



SUBMISSION

Training and Skills Development Act Review

19 June 2019

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2. Executive Summary

As an industry association that also operates a Registered Training Organisation (RTO) training 900 apprentice students and a Group Training Organisation (GTO) employing over 500 apprentices, we welcome the opportunity to comment on the review of the Training and Skills Development Act (T&SDA).

MTA-SA has advocated consistently that the training and skills systems focus on employment

We believe this is best achieved through enhanced integration and cooperation between schools, industry based RTOs, employers including GTOs, TAFE and industry.

This approach facilitates the promotion of and access to apprenticeship pathways through direct access to employers, including GTOs, and industry by enshrining cooperation between stakeholders as a legislative requirement.

The role of pathways facilitators should be undertaken by industry bodies or their associated training arms. Notwithstanding this, we do not support the inclusion of a skilled migration pathway in this Act, as migrants should already have attained their qualification and relevant experience as a condition of entry. We recommend it be subject to either a standalone Act or included in an alternate, employment related Act.

The roles of each critical stakeholder must be identified and defined within the Act. Whilst not specifically called for by this review, we recommend that these roles be supported through regulatory and financial measures that will facilitate the achievement of the obligations set out by the Act.

In particular, we feel that an industry specific mentoring program, and adult apprentice incentives will assist in helping industry achieve higher apprentice commencement and completion rates, in line with the Government's Skilling South Australia objectives.

We have also advocated for a reduction of the duplication and inconsistency between the State and Federal regulatory requirements, which can overlap, and commensurate funding to ensure the attainment of those requirements.

In defining the role of GTOs, this should include recognition of their unique status as an employer, a facilitator of on the job training and pastoral care provider, with a requirement to explicitly exclude consideration of GTOs as subject to Labour Hire regulation and WorkCover Premiums, as well as the reinstatement of completion rate funding previously delivered under the Critical Skills Fund.

These recommendations are stated below, in response to the objectives of the review rather than the specific terms of reference, in order to better align our proposed solutions to the intent of government. We look forward to

working with the State Government to modernise South Australia's Skilling and Training System.

3. Key Recommendations

The Motor Trade Association of South Australia makes the following recommendations in relation to the Training and Skills Development Act Review:

- 1) The terms apprentice, Registered Training Organisation, Group Training Organisation and employer should each be defined within the Act. This would be a positive step in recognising their critical role in the development of the workforce and setting a clear purpose for their involvement and the particular roles they play.
- 2) In recognising employers in the Act, their responsibilities to assist with the completion of apprenticeships should be supported through additional funding for mentoring and adult apprenticeships. This will help facilitate the return of apprenticeship commencement and completion rates to 2014 levels, which are the highpoint over the last five years.
- 3) In providing a reasonable definition of apprentice in the Act, apprentices would have clearer obligations regarding their conduct and responsibilities to the employer. This would provide a basis for rebalancing the decisions of the Training Advocate and the South Australian Employment tribunal to a 'without prejudice' basis in the event of a material breach.
- 4) Where the dual regulatory regimes of the State and Federal Government contradict each other, the federal guidance should apply.
- 5) Funding to meet these legislated compliance obligations should be reflected by increasing State administered payments to industry training providers accessing subsidised training payments.
- 6) The Act should specify that the functions of schools, TAFE and industry training providers is to work cooperatively to develop, support and promote apprenticeship pathways, thus providing clarity and certainty to those institutions who have been reluctant to engage fully with industry to provide pathways guidance.
- 7) Skilled migration should be governed by either a standalone Act or as part of an employment Act. Its inclusion in this legislation appears inconsistent with the requirement for skilled migrants to have already attained a trade qualification and relevant experience in their country of origin.
- 8) Group training organisations are not mentioned at all in the Act and should be defined to recognise their unique positions as apprentice employers and on the job training providers. In recognition of this, they are already exempt from Labour Hire regulations and WorkCover premiums. Further

recognition of their role by the State should include the reinstatement of the \$4,000 completion payment previously funded from the Critical Skills Fund.

