

# SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

## PRACTICE DIRECTION NO 28

### CONSENT ORDERS

I, James Peter McCusker, the President of the Tribunal, pursuant to Rule 10(1) of the *South Australian Employment Tribunal Rules 2017* do hereby make the following Practice Direction. I do so because an issue has arisen in connection with the recording of consent orders in connection with s 58 assessments under the *Return to Work Act 2014*.

Some lawyers have been submitting consent orders that contain orders for the payment of lump sum compensation pursuant to s 58 in circumstances where there has been no assessment pursuant to s 22 of the RTW Act.

The Tribunal has resolved that in such circumstances it is not appropriate for it to make such orders.

Section 58 (1) of the RTW provides: “ Subject to this Act, if a worker suffers a work injury resulting in permanent impairment as assessed under Part 2 Division 5 , the worker is entitled (in addition to any entitlement apart from this section) to compensation for non-economic loss by way of a lump sum.

Part 2 Division 5 is a reference to s 22.

Section 22 relevantly provides: “This section sets out a scheme for assessing the degree of impairment (being whole person impairment) that applies to a work injury that results in permanent impairment.

(2) An assessment under this section—

(a) must be made in accordance with the Impairment Assessment Guidelines; and

(b) must be made by a medical practitioner who holds a current accreditation under this section.

Section 43(15) of the South Australian Employment Act 2014 provides:

“The member of the Tribunal presiding at a compulsory conference—

(a) must not accept a settlement that appears to be inconsistent with a relevant Act (but he or she may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act);”

The Tribunal has formed the view that a s 58 determination cannot be made without a s 22 assessment and to make a consent order in the knowledge that there is no such assessment would be contrary to s 43(15) of the SAET Act

Some lawyers have been attempting to get around these concerns on the basis that s 43(15) of the SAET Act only applies to member of the Tribunal presiding at a compulsory conference such that if the orders are placed before a Presidential Member who is not conducting a compulsory conference the provision does not apply.

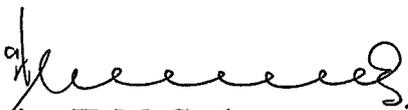
Even if technically a member who is making consent orders outside of a compulsory conference is not bound by s 43(15) of the SAET Act, it is not appropriate for the Tribunal to be making orders that do not comply with the Act.

Accordingly I have resolved to issue the following practice direction:

***Practice Direction 28 Consent orders***

*Where parties submit consent orders that include the provision for the payment of lump sum compensation pursuant to s 58 of the Return to Work Act 2014 they by implication are taken as giving an undertaking to the Tribunal that there has been an assessment pursuant to s 22 of that Act of the degree of whole person impairment that underpins the orders.*

Dated this 23<sup>rd</sup> day of October 2017

  
Justice JP McCusker

President of the South Australian Employment Tribunal

