



Consultation Outcomes Report

Training and Skills Development (Miscellaneous) Amendment Bill 2020

Context

The current *Training and Skills Development Act 2008* (the Act) establishes the Training and Skills Commission (TaSC), the Training Advocate and sets the regulatory framework for apprenticeships and traineeships in South Australia.¹ It has been in operation in its current form for more than a decade. In that time the general vocational education and training (VET) landscape and the broader economy have changed significantly.

Review Scope

This Review of the Act is part of the South Australian Government's commitment to reform the training system under the Skilling South Australia initiative.

The Review has been undertaken with the aim of refreshing and updating the Act to ensure that it provides an effective framework for skills and workforce development in South Australia. This review also drew on information provided by stakeholders in a previous review of the Act that was commenced in 2016 but not concluded, consultations related to Skilling South Australia and the TaSC's *Futureproofing the South Australian Apprenticeships and Traineeships System* report. The Government also convened an Expert Advisory Panel to assist it to make important decisions about a number of issues that will influence the way apprenticeships and traineeships, and the broader training system should operate under new legislation.

The Government's approach to new legislation for the South Australian training system is underpinned by the principle that the regulatory framework ensures that the level of intervention in the affairs of parties to training contracts should be commensurate with the overarching objective of productive, successful and safe training and working relationships. In this regard, the Government seeks an outcome that builds on the strengths of the existing system by encouraging employers to employ apprentices and trainees; ensuring there are appropriate protections for apprentices and trainees; and ensuring high levels of probity, quality and consumer protection.

Review process

Feedback from stakeholders is essential in informing the approach taken to these issues in the development of new legislation. The *Training and Skills Development (Miscellaneous) Amendment Bill 2020* (the Amendment Bill) was drafted following an initial four-week consultation period on the current Act, during which time all interested stakeholders were

¹ This report uses the term 'apprenticeships and traineeships' interchangeably with 'apprenticeships'.

provided with the opportunity to provide input through a variety of formats. The Government also convened an Expert Advisory Panel to assist it to make important decisions about a number of issues that will influence the way apprenticeships and traineeships, and the broader training system should operate under new legislation.

Taking into account all the feedback received during the initial four-week consultation period, the Amendment Bill was introduced into the South Australian Parliament on 2 July 2020. Concurrently with the introduction of the Amendment Bill to Parliament, a further seven-week consultation period commenced, enabling stakeholders to provide feedback on the Amendment Bill. The consultation period concluded on 20 August 2020 and consisted of meetings with stakeholders, including members of Parliament, representatives from industry and business associations, the Office of the Training Advocate, the Office of the Training and Skills Commission, and the Industry Skills Councils. In order to facilitate broader engagement, feedback on the Amendment Bill was also sought through the YourSAy platform, resulting in the receipt of formal submissions and comments.

This report summarises the input from stakeholders through all of these engagements with a focus on the key themes which were raised by various stakeholders throughout the consultation process.

Summary of Consultation Outcomes

Establishment of the South Australian Skills Commission

Clause 11, Part 3 of the Bill establishes the South Australian Skills Commission (SASC), amalgamating the Training and Skills Commission and the Training Advocate. This aims to resolve weaknesses and confusion raised during the initial consultation from the structures underpinning governance of the State's training system by minimising duplication of roles and functions currently performed by the TaSC, Training Advocate and the Department.

Some stakeholders expressed views that the proposed governance structure will reduce confusion and improve the effectiveness of decision making around training and skills in the State; whilst other stakeholders expressed concern on how the removal of the role of Training Advocate would operate in practice. There were also mixed views on the composition of the new Commission including removal of consultation provisions relevant to the composition and representation of the TaSC. In line with the scope of this legislative review, the updating of this provision is consistent with modern, responsive best practice legislation, and reflects modern appointment processes. The Bill requires the Minister to ensure that the Commission has the appropriate skills mix to enable it to respond to the changing needs of the economy, skills and vocational education in South Australia. Appointments to similar interstate bodies such as the New South Wales Skills Board and the Advisory Committees proposed to be established under the National Skills Commissioner Bill 2020 also allow for appointments to be made on the basis of individuals the Minister believes have the experience and skills necessary to perform the relevant functions.

