to comply with subsection (1), do 1 or more of the following:
- (a) give the apprentice or trainee a written warning;
  - (b) require the parties to the training contract to attend a conciliation conference under section 52;
  - (c) suspend the training contract under section 51;
  - (d) terminate the training contract under section 51B.

## **Division 3C—Substitution of employer under training contract and transfer fees**

### **54MA—Transfer of training contract where change of ownership of business**

- (1) A change in the ownership of a business (or part of a business) does not result in the termination of a training contract entered into by the former owner but, where a change in ownership occurs, the rights, obligations and liabilities of the former owner under the contract are transferred to the new owner.
- (2) If a training contract is transferred under this section, both the former owner and the new owner must, within 21 days of the transfer or assignment, notify the Commission in writing of the transfer.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **54N—Commission may approve substitution of employer under training contract**

- (1) The Commission may, on an application under this section and in accordance with any requirements set out in the regulations or the South Australian Skills Standards, approve the substitution of an employer in relation to a training contract.
- (2) An application under this section—
  - (a) may be made by, or on behalf of, an employer, or an apprentice or trainee, in relation to a training contract, or a person who is to be substituted for the employer (a *proposed employer*), each of whom will be taken to be a party to the application; and
  - (b) must be made in a manner and form determined by the Commission; and
  - (c) must include any information or documents required by the Commission; and
  - (d) must be accompanied by the prescribed fee.
- (3) The Commission may only approve the substitution of an employer under this section if—
  - (a) the proposed employer consents to the substitution; and
  - (b) the proposed employer is not a prohibited employer; and
  - (c) the proposed employer is—
    - (i) a registered employer; and
    - (ii) operating within the scope of the registration of the employer; and
    - (iii) complying with any other condition of the registration; and
  - (d) the proposed employer has paid, or has entered into an agreement to pay, any transfer fee payable under section 54O to the employer in relation to the training contract;
  - (e) the Commission is satisfied that it is, in all the circumstances, appropriate to do so.

- (4) Despite subsection (3)(c), the Commission may approve a substitution despite a proposed employer not being a registered employer if—
  - (a) the proposed employer has applied for registration under Division 3, but that application has not yet been determined; and
  - (b) the Commission is satisfied that the proposed employer is a fit and proper person to enter a training contract.
- (5) The Commission should, where it is reasonably practicable to do so, have regard to any submissions of the existing employer in relation to the relevant training contract in relation to the application (other than where that employer is the applicant).
- (6) The following provisions apply where the substitution of an employer is approved under this section:
  - (a) the employment of the apprentice or trainee to which the training contract relates continues as employment with the new employer;
  - (b) the training contract continues in force, subject to the substitution;
  - (c) any rights, obligations and liabilities of the former employer in relation to that training contract are, by force of this paragraph, transferred to the new employer.

#### **54O—Transfer fee payable in relation to certain substitutions of employer in relation to training contract**

- (1) This section applies to the substitution of an employer in relation to a training contract under section 54N.
- (2) A proposed employer in relation to a training contract must, in accordance with any requirements set out in the regulations or the South Australian Skills Standards, pay to the previous employer in relation to the training contract the prescribed transfer fee for a business of the relevant size.
- (3) An amount payable to a previous employer under this section may be recovered by the previous employer as a debt in a court of competent jurisdiction.
- (4) The Governor may, by regulation, exempt a specified proposed employer, or proposed employers of a specified class, from the operation of this section.
- (5) Nothing in this section affects any cause of action or other right that an employer may have arising out of, or relating to, a training contract.
- (6) For the purposes of this section, the size of a business is to be determined as follows:
  - (a) if the business employs or otherwise engages not more than 20 people, the business will be taken to be a small business;
  - (b) if the business employs or otherwise engages more than 20 people, the business will be taken to be a medium to large business.
- (7) In this section—

*previous employer* in relation to a training contract, means the employer in relation to the training contract immediately preceding the substitution of a proposed employer under section 54N;

*proposed employer*, in relation to a training contract, has the same meaning as in section 54N.

### **Division 3D—Provisions relating to nominated training organisations and training plans**

#### **54P—Nomination of training organisation for apprentice or trainee**

- (1) There is to be a *nominated training organisation* for an apprentice or trainee under each training contract to which the apprentice or trainee is a party.
- (2) A nominated training organisation must be—
  - (a) a registered training organisation; or
  - (b) a recognised higher education provider.
- (3) Subject to this section, a registered training organisation or recognised higher education provider will be taken to be the nominated training organisation for an apprentice or trainee if, in accordance with any requirements set out in the South Australian Skills Standards—
  - (a) the employer and the apprentice or trainee in relation to a training contract agree on which registered training organisation or recognised higher education provider (as the case requires) is to become the nominated training organisation for the apprentice or trainee; and
  - (b) the employer and the apprentice or trainee seek the acceptance of the registered training organisation or recognised higher education provider (as the case requires) in respect of the nomination; and
  - (c) the registered training organisation or recognised higher education provider (as the case requires) accepts the nomination and agrees to be the nominated training organisation for the apprentice or trainee.
- (4) To avoid doubt, an apprentice or trainee may have more than 1 nominated training organisation for each apprenticeship or traineeship at any time.

#### **54Q—Training plans**

- (1) The nominated training organisation for an apprentice or trainee must, as soon as is reasonably practicable, but in any event within the time specified in the regulations, prepare a training plan for the apprentice or trainee in accordance with any requirements set out in the South Australian Skills Standards.
- (2) The parties to a training plan are—
  - (a) the employer; and
  - (b) the apprentice or trainee; and
  - (c) the nominated training organisation for the apprentice or trainee.
- (3) The nominated training organisation for an apprentice or trainee must 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 Skills Standards.

- (4) The nominated training organisation must, within 28 days after a training plan has been endorsed by each of the parties to the training plan, and in accordance with any requirements set out in the South Australian Skills Standards, notify the Commission of that fact.
- (5) A training plan may be varied from time to time in accordance with any requirements set out in the South Australian Skills Standards.
- (6) A training plan, or a variation of a training plan, has effect from—
  - (a) if a commencement day is specified in the training plan or variation—that day; or
  - (b) if no commencement day is specified—on the day that the training plan or variation (as the case requires) is endorsed by each of the parties to the training plan.
- (7) The nominated training organisation must provide a copy of the training plan or the revised training plan (as the case requires) for an apprentice or trainee to each party within 14 days after the day from which the training plan, or the revised training plan, has effect.

#### **54R—Obligations of nominated training organisations**

- (1) A nominated training organisation for an apprentice or trainee must comply with the South Australian Skills Standards.
- (2) A nominated training organisation for an apprentice or trainee must comply with such of the obligations specified in the training plan of the apprentice or trainee as may be applicable to the nominated training organisation.
- (3) The nominated training organisation for an apprentice or trainee must ensure that the training required to be delivered by the organisation under the training plan for the apprentice or trainee is provided in accordance with the training plan.

#### **54S—Nominated training organisation to notify Commission of certain matters**

- (1) A nominated training organisation under a training contract must notify the Commission if any of the following occurs:
  - (a) the nominated training organisation becomes aware that an apprentice or trainee under a training plan is not meeting the goals (however described) set out in the training plan;
  - (b) 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;
  - (c) the nominated training organisation ceases to be the nominated training organisation under the training contract;
  - (d) any other occurrence or matter prescribed by the regulations.
- (2) A notice under subsection (1)—
  - (a) must be given in a manner and form determined by the Commission; and
  - (b) must be given as soon as is reasonably practicable after the nominated training organisation becomes aware of the relevant matter; and

- (c) must contain the information required by the regulations for the purposes of this paragraph.

