

## Memorandum of Understanding

### Between

RCM	Name	Regulation and Contract Management, a directorate within the South Australian Department of State Development
	Isabel Maurer	Level 6 11 Waymouth Street Adelaide SA 5000

- And -

FWO	Name	The Office of the Fair Work Ombudsman ("The Fair Work Ombudsman")
	Michael Campbell	Level 6 414 La Trobe Street Melbourne VIC 3000

## RECITALS

1. The Training and Skills Commission ("Commission") is established under Part 2 of the *Training and Skills Development Act 2008* (SA) (T&SD Act). Certain functions of the Commission have been delegated to officers of Regulation and Contract Management (RCM) including, but not limited to, the registration of employers and the administration and regulation of training contracts between an employer and apprentice or trainee.
2. The Office of the Fair Work Ombudsman (FWO) is a Commonwealth agency established by the *Fair Work Act 2009* (Cth) (the Act) and is responsible for promoting harmonious, productive and cooperative workplaces and ensuring compliance with the *Fair Work Act 2009*, the Fair Work Regulations 2009 and fair work instruments.

# 1. Interpretation

## 1.1 Definitions

For ease of description this Memorandum uses the following terms:

**Apprentice/Trainee** means a person (who may be either an apprentice or a trainee) undertaking training in a trade or a declared vocation under a training contract.

**Apprenticeship/Traineeship** means a Training Contract between an employer and apprentice or trainee.

**Director RCM** means the person appointed to, holding or acting for the time being in the position of Director of RCM.

**FWO** means the Office of the Fair Work Ombudsman.

**Memorandum** means this memorandum of understanding.

**Parties** mean RCM and the FWO.

**RCM** means Regulation and Contract Management, and includes any delegate or successor of RCM with responsibility for matters relating to RCM in this Memorandum.

**Training Contract** means a training contract under Part 4 of the T&SD Act.

## 2. Purposes of Memorandum

2.1 The purposes of this Memorandum are:

- i. To assist the FWO fulfil its responsibilities in promoting and monitoring compliance with Commonwealth workplace relations laws, as they relate to apprentices and trainees, including the Act, the National Employment Standards (NES) and relevant industrial instruments within various industry sectors.
- ii. To assist RCM fulfil its responsibilities in relation to compliance of employers and their apprentices and/or trainees with the training contract obligations and obligations set out in Part 4 of the T&SD Act. This includes collaboration on education projects that foster compliance and understanding of the obligations of parties to a training contract, as well as determining key industries that require additional assistance.
- iii. To set out a common statement of intent and the commitment of both parties.

2.2 This Memorandum records the parties' shared understanding and expectations about their respective roles and responsibilities in relation to:

- iv. RCM's legislative responsibility for the regulation of apprenticeships and traineeships in South Australia under the T&SD Act; and
- v. The FWO's role in promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Australian workplace laws.



- 2.3 This Memorandum is not intended to restrain RCM or the FWO in the way it investigates any matter, or how each party takes decisions to pursue matters to Court, or other outcomes.

### 3. Obligations

- 3.1 RCM and the FWO will give effect to the arrangements and procedures set out in Annexure A.
- 3.2 Subject to legal restrictions on information disclosure, RCM and the FWO will exchange information and respond to requests where relevant, to assist each other in their roles.
- 3.3 RCM and the FWO will establish and maintain liaison contacts to ensure the effective operation of this Memorandum.

### 4. Variation and termination

#### 4.1 Variation

This Memorandum may be varied at any time by agreement of the Responsible officers. Any variations must be in writing and signed by both parties.

#### 4.2 Termination

Either party may terminate this Memorandum by providing 28 days' notice in writing to the other party.

### 5. Constraints imposed by laws

- 5.1 RCM and the FWO acknowledge that from time to time the other may be unable to fully comply with all the requirements of this Memorandum due to constraints imposed by laws (including but not limited to Commonwealth privacy legislation and relevant State legislation including the T&SD Act). Each Party agrees to use its best endeavours to exchange information to the extent permissible by law.