Feedback was also received on the importance of the Industry Skills Councils (ISC's) and ensuring their ongoing operation despite not being enshrined in legislation. Whilst the ISC's are not specifically referenced in the Amendment Bill (or in the existing Act), a legislative mechanism is provided for the SASC to establish such industry engagement or advisory bodies and the Commission thinks appropriate in Clause 11.

Functions of the Minister, Commissioner and South Australian Skills Commission

Clause 11 of the Amendment Bill outlines the functions of the Minister (section 7), the South Australian Skills Commissioner (section 13), and South Australian Skills Commission (section 19). Under the new model outlined, the functions of the Training and Skills Commission and Training Advocate have been combined and rationalised.

Stakeholders acknowledged the need for rationalising the functions of the current skills governance structure, however there were mixed views on the manner in which the functions had been consolidated, with feedback provided on the need to clarify the functions related to complaints handling and conciliation and concerns raised regarding duplication of functions for the Commission. These have been revised through an amendment brought by the Government. The revised functions clearly articulate the scope of the Commission in complaints handling, mediation and advocacy with responsibility for conciliation resting with the South Australian Employment Tribunal. The functions of the SASC have also been amended to reduce duplication. Amendment number 11 as proposed by the Government, substitutes the functions of the SASC as outlined in the Amendment Bill under section 19(1) with the following:

(1) The Commission's functions are—

(a) to advise the Minister on—

(i) matters relating to the development, funding, quality and performance of vocational education and training and adult community education; and

(ii) strategies and priorities for workforce development 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

(iii) the State's role as part of an integrated national system of education and training; and

(b) to regulate the State's apprenticeship and traineeship system; and

(c) to prepare the South Australian Skills Standards and other information for the purposes of this Act; and

(d) to undertake complaint handling and provide, where appropriate, mediation and advocacy services in disputes relating to apprenticeships and traineeships, vocational

education and training, higher education or international education, and to otherwise assist in the resolution of such disputes (including by providing advocacy services for parties in proceedings before the SAET); and

(e) to monitor, and report to the Minister on, the state of vocational education and training and adult community education in the State, including the expenditure of public money in those areas; and

(f) to promote the development of investment, equity and participation in, and access to, vocational education and training and adult community education; and

(g) to promote pathways between the secondary school, vocational education and training, adult community education, and higher education sectors; and

(h) to enter into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; and

(i) to monitor, and make recommendations to the Minister on, the administration and operation of this Act; and

(j) such other functions as may assigned to the Commission by the Minister or by or under this or any other Act.

South Australian Skills Guidelines

Section 26 of the Amendment Bill, as contained within Clause 11, describes the powers of the new SASC to develop the South Australian Skills Guidelines (the guidelines). These powers largely mirror the TaSC's powers under the current Act. A number of clauses in the Bill refer to these guidelines, which are intended to provide greater direction for the implementation of elements of the Bill.

Feedback on the Amendment Bill identified that the term 'guidelines' can be a source of confusion for stakeholders, who may perceive guidelines to be optional or merely advisory in nature, as opposed to a legislative instrument under the Act. As a result of this feedback the Government has proposed an amendment outlining that the term 'guidelines' in all instances within the Amendment Bill and Act be amended from the 'South Australian Skills Guidelines' to the 'South Australian Skills Standards' (the standards). This change will provide greater clarity on the enforceable nature of the content and reduce ambiguities associated with the term guidelines. The content of both the standards and the regulations will be the subject of further consultation following the enactment of the Amendment Bill at a later date.

Declaration of trades and declared vocations

The declaration of trades and declared vocations process is outlined in Clause 9 of the Amendment Bill, amending section 6 of the current Act. It specifies that the Minister may, on recommendation of the SASC, declare an occupation to be a trade (apprenticeship) or

declared vocation (traineeship) through Gazetted notice which identifies a job or occupation, or class of job or occupation to which the trade or vocation relates and relevant pathways to the trade or vocation. To avoid doubt, the Amendment Bill outlines that a relevant pathway to a trade or vocation may, in addition to the primary qualification relating to the trade or vocation, include pre-apprenticeships; specified skill sets; higher qualifications and other matters as the Minister thinks appropriate.