#### **54T—Substitution of nominated training organisation**

- (1) The employer and the apprentice or trainee in relation to a training contract may, in accordance with any requirements set out in the South Australian Skills Standards, substitute the nominated training organisation for the apprentice or trainee.
- (2) A training organisation or recognised higher education provider is substituted as the nominated training organisation for an apprentice or trainee if, in accordance with any requirements set out in the South Australian Skills Standards—
  - (a) the employer and the apprentice or trainee agree on which registered training organisation or recognised higher education provider (as the case requires) is to become the nominated training organisation for the apprentice or trainee; and
  - (b) the employer and the apprentice or trainee seek the acceptance of the registered training organisation or recognised higher education provider (as the case requires) in respect of the nomination; and
  - (c) the registered training organisation or recognised higher education provider (as the case requires) accepts the nomination and agrees to be the nominated training organisation for the apprentice or trainee.
- (3) The following provisions apply where a nominated training organisation is substituted under this section:
  - (a) the training plan for an apprentice or trainee continues in force, subject to the substitution;
  - (b) any rights, obligations and liabilities of the former nominated training organisation in relation to the training contract or training plan are, by force of this paragraph, transferred to the new nominated training organisation.
- (4) The new nominated training organisation under a training contract must, within 14 days after being substituted under this section, notify the Commission of that fact.
- (5) A notification under subsection (4) must be given in a manner and form determined by the Commission.

#### **54U—Making and retention of records**

- (1) A nominated training organisation under a training contract must keep such records as may be required by the regulations.
- (2) A nominated training organisation must retain a record kept under subsection (1) for at least 7 years after the expiry or termination of the training contract to which the record relates.
- (3) For the purposes of this section, a reference to a nominated training organisation under a training contract includes a reference to a registered training organisation or recognised higher education provider that was, but is no longer, the nominated training organisation under a training contract.

### **54V—Offences by nominated training organisations**

- (1) A nominated training organisation under a training contract must not refuse or fail to comply with a requirement under this Division.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) For the purposes of this section, a reference to a nominated training organisation under a training contract includes a reference to a registered training organisation or recognised higher education provider that was, but is no longer, the nominated training organisation under a training contract.

### **54W—Commission may notify certain bodies where contravention of Act**

The Commission may, if satisfied that a registered training organisation or recognised higher education provider has contravened a provision of this Act, notify 1 or more of the following bodies of that fact:

- (a) the Department;
- (b) AQSA;
- (c) TEQSA.

## **Division 4—Compliance notices, misconduct, disputes and grievances**

### **63—Compliance notices**

- (1) If it appears that a prescribed person has contravened a provision of this Act, a member of the Commission, or a person authorised by the Commission to exercise the powers conferred by this section, may issue a compliance notice requiring the prescribed person, within a period stated in the notice—
  - (a) to take specified action to remedy the non-compliance; and
  - (b) to produce reasonable evidence of the prescribed person's compliance with the notice.
- (2) A prescribed person who fails to comply with a compliance notice within the time allowed in the notice is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (3) The following applications may, within 14 days after the issue of a compliance notice under this section, be made to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the notice:
  - (a) a prescribed person may apply to SAET on the ground that the prescribed person has in fact complied with this Act;
  - (b) an employee may apply to SAET on the ground that the prescribed person's failure to comply with this Act is more extensive than stated in the notice.
- (4) SAET may, at the conclusion of the review—
  - (a) confirm the notice; or
  - (b) confirm the notice with such modification as it thinks fit; or

- (c) cancel the notice.
- (5) In this section—
  - prescribed person* means—
    - (a) an employer in relation to a training contract; or
    - (b) a nominated training organisation for an apprentice or trainee; or
    - (c) any other person, or class of persons, prescribed by the regulations.

#### **64—Employer may suspend apprentice or trainee for serious misconduct**

- (1) If an employer has reasonable grounds to believe that an apprentice or trainee employed by the employer is guilty of wilful and serious misconduct, the employer may (without first obtaining the approval of the Commission) suspend the apprentice or trainee from employment.
- (1a) If an employer suspends an apprentice or trainee from employment under subsection (1), the employer must, in accordance with any requirement set out in the South Australian Skills Standards—
  - (a) as soon as is reasonably practicable—
    - (i) refer the matter to the Commission for mediation; and
    - (ii) notify SAET that the matter has been so referred; and
  - (b) notify the apprentice or trainee that the matter has been so referred; and
  - (c) comply with any other reasonable requirement of the Commission in relation to the mediation.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (1b) If a matter is unable to be resolved by mediation under subsection (1a), the employer must, as soon as is reasonably practicable after the conclusion of the mediation (but in any event within 3 days), refer the matter to SAET for consideration.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (1c) Despite section 65, a matter referred to the Commission for mediation cannot be considered by SAET until after the conclusion of the mediation.

- (2) Except where—
  - (a) the employer and the trainee or apprentice agree to a longer suspension (whether in the course of mediation or otherwise); or
  - (b) the Commission extends the suspension for a specified period (not being more than 3 days after the conclusion of the mediation); or
  - (c) SAET confirms or extends the suspension under section 65,a suspension under this section will cease after 7 working days, unless cancelled sooner.

- (3) A referral to SAET under this section will be dealt with under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014*.

## 65—Other matters to be dealt with by SAET

- (1) If—
  - (a) a dispute arises between parties to a training contract; or
  - (b) a party to a training contract is aggrieved by the conduct of another party, a party to the contract may apply to SAET for consideration of the matter.
- (2) SAET may, if it thinks fit, by order, exercise 1 or more of the following powers in relation to a matter before SAET:
  - (a) it may make recommendations to the Commission about the assessment of the skills of an apprentice or trainee and, if appropriate, the granting of an appropriate qualification under the AQF;
  - (b) it may reprimand a party in default;
  - (c) it may suspend the employment of an apprentice or trainee commencing on a date specified in the order;
  - (d) it may confirm, extend (for a period not exceeding 4 weeks) or revoke a suspension imposed by an employer under section 64 and, in the event of revocation—
    - (i) order the employer to pay any remuneration, or compensation for any non-monetary benefit, to which the apprentice/trainee would, but for the suspension, have been entitled; and
    - (ii) order the employer to treat the period of suspension as service for specified purposes;
  - (e) it may extend or reduce the term of, or otherwise vary, a training contract;
  - (f) it may terminate a training contract as at the date specified in the order;
  - (fa) it may 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;
  - (g) it may order an employer to pay any remuneration to which an apprentice/trainee is entitled;
  - (h) it may order an employer to pay compensation for any breach of the training contract;
  - (i) it may order a party to a training contract to take any other action that, in the opinion of SAET, the party is required to take under the contract or under this Part;
  - (j) it may excuse a party to a training contract from performing 1 or more of his or her obligations under the contract;
  - (k) it may order that, for the purpose of computing the period of training that has been served by an apprentice/trainee, a specified period or specified periods be excluded;
  - (l) it may vary, suspend or cancel the registration of an employer granted by the Commission under this Part;

