



**Business SA Submission
to consultation on the
draft *South Australian
Skills Regulations 2021*
under the *South
Australian Skills Act 2008*
and associated Draft
Standards**

May 2021

Introduction

Business SA, South Australia's Chamber of Commerce and Industry, was formed in 1839 and has more than 3,500 members and several thousand clients across every industry sector, from micro businesses through to listed companies. We are a not-for-profit business membership organisation working on behalf of members and the broader business community in pursuit of economic prosperity for both South Australia and the nation. Funded by member subscriptions and the provision of products and professional services, we are independent of any government or political party.

As the recognised voice of business in South Australia, Business SA constantly communicates with members to ensure our advocacy speaks to their collective needs and those of the broader business community. This occurs through day-to-day conversations, various online communication mediums including surveys, and more formally through member reference groups, topical roundtables and seminars.

Business SA also has strong links with Regional Chambers of Commerce across the State. We hold quarterly online summits to discuss business activity as well as key challenges and opportunities, and our biennial Regional Voice survey is the most representative survey of regional business issues. We also run regular events across the regions.

Business SA has followed the progress of, and provided submissions to assist in, the review of the *Training and Skills Development Act 2008* leading to amendments and the production of *the SA Skills Act 2008* which will come into effect on 1 July 2021. We are pleased to now make further submissions regarding the final step in this part of the process – drafting the regulations and Standards to support the changes to the Act.

According to the National Centre for Vocational Education Research (NCVER), South Australian medium-sized businesses (more than 20 employees) take on the majority of apprentices and trainees (56%).¹ However, South Australia is home to a large proportion of micro to small businesses which, while they take on 44% of South Australian apprentices and trainees, have the capacity to take on more and need to be encouraged to do so. Businesses in regional, rural and remote South Australia also face greater challenges accessing new apprentices and trainees as well as retaining and educating them.

Regulations and Standards must be as streamlined as possible to ensure these small businesses are encouraged to take on trainees and apprentices. Business SA commends the Department of Innovation and Skills on generally well thought out and reasonably easily followed draft Regulations and Standards.

New provisions of the Act including Transfer Fees, Prohibited Employer and Extended Probation are well supported by regulations and standards. It is clear that any application for an individual extension of probationary period will be closely examined if it is to be approved by the Commission. The provision for transfer fees in the Skills Schedule, Transfer of training contracts (including transfer fees), will encourage businesses, that have previously lost advanced apprentices and trainees to other organisations, to take on apprentices or trainees again by discouraging poaching from employers in the future. The new provision enabling the Commission to declare and employer to be prohibited from taking on a trainee or apprentice adequately balances the streamlining of provisions such as employer registration.

¹ as at May 2020

Recommendations

1. Regulations

- a) Discussions with member RTO's has highlighted some confusion and possible unnecessary red tape arising from the combination of the NTO record keeping requirements of the Act, Regulations and Standards.

S 54U of the SA Skills Act 2008 states:

- (1) *A nominated training organisation under a training contract must keep such records as may be required by the regulations.*
- (2) *A nominated training organisation must retain a record kept under subsection (1) for at least 7 years after the expiry or termination of the training contract to which the record relates.*

Regulation 15 of the draft South Australian Skills Regulations 2021—Making and retention of records states:

For the purposes of section 54U(1) of the Act, a nominated training organisation under a training contract is required to keep the following records:

- (a) *the training contract and training plan for all apprentices and trainees for whom they are the nominated training organisation;*
- (b) *the names and contact details of all employers under training contracts for which they are the nominated training organisation;*
- (c) *records of meetings with employers, apprentices and trainees under each training contract for which they are the nominated training organisation and records of outcomes of those meetings including:*
- (i) *the progress or lack of progress in training by an apprentice or trainee; and*
- (ii) *any agreed remedial action to address lack of progress in training by an apprentice or trainee; and*
- (iii) *supports provided by an employer to assist the apprentice or trainee to meet their training goals as set out in the training plan;*
- (d) *any other records specified in the South Australian Skills Standards*

The *South Australian Skills Standard Nominated Training Organisations and Training plan*, at point 4.4, states 'The NTO for a training contract must keep such records in accordance with the ASQA requirements for RTO's, TEQSA requirements for higher education providers and the South Australian Skills Standard on Record Keeping. Records must be retained for at least seven years after the completion, expiry or termination of the training contract to which the record relates.'

The *South Australian Skills Standard on Record Keeping*, assuming it contains no more than the current guideline, applies only to an employer.

Business SA recommends that the detailed record keeping requirements for NTO's, in particular as they relate to RTOs, at s.15 of the regulations be amended to refer to a record keeping requirement RTO's currently meet and report on. It is also suggested that record keeping requirements of ASQA or TEQSA be compared with the proposed record keeping requirements to ensure the NTO is not constrained by unnecessary red tape, and at the very least, ensure the requirements under the Act, Regulations and Standards are aligned.

2. SA Skills Standard - Declaration of Trades and Vocations

- a) While Business SA has no comment to make on this Skills Standard it is assumed that spelling and punctuation of the standards will be reviewed prior to final publication. It is also noted the phrase “taken against you’ is used in the standard compliance paragraph in each Skills Standard. An alternative could be ‘taken against the person or organisation responsible”.

3. SA Skills Standard – Training Contract Approval

- a) Business SA notes a requirement for businesses at 4.6 of the Standard to keep a record of ‘b) on the job training and competency assessments”. It is unclear what the need to keep records regarding competency assessments relates to.
- b) Discussions with members has raised the issue of the employers requirement and ability to release the apprentice or trainee from work to attend any training and assessment specified in the training plan as a problem to be addressed. It is recognised that some seasonal industries may have difficulties meeting this training contract requirement and have requested that this issue be examined further.

4. SA Skills Standard -Transfer of training contracts substitution of Employer (including transfer fees)

- a) As previously mentioned, the record keeping responsibilities required under the regulations, this Standard and the Record Keeping Standard are complex and may increase the red tape that impacts the Registered Training Organisations.

5. SA Skills Standard – Host Employment Arrangements

- a) Business SA has no recommendations regarding this Standard.

6. SA Skills Standard – Complaint handling mediation and advocacy

- a) Business SA welcomed the increased emphasis the Training and Skills Development Bill placed 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.
- b) Business SA encouraged the Government to amend the T&SD Bill to allow for improved representation of employers if the matter is referred to the South Australian Employment Tribunal. Employers are unable to use legal representation or a registered association if they are not a member and, as they were not generally deemed by the OTA to be the vulnerable party, were unable to be represented by the OTA. This has not change in the legislation.

It is still 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 through the Commission.

- c) The Skills Standard, at every occasion, notes that employers and apprentices or trainees, as well as other parties have access to advocacy provided by the Commission. There is no mention of vulnerable parties or more vulnerable parties in the Standard. Business SA is heartened by this indication of equity of access for small businesses.

7. SA Skills Standard – Employer Registration

- a) South Australia Business SA recognises the streamlined process introduced by this Skills Standard while maintaining the requirement for quality training.

8. SA Skills Standard – Recognition of other Trade or declared vocation employment and training.

- a) Business SA recognises the assistance this Skills Standard will provide in easily employing qualified employees from interstate, utilising overseas qualifications and encouraging upskilling and career progression.

9. SA Skills Standard – training conditions including extended probationary period.

- a) Business SA is of the opinion that, in relation to item 6 of this Skills Standard, the provisions will ensure a fair outcome for trainees or apprentices and will be useful when it is necessary to assist a trainee or apprentice retain their position by providing additional time and support.