

SAET: Hearing and Determination

What happens when matters are referred for H & D



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SAET: The story so far

- SAET was established by s 5 of the SAET Act and commenced operation on 1 July 2015.
- As at 7 October 2015, SAET had received 1,312 applications. 684 of those (52%) have already resolved at conciliation.
- July was the busiest month with 533 matters filed. In August and September the lodgement numbers were 331 and 388.
- About 90% of matters are s 99 reviews. The remaining 10% are mainly AEDs. There have been < 10 s 18 applications.



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SAET: The story so far

- It is too early to predict with any certainty likely SAET lodgement rates and timelines. Subject to that caveat:
- The clearance rate (matters resolved / matters lodged) for September was 80%.
- Time from lodgement to a referral to a CO = 1 day.
Time from lodgement to IDH = 19 days.
Time from IDH to a CC = 25 days.
- Only 17% of applications are being lodged on line. We are working to try and improve the utilisation of this option.



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SAET: The story so far

- The conciliation timeline mandated by s 43 of the SAET Act has been adhered to.
- So far, settlement rates and durations are positive and encouraging.
- Partly as a result of compressed conciliation timelines, there will be a steady flow of matters proceeding to H & D from conciliation.
- This presentation will outline what to expect at H & D.



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SAET: H & D - Appeals

- s 66 of the SAET Act allows an appeal from a decision of a conciliation officer (CO) or magistrate to a Presidential member (PM).
- To date these have concerned decisions on AEDs, and in particular, s 43 / s 58 non-eco loss.
- Usually no evidence is called in a s 66 appeal and the PM makes orders for outlines of argument and gives a hearing date at the pre-hearing conference (PHC) required by s 45 of the SAET Act.



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SAET: H & D – s 18 applications

- s 18 of the RTW Act provides a worker can seek an order from SAET that a pre-injury employer provide employment.
- Given the nature of the remedy, if there has been a recent termination of employment, PHC and hearing dates are likely to be given in the near future.
- If there has been no conciliation, the matter may proceed to conciliation before a CO or a PM.
- A PM may ask the parties to outline their positions at the PHC and/or to provide written statements which do so.



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SAET: H & D – s 18 applications

- The orders made at a s 18 PHC will depend on the matter.
- In one matter, an order was referring the matter to conciliation before a CO.
- In another matter, the s 18 application was joined with some existing WCT work capacity disputes so all capacity related issues could be heard at once by the same PM.
- In some matters there will be legal and technical points and issues taken. Such an issue may inform the course the matter takes and the order made.



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SAET: H & D – s 99 review PHCs

- 30 minutes are set aside for most PHCs.
- At present 2 PMs are conducting all initial PHCs.
- The PM will have read the papers and will want to discuss the substantive issues with the parties.
- At a PHC, the issues will be identified and noted, general orders will be made, and often trial orders will also be made.
- A hearing date may be given at the PHC or may be advised of shortly afterwards.



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SAET: Approach at a PHC

- The approach taken at a PHC will often resemble triage.
- If the PM believes the fastest way to a result is to list a settlement conference, he or she will do so.
- If further clarification or identification of issues or evidence is needed, time to do so may be given.
- If the PM considers the most efficient way to achieve an outcome is to list a hearing, that will occur.
- Optimal outcomes will only happen if representatives know the matter well and can comment on it at the PHC.



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SAET: H & D -Hearings

- r 78 contains the objective of listing a hearing in a matter within 3 months of referral to H&D. How will this be done?
- In part by listing some matters for lay evidence alone. One day will usually be allocated for this.
- If a matter proceeds beyond that point, further hearing dates will be allocated by the PM.
- More listing dates may be made available than at present.
- r 30 – r 35 limit expert witness numbers.



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SAET:H & D - Hearings

Advantages of listing lay evidence alone

1. Avoid delay in listing due to medical witness availability.
2. More hearings can be listed.
3. The impetus to settle happens sooner.
4. If not, the evidence of the applicant can be heard.
5. Significant medical cancellation fees are avoided.



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SAET: H & D - Hearings

- A complex matter may have specific pre-hearing procedures and timelines ordered.
- A PM will need to be satisfied this is justified in the particular case.
- An example be a death claim where a link between employment and death is not clear cut and where lay and expert evidence is required to decide the issue.



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