- (m) it may order an employer not to employ any apprentices or trainees in addition to those named in the order without the approval of SAET;
  - (n) it may make any consequential orders that SAET thinks necessary or expedient.
- (2a) Despite subsection (2)(c), SAET may suspend the employment of an apprentice/trainee for a period exceeding 4 weeks if—
  - (a) SAET is satisfied that the suspension is necessary having regard to the circumstances of the COVID-19 pandemic; and
  - (b) the period of suspension will end on or before 1 January 2021.
- (3) The Commission may, without further inquiry, accept and act on any recommendation of SAET under this Division.
- (4) The term of a training contract must be computed and the contract must be construed and must apply in accordance with an order made by SAET under this Division.
- (5) The cancellation or suspension of the registration of an employer by SAET under this Division may relate to a particular apprentice or trainee or to all apprentices or trainees employed by the employer.
- (6) Notice must be given by SAET to the Commission of the outcome of any application or reference of a matter under this Division.
- (7) A person must not contravene an order of SAET under this Division.  
Maximum penalty: \$5 000.
- (8) An application to SAET under subsection (1) must be made during the term of the relevant training contract or within 6 months after the expiry, termination or cancellation of the relevant training contract.
- (9) SAET may extend the time within which any such application may be made.
- (9a) For the purposes of this section, a reference to a training contract will be taken to include a reference to a terminated or expired training contract.
- (9b) For the purposes of this section, a reference to an employer, apprentice or trainee will, in the case where a training contract has been terminated or expired, be taken to include a reference to a person who was, at a relevant time, an employer, apprentice or trainee (as the case requires).
- (10) In this section—  
***party to a training contract*** or ***party*** includes a person who was formerly a party to a training contract.

## 66—Holding of compulsory conciliation conferences

For the purposes of section 43 of the *South Australian Employment Tribunal Act 2014*, in relation to proceedings before SAET under this Division (other than applications for review of a compliance notice issued under section 63), parties are required to attend a compulsory conciliation conference.

## 67—Representation in proceedings before SAET

- (1) The following provisions govern representation in proceedings (other than appellate proceedings) before SAET under this Division:
  - (a) a party to the proceedings that is a member of a registered association may be represented by an officer or employee of the registered association acting in the course of employment with that registered association;
  - (b) a party to the proceedings that is a body corporate may be represented by an officer or employee of the body corporate;
  - (ba) a party to the proceedings may be represented by a person appointed by the Commission to represent the party in such proceedings (however described);
  - (c) a party to the proceedings may be represented by another person with leave of SAET if—
    - (i) SAET is satisfied that the party will be disadvantaged if the party is not represented by another person; and
    - (ii) the other person is acting gratuitously.
- (2) However, a person acting as a representative of a party under subsection (1) (other than a person referred to in paragraph (ba)) cannot be a legal practitioner or a registered agent.
- (3) In this section—

*registered agent* means a person who is a registered agent under the *Fair Work Act 1994*;

*registered association* means a registered association under the *Fair Work Act 1994*.

## Part 4A—Recognition of other trade training etc

### 70A—Application for recognition of other trade qualifications etc

- (1) A person may apply to the Commission for recognition of the person's qualifications or experience in relation to a particular trade or declared vocation (not being qualifications obtained under a training contract).
- (2) An application under this section—
  - (a) must be made in a manner and form determined by the Commission; and
  - (b) must be accompanied by such information and documents as may be required by the Commission; and
  - (c) must be accompanied by the prescribed fee.
- (3) The Commission may, for the purpose of determining an application under this section, require the applicant to—
  - (a) undertake an examination or test; or
  - (b) undergo an independent competency assessment,

of a kind specified by the Commission to determine whether the applicant has acquired the competencies of the relevant trade or declared vocation.

- (4) The Commission may refuse to determine an application under this section until such time as the applicant has undertaken an examination or test, or undergone an independent competency assessment (as the case requires).
- (5) If the report of an independent competency assessment specifies that the applicant requires further training to acquire the competencies of the relevant trade or declared vocation, the Commission may refuse to determine the application until the Commission is satisfied that the applicant has satisfactorily completed such training.
- (6) The Commission may, in determining an application under this section, seek advice from any person or body who, in the Commission's opinion, has special knowledge of, and experience in, the relevant trade or declared vocation.
- (7) The Commission may provide to ASQA a copy of any report relating to an independent competency assessment provided under this section.

#### **70B—Commission may determine person adequately trained**

- (1) The Commission may, on an application under section 70A or on its own motion, and in accordance with any requirements set out in the South Australian Skills Standards, and if satisfied that an applicant for recognition of qualifications or experience in a particular trade or declared vocation has acquired the competencies of the trade or declared vocation—
  - (a) determine that the applicant is adequately trained to pursue that vocation; and
  - (b) certify to that effect.
- (2) In making a determination under subsection (1), the Commission must have regard to—
  - (a) the length of time for which the applicant has been working in the relevant trade or declared vocation; and
  - (b) the nature and duration of any instruction or training received by the applicant in the relevant trade or declared vocation; and
  - (c) the nature of any qualifications held by the applicant in relation to the relevant trade or declared vocation; and
  - (d) any advice obtained under section 70A(6) in relation to the applicant; and
  - (e) the applicant's performance in any examination or test, or any independent competency assessment, required under section 70A,and may have regard to any other matters as the Commission considers appropriate.

### **Part 4B—Additional powers of Commission etc**

#### **70C—Commission may require information**

- (1) The Commission may, by notice in writing, require a prescribed person or body to provide to them such information, or such documents, as may be specified in the notice (being information or documents in the possession of the prescribed person or body that the Commission reasonably requires for the performance of functions under this Act).
- (2) A prescribed person or body must give the specified information or documents to the Commission within the period specified in the notice.

- (3) A prescribed person or body that refuses or fails to comply with a notice under subsection (1) is guilty of an offence.  
Maximum penalty: \$10 000.
- (4) If a prescribed person or body that is a public sector agency refuses or fails to comply with a notice under subsection (1), the Commission may, after consultation with the public sector agency—
- (a) report the refusal or failure to the Minister and to the Minister responsible for the public sector agency (if any); and
  - (b) include details of the refusal or failure in the annual report of the Commission.
- (5) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.
- (6) An exemption—
- (a) may be conditional or unconditional; and
  - (b) may be varied or revoked by the Minister by further notice in writing.
- (7) In this section—
- prescribed person or body*** means—
- (a) a public sector agency (within the meaning of the *Public Sector Act 2009*); or
  - (b) a registered employer, or an applicant for such registration; or
  - (c) a nominated training organisation; or
  - (d) any other person or body prescribed by the regulations.

#### **70D—Sharing of information between certain persons and bodies**

- (1) This section applies to the following persons and bodies:
- (a) the Commission;
  - (b) a prescribed person or body under section 70C;
  - (c) any other person or body prescribed by the regulations.
- (2) Despite any other Act or law, a person or body to whom this section applies (the ***provider***) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the ***recipient***) if the provider reasonably believes that the provision of the information or documents would assist the recipient—
- (a) to perform functions and duties related to apprenticeships or traineeships or otherwise related to the operation of this Act; or
  - (b) to manage any risk to an apprentice or trainee, or class of apprentice or trainee, that might arise in the recipient's capacity as an employer or provider of services.
- (3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.

