

## GUIDELINES FOR THE APPROVAL OF TRAINING CONTRACTS UNDER THE TRAINING AND SKILLS DEVELOPMENT ACT 2008

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### PREAMBLE

In South Australia, the Training and Skills Commission is charged with responsibility for administering the State's traineeship and apprenticeship system. It derives its authority from the Training and Skills Development Act, 2008 ("the Act").

The primary purpose of the traineeship and apprenticeship system is to support quality training for apprentices and trainees.

To that end, the Act governs aspects of the relationship between employers and their apprentices or trainees that impact on the training of apprentices and trainees. It also provides a mechanism for resolving disputes between employers and apprentices/trainees within the mainstream industrial relations system.

Consistent with the purpose of the traineeship and apprenticeship system, the Commission is empowered to approve training contracts and it can also decline to approve contracts.

The circumstances in which training under a training contract is required and may be approved are provided in Section 46 of the Act.

The circumstances in which the Commission can decline to approve a training contract are set out in section 48 (5) of the Act.

### DEFINITIONS

In these Guidelines:

- An **apprentice** is a person who is being or will be trained by his/her employer under a training contract in an occupation declared to be a trade under section 6 of the Act;
- **Commission** refers to the Training and Skills Commission, and includes, except where otherwise indicated, a reference to a duly authorised delegate of the Training and Skills Commission;
- A **trainee** is a person who is or will be trained by his/her employer under a training contract in an occupation which is a declared vocation under section 6 of the Act;

- A **training contract** is an agreement approved under Part 4 of the Act between a registered employer and an apprentice/trainee, through which the employer agrees to employ and train the apprentice/trainee for a particular trade or declared vocation and qualification. The Commission may approve a standard form of contract for this purpose.

**Note:** In South Australia, it is unlawful for an employer to train a person in a trade except under a training contract. However, a person who has completed an apprenticeship in a trade, or who has an equivalent qualification, is not required to enter into a training contract to undertake further training or re-training in a trade. For example, they may undertake institution-based training with a registered training organisation.

An employer who wishes to train an employee in a declared vocation can choose whether to enter into a training contract or not.

## **GUIDELINES FOR THE APPROVAL OF TRAINING CONTRACTS**

### **1) An employer must apply to the Commission for approval (section 48(1))**

An employer is required to apply to the Commission for the approval of a training contract within 4 weeks of signing the contract.

### **2) The Commission may approve a contract as a training contract:**

#### **a) If the employer is a registered employer (section 48(5)(a))**

An employer must be registered by the Commission to undertake the training of an apprentice/trainee in the trade or declared vocation specified in the training contract. Where an employer is not complying with any condition of registration, a training contract may be declined

#### **b) If the contract is in the form of the standard form contract (sections 46(6)(a) and 48(5)(b)(i))**

An application for approval must be made by the employer party to the contract to the Commission in the manner and form approved by the Commission. The Commission has approved and gazetted the national *Apprenticeship/Traineeship Training Contract* form, accessible at [www.skills.sa.gov.au](http://www.skills.sa.gov.au), and available from Australian Apprenticeships Centres.

The Commission may accept an alternative form to the standard form if it provides all of the information contained in the standard form, including the obligations of the employer and apprentice/trainee and the Declarations of the two parties to the contract, and any deviations from the standard form are not calculated to mislead.

**c) If the contract contains conditions required by Part 4 of the Act (section 46(6)(b) (ii))**

The conditions that must be included in a training contract under the Act are as follows:

- i) The apprentice/trainee will be employed by the employer party to the contract in accordance with the applicable award or industrial agreement. The applicable award or industrial agreement must be specified on the contract.
- ii) The probationary period for the relevant trade or declared vocation is specified on the contract. Where the Commission has determined an applicable probationary period by notice in the Gazette, that period should be stated in the contract. If the Commission has not determined an applicable probationary period, the probationary period must be the period specified in the applicable award or industrial agreement.
- iii) The training contract contains the standard conditions for the relevant trade or declared vocation as determined by the Commission and published by notice in the Gazette.
- iv) The training contract contains 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/trainee and a registered training organisation chosen jointly by the employer and apprentice/trainee (see 2(d) below).
- v) The training contract contains any other conditions that have been agreed between the employer and the apprentice/trainee after consultation with the registered training organisation.

