



Issues Paper 1

Governance and Regulation

Introduction

Oversight and governance of the South Australian apprenticeship and traineeship system is shared by the Minister, the Training and Skills Commission (TaSC) and the Training Advocate. The Department for Innovation and Skills (Department) supports the Minister and the Commission carry out various functions such as administering apprenticeships and traineeships and providing data to support the Commission's research and policy development. This occurs through the delegation of powers vested with the Commission under the Training and Skills Development Act (T&SD Act) to the Department.

The TaSC has consulted broadly on its role in relation to acting as a conduit for industry when providing advice to government on the skilling needs of the State. These recommendations are contained in the report developed by the TaSC: *Futureproofing the South Australian Apprenticeship and Traineeships system*.

As defined under the T&SD Act, the functions of the Minister, TaSC and Training Advocate are summarised in the following table.

Minister	TaSC	Training Advocate
<ul style="list-style-type: none"> • Establish priorities and workforce development strategies to meet the State’s current and future work skills needs in conjunction with industry, commerce, employee representatives and governments. • Manage the State’s system of vocational education and training and adult community education by allocating resources within the State on a program and geographic basis. • Manage the State’s role as part of an integrated national system of education and training. 	<ul style="list-style-type: none"> • Advise and make recommendations to the Minister on matters relating to the development, funding, quality and performance of vocational education and training and adult community education. • Regulate¹ apprenticeships and traineeships. • Promote investment, equity and participation in, and access to, vocational education and training and adult community education. 	<ul style="list-style-type: none"> • Promote the benefits of higher education, vocational education and training and adult community education in the State. • Provide an independent complaint handling process and investigate complaints relating to the provision of higher education, vocational education and training, education services for overseas students, adult community education and training contracts • Promote the development of employment and skills formation policies and procedures. • Speak for and negotiate on behalf of education and training providers and clients (and prospective clients) of education and training providers in the resolution of any matter arising out of the delivery of education and training. • Speak for and negotiate on behalf of an employer or an apprentice/trainee in the resolution of any matter arising under Part 4 (apprenticeships and traineeships); and • Monitor the administration of the Act and make recommendations (if any) to the Minister for legislative change.

CONSULTATION QUESTIONS

1. Are the functions, roles and responsibilities of the TaSC, the Minister and Training Advocate² clear? If not, how do you think they should be changed?
2. What is your view of the TaSC having a more strategic role in policy and direction setting for the State’s training system, including apprenticeships and traineeships? If so, what would this look like and how might it work?
3. How should compliance functions around apprenticeships and traineeships be handled? What is the appropriate body to exercise these functions?

A compliance model that focusses on outcomes

Shifting the balance in the T&SD Act from an emphasis on up front requirements, for example, through employer registration, to improved facilitation, compliance and capacity to respond to breaches of the T&SD Act has been identified as something industry would value.

This re-balancing could be aimed at strengthening the requirement for compliance with quality standards throughout the life of the apprenticeship and traineeship. Amendments to the T&SD Act to achieve this would aim to streamline access to apprenticeships and traineeships, on the one hand, while providing a greater range of responses to poor performance by employers, and lift protection for apprentices, trainees and the general public, on the other.

CONSULTATION QUESTIONS

4. How can the T&SD Act assist parties to training contracts focus on outcomes and success measures, including through the use of penalties and other sanctions but also through less punitive mechanisms?

5. Are there measures of success, other than the completion of an apprenticeship or traineeship, that the T&SD Act could support?

6. Are there specific changes you can propose to make it easier to enter into an apprenticeship or traineeship?

7. What specific protections do you think the T&SD Act needs to provide for any of the parties to a training contract?

8. Should the T&SD Act be amended to ensure apprentices and employers fulfil the obligations under their training contract and/or training plan? If so, how would this occur?

Employer registration

To be registered to employ an apprentice or trainee, applicants must satisfy a range of criteria that ensure the training provided is based on a clear plan linked to the occupational requirements, appropriately supervised and consistent with occupational requirements³.

In late 2018, the Department for Innovation and Skills implemented new online employer registration application system, which simplifies and speeds up the registration process. Applicants are now able to submit evidence electronically (e.g. worksite images) and there is a better alignment of resources to risk, with respect to employer site visits. During 2017/18 the average time for employer registration was approximately 25 days. However, as of May 2019 the time taken for employer registration is less than 12 days.

The TaSC's recent consultation on these requirements has resulted in a range of recommendations that partly may be resolved through the T&SD Act. There are a range of views on the efficacy of the current employer registration system's requirements under the Act. On balance, there is support for maintaining employer registration, but also for making it more administratively straight forward for the parties.

CONSULTATION QUESTIONS

9. How could the T&SD Act's employer registration provisions be a more effective mechanism for ensuring that employers are suitable for the responsibilities of taking on an apprentice or trainee?

10. Is employer registration a useful mechanism in light of other powers under the T&SD Act for addressing the risk of poor or unsatisfactory training, for example, powers to impose conditions on an employer's registration or issue compliance notices or suspend or cancel a training contract?

11. Are the current employer registration criteria⁴ proportionate to the risks involved in employing an apprentice or trainee, for example, poor training outcomes? What, if any, criteria would you include or exclude?

12. Should a higher threshold standard for employer registration apply to employers who
 - a. have never employed an apprentice or trainee?
 - b. may employ junior (under 18 years of age) apprentices?If so, what additional criteria should apply in this context?

13. Could the T&SD Act provide more flexibility in relation to who can undertake an apprenticeship or traineeship? For example, should those who are self-employed or casually employed be able to undertake an apprenticeship and, if so, under what supervisory and certification arrangements?

Registration after 5 years

The T&SD Act requires an application to renew an employer's registration after five years and the TaSC must apply the same rigor to an assessment of an application to renew an employer's registration as it does to the initial registration⁵. This requirement applies irrespective of whether or not an employer has complied with their obligations for the duration of the registration.

CONSULTATION QUESTION

14. Should the T&SD Act allow the TaSC to renew an employer's registration on the basis of a less rigorous test than applies at initial registration for employers who have demonstrated compliance with the requirements of the Act? If not, why? If so, what test, if any, should the TaSC apply?

References

1. The role of the TaSC is also a facilitative one, that entails encouraging the establishment of traineeships and apprenticeships in South Australia that are compliant with regulatory frameworks
2. The Training Advocate's functions are broadly defined in the T&SD Act, and more explicitly in the Charter of Functions. Changes to the Training Advocate's functions can therefore be achieved through amendments to the Charter, rather than the legislation
3. Section 57 of the T&SD Act provides that when determining whether or not to register an employer, the TaSC must have regard to several factors. However, it does not stipulate that a site visit needs to be conducted by the TaSC in order to assess an employer's suitability to be registered.
4. The T&SD Act requires that when determining whether or not to register an employer, the TaSC must have regard to—
 - any guidelines developed by the TaSC
 - the place of employment of the apprentice/trainee
 - the equipment and methods to be used in the training of the apprentice/trainee
 - the persons who are to supervise the work of the apprentice/trainee
 - the ratio between the number of apprentices/trainees and the number of persons who are to supervise their work
 - any other matter that is, in the opinion of the TaSC, relevant to the registration.
5. The TaSC may not register, renew or vary the registration of a person unless it is satisfied that the person is fit and proper to be registered taking into account—
 - the prior conduct of the person or an associate of the person (whether in this State or elsewhere); and
 - any other matter that the TaSC considers relevant.
6. The criteria for initial registration and registration renewal are identical: T&SD Act, section 57.