- (4) Subsection (3) applies—
- (a) whether or not the information or documents consist of or include prescribed information and documents; and
  - (b) whether or not the information or document ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information may be provided under this section whether or not the provider has been requested to provide the information.
- (6) Despite section 72A, the recipient of information or documents under this section must not disclose information or documents received under this section except—
- (a) to another person or body to whom this section applies; or
  - (b) as may be authorised by the regulations.
- (7) In this section—
- prescribed information and documents*** means—
- (a) information or documents relating to the health, safety, welfare or wellbeing of a particular person, or class of persons; or
  - (b) any other information or document of a kind prescribed by the regulations.

#### **70E—Other powers of Commission and authorised persons**

- (1) For the purposes of this Act, a member of the Commission, or a person authorised by the Commission (an ***authorised person***), may exercise any 1 or more of the following powers:
- (a) an authorised person may question any person in relation to the operation or enforcement of this Act;
  - (b) an authorised person may require the production of any record or document required to be kept by or under this Act and—
    - (i) examine, copy and take extracts from any record or document; and
    - (ii) take any record or document; and
    - (iii) seize and remove anything that may constitute evidence of an offence against this Act; and
    - (iv) take photographs, films or video recordings;
  - (c) an authorised person may enter and inspect, at any reasonable time, the following places or premises or anything in the following places or premises:
    - (i) a place or premises in which education or training is provided, including a place or premises in which a person undertakes the practical component of any such course;
    - (ii) a place or premises in which an apprentice or trainee is employed under a training contract.
- (2) An authorised person must, when exercising a power under this section—
- (a) carry an identity card in a form approved by the Commission; and

- (b) produce the identity card at the request of a person in relation to whom the power is being exercised.
- (3) A person must not—
  - (a) hinder or obstruct an authorised person in the exercise of a power conferred by this section; or
  - (b) refuse or fail to answer truthfully to the best of the person's knowledge or belief a question put to the person under this section; or
  - (c) without lawful excuse, fail to comply with a requirement made under this section.

Maximum penalty: \$10 000.

- (4) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person or make the person liable to a penalty.

## Part 4C—Review of certain decisions by South Australian Civil and Administrative Tribunal

### 70F—Review of decisions by Tribunal

- (1) The South Australian Civil and Administrative Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a reviewable decision.
- (2) An application for review of a reviewable decision must be made to the South Australian Civil and Administrative Tribunal within 28 days after the applicant receives notice of the relevant decision (or such longer period as the Tribunal may allow).
- (3) However, the South Australian Civil and Administrative Tribunal may only allow an extension of time under subsection (2) if satisfied that—
  - (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.
- (4) In this section—

**reviewable decision**—the following are reviewable decisions:

  - (a) a decision of the Commission under Part 4 Division 3;
  - (b) a decision of the Commission to refuse to register or renew a registration, to impose a condition on a registration, or to vary, suspend or cancel a registration under Part 4 Division 3A;
  - (c) a decision of the Commission to refuse to approve a substitution of an employer under section 54N;
  - (d) a decision of the Commission to refuse an application for recognition of a person's qualifications or experience under section 70B;
  - (e) any other decision under this Act of a kind declared by the regulations to be included in the ambit of this definition.

### **70G—Offence to exert undue influence etc in relation to training contracts and training plans**

A person must not exert undue influence or pressure on, or use unfair tactics against, another person in relation to—

- (a) entering a training contract; or
- (b) endorsing a training plan, or variation of a training plan; or
- (c) any matter relating to, or arising out of, a training contract or training plan.

Maximum penalty: \$10 000.

## **Part 5—Miscellaneous**

### **71—South Australian Skills Register**

- (1) The Training and Skills Register in force immediately before the commencement of this subsection continues as the *South Australian Skills Register* (the **Register**).
- (2) The Commission must ensure that the following matters are recorded in the Register:
  - (a) details of the declarations (if any) made by the Minister under section 5;
  - (c) the declaration, or revocation of a declaration, of an employer as a prohibited employer under Part 4 Division 3;
  - (d) the registration of employers under Part 4;
  - (e) the variation, cancellation or suspension of the registration of an employer under Part 4;
  - (f) any other matter that, in the opinion of the Commission, should be recorded in the Register.
- (3) The Register will be kept in the form of a computer record and published on a website determined by the Commission.
- (4) The Register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Commission.
- (5) The Commission must ensure that copies of material on the Register can be purchased for a reasonable fee at the public office, or public offices, at which the Register is kept available for inspection.

### **72A—Confidentiality**

A person must not divulge or communicate information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the administration, operation or enforcement of this Act;  
or
- (c) to a member of the police force of this State or of the Commonwealth or another State or a Territory; or

- (d) to a person concerned in the administration, operation or enforcement of a law of the Commonwealth, or another State or Territory, relating to training and skills development; or
- (e) for the purposes of legal proceedings.

Maximum penalty: \$20 000.

### **73—Commission may correct certain mistakes**

- (1) The Commission may, on application or on its own motion, correct a determination or decision it gives, or a statement of the reasons it has given for a determination or decision, to the extent necessary to rectify—
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or
  - (d) a defect of form.
- (2) A correction under this section must be by notice in writing.

### **75—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

### **75A—Imputation of conduct or state of mind of officer etc**

- (1) For the purposes of proceedings for an offence against this Act—
  - (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
  - (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person,

(but not so as to affect any personal liability of the officer, employee or agent).
- (2) It will be a defence in any criminal proceedings under the Act against a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under subsection (1) if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.
- (3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

### **75B—Offences by bodies corporate and employees**

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate, and each person concerned in the management of the body corporate, is guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.
- (2) It is a defence to a charge of an offence arising under subsection (1) if the defendant establishes that the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the body corporate.
- (3) If an employee is guilty of an offence against this Act, the employer is liable to the same penalty as is prescribed for the principal offence.
- (4) It is a defence to a charge of an offence arising under subsection (3) if the defendant establishes that—
  - (a) the defendant had no knowledge of the actual offence; or
  - (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the employee.

### **76—Evidentiary provision**

- (2) In proceedings for an offence against this Act—
  - (a) an allegation in the complaint that a training contract was or was not at a specified time approved will be accepted as proved in the absence of proof to the contrary; and
  - (b) an allegation in the complaint that—
    - (i) an employer was or was not at a specified time registered; or
    - (ii) the registration of an employer was at a specified time subject to specified conditions; or
    - (iii) that an employer was or was not at a specified time a prohibited employer,will be accepted as proved in the absence of proof to the contrary.

### **77—Gazette notices may be varied or revoked**

A notice published in the Gazette by the Commission under this Act may be varied or revoked by the Commission by subsequent notice in the Gazette.

### **78—Service**

A notice or other document required or authorised to be given to or served on a person under this Act may be given or served personally or by post.

