



# Issues Paper 3

## Responsive Legislation

### Introduction

Responsive legislation for apprenticeships and traineeships should support the needs of enterprises, apprentices and trainees, and address challenges that hamper the commencement and completion of training relationships.

These challenges include:

- The tripartite nature of the training relationship between the employer, apprentice or trainee and nominated training provider
- Variation in the quality of training and supervision provided by employers
- The need to provide pastoral care, in addition to theory and technical support to apprentices and trainees, particularly in the early phase of their training
- The desirability of employers having assurance that their investment in apprentice/trainee training will be rewarded through a continuing employment relationship
- The need to have a clear roadmap for the training of an apprentice/trainee, encapsulated in the training plan<sup>1</sup>.

Whilst the Training and Skills Development Act (T&SD Act) does not directly regulate all these issues, it provides the framework through which potential problems can be anticipated and addressed.

Key to the T&SD Act being effective in this context are the articulated roles and responsibilities of the key participants in an apprenticeship or traineeship.

Recent consultation on the South Australian apprenticeship and traineeship system highlighted areas where stakeholders were unsure of their rights and responsibilities and this is at least in part attributable to the way the T&SD Act is drafted.

These areas include:

- Stakeholders report that the key parties to the training contract - the employer and apprentice and, notionally, the training provider - are at times unaware of their respective responsibilities and roles. This can undermine the resilience and effectiveness of the training relationship and lead to friction or conflict.
- Training providers' role in relation to apprenticeships and traineeships is not always clear to the parties and training providers are not always involved at the point training contracts are being signed. This can result in an inappropriate training provider being selected, and/or the training provider having no substantive input into the development of the training plan (neither the training contract, the T&SD Act, Training and Skills Commission (TaSC) guidelines nor the model training plan make explicit which party is responsible for ensuring the training plan is in place).

## CONSULTATION QUESTIONS

1. Are the roles of and relationships between the apprentice, employer and training provider clear under the T&SD Act? If not, how should their respective roles be described in legislation, if at all?

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2. Are the obligations of employers and apprentices and trainees sufficiently set out? If not, what obligations should be specified?

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3. Currently the parties to the training contract identify a training provider to enable the training contract to be signed up, however, sometimes the training provider isn't told of this decision until after the training contract is lodged. How can the T&SD Act resolve this outcome? Should the T&SD Act specify the timeframe within which a training provider must be notified of it being the nominated training provider in an apprenticeship / traineeship?

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4. Would you support training providers being made a third party to the training contract or having a greater role/responsibility/obligation in the establishment of the training contract and for this to be included in the T&SD Act or T&SD Regulations? If not, why?

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# Key elements of the apprenticeship or traineeship: training contract and training plan

The T&SD Act requires the employer, apprentice or trainee and their nominated training provider to agree on a training contract and training plan<sup>2</sup>.

In practice, development of an effective training plan may be time consuming and under current arrangements delay the approval of the training contract - and by extension the formalisation of the apprenticeship or traineeship. The T&SD Act separates the requirements to develop a training contract and training plan and some stakeholders consider it inefficient that training providers are not consulted until after training contract has been signed, which can result in apprentices or trainees being signed up to an incorrect pathway or the employer not understanding the off-the-job training structure, content or expense<sup>3</sup>.

## CONSULTATION QUESTIONS

5. In your experience, are training plans effective? If not, what would you change?

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6. How can requirements around the training contract and training plan be improved, taking into account the requirement under T&SD Act that these be developed for all apprenticeships and traineeships and the possible use of technology, including online lodgement processes, that could facilitate this process?

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7. What should be the role of the training provider before and throughout the apprenticeship to ensure the training plan is appropriate (having regard to the employer's capacity to provide training, facilities and appropriate supervision) and up to date, if any?

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8. How could the T&SD Act be improved in relation to the development and lodgement of training plans? What is your view of the assessment process for a training plan occurring upfront as a precursor to approving a training contract?

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9. Are the timeframes for the development and lodgement of the training contract<sup>4</sup> and training plan reasonable, with regard to the requirement to consult with a nominated training provider?

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10. What should occur if an employer and or the apprentice/trainee do not wish to continue or want to suspend the apprenticeship/traineeship? For example, should the T&SD Act facilitate a transfer of the apprentice/trainee to a new employer? If so, what safeguards would you recommend in this situation?

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# Meeting the demand for skilled workers through migration

The South Australian Government is exploring ways to attract workers to the state to meet skills demands, notably in key regional growth industries of agribusiness, mining and construction, health and aged care, and hospitality and tourism.

The eligibility criteria for skilled migrants joining the South Australian workforce are largely the product of the Australian Government Department of Home Affairs and bilateral agreements between it and states and territories. These agreements can, for example, facilitate skilled migrants' passage and settlement in regions where skills shortages exist.

One of the TaSC's functions is advising and making recommendations to the Minister on strategies and priorities for workforce development with the aim of supporting employment growth and investment in the state including the recognition of skills and qualifications gained outside of Australia<sup>5</sup>.

## CONSULTATION QUESTION

11. What is the role of the T&SD Act in relation to recognition of skills and qualifications gained overseas? Are there ways the T&SD Act can be improved to support migrants with skills and qualifications gained overseas to find employment in South Australia?

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# Consistency with national training arrangements

South Australia jointly with other states and territories has agreed to a more unified apprenticeship and traineeship system that reduces arbitrary distinctions in the way apprenticeships and traineeships are handled across states and territories.

Apprentices and trainees who move to a new state or territory to complete an apprenticeship or traineeship are required to apply to have their apprenticeship registered in the new state or territory. The T&SD Act allows for the transfer of an apprenticeships or traineeship from one employer to another however, it is silent on how to facilitate an interstate transfer.

## CONSULTATION QUESTIONS

12. In what areas is it important that the T&SD Act be nationally consistent in relation to apprenticeships and traineeships, where this does not already occur?

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13. Should the T&SD Act, T&SD Regulations or TaSC Guidelines provide direction on the transfer of an apprenticeship or traineeship interstate? If so, would this need to occur within a nationally harmonised policy?

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# State accreditation of courses

Stakeholders consulted for the TaSC's Future-proofing the South Australian Apprenticeship and Traineeships System provided feedback on the inefficacy of the development of modern training packages and the attractiveness of a state-based capacity to develop and accredit training packages that meet identified state and industry need.

The T&SD Act is currently not set up to enable the state to accredit courses (or seek their accreditation through another means), given the referral of VET regulatory powers to the Commonwealth in 2012.

## CONSULTATION QUESTIONS

14. Should the T&SD Act be the vehicle through which courses are developed and accredited? If so, what key elements of the development and approval process should the T&SD Act regulate?

## References

1. The T&SD Act requires a training plan as part of the training contract: section 46(6)
2. The minimum requirements of a Training Plan are that it should record:
  - the Australian Qualification Framework (AQF) qualification to be undertaken
  - the units of competence that will make up the AQF qualification
  - the mode of delivery of formal training (on-job or off-job)
  - the responsibilities of the apprentice/trainee, employer and Registered Training Organisation (RTO), with respect to training under the Contractany additional expectations of the apprentice/trainee, employer or RTO that are agreed to by the parties to the Contract.
3. Future-proofing the South Australian apprenticeship and traineeship system. Recommendations Report 2019 (pending public release)
4. The T&SD Act requires that an apprenticeship/traineeship training contract, including school-based training contracts, are provided for approval within 4 weeks of execution. The T&SD Act empowers the Commission to decline a training contract if it is not "accompanied by" a training plan.
5. T&SD Act, section 10(2)(b)