Feedback received from stakeholders in relation to the declaration of trades and declared vocations by the Minister was overwhelmingly positive. Stakeholders identified in the initial four-week consultation process that the current process for the declaration of trades and declared vocations was an area which required further clarity and improvement. Feedback received on the Amendment Bill strongly indicated that the reforms outlined in Clause 9 of the Amendment Bill provide the requisite clarity on the process and purpose of this function. Furthermore, feedback received identified a need to include pre-traineeships as a relevant pathway to a trade or declared vocation to avoid doubt. As a result of this feedback, the Government has proposed an amendment to the Bill to reflect pre-traineeships as a potential pathway. Amendment number 8 as proposed by the Government to section 6(3)(a) reflects that a relevant pathway to a trade or vocation may, in addition to the primary qualification relating to the trade or vocation, include “pre-apprenticeships or pre-traineeships.” In addition to this amendment, section 6(3)(c) is also proposed to be amended to “higher qualifications,” removing “in a specified area in response to changing requirements of the trade or vocation” as contained within the original Amendment Bill

Extension of probationary periods for up to three months by application to the SASC

The current Act gives the TaSC the power to determine a probationary period for a training contract for a specified trade or declared vocation. However, the Act does not set a minimum or maximum period of time for a probationary period determined in this manner. In line with feedback received in the initial four-week consultation period, Clause 17 of the Amendment Bill allows a party to a training contract to apply to the SASC to extend the probationary period specified in the training contract, provided the total duration of the probationary period does not exceed six months.

Feedback received on the ability of the SASC to extend the probationary period for a period not exceeding six months was met with positive feedback overall, as it was recognised that there may be circumstances in which probationary periods are deemed insufficient. There were some concerns raised about the interaction of this provision with short training contracts. As a result, an amendment will be brought by the Government to cap the probationary period to a maximum of 25 percent of the contract's nominal term, up to a total of six months. Amendment number 19 as proposed by the Government, would amend section 49A(1) to stipulate “... however the probationary period, as extended, must not exceed 6 months in total or 25% of the term of the contract, whichever is the lesser.”

Issuing of certificates of proficiency on completion of an apprenticeship or traineeship

Clause 23 of the Amendment Bill introduces certificates of proficiency and rationalises powers under the current Act of the TaSC to certify the competency of individuals. This Amendment responds to submissions received in the initial four-week consultation period which supported the need for better structured skill recognition pathways, and consideration of the legislative arrangements in other jurisdictions.

Feedback received from stakeholders in relation to the certificate of proficiency provisions of the Amendment Bill was met with confusion on the application of these provisions, as well as concerns as to how using the same certificate of proficiency would allow for appropriate differentiation between the recognition of qualifications and experience in relation to a trade or declared vocation outside of a training contract. In response to the issues raised by stakeholders, the Government has proposed an amendment to the Bill which would result in the removal of all references to a certificate of a proficiency, resulting in a reinstatement of current certification practices.

Registration of employers

Clause 24 of the Amendment Bill inserts section 54F, amending sections in the current Act relating to employer registration. The amendments outlined in this section aim to streamline the process for employer registration, and align the Act with contemporary, risk-based processes that balance incentives to enter into apprenticeships and traineeships with protections against unscrupulous employers entering the system. The Amendment Bill also introduces the ability for an application for this section to be accompanied by a prescribed fee. This provision was included in the Amendment Bill in response to stakeholder feedback received in the initial four-week consultation period which acknowledged employer registration was a valuable assurance mechanism which would benefit from a more streamlined approach.

Feedback on provisions for employer registration identified concerns with the extent to which employer registration had been streamlined and the impact this may have on oversight of unscrupulous employers, as well as false or misleading declarations on matters such as the employer's scope of registration. However, the Amendment Bill provides checks and balances against manipulation of the employer registration system, including the ability to declare an employer a prohibited employer. Section 75 of the Amendment Bill also makes it an offence for a person to 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 the Act, with a maximum penalty of \$10,000. Further detail with regard to employer registration will be provided as necessary in the regulations and guidelines (standards). Stakeholders will be consulted in the development of these documents.

Clarity was also sought on the amount of the prescribed fee. While the option to set a fee is provided for in the legislation, the SASC may determine to set the fee at zero. In the event a

fee is set, it is anticipated to be reflective of the cost to Government of providing the service. Detail with regard to prescribed fees will be provided as necessary in the regulations and guidelines (standards). Stakeholders will be consulted in the development of these documents.