### **79—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (b) make provision with respect to the contents of the Register; and

- (c) prescribe fees for the purpose of this Act and provide for the payment, recovery, waiver or refund of such fees;
  - (d) impose a penalty, not exceeding \$10 000, for contravention of a regulation;
  - (e) fix expiation fees, not exceeding \$500, for alleged offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Commission or any other specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

## **Schedule 2—Transitional provisions**

### **Part 4—Transitional provisions**

#### **11—Transitional provisions**

- (1) On the commencement of Part 3 of this Schedule—
- (a) the offices of the members of the Training and Skills Commission established under the repealed Act are vacated;
  - (b) the offices of the members of the Grievances and Disputes Mediation Committee established under the repealed Act are vacated;
  - (c) the offices of the members of any committee established by the Training and Skills Commission under the repealed Act are vacated;
  - (d) the offices of the members of any panel established by the Minister for the purpose of constituting the Grievances and Disputes Mediation Committee under the repealed Act are vacated;
  - (e) the offices of the members of any reference group established by the Minister under the repealed Act are vacated.
- (2) Subject to this Act, a declaration that an occupation is a trade or a declared vocation in force under section 5 of the repealed Act immediately before the commencement of section 6 of this Act will be taken to be a declaration under that section of this Act that the occupation is a trade or a declared vocation (as the case requires).
- (3) Subject to this Act, registration or accreditation in force under Part 3 of the repealed Act immediately before the commencement of Part 3 of this Act will continue in force for the unexpired portion of the term for which the registration or accreditation was granted, or last renewed, as registration or accreditation under Part 3 of this Act.

- (4) Subject to this Act, if an employer was, immediately before the commencement of Part 4 of this Act—
- (a) an approved employer within the meaning of Part 4 of the repealed Act; and
  - (b) party to a contract of training under Part 4 of the repealed Act,
- the employer will be taken to have been registered under Part 4 of this Act (with registration for a period of 5 years to be taken to have come into force immediately before the commencement of Part 4 of this Act).
- (5) Subject to this Act, a contract of training in force under Part 4 of the repealed Act immediately before the commencement of Part 4 of this Act will continue in force as a training contract under Part 4 of this Act.
- (6) Subject to this Act, a suspension, order or decision of the Grievances and Disputes Mediation Committee in force under the repealed Act immediately before the commencement of Part 4 of this Act will continue in force as a suspension, order or decision of the Industrial Relations Commission under Part 4 of this Act.
- (7) If, immediately before the commencement of Part 4 of this Act, a matter has, under section 19(7) of the repealed Act, been referred by the Commission (acting at the direction of the Minister) to the Grievances and Disputes Mediation Committee (**GDMC**) for review but the GDMC has not yet completed the review, the matter will be taken to be the subject of an appeal under section 207 of the *Fair Work Act 1994*—
- (a) as if the decision or order of the GDMC at first instance were a determination of the Industrial Relations Commission; and
  - (b) as if the party who made the request of the Minister for the giving of the direction were the appellant,
- (and the provisions of Chapter 5, Part 3, Division 4 of that Act will apply to the appeal).
- (8) A reference in an Act or an instrument or document—
- (a) to the Training and Skills Commission is to be read as a reference to the Training and Skills Commission established under this Act and is to be construed accordingly;
  - (b) to a training organisation is to be read as a reference to a training provider and is to be construed accordingly;
  - (c) to an occupation as a trade or declared vocation is to be read as a reference to an occupation that is a trade or a declared vocation declared as such under section 6 of this Act and is to be construed accordingly;
  - (d) to an apprentice/trainee under a contract of training is to be read as a reference to an apprentice/trainee under a training contract and is to be construed accordingly;
  - (e) to a contract of training is to be read as a reference to a training contract and is to be construed accordingly;
  - (f) to an approved employer is to be read as a reference to a registered employer and is to be construed accordingly.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Training and Skills Development Act 2008*

### Legislation repealed by principal Act

The *South Australian Skills Act 2008* repealed the following:

*Training and Skills Development Act 2003*

### Legislation amended by principal Act

The *South Australian Skills Act 2008* amended the following:

*Fair Work Act 1994*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2008	30	<i>Training and Skills Development Act 2008</i>	10.7.2008	1.9.2008 ( <i>Gazette 24.7.2008 p3465</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 159 (ss 358—361)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2011	8	<i>Training and Skills Development (Miscellaneous) Amendment Act 2011</i>	31.3.2011	30.5.2011 ( <i>Gazette 5.5.2011 p1330</i> )
2015	8	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	18.6.2015	Pt 40 (ss 260—266)—1.7.2015 ( <i>Gazette 25.6.2015 p3076</i> )
2016	63	<i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i>	8.12.2016	Pt 21 (ss 143—150)—1.7.2017 ( <i>Gazette 16.5.2017 p1221</i> )
2019	14	<i>Statutes Amendment (SACAT) Act 2019</i>	11.7.2019	Pt 30 (ss 182 to 186)—2.12.2019 ( <i>Gazette 21.11.2019 p3928</i> )

2020	14	<i>COVID-19 Emergency Response (Further Measures) Amendment Act 2020</i>	15.5.2020	Sch 1 (cl 2)—15.5.2020
2020	40	<i>Training and Skills Development (Miscellaneous) Amendment Act 2020</i>	19.11.2020	Pt 2 (ss 4 to 36) & Sch 1 (cll 12 to 18)—1.7.2021 ( <i>Gazette 24.6.2021 p2260</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.2.2010
	<b>amended by 40/2020 s 4</b>	<b>1.7.2021</b>
Pt 1		
s 1	<b>amended by 40/2020 s 5</b>	<b>1.7.2021</b>
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2010
s 3	<b>substituted by 40/2020 s 6</b>	<b>1.7.2021</b>
s 4		
s 4(1)		
<b>apprentice</b>	<b>inserted by 40/2020 s 7(1)</b>	<b>1.7.2021</b>
<i>apprentice/trainee</i>	<i>deleted by 40/2020 s 7(1)</i>	<i>1.7.2021</i>
<i>AQTF</i>	<i>deleted by 40/2020 s 7(2)</i>	<i>1.7.2021</i>
<b>ASQA</b>	<b>inserted by 40/2020 s 7(2)</b>	<b>1.7.2021</b>
<i>authorised operations</i>	<i>inserted by 8/2011 s 4(1)</i>	30.5.2011
	<i>deleted by 40/2020 s 7(3)</i>	<i>1.7.2021</i>
<b>Commission</b>	<b>amended by 40/2020 s 7(4)</b>	<b>1.7.2021</b>
<b>compliance notice</b>	<b>inserted by 40/2020 s 7(5)</b>	<b>1.7.2021</b>
<i>corresponding law</i>	<i>deleted by 40/2020 s 7(6)</i>	<i>1.7.2021</i>
<i>course accrediting body</i>	<i>deleted by 40/2020 s 7(7)</i>	<i>1.7.2021</i>
<i>declared institution</i>	<i>deleted by 40/2020 s 7(9)</i>	<i>1.7.2021</i>
<b>Department</b>	<b>inserted by 40/2020 s 7(8)</b>	<b>1.7.2021</b>
<i>District Court</i>	<i>deleted by 14/2019 s 182(1)</i>	2.12.2019
<i>domestic partner</i>	<i>deleted by 40/2020 s 7(11)</i>	<i>1.7.2021</i>
<b>employer</b>	<b>inserted by 40/2020 s 7(11)</b>	<b>1.7.2021</b>
<b>employer's obligations under the training contract</b>	<b>inserted by 40/2020 s 7(11)</b>	<b>1.7.2021</b>

