

South Australia

South Australian Skills Regulations 2021

under the *South Australian Skills Act 2008*

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Schedule 1—Revocation of *Training and Skills Development Regulations 2008*

Legislative history

1—Short title

These regulations may be cited as the *South Australian Skills Regulations 2021*.

2—Commencement

These regulations come into operation on 1 July 2021.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *South Australian Skills Act 2008*.

4—Declarations of trades and declared vocations

For the purposes of section 6(2)(c) of the Act, a notice declaring an occupation to be a trade or a declared vocation (as the case requires) must contain the following information:

- (a) the full name of the trade or vocation;
- (b) in relation to any identified relevant pathway—the conditions (if any) attached to the pathway.

5—South Australian Skills Standards

- (1) In accordance with section 26(1) of the Act, the Commission must, before preparing a South Australian Skills Standard—
 - (a) have regard to the regulatory impact and compliance costs associated with the Standard; and
 - (b) undertake consultation on the proposed Standard as the Commission thinks fit.
- (2) In accordance with section 26(2) of the Act, the Commission must, before varying or reviewing a South Australian Skills Standard, unless the Commission determines that exceptional circumstances exist for not doing so in a particular case, undertake consultation with—
 - (a) the Department; and
 - (b) relevant State and Federal government bodies; and
 - (c) other relevant persons or bodies that the Commission considers—
 - (i) in the case of a variation of a Standard—may be affected by the proposed variation to the Standard; or
 - (ii) in the case of a review of a Standard—will or may be affected by the Standard.

6—Training contracts to be approved by the Commission

For the purposes of section 48(4)(c) of the Act, the Commission must refuse to approve an agreement as a training contract in the following circumstances:

- (a) if the trade or vocation that is the subject of the training contract is not a declared trade or vocation under the Act;
- (b) if, in the opinion of the Commission, the employer is not 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.

7—Transfer of training contracts between jurisdictions

- (1) For the purposes of section 48A(2) of the Act, the Commission must not recognise a training contract entered under the law of another State or Territory under section 48A(1) of the Act if the proposed employer in respect of the training contract is a prohibited employer.

- (2) For the purposes of section 48A(2) of the Act, the Commission may refuse to recognise a training contract entered under the law of another State or Territory under section 48A(1) of the Act if—
- (a) there is no nominated training organisation for the apprentice or trainee under the training contract; or
 - (b) there is no training plan relating to the training contract; or
 - (c) the trade or vocation that is the subject of the training contract—
 - (i) is not a declared trade or vocation under the Act; and
 - (ii) does not have an equivalent declared trade or vocation under the Act; or
 - (d) the proposed employer—
 - (i) is not registered, or has not applied for registration, under section 54F of the Act; or
 - (ii) is not operating within the scope of their registration; or
 - (iii) has contravened or failed to comply with a condition of their registration.

8—Prohibited employers—notice of declaration

- (1) For the purposes of section 54B(1) of the Act, the Commission must, before declaring an employer as a prohibited employer under that section—
- (a) give notice in writing to the employer of the proposed declaration; and
 - (b) allow the employer a period of 14 days (or such longer period as the Commission may allow) to make submissions to the Commission as to why the declaration should not be made.
- (2) A notice declaring an employer to be a prohibited employer under section 54B of the Act must set out—
- (a) the conditions (if any) imposed under section 54B(3)(a) of the Act in relation to the declaration; and
 - (b) whether, in accordance with section 54B(3)(b) of the Act, the declaration applies—
 - (i) for a period specified in the notice; or
 - (ii) for an indefinite period.

9—Registration of employers—prescribed requirement

For the purposes of section 54F(1)(b) of the Act, it is a requirement of registration under section 54F of the Act that an employer satisfies the employer supervision requirements set out in the relevant South Australian Skills Standards.

10—Corresponding laws

For the purposes of section 54G(7) of the Act, the following are declared to be *corresponding laws*:

- (a) the *Apprenticeship and Traineeship Act 2001* of New South Wales;

- (b) the *Education and Training Reform Act 2006* of Victoria;
- (c) the *Further Education and Training Act 2014* of Queensland;
- (d) the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;
- (e) the *Training and Skills Development Act 2016* of the Northern Territory;
- (f) the *Training and Tertiary Education Act 2003* of the Australian Capital Territory;
- (g) the *Training and Workforce Development Act 2013* of Tasmania;
- (h) the *Vocational Education and Training Act 1996* of Western Australia.

11—Employer to notify the Commission of prescribed matter

For the purposes of section 54K(1)(e) of the Act, a failure of an apprentice or trainee to comply with section 54M(1) of the Act is prescribed.

12—Making and retention of records

For the purposes of section 54L(1) of the Act, an employer in relation to a training contract is required to keep a record of the following:

- (a) the training contract and training plan;
- (b) on the job training and competency assessments;
- (c) a record of an apprentice or trainee's attendance—
 - (i) at the workplace; and
 - (ii) at training, which must specify whether the training occurred at the workplace or another specified location;
- (d) costs incurred by the employer and the apprentice or trainee in relation to the training;
- (e) records of each payment of a transfer fee under section 54O of the Act;
- (f) any other records specified in the South Australian Skills Standards.

