

GUIDELINES FOR THE REGISTRATION OF AN EMPLOYER TO TRAIN AN APPRENTICE/TRAINEE UNDER THE *TRAINING AND SKILLS DEVELOPMENT ACT 2008*

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 training contract system is to ensure the provision of 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 under section 55 of the Act to register employers to undertake to train a person under a training contract for a period of up to 5 years. An employer can not enter into training contracts until they have been registered.

The Commission may decline to register an employer or it may attach additional conditions to the registration of an employer.

The Commission is also empowered to renew the registration of an employer for a period of up to 5 years, or to vary the registration of an employer at the time of initial registration, at the time of renewal, or at any time during the period that registration of an employer is in force.

Registered employers are placed on the Training and Skills Register (the State Register), which can be viewed at www.skills.sa.gov.au [see *List of registered employers for apprentices and trainees in South Australia*].

Under section 62 of the Act, the Commission may inquire into employers at any time, whether they are registered or the subject of an application for registration.

Definitions

In these Guidelines:

- 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 occupation and qualification
- 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 pursuant to 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;
- **required competencies** means the set of competencies that must be achieved by the apprentice/trainee in order to achieve the qualification specified in the training contract
- **required standard** means the standard or level of competence that must be achieved, as defined by industry through an endorsed training package, a nationally accredited course or licensing standards where applicable
- **the scope of registration** of a registered employer means the operations that the employer is authorised by the registration to conduct, as determined by the conditions imposed on the registration. Section 55 of the Act allows the Commission to include the following in the scope of registration of an employer:
 - a specified trade or trades
 - a specified declared vocation or specified declared vocations
 - approval to undertake a training contract for a particular apprentice/trainee
 - approval to undertake training contracts for apprentices/trainees generally
- 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 pursuant to section 6 of the Act
- the **variation of registration** of an employer means variation of the conditions of registration or the registered details of the employer
- **work** includes on-the-job training.

Note: In South Australia, it is unlawful for an employer to undertake to train a person under a training contract except where the employer is registered and the trade or declared vocation is within the scope of the employer's registration, and the obligations of the training contract do not conflict with any condition imposed by the Commission.

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Section 57 of the Act identifies the matters that the Commission must take into account, and the criteria for registration that the Commission must apply in determining whether to register, or renew or vary the registration of an employer, and in determining conditions of registration. These are set out below.

1) The Commission must apply the guidelines developed by the commission (section 57(1)(a))

From time to time, the Commission develops guidelines in relation to specific sections of the Act. The relevant guidelines must be applied when considering the registration, renewal or variation of registration of an employer. The Commission guidelines may be accessed at www.tasc.sa.gov.au

2) The Commission must have regard to the following matters:

a) The place of employment of the apprentice/trainee (section 57(1)(b)(i))

The place of employment, whether located at a particular site or dispersed across several sites, must be able to support the training of the apprentice/trainee in the occupation to the required standard.

b) The equipment and methods to be used in the training of the apprentice or trainee (section 57(1)(b)(ii))

The employer must be able to ensure that the apprentice/trainee has access to a suitable range of equipment, tools, materials, personnel and other resources to achieve the required competencies to the required standard.

The work that is available to be undertaken by the apprentice/trainee must be suitable in terms of its quantity, regularity, type, range and level, to enable the apprentice/trainee to develop the required competencies to the required standard, within the term of the contract.

c) The persons who are to supervise the work of the apprentice/trainee (section 57(1)(b)(iii))

One or more people must be authorised and assigned by the employer to supervise, train and guide each apprentice/trainee.

Supervisors must be suitably qualified for this task and be accessible to the apprentice/trainee while the apprentice /trainee is on the job.

Supervisors of trainees or apprentices must have the appropriate occupational licences.

d) The ratio between the number of apprentices/trainees party to training contracts with the employer and the number of persons who are to supervise their work (section 57(1)(b)(iv))

The following supervision ratio requirements for apprentices and trainees apply in South Australia:

- Apprentices in the first and second year/stage of an apprenticeship will be under direct supervision with a supervision ratio of one supervisor to one apprentice.
- Apprentices in the third and fourth year/stage of an apprenticeship will be under an appropriate level of supervision with a maximum supervision ratio of one supervisor to five apprentices.
- Trainees will be under a supervision ratio that is no greater than one supervisor to five trainees.
- The maximum number of apprentices and trainees that one supervisor may supervise is five. If a supervisor is responsible for providing direct supervision to a first or second year/stage apprentice, the same supervisor may provide general supervision to any combination of up to four trainees or third or fourth year/stage apprentices.