### 6. No intention to enter legal relations

#### 6.1 The parties:

- vi. Agree that by entering this Memorandum they have no intention to enter legal relations.
- vii. Confirm that this Memorandum is not a legally binding document and is not enforceable as such, and neither party shall be entitled to any compensation or make any claim on the other before a court or any other person or body arising out of a breach by a party of this Memorandum.

### 7. Privacy

- 7.1 RCM and the FWO respectively undertake that any disclosure of information, and any use, storage or transfer of such information, shall only be made to the extent permitted by law and, in particular:
- i. Assure each other that any personal information as defined in the relevant privacy legislation disclosed by one to the other in connection with this

Memorandum has been collected in accordance with the laws of the Commonwealth and the State of South Australia.

- ii. Assure each other that the disclosure of the information to, and its use by, the organisation to which it is disclosed is authorised by the individual or by law.
- iii. Agree not to use, disclose, store, transfer or handle personal information collected in connection with this Memorandum except in accordance with the laws of the Commonwealth and the State of South Australia.
- iv. Agree to cooperate with any reasonable request of the other relating to the protection of personal information or the investigation of a complaint regarding personal information.

## 8. Communication

- 8.1 RCM and the FWO agree to meet when requested by the Responsible officers to discuss issues arising in relation to apprentices and trainees in South Australia, including issues arising under this Memorandum.
- 8.2 RCM and the FWO agree to consider collaborating on education, compliance and enforcement activities involving employers of apprentices and trainees in South Australia, where requested by the Responsible officers.
- 8.3 The exchange of information outlined in this Memorandum will, unless agreed otherwise, occur at an operational level between the Operational officers.
- 8.4 RCM and the FWO will publish this Memorandum on their respective websites.

## 9. Confidential Information

- 9.1 With respect to any information designated as confidential and subject to the laws of the Commonwealth and the State of South Australia, the Parties agree to:
  - i. secure the confidential information and only allow authorised personnel to have access to that confidential information;
  - ii. use and reproduce confidential information only for the purposes set out in this Memorandum;
  - iii. not disclose or otherwise make available confidential information other than to its authorised personnel in order to give effect to the purpose set out in this Memorandum.
- 9.2 The above paragraph shall not apply to any information which is publically available or permitted to be disclosed to a third party without restriction.

## 10. Term

This Memorandum has effect from the date it is signed on behalf of the last party to sign it, and operates until 1 December 2018 inclusive, unless varied or terminated in accordance with paragraph 4 or by any right at law.

# 11. Contacts

## 11.1 Responsible officers

The parties acknowledge that the persons appointed to, holding, or acting for the time being in, the following positions will use their best endeavours to facilitate the efficient implementation of this Memorandum.

- i. For RCM: Director
- ii. For FWO: Director - Regional Services and Young Workers Team

## 11.2 Operational officers

The parties acknowledge that the persons appointed to, holding or acting for the time being in the following positions will be responsible for the exchange of information at the operational level to enable the implementation of this Memorandum:

- iii. For RCM: Manager - Registration and Compliance
- iv. For FWO: Assistant Director - Young Workers Team

## 11.3 Change in Responsible officers and Operational officers

RCM and the FWO may change their Responsible officers or operational officers by notifying the other party in writing.

Signing page

SIGNED by

John King, Executive Director

Skills and Employment Division

Department of State Development, South Australia

in the presence of:

.....*A Lacey*.....

Signature of witness

.....ALEXANDRA LACEY.....

Name of witness (block letters)

DATED: 16/12/16

SIGNED by

Michael Campbell

Deputy Fair Work Ombudsman (Operations)

in the presence of:

.....*L Cato*.....

Signature of witness

.....LOUISE CATO.....

Name of witness (block letters)

DATED: 9/01/17



# ANNEXURE A

## 1. PRINCIPLES

The following general principles will apply in relation to RCM and the FWO with respect to the investigation of workplace complaints relating to a party or parties to a training contract.