13—Waiver or reduction of certain fees

- (1) The Commission may waive or reduce (in whole or in part) the prescribed transfer fee payable under section 54O of the Act if the Commission is satisfied that—
 - (a) each party to the application under section 54N of the Act agrees to the transfer; or
 - (b) it is unlikely that the previous employer will be able to employ the apprentice or trainee for the duration of the training contract; or
 - (c) it is unlikely that the previous employer will be able to provide the scope of training or supervision necessary for the apprentice or trainee to complete the training required under the training contract,

and the Commission considers that it is otherwise appropriate to do so in the circumstances of the case.

- (2) The Commission may, in respect of a prescribed fee payable by a person under section 70A(2)(c) of the Act—
- (a) waive the fee payable by the person in full; or
 - (b) reduce the fee payable by the person by an amount equal to 20% of the fee that would otherwise be payable by the person.
- (3) In this regulation—
- previous employer* has the same meaning as in section 54O of the Act.

14—Preparation of training plans—specified times

For the purposes of section 54Q(1) of the Act, the following times are specified:

- (a) within 28 days following nomination of the nominated training organisation under section 54P of the Act; or
- (b) such longer time as the Commission may allow in a particular case.

15—Nominated training organisation to notify Commission of certain matters etc

For the purposes of section 54S(1)(d) of the Act, the following matters are prescribed:

- (a) if there is more than 1 nominated training organisation in respect of each apprenticeship or traineeship at any time—the name of each additional nominated training organisation;
- (b) if the nominated training organisation becomes aware that an employer is not meeting its obligations under the training contract or training plan;
- (c) if the nominated training organisation becomes aware that the health or safety of an apprentice or trainee is at risk;
- (d) if ASQA or TEQSA has made a decision in relation to the nominated training organisation—
 - (i) suspending or cancelling their registration or recognition; or
 - (ii) cancelling a qualification or statement of attainment; or
 - (iii) rejecting an application for renewal of a registration or recognition;
- (e) if, in relation to a qualification under a training contract in respect of which the nominated training organisation is the nominated training organisation, ASQA or TEQSA has made a decision—
 - (i) amending the nominated training organisation's scope of training; or
 - (ii) imposing a condition on the nominated training organisation's registration or recognition; or
 - (iii) allowing the nominated training organisation to enter into an enforceable undertaking.

16—Making and retention of records

For the purposes of section 54U(1) of the Act, a nominated training organisation under a training contract is required to keep the following records:

- (a) the training plan for all apprentices and trainees for whom they are the nominated training organisation;
- (b) the names and contact details of all employers under training contracts for which they are the nominated training organisation;
- (c) records of meetings with employers, apprentices and trainees under each training contract for which they are the nominated training organisation and records of outcomes of those meetings including—
 - (i) the progress or lack of progress in training by an apprentice or trainee; and
 - (ii) any agreed remedial action to address lack of progress in training by an apprentice or trainee; and
 - (iii) supports provided by an employer to assist the apprentice or trainee to meet their training goals as set out in the training plan;
- (d) any other records specified in the South Australian Skills Standards.

17—Compliance notices

The following persons are prescribed for the purposes of paragraph (c) of the definition of *prescribed person* in section 63(5) of the Act:

- (a) a host employer with whom an apprentice or trainee is or was placed;
- (b) a supervisor of an apprentice or trainee under a training contract.

18—Commission may require information—prescribed person

- (1) The following are prescribed for the purpose of paragraph (d) of the definition of *prescribed person or body* under section 70C(7) of the Act:

- (a) a host employer with whom an apprentice or trainee is or was placed;
- (b) a former registered employer;
- (c) a supervisor of an apprentice or trainee under a training contract;
- (d) the apprenticeship network provider for the apprentice or trainee.

- (2) In this regulation—

former registered employer means an employer of an apprentice or trainee under a training contract whose registration as an employer under section 54G of the Act has, within a period of 6 months before the day on which the notice under section 70C(1) of the Act is issued—

- (a) been suspended or cancelled under section 54G of the Act; or
- (b) expired.

19—Sharing of information between certain persons and bodies

For the purposes of section 70D(6)(b) of the Act, disclosure of information or documents received by a person under section 70D of the Act to the following bodies is authorised:

- (a) ASQA;
- (b) the Department;
- (c) the National Centre for Vocational Education Research Ltd;
- (d) the National Skills Commissioner established under the *National Skills Commissioner Act 2020* of the Commonwealth;
- (e) the Registration and Qualifications Authority established under the *Education and Training Reform Act 2006* of Victoria;
- (f) TEQSA;
- (g) the Training Accreditation Council established under the *Vocational Education and Training Act 1996* of Western Australia.

20—Reviewable decision

The following decisions are prescribed for the purposes of paragraph (e) of the definition of *reviewable decision* in section 70F(4) of the Act:

- (a) a decision of the Commission to refuse an application by a person under 15 years of age to enter into a training contract;
- (b) a decision of the Commission to approve or refuse an application to extend the probationary period for a training contract under section 49A of the Act;
- (c) a decision of the Commission to approve the substitution of an employer in relation to a training contract under section 54N of the Act.

Schedule 1—Revocation of *Training and Skills Development Regulations 2008*

The *Training and Skills Development Regulations 2008* are revoked.

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.

Principal regulations

| Year | No | Reference | Commencement |
|------|----|--------------------------------|---------------|
| 2021 | 81 | <i>Gazette 24.6.2021 p2266</i> | 1.7.2021: r 2 |