Traineeships

Year/stage of traineeship	Minimum number of supervisors to trainees
Any	1:5

Some traineeship occupations may have more stringent ratios, which are published on the Commission's website (www.tasc.sa.gov.au).

Apprenticeships

Year/stage of traineeship	Minimum number of supervisors to trainees
1 or 2	1:1
3 or 4	Appropriate level of supervision to be determined by the employer (must not be less than 1 supervisor to 5 apprentices)

Where the Commission and the Award or Agreement have both specified a minimum ratio, the ratio specified by the Commission applies.

Employers wishing to exceed the specified ratio must apply in writing to the Commission stating their reasons for requesting approval to exceed the ratio.

Where an employer utilising hosting arrangements is the nominated employer, that employer must ensure that the host employer complies with the ratio requirement.

- e) **Any other matter that is, in the opinion of the Commission, relevant to the registration (section 57(1)(b)(v))**

As an example, the Commission may take into account the previous experience of an employer in training apprentices or trainees under training contracts, including but not limited to:

- i) the extent to which apprentices/trainees employed and trained by the employer, have successfully completed training contracts, and the circumstances related to any non-completions;
- ii) whether the employer has had its registration suspended or cancelled and the circumstances of any such suspension or cancellation; and
- iii) the occupational health and safety record of the employer.

The Commission may take into account any other relevant matter in deciding whether to grant registration or renew or vary the registration of an employer. It is not possible to make an exhaustive list. Each case must be decided on its own particular merits.

f) Whether the person is fit and proper to be registered

Section 57 (2) of the Act states that the Commission may not register, renew or vary the registration of a person under this section unless the Commission is satisfied that the person is fit and proper to be so registered, or to have the registration so renewed or varied. The Commission will take into account:

- i) **the prior conduct of the person or an *associate* of the person (whether in this state or elsewhere)**

For the purposes of section 57(2), a person is an 'associate of another person' if:

- (a) they are partners; or
- (b) they are both trustees or beneficiaries of the same trust, or 1 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 director or a member of the governing body 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 five per cent or more of the share capital of the body corporate; or
- (e) one is an employer or employee of the other; or
- (f) one is the spouse, domestic partner, parent or child of the other; or
- (g) a chain of relationships can be traced between them under any one or more of the preceding paragraphs. [section 4(4a)]

Matters that may be taken into account include, but are not limited to, recent relevant criminal convictions. These will be considered in relation to the trades and declared vocations the person has requested for their scope of registration, and the merits of the application.

Trainees and apprentices under the age of 18 years are owed a higher duty of care due to their vulnerability and inexperience. Therefore, the Commission will regard as relevant, criminal convictions for child related offences, including sex offences, recorded against a person or an associate of the

person, where there is a reasonable risk that the person applying for registration will train trainees and apprentices under the age of 18 years.

A person applying for registration, or for renewal of their registration, is required to sign an *Employer Declaration*, which includes an assurance that the person is a *fit and proper person*. They are also required to notify the Commission if there is any change that affects this declaration.

ii) any other matter that the Commission considers relevant.

The Commission may take into account any other relevant matter in deciding whether a person is fit and proper to be registered, or to have their registration renewed or varied.

3) The registration of employers is subject to conditions

The registration of an employer to train apprentices or trainees under training contracts is subject to the following conditions (section 56 of the Act):

a) The conditions determined by the Commission as to the operations that the employer is authorised to conduct by the registration

The following may be included in the scope of registration of an employer:

- a specified trade or trades
- a specified declared vocation or specified declared vocations
- approval to undertake a training contract for a particular apprentice/trainee
- approval to undertake training contracts for apprentices/trainees generally.

The Commission may limit the trades and declared vocations in which an employer may train an apprentice or trainee, and may limit the number of apprentices and trainees that the employer may have in the employer's employment at any one time.

An employer must not train trainees or apprentices engaged in training contracts in trades or declared vocations outside the scope of their registration.