Declaration of prohibited employers

Clause 24 establishes a class of persons who may be declared by the SASC to be a prohibited employer. The consequence of a declaration by the SASC of this kind is that the person concerned is prohibited from employing an apprentice or trainee for the duration of the declaration made against them. In so doing, the SASC must have regard to set of criteria, as set out under this clause, before it can determine that a person is a prohibited employer.

The ability of the SASC to declare an employer as a prohibited employer in accordance with the criteria outlined in the Amendment Bill, was largely met with positive feedback by stakeholders as it was seen as an appropriate measure to mitigate risks of exploitation and harm for apprentices and trainees. Some concerns were raised by industry and Group Training Organisations regarding the impacts on employers and requirement for Group Training to ensure they do not host an apprentice to a prohibited employer. This will be managed through regulations and the requirement that the SASC, under Section 71(2)(c) of the Amendment Bill, publish a list of prohibited employers in the South Australian Skills Register.

Introduction of a prescribed transfer fee

Section 54O which is contained in Clause 24 of the Amendment Bill, introduces a prescribed transfer fee applicable to the substitution of an employer in relation to a training contract under section 54N. The prescribed transfer fee seeks to compensate an employer's investment in the training and supervision of an apprentice or trainee who seeks to transfer their apprenticeship or traineeship to a new employer whilst under a current training contract. This provision seeks to reduce instances of other employers 'poaching' third and fourth year apprentices who have undertaken the vast majority of their training and are often more productive than apprentices in their first couple of years of training.

This provision of the Amendment Bill was met with support from industry who largely sought further clarification as to the application of this section and the determination of the prescribed transfer fee. Further detail on these matters, as outlined in the Amendment Bill, will be provided for in the regulations or the guidelines (standards). Both the regulations and guidelines (standards) will be worked through upon enactment of the Bill, prior to its proclamation, by the South Australian Skills Commissioner who will engage in a thorough consultation process with stakeholders on such matters.

Representation in proceedings before the South Australian Employment Tribunal

Clause 28 of the Amendment Bill does not materially change the arrangements outlined in the current Act pertaining to the representation of parties to disputes in the South Australian

Employment Tribunal (SAET). However, it does make refinements to reflect the discontinuance of the Office of the Training Advocate, which primarily undertakes this task on behalf of aggrieved parties.

Whilst this clause represents a minor change to the provisions outlined in the current Act, stakeholders provided feedback that consideration should be given as to whether the Bill should be amended to enable legal representation for employers in the event that the matter is referred to the SAET. On balance, the current arrangements are effective in resolving disputes and further change is not warranted.

Recognition of other trade training

Under clause 30, the Amendment Bill introduces new sections (sections 70A and 70B) for the recognition of trade qualifications, outside of qualifications gained through completion of a training contract. The Amendment Bill permits the making of an application to the SASC to recognise a person's qualifications or experience in relation to a particular trade or declared vocation; and sets out the SASC's powers to determine an application, including through conducting independent assessment of a person's competencies. This provision was included in response to feedback received during the initial four-week consultation period which supported the need for better structured skill recognition pathways that could lead to trade certification.

Feedback on this clause during the consultation process for the Amendment Bill was mixed. Some stakeholders were appreciative of the clarity provided by this provision and supportive of the broader scope for the SASC to recognise qualifications or experience in a trade or declared vocation. Other stakeholders raised views the recognition of other trade training was more appropriately conducted by industry or other entities. The regulations and guidelines (standards) will outline mechanisms to ensure there are appropriate checks and balances in place to effectively manage this process.

Inclusion of Group Training Organisations in legislation

Currently neither the current Act nor the Amendment Bill contain provisions targeted specifically at the operation of Group Training Organisations (GTOs). During the consultation on the Amendment Bill some stakeholders indicated that reference to and incorporation of GTOs as a specific employer type would be of benefit. An amendment in this regard has not been pursued as GTOs are accommodated under the broader term of employer. Further detail with regard to the operation of GTOs may be provided for as necessary in regulations and guidelines (standards). Stakeholders will be consulted in the development of these documents.