

South Australia

## **Training and Skills Development Act 2003**

An Act to make provision relating to higher education, vocational education and training and adult community education; to establish the Training and Skills Commission; to repeal the *Vocational Education, Employment and Training Act 1994*; 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 *Training and Skills Development Act 2003*.

#### 3—Objects

The objects of this Act are—

- (a) to further the State's economic and social development by establishing the Training and Skills Commission—
  - (i) to assist the Minister in identifying strategies and priorities to meet the State's current and future work skills needs through education, training and skills development; and
  - (ii) to provide quality assurance in relation to higher education (other than that delivered by a State university) and vocational education and training by regulating training organisations, courses and the relationship between employers and apprentices/trainees; and
  - (iii) to promote equity and participation in and access to education, training and skills development; and
  - (iv) to promote the development of a culture of continuous learning through adult community education; and
- (b) to further the commitment by the States, the Territories and the Commonwealth, in partnership with industry, to work together to increase the participation of Australians in an integrated national vocational education and training system that allows for local diversity.

#### 4—Interpretation

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

*accredited*—see subsection (3), and *accredit* and *accreditation* have corresponding meanings;

*ANTA* means—

- (a) the Australian National Training Authority established under the Commonwealth Act; or
- (b) any other body declared by regulation to be the successor of ANTA;

*Annual VET Plan* has the same meaning as in the ANTA Agreement;

*ANTA Agreement* means the Australian National Training Authority Agreement (a copy of which is set out in the Schedule of the Commonwealth Act), approved by the Commonwealth, the States and the Territories;

*apprentice/trainee* means a person (who may be either an apprentice or a trainee) undertaking training in a trade, declared vocation or other occupation under a contract of training;

**AQF** means the policy framework entitled "Australian Qualifications Framework" that defines all qualifications recognised nationally in post-compulsory education within Australia, endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs so as to commence on 1 January 1995;

**AQTF** means the policy framework entitled "Australian Quality Training Framework" that defines the criteria and standards for the registration of training organisations and the accreditation of courses in the vocational education and training sector, endorsed by the Ministerial Council on 8 June 2001;

**Commission** means the Training and Skills Commission established under Part 2;

**Commonwealth Act** means the *Australian National Training Authority Act 1992* of the Commonwealth, as amended from time to time;

**condition** includes a limitation or restriction;

**contract of training** means a contract of training under Part 4;

**contravene** includes fail to comply with, and **contravention** has a corresponding meaning;

**corresponding law** means the law of another State or a Territory relating to vocational education and training;

**course accrediting body** means the body equivalent to the Commission in another State or a Territory responsible for the administration of the accreditation of courses under that State's or Territory's corresponding law;

**declared vocation** means an occupation declared by notice in the Gazette under section 5 to be a declared vocation for the purposes of this Act;

**Grievances and Disputes Mediation Committee** means the Grievances and Disputes Mediation Committee established under Part 2;

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

**Ministerial Council** means the Council consisting of the Ministers from each State and the Commonwealth responsible for vocational education and training operating in accordance with the ANTA Agreement;

**National Protocols** mean the protocols entitled "National Protocols for Higher Education Approval Processes" relating to quality assurance for the higher education sector in Australia, endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs in March 2000;

**National register** means—

- (a) the National Training Information Service—an information database maintained by ANTA; or
- (b) if the regulations declare some other information database to be in substitution for the National Training Information Service—that information database;

**National Training Framework** means the policy framework comprising the AQTF and the concept of training packages, endorsed by the Ministerial Council in September 1996;

**qualification** has the same meaning as in the AQF;

**reference group**—see Part 2;

**registered**—see subsection (4), and **register** and **registration** have corresponding meanings;

**registering body** means the body equivalent to the Commission in another State or a Territory responsible for the registration of training organisations under that State's or Territory's corresponding law;

**scope of the registration** of a registered training organisation means the operations that the organisation is authorised to conduct by its registration;

**standards for accreditation of courses** means—

- (a) in relation to higher education—the criteria for accreditation of courses under the National Protocols;
- (b) in relation to vocational education and training—the standards for accreditation of courses under the AQTF;
- (c) in relation to education services for overseas students—the standards determined from time to time by the Minister;

**standards for registered training organisations** means—

- (a) in relation to a training organisation for higher education—the criteria for registration of training organisations under the National Protocols;
- (b) in relation to a training organisation for vocational education and training—the standards for registration of training organisations under the AQTF;
- (c) in relation to a training organisation for education services for overseas students—the standards determined from time to time by the Minister;

**standards for State and Territory registering/course accrediting bodies** means—

- (a) in relation to higher education—the criteria for State and Territory registering bodies and course accrediting bodies under the National Protocols;
- (b) in relation to vocational education and training—the standards for State and Territory registering bodies and course accrediting bodies under the AQTF,

and includes, in relation to higher education or vocational education and training, any standards determined from time to time by the Minister for higher education or vocational education and training;

**statement of attainment** has the same meaning as in the AQF;

**State register** means the register maintained by the Commission for the purposes of this Act;

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

**trade** means an occupation declared by notice in the Gazette under section 5 to be a trade for the purposes of this Act;

**training package**—a training package is an integrated set of competency standards, assessment guidelines and AQF qualifications for a specific industry, industry sector or enterprise (see, also, the definition of National Training Framework);

**variation of registration**—see section 22;

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

- (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*.
- (3) For the purposes of this Act, a course is *accredited* if—
  - (a) the course is entered as an accredited course in higher education, and the conditions of accreditation and details of the course are recorded, on the State register by the Commission; or
  - (b) the course is entered as an accredited course in vocational education and training, and the conditions of accreditation and details of the course are recorded, on the National register by the Commission or some other course accrediting body.
- (4) For the purposes of this Act, a training organisation is *registered* if—
  - (a) the training organisation is entered as a registered training organisation in relation to higher education, and the conditions of registration and details of the organisation are recorded, on the State register by the Commission; or
  - (b) the training organisation is entered as a registered training organisation in relation to vocational education and training, and the conditions of registration and details of the organisation are recorded, on the National register whether by the Commission or some other registering body; or
  - (c) the training organisation is entered as a registered training organisation in relation to education and training for overseas students, and the conditions of registration and details of the organisation are recorded, on the State register by the Commission.
- (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 for purposes of Act

- (1) The Minister may, by notice in the Gazette, declare an institution to be a university for the purposes of this Act.
- (2) The Minister must, in making a declaration under subsection (1), apply—
  - (a) the National Protocols; and
  - (b) any other guidelines determined by the Minister.