4. Responses to Key Review Objectives

Ensuring the rights and responsibilities of the apprentice, employer and training provider are clear under the T&SD Act



KEY TAKEAWAYS

- The key terms apprentice, employer and training provider are not currently defined in the Act.
- These stakeholders are at the heart of the VET system and need to have clarity regarding their role, rights and responsibilities.
- A consequence of defining their responsibilities in law is the need for government to appropriately support them to meet those statutory obligations, which may include regulatory or financial measures.

A review of the T&SDA by MTA-SA indicates that while public bodies such as the Training and Skills Commission and Training Advocate each has their functions, rights and obligations enshrined in the Act, apprentices, employers and training providers do not.

This is a curious oversight given the fundamental role each of these three groups play in the VET system and one we believe should be corrected.

We believe that defining the roles of each of the groups would be a positive step in recognising their critical role in the development of the workforce and setting a clear purpose for their involvement.

Scope of Definitions

Employers

In developing these definitions, government should be mindful that employers play a unique role as an education provider within the VET system through

on-job training with implied responsibility for assisting apprentices to complete their qualification.

Since 2014, apprentice completion rates have declined by 35 percent, a result of declining commencements and a comparatively low retention rate.¹

Therefore it is appropriate that employers are supported to undertake responsibility for attracting and retaining apprentices. This should include the provision of incentives to minimise productivity losses in the first and second year of an apprenticeship in terms of the funding of a mentoring State program based on the successful Commonwealth program *Industry Specific Mentoring of Australia's Apprentices*, which expires this year.

This program has achieved an apprentice retention rate of approximately 95 percent in the automotive industry. This program should continue to be delivered through industry associations, who have the knowledge and experience to deliver the crucial 'industry specific' component of the service.

In addition, employers should have their financial risk recognised through the offsetting of the difference between an adult apprenticeship and a standard apprenticeship. This will facilitate the increased employment of latent labour in the over 21 year old demographic and assist in meeting the Government's Skilling South Australia target of 20,800 new apprenticeships in the first term of government.

The Act should include within its employer definition such wording as to make clear these responsibilities and the need for government to provide such support for them.

Apprentices

Apprentices have obligations under the Act, however, when these are breached and there is, as a result, ongoing detriment to the training provider or hosting business, they appear to be not held accountable by regulators.

Apprentices be defined in the Act in a way that makes clear to the regulators they have obligations to the employer that if breached may result in their termination, and this should be determined with consistency and without prejudice.

Group Training Organisations

Group Training Organisations should be defined as having overarching responsibility to apply a recruiting process that fairly evaluates applicants for their chosen career based on a criteria including education and ability. They must arrange ongoing hosting opportunities in safe and responsible

¹ *Apprentices and trainees 2018 - December quarter*, National Centre for Vocational Education Research

workplaces that complete the requirements of supervised on-the-job training reflecting the qualification units of competency to gain a trade certificate. They have responsibility for arranging and ensuring all off-the-job training is undertaken in conjunction with an RTO, whilst providing apprentices with pastoral support to maintain apprentice engagement through to completion

Registered Training Organisations

Registered Training Organisations are responsible for the delivery of training and assessments consistent with qualification training package requirements and student experience and delivery outcomes under ASQA regulations. They are also responsible for the scheduling of student training and assessments, and notification of the employer and student of dates, times and locations of training and assessments. They have responsibility to deliver training and assessments in a non-threatening environment with appropriate learner support and to ensure the student has an opportunity to provide feedback on the learning experience.

Ensuring the protections under the T&SD Act for parties to a training contract (employers, apprentices and trainees) are working and that the T&SD Act's dispute resolution processes are effective



KEY TAKEAWAYS

- Dispute resolution procedures appear to favour apprentices.
- This permits disruptive apprentices who have no real desire to undertake their apprenticeship in any meaningful way and to continue in paid employment despite being a detriment to other apprentices and their employer.
- Consequently, employers who experience this are reluctant to take on additional apprentices in the future.

