

TRAINING AND SKILLS COMMISSION DELEGATION POLICY

Introduction

The *Training and Skills Development Act 2008 (SA)* (the Act) gives the Training and Skills Commission (the Commission) regulatory powers under Part 4 in relation to apprenticeships and traineeships in South Australia.

The Commission, with the consent of the Minister for Innovation and Skills (the Minister), may delegate any power or function to a committee, or any other person or body, occupying a particular office or position in the Department for Innovation and Skills (DIS).

Delegation is the mechanism by which the Commission gives formal authority for its powers and functions to be exercised on its behalf. This is undertaken to maximise operational efficiency within those workgroups which are responsible for administering the Commission's legislative and regulatory functions daily.

The Commission has, with the Minister's consent, delegated a range of its powers and functions to the Chief Executive, DIS and some senior DIS officers. The Commission has also provided, as a condition of its delegations, for the Chief Executive, DIS to further delegate a range of these powers and functions to offices and positions within the Departmental areas responsible for undertaking legislative and regulatory functions on behalf of the Commission.

Purpose of the Training and Skills Commission Delegations Policy

The purpose of this policy is to clarify the expectations of the Commission in relation to the exercise of its statutory powers and functions delegated under the Act.

The policy applies to all offices/positions holding delegations from the Commission and to offices/positions within DIS to which the Chief Executive, DIS has further delegated powers and functions.

This policy and related legislation, policies and guidelines are available on the Training and Skills Commission website at www.tasc.sa.gov.au.

Delegation Formalities

Section 10 (5) of the Act states that delegations:

- (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.

10(5)(c) provides that, despite the delegation of a particular power or function, the Commission can still exercise its inherent power or function in relation to an issue before it.

The current instrument of delegation prescribes several conditions, including that:

- the exercise of functions by delegates shall be undertaken in accordance with the *Training and Skills Development Act 2008 (SA)* and any directions, policies, procedures, guidelines etc issued there under from time to time; and
- the exercise of delegations will be subject to an annual compliance audit OR as required by the Training and Skills Commission.

Managing Difficult Decisions

A delegate may, at any time, seek advice in relation to the exercise of a delegation in a particular matter, or in circumstances where the delegate perceives or is aware of a conflict, from a higher-level delegate or the Commission itself.

The Commission requires the following to occur in relation to delegates' decision making:

- where a delegate is potentially in a position of breaching a condition of the delegation, the delegate, through the Chief Executive, DIS must seek the Commission's advice in advance of making a decision.
- if a delegate is in receipt of conflicting advice, which the delegate is unable to reconcile, then the delegate, through the Chief Executive, DIS must seek the advice of the Commission.

Reporting and Confirmation of Delegations

1. The Chief Executive, DIS is to provide written annual activity reports to the Commission on:
 - a) the regulatory activities undertaken by DIS under delegation from the Commission under Part 4 of the Act
 - b) activity in the system, providing (where appropriate), comparative analysis over the past five calendar years
 - c) a summary of SAET (South Australian Employment Tribunal) matters and compliance matters
 - d) a summary of NCVET (National Centre for Vocational Education Research) trend data.
2. Reports should include an assurance from the Chief Executive, DIS that the exercise of any delegation (including that by a further delegate) has been undertaken in accordance with the conditions of the relevant instrument and that where non-compliance with these conditions has been identified, details of the departure from the conditions and the reasons for the departure. In addition, the Chief Executive, DIS **must certify at the end of the reports** that all delegations have been appropriately exercised.

3. Comprehensive records of delegate decisions must be maintained for examination by the Commission at any time.
4. Where a delegate utilises the prerogative to consider “any other matters” in exercising their powers, the delegate is to report the use of this and the rationale for their decision to the Commission in the form of a report presented at the next scheduled meeting of the Commission. This requirement also extends to the exercise by delegates of the following powers and functions of the Act:
 - Section 45 (2) (b) and (c) – determine a probationary period, the standard conditions for a training contract or any other conditions for a specified trade or declared vocation
 - Section 45 (3) – vary or revoke a notice under sub-sections 45 (2) (b) or (c)
 - Section 48 (8) – authorise an employer who has entered into a training contract to train a person in a trade, which has been declined under section 48 (5), to continue to train that person in a trade
 - Section 56 (d) determine any other conditions for the registration of an employer
 - Section 57 (1)(b) (v) and (2) (b) – consider any other matter to be relevant to an application to register, renew or vary the registration of an employer
 - Section 73 (1) – authorise persons to exercise the powers conferred by this section.

Audits

The Commission will take steps to satisfy itself that its regulatory powers are being exercised appropriately.

The Commission will undertake an independent audit of the exercise of its powers and functions by delegates (and further delegates), periodically (as deemed necessary). The audit process will be managed by the Office of the Training and Skills Commission (OTaSC).

The audit will include a limited examination of the Commission’s delegations:

- 1) has the Commission received sufficient and regular reports to satisfy itself that each delegate is performing in accordance with the Delegations Policy?
- 2) have delegates kept satisfactory records that are certified by the bodies consulted?
- 3) have there been any times that a delegate has been uncertain how to exercise a delegation, and needed to seek the Commission’s advice in advance of making a decision?
- 4) are there any delegations that need to be formally re-issued?

The resultant report of this audit process will be considered by the Commission and then forwarded to the Minister and include advice on any Commission action undertaken as a result of the report.

Review

The Commission will review its delegations as deemed appropriate. The Commission may review its delegations and/or this policy at any time, including after a change of Minister or Government or in relation to the establishment of any State or National body which impacts upon the Commission’s legislative responsibilities. Delegations may be remade after such review or in response to the findings of an audit.