**d) If the contract is accompanied by the training plan for the contract**

A training contract must be accompanied by a training plan that has been agreed between the employer, apprentice /trainee and a registered training organisation chosen jointly by the employer and apprentice/trainee, and that contains the information required by the Commission. The *Training Plan* form approved and gazetted by the Commission is accessible at [www.skills.sa.gov.au](http://www.skills.sa.gov.au)

**e) If the qualification to which the contract relates is, in the opinion of the Commission, an appropriate qualification for a training contract**

The Commission may determine the qualifications that are appropriate for a person being trained in a particular trade or declared vocation in South Australia.

These qualifications are published in the Gazette. They are placed on the Traineeship and Apprenticeship Pathways Schedule, which can be accessed at [www.employment.sa.gov.au/employ/files/traineeship\\_and\\_apprentice.pdf](http://www.employment.sa.gov.au/employ/files/traineeship_and_apprentice.pdf)

The Commission may also determine from time to time that particular qualifications are inappropriate for delivery under training contracts in South Australia.

Where a qualification that is specified in a training contract is not appropriate to the trade or declared vocation, as determined by the Commission, or not appropriate for delivery under a training contract, the contract will not be approved.

The Commission may also decline to approve a training contract in order to assess the suitability of a qualification that is specified in a training contract.

**f) If the employer will be able, in the opinion of the Commission, to fulfil the employer's obligations under the contract**

In considering the approval of a training contract, the Commission may take into account the employer's ability to fulfil the employer's obligations set out in the training contract. Those obligations currently include:

- i) To employ and train the apprentice/trainee as agreed in the training plan;
- ii) To provide appropriate facilities and expertise to assist in the training of the apprentice/trainee in accordance with the requirements of the training plan;
- iii) To ensure the apprentice/trainee receives on-the-job training and assessment in accordance with the requirements of the training plan;
- iv) To ensure that a person able to demonstrate the relevant competencies and/or qualifications will supervise the apprentice/trainee in the workplace;
- v) To release the apprentice/trainee to attend any off-the-job training and assessment in accordance with the requirements of the training plan;
- vi) To provide the relevant wages and conditions to the apprentice/trainee employed to complete the training contract;
- vii) To work with the assistance of a registered training organisation and the apprentice/trainee to ensure that the training plan is complied with and that training records are kept up to date and progress is monitored and reviewed;

- viii) To notify the Commission of any material change to the training contract in accordance with the Act;
- ix) To attempt to resolve a dispute between the parties in the first instance, but if such attempts fail, apply to the South Australian Industrial Relations Commission for consideration of the matter. The application form can be obtained from the Industrial Relations Commission website: [www.industrialcommission.sa.gov.au](http://www.industrialcommission.sa.gov.au)

Where the Commission forms the opinion that an employer will not be able to fulfil its obligations under the training contract, the Commission will advise the employer, and the employer will have the opportunity to provide information to the Commission in support of its claim that it is able to fulfil the obligations.

In the meantime, any training contracts that have been submitted by the employer for the Commission's approval will be declined.

The Commission will consider the additional information provided by the employer and may then approve the training contracts or confirm its original decision.

**g) If a term of the contract is, in the opinion of the Commission, not prejudicial to the interests of the apprentice/trainee**

The Commission's primary concern is to ensure that all apprentices and trainees are able, as far as possible, to achieve the qualifications for which they have contracted, and that the responsibilities and obligations of the parties to training contracts are upheld in accordance with the Act.

In that context, the Commission will develop guidelines on matters that it considers may be prejudicial to the interests of apprentices/trainees.

**h) If a contract for a visa holder is accompanied by a the visa holder's passport number and the visa holder's work rights enable the visa holder to enter into a training contract**

The Commission requires the visa holder's passport number to validate the visa holder's work rights. Temporary visa holders are eligible for an apprenticeship or traineeship in South Australia, provided their employment is compliant with the Australian Government Department of Immigration and Citizenship's requirements.

**i) If, in the opinion of the Commission, there is no other reason that the contract should not be approved**

The Commission will develop guidelines on matters that it considers to be proper reasons for declining to approve training contracts.

### **3) Notification of decisions**

The Commission will 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 training contract, the date of approval of the contract.

When the training contract has been approved, the commencement date entered in the contract will be taken as the date on which the apprenticeship/traineeship of the person commenced, or will commence.