- (3) A declaration under subsection (1)—
  - (a) may be subject to such conditions 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) The Minister may, on the Commission's recommendation—
  - (a) by notice in the Gazette, declare an occupation to be—
    - (i) a trade; or
    - (ii) a declared vocation,for the purposes of this Act; and
  - (b) by further notice in the Gazette, vary or revoke such a declaration.

## **Part 2—Administration**

### **Division 1—State Training Agency**

#### **6—Minister to be Agency**

The Minister is the State Training Agency contemplated by the Commonwealth Act.

#### **7—Functions of Minister as Agency**

- (1) As the State Training Agency, the Minister has the following functions:
  - (a) to provide to ANTA advice and information on vocational education and training and adult community education needs and the funding implications of those needs, in consultation with all interested parties, including industry, commerce and government;
  - (b) to develop, in conjunction with ANTA, the Annual VET Plan in accordance with the ANTA Agreement;
  - (c) to ensure that the management of the State's system of vocational education and training and adult community education, including—
    - (i) planning, regulation and provision of public and private training; and
    - (ii) allocation of resources within the State on a program and geographic basis,is in accordance with any national priorities approved by the Ministerial Council under the ANTA Agreement and the Annual VET Plan;
  - (d) to provide annually to ANTA a report on performance to enable the compilation of an annual integrated report for approval by the Ministerial Council;
  - (e) the other functions contemplated by the ANTA Agreement and any other functions that the Minister considers appropriate.

- (2) The Minister is to ensure that the vocational education and training and adult community education needs of the State are identified and met in a cost effective and efficient manner.

## **8—Delegation by Minister**

- (1) The Minister may delegate a function of the Minister as the State Training Agency or any other function or matter that the Minister considers appropriate—
  - (a) to the Commission or any other particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A function or matter 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.

## **Division 2—Training and Skills Commission**

### **9—Establishment of Training and Skills Commission**

- (1) The *Training and Skills Commission* is established.
- (2) The Commission will consist of not more than 9 members appointed by the Governor on the nomination of the Minister.
- (3) Membership of the Commission will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Commission's functions, of whom—
  - (a) at least 2 will be nominated after consultation with State employer associations; and
  - (b) at least 2 will be nominated after consultation with the United Trades and Labor Council.
- (4) The Governor may, on the nomination of the Minister—
  - (a) appoint a member to chair meetings of the Commission; and
  - (b) appoint a member to be the deputy of the member appointed to chair meetings of the Commission (and the deputy may perform or exercise the functions and powers of that member in the member's absence).
- (5) The Governor may, on the nomination of the Minister, appoint a suitable person to be the deputy of a member (other than the members referred to in subsection (4)) and a person so appointed may act as a member of the Commission in the member's absence.
- (6) The qualifications required for the appointment of members under subsection (3) extend to the appointment of deputies.



- (7) The same number of members must be appointed by the Governor under subsection (3)(a) and (b).
- (8) At least one member of the Commission must be a woman and one a man.

## **10—Commission's functions**

- (1) The Commission's general functions are—
  - (a) to assist, advise and make recommendations to the Minister on—
    - (i) the Minister's functions as the State Training Agency; and
    - (ii) other matters relating to the development, funding, quality and performance of vocational education and training and adult community education; and
  - (b) to regulate higher education (other than that delivered by a State university) and vocational education and training.
- (2) The Commission's functions include—
  - (a) promoting and encouraging the development of, investment, equity and participation in, and access to, vocational education and training and adult community education; and
  - (b) advising and making recommendations to the Minister—
    - (i) on strategies and priorities for increasing the work skills base 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
    - (ii) on strategies for the development of vocational education and training and adult community education in the State; and
    - (iii) relating to the amount and allocation of funds for vocational education and training and adult community education; and
    - (iv) about the occupations that should constitute trades or declared vocations; and
  - (c) registering training organisations and accrediting courses under Part 3; and
  - (d) performing the functions assigned to the Commission under Part 4; and
  - (e) monitoring vocational education and training and adult community education in the State and advising the Minister of the extent of compliance with, and any departures from, the Annual VET Plan; and
  - (f) reporting annually to the Minister on vocational education and training and adult community education in the State, including the expenditure of public money in these areas; and
  - (g) developing guidelines—
    - (i) relating to contracts of training; and
    - (ii) if required—for the purposes of Part 3 for the approval of the Minister; and

- (h) promoting pathways between the secondary school, vocational education and training, adult community education, and university, sectors; and
  - (i) entering into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; and
  - (j) monitoring, and making recommendations to the Minister on, the administration and operation of this Act; and
  - (k) performing any other function assigned to the Commission by the Minister or by or under this or any other Act.
- (3) For the purpose, or in the course, of performing its functions, the Commission may—
- (a) establish committees (which may but need not consist of members of the Commission); and
  - (b) with the consent of the Minister, delegate a function—
    - (i) to a particular committee, reference group or any other person or body; or
    - (ii) to the person for the time being occupying a particular office or position.
- (4) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (5) 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.
- (6) The Commission must, for the purposes of assisting, advising and making recommendations to the Minister on the Minister's functions as the State Training Agency, and generally to the extent practicable, consult with—
- (a) industry and commerce, including industry training advisory bodies and associations and organisations established by or representing industry and commerce; and
  - (b) associations and organisations representing employees; and
  - (c) relevant government and community bodies.

## **11—Ministerial control**

Except in relation to the formulation of advice and reports to the Minister, the Commission is, in the performance of its functions, subject to control and direction by the Minister.