An employer must not exceed any limit the Commission has placed on the number of apprentices and trainees that the employer may have in the employer's employment at any one time.

b) A condition that an apprentice/trainee, or apprentices/trainees of a specified class, will be managed in a specified way;

The Commission may place additional requirements on the registration to ensure the quality of the training provided to a particular trainee/apprentice or a specified class of apprentices/trainees.

c) If guidelines have been developed by the Commission, the condition that the employer will comply with the guidelines, as in force from time to time;

An employer is required to comply with the Commission guidelines. These may be accessed at www.tasc.sa.gov.au.

d) Any other condition determined by the Commission.

The Commission may determine other conditions in relation to an employer registration at the time of the initial registration or renewal of registration, or during the period of registration.

The Commission has determined that the following condition applies to all employers throughout the period of their registration:

'The employer must provide a safe working and training environment for the apprentice/trainee for the term of the training contract(s) to which the registration relates.'

4) The Commission may decline to register an employer

The circumstances under which the Commission may decline to register, or renew or vary the registration of an employer or determine conditions that apply to an employer's registration are set out in sections 55–57 of the Act.

These include:

- a) If the application is not in the manner and form approved by the Commission (section 55(2));**

Employers need to complete the Employer Registration Form, which may be accessed at www.skills.sa.gov.au and forward it to Traineeship and Apprenticeship Services for assessment and registration.

- b) If the employer has failed to provide all the information required by the Commission for the purposes of determining the application (section 55 (3));**

The Commission requires the employer to complete the Employer Registration Form, and subsequently sign the Employer Declaration. The Commission requires information from employers, which will enable an assessment of the employer's ability and capacity to meet relevant requirements of the Act. Employers must also comply with general legislative obligations that apply to all employers, such as occupational, health, safety and welfare, anti-discrimination, industrial and superannuation laws.

- c) If the Commission considers the employer is unable to meet the requirements for training in the trade/s and/or declared vocation/s included in the employer's application (section 55(1));**

See point 2 above, regarding section 57 of the Act.

- d) If the Commission is not satisfied that the person or an associate of the person is fit and proper to be registered (section 57(2)).**

See point 2(f) above.

5) Procedural fairness

- a) Where the Commission comes to the preliminary view that an employer should not be registered, the Commission will give written notice to the employer of the possibility of refusing registration, and will state the reasons for possibly refusing registration in writing. The Commission will give the employer an opportunity to provide further

- information to the Commission in support of its application for registration, or for the renewal or variation of registration, and in response to the Commission's concerns.
- b) The Commission will consider the additional information provided by the employer and will then make a decision to register or not register the employer and notify the employer accordingly. If the decision is to refuse registration, the Commission will state the reasons for refusing registration in writing.
- 6) Appeal to the District Court**
- a) Under section 61 of the Act, an employer may appeal to the District Court against a decision to refuse registration within 28 days of the decision.
 - b) The Commission must state in writing the reasons for the decision. 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 28 days 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.
 - c) The District Court Civil Registry provides information about the appeals process relating to section 61 of the TSD Act (phone (08) 8204 0289).
- 7) Variation or cancellation of registration**

An employer is able to apply to the Commission to vary or cancel their registration. The circumstances under which the Commission may consider an application by an employer to vary or cancel the registration are set out in section 58 of the Act. These are:

- a) **An application by an employer to vary or cancel their registration must be made by an employer in the manner and form approved by the Commission.**

An employer must apply to the Commission to vary their scope of registration or cancel their registration. The Commission will update the employer registration details on the State Register once the application has been approved.

The application forms to vary or cancel registration, Employer variation to scope of registration application and Employer application to cancel registration, may be accessed at www.skills.sa.gov.au

- b) **The applicant must provide all the information required by the Commission for the purposes of determining the application.**

The Commission requires the employer to complete the Employer Registration Form, and subsequently sign the Employer Declaration. The Commission requires information from employers which will enable an assessment of the employer's ability and capacity to meet relevant legislative requirements of the Act. Employers must also comply with general legislative obligations that apply to all employers, such as occupational, health, safety and welfare, anti-discrimination, industrial and superannuation laws.

An employer who fails to comply with requests for information within a reasonable time frame risks having their application for registration refused.

- c) **An employer must notify the Commission of any change in the details of their registration.**

An employer is required to advise the Commission within 20 working days of changes in the details of their registration, for example, a change of address, phone number or supervisor. The Commission will update the employer registration details on the State Register.

8) The Commission may inquire into employers

The Commission may inquire into an employer at any time to ascertain whether the employer is able to satisfy, or is complying with the registration requirements and legislative obligations in relation to training contracts.