



Key changes to the SA traineeship and apprenticeship system arising from the new *Training and Skills Development Act 2008* effective 1/9/08

The new *Training and Skills Development Act 2008* (the Act) will enable the traineeship and apprenticeship system to be more responsive to the skill needs of employers, and will also benefit trainees and apprentices, by providing:

- *Faster training contract approvals, and a new employer registration process.*
- *Greater education and assistance for employers, trainees and apprentices, through consultants visiting workplaces to assess employers' ability to train trainees and apprentices, and to monitor training arrangements.*
- *A simpler, faster dispute resolution process through the South Australian Industrial Relations Commission (IRC).*
- *More protection for trainees and apprentices.*

Traineeship and Apprenticeship Services (TAS), Department of Further Education, Employment, Science and Technology (DFEEST), administers Part 4 of the Act, titled Apprenticeships/traineeships. TAS staff work under delegation from the Training and Skills Commission. The new Act can be found at www.legislation.sa.gov.au

Registration of employers

Employers who wish to train trainees and apprentices must be registered by TAS before they enter into a training contract with a trainee or apprentice. Registered employers will be placed on the State Training and Skills Register (the 'State Register'), which can be viewed at www.tasc.sa.gov.au Go to List of registered employers for apprentices and trainees in South Australia (Note: The list will be available from 1/9/08).

- The registration of employers is for a period of not more than 5 years. Initially, employers who currently have training contracts with trainees and apprentices will be registered for 5 years from the proclamation date of the new legislation (1/9/08). After that period, TAS may renew their registration for **up to 5 years**.
- In determining whether to register, renew or vary the registration of an employer to train trainees and apprentices, and in determining the conditions of registration, TAS will consider a range of criteria, including whether the employer is a fit and proper person, taking into account the prior conduct of the employer or an associate.
- The conditions determine the employer's scope of registration; that is, the trade and declared vocations in which they are approved to train one or more trainees and/or apprentices, and any restrictions imposed by TAS or the Industrial Relations Commission. TAS may impose conditions on an employer's registration, either upfront or during the registration period.
- An employer may apply to vary (eg add trades and vocations to) or cancel their registration.
- TAS may cancel, suspend or vary an employer's registration if the employer contravenes the Act or a corresponding law or a condition of the registration. Employers must be given 28 days written notice of the nature of the action TAS intends to take, and the employer is able to make representation to TAS within that period.
- An employer may appeal to the District Court against a TAS decision to refuse, vary, suspend or cancel registration within 28 days of the decision. Contact the District Court Civil Registry on (08) 8204 0286 for further information about the appeals process relating to section 61 of the Act.

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Compliance with the new Act

- If it appears that an employer has contravened a provision of Part 4 of the Act, a Compliance Notice may be issued, requiring the employer, within a period stated in the notice:
 - to take specified action to remedy the non-compliance; and
 - to produce reasonable evidence of the employer's compliance with the notice.
- An employer who fails to comply with a Compliance Notice within the time allowed in the notice is guilty of an offence.
- If you want to challenge a Compliance Notice, the following applications may be made to the **Industrial Relations Commission (IRC)**:
 - an employer may apply to the IRC on the ground that the employer has in fact complied with the Act;
 - an employee may apply to the IRC on the ground that the employer's failure to comply with the Act is more extensive than stated in the notice.
- The IRC, after hearing those involved, may confirm, modify or cancel the Compliance Notice.
- Maximum penalties for breaches of the legislation have been increased from \$2500 to \$5000, and in many instances, provision has been made for expiation fees of \$315.

Wilful and serious misconduct

- An employer must notify the IRC of a suspension of a trainee/apprentice for wilful and serious misconduct **immediately** by phoning the Registry, or by fax, email or personally attending the Registry, at the Riverside Centre, North Terrace, Adelaide. It must confirm the suspension in writing **within 3 days** of the suspension. A conciliation conference will be held within 7 working days of the date of the suspension. If the matter is not resolved at conciliation, it will proceed to a full hearing at a later date. The IRC may confirm or extend the suspension. Go to <http://www.industrialcommission.sa.gov.au> for further information.

Undue pressure

- It is now an offence for a person to exert undue influence or pressure on, or use unfair tactics against, a person in relation to entering into a training contract, or in relation to varying, transferring or terminating or suspending a training contract, or completing a contract on the basis that competency has been achieved.

Disputes and grievances

- The Industrial Relations Commission (IRC) will handle all grievances and disputes relating to training contracts that can't be resolved by agreement in the workplace. A party to the training contract must lodge an application with the IRC. The IRC's *Guide to Applications under the Training and Skills Development Act* and application forms may be accessed at <http://www.industrialcommission.sa.gov.au>
- An application should be lodged within the term of the training contract or **within 6 months** after completion, expiry, termination or cancellation of the training contract.
- The IRC will hold conciliation conferences with the parties generally **within 14 calendar days** of receiving the application, to see if it can get the parties to resolve the matter by agreement. In cases that cannot be settled by agreement, the applicant can choose to have the matter heard and determined by the IRC.

Note: If you have any queries about this Fact Sheet, freecall TAS **1800 673 097**. The Fact Sheet and FAQs may be accessed at www.employment.sa.gov.au