<b>Higher Education Standards</b>	inserted by 40/2020 s 7(11)	1.7.2021
<b>host employment arrangement</b>	inserted by 40/2020 s 7(11)	1.7.2021
<i>Industrial Relations Commission</i>	<i>deleted by 63/2016 s 143(1)</i>	1.7.2017
<b>National Protocols</b>	<i>deleted by 40/2020 s 7(12)</i>	1.7.2021
<b>nominated training organisation</b>	inserted by 40/2020 s 7(13)	1.7.2021
<b>prohibited employer</b>	inserted by 40/2020 s 7(13)	1.7.2021
<b>qualification</b>	substituted by 40/2020 s 7(14)	1.7.2021
<b>recognised higher education provider</b>	inserted by 40/2020 s 7(15)	1.7.2021
<i>reference group</i>	<i>deleted by 8/2015 s 260</i>	1.7.2015
<b>Register</b>	amended by 40/2020 s 7(16)	1.7.2021
<b>registered</b>	amended by 40/2020 s 7(17)	1.7.2021
<b>registered training organisation</b>	inserted by 40/2020 s 7(18)	1.7.2021
<b>registering body</b>	<i>deleted by 40/2020 s 7(19)</i>	1.7.2021
SAET	inserted by 63/2016 s 143(2)	1.7.2017
<b>scope of the registration</b>	substituted by 40/2020 s 7(20)	1.7.2021
<b>South Australian Skills Standards or Standards</b>	inserted by 40/2020 s 7(22)	1.7.2021
<i>spouse</i>	<i>deleted by 40/2020 s 7(21)</i>	1.7.2021
<i>standards for accreditation of courses</i>	<i>deleted by 40/2020 s 7(23)</i>	1.7.2021
<i>standards for registered training providers</i>	<i>deleted by 40/2020 s 7(24)</i>	1.7.2021
<i>standards for registering/course accrediting bodies</i>	<i>deleted by 40/2020 s 7(25)</i>	1.7.2021
<i>statement of attainment</i>	<i>deleted by 40/2020 s 7(26)</i>	1.7.2021
<b>TEQSA</b>	inserted by 40/2020 s 7(28)	1.7.2021
<b>Territory</b>	<i>deleted by 40/2020 s 7(27)</i>	1.7.2021
<b>trainee</b>	inserted by 40/2020 s 7(29)	1.7.2021
<b>Training Advocate</b>	<i>deleted by 40/2020 s 7(30)</i>	1.7.2021

<b>training contract</b>	<b>substituted by 40/2020 s 7(31)</b>	<b>1.7.2021</b>
<i>training package</i>	<i>deleted by 40/2020 s 7(32)</i>	<i>1.7.2021</i>
<b>training plan</b>	<b>inserted by 40/2020 s 7(31)</b>	<b>1.7.2021</b>
Tribunal	inserted by 14/2019 s 182(2)	2.12.2019
<b>variation of registration</b>	<b>deleted by 40/2020 s 7(33)</b>	<b>1.7.2021</b>
<b>s 4(3)</b>	<b>substituted by 40/2020 s 7(34)</b>	<b>1.7.2021</b>
<i>s 4(4)</i>	<i>deleted by 40/2020 s 7(35)</i>	<i>1.7.2021</i>
<i>s 4(4a)</i>	<i>inserted by 8/2011 s 4(2)</i>	<i>30.5.2011</i>
	<b>deleted by 40/2020 s 7(36)</b>	<b>1.7.2021</b>
s 5		
<b>s 5(1)</b>	<b>(b) deleted by 40/2020 s 8(1)</b>	<b>1.7.2021</b>
<b>s 5(2)</b>	<b>amended by 40/2020 s 8(2)</b>	<b>1.7.2021</b>
<i>s 5(4)</i>	amended by 8/2011 s 5	30.5.2011
<b>s 6</b>	<b>substituted by 40/2020 s 9</b>	<b>1.7.2021</b>
<b>s 6A</b>	<b>inserted by 40/2020 s 10</b>	<b>1.7.2021</b>
<i>Pt 2 before substitution by 40/2020</i>		
<i>Pt 2 Div 2</i>		
<i>s 10</i>		
<i>s 10(3)</i>	<i>amended by 8/2015 s 261</i>	<i>1.7.2015</i>
<i>s 13A</i>	<i>inserted by 84/2009 s 358</i>	<i>1.2.2010</i>
<i>s 15</i>		
<i>s 15(2)</i>	<i>amended by 84/2009 s 359</i>	<i>1.2.2010</i>
<i>Pt 2 Div 3</i>		
<i>deleted by 8/2015 s 262</i>		
<i>Pt 2 Div 4</i>		
<i>s 24</i>		
<i>s 24(2)</i>	<i>amended by 84/2009 s 360</i>	<i>1.2.2010</i>
<b>Pt 2</b>	<b>substituted by 40/2020 s 11</b>	<b>1.7.2021</b>
<i>Pt 3 before substitution by 40/2020</i>		
<i>Pt 3 Div 1</i>		
<i>s 27</i>		
<i>s 27(2)</i>	<i>amended by 8/2011 s 6(1), (2)</i>	<i>30.5.2011</i>
<i>s 28</i>		
<i>s 28(1)</i>	<i>amended by 8/2011 s 7</i>	<i>30.5.2011</i>
<i>s 29</i>		
<i>s 29(2)</i>	<i>amended by 8/2011 s 8(1)</i>	<i>30.5.2011</i>
<i>s 29(4)</i>	<i>deleted by 8/2011 s 8(2)</i>	<i>30.5.2011</i>
<i>Pt 3 Div 2</i>		
<i>s 31</i>		
<i>s 31(2)</i>	<i>amended by 8/2011 s 9(1), (2)</i>	<i>30.5.2011</i>
<i>s 32</i>		
<i>s 32(1)</i>	<i>amended by 8/2011 s 10</i>	<i>30.5.2011</i>

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<i>Pt 3 Div 3</i>		
<i>s 34</i>		
<i>s 34(1)</i>	<i>amended by 8/2011 s 11(1)</i>	<i>30.5.2011</i>
<i>s 34(2)</i>	<i>amended by 8/2011 s 11(2)</i>	<i>30.5.2011</i>
<i>Pt 3 Div 4</i>		
<i>s 35</i>		
<i>s 35(3)</i>	<i>inserted by 8/2011 s 12</i>	<i>30.5.2011</i>
<i>s 36</i>		
<i>s 36(4) and (5)</i>	<i>inserted by 8/2011 s 13</i>	<i>30.5.2011</i>
<i>s 36A</i>	<i>inserted by 8/2011 s 14</i>	<i>30.5.2011</i>
<i>s 37</i>	<i>substituted by 8/2011 s 15</i>	<i>30.5.2011</i>
<i>s 39</i>		
<i>s 39(1)</i>	<i>substituted by 8/2011 s 16(1)</i>	<i>30.5.2011</i>
<i>s 39(3)</i>	<i>substituted by 8/2011 s 16(2)</i>	<i>30.5.2011</i>
<i>s 39(4)—(6)</i>	<i>inserted by 8/2011 s 16(2)</i>	<i>30.5.2011</i>
<i>s 41</i>	<i>substituted by 8/2011 s 17</i>	<i>30.5.2011</i>
<i>Pt 3 Div 5</i>		
<i>heading</i>	<i>substituted by 14/2019 s 183</i>	<i>2.12.2019</i>
<i>s 42</i>		
<i>s 42(1)</i>	<i>amended by 8/2011 s 18</i>	<i>30.5.2011</i>
	<i>amended by 14/2019 s 184(1)</i>	<i>2.12.2019</i>
<i>s 42(2)</i>	<i>amended by 14/2019 s 184(2), (3)</i>	<i>2.12.2019</i>
<i>s 42(4)</i>	<i>amended by 14/2019 s 184(4)</i>	<i>2.12.2019</i>
<i>Pt 3 Div 6</i>		
<i>s 43</i>		
<i>s 43(1)</i>	<i>amended by 8/2011 s 19(1)</i>	<i>30.5.2011</i>
<i>s 43(2)</i>	<i>amended by 8/2011 s 19(2)</i>	<i>30.5.2011</i>
<i>s 43(3)</i>	<i>amended by 8/2011 s 19(3)</i>	<i>30.5.2011</i>
<i>s 43(4)</i>	<i>amended by 8/2011 s 19(4)</i>	<i>30.5.2011</i>
<i>s 43(5)</i>	<i>amended by 8/2011 s 19(5)</i>	<i>30.5.2011</i>
<i>s 44</i>		
<i>s 44(1)</i>	<i>amended by 8/2011 s 20(1)</i>	<i>30.5.2011</i>
<i>s 44(2)</i>	<i>amended by 8/2011 s 20(2)</i>	<i>30.5.2011</i>
<i>s 44(3)</i>	<i>amended by 8/2011 s 20(3)</i>	<i>30.5.2011</i>
<i>s 44(4)</i>	<i>amended by 8/2011 s 20(4)</i>	<i>30.5.2011</i>
<i>s 44(6)</i>	<i>amended by 8/2011 s 20(5)</i>	<i>30.5.2011</i>
<i>s 44(7)</i>	<i>amended by 8/2011 s 20(6)</i>	<i>30.5.2011</i>
<i>s 44A</i>	<i>inserted by 8/2011 s 21</i>	<i>30.5.2011</i>
<i>Pt 3 Div 7</i>	<i>inserted by 8/2011 s 21</i>	<i>30.5.2011</i>
<i>Pt 3 Div 12</i>		
<i>s 68</i>	<i>deleted by 8/2015 s 263</i>	<i>1.7.2015</i>
<b>Pt 3</b>	<b>substituted by 40/2020 s 11</b>	<b>1.7.2021</b>
<i>Pt 4</i>		

