



Business SA response to
the *Training and Skills
Development
(Miscellaneous)
Amendment Bill 2020*



Business SA
Chamber of Commerce
and Industry South Australia

Executive Summary

Considering the rate of change the South Australian economy is currently experiencing, the future ability of Government to identify trends in the skills needs of industry will only increase in importance. The existing skills and training development system is long overdue for an overhaul to better meet the needs of employers and to be able to ensure the skills required in future are available as the economy evolves. There is also a need to ensure vocational training is better linked to university level qualifications to enable students to more easily shift between the two and improve tenure with existing employers.

Business SA is pleased to support the provisions of the Bill, specifically the establishment of the South Australian Skills Commission (SASC) to combine the existing Training & Skills Commission and the South Australian Training Advocate. The proposed SASC will reduce the confusion and duplication of roles within the apprenticeship system. The streamlining provisions in the Bill should also improve the apprentice registration process for many employers, while the expansion of the scope of trades and declared vocations in the Bill will assist flexibility in the delivery of employment-based training.

Business SA supports the introduction of the apprentice transfer fee, recognising the investment a business makes in the early period of an apprenticeship. There have long been issues with small businesses losing apprentices to larger businesses, particularly in sectors such as hospitality, without any recompense for the costs for off-site training incurred over what is typically at least two years of an apprenticeship. While Business SA seeks to avoid situations where apprentices are unable to move or are indirectly penalised where an employer is otherwise contracting, there needs to be a mechanism to provide confidence to small business employers able to take on an apprentice that their out-of-pocket training costs will not be in vain if the apprentice is poached ahead of completion.

A key area of concern for Business SA is ensuring both employees and employers are on an equal footing in terms of any dispute resolution process. Employers, who are often small businesses and may not be overly familiar with the system and associated risk of incurring penalties, are at a significant disadvantage when faced with an employee represented by the Office of the Training Advocate (OTA) or a replacement decided by the SASC. Business SA has previously asked for this provision of the Act to be reviewed and proposes the Bill be amended to open up the options for representation of employers.

Introduction

Business SA, South Australia's Chamber of Commerce and Industry, was formed in 1839 and has approximately 3,250 members across a wide range of industry sectors, from micro businesses right through to listed companies. We are a not-for-profit business membership organisation which works, not only on behalf of members, but for the broader business community and in pursuit of economic prosperity for both South Australia and the nation. Being primarily funded by our products and services to thousands of local businesses alongside member subscription support, Business SA is independent of the policy agenda of any government or political party.

Business SA has consistently sought a review of the *Training and Skills Development Act 2008* (the Act) to ensure the Act remains relevant to South Australian businesses and provides an incentive to engage apprentices and trainees. In our 2018 pre-election Charter¹, Business SA recommended the State Government ensure confidence in the VET sector is restored through a review and modernisation of the Act. In 2019, Business SA responded via submission to the Government's review of the Act where we commended the Government for following through on a long awaited review to progress the need for employers to have greater clarity in navigating the apprenticeship system.

¹ <https://www.business-sa.com/CMSPages/GetAzureFile.aspx?path=~\businesssa\media\charter-2018\charter-2018-skills-and-training.pdf&hash=6a9f022e315ca51f49e7cbe37f03cec0fb970a07341db71c6e71084afa9f4195>

Vocational Education Training (VET) plays a very important part in the South Australian education landscape and economy. The support of the Skilling South Australia initiative and the additional financial support to employers provided during COVID 19 to train and maintain a skilled workforce will undoubtedly assist South Australia's economy in recovering from the impact of the pandemic.

A key component to the success of the VET system is employers and their willingness to take on apprentices and trainees. Business SA continues to encourage the Government to make all efforts to encourage employers to take on apprentices and trainees and address all known barriers, whether these barriers exist in the Act, government departmental obstructions or inconsistencies between the State and Federal system. The Government can also assist to improve the perception of vocational education through promoting the life-long benefits to young people and their families.

Unless specifically set out otherwise, in this document, the term apprentice is taken to include trainee.

South Australian Skills Commission (SASC)

The establishment of the SASC is intended to reduce the confusion and duplication of roles within the apprenticeship system, one of the key issues raised by Business SA in its 2019 submission to the review of the Act.

In our 2019 submission, Business SA specifically identified conflict between Training and Apprentice Services (TAS) and the Office of the Training Advocate (OTA) in the provision of advice, mediation and representation of apprentices and employers regarding disputes and issues with contracts of training. Business SA welcomes the increased emphasis the Bill places on the use of conciliation and mediation to assist parties to a training contract constructively resolve disputes and maintain the employment relationship that underpins the training contract.

However, Business SA encourages the Government to amend the Bill to allow for improved representation of employers in the event that the matter is referred to the South Australian Employment Tribunal. Currently employers are unable to use legal representation and, as they are not deemed by the OTA to be the vulnerable party, are unable to be represented by the OTA. This has not changed in the Bill. It is Business SA's view that employers, who are often small businesses, are not overly familiar with the system and carry the risk of incurring penalties which places them at a significant disadvantage when faced with an employee represented by the OTA or its replacement decided by the SASC. At the very least, Business SA proposes a change to the proposed provisions of the Bill at 28—Amendment of section 67—Representation in proceedings before SAET (1) Section 67(1)(a)—delete paragraph (a) and substitute:

(a) a party to the proceedings that is a member of a registered association may be represented by an officer or employee of the registered association acting in the course of employment with that registered association; to read

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Alternatively, we propose that these provisions be replaced with provisions that mirror those of the Fair Work Act 1994 South Australia at Part 3—Representation 25—Representation of that Act.

Either amendments will ensure that equal representation is able to be provided in all matters facilitating faster resolutions and more equitable outcomes for both employers and employees.

Further, employers have been cautious about approaching the OTA due to the perception of conflicting roles and the understanding that the OTA only represents apprentices and trainees. The conflict in roles has occurred by virtue of the OTA often assuming a role in both independent complaint handling and representing one of the parties. Further, the OTA generally acts on behalf of the party they believe to be the most vulnerable, rarely advocating on behalf of employers resulting in the perception they are only an apprentice and trainee advocate. The incorporation of the role of the OTA into the new SASC does not necessarily address the concerns of employers. We understand that this

may be addressed as a matter of policy by the SASC and Business SA looks forward to an opportunity to discuss our concerns with the Commissioner upon their appointment.

Making it easier to commence an apprenticeship/traineeship

Business SA has previously advocated for change to the employer registration process and is pleased to see the improvements made to move the process online, and to reduce the waiting time between application and registration.

Business SA also welcomes the streamlining provisions in the Bill which should improve the process for many employers. These changes are needed to encourage businesses to engage an apprentice in what can often be a confusing and complex system. We also acknowledge the new prohibited employer category which is intended to offset the reduction in complex criteria, assisting both compliant employers and protecting apprentices.

The proposed changes to incorporate a stronger focus on the obligations of all parties (employer, student and RTO) to training contracts, via legislating obligations under the contract of training and other provisions, will support both employers and apprentices in resolving issues. The ability to extend the probationary period, a clearer framework for the development of, and a greater focus on the use of, training plans will also provide better training outcomes for apprentices.

Greater flexibility for undertaking an apprenticeship or traineeship

Business SA continues to encourage increased flexibility in work arrangements to allow for rostering and flexible work to suit the employer and employee, specifically regarding supervision ratios. Business SA has recommended that the definition of supervision be clarified and modernised to include electronic means or a percentage that is relevant to the industry. We note the ongoing process of consultation in relation to the supervision guidelines and look forward to providing additional feedback in due course.

Business SA agrees with the expansion of the scope of trades and declared vocations in the Bill which should improve flexibility in the delivery of employment-based training. The framework for recognition of qualifications or experience in relation to a trade or vocation outside the training contract will add flexibility to the training system and in the recognition of skilled migrants' prior training and work experience.

Apprentice Transfer Fee

The introduction of the apprentice transfer fee is supported by Business SA. Business SA members have long raised concerns about regularly losing apprentices in their 3rd and 4th years to other businesses and how this impacts their willingness to take on apprentices if they cannot retain them once becoming commercially viable. The intention of the fee is to recognise the investment a business makes in the early period of an apprenticeship and to act as a disincentive to businesses that have chosen not to make that investment and as such, should assist impacted businesses.

Conclusion

Business SA generally supports the changes introduced by the Bill. We encourage the Government, through the new South Australian Skills Commission, to implement these changes and supporting guidelines in consultation with the Industry Skills Councils, keeping in mind the needs of small to medium business for flexibility and clarity.

It is important the small employers, and employees, are on an equal footing when resolving any disputes that arise through the system and we trust our recommend changes to even the ledger can be implemented in the final Act.

Finally, the ongoing promotion of the VET sector is singularly one of the most important issues to Business SA and we encourage the Government to continue the work undertaken in recent years to educate students and their families that a VET education is not second best, but likely to lead to a financially successful and rewarding career.