- 1.1 RCM and the FWO will exchange information, to the extent possible that will assist both organisations in the delivery of their services to apprentices and trainees in relation to their entitlements under Commonwealth workplace relations laws, the *Fair Work Act 2009*, the National Employment Standards (NES) and relevant industrial instruments within various industry sectors; and fulfil compliance of employers and apprentices and/or trainees with their training contract obligations and obligations set out in Part 4 of the *Training and Skills Development Act 2008*.
- 1.2 RCM and the FWO will provide mutual assistance and support, to the extent possible, when assessing complaints or allegations relating to a party or parties to a training contract who raise/s legitimate employment/training issues that may relate to potential breaches of employment or training contract obligations.

## 2. JURISDICTION AND RESPONSIBILITIES

- 2.1 The FWO is a statutory office created by the *Fair Work Act 2009*. Its jurisdiction under the *Fair Work Act 2009* is to promote harmonious, productive and cooperative workplace relations and ensure compliance with Australian workplace laws. It does this by:

- providing education, assistance and advice to employers and workers
- promoting and monitoring compliance with workplace laws
- investigating workplace acts and practices that are suspected to be contrary to workplace laws
- enforcing relevant Commonwealth workplace laws.

- 2.2 **The functions of the Commission under Part 4 of the T&SD Act in relation to Apprenticeships and Traineeships have been delegated to officers of RCM.**

- 2.2.1 Section 55 of the T&SD Act requires an employer to be registered. The registered employer may then enter into a Training Contract.

Section 57 requires that in determining whether to register or renew or vary an application for employer registration, officers of RCM must have regard to the following matters:

- any guidelines developed by the Commission;
- the place of employment of the apprentice/trainee;
- the equipment and methods to be used in the training of the apprentice/trainee;
- the persons who are to supervise the work of the apprentice/trainee;
- the ratio between the number of apprentices/trainees who are a party to a training contract with the employer and the number of persons who are to supervise their work;

- any other matter that is, in the opinion of the Commission, relevant to the registration;
- whether the employer (and any associate) is a fit and proper person to be so registered, or to have the registration renewed or varied.

Section 48 of the T&SD Act requires a registered employer to obtain approval from RCM for the training of an apprentice or trainee under a training contract.

2.2.2 The Commission has delegated the function of appointing authorised officers pursuant to section 73 of the T&SD Act to the Chief Executive of the Department of State Development. The Chief Executive has appointed certain officers of RCM as authorised officers under section 73. An authorised officer may:

- question any person about the delivery or provision of education or training or the employment of an apprentice/trainee;
- require the production of any record or document required to be kept under the Act and inspect and examine the record or document and take copies or extracts of the record or document, take any record or document, seize and remove anything that may constitute evidence of an offence against the T&SD Act and take photographs, films or video recordings; and
- enter and inspect premises in which education or training is provided or in which an apprentice/trainee is employed.

### 3. ARRANGEMENTS

To give effect to the principles outlined above:

#### 3.1 Exchange of Information

Subject to the laws of the Commonwealth and the State of South Australia or the consent of a person to whom the information relates (as the case may be):

- 3.1.1 On a regular basis, the FWO will provide information to RCM on significant education, compliance and enforcement activities and outcomes involving employers and apprentices and trainees in South Australia;
- 3.1.2 RCM will provide information to the FWO on parties to training contracts where there are reasons to believe there may be substantial breaches of the *Fair Work Act 2009* and relevant awards;
- 3.1.3 Any outcomes of referrals, investigations or prosecutions of incidents covered by this **Annexure** may be made available to both parties; and
- 3.1.4 On request from the FWO, RCM will provide information in its possession to the FWO.

#### 3.2 Confidentiality of Information

When using information, the Parties acknowledge each Party's primary responsibility to comply with the requirements of confidentiality pursuant to the laws of the Commonwealth and the State of South Australia.



### 3.3 Formal Meetings

- 3.3.1 RCM and the FWO will meet formally at least once a year to share information and discuss strategic and operational issues concerning the employment of apprentices and trainees, over which both have a direct regulatory responsibility, and to review implementation of this Memorandum and resolve any issues arising from its application or interpretation.