<b>heading</b>	<b>amended by 40/2020 s 12</b>	<b>1.7.2021</b>
<b>Pt 4 Div 1A</b>	<b>inserted by 40/2020 s 13</b>	<b>1.7.2021</b>
Pt 4 Div 2		
<b>s 46</b>		
<i>s 46(1)—(3)</i>	<i>deleted by 40/2020 s 14(1)</i>	<i>1.7.2021</i>
<b>s 46(5)</b>	<b>amended by 40/2020 s 14(2)</b>	<b>1.7.2021</b>
<b>s 46(6)</b>	<b>amended by 40/2020 s 14(3)</b>	<b>1.7.2021</b>
<b>s 46(7)</b>	<b>substituted by 40/2020 s 14(4)</b>	<b>1.7.2021</b>
<i>s 46(8)—(12)</i>	<i>deleted by 40/2020 s 14(4)</i>	<i>1.7.2021</i>
<b>s 48</b>	<b>substituted by 40/2020 s 15</b>	<b>1.7.2021</b>
<b>s 48A</b>	<b>inserted by 40/2020 s 15</b>	<b>1.7.2021</b>
<i>s 49 before substitution by 40/2020</i>		
<i>s 49(3) and (6)</i>	<i>amended by 63/2016 s 144</i>	<i>1.7.2017</i>
<b>s 49</b>	<b>substituted by 40/2020 s 16</b>	<b>1.7.2021</b>
<b>s 49A</b>	<b>inserted by 40/2020 s 17</b>	<b>1.7.2021</b>
<b>s 50</b>		
<b>s 50(1)</b>	<b>amended by 40/2020 s 18(1), (2)</b>	<b>1.7.2021</b>
<b>s 50(2)</b>	<b>amended by 40/2020 s 18(3), (4)</b>	<b>1.7.2021</b>
<b>s 51</b>	<b>substituted by 40/2020 s 19</b>	<b>1.7.2021</b>
<b>ss 51A—51C</b>	<b>inserted by 40/2020 s 20</b>	<b>1.7.2021</b>
<b>s 52</b>	<b>substituted by 40/2020 s 21</b>	<b>1.7.2021</b>
<b>s 53</b>	<b>substituted by 40/2020 s 22</b>	<b>1.7.2021</b>
<i>Pt 4 Div 3 before substitution by 40/2020</i>		
<i>s 57</i>		
<i>s 57(3)</i>	<i>deleted by 8/2011 s 22</i>	<i>30.5.2011</i>
<i>s 61</i>		
<i>s 61(1)</i>	<i>amended by 14/2019 s 185(1)</i>	<i>2.12.2019</i>
<i>s 61(2)</i>	<i>amended by 14/2019 s 185(2), (3)</i>	<i>2.12.2019</i>
<i>s 61(4)</i>	<i>amended by 14/2019 s 185(4)</i>	<i>2.12.2019</i>
<b>Pt 4 Div 3</b>	<b>substituted by 40/2020 s 23</b>	<b>1.7.2021</b>
Pt 4 Div 4		
<b>s 63</b>		
<b>s 63(1)</b>	<b>amended by 40/2020 s 24(1)—(3)</b>	<b>1.7.2021</b>
<b>s 63(2)</b>	<b>amended by 40/2020 s 24(4)</b>	<b>1.7.2021</b>
<b>s 63(3)</b>	amended by 63/2016 s 145(1), (2)	1.7.2017
	<b>amended by 40/2020 s 24(5)—(7)</b>	<b>1.7.2021</b>
<b>s 63(5)</b>	<b>inserted by 40/2020 s 24(8)</b>	<b>1.7.2021</b>
<b>s 64</b>		
<b>s 64(1)</b>	amended by 63/2016 s 146(1)	1.7.2017
	<b>substituted by 40/2020 s 25(1)</b>	<b>1.7.2021</b>
<b>s 64(1a)—(1c)</b>	<b>inserted by 40/2020 s 25(1)</b>	<b>1.7.2021</b>