MTA-SA believes that regulators assume that if an apprentice has a complaint or is facing termination, it is the responsibility of the employer to persist with apprentice regardless of the actions of the apprentice. This has the effect of discouraging direct employment of apprentices by businesses, and imposing additional costs on GTOs.

MTA-SA is aware of approximately a dozen incidents where one of our GTO employed apprentices has contacted the Training Advocate, with half of these

progressing to the South Australian Employment Tribunal or its predecessor. In each of these cases, MTA-SA has been ordered to payout the apprentice or return them to work with special allowances and tolerances.

We are also aware of at least one direct employer whose experience was so negative that he will never employ an apprentice again.

As indicated above, a reasonable definition of an apprentice in the Act would set out their responsibilities and obligations to the employer, and provide guidance to regulators so as not to prejudge matters that come before it in event of a material breach.

Whether penalties in the T&SD Act are properly targeted and proportionate and how compliance functions around apprenticeships and traineeships should be handled

KEY TAKEAWAYS

- Training Provider compliance is governed by both State and Federal Acts, creating duplicate, inconsistent, and at times conflicting obligations for training providers.
- These instances should be eliminated such that State regulation should be consistent with Federal regulation.
- State funding for RTOs is not commensurate with the cost of compliance, despite these obligations being mandated by law.
- ASQA utilises a risk based approach, which South Australia should be consistent with.

MTA-SA believes that it is important that the State recognise the dual regulatory obligations imposed by both the State and Federal Governments.

We are aware of instances where this dual regulation results in duplication of functions, such as compliance and enforcement. Inconsistency exists particularly in terms of classification and reporting requirements, or conflicts in the compliance enforcement space.

Where such conflict exists, South Australia should adopt the Federal regulation. Additionally ASQA, the federal regulator, has adopted a risk based

approach to its compliance functions, which South Australia should be consistent with.

In recognising that there are dual regulatory obligations, it should also be recognised that state funding for RTOs, which is their primary source of revenue, does not reflect the increased compliance obligations that have been imposed since 2015. This should be corrected.

Flexibilities in relation to pathways to an apprenticeship or traineeship and to trade certifications

KEY TAKEAWAYS

- Strengthening and clarifying pathways to apprenticeships and employment is an urgent priority and should be facilitated through legislation.
- This requires the integration of industry associations and training providers with schools and TAFE, who can facilitate industry experience and workplace placements.
- GTOs are well placed to provide pathways guidance to students from school to employment, if they are permitted to work alongside schools and TAFE.

Apprenticeship pathways are critical to maintaining the pipeline of apprentices to industry and ensuring young people in particular are able to access not only the VET system but the employment market.

However, too many students get lost between school and the VET system because they are unable to find direct employment opportunities or they are unaware of the role of GTOs.

The MTA has implemented a School Pathways program which seeks to guide students and parents through the complexity and uncertainty of the school - training - employment continuum.

This is the result of extensive market research which uncovered a surprisingly high level of interest in trade based learning, alongside a disappointing lack of awareness of the opportunities to access it.

This market research included site tours of more than 40 schools, many of which had automotive workshops. It also confirmed that these were essentially not operative or underutilised because there was an apparent lack of demand, no curriculum or a lack of sufficiently qualified trainers.

We have also attempted to engage with TAFE-SA in developing a pathway from TAFE to our GTO as well as the industry association, only to be refused despite the enthusiasm of a number of outer metropolitan and peri-urban campuses.

Our conclusions therefore are that schools are not predisposed to the delivery of VET learning within current constraints, although there were a limited number of examples where schools did this well. We also believe that VET coordinators are hampered by not having industry experience and knowledge, or where it exists it is limited to a single trade in our experience.