## **12—Conditions of membership**

- (1) A member of the Commission will be appointed for a term not exceeding 2 years and on conditions determined by the Governor and specified in the instrument of appointment.

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- (2) A member of the Commission will, at the expiration of a term of appointment, be eligible for reappointment.
  - (3) The Governor may remove a member from office—
    - (a) for misconduct; or
    - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
    - (c) for contravention of a condition of his or her appointment; or
    - (d) if serious irregularities have occurred in the conduct of the Commission's affairs or the Commission has failed to carry out its functions satisfactorily and its membership should, in the opinion of the Governor, be reconstituted for that reason.
  - (4) 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 an indictable offence or sentenced to imprisonment for an offence; or
    - (e) is removed from office under subsection (3).
  - (5) On the office of a member becoming vacant, a person may be appointed in accordance with this Division to the vacant office.

### **13—Commission's proceedings**

- (1) The member appointed to chair meetings of the Commission will preside at each meeting of the Commission at which the member is present.
- (2) If the member appointed to chair meetings of the Commission is absent from a meeting of the Commission, the following provisions apply:
  - (a) if another member has been appointed as that member's deputy and is present at the meeting—the deputy 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.
- (3) A quorum of the Commission consists of half of the total number of its members (ignoring any fraction resulting from the division) plus one and must include at least one of the members appointed under section 9(3)(a) and at least one of the members appointed under section 9(3)(b).
- (4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Commission.
- (5) Each member present at a meeting of the Commission has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

- (6) 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.
- (7) 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.
- (8) The Commission must cause accurate minutes to be kept of its proceedings.
- (9) Subject to this Act, the Commission may determine its own procedures.
- (10) Subject to the directions of the Commission, this section applies to a committee of the Commission (other than the Grievances and Disputes Mediation Committee) in the same way as to the Commission.

#### **14—Validity of acts**

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

#### **15—Immunity**

- (1) A member of the Commission or a committee of the Commission incurs no liability for anything done honestly in the performance or exercise, or purported performance or exercise, of functions or powers under this Act.
- (2) A liability that would, but for this section, attach to a member attaches instead to the Crown.

#### **16—Minister to provide facilities, staff etc**

- (1) The Minister must provide the Commission with facilities and assistance by staff and consultants as reasonably required for the proper performance of the Commission's functions.
- (2) For the purposes of subsection (1), the Minister may, if so requested by the Commission, do either or both of the following:
  - (a) allow the Commission to select persons to be engaged as staff members or consultants to assist the Commission;
  - (b) engage staff members or consultants otherwise than as Public Service employees or officers or employees under the *Technical and Further Education Act 1975*.

#### **17—Report**

- (1) The Commission must, on or before 31 March in each year, present to the Minister a report on its operations for the preceding calendar year.
- (2) The Minister must, within 6 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## **Division 3—Reference groups**

### **18—Establishment of reference groups**

- (1) The Minister must establish—
  - (a) a reference group to advise the Commission in relation to the performance of the functions assigned to the Commission under Parts 3 and 4; and
  - (b) a reference group to advise the Commission in relation to the performance of its functions relating to adult community education.
- (2) The Minister may establish other reference groups as the Minister considers necessary to advise the Commission in relation to the carrying out of its functions or particular matters relating to its functions.
- (3) A reference group will consist of not more than 5 members appointed by the Minister, of whom—
  - (a) one (who will chair meetings of the reference group) will be a member of the Commission; and
  - (b) the remainder (who may but need not be members of the Commission) must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the reference group's functions.
- (4) Members of a reference group will hold office on such terms and conditions as the Minister thinks fit.
- (5) Subject to this Act, a reference group may determine its own procedures.
- (6) A reference group must submit to the Commission for inclusion in each annual report of the Commission a report on its operations (if any) during the year to which the report relates.

## **Division 4—Grievances and Disputes Mediation Committee**

### **19—Establishment of Grievances and Disputes Mediation Committee**

- (1) The *Grievances and Disputes Mediation Committee* is established as a committee of the Commission.
- (2) The Grievances and Disputes Mediation Committee has the functions assigned to the Committee under Parts 3 and 4.
- (3) The Minister must appoint a member of the Commission to chair meetings of the Grievances and Disputes Mediation Committee (and that member will preside at meetings of the Committee).
- (4) The Grievances and Disputes Mediation Committee will be constituted of the member appointed to chair meetings of the Committee and at least 2 but not more than 4 other persons selected in accordance with Schedule 1.
- (5) Each person present at a meeting of the Grievances and Disputes Mediation Committee has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

- (6) The Grievances and Disputes Mediation Committee is not subject to control or direction by the Commission and, subject to subsection (7), the Commission has no power to overrule or otherwise interfere with a decision or order of the Committee under Part 4.
- (7) If the Commission, acting at the direction of the Minister, requests the Grievances and Disputes Mediation Committee to review a decision or order of the Committee under Part 4, the Committee must review the decision or order and may, on the review—
  - (a) confirm, vary or revoke the decision or order subject to the review; or
  - (b) make any other decision or order in substitution for the decision or order.
- (8) The Grievances and Disputes Mediation Committee may, at any one time, be separately constituted in accordance with this section and Schedule 1 for the performance of its functions in relation to a number of separate matters.
- (9) Subject to this Act, the Grievances and Disputes Mediation Committee may determine its own procedures.

## **Part 3—Higher education and vocational education and training**

### **20—Registration of training organisations**

- (1) The Commission may, on application or of its own motion, register, or renew the registration of, a person as a training organisation—
  - (a) to—
    - (i) deliver education and training and provide assessment services; and
    - (ii) issue qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training, or both; or
  - (b) to—
    - (i) provide assessment services; and
    - (ii) issue qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training, or both.
- (2) The Commission may, on application or of its own motion, register, or renew the registration of, a person as a training organisation for the delivery of education and training to overseas students.
- (3) An application for registration or renewal of registration must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (4) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

## 21—Conditions of registration

Registration of a training organisation is subject to—

- (a) the conditions determined by the Commission as to what operations the organisation is authorised to conduct by the registration; and
- (b) the condition that the organisation will comply with the standards for registered training organisations; and
- (c) if guidelines have been developed by the Commission and approved by the Minister—the condition that the organisation will comply with the guidelines; and
- (d) any other conditions determined by the Commission.

## 22—Variation of registration of training organisations

- (1) The Commission may, on application, vary the registration of a training organisation.
- (2) An application to vary the registration must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (4) For the purposes of this Act, *variation of registration* of a training organisation means variation of the conditions of registration or the registered details of the organisation.

## 23—Criteria for registration etc of training organisations

- (1) The Commission must, in determining whether to register, or renew or vary the registration of, a training organisation, and in determining conditions of registration—
  - (a) apply—
    - (i) the standards for registered training organisations; and
    - (ii) the guidelines (if any) developed by the Commission and approved by the Minister; and
  - (b) have regard to the standards for State and Territory registering/course accrediting bodies; and
  - (c) have regard to the prior conduct of the organisation or an associate of the organisation (whether in this State or elsewhere), and any other matter that the Commission considers relevant.
- (2) The Commission may not register, or renew or vary the registration of, a training organisation in relation to vocational education and training—
  - (a) if the organisation is registered as the result of a determination by some other registering body; and
  - (b) unless the Commission determines (according to such criteria as the Commission thinks fit) that this State will be the organisation's principal place of business as a training organisation in relation to vocational education and training.

- (3) For the purposes of subsection (1), *a person is an associate of a training organisation* if—
- (a) they are partners; or
  - (b) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (c) one is a body corporate and the other is a member of the board or committee of management of the body corporate; or
  - (d) one is a body corporate and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate; or
  - (e) a chain of relationships can be traced between them under any one or more of the preceding paragraphs.

## **24—Accreditation of courses**

- (1) The Commission may, on application or of its own motion, accredit a course, or renew the accreditation of a course, as a course in higher education or vocational education and training.
- (2) An application for accreditation must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

## **25—Conditions of accreditation**

- (1) Accreditation of a course is subject to—
  - (a) the condition that the course will comply with the standards for accreditation of courses; and
  - (b) if guidelines have been developed by the Commission and approved by the Minister—the condition that the course will comply with the guidelines; and
  - (c) any other conditions determined by the Commission.
- (2) The Commission must consult with the State universities before determining an application for accreditation of a course in relation to which a degree is to be conferred.

## **26—Criteria for accreditation of courses**

The Commission must, in determining whether to accredit, or renew the accreditation of, a course, and in determining conditions of accreditation—

- (a) apply—
  - (i) the standards for accreditation of courses; and
  - (ii) the guidelines (if any) developed by the Commission and approved by the Minister; and



- (b) have regard to the standards for State and Territory registering/course accrediting bodies.

## **27—Duration of registration/accreditation and periodic fee and return**

- (1) Subject to this Act, registration or accreditation remains in force, on initial grant or renewal, for a period (which may not be longer than 5 years) determined by the Commission.
- (2) The holder of registration or accreditation must, at intervals fixed by regulation—
  - (a) pay to the Commission the fee fixed by regulation; and
  - (b) lodge with the Commission a return in the manner and form required by the Commission.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (3) An amount payable under this section as a fee may be recovered by the Commission as a debt in a court of competent jurisdiction.
- (4) In this section—  
*the holder of registration or accreditation* includes a person whose registration or accreditation has been suspended.

## **28—Grievances relating to registered training organisations**

- (1) A person with a grievance relating to—
  - (a) the delivery of education and training, provision of assessment services, or issue of qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training by a registered training organisation; or
  - (b) the provision of education and training to overseas students by a registered training organisation,

may refer the grievance to the Grievances and Disputes Mediation Committee for consideration.

- (2) The aggrieved person and the registered training organisation must provide the Grievances and Disputes Mediation Committee with any information required by the Committee for the purposes of considering the grievance.
- (3) The Grievances and Disputes Mediation Committee must inquire into a matter referred to it under this section and may, if it thinks fit, make a recommendation to the Commission about what action (if any) the Commission should take as a result of the inquiry.
- (4) The Commission may, without further inquiry, accept and act on any recommendation of the Grievances and Disputes Mediation Committee under subsection (3).

## **29—Commission may inquire into training organisations or courses**

- (1) The Commission—
  - (a) may, at any time; and
  - (b) must, at the request of the Grievances and Disputes Mediation Committee,

inquire into a training organisation or course whether registered or accredited or the subject of an application for registration or accreditation.

- (2) The Commission may inquire into—
- (a) a training organisation the registration of which was, or is to be, determined by some other registering body; or
  - (b) a course the accreditation of which was, or is to be, determined by some other course accrediting body,

at the request of or after consultation with the relevant registering body.

- (3) The holder of, or applicant for, the registration or accreditation must provide the Commission with any information required by the Commission for the purposes of an inquiry under this section.

### **30—Commission may cancel, suspend or vary registration or accreditation**

- (1) If the holder of registration or accreditation contravenes this Act or a corresponding law or a condition of the registration or accreditation (whether the contravention occurs in this State or elsewhere), the Commission may do one or more of the following:
- (a) impose or vary a condition of the registration or accreditation;
  - (b) cancel or suspend the registration or accreditation.
- (2) The Commission may not take action under subsection (1) in relation to a training organisation the registration of which was determined by some other registering body except to impose conditions preventing the organisation from operating in this State or restricting the organisation's operations in this State.
- (3) The Commission may, subject to the regulations, cancel the registration of a training organisation the registration of which was determined by the Commission if the Commission determines (according to such criteria as the Commission thinks fit) that this State is no longer the organisation's principal place of business as a training organisation in relation to vocational education and training.
- (4) The Commission may not take action under this section unless the Commission first—
- (a) gives the holder of the registration or accreditation 28 days written notice of the nature of the action the Commission intends to take against it; and
  - (b) takes into account any representations made by the holder of the registration or accreditation within that period; and
  - (c) in the case of cancellation of the registration of a training organisation in relation to vocational education and training—consults the registering body in each State and Territory where the organisation operates.
- (5) Any action to be taken under this section—
- (a) must be imposed by written notice to the holder of the registration or accreditation; and
  - (b) may have effect at a future time or for a period specified in the notice.

### **31—Provision of information to other State or Territory registering/course accrediting bodies**

- (1) The Commission may provide to another registering body or course accrediting body any information obtained by the Commission in the course of carrying out its functions under this Act.
- (2) The provision of information under this section may be subject to such conditions as the Commission thinks fit.

### **32—Cancellation of qualification or statement of attainment**

- (1) The Commission may cancel a qualification or statement of attainment issued by a registered training organisation (the *issuing training organisation*) if the Commission is satisfied that the qualification or statement of attainment was issued by mistake or on the basis of false or misleading information.
- (2) Cancellation must be imposed by written notice to the holder of the qualification or statement of attainment and the issuing training organisation.
- (3) The Commission may not cancel a qualification or statement of attainment unless the Commission first—
  - (a) takes all reasonable steps to give the holder of the qualification or statement of attainment and the issuing training organisation 28 days written notice of its intention to do so; and
  - (b) takes into account any representations made within that period by the holder of the qualification or statement of attainment and the issuing training organisation.

### **33—Appeal to District Court**

- (1) An appeal to the Administrative and Disciplinary Division of the District Court (the *Court*) may be made against a decision of the Commission—
  - (a) refusing an application for the grant or renewal of registration or accreditation; or
  - (b) imposing or varying conditions of registration or accreditation; or
  - (c) suspending or cancelling registration or accreditation; or
  - (d) cancelling a qualification or statement of attainment.
- (2) Subject to subsection (4), an appeal must be instituted by a person within one month of the making of the decision appealed against.
- (3) The Commission must, if so required by a person affected by a decision made by it, state in writing the reasons for the decision.
- (4) If the reasons of the Commission are not given in writing at the time of making a decision and the person affected by the decision (within one month of the making of the decision) requires the Commission to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.

### **34—Offences relating to registration**

- (1) A person must not claim or purport to be a registered training organisation in relation to higher education unless registered as a training organisation in relation to higher education.

Maximum penalty: \$2 500.

- (2) A person must not issue, or claim or purport to issue, qualifications or statements of attainment under the AQF in relation to higher education unless—
- (a) the person is a State university; or
  - (b) the person is—
    - (i) registered as a training organisation in relation to higher education; and
    - (ii) operating within the scope of the registration of the organisation and complying with the conditions of the registration.

Maximum penalty: \$2 500.

- (3) A person must not claim or purport to be a registered training organisation in relation to vocational education and training unless registered as a training organisation in relation to vocational education and training.

Maximum penalty: \$2 500.

- (4) A person must not issue, or claim or purport to issue, qualifications or statements of attainment under the AQF in relation to vocational education and training unless the person is—

- (a) registered as a training organisation in relation to vocational education and training; and
- (b) operating within the scope of the registration of the organisation and complying with the conditions of the registration.

Maximum penalty: \$2 500.

- (5) A person must not claim or purport to be able to deliver education and training that will result in the issue of a qualification or statement of attainment by another person if the person knows that the other person is not lawfully able to issue the qualification or statement of attainment.

Maximum penalty: \$2 500.

- (6) This section does not apply to the Commission.

### **35—Offences relating to universities, degrees etc**

- (1) A person must not claim or purport to be a university unless—

- (a) the person is—
  - (i) a State university; or
  - (ii) an institution declared to be a university under section 5; or
  - (iii) an institution or institution of a class prescribed by regulation; or

- (b) the person has been exempted from the operation of this subsection by the Minister.

Maximum penalty: \$2 500.

- (2) An exemption under subsection (1)(b) may be subject to such conditions as the Minister thinks fit and may, at any time by written notice to the person, be varied or revoked by the Minister.
- (3) Subject to subsection (5), a person must not offer or provide a course of education and training in relation to which a degree is to be conferred (a *degree course*) unless—
  - (a) the person is registered as a training organisation under this Part; and
  - (b) the degree course is accredited under this Part.

Maximum penalty: \$2 500.

- (4) Subject to subsection (5), a person must not offer or confer a degree unless—
  - (a) the person is registered as a training organisation under this Part; and
  - (b) the degree is in relation to successful completion of a degree course accredited under this Part.

Maximum penalty: \$2 500.

- (5) Subsections (3) and (4) do not apply to—
  - (a) a State university; or
  - (b) an institution declared to be a university under section 5 that is authorised by the Commission to provide such a course or confer such a degree; or
  - (c) an institution or institution of a class prescribed by regulation.

## Part 4—Apprenticeships/traineeships

### 36—Interpretation

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

*approved employer* means an employer who has been approved by the Commission under this Part;

*award* includes—

- (a) an award or order of the Industrial Relations Commission of South Australia; and
- (b) an award or order of the Australian Industrial Relations Commission;

*industrial agreement* means—

- (a) an enterprise agreement in force under the *Industrial and Employee Relations Act 1994*; or
- (b) a certified agreement or an Australian workplace agreement in force under the *Workplace Relations Act 1996* of the Commonwealth as amended from time to time;

*industrial authority* has the same meaning as in the *Industrial and Employee Relations Act 1994*;

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

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

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

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

*training plan*—see section 37(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 contract of training for a specified trade, declared vocation or occupation;
  - (c) determine *standard conditions* for a contract of training 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).

### **37—Training under contracts of training**

- (1) An employer must not undertake to train a person in a trade except under a contract of training.  
Maximum penalty: \$2 500.
- (2) Subsection (1) does not apply in relation to the further training or re-training of a person who has already completed the training required under a contract of training, or who has an equivalent qualification.
- (3) An employer may undertake to train a person in any other occupation (including a declared vocation) under a contract of training.
- (4) An employer must not enter into a contract of training unless—
  - (a) the employer is an approved employer; or
  - (b) the contract is subject to the employer becoming an approved employer.Maximum penalty: \$2 500.
- (5) Two or more employers may, with the approval of the Commission, enter into a contract of training with the same apprentice/trainee.
- (6) A contract of training must—
  - (a) be in the form of the standard form contract; and
  - (b) contain the following conditions:

- (i) a condition that the apprentice/trainee will be employed in accordance with the applicable award or industrial agreement (which must be specified in the contract);
  - (ii) a condition specifying the probationary period for a contract for the relevant trade, declared vocation or occupation;
  - (iii) if the contract is in respect of a trade or declared vocation—the standard conditions for a contract for the trade or declared vocation;
  - (iv) a condition that the apprentice/trainee will be trained and assessed in accordance with the *training plan* (to be agreed between the employer, the apprentice/trainee and a registered training organisation chosen jointly by the employer and the apprentice/trainee);
  - (v) any other conditions that have been agreed between the employer and the apprentice/trainee after consultation with the registered training organisation.
- (7) An employer under a contract of training must comply with the employer's obligations specified in the contract.  
Maximum penalty: \$2 500.
- (8) An apprentice/trainee under a contract of training must comply with the apprentice's/trainee's obligations specified in the contract.
- (9) An employer must permit an apprentice/trainee party to a contract of training to carry out his or her obligations under the contract.  
Maximum penalty: \$2 500.
- (10) If an apprentice/trainee attends a course previously undertaken by the apprentice/trainee, the time spent re-attending the course need not be counted for the purpose of determining the wages payable to the apprentice/trainee but, with that exception, the time spent attending or re-attending any course as required under the contract of training is to be treated for all purposes as part of the employment of an apprentice/trainee.
- (11) No person is disqualified from entering into a contract of training by reason of his or her age.

### **38—Minister may enter contracts of training**

- (1) The Minister may enter into a contract of training, assuming the rights and obligations of an employer under the contract.
- (2) The Minister may not enter into a contract of training except—
  - (a) on a temporary basis; or
  - (b) where it is not reasonably practicable for some other employer to enter into the contract of training.

### **39—Approval of employers for training of apprentices/trainees**

- (1) The Commission may, on application or of its own motion, grant approval of an employer as an employer who may undertake the training of an apprentice/trainee under a contract of training.

- (2) The Commission may, in determining whether to grant an approval of an employer under subsection (1), take into consideration the following matters:
  - (a) the place of employment of the apprentice/trainee;
  - (b) the equipment and methods to be used in the training of the apprentice/trainee;
  - (c) the persons who are to supervise the work of the apprentice/trainee;
  - (d) the ratio between the number of apprentices/trainees party to contracts of training with the employer and the number of persons who are to supervise their work;
  - (e) any other matter that is, in the opinion of the Commission, relevant to the approval.
- (3) An approval under subsection (1)—
  - (a) may be granted to an employer in relation to—
    - (i) the training of a particular apprentice/trainee; or
    - (ii) the training of apprentices/trainees generally; and
  - (b) may be subject to conditions determined by the Commission.
- (4) The Commission may, by notice served on an employer, withdraw an approval granted under subsection (1) if—
  - (a) there has been a contravention of a condition of the Commission's approval; or
  - (b) the circumstances are such that it is, in the Commission's opinion, no longer appropriate that the employer be so approved.
- (5) The Commission must not grant an approval under subsection (1) at variance with an order of the Grievances and Disputes Mediation Committee.

#### **40—Term of contracts of training**

- (1) The Commission may, on the application of the parties to a contract of training (or proposed contract of training) for a trade or declared vocation or of its own motion, determine—
  - (a) that the whole or a part of a period of training that occurred before the date of the 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 contract of training be treated as a period of training served under the contract; or
  - (c) that a period of absence of the apprentice/trainee under the contract of training be excluded from consideration in computing the length of the apprentice's/trainee's service under the contract.
- (2) Subject to subsection (3), the term of a contract of training must be computed and the contract must be construed and must apply in accordance with a determination made by the Commission under subsection (1).



- (3) If a conflict occurs between a determination of the Commission under this section and a determination of the Grievances and Disputes Mediation Committee, the determination of the Committee prevails.
- (4) If the Commission is satisfied of the competence of an apprentice/trainee under a contract of training, the Commission may, of its own motion or on the application of each party to the contract, relieve the apprentice/trainee of his or her obligations under the contract, and the apprentice/trainee will be taken to have completed the training required under the contract.
- (5) The Commission may, by notice in writing to the parties to a contract of training, increase or reduce the term of the contract.
- (6) This section does not prevent the extension or reduction of the term of a contract of training by the Grievances and Disputes Mediation Committee.

#### **41—Approval of contracts of training**

- (1) An employer must, within 4 weeks after entering into a contract by which the employer undertakes to train a person in a trade, apply to the Commission for approval of the contract.  
Maximum penalty: \$2 500.
- (2) An employer must, within 4 weeks after entering into a contract with a person that is intended to be a contract of training under this Part, apply to the Commission for approval of the contract.  
Maximum penalty: \$2 500.
- (3) The employer must provide the Commission with any information required by the Commission for the purposes of determining an application for approval of a contract as a contract of training.
- (4) The Commission may decline to approve a contract as a contract of training if—
  - (a) the contract is not in the form of the standard form contract or does not contain conditions required by this Part; or
  - (b) the employer is not an approved employer; or
  - (c) the contract is not accompanied by the training plan for the contract; or
  - (d) the qualification to which the contract relates is, in the opinion of the Commission, an inappropriate qualification for a contract of training; or
  - (e) the employer will be unable, in the opinion of the Commission, to fulfil the employer's obligations under the contract; or
  - (f) a term of the contract is, in the opinion of the Commission, prejudicial to the interests of the apprentice/trainee; or
  - (g) for any other proper reason, the Commission is of the opinion that the contract should not be approved.
- (5) The Commission must notify the employer and apprentice/trainee in writing of the Commission's decision on an application and, if the Commission approves a contract as a contract of training, the date of approval of the contract.

- (6) Except as authorised by the Commission, an employer must not continue to train a person in a trade if the Commission has declined to approve the contract entered into with the person for that purpose.

Maximum penalty: \$2 500.

#### **42—Alteration of training under contract of training to part-time or full-time**

The Commission may, on the application of all parties to a contract of training, alter 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/trainee is employed.

#### **43—Termination of contract of training**

- (1) Subject to this Part, a contract of training may not be terminated or suspended without the approval of the Commission.
- (2) A party to a contract of training 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.
- (3) If a contract of training is terminated during the probationary period, the employer under the contract must, within 7 days of the termination, notify the Commission in writing of the termination.

Maximum penalty: \$2 500.

#### **44—Transfer of contract of training to new employer**

- (1) A change in the ownership of a business does not result in the termination of a contract of training entered into by the former owner but, where a change of ownership occurs, the rights, obligations and liabilities of the former owner under the contract are transferred to the new owner.
- (2) If a contract of training is transferred or assigned from one employer to another (whether by subsection (1) or otherwise), the employer to whom the contract is transferred or assigned must, within 7 days of the transfer or assignment, notify the Commission in writing of the transfer or assignment.

Maximum penalty: \$2 500.

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

If a contract of training 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 contract of training does not of itself terminate the person's employment with the employer.

#### **46—Disputes and grievances relating to contracts of training**

- (1) If—
- (a) a dispute arises between parties to a contract of training; or
  - (b) a party to a contract of training is aggrieved by the conduct of another party,
- a party to the contract may refer the matter to the Grievances and Disputes Mediation Committee.

- (2) If the Commission suspects on reasonable grounds that a party to a contract of training has contravened a provision of the contract or this Act, it may refer the matter to the Grievances and Disputes Mediation Committee.
- (3) The Grievances and Disputes Mediation Committee must inquire into a matter referred to it under this section.
- (4) If, after inquiring into a matter, the Grievances and Disputes Mediation Committee forms the opinion that the matter is one that should be dealt with by an industrial authority, the Commission or some other body, the Committee must refer the matter to the industrial authority, Commission or other body.
- (5) The Grievances and Disputes Mediation Committee may, if it thinks fit, by order, exercise one or more of the following powers in relation to a matter before the Committee:
  - (a) it may make recommendations about the following matters to the Commission:
    - (i) the variation of a contract of training;
    - (ii) the employment by an employer of apprentices/trainees, including any conditions that should be imposed on an approval of the employer granted by the Commission under this Part;
    - (iii) the assessment of the skills of an apprentice/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/trainee for a period not exceeding 4 weeks commencing on a date specified in the order;
  - (d) it may confirm or revoke a suspension imposed under subsection (10) 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 a contract of training;
  - (f) it may terminate a contract of training as at the date specified in the order;
  - (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 non-monetary benefit that should have been provided to an apprentice/trainee;
  - (i) it may order a party to a contract of training to take any other action that, in the opinion of the Committee, he or she is required to take under the contract or under this Part;
  - (j) it may excuse a party to a contract of training from performing one 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 withdraw the approval of an employer granted by the Commission under this Part;
  - (m) it may order an employer not to employ any apprentices/trainees in addition to those named in the order without the approval of the Committee;
  - (n) it may make any consequential orders that the Committee thinks necessary or expedient.
- (6) The Commission may, without further inquiry, accept and act on any recommendation of the Grievances and Disputes Mediation Committee under subsection (5).
- (7) The term of a contract of training must be computed and the contract must be construed and must apply in accordance with an order made by the Grievances and Disputes Mediation Committee under subsection (5).
- (8) The withdrawal of approval of an employer by the Grievances and Disputes Mediation Committee under subsection (5) may relate to a particular apprentice/trainee or to all apprentices/trainees employed by the employer.
- (9) If, under subsection (5), the Grievances and Disputes Mediation Committee orders one party to a contract of training to pay a sum of money to another party to the contract, that sum may be recovered by the other party as a debt.
- (10) If an employer has reasonable grounds to believe that an apprentice/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/trainee from employment and must, in that event—
- (a) immediately refer the matter to the Grievances and Disputes Mediation Committee; and
  - (b) within 3 days of the suspension—confirm the reference in writing.
- Maximum penalty: \$2 500.
- (11) A suspension under subsection (10) must, unless confirmed by the Grievances and Disputes Mediation Committee, not operate for more than 7 working days.
- (12) Notice must be given by the Grievances and Disputes Mediation Committee to the Commission of the termination of a contract of training under this section.
- (13) The Grievances and Disputes Mediation Committee may consult with industry training advisory bodies before exercising its powers under this section.
- (14) The Grievances and Disputes Mediation Committee may, at any time, vary or revoke an order made by it under this section.
- (15) A person must not contravene an order of the Grievances and Disputes Mediation Committee under this section.
- Maximum penalty: \$2 500.
- (16) In this section—
- party to a contract of training*** or ***party*** includes a person who was formerly a party to a contract of training.

#### **47—Relation to other Acts and awards etc**

- (1) This Act prevails to the extent of any inconsistency over the *Industrial and Employee Relations Act 1994* and any regulation, award or other determination, enterprise agreement or industrial agreement made under that Act or an Act repealed by that Act.
- (2) Despite subsection (1), a provision of an award or other determination, enterprise agreement or industrial agreement made under the *Industrial and Employee Relations Act 1994* or an Act repealed by that Act requiring employers to employ apprentices/trainees in preference to junior employees remains in full force.

#### **48—Making and retention of records**

- (1) An employer who employs an apprentice/trainee must keep records as required by the Commission by notice in the Gazette.  
Maximum penalty: \$2 500.
- (2) An employer must retain a record kept under subsection (1) for at least 2 years after the expiry or termination of the contract of training to which the record relates.  
Maximum penalty: \$2 500.

### **Part 5—Recognition of competency**

#### **49—Commission may issue qualifications or statements of competency**

The Commission may assess, by such means as the Commission thinks fit, the competency of persons who have acquired skills or qualifications otherwise than under the AQF and, in appropriate cases, having regard to the standards and outcomes specified in accredited courses or training packages, grant, or arrange for or approve the granting of, qualifications or statements certifying that competency.

### **Part 6—Miscellaneous**

#### **50—State register**

- (1) The Commission must establish a State register for the purposes of this Act.
- (2) The State register may be kept in the form of a computer record.
- (3) The State register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Commission.
- (4) The Commission must ensure that copies of material on the State register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.
- (5) The Commission may determine that the State register can be inspected at a website determined by the Commission.

#### **51—Maintenance of registers**

The Commission must ensure that the State register or the National register (as the case requires) records registration and accreditation under this Act and any variation, cancellation, suspension or expiry of registration or accreditation (whether by the making, variation or deletion of entries in the register).

## 52—Powers of entry and inspection

- (1) For the purposes of Part 3 or 4, a member of the Commission, or a person authorised by the Commission to exercise the powers conferred by this section, may—
  - (a) enter at any reasonable time any place or premises in which education or training is provided; and
  - (b) inspect the place or premises or anything in the place or premises; and
  - (c) question any person involved in education or training; and
  - (d) require the production of any record or document required to be kept by or under this Act and inspect, examine or copy it.
- (2) A person exercising a power under this section must—
  - (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 a member of the Commission or other 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: \$2 500.

- (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.
- (5) A person authorised by the Commission to exercise powers conferred by this section incurs no liability for anything done in good faith in the exercise, or purported exercise, of the powers.
- (6) A liability that would, but for subsection (5), attach to a person attaches instead to the Crown.

## 53—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: \$2 500.

## 54—Evidentiary provision relating to registration

In proceedings for an offence against Part 3, an allegation in the complaint that—

- (a) a training organisation was or was not at a specified time registered; or
- (b) the registration of a training organisation was at a specified time subject to specified conditions; or

- (c) a registered training organisation was at a specified time acting outside the scope of the registration of the organisation,

will be accepted as proved in the absence of proof to the contrary.

### **55—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.

### **56—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.

### **57—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—
- (a) impose conditions on the Commission in the exercise of its powers in relation to training organisations the registration of which was determined by a registering body other than the Commission; and
  - (b) make provision with respect to the contents of the State register; and
  - (c) fix, or provide for the Minister or the Commission to fix, fees and provide for the payment, recovery, waiver or refund of fees; and
  - (d) impose a penalty, not exceeding \$2 500, for breach of a regulation.

## **Schedule 1—Grievances and Disputes Mediation Committee**

- 1 For the purpose of constituting the Grievances and Disputes Mediation Committee to hear a grievance under Part 3, the Minister must, on the advice of the Commission, establish a panel of not more than 7 persons.
- 2 For the purpose of constituting the Grievances and Disputes Mediation Committee to hear a dispute or grievance under Part 4, the Minister must—
- (a) on the advice of the Commission and after consultation with State employer associations, establish a panel of not more than 4 persons; and
  - (b) on the advice of the Commission and after consultation with the United Trades and Labor Council, establish a panel of not more than 4 persons.
- 3 Membership of a panel—
- (a) under clause 1 will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Grievances and Disputes Mediation Committee's functions under Part 3;
  - (b) under clause 2 will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Committee's functions under Part 4.
- 4 A member of a panel will be appointed by the Minister for a term of office not exceeding 2 years and on conditions determined by the Minister and specified in the instrument of appointment.

- 5 A member of a panel will, on the expiration of a term of office, be eligible for reappointment.
- 6 Subject to clause 7, the member of the Commission appointed to chair proceedings of the Grievances and Disputes Mediation Committee must—
- (a) if hearing a grievance under Part 3—select at least 2 but not more than 4 members from the panel under clause 1; and
  - (b) if hearing a dispute or grievance under Part 4—select equally 1 or 2 members from each of the panels under clause 2,
- to sit with the Committee to hear and determine a matter referred to the Committee.
- 7 A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Grievances and Disputes Mediation Committee is disqualified from participating in the hearing of the matter.
- 8 If the member of the Commission appointed to chair meetings of the Grievances and Disputes Mediation Committee dies or is for any reason unable to continue with any proceedings before the Committee, the Commission may, under Division 4 of Part 2, appoint another member of the Commission to preside at, continue and complete the proceedings.
- 9 If a member of a panel dies or is for any reason unable to continue with any proceedings before the Grievances and Disputes Mediation Committee, the Committee constituted of the member presiding at the proceedings and the other member or members of the panel may, if the member presiding so determines, continue and complete the proceedings.

## **Schedule 2—Repeal and transitional provisions**

### **1—Repeal of *Vocational Education, Employment and Training Act 1994***

The *Vocational Education, Employment and Training Act 1994* (the **repealed Act**) is repealed.

### **2—Transitional provisions**

- (1) Subject to this Act, a declaration that an occupation is a trade or a declared vocation in force under section 3(2) of the repealed Act immediately before the commencement of section 5(4) of this Act will continue in force as a declaration under section 5(4) of this Act.
- (2) 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.
- (3) Subject to this Act, an approval, determination or requirement of ARC in force under Part 4 of the repealed Act immediately before the commencement of Part 4 of this Act will continue in force as an approval, determination or requirement of the Commission under Part 4 of this Act.
- (4) 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 contract of training under Part 4 of this Act.



- (5) Subject to this Act, a suspension, order or decision of the Disputes Resolution 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 Grievances and Disputes Mediation Committee under Part 4 of this Act.
- (6) A reference in an Act or an instrument or document to a trainee under a contract of training is to be read as a reference to an apprentice/trainee under a contract of training and a reference to apprenticeship/traineeship is to be construed accordingly.
- (7) A reference in an Act or an instrument or document to the VEET Board, ARC or ACEC is to be read as a reference to the Commission.

## Legislative history

### Notes

- 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).

### Repeal of Act

The *Training and Skills Development Act 2003* was repealed by Sch 2 cl 10 of the *Training and Skills Development Act 2008* on 1.9.2008.

### Principal Act

Year	No	Title	Assent	Commencement
2003	10	<i>Training and Skills Development Act 2003</i>	12.6.2003	1.7.2003 ( <i>Gazette 26.6.2003 p2813</i> )

### Provisions amended

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

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	