s 64(2)	amended by 63/2016 s 146(1)	1.7.2017
	<b>substituted by 40/2020 s 25(2)</b>	<b>1.7.2021</b>
s 64(3)	inserted by 63/2016 s 146(2)	1.7.2017
s 65		
s 65(1)	amended by 63/2016 s 147(1)	1.7.2017
s 65(2)	amended by 63/2016 s 147(2), (3)	1.7.2017
	<b>amended by 40/2020 s 26(1)—(4)</b>	<b>1.7.2021</b>
s 65(2a)	inserted by 14/2020 Sch 1 cl 2	15.5.2020
s 65(3) and (4)	amended by 63/2016 s 147(3)	1.7.2017
s 65(5)	amended by 63/2016 s 147(3)	1.7.2017
	<b>amended by 40/2020 s 26(5)</b>	<b>1.7.2021</b>
s 65(6)—(8)	amended by 63/2016 s 147(3)	1.7.2017
s 65(9)	amended by 63/2016 s 147(4)	1.7.2017
<b>s 65(9a) and (9b)</b>	<b>inserted by 40/2020 s 26(6)</b>	<b>1.7.2021</b>
s 66	substituted by 63/2016 s 148	1.7.2017
s 67	substituted by 63/2016 s 149	1.7.2017
s 67(1)	<b>amended by 40/2020 s 27(1), (2)</b>	<b>1.7.2021</b>
s 67(2)	<b>amended by 40/2020 s 27(3)</b>	<b>1.7.2021</b>
<i>Pt 4 Div 5</i>	<i>deleted by 40/2020 s 28</i>	<i>1.7.2021</i>
<b>Pts 4A—4C</b>	<b>inserted by 40/2020 s 29</b>	<b>1.7.2021</b>
Pt 5		
<b>s 70G</b>	<b>inserted by 40/2020 s 30</b>	<b>1.7.2021</b>
s 71		
s 71(1)	<b>substituted by 40/2020 s 31(1)</b>	<b>1.7.2021</b>
s 71(2)	<b>(b) deleted by 40/2020 s 31(2)</b>	<b>1.7.2021</b>
	<b>amended by 40/2020 s 31(3), (4)</b>	<b>1.7.2021</b>
s 72	<i>deleted by 40/2020 s 32</i>	<i>1.7.2021</i>
s 72A	inserted by 8/2011 s 23	30.5.2011
	<b>amended by 40/2020 s 33(1), (2)</b>	<b>1.7.2021</b>
<i>s 73 before substitution by 40/2020</i>		
<i>s 73(1)</i>	<i>amended by 8/2011 s 24(1)</i>	<i>30.5.2011</i>
<i>s 73(3)</i>	<i>amended by 8/2011 s 24(2)</i>	<i>30.5.2011</i>
<b>s 73</b>	<b>substituted by 40/2020 s 34</b>	<b>1.7.2021</b>
s 74	<i>deleted by 84/2009 s 361</i>	<i>1.2.2010</i>
s 75	amended by 8/2011 s 25	30.5.2011
ss 75A and 75B	inserted by 8/2011 s 26	30.5.2011
<b>s 76</b>		
s 76(1)	<i>deleted by 40/2020 s 35(1)</i>	<i>1.7.2021</i>
s 76(2)	<b>amended by 40/2020 s 35(2), (3)</b>	<b>1.7.2021</b>
s 79		
s 79(2)	<b>(a) deleted by 40/2020 s 36(1)</b>	<b>1.7.2021</b>

	<b>amended by 40/2020 s 36(2)—(4)</b>	<b>1.7.2021</b>
s 79(3)	inserted by 8/2015 s 264	1.7.2015
	<b>substituted by 40/2020 s 36(5)</b>	<b>1.7.2021</b>
s 79(4) and (5)	inserted by 8/2015 s 264	1.7.2015
	<b>deleted by 40/2020 s 36(5)</b>	<b>1.7.2021</b>
Sch 1	deleted by 8/2015 s 265	1.7.2015
Sch 2		
Pts 1—3	omitted under <i>Legislation Revision and Publication Act 2002</i>	1.2.2010

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*

#### 266—Transitional provisions

- (1) A member of a reference group established under Part 2 Division 3 of the *Training and Skills Development Act 2008* as in force immediately before the commencement of section 262 of this Act ceases to hold office on the commencement of this subsection.
- (2) A member of a panel established under Schedule 1 of the *Training and Skills Development Act 2008* as in force immediately before the commencement of section 265 of this Act ceases to hold office on the commencement of this subsection.

### *Statutes Amendment (South Australian Employment Tribunal) Act 2016*

#### 150—Transitional provisions

- (1) In this section—
  - principal Act* means the *Fair Work Act 1994*;
  - relevant day* means the day on which this Part comes into operation;
  - Tribunal* means the South Australian Employment Tribunal.
- (2) A decision, direction or order of the Industrial Relations Commission of South Australia under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- (3) A right to make any application, or to seek a review, or lodge an appeal under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Commission of South Australia, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (4) Any proceedings before the Industrial Commission of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

- (5) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Industrial Commission, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Industrial Commission that may be relevant to proceedings before the Tribunal; and
  - (c) adopt or make any decision (including a decision in the nature of a permission), direction or order in relation to proceedings before the Industrial Commission (as the case may be) before the relevant day (including so as to make a decision or give a permission, direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

### ***Statutes Amendment (SACAT) Act 2019, Pt 30***

#### **186—Transitional provisions**

- (1) A right of appeal under section 42 or 61 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the District Court.
- (2) Nothing in this section affects any proceedings before the District Court commenced before the relevant day.
- (3) In this section—

*principal Act* means the *Training and Skills Development Act 2008*;

*relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

### ***Training and Skills Development (Miscellaneous) Amendment Act 2020, Sch 1 Pt 10—Transitional and saving etc provisions***

#### **12—Abolition of Training and Skills Commission**

On the commencement of this clause—

- (a) the Training and Skills Commission is abolished; and
- (b) the office of each member or the Training and Skills Commission is vacated; and
- (c) any assets or liabilities of the Training and Skills Commission vest in the South Australian Skills Commission.

#### **13—Vacation of office of Training Advocate**

On the commencement of this clause, the office of the Training Advocate is vacated.

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## 14—Revocation of charter

On the commencement of this clause, the charter prepared for the Training Advocate under section 21 of the Act is revoked.

## 15—Appointment etc of Training Advocate to represent person etc to continue

- (1) An appointment under the Act, as in force immediately before the commencement of this clause, of the Training Advocate—
  - (a) to advocate or represent a person in legal proceedings, a dispute or other negotiation (however described); or
  - (b) to investigate a complaint referred to in section 21(2)(b) of the Act (as in force immediately before the commencement of this clause); or
  - (c) to perform any other function conferred on the Training Advocate by the Minister or under the Act,is, on the commencement of this clause, revoked and, except where the Commission determines otherwise—
  - (d) any functions and duties relating to the appointment will be taken to be functions and duties of the South Australian Skills Commission; and
  - (e) the appointment of the Training Advocate will be taken to be an appointment of a person or body specified by the Commission for the purposes of this paragraph and will continue subject to the same terms as the appointment of the Training Advocate.
- (2) A person or body referred to in subclause (1)(e) may be a legal practitioner.
- (3) Despite any other Act or law, the Commission will be taken to be a party in any legal proceedings (including proceedings before SAET) in which the Training Advocate is or was, before the commencement of this clause, a party (and any rights or obligations of the Training Advocate in respect of the proceedings will be taken to transfer to the Commission).
- (4) To avoid doubt, nothing in this clause limits the operation of section 15 or 16 (other than section 16(2a)) of the *Acts Interpretation Act 1915*.

## 16—Requests for information

A request to a prescribed authority for information made by the Training Authority, but not complied with, before the commencement of this clause will, on the commencement of this clause, be taken to be a request made by the Commission.

## 17—Training plans

A training plan in relation to an apprentice/trainee under the Act in force immediately before the commencement of the *Training and Skills Development (Miscellaneous) Amendment Act 2020* will, on the commencement of this clause, subject to the Act, continue as a training plan for the apprentice or trainee under section 54Q.

## 18—References

- (1) A reference in any other Act, or in any training contract or other instrument or document, to the Training and Skills Commission will, on the commencement of this clause, be taken to be a reference to the South Australian Skills Commission.

- (2) A reference in any other Act, or in any training contract or other instrument or document, to the Training Advocate will, on the commencement of this clause, be taken to be a reference to the South Australian Skills Commission.
- (3) A reference in any other Act, or in any training contract or other instrument or document, guidelines developed by the Training and Skills Commission (however described), will, on the commencement of this clause, be taken to be a reference to the South Australian Skills Standards.

## **Historical versions**

1.2.2010

30.5.2011

1.7.2015

1.7.2017

2.12.2019

15.5.2020