We reiterate that it has been difficult for TAFE to form co-operative relationships with GTOs, at least in our experience.

The Act review offers an opportunity for government to utilise industry training providers and GTOs to fill the gaps within the school system.

The Act should specify the functions of schools, TAFE and industry training providers as working cooperatively to develop, support and promote apprenticeship pathways, thus providing clarity and certainty to those institutions who have been reluctant to engage fully with industry to provide pathways guidance.

This would allow training providers, such as GTOs, to utilise their expert knowledge and current training packages, access to work placements and awareness of industry connections to facilitate greater understanding and cooperation at the local level between schools and employers, including GTOs.

Skilled Migration Pathways

We also note the proposal to have the T&SDA provide the legislative framework governing skilled migration.

MTA-SA is a supporter of skilled migration, with appropriate protections, but we do not believe that its inclusion in this Act would be appropriate.

In theory, skilled migrants have already achieved their qualification in their country of origin, therefore it makes little sense to include them in an Act that primarily regulates unqualified apprentices. This could dilute and confuse the administration of both functions.

We suggest that skilled migration is better suited to either a standalone enabling Act or to an alternate employment related Act separate to training and skills policy.

Whether the T&SD Act provides appropriately for Group Training Organisations (GTOs) as distinct from other employers

KEY TAKEAWAYS

- There is no reference to Group Training at all in the Act.
- The role of a GTO in facilitating employment outcomes should be included in the Act.
- In recognition of their critical role in facilitating employment outcomes and the disproportionate risk they assume as employers, the Act should specifically exempt them from Labour Hire regulations and WorkCover Premiums as per current arrangements.

The T&SDA makes no reference to group training at all. The role of GTOs in providing employment outcomes and as described above should be facilitated by the Act, as it is a critical component of the training and skills system but essentially unrecognised by legislation.

This has created situations where GTOs are considered to be Labour Hire companies, or where their role as an education provider is ignored in terms of WorkCover premiums, which GTOs are currently exempt from.

Recently, attempts have been made to subject GTOs to Labour Hire laws and to impose WorkCover premiums, on the basis that they are an employer like any other. However, this misunderstands the fact that although they are an employer, they are unlike any other.

In light of this, GTO's require substantial investment and development, and already subject to high levels of compliance and regulation from State and Federal jurisdictions. This results in a disproportionate level of risk for a GTO as compared to a business that trades in good or services, which has greater diversity in their workforce demographics.

This should be recognised in the Act and through appropriate funding, with the reinstatement of the \$4,000 apprenticeship completion payment, previously funded through the Critical Skills Fund.

5. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

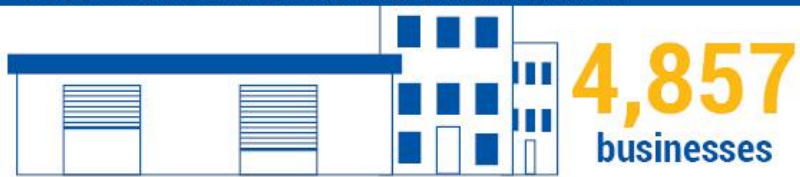
6. About Us

The Motor Trade Association of South Australia is the only employer organisation representing the interests of automotive retail, service and repair businesses in the state.

The MTA Training and Employment Centre comprises of both our Registered Training and Group Training Organisations. It is the automotive industry's training provider of choice and is the largest employer of automotive apprentices in South Australia.

South Australian Automotive Retail, Service & Repair Sector Overview*

*Source: Directions in Australia's Automotive Industry, An industry Report 2017 MTA



Motor Trade Association of South Australia



MTA Training and Employment



We currently have
over **800** apprentices
in training

We also directly employ
500 apprentices
through **240** host businesses

DIVISIONS



7. Submission Contact

For further information relating to this submission please contact:

Nathan Robinson
Industry Policy Specialist
nrobinson@mtaofsa.com.au
08 8291 2